No. 18-35347

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RYAN KARNOSKI, et al.,
Plaintiffs-Appellees,

STATE OF WASHINGTON, Attorney General's Office Civil Rights Unit,
Intervenor-Plaintiff-Appellee,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.
Defendants-Appellants.

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

EXCERPTS OF RECORD
VOLUME I (ER1-62)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	CASE NO. C17-1297-MJP ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' AND WASHINGTON'S MOTIONS FOR SUMMARY JUDGMENT; GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER comes before the Court on Plaintiffs' Motion for Summary Judgment (Dkt. No. 129); the State of Washington's Motion for Summary Judgment (Dkt. No. 150); and Defendants' Cross-Motion for Partial Summary Judgment (Dkt. No. 194.) Having reviewed the Motions, the Responses (Dkt. Nos. 194, 207, 209), the Replies (Dkt. Nos. 201, 202, 212) and all related papers, and having considered arguments made in proceedings before the Court, the Court rules as follows: The Court GRANTS IN PART and DENIES IN PART Plaintiffs' and

Washington's Motions and GRANTS IN PART and DENIES IN PART Defendants' Cross-Motion.

ORDER SUMMARY

In July 2017, President Donald J. Trump announced on Twitter a ban on military service by openly transgender people (the "Ban"). Plaintiffs and the State of Washington ("Washington") challenged the constitutionality of the Ban, and moved for a preliminary injunction to prevent it from being carried out.

In December 2017, the Court—along with three other federal judges—entered a nationwide preliminary injunction preventing the military from implementing the Ban. The effect of the order was to maintain the status quo, allowing transgender people to join and serve in the military and receive transition-related medical care. For the past few months, they have done just that.

In March 2018, President Trump announced a plan to implement the Ban. With few exceptions, the plan excludes from military service people "with a history or diagnosis of gender dysphoria" and people who "require or have undergone gender transition." The plan provides that transgender people may serve in the military only if they serve in their "biological sex." Defendants claim that this plan resolves the constitutional issues raised by Plaintiffs and Washington.

In the following order, the Court concludes otherwise, and rules that the preliminary injunction will remain in effect. Each of the claims raised by Plaintiffs and Washington remains viable. The Court also rules that, because transgender people have long been subjected to systemic oppression and forced to live in silence, they are a protected class. Therefore, any attempt to exclude them from military service will be looked at with the highest level of care,

and will be subject to the Court's "strict scrutiny." This means that before Defendants can implement the Ban, they must show that it was sincerely motivated by compelling interests, rather than by prejudice or stereotype, and that it is narrowly tailored to achieve those interests.

The case continues forward on the issue of whether the Ban is well-supported by evidence and entitled to deference, or whether it fails as an impermissible violation of constitutional rights. The Court declines to dismiss President Trump from the case and allows Plaintiffs' and Washington's claims for declaratory relief to go forward against him.

BACKGROUND

I. The Ban on Military Service by Openly Transgender People[1]

***President Trump's Announcement on Twitter*:** On July 26, 2017, President Donald J. Trump (@realDonaldTrump) announced over Twitter that the United States would no longer "accept or allow" transgender people "to serve in any capacity in the U.S. military" (the "Twitter Announcement"):



(Dkt. No. 149, Ex. 1.)

[1] As used throughout this Order, and as explained in greater detail in this section, the "Ban" refers to Defendants' policy generally prohibiting military service by openly transgender people, as announced in President Trump's Twitter Announcement and 2017 Memorandum and as further detailed in the Implementation Plan and 2018 Memorandum.

***The 2017 Memorandum*:** On August 25, 2017, President Trump issued a Presidential Memorandum (the "2017 Memorandum") formalizing his Twitter Announcement, and directing the Secretaries of Defense and Homeland Security to "return" to an earlier policy excluding transgender service members. (Dkt. No. 149, Ex. 2.) The 2017 Memorandum authorized the discharge of openly transgender service members (the "Retention Directive"); prohibited the accession of openly transgender service members (the "Accession Directive"); and prohibited the use of Department of Defense ("DoD") and Department of Homeland Security ("DHS") resources to fund "sex reassignment" surgical procedures (the "Medical Care Directive"). (Id. at §§ 1-3.) The Accession Directive was to take effect on January 1, 2018; the Retention and Medical Care Directives on March 23, 2018. (Id. at § 3.) The 2017 Memorandum also ordered the Secretary of Defense to "submit to [President Trump] a plan for implementing both [its] general policy . . . and [its] specific directives . . ." no later than February 21, 2018. (Id.)

***Secretary Mattis' Press Release and Interim Guidance*:** On August 29, 2017, Secretary of Defense James N. Mattis issued a press release confirming that the DoD had received the 2017 Memorandum and, as directed, would "carry out" its policy direction. (Dkt. No. 197, Ex. 2.) The press release explained that Secretary Mattis would "develop a study and implementation plan" and "establish a panel of experts . . . to provide advice and recommendation on the implementation of the [P]resident's direction." (Id.)

On September 14, 2017, Secretary Mattis issued interim guidance regarding President Trump's Twitter Announcement and 2017 Memorandum to the military (the "Interim Guidance"). (Dkt. No. 149, Ex. 3.) The Interim Guidance again identified the DoD's intent to "carry out the President's policy and directives" and "present the President with a plan to implement the policy and directives in the [2017] Memorandum." (Id. at 2.) The Interim

Guidance provided (1) that transgender people would be prohibited from accession effective immediately; (2) that service members diagnosed with gender dysphoria would be provided "treatment," however, "no new sex reassignment surgical procedures for military personnel [would] be permitted after March 22, 2018"; and (3) that no action would be taken "to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender status." (Id. at 3.)

***The Implementation Plan*:** On February 22, 2018, as directed, Secretary Mattis delivered to President Trump a plan for carrying out the policies set forth in his Twitter Announcement and 2017 Memorandum (Dkt. No. 224, Ex. 1) along with a "Report and Recommendations on Military Service by Transgender Persons" (Dkt. No. 224, Ex. 2) (collectively, the "Implementation Plan"). The Implementation Plan recommended the following policies:

- Transgender persons with a history or diagnosis of gender dysphoria are disqualified from military service, except under the following limited circumstances: (1) if they have been stable for 36 consecutive months in their biological sex prior to accession; (2) Service members diagnosed with gender dysphoria after entering into service may be retained if they do not require a change of gender and remain deployable within applicable retention standards; and (3) currently serving Service members who have been diagnosed with gender dysphoria since the previous administration's policy took effect and prior to the effective date of this new policy, may continue to serve in their preferred gender and receive medically necessary treatment for gender dysphoria.

- Transgender persons who require or have undergone gender transition are disqualified from military service.

- Transgender 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.

(Dkt. No. 224, Ex. 1 at 3-4.)

***The 2018 Memorandum*:** On March 23, 2018, President Trump issued another Presidential Memorandum (the "2018 Memorandum"). (Dkt. No. 224, Ex. 3.) The 2018 Memorandum confirms his receipt of the Implementation Plan, purports to "revoke" the 2017 Memorandum and "any other directive [he] may have made with respect to military service by transgender individuals," and directs the Secretaries of Defense and Homeland Security to "exercise their authority to implement any appropriate policies concerning military service by transgender individuals." (Id. at 2-3.)

II. The Carter Policy

In 2010, Congress repealed the "Don't Ask, Don't Tell" policy that had previously prevented gay, lesbian, and bisexual people from serving openly in the military. (Dkt. No. 145 at ¶ 10.) The repeal of "Don't Ask, Don't Tell" raised questions about the military's policy on transgender service members, as commanders became increasingly aware that there were capable and experienced transgender service members in every branch of the military. (Id. at ¶ 11; Dkt. No. 146 at ¶ 7.) In August 2014, the DoD eliminated its categorical ban on retention of transgender service members, enabling each branch of military service to reassess its own policies. (Dkt. No. 145 at ¶ 12; Dkt. No. 146 at ¶ 8.) In July 2015, then-Secretary of Defense Ashton Carter convened a group to evaluate policy options regarding openly transgender service members (the "Working Group"). (Dkt. No. 142 at ¶ 8.) The Working Group included senior uniformed officials from each branch, a senior civilian official, and various staff members. (Id. at ¶ 9.) It sought to "identify and address all relevant issues relating to service by openly transgender persons." (Id. at ¶ 22.) To do so, it consulted with medical experts, personnel experts, readiness experts, and commanders whose units included transgender service members, and commissioned an independent study by the RAND Corporation to assess the implications of

allowing transgender people to serve openly (the "RAND Study"). (Id. at ¶¶ 10-11, 22-27.) In particular, the RAND Study focused on: (1) the health care needs of transgender service members and the likely costs of providing coverage for transition-related care; (2) the readiness implications of allowing transgender service members to serve openly; and (3) the experiences of foreign militaries that allow for open service. (Dkt. No. 144, Ex. B at 4.) The RAND Study found "no evidence" that allowing transgender people to serve openly would adversely impact military effectiveness, readiness, or unit cohesion. (Dkt. No. 144 at ¶ 14.) Instead, the RAND Study found that discharging transgender service members would reduce productivity and result in "significant costs" associated with replacing skilled and qualified personnel. (Dkt. No. 142 at ¶ 21.) The results of the RAND Study were published in a 113-page report titled "Assessing the Implications of Allowing Transgender Personnel to Serve Openly." (See Dkt. No. 144, Ex. B.)

After reviewing the results of the RAND Study and other evidence, the Working Group unanimously agreed that (1) transgender people should be allowed to serve openly and (2) excluding them from service based on a characteristic unrelated to their fitness to serve would undermine military efficacy. (Dkt. No. 142 at ¶¶ 26-27.) On June 30, 2016, Secretary Carter accepted the recommendations of the Working Group and issued Directive-type Memorandum 16-005 (the "Carter Policy"), which affirmed that "service in the United States military should be open to all who can meet the rigorous standards for military service and readiness." (Dkt. No. 144, Ex. C.) The Carter Policy provided that "[e]ffective immediately, no otherwise qualified service member may be involuntarily separated, discharged or denied reenlistment or continuation of service, solely on the basis of their gender identity," and further provided that

transgender people would be allowed to accede into the military not later than July 1, 2017.[2] (Id. at 5.) Consistent with the Carter Policy, each branch of military service issued detailed instructions, policies, and regulations regarding separation and retention, accession, in-service transition, and medical care. (Dkt. No. 144 at ¶¶ 24-36, Exs. D, E, F; Dkt. No. 145 at ¶¶ 41-50, Exs. A, B; Dkt. No. 146 at ¶¶ 27-34, Ex. A.)

In reliance upon the Carter Policy and the DoD's assurances that it would not discharge them for being transgender, many service members came out to the military and had been serving openly for more than a year when President Trump issued his Twitter Announcement and 2017 Memorandum. (Dkt. No. 144, ¶ 37; Dkt. No. 145 at ¶ 51; Dkt. No. 146 at ¶ 35.)

III. Procedural History

On August 28, 2017, Plaintiffs filed this lawsuit challenging the constitutionality of the Ban, as set forth in the Twitter Announcement and the 2017 Memorandum. (See Dkt. No. 1.) Plaintiffs include nine transgender individuals (the "Individual Plaintiffs") and three organizations (the "Organizational Plaintiffs"). (Dkt. No. 30 at ¶¶ 7-18.) Individual Plaintiffs Ryan Karnoski, D.L., and Connor Callahan aspire to enlist in the military; Staff Sergeant Cathrine Schmid, Chief Warrant Officer Lindsey Muller, Petty Officer First Class Terece Lewis, Petty Officer Second Class Phillip Stephens, and Petty Officer Second Class Megan Winters currently serve openly in the military. (Id. at ¶¶ 7-13.) Individual Plaintiff Jane Doe currently serves in the military, but does not serve openly. (Id. at ¶ 14.) Organizational Plaintiffs include the Human Rights Campaign ("HRC"), the Gender Justice League ("GJL"), and the American

[2] On June 30, 2017, Secretary Mattis extended the effective date for accepting transgender recruits to January 1, 2018. (Dkt. No. 197, Ex. 3.)

Military Partner Association ("AMPA"). (Id. at ¶¶ 16-18.) Defendants include President Trump, Secretary Mattis, the United States, and the DoD. (Id. at ¶¶ 19-22.)

On November 27, 2017, the Court granted intervention to Washington, which joined to protect its sovereign and quasi-sovereign interests in its natural resources and in the health and physical and economic well-being of its residents. (See Dkt. No. 101.)

On December 11, 2017, the Court issued a nationwide preliminary injunction barring Defendants from "taking any action relative to transgender individuals that is inconsistent with the status quo that existed prior to President Trump's July 26, 2017 announcement."[3] (Dkt. No. 103 at 23.) The Court found that Plaintiffs and Washington had standing to challenge the Ban and were likely to succeed on the merits of their claims for violation of equal protection, substantive due process, and the First Amendment. (Id. at 6-12, 15-20.)

On January 25, 2018, Plaintiffs and Washington filed separate motions for summary judgment.[4] (Dkt. Nos. 129, 150.) Both seek an order declaring the Ban unconstitutional and permanently enjoining its implementation. (Dkt. No. 129 at 28-29; Dkt. No. 150-1.)

On February 28, 2018, Defendants filed an opposition and cross-motion for partial summary judgment seeking dismissal of all claims brought against President Trump. (Dkt. No. 194.)

[3] Three other district courts also entered preliminary injunctions against the Ban. See Doe 1 v. Trump, 275 F. Supp. 3d 167 (D.D.C. 2017); Stone v. Trump, 280 F. Supp. 3d 747 (D. Md. 2017); Stockman v. Trump, No. 17-cv-1799-JGB-KK, Dkt. No. 79 (C.D. Cal. Dec. 22, 2017).

[4] Plaintiffs are joined by amici the Constitutional Accountability Center (Dkt. No. 163, Ex. 1); Legal Voice (Dkt. No. 169); Retired Military Officers and Former National Security Officials (Dkt. No. 152, Ex. A); and the Commonwealths of Massachusetts and Pennsylvania, the States of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and the District of Columbia (Dkt. No. 170, Ex. A.)

On March 23, 2018, as these motions were pending and only days before the Court was set to hear oral argument, President Trump issued the 2018 Memorandum. (Dkt. No. 214, Ex. 1.) On March 27, the Court ordered the parties to present supplemental briefing on the effect of the 2018 Memorandum and the Implementation Plan. (Dkt. No. 221.) That briefing has now been completed and this matter is ready for ruling. (See Dkt. Nos. 226, 227, 228.)

DISCUSSION

I. Legal Standard

Summary judgment is proper if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). To defeat a motion for summary judgment, the non-movant must point to facts supported by the record which demonstrate a genuine issue of material fact. Lujan v. National Wildlife Federation, 497 U.S. 871, 888 (1990). Conclusory, non-specific statements are not sufficient. Id. Similarly, "a party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda." S.A. Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co., Inc., 690 F.2d 1235, 1238 (9th Cir. 1982).

II. Plaintiffs' and Washington's Motions for Summary Judgment

Plaintiffs and Washington contend that summary judgment is proper because the Ban is unsupported by any constitutionally adequate government interest as a matter of law, and therefore violates equal protection, substantive due process, and the First Amendment. (Dkt. No. 129 at 15-28; Dkt. No. 150 at 13-23.) Defendants respond that disputes of material fact preclude summary judgment, including disputes as to (1) whether Plaintiffs' and Washington's challenges

are moot as a result of the 2018 Memorandum; (2) whether Plaintiffs and Washington have standing; and (3) whether the Ban satisfies the applicable level of scrutiny. (Dkt. No. 194 at 5-24; Dkt. No. 226 at 3-11.) The Court addresses each of these issues in turn:

A. Mootness

Defendants claim that Plaintiffs' and Washington's challenges are now moot, as the policy set forth in the 2017 Memorandum has been "revoked" and replaced by that in the 2018 Memorandum. (Dkt. No. 226 at 3-7.) Defendants claim the "new policy" has "changed substantially," such that it presents a "substantially different controversy." (Id. at 6 (citations omitted.)) Plaintiffs and Washington respond that there is no "new policy" at all, as the 2018 Memorandum and the Implementation Plan merely implement the directives of the 2017 Memorandum. (Dkt. No. 227 at 2; Dkt. No. 228 at 7-8.)

"The burden of demonstrating mootness 'is a heavy one.'" Los Angeles County v. Davis, 440 U.S. 625, 631 (1979) (quoting United States v. W.T. Grant Co., 345 U.S. 629, 632-33 (1953)). The Ninth Circuit has explained that a case is not moot unless "subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur," McCormack v. Herzog, 788 F.3d 1017, 1024 (9th Cir. 2015) (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000)), such that "the litigant no longer ha[s] any need of the judicial protection that is sought." Jacobus v. Alaska, 338 F.3d 1095, 1102-03 (9th Cir. 2003) (quoting Adarand Constructors, Inc. v. Slater, 528 U.S. 216, 224 (2000)). Accordingly, courts find cases moot only where the challenged policy has been completely revoked or rescinded, not merely voluntarily ceased. See Davis, 440 U.S. at 631 (holding that a case is moot only where "there can be no reasonable expectation" that the alleged violation will recur and "interim relief or events have completely and irrevocably

eradicated the effects of the alleged violation"); City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982) (holding that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice"); see also McCormack, 788 F.3d at 1025 (noting that a case is not moot where the government never "repudiated . . . as unconstitutional" the challenged policy).

The Court finds that the 2018 Memorandum and the Implementation Plan do not substantively rescind or revoke the Ban, but instead threaten the very same violations that caused it and other courts to enjoin the Ban in the first place. The 2017 Memorandum prohibited the accession and authorized the discharge of openly transgender service members (the Accession and Retention Directives); prohibited the use of DoD and DHS resources to fund transition-related surgical procedures (the Medical Care Directive); and directed Secretary Mattis to submit "a plan for implementing" both its "general policy" and its "specific directives" no later than February 21, 2018. (Dkt. No. 149, Ex. 2 at §§ 1-3.) The 2017 Memorandum did not direct Secretary Mattis to determine *whether* or not the directives should be implemented, but instead ordered the directives to be implemented by specific dates and requested a plan for *how* to do so.

The Implementation Plan adheres to the policy and directives set forth in the 2017 Memorandum with few exceptions: With regard to the Accession and Retention Directives, the Implementation Plan excludes from military service and authorizes the discharge of transgender people who "require or have undergone gender transition" and those "with a history or diagnosis of gender dysphoria" unless they have been "stable for 36 consecutive months in their biological sex prior to accession." (Dkt. No. 224, Ex. 1 at 3-4.) With regard to the Medical Care Directive, the Implementation Plan provides that the military will, with few exceptions, no longer provide

transition-related surgical care (as people who "require . . . gender transition" will no longer be permitted to serve and those who are currently serving will be subject to discharge). (Id.)

Defendants claim that the 2018 Memorandum and the Implementation Plan differ from the 2017 Memorandum in that they do not mandate a "categorical" prohibition on service by openly transgender people and "contain[] several exceptions allowing some transgender individuals to serve." (Dkt. No. 226 at 6-7). The Court is not persuaded. The Implementation Plan prohibits transgender people—including those who have neither transitioned nor been diagnosed with gender dysphoria—from serving, unless they are "willing and able to adhere to all standards associated with their biological sex." (Dkt. No. 224, Ex. 1 at 4, Ex. 2 at 7.) Requiring transgender people to serve in their "biological sex" [5] does not constitute "open" service in any meaningful way, and cannot reasonably be considered an "exception" to the Ban. Rather, it would force transgender service members to suppress the very characteristic that defines them as transgender in the first place.[6] (See Dkt. No. 143 at ¶ 19 ("The term 'transgender' is used to describe someone who experiences any significant degree of

[5] The Court notes that the Implementation Plan uses the term "biological sex," apparently to refer to the sex one is assigned at birth. This is somewhat misleading, as the record indicates that gender identity—"a person's internalized, inherent sense of who they are as a particular gender (i.e., male or female)"—is also widely understood to have a "biological component." (See Dkt. No. 143 at ¶¶ 20-21.)

[6] While the Implementation Plan contains an exception that allows current service members to serve openly and in their preferred gender and receive "medically necessary" treatment for gender dysphoria, the exception is narrow, and applies only to those service members who "were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter [P]olicy" (i.e., June 30, 2016) but "before the effective date" of the policy set forth in the Implementation Plan. (Dkt. No. 224, Ex. 2 at 7-8.) Further, this exception is severable from the remainder of the Implementation Plan. (Id. at 7 ("[S]hould [the DoD]'s decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption is and should be deemed severable from the rest of the policy.").)

misalignment between their gender identity and their assigned sex at birth."); Dkt. No. 224, Ex. 2 at 9 n.10 ("[T]ransgender" is "an umbrella term used for individuals who have sexual identity or gender expression that differs from their assigned sex at birth.")

Therefore, the Court concludes that the 2018 Memorandum and the Implementation Plan do not moot Plaintiffs' and Washington's existing challenges.

B. Standing

Defendants claim that Plaintiffs and Washington lack standing to challenge the Ban, and that the 2018 Memorandum and Implementation Plan "have significantly changed the analysis." (Dkt. No. 194 at 6-12; Dkt. No. 226 at 7.)

Standing requires (1) an "injury in fact"; (2) a "causal connection between the injury and the conduct complained of"; and (3) a likelihood "that the injury will be redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (internal quotation marks and citations omitted). An "injury in fact" exists where there is an invasion of a legally protected interest that is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." Id. at 560 (internal quotation marks and citations omitted).

While the Court previously concluded that both Plaintiffs and Washington established standing at the preliminary injunction stage (Dkt. No. 103 at 7-12), their burden for doing so on summary judgment is more exacting and requires them to set forth "by affidavit or other evidence 'specific facts'" such that a "fair-minded jury" could find they have standing. Id. at 561; see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

The Court considers standing for the Individual Plaintiffs, the Organizational Plaintiffs, and Washington in turn:

1. Individual Plaintiffs

Each of the Individual Plaintiffs has submitted an affidavit detailing the ways in which they have already been harmed by the Ban, and would be further harmed were it to be implemented. (See Dkt. Nos. 130-138.) While Defendants claim that "Plaintiffs are obviously not suffering any harm from the revoked 2017 Memorandum," and "would neither sustain an actual injury nor face an imminent threat of future injury" as a result of the 2018 Memorandum, the Court disagrees and concludes that each of the Individual Plaintiffs has standing to challenge the Ban.

Karnoski, D.L, and Callahan have "taken clinically appropriate steps to transition" and would be excluded from acceding under the Implementation Plan. (Dkt. No. 130 at ¶ 10; Dkt. No. 132 at ¶ 8; Dkt. No. 137 at ¶ 8.) Whether they could have acceded under the Carter Policy and whether they might be able to obtain "waivers," as Defendants suggest, are irrelevant. (See Dkt. No. 226 at 8.) As the Court previously found, their injury "lies in the denial of an equal *opportunity* to compete, not the denial of the job itself," and the Court need not "inquire into the plaintiff's qualifications (or lack thereof) when assessing standing." (Dkt. No. 103 at 10 n.3 (citing Shea v. Kerry, 796 F.3d 42, 50 (D.C. Cir. 2015)) (emphasis in original).)

Doe does not currently serve openly, but was intending to come out and to transition surgically before President Trump's Twitter Announcement. (Dkt. No. 138 at ¶¶ 8-11.) The Ban unambiguously subjects her to discharge should she seek to do either. (See Dkt. No. 224, Ex. 1.) Schmid, Muller, Lewis, Stephens, and Winters have been diagnosed with gender dysphoria, and likewise would be subject to discharge under the Ban.[7] (Dkt. No. 131 at ¶ 9; Dkt. No. 133 at

[7] Defendants claim that the currently serving Plaintiffs were "diagnosed with gender dysphoria within the relevant time period" and "therefore would be able to continue serving in their preferred gender, change their gender marker, and receive all medically necessary

¶ 15; Dkt. No. 134 at ¶ 10; Dkt. No. 135 at ¶ 10; Dkt. No. 136 at ¶ 10.) The threat of discharge facing Doe, Schmid, Muller, Lewis, Stephens, and Winters is "actual or imminent, not conjectural or hypothetical," and clearly gives rise to standing. See Lujan, 504 U.S. at 560 (internal quotation marks and citation omitted).

Importantly, even if each of the Individual Plaintiffs were granted waivers or otherwise not excluded, discharged, or denied medical care, there can be no dispute that they would nevertheless have standing to challenge the Ban. This is because the Ban already has denied them the opportunity to serve in the military on the same terms as others; has deprived them of dignity; and has subjected them to stigmatization. (See Dkt. No. 103 at 8.) Policies that "stigmatiz[e] members of [a] disfavored group as 'innately inferior' . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group." Heckler v. Mathews, 465 U.S. 728, 737-740 (1984) (citation omitted). Such stigmatic injury, when identified in specific terms, is "one of the most serious consequences of discriminatory government action and is sufficient in some circumstances to support standing." Allen v. Wright, 468 U.S. 737, 755 (1984), abrogated on other grounds, 134 S. Ct. 1377 (2014).

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treatment" under the Implementation Plan's narrow exception. (Dkt. No. 226 at 8.) The record does not support this claim. As noted previously, the exception applies only to current service members who "were diagnosed with gender dysphoria by a military medical provider *after* the effective date of the Carter [P]olicy" (i.e., June 30, 2016) but "before the effective date" of the policy set forth in the Implementation Plan. (See supra, n.6; Dkt. No. 224, Ex. 2 at 7-8 (emphasis added).) The record suggests that many, if not all, of the currently serving Plaintiffs were diagnosed *before* June 30, 2016. For example, Schmid was diagnosed "approximately four years ago." (Dkt. No. 131 at ¶ 9.) Muller was diagnosed "approximately six years ago." (Dkt. No. 133 at ¶ 15.) Lewis, Stephens, and Winters were diagnosed "approximately three years ago," "approximately two and a half years ago," and "approximately two years ago" respectively. (Dkt. No. 134 at ¶ 10; Dkt. No. 135 at ¶ 10; Dkt. No. 136 at ¶ 10.) There is also no indication that any of the currently serving Plaintiffs received their diagnosis from a "military medical provider."

Each of the Individual Plaintiffs has detailed the stigmatic injuries they have suffered through affidavits. For example, Karnoski has explained that the Ban has caused him "great distress, discomfort, and pain." (Dkt. No. 130 at ¶ 21.) Schmid has explained that the Ban's "abrupt change in policy and implicit commentary on [her] value to the military and competency to serve has caused [her] to feel tremendous anguish," and that since it was announced, she has lost sleep and suffered "an immense amount of anxiety." (Dkt. No. 131 at ¶¶ 23-24, 26.) Muller has explained that the Ban was "devastating" and "wounded [her] more than any combat injury could." (Dkt. No. 133 at ¶¶ 30-31.) Doe has explained that the Ban precludes her from expressing her authentic gender identity, and that as a result, she has not come out. (Dkt. No. 138 at ¶¶ 10-11.) Doe's self-censorship alone is a "constitutionally sufficient injury," as it is based on her "actual and well-founded fear" of discharge. See Cal. Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1095 (9th Cir. 2003) (holding that a person's "actual and well-founded fear that [a] law will be enforced against him or her" may give rise to standing to bring pre-enforcement claims under the First Amendment and that "self-censorship is 'a harm that can be realized even without an actual prosecution'") (quoting Virginia v. Am. Booksellers Ass'n, 484 U.S. 383, 393 (1988)).

Therefore, the Court concludes that each of the Individual Plaintiffs has standing.

2. Organizational Plaintiffs

As each of the Individual Plaintiffs has standing, so too do the organizations they represent. An organization has standing where "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333,

343 (1977). Each of the Organizational Plaintiffs satisfies these requirements. Karnoski and Schmid are members of HRC, GJL, and AMPA, and Muller, Stephens, and Winters are also members of AMPA. (Dkt. No. 130 at ¶ 3; Dkt. No. 131 at ¶ 5; Dkt. No. 133 at ¶ 5; Dkt. No. 135 at ¶ 4; Dkt. No. 136 at ¶ 4; Dkt. No. 140 at ¶ 3.) The interests each Organizational Plaintiff seeks to protect are germane to their organizational purposes, which include ending discrimination against lesbian, gay, bisexual, transgender and queer ("LGBTQ") individuals (HRC and GJL) and supporting families and allies of LGBT service members and veterans (AMPA). (Dkt. No. 139 at ¶ 2; Dkt. No. 140 at ¶ 2; Dkt. No. 141 at ¶ 2.)

Therefore, the Court concludes that each of the Organizational Plaintiffs has standing.

3. Washington

Defendants claim that "Washington has not even attempted to satisfy its burden to demonstrate standing," and that "in granting Washington's motion to intervene, the Court expressly declined to decide whether Washington possessed standing to sue." (Dkt. No. 194 at 12.) To the contrary, the Court explicitly found that Washington had standing in its own right, and not merely as an intervenor. (Dkt. No. 103 at 11-12.)

A state has standing to sue the federal government to vindicate its sovereign and quasi-sovereign interests. See Massachusetts v. E.P.A., 549 U.S. 497, 518-520 (2007). Sovereign interests include a state's interest in protecting the natural resources within its boundaries. Id. at 518-19. Quasi-sovereign interests include its interest in "the health and well-being—both physical and economic—of its residents," and in "securing residents from the harmful effects of discrimination." Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez, 458 U.S. 592, 607, 609 (1982).

Washington contends that the Ban will impede its ability to protect its residents and natural resources and will undermine the efficacy of its National Guard. (Dkt. No. 150 at 9-10.) Washington is home to approximately 60,000 active, reserve, and National Guard members, and the military is the second largest public employer in the state. (Id. at 9.) Washington is also home to approximately 32,850 transgender adults, and its laws protect these residents against discrimination on the basis of sex, gender, and gender identity. (Id. at 9-10); RCW §§ 49.60.030; 49.60.040(25)-(26).

Washington relies on the National Guard to assist with emergency preparedness and disaster recovery planning, and to protect the state's residents and natural resources from wildfires, landslides, flooding, and earthquakes. (Dkt. No. 150 at 9.) When the Governor deploys the National Guard for state active duty, Washington pays its members' wages and provides disability and life insurance benefits for injuries they may sustain while serving the state. (Id.); RCW § 38.24.050. The state also oversees recruitment efforts and exercises day-to-day command over Guard members in training and most forms of active duty. (Dkt. No. 170, Ex. A at 20.) Further, the Governor must ensure that the Guard conforms to both federal and state laws and regulations, including the state's anti-discrimination laws and, were the Ban to be implemented, conflicting DoD policies regarding accession and retention. (Dkt. No. 150 at 9-10; Dkt. No. 170, Ex. A at 21-22.) Thus, in addition to diminishing the number of eligible members for the National Guard, the Ban threatens Washington's ability to (1) protect its residents and natural resources in times of emergency and (2) "assur[e] its residents that it will act" to protect them from "the political, social, and moral damage of discrimination." See Snapp, 458 U.S. at 609. Defendants have not offered any contrary evidence with respect to

Washington's sovereign and quasi-sovereign interests. Therefore, the Court concludes that Washington has standing.

C. Constitutional Violations

Plaintiffs contend that the Ban violates equal protection, substantive due process, and the First Amendment. (Dkt. No. 129 at 15-28.) Washington contends that the Ban violates equal protection and substantive due process. (Dkt. No. 150 at 13-23.) Before it can reach the merits of these constitutional claims, the Court must determine (1) the applicable level of scrutiny and (2) the applicable level of deference owed to the Ban, if any. The Court addresses each of these issues in turn:

1. Level of Scrutiny

At the preliminary injunction stage, the Court found that transgender people were, at minimum, a quasi-suspect class. (Dkt. No. 103 at 15-16.) In light of additional evidence before it at this stage, the Court today concludes that they are a suspect class, such that the Ban must satisfy the most exacting level of scrutiny if it is to survive.

In determining whether a classification is suspect or quasi-suspect, the Supreme Court has observed that relevant factors include: (1) whether the class has been "[a]s a historical matter . . . subjected to discrimination," Bowen v. Gilliard, 483 U.S. 587, 602 (1987); (2) whether the class has a defining characteristic that "frequently bears [a] relation to ability to perform or contribute to society," City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 440-41 (1985); (3) whether the class exhibits "obvious, immutable, or distinguishing characteristics that define [it] as a discrete group," Bowen, 483 U.S. at 602; and (4) whether the class is "a minority or politically powerless." Id.; see also Windsor v. U.S., 699 F.3d 169, 181 (2d Cir. 2012), aff'd on other grounds, 570 U.S. 744 (2013). While "[t]he presence of any of the

factors is a signal that the particular classification is 'more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective,'" the first two factors alone may be dispositive. Golinski v. U.S. Office of Pers. Mgmt., 824 F. Supp. 2d 968, 983 (N.D. Cal. 2012) (quoting Pyler v. Doe, 457 U.S. 202, 216 n.14 (1982)).

The Court considers each of these factors in turn:

i. History of Discrimination

The history of discrimination and systemic oppression of transgender people in this country is long and well-recognized. Transgender people have suffered and continue to suffer endemic levels of physical and sexual violence, harassment, and discrimination in employment, education, housing, criminal justice, and access to health care. (See Dkt. No. 169, Ex. A at 9-12.) According to a nationwide survey conducted by the National Center for Transgender Equality in 2015, 48 percent of transgender respondents reported being "denied equal treatment, verbally harassed, and/or physically attacked in the past year because of being transgender" and 47 percent reported being "sexually assaulted at some point in their lifetime." (Id. at 10.) Seventy-seven (77) percent report being "verbally harassed, prohibited from dressing according to their gender identity, or physically or sexually assaulted" in grades K-12. (Id. at 10-11.) Thirty (30) percent reported being "fired, denied a promotion, or experiencing some other form of mistreatment in the workplace related to their gender identity or expression, such as being harassed or attacked." (Id. at 11.) Finally, "it is generally estimated that transgender women face *4.3 times the risk* of becoming homicide victims than the general population." (Id. at 10 (emphasis in original).)

ii. Contributions to Society

Discrimination against transgender people clearly is unrelated to their ability to perform and contribute to society. See Doe 1, 275 F. Supp. 3d at 209 (noting the absence of any "argument or evidence suggesting that being transgender in any way limits one's ability to contribute to society"); Adkins v. City of New York, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015) (noting the absence of "any data or argument suggesting that a transgender person, simply by virtue of transgender status, is any less productive than any other member of society"). Indeed, the Individual Plaintiffs in this case contribute not only to society as a whole, but to the military specifically. For years, they have risked their lives serving in combat and non-combat roles, fighting terrorism around the world, and working to secure the safety and security of our forces overseas. (See, e.g., Dkt. No. 133 at ¶¶ 7-9; Dkt. No. 134 at ¶¶ 5-6; Dkt. No. 135 at ¶¶ 6-7; Dkt. No. 136 at ¶¶ 6-7.) Their exemplary service has been recognized by the military itself, with many having received awards and distinctions. (See Dkt. No. 131 at ¶ 15; Dkt. No. 133 at ¶ 12; Dkt. No. 134 at ¶ 7.)

iii. Immutability

Transgender people clearly have "immutable" and "distinguishing characteristics that define them as a discrete group." Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ., 208 F. Supp. 3d 850, 874 (S.D Ohio 2016) (quoting Lyng v. Castillo, 477 U.S. 635, 638 (1986)). Experts agree that gender identity has a "biological component," and there is a "medical consensus that gender identity is deep-seated, set early in life, and *impervious to external influences*." (Dkt. No. 143 at ¶¶ 21-22 (emphasis added).) In other contexts, the Ninth Circuit has held that "[s]exual orientation and sexual identity" are "immutable" and are "so fundamental to one's identity that a person should not be required to abandon them."

Hernandez-Montiel v. I.N.S., 225 F.3d 1087, 1093 (9th Cir. 2000), overruled on other grounds, 409 F.3d 1177 (9th Cir. 2005).

iv. Political Power

Despite increased visibility in recent years, transgender people as a group lack the relative political power to protect themselves from wrongful discrimination. While the exact number is unknown, transgender people make up less than 1 percent of the nation's adult population. (Dkt. No. 143, Ex. B at 3 (estimating 0.3 percent)); see also Doe 1, 275 F. Supp. 3d at 209 (estimating 0.6 percent). Fewer than half of the states have laws that explicitly prohibit discrimination against transgender people. (Dkt. No. 169, Ex. A at 12.) Further, recent actions by President Trump's administration have removed many of the limited protections afforded by federal law. (Id. at 12-13.) Finally, openly transgender people are vastly underrepresented in and have been "systematically excluded from the most important institutions of self-governance." SmithKline Beecham Corp. v. Abbott Labs., 740 F.3d 471, 484 (9th Cir. 2014). There are no openly transgender members of the United States Congress or the federal judiciary, and only one out of more than 7,000 state legislators is openly transgender. (Dkt. No. 169, Ex. A at 14); see also Adkins, 143 F. Supp. 3d at 140.

Recognizing these factors, courts have consistently found that transgender people constitute, at minimum, a quasi-suspect class.[8] See, e.g., Doe 1, 275 F. Supp. 3d at 208-10;

[8] The Ninth Circuit applies heightened scrutiny to equal protection claims involving discrimination based on sexual orientation. SmithKline, 740 F.3d at 484; Latta v. Otter, 771 F.3d 456, 468 (9th Cir. 2014). This reasoning further supports the Court's conclusion as to the applicable level of scrutiny, as discrimination based on transgender status burdens a group that has in many ways "experienced even greater levels of societal discrimination and marginalization." Norsworthy, 87 F. Supp. 3d at 1119 n.8; see also Adkins, 143 F. Supp. 3d at 140 ("Particularly in comparison to gay people . . . transgender people lack the political strength to protect themselves. . . . [A]lthough there are and were gay members of the United States

Stone, 280 F. Supp. 3d at 768; Adkins, 143 F. Supp. 3d at 139-40; Highland, 208 F. Supp. 3d at 873-74; Norsworthy v. Beard, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015). Today, the Court concludes that transgender people constitute a suspect class. Transgender people have long been forced to live in silence, or to come out and face the threat of overwhelming discrimination.

Therefore, the Court GRANTS summary judgment in Plaintiffs' and Washington's favor as to the applicable level of scrutiny. The Ban specifically targets one of the most vulnerable groups in our society, and must satisfy strict scrutiny if it is to survive.

2. Level of Deference

Defendants claim that "considerable deference is owed to the President and the DoD in making military personnel decisions," and that for this reason, Plaintiffs' and Washington's constitutional claims necessarily fail. (Dkt. No. 194 at 16.)

The Court previously found that the Ban—as set forth in President Trump's Twitter Announcement and 2017 Memorandum—was not owed deference, as it was not supported by "any evidence of considered reason or deliberation." (Dkt. No. 103 at 17-18.) Indeed, at the time he announced the Ban, "all of the reasons proffered by the President for excluding transgender individuals from the military were not merely unsupported, but were actually *contradicted* by the studies, conclusions, and judgment of the military itself." Doe 1, 275 F. Supp. 3d at 212 (emphasis in original); see also Rostker v. Goldberg, 453 U.S. 57, 67-72 (1981) (concluding that deference is owed to well-reasoned policies that are not adopted "unthinkingly" or "reflexively and not for any considered reason"); Goldman v. Weinberger, 475 U.S. 503, 507-08 (1986) (concluding that deference is owed where a policy results from the "professional

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Congress . . . as well as gay federal judges, there is no indication that there have ever been any transgender members of the United States Congress or federal judiciary.")

judgment of military authorities concerning the relative importance of a particular military interest"); compare Owens v. Brown, 455 F. Supp. 291, 305 (D.D.C. 1978) (concluding that deference is not owed where a policy is adopted "casually, over the military's objections and without significant deliberation").

Now that the specifics of the Ban have been further defined in the 2018 Memorandum and the Implementation Plan, whether the Court owes deference to the Ban presents a more complicated question. Any justification for the Ban must be "genuine, not hypothesized or invented post hoc in response to litigation." United States v. Virginia, 518 U.S. 515, 533 (1996). However, the Court is mindful that "complex[,] subtle, and professional decisions as to the composition . . . and control of a military force are essentially professional military judgments," reserved for the Legislative and Executive Branches. Gilligan v. Morgan, 413 U.S. 1, 10 (1973). The Court's entry of a preliminary injunction was not intended to prevent the military from continuing to review the implications of open service by transgender people, nor to preclude it from *ever* modifying the Carter Policy.

Defendants claim that the military has done just that, and that the Ban—as set forth in the 2018 Memorandum and the Implementation Plan—is now the product of a deliberative review. In particular, Defendants claim the Ban has been subjected to "an exhaustive study" and is consistent with the recommendations of a "Panel of Experts" convened by Secretary Mattis to study "military service by transgender individuals, focusing on military readiness, lethality, and unit cohesion," and tasked with "conduct[ing] an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members." (See Dkt. No. 226 at 9-10; Dkt. No. 224, Ex. 2 at 19.) Defendants claim that the Panel was comprised of senior military leaders who received "support from medical and personnel experts from across

the [DoD] and [DHS]," and considered "input from transgender Service members, commanders of transgender Service members, military medical professionals, and civilian medical professionals with experience in the care and treatment of individuals with gender dysphoria." (Dkt. No. 224, Ex. 2 at 20.) "Unlike previous reviews on military service by transgender individuals," Defendants claim that the Panel's analysis was "informed by the [DoD]'s own data obtained since the new policy began to take effect last year." (Dkt. No. 224, Ex. 1 at 3.) The Panel's findings are set forth in a 44-page "Report and Recommendations on Military Service by Transgender Persons," which concludes that "the realities associated with service by transgender individuals are far more complicated than the prior administration or RAND had assumed," and that because gender transition "would impede readiness, limit deployability, and burden the military with additional costs . . . the risks associated with maintaining the Carter [P]olicy . . . counsel in favor of" the Ban. (Dkt. No. 224, Ex. 2 at 46.)

Having carefully considered the Implementation Plan—including the content of the DoD's "Report and Recommendations on Military Service by Transgender Persons"—the Court concludes that whether the Ban is entitled to deference raises an unresolved question of fact. The Implementation Plan was not disclosed until March 29, 2018. (See Dkt. No. 224, Exs. 1, 2.) As Defendants' claims and evidence regarding their justifications for the Ban were presented to the Court only recently, Plaintiffs and Washington have not yet had an opportunity to test or respond to these claims. On the present record, the Court cannot determine whether the DoD's deliberative process—including the timing and thoroughness of its study and the soundness of the medical and other evidence it relied upon—is of the type to which Courts typically should defer. See Fed. R. Civ. P. 56(e)(1).

Accordingly, the Court DENIES summary judgment as to the level of deference due. The Court notes that, even in the event it were to conclude that deference is owed, it would not be rendered powerless to address Plaintiffs' and Washington's constitutional claims, as Defendants seem to suggest. "'The military has not been exempted from constitutional provisions that protect the rights of individuals' and, indeed, '[i]t is precisely the role of the courts to determine whether those rights have been violated.'" Doe 1, 275 F. Supp. 3d at 210 (quoting Emory v. Sec'y of Navy, 819 F.2d 291, 294 (D.C. Cir. 1987)); Chappell v. Wallace, 462 U.S. 296, 304 (1983) ("This Court has never held, nor do we now hold, that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service."); Rostker, 453 U.S. at 70 ("[D]eference does not mean abdication."). Indeed, the Court notes that Defendants' claimed justifications for the Ban—to promote "military lethality and readiness" and avoid "disrupt[ing] unit cohesion, or tax[ing] military resources"— are strikingly similar to justifications offered in the past to support the military's exclusion and segregation of African American service members, its "Don't Ask, Don't Tell" policy, and its policy preventing women from serving in combat roles. (Dkt. No. 224, Ex. 1 at 2-4; see also Dkt. No. 163, Ex. 1 at 8-16.)

3. Equal Protection, Due Process, and First Amendment Claims

A policy will survive strict scrutiny only where it is motivated by a "compelling state interest" and "the means chosen 'fit' the compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate . . . prejudice or stereotype." Grutter v. Bollinger, 539 U.S. 306, 333 (2003) (citation omitted). In making this determination, the Court must carefully evaluate "the importance and the sincerity of the reasons advanced" by the government for the use of a particular classification in a particular context. Id. at 327.

Whether Defendants have satisfied their burden of showing that the Ban is constitutionally adequate (i.e., that it was sincerely motivated by compelling state interests, rather than by prejudice or stereotype) necessarily turns on facts related to Defendants' deliberative process. As discussed previously, these facts are not yet before the Court. (See supra, § II.C.2.) Further, Defendants' responsive briefing addresses only the constitutionality of the Interim Guidance, a document that has never been, and is not now, the applicable policy before the Court. (See Dkt. No. 194 at 19-24.)

For the same reasons it cannot grant summary judgment as to the level of deference due at this stage, the Court cannot reach the merits of the alleged constitutional violations. Accordingly, the Court DENIES summary judgment as to Plaintiffs' and Washington's equal protection, due process, and First Amendment claims.

IV. Defendants' Motion for Partial Summary Judgment

Defendants contend that the Court is without jurisdiction to impose injunctive or declaratory relief against President Trump in his official capacity, and move for partial summary judgment on all claims against him individually. (Dkt. No. 194 at 25-27.) Plaintiffs and Washington do not oppose summary judgment as to injunctive relief, but respond that declaratory relief against President Trump is proper. (Dkt. No. 207 at 8-10; Dkt. No. 209 at 6-8.)

The Court is aware of no case holding that the President is immune from declaratory relief—Rather, the Supreme Court has explicitly affirmed the entry of such relief. See Clinton v. City of New York, 524 U.S. 417, 425 n.9 (1998) (affirming entry of declaratory judgment against President Clinton stating that Line Item Veto Act was unconstitutional); NTEU v. Nixon, 492 F.2d 587, 609 (1974) ("[N]o immunity established under any case known to this Court bars every suit against the president for injunctive, declaratory or mandamus relief."); see also Hawaii

v. Trump, 859 F.3d 741, 788 (9th Cir. 2017) (vacating injunctive relief against President Trump, but not dismissing him in suit for declaratory relief), vacated as moot, 874 F.3d 1112 (9th Cir. 2017).

The Court concludes that, not only does it have jurisdiction to issue declaratory relief against the President, but that this case presents a "most appropriate instance" for such relief. See NTEU, 492 F.2d at 616. The Ban was announced by President Trump (@realDonaldTrump) on Twitter, and was memorialized in the 2017 and 2018 Presidential Memorandums, which were each signed by President Trump. (Dkt. No. 149, Exs. 1, 2; Dkt. No. 224, Ex. 3.) While President Trump's Twitter Announcement suggests he authorized the Ban "[a]fter consultation with [his] Generals and military experts" (Dkt. No. 149, Ex. 1), Defendants to date have failed to identify even one General or military expert he consulted, despite having been ordered to do so repeatedly. (See Dkt. Nos. 204, 210, 211.) Indeed, the *only* evidence concerning the lead-up to his Twitter Announcement reveals that military officials were entirely unaware of the Ban, and that the abrupt change in policy was "unexpected." (See Dkt. No. 208, Ex. 1 at 9 (General Joseph F. Dunford, Chairman of the Joint Chiefs of Staff stating on July 27, 2017 "Chiefs, I know yesterday's announcement was unexpected . . ."); Dkt. No. 152, Ex. A at 11-12 ("The Joint Chiefs of Staff were not consulted at all on the decision . . . The decision was announced so abruptly that White House and Pentagon officials were unable to explain the most basic of details about how it would be carried out.").) Even Secretary Mattis was given only one day's notice before President Trump's Twitter Announcement. (Id.; Dkt. No. 163, Ex. 1 at 26.) As no other persons have ever been identified by Defendants—despite repeated Court orders to do so—the Court is led to conclude that the Ban was devised by the President, and the President alone.

Therefore, the Court GRANTS Defendants' motion for partial summary judgment with regard to injunctive relief and DENIES the motion with regard to declaratory relief.

CONCLUSION

The Court concludes that all Plaintiffs and Washington have standing; that the 2018 Memorandum and Implementation Plan do not moot their claims; and that transgender people constitute a suspect class necessitating a strict scrutiny standard of review. The Court concludes that questions of fact remain as to whether, and to what extent, deference is owed to the Ban, and whether the Ban, when held to strict scrutiny, survives constitutional review.

Accordingly, the Court rules as follows:

1. The Court GRANTS Plaintiffs' and Washington's motions for summary judgment with respect to the applicable level of scrutiny, which is strict scrutiny;

2. The Court DENIES Plaintiffs' and Washington's motions for summary judgment with respect to the applicable level of deference;

3. The Court DENIES Plaintiffs' and Washington's motions for summary judgment with respect to violations of equal protection, due process, and the First Amendment;

4. The Court GRANTS Defendants' cross-motion for summary judgment with respect to injunctive relief against President Trump and DENIES the cross-motion with respect to declarative relief against President Trump.

5. The preliminary injunction previously entered otherwise remains in full force and effect. Defendants (with the exception of President Trump), their officers, agents, servants, employees, and attorneys, and any other person or entity subject to their control or acting directly or indirectly in concert or participation with Defendants are enjoined from taking any action

relative to transgender people that is inconsistent with the status quo that existed prior to President Trump's July 26, 2017 announcement.

6. The Court's ruling today eliminates the need for Plaintiffs and Washington to respond to Defendants' Motion to Dissolve the Preliminary Injunction (Dkt. No. 223), which is hereby STRICKEN.

7. The parties are directed to proceed with discovery and prepare for trial on the issues of whether, and to what extent, deference is owed to the Ban and whether the Ban violates equal protection, substantive due process, and the First Amendment.

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

Dated April 13, 2018.

Marsha J. Pechman
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, et al. Plaintiffs, v. DONALD J. TRUMP, et al. Defendants.	CASE NO. C17-1297-MJP ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

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

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

ORDER SUMMARY

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

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

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

BACKGROUND

I. Presidential Memorandum and Interim Guidance

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



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

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

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

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

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

III. Plaintiffs Challenge to the Presidential Memorandum

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

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

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

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

DISCUSSION

I. Motion to Dismiss

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

A. Rule 12(b)(1)

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

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

i. *Individual Plaintiffs*

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

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

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

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

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

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

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

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

unwillingness to engage in a futile gesture he is as much a victim of discrimination as is he who goes through the motions of submitting an application.").[3]

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

ii. *Organizational Plaintiffs*

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

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

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

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

iii. *Washington State*

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

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

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

iv. *Ripeness*

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

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

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

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

B. Rule 12(b)(6)

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

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

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

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

II. Motion for Preliminary Injunction

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

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

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

A. Likelihood of Success on the Merits

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

i. *Equal Protection*

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

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

gender expectations" is a form of gender discrimination) (citing Price Waterhouse v. Hopkins, 490 U.S. 228, 240 (1989)).[6]

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

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

[6] The June 2016 Policy also stated it was DoD's position "consistent with the U.S. Attorney General's opinion, that discrimination based on gender identity is a form of sex discrimination." (See Dkt. No. 48, Ex. C at 6.)

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

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

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

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

ii. *Substantive Due Process*[9]

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

[7] Defendants' reliance on Goldman v. Weinberger, 475 U.S. 503 (1986), is also misplaced. See Doe 1, 2017 WL 4873042, at *30 n.11 (distinguishing the policy at issue in Weinberger as having been "based on the 'considered professional judgment" of the military).

[8] For the same reasons, the policy is also unlikely to survive rational basis review.

[9] Having granted Defendants' Motion to Dismiss with regard to Plaintiffs' procedural due process challenge, the Court does not reach the merits of that claim at this time.

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

iii. *First Amendment*

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

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

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

B. Irreparable Harm

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

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

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

C. Balance of Equities and Public Interest

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

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

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

CONCLUSION

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

1. The Court GRANTS Defendants' Motion to Dismiss with respect to Plaintiffs' procedural due process claim;

2. The Court DENIES Defendants' Motion to Dismiss with respect to Plaintiffs' equal protection, substantive due process, and First Amendment claims;

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

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

Dated December 11, 2017.

Marsha J. Pechman
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, *et al.*, Plaintiffs, v. DONALD J. TRUMP, *et al.*, Defendants.	Case No. C17-01297MJP ORDER GRANTING MOTION TO INTERVENE

THIS MATTER comes before the Court on the State of Washington's ("Washington State") Motion to Intervene. (Dkt. No. 55.) Washington State seeks to join Plaintiffs Ryan Karnoski, et al. in challenging the constitutionality of Defendant President Donald J. Trump's Presidential Memorandum excluding transgender individuals from the military. Having reviewed the motion, the responses (Dkt. Nos. 76, 77), the reply (Dkt. No. 81), and all related papers, and having considered the arguments made in proceedings before the Court, the Court GRANTS the State of Washington's Motion to Intervene.

BACKGROUND

On July 26, 2017, President Donald J. Trump announced on Twitter that the United States government will no longer allow transgender individuals to serve in the military. (Dkt.

No. 32 at 3.) Following this announcement, the President issued a memorandum directing the Secretaries of Defense and Homeland Security to: (1) return to the military's policy authorizing the discharge of openly transgender individuals; (2) prohibit openly transgender individuals from accession into the military; (3) prohibit the use of Department of Defense and Department of Homeland Security funds to provide certain medical procedures for transgender service members; and (4) issue a plan to implement these directives. (Dkt. No. 55 at 1-2.) Plaintiffs filed this suit challenging the constitutionality of the directives announced in this memorandum. (Dkt. No. 30.) Washington State now moves to intervene under Rule 24 of the Federal Rules of Civil Procedure. (Dkt. No. 55.)

DISCUSSION

I. Legal Standard

Rule 24 of the Federal Rules of Civil Procedure governs intervention. Fed. R. Civ. P. 24(a)-(b). Rule 24(a)(2) governs intervention as a matter of right, and requires that courts permit intervention by a party who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interests, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Intervention as a matter of right is appropriate if the proposed intervenor shows: (1) a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent that applicant's interest. United States v. City of Los Angeles, 288 F.3d 391, 397 (9th Cir. 2002) (quoting Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998)). Because "[a] liberal policy in favor

of intervention serves both efficient resolution of issues and broadened access to the courts," Wilderness Soc. v. U.S. Forest Serv., 630 F.3d 1173, 1179 (9th Cir. 2011) (citation and internal quotation marks omitted), Rule 24(a)(2) "is construed broadly in favor of proposed intervenors." United States ex rel. McGough v. Covington Tech. Co., 967 F.2d 1391, 1394 (9th Cir. 1992).

Rule 24(b)(1)(B) governs permissive intervention, and permits intervention where a proposed intervenor's claim or defense shares a common question of law or fact with the main action. Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention requires "(1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action." Freedom from Religion Found., Inc. v. Geithner, 644 F.3d 836, 843 (9th Cir. 2011) (citation omitted). The independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-question cases where the proposed intervenor does not raise new claims. Id. at 844.

II. Intervention as a Matter of Right

Washington State contends it has a right to intervene because it has significantly protectable interests relating to the action; because disposition of the action will impair or impede its interests; and because its interests are not adequately represented by Plaintiffs. (Dkt. No. 55 at 6-11.) Defendants respond that intervention as a matter of right is not warranted, but do not dispute the timeliness of the motion. [1] (Dkt. No. 76 at 8-14.) The Court addresses each of Rule 24(a)(2)'s requirements in turn.

[1] Defendants contend that Washington State may not intervene because neither Plaintiffs nor Washington State have standing to bring their claims. (See Dkt. No. 76 at 3, 6-8.) Defendants' Motion to Dismiss is pending, and the Ninth Circuit does not require intervenors to demonstrate standing, so this contention is premature. See Perry v. Schwarzenegger, 630 F.3d 898, 906 (9th

A. Significantly Protectable Interests

Washington has identified significantly protectable interests. While a proposed intervenor need not demonstrate any "specific legal or equitable interest," a "significantly protectable interest" is required. Northwest Forest Res. Council v. Glickman, 82 F.3d 825, 837 (9th Cir. 1996) (citation and internal quotation marks omitted). This requirement is satisfied where the intervenor's interest is protectable under some law, and there is a relationship between the purported interest and the claims at issue. Arakaki v. Cayetano, 324 F.3d 1078, 1084 (9th Cir. 2003).

Washington State has demonstrated that its quasi-sovereign and sovereign interests are significantly protectable interests. Quasi-sovereign interests include a state's interest in the health, and physical and economic well-being of its residents, and in "securing residents from the harmful effects of discrimination." Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez, 458 U.S. 592, 607, 609 (1982). States also have an interest in "assuring that the benefits of the federal system are not denied to its general population." Id. at 608. Washington State contends that its quasi-sovereign interests include protecting its transgender residents from a discriminatory policy that restricts access to employment and healthcare based on their gender identity, and thereby implicates their physical and economic well-being. (Dkt. No. 55 at 7.) The Court finds that Washington State has quasi-sovereign interests that are significantly protectable. See Snapp, 458 U.S. at 607 ("[A] State has a quasi-sovereign interest in the health and well-being-both physical and economic-of its residents in general."); see also United States v. Reserve Mining Co., 56 F.R.D. 408, 416-17 (D. Minn. 1972) (state satisfied protectable interest requirement where it asserted quasi-sovereign interests).

Cir. 2011) ("In general, an applicant for intervention need not establish Article III standing to intervene."). Accordingly, the Court does not evaluate standing at this time.

Washington State's sovereign interests are also significantly protectable interests. A state's sovereign interests include the power to protect its territory and "the power to create and enforce a legal code, both civil and criminal." Snapp, 458 U.S. at 601. Washington State is home to approximately 60,000 active, reserve, and National Guard members and military service members, and the military is the second largest public employer in the state. (Dkt. No. 55 at 2.) Additionally, the Washington National Guard is comprised of military service members who assist with emergency preparedness and disaster recovery planning, and have been deployed to protect the State's natural resources from flooding and wildfires. (Id. at 2-4.) Washington State argues that excluding transgender individuals from the military will reduce the number of individuals who are willing and able to join the Washington National Guard, and will negatively impact the State's ability to provide emergency response and disaster recovery. (Id. at 8.) The Court is convinced that a directive that limits Washington State's ability to recruit for its National Guard directly affects the State's ability to protect its territory. The Court is also convinced that, if found to be discriminatory, the directive will directly affect Washington State's sovereign interest in maintaining and enforcing its own anti-discrimination laws.

The Court is not convinced that the proprietary interests identified by Washington State are significantly protectable interests. Washington State contends it has a proprietary interest in its economic health and growth, and argues that excluding transgender individuals from military service will result in a loss of employment and will reduce the property and sales tax revenues that transgender service members and their families would otherwise contribute to the state. (Id. at 7-8.) Washington State contends that these proprietary interests create a "protectable interest" in the underlying litigation capable of satisfying Article III's injury-in-

fact requirement. (Id. at 7-8; Dkt. No. 81 at 4-5.) However, that a proposed intervenor satisfies the injury-in-fact requirement does not give rise to a significantly protectable interest. Indeed, the Ninth Circuit has indicated that the analyses for Article III standing and Rule 24 intervention are different. See, e.g., United States v. $129,374 in U.S. Currency, 769 F.2d 583, 586 (9th Cir. 1985) (acknowledging "it would be inappropriate to affirm the district court on the ground that the conservator lacked standing to intervene under rule 24," because standing and intervention involve distinct analyses). Notably, "[a] claim based only on an indirect economic effect of some action is rarely considered the same as a protectable right or interest sufficient to justify intervention." 6 James WM. Moore, Moore's Federal Practice § 24.03[2][b] at 24–32 n.33 (Matthew Bender 3d ed. 2017); see also State of Montana v. U.S. E.P.A., 137 F.3d 1135, 1142 (9th Cir. 1998) ("[A] speculative and purely economic interest does not create a protectable interest in litigation concerning a statute that regulates environmental, not economic, interests."). Washington State asserts a general proprietary interest in economic health and growth, but fails to demonstrate that this interest is directly affected by Defendants' directive.

The Court finds that Washington State's quasi-sovereign and sovereign interests are significantly protectable interests.

B. Disposition of Action May Impair or Impede Proposed Intervenor's Interest

Disposition of Plaintiffs' action will, as a practical matter, impair or impede Washington State's ability to protect its quasi-sovereign and sovereign interests. The Ninth Circuit has indicated that "[i]ntervention may be required when considerations of stare decisis indicate that an applicant's interest will be practically impaired." Greene v. United States, 996 F.2d 973, 977 (9th Cir. 1993) (citation omitted). Should the Court find that the directive does

not violate Plaintiffs' constitutional rights, any subsequent suit brought by Washington State to protect its residents' health, well-being, and economic security will be impeded. Therefore, the Court finds that Washington State is "so situated that the disposition of the action may as a practical matter impair or impede its ability to protect" its interests. Lockyer, 450 F.3d at 440-41 (citation omitted).

C. Intervenor's Interests Not Adequately Represented by Existing Parties

Washington State's interests will not be adequately represented by Plaintiffs in this action. A proposed intervenor's interests are adequately represented by the existing parties if: (1) a present party will undoubtedly make all of the proposed intervenor's arguments; (2) a present party is capable and willing to make such arguments; and (3) the proposed intervenor would not offer any necessary elements to the proceeding. See Arakaki, 324 F.3d at 1086 (citation omitted). The first factor is the "most important factor," and if "an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises." Id. This presumption can be overcome with a "'compelling showing' to the contrary." Perry v. Proposition 8 Official Proponents, 587 F.3d 947, 950–51 (9th Cir. 2009).

Washington State does not dispute that it shares the same "ultimate objective" with Plaintiffs. (See Dkt. No. 81 at 7.) However, given its unique quasi-sovereign and sovereign interests, the Court finds that Washington State has made a "compelling showing" that its interests are distinct from those of the individual litigants and that Plaintiffs will not adequately represent its interests.

D. Timeliness of Motion

The Motion to Intervene is timely. Defendants do not dispute the timeliness of Washington State's motion, which was filed four weeks after Plaintiff's Complaint and before Defendants filed their responsive pleading. (See Dkt. No. 76 at 3-14.) Therefore, the Court finds that Washington State has satisfied Rule 24(a)(2)'s requirements and is entitled to intervene as a matter of right.

III. Permissive Intervention

Washington State also satisfies Rule 24(b)(1)(B)'s requirements for permissive intervention. The Court may grant permissive intervention where a proposed intervenor "shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." Glickman, 82 F.3d at 839. Washington State does not raise any new claims, so the independent jurisdictional requirement does not apply. Freedom, 644 F.3d at 844. Washington State also shares common questions of law with Plaintiffs (namely, whether Defendants' directive violates the Fifth Amendment). Therefore, the Court finds that Washington State satisfies the requirements for permissive intervention.

CONCLUSION

Because Washington State satisfies the requirements for intervention under Rule 24 of the Federal Rules of Civil Procedure, the Court hereby GRANTS the State of Washington's Motion to Intervene.

DATED this _27th__ day of November, 2017.

Marsha J. Pechman
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2018, I filed the foregoing excerpts of record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Catherine H. Dorsey
Catherine H. Dorsey

No. 18-35347

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RYAN KARNOSKI, et al.,
Plaintiffs-Appellees,

STATE OF WASHINGTON, Attorney General's Office Civil Rights Unit,
Intervenor-Plaintiff-Appellee,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.
Defendants-Appellants.

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

EXCERPTS OF RECORD
VOLUME II (ER63-319)

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Certificate of Service

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

DEFENDANTS' NOTICE OF APPEAL – PRELIMINARY INJUNCTION APPEAL

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20530
Tel: (202) 514-4336

Notice is hereby given that all Defendants appeal to the United States Court of Appeals for the Ninth Circuit from this Court's Order of April 13, 2018, ECF No. 233, granting in part and denying in part Plaintiffs' and Washington's motions for summary judgment, granting in part and denying in part Defendants' motion for partial summary judgment, and striking Defendants' motion to dissolve the preliminary injunction.

Date: April 30, 2018

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018, I electronically filed the foregoing Notice of Appeal using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: April 30, 2018

/s/ Ryan Parker

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The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendants, through their undersigned counsel, hereby answer Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief (the "Amended Complaint") as follows:

NATURE OF THE ACTION

1. The first sentence of this paragraph contains Plaintiffs' characterization of this action, to which no answer is required. To the extent an answer may be deemed required, deny. The second sentence of this paragraph contains Plaintiffs' characterization and opinion about the nature of transgender service members' military service, and about the nature of transgender individuals' desire to serve in the military, both of which do not require a response. To the extent a response may be deemed required, Defendants admit that some open transgender persons are serving in the military, and admit that some open transgender persons may desire to join the military. The third sentence of this paragraph contains Plaintiffs' characterization and opinion about the nature of transgender service members' military service, to which no response is required. The final sentence

of this paragraph consists of a legal conclusion, to which no response is required. To the extent a response may be deemed required, denied.

2. The first three sentences of this paragraph appear to characterize Directive-Type Memorandum ("DTM") 16-005, "Military Service of Transgender Service Members" (June 30, 2016). Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its content. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with DTM 16-005, Defendants deny the allegations. The fourth sentence of this paragraph contains Plaintiffs' characterization and opinion about the nature of transgender service members' military service, to which no response is required. The final sentence of this paragraph is denied.
3. This paragraph purports to characterize tweets posted by President Trump on July 26, 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete and accurate statement of their contents. To the extent Plaintiffs' allegations are inconsistent with the July 26 tweets, or call for legal conclusions, this paragraph is denied.
4. Denied.
5. This paragraph appears to characterize the Executive Memorandum entitled "Military Service by Transgender Individuals," which was issued on August 25, 2017 (the "Presidential Memorandum"). Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the Presidential Memorandum, Defendants deny the allegations.
6. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

PARTIES

A. Plaintiffs

7. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

8. The first and second sentences are admitted, except that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Staff Sergeant Schmid's residency. Defendants also lack knowledge or information sufficient to form a belief as to the truth of the allegations in the final sentence of this paragraph.
9. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
10. The first and second sentences are admitted, except that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Chief Warrant Officer Three Muller's residency. Defendants also lack knowledge or information sufficient to form a belief as to the truth of the allegations in the final sentence of this paragraph.
11. Admit.
12. The first and second sentences are admitted. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the final sentence of this paragraph.
13. The first and second sentences are admitted. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the final sentence of this paragraph.
14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first, second, and third sentences of this paragraph. Defendants admit that Plaintiff Doe has sought leave to proceed as a Doe plaintiff.
15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
16. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

B. Defendants

19. The first sentence is admitted. The second sentence appears to characterize the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the Presidential Memorandum, Defendants deny the allegations. Defendants also deny that the Presidential Memorandum constitutes a "ban" on transgender military service.

20. Admitted that the United States Government includes federal government departments and agencies, among them the Departments of Defense and Homeland Security, which are tasked with implementing the government's policies with regard to the military service of transgender individuals. Denied that those policies constitutes a "ban" on transgender military service.

21. Defendants admit that James N. Mattis is the United States Secretary of Defense. The duties and responsibilities of the Secretary of Defense are specified at 10 U.S.C. § 113. Denied that current policy regarding transgender military service constitutes a "ban" on such service.

22. Regarding the first and second sentences of this paragraph, the components of the Department of Defense are set out at 10 U.S.C. § 111, and the duties and responsibilities of the Secretary of Defense are specified at 10 U.S.C. § 113. Denied that current policy regarding transgender military service constitutes a "ban" on such service.

JURISDICTION AND VENUE

23. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

24. Denied that current policy related to transgender military service constitutes a "ban" on such service. This paragraph otherwise consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

25. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

26. Denied that current policy related to transgender military service constitutes a "ban" on such service. This paragraph otherwise consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

FACTUAL ALLEGATIONS

A. Background Information Regarding Transgender Individuals

27. The first sentence of this paragraph is admitted. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of this paragraph, which cover subjects that require medical expertise.

28. The first sentence of this paragraph is admitted. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph, which covers subjects that require historical and/or medical expertise.

29. The first sentence of this paragraph is admitted. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph, which covers subjects that require medical and/or clinical expertise.

30. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which covers subjects that require medical and/or clinical expertise.

31. The first sentence of this paragraph is admitted. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph, which covers subjects that require medical and/or clinical expertise.

32. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph, which covers subjects that require medical and/or clinical expertise. The second sentence of this paragraph is admitted.

33. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which covers subjects that require medical and/or clinical expertise.
34. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which covers subjects that require medical and/or clinical expertise.
35. Admitted.
36. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which covers subjects that require medical and/or clinical expertise.
37. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which covers subjects that require medical and/or clinical expertise.

B. Plaintiff Ryan Karnoski

38. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
39. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
40. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
41. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
42. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
43. Defendants admit that the United States Military employs service members, contractors, and DoD civilians as social workers. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

44. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

45. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

46. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

47. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

48. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

49. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

C. Plaintiff Staff Sergeant Cathrine Schmid

50. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, except to admit that Staff Sergeant Schmid was born at K.I. Sawyer Air Force Base in Michigan.

51. Admitted, except that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph concerning Staff Sergeant Schmid's former role as a Counterintelligence Agent.

52. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

53. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

54. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

55. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

56. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, except to admit that Staff Sergeant Schmid changed her name to Cathrine and her gender to female on her passport. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

57. The allegations in the first sentence of this paragraph that Staff Sergeant Schmid has "worked with" her chain of command and that they have "been supportive" of her are vague; they therefore do not require a response. To the extent a response may be deemed required, denied. The second sentence of this paragraph is admitted.

58. Admitted, except that Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph concerning how Staff Sergeant Schmid is recognized and treated in social interactions.

59. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. Admitted that Staff Sergeant Schmid performs valuable services for the Army. The remaining allegations of this paragraph are denied.

60. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

61. The first and second sentences of this paragraph are admitted. The third sentence of this paragraph is denied.

62. The first sentence of this paragraph appears to characterize Department of Defense Instruction ("DoDI") 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*. Defendants respectfully refer the Court to DoDI 6130.03 itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations

constitute legal conclusions or are inconsistent with DoDI 6130.03, Defendants deny the allegations. Regarding the second sentence of this paragraph, Defendants admit that Staff Sergeant Schmid was informed in writing in July 2017 that her application to become a warrant office was placed on hold in accordance with the memorandum issued by the Secretary of Defense on September 14, 2017, titled *Military Service by Transgender Individuals—Interim Guidance*, and DoDI 6130.03. The third sentence of this paragraph is a legal conclusion, to which no response is required. To the extent a response may be required, denied.

63. Admitted that Staff Sergeant Schmid has an approved medical treatment plan for gender transition. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

D. Plaintiff D.L.

64. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

65. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, except to admit that Survival, Evasion, Resistance and Escape Specialist training involves training on survival-related techniques needed for various terrains and climates, and during dangerous events (i.e. aircraft crashes).

66. The first sentence of this paragraph is admitted. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of this paragraph.

67. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. *See* Declaration of Phillip A. Layman ¶ 4, which was filed

with Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Application for a Preliminary Injunction (ECF No. 71) (hereinafter "Layman Decl.").

69. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

70. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

71. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

72. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

73. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. *See* Layman Decl. ¶ 4. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

E. Plaintiff Chief Warrant Officer Muller

74. Admitted, except to deny that Chief Warrant Officer Three Muller enlisted in 2000, and to instead aver that she enlisted in 1999.

75. Admitted that Chief Warrant Officer Three Muller served in Operation Iraqi Freedom, and multiple assignments in the Republic of Korea. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

76. Admitted.

77. The first and second sentences of this paragraph are admitted. The third sentence of this paragraph is vague and ambiguous because it alleges that Chief Warrant Officer Three Muller's "performance has been consistently recognized throughout her career" without naming any specific awards or recognitions. It therefore does not require a response. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of this paragraph.

78. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

79. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

80. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

81. Defendants admit that Chief Warrant Officer Three Muller has taken steps to transition. Defendants otherwise deny the allegations in this paragraph, and aver that as of February 13, 2018, Chief Warrant Officer Three Muller is on convalescent leave after receiving gender reassignment surgery, which was part of her transition plan.

82. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, except to admit that Chief Warrant Officer Three Muller has changed her name to Lindsey and her gender marker to female on her passport. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

83. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. Admitted that Chief Warrant Officer Three Muller performs valuable services for the Army. The remaining allegations of this paragraph are denied.

84. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

85. Admitted that Chief Warrant Officer Three Muller has an approved formal gender transition plan. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

F. Plaintiff Petty Officer Lewis

86. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

87. Admit.

88. Defendants admit the first and second sentences. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations this paragraph.

89. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

90. Defendants admit the first sentence of this paragraph. Defendants deny that the President's tweets or any subsequent policy related to transgender military service constitute a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

91. Defendants admit the first sentence of this paragraph and admit that Petty Officer Lewis has changed her first name to Terece. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

92. Defendants admit that Petty Officer Lewis has worked with her chain of command throughout her transition and admit that her chain of command has acted—and continues to act—in accordance with DoD policy.

93. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. Admitted that Petty Officer Lewis performs a valuable service for the Navy. The remaining allegations in this paragraph are denied.

94. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

95. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

96. Admitted that Petty Officer Lewis disclosed to her chain of command a diagnosis of gender dysphoria, and admitted that Petty Officer Lewis requested, and was approved for,

a formal gender transition plan. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

G. Plaintiff Petty Officer Stephens

97. Admitted that Plaintiff Petty Officer Stephens currently serves as an Aviation Structural Mechanic in the United States Navy. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

98. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

99. Defendants admit that Petty Officer Stephens is transgender and admit that he was assigned the sex of female at birth. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

100. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

101. Admitted that on Petty Officer Stephens deployed to the Persian Gulf. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

102. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, the last sentence of the paragraph is a legal conclusion, to which no response is required. To the extent a response may be deemed required, denied.

103. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

104. Admitted that Petty Officer Stephens' chain of command has approved his gender transition plan. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

105. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. Admitted that Petty Officer Stephens performs a valuable service for the Navy. The remaining allegations in this paragraph are denied.

106. Admitted that Petty Officer Stephens has disclosed his transgender status to his chain of command and has received approval of his formal gender transition plan. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

H. Plaintiff Petty Officer Winters

107. Admit.

108. Admitted that Plaintiff Petty Officer Winters performs a valuable service for the Navy. The remaining allegations in this paragraph are denied.

109. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

110. Admitted the Petty Officer Winters is transgender, and admitted that she was assigned the sex of male at birth. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

111. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

112. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

113. Admitted that Petty Officer Winters disclosed her transgender status openly in the military. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, the allegation that Petty Officer Winters openly expressed her gender identity "in reliance" on any government policy is a legal conclusion to which no response is required. To the extent a response may be deemed required, denied.

114. Admitted that Petty Officer Winters has an approved formal gender transition plan, and admitted that her plan includes hormonal therapy. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

115. Denied. *See* Declaration of Susan Breyerjoyner ¶ 7, which was filed with Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Application for a Preliminary Injunction (ECF No. 75).

116. Defendants admit that Petty Office Winter has changed her name in DEERS. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

117. Admitted that Petty Officer Winters' gender marker in DEERS has changed, and admitted that Petty Officer Winters has worked with her chain of command on her formal gender transition plan. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

118. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. Admitted that Petty Officer Winters performs a valuable service for the Navy. This paragraph is otherwise denied.

119. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

120. Admitted that Petty Officer Winters has disclosed her transgender status to her chain of command and has received approval of her formal gender transition plan. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

I. Plaintiff Jane Doe

121. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

122. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

123. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

124. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

125. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

126. The first sentence of this paragraph purports to characterize tweets posted by President Trump on July 26, 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete statement of their contents. To the extent Plaintiffs' allegations are inconsistent with the July 26 tweets, or call for legal conclusions, the first sentence of this paragraph is denied. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph.

127. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

128. Denied that Jane Doe has "been forced to postpone the steps required for her to transition." And denied that current policy related to transgender military service

constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

129. Denied that current policy related to transgender military service constitutes a "ban" on such service. The second sentence of this paragraph is also denied. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

J. Plaintiff Conner Callahan

130. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

131. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

132. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. *See* Layman Decl. ¶ 3.

133. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

134. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

135. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

136. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

137. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. *See* Layman Decl. ¶ 3.

138. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

139. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. *See* Layman Decl. ¶ 3. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

K. Plaintiff Human Rights Campaign

140. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

141. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

L. Plaintiff Gender Justice League

142. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

143. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

M. Plaintiff American Military Partner Organization

144. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

145. Denied that current policy related to transgender military service constitutes a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.

N. Prior Military Ban Against Transgender Individuals

146. The first sentence of this paragraph is admitted. The second sentence of this paragraph is vague and ambiguous because it states that the military "previously" had a policy, but does not specify what the policy was "previous" to. Accordingly, Defendants lack sufficient information to respond to this sentence, except to admit that there was a time during which the military excluded openly transgender people from military service.

147. The first sentence of this paragraph is denied. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph, which covers subjects that require medical and/or clinical expertise.

148. This paragraph is vague and ambiguous because it contains allegations of the historical service of transgender individuals in the military, but does not identify any sources for the allegations. Defendants thus lack sufficient information to admit or deny the allegations. This paragraph also purports to characterize a statement by former Secretary of Defense Ashton Carter. Former Secretary Carter's statements speak for themselves and are the best evidence of their content. To the extent Plaintiffs' allegations are inconsistent with former Secretary Carter's statements, this paragraph is denied.

149. This paragraph is vague and ambiguous because it refers to "essential, mission-critical" roles without defining those roles, and because it refers to "a transgender woman" who "served on Navy SEAL Team 6" without identifying the individual. Defendants therefore lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

150. This paragraph is vague and ambiguous because it refers to "a 2014 study conducted by the Williams Institute at the University of California, Los Angeles," but does not identify the title of the study. Defendants therefore lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, the study itself, rather than Plaintiffs' characterization of it, would be the best evidence of its findings. To the degree Plaintiffs' characterization of the study is inconsistent with the study itself, Defendant's deny the allegations in this paragraph.

151. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which covers subjects that require statistical and/or mathematical expertise.

O. Rescission of Prior Military Ban Against Transgender Individuals

152. Deny.

153. This paragraph appears to characterize a 2014 report issued by the think tank the Palm Center titled "Report of the Transgender Military Service Commission" Defendants respectfully refer the Court to the report itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the report, Defendants deny the allegations.

154. This paragraph purports to characterize statements made by Former Secretary of Defense Chuck Hagel, which speak for themselves and are the best evidence of their content. To the extent Plaintiffs' allegations are inconsistent with the statements, this paragraph is denied.

155. This paragraph purports to characterize statements made by Former Secretary of Defense Ashton Carter, which speak for themselves and are the best evidence of their content. To the extent Plaintiffs' allegations are inconsistent with the statements, this paragraph is denied.

156. Admitted as of the time of the filing of the amended complaint, except that the working group was chaired by persons either "acting" or "performing the duties of" the Under Secretary of Defense for Personnel and Readiness.

157. Admit.

158. Defendants admit that, to the best of their knowledge, no cases for separation on the basis of gender identify were presented for approval to the Acting Under Secretary of Defense for Personnel and Readiness between July 2015 and June 2016. Defendants otherwise deny the allegations in this paragraph.

159. Denied that the RAND Corporation's research related to transgender military service constituted a "study" of the issue. Defendants otherwise respectfully refer the Court to

Agnes, Gereben, Shaefer et al., *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, RAND Corporation (2016) (hereinafter the "RAND Report"), for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the RAND Report, Defendants deny the allegations.

160. Defendants respectfully refer the Court to the RAND Report for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the RAND Report, Defendants deny the allegations.

161. The first and second sentences of this paragraph are admitted. As to the third sentence of this paragraph, Defendants admit that the working group examined the experiences of foreign militaries that permit transgender people to serve openly, as well as experiences from the private sector. The third sentence otherwise contains Plaintiffs' subjective characterization and argument about the scope of the examination, to which no response is required.

162. This paragraph purports to characterize statements made by Former Secretary of Defense Ashton Carter, which speak for themselves and are the best evidence of their content. To the extent Plaintiffs' allegations are inconsistent with the statements, this paragraph is denied.

163. This paragraph appears to characterize DTM 16-005. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with DTM 16-005, Defendants deny the allegations.

164. The first sentence of this paragraph is admitted. The second sentence of this paragraph purports to characterize the section of the Department of Defense's website titled "Department of Defense Transgender Policy." Defendants respectfully refer the court to that section of the Department of Defense's website for a full and accurate statement

of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the website, Defendants deny the allegations.

165. Admit.

166. This paragraph purports to characterize the Department of Defense's implementation handbook, "Transgender Service in the U.S. Military." Defendants respectfully refer the court to the handbook for a full and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the handbook, Defendants deny the allegations.

167. This paragraph appears to characterize the Assistant Secretary of Defense (Health Affairs) Memorandum of July 29, 2016 "Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members." Defendants respectfully refer the court to the memorandum of July 29, 2016 for a full and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the memorandum of July 29, 2016, Defendants deny the allegations.

168. Admit.

169. This paragraph is vague and ambiguous because it is written in the passive voice and does not identify who "envisioned" that the military would begin accessing transgender people who met all relevant standards. Defendants therefore lack sufficient information to admit or deny. Moreover, to the extent a response may be deemed required, Defendants deny that under DTM 16-005, transgender individuals were subject to the same accession standards as non-transgender individuals.

170. The first sentence of this paragraph is admitted. The second sentence of this paragraph is denied.

171. This paragraph is hypothetical and speculative. Defendants therefore lack sufficient information to admit or deny. To the extent a response may be deemed required, denied that current policies related to transgender military service constitute a "ban."

P. Current Policy of Discrimination Against Transgender Individuals in Military Service

172. This paragraph purports to characterize tweets posted by President Trump on July 26, 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete statement of their contents. To the extent Plaintiffs' allegations are inconsistent with the July 26 tweets, or call for legal conclusions, this paragraph is denied.

173. This paragraph purports to characterize tweets posted by President Trump on July 26, 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete statement of their contents. To the extent Plaintiffs' allegations are inconsistent with the July 26 tweets, or call for legal conclusions, this paragraph is denied.

174. This paragraph purports to characterize tweets posted by President Trump on July 26, 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete statement of their contents. To the extent Plaintiffs' allegations are inconsistent with the July 26 tweets, or call for legal conclusions, this paragraph is denied.

175. This paragraph purports to characterize tweets posted by President Trump on July 26, 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete statement of their contents. To the extent Plaintiffs' allegations are inconsistent with the July 26 tweets, or call for legal conclusions, this paragraph is denied.

176. Deny.

177. The first sentence of this paragraph is denied. Regarding the second sentence of this paragraph, admitted that Secretary Mattis was away from the Pentagon on July 26, 2017. This sentence is otherwise vague and ambiguous because it refers to facts that have allegedly been "reported[]," without identifying the source of the reporting. Defendants therefore lack sufficient information to admit or deny.

178. Denied that current policy related to transgender military service constitutes a "ban" on such service. Also, this paragraph is vague and ambiguous because it refers to "top pentagon officials," as well as unnamed individuals with "concerns," without identifying any of those officials or individuals. Defendants therefore lack sufficient information to admit or deny.

179. Denied that the President's tweets or any subsequent policy related to transgender military service constitute a "ban" on such service. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which concern the states of minds of individuals who are not parties to this case.

180. This paragraph purports to characterize a statement made by Chairman of the Joint Chiefs of Staff General Joseph Dunford, which speaks for itself and is the best evidence of its content. To the extent Plaintiffs' allegations are inconsistent with the statement, this paragraph is denied.

181. Denied that the President's tweets or any subsequent policy related to transgender military service constitute a "ban" on such service. Also, the first sentence of this paragraph is vague and ambiguous because it states that the Pentagon press office was "unaware" of a decision without specifying any individual in that office that lacked awareness of the decision. Defendants therefore lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. The second sentence of this paragraph purports to characterize a statement made by Navy Captain Jeff Davis, which speaks for itself and is the best evidence of its content. To the extent Plaintiffs' characterizations are inconsistent with Captain Davis' statement, the second sentence of this paragraph is denied.

182. Denied that current policy related to transgender military service constitutes a "ban" on such service. This paragraph also purports to characterize statements made by White House Press Secretary Sarah Huckabee Sanders, which speak for themselves and are the best evidence of their content. To the extent Plaintiffs' allegations are inconsistent with Press Secretary Sanders' statements, this paragraph is denied.

183. Denied that the President's tweets or any subsequent policy related to transgender military service constitute a "ban" on such service. The allegations in this paragraph are vague and ambiguous because they refer to "White House lawyers and aides," "one

White House official," and "a White House official," without identifying any of the relevant individuals. Defendants therefore lack sufficient information to admit or deny.

184. The allegation in this paragraph is vague and ambiguous because it characterizes the nature of President Trump's discussions without citing any source for that characterization. Defendants therefore lack sufficient information to admit or deny the allegations, except to deny that the President ever proposed or decided to institute a "ban" on transgender military service.

185. Each sentence of this paragraph is vague and ambiguous. The first sentence of this paragraph refers to "[s]everal congressional and White House sources" without identifying who those sources are. The second sentence of this paragraph uses the passive voice to say there "was concern," without identifying what individual(s) was/were concerned. The third sentence of this paragraph refers to a proposed amendment rejected by the United States House of Representatives without citing to or identifying the proposed amendment. The fourth sentence of this paragraph refers to "these Republican members" without identifying any of the relevant members of Congress. Defendants therefore lack sufficient information to admit or deny each sentence of this paragraph, except to deny that the President ever instituted a "ban" on transgender military service. Moreover, the fourth sentence of this paragraph consists of Plaintiffs' characterization of tweets posted by President Trump on July 26, 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete statement of their contents. To the extent Plaintiffs' allegations are inconsistent with the July 26 tweets, or call for legal conclusions, this paragraph is denied.

186. The allegations in this paragraph are vague and ambiguous because they refer to "A Trump administration official" without identifying the official. Defendants therefore lack sufficient information to admit or deny. Moreover, the official's statement itself, rather than Plaintiffs' characterization of it, would be the best evidence of its content. To the extent Plaintiffs' characterizations of the statement are inconsistent with the statement itself, or are legal conclusions, Defendant's deny the allegations.

187. The allegations in this paragraph are vague and ambiguous because they refer to "reports" without identifying the relevant reports. Defendants therefore lack sufficient information to admit or deny.

188. This paragraph purports to characterize statements made by former Deputy Assistant to the President Sebastian Gorka, which speak for themselves and are the best evidence of their content. To the extent Plaintiffs' characterizations are inconsistent with Mr. Gorka's statements, or are legal conclusions, this paragraph is denied.

189. The first sentence of this paragraph is vague and ambiguous because it refers to "widespread opposition and condemnation" of an alleged decision without identifying all individuals opposed to the alleged decision, or at least the number or percentage of individuals opposed to it. Defendants therefore lack sufficient information to admit or deny the first sentence. The second, third, and fourth sentences of this paragraph purports to characterize statements made by several senators, which speak for themselves and are the best evidence of their content. To the extent Plaintiffs' characterizations are inconsistent with the senators' statements, those characterizations are denied. The fifth sentence of this paragraph purports to characterize a letter joined by members of the United States House of Representatives. Defendants respectfully refer the court to the letter itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the letter, Defendants deny the allegations in the fifth sentence of this paragraph. Denied also that the President ever instituted a "ban" on transgender military service.

190. This paragraph purports to characterize a letter joined by the attorneys general of 19 states and the District of Columbia. Defendants respectfully refer the court to the letter itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the letter, Defendants deny the allegations in this paragraph.

191. This paragraph purports to characterize a public statement by fifty-six retired generals and admirals, which speaks for itself and is the best evidence of its content. To the

extent Plaintiffs' characterizations are inconsistent with the statement, this paragraph is denied.

Q. Implementation of Discrimination Against Transgender Individuals in Military Service

192. This paragraph purports to characterize statements made by Navy Captain Jeff Davis, which speak for themselves and are the best evidence of their content. To the extent Plaintiffs' characterizations are inconsistent with Captain Davis' statements, this paragraph is denied.

193. This paragraph purports to characterize statements made by Secretary of Defense James Mattis, which speak for themselves and are the best evidence of their content. To the extent Plaintiffs' characterizations are inconsistent with Secretary Mattis' statements, this paragraph is denied.

194. This paragraph purports to characterize the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the Presidential Memorandum, Defendants deny the allegations.

195. This paragraph appears to characterize the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the Presidential Memorandum, Defendants deny the allegations.

196. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

197. This paragraph appears to characterize the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the Presidential Memorandum, Defendants deny the allegations.

198. This paragraph appears to characterize the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the Presidential Memorandum, Defendants deny the allegations.

199. Admit.

200. Admitted that President Trump, the United States, Secretary of Defense Mattis, and the Department of Defense, are responsible for implementing policy with regard to the military service of transgender individuals. Denied that that policy constitutes a "ban" on transgender military service.

R. Purported Justifications for Policy of Discrimination Against transgender Individuals

201. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

202. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

203. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

1. Medical Costs

204. This paragraph purports to characterize the RAND report. Defendants respectfully refer the Court to the RAND Report for a complete and accurate statement of its contents. To the extent Plaintiffs' allegations are inconsistent with the RAND Report, this paragraph is denied.

205. This paragraph is vague and ambiguous because it refers to an article published in the New England Journal of Medicine without identifying the title or author of the article. Defendants therefore lack sufficient information to admit or deny. Moreover, even if Defendants could identify the article, the article would speak for itself and be the best evidence of its content. To the extent Plaintiffs' characterizations are inconsistent with the article, Defendants would deny the allegations.

206. This paragraph purports to characterize a statement made by the surgeon general of the Navy, which speaks for itself and is the best evidence of its content. To the extent Plaintiffs' characterizations are inconsistent with the statement, this paragraph is denied.

207. The first sentence of this paragraph is vague and ambiguous because it refers to "other costs" without identifying what those costs are. Defendants therefore lack sufficient information to admit or deny the first sentence of this paragraph. The second sentence of this paragraph purports to characterize the RAND Report. Defendants respectfully refer the Court to the RAND Report for a complete and accurate statement of its contents. To the extent Plaintiffs' allegations are inconsistent with the RAND Report, the second sentence of this paragraph is denied.

208. The first and second sentences of this paragraph are denied. The third sentence of this paragraph is vague and ambiguous because it refers to "[a] recent study" without identifying the study. Defendants therefore lack sufficient information to admit or deny the third sentence of this paragraph. Moreover, even if Defendants could identify the study, the study would speak for itself and be the best evidence of its content. To the extent Plaintiffs' characterizations are inconsistent with the study, Defendants would deny the allegations.

2. Military Readiness

209. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

210. This paragraph purports to characterize the RAND Report. Defendants respectfully refer the Court to the RAND Report for a complete and accurate statement of its contents. To the extent Plaintiffs' allegations are inconsistent with the RAND Report, this paragraph is denied.

211. Deny.

212. Admitted that the military adapted to the racial integration of the military, the end of the "Don't Ask, Don't Tell" policy, and the integration of women into direct combat roles. The second sentence of this paragraph is denied.

213. The first sentence of this paragraph is admitted. The second sentence of this paragraph purports to characterize the RAND Report. Defendants respectfully refer the Court to the RAND Report for a complete statement of its contents. To the extent Plaintiffs' allegations are inconsistent with the RAND Report, the second sentence of this paragraph is denied.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
EQUAL PROTECTION VIOLATION
(By All Plaintiffs Against All Defendants)

214. The answers to all preceding paragraphs are incorporated herein by reference.

215. This paragraph contains Plaintiffs' characterization of their cause of action, to which no answer is required. To the extent an answer may be deemed required, Defendants deny that Plaintiffs have properly stated their cause of action, and deny that the current policy with regard to transgender military service members constitutes a "ban" on their service.

216. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

217. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

218. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

219. This paragraph purports to characterize the Department of Defense's Transgender Service Member Policy Implementation Fact Sheet. Defendants respectfully refer the Court to the fact sheet for a complete statement of its contents. To the extent Plaintiffs' allegations are inconsistent with the fact sheet, or are legal conclusions, the second sentence of this paragraph is denied.

220. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

221. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

222. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

223. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

224. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

SECOND CAUSE OF ACTION
DUE PROCESS VIOLATION
(By All Plaintiffs Against All Defendants)

225. The answers to all preceding paragraphs are incorporated herein by reference.

226. This paragraph contains Plaintiffs' characterization of their cause of action, to which no answer is required. To the extent an answer may be deemed required, Defendants deny that Plaintiffs have properly stated their cause of action, and deny that the current policy with regard to transgender military service members constitutes a "ban" on their service.

227. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

228. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

229. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

230. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

THIRD CAUSE OF ACTION
FREE SPEECH VIOLATION
(By All Plaintiffs Against All Defendants)

231. The answers to all preceding paragraphs are incorporated herein by reference.

232. This paragraph contains Plaintiffs' characterization of their cause of action, to which no answer is required. To the extent an answer may be deemed required, Defendants deny that Plaintiffs have properly stated their cause of action, and deny that the current policy with regard to transgender military service members constitutes a "ban" on their service.

233. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

234. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

235. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

236. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied. Moreover, this paragraph characterizes the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations are inconsistent with the Presidential Memorandum, Defendants deny the allegations.

237. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

238. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

PRAYER FOR RELIEF

1–4. Defendants deny that Plaintiffs are entitled to the relief requested in their Prayer for Relief or to any relief whatsoever.

Defendants hereby specifically deny each and every allegation in the First Amended Complaint not expressly admitted or denied in this Answer, or to which it has responded that it has insufficient information to admit or deny.

Dated: February 26, 2018

Respectfully submitted,

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Civil Division

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Branch Director

ANTHONY J. COPPOLINO
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/s/ Ryan B. Parker
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2018, I electronically filed the foregoing answer, causing a notice of filing to be served upon all counsel of record.

Dated: February 26, 2018

/s/ Ryan Parker

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Counsel for Defendants

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

DEFENDANTS' ANSWER TO THE COMPLAINT IN INTERVENTION BY STATE OF WASHINGTON

Defendants, through their undersigned counsel, hereby answer the Complaint in Intervention by State of Washington for Declaratory and Injunctive Relief (the "Intervenor Complaint") as follows:

I. INTRODUCTION

1. This paragraph consists of Plaintiffs' characterization of this action, to which no answer is required. To the extent an answer may be deemed required, deny.
2. This paragraph consists of Plaintiffs' characterization of this action, to which no answer is required. To the extent an answer may be deemed required, deny.

II. JURISDICTION AND VENUE

3. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

4. The first sentence of this paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied. Regarding the second sentence of this paragraph, admitted that the President of the United States, United States agencies, and United States officers sued in their official capacities are named defendants. But denied that those are the only defendants, because the United States of America is an additional named defendant in this case.

III. Parties

Intervenor-Plaintiff State of Washington

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, which cover matters of state government and state law. Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they do not require a response. To the extent a response may be deemed required, denied.
6. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.
7. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.
8. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.
9. The first and third sentences of this paragraph consist of legal conclusions, to which no response is required. To the extent a response to those sentences may be deemed required, denied. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph.
10. The first, second, and third sentences of this paragraph are admitted. Regarding the fourth sentence of this paragraph, admitted that in order to join the military, Washingtonians must

meet the accession standards of the Department of Defense ("DOD"), including its policies regarding military service by transgender individuals. Denied that those policies constitute a "ban" on transgender military service.

11. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in first and second sentences of this paragraph, except to admit that the Washington National Guard is a member of Washington's militia. Regarding the third sentence of this paragraph, admitted that recruitment for the Washington National Guard is subject to DOD policies governing military service by transgender individuals. Denied that those policies constitute a "ban" on transgender military service.

Intervenor-Defendants

12. Admitted that Donald Trump is the President of the United States and admitted that on August 25, 2017 he issued the Executive Memorandum entitled "Military Service by Transgender Individuals" (the "Presidential Memorandum"). Denied that the Presidential Memorandum constituted a "ban" on transgender military service.
13. Admitted that the United States of America includes all government agencies and departments responsible for implementation of the Presidential Memorandum. Denied that the Presidential Memorandum constituted a "ban" on transgender military service.
14. Defendants admit that James N. Mattis is the United States Secretary of Defense. The duties and responsibilities of the Secretary of Defense are specified in 10 U.S.C. § 113. Denied that the referenced policies constitute a "ban" on transgender military service.
15. Admitted.
16. Defendants clarify that Kirstjen Nielsen is the Secretary of Homeland Security. The duties and responsibilities of the Secretary of Homeland Security are specified in 6 U.S.C. § 112. Denied that the referenced policies constitute a "ban" on transgender military service.

17. Admit.

IV. ALLEGATIONS

18. The allegations in this paragraph are vague and ambiguous because they do not specify a particular policy or period of time to which Plaintiffs refer. Defendants therefore lack sufficient information to admit or deny.

19. The allegations in this paragraph are vague and ambiguous because they refer to a report without identifying the report itself. Defendants therefore lack sufficient information to admit or deny.

20. Admit.

21. This paragraph appears to characterize Department of Defense Directive-Type Memorandum ("DTM") 16-005, "Military Service of Transgender Service Members" (June 30, 2016). Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with DTM 16-005, Defendants deny the allegations.

22. This paragraph appears to characterize DTM 16-005. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with DTM 16-005, Defendants deny the allegations.

23. Admit.

24. This paragraph appears to characterize the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the Presidential Memorandum, Defendants deny the allegations.

25. Defendants deny the first and second sentences of this paragraph to the extent they allege that President Trump relied on *only* his own judgment. Regarding the third sentence of this paragraph, admitted that the quoted statement reflects President Trump's judgment, but denied that the statement reflects his judgment alone. Finally, this paragraph quotes from the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' quotes are inconsistent with the Presidential Memorandum or are legal conclusions, Defendants deny the allegations.

26. This paragraph appears to characterize the Presidential Memorandum. Defendants respectfully refer the Court to the Presidential Memorandum itself for a complete and accurate statement of its contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the Presidential Memorandum, Defendants deny the allegations.

V. LEGAL CLAIMS

FIRST CAUSE OF ACTION
(EQUAL PROTECTION VIOLATION)

27. The answers to all preceding paragraphs are incorporated herein by reference.

28. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

29. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

30. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

31. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

32. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

SECOND CAUSE OF ACTION
(SUBSTANTIVE DUE PROCESS VIOLATION)

33. The answers to all preceding paragraphs are incorporated herein by reference.

34. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

35. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

36. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

37. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

38. This paragraph consists of legal conclusions, to which no response is required. To the extent a response may be deemed required, denied.

VI. PRAYER FOR RELEIF

39–45. Defendants deny that Plaintiffs are entitled to the relief requested in their Prayer for Relief or to any relief whatsoever.

Defendants hereby specifically deny each and every allegation in the Intervenor Complaint not expressly admitted or denied in this Answer, or to which they have responded that they have insufficient information to admit or deny.

Dated: February 26, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2018, I electronically filed the foregoing answer, causing a notice of filing to be served upon all counsel of record.

Dated: February 26, 2018

/s/ Ryan Parker

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Counsel for Defendants

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI; STAFF SEARGEANT CATHERINE SCHMID; D.L., formerly known as K.G., by his next friend and mother, LAURA GARZA; HUMAN RIGHTS CAMPAIGN; and GENDER JUSTICE LEAGUE,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

STATE OF WASHINGTON,

Intervenor-Plaintiff,

v.

DONALD TRUMP, in his official capacity as President of the United States; the UNITED STATES OF AMERICA; JAMES N. MATTIS, in his official capacity as Secretary of Defense; the UNITED STATES DEPARTMENT OF DEFENSE; ELAINE C. DUKE, in her official capacity as Acting Secretary of Homeland Security; and the UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Intervenor-Defendants.

Case No: 2:17-cv-1297

COMPLAINT IN INTERVENTION BY STATE OF WASHINGTON FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. The State of Washington ("State") brings this action to protect itself, its residents, and the Washington National Guard from a facially discriminatory policy that targets transgender individuals who wish to serve their country and their State.

2. The State brings this action to ensure that the health, well-being, and economic interests of the State, its residents, and the Washington National Guard are not unconstitutionally infringed by the federal government's implementation of a ban on military service by transgender individuals and a policy that denies federal funding for transgender service members to access certain medical procedures – simply because of their sex, gender identity, or gender expression.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1). Defendants are the President of the United States, United States agencies, and United States officers sued in their official capacities.

III. PARTIES

Intervenor-Plaintiff State of Washington

5. The Governor is the chief executive officer of the State. The Governor is responsible for overseeing the operations of the State and ensuring the faithful execution of its laws, including adherence to state and federal constitutional protections. The Governor is also the commander-in-chief of the Washington National Guard and is responsible for ensuring Washington's safety in times of disaster or emergency.

6. The State has a quasi-sovereign interest in protecting the health, safety, and well-being of its residents, including protecting its residents from unlawful discrimination and the harms that result. The State's interest in preventing and remedying injuries to the public's health,

safety, and physical and economic well-being extends to all of the State's residents, including individuals who suffer indirect injuries and members of the general public.

7. The State also has a quasi-sovereign interest in ensuring that its residents are not excluded from the benefits that flow form participation in the federal system, including the rights and privileges provided by the U.S. Constitution.

8. The State has a proprietary interest in protecting the State's economic health from the loss of military service and advancement opportunities for Washingtonians who are transgender, and the attendant loss to Washington of employment, property, and sales tax revenues that would be contributed by transgender service members and their families.

9. The State has a sovereign interest in protecting its territory and maintaining its antidiscrimination laws. Excluding transgender Washingtonians from the pool of candidates who can join the Washington National Guard may result in diminished numbers of service members who can provide emergency response and disaster mitigation. The State has declared that practices that discriminate against any of its inhabitants because of sex, sexual orientation, gender identity, or gender expression are matters of public concern that threaten the rights and proper privileges of the State and harm the public welfare, health, and peace of the people. *See* Wash. Rev. Code § 49.60.010.

10. The United States military is the second largest employer in Washington State and an important economic driver in Washington. There are approximately 60,000 Washingtonians engaged in military service either as active, reserve, or Guard members. These Washingtonians serve their State and country at six major military bases in Washington State. To serve in the United States' military, Washingtonians must meet the accession standards of the Department of Defense ("DoD"), which include the Transgender Military Service Ban described below.

11. The Washington National Guard is an integral part of Washington's emergency preparedness and disaster recovery planning and response, as well as a member of Washington's

militia. Between 2007 and September 2017, the Washington National Guard was deployed eight times to respond to emergencies in Washington State to fight forest fires, battle flooding, and provide rescue services to communities devastated by landslides. Recruitment for the Washington National Guard is subject to DoD policies governing accession into military service, which includes the Transgender Military Service Ban.

Intervenor-Defendants

12. Defendant Donald Trump is the President of the United States, and issued the August 25, 2017, Transgender Military Service Ban challenged here.

13. Defendant United States of America includes all government agencies and departments responsible for implementation of President Trump's August 25, 2017, Transgender Military Service Ban.

14. Defendant James N. Mattis is the Secretary of the Department of Defense. Secretary Mattis is responsible for implementing the Transgender Military Service Ban, including the limitations on accession and health care. Secretary Mattis is also responsible for the development of additional policies to implement the directive.

15. Defendant DoD is a Cabinet-level department that is responsible for overseeing the Army, Navy, and Air Force including the United States Special Operations Command. The DoD provides military forces needed to deter war and to protect the security of our country. DoD has authority over the United States armed forces and is responsible for implementing policies governing accession and service in the armed forces.

16. Defendant Elaine Duke is the Acting Secretary of the Department of Homeland Security ("DHS"). Secretary Duke is responsible for implementing the Transgender Military Service Ban, including the limitations on accession and health care, for the Coast Guard. Secretary Duke is also responsible for the development of additional policies to implement the directive.

17. Defendant DHS is a Cabinet-level department that is responsible for the coordination and unification of national security efforts. DHS has authority over the United States Coast Guard including setting and implementing policies governing accession and service in the Coast Guard.

IV. ALLEGATIONS

18. The military has a longstanding policy and practice of excluding transgender individuals from serving in the military.

19. In 2014, the military issued its first report analyzing the military's ban on service by openly transgender individuals. The report found that there was no compelling reason for banning transgender individuals from military service.

20. In July 2015, then-Secretary of Defense Ashton Carter created a work group composed of senior representatives from each of the Military Departments, Joint Staff, and relevant members of the Office of the Secretary of Defense to formulate policy options regarding military service by transgender individuals. On or about July 13, 2015, Secretary Carter also terminated the practice of involuntarily separating or denying reenlistment or continuation of active or reserve service on the basis of gender identity – unless it went through an approval process chaired by the Under Secretary of Defense for Personnel and Readiness.

21. On June 30, 2016, after a year-long, research-based assessment, which included the leadership of the Armed Services, military medical and personnel experts, transgender service members, outside medical experts, advocacy groups, and the RAND Corporation, DoD lifted its categorical ban on military service by transgender individuals.

22. After lifting the categorical ban on military service by transgender individuals, DoD issued guidance regarding the implementation of a policy that would allow openly transgender individuals accession into military service. The policy was to be implemented in stages over 12 months. The process included training for the entire force, and set July 1, 2017, as the date that the military would allow accession by transgender recruits.

23. On or around June 30, 2017, Secretary Mattis delayed the date that the military would allow accession by openly transgender individuals to January 1, 2018.

24. On August 25, 2017, President Trump issued a memorandum titled "Military Service by Transgender Individuals," which set new policy directives for the military regarding accession and military service by transgender individuals. Military Service by Transgender Individuals, 82 Fed. Reg. 41,319 (Aug. 30, 2017) ("Transgender Military Service Ban"). The memorandum directs the Secretaries of Defense and Homeland Security to (1) return to the military's pre-2016 policy regarding transgender service members; (2) bar openly transgender individuals from accession, or joining the military; (3) ban the use of funds from the DoD and DHS to fund certain medical procedures for transgender service members unless the service members are already in the process of receiving such treatment; and (4) require the Secretaries of Defense and Homeland Security to issue a plan to implement the above directives, including "how to address transgender individuals currently serving in the United States military."

25. President Trump relied upon his own judgment to reverse the military's multiyear strategic research and planning regarding implementation of policies that would allow openly transgender individuals into military service. President Trump also relied upon his own judgment to determine that "the previous Administration failed to identify a sufficient basis to conclude that terminating the [military's] longstanding policy and practice [of excluding transgender individuals from military service] would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources[.]" Transgender Military Service Ban § 1(a). President Trump stated his judgment that "there remain meaningful concerns that further study is needed" to ensure that allowing openly transgender individuals into military service would not have negative consequences for the military. *Id.*

26. The effective dates on the provisions of the Transgender Military Service Ban vary—the accession ban goes into effect January 1, 2018, with the remaining provisions effective on March 23, 2018. Military Service by Transgender Individuals, 82 Fed. Reg. 41319.

V. LEGAL CLAIMS

FIRST CAUSE OF ACTION
(EQUAL PROTECTION VIOLATION)

27. Plaintiff realleges and incorporates by reference herein all of the allegations of paragraphs 1 through 26.

28. The Due Process Clause of the Fifth Amendment prohibits the federal government from denying transgender individuals equal protection of the laws.

29. The Transgender Military Service Ban is a facially discriminatory policy that constitutes sex and gender identity discrimination and targets individuals for discriminatory treatment without lawful justification.

30. The discriminatory terms of the Transgender Military Service Ban are arbitrary and cannot be sufficiently justified by federal interests.

31. Through their actions above and by maintaining the Transgender Military Service Ban, Defendants have violated the equal protection guarantee of the Fifth Amendment.

32. Defendants' violation causes ongoing harm to Washington State and its residents.

SECOND CAUSE OF ACTION
(SUBSTANTIVE DUE PROCESS VIOLATION)

33. Plaintiff realleges and incorporates by reference herein all of the allegations of paragraphs 1 through 32.

34. The substantive component of the Due Process Clause of the Fifth Amendment protects fundamental rights that are implicit in the concept of ordered liberty.

35. The Transgender Military Service Ban, without adequate justification, impermissibly burdens fundamental liberty interests of transgender Washingtonians who currently serve or seek accession into the military.

36. The Transgender Military Service Ban, without adequate justification, impermissibly burdens fundamental liberty interests of transgender Washingtonians currently serving in the military who need particular medical treatments.

37. Through their actions above, Defendants have violated the substantive due process protections of the Fifth Amendment.

38. Defendants' violation causes ongoing harm to Washington State and its residents.

V. PRAYER FOR RELIEF

Wherefore, the State of Washington prays that the Court:

39. Declare that the Transgender Military Service Ban is unauthorized by and contrary to the Constitution and laws of the United States;

40. Enjoin Defendants from implementing or enforcing the Transgender Military Service Ban;

41. Enjoin Defendants from barring transgender individuals accession into military service when exclusion is based solely on an individual's sex, gender identity, or transgender status;

42. Enjoin Defendants from taking adverse employment actions that are based solely on a service member's sex, gender identity, or transgender status;

43. Enjoin Defendants from denying transgender service members access to necessary medical care;

44. Award reasonable attorneys' fees and allowable costs of court; and

45. Award such additional relief as the interests of justice may require.

DATED December 14, 2017.

ROBERT W. FERGUSON
Washington Attorney General

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The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI; STAFF SERGEANT CATHRINE SCHMID; D.L., formerly known as K.G., by his next friend and mother, LAURA GARZA; CHIEF WARRANT OFFICER LINDSEY MULLER; PETTY OFFICER FIRST CLASS TERECE LEWIS; PETTY OFFICER SECOND CLASS PHILLIP STEPHENS; PETTY OFFICER SECOND CLASS MEGAN WINTERS; JANE DOE; CONNER CALLAHAN; HUMAN RIGHTS CAMPAIGN; GENDER JUSTICE LEAGUE; AND AMERICAN MILITARY PARTNER ASSOCIATION,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; the UNITED STATES OF AMERICA; JAMES N. MATTIS, in his official capacity as Secretary of Defense; and the UNITED STATES DEPARTMENT OF DEFENSE,

Defendants.

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

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF ACTION

1. This action challenges the constitutionality of an official federal policy of discrimination against transgender people regarding military service. There are currently thousands of transgender individuals who are bravely serving in our nation's military across myriad roles, and there are many transgender individuals who seek to follow the same noble path.

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Like other service members, these transgender individuals are willing to place themselves in harm's way—and potentially pay the ultimate price—in service of our country. But their President deprives them of an opportunity to serve on equal terms as others simply because they are transgender.

2. The U.S. military previously excluded open service by transgender individuals but it reversed that policy in 2016. Following extensive study and deliberation, the U.S. Department of Defense ("DoD") concluded that a ban on open service by transgender individuals was inconsistent with the military's goal of maintaining an all-volunteer force in which any individual who is qualified to serve has the opportunity to do so. On June 30, 2016, DoD lifted its previous categorical ban. For more than a year after that change, transgender individuals in the military were able to serve openly and authentically alongside their fellow service members. This change strengthened our nation's military readiness.

3. On July 26, 2017, President Donald J. Trump unexpectedly and abruptly reversed course on the military's policy. He took to social media to announce, through three tweets, that "the United States Government will not accept or allow . . . [t]ransgender 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 [sic] in the military would entail. Thank you[.]"

4. This unilateral decision to exclude transgender people from the military was made without any meaningful deliberative process and was directly contrary to the considered judgment of the military. For example, President Trump failed to engage in any meaningful consultation with Secretary of Defense James N. Mattis or the other range of military officials who would ordinarily be consulted about a policy change of this nature and magnitude.

5. In the evening of Friday, August 25, 2017, President Trump followed up on his tweets and implemented an official federal policy of discrimination against transgender individuals in military service ("the Ban"). Among other things, President Trump has mandated that the U.S. military return to its earlier policy and practice of discrimination against transgender people, including by discharging them. He has also maintained and extended the

current bar on accession into the military of individuals known to be transgender ("the current accessions bar"). Last, he has singled out for adverse treatment the health care needs of transgender service members.

6. Dripping with animus, the Ban and the current accessions bar violate the equal protection and due process guarantees of the Fifth Amendment and the free speech guarantee of the First Amendment. They are unsupported by any compelling, important, or even rational justification.

PARTIES

A. Plaintiffs

7. Plaintiff Ryan Karnoski is a 22-year-old man who resides in Seattle, Washington. He wishes to serve in the military. Mr. Karnoski is transgender.

8. Plaintiff Staff Sergeant Cathrine Schmid ("Staff Sergeant Schmid") is a 33-year-old woman who resides in Lakewood, Washington. She has served in the U.S. Army for approximately twelve-and-a-half years and is currently stationed at Joint Base Lewis-McChord in Washington. Staff Sergeant Schmid is transgender.

9. Plaintiff D.L., formerly known as K.G., is a male high school student who resides in Corpus Christi, Texas. He wishes to serve in the military. D.L. is transgender.

10. Plaintiff Chief Warrant Officer Lindsey Muller ("Chief Warrant Officer Muller") is a 35-year-old woman who resides in Poplar Bluff, Missouri. She has served in the U.S. Army for more than seventeen years and is currently stationed at U.S. Army Garrison Yongsan Army Base in Seoul, South Korea. Chief Warrant Officer Muller is transgender.

11. Plaintiff Petty Officer First Class Terece Lewis ("Petty Officer Lewis") is a 33-year-old woman who resides in Bremerton, Washington. She has served in the U.S. Navy for approximately fourteen years and is currently stationed on the U.S.S. John C. Stennis. Petty Officer Lewis is transgender.

12. Plaintiff Petty Officer Second Class Phillip Stephens ("Petty Officer Stephens") is a 30-year-old man who resides in Crestview, Florida. He has served in the U.S. Navy for roughly five years and is currently stationed at Eglin Air Force Base in Florida. Petty Officer

Stephens is transgender.

13. Plaintiff Petty Officer Second Class Megan Winters ("Petty Officer Winters") is a 29-year-old woman who resides in Alexandria, Virginia. She has served in the U.S. Navy for approximately five years and is currently stationed at Hopper Information Service Center, in the Office of Naval Intelligence in Washington, D.C. Petty Officer Winters is transgender.

14. Plaintiff Jane Doe is a 29-year-old woman. She currently serves in the U.S. military. She is transgender. In order to protect her, she has sought leave to proceed as a Doe plaintiff and does not allege her further details about where she resides or her military service.

15. Plaintiff Conner Callahan is a 29-year-old man who resides in Asheville, North Carolina. He wishes to serve in the military. Mr. Callahan is transgender. (Mr. Kanorski, Staff Sergeant Schmid, D.L., Chief Warrant Officer Muller, Petty Officer Lewis, Petty Officer Stephens, Petty Officer Winters, Jane Doe, and Mr. Callahan are referred to collectively as the "individual plaintiffs.")

16. Plaintiff Human Rights Campaign ("HRC") is largest national lesbian, gay, bisexual, transgender, and queer ("LGBTQ") civil rights organization in America. HRC's principal place of business is in Washington, D.C.

17. Plaintiff Gender Justice League ("GJL") is a Washington state gender and sexuality civil and human rights organization. GJL's principal place of business is in Seattle, Washington.

18. Plaintiff American Military Partner Association ("AMPA") is the nation's largest organization of LGBT military families and their allies. AMPA's principal place of business is in Washington, D.C. (HRC, GJL, and AMPA are referred to collectively as the "organizational plaintiffs.")

B. Defendants

19. President Donald J. Trump is the President of the United States of America and Commander in Chief of the U.S. military. President Trump instituted the Ban.

20. The United States of America encompasses all federal agencies and departments responsible for implementing the Ban and the current accessions bar, including the U.S.

Department of Defense and the Department of Homeland Security.

21. Secretary James N. Mattis is the Secretary of the U.S. Department of Defense. He is responsible for the implementation of the Ban and for the administration and enforcement of the current accessions bar.

22. The U.S. Department of Defense is an executive branch department of the U.S. federal government composed of the office of the Secretary of Defense; the Joint Chiefs of Staff; the Joint Staff; America's Defense Agencies; the Department of Defense Field Activities; the Departments of the Army, Navy, and Air Force; the unified and specified combatant commands, such other offices, agencies, activities, and commands as may be established or designated by law or by the President; and all offices, agencies, activities, and commands under any of their control or supervision. Under the direction of Secretary Mattis, DoD is also responsible for administration and enforcement of the Ban and of the current accessions bar.

JURISDICTION AND VENUE

23. Subject matter jurisdiction exists under 28 U.S.C. §§ 1331 and 1346 because this action arises under, is founded upon, and seeks to redress the deprivation of rights secured by, the United States Constitution.

24. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391(e). Mr. Karnoski, Staff Sergeant Schmid, and GJL all reside within this district. In addition, the ban is enforced, and the impact of it is felt, in this district. A substantial part of the events or omissions that gave rise to Plaintiffs' claims, including particularly those of Mr. Karnoski, HRC, and GJL, occurred in King County, Washington.

25. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

26. This Court has personal jurisdiction over Defendants because their enforcement of the Ban and the current accessions bar occurs within Washington.

FACTUAL ALLEGATIONS

A. Background Information Regarding Transgender Individuals

27. Gender identity is a person's fundamental, internal sense of belonging to a particular gender. It is a core characteristic of human identity that everyone possesses. Gender identity is innate, biologically rooted, and fixed at an early age.

28. Although most people have a gender identity that matches their sex assigned at birth, this is not the case for transgender people, who are defined as transgender because their gender identity does not match the sex they were assigned at birth. Transgender people have existed throughout human history, although understanding of transgender people has grown in modern times.

29. An individual's sex is generally assigned at birth based on external genitalia. But other sex-related characteristics can include chromosomes, hormone levels, internal reproductive organs, and gender identity.

30. When someone's sex-related characteristics are not in typical alignment with each other, gender identity is the critical determinant of sex. Attempts to change an individual's gender identity to bring it into alignment with the sex that the individual was assigned at birth are ineffective and potentially harmful.

31. The discordance between one's gender identity and the sex one was assigned at birth can be associated with clinically significant distress, which is known as gender dysphoria. Gender dysphoria can be treated in accordance with internationally recognized standards of care.

32. Living in a manner consistent with one's gender identity is critical to the health and well-being of transgender people and is a key aspect of treatment for gender dysphoria. The process by which transgender individuals come to live in a manner consistent with their gender identity, rather than the sex they were assigned at birth, is known as transition.

33. The steps that transgender people take to transition are not identical, but they generally include social, legal, and medical transition.

34. Social transition entails the adoption of a gender role matching one's gender identity. For example, for a man who is transgender, social transition can include wearing typical

male attire, using male pronouns, and otherwise living as a man in all aspects of everyday life.

35. Legal transition involves steps to conform one's legal identity to one's gender identity, such as legally changing one's name and updating the name and gender marker on one's driver's license and birth certificate.

36. Medical transition includes treatment that brings one's body into alignment with one's gender identity, such as hormone therapy. Whether any particular treatment is medically necessary or even appropriate, however, depends on the needs of the individual.

37. These various components associated with transition—social, legal, and medical transition—do not change an individual's gender, which is already determined by gender identity, but instead bring the individual's social presentation, legal identity, and physical appearance into greater typical alignment with their gender.

B. Plaintiff Ryan Karnoski

38. Plaintiff Ryan Karnoski comes from a family with a legacy of military service. His grandfather and step-grandfather served in the Army during the Korean War, and other of his relatives have served in the Army and Navy.

39. Mr. Karnoski's desire to join the military came into sharper focus following the death of his cousin, who was killed in action in Afghanistan in 2009. His cousin's death—and the toll that it took on surviving family members—further impressed upon Mr. Karnoski the tremendous sacrifice that service members make for their country. Mr. Karnoski also realized that his own desire to serve in the military was motivated by more than simply a family legacy: it was a personal calling in life for him, and it is something that he has long dreamt of being able to fulfill.

40. Mr. Karnoski works as a mental health clinician in Seattle, Washington.

41. Mr. Karnoski holds a Masters in Social Work from the University of Washington School of Social Work's Child Welfare Training Advancement Program. He also holds a Bachelor of Arts degree in both Social Welfare and Gender, Women, and Sexuality Studies from the University of Washington. Mr. Karnoski is currently registered with the Selective Service.

42. But for the Ban and the current accessions bar, and Defendants' enforcement of them both, Mr. Karnoski would seek to join the military, and he is ready and able to pursue a military career. In fact, he contacted military recruiters in or around September 2016, but he was open about his transgender status and discussed with a recruiter having to wait until the current accessions bar was lifted. Mr. Karnoski was referred to recruiting offices in King County, Washington, his point of contact for further communications regarding his accession.

43. Mr. Karnoski would like to put his social work skills to use for the military. Social work is an area for which there can be significant need in the military, including in the Army and Navy. Given that Mr. Karnoski holds a master's degree in social work, he aspires to serve as an officer in the military.

44. Mr. Karnoski is transgender. He was assigned the sex of female at birth but his gender identity is male.

45. Mr. Karnoski began to come to terms with his gender identity approximately five years ago.

46. Mr. Karnoski began living openly as male in 2014.

47. In consultation with health care professionals, Mr. Karnoski has taken clinically appropriate steps to transition.

48. Mr. Karnoski has taken legal steps to transition. He legally changed his first name to Ryan. He also changed his name and gender marker to male on his driver's license, birth certificate, social security card and records, and passport.

49. Mr. Karnoski has engaged in speech and conduct disclosing his transgender status and expressing his gender identity and wants to continue to be able to do so.

C. Plaintiff Staff Sergeant Cathrine Schmid

50. Plaintiff Staff Sergeant Cathrine ("Katie") Schmid was born at K.I. Sawyer Air Force Base, Michigan, and was raised in Portland, Oregon. She has always been a patriotic American with a desire to serve others and was drawn to opportunities presented by serving in the Army. She is proud to put on her uniform each day and serve her country.

51. Staff Sergeant Schmid holds the military occupational specialty of Signals Intelligence Analyst within the Army, currently performing duties as Brigade Land and Ammunition Manager. Before her current role, she performed duties as a Signals Intelligence Analyst, All-Source Analysis System Master Analyst, Human Intelligence Collector, and Counterintelligence Agent. She joined the Army in 2005.

52. Staff Sergeant Schmid is transgender. She was assigned the sex of male at birth but has a female gender identity. She knew from a young age in life that she was female.

53. Staff Sergeant Schmid began to come to terms with her gender identity approximately four years ago. At that time, she started to see a mental health professional who diagnosed her with gender dysphoria.

54. Staff Sergeant Schmid began living openly as a woman around 2014.

55. In consultation with health care professionals, Staff Sergeant has taken clinically appropriate steps to transition, and she has further transition-related health care needs.

56. Staff Sergeant Schmid has taken legal steps to transition. She legally changed her first name to Cathrine. She also changed her name and changed her gender marker to female on her driver's license, passport, and social security records.

57. Staff Sergeant Schmid has worked with her chain of command throughout her transition, and both they and other enlisted personnel have been supportive of her throughout that process. Her gender marker in the military's personnel management systems (including the Defense Enrollment Eligibility Reporting System ("DEERS")) reflects that she is female.

58. She is recognized and treated as female in all aspects of military life, including in social interactions and in her compliance with women's grooming and physical training requirements.

59. The fact that Staff Sergeant Schmid is transgender has not prevented her from doing her job in the military nor has it prevented others from doing their jobs in the military. Staff Sergeant Schmid performs valuable services for the Army, and her performance of those duties strengthen our nation's military readiness.

60. Being able to serve openly as a transgender woman has made Staff Sergeant Schmid a stronger asset for the military. She is able to function as a productive, healthy member of the military, and she is able to forge stronger relationships with others in her unit.

61. In June 2017, Staff Sergeant Schmid submitted an application to become an Army warrant officer. A warrant officer is a highly specialized expert and trainer in a technical area such as aviation, military police, or, in Staff Sergeant Schmid's case, intelligence. Her application was approved at the initial stages.

62. But the military's current accessions bar not only excludes transgender individuals from enlistment but also from appointment as officers, even where an individual is already serving in the military. Staff Sergeant Schmid was informed in writing in July 2017 that her application was placed on hold, and thus was not being considered further at the time, because of the current accessions bar, which has now been indefinitely extended by the Ban. Staff Sergeant Schmid has been deprived of an equal opportunity to become a warrant officer because of President Trump's issuance of the Ban, because of his extension of the current accessions bar, and because of the Defendants' enforcement of them both.

63. Staff Sergeant Schmid has engaged in speech and conduct disclosing her transgender status and expressing her gender identity, including by coming out to her chain of command and her fellow service members, taking steps to transition, and living openly as a woman in military life. She wants to continue to be able to engage in speech and conduct disclosing her transgender status and expressing her gender identity.

D. Plaintiff D.L.

64. Plaintiff D.L. was born in Alice, Texas and currently resides in Corpus Christi, Texas. D.L.'s great grandfather and great uncle both served in the Army, and the former earned a Purple Heart for his service. D.L. is proud of his family's history of service and has a strong desire to serve his country by joining the military as well.

65. After years of consideration, research, and speaking to veterans of different services, D.L. decided to pursue a career in the military. Specifically, D.L. wants to serve as a Survival, Evasion, Resistance and Escape Specialist in the Air Force. This position entails

training other Airmen on survival-related techniques needed, for various terrains and climates, in the event that their aircraft goes down.

66. Existing regulations permit individuals to join the military at age 17 with parental consent. Based on his age, D.L. has been eligible to join the military since August 2017. D.L.'s mother and next friend, Laura Garza, supports D.L. in his desire to join the military.

67. D.L. anticipates receiving his high school diploma in roughly September 2017. D.L. has long planned and hoped to join the Air Force upon completion of high school.

68. In preparation for enlistment, D.L. communicated with an Air Force recruiter in early July 2017. When D.L. disclosed to the recruiter that he is transgender, the recruiter stopped communicating with D.L.

69. But for the Ban and the current accessions bar, and Defendants' enforcement of them both, D.L. would seek to join the military, and he is ready and able to pursue a military career.

70. D.L. is transgender. He was assigned the sex of female at birth but his gender identity is male.

71. D.L. came out about his gender identity in the summer of 2015. He has lived openly as male since that time.

72. In consultation with health care professionals, D.L. has taken clinically appropriate steps to transition.

73. D.L. has engaged in speech and conduct disclosing his transgender status and expressing his gender identity, including by coming out to the Air Force recruiter, taking steps to transition, and living openly as male in his everyday life. He wants to be able to continue to engage in speech and conduct disclosing his transgender status and expressing his gender identity.

E. Plaintiff Chief Warrant Officer Muller

74. Plaintiff Chief Warrant Officer Muller is a Chief Warrant Officer 3 in the U.S. Army. She enlisted in the Army in 2000 and has been serving for more than seventeen years.

75. Chief Warrant Officer Muller chose the military as a career path because of the abundant job opportunities and her strong sense of patriotism. She has proudly served in combat and takes great pride in wearing the uniform to serve her country. Chief Warrant Officer Muller has served in Operation Iraqi Freedom, Operation Enduring Freedom, and multiple assignments in the Republic of Korea.

76. Chief Warrant Officer Muller's military occupation specialty is Attack Helicopter Pilot/Aviator within the Army and she currently performs duties as an Aviation Safety Officer. Her duties currently involve providing combat support and combat service support to various echelons of commands. She serves as advisor to Commanders on all aviation and ground related safety matters. Chief Warrant Officer Muller is responsible for managing the Battalion Commander's Safety Program and developing safety policies, safety goals, mission objectives, priorities, and integrating them into daily operations.

77. The military has invested significant resources in training Chief Warrant Officer Muller. Her well-honed skills and leadership position make her a highly valued member of the military. Chief Warrant Officer Muller's performance has been consistently recognized throughout her career in military service.

78. Chief Warrant Officer Muller wants to continue serving in the Army.

79. Chief Warrant Officer Muller is transgender. She was assigned the sex of male at birth. She has known for more than twelve years that she is female, and began to come to terms with her gender identity approximately five years ago. At that time, Chief Warrant Officer Muller started to see a mental health professional who diagnosed her with gender dysphoria.

80. Chief Warrant Officer Muller began living openly as a woman in 2014.

81. In consultation with health care professionals, Chief Warrant Officer Muller has taken clinically appropriate steps to transition, and she has further transition-related health care needs—including medically necessary surgical treatment. However, in the aftermath of President Trump's announcement of the change in policy regarding service by transgender individuals, all efforts to arrange that surgical treatment were called off.

82. Chief Warrant Officer Muller has taken legal steps to transition. She has legally changed her first name to Lindsey. She has also changed her name and changed her gender marker to female on her driver's license, passport, and social security records.

83. The fact that Chief Warrant Officer Muller is transgender has not prevented her from doing her job as Aviation Safety Officer nor has her gender identity prevented others from doing their jobs in the military. Chief Warrant Officer Muller performs valuable services for the Army, and her performance of those duties strengthens our nation's military readiness.

84. Being able to serve openly as a transgender woman has made Chief Warrant Officer Muller a stronger asset to the military. Because she has been able to serve openly, she has been able to function as a productive, healthy member of the military, and has been able to forge stronger relationships with others in her unit.

85. Chief Warrant Officer Muller has engaged in speech and conduct disclosing her transgender status and expressing her gender identity, including by coming out to her chain of command and fellow service members, taking steps to transition, and living openly as a woman in military life. She wants to continue to be able engage in speech and conduct disclosing her transgender status and expressing her gender identity.

F. Plaintiff Petty Officer Lewis

86. Plaintiff Petty Officer Lewis is steadfastly dedicated to the mission of the U.S. Navy—to maintain, train and equip combat-ready Naval forces capable of winning wars, deterring aggression and maintaining freedom of the seas. During her fourteen years of service, Petty Officer Lewis has defended oil platforms in the Arabian Gulf, boarded vessels and seized tons of cocaine in route to the U.S. from South America, protected the shipping lanes from Somali pirates, and defended freedom of navigation in the South China Sea.

87. Petty Officer Lewis has served in a variety of roles within the Navy, including as an Engineman and Machinists Mate, as a public affairs officer for a major shore command, and as a career counselor advising Sailors of their career options.

88. Petty Officer Lewis is transgender. She was assigned the sex of male at birth. However, she has known since approximately early 2013 that she is female and began to come to

terms with her gender identity shortly thereafter. Petty Officer Lewis then began seeing a mental health professional who diagnosed her with gender dysphoria.

89. Petty Officer Lewis began living openly as a woman in late 2016.

90. Petty Officer Lewis is taking medical steps to bring her body into conformity with her female gender identity. In consultation with her physician, Petty Officer Lewis began hormone therapy on July 25, 2017, one day before President Trump released the transgender military ban on Twitter.

91. Petty Officer Lewis has taken legal steps to transition. She legally changed her first name to Terece and changed her driver's license and social security documentation.

92. Petty Officer Lewis has worked with her chain of command throughout her transition, and both they and other enlisted personnel have been supportive.

93. The fact that Petty Officer Lewis is transgender has not prevented her from doing her job in the military. Petty Officer Lewis performs a valuable service for the Navy that strengthens military readiness; excluding her from the military based on her transgender status would weaken military readiness.

94. Being able to serve openly as a transgender woman makes Petty Officer Lewis a stronger asset for the military. Because she has been able to serve openly, she has been able to function as a productive, healthy member of the military, without the distress that would otherwise accompany untreated gender dysphoria, and she has been able to forge stronger relationships with others in her unit, without having to pretend to live as someone she is not.

95. If permitted to do so, Petty Officer Lewis will re-enlist in the military following the expiration of her current term of service. Indeed, she intends to serve honorably in the military until the age of retirement.

96. Petty Officer Lewis has engaged in speech and conduct disclosing her transgender status and expressing her gender identity, including by coming out to her chain of command and fellow service members, taking steps to transition, and living openly as a woman in military life. She wants to continue to be able engage in speech and conduct disclosing her transgender status and expressing her gender identity.

G. Plaintiff Petty Officer Stephens

97. Over the past five years, Plaintiff Petty Officer Stephens has served one main role within the Navy: Aviation Structural Mechanic. Petty Officer Stephens has worked on the flight deck of an aircraft carrier ensuring that Navy aircraft pilots are able to safely eject from their aircraft in the event of an emergency. He has performed this duty with honor and precision both during simulated and active duty scenarios, including a deployment to the Persian Gulf.

98. Petty Officer Stephens proudly joined the Navy to serve his country and for the security and stability that a military career provides.

99. Petty Officer Stephens is transgender. He was assigned the sex of female at birth, but has known since he was a young child that he is male.

100. Petty Officer Stephens began to come to terms with his gender identity approximately two years ago and thereafter started to see a mental health professional who diagnosed him with gender dysphoria.

101. On June 30, 2016, Petty Officer Stephens was deployed in the Persian Gulf. When he read that the ban on military service by transgender individuals was being lifted, he was filled with incredible relief and joy. Following this change in policy, Petty Officer Stephens decided to remain in the Navy and transition. He began living openly as a man in August 2016, as soon as he returned home from deployment.

102. Petty Officer Stephens began scheduling the necessary medical appointments and phone interviews to acquire the required transition-related paperwork to submit to his Commanding Officer. He began taking medical steps to bring his body into conformity with his male gender identity. In consultation with his physician, Petty Officer Stephens began hormone therapy in November 2016. This approved treatment plan includes surgical treatment. The proposed ban on transition-related surgery will bar Petty Officer Stephens from obtaining this medically necessary care.

103. Petty Officer Stephens is taking legal steps to transition. He will be legally changing his first name to Phillip and will be changing his name and gender marker on his driver's license and social security records.

104. Petty Officer Stephens has worked with his chain of command throughout his transition, and both they and other enlisted personnel have been supportive. Since coming out to his chain of command, other service members have addressed Petty Officer Stephens by male pronouns, which match his gender identity. He has been known, accepted, and treated as the man that he is.

105. The fact that Petty Officer Stephens is transgender has not prevented him from doing his job in the military. He performs a valuable service for the Navy that strengthens military readiness—keeping our nation's aircraft systems safe and operational. Conversely, his exclusion from the military on the basis of his transgender status would weaken military readiness.

106. Petty Officer Stephens has engaged in speech and conduct disclosing his transgender status and expressing his gender identity, including by coming out to his chain of command and fellow service members, taking steps to transition, and living openly as a man in military life. He wants to continue to be able engage in speech and conduct disclosing his transgender status and expressing his gender identity.

H. Plaintiff Petty Officer Winters

107. Plaintiff Petty Officer Winters is an Information Systems Technician in the U.S. Navy. During her five-years serving in the military, Petty Officer Winters has received specialized training and provided mission-related information technology and services to the Office of Naval Intelligence, its subordinate commands, the Fleet, and Joint Forces commands. Petty Officer Winters has performed her job duties in support of the Global War on Terrorism.

108. Petty Officer Winters provides a valuable service for the Navy intelligence community that strengthens military readiness—providing information technology and services that, in turn, allows other service members to do their jobs.

109. Growing up as the child of a veteran, the military's core values and creeds have been ingrained into every aspect of her life from a young age. The only career path that Petty Officer Winters has ever envisioned for herself has been the military.

110. Petty Officer Winters is transgender. She was assigned the sex of male at birth, but she has known since approximately 2001 that she is female.

111. After struggling for many years to receive family acceptance, Petty Officer Winters began to come to terms with accepting and living openly in her gender identity approximately one-and-a-half years ago. She then started to see a mental health professional who diagnosed her with gender dysphoria.

112. When Petty Officer Winters found out, in June 2016, that the ban on open transgender military service had been lifted, she was absolutely ecstatic. She had informed her family that she was transgender immediately prior to the announcement because she realized that she needed to finally live her true, authentic life. Petty Officer Winters hoped to do that while continuing to proudly serve the country in the Navy.

113. Following the lift on the ban, Petty Officer Winters began living openly as a woman. She disclosed her transgender status and expressed her gender identity openly in the military in reliance on the open service ban having been lifted.

114. Petty Officer Winters has started taking medical steps to bring her body into conformity with her female gender identity. In June 2016, Navy medical officers created an individualized treatment plan for her gender transition. In consultation with her physician, Petty Officer Winters began hormone therapy in July 2016.

115. Petty Officer Winters's treatment plan also includes medically necessary surgical treatment. Petty Officer Winters has made multiple attempts to make contact with relevant military personnel to determine if her paperwork for approval of this treatment is still in process or has been rejected. She has not received any response to her inquiries.

116. Petty Officer Winters has taken legal steps to transition. She has legally changed my first and middle names to Megan Dawn. She has also changed her name on her driver's license and her social security card and records.

117. Petty Officer Winters has also changed her gender marker in DEERS. She has worked with her chain of command throughout her transition. Since coming out, others have mostly addressed Petty Officer Winters by female pronouns, which match her gender identity.

118. The fact that Petty Officer Winters is transgender has not prevented her from doing her job in the military. She performs a valuable service for the Navy that strengthens military readiness. Excluding Petty Officer Winters from the military on the basis of her transgender status would weaken military readiness.

119. If permitted to do so, Petty Officer Winters would re-enlist in the military following the expiration of her current term of service in March 2019. She intends to serve honorably in the military until retirement.

120. Petty Officer Winters has engaged in speech and conduct disclosing her transgender status and expressing her gender identity, including by coming out to her chain of command and fellow service members, taking steps to transition, and living openly as a woman in military life. She wants to continue to be able engage in speech and conduct disclosing her transgender status and expressing her gender identity.

I. Plaintiff Jane Doe

121. Plaintiff Jane Doe currently serves in the U.S. Military.

122. Jane Doe joined the military to serve her country and for the security and stability that a military career provides. She takes pride in her role in protecting our country and helping others save innocent lives.

123. Jane Doe is transgender, although she has not yet transitioned to living openly as a woman. She was assigned the sex of male at birth, but she has known since she was 20 years old that she is female. Jane Doe has long hoped to be able to transition to living openly as a woman, but the prospect of doing so felt unattainable in the past, without a supportive environment in which to transition.

124. On or around June 30, 2016, Jane Doe became aware that the ban on open military service by transgender individuals had been lifted. She was very excited and nervous about the possibility of serving openly as a woman. In October 2016, she began extensively reviewing the materials the military was releasing to implement the lifting of the ban. In December 2016, she attended her command-level training on the new policy. Around that time, she decided to come out as transgender to select colleagues whom she felt she could trust. She also researched what

was required to formally change her gender marker in DEERS.

125. Jane Doe decided to begin her legal and medical transition once she was posted at her next assigned location. She planned to time and structure her transition so that it was as smooth as possible for her colleagues and herself. Jane Doe wanted to give her Commanding Officer plenty of time to prepare her unit and for other service members at her next assigned location to get to know her as a valuable individual member of the team. She also wanted to give herself some time to come out. She transferred to this assigned location in July 2017.

126. On July 26, 2017, President Trump posted three tweets that said that transgender people would not be able to serve in the military "in any capacity." After Jane Doe saw the President's tweets, she decided to put her plans – to transition, come out as transgender, live openly as a woman, and change her gender marker – on hold, fearing negative consequences.

127. Because of this change in policy, Jane Does has not come out to anyone in her chain of command. She is open to a few select individuals with whom she serves, as well as a group of veterans with whom she communicates about her gender identity for support.

128. As a result of the announced ban, Jane Doe has been forced to postpone the steps required for her to transition and she questions whether she will be able to continue serving in the military, a career that she loves and wants to continue.

129. Jane Doe is terrified that her career will be brought to an early end because of the President's decision to ban transgender individuals from military service. If she transitions, she will lose her career and everything that comes with it. If she does not transition, then she gives up the expression of herself on the most fundamental level and, instead, must continue living as someone that she is not.

J. Plaintiff Conner Callahan

130. Plaintiff Conner Callahan is a Public Safety Officer at Warren Wilson College in Asheville, North Carolina.

131. Mr. Callahan has wanted to enlist in the military since age 13. He comes from a family with a legacy of military service and considers it his personal calling to serve and protect the people of the United States in this capacity.

132. Mr. Callahan would like to put his investigative and problem-solving skills to use for the military. In 2014, with the help of a U.S. Air Force recruiter in Kent, Ohio, Mr. Callahan identified the enlisted position he would like to pursue: Explosive Ordnance Disposal.

133. Mr. Callahan is transgender. He was assigned the sex of female at birth, but has known since approximately early 2012 that he is male.

134. Mr. Callahan began living openly as male in 2014 and has done so consistently since that time.

135. In consultation with health care professionals, Mr. Callahan has taken clinically appropriate steps to transition, which were completed in 2015.

136. Mr. Callahan has taken legal steps to transition. He legally changed his first name to Conner. He has also changed his legal gender to male by court order. Mr. Callahan changed his name and gender marker to male on his driver's license and on social security card and records.

137. Mr. Callahan is ready and able to pursue a military career. When he spoke with military recruiters he was open about his transgender status and discussed with a recruiter what position would be best for him after enlistment. Mr. Callahan also took practice Armed Services Vocational Aptitude tests, scoring above the 90th percentile on both tests.

138. But for the Ban and the current accessions bar, Mr. Callahan would seek to join the military, and he is ready and able to pursue a military career.

139. Mr. Callahan has engaged in speech and conduct disclosing his transgender status and expressing his gender identity, including by coming out to military recruiters, taking steps to transition, and living openly as male in his everyday life. He wants to be able to continue to engage in speech and conduct disclosing his transgender status and expressing his gender identity.

K. Plaintiff Human Rights Campaign

140. HRC is a private, non-profit membership organization with approximately 508,000 members throughout the United States, including transgender members serving in the United States military and transgender members who wish to serve in the United States military. The mission of HRC is to end discrimination against LGBTQ people and realize a world that

achieves fundamental fairness and equality for all, including ending discrimination against LGBTQ people who wish to serve their country.

141. HRC sues on behalf of its members, including Mr. Karnoski, Staff Sergeant Schmid, and other prospective and current transgender service members who are currently adversely affected by the Ban and the current accessions bar.

L. Plaintiff Gender Justice League

142. GJL is a civil and human rights membership organization that, as relevant here, advocates on behalf of transgender individuals in Washington state. It seeks to create a community for transgender people and to empower them to combat the structural oppression, discrimination, and violence they face in their daily lives.

143. GJL sues on behalf of its members, including Mr. Karnoski, Staff Sergeant Schmid, and other prospective and current transgender service members who are currently adversely affected by the Ban and the current accessions bar.

M. Plaintiff American Military Partner Association

144. With more than 50,000 members and supporters across the country and around the world, AMPA's mission is to connect, support, honor, and serve the partners, spouses, families, and allies of America's LGBT service members and veterans.

145. AMPA's members include transgender individuals currently serving in the military, including for example, Chief Warrant Officer Muller, Staff Sergeant Schmid, Petty Officer Stephens, and Petty Officer Megan Winters. AMPA's members also include transgender individuals who wish to access into the military, including for example Mr. Karnoski. AMPA sues on behalf of its individual transgender members who are directly affected by the Ban and the accessions bar.

N. Prior Military Ban Against Transgender Individuals

146. There has never been a federal statute excluding transgender people from military service. Instead, the military previously had a policy of excluding transgender people from service based on DoD and service-specific rules and regulations.

147. This earlier military policy was based on an inaccurate, historical, pathological view that regarded transgender people as deviants. This view was discredited long ago following psychological and medical advances in the understanding of gender identity and of transgender people.

148. Despite this earlier policy of exclusion, transgender people have always served in the military but, as noted by former Secretary of Defense Ash Carter ("Secretary Carter"), "they often had to serve in silence alongside their fellow comrades in arms."

149. Transgender people have played essential, mission-critical roles in the military, even when they have not had the ability to serve openly. For example, a transgender woman served on Navy SEAL Team 6 and earned a Purple Heart and a Bronze Star, among many other ribbons and medals.

150. According to a 2014 study conducted by the Williams Institute at the University of California, Los Angeles, there are an estimated 134,300 transgender people who are veterans or are retired from guard or reserve service.

151. It is a statistical certainty that there have been transgender people who have sacrificed their lives in the course of military service to the United States.

O. Rescission of Prior Military Ban Against Transgender Individuals

152. The military's prior ban against transgender people was the subject of extensive research and study, which concluded that it lacked any valid justification.

153. For example, in March 2014, the Transgender Military Service Commission (the "Commission") issued a report analyzing the military's former ban. The Commission, which was co-chaired by a former U.S. Surgeon General, was convened to determine whether the ban was based on medically sound reasons. The Commission found that there was "no compelling medical rationale" for banning military service by transgender people.

154. In May 2014, then-Secretary of Defense Chuck Hagel publicly stated that he was receptive to reviewing and reassessing the rules that govern service by transgender people. He explained that "[e]very qualified American who wants to serve our country should have an opportunity if they fit the qualifications and can do it."

155. In July 2015, Secretary Carter admitted that DoD's regulations regarding transgender service members "[were] outdated and [were] causing uncertainty that distracted commanders from our core missions." He also recognized the many transgender people who were already serving in the military: "We have transgender soldiers, sailors, airmen and Marine—real, patriotic Americans—who I know are being hurt by an outdated, confusing, inconsistent approach that's contrary to our value of service and individual merit."

156. Accordingly, Secretary Carter announced the creation of a working group to study for six months the policy and readiness implications of permitting transgender individuals to serve openly. This working group was chaired by the Under Secretary of Defense for Personnel and Readiness and comprised senior representatives from each of the military services, the Joint Staff, and relevant components from Office of the Secretary of Defense.

157. In addition to creating a working group, Secretary Carter also directed that, effective July 13, 2015, no service member could be involuntarily separated or denied reenlistment or continuation of active or reserve service on the basis of their gender identity without the approval of the Under Secretary of Defense for Personnel and Readiness.

158. On information and belief, separations of service members on the basis of their gender identity fell sharply after July 2015, and there were very few, if any, service members who were separated on that basis from July 2015 to June 2016. In effect, transgender people served openly in the military from July 2015 to June 2016, as well as likely before that period, albeit under the threat of separation.

159. In or around July 2015, Secretary Carter also directed the commencement of a study to evaluate the implications of allowing transgender personnel to serve openly in the military. DoD commissioned the RAND Corporation, a non-profit, non-partisan research organization, to conduct the study. DoD asked RAND to (1) identify the health care needs of the transgender population and the costs associated with providing transition-related care to transgender service members, (2) assess the readiness implications of allowing transgender service members to serve openly, and (3) review the experiences of foreign militaries that permit transgender individuals to serve openly. The findings from the study, which reflected the

culmination of months of research and spanned 91 pages, were publicly released in May 2016.

160. As detailed further below, the RAND study demonstrated that the cost of providing transition-related care is exceedingly small relative to DoD's overall health care expenditures, that there are no readiness implications that prevent transgender members from serving openly, and that foreign militaries have successfully permitted open service without a negative effect on effectiveness, readiness, or unit cohesion.

161. The leadership of the Armed Services—including the Joint Chiefs of Staff, the Service Secretaries, and Secretary Carter—together with personnel, training, readiness, and medical specialists from across DoD, studied the available data, including the findings and analysis from RAND. They also received input from transgender service members, from outside expert groups, and from medical professionals outside DoD. They looked carefully at what lessons could be learned from outside the U.S. military, including from allied militaries that permit transgender people to serve openly, as well as from the private sector.

162. As a result of this deliberative process and year-long study, on June 30, 2016, Secretary Carter announced that the military was ending the ban on open service by transgender people. The conclusion was supported by, among other things, the need to recruit and retain the individuals most highly qualified to serve. Effective immediately, transgender service members were permitted to serve openly and could no longer be discharged or otherwise separated from the military solely for being transgender. DoD materials explained that "[t]his policy change was crafted through a comprehensive and inclusive process that included the leadership of the Armed Services, medical and personnel experts across the Department, transgender Service members, outside medical experts, advocacy groups, and the RAND Corporation."

163. In the accompanying directive-type memorandum regarding the policy change, Secretary Carter explained that the policies and procedures permitting open service were premised on the conclusion that "open service by transgender Service members . . . is consistent with military readiness and with strength through diversity."

164. The policy change was announced through a press conference held by Secretary Carter as well as through a section of the DoD website titled "Department of Defense

Transgender Policy," which was still active in the days following President Trump's July 26, 2017 tweets. That website lists the highlights of the policy change, links to various DoD resources related to the policy change, and includes a video that assures transgender individuals: "Transgender Members Can Now Serve Openly."

165. DoD planned a 12-month implementation process that would proceed in stages, beginning with the needs of current service members and their commanders, followed by training for the entire force, and concluding with the accession of transgender recruits.

166. On September 30, 2016, within 90 days after the lifting of the ban, DoD issued a training handbook for commanders, transgender service members, and the force, titled "Transgender Service in the U.S. Military: An Implementation Handbook." The 71-page handbook was designed to help transgender service members in their transition, help commanders with their duties and responsibilities, and help all service members understand the new policies allowing open service by transgender service members. The handbook illustrates that open service has been workable and practicable.

167. Also within 90 days of the lifting of the prior ban, DoD issued medical guidance for providing transition-related care to transgender service members, who were also able to begin the process to officially change their gender marker in the military's personnel management systems.

168. Over the next nine months following the lifting of the prior ban (i.e., from October 2016 to June 2017), the services conducted training of the force based on detailed guidance and training materials regarding the policy change.

169. Finally, it was envisioned that by July 1, 2017, the military would begin accessing transgender people who meet all relevant standards—holding them to the same physical and mental fitness standards as everyone else who wishes to serve in the military.

170. On or around June 30, 2017, Secretary Mattis deferred the accession of transgender individuals until January 1, 2018. There was no change in the decision about whether transgender individuals would be able to join the military but instead merely a change in when they could begin to do so.

171. But for President Trump's implementation of the Ban, the military would have begun the accession of transgender individuals on January 1, 2018.

P. Current Policy of Discrimination Against Transgender Individuals in Military Service

172. Through a series of three tweets on July 26, 2017, President Trump unilaterally reversed the U.S. military's policy of permitting open service by transgender individuals and dismantled the years of work that led to the development and implementation of that policy.

173. At 8:55 a.m. Eastern time, President Trump tweeted: "After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow....."

174. At 9:04 a.m. Eastern time, President Trump tweeted: "....Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming....."

175. At 9:08 a.m. Eastern time, President Trump tweeted: "....victory and cannot be burdened with the tremendous medical costs and disruption that transgender [sic] in the military would entail. Thank you[.]"

176. The "process" that led to the Ban—to the extent there was any meaningful process at all—was the antithesis of the deliberative, comprehensive, and inclusive process that led to the rescission of the prior ban.

177. President Trump failed to engage in any meaningful study, deliberation, or consultation with key military officials, including Secretary Mattis, before making the decision to exclude transgender individuals from the military. Indeed, President Trump tweeted about his decision when Secretary Mattis was on vacation and reportedly provided Secretary Mattis with only one day's notice of the decision.

178. Before the President's Twitter announcement, other top Pentagon officials were similarly unaware of his decision to ban transgender individuals from the military. In fact, in the nine minutes between the President's tweet at 8:55 a.m. Eastern Time (which stated, "After consultation with my Generals and military experts, please be advised that the United States

Government will not accept or allow.....") and his next tweet at 9:04 a.m. Eastern Time, there were concerns that President Trump was declaring war on North Korea.

179. The Joint Chiefs of Staff, including Chairman General Joseph Dunford, were not aware that President Trump planned to tweet about a renewed ban on transgender service members. Military service chiefs from the U.S. Army, Marine Corps, Navy, Air Force, and, upon information and belief, the U.S. Coast Guard were all blindsided by the President's Twitter announcement.

180. Indeed, on June 19, 2017, Chairman General Dunford stated: "Transgender personnel are serving right now, and there is no ongoing review that would affect the ability of those currently serving to continue serving, provided they can meet the physical and mental qualifications of service, be worldwide deployable, and [meet] the same standards that every other soldier, sailor, airmen, [and] marine meets."

181. Before the President's Twitter announcement, the Pentagon press office was also unaware of the President's decision to again ban transgender people from the military. Immediately after the President's tweets, a Pentagon spokesperson, Navy Captain Jeff Davis, declined to answer media questions about them, instead telling media: "call the White House."

182. On July 26, 2017, White House Press Secretary Sarah Huckabee Sanders also could not answer a basic question about the proposed new ban: whether transgender individuals currently serving in the military would be discharged. Instead, she responded that DoD and the White House "[would] have to work together" to figure that out. She also could not say for certain who would even take the lead on implementation but "imagine[d]" that it would be DoD.

183. Even White House lawyers and aides, who had advised President Trump against banning transgender individuals from the military, were blindsided by the President's tweets announcing the intended ban. Indeed, one White House official admitted that President Trump took to Twitter to announce the change because the President was frustrated that others wanted to engage in further discussion and analysis of the issues involved. According to a White House official, President Trump stated that the announcement "would stop the lawyers from arguing with him anymore" and trying to dissuade him from reinstituting a ban on transgender military

service.

184. On information and belief, President Trump also never spoke to a single transgender person regarding the potential impact of his proposed ban before deciding to institute it.

185. Several congressional and White House sources reported that part of the President's motivation for the policy change was to shore up support for a spending bill that would have funded his desired border wall with Mexico and other campaign promises. There was concern that the spending bill would not pass the House of Representatives because some Republican members wanted a ban on military funding for transition-related care, which Republican leadership would not permit, and thus these members might cause the defeat of the entire spending bill. Indeed, on July 13, 2017—almost two weeks before the tweets—the House had previously rejected a proposed amendment that would have banned coverage for transition-related care for transgender service members. These Republican members turned to President Trump, who quickly went much further than banning coverage for transition-related care and instead announced his intention to ban transgender members from military service altogether, presumably as a last-ditch attempt to save the spending bill at issue.

186. A Trump administration official also suggested that the President's policy change was motivated by a desire to gain political advantage over Democrats, stating: "This forces Democrats in Rust Belt states like Ohio, Michigan, and Wisconsin, to take complete ownership of this issue. How will the blue collar voters in these states respond when senators up for re-election in 2018 like Debbie Stabenow are forced to make their opposition to this a key plank of the campaigns?"

187. Additional reports indicate that the President's policy change was undertaken at the behest of Tony Perkins, president of the Family Research Council, a religious lobbying organization that has been labeled an anti-LGBT hate group. That request reportedly was made at a meeting held in the White House Oval Office on July 11, 2017, in which invited, conservative religious leaders laid hands on President Trump and prayed.

188. Then-Deputy Assistant to President Trump Sebastian Gorka stated on July 28, 2017, that the military is "not there to reflect America" but instead "to kill people and blow stuff up." He derided the inclusion of transgender service members in the military as "Obama-era social engineering." He also cited reports that 40 percent of transgender people have attempted suicide at some point in their lives as a justification for excluding them from military service—failing to recognize or acknowledge the role that discrimination plays in that statistic—and asserted that "we don't need to try and force them into the hierarchical military environment where they are under the utmost pressure to kill or be killed." Mr. Gorka continued, "that is why the President is doing this—out of warmth of his consideration for this population." That statement is false.

189. President Trump's unilateral decision to bar transgender individuals from the military has been met with widespread opposition and condemnation, including by elected representatives from both main political parties. For example, Republican Senator John McCain, Chair of the Senate Armed Services Committee, stated "We should all be guided by the principle that any American who wants to serve our country and is able to meet the standards should have the opportunity to do so—and should be treated as the patriots they are." Similarly, Republican Senator Richard Shelby stated, "You ought to treat everybody fairly and you ought to give everybody a chance to serve." Republican Senator Lindsey Graham added, "This is something we should... not make a decision [about] based off a tweet." Furthermore, more than 50 House members, including those on the House Judiciary Committee and Armed Services Committee, joined a letter stating that the President's decision to ban transgender individuals from the military was unconstitutional on its face.

190. Attorneys general from 19 states and the District of Columbia joined a letter denouncing the President's exclusion of transgender individuals from the military as "blatant discrimination" that violates "fundamental constitutional and American values." The states include California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia and Washington.

191. Fifty-six retired generals and admirals issued a public statement on August 1, 2017, warning that the proposed ban on transgender service members would downgrade military readiness. The statement notes that two four-star generals and former chairmen of the Joint Chiefs of Staff—Army General Martin Dempsey and Navy Admiral Michael Mullen—have publicly supported open service by transgender individuals.

Q. Implementation of Discrimination Against Transgender Individuals in Military Service

192. On or around July 31, 2017, Navy Captain Jeff Davis stated that, upon receiving any "formal direction" from the President, DoD officials "would provide implementing guidance and implement accordingly." He added that the military was ready "to make [it] happen" once the formal direction was received.

193. On or around August 14, 2017, Secretary Mattis informed reporters: "I've got my people over there in the room to give [the White House] any military background that they might need to inform them." But he added, "[t]hey write their own policy of course, so we're in a supporting role right now."

194. On August 25, 2017, President Trump issued a memorandum entitled "Military Service by Transgender Individuals" (the "Memorandum") to the Secretary of Defense and the Secretary of Homeland Security ("DHS"). The Memorandum institutes and implements the Ban.

195. President Trump has admitted that, until June 2016, DoD and DHS "generally prohibited openly transgender individuals from accession in the United States military and authorized the discharge of such individuals." President Trump's avowed purpose in issuing the Memorandum and the Ban is to "return" the United States to that "longstanding" policy and practice of discrimination.

196. In light of both President Trump's tweets, his Memorandum, and the Ban, transgender service members are now no longer able to serve openly on the same terms as before his tweets, his Memorandum, and the Ban, notwithstanding any purported effective dates set forth in the Memorandum. Any present-day speech or conduct that "openly" discloses a

transgender individual's gender identity or transgender status places them in violation of President Trump's Memorandum and the Ban, subjecting them to discharge and other "action . . . against [them]."

197. President Trump's Memorandum also mandates that the Secretary of Defense and the Secretary of Homeland Security "maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018." As a result, individuals known to be transgender are currently and now indefinitely barred from enlistment and appointment in the military.

198. Lastly, President Trump's Memorandum mandates that the Secretary of Defense and the Secretary of Homeland Security "halt all use of DoD or Department of Homeland Security resources to fund sex-reassignment [sic] 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." The Memorandum selectively targets the health care needs of transgender service members for adverse treatment for no legitimate reason.

199. Transition-related health care, including surgical care, can be medically necessary for an individual, regardless of whether that individual has already begun a course of treatment to transition.

200. All Defendants—President Trump, the U.S., Secretary Mattis, and DoD—are responsible for implementing and enforcing the Ban and the current accessions bar.

R. Purported Justifications for Policy of Discrimination Against Transgender Individuals

201. The Ban and the current accessions bar are not supported by any compelling, important, or even rational government interest.

202. The Ban and the current accessions bar lack any narrowly-tailored, substantially-related, or even rational relationship to any legitimate government interest, and they are not the least restrictive means of achieving any valid government interest.

203. Neither of the purported justifications cited by President Trump for the reinstatement of the prior ban in his tweets—medical costs and disruption—nor any of the after-

the-fact justifications drafted by others in defense of his tweets has any basis in reality. Indeed, they are rebutted by, among other things, the fact that transgender individuals have already served openly for more than a year without any of these concerns materializing.

1. Medical Costs

204. With respect to the issue of medical cost, DoD's own commissioned study by RAND estimated that providing transition-related care to active-duty service members would cost between $2.4 million and $8.4 million annually—which is "an amount that will have little impact on and represents exceedingly small proportion of [active component] health care expenditures (approximately $6 billion in FY 2014) and overall DoD health care expenditures ($49.3 billion actual expenditures [in FY 2014] . . .)."

205. The RAND study mirrored earlier research findings. A 2015 article published in the New England Journal of Medicine estimated that the cost of providing transition-related care to service members would be approximately $5.6 million annually or 22 cents per member per month. The article concluded that any plausible estimate of the cost involved is equivalent to a "rounding error" in the military's nearly-$50 billion annual health care budget.

206. The surgeon general of the Navy also noted in December 2016 that most of the medical care for transgender service members was already provided to others in relation to similar medical needs.

207. Providing transition-related care also mitigates other costs that the military would otherwise be required to bear. The RAND study noted that the adverse consequences of not providing transition-related care to transgender personnel could include causing these individuals to avoid other necessary health care altogether, such as important preventive services, as well as increased rates of mental and substance abuse disorders, and suicide, and reduced productivity.

208. Implementing a ban against transgender individuals in the military will cost the federal government many times more in taxpayer dollars than any cost associated with allowing transgender individuals to continue serving and to join the military. Implementation costs include the high expense of separating or dismissing people subject to the policy and the cost of finding replacements for and training non-transgender individuals to replace them. A recent study

estimated that it would cost $960 million dollars to recruit and train the replacements for all the transgender individuals who are currently serving in the military—more than one hundred times the upper estimate of the cost of providing transition-related care for one year.

2. Military Readiness

209. There is also no military readiness justification for the policy of excluding transgender individuals from the military.

210. The RAND study found that less than 0.0015 percent of total available labor-years, defined as the amount of work done by an individual in a year, would be affected by permitting transgender individuals to openly serve. This is because, even on the high end of estimates, less than 0.1 percent of the total force would seek transition-related care that could temporarily affect their ability to deploy.

211. Existing data also show that there is no impact on unit cohesion that would prevent transgender individuals from serving openly.

212. The military has previously adapted to the eradication of other forms of discrimination including racial desegregation, the end of the anti-lesbian, gay, and bisexual "Don't Ask, Don't Tell" policy, and the integration of women into direct combat positions. The military was able to adapt to the inclusion of transgender troops serving openly as well, particularly with the benefit of force-wide training and clear guidance implemented by the military.

213. Eighteen countries allow transgender people to serve openly in the military: Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, Netherlands, New Zealand, Norway, Spain, Sweden, and the United Kingdom. The RAND study focused on the policies of four countries with the most well-developed and publicly available policies on transgender military service members—Australia, Canada, Israel, and the United Kingdom. In no case did the study find any evidence of an adverse effect on operational effectiveness, operational readiness, or cohesion of the force.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
EQUAL PROTECTION VIOLATION
(By All Plaintiffs Against All Defendants)

214. Plaintiffs incorporate paragraphs 1 through 213 as though fully set forth herein.

215. All Plaintiffs state this cause of action against all Defendants (including President Trump and Secretary Mattis, in exclusively their official capacities) for purposes of seeking declaratory and injunctive relief, and challenge the Ban and the current accessions bar both facially and as applied to them or, as to the organizational plaintiffs, as applied to their members.

216. The Fifth Amendment to the United States Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. The Due Process Clause includes within it a prohibition against the denial of equal protection by the federal government, its agencies, or its officials or employees.

217. Defendants' disparate treatment of transgender individuals facially and intentionally discriminates against transgender individuals based on sex-related considerations.

218. Discrimination based on sex-related considerations includes, but is not limited to, discrimination based on gender nonconformity, gender identity, transgender status, and gender transition.

219. The Department of Defense's Transgender Service Member Policy Implementation Fact Sheet, posted on the Department of Defense's official website, admits that "Any discrimination against a Service member based on their gender identity is sex discrimination."

220. Discrimination because an individual is transgender is both discrimination based on a sex-related consideration, which at a minimum requires courts to apply intermediate scrutiny in evaluating the constitutionality of the government's discrimination, and discrimination based on transgender status, which requires courts to apply strict scrutiny to such discrimination.

221. Government discrimination against transgender individuals bears all the indicia of a suspect classification requiring strict scrutiny by the courts.

a. Transgender people have suffered a long history of extreme discrimination and continue to suffer such discrimination to this day.

b. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have largely been unable to secure express federal, state, and local protections specifically protecting them against discrimination, and have been and continue to be regularly targeted by anti-transgender legislation, regulations, bills, and other government action.

c. A person's gender identity or transgender status bears no relation to that person's ability to contribute to society.

d. Transgender people constitute a small minority of the population. In addition, gender identity is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment. Gender identity is also generally fixed at an early age and highly resistant to voluntary change. Efforts to change gender identity have been condemned by leading medical and psychological authorities as harmful, and have been barred by numerous states, the District of Columbia, and numerous local governments.

222. Defendants' disparate treatment of transgender individuals like the individual plaintiffs and the transgender members of the organizational plaintiffs deprives them of their right to equal dignity and stigmatizes them as second-class citizens in violation of equal protection guarantees.

223. There is not even a legitimate justification for such disparate treatment, let alone the important or compelling one that is constitutionally required.

224. The Ban and current accessions bar are motivated by impermissible animus towards transgender people and are thus invalid as a whole.

SECOND CAUSE OF ACTION
DUE PROCESS VIOLATION
(By All Plaintiffs Against All Defendants)

225. Plaintiffs incorporate paragraphs 1 through 213 as though fully set forth herein.

226. All Plaintiffs state this cause of action against all Defendants (including President Trump and Secretary Mattis, in exclusively their official capacities) for purposes of seeking declaratory and injunctive relief, and challenge the Ban and current accessions bar both facially and as applied to them or, as to the organizational plaintiffs, as applied to their members.

227. Defendants' conduct, including their enforcement of the Ban and current accessions bar, violates the rights of the individual plaintiffs and of the transgender members of the organizational plaintiffs under the Fifth Amendment's Due Process Clause. The Due Process Clause protects each person's fundamental liberty to individual dignity, autonomy, and privacy. That includes the right to define and express one's own identity, to define one's own concept of existence, and to make intimate decisions concerning marriage, procreation, and family life, all without undue government interference.

228. A person's gender identity constitutes a core aspect of individual self-definition. The Ban and current accessions bar diminish the personhood, dignity, and autonomy of the individual plaintiffs and of the transgender members of the organizational plaintiffs, and impermissibly interfere with the most intimate choices a person may make in a lifetime, including the right to self-expression and to live openly and authentically.

229. Where the government impermissibly burdens a fundamental liberty interest, such government action may be sustained only upon a showing that it is, at the very least, substantially related to an important government interest, if not narrowly tailored to serve a compelling government interest. Here, the Ban and the current accessions bar lack adequate tailoring and fail to serve even a legitimate governmental interest. Indeed, they epitomize the very kind of arbitrary and capricious government action that the Due Process Clause forbids.

230. Defendants have also violated the due process rights of the individual plaintiffs and of the transgender members of the organizational plaintiffs to the extent that they

detrimentally relied on the military's policy, extant during the period of June 2016 to August 2017, of permitting open service by transgender individuals. In addition, Defendants' conduct violates basic principles of equity.

THIRD CAUSE OF ACTION
FREE SPEECH VIOLATION
(By All Plaintiffs Against All Defendants)

231. Plaintiffs incorporate paragraphs 1 through 213 as though fully set forth herein.

232. All Plaintiffs state this cause of action against all Defendants (including President Trump and Secretary Mattis, in exclusively their official capacities) for purposes of seeking declaratory and injunctive relief, and challenge the Ban and current accessions bar both facially and as applied to them or, as to the organizational plaintiffs, as applied to their members.

233. The Ban and current accessions bar violate the Free Speech Clause of the First Amendment because they impermissibly burden and chill the exercise of the individual plaintiffs' and of the organizational plaintiffs' transgender members' constitutionally protected speech, expression, expressive conduct, and expressive association, based on the content and viewpoint of their speech.

234. All the individual plaintiffs and transgender members of the organizational plaintiffs have been open about their status as transgender either in the context of seeking to join the military or in the course of their military service. All individual plaintiffs and transgender members of organizational plaintiffs want to continue being open about their status as transgender, and to continue expressing and conducting themselves consistently with their gender.

235. The gender expression of the individual plaintiffs and of transgender members of the organizational plaintiffs, the conduct of those individuals that is consistent with their gender, and those individuals' disclosure of their transgender status, all constitute protected First Amendment activity. Similarly, the advocacy of those individuals for fairness for transgender service members and an end to discrimination against transgender individuals in military service, and those individuals' association with other transgender people and their allies for expressive

purposes, constitute protected First Amendment activity.

236. The purpose and effect of the Ban and current accessions bar are to chill constitutionally protected First Amendment activity. Indeed, the Memorandum on its face demonstrates that it is directed at suppressing the gender expression and related expressive conduct of transgender individuals, including that of the individual plaintiffs and transgender members of the organizational plaintiffs , and those individuals' disclosure of their transgender status: specifically, the Memorandum states that policy is changing by returning to one that prohibits "*openly* transgender individuals" from accession, authorizes the discharge of such individuals, and prevents transgender individuals from serving "*openly* in the military" (emphases added).

237. The Ban and current accessions bar penalize the individual plaintiffs, transgender members of the organizational plaintiffs, other transgender service members, and other transgender individuals who would like to join the military or be appointed as officers, for their gender expression. The Ban and current accessions bar chill the protected First Amendment activity of a person of ordinary firmness who is transgender by requiring such persons either to attempt to deny who they are and suppress expression of their gender or be denied military service on the same terms as others. The ban also chills these individuals' right to advocate for fair treatment for transgender service members for fear that this advocacy will identify them as transgender. For the same reason, the exclusion chills exercise of their right to associate with other transgender service members and their allies and form or participate in expressive associations for the purpose of advocating for an end to the exclusion.

238. The individual plaintiffs and transgender members of the organizational plaintiffs are harmed by being denied the opportunity to serve in the military on the same terms as other service members. All of the individual plaintiffs and transgender members of the organizational plaintiffs face a realistic danger of sustaining a direct injury as a result of implementation, operation, or enforcement of the terms of the Ban as well as the current accessions bar. For example, Mr. Karnoski, D.L., and Mr. Callahan are harmed by being denied the opportunity to serve in the military. Staff Sergeant Schmid is being refused appointment as a warrant officer due

to the current accessions bar, and she also faces a realistic danger that she will sustain a direct injury from implementation of the Ban, which requires a return to the exclusion of transgender service members from the military. Chief Warrant Officer Muller, Petty Officer Lewis, Petty Officer Stephens, Petty Officer Winters, and Jane Doe also face the realistic danger that they will sustain direct injuries from implementation of the Ban.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a judgment, pursuant to 28 U.S.C. §§ 2201-02, declaring the Ban and the current accessions bar unconstitutional on their face and as applied to the individual plaintiffs and transgender members of the organizational plaintiffs for the reasons set forth above;

2. Preliminarily and permanently enjoin Defendants, their agents, employees, representatives, successors, and any other person or entity subject to their control or acting directly or indirectly in concert with them from enforcing the Ban or the current accessions bar, including by enjoining any separation, discharge, adverse action, or denial of promotion, reenlistment, continuation of service, accession, or appointment because an individual is transgender.

3. Award Plaintiffs costs, expenses, and reasonable attorneys' fees pursuant to 28 U.S.C. § 2412 and any other applicable laws; and

4. Grant any injunctive or other relief that this Court deems just, equitable, and proper.

Respectfully submitted September 14, 2017.

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that on September 14, 2017, I caused true and correct copies of the foregoing documents to be served by the method(s) listed below on the following interested parties:

By Hand Delivery:

US Attorney's Office
700 Stewart St., Suite 5220
Seattle, WA 98101-1271

By Registered or Certified Mail:

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Department of Defense
1400 Defense Pentagon
Washington, DC 20301-1400

Secretary of Defense James N. Mattis
1000 Defense Pentagon
Washington, DC 20301-1000

President Donald J. Trump
1600 Pennsylvania Ave. NW
Washington, DC 20500

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

Executed on September 14, 2017 at Seattle, Washington.

Rachel Horvitz, *Paralegal*

THE WHITE HOUSE

WASHINGTON

March 23, 2018

MEMORANDUM FOR THE SECRETARY OF DEFENSE
THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Military Service by Transgender Individuals

Pursuant to my memorandum of August 25, 2017, "Military Service by Transgender Individuals," the Secretary of Defense, in consultation with the Secretary of Homeland Security, submitted to me a memorandum and report concerning military service by transgender individuals.

These documents set forth the policies on this issue that the Secretary of Defense, in the exercise of his independent judgment, has concluded should be adopted by the Department of Defense. The Secretary of Homeland Security concurs with these policies with respect to the U.S. Coast Guard.

Among other things, the policies set forth by the Secretary of Defense state that transgender persons with a history or diagnosis of gender dysphoria -- individuals who the policies state may require substantial medical treatment, including medications and surgery -- are disqualified from military service except under certain limited circumstances.

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. I hereby revoke my memorandum of August 25, 2017, "Military Service by Transgender Individuals," and any other directive I may have made with respect to military service by transgender individuals.

Sec. 2. The Secretary of Defense, and the Secretary of Homeland Security, with respect to the U.S. Coast Guard, may exercise their authority to implement any appropriate policies concerning military service by transgender individuals.

Sec. 3. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

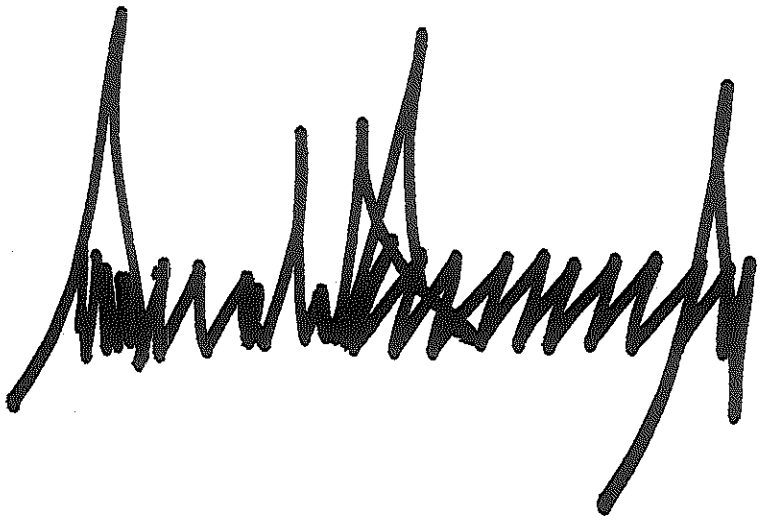
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

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

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





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

FEB 22 2018

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Military Service by Transgender Individuals

"Transgender" is a term describing those persons whose gender identity differs from their biological sex. A subset of transgender persons diagnosed with gender dysphoria experience discomfort with their biological sex, resulting in significant distress or difficulty functioning. Persons diagnosed with gender dysphoria often seek to transition their gender through prescribed medical treatments intended to relieve the distress and impaired functioning associated with their diagnosis.

Prior to your election, the previous administration adopted a policy that allowed for the accession and retention in the Armed Forces of transgender persons who had a history or diagnosis of gender dysphoria. The policy also created a procedure by which such Service members could change their gender. This policy was a departure from decades-long military personnel policy. On June 30, 2017, before the new accession standards were set to take effect, I approved the recommendation of the Services to delay for an additional six months the implementation of these standards to evaluate more carefully their impact on readiness and lethality. To that end, I established a study group that included the representatives of the Service Secretaries and senior military officers, many with combat experience, to conduct the review.

While this review was ongoing, on August 25, 2017, you sent me and the Secretary of Homeland Security a memorandum expressing your concern that the previous administration's new policy "failed to identify a sufficient basis" for changing longstanding policy and that "further study is needed to ensure that continued implementation of last year's policy change would not have … negative effects." You then directed the Department of Defense and the Department of Homeland Security to reinstate the preexisting policy concerning accession of transgender individuals "until such time as a sufficient basis exists upon which to conclude that terminating that policy" would not "hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources." You made clear that we could advise you "at any time, in writing, that a change to this policy is warranted."

I created a Panel of Experts comprised of senior uniformed and civilian Defense Department and U.S. Coast Guard leaders and directed them to consider this issue and develop policy proposals based on data, as well as their professional military judgment, that would enhance the readiness, lethality, and effectiveness of our military. This Panel included combat veterans to ensure that our military purpose remained the foremost consideration. I charged the Panel to provide its best military advice, based on increasing the lethality and readiness of America's armed forces, without regard to any external factors.

The Panel met with and received input from transgender Service members, commanders of transgender Service members, military medical professionals, and civilian medical

professionals with experience in the care and treatment of individuals with gender dysphoria. The Panel also reviewed available information on gender dysphoria, the treatment of gender dysphoria, and the effects of currently serving individuals with gender dysphoria on military effectiveness, unit cohesion, and resources. Unlike previous reviews on military service by transgender individuals, the Panel's analysis was informed by the Department's own data obtained since the new policy began to take effect last year.

Based on the work of the Panel and the Department's best military judgment, the Department of Defense concludes that there are substantial risks associated with allowing the accession and retention of individuals with a history or diagnosis of gender dysphoria and require, or have already undertaken, a course of treatment to change their gender. Furthermore, the Department also finds that exempting such persons from well-established mental health, physical health, and sex-based standards, which apply to all Service members, including transgender Service members without gender dysphoria, could undermine readiness, disrupt unit cohesion, and impose an unreasonable burden on the military that is not conducive to military effectiveness and lethality.

The prior administration largely based its policy on a study prepared by the RAND National Defense Research Institute; however, that study contained significant shortcomings. It referred to limited and heavily caveated data to support its conclusions, glossed over the impacts of healthcare costs, readiness, and unit cohesion, and erroneously relied on the selective experiences of foreign militaries with different operational requirements than our own. In short, this policy issue has proven more complex than the prior administration or RAND assumed.

I firmly believe that compelling behavioral health reasons require the Department to proceed with caution before compounding the significant challenges inherent in treating gender dysphoria with the unique, highly stressful circumstances of military training and combat operations. Preservation of unit cohesion, absolutely essential to military effectiveness and lethality, also reaffirms this conclusion.

Therefore, in light of the Panel's professional military judgment and my own professional judgment, the Department should adopt the following policies:

- Transgender persons with a history or diagnosis of gender dysphoria are disqualified from military service, except under the following limited circumstances: (1) if they have been stable for 36 consecutive months in their biological sex prior to accession; (2) Service members diagnosed with gender dysphoria after entering into service may be retained if they do not require a change of gender and remain deployable within applicable retention standards; and (3) currently serving Service members who have been diagnosed with gender dysphoria since the previous administration's policy took effect and prior to the effective date of this new policy, may continue to serve in their preferred gender and receive medically necessary treatment for gender dysphoria.

- Transgender persons who require or have undergone gender transition are disqualified from military service.

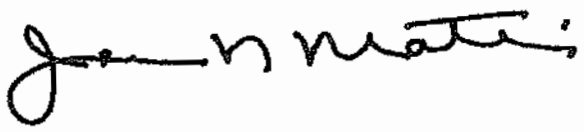
- Transgender persons without a history or diagnosis of gender dysphoria, who are otherwise qualified for service, may serve, like all other Service members, in their biological sex.

I have consulted with the Secretary of Homeland Security, and she agrees with these proposed policies.

By its very nature, military service requires sacrifice. The men and women who serve voluntarily accept limitations on their personal liberties – freedom of speech, political activity, freedom of movement - in order to provide the military lethality and readiness necessary to ensure American citizens enjoy their personal freedoms to the fullest extent. Further, personal characteristics, including age, mental acuity, and physical fitness – among others – matter to field a lethal and ready force.

In my professional judgment, these policies will place the Department of Defense in the strongest position to protect the American people, to fight and win America's wars, and to ensure the survival and success of our Service members around the world. The attached report provided by the Under Secretary of Defense for Personnel and Readiness includes a detailed analysis of the factors and considerations forming the basis of the Department's policy proposals.

I therefore respectfully recommend you revoke your memorandum of August 25, 2017, regarding Military Service by Transgender Individuals, thus allowing me and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to implement appropriate policies concerning military service by transgender persons.



Attachment:
As stated

cc:
Secretary of Homeland Security

DEPARTMENT OF DEFENSE REPORT AND RECOMMENDATIONS ON MILITARY SERVICE BY TRANSGENDER PERSONS

FEBRUARY 2018

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Executive Summary

It is a bedrock principle of the Department of Defense that any eligible individual[1] who can meet the high standards for military service without special accommodations should be permitted to serve. This is no less true for transgender persons than for any other eligible individual. This report, and the recommendations contained herein, proceed from this fundamental premise.

The starting point for determining a person's qualifications for military duty is whether the person can meet the standards that govern the Armed Forces. Federal law requires that anyone entering into military service be "qualified, effective, and able-bodied."[2] Military standards are designed not only to ensure that this statutory requirement is satisfied but to ensure the overall military effectiveness and lethality of the Armed Forces.

The purpose of the Armed Forces is to fight and win the Nation's wars. No human endeavor is more physically, mentally, and emotionally demanding than the life and death struggle of battle. Because the stakes in war can be so high—both for the success and survival of individual units in the field and for the success and survival of the Nation—it is imperative that all Service members are physically and mentally able to execute their duties and responsibilities without fail, even while exposed to extreme danger, emotional stress, and harsh environments.

Although not all Service members will experience direct combat, standards that are applied universally across the Armed Forces must nevertheless account for the possibility that any Service member could be thrust into the crucible of battle at any time. As the Department has made clear to Congress, "[c]ore to maintaining a ready and capable military force is the understanding that each Service member is required to be available and qualified to perform assigned missions, including roles and functions outside of their occupation, in any setting."[3] Indeed, there are no occupations in the military that are exempt from deployment.[4] Moreover, while non-combat positions are vital to success in war, the physical and mental requirements for those positions should not be the barometer by which the physical and mental requirements for all positions, especially combat positions, are defined. Fitness for combat must be the metric against which all standards and requirements are judged. To give all Service members the best chance of success and survival in war, the Department must maintain the highest possible standards of physical and mental health and readiness across the force.

While individual health and readiness are critical to success in war, they are not the only measures of military effectiveness and lethality. A fighting unit is not a mere collection of individuals; it is a unique social organism that, when forged properly, can be far more powerful than the sum of its parts. Human experience over millennia—from the Spartans at Thermopylae to the band of brothers of the 101st Airborne Division in World War II, to Marine squads fighting building-to-building in Fallujah—teaches us this. Military effectiveness requires

[1] 10 U.S.C. §§ 504, 505(a), 12102(b).
[2] 10 U.S.C. § 505(a).
[3] Under Secretary of Defense for Personnel and Readiness, "Fiscal Year 2016 Report to Congress on the Review of Enlistment of Individuals with Disabilities in the Armed Forces," pp. 8-9 (Apr. 2016).
[4] Id.

transforming a collection of individuals into a single fighting organism—merging multiple individual identities into one. This transformation requires many ingredients, including strong leadership, training, good order and discipline, and that most intangible, but vital, of ingredients—unit cohesion or, put another way, human bonding.

Because unit cohesion cannot be easily quantified, it is too often dismissed, especially by those who do not know what Justice Oliver Wendell Holmes called the "incommunicable experience of war."[5] But the experience of those who, as Holmes described, have been "touched with fire" in battle and the experience of those who have spent their lives studying it attest to the enduring, if indescribable, importance of this intangible ingredient. As Dr. Jonathan Shay articulated it in his study of combat trauma in Vietnam, "[s]urvival and success in combat often require soldiers to virtually read one another's minds, reflexively covering each other with as much care as they cover themselves, and going to one another's aid with little thought for safety."[6] Not only is unit cohesion essential to the health of the unit, Dr. Shay found that it was essential to the health of the individual soldier as well. "Destruction of unit cohesion," Dr. Shay concluded, "cannot be overemphasized as a reason why so many psychological injuries that might have healed spontaneously instead became chronic."[7]

Properly understood, therefore, military effectiveness and lethality are achieved through a combination of inputs that include individual health and readiness, strong leadership, effective training, good order and discipline, and unit cohesion. To achieve military effectiveness and lethality, properly designed military standards must foster these inputs. And, for the sake of efficiency, they should do so at the least possible cost to the taxpayer.

To the greatest extent possible, military standards—especially those relating to mental and physical health—should be based on scientifically valid and reliable evidence. Given the life-and-death consequences of warfare, the Department has historically taken a conservative and cautious approach in setting the mental and pbysical standards for the accession and retention of Service members.

Not all standards, however, are capable of scientific validation or quantification. Instead, they are the product of professional military judgment acquired from hard-earned experience leading Service members in peace and war or otherwise arising from expertise in military affairs. Although necessarily subjective, this judgment is the best, if not only, way to assess the impact of any given military standard on the intangible ingredients of military effectiveness mentioned above—leadership, training, good order and discipline, and unit cohesion.

For decades, military standards relating to mental health, physical health, and the physiological differences between men and women operated to preclude from military service transgender persons who desired to live and work as the opposite gender.

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[5] *The Essential Holmes: Selections from the Letters, Speeches, Judicial Opinions, and Other Writings of Oliver Wendell Holmes, Jr.*, p. 93 (Richard Posner, ed., University of Chicago Press 1992).
[6] Jonathan Shay, *Achilles in Vietnam*, p. 61 (Atheneum 1994).
[7] Id. at 198.

Relying on a report by an outside consultant, the RAND National Defense Research Institute, the Department, at the direction of Secretary Ashton Carter, reversed that longstanding policy in 2016. Although the new policy—the "Carter policy"—did not permit all transgender Service members to change their gender to align with their preferred gender identity, it did establish a process to do so for transgender Service members who were diagnosed with gender dysphoria—that is, the distress or impairment of functioning that is associated with incongruity between one's biological sex and gender identity. It also set in motion a new accession policy that would allow applicants who had a history of gender dysphoria, including those who had already transitioned genders, to enter into military service, provided that certain conditions were met. Once a change of gender is authorized, the person must be treated in all respects in accordance with the person's preferred gender, whether or not the person undergoes any hormone therapy or surgery, so long as a treatment plan has been approved by a military physician.

The new accession policy had not taken effect when the current administration came into office. Secretary James Mattis exercised his discretion and approved the recommendation of the Services to delay the Carter accession policy for an additional six months so that the Department could assess its impact on military effectiveness and lethality. While that review was ongoing, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security with respect to the U.S. Coast Guard expressing that further study was needed to examine the effects of the prior administration's policy change. The memorandum directed the Secretaries to reinstate the longstanding preexisting accession policy until such time that enough evidence existed to conclude that the Carter policy would not have negative effects on military effectiveness, lethality, unit cohesion, and military resources. The President also authorized the Secretary of Defense, in consultation with the Secretary of Homeland Security, to address the disposition of transgender individuals who were already serving in the military.

Secretary Mattis established a Panel of Experts that included senior uniformed and civilian leaders of the Department and U.S. Coast Guard, many with experience leading Service members in peace and war. The Panel made recommendations based on each Panel member's independent military judgment. Consistent with those recommendations, the Department, in consultation with the Department of Homeland Security, recommends the following policy to the President:

A. Transgender 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. Transgender persons who have not transitioned to another gender and do not have a history or current diagnosis of gender dysphoria—i.e., they identify as a gender other than their biological sex but do not currently experience distress or impairment of functioning in meeting the standards associated with their biological sex—are qualified for service, provided that they, like all other persons, satisfy all standards and are capable of adhering to the standards associated with their biological sex. This is consistent with the Carter policy, under which transgender persons without a history or diagnosis of gender dysphoria must serve, like everyone else, in their biological sex.

B. Transgender Persons Who Require or Have Undergone Gender Transition Are Disqualified. Except for those who are exempt under this policy, as described below, and except where waivers or exceptions to policy are otherwise authorized, transgender persons who are diagnosed with gender dysphoria, either before or after entry into service, and require transition-related treatment, or have already transitioned to their preferred gender, should be ineligible for service. For reasons discussed at length in this report, the Department concludes that accommodating gender transition could impair unit readiness; undermine unit cohesion, as well as good order and discipline, by blurring the clear lines that demarcate male and female standards and policies where they exist; and lead to disproportionate costs. Underlying these conclusions is the considerable scientific uncertainty and overall lack of high quality scientific evidence demonstrating the extent to which transition-related treatments, such as cross-sex hormone therapy and sex reassignment surgery—interventions which are unique in psychiatry and medicine—remedy the multifaceted mental health problems associated with gender dysphoria.

C. Transgender Persons With a History or Diagnosis of Gender Dysphoria Are Disqualified, Except Under Certain Limited Circumstances. Transgender persons who are diagnosed with, or have a history of, gender dysphoria are generally disqualified from accession or retention in the Armed Forces. The standards recommended here are subject to the same procedures for waiver or exception to policy as any other standards. This is consistent with the Department's handling of other mental conditions that require treatment. As a general matter, only in the limited circumstances described below should persons with a history or diagnosis of gender dysphoria be accessed or retained.

1. *Accession of Individuals Diagnosed with Gender Dysphoria.* Persons with a history of gender dysphoria may access into the Armed Forces, provided that they can demonstrate 36 consecutive months of stability (i.e., absence of gender dysphoria) immediately preceding their application; they have not transitioned to the opposite gender; and they are willing and able to adhere to all standards associated with their biological sex.

2. *Retention of Service Members Diagnosed with Gender Dysphoria.* Consistent with the Department's general approach of applying less stringent standards to retention than to accession in order to preserve the Department's substantial investment in trained personnel, Service members who are diagnosed with gender dysphoria after entering military service may be retained without waiver, provided that they are willing and able to adhere to all standards associated with their biological sex, the Service member does not require gender transition, and the Service member is not otherwise non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months).[8]

3. *Exempting Current Service Members Who Have Already Received a Diagnosis of Gender Dysphoria.* 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, may continue to receive all medically necessary care,

[8] Under Secretary of Defense for Personnel and Readiness, "DoD Retention Policy for Non-Deployable Service Members" (Feb. 14, 2018).

to change their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS), and to serve in their preferred gender, even after the new policy commences. This includes transgender Service members who entered into military service after January 1, 2018, when the Carter accession policy took effect by court order. The Service member must, however, adhere to the Carter policy procedures and may not be deemed to be non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months). While the Department believes that its solemn promise to these Service members, and the investment it has made in them, outweigh the risks identified in this report, should its decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption is and should be deemed severable from the rest of the policy.

Although the precise number is unknown, the Department recognizes that many transgender persons who desire to serve in the military experience gender dysphoria and, as a result, could be disqualified under the recommended policy set forth in this report. Many transgender persons may also be unwilling to adhere to the standards associated with their biological sex as required by longstanding military policy. But others have served, and are serving, with distinction under the standards for their biological sex, like all other Service members. Nothing in this policy precludes service by transgender persons who do not have a history or diagnosis of gender dysphoria and are willing and able to meet all standards that apply to their biological sex.

Moreover, nothing in this policy should be viewed as reflecting poorly on transgender persons who suffer from gender dysphoria, or have had a history of gender dysphoria, and are accordingly disqualified from service. The vast majority of Americans from ages 17 to 24—that is, 71%—are ineligible to join the military without a waiver for mental, medical, or behavioral reasons.[9] Transgender persons with gender dysphoria are no less valued members of our Nation than all other categories of persons who are disqualified from military service. The Department honors all citizens who wish to dedicate, and perhaps even lay down, their lives in defense of the Nation, even when the Department, in the best interests of the military, must decline to grant their wish.

Military standards are high for a reason—the trauma of war, which all Service members must be prepared to face, demands physical, mental, and moral standards that will give all Service members the greatest chance to survive the ordeal with their bodies, minds, and moral character intact. The Department would be negligent to sacrifice those standards for any cause. There are serious differences of opinion on this issue, even among military professionals, but in the final analysis, given the uncertainty associated with the study and treatment of gender dysphoria, the competing interests involved, and the vital interests at stake—our Nation's defense and the success and survival of our Service members in war—the Department must proceed with caution.

[9] The Lewin Group, Inc., "Qualified Military Available (QMA) and Interested Youth: Final Technical Report," p. 26 (Sept. 2016).

History of Policies Concerning Transgender Persons

For decades, military standards have precluded the accession and retention of certain transgender persons.[10] Accession standards—i.e., standards that govern induction into the Armed Forces—have historically disqualified persons with a history of "transsexualism." Also disqualified were persons who had undergone genital surgery or who had a history of major abnormalities or defects of the genitalia. These standards prevented transgender persons, especially those who had undergone a medical or surgical gender transition, from accessing into the military, unless a waiver was granted.

Although retention standards—i.e., standards that govern the retention and separation of persons already serving in the Armed Forces—did not require the mandatory processing for separation of transgender persons, it was a permissible basis for separation processing as a physical or mental condition not amounting to a disability. More typically, however, such Service members were processed for separation because they suffered from other associated medical conditions or comorbidities, such as depression, which were also a basis for separation processing.

At the direction of Secretary Carter, the Department made significant changes to these standards. These changes—i.e., the "Carter policy"—prohibit the separation of Service members on the basis of their gender identity and allow Service members who are diagnosed with gender dysphoria to transition to their preferred gender.

Transition-related treatment is highly individualized and could involve what is known as a "medical transition," which includes cross-sex hormone therapy, or a "surgical transition,"

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[10] For purposes of this report, the Department uses the broad definition of "transgender" adopted by the RAND National Defense Institute in its study of transgender service: "an umbrella term used for individuals who have sexual identity or gender expression that differs from their assigned sex at birth." RAND National Defense Research Institute, *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, p.75 (RAND Corporation 2016), available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR1500/RR1530/RAND_RR1530.pdf ("RAND Study"). According to the Human Rights Campaign, "[t]he transgender community is incredibly diverse. Some transgender people identify as male or female, and some identify as genderqueer, nonbinary, agender, or somewhere else on or outside of the spectrum of what we understand gender to be." Human Rights Campaign, "Understanding the Transgender Community," https://www.hrc.org/resources/understanding-the-transgender-community (last visited Feb. 14, 2018). A subset of transgender persons are those who have been diagnosed with gender dysphoria. According to the *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association, "gender dysphoria" is a "marked incongruence between one's experienced/expressed gender and assigned gender" that "is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning." American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, pp. 452-53 (5th ed. 2013). Based on these definitions, a person can be transgender without necessarily having gender dysphoria (i.e., the transgender person does not suffer "clinically significant distress or impairment" on account of gender incongruity). A 2016 survey of active duty Service members estimated that approximately 1% of the force—8,980 Service members—identify as transgender. Office of People Analytics, Department of Defense, "2016 Workplace and Gender Relations Survey of Active Duty Members, Transgender Service Members," pp. 1-2. Currently, there are 937 active duty Service members who have been diagnosed with gender dysphoria since June 30, 2016. In addition, when using the term "biological sex" or "sex," this report is referring to the definition of "sex" in the RAND study: "a person's biological status as male or female based on chromosomes, gonads, hormones, and genitals (intersex is a rare exception)." RAND Study at 75.

which includes sex reassignment surgery. Service members could also forego medical transition treatment altogether, retain all of their biological anatomy, and live as the opposite gender—this is called a "social transition."

Once the Service member's transition is complete, as determined by the member's military physician and commander in accordance with his or her individualized treatment plan, and the Service member provides legal documentation of gender change, the Carter policy allows for the Service member's gender marker to be changed in the DEERS. Thereafter, the Service member must be treated in every respect—including with respect to physical fitness standards; berthing, bathroom, and shower facilities; and uniform and grooming standards—in accordance with the Service member's preferred gender. The Carter policy, however, still requires transgender Service members who have not changed their gender marker in DEERS, including persons who identify as other than male or female, to meet the standards associated with their biological sex.

The Carter policy also allows accession of persons with gender dysphoria who can demonstrate stability in their preferred gender for at least 18 months. The accession policy did not take effect until required by court order, effective January 1, 2018.

The following discussion describes in greater detail the evolution of accession and retention standards pertaining to transgender persons.

Transgender Policy Prior to the Carter Policy

A. Accession Medical Standards

DoD Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, establishes baseline accession medical standards used to determine an applicant's medical qualifications to enter military service. This instruction is reviewed every three to four years by the Accession Medical Standards Working Group (AMSWG), which includes medical and personnel subject matter experts from across the Department, its Military Services, and the U.S. Coast Guard. The AMSWG thoroughly reviews over 30 bodily systems and medical focus areas while carefully considering evidence-based clinical information, peer-reviewed scientific studies, scientific expert consensus, and the performance of existing standards in light of empirical data on attrition, deployment readiness, waivers, and disability rates. The AMSWG also considers inputs from non-government sources and evaluates the applicability of those inputs against the military's mission and operational environment, so that the Department and the Military Services can formally coordinate updates to these standards.

Accession medical standards are based on the operational needs of the Department and are designed to ensure that individuals are physically and psychologically "qualified, effective, and able-bodied persons"[1] capable of performing military duties. Military effectiveness requires that the Armed Forces manage an integrated set of unique medical standards and qualifications because all military personnel must be available for worldwide duty 24 hours a day without

[1] 10 U.S.C. § 505(a).

restriction or delay. Such duty may involve a wide range of demands, including exposure to danger or harsh environments, emotional stress, and the operation of dangerous, sensitive, or classified equipment. These duties are often in remote areas lacking immediate and comprehensive medical support. Such demands are not normally found in civilian occupations, and the military would be negligent in its responsibility if its military standards permitted admission of applicants with physical or emotional impairments that could cause harm to themselves or others, compromise the military mission, or aggravate any current physical or mental health conditions that they may have.

In sum, these standards exist to ensure that persons who are under consideration for induction into military service are:

- free of contagious diseases that probably will endanger the health of other personnel;
- free of medical conditions or physical defects that may require excessive time lost from duty for necessary treatment or hospitalization, or probably will result in separation from service for medical unfitness;
- medically capable of satisfactorily completing required training;
- medically adaptable to the military environment without the necessity of geographical area limitations; and
- medically capable of performing duties without aggravation of existing physical defects or medical conditions.[12]

Establishing or modifying an accession standard is a risk management process by which a health condition is evaluated in terms of the probability and effect on the five listed outcomes above. These standards protect the applicant from harm that could result from the rigors of military duty and help ensure unit readiness by minimizing the risk that an applicant, once inducted into military service, will be unavailable for duty because of illness, injury, disease, or bad health.

Unless otherwise expressly provided, a current diagnosis or verified past medical history of a condition listed in DoDI 6130.03 is presumptively disqualifying.[13] Accession standards reflect the considered opinion of the Department's medical and personnel experts that an applicant with an identified condition should only be able to serve if they can qualify for a waiver. Waivers are generally only granted when the condition will not impact the individual's assigned specialty or when the skills of the individual are unique enough to warrant the additional risk. Waivers are not generally granted when the conditions of military service may aggravate the existing condition. For some conditions, applicants with a past medical history may nevertheless be eligible for accession if they meet the requirements for a certain period of "stability"—that is, they can demonstrate that the condition has been absent for a defined period

[12] Department of Defense Instruction 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services* (Apr. 28, 2010), incorporating Change 1, p. 2 (Sept. 13, 2011) ("DoDI 6130.03").
[13] Id. at 10.

of time prior to accession.[14] With one exception,[15] each accession standard may be waived in the discretion of the accessing Service based on that Service's policies and practices, which are driven by the unique requirements of different Service missions, different Service occupations, different Service cultures, and at times, different Service recruiting missions.

Historically, mental health conditions have been a great concern because of the unique mental and emotional stresses of military service. Mental health conditions frequently result in attrition during initial entry training and the first term of service and are routinely considered by in-service medical boards as a basis for separation. Department mental health accession standards have typically aligned with the conditions identified in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), which is published by the American Psychiatric Association (APA). The DSM sets forth the descriptions, symptoms, and other criteria for diagnosing mental disorders. Health care professionals in the United States and much of the world use the DSM as the authoritative guide to the diagnosis of mental disorders.

Prior to implementation of the Carter policy, the Department's accession standards barred persons with a "[h]istory of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias."[16] These standards were consistent with DSM-III, which in 1980, introduced the diagnosis of transsexualism.[17] In 1987, DSM-III-R added gender identity disorder, non-transsexual type.[18] DSM-IV, which was published in 1994, combined these two diagnoses and called the resulting condition "gender identity disorder."[19] Due to challenges associated with updating and publishing a new iteration of DoDI 6130.03, the DoDI's terminology has not changed to reflect the changes in the DSM, including further changes that will be discussed later.

DoDI 6130.03 also contains other disqualifying conditions that are associated with, but not unique to, transgender persons, especially those who have undertaken a medical or surgical transition to the opposite gender. These include:

- a history of chest surgery, including but not limited to the surgical removal of the breasts,[20] and genital surgery, including but not limited to the surgical removal of the testicles;[21]

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[14] See, e.g., id. at 47.
[15] The accession standards for applicants with HIV are not waivable absent a waiver from both the accessing Service and the Under Secretary of Defense for Personnel and Readiness. See Department of Defense Instruction 6485.01, *Human Immunodeficiency Virus (HIV) in Military Service Members* (Jun. 7, 2013).
[16] DoDI 6130.03 at 48.
[17] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-III)*, pp. 261-264 (3rd ed. 1980).
[18] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)*, pp. 76-77 (3rd ed. revised 1987).
[19] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)*, pp. 532-538 (4th ed. 1994).
[20] DoDI 6130.03 at 18.
[21] Id. at 25-27.

- a history of major abnormalities or defects of the genitalia, including but not limited to change of sex, hermaphroditism, penis amputation, and pseudohermaphroditism;[22]
- mental health conditions such as suicidal ideation, depression, and anxiety disorder;[23] and
- the use of certain medications, or conditions requiring the use of medications, such as hormone therapies and anti-depressants.[24]

Together with a diagnosis of transsexualism, these conditions, which were repeatedly validated by the AMSWG, provided multiple grounds for the disqualification of transgender persons.

B. Retention Standards

The standards that govern the retention of Service members who are already serving in the military are generally less restrictive than the corresponding accession standards due to the investment the Department has made in the individual and their increased capability to contribute to mission accomplishment.

Also unlike the Department's accession standards, each Service develops and applies its own retention standards. With respect to the retention of transgender Service members, these Service-specific standards may have led to inconsistent outcomes across the Services, but as a practical matter, before the Carter policy, the Services generally separated Service members who desired to transition to another gender. During that time, there were no express policies allowing individuals to serve in their preferred gender rather than their biological sex.

Previous Department policy concerning the retention (administrative separation) of transgender persons was not clear or rigidly enforced. DoDI 1332.38, *Physical Disability Evaluation*, now cancelled, characterized "sexual gender and identity disorders" as a basis for allowing administrative separation for a condition not constituting a disability; it did not require mandatory processing for separation. A newer issuance, DoDI 1332.18, *Disability Evaluation System (DES)*, August 5, 2014, does not reference these disorders but instead reflects changes in how such medical conditions are characterized in contemporary medical practice.

Earlier versions of DoDI 1332.14, *Enlisted Administrative Separations*, contained a cross reference to the list of conditions not constituting a disability in former DoDI 1332.38. This was how "transsexualism," the older terminology, was used as a basis for administrative separation. Separation on this basis required formal counseling and an opportunity to address the issue, as well as a finding that the condition was interfering with the performance of duty. In practice, transgender persons were not usually processed for administrative separation on account of gender dysphoria or gender identity itself, but rather on account of medical comorbidities (e.g., depression or suicidal ideation) or misconduct due to cross dressing and related behavior.

[22] Id.
[23] Id. at 47-48.
[24] Id. at 48.

The Carter Policy

At the direction of Secretary Carter, the Department began formally reconsidering its accession and retention standards as they applied to transgender persons with gender dysphoria in 2015. This reevaluation, which culminated with the release of the Carter policy in 2016, was prompted in part by amendments to the DSM that appeared to change the diagnosis for gender identity disorder from a disorder to a treatable condition called gender dysphoria. Starting from the assumption that transgender persons are qualified for military service, the Department sought to identify and remove the obstacles to such service. This effort resulted in substantial changes to the Department's accession and retention standards to accommodate transgender persons with gender dysphoria who require treatment for transitioning to their preferred gender.

A. Changes to the DSM

When the APA published the fifth edition of the DSM in May 2013, it changed "gender identity disorder" to "gender dysphoria" and designated it as a "condition"—a new diagnostic class applicable only to gender dysphoria—rather than a "disorder."[25] This change was intended to reflect the APA's conclusion that gender nonconformity alone—without accompanying distress or impairment of functioning—was not a mental disorder.[26] DSM-5 also decoupled the diagnosis for gender dysphoria from diagnoses for "sexual dysfunction and parphilic disorders, recognizing fundamental differences between these diagnoses."[27]

According to DSM-5, gender dysphoria in adolescents and adults is "[a] marked incongruence between one's experience/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following":

- A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
- A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).

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[25] See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, pp. 451-459 (5th ed. 2013) ("DSM-5").

[26] RAND Study at 77; see also Hayes Directory, "Sex Reassignment Surgery for the Treatment of Gender Dysphoria" (May 15, 2014), p. 1 ("This change was intended to reflect a consensus that gender nonconformity is not a psychiatric disorder, as it was previously categorized. However, since the condition may cause clinically significant distress and since a diagnosis is necessary for access to medical treatment, the new term was proposed."); Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, pp. 1182-83 (2016) ("In the DSM-5, [gender dysphoria] has replaced the diagnosis of 'gender identity disorder' in order to place the focus on the dysphoria and to diminish the pathology associated with identity incongruence.").

[27] Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1183 (2016).

- A strong desire for the primary and/or secondary sex characteristics of the other gender.
- A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
- A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
- A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

Importantly, DSM-5 observed that gender dysphoria "is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning."[28]

B. The Department Begins Review of Transgender Policy

On July 28, 2015, then Secretary Carter issued a memorandum announcing that no Service members would be involuntarily separated or denied reenlistment or continuation of service based on gender identity or a diagnosis of gender dysphoria without the personal approval of the Under Secretary of Defense for Personnel and Readiness.[29] The memorandum also created the Transgender Service Review Working Group (TSRWG) "to study the policy and readiness implications of welcoming transgender persons to serve openly."[30] The memorandum specifically 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."[31]

As part of this review, the Department commissioned the RAND National Defense Research Institute to conduct a study to "(1) identify 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 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."[32] The resulting report, entitled *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, reached several conclusions. First, the report estimated that there are between 1,320 and 6,630 transgender Service members already serving in the active component of the Armed Forces and 830 to 4,160 in the Selected Reserve.[33] Second, the report predicted "annual gender transition-related health care to be an extremely small part of the overall health care provided to the [active component] population."[34] Third, the report estimated that active component "health care costs will increase by between $2.4 million and $8.4 million annually—an amount that will have little impact on and represents an exceedingly small proportion of

[28] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, p. 453 (5th ed. 2013).
[29] Memorandum from Ashton Carter, Secretary of Defense, "Transgender Service Members" (July 28, 2015).
[30] Id.
[31] Id.
[32] RAND Study at 1.
[33] Id. at x-xi.
[34] Id. at xi.

[active component] health care expenditures (approximately $6 billion in FY 2014)."[35] Fourth, the report "found that less than 0.0015 percent of the total available labor-years would be affected, based on estimated gender transition-related health care utilization rates."[36] Finally, the report concluded that "[e]xisting data suggest a minimal impact on unit cohesion as a result of allowing transgender personnel to serve openly."[37] "Overall," according to RAND, "our study found that the number of U.S. transgender Service members who are likely to seek transition-related care is so small that a change in policy will likely have a marginal impact on health care costs and the readiness of the force."[38]

The RAND report thus acknowledged that there will be an adverse impact on health care utilization and costs, readiness, and unit cohesion, but concluded nonetheless that the impact will be "negligible" and "marginal" because of the small estimated number of transgender Service members relative to the size of the active component of the Armed Forces. Because of the RAND report's macro focus, however, it failed to analyze the impact at the micro level of allowing gender transition by individuals with gender dysphoria. For example, as discussed in more detail later, the report did not examine the potential impact on unit readiness, perceptions of fairness and equity, personnel safety, and reasonable expectations of privacy at the unit and sub-unit levels, all of which are critical to unit cohesion. Nor did the report meaningfully address the significant mental health problems that accompany gender dysphoria—from high rates of comorbidities and psychiatric hospitalizations to high rates of suicide ideation and suicidality—and the scope of the scientific uncertainty regarding whether gender transition treatment fully remedies those problems.

C. New Standards for Transgender Persons

Based on the RAND report, the work of the TSRWG, and the advice of the Service Secretaries, Secretary Carter approved the publication of DoDI 1300.28, *In-service Transition for Service Members Identifying as Transgender*, and Directive-type Memorandum (DTM) 16-005, "Military Service of Transgender Service Members," on June 30, 2016. Although the new retention standards were effective immediately upon publication of the above memoranda, the accession standards were delayed until July 1, 2017, to allow time for training all Service members across the Armed Forces, including recruiters, Military Entrance Processing Station (MEPS) personnel, and basic training cadre, and to allow time for modifying facilities as necessary.

1. *Retention Standards*. DoDI 1300.28 establishes the procedures by which Service members who are diagnosed with gender dysphoria may administratively change their gender. Once a Service member receives a gender dysphoria diagnosis from a military physician, the physician, in consultation with the Service member, must establish a treatment plan. The treatment plan is highly individualized and may include cross-sex hormone therapy (i.e., medical transition), sex reassignment surgery (i.e., surgical transition), or simply living as the opposite gender but without any cross-sex hormone or surgical treatment (i.e., social

[35] Id. at xi-xii.
[36] Id. at xii.
[37] Id.
[38] Id. at 69.

transition). The nature of the treatment is left to the professional medical judgment of the treating physician and the individual situation of the transgender Service member. The Department does not require a Service member with gender dysphoria to undergo cross-sex hormone therapy, sex reassignment surgery, or any other physical changes to effectuate an administrative change of gender. During the course of treatment, commanders are authorized to grant exceptions from physical fitness, uniform and grooming, and other standards, as necessary and appropriate, to transitioning Service members. Once the treating physician determines that the treatment plan is complete, the Service member's commander approves, and the Service member produces legal documentation indicating change of gender (e.g., certified birth certificate, court order, or U.S. passport), the Service member may request a change of gender marker in DEERS. Once the DEERS gender marker is changed, the Service member is held to all standards associated with the member's transitioned gender, including uniform and grooming standards, body composition assessment, physical readiness testing, Military Personnel Drug Abuse Testing Program participation, and other military standards congruent to the member's gender. Indeed, the Service member must be treated in all respects in accordance with the member's transitioned gender, including with respect to berthing, bathroom, and shower facilities. Transgender Service members who do not meet the clinical criteria for gender dysphoria, by contrast, remain subject to the standards and requirements applicable to their biological sex.

2. *Accession Standards*. DTM 16-005 directed that the following medical standards for accession into the Military Services take effect on July 1, 2017:

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

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

(a) the applicant has completed all medical treatment associated with the applicant's gender transition; and
(b) the applicant has been stable in the preferred gender for 18 months; and
(c) if the applicant is presently receiving cross-sex hormone therapy post-gender transition, the individual has been stable on such hormones for 18 months.

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

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

(b) no functional limitations or complications persist, nor is any additional surgery required.[39]

[39] Memorandum from Ashton Carter, Secretary of Defense, "Directive-type Memorandum (DTM) 16-005, 'Military Service of Transgender Service Members,'" Attachment, pp. 1-2 (June 30, 2016).

Panel of Experts Recommendation

The Carter policy's accession standards for persons with a history of gender dysphoria were set to take effect on July 1, 2017, but on June 30, after consultation with the Secretaries and Chiefs of Staff of each Service, Secretary Mattis postponed the new standards for an additional six months "to evaluate more carefully the impact of such accessions on readiness and lethality."[40] Secretary Mattis specifically directed that the review would "include all relevant considerations" and would last for five months, with a due date of December 1, 2017.[41] The Secretary also expressed his desire to have "the benefit of the views of the military leadership and of the senior civilian officials who are now arriving in the Department."[42]

While Secretary Mattis's review was ongoing, President Trump issued a memorandum, on August 25, 2017, directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to reinstate longstanding policy generally barring the accession of transgender individuals "until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice" would not "hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources."[43] The President found that "further study is needed to ensure that continued implementation of last year's policy change would not have those negative effects."[44] Accordingly, the President directed both Secretaries to maintain the prohibition on accession of transgender individuals "until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary" that is convincing.[45] The President made clear that the Secretaries may advise him "at any time, in writing, that a change to this policy is warranted."[46] In addition, the President gave both Secretaries discretion to "determine how to address transgender individuals currently serving" in the military and made clear that no action be taken against them until a determination was made.[47]

On September 14, 2017, Secretary Mattis established a Panel of Experts to study, in a "comprehensive, holistic, and objective" manner, "military service by transgender individuals, focusing on military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law."[48] He directed the Panel to "conduct an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members."[49]

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[40] Memorandum from James N. Mattis, Secretary of Defense, "Accession of Transgender Individuals into the Military Services" (June 30, 2017).
[41] Id.
[42] Id.
[43] Memorandum from Donald J. Trump, President of the United States, "Military Service by Transgender Individuals" (Aug. 25, 2017).
[44] Id. at 1.
[45] Id. at 2.
[46] Id.
[47] Id.
[48] Memorandum from James N. Mattis, Secretary of Defense, "Terms of Reference—Implementation of Presidential Memorandum on Military Service by Transgender Individuals," pp. 1-2 (Sept. 14, 2017).
[49] Id. at 2.

The Panel consisted of the Under Secretaries of the Military Departments (or officials performing their duties), the Armed Services' Vice Chiefs (including the Vice Commandant of the U.S. Coast Guard), and the Senior Enlisted Advisors, and was chaired by the Under Secretary of Defense for Personnel and Readiness or an official performing those duties. The Secretary of Defense selected these senior leaders because of their experience leading warfighters in war and peace or their expertise in military operational effectiveness. These senior leaders also have the statutory responsibility to organize, train, and equip military forces and are uniquely qualified to evaluate the impact of policy changes on the combat effectiveness and lethality of the force. The Panel met 13 times over a span of 90 days.

The Panel received support from medical and personnel experts from across the Departments of Defense and Homeland Security. The Transgender Service Policy Working Group, comprised of medical and personnel experts from across the Department, developed policy recommendations and a proposed implementation plan for the Panel's consideration. The Medical and Personnel Executive Steering Committee, a standing group of the Surgeons General and Service Personnel Chiefs, led by Personnel and Readiness, provided the Panel with an analysis of accession standards, a multi-disciplinary review of relevant data, and information about medical treatment for gender dysphoria and gender transition-related medical care. These groups reported regularly to the Panel and responded to numerous queries for additional information and analysis to support the Panel's review and deliberations. A separate working group tasked with enhancing the lethality of our Armed Forces also provided a briefing to the Panel on their work relating to retention standards.

The Panel met with and received input from transgender Service members, commanders of transgender Service members, military medical professionals, and civilian medical professionals with experience in the care and treatment of individuals with gender dysphoria. The Panel also reviewed information and analyses about gender dysphoria, the treatment of gender dysphoria, and the effects of currently serving individuals with gender dysphoria on military effectiveness, unit cohesion, and resources. Unlike past reviews, the Panel's analysis was informed by the Department's own data and experience obtained since the Carter policy took effect.

To fulfill its mandate, the Panel addressed three questions:

- Should the Department of Defense access transgender individuals?
- Should the Department allow transgender individuals to transition gender while serving, and if so, what treatment should be authorized?
- How should the Department address transgender individuals who are currently serving?

After extensive review and deliberation, which included evidence in support of and against the Panel's recommendations, the Panel exercised its professional military judgment and made recommendations. The Department considered those recommendations and the information underlying them, as well as additional information within the Department, and now proposes the following policy consistent with those recommendations.

Recommended Policy

To maximize military effectiveness and lethality, the Department, after consultation with and the concurrence of the Department of Homeland Security, recommends cancelling the Carter policy and, as explained below, adopting a new policy with respect to the accession and retention of transgender persons.

The Carter policy assumed that transgender persons were generally qualified for service and that their accession and retention would not negatively impact military effectiveness. As noted earlier, Secretary Carter directed the TSRWG, the group charged with evaluating, and making recommendations on, transgender service, 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."[50] Where necessary, standards were adjusted or relaxed to accommodate service by transgender persons. The following analysis makes no assumptions but instead applies the relevant standards applicable to everyone to determine the extent to which transgender persons are qualified for military duty.

For the following reasons, the Department concludes that transgender persons should not be disqualified from service solely on account of their transgender status, provided that they, like all other Service members, are willing and able to adhere to all standards, including the standards associated with their biological sex. With respect to the subset of transgender persons who have been diagnosed with gender dysphoria, however, those persons are generally disqualified unless, depending on whether they are accessing or seeking retention, they can demonstrate stability for the prescribed period of time; they do not require, and have not undergone, a change of gender; and they are otherwise willing and able to meet all military standards, including those associated with their biological sex. In order to honor its commitment to current Service members diagnosed with gender dysphoria, those Service members who were diagnosed after the effective date of the Carter policy and before any new policy takes effect will not be subject to the policy recommended here.

Discussion of Standards

The standards most relevant to the issue of service by transgender persons fall into three categories: mental health standards, physical health standards, and sex-based standards. Based on these standards, the Department can assess the extent to which transgender persons are qualified for military service and, in light of that assessment, recommend appropriate policies.

A. Mental Health Standards

Given the extreme rigors of military service and combat, maintaining high standards of mental health is essential to military effectiveness and lethality. The immense toll that the burden and experience of combat can have on the human psyche cannot be overstated. Therefore, putting individuals into battle, who might be at increased risk of psychological injury, would be reckless, not only for those individuals, but for the Service members who serve beside them as well.

[50] Memorandum from Ashton Carter, Secretary of Defense, "Transgender Service Members" (July 28, 2015).

The Department's experience with the mental health issues arising from our wars in Afghanistan and Iraq, including post-traumatic stress disorder (PTSD), only underscores the importance of maintaining high levels of mental health across the force. PTSD has reached as high as 2.8% of all active duty Service members, and in 2016, the number of active duty Service members with PTSD stood at 1.5%.[51] Of all Service members in the active component, 7.5% have been diagnosed with a mental health condition of some type.[52] The Department is mindful of these existing challenges and must exercise caution when considering changes to its mental health standards.

Most mental health conditions and disorders are automatically disqualifying for accession absent a waiver. For example, persons with a history of bipolar disorder, personality disorder, obsessive-compulsive disorder, suicidal behavior, and even body dysmorphic disorder (to name a few) are barred from entering into military service, unless a waiver is granted.[53] For a few conditions, however, persons may enter into service without a waiver if they can demonstrate stability for 24 to 36 continuous months preceding accession. Historically, a person is deemed stable if they are without treatment, symptoms, or behavior of a repeated nature that impaired social, school, or work efficiency for an extended period of several months. Such conditions include depressive disorder (stable for 36 continuous months) and anxiety disorder (stable for 24 continuous months).[54] Requiring a period of stability reduces, but does not eliminate, the likelihood that the individual's depression or anxiety will return.

Historically, conditions associated with transgender individuals have been automatically disqualifying absent a waiver. Before the changes directed by Secretary Carter, military mental health standards barred persons with a "[h]istory of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias."[55] These standards, however, did not evolve with changing understanding of transgender mental health. Today, transsexualism is no longer considered by most mental health practitioners as a mental health condition. According to the APA, it is not a medical condition for persons to identify with a gender that is different from their biological sex.[56] Put simply, transgender status alone is not a condition.

Gender dysphoria, by contrast, is a mental health condition that can require substantial medical treatment. Many individuals who identify as transgender are diagnosed with gender dysphoria, but "[n]ot all transgender people suffer from gender dysphoria and that distinction," according to the APA, "is important to keep in mind."[57] The DSM-5 defines gender dysphoria as

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[51] Deployment Health Clinical Center, "Mental Health Disorder Prevalence among Active Duty Service Members in the Military Health System, Fiscal Years 2005-2016" (Jan. 2017).
[52] Id.
[53] DoDI 6130.03 at 47-48.
[54] Id.
[55] Id. at 48.
[56] DSM-5 at 452-53.
[57] American Psychiatric Association, "Expert Q & A: Gender Dysphoria," available at https://www.psychiatry.org/patients-families/gender-dysphoria/expert-qa (last visited Feb. 14, 2018). Conversely, not all persons with gender dysphoria are transgender. "For example, some men who are disabled in combat, especially if their injury includes genital wounds, may feel that they are no longer men because their bodies do not conform to their concept of manliness. Similarly, a woman who opposes plastic surgery, but who must undergo mastectomy because of breast

a "marked incongruence between one's experience/expressed gender and assigned gender, of at least 6 months duration," that is manifested in various specified ways.[58] According to the APA, the "condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning."[59]

Transgender persons with gender dysphoria suffer from high rates of mental health conditions such as anxiety, depression, and substance use disorders.[60] High rates of suicide ideation, attempts, and completion among people who are transgender are also well documented in the medical literature, with lifetime rates of suicide attempts reported to be as high as 41% (compared to 4.6% for the general population).[61] According to a 2015 survey, the rate skyrockets to 57% for transgender individuals without a supportive family.[62] The Department is concerned that the stresses of military life, including basic training, frequent moves, deployment to war zones and austere environments, and the relentless physical demands, will be additional contributors to suicide behavior in people with gender dysphoria. In fact, there is recent evidence that military service can be a contributor to suicidal thoughts.[63]

Preliminary data of Service members with gender dysphoria reflect similar trends. A review of the administrative data indicates that Service members with gender dysphoria are eight times more likely to attempt suicide than Service members as a whole (12% versus 1.5%).[64]

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cancer, may find that she requires reconstructive breast surgery in order to resolve gender dysphoria arising from the incongruence between her body without breasts and her sense of herself as a woman." M. Jocelyn Elders, George R. Brown, Eli Coleman, Thomas Kolditz & Alan Steinman, "Medical Aspects of Transgender Military Service," *Armed Forces & Society*, p. 5 n.22 (Mar. 2014).

[58] DSM-5 at 452.

[59] DSM-5 at 453.

[60] Cecilia Dhejne, Roy Van Vlerken, Gunter Heylens & Jon Arcelus, "Mental health and gender dysphoria: A review of the literature," *International Review of Psychiatry*, Vol. 28, pp. 44-57 (2016); George R. Brown & Kenneth T. Jones, "Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study," *LGBT Health*, Vol. 3, p. 128 (Apr. 2016).

[61] Ann P. Haas, Philip L. Rodgers & Jody L. Herman, *Suicide Attempts among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey*, p. 2 (American Foundation for Suicide Prevention and The Williams Institute, University of California, Los Angeles, School of Law 2014), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf; H.G. Virupaksha, Daliboyina Muralidhar & Jayashree Ramakrishna, "Suicide and Suicide Behavior among Transgender Persons," *Indian Journal of Psychological Medicine*, Vol.38, pp. 505-09 (2016); Claire M. Peterson, Abigail Matthews, Emily Copps-Smith & Lee Ann Conard, "Suicidality, Self-Harm, and Body Dissatisfaction in Transgender Adolescents and Emerging Adults with Gender Dysphoria," *Suicide and Life Threatening Behavior*, Vol. 47, pp. 475-482 (Aug. 2017).

[62] Ann P. Haas, Philip L. Rodgers & Jody L. Herman, *Suicide Attempts among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey*, pp. 2, 12 (American Foundation for Suicide Prevention and The Williams Institute, University of California, Los Angeles, School of Law 2014), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf.

[63] Raymond P. Tucker, Rylan J. Testa, Mark A.Reger, Tracy L. Simpson, Jillian C. Shipherd, & Keren Lehavot, "Current and Military-Specific Gender Minority Stress Factors and Their Relationship with Suicide Ideation in Transgender Veterans," *Suicide and Life Threatening Behavior* DOI: 10.1111/sltb.12432 (epub ahead of print), pp. 1-10 (2018); Craig J. Bryan, AnnaBelle O. Bryan, Bobbie N. Ray-Sannerud, Neysa Etienne & Chad E. Morrow, "Suicide attempts before joining the military increase risk for suicide attempts and severity of suicidal ideation among military personnel and veterans," *Comprehensive Psychiatry*, Vol. 55, pp. 534-541 (2014).

[64] Data retrieved from Military Health System data repository (Oct. 2017).

Service members with gender dysphoria are also nine times more likely to have mental health encounters than the Service member population as a whole (28.1 average encounters per Service member versus 2.7 average encounters per Service member).[65] From October 1, 2015 to October 3, 2017, the 994 active duty Service members diagnosed with gender dysphoria accounted for 30,000 mental health visits.[66]

It is widely believed by mental health practitioners that gender dysphoria can be treated. Under commonly accepted standards of care, treatment for gender dysphoria can include: psychotherapy; social transition—also known as "real life experience"—to allow patients to live and work in their preferred gender without any hormone treatment or surgery; medical transition to align secondary sex characteristics with patients' preferred gender using cross-sex hormone therapy and hair removal; and surgical transition—also known as sex reassignment surgery—to make the physical body—both primary and secondary sex characteristics—resemble as closely as possible patients' preferred gender.[67] The purpose of these treatment options is to alleviate the distress and impairment of gender dysphoria by seeking to bring patients' physical characteristics into alignment with their gender identity—that is, one's inner sense of one's own gender.[68]

Cross-sex hormone therapy is a common medical treatment associated with gender transition that may be commenced following a diagnosis of gender dysphoria.[69] Treatment for women transitioning to men involves the administration of testosterone, whereas treatment for men transitioning to women requires the blocking of testosterone and the administration of estrogens.[70] The Endocrine Society's clinical guidelines recommend laboratory bloodwork every 90 days for the first year of treatment to monitor hormone levels.[71]

As a treatment for gender dysphoria, sex reassignment surgery is "a unique intervention not only in psychiatry but in all of medicine."[72] Under existing Department guidelines

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[65] Data retrieved from Military Health System data repository (Oct. 2017). Study period was Oct. 1, 2015 to July 26, 2017.

[66] Data retrieved from Military Health System data repository (Oct. 2017).

[67] RAND Study at 5-7, Appendices A & C; see also Hayes Directory, "Sex Reassignment Surgery for the Treatment of Gender Dysphoria," p. 1 (May 15, 2014) ("The full therapeutic approach to [gender dysphoria] consists of 3 elements or phases, typically in the following order: (1) hormones of the desired gender; (2) real-life experience for 12 months in the desired role; and (3) surgery to change the genitalia and other sex characteristics (e.g., breast reconstruction or mastectomy). However, not everyone with [gender dysphoria] needs or wants all elements of this triadic approach."); Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1183 (Oct. 2016) ("The Endocrine Society proposes a sequential approach in transsexual care to optimize mental health and physical outcomes. Generally, they recommend initiation of psychotherapy, followed by cross-sex hormone treatments, then [sex reassignment surgery].").

[68] RAND Study at 73.

[69] Wylie C. Hembree, Peggy Cohen-Kettenis, Lous Gooren, Sabine Hannema, Walter Meyer, M. Hassan Murad, Stephen Rosenthal, Joshua Safer, Vin Tangpricha, & Guy T'Sjoen, "Endocrine Treatment of Gender-Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline," *The Journal of Clinical Endocrinology & Metabolism*, Vol. 102, pp. 3869-3903 (Nov. 2017).

[70] Id. at 3885-3888.

[71] Id.

[72] Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden," *PLoS One*, Vol. 6, pp. 1-8 (Feb. 2011); see also Hayes Directory, "Sex Reassignment Surgery for the Treatment of

implementing the Carter policy, men transitioning to women may obtain an orchiectomy (surgical removal of the testicles), a penectomy (surgical removal of the penis), a vaginoplasty (surgical creation of a vagina), a clitoroplasty (surgical creation of a clitoris), and a labiaplasty (surgical creation of the labia). Women transitioning to men may obtain a hysterectomy (surgical removal of the uterus), a mastectomy (surgical removal of the breasts), a metoidioplasty (surgical enlargement of the clitoris), a phalloplasty (surgical creation of a penis), a scrotoplasty (surgical creation of a scrotum) and placement of testicular prostheses, a urethroplasty (surgical enlargement of the urethra), and a vaginectomy (surgical removal of the vagina). In addition, the following cosmetic procedures may be provided at military treatment facilities as well: abdominoplasty, breast augmentation, blepharoplasty (eyelid lift), hair removal, face lift, facial bone reduction, hair transplantation, liposuction, reduction thyroid chondroplasty, rhinoplasty, and voice modification surgery.[73]

The estimated recovery time for each of the surgical procedures, even assuming no complications, can be substantial. For example, assuming no complications, the recovery time for a hysterectomy is up to eight weeks; a mastectomy is up to six weeks; a phalloplasty is up to three months; a metoidioplasty is up to eight weeks; an orchiectomy is up to six weeks; and a vaginoplasty is up to three months.[74] When combined with 12 continuous months of hormone therapy, which is required prior to genital surgery,[75] the total time necessary for surgical transition can exceed a year.

Although relatively few people who are transgender undergo genital reassignment surgeries (2% of transgender men and 10% of transgender women), we have to consider that the rate of complications for these surgeries is significant, which could increase a transitioning Service member's unavailability.[76] Even according to the RAND study, 6% to 20% of those receiving vaginoplasty surgery experience complications, meaning that "between three and 11 Service members per year would experience a long-term disability from gender reassignment

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Gender Dysphoria," p. 2 (May 15, 2014) (noting that gender dysphoria "does not readily fit traditional concepts of medical necessity since research to date has not established anatomical or physiological anomalies associated with [gender dysphoria]"); Hayes Annual Review, "Sex Reassignment Surgery for the Treatment of Gender Dysphoria" (Apr. 18, 2017).

[73] Memorandum from Defense Health Agency, "Information Memorandum: Interim Defense Health Agency Procedures for Reviewing Requests for Waivers to Allow Supplemental Health Care Program Coverage of Sex Reassignment Surgical Procedures" (Nov. 13, 2017); see also RAND Study at Appendix C.

[74] University of California, San Francisco, Center of Excellence for Transgender Health, "Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People," available at http://transhealth.ucsf.edu/trans?page=guidelines-home (last visited Feb. 16, 2018); Discussion with Dr. Loren Schechter, Visiting Clinical Professor of Surgery, University of Illinois at Chicago (Nov. 9, 2017).

[75] RAND Study at 80; see also Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1184 (Oct. 2016) (noting that Endocrine Society criteria "require that the patient has been on continuous cross-sex hormones and has had continuous [real life experience] or psychotherapy for the past 12 months").

[76] Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet & Ma'ayan Anafi, *The Report of the 2015 U.S. Transgender Survey*, pp. 100-103 (National Center for Transgender Equality 2016) available at https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF.

surgery."[77] The RAND study further notes that of those receiving phalloplasty surgery, as many as 25%—one in four—will have complications.[78]

The prevailing judgment of mental health practitioners is that gender dysphoria can be treated with the transition-related care described above. While there are numerous studies of varying quality showing that this treatment can improve health outcomes for individuals with gender dysphoria, the available scientific evidence on the extent to which such treatments fully remedy all of the issues associated with gender dysphoria is unclear. Nor do any of these studies account for the added stress of military life, deployments, and combat.

As recently as August 2016, the Centers for Medicare and Medicaid Services (CMS) conducted a comprehensive review of the relevant literature, over 500 articles, studies, and reports, to determine if there was "sufficient evidence to conclude that gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria."[79] After reviewing the universe of literature regarding sex reassignment surgery, CMS identified 33 studies sufficiently rigorous to merit further review, and of those, "some were positive; others were negative."[80] "Overall," according to CMS, "the quality and strength of evidence were low due to mostly observational study designs with no comparison groups, subjective endpoints, potential confounding . . . , small sample sizes, lack of validated assessment tools, and considerable [number of study subjects] lost to follow-up."[81] With respect to whether sex reassignment surgery was "reasonable and necessary" for the treatment of gender dysphoria, CMS concluded that there was "not enough high quality evidence to determine whether gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria and whether patients most likely to benefit from these types of surgical intervention can be identified prospectively."[82]

Importantly, CMS identified only six studies as potentially providing "useful information" on the effectiveness of sex reassignment surgery. According to CRS, "the four best designed and conducted studies that assessed the quality of life before and after surgery using validated (albeit, non-specific) psychometric studies did not demonstrate clinically significant changes or differences in psychometric test results after [sex reassignment surgery]."[83]

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[77] RAND Study at 40-41.
[78] Id. at 41.
[79] Tamara Jensen, Joseph Chin, James Rollins, Elizabeth Koller, Linda Gousis & Katherine Szarama, "Final Decision Memorandum on Gender Reassignment Surgery for Medicare Beneficiaries with Gender Dysphoria," Centers for Medicare & Medicaid Services, p. 9 (Aug. 30, 2016) ("CMS Report").
[80] Id. at 62.
[81] Id.
[82] Id. at 65. CMS did not conclude that gender reassignment surgery can never be necessary and reasonable to treat gender dysphoria. To the contrary, it made clear that Medicare insurers could make their own "determination of whether or not to cover gender reassignment surgery based on whether gender reassignment surgery is reasonable and necessary for the individual beneficiary after considering the individual's specific circumstances." Id. at 66. Nevertheless, CMS did decline to require all Medicare insurers to cover sex reassignment surgeries because it found insufficient scientific evidence to conclude that such surgeries improve health outcomes for persons with gender dysphoria.
[83] Id. at 62.

Additional studies found that the "cumulative rates of requests for surgical reassignment reversal or change in legal status" were between 2.2% and 3.3%.[84]

A sixth study, which came out of Sweden, is one of the most robust because it is a "nationwide population-based, long-term follow-up of sex-reassigned transsexual persons."[85] The study found increased mortality and psychiatric hospitalization for patients who had undergone sex reassignment surgery as compared to a healthy control group.[86] As described by CMS: "The mortality was primarily due to completed suicides (19.1-fold greater than in [the control group]), but death due to neoplasm and cardiovascular disease was increased 2 to 2.5 times as well. We note, mortality from this patient population did not become apparent until after 10 years. The risk for psychiatric hospitalization was 2.8 times greater than in controls even after adjustment for prior psychiatric disease (18%). The risk for attempted suicide was greater in male-to-female patients regardless of the gender of the control."[87]

According to the Hayes Directory, which conducted a review of 19 peer-reviewed studies on sex reassignment surgery, the "evidence suggests positive benefits," including "decreased [gender dysphoria], depression and anxiety, and increased [quality of life]," but "because of serious limitations," these findings "permit only weak conclusions."[88] It rated the quality of evidence as "very low" due to the numerous limitations in the studies and concluded that there is

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[84] Id.

[85] Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden," *PLoS One*, Vol. 6, p. 6 (Feb. 2011); see also id. ("Strengths of this study include nationwide representativity over more than 30 years, extensive follow-up time, and minimal loss to follow-up. . . . Finally, whereas previous studies either lack a control group or use standardised mortality rates or standarised incidence rates as comparisons, we selected random population controls matched by birth year, and either birth or final sex.").

[86] Id. at 7; see also at 6 ("Mortality from suicide was strikingly high among sex-reassigned persons, also after adjustment for prior psychiatric morbidity. In line with this, sex-reassigned persons were at increased risk for suicide attempts. Previous reports suggest that transsexualism is a strong risk factor for suicide, also after sex reassignment, and our long-term findings support the need for continued psychiatric follow-up for persons at risk to prevent this. Inpatient care for psychiatric disorders was significantly more common among sex-reassigned persons than among matched controls, both before and after sex reassignment. It is generally accepted that transsexuals have more psychiatric ill-health than the general population prior to the sex reassignment. It should therefore come as no surprise that studies have found high rates of depression, and low quality of life, also after sex reassignment. Notably, however, in this study the increased risk for psychiatric hospitalization persisted even after adjusting for psychiatric hospitalization prior to sex reassignment. This suggests that even though sex reassignment alleviates gender dysphoria, there is a need to identify and treat co-occurring psychiatric morbidity in transsexual persons not only before but also after sex reassignment.").

[87] CMS Report at 62. It bears noting that the outcomes for mortality and suicide attempts differed "depending on when sex reassignment was performed: during the period 1973-1988 or 1989-2003." Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden," *PLoS One*, Vol. 6, p. 5 (Feb. 2011). Even though both mortality and suicide attempts were greater for transsexual persons than the healthy control group across both time periods, this did not reach statistical significance during the 1989-2003 period. One possible explanation is that mortality rates for transsexual persons did not begin to diverge from the healthy control group until after 10 years of follow-up, in which case the expected increase in mortality would not have been observed for most of the persons receiving sex reassignment surgeries from 1989-2003. Another possible explanation is that treatment was of a higher quality from 1989-2003 than from 1973-1988.

[88] Hayes Directory, "Sex Reassignment Surgery for the Treatment of Gender Dysphoria," p. 4 (May 15, 2014).

not sufficient "evidence to establish patient selection criteria for [sex reassignment surgery] to treat [gender dysphoria]."[89]

With respect to hormone therapy, the Hayes Directory examined 10 peer-reviewed studies and concluded that a "substantial number of studies of cross-sex hormone therapy each show some positive findings suggesting improvement in well-being after cross-sex hormone therapy."[90] Yet again, it rated the quality of evidence as "very low" and found that the "evidence is insufficient to support patient selection criteria for hormone therapy to treat [gender dysphoria]."[91] Importantly, the Hayes Directory also found: "Hormone therapy and subsequent [sex reassignment surgery] failed to bring overall mortality, suicide rates, or death from illicit drug use in [male-to-female] patients close to rates observed in the general male population. It is possible that mortality is nevertheless reduced by these treatments, but tbat cannot be determined from the available evidence."[92]

In 2010, Mayo Clinic researchers conducted a comprehensive review of 28 studies on the use of cross-sex hormone therapy in sex reassignment and concluded that there was "very low quality evidence" showing that such therapy "likely improves gender dysphoria, psychological functioning and comorbidities, sexual function and overall quality of life."[93] Not all of the studies showed positive results, but overall, after pooling the data from all of the studies, the researchers showed that 80% of patients reported improvement in gender dysphoria, 78% reported improvement in psychological symptoms, and 80% reported improvement in quality of life, after receiving hormone therapy.[94] Importantly, however, "[s]uicide attempt rates decreased after sex reassignment but stayed higher than the normal population rate."[95]

The authors of the Swedish study discussed above reached similar conclusions: "This study found substantially higher rates of overall mortality, death from cardiovascular disease and suicide, suicide attempts, and psychiatric hospitali[z]ations in sex-reassigned transsexual individuals compared to a healthy control population. This highlights that post[-]surgical transsexuals are a risk group that need long-term psychiatric and somatic follow-up. Even though surgery and hormonal therapy alleviates gender dysphoria, it is apparently not sufficient to remedy the high rates of morbidity and mortality found among transsexual persons."[96]

Even the RAND study, which the Carter policy is based upon, confirmed that "[t]here have been no randomized controlled trials of the effectiveness of various forms of treatment, and

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[89] Id. at 3.
[90] Hayes Directory, "Hormone Therapy for the Treatment of Gender Dysphoria," pp. 2, 4 (May 19, 2014).
[91] Id. at 4.
[92] Id. at 3.
[93] Mohammad Hassan Murad, Mohamed B. Elamin, Magaly Zumaeta Garcia, Rebecca J. Mullan, Ayman Murad, Patricia J. Erwin & Victor M. Montori, "Hormonal therapy and sex reassignment: a systematic review and meta-analysis of qualify of life and psychosocial outcomes," *Clinical Endocrinology*, Vol. 72, p. 214 (2010).
[94] Id. at 216.
[95] Id.
[96] Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden," *PLoS One*, Vol. 6, pp. 1-8 (Feb. 2011).

most evidence comes from retrospective studies."[97] Although noting that "[m]ultiple observational studies have suggested significant and sometimes dramatic reductions in suicidality, suicide attempts, and suicides among transgender patients after receiving transition-related treatment," RAND made clear that "none of these studies were randomized controlled trials (the gold standard for determining treatment efficacy)."[98] "In the absence of quality randomized trial evidence," RAND concluded, "it is difficult to fully assess the outcomes of treatment for [gender dysphoria]."[99]

Given the scientific uncertainty surrounding the efficacy of transition-related treatments for gender dysphoria, it is imperative that the Department proceed cautiously in setting accession and retention standards for persons with a diagnosis or history of gender dysphoria.

B. Physical Health Standards

Not only is maintaining high standards of mental health critical to military effectiveness and lethality, maintaining high standards of physical health is as well. Although technology has done much to ease the physical demands of combat in some military specialties, war very much remains a physically demanding endeavor. Service members must therefore be physically prepared to endure the rigors and hardships of military service, including potentially combat. They must be able to carry heavy equipment sometimes over long distances; they must be able to handle heavy machinery; they must be able to traverse harsh terrain or survive in ocean waters; they must be able to withstand oppressive heat, bitter cold, rain, sleet, and snow; they must be able to endure in unsanitary conditions, coupled with lack of privacy for basic bodily functions, sometimes with little sleep and sustenance; they must be able to carry their wounded comrades to safety; and they must be able to defend themselves against those who wisb to kill them.

Above all, whether they serve on the frontlines or in relative safety in non-combat positions, every Service member is important to mission accomplishment and must be available to perform their duties globally whenever called upon. The loss of personnel due to illness, disease, injury, or bad health diminishes military effectiveness and lethality. The Department's physical health standards are therefore designed to minimize the odds that any given Service member will be unable to perform his or her duties in the future because of illness, disease, or injury. As noted earlier, those who seek to enter military service must be free of contagious diseases; free of medical conditions or physical defects that could require treatment, hospitalization, or eventual separation from service for medical unfitness; medically capable of satisfactorily completing required training; medically adaptable to the military environment; and medically capable of performing duties without aggravation of existing physical defects or medical conditions.[100] To access recruits with higher rates of anticipated unavailability for deployment thrusts a heavier burden on those who would deploy more often.

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[97] RAND Study at 7.
[98] Id. at 10 (citing only to a California Department of Insurance report).
[99] Id.
[100] DoDI 6130.03 at 2.

Historically, absent a waiver, the Department has barred from accessing into the military anyone who had undergone chest or genital surgery (e.g., removal of the testicles or uterus) and anyone with a history of major abnormalities or defects of the chest or genitalia, including hermaphroditism and pseudohermaphroditism.[101] Persons with conditions requiring medications, such as anti-depressants and hormone treatment, were also disqualified from service, unless a waiver was granted.[102]

These standards have long applied uniformly to all persons, regardless of transgender status. The Carter policy, however, deviates from these uniform standards by exempting, under certain conditions, treatments associated with gender transition, such as sex reassignment surgery and cross-sex hormone therapy. For example, under the Carter policy, an applicant who has received genital reconstruction surgery may access without a waiver if a period of 18 months has elapsed since the date of the most recent surgery, no functional limitations or complications persist, and no additional surgery is required. In contrast, an applicant who received similar surgery following a traumatic injury is disqualified from military service without a waiver.[103] Similarly, under the Carter policy, an applicant who is presently receiving cross-sex hormone therapy post-gender transition may access without a waiver if the applicant has been stable on such hormones for 18 months. In contrast, an applicant taking synthetic hormones for the treatment of hypothyroidism is disqualified from military service without a waiver.[104]

C. Sex-Based Standards

Women have made invaluable contributions to the defense of the Nation throughout our history. These contributions have only grown more significant as the number of women in the Armed Forces has increased and as their roles have expanded. Today, women account for 17.6% of the force,[105] and now every position, including combat arms positions, is open to them.

The vast majority of military standards make no distinctions between men and women. Where biological differences between males and females are relevant, however, military standards do differentiate between them. The Supreme Court has acknowledged the lawfulness of sex-based standards that flow from legitimate biological differences between the sexes.[106] These sex-based standards ensure fairness, equity, and safety; satisfy reasonable expectations of privacy; reflect common practice in society; and promote core military values of dignity and respect between men and women—all of which promote good order, discipline, steady leadership, unit cohesion, and ultimately military effectiveness and lethality.

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[101] Id. at 25-27.
[102] Id. at 46-48.
[103] Id. at 26-27.
[104] Id. at 41.
[105] Defense Manpower Data Center, Active and Reserve Master Files (Dec. 2017).
[106] For example, in *United States v. Virginia*, the Court noted approvingly that "[a]dmitting women to [the Virginia Military Institute] would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements, and to adjust aspects of the physical training programs." 518 U.S. 515, 550-51 n.19 (1996) (citing the statute that requires the same standards for women admitted to the service academies as for the men, "except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals").

For example, anatomical differences between males and females, and the reasonable expectations of privacy that flow from those differences, at least partly account for the laws and regulations that require separate berthing, bathroom, and shower facilities and different drug testing procedures for males and females.[107] To maintain good order and discipline, Congress has even required by statute that the sleeping and latrine areas provided for "male" recruits be physically separated from the sleeping and latrine areas provided for "female" recruits during basic training and that access by drill sergeants and training personnel "after the end of the training day" be limited to persons of the "same sex as the recruits" to ensure "after-hours privacy for recruits during basic training."[108]

In addition, physiological differences between males and females account for the different physical fitness and body fat standards that apply to men and women.[109] This ensures equity and fairness. Likewise, those same physiological differences also account for the policies that regulate competition between men and women in military training and sports, such as boxing and combatives.[110] This ensures protection from injury.

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[107] See, e.g., Department of the Army, Training and Doctrine Command, TRADOC Regulation 350-6, "Enlisted Initial Entry Training Policies and Administration," p. 56 (Mar. 20, 2017); Department of the Air Force, Air Force Instruction 32-6005, "Unaccompanied Housing Management," p. 35 (Jan 29., 2016); Department of the Army, Human Resources Command, AR 600-85, "Substance Abuse Program" (Dec. 28, 2012) ("Observers must . . . [b]e the same gender as the Soldier being observed.").

[108] See 10 U.S.C. § 4319 (Army), 10 U.S.C. § 6931 (Navy), and 10 U.S.C. § 9319 (Air Force) (requiring the sleeping and latrine areas provided for "male" recruits to be physically separated from the sleeping and latrine areas provided for "female" recruits during basic training); 10 U.S.C. § 4320 (Army), 10 U.S.C. § 6932 (Navy), and 10 U.S.C. § 9320 (Air Force) (requiring that access by drill sergeants and training personnel "after the end of the training day" be limited to persons of the "same sex as the recruits").

[109] See, e.g., Department of the Army, Army Regulation 600-9, "The Army Body Composition Program," pp. 21-31 (June 28, 2013); Department of the Navy, Office of the Chief of Naval Operations Instruction 6110.1J, "Physical Readiness Program," p. 7 (July 11, 2011); Department of the Air Force, Air Force Instruction 36-2905, "Fitness Program," pp. 86-95, 106-146 (Aug. 27, 2015); Department of the Navy, Marine Corps Order 6100.13, "Marine Corps Physical Fitness Program," (Aug. 1, 2008); Department of the Navy, Marine Corps Order 6110.3A, "Marine Corps Body Composition and Military Appearance Program," (Dec. 15, 2016); see also United States Military Academy, Office of the Commandant of Cadets, "Physical Program Whitebook AY 16-17," p. 13 (specifying that, to graduate, cadets must meet the minimum performance standard of 3:30 for men and 5:29 for women on the Indoor Obstacle Course Test); Department of the Army, Training and Doctrine Command, TRADOC Regulation 350-6, "Enlisted Initial Entry Training Policies and Administration," p. 56 (Mar. 20, 2017) ("Performance requirement differences, such as [Army Physical Fitness Test] scoring are based on physiological differences, and apply to the entire Army.").

[110] See, e.g., Headquarters, Department of the Army, TC 3-25.150, "Combatives," p. A-15 (Feb. 2017) ("Due to the physiological difference between the sexes and in order to treat all Soldiers fairly and conduct gender-neutral competitions, female competitors will be given a 15 percent overage at weigh-in."); id. ("In championships at battalion-level and above, competitors are divided into eight weight class brackets. . . . These classes take into account weight and gender."); Major Alex Bedard, Major Robert Peterson & Ray Barone, "Punching Through Barriers: Female Cadets Integrated into Mandatory Boxing at West Point," *Association of the United States Army* (Nov. 16, 2017), https://www.ausa.org/articles/punching-through-barriers-female-cadets-boxing-west-point (noting that "[m]atching men and women according to weight may not adequately account for gender differences regarding striking force" and that "[w]hile conducting free sparring, cadets must box someone of the same gender"); RAND Study at 57 (noting that, under British military policy, transgender persons "can be excluded from sports that organize around gender to ensure the safety of the individual or other participants"); see also International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogensim (Nov. 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_

Uniform and grooming standards, to a certain extent, are also based on anatomical differences between males and females. Even those uniform and grooming standards that are not, strictly speaking, based on physical biology nevertheless flow from longstanding societal expectations regarding differences in attire and grooming for men and women.[111]

Because these sex-based standards are based on legitimate biological differences between males and females, it follows that a person's physical biology should dictate which standards apply. Standards designed for biological males logically apply to biological males, not biological females, and vice versa. When relevant, military practice has long adhered to this straightforward and logical demarcation.

By contrast, the Carter policy deviates from this longstanding practice by making military sex-based standards contingent, not necessarily on the person's biological sex, but on the person's gender marker in DEERS, which can be changed to reflect the person's gender identity.[112] Thus, under the Carter policy, a biological male who identifies as a female (and changes his gender marker to reflect that gender) must be held to the standards and regulations for females, even though those standards and regulations are based on female physical biology, not female gender identity. The same goes for females who identify as males. Gender identity alone, however, is irrelevant to standards that are designed on the basis of biological differences.

Rather than apply only to those transgender individuals who have altered their external biological characteristics to fully match that of their preferred gender, under the Carter policy, persons need not undergo sex reassignment surgery, or even cross-sex hormone therapy, in order to be recognized as, and thus subject to the standards associated with, their preferred gender. A male who identifies as female could remain a biological male in every respect and still must be treated in all respects as a female, including with respect to physical fitness, facilities, and uniform and grooming. This scenario is not farfetched. According to the APA, not "all individuals with gender dysphoria desire a complete gender reassignment. . . . Some are satisfied with no medical or surgical treatment but prefer to dress as the felt gender in public."[113] Currently, of the 424 approved Service member treatment plans, at least 36 do not include cross-

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consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf; NCAA Office of Inclusion; NCAA Inclusion of Transgender Student-Athletes (Aug. 2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

[111] "The difference between men's and women's grooming policies recognizes the difference between the sexes; sideburns for men, different hairstyles and cosmetics for women. Establishing identical grooming and personal appearance standards for men and women would not be in the Navy's best interest and is not a factor in the assurance of equal opportunity." Department of the Navy, Navy Personnel Command, Navy Personnel Instruction 156651, "Uniform Regulations," Art. 2101.1 (July 7, 2017); see also Department of the Army, Army Regulation 670-1, "Wear and Appearance of Army Uniforms and Insignia," pp. 4-16 (Mar. 31, 2014); Department of the Air Force, Air Force Instruction 26-2903, "Dress and Personal Appearance of Air Force Personnel," pp. 17-27 (Feb. 9, 2017); Department of the Navy, Marine Corps Order P1020.34G, "Marine Corps Uniform Regulations," pp. 1-9 (Mar. 31, 2003).

[112] Department of Defense Instruction 1300.28, *In-service Transition for Service Members Identifying as Transgender*, pp. 3-4 (June 30, 2016).

[113] American Psychiatric Association, "Expert Q & A: Gender Dysphoria," available at https://www.psychiatry.org/patients-families/gender-dysphoria/expert-qa (last visited Feb. 14, 2018).

sex hormone therapy or sex reassignment surgery.[114] And it is questionable how many Service members will obtain any type of sex reassignment surgery. According to a survey of transgender persons, only 25% reported having had some form of transition-related surgery.[115]

The variability and fluidity of gender transition undermine the legitimate purposes that justify different biologically-based, male-female standards. For example, by allowing a biological male who retains male anatomy to use female berthing, bathroom, and shower facilities, it undermines the reasonable expectations of privacy and dignity of female Service members. By allowing a biological male to meet the female physical fitness and body fat standards and to compete against females in gender-specific physical training and athletic competition, it undermines fairness (or perceptions of fairness) because males competing as females will likely score higher on the female test than on the male test and possibly compromise safety. By allowing a biological male to adhere to female uniform and grooming standards, it creates unfairness for other males who would also like to be exempted from male uniform and grooming standards as a means of expressing their own sense of identity.

These problems could perhaps be alleviated if a person's preferred gender were recognized only after the person underwent a biological transition. The concept of gender transition is so nebulous, however, that drawing any line—except perhaps at a full sex reassignment surgery—would be arbitrary, not to mention at odds with current medical practice, which allows for a wide range of individualized treatment. In any event, rates for genital surgery are exceedingly low—2% of transgender men and 10% of transgender women.[116] Only up to 25% of surveyed transgender persons report having had some form of transition-related surgery.[117] The RAND study estimated that such rates "are typically only around 20 percent, with the exception of chest surgery among female-to-male transgender individuals."[118] Moreover, of the 424 approved Service member treatment plans available for study, 388 included cross-sex hormone treatment, but only 34 non-genital sex reassignment surgeries and one genital surgery have been completed thus far. Only 22 Service members have requested a waiver for a genital sex reassignment surgery.[119]

Low rates of full sex reassignment surgery and the otherwise wide variation of transition-related treatment, with all the challenges that entails for privacy, fairness, and safety, weigh in favor of maintaining a bright line based on biological sex—not gender identity or some variation thereof—in determining which sex-based standards apply to a given Service member. After all, a person's biological sex is generally ascertainable through objective means. Moreover, this approach will ensure that biologically-based standards will be applied uniformly to all Service members of the same biological sex. Standards that are clear, coherent, objective, consistent, predictable, and uniformly applied enhance good order, discipline, steady leadership, and unit cohesion, which in turn, ensure military effectiveness and lethality.

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[114] Data reported by the Departments of the Army, Navy, and Air Force (Oct. 2017).
[115] Id.
[116] Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet & Ma'ayan Anafi, *The Report of the 2015 U.S. Transgender Survey*, pp. 100-103 (National Center for Transgender Equality 2016) available at https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF.
[117] Id. at 100.
[118] RAND Study at 21.
[119] Defense Health Agency, Supplemental Health Care Program Data (Feb. 2018).

New Transgender Policy

In light of the forgoing standards, all of which are necessary for military effectiveness and lethality, as well as the recommendations of the Panel of Experts, the Department, in consultation with the Department of Homeland Security, recommends the following policy:

A. Transgender 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.

Transgender persons who have not transitioned to another gender and do not have a history or current diagnosis of gender dysphoria—i.e., they identify as a gender other than their biological sex but do not currently experience distress or impairment of functioning in meeting the standards associated with their biological sex—are eligible for service, provided that they, like all other persons, satisfy all mental and physical health standards and are capable of adhering to the standards associated with their biological sex. This is consistent with the Carter policy, under which a transgender person's gender identity is recognized only if the person has a diagnosis or history of gender dysphoria.

Although the precise number is unknown, the Department recognizes that many transgender persons could be disqualified under this policy. And many transgender persons who would not be disqualified may nevertheless be unwilling to adhere to the standards associated with their biological sex. But many have served, and are serving, with great dedication under the standards for their biological sex. As noted earlier, 8,980 Service members reportedly identify as transgender, and yet there are currently only 937 active duty Service members who have been diagnosed with gender dysphoria since June 30, 2016.

B. Transgender Persons Who Require or Have Undergone Gender Transition Are Disqualified.

Except for those who are exempt under this policy, as described below in C.3, and except where waivers or exceptions to policy are otherwise authorized, persons who are diagnosed with gender dysphoria, either before or after entry into service, and require transition-related treatment, or have already transitioned to their preferred gender, should be disqualified from service. In the Department's military judgment, this is a necessary departure from the Carter policy for the following reasons:

1. *Undermines Readiness.* While transition-related treatments, including real life experience, cross-sex hormone therapy, and sex reassignment surgery, are widely accepted forms of treatment, there is considerable scientific uncertainty concerning whether these treatments fully remedy, even if they may reduce, the mental health problems associated with gender dysphoria. Despite whatever improvements in condition may result from these treatments, there is evidence that rates of psychiatric hospitalization and suicide behavior remain higher for persons with gender dysphoria, even after treatment, as compared to persons without gender dysphoria.[120] The persistence of these problems is a risk for readiness.

[120] See *supra* at pp. 24-26.

Another readiness risk is the time required for transition-related treatment and the impact on deployability. Although limited and incomplete because many transitioning Service members either began treatment before the Carter policy took effect or did not require sex reassignment surgery, currently available in-service data already show that, cumulatively, transitioning Service members in the Army and Air Force have averaged 167 and 159 days of limited duty, respectively, over a one-year period.[121]

Transition-related treatment that involves cross-sex hormone therapy or sex reassignment surgery could render Service members with gender dysphoria non-deployable for a significant period of time—perhaps even a year—if the theater of operations cannot support the treatment. For example, Endocrine Society guidelines for cross-sex hormone therapy recommend quarterly bloodwork and laboratory monitoring of hormone levels during the first year of treatment.[122] Of the 424 approved Service member treatment plans available for study, almost all of them—91.5%—include the prescription of cross-sex hormones.[123] The period of potential non-deployability increases for those who undergo sex reassignment surgery. As described earlier, the recovery time for the various sex reassignment procedures is substantial. For non-genital surgeries (assuming no complications), the range of recovery is between two and eight weeks depending on the type of surgery, and for genital surgeries (again assuming no complications), the range is between three and six months before the individual is able to return to full duty.[124] When combined with 12 continuous months of hormone therapy, which is recommended prior to genital surgery,[125] the total time necessary for sex reassignment surgery could exceed a year. If the operational environment does not permit access to a lab for monitoring hormones (and there is certainly debate over how common this would be), then the Service member must be prepared to forego treatment, monitoring, or the deployment. Either outcome carries risks for readiness.

Given the limited data, however, it is difficult to predict with any precision the impact on readiness of allowing gender transition. Moreover, the input received by the Panel of Experts varied considerably. On one hand, some commanders with transgender Service members

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[121] Data reported by the Departments of the Army and Air Force (Oct. 2017).

[122] Wylie C. Hembree, Peggy Cohen-Kettenis, Lous Gooren, Sabine Hannema, Walter Meyer, M. Hassan Murad, Stephen Rosenthal, Joshua Safer, Vin Tangpricha, & Guy T'Sjoen, "Endocrine Treatment of Gender-Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline," *The Journal of Clinical Endocrinology & Metabolism*, Vol. 102, pp. 3869-3903 (Nov. 2017).

[123] Data reported by the Departments of the Army, Navy, and Air Force (Oct. 2017). Although the RAND study observed that British troops who are undergoing hormone therapy are generally able to deploy if the "hormone dose is steady and there are no major side effects," it nevertheless acknowledged that "deployment to all areas may not be possible, depending on the needs associated with any medication (e.g., refrigeration)." RAND Study at 59.

[124] For example, assuming no complications, the recovery time for a hysterectomy is up to eight weeks; a mastectomy is up to six weeks; a phalloplasty is up to three months; a metoidioplasty is up to 8 weeks; an orchiectomy is up to 6 weeks; and a vaginoplasty is up to three months. See University of California, San Francisco, Center of Excellence for Transgender Health, "Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People," available at http://transhealth.ucsf.edu/trans?page=guidelines-home (last visited Feb. 16, 2018); see also Discussion with Dr. Loren Schechter, Visiting Clinical Professor of Surgery, University of Illinois at Chicago (Nov. 9, 2017).

[125] RAND Study at 80; see also id. at 7; Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1184 (Oct. 2016) (noting that Endocrine Society criteria "require that the patient has been on continuous cross-sex hormones and has had continuous [real life experience] or psychotherapy for the past 12 months").

reported that, from the time of diagnosis to the completion of a transition plan, the transitioning Service members would be non-deployable for two to two-and-a-half years.[126] On the other band, some commanders, as well as transgender Service members themselves, reported that transition-related treatment is not a burden on unit readiness and could be managed to avoid interfering with deployments, with one commander even reporting that a transgender Service member with gender dysphoria under his command elected to postpone surgery in order to deploy.[127] This conclusion was echoed by some experts in endocrinology who found no harm in stopping or adjusting hormone therapy treatment to accommodate deployment during the first year of hormone use.[128] Of course, postponing treatment, especially during a combat deployment, has risks of its own insofar as the treatment is necessary to mitigate the clinically significant distress and impairment of functioning caused by gender dysphoria. After all, "when Service members deploy and then do not meet medical deployment fitness standards, there is risk for inadequate treatment within tbe operational theater, personal risk due to potential inability to perform combat required skills, and the potential to be sent home from the deployment and render the deployed unit with less manpower."[129] In short, the periods of transition-related non-availability and the risks of deploying untreated Service members with gender dysphoria are uncertain, and that alone merits caution.

Moreover, most mental health conditions, as well as the medication used to treat them, limit Service members' ability to deploy. Any DSM-5 psychiatric disorder witb residual symptoms, or medication side effects, which impair social or occupational performance, require a waiver for the Service member to deploy.[130] The same is true for mental health conditions that pose a substantial risk for deterioration or recurrence in the deployed environment.[131] In managing mental health conditions while deployed, providers must consider the risk of exacerbation if the individual were exposed to trauma or severe operational stress. These determinations are difficult to make in the absence of evidence on the impact of deployment on individuals with gender dysphoria.[132]

The RAND study acknowledges that the inclusion of individuals with gender dysphoria in the force will have a negative impact on readiness. According to RAND, foreign militaries that allow service by personnel with gender dysphoria have found that it is sometimes necessary to restrict the deployment of transitioning individuals, including those receiving hormone therapy and surgery, to austere environments where their healthcare needs cannot be met.[133] Nevertheless, RAND concluded that the impact on readiness would be minimal—e.g., 0.0015% of available deployable labor-years across the active and reserve components—because of the

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[126] Minutes, Transgender Review Panel (Oct. 13, 2017).
[127] Id.
[128] Minutes, Transgender Review Panel (Nov. 9, 2017).
[129] Institute for Defense Analyses, "Force Impact of Expanding the Recruitment of Individuals with Auditory Impairment," pp. 60-61 (Apr. 2016).
[130] Modification Thirteen to U.S. Central Command Individual Protection and Individual, Unit Deployment Policy, Tab A, p. 8 (Mar. 2017).
[131] Id.
[132] See generally Memorandum from the Assistant Secretary of Defense for Health Affairs, "Clinical Practice Guidance for Deployment-Limiting Mental Disorders and Psychotropic Medications," pp. 2-4 (Oct. 7, 2013).
[133] RAND Study at 40.

exceedingly small number of transgender Service members who would seek transition-related treatment.[134] Even then, RAND admitted that the information it cited "must be interpreted with caution" because "much of the current research on transgender prevalence and medical treatment rates relies on self-reported, nonrepresentative samples."[135] Nevertheless, by RAND's standard, the readiness impact of many medical conditions that the Department has determined to be disqualifying—from bipolar disorder to schizophrenia—would be minimal because they, too, exist only in relatively small numbers.[136] And yet that is no reason to allow persons with those conditions to serve.

The issue is not whether the military can absorb periods of non-deployability in a small population; rather, it is whether an individual with a particular condition can meet the standards for military duty and, if not, whether the condition can be remedied through treatment that renders the person non-deployable for as little time as possible. As the Department has noted before: "[W]here the operational requirements are growing faster than available resources," it is imperative that the force "be manned with Service members capable of meeting all mission demands. The Services require that every Service member contribute to full mission readiness, regardless of occupation. In other words, the Services require all Service members to be able to engage in core military tasks, including the ability to deploy rapidly, without impediment or encumbrance."[137] Moreover, the Department must be mindful that "an increase in the number of non-deployable military personnel places undue risk and personal burden on Service members qualified and eligible to deploy, and negatively impacts mission readiness."[138] Further, the Department must be attuned to the impact that high numbers of non-deployable military personnel places on families whose Service members deploy more often to backfill or compensate for non-deployable persons.

In sum, the available information indicates that there is inconclusive scientific evidence that the serious problems associated with gender dysphoria can be fully remedied through transition-related treatment and that, even if it could, most persons requiring transition-related treatment could be non-deployable for a potentially significant amount of time. By this metric, Service members with gender dysphoria who need transition-related care present a significant challenge for unit readiness.

2. *Incompatible with Sex-Based Standards.* As discussed in detail earlier, military personnel policy and practice has long maintained a clear line between men and women where their biological differences are relevant with respect to physical fitness and body fat standards; berthing, bathroom, and shower facilities; and uniform and grooming standards. This line promotes good order and discipline, steady leadership, unit cohesion, and ultimately military

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[134] Id. at 42.
[135] Id. at 39.
[136] According to the National Institute of Mental Health, 2.8% of U.S. adults experienced bipolar disorder in the past year, and 4.4% have experienced the condition at some time in their lives. National Institute of Mental Health, "Bipolar Disorder" (Nov. 2017) https://www.nimh.nih.gov/health/statistics/bipolar-disorder.shtml. The prevalence of schizophrenia is less than 1%. National Institute of Mental Health, "Schizophrenia" (Nov. 2017) https://www.nimh.nih.gov/health/statistics/schizophrenia.shtml.
[137] Under Secretary of Defense for Personnel and Readiness, "Fiscal Year 2016 Report to Congress on the Review of Enlistment of Individuals with Disabilities in the Armed Forces," p. 9 (Apr. 2016).
[138] Id. at 10.

effectiveness and lethality because it ensures fairness, equity, and safety; satisfies reasonable expectations of privacy; reflects common practice in the society from which we recruit; and promotes core military values of dignity and respect between men and women. To exempt Service members from the uniform, biologically-based standards applicable to their biological sex on account of their gender identity would be incompatible with this line and undermine the objectives such standards are designed to serve.

First, a policy that permits a change of gender without requiring any biological changes risks creating unfairness, or perceptions thereof, that could adversely affect unit cohesion and good order and discipline. It could be perceived as discriminatory to apply different biologically-based standards to persons of the same biological sex based on gender identity, which is irrelevant to standards grounded in physical biology. For example, it unfairly discriminates against biological males who identify as male and are held to male standards to allow biological males who identify as female to be held to female standards, especially where the transgender female retains many of the biological characteristics and capabilities of a male. It is important to note here that the Carter policy does not require a transgender person to undergo any biological transition in order to be treated in all respects in accordance with the person's preferred gender. Therefore, a biological male who identifies as female could remain a biological male in every respect and still be governed by female standards. Not only would this result in perceived unfairness by biological males who identify as male, it would also result in perceived unfairness by biological females who identify as female. Biological females who may be required to compete against such transgender females in training and athletic competition would potentially be disadvantaged.[139] Even more importantly, in physically violent training and competition, such as boxing and combatives, pitting biological females against biological males who identify as female, and vice versa, could present a serious safety risk as well.[140]

This concern may seem trivial to those unfamiliar with military culture. But vigorous competition, especially physical competition, is central to the military life and is indispensable to the training and preparation of warriors. Nothing encapsulates this more poignantly than the words of General Douglas MacArthur when he was superintendent of the U.S. Military Academy and which are now engraved above the gymnasium at West Point: "Upon the fields of friendly

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[139] See *supra* note 109. Both the International Olympic Committee (IOC) and the National Collegiate Athletic Association (NCAA) have attempted to mitigate this problem in their policies regarding transgender athletes. For example, the IOC requires athletes who transition from male to female to demonstrate certain suppressed levels of testosterone to minimize any advantage in women's competition. Similarly, the NCAA prohibits an athlete who has transitioned from male to female from competing on a women's team without changing the team status to a mixed gender team. While similar policies could be employed by the Department, it is unrealistic to expect the Department to subject transgender Service members to routine hormone testing prior to biannual fitness testing, athletic competition, or training simply to mitigate real and perceived unfairness or potential safety concerns. See, e.g., International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogensim (Nov. 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf; NCAA Office of Inclusion, NCAA Inclusion of Transgender Student-Athletes (Aug. 2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

[140] See *supra* note 109.

strife are sown the seeds that, upon other fields, on other days will bear the fruits of victory."[141] Especially in combat units and in training, including the Service academies, ROTC, and other commissioning sources, Service members are graded and judged in significant measure based upon their physical aptitude, which is only fitting given that combat remains a physical endeavor.

Second, a policy that accommodates gender transition without requiring full sex reassignment surgery could also erode reasonable expectations of privacy that are important in maintaining unit cohesion, as well as good order and discipline. Given the unique nature of military service, Service members of the same biological sex are often required to live in extremely close proximity to one another when sleeping, undressing, showering, and using the bathroom. Because of reasonable expectations of privacy, the military has long maintained separate berthing, bathroom, and shower facilities for men and women while in garrison. In the context of recruit training, this separation is even mandated by Congress.[142]

Allowing transgender persons who have not undergone a full sex reassignment, and thus retain at least some of the anatomy of their biological sex, to use the facilities of their identified gender would invade the expectations of privacy that the strict male-female demarcation in berthing, bathroom, and shower facilities is meant to serve. At the same time, requiring transgender persons who have developed, even if only partially, the anatomy of their identified gender to use the facilities of their biological sex could invade the privacy of the transgender person. Without separate facilities for transgender persons or other mitigating accommodations, which may be unpalatable to transgender individuals and logistically impracticable for the Department, the privacy interests of biological males and females and transgender persons could be anticipated to result in irreconcilable situations. Lieutenants, Sergeants, and Petty Officers charged with carrying out their units' assigned combat missions should not be burdened by a change in eligibility requirements disconnected from military life under austere conditions.

The best illustration of this irreconcilability is the report of one commander who was confronted with dueling equal opportunity complaints—one from a transgender female (i.e., a biological male with male genitalia who identified as female) and the other from biological females. The transgender female Service member was granted an exception to policy that allowed the Service member to live as a female, which included giving the Service member access to female shower facilities. This led to an equal opportunity complaint from biological females in the unit who believed that granting a biological male, even one who identified as a female, access to their showers violated their privacy. The transgender Service member responded with an equal opportunity complaint claiming that the command was not sufficiently supportive of the rights of transgender persons.[143]

The collision of interests discussed above are a direct threat to unit cohesion and will inevitably result in greater leadership challenges without clear solutions. Leaders at all levels

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[141] Douglas MacArthur, *Respectfully Quoted: A Dictionary of Quotations* (1989), available at http://www.bartleby.com/73/1874.html.

[142] See *supra* note 108.

[143] Minutes, Transgender Review Panel (Oct. 13, 2017). Limited data exists regarding the performance of transgender Service members due to policy restrictions in Department of Defense 1300.28, *In-Service Transition for Transgender Service Members* (Oct. 1, 2016), that prevent the Department from tracking individuals who may identify as transgender as a potentially unwarranted invasion of personal privacy.

already face immense challenges in building cohesive military units. Blurring the line that differentiates the standards and policies applicable to men and women will only exacerbate those challenges and divert valuable time and energy from military tasks.

The unique leadership challenges arising from gender transition are evident in the Department's handbook implementing the Carter policy. The handbook provides guidance on various scenarios that commanders may face. One such scenario concerns the use of shower facilities: "A transgender Service member has expressed privacy concerns regarding the open bay shower configuration. Similarly, several other non-transgender Service members have expressed discomfort when showering in these facilities with individuals who have different genitalia." As possible solutions, the handbook offers that the commander could modify the shower facility to provide privacy or, if that is not feasible, adjust the timing of showers. Another scenario involves proper attire during a swim test: "It is the semi-annual swim test and a female to male transgender Service member who has fully transitioned, but did not undergo surgical change, would like to wear a male swimsuit for the test with no shirt or other top coverage." The extent of the handbook's guidance is to advise commanders that "[i]t is within [their] discretion to take measures ensuring good order and discipline," that they should "counsel the individual and address the unit, if additional options (e.g., requiring all personnel to wear shirts) are being considered," and that they should consult the Service Central Coordination Cell, a help line for commanders in need of advice.

These vignettes illustrate the significant effort required of commanders to solve challenging problems posed by the implementation of the current transgender service policies. The potential for discord in the unit during the routine execution of daily activities is substantial and highlights the fundamental incompatibility of the Department's legitimate military interest in uniformity, the privacy interests of all Service members, and the interest of transgender individuals in an appropriate accommodation. Faced with these conflicting interests, commanders are often forced to devote time and resources to resolve issues not present outside of military service. A failure to act quickly can degrade an otherwise highly functioning team, as will failing to seek appropriate counsel and implementing a faulty solution. The appearance of unsteady or seemingly unresponsive leadership to Service member concerns erodes the trust that is essential to unit cohesion and good order and discipline.

The RAND study does not meaningfully address how accommodations for gender transition would impact perceptions of fairness and equity, expectations of privacy, and safety during training and athletic competition and how these factors in turn affect unit cohesion. Instead, the RAND study largely dismisses concerns about the impact on unit cohesion by pointing to the experience of four countries that allow transgender service—Australia, Canada, Israel, and the United Kingdom.[144] Although the vast majority of armed forces around the world do not permit or have policies on transgender service, RAND noted that 18 militaries do, but only four have well-developed and publicly available policies.[145] RAND concluded that "the available research revealed no significant effect on cohesion, operational effectiveness, or

[144] RAND Study at 45.
[145] Id. at 50.

readiness."[146] It reached this conclusion, however, despite noting reports of resistance in the ranks, which is a strong indication of an adverse effect on unit cohesion.[147] Nevertheless, RAND acknowledged that the available data was "limited" and that the small number of transgender personnel may account for "the limited effect on operational readiness and cohesion."[148]

Perhaps more importantly, however, the RAND study mischaracterizes or overstates the reports upon which it rests its conclusions. For example, the RAND study cites *Gays in Foreign Militaries 2010: A Global Primer* by Nathaniel Frank as support for the conclusions that there is no evidence that transgender service has had an adverse effect on cohesion, operational effectiveness, or readiness in the militaries of Australia and the United Kingdom and that diversity has actually led to increases in readiness and performance.[149] But that particular study has nothing to do with examining the service of transgender persons; rather, it is about the integration of homosexual persons into the military.[150]

With respect to transgender service in the Israeli military, the RAND study points to an unpublished paper by Anne Speckhard and Reuven Paz entitled *Transgender Service in the Israeli Defense Forces: A Polar Opposite Stance to the U.S. Military Policy of Barring Transgender Soldiers from Service*. The RAND study cites this paper for the proposition that "there has been no reported effect on cohesion or readiness" in the Israeli military and "there is no evidence of any impact on operational effectiveness."[151] These sweeping and categorical claims, however, are based only on "six in-depth interviews of experts on the subject both inside and outside the [Israeli Defense Forces (IDF)]: two in the IDF leadership—including the spokesman's office; two transgender individuals who served in the IDF, and two professionals who serve transgender clientele—before, during and after their IDF service."[152] As the RAND report observed, however: "There do appear to be some limitations on the assignment of transgender personnel, particularly in combat units. Because of the austere living conditions in these types of units, necessary accommodations may not be available for Service members in the midst of a gender transition. As a result, transitioning individuals are typically not assigned to combat units."[153] In addition, as the RAND study notes, under the Israeli policy at the time, "assignment of housing, restrooms, and showers is typically linked to the birth gender, which does not change in the military system until after gender reassignment surgery."[154] Therefore, insofar as a Service member's change of gender is not recognized until after sex reassignment

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[146] Id. at 45.
[147] Id.
[148] Id.
[149] Id.
[150] Nathaniel Frank, "Gays in Foreign Militaries 2010: A Global Primer," p. 6 *The Palm Center* (Feb. 2010), https://www.palmcenter.org/wpcontent/uploads/2017/12/FOREIGNMILITARIESPRIMER2010FINAL.pdf ("This study seeks to answer some of the questions that have been, and will continue to be, raised surrounding the instructive lessons from other nations that have lifted their bans on openly gay service.").
[151] Rand Study at 45.
[152] Anne Speckhard & Reuven Paz, "Transgender Service in the Israeli Defense Forces: A Polar Opposite Stance to the U.S. Military Policy of Barring Transgender Soldiers from Service," p. 3 (2014), http://www.researchgate.net/publication/280093066.
[153] RAND Study at 56.
[154] Id. at 55.

surgery, the Israeli policy—and whatever claims about its impact on cohesion, readiness, and operational effectiveness—are distinguishable from the Carter policy.

Finally, the RAND study cites to a journal article on the Canadian military experience entitled *Gender Identity in the Canadian Forces: A Review of Possible Impacts on Operational Effectiveness* by Alan Okros and Denise Scott. According to RAND, the authors of this article "found no evidence of any effect on unit or overall cohesion."[155] But the article not only fails to support the RAND study's conclusions (not to mention the article's own conclusions), but it confirms the concerns that animate the Department's recommendations. The article acknowledges, for example, the difficulty commanders face in managing the competing interests at play:

> Commanders told us that the new policy fails to provide sufficient guidance as to how to weigh priorities among competing objectives during their subordinates' transition processes. Although they endorsed the need to consult transitioning Service members, they recognized that as commanding officers, they would be called on to balance competing requirements. They saw the primary challenge to involve meeting trans individual's expectations for reasonable accommodation and individual privacy while avoiding creating conditions that place extra burdens on others or undermined the overall team effectiveness. To do so, they said that they require additional guidance on a range of issues including clothing, communal showers, and shipboard bunking and messing arrangements.[156]

Notwithstanding its optimistic conclusions, the article also documents serious problems with unit cohesion. The authors observe, for instance, that the chain of command "has not fully earned the trust of the transgender personnel," and that even though some transgender Service members do trust the chain of command, others "expressed little confidence in the system," including one who said, "I just don't think it works that well."[157]

In sum, although the foregoing considerations are not susceptible to quantification, undermining the clear sex-differentiated lines with respect to physical fitness; berthing, bathroom, and shower facilities; and uniform and grooming standards, which have served all branches of Service well to date, risks unnecessarily adding to the challenges faced by leaders at all levels, potentially fraying unit cohesion, and threatening good order and discipline. The Department acknowledges that there are serious differences of opinion on this subject, even among military professionals, including among some who provided input to the Panel of Experts,[158] but given the vital interests at stake—the survivability of Service members, including

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[155] Id. at 45.

[156] Alan Okros & Denise Scott, "Gender Identity in the Canadian Forces," *Armed Forces and Society* Vol. 41, p. 8 (2014).

[157] Id. at 9.

[158] While differences of opinion do exist, it bears noting that, according to a Military Times/Syracuse University's Institute for Veterans and Military Families poll, 41% of active duty Service members polled thought that allowing gender transition would hurt their unit's readiness, and only 12% thought it would be beneficial. Overall, 57% had a negative opinion of the Carter policy. Leo Shane III, "Poll: Active-duty troops worry about military's transgender

transgender persons, in combat and the military effectiveness and lethality of our forces—it is prudent to proceed with caution, especially in light of the inconclusive scientific evidence that transition-related treatment restores persons with gender dysphoria to full mental health.

3. *Imposes Disproportionate Costs.* Transition-related treatment is also proving to be disproportionately costly on a per capita basis, especially in light of the absence of solid scientific support for the efficacy of such treatment. Since implementation of the Carter policy, the medical costs for Service members with gender dysphoria have increased nearly three times—or 300%—compared to Service members without gender dysphoria.[159] And this increase is despite the low number of costly sex reassignment surgeries that have been performed so far.[160] As noted earlier, only 34 non-genital sex reassignment surgeries and one genital surgery have been completed,[161] with an additional 22 Service members requesting a waiver for genital surgery.[162] We can expect the cost disparity to grow as more Service members diagnosed with gender dysphoria avail themselves of surgical treatment. As many as 77% of the 424 Service member treatment plans available for review include requests for transition-related surgery, although it remains to be seen how many will ultimately obtain surgeries.[163] In addition, several commanders reported to the Panel of Experts that transition-related treatment for Service members with gender dysphoria in their units had a negative budgetary impact because they had to use operations and maintenance funds to pay for the Service members' extensive travel throughout the United States to obtain specialized medical care.[164]

Taken together, the foregoing concerns demonstrate why recognizing and making accommodations for gender transition are not conducive to, and would likely undermine, the inputs—readiness, good order and discipline, sound leadership, and unit cohesion—that are essential to military effectiveness and lethality. Therefore, it is the Department's professional military judgment that persons who have been diagnosed with, or have a history of, gender dysphoria and require, or have already undergone, a gender transition generally should not be eligible for accession or retention in the Armed Forces absent a waiver.

C. Transgender Persons With a History or Diagnosis of Gender Dysphoria Are Disqualified, Except Under Certain Limited Circumstances.

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policies," *Military Times* (July 27, 2017) available at https://www.militarytimes.com/news/pentagon-congress/2017/07/27/poll-active-duty-troops-worry-about-militarys-transgender-policies/.

[159] Minutes, Transgender Review Panel (Nov. 21, 2017).

[160] Minutes, Transgender Review Panel (Nov. 2, 2017).

[161] Data retrieved from Military Health System Data Repository (Nov. 2017).

[162] Defense Health Agency Data (as of Feb. 2018).

[163] Data reported by the Departments of the Army, Navy, and Air Force (Oct. 2017).

[164] Minutes, Transgender Review Panel (Oct. 13, 2017); see also Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1185 (Oct. 2016) ("As previously discussed, a new diagnosis of gender dysphoria and the decision to proceed with gender transition requires frequent evaluations by the [mental health professional] and endocrinologist. However, most [military treatment facilities] lack one or both of these specialty services. Members who are not in proximity to [military treatment facilities] may have significant commutes to reach their required specialty care. Members stationed in more remote locations face even greater challenges of gaining access to military or civilian specialists within a reasonable distance from their duty stations.").

As explained earlier in greater detail, persons with gender dysphoria experience significant distress and impairment in social, occupational, or other important areas of functioning. Gender dysphoria is also accompanied by extremely high rates of suicidal ideation and other comorbidities. Therefore, to ensure unit safety and mission readiness, which is essential to military effectiveness and lethality, persons who are diagnosed with, or have a history of, gender dysphoria are generally disqualified from accession or retention in the Armed Forces. The standards recommended here are subject to the same procedures for waiver as any other standards. This is consistent with the Department's handling of other mental conditions that require treatment. As a general matter, only in the limited circumstances described below should persons with a history or diagnosis of gender dysphoria be accessed or retained.

1. *Accession of Individuals Diagnosed with Gender Dysphoria.* Given the documented fluctuations in gender identity among children, a history of gender dysphoria should not alone disqualify an applicant seeking to access into the Armed Forces. According to the DSM-5, the persistence of gender dysphoria in biological male children "has ranged from 2.2% to 30%," and the persistence of gender dysphoria in biological female children "has ranged from 12% to 50%."[165] Accordingly, persons with a history of gender dysphoria may access into the Armed Forces, provided that they can demonstrate 36 consecutive months of stability—i.e., absence of gender dysphoria—immediately preceding their application; they have not transitioned to the opposite gender; and they are willing and able to adhere to all standards associated with their biological sex. The 36-month stability period is the same standard the Department currently applies to persons with a history of depressive disorder. The Carter policy's 18-month stability period for gender dysphoria, by contrast, has no analog with respect to any other mental condition listed in DoDI 6130.03.

2. *Retention of Service Members Diagnosed with Gender Dysphoria.* Retention standards are typically less stringent than accession standards due to training provided and on-the-job performance data. While accession standards endeavor to predict whether a given applicant will require treatment, hospitalization, or eventual separation from service for medical unfitness, and thus tend to be more cautious, retention standards focus squarely on whether the Service member, despite his or her condition, can continue to do the job. This reflects the Department's desire to retain, as far as possible, the Service members in which it has made substantial investments and to avoid the cost of finding and training a replacement. To use an example outside of the mental health context, high blood pressure does not meet accession standards, even if it can be managed with medication, but it can meet retention standards so long as it can be managed with medication. Regardless, however, once they have completed treatment, Service members must continue to meet the standards that apply to them in order to be retained. Therefore, Service members who are diagnosed with gender dysphoria after entering military service may be retained without waiver, provided that they are willing and able to adhere to all standards associated with their biological sex, the Service member does not require gender transition, and the Service member is not otherwise non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months).[166]

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[165] DSM-5 at 455.

[166] Under Secretary of Defense for Personnel and Readiness, "DoD Retention Policy for Non-Deployable Service Members" (Feb. 14, 2018).

3. *Exempting Current Service Members Who Have Already Received a Diagnosis of Gender Dysphoria.* The Department is mindful of the transgender Service members who were diagnosed with gender dysphoria and either entered or remained in service following the announcement of the Carter policy and the court orders requiring transgender accession and retention. The reasonable expectation of these Service members that the Department would honor their service on the terms that then existed cannot be dismissed. Therefore, 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, 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. This includes transgender Service members who entered into military service after January 1, 2018, when the Carter accession policy took effect by court order. The Service member must, however, adhere to the procedures set forth in DoDI 1300.28, and may not be deemed to be non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months). While the Department believes that its commitment to these Service members, including the substantial investment it has made in them, outweigh the risks identified in this report, 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.

Conclusion

In making these recommendations, the Department is well aware that military leadership from the prior administration, along with RAND, reached a different judgment on these issues. But as the forgoing analysis demonstrates, the realities associated with service by transgender individuals are more complicated than the prior administration or RAND had assumed. In fact, the RAND study itself repeatedly emphasized the lack of quality data on these issues and qualified its conclusions accordingly. In addition, that study concluded that allowing gender transition would impede readiness, limit deployability, and burden the military with additional costs. In its view, however, such harms were negligible in light of the small size of the transgender population. But especially in light of the various sources of uncertainty in this area, and informed by the data collected since the Carter policy took effect, the Department is not convinced that these risks could be responsibly dismissed or that even negligible harms should be incurred given the Department's grave responsibility to fight and win the Nation's wars in a manner that maximizes the effectiveness, lethality, and survivability of our most precious assets—our Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen.

Accordingly, the Department weighed the risks associated with maintaining the Carter policy against the costs of adopting a new policy that was less risk-favoring in developing these recommendations. It is the Department's view that the various balances struck by the recommendations above provide the best solution currently available, especially in light of the significant uncertainty in this area. Although military leadership from the prior administration reached a different conclusion, the Department's professional military judgment is that the risks associated with maintaining the Carter policy—risks that are continuing to be better understood as new data become available—counsel in favor of the recommended approach.

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

9/14/17

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

SUBJECT: Military Service by Transgender Individuals - Interim Guidance

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

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

Attachment:
As stated

cc:
Secretary of Homeland Security

ER208
OSD011321-17/CMD015105-17

Interim Guidance

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

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

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

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

Separation and Retention of Transgender Service members:

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

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

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

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

SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1000

9/14/17

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

SUBJECT: Terms of Reference - Implementation of Presidential Memorandum on Military Service by Transgender Individuals

Reference: Military Service by Transgender Individuals – Interim Guidance

I direct the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff to lead the Department of Defense (DoD) 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 ("Presidential Memorandum"). The implementation plan will establish the policy, standards and procedures for service by transgender individuals in the military, consistent with military readiness, lethality, deployability, budgetary constraints, and applicable law.

The Deputy Secretary and the Vice Chairman, supported by a panel of experts drawn from DoD and the Department of Homeland Security (DHS) ("Panel"), shall propose for my consideration recommendations supported by appropriate evidence and information, not later than January 15, 2018. The Deputy Secretary and the Vice Chairman will be supported by the Panel, which will be comprised of the Military Department Under Secretaries, Service Vice Chiefs, and Service Senior Enlisted Advisors. The Deputy Secretary and Vice Chairman shall

OSD011320-17/CMD015104-17

designate personnel to support the Panel's work to ensure Panel recommendations reflect senior civilian experience, combat experience, and expertise in military operational effectiveness. The Panel and designated support personnel shall bring a comprehensive, holistic, and objective approach to study military service by transgender individuals, focusing on military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law. The Panel will be chaired by the Under Secretary of Defense for Personnel and Readiness and will report to the Deputy Secretary and the Vice Chairman at least every 30 days and address, at a minimum, the following three areas:

Accessions: The Presidential Memorandum directs DoD to maintain the policy currently in effect, which generally prohibits accession of transgender individuals into military service. The Panel will recommend updated accession policy guidelines to reflect currently accepted medical terminology.

Medical Care: The Presidential Memorandum halts the use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, effective March 23, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex. The 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.

Transgender Members Serving in the Armed Forces: The Presidential Memorandum directs that the Department return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016. The Presidential Memorandum also allows the Secretary to determine how to address transgender individuals currently serving in the Armed Forces. The Panel will set forth, in a single policy document, the standards and procedures applicable to military service by transgender persons, with specific attention to addressing transgender persons currently serving. The Panel will develop a universal retention standard that promotes military readiness, lethality, deployability, and unit cohesion.

To support its efforts, the Panel will conduct an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members. The study will be planned and executed to inform the Implementation Plan. The independent multi-disciplinary review and study will address aspects of medical care and treatment, personnel management, general policies and practices, and other matters, including the effects of the service of transgender persons on military readiness, lethality, deployability, and unit cohesion.

The Panel may obtain advice from outside experts on an individual basis. The recommendations of the Deputy Secretary and the Vice Chairman will be coordinated with senior civilian officials, the Military Departments, and the Joint Staff.

All DoD Components will cooperate fully in, and will support the Deputy Secretary and the Vice Chairman in their efforts, by making personnel and resources available upon request in support of their efforts.

cc:
Secretary of Homeland Security

IMMEDIATE RELEASE

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

Press Operations

Release No: NR-312-17
Aug. 29, 2017

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

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

Once the panel reports its recommendations and following my consultation with the secretary of Homeland Security, I will provide my advice to the president concerning implementation of his policy direction. In the interim, current policy with respect to currently serving members will remain in place. I expect to issue interim guidance to the force concerning the president's direction, including any necessary interim adjustments to procedures, to

ensure the continued combat readiness of the force until our final policy on this subject is issued.

Presidential Documents

Memorandum of August 25, 2017

Military Service by Transgender Individuals

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

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

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

(b) Accordingly, by the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States under the Constitution and the laws of the United States of America, including Article II of the Constitution, I am directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have the negative effects discussed above. The Secretary of Defense, after consulting with the Secretary of Homeland Security, may advise me at any time, in writing, that a change to this policy is warranted.

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

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

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

Sec. 3. *Effective Dates and Implementation.* Section 2(a) of this memorandum shall take effect on January 1, 2018. Sections 1(b) and 2(b) of this memorandum shall take effect on March 23, 2018. By February 21, 2018, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall submit to me a plan for implementing both the general policy set forth in section 1(b) of this memorandum and the specific directives

set forth in section 2 of this memorandum. The implementation plan shall adhere to the determinations of the Secretary of Defense, made in consultation with the Secretary of Homeland Security, as to what steps are appropriate and consistent with military effectiveness and lethality, budgetary constraints, and applicable law. As part of the implementation plan, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine how to address transgender individuals currently serving in the United States military. Until the Secretary has made that determination, no action may be taken against such individuals under the policy set forth in section 1(b) of this memorandum.

Sec. 4. *Severability.* If any provision of this memorandum, or the application of any provision of this memorandum, is held to be invalid, the remainder of this memorandum and other dissimilar applications of the provision shall not be affected.

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

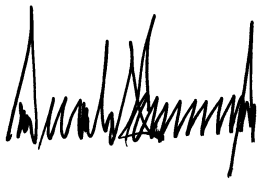
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

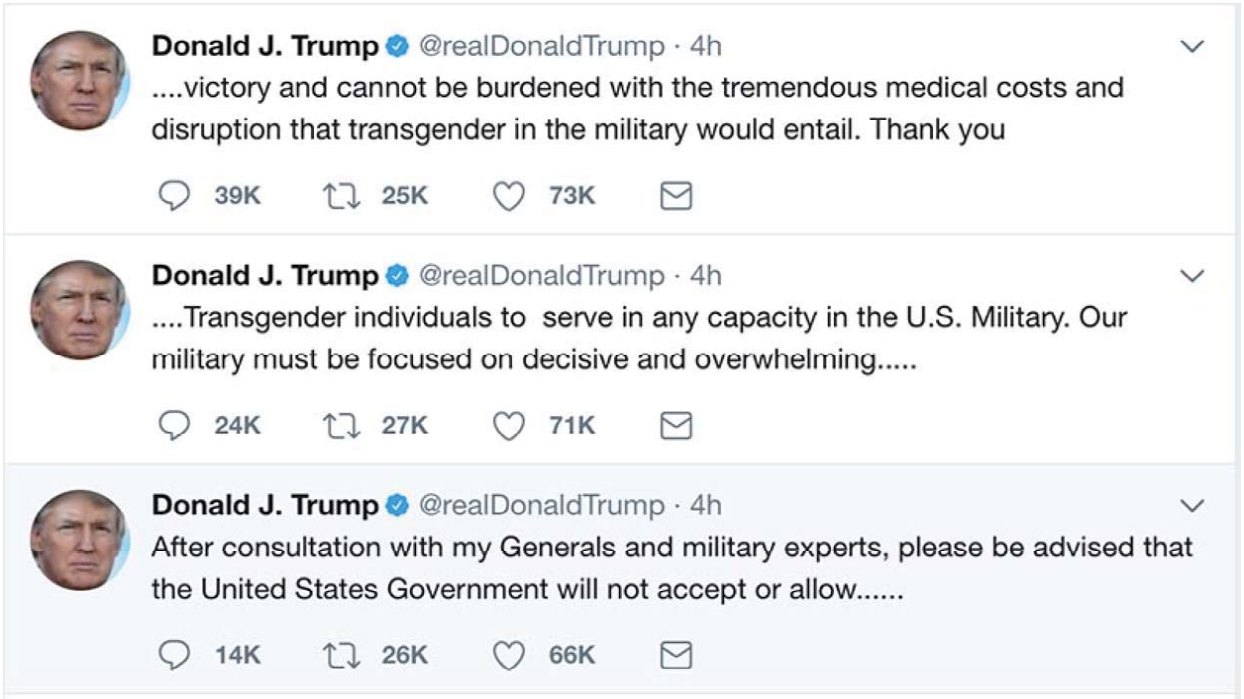
(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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



THE WHITE HOUSE,
Washington, August 25, 2017

[FR Doc. 2017–18544
Filed 8–29–17; 11:15 am]
Billing code 5001–06–P


Donald J. Trump @realDonaldTrump · 4h
....victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you
39K 25K 73K
Donald J. Trump @realDonaldTrump · 4h
....Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming.....
24K 27K 71K
Donald J. Trump @realDonaldTrump · 4h
After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow.....
14K 26K 66K

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

JUN 30 2017

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Accession of Transgender Individuals into the Military Services

Since becoming the Secretary of Defense, I have emphasized that the Department of Defense must measure each policy decision against one critical standard: will the decision affect the readiness and lethality of our armed forces? Put another way, how will the decision affect the ability of America's military forces to defend the Nation? It is against this standard that I provide the following guidance on the way forward in accessing transgender individuals into the military Services.

Under existing DoD policy, such accessions were anticipated to begin on July 1, 2017. The Deputy Secretary directed the Services to assess their readiness to begin accessions. Building upon that work and after consulting with the Service Chiefs and Secretaries, I have determined that it is necessary to defer the start of accessions for six months. We will use this additional time to evaluate more carefully the impact of such accessions on readiness and lethality. This review will include all relevant considerations.

My intent is to ensure that I personally have the benefit of the views of the military leadership and of the senior civilian officials who are now arriving in the Department. This action in no way presupposes the outcome of the review, nor does it change policies and procedures currently in effect under DoD Instruction 1300.28, "In-Service Transition for Transgender Service Members." I am confident we will continue to treat all Service members with dignity and respect.

The Under Secretary of Defense for Personnel and Readiness will lead this review and will report the results to me not later than December 1, 2017.

IMMEDIATE RELEASE

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

Press Operations

Release No: NR-250-17
June 30, 2017

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

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

DoD INSTRUCTION 1300.28

IN-SERVICE TRANSITION FOR TRANSGENDER SERVICE MEMBERS

Originating Component:	Office of the Under Secretary of Defense for Personnel and Readiness
Effective:	October 1, 2016
Releasability:	Cleared for public release. Available on the DoD Issuances Website at http://www.dtic.mil/whs/directives.
Cancels:	Secretary of Defense Memorandum, "Transgender Service Members," July 28, 2015
Approved by:	Ashton Carter, Secretary of Defense

Purpose: This issuance:

- Establishes a construct by which transgender Service members may transition gender while serving.
- Enumerates prerequisites and prescribes procedures for changing a Service member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS).
- Specifies medical treatment provisions for Active Component (AC) and Reserve Component (RC) transgender Service members.
- Implements the policies and procedures in Directive-type Memorandum 16-005.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security, by agreement with that Department, and in all regards, except as to the requirement to submit issuances implementing this issuance to the Office of the Under Secretary of Defense for Personnel and Readiness 30 days in advance of publication in accordance with Paragraphs 2.1c and 2.2e), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

1.2. POLICY.

a. DoD and the Military Departments will institute policies to provide Service members a process by which, while serving, they may transition gender. These policies are premised on the conclusion that open service by transgender persons who are subject to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming standards, deployability, and retention, is consistent with military service and readiness.

b. The Military Departments and Services recognize a Service member's gender by the member's gender marker in the DEERS. Coincident with that gender marker, the Services apply, and the member is responsible to meet, all standards for uniforms and grooming; body composition assessment (BCA); physical readiness testing (PRT); Military Personnel Drug Abuse Testing Program (MPDATP) participation; and other military standards applied with consideration of the member's gender. As to facilities subject to regulation by the military, the Service member will use those berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

c. Service members with a diagnosis from a military medical provider indicating that gender transition is medically necessary, will be provided medical care and treatment for the diagnosed medical condition. Recommendations of a military medical provider will address the severity of the Service member's medical condition and the urgency of any proposed medical treatment. Medical advice to commanders will be provided in a manner consistent with processes used for other medical conditions that may limit the Service member's performance of official duties.

d. Any medical care and treatment provided to an individual Service member in the process of gender transition will be provided in the same manner as other medical care and treatment. Nothing in this issuance will be construed to authorize a commander to deny medically necessary treatment to a Service member.

e. Any determination that a transgender Service member is non-deployable at any time will be consistent with established Military Department and Service standards, as applied to other Service members whose deployability is similarly affected in comparable circumstances unrelated to gender transition.

f. Commanders will assess expected impacts on mission and readiness after consideration of the advice of military medical providers and will address such impacts in accordance with this issuance. In applying the tools described in this issuance, a commander will not accommodate biases against transgender individuals. If a Service member is unable to meet standards or requires an exception to policy (ETP) during a period of gender transition, all applicable tools, including the tools described in this issuance, will be available to commanders to minimize impacts to the mission and unit readiness.

g. When the military medical provider determines that a Service member's gender transition is complete, and at a time approved by the commander in consultation with the transgender Service member, the member's gender marker will be changed in DEERS and the Service member will be recognized in the preferred gender.

SECTION 2: RESPONSIBILITIES

2.1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R):

a. Updates existing DoD issuances, or promulgate new issuances, as appropriate, in accordance with the provisions of this issuance.

b. Expeditiously develops and promulgates education and training materials to provide relevant, useful information for transgender Service members, commanders, military medical providers, and the force.

c. Ensures that the text of proposed revisions to existing Military Department and Service regulations, policies, and guidance, and of any proposed new Military Department and Service issuance, is consistent with this issuance.

d. Issues guidance to the Military Departments, establishing the prerequisites and procedures for changing a Service member's gender marker in DEERS.

2.2. SECRETARIES OF THE MILITARY DEPARTMENTS AND COMMANDANT, UNITED STATES COAST GUARD (USCG). The Secretaries of the Military Departments and the Commandant, USCG:

a. Adhere to all provisions of this issuance.

b. Administer their respective programs, and update existing Military Department regulations, policies, and guidance, or promulgate new issuances, as appropriate, in accordance with the provisions of this issuance.

c. Establish a Service Central Coordination Cell (SCCC) to provide multi-disciplinary (e.g., medical, legal, military personnel management) expert advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military and to assist commanders in the execution of DoD, Military Department, and Service policies and procedures.

d. Educate their AC and RC forces to ensure appropriate understanding of the policies and procedures pertaining to gender transition in the military.

e. Submit to the USD(P&R) the text of any proposed revision to existing Military Department and Service regulations, policies, and guidance, and of any proposed new issuance, not later than 30 days in advance of the proposed publication date.

f. Ensure the protection of personally identifiable information (PII) and personal privacy considerations in the implementation of this issuance and Military Department and Service regulations, policies, and guidance.

g. Implement processes for the assessment and oversight of compliance with DoD, Military Department, and Service policies and procedures applicable to service by transgender persons, in accordance with Paragraph 3.8 of this issuance.

SECTION 3: GENDER TRANSITION

3.1. SPECIAL MILITARY CONSIDERATIONS. Gender transition while serving in the military presents unique challenges associated with addressing the needs of the Service member in a manner consistent with military mission and readiness. Where possible, gender transition should be conducted such that a Service member would meet all applicable standards and be available for duty in the birth gender prior to a change in the member's gender marker in DEERS and would meet all applicable standards and be available for duty in the preferred gender after the change in gender marker. Recognizing, however, that every transition is unique, the policies and procedures set forth herein provide flexibility to the Military Departments, Services, and commanders, in addressing transitions that may or may not follow this construct. These policies and procedures are applicable, in whole or in relevant part, to those Service members who intend to begin transition, are beginning transition, who already may have started transition, and who have completed gender transition and are stable in their preferred gender.

a. Medical.

(1) In accordance with DoD Instructions (DoDIs) 6025.19 and 1215.13, all Service members have a responsibility to maintain their health and fitness, meet individual medical readiness requirements, and report to their chains of command any medical (including mental health) and health issue that may affect their readiness to deploy or fitness to continue serving in an active status.

(2) Each Service member in the AC or in the Selected Reserve will, as a condition of continued participation in military service, report significant health information to their chain of command. Service members who have or have had a medical condition that may limit their performance of official duties, must consult with a military medical provider concerning their diagnosis and proposed treatment, and must notify their commanders.

(3) As in the case of other health issues, when a Service member receives a diagnosis from a military medical provider indicating that gender transition is medically necessary, the member's notification to the commander must identify all medically necessary care and treatment that is part of the Service member's medical treatment plan and a projected schedule for such treatment, including an estimated date for a change in the member's gender marker in DEERS.

b. Gender Transition in the Military. Gender transition begins when a Service member receives a diagnosis from a military medical provider indicating that gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in the preferred gender. At that point, the Service member will be responsible for meeting all applicable military standards in the preferred gender, and as to facilities subject to regulation by the military, will use those berthing, bathroom, and shower facilities associated with the preferred gender.

c. Continuity of Medical Care. A military medical provider may determine certain medical care and treatment to be medically necessary, even after a Service member's gender marker is

changed in DEERS (e.g., cross-sex hormone therapy). A gender marker change does not preclude such care and treatment.

d. Living in Preferred Gender. Real Life Experience (RLE) is the phase in the gender transition process during which the individual commences living socially in the gender role consistent with their preferred gender. Although in civilian life this phase is generally categorized by living and working full-time in the preferred gender, consistent application of military standards will normally require that RLE occur in an off-duty status and away from the Service member's place of duty, prior to the change of a gender marker in DEERS.

e. DEERS. The Military Departments and Services recognize a Service member's gender by the member's gender marker in DEERS. Coincident with that gender marker, the Services apply, and the member is responsible to meet, all standards for uniforms and grooming; BCA; PRT; MPDATP participation; and other military standards applied with consideration of the member's gender. As to facilities subject to regulation by the military, the Service member will use those berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

f. Military Readiness. Unique to military service, the commander is responsible and accountable for the overall readiness of his or her command. The commander is also responsible for the collective morale and welfare and good order and discipline of the unit, the command climate, and for ensuring that all members of the command are treated with dignity and respect. When a commander receives any request from a Service member that entails a period of non-availability for duty (e.g., necessary medical treatment, ordinary leave, emergency leave, temporary duty, other approved absence), the commander must consider the individual need associated with the request and the needs of the command, in making a decision on that request.

3.2. ROLES AND RESPONSIBILITIES. The individual Service member, the military medical provider, the commander, and each of the Military Departments have crucial roles and responsibilities in the process of gender transition in the military.

a. Service Member's Role.

(1) Secure a medical diagnosis from a military medical provider.

(2) Notify the commander of a diagnosis indicating that gender transition is medically necessary, and identify all medically necessary treatment that is part of the member's medical treatment plan and a projected schedule for such treatment, including an estimated date for a change in the member's gender marker in DEERS, as set forth in Paragraph 3.1.a.

(3) Notify the commander of any change to the medical treatment plan, the projected schedule for **such** treatment, or the estimated date on which the member's gender marker would be changed in DEERS.

b. Military Medical Provider's Role.

(1) Establish the member's medical diagnosis, recommend medically necessary care and treatment, and, in consultation with the Service member, develop a medical treatment plan associated with the Service member's gender transition, as set forth in Paragraph 3.1.a, for submission to the commander.

(2) In accordance with established military medical practices, advise the commander on the medical diagnosis applicable to the Service member, including the provider's assessment of the medically necessary care and treatment, the urgency of the proposed care and treatment, the likely impact of the care and treatment on the individual's readiness and deployability, and the scope of the human and functional support network needed to support the individual.

(3) In consultation with the Service member, formally advise the commander when the Service member's gender transition is complete, and recommend to the commander a time at which the member's gender marker may be changed in DEERS.

(4) Provide the Service member with medically necessary care and treatment after the member's gender marker has been changed in DEERS.

c. Commander's Role.

(1) Review a Service member's request to transition gender. Ensure, as appropriate, a transition process that:

(a) Complies with DoD, Military Department, and Service regulations, policies, and guidance.

(b) Considers the individual facts and circumstances presented by the Service member.

(c) Ensures military readiness by minimizing impacts to the mission (including deployment, operational, training, and exercise schedules, and critical skills availability), as well as to the morale and welfare, and good order and discipline of the unit.

(d) Is consistent with the medical treatment plan.

(e) Incorporates consideration of other factors, as appropriate.

(2) Coordinate with the military medical provider regarding any medical care or treatment provided to the Service member, and any medical issues that arise in the course of a Service member's gender transition.

(3) Consult with the SCCC with regard to service by transgender Service members and gender transition in the military, the execution of DoD, Military Department, and Service policies and procedures, and assessment of the means and timing of any proposed medical care or treatment.

d. Role of the Military Department and the USCG.

(1) Establish policies and procedures in accordance with this issuance, outlining the actions a commander may take to minimize impacts to the mission and ensure continued unit readiness in the event that a transitioning individual is unable to meet standards or requires an ETP during a period of gender transition. Such policies and procedures may address the means and timing of transition, procedures for responding to a request for an ETP prior to the change of a Service member's gender marker in DEERS, appropriate duty statuses, and tools for addressing any inability to serve throughout the gender transition process. Any such actions available to the commander will consider and balance the needs of the individual and the needs of the command in a manner comparable to the actions available to the commander in addressing comparable Service member circumstances unrelated to gender transition. Such actions may include:

(a) Adjustments to the date on which the Service member's gender transition, or any component of the transition process, will commence.

(b) Advising the Service member of the availability of options for extended leave status or participation in other voluntary absence programs during the transition process.

(c) Arrangements for the transfer of the Service member to another organization, command, location, or duty status (e.g., Individual Ready Reserve), as appropriate, during the transition process.

(d) ETPs associated with changes in the member's physical appearance and body composition during gender transition, such as accommodations in the application of standards for uniforms and grooming, BCA, PRT, and MPDATP participation.

(e) Establishment of, or adjustment to, local policies on the use of berthing, bathroom, and shower facilities subject to regulation by the military, during the transition process.

(f) Referral for a determination of fitness in the disability evaluation system in accordance with DoDI 1332.18.

(g) Other actions, including the initiation of administrative or other proceedings, comparable to actions that could be initiated with regard to others whose ability to serve is similarly affected for reasons unrelated to gender transition.

(2) Establish policies and procedures, consistent with this issuance, whereby a Service member's gender marker will be changed in DEERS based on a determination by the military medical provider that the Service member's gender transition is complete; receipt of written approval from the commander, issued in consultation with the Service member; and production by the Service member of documentation indicating gender change. Such documentation is limited to:

(a) A certified true copy of a State birth certificate reflecting the Service member's preferred gender;

(b) A certified true copy of a court order reflecting the Service member's preferred gender; or

(c) A United States passport reflecting the member's preferred gender.

(3) When the Service member's gender marker in DEERS is changed:

(a) Apply uniform standards, grooming standards, BCA standards, PRT standards, MPDATP standards, and other standards applied with consideration of the member's gender, applicable to the Service member's gender as reflected in DEERS.

(b) As to facilities that are subject to regulation by the military, direct the use of berthing, bathroom, and shower facilities according to the Service member's gender marker as reflected in DEERS.

3.3. GENDER TRANSITION APPROVAL PROCESS.

a. A Service member on active duty, who receives a diagnosis from a military medical provider for which gender transition is medically necessary may, in consultation with the military medical provider and at the appropriate time, request that the commander approve:

(1) The timing of medical treatment associated with gender transition;

(2) An ETP associated with gender transition, consistent with Paragraph 3.2.d, and/or

(3) A change to the Service member's gender marker in DEERS.

b. The commander, informed by the recommendations of the military medical provider, the SCCC, and others, as appropriate, will respond to the request within a framework that ensures readiness by minimizing impacts to the mission (including deployment, operational, training, exercise schedules, and critical skills availability), as well as to the morale and welfare and good order and discipline of the command.

c. Consistent with applicable law, regulation, and policy, the commander will:

(1) Comply with the provisions of this issuance, and with Military Department and Service regulations, policies, and guidance, and consult with the SCCC.

(2) Promptly respond to any request for medical care, as identified by the military medical provider, and ensure that such care is provided consistent with applicable regulations.

(3) Respond to any request for medical treatment or an ETP associated with gender transition, as soon as practicable, but not later than, 90 days after receiving a request determined to be complete in accordance with the provisions of this issuance and Military Department and Service regulations, policies, and guidance. The response will be in writing; include notice of any actions taken by the commander in accordance with applicable regulations, policies, and guidance and the provisions of this issuance; and will be provided to both the Service member

and their military medical provider. A request that, upon review by the commander, is determined to be incomplete, will be returned to the Service member, with written notice of the deficiencies identified, as soon as practicable, but not later than 30 days after receipt.

(4) At any time prior to the change of the Service member's gender marker in DEERS, the commander may modify a previously approved approach to, or an ETP associated with, gender transition. A determination that modification is necessary and appropriate will be made in accordance with the procedures, and upon review and consideration of the factors set forth in Paragraph 3.2.c of this issuance. Notice of such modification will be provided to the Service member under procedures established by the Secretary of the Military Department concerned, and may include options as set forth in Paragraph 3.2.d.

(5) The commander will approve, in writing, the change of a Service member's gender marker in DEERS, subsequent to receipt of the recommendation of the military medical provider that the member's gender marker be changed and receipt of the requisite documentation from the Service member. Upon submission of the commander's written approval to the appropriate personnel servicing activity, the change in the Service member's gender marker will be entered in the database and transmitted to and updated in DEERS, under the authority, direction, and control of the Defense Manpower Data Center.

d. As authorized by Military Department and Service regulations, policies, and guidance implementing this issuance, a Service member may request review by a senior officer in the chain of command, of a subordinate commander's decision with regard to any request under this issuance and any subsequent modifications to that decision.

3.4. ADDITIONAL RC CONSIDERATIONS.

a. General. Excepting only those special considerations set forth below, RC personnel are subject to all policies and procedures applicable to AC Service members as set forth in this issuance and in Military Department and Service regulations, policies, and guidance implementing this issuance.

b. Gender transition approach. All RC Service members (except Selected Reserve full-time support personnel) identifying as transgender individuals, will submit to, and coordinate with their chain of command, evidence of a medical evaluation that includes a medical treatment plan. Selected Reserve full-time support personnel will follow the gender transition approval process set forth in Paragraph 3.3.

c. Medical treatment plans. A medical treatment plan established by a civilian medical provider will be subject to review and approval by a military medical provider.

d. Selected Reserve Drilling Member Participation. To the greatest extent possible, commanders and Service members will address periods of non-availability for any period of military duty, paid or unpaid, during the member's gender transition with a view to mitigating unsatisfactory participation. In accordance with DoDI 1215.13, such mitigation strategies may include:

(1) Rescheduled training.

(2) Authorized absences.

(3) Alternate training.

e. Delayed Training Program. Delayed Training Program personnel must be advised by recruiters and commanders of limitations resulting from being non-duty qualified. As appropriate, Service members in the Delayed Training Program may be subject to the provisions of Paragraph 3.5 of this issuance.

f. Split Option Training. When authorized by the Military Department concerned, Service members who elect to complete basic and specialty training over two non-consecutive periods may be subject to the provisions of Paragraph 3.5 of this issuance.

3.5. INITIAL ENTRY TRAINING AND CONSIDERATIONS ASSOCIATED WITH THE FIRST TERM OF SERVICE.

a. A blanket prohibition on gender transition during a Service member's first term of service is not permissible. However, the Department recognizes that the All-Volunteer Force readiness model is largely based on those newly accessed into the military being ready and available for multiple training and deployment cycles during their first term of service. This readiness model may be taken into consideration by a commander in evaluating a request for medical care or treatment or an ETP associated with gender transition during a Service member's first term of service. Any other facts and circumstances related to an individual Service member that impact that model will be considered by the commander as set forth in this issuance and implementing Military Department and Service regulations, policies, and guidance.

b. The following policies and procedures apply to Service members during the first term of service and will be applied to Service members with a diagnosis indicating that gender transition is medically necessary in the same manner, and to the same extent, as to Service members with other medical conditions that have a comparable impact on the member's ability to serve:

(1) A Service member is subject to separation in an entry-level status during the period of initial training (defined as 180 days per DoDI 1332.14) based on a medical condition that impairs the Service member's ability to complete such training.

(2) An individual participant is subject to separation from the Reserve Officers' Training Corps in accordance with DoDI 1215.08, or from a Service Academy in accordance with DoDI 1322.22, based on a medical condition that impairs the individual's ability to complete such training or to access into the Armed Forces, under the same terms and conditions applicable to participants in comparable circumstances not related to transgender persons or gender transition. As with all cadets or midshipmen who experience a medical condition while in the Reserve Officers' Training Corps Program or at a Service Academy, each situation is unique and will be evaluated based on its individual circumstances; however, the individual will be required

to meet medical accession standards as a prerequisite to graduation and appointment in the Armed Forces.

(3) A Service member is subject to administrative separation for a fraudulent or erroneous enlistment or induction when warranted and in accordance with DoDI 1332.14, based on any deliberate material misrepresentation, omission, or concealment of a fact, including a medical condition, that if known at the time of enlistment, induction, or entry into a period of military service, might have resulted in rejection.

(4) If a Service member requests non-urgent medical treatment or an ETP associated with gender transition during the first term of service, including during periods of initial entry training in excess of 180 days, the commander may give the factors set forth in Paragraph 3.5.a significant weight in considering and balancing the individual need associated with the request and the needs of the command, in determining when such treatment, or whether such ETP may commence in accordance with Paragraph 3.2.d.

3.6. PROTECTION OF PII AND PROTECTED HEALTH INFORMATION.

a. In accordance with DoDD 5400.11, in cases in which there is a need to collect, use, maintain, or disseminate PII in furtherance of this issuance or Military Department and Service regulations, policies, or guidance, the Military Departments and the USCG will protect against unwarranted invasions of personal privacy and the unauthorized disclosure of such PII. The Military Departments and the USCG will maintain such PII so as to protect individual's rights, consistent with federal law, regulation, and policy.

b. Disclosure of protected health information will be consistent with DoD 6025.18-R.

3.7. PERSONAL PRIVACY CONSIDERATIONS. A commander may employ reasonable accommodations to respect the privacy interests of Service members.

3.8. ASSESSMENT AND OVERSIGHT OF COMPLIANCE.

a. The Secretaries of the Military Departments and the Commandant, USCG, will implement processes for the assessment and oversight of compliance with DoD, Military Department, and Service policies and procedures applicable to service by transgender persons.

b. Beginning in 2018 and no less frequently than triennially thereafter, Secretaries of the Military Departments and the Commandant, USCG, will direct an Inspector General Special Inspection of compliance with this issuance and implementing Military Department or USCG regulations, policies, and guidance. The directing official will review the Report of Inspection for purposes of assessing and overseeing compliance; identifying compliance deficiencies, if any; timely initiating corrective action, as appropriate; and deriving best practices and lessons learned.

GLOSSARY

G.1. ACRONYMS.

AC	Active Component
BCA	body composition assessment
DEERS	Defense Enrollment Eligibility Reporting System
DoDI	DoD instruction
ETP	exception to policy
MPDATP	military personnel drug abuse testing program
PII	personally identifiable information
PRT	physical readiness testing
RLE	real life experience
RC	Reserve Component
SCCC	Service Central Coordination Cell
USCG	United States Coast Guard
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

cross-sex hormone therapy. The use of feminizing hormones in an individual assigned male at birth based on traditional biological indicators or the use of masculinizing hormones in an individual assigned female at birth. A common medical treatment associated with gender transition.

gender marker. Data element in DEERS that identifies a Service member's gender. A Service member is expected to adhere to all military standards associated with the member's gender marker in DEERS and use military berthing, bathroom, and shower facilities in accordance with the DEERS gender marker.

gender transition is complete. A Service member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the preferred gender.

gender transition process. Gender transition in the military begins when a Service member receives a diagnosis from a military medical provider indicating that the member's gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in the preferred gender.

human and functional support network. Support network for a Service member that may be informal (e.g., friends, family, co-workers, social media.) or formal (e.g., medical professionals, counselors, clergy).

medically necessary. Those health-care services or supplies necessary to prevent, diagnose, or treat an illness, injury, condition, disease, or its symptoms, and that meet accepted standards of medicine.

non-urgent medical care. The care required to diagnose and treat problems that are not life or limb threatening or that do not require immediate attention.

preferred gender. The gender in which a transgender Service member will be recognized when that member's gender transition is complete and the member's gender marker in DEERS is changed.

RLE. The phase in the gender transition process during which the individual commences living socially in the gender role consistent with their preferred gender. RLE may or may not be preceded by the commencement of cross-sex hormone therapy, depending on the medical treatment associated with the individual Service member's gender transition. The RLE phase is also a necessary precursor to certain medical procedures, including gender transition surgery. RLE generally encompasses dressing in the new gender, as well as using preferred gender berthing, bathroom, and shower facilities.

SCCC. Service-level cell of experts created to provide multi-disciplinary (e.g., medical, legal) advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military.

stable in the preferred gender. Medical care identified or approved by a military medical provider in a documented medical treatment plan is complete, no functional limitations or complications persist, and the individual is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning. Continuing medical care, including but not limited to cross-sex hormone therapy, may be required to maintain a state of stability.

transgender Service member. A Service member who has received a medical diagnosis indicating that gender transition is medically necessary, including any Service member who intends to begin transition, is undergoing transition, or has completed transition and is stable in the preferred gender.

transition. Period of time when individuals change from the gender role associated with their sex assigned at birth to a different gender role. For many people, this involves learning how to live socially in another gender role; for others this means finding a gender role and expression that are most comfortable for them. Transition may or may not include feminization or masculinization of the body through cross-sex hormone therapy or other medical procedures. The nature and duration of transition are variable and individualized.

urgent medical care. The care needed to diagnose and treat serious or acute medical conditions that pose no immediate threat to life and health, but require medical attention within 24 hours.

REFERENCES

Directive-type Memorandum 16-005, "Military Service of Transgender Service Members," July 1, 2016

DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 24, 2003

DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014

DoD Instruction 1215.08, "Senior Reserve Officers' Training Corps (ROTC) Programs," June 26, 2006

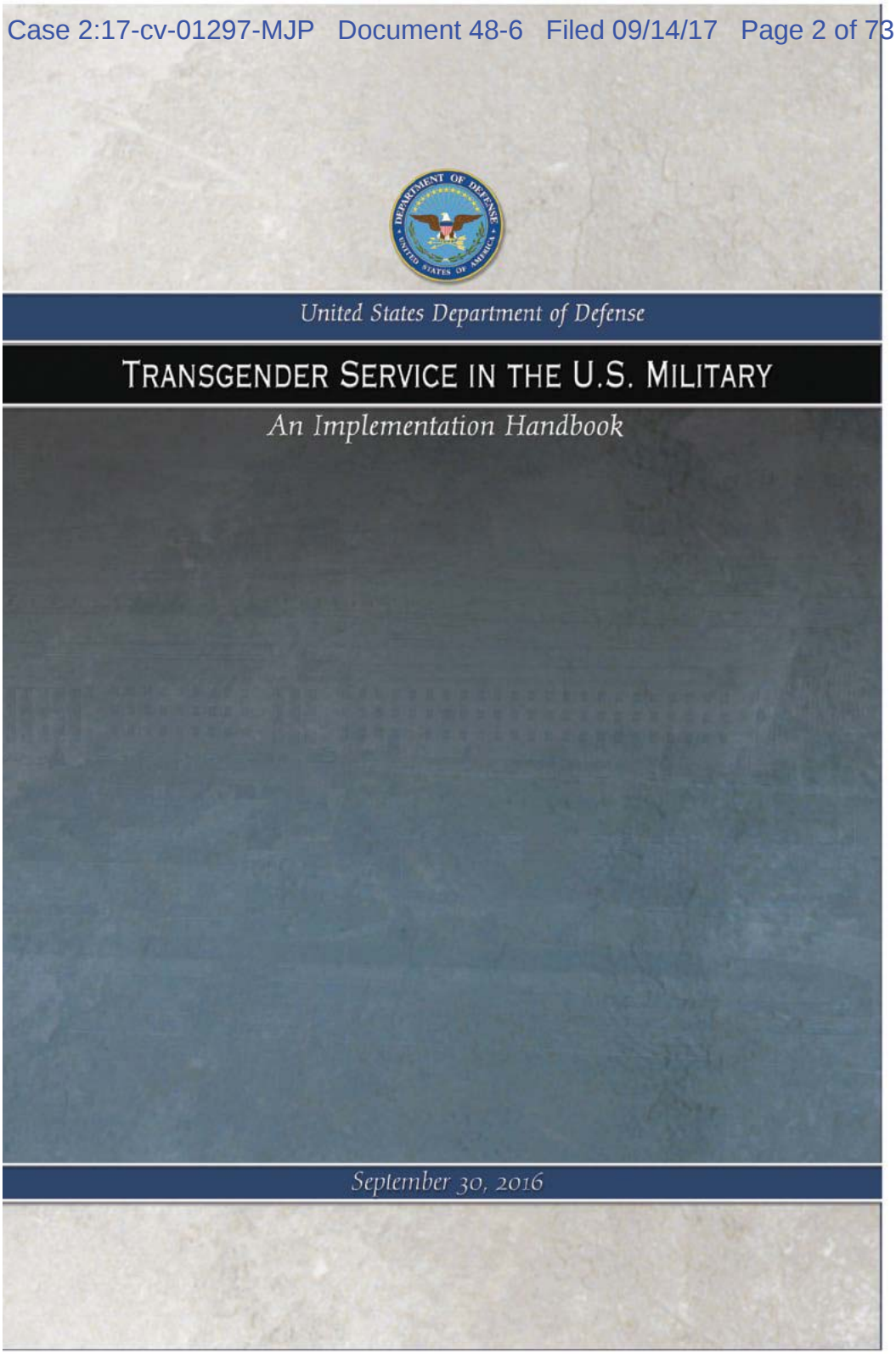
DoD Instruction 1215.13, "Ready Reserve Member Participation Policy," May 5, 2015

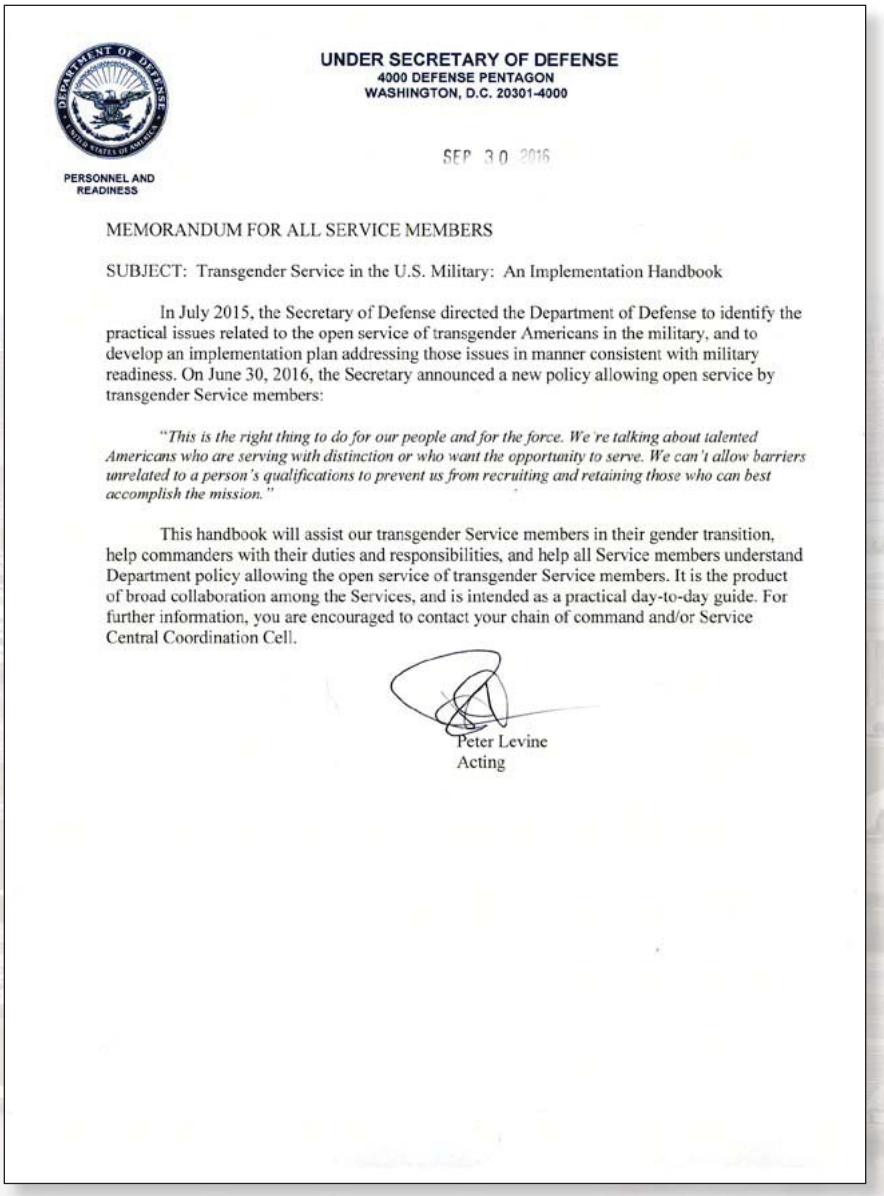
DoD Instruction 1322.22, "Service Academies," September 24, 2015

DoD Instruction 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended

DoD Instruction 1332.18, "Disability Evaluation System (DES)," August 5, 2014

DoD Instruction 6025.19, "Individual Medical Readiness (IMR)," June 9. 2014


United States Department of Defense
TRANSGENDER SERVICE IN THE U.S. MILITARY
An Implementation Handbook
September 30, 2016



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND READINESS

SEP 30 2016

MEMORANDUM FOR ALL SERVICE MEMBERS

SUBJECT: Transgender Service in the U.S. Military: An Implementation Handbook

In July 2015, the Secretary of Defense directed the Department of Defense to identify the practical issues related to the open service of transgender Americans in the military, and to develop an implementation plan addressing those issues in manner consistent with military readiness. On June 30, 2016, the Secretary announced a new policy allowing open service by transgender Service members:

"This is the right thing to do for our people and for the force. We're talking about talented Americans who are serving with distinction or who want the opportunity to serve. We can't allow barriers unrelated to a person's qualifications to prevent us from recruiting and retaining those who can best accomplish the mission."

This handbook will assist our transgender Service members in their gender transition, help commanders with their duties and responsibilities, and help all Service members understand Department policy allowing the open service of transgender Service members. It is the product of broad collaboration among the Services, and is intended as a practical day-to-day guide. For further information, you are encouraged to contact your chain of command and/or Service Central Coordination Cell.

Peter Levine
Acting

TRANSGENDER SERVICE IN THE U.S. MILITARY

An Implementation Handbook

September 30, 2016

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TRANSGENDER SERVICE IN THE US MILITARY:

An Implementation Handbook

Our mission is to defend this country, and we don't want barriers unrelated to a person's qualification to serve preventing us from recruiting or retaining the Soldier, Sailor, Airman, or Marine who can best accomplish the mission. We have to have access to 100 percent of America's population for our all-volunteer force to be able to recruit from among them the most highly qualified—and to retain them…Starting today: Otherwise qualified Service members can no longer be involuntarily separated, discharged, or denied reenlistment or continuation of service just for being transgender.

—Statement by Secretary of Defense Ash Carter[1]

1 U.S. Secretary of Defense Ash Carter, "Secretary of Defense Ash Carter Remarks Announcing Transgender Policy Changes," June 30, 2016.

BACKGROUND

The handbook is designed to assist our transgender Service members in their gender transition, help commanders with their duties and responsibilities, and help all Service members understand new policies enabling the open service of transgender Service members. The handbook includes advice, questions and answers, and scenarios.

This handbook outlines some of the issues faced by commanders, transgender Service members, and the Military Services; it does not have all of the solutions – individual circumstances will vary. It is an administrative management tool, and is not a health management tool or policy document. Additional key parts of this handbook include: Annex A, which contains questions and answers to help with understanding specific terms and words; Annex B, which provides step-by-step details of the gender transition process; Annex C, which highlights situation-based scenarios that may be useful for training situations; and Annex D, which provides links to additional resources. For specific policies refer to Department of Defense Instruction (DoDI) 1300.28,[2] Directive-type Memorandum (DTM) 16-005,[3] Service policies, and/or Service Central Coordination Cells (SCCC).[4]

2 DoD Instruction (DoDI) 1300.28, "In-Service Transition for Service Members Identifying as Transgender," June 30, 2016.

3 Directive-type Memorandum (DTM), 16-005, "Military Service of Transgender Service Members," June 30, 2016.

4 See Annex D for SCCC contact information.

INTRODUCTION

Sex and gender are different. Sex is whether a person is male or female through their biology. Gender is the socially defined roles and characteristics of being male and female associated with that sex. There are a number of people for whom these associations do not match. This feeling may arise in childhood, adolescence or adulthood and may result in gender dysphoria. Sometimes people's gender identity does not match their sex at birth.

Gender dysphoria is a medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex assigned at birth. The condition can manifest in a person as strong and persistent cross-gender identification and a discomfort with their biological sex, or a sense of inappropriateness in the gender role of that sex. Transgender Service members may face challenges centered on their own personal situation and/or others' unfamiliarity with gender identity issues.

POLICY

In July 2015, the Secretary of Defense directed the Department of Defense to identify the practical issues related to transgender Americans serving openly in the military and to develop an implementation plan that addresses those issues consistent with military readiness. On June 30, 2016, the Secretary announced a new policy[5] allowing open service of transgender Service members and outlined three reasons[6] for this policy change:

- The Army, Navy, Air Force, Marine Corps, and Coast Guard need to avail themselves of all available talent in order to remain the finest fighting force the world has ever known. The mission to defend this country requires that the Services do not have barriers unrelated to a person's qualification to serve or preventing the Department of Defense (DoD) from recruiting or retaining Service members.
- There are transgender Service members in uniform today. DoD has a responsibility to them and their commanders to provide clearer and more consistent guidance.
- Individuals who want to serve and can meet the Department's standards should be afforded the opportunity to compete to do so.

This handbook will explain the framework by which transgender Service members may transition gender while serving.

5 DoDI 1300.28 and DTM 16-005.

6 U.S. Secretary of Defense Ash Carter Remarks, June 30, 2016.

TERMS AND DEFINITIONS

The following terms are associated with open service by transgender individuals. The list is not all-inclusive. The definitions are consistent with those in the new policy.

Cross-sex hormone therapy. The use of feminizing hormones in an individual assigned male at birth based on traditional biological indicators or the use of masculinizing hormones in an individual assigned female at birth. A common medical treatment associated with gender transition.

Gender dysphoria. A medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex assigned at birth.

Gender identity. One's internal or personal sense of being male or female.

Gender marker. Data element in the Defense Enrollment Eligibility Reporting System (DEERS) that identifies a Service member's gender. A Service member must meet all military standards associated with the member's gender marker in DEERS and use military berthing, bathroom, and shower facilities in accordance with the DEERS gender marker.[7]

Gender transition is complete. A Service member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the preferred gender.

Gender transition process. Gender transition in the military begins when a Service member receives a diagnosis from a military medical provider indicating that the member's gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in the preferred gender.

Human and functional support network. Support network for a Service member that may be informal (e.g., friends, family, co-workers, social media.) or formal (e.g., medical professionals, counselors, clergy).

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7 While the gender marker change is reflected in DEERS, the Services' personnel data systems are the means to input gender; as such, the remainder of this handbook refers to 'Services' personnel data systems'.

Medically necessary. Those health care services or supplies necessary to prevent, diagnose, or treat an illness, injury, condition, disease, or its symptoms and that meet accepted standards of medical care.

Non-urgent medical care. The care required to diagnose and treat problems that are not life or limb threatening or that do not require immediate attention.

Preferred gender. The gender of a transgender Service member when gender transition is complete and the gender marker in DEERS is changed.

Real life experience (RLE). The phase in the gender transition process when the individual commences living socially in the gender role consistent with their preferred gender. RLE may or may not be preceded by the commencement of cross-sex hormone therapy, depending on the individual gender transition medical treatment plan. The RLE phase is also a necessary precursor to certain medical procedures, including gender transition surgery. RLE generally encompasses dressing in the new gender, as well as using preferred gender berthing, bathroom, and shower facilities.[8]

Service Central Coordination Cell (SCCC). Service-level cell of experts created to provide multi-disciplinary (e.g., medical, legal) advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military.[9]

Stable in the preferred gender. Medical care identified or approved by a military medical provider in a documented medical treatment plan is complete, no functional limitations or complications persist, and the individual is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning. Continuing medical care, including but not limited to cross-sex hormone therapy, may be required to maintain a state of stability.

Transgender Service member. A Service member who has received a medical diagnosis indicating that gender transition is medically necessary, including any Service member who intends to begin transition, is undergoing transition, or has completed transition and is stable in the preferred gender.

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8 RLE intended to occur off duty; however, exceptions to policy may be granted. Consult Service policy for specifics.

9 A complete listing with SCCC contact information can be found at Annex D.

THE BASICS

Sex and gender are different. Sex is the assignment made at birth as male or female, based on anatomy. Gender identity is an individual's internal sense of being male or female. Gender role or expression is the socially defined roles and characteristics of being male and female associated with that sex. For most people, gender identity and expression are consistent with their sex assigned at birth. However, in transgender individuals, gender identity and/or expression differs from their sex assigned at birth.

Gender dysphoria is a medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex assigned at birth.

Broadly, the term "transgender person" refers to individuals whose internal sense of being male or female (gender identity) is different from the sex they were assigned at birth. Some transgender individuals feel compelled to align their external appearance with their gender identity and undergo transition to the preferred gender. Gender transition care is individualized and can include psychotherapy, hormone therapy, RLE, and sex reassignment surgery.

Traditionally, society has had little understanding of what it means to transition gender. Many transitioning people have been subjected to hostility, ridicule, and discrimination. Every person has the right to have their gender identity recognized and respected, and all Service members who receive a diagnosis that gender transition is medically necessary will be provided with support and management to transition, within the bounds of military readiness.

Gender transition is the process a person goes through to live fully in their preferred gender. Gender transition in the military may present challenges associated with addressing the needs of the Service member while preserving military readiness. The oversight and management of the gender transition process is a team effort with the commander, the Service member, and the military medical provider (MMP). DoD values the contributions of all Service members and tries to ensure all are as medically ready as possible throughout their service. Individual readiness is a key to Total Force readiness.

Gender Transition Approval Process Overview

Gender transition is highly individualized. Figure 1 outlines the main components. Generally, the gender transition process includes:

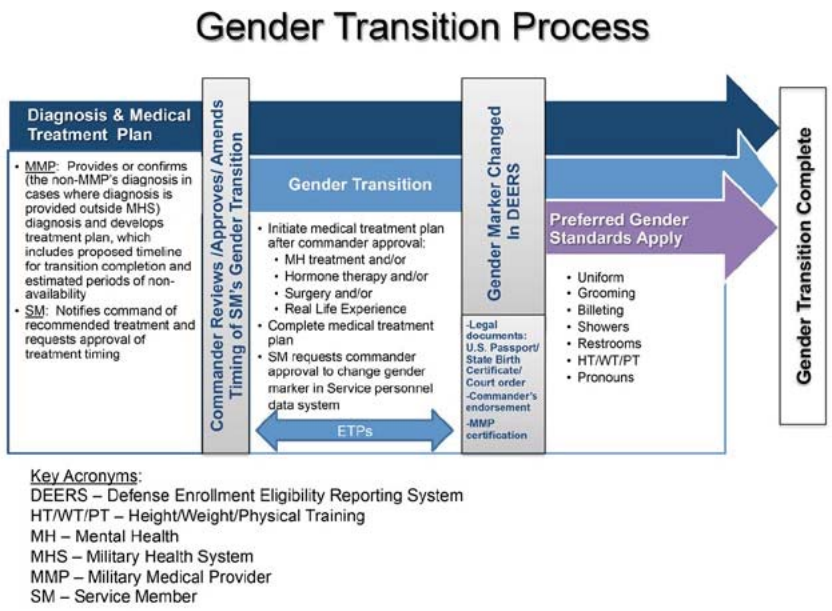
- Diagnosis and medical treatment plan received from or validated by an MMP;
- Gender transition (initiate medical treatment plan, complete medical treatment plan, Service member requesting gender marker change); and
- Compliance with gender standards post-gender marker change.

The process depicted is only a framework and Service members may progress on varying timelines. The commander, informed by the recommendations of the MMP, the SCCC, and others, as appropriate, will respond to the request to transition gender while ensuring readiness by minimizing impacts to the mission (including deployment, operations, training, exercise schedules, and critical skills availability), as well as to the morale and welfare and good order and discipline of the command.

Within this framework, the commander plays a key role in making recommendations and taking action on:

- The timing of medical treatment associated with gender transition;
- Timing of RLE (e.g., non-duty hours, duty hours with an exception to policy (ETP))
- Requested ETPs associated with gender transition; and
- A change to the Service member's gender marker in their Service's personnel data system.

Figure 1: Gender Transition Process



Key Acronyms:
DEERS – Defense Enrollment Eligibility Reporting System
HT/WT/PT – Height/Weight/Physical Training
MH – Mental Health
MHS – Military Health System
MMP – Military Medical Provider
SM – Service Member

FOR THE TRANSGENDER SERVICE MEMBER

"…the reality is that we have transgender Service members serving in uniform today, and I have a responsibility to them and their commanders to provide them both with clearer and more consistent guidance than is provided by current policies."

—Statement by Secretary of Defense Ash Carter[10]

DoD's revised transgender Service member policy ensures your medical care is brought into the military health system (MHS), protects your privacy when receiving medical care, and establishes a structured process whereby you may transition gender when medically necessary.

In-Service Transition

Gender transition in the military begins when you receive a diagnosis from an MMP indicating that gender transition is medically necessary and concludes when you change your gender marker in your Service's personnel data system. Your commander is a critical part of your transition and much of this section will highlight his/her role. The table below outlines responsibilities for both Active and Reserve Component Service members requesting in-service transition. To make a request, you must:

10 U.S. Secretary of Defense Ash Carter Remarks, June 30, 2016.

Active Component & Reserve Component Uniformed Full-Time Support Personnel	Reserve Component (All Others)
1. Secure a medical diagnosis and a medical treatment plan from your MMP. If the diagnosis and treatment plan are from a non-military medical provider (non-MMP), you are required to notify your MMP at the earliest practical opportunity to bring your care into the MHS. Your MMP will review, and if appropriate validate the non-MMP's diagnosis and treatment plan.	1. Secure a medical diagnosis and a medical treatment plan from your non-MMP.
2. Notify your commander of the diagnosis and medical treatment plan indicating that gender transition is medically necessary. Work with your commander and your MMP to develop a transition plan that includes a timeline for treatment and an estimated date for a change of your gender marker in your Service's personnel data system.	2. Notify your commander of the diagnosis and medical treatment plan, indicating that gender transition is medically necessary. Work with your commander to have an MMP validate the non-MMP's diagnosis and treatment plan and develop a transition plan that includes a timeline for treatment and an estimated date for a change of your gender marker in your Service's personnel data system.
3. Notify your commander of any changes to the medical treatment plan, the projected schedule for such treatment, any exceptions to policy (ETP) you may request, and the estimated date on which your gender marker would be changed in your Service's personnel data system.	3. Same as AC.
4. Obtain one of the following to change your gender marker in your Service's personnel data system: ■ A certified true copy of a state birth certificate reflecting your preferred gender; or ■ A certified true copy of a court order reflecting your preferred gender; or ■ A U.S. Passport reflecting your preferred gender.	4. Same as AC.

Active Component & Reserve Component Uniformed Full-Time Support Personnel	Reserve Component (All Others)
5. Obtain your MMP's confirmation that gender transition is complete.[11]	5. Obtain a non-MMP confirmation that your gender transition is complete, then validate with an MMP (in concert with commander).
6. Obtain written approval from your commander to change your gender marker in your service's personnel data system.	6. Same as AC.
7. Submit paperwork to your personnel administrative office once you have all the required documentation and your commander's written approval to obtain your gender marker change.	7. Same as AC.
8. Meet all applicable military standards in your preferred gender (to include using military berthing, bathroom, and shower facilities), when your gender marker is changed in your Service's personnel data system.	8. Same as AC.
9. Adhere to the ongoing medical treatment plan developed by your MMP to address continuing medical needs, including follow-up visits related to continuous hormone treatment and routine health screening.[12]	9. Adhere to the ongoing medical treatment plan developed by your non-MMP to address continuing medical needs, including follow-up visits related to continuous hormone treatment and routine health screening.

11 In DoDI 1300.28, gender transition is complete when a Service member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the preferred gender.

12 The MMP (or non-MMP, if you are not on active duty) may determine certain aspects of your medical care and treatment to be medically necessary, even after your gender marker is changed in your Service's personnel data system (e.g., cross-sex hormone therapy). A gender marker change does not prohibit you from receiving further care and treatment.

Communication

It is vital that you are open and honest with your leadership when discussing the gender transition process. This will enable you to convey your needs as well as address any questions or concerns from your leadership.

Communication with colleagues is equally important as they may not be familiar or comfortable with gender transition. It is important to remember that while you have had many months, probably years, to understand your need to transition, this may be the first time your colleagues have encountered gender transition. They may have difficulty understanding the reasons and the process.

There are many ways to respectfully disclose your gender identity to your colleagues. How and when you wish to tell your coworkers is something you will need to discuss with your commander and/or your MMP. It is important to state what information you are open to discussing and what information you wish to remain private. Communication strategies could include:

- Ask your leadership to convene a unit meeting and make an announcement on your behalf. Have health professionals and/or chaplains available to answer questions;
- Share a letter from you with your unit;
- Distribute a letter or notification via email; and/or
- Make the announcement in person at a unit meeting.

Finding a Mentor

Similar to seeking a mentor to assist and guide in career/professional development, it may be advisable to seek a mentor to assist you in your transition. A mentor should be someone familiar with the process you are undertaking. If possible, choose someone from your peer group or military pay grade. If you cannot find your own potential mentor(s), consider seeking recommendations from your commander, a chaplain, or medical professional. Below are some areas where a mentor may be beneficial:

- Providing advice on military issues related to the correct wear of your preferred gender uniform and related grooming issues;
- Being a supportive sounding board;

- Providing frank and honest advice; and
- Being a unit point of contact, or conduit, for questions from the workplace related to gender transition.

Considerations

Below are some career considerations that you may wish to take into account.

Period of Adjustment
Early on in your transition you may need to consider that adjusting your appearance and grooming can take some time. During this period of transition, it may be appropriate to discuss periods of authorized absence with your commander and the MMP.

For most of your transition, you should not need to use convalescent leave; however, you may require some time to recover from certain medical or surgical treatments. Accordingly, when convalescent leave is recommended, ensure you have coordinated with your unit leadership, administrative personnel, and medical personnel.

Impact Transitioning May Have on Your Career
Transitioning gender may have an impact on several different aspects of your career including deployability, assignment considerations, medical classification, and aspects of individual readiness (e.g., physical fitness, body composition assessment, and professional military education attendance). Since the impact to your career could be significant, it is strongly recommended you discuss this with your commander and/or mentor.

Assignments
You may need to discuss with your MMP and commander whether you want to transition while in your current unit or upon arrival at a new unit. There are advantages and disadvantages to both. The latter has the advantage of leaving your old life at your last duty station and arriving at your next assignment ready to start your new life. However, the disadvantage is that you will have to re-establish your support network in the new location.

Completing transition within a normal Permanent Change of Station cycle of 3-4 years is possible, but may or may not be desirable depending on your circumstances. Below are some issues to consider:

- Specialized medical care may not be available at all duty locations. Assignments near installations with such care may need to be considered;
- Moving locations means potentially moving away from a stable environment, including medical specialists and social support. However, making a fresh start may be easier for some transitioning members;
- Your duty locations may impact decisions about when to commence RLE in your preferred gender; and
- Not all duty assignments will be able to support a gender transition.

Individual Medical Readiness (IMR)
Medical care for gender transition is managed in the same way as other medical conditions. You may be non-deployable for some periods during your gender transition process. It is your responsibility to inform your leadership regarding your medical condition when, as a result of any medical treatment, you will be or have become non-deployable.[13]

Physical Readiness Testing (PRT)
PRT is a fundamental requirement of your military service. You are required to meet the PRT standards based upon your gender marker in your Service's personnel data system and in accordance with Service regulations. Similar to other circumstances where Service members may not meet standards, it is important that you consult regularly with your MMP to ensure you can meet standards (i.e., fitness). If you are unable to meet the standards, it may be necessary to request an ETP.

Privacy
Maintaining dignity and respect for all is important. You will need to consider both your own privacy needs and the privacy needs of others. This includes, but is not limited to, maintaining personal privacy in locker rooms, showers, and living quarters. One strategy might include adjusting personal hygiene hours. If you have concerns, you are encouraged to discuss them with your chain of command.

Military Records
Your records prior to transition (e.g., awards, performance evaluations) are historical and will not be changed after completion of your gender transition.

13 DoDI 6025.19, "Individual Medical Readiness (IMR)," June 9, 2014.

Your Service has a board process that may consider changes to historical military records.[14] All records generated after your Service's personnel data system gender marker is changed will reflect your preferred gender.

Expectation Management
The military developed a process to allow you to transition gender while you serve. Keep the lines of communication open and be patient with the process. Your timeline may need to be flexible due to operational requirements.

Tips for Transitioning Service Members

The following tips have been provided by Service members from an allied foreign military who have transitioned gender.[15]

- Honesty. "If you wish to be respected you must also give that same respect to your coworkers up and down the chain. How you treat others and inform others will be directly related to the way you are treated. It is incredibly hard to open up and trust people with a personal secret you have probably carried for your entire adult life; however from my experiences if you keep an open-door philosophy and answer honest questions with polite and clear non-emotional detail, most will accept and understand."
- Be professional. "The hormones you may [take] to change will have a varied and perhaps profound effect on not only your physical body, but more importantly your emotional stability. Try not to allow this to cloud or affect your judgement, it will be hard for some to see this happening, trust in your friends when they point out little slips and errors in your emotional well-being, they have your interests at heart!"
- Empower those around you. "Knowledge equals power which equals understanding; empowering those around you to understand will help them feel less threatened and confused, which can assist in being treated with respect and understanding rather than confusion and possibly even contempt and hostility."
- Be confident. "Know yourself, make as much effort as possible to be part of the team and not hide or be hidden away to avoid embarrassment. Stepping

14 See Annex D for a list of Service links to boards for correction of military records.

15 Australian Air Force, Air Force Diversity Handbook: Transitioning Gender in the Air Force, April 2013, 19.

out in to the work arena will be hard, but the sooner you face this challenge the sooner your well-being can return."

- Trust. "Trusting others when you're vulnerable is hard for most serving people. We are proud, strong, and generally rather too stubborn to allow others to take charge of us when we feel we can manage ourselves. The problem is you may not understand all that is happening around you, particularly with your coworkers. So listen and trust in your commanders based on their good sound knowledge."
- Planning. "Map out your transition as best you can, try and forecast as much as possible and pass this on to the relevant commanders. Learn and understand not only what's happening now in your world, but look and think about where you will be and what you may need."

FOR THE COMMANDER

"We owe commanders better guidance on how to handle questions such as deployment, medical treatment and other matters. And this is particularly true for small unit leaders, like our senior enlisted and junior officers."

—Statement by Secretary of Defense Ash Carter[16]

The Commander's Impact

In the course of your duties, you may encounter a transgender Service member who wants to transition gender. It is important that you are aware of your obligations and responsibilities with regard to the support and management of Service members who are transitioning gender. You are responsible and accountable for the overall readiness of your command. You are also responsible for the collective morale and welfare and good order and discipline of the unit and for fostering a command climate where all members of your command are treated with dignity and respect.

Commander's Roles and Responsibilities

In-Service Transition

When you receive a request from a Service member for medical treatment or an ETP associated with gender transition, you must consider the individual needs associated with the request and the needs of your command. The table below outlines your responsibilities for Active and Reserve Component Service members requesting in-service transition. In making a decision on the request, your responsibilities include:

16 U.S. Secretary of Defense Ash Carter Remarks, June 30, 2016.

Active Component & Reserve Component Uniformed Full-Time Support Personnel	Reserve Component (All Others)
1. Complying with the provisions of DoDI 1300.28[17] and with Military Department and Service regulations, policies, guidance, and with your SCCC, as appropriate.	1. Same as AC.
2. Evaluating a Service member's request to transition gender. Ensure, as appropriate, a transition process that: ■ Considers the individual facts and circumstances presented by the Service member; ■ Considers military readiness and impacts to the mission (including deployment, operations, training, and exercise schedules, and critical skills availability), as well as to the morale and welfare and good order and discipline of the unit; ■ Is consistent with the medical treatment plan generated or validated by the MMP; and incorporates consideration of other factors, as appropriate.	2. A Service member will likely provide a diagnosis and medical treatment plan from a non-MMP. In this instance, it still must be validated by the MMP. Consult your chain of command for guidance, if required. You must still evaluate Service member's request in light of the 3 bullets in the active duty column.
3. Reviewing a Service member's request for completeness.[18] If you determine the request to be incomplete, you must return it to the Service member, with written notice of the deficiencies identified, as soon as practicable, but not later than 30 days after receipt.	3. Same as AC.

17 DoDI 1300.28.

18 Refer to Figure 1 and Service policy for completeness determination; in all cases, it will include: completed medical treatment plan and commander approval of request.

Active Component & Reserve Component Uniformed Full-Time Support Personnel	Reserve Component (All Others)
4. Responding to any requests for medical treatment or an ETP[19] associated with gender transition, as soon as practicable, but not later than 90 days after receiving a request determined to be complete. Your response shall: ■ Be in writing; including notice of any actions taken by you; and ■ Be provided to both the Service member and their MMP.	4. Same as AC.
5. At any time prior to the change of the Service member's gender marker in Service's personnel data system, you may modify a previously approved approach to, or an ETP associated with, gender transition.	5. Same as AC.
6. Approving in writing[20] the request to change a Service member's gender marker in your Service's personnel data system upon receipt of the recommendation by the MMP and the requisite legal documentation from the Service member. The Service member is then able to take the approval and the legal documentation to the personnel administrative office to obtain the change to the gender marker.	6. Ensuring non-MMP's statement of completion is validated by an MMP, prior to your approval. The remaining process in active duty column should be followed.
7. When the gender marker in the Service's personnel data system is changed: ■ Apply uniform, grooming, body composition assessment (BCA), PRT, Military Personnel Drug Abuse Testing Program (MPDATP), and other standards reflecting the Service member's gender marker in the Service's personnel data system; and ■ Direct the use of berthing, bathroom, and shower facilities according to the Service member's gender marker as reflected in the Service's personnel data system in facilities that are subject to regulation by the military.	7. Same as AC.

19 Your Service will determine the approval level for ETPs. Refer to Service policy or your SCCC if there are concerns.

20 There is no prescribed format for approving a request to change gender marker. Refer to Service policy or your SCCC if there are concerns.

What You Should Expect From the Military Medical Provider (MMP)

The MMP plays a key role in the gender transition process. The MMP will:

- Provide the medical diagnosis applicable to the Service member; list the medically necessary treatments, including the timing of the proposed treatment and the likely impact of the treatment on the individual's readiness, and deployability; and
- Formally advise you when the Service member's medical treatment plan for gender transition is complete and recommend a time at which the gender marker may be changed in your Service's personnel data system.
- Validate the non-MMP's confirmation that Service member's gender transition is complete.

Policy Implications

You have broad responsibilities to maintain your unit's readiness. Select policy areas that may impact the transition process are highlighted below.

Non-Military Medical Care

If an active duty Service member's diagnosis and/or treatment plan are from a non-MMP, direct the individual to notify the MMP at the earliest practical opportunity to bring the care into the MHS. The MMP must consider, and if appropriate, validate the Service member's diagnosis before initiating any other steps in the transition process. If the request is from a non-active duty Service member, the non-MMP diagnosis and/or treatment plan must still be approved by an MMP.

Military Personnel Uniform and Grooming Standards

Exceptions for uniform and grooming standards may be considered per your Service's policy. You may consider current and preferred gender uniforms, form, fit and/or function, the Service member's professional military image, as well as impact on unit cohesion and good order and discipline. If you have questions, refer to your SCCC.

Deployment

Service members will deploy if they are medically and otherwise qualified to do so. As with any Service member, exceptions may be considered by your Service and must be coordinated with the deployed commander, if unique medical needs exist. Individuals requiring close monitoring or ongoing care may not be available for deployment.

Physical Fitness

There are no separate standards for transgender Service members. Any exceptions to PRT standards will be administered by your Service. Individuals undergoing cross-sex hormone therapy may experience changes to their body shape and physical strength, which may have a notable effect on their ability to maintain standards. If that is the case, consult with the individual and the MMP as you would for any other Service member with a medical condition affecting their ability to meet physical fitness standards.

Privacy Accommodations

If concerns are raised by Service members about their privacy in showers, bathrooms, or other shared spaces, you may employ reasonable accommodations, such as installing shower curtains and placing towel and clothing hooks inside individual shower stalls, to respect the privacy interests of Service members. In cases where accommodations are not practicable, you may authorize alternative measures to respect personal privacy, such as adjustments to timing of the use of shower or changing facilities. This should be done with the intent of avoiding any stigmatizing impact to any Service member. You are encouraged to consult with your SCCC for guidance on such measures.

Military Personnel Drug Abuse Testing Program

The MPDATP[23] requires urinalysis specimens to be collected under the direct supervision of a designated individual of the same sex as the Service member providing the specimen. You have discretion to take additional steps to promote privacy, provided those steps do not undermine the integrity of the program. However, all collections must be directly observed. You are encouraged to use discretion and/or contact your SCCC for additional guidance.

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23 DoDI 1010.16, "Technical Procedures for the Military Personnel Drug Abuse Testing Program (MPDATP)," October 10, 2012.

Tips for Commanders

The below tips are provided by an allied foreign military and may prove useful:[24]

- Protect the service member's privacy. Information management is very important.
- Listen to the Service member's wishes with respect to disclosure to the workplace and the broader community.
- Consider consultation with the chaplain, behavioral health personnel, and medical providers.
- Seek guidance and advice from other commanders and supervisors who have experience with individuals who transitioned gender while serving.
- Encourage the Service member to articulate a plan to include a timeline and strategy for notifying coworkers and other command personnel.
- Assist the Service member with identifying a mentor with whom they are comfortable.
- Encourage open communication. Feel free to ask questions.
- Ensure bullying, bias, harassment, hazing, or any other unacceptable behavior is not tolerated.

24 Australian Air Force Handbook.

FOR ALL SERVICE MEMBERS

"I am 100 percent confident in the ability of our military leaders and all our men and women in uniform to implement these changes in a manner that both protects the readiness of the force and also upholds values cherished by the military—honor, trust, and judging every individual on their merits."

—Statement by Secretary of Defense Ash Carter[25]

The cornerstone of DoD values is treating every Service 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. Previous policy, however, required transgender Service members to hide their gender identity and forced them to receive their gender-related medical care outside the MHS.

The June 30, 2016, policy allows transgender Service members to openly acknowledge their gender identity, brings all of their medical care into the MHS, allows transgender Service members to transition their gender when medically necessary, and allows the commander to work with the Service member and an MMP to implement a gender transition plan that meets the individual's medical requirements and unit readiness requirements.

Understanding Gender Transition

The gender transition process is individualized. Gender transition can include social, medical, and legal components. Social transition, in the military context, will generally encompass living in the preferred gender after duty hours. (You may encounter a situation where you know a Service member by one name during duty hours and another after duty hours; this all depends on the individual's transition.) Medical treatment may include behavioral health care, use of hormones (which may change physical appearance), and/or surgery.

25 U.S. Secretary of Defense Ash Carter Remarks, June 30, 2016.

Other aspects of transition includes formally changing one's gender with federal, state, and military documentation.

Some individuals prefer that very few people know they are transgender Service members and hope that after transition they can quietly blend in with their new gender. Others are committed to educating the public about gender identity, are eager to answer questions, and continue to talk openly about being a transgender Service member long after transition.

Revealing gender identity at work may be one of the last steps transgender Service members take to live and work in their preferred gender. By the time they inform their chain of command they plan to change gender, they have often been dealing with this issue for many years. It is also important not to "out" a transgender Service member (i.e., do not talk about someone else's gender identity or status unless they are okay with it.) The bottom line is to treat others with the dignity, respect, and consideration you would like to be treated with by others.

Harassment and Bullying

Everyone plays a role in stopping bullying and harassment. You must be proactive and question behavior that is inappropriate at the time it occurs. You must report inappropriate behavior to your chain of command immediately. Remember, everyone is responsible for fostering the best possible command climate within your unit.

The impact harassment can have on Service members should not be underestimated; it has the potential to affect the member both personally and professionally. Inappropriate jokes, attitudes, or comments that marginalize transgender Service members are damaging to command climate. In an environment that permits inappropriate jokes and behavior, transgender Service members who have not disclosed their status may be unlikely to seek the care they need.

Respect for Personal Information

You are responsible for upholding and maintaining the high standards of the U.S. military at all times and at all places. Out of respect for all Service members, as mentioned earlier, you should not disclose someone's gender identity without their permission, unless the disclosure is made for official use.[26]

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26 Services retain the authority provided by law and Department and Service regulations to counsel, discipline, and involuntarily separate, as appropriate under the circumstances, those Service members who fail to obey established standards.

Tips for Service Members

Your social interactions and developing friendships with peers contribute to a positive work environment. Do not make assumptions about an individual's gender or sexual orientation. Let others volunteer personal information.

Try to ensure planned social activities are inclusive of Service members and their families who may not fit into your perception of what is typical.

If you notice colleagues or peers are expressing opinions that may alienate others, speak up regarding how their statements may impact others. Often people may be unaware of how their statements, questions, and activities may alienate and offend their coworkers, team members, or staff.

You should be sensitive to the use of pronouns when addressing others. This will vary by individual and unit. If there is ever any question about pronoun usage, do not hesitate to ask the Service member how they wish to be addressed.

If you have questions or concerns, you are encouraged to talk with your chain of command.

Privacy

Maintaining dignity and respect for all is important. You will need to consider both your own privacy needs and the privacy needs of others. This includes, but is not limited to, maintaining personal privacy in locker rooms, showers, and living quarters. One strategy might include adjusting personal hygiene hours. If you have concerns, you are encouraged to discuss them with your chain of command.

ACRONYMS

AOR	*Area of Responsibility*
BCA	*Body Composition Assessment*
DEERS	*Defense Enrollment Eligibility Reporting System*
DES	*Disability Evaluation System*
DoD	*Department of Defense*
DoDI	*Department of Defense Instruction*
DTM	*Directive-type Memorandum*
ETP	*Exception to Policy*
HT/WT	*Height/Weight*
IMR	*Individual Medical Readiness*
ING	*Inactive National Guard*
IR	*Individual Readiness*
IRR	*Individual Ready Reserve*
MHS	*Military Health System*
MLOA	*Medical Leave of Absence*
MMP	*Military Medical Provider*
MPDATP	*Military Personnel Drug Abuse Testing Program*
MSA	*Military Service Academy*
MTF	*Military Treatment Facility*
PRT	*Physical Readiness Test*
RLE	*Real Life Experience*
ROTC	*Reserve Officers' Training Corps*
SCCC	*Service Central Coordination Cell*
SELRES	*Selected Reserve*

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ANNEX A:
Questions and Answers

Listed below are responses to frequently asked questions organized by topic and applicable to multiple audiences.

The Basics

1. What does transgender mean?

A. Transgender is a term used to describe people whose sex at birth is different from their sense of being male or female. A transgender male is someone who was born female but identifies as male, and a transgender female is someone who was born male but identifies as female.

2. What is gender identity?

A. Gender identity is one's internal sense of being male or female.

3. What is gender dysphoria?

A. Gender dysphoria is a medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex assigned at birth.

4. Is being a transgender person the same as being a transvestite or a cross-dresser?

A. No. "Transvestite" is an outdated term that is considered derogatory. A "cross-dresser" is a person who wears clothing of the opposite sex for reasons other than gender identity (see question #2). A transgender person who dresses according to their gender identity is not "cross-dressing."

5. What is the relationship between sexual orientation and gender identity?

A. There is no relationship between sexual orientation and gender identity.

6. What pronouns should I use with transgender Service members?

A. This will vary by individual and unit. Transgender Service members should work with their unit leadership to establish correct pronoun usage. If there is ever any question about pronoun usage, do not hesitate to ask the Service member how they wish to be addressed.

7. What happens when federal and state laws appear to conflict?

A. When not on federal property, Service members must abide by local laws. If there are any questions or concerns about how state laws may affect Service members and/or their dependents off federal property or in areas of concurrent federal and state jurisdiction, the installation legal assistance office should be consulted.

It is also the commander's responsibility to ensure the safety of unit personnel. This includes reminding Service members of risks through use of safety bulletins, alerts, or briefings regarding off-installation activities. Additionally, judge advocate and SCCC resources are available to enhance risk management strategies.

Health Care Issues

8. What hormones do transgender people need?

A. Not all transgender Service members need cross-sex hormone therapy. Male or female hormones may be prescribed by medical providers in order for transgender Service members to develop the physical characteristics of their preferred gender if that is part of their transition plan.

9. What if a deployed transgender Service member loses his or her medications?

A. In the event that a Service member lost his or her supply of hormones, and for some unlikely reason was not able to obtain replacements, any side effects, like irritability, decreased energy, or hot flashes, would take a few weeks to become evident. None of these side effects would be life threatening.

In-Service Transition Policy Issues

10. Have other countries allowed transgender individuals to serve openly in their militaries?

A. Yes. At least 18 countries: Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, the Netherlands, New Zealand, Norway, Spain, Sweden, and the United Kingdom, allow transgender personnel to serve openly.

11. What about Service members whose beliefs just cannot allow them to accept this as normal?

A. In today's military, people of different moral and religious values work, live, and fight together. This is possible because they treat each other with dignity and respect. This will not change. There will be no changes regarding Service members' ability to freely exercise their religious beliefs, nor are there any changes to policies concerning the Chaplain Corps of the Military Departments and their duties. Service members will continue to treat with respect and serve with others who may hold different views and beliefs.

12. What is the Service Central Coordination Cell (SCCC)?

A. Each Service has an SCCC of medical, legal, and policy experts, primarily to advise field commanders and medical service providers. Contact information for the SCCCs can be found in Annex D of this handbook.

13. Will Reserve Component members receive any kind of medical care or financial assistance to pay for transition-related treatment? Can they be treated in a military treatment facility (MTF) throughout their transition?

A. Reserve Component members typically receive health care through private civilian health insurance. Those enrolled in TRICARE Reserve Select may be able to access mental health and hormone treatment through TRICARE and are eligible for care in MTFs on a space-available basis. Service members are encouraged to contact their civilian provider/TRICARE for eligibility benefits. A civilian diagnosis and medical treatment plan must be submitted to your chain of command and validated by an MMP. This may be accomplished by telemedicine if available or submission of civilian health documentation to an MMP for review per Service policy.

14. How will the military protect the rights of Service members who are not comfortable sharing berthing, bathroom, and shower facilities with a transitioning Service member? Are they forced to just accept a transgender person living and showering with them?

A. To the extent feasible, a commander may employ reasonable accommodations to protect the privacy interests of Service members, while avoiding a stigmatizing impact to any Service member. Commanders are encouraged to consult with their SCCC for guidance.

15. How long will a Service member's deployment eligibility be affected? Is this a way to get out of deployment? Can a Service member in the process of transitioning, which can be a lengthy process, still deploy if called upon?

A. A Service member's period of non-deployability will vary by individual based on the care needed. Availability for deployment and any anticipated duty limitations would be part of the conversation Service members have with their commanders and medical providers as part of a medical treatment plan. Medical recommendations concerning unanticipated calls for deployment would be made in the same way as other medical conditions and as part of the pre-deployment process.

New Accession Policy Issues

Recruiting

16. Does the new policy mean the Military Services will start recruiting transgender applicants immediately?

A. No, policy is being revised to allow the Military Services to recruit new personnel no later than July 1, 2017.[27]

When training of the Force is complete and the new DoDI 6130.03 is effective, the Military Services will begin accessing transgender applicants who meet all standards, holding them to the same physical and mental fitness standards as everyone else who wants to join the military.

Detailed accession policy can be found in in DoD DTM 16-005, "Military Service of Transgender Service Members."[28]

17. What should a recruiter do if a transgender applicant wants to enlist, but the new policy is not in place?

A. A recruiter should ensure the applicant meets all standards (e.g., physical fitness, medical fitness) prior to being accessed. This is also a good time to assist the applicant in understanding the accession requirements so they can prepare themselves for entry once the new policy is in place.

27 DTM 16-005.

28 Ibid.

Military Service Academy (MSA)/ Reserve Officers' Training Corps (ROTC)

18. Does the new accession policy mentioned above apply to the Service Academies and the Reserve Officers' Training Corps (ROTC)?

A. Yes, effective July 1, 2017, the gender identity of an otherwise qualified individual will not bar them from joining the military, from admission to the MSAs, or from participating in ROTC or any other accession program. However, they must adhere to accession standards prior to being commissioned.

19. If ROTC or MSA students seek to transition during college, would they need to be stable for 18 months prior to commissioning?

A. Yes. An individual participant who is transgender is subject to separation from ROTC in accordance with DoDI 1215.08[29] or from an MSA in accordance with DoDI 1322.22,[30] based on a medical condition that impairs the individual's ability to complete such training or to access into the Armed Forces, under the same terms and conditions applicable to participants in comparable circumstances not related to transgender persons or gender transition. ROTC and MSA cadets and midshipmen are required to meet medical accessions standards when they are appointed as commissioned officers.

20. What are the medical requirements that must be met by an MSA cadet or midshipman to be eligible for a commission?

A. Cadets and midshipmen are subject to medical accession standards enumerated in DoDI 6130.03[31] prior to being commissioned.

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29 DoDI 1215.08, "Senior Reserve Officers' Training Corps (ROTC) Programs," June 26, 2006.

30 DoDI 1322.22, "Service Academies," September 24, 2015.

31 DoDI 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services," September 13, 2011. (Currently under revision to reflect DTM 16-005 changes.)

21. What are the medical requirements that must be met by a ROTC cadet or midshipman to be eligible for a commission?

A. In accordance with DoDI 1215.08,[32] E3.2 (Senior ROTC Programs), complete medical examinations must be conducted before enrollment in the scholarship program or at the time of or immediately before enrollment in Senior ROTC programs of the Army, Navy, and Air Force. Such examinations must, in all respects, be equal to the examination conducted to determine medical qualifications for appointment as a commissioned officer. Provided the cadet or midshipman meets the requirements in DoDI 6130.03,[33] they would be qualified to receive a commission.

22. Would a cadet or midshipman be able to undergo hormone therapy while at one of the MSAs or enrolled in ROTC?

A. It depends. Cadets and midshipmen must continue to meet medical accession standards while at the MSA or enrolled in ROTC. If the standards for appointment into the U.S. Military Services are not maintained, an ROTC cadet or midshipman may be placed on an involuntary Medical Leave of Absence (MLOA) by the Service Secretary or designee. When an MLOA is recommended, a medical record review will determine whether the health-related incapacity or condition presents clear evidence that, following medical treatment, the cadet or midshipman will be unable to meet the physical standards for appointment into the U.S. Armed Forces within a reasonable period of time. Military Service Academy cadets and midshipmen who cannot meet medical accession standards and become medically disqualified may be disenrolled.[34]

32 DoDI 1215.08.

33 DoDI 6130.03.

34 DoDI 1322.22.

ANNEX B:

Gender Transition Roadmap for U.S. Military Personnel

Below is a summary of the gender transition process for a Service member in accordance with the recently implemented DoD Instruction, "In-Service Transition for Transgender Service Members." The roles, responsibilities, and courses of action available to transgender Service members and their commanders are described below.

Service Member Responsibilities

Before Initiating Gender Transition

Request an assessment by an MMP in order to confirm a diagnosis stating gender transition is medically necessary.

- Collaborate with and assist the MMP with developing a medical treatment plan for submission to the commander. This plan should include a projected timeline for completion of gender transition, and estimated periods of non-deployability and absence.
- Notify the commander of the recommended treatment and request approval of the timing of the treatment plan. The written request should include the following:
  - Medical treatment plan outlining all medically necessary care and a projected schedule for such treatment; and an estimated date for the completion of gender transition and a gender marker change in the appropriate Service personnel data system.

Reserve Considerations

- All transgender Reserve Component Service members (except Selected Reserve (SELRES) Full-Time Support personnel who fall under Active Component rules/requirements) will submit to, and coordinate with, their chain of command evidence of a civilian medical evaluation that includes a medical treatment plan.
- To the greatest extent possible, commanders and Service members shall address periods of non-availability for any period of military duty, paid or unpaid, during the Service member's gender transition with a view

to mitigate unsatisfactory participation through the use of rescheduled training or authorized absences.

During Gender Transition

- Initiate gender transition after obtaining the commander's approval.
- Inform the commander of any medical issues that come up in the course of gender transition.
- Notify the commander of any changes to the approved timeline of the medical treatment plan.
- Request the commander process an ETP, if necessary.

When Gender Transition is Complete

- Through your MMP, inform the commander that gender transition is complete, along with a recommended time to change gender marker in the Service personnel data system.
- Request the commander's written approval to change the gender marker in the Service personnel data system. The request must comply with Service policies and must, at a minimum, be accompanied by one of the following legal documents to support gender change:
  - A certified true copy of a State birth certificate reflecting your preferred gender;
  - A certified true copy of a court order reflecting your preferred gender; or
  - A U.S. passport reflecting your preferred gender.
- Upon receipt of the commander's approval, submit supporting documentation to personnel servicing activity to change the gender marker in the Service personnel data system.

After Gender Marker Change in the Service Personnel Data System

- Meet applicable Service standards of the preferred gender, including medical fitness, physical fitness, uniform and grooming, deployability, and retention standards.

- Use military berthing, bathroom, and shower facilities associated with the preferred gender.
- Request ETPs, as needed, from the commander.

Commander Responsibilities

Before Initiating Gender Transition

No later than 30 calendar days after receiving a Service member's request to transition gender:

- Review Service member's request to ensure that it contains the required documentation in accordance with DoD and Service policies, to include a medical treatment plan with a projected timeline for completion of gender transition, estimated periods of non-deployability/absence, and estimated date of gender marker change;
- Coordinate with an MMP. If request to transition gender is from an RC Service member they will likely provide a diagnosis and medical treatment plan from a non-MMP. In this instance, it still must be validated by an MMP;
- Consult with the SCCC; and
- If the Service member's request is incomplete, return it with a written notice of additional required documentation.

No later than 90 calendar days after receiving a Service member's request to transition gender:

- Provide a written response to Service member's request for gender transition or an ETP, with a copy to the MMP; and
- In reviewing the Service member's gender transition request, ensure the decision:
  - Complies with DoD, Service policies, and guidance;
  - Considers the individual facts and circumstances presented by the Service member;

- Considers the needs of the command (including deployment, operations, training, exercise schedules, critical skills availability, morale and welfare, and good order and discipline of the unit);
- Minimizes impacts to the mission and readiness by balancing the needs of the individual with the needs of the command;
- Is consistent with the medical treatment plan; and
- Incorporates input provided by the MMP.

During Gender Transition

In cases where a transitioning Service member is unable to meet standards or requests an ETP during the gender transition, review Service policies outlining the actions a commander may take to balance the needs of the individual Service member and unit readiness. As permitted by Service policies, the commander may:

- Adjust the date on which the Service member's gender transition, or any component of the transition process, will commence;
- Advise the Service member regarding options for extended leave status or participation in other voluntary absence programs during the transition process;
- Arrange for the transfer of the Service member to another organization, command, location, or duty status (e.g., Individual Ready Reserve (IRR)), as appropriate, during the transition process;
- Review and forward ETP requests for application of standards for uniforms and grooming, PRT, and MPDATP participation;
- Establish, or adjust, command policies on the use of berthing, bathroom, and shower facilities;
- Refer for a determination of fitness in the disability evaluation system in accordance with DoDI 1332.18;[35]

35 DoDI 1332.18, "Disability Evaluation System (DES)," August 5, 2014.

- Initiate administrative proceedings, comparable to actions that could be initiated with regard to others whose ability to serve is limited by medical conditions unrelated to gender transition; and
- Consult the SCCC, with regard to:
  - Service by transgender Service members and gender transition in the military;
  - Implementing DoD, Military Department, and Service policies and procedures; and
  - Assessing the means and timing of any proposed medical care or treatment.
- Coordinate with the MMP regarding any medical issues that arise in the course of a Service member's gender transition;
- Ensure that requests for ETPs are processed within 90 days and provide a written response to both the Service member and their MMP; and
- Modify a previously approved timeline for gender transition or an ETP at any time prior to the change in a Service member's gender marker in the Service personnel data system.
  - A determination that modification is necessary and appropriate will be made in accordance with DoD/Service policies and procedures.
  - Notify Service member of such modification under established DoD procedures as described in the 'before intitiating gender transition' section at beginning of 'commander's responsibilities'.

When Gender Transition is Complete

- Review a Service member's request to change gender marker in the Service personnel data system to ensure that it complies with Service requirements, to include at a minimum:
  - A recommendation from the MMP stating that gender transition according to the medical treatment plan is complete and that the Service member is stable in the identified gender; and

- One of the following legal documents to effect gender change:
  - A certified true copy of a State birth certificate reflecting the Service member's preferred gender;
  - A certified true copy of a court order reflecting the Service member's preferred gender; or
  - A U.S. passport reflecting the member's preferred gender.

- If the Service member's request is complete, provide written approval to Service member authorizing gender marker change in the Service personnel data system.

After Gender Marker Change in the Service Personnel Data System

- Apply uniform standards, grooming standards, BCA standards, PRT standards, MPDATP standards, and other standards according to the Service member's identified gender listed in the Service personnel data system.
- Direct the use of military berthing, bathroom, and shower facilities according to the Service member's gender listed in the Service personnel data system.
- Review ETP requests as appropriate.

ANNEX C:
Scenarios

The following fictional cases illustrate scenarios that may be encountered when addressing individual issues.[36] The delineation of responsibilities in each scenario is intended only to provide a general discussion of issues that may arise. The scenarios are not all inclusive, nor are they directive in nature. All personnel are reminded to consult with their Chain of Command, SCCC, Service, and DoD guidelines before determining the best course(s) of action. Commanders are reminded of their responsibility to ensure good order and discipline throughout their entire unit.

Readiness

Scenario 1: Inability to Meet Standards during Transition

A senior officer, Tony, is transitioning to become Tanya. The officer is about halfway through the gender transition timeline agreed upon with his military medical provider (MMP) and commander and is taking feminizing hormone therapy. The officer is aware that male standards (berthing, uniform, BCA, PRT, etc.) will still apply until his transition is complete. However, midway through hormone treatment, it becomes increasingly difficult for Tony to meet the male body composition and physical readiness standards. Tony's commander is supportive, but several key unit training events have been scheduled over the next several months, making immediate accommodation difficult.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to individual medical readiness (IMR) that may impact the ability to meet standards. It is essential that communication among Service member, commander, and the MMP is ongoing.

Service member responsibilities

- If necessary, work with the MMP to obtain proper waiver for male physical readiness standards during the period of gender transition and ensure the commander is informed; and

36 The scenarios presented are fictitious and not intended to represent any actual person or event.

- Discuss alternatives with the commander, such as rescheduled training events or extended leave/absence until gender transition process is complete.

Commander responsibilities

The commander can exercise multiple options listed below, as permitted by DoD and Service policies:

- Advise Tony on the option of taking extended leave/absence during the gender transition process;
- Explore the possibility of transferring Tony to another organization with less rigorous operational requirements;
- Refer Tony for a determination of fitness in the disability evaluation system;[37] or
- Review approved ETPs consistent with Service policies for male physical readiness and male body composition standards and ensure they are followed until the change of gender marker in the Service personnel data system to a female is complete.

Scenario 2: Physical Standards

A Service member has completed their medical treatment plan and is requesting commander approval to change their gender marker in the Service personnel data system. The commander has concerns about the Service member's ability to meet height/weight (HT/WT) and physical readiness training (PRT) standards for the preferred gender.

Key takeaway(s)

This scenario illustrates the importance of ongoing communication among Service member, commander, and the MMP, and the requirement for the commander to approve in writing all gender marker change requests. This communication will assist the commander in determining the timing of the gender marker change in the Service's personnel data system.

37 DoDI 1332.18. (USCG reference is Physical Disability Evaluation System, COMDTINST M1850.2 (series))

Service member responsibilities

- Part of your transition process should include a provision to meet new HT/WT and PRT standards and consider whether an ETP will be required as you progress through the medical treatment plan.
- Continue communicating with your commander and your MMP on your ability to meet HT/WT and PRT standards.

Commander responsibilities

- Part of the Service member's transition process should include a provision to meet new HT/WT and PRT standards as they progress through their medical treatment plan.
- Counsel Service member on HT/WT requirements and personal fitness and the potential negative outcomes should they fail to meet those requirements.
- Consult with the MMP on Service member's ability to meet standards.
- Consider two possible courses of action for gender maker change in Service personnel data system: (1) grant gender marker change with ETPs or (2) delay gender marker change until all standards of the preferred gender are met.
- Consult DoD and Service policy as well as the SCCC.

Scenario 3: Pregnancy

Lieutenant Marty changed his gender marker in the Service personnel data system from female to male after completing an approved transition plan. Lieutenant Marty has not had sex reassignment surgery as part of the transition plan and is working with his MMP on a plan to start a family. Lieutenant Marty approached his commanding officer a few weeks ago and mentioned he was pregnant.

Key takeaway(s)

This scenario illustrates the importance of ongoing communication among Service member, commander, and the MMP with regard to Individual Medical Readiness (IMR). It also emphasizes the importance of understanding

special medical care that may be required and administrative benefits resulting from pregnancy.

Service member responsibilities

- It is your responsibility to notify the chain of command of any change to IMR.[38]
- Though you have changed your gender marker in the Service personnel data system, there are IMR requirements that may be contrary to what is listed in the personnel data system (i.e., gender reflects male, however you have female anatomical characteristics). Health matters specific to anatomical characteristics still require appropriate medical review as they may affect your overall health and readiness, thus you will still require annual female examinations.
- You will receive any/all treatment/check-ups/physicals as it relates to female genitalia, including, in this case, prenatal care. Upon giving birth, you will be entitled to all relevant medical care, administrative entitlements, and leave prescribed under Service policies.
- Be aware that colleagues may find this situation confusing. Consider how and when you would like to discuss the pregnancy with your chain of command and colleagues.

Commander responsibilities

- Comply with Service pregnancy policies.
- Understand and be prepared to address administrative entitlements with Lieutenant Marty (i.e., maternity leave).
- Even though Lieutenant Marty has maintained female anatomy, he must be screened for pregnancy prior to deployment. If Lieutenant Marty became pregnant on deployment he will be transferred in accordance with Service policy.
- Consider workplace communications at the appropriate time with consideration of Lieutenant Marty's wishes.
- Consult with the SCCC.

38 DoDI 6025.19.

Career

Scenario 4: Specialized Career Limitations

A male aviation officer with 12 years of service approaches his commanding officer and requests guidance on how to complete a transition from "Eric" to "Erica." He has been living as a female when not on duty, and has already started hormone therapy, prescribed by a civilian provider, sought consultation for surgical transition, and is about to have a legal name change.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, and the importance of bringing all medical care into the MHS, whether a member of the Active or Reserve Component. Even though the Service member has received gender transition-related treatment with a civilian medical provider, they must have their subsequent care within the military health system. Finally, the scenario highlights how performance of duty may be limited depending on specialty/career field.

Service member responsibilities

- Immediately notify the flight surgeon of care received by a civilian medical provider.
- You are required by policy to inform your commander of medical treatment that may impact your medical readiness status.
- You have a responsibility to maintain your health and fitness, meet IMR requirements,[39] and report medical (including mental health) and health issues that may affect your readiness to deploy or fitness to continue serving in an active/reserve status;
- Receive a diagnosis and a treatment plan from an MMP.
- Provide all medical documentation from your civilian provider to the MMP.
- Develop a transition timeline with the MMP and the commander.

39 Ibid.

Commander responsibilities

- Consider Service policies applicable to Service members regarding unauthorized medical care.
- Direct Service member to an MMP for diagnosis and review of procedures already performed.
- Consult the MMP and/or the SCCC regarding the impact of gender transition on the Service member's readiness status and ability to perform military duties, highlighting the immediate impact to the officer's ability to maintain aviation credentials.
- Consider the timing of medical requirements in the treatment plan and any impacts to the mission (including deployments, operations, training and exercises) as well as the morale and welfare, and good order and discipline of the unit.

Scenario 5: Entry-Level Training

After four months, Private Lee completes recruit and combat training. She then reports to Ft. Sill for Military Occupational Specialty training. Upon arrival, Private Lee tells her Platoon Sergeant she is currently feeling distress as she believes she should be a man. Although she pushed herself through to completion, recruit training increased her distress. Private Lee has expressed reluctance about seeing a mental health specialist and/or medical care provider.

Key takeaway(s)

This scenario illustrates the importance of receiving a proper diagnosis from the MMP prior to other actions being taken. The commander has tools available to facilitate medical care for a Service member's well-being and to ensure Service members complete initial entry training.

Service member responsibilities

- Discuss situation with the commander.
- Obtain an evaluation by an MMP.

Next, Private Lee received a diagnosis of gender dysphoria, and the commander is told her training will be interrupted as treatment is medically necessary. After one month, it is clear Private Lee's medical condition impairs her ability to train.

Commander responsibilities

- Consult with an MMP and determine need for a command-directed mental health evaluation.[40]
- Consult with the SCCC.
- Inform Private Lee potential courses of action may include: withdrawal from training due to her medical condition, a training delay, or an initial entry separation if within 180 days of accession.[41]

Reserve Component

Scenario 6: Individual Ready Reserve

Corporal Kennedy is a member of the IRR and does not have access to an MMP. He has recently completed the transition from female to male. Corporal Kennedy wants to be considered male by his Service. He has a new birth certificate showing his preferred gender.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. Even though the Service member did all of their gender transition-related treatment with a civilian medical provider, they must still adhere to established military medical and personnel processes.

40 DoDI 6490.04, "Mental Health Evaluations of Members of the Military Services," March 4, 2013.

41 DoDI 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended.

Service member responsibilities

- All IRR Service members have a responsibility to maintain their health and fitness, meet IMR requirements,[42] and report to their chain of command any medical (including mental health) and health issues that may affect their readiness to deploy or fitness to continue serving.
- Provide medical documentation indicating that transition is complete to their IRR command and ensure it is available to an MMP to confirm the diagnosis.
- Provide legal documentation of gender change (i.e., certified birth certificate, U.S. passport, certified court order) to IRR command.

Commander responsibilities

- Review documentation with an MMP to ensure completeness and compliance with Service instructions and DoD policy.
- If complete, provide letter authorizing gender marker change in the Service personnel database.
- Consult with SCCC.

Scenario 7: Standards and Exceptions to Policy

Sergeant Rich, a Selected Reservist, informs his commanding officer that he has been living as a female when he is not in a drilling status. He requests to be called Meena; to use the female bathroom; to be held to female physical, uniform, and grooming standards; and to have his gender changed in his official military personnel file.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. Even though the Service member has initiated their gender transition-related treatment with a civilian medical provider, they must still adhere to established military medical and personnel processes.

42 DoDI 1215.13, "Ready Reserve Member Participation Policy," May 5, 2015.

Service member responsibilities

- All Selected Reserve Service members have a responsibility to maintain their health and fitness, meet IMR requirements,[43] and report to their chain of command any medical (including mental health) and health issues that may affect their readiness to deploy or fitness to continue serving.
- Provide medical documentation to the MMP showing diagnosis and medical treatment received from civilian medical provider.
- Upon confirmed diagnosis by the MMP, work with the MMP and commander to develop a transition plan.
- Provide legal documentation of gender change (i.e., certified birth certificate, U.S. passport, certified court order).

Commander responsibilities

- Facilitate Sergeant Rich's consultation with the MMP and discuss need for any ETPs that may be required.
- Upon confirmed diagnosis by the MMP, work with Sergeant Rich and the MMP to develop a gender transition plan consistent with your unit's operational responsibilities.
- When transition is complete, as certified by the MMP, provide a letter authorizing gender marker change in the Service personnel database.
- Ensure your unit is properly trained to accept and understand Sergeant Rich's preferred gender.

Scenario 8: Satisfactory Reserve Participation

Sergeant Williams is a Selected Reserve member with an Army Reserve unit. He has been in consultation with his commander regarding his gender transition. The medical treatment portion of his gender transition will require him to miss up to 2 months of duty. Both the commander and Sergeant Williams are working through potential mitigation strategies to ensure he does not become an unsatisfactory participant.

43 DoDI 6025.19.

Key policy takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. The commander also has tools available to address the Service member's absence.

Service member responsibilities

- As part of the previously agreed to transition, continued communication with the commander is key to success.
- Be aware of participation requirements to ensure a satisfactory year is achieved.
- Consult with the commander regarding alternative training opportunities.

Commander responsibilities

- You have the necessary tools to develop an initial mitigation strategy; options available to you include: (1) rescheduled training; (2) authorized absences; or (3) alternate training.
- Individual Service policies will detail processes and procedures required to use the above mitigation tools.
- Consult with your SCCC.
- Ensure your unit is properly trained to accept and understand Sergeant Williams' preferred gender.

Scenario 9: Medical Compliance

Airman Bristol, a Selected Reserve member with an Air Force Reserve unit, has an approved transition plan. She has been contemplating an unscheduled medical procedure between unit training assemblies. It is highly unlikely that the surgical procedure will require her to miss training. Airman Bristol is uncertain if she needs to report the procedure to her chain of command.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. Even though the Service member has initiated their gender transition-related treatment with a civilian medical provider, they must still adhere to established military medical and personnel processes. The commander also has tools available to facilitate the Service member's well-being.

Service member responsibilities

- You have a responsibility to maintain your health and fitness, meet IMR requirements,[44] and report to your chain of command any medical (including mental health) and health issues that may affect your readiness to deploy or fitness to continue serving in an active status.
- Discuss with your commander to address potential adjustments to your transition plan and any readiness implications.

Commander responsibilities

- You should prepare Airman Bristol for any potential periods of non-availability and work with her to mitigate absences. Options available to you include: (1) rescheduled training; (2) authorized absences; or (3) alternate training.
- Consider potential adjustments to Airman Bristol's transition plan based on individual needs as well as readiness.
- Individual Service policies will detail processes and procedures required to use any of these mitigation tools.
- You must also balance the needs of the individual and the unit in terms of readiness. While Airman Bristol may have great flexibility in her Air Force Reserve unit as to the timing of the medical procedure, this may not always be the case. Continued dialogue between you and Airman Bristol is important to individual and unit readiness. For further information, you should consult your chain of command and/or SCCC.

44 Ibid.

Scenario 10: Unauthorized Medical Care

An Active Guard/Reserve (AGR) National Guardsman has completed nearly all aspects of gender transition with the assistance of a civilian medical provider. His gender transition and medical treatment have not been disclosed to the chain of command. He would like to be recognized in his preferred gender.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. Even though the Service member did all of their gender transition-related treatment with a civilian medical provider, they must still adhere to established military medical procedures.

Service member responsibilities

Even though you have completed nearly all aspects of gender transition by a civilian medical provider, you must:

- By policy, inform your commander of medical treatment that may impact your medical readiness status.
- Maintain your health and fitness, meet IMR requirements, and report medical (including mental health) and health issues that may affect your readiness to deploy or fitness to continue serving in an active/reserve status.
- Request and receive a diagnosis and a treatment plan from an MMP.
- Provide all medical documentation from your civilian provider to the MMP.
- Develop a transition timeline with the MMP and the commander.

Commander responsibilities

- Consider Service policies applicable to Service members regarding unauthorized medical care.
- Direct the Service member to military medical for diagnosis and review of procedures already performed.

- Consult the MMP and/or the SCCC regarding the impact of gender transition on the Service member's readiness status and ability to perform military duties.
- Consider the timing of medical requirements in the treatment plan and any impacts to the mission (including deployments, operations, training and exercises) as well as the morale and welfare, and good order and discipline of the unit.

Privacy and Cohabitation

Scenario 11: Use of Shower Facilities

A transgender Service member has expressed privacy concerns regarding the open bay shower configuration. Similarly, several other non-transgender Service members have expressed discomfort when showering in these facilities with individuals who have different genitalia.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander. It also depicts steps a commander may take to permit privacy, based on Service policy.

Service member responsibilities

- If you have any concerns about privacy in an open bay shower setting, you should discuss this with your chain of command.
- Consider altering your shower hours.

Commander responsibilities

- You may employ reasonable accommodations when/if you have a Service member who voices concerns about privacy. This should be done with the intent of avoiding any stigmatizing impact to any Service member. If permitted by Service policies, some of these steps may include:
  - Facility modifications, such as installing shower curtains and placing towel and clothing hooks inside individual shower stalls.

- In cases where accommodations are not practicable, you may authorize alternative measures to respect personal privacy, such as adjustments to timing of the use of shower or changing facilities.
- Take proactive steps through the chain of command to ensure that expressions of discomfort don't escalate into harassment or hazing.
- Consult the SCCC for guidance on how to institute such measures.

Scenario 12: Urinalysis

A transgender Service member is randomly selected to undergo a urinalysis test at their new command.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander. The commander must adhere to procedures outlined in the Military Personnel Drug Abuse Testing Program (MPDATP)[45] and Service policy.

Service member responsibilities

- Discuss your circumstances with command leadership during sign-in period to determine your options and allow the commander the ability to adjust as required/desired for your comfort and the comfort level of the observer, particularly if you have not undergone full surgical change.

Commander responsibilities

- Depending on Service regulations, you may consider alternate observation options if a request from a transgender Service member or an observer is made. Options could include observation by a different observer or medical personnel.
- You have discretion to take additional steps to promote privacy, provided those steps do not undermine the integrity of the program. However, all collections must be directly observed.

45 DoDI 1010.16.

- Consult with the SCCC; if unable to make special accommodation, spend time discussing with both the observer and the Service member.
- Ensure your observers are properly trained.

Good Order and Discipline

Scenario 13: Living Quarters

You are the leading Chief Petty Officer aboard ship. A high performing Petty Officer, who is transgender and completely transitioned, approaches you and states she can no longer tolerate her roommate. Through positive reinforcement, counseling, and mentorship, you attempt to resolve the issue at the lowest level in the chain of command. However, you notice her performance starting to diminish, and she and her roommate are making derogatory comments to co-workers about each other. The behavior has become disruptive to the entire unit and others are starting to complain. She puts in a request to be re-assigned to another berthing area onboard ship.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as standards of conduct. It also highlights existing tools available to resolve the situation.

Service member responsibilities

- Respecting each other's rights within a closed space is critical to maintaining good order and discipline.
- Standards of conduct apply equally to all Service members.

Commander responsibilities

- Take an active and positive leadership approach with a focus on conflict resolution and professional obligations to maintain high standards of conduct.
- Counsel the individuals and encourage them to resolve their personal differences. Make clear to both that respecting each other's rights within a closed space is critical to maintaining good order and discipline.

- If the issue cannot be resolved and alternative berthing arrangements can be made within command policy and without degrading good order and discipline of the unit, you may consider alternative arrangements.

Scenario 14: Proper Attire during a Swim Test

It is the semi-annual swim test and a female to male transgender Service member who has fully transitioned, but did not undergo surgical change, would like to wear a male swimsuit for the test with no shirt or other top coverage.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander. It also depicts steps a commander may take to permit privacy, based on Service policy.

Service member responsibilities

- You may be comfortable with your outward appearance; however, there may be a period of adjustment for others. It is courteous and respectful to consider social norms and mandatory to adhere to military standards of conduct.
- Discuss with your chain of command.

Commander responsibilities

- It is within your discretion to take measures ensuring good order and discipline.
- When administering the swim test, counsel the individual and address the unit, if additional options (e.g., requiring all personnel to wear shirts) are being considered.
- Consult with your SCCC.

Scenario 15: Living Quarters

Following her transition (which did not include any sex reassignment surgery) and gender marker change in the Service personnel data system from male to female, Petty Officer Kelleher was assigned to a Coast Guard cutter and

provided quarters in female berthing. Shortly after her arrival aboard the cutter, several females in Petty Officer Kelleher's berthing area complained to the Command Senior Chief about being uncomfortable around Petty Officer Kelleher as she still has male genitalia. The Command Senior Chief approached the commanding officer with these complaints hoping to achieve some sort of resolution.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as standards of conduct. It also highlights existing tools available to resolve the situation.

Service member responsibilities

- You are not required to modify or adjust your behavior based on the fact you do not "match" the physical appearance of those in your berthing area. You must, however, follow all relevant shipboard and/or Service regulations commensurate with your gender.
- If you suspect others feel uncomfortable, or begin to feel uncomfortable, you should immediately reach out to an appropriate member of your command and note your concern. Should you feel uncomfortable approaching your command, every effort should be made to use resources available through the command senior enlisted leader network (e.g., Command Master Chief, Command Sergeant Major).
- The preservation of personal privacy, dignity, and respect is a responsibility shared by all crew members.

Commander's responsibilities

- Prior to Petty Officer Kelleher's arrival, ensure crew has received baseline training on policy regarding service by transgender personnel.
- Immediately upon the gender marker change in the Service personnel data system, Petty Officer Kelleher will be responsible for meeting all applicable military standards in her preferred gender, and subject to regulation by the military, will use those berthing, bathroom, and shower facilities associated with the preferred gender.

- You are responsible for the collective morale and welfare and good order and discipline of the unit and for fostering a command climate where all members of your command are treated with dignity and respect.
- An initial approach to the complaints may entail meeting with the Command Senior Chief as well as the complaining members of the berthing area to determine the exact nature of their complaints. You should inform them that Petty Officer Kelleher's assignment to female berthing is required regardless of her physical appearance and that their lack of comfort is not reason to prevent Petty Officer Kelleher from residing in female berthing or make her subject to treatment different from others.
- Similarly, as with any other issue taking place in a berthing area that affects the morale and welfare and good order and discipline, you (or Command Senior Chief) may also want to speak with Petty Officer Kelleher to inform her of the perceived problem regarding her physical appearance and its effect on the other members in the berthing area. Such a conversation should be handled very carefully; coordination with the SCCC is advisable to gain assistance on strategies to successfully engage in such communication.
- In every case, you may employ reasonable accommodations to respect the privacy interests of Service members. Avoid stigmatizing actions that may single out any Service members in an attempt to resolve the complaints.

Real Life Experience (RLE)

Scenario 16: Attending a Unit Social Event

A Service member has been undergoing transition for the last three months, from male to female, and his gender marker has not been changed in the Service's personnel data system. Only the immediate chain of command is aware of this transition. The Service member desires to attend an off-post unit event dressed as a female.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as standards of conduct. It also

highlights existing tools available to resolve the situation, as well as emphasizing the RLE agreement that was discussed when developing the transition plan.

Service member responsibilities

- Your RLE should be conducted in accordance with your approved transition plan. If this specific situation is not addressed, discuss this with your commander and the MMP to potentially modify the transition plan.
- Devise a communication plan with the commander to inform unit members of the transition to your preferred gender prior to attending unit events.

Commander responsibilities

- Maintain good order and discipline.
- During transition planning, discuss and document expected conduct to include RLE and whether ETPs may be necessary.
- If approving the ETP, ensure the unit members are properly trained prior to the event. If granting an ETP is not practicable, discuss with the Service member and advise him not to attend such activities as a female until unit members are properly trained.

Scenario 17: Off Duty

A Service member has been undergoing transition for the last three months, from male to female, and has not yet changed his gender marker in the Service's personnel database system. The unit is aware of his transition. He is preparing to begin his RLE after duty hours (i.e., wearing make-up, wigs, and female clothing) and would like to do so in his barracks room, unit day room, and on the military installation. He is still using the male facilities.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as standards of conduct. It also highlights existing tools available to resolve the situation, as well as emphasizing the RLE agreement that was discussed when developing transition plan.

Service member responsibilities

- Your RLE should be conducted in accordance with your approved transition plan. If this specific situation is not addressed, discuss this with your commander and the MMP to potentially modify the transition plan (i.e., request an ETP if necessary).

Commander responsibilities

- During transition plan development, discuss and document expected conduct to include RLE.
- Consider ETPs if requested by Service member; ensure your unit is aware and properly trained prior to granting an ETP.
- Only at the Service member's request, consider authorizing extended leave, transfer to IRR, ING, or Career Intermission Program/ Temporary Separation in accordance with Service policy to allow the Service member to live in their preferred gender and conduct RLE. Care should be taken to not apply any undue pressure on the Service member to avail himself of these voluntary options.
- Consider notifying the installation commander that you have a transitioning Service member to mitigate any potential confusion at base access control points.

Overseas

Scenario 18: Liberty Call and Personal Safety

The USS SHIP is about to pull into port for 3 days of liberty. The diverse crew, which includes a transgender Service member, has been working hard in the Arabian Gulf and is excited about a few days off. There is concern for Service member safety ashore due to wide spread anti-LGBT sentiment. Additionally, there are criminal penalties for violations of social norms.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander. Additionally, emphasis is placed on using available tools to evaluate assignments that may be potentially risky for the Service member.

Service member responsibilities

- You must always remember that the laws and what is considered socially normal in the host country may be vastly different than in the U.S.
- Pay attention to any travel warnings given at your command as a pre-arrival brief. You should also consult the Foreign Clearance Guide,[46] Travel Precautions, and Information section for LGBT travel information for that country.
- You should ensure that when you visit the country that you are always accompanied by some of your shipmates and avoid areas that are listed as dangerous. Be cautious of potential risky situations and don't do anything you would not do at home.
- You should avoid all physical displays of affection in public.

Commander responsibilities

- While having a transgender Service member might be unique to your crew, the specific issues and concerns are analyzed similarly to any other safety issues that may be encountered by any member of your crew.
- Conduct a thorough analysis of the country you are visiting prior to arrival. At a minimum, you should review the U.S. State Department's country specific website and DoD Foreign Clearance Guide.
- Tailor your pre-briefs to the crew on the accepted country norms and places to avoid. Ensure a robust buddy system for liberty is prescribed. Educate your non-commissioned officers about any concerns regarding the port.

Scenario 19: Assignment Considerations

A newly reported transgender female Service member arrives in the CENTCOM Area of Responsibility (AOR) to serve as an advise-and-assist mentor to women police officers. The country of assignment specifically requires female trainers for their female police officers.

46 See Annex D.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as the personnel assignment officer. Additionally, emphasis is placed on using available tools to evaluate assignments that may be potentially risky for the Service member.

Service member responsibilities

- You must be mindful of challenges presented by beliefs and norms in the AOR and how they are different than the accepted norms in the U.S.
- You may need to adjust your expectations in the event that you are asked to shift to a different billet in support of the mission. It is important to maintain a flexible mentality when working with foreign nations to better meet the needs of the overall mission.

Commander responsibilities

- This situation is unique in that close proximity with women and men in foreign countries may be more complicated than in the U.S.
- Some nations view transgender people as culturally unacceptable and will not recognize the individual's preferred gender.
- Conduct a thorough analysis of the country prior to arrival. At a minimum, you should review the U.S. State Department's country specific website and DoD Foreign Clearance Guide.
- You are encouraged to discuss this situation with your chain of command and the SCCC.

Proceed with caution for the safety of the Service member and the possible attention local media interest would generate in assigning this individual to the billet. The individual may need to be reassigned.

ANNEX D:
Additional Resources and Links

DoD Public and CAC-Enabled Websites

Public DoD website, "Department of Defense Transgender Policy":
http://www.defense.gov/transgender

DoD CAC-enabled website:
https://ra.sp.pentagon.mil/DoDCCC/SitePages/HomePage.aspx

Foreign Clearance Guide:

https://www.fcg.pentagon.mil/

Passport

The Department of State has established procedures allowing a person to change the gender on their U.S. Passport. Significantly, an amended birth certificate is not required. Details on this process are contained in the attached information page, found at this link:
http://travel.state.gov/content/passports/english/passports/information/gender.html

Service Boards for Correction of Military Records

Air Force:
http://www.afpc.af.mil/board-for-correction-of-military-records

Army:
http://arba.army.pentagon.mil/abcmr-overview.cfm

Coast Guard:
http://www.uscg.mil/legal/BCMR.asp

Navy and Marine Corps:
http://www.secnav.navy.mil/mra/bcnr/Pages/home.aspx

Service Central Coordination Cells (SCCCs)

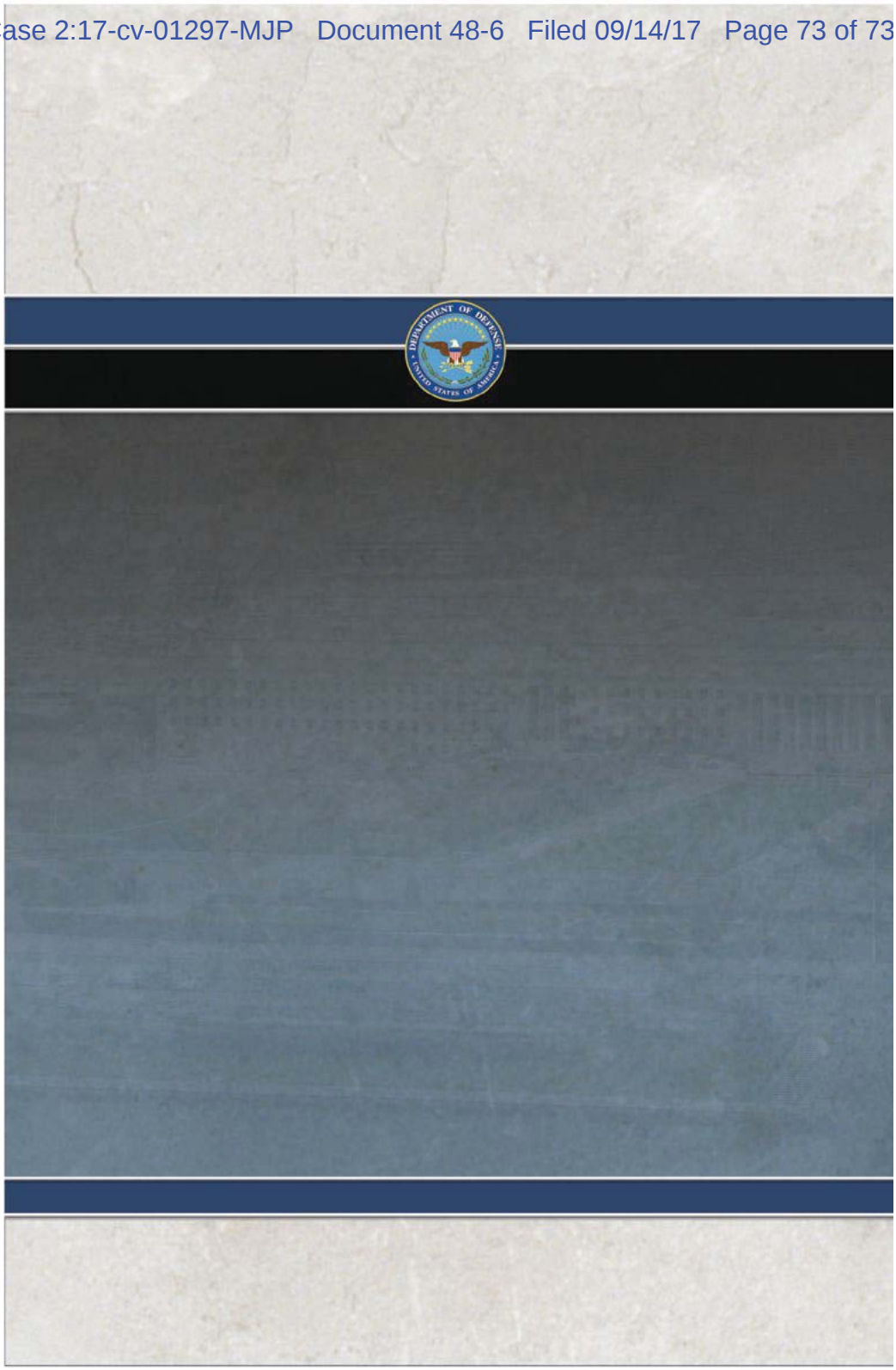
Air Force:
usaf.pentagon.saf-mr.mbx.af-central-coordination-cell@mail.mil

Army:
usarmy.pentagon.hqda-dcs-g-1.mbx.sccc@mail.mil

Coast Guard:
SCCC@uscg.mil

Marine Corps:
USMC.SCCC@usmc.mil

Navy:
usn_navy_sccc@navy.mil



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HEALTH AFFAIRS

JUL 2 9 2016

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER AND RESERVE AFFAIRS)
DIRECTOR, DEFENSE HEALTH AGENCY
DIRECTOR, HEALTH, SAFETY AND WORK LIFE, U.S. COAST GUARD

SUBJECT: Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members

In accordance with Department of Defense Instruction (DoDI) 1300.28, "In-Service Transition for Transgender Service Members," June 30, 2016, and Directive-Type Memorandum (DTM)16-005, "Military Service of Transgender Service Members," June 30, 2016, this memorandum provides guidance for the medical care of transgender Service members. This memorandum supplements requirements in those issuances; it does not supersede any such requirements.

General Provisions:

The Military Health System (MHS) will either provide or arrange consultation for medically necessary care for members on active duty for a period of more than 30 days (referred to as Active Duty Service members (ADSMs) throughout the remainder of this document). Such care is based upon the individual's unique health care needs and, following initial evaluation, may include counseling and behavioral health services, medical support, and assistance with establishing a treatment plan for the Service member's submission to the unit commander, followed by any medically necessary treatment.

Until the DoD is able to promulgate specific clinical practice guidelines for the care of transgender personnel, the MHS will adhere to the attached 2009 version of the Endocrine Society's Standards of Care, "Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline," as the primary guideline to provide consistent, evidence based care to transitioning patients. Explanation of any clinically indicated deviation from the guideline should be documented in the patient's health record. Clinical Practice Guidelines from other professional societies may also help inform clinical decision making (e.g., the 2015 American Psychological Association Guidelines for Psychological Practice with Transgender and Gender Nonconforming People and the World Professional Association for Transgender Health Standards of Care). Key components of medical care for the purpose of treating gender dysphoria include initial assessment and, based upon that assessment of the individual's needs,

the establishment of a treatment plan which may include real life experience (RLE) that is provided in a manner consistent with the requirements of DoDI 1300.28 and DTM 16-005 regarding RLE, cross-sex hormone therapy, and surgical transition. Treatment plans must be individualized and approved by a military medical provider. The following guidance addresses various stages of treatment:

1. For Active Duty Service members (ADSMs) seeking initial treatment for gender dysphoria, a diagnosis of gender dysphoria must be established by a privileged behavioral health provider (or similarly qualified civilian provider if unavailable in a military facility), with appropriate referral to other types of providers as indicated or required. The assessment should be comprehensive in nature, including exclusion of other causes for dysphoria, and lead to formulation of an initial treatment plan.

2. For ADSMs who have already received a diagnosis of gender dysphoria and established a treatment plan approved by a military medical provider, and who desire to proceed to or continue cross-sex hormone therapy, an endocrinologist or other physician with appropriate professional expertise should exclude medical conditions making hormone therapy unsafe, may initiate or continue hormone therapy if indicated as medically necessary, and monitor response to hormones in accordance with the Endocrine Society's Standards of Care guidelines, to include periodic screening for hormone associated adverse outcomes.

3. ADSMs with an established treatment plan desiring surgical treatment following a period of RLE and who are compliant with all facets of an approved treatment plan should be referred to an appropriately qualified surgeon for evaluation. The surgeon should fully discuss all surgical options and potential complications in order to provide informed consent before surgery is proposed. Consistent with current DoD policies, purely cosmetic or other non-medically necessary surgery is not authorized.

4. Any Service member for whom the Defense Enrollment Eligibility Reporting System has recorded a gender change, or who is in the process of obtaining such a change, must have an ongoing plan to address needed medical care, including follow up of hormone treatment and any appropriate health screening.

5. Unless and until adequate surgical capabilities have been established in DoD Military Treatment Facilities (MTFs), medically necessary surgical treatment will be evaluated using the existing MHS waiver process for private sector care for Active Duty members under the Supplemental Health Care Program (SHCP). This standardized process requires referral through the Service chain of command and review and approval by the Director, Defense Health Agency (DHA).

6. The expectation is for the MHS to provide an interdisciplinary team approach to transition care in accordance with evidence based guidelines and practices, reinforcing at all times the transgender Service member's right to receive all medical care with dignity and respect. Provision of care may involve multiple facilities and require appropriate care coordination between providers. In no circumstance will a provider be required to

deliver care that he or she feels unprepared to provide either by lack of clinical skill or due to ethical, moral or religious beliefs. However, referral to an appropriate provider or level of care is required under such circumstances.

7. As with all other medical conditions, in the first 180 days of service in the military, all personnel must continue to meet the medical standards associated with accession (DoDI 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services"). Ongoing fitness for duty and deployment screening after 180 days shall be assessed in accordance with current Service practices and policies applied to other medical conditions.

Central Coordination:

1. Service Central Coordination Cells (SCCC) established under DoDI 1300.28 shall provide multi-disciplinary (e.g., medical, legal, military personnel management) expert advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military to assist commanders in the execution of DoD, Military Department, and Service policies and procedures.

2. The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) has established a Central Coordination Cell with Office of the Secretary of Defense, DHA, and Service representatives to oversee consistent and uniform implementation of DoDI 1300.28, provide consultation to SCCCs, and receive and analyze data reported by the Services. The Central Coordination Cell is not a substitute for SCCCs, but provides information and advice on policy matters, and assistance with identification and coordination of needed treatment resources, when necessary. DHA has provided a senior representative to facilitate coordination of care and services delivered by the managed care support contractors and the DHA Waiver Authority process.

3. To assist Commanders and Service members until each Service establishes its own SCCC, the DoD Central Coordination Cell has established the following website: https://prext.osd.mil/DoDCCC. This is a Common Access Card-enabled website for secure questions by all Service members. Policy documents and Frequently Asked Questions reside on this website and questions will be answered by policy, legal and medical experts.

Service and DHA Requirements and Responsibilities:

1. Each Service and DHA shall develop and submit an assessment of current Service medical capacity and expertise in providing medical and surgical support for treating gender dysphoria to the USD(P&R) no later than August 31, 2016. This assessment should include a listing of MTFs at which interdisciplinary care and treatment are available or under development for this purpose, and use the attached data reporting template.

2. Each Service and DHA shall develop an education and training plan for both privileged and non-privileged medical personnel no later than November 1, 2016. This plan should detail how the Service will ensure familiarity with applicable Department policies and requirements, evidence-based practice guidelines and standards of care, and any Service-specific policies. To the extent practicable, training plans and requirements, and additional procedural guidance for care and services will be consistent across the MHS, and will be published as DHA procedural guidance.

3. Each Service and DHA shall be prepared to begin supporting transition medical care to transgender ADSMs no later than October 1, 2016. At a minimum, Services will be expected to provide, by referral if necessary, initial assessment, psychological and pharmaceutical support. As directed by the Secretary of Defense, in the period prior to October 1, 2016, the Military Departments and Services will address requests for gender transition from serving transgender Service members on a case-by-case basis, following the spirit and intent of DTM 16-005 and DoDI 1300.28. Until the capability of MHS MTFs to provide surgical transition services has been documented, any proposed genital surgical transition procedures within MTFs shall be prospectively reviewed by the appropriate Surgeon General or, in the case of the National Capital Region facilities, the Director, DHA. Approvals will be reported to the Assistant Secretary of Defense for Health Affairs (ASD(HA)) monthly.

4. The Director, DHA, will ensure that the Managed Care Support Contractors identify appropriate referral resources with providers experienced in care and treatment of transgender persons to ensure availability of care to complement MTF capabilities. An inventory of such resources shall be provided to the ASD(HA) not later than August 31, 2016.

5. The Director, DHA, will evaluate proposed referrals to the TRICARE network for surgical treatment in accordance with the Supplemental Health Care Program (SHCP). MHS care for ADSMs from non-DoD providers is governed by section 1074(c)(2) of title 10, U.S. Code, and section 199.16 of title 32, Code of Federal Regulations. Under these provisions, the SHCP normally follows TRICARE rules, which disallow surgical treatment of gender dysphoria, but the prohibition is subject to waiver for medically necessary care for ADSMs. The Director, DHA, is authorized to grant waivers on a case-by-case basis. Waiver requests will follow existing processes. Each waiver request, with appropriate clinical documentation, should be submitted through the Surgeon General concerned, to the Director, DHA.

6. To the extent a SHCP waiver would be needed to authorize non-surgical care for an ADSM, this memorandum approves such a waiver on a blanket basis if such care is recommended by a military health care provider in accordance with established SHCP procedures and this memorandum.

7. With respect to Reserve Component Service members not on active duty for a period of more than 30 days who initiate or are involved in a gender transition process, the Services shall establish procedures to ensure that a medical diagnosis and treatment plan (or significant revisions to a treatment plan) or a recommendation for a change in a member's gender marker made by a civilian medical provider is reviewed and approved by an appropriate military medical provider and communicated in a timely and efficient manner with the Reserve Component command involved.

ASD(HA) Responsibilities:

1. The ASD(HA) shall establish collaboration with the Veterans Health Administration and academic medical centers to support Service training plans and specialty consultations, including via telemedicine, where necessary and appropriate.

2. The ASD(HA) shall monitor compliance with this memorandum, which may include assessing Service and DHA performance on all provisions contained within this memorandum.

Karen S. Guice, M.D., M.P.P.
Acting

Attachments:
As stated

cc:
Under Secretary of Defense for Personnel and Readiness
Assistant Secretary of Defense (Manpower and Reserve Affairs)
Surgeon General of the Army
Surgeon General of the Navy
Surgeon General of the Air Force
Joint Staff Surgeon
Medical Office of the Marine Corps

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

JUN 30 2016

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

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

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

Purpose. This DTM:

- Establishes policy, assigns responsibilities, and prescribes procedures for the standards for retention, accession, separation, in-service transition, and medical coverage for transgender personnel serving in the Military Services.

- Except as otherwise noted, this DTM will take effect immediately. It will be converted to a new DoDI. This DTM will expire effective June 30, 2017.

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

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

Policy.

- The defense of the Nation requires a well-trained, all-volunteer force comprised of Active and Reserve Component Service members ready to deploy worldwide on combat and operational missions.

- The policy of the Department of Defense is that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness. Consistent with the policies and procedures set forth in this memorandum, transgender individuals shall be allowed to serve in the military.

- These policies and procedures are premised on my conclusion that open service by transgender Service members while being subject to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming, deployability, and retention, is consistent with military readiness and with strength through diversity.

Responsibilities

- The Secretaries of the Military Departments will:

  - Take immediate action to identify all DoD, Military Department, and Service issuances, the content of which relate to, or may be affected by, the open service of transgender Service members.

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

  - Submit to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) the text of any proposed revisions to existing Military Department and Service regulations, policies, and guidance, and of any proposed new issuance, no later than 30 days in advance of the proposed publication date of each.

- The USD(P&R) will:

  - Take immediate action to identify all DoD, Military Department, and Service issuances, the content of which relate to, or may be affected by, the open service of transgender Service members.

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

Procedures. See Attachment.

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

Ash Carter

Attachment:
As stated

cc:
Secretary of Homeland Security
Commandant, United States Coast Guard

ATTACHMENT

PROCEDURES

1. SEPARATION AND RETENTION

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

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

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

2. ACCESSIONS

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

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

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

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

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

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

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

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

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

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

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

3. IN-SERVICE TRANSITION

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

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

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

5. EQUAL OPPORTUNITY

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

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

6. EDUCATION AND TRAINING

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

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

7. IMPLEMENTATION AND TIMELINE

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

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

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2018, I filed the foregoing excerpts of record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Catherine H. Dorsey
Catherine H. Dorsey

No. 18-35347

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RYAN KARNOSKI, et al.,
Plaintiffs-Appellees,

STATE OF WASHINGTON, Attorney General's Office Civil Rights Unit,
Intervenor-Plaintiff-Appellee,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.
Defendants-Appellants.

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

EXCERPTS OF RECORD
VOLUME III (ER320-614)

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Assessing the Implications of Allowing Transgender Personnel to Serve Openly

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Preface

U.S. Department of Defense (DoD) policies have rendered both the physical and psychological aspects of "transgender conditions" as disqualifying conditions for accession and allow for the administrative discharge of service members who fall into these categories. However, in July 2015, Secretary of Defense Ashton Carter announced that DoD would "create a working group to study the policy and readiness implications of welcoming transgender persons to serve openly." In addition, he directed that "decision authority in all administrative discharges for those diagnosed with gender dysphoria[1] or who identify themselves as transgender be elevated to the Under Secretary of Defense (Personnel and Readiness), who will make determinations on all potential separations" (DoD, 2015b).

It is against this backdrop that DoD is considering allowing transgender personnel to serve openly. To assist in identifying the potential implications of such a change in policy, the Office of the Under Secretary of Defense for Personnel and Readiness asked the RAND National Defense Research Institute to conduct a study to (1) identify 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 the potential readiness implications of allowing transgender service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly. This report documents the findings from that study. This research should be of interest to DoD and military service leadership, members of Congress, and others who are interested in the potential implications of allowing transgender personnel to serve openly in the U.S. armed forces.

This research was sponsored by the Office of the Under Secretary of Defense for Personnel and Readiness and conducted within the Forces and Resources Policy Center of the RAND National Defense Research Institute, a federally funded research and development center sponsored by the Office of the Secretary of Defense, the Joint

[1] *Gender dysphoria* is "discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth" (World Professional Association for Transgender Health, 2011, p. 2).

Staff, the Unified Combatant Commands, the Navy, the Marine Corps, the defense agencies, and the defense Intelligence Community.

For more information on the RAND Forces and Resources Policy Center, see www.rand.org/nsrd/ndri/centers/frp or contact the director (contact information is provided on the web page).

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Summary

The U.S. Department of Defense (DoD) is reviewing its policy on transgender personnel serving openly and receiving gender transition–related treatment during military service. The prospect of transgender personnel serving openly raises a number of policy questions, including those regarding access to gender transition–related health care, the range of transition-related treatments to be provided, the potential costs associated with these treatments, and the impact of gender transition–related health care needs (i.e., surgical, pharmacologic, and psychosocial) on military readiness—specifically, in terms of the deployability of transgender service members. The Office of the Under Secretary of Defense for Personnel and Readiness asked the RAND National Defense Research Institute to conduct a study to (1) identify 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 the potential readiness implications of allowing transgender service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly. This report presents the study findings centered around the following research questions:

- What are the health care needs of the transgender population?
- What is the estimated transgender population in the U.S. military?
- How many transgender service members are likely to seek gender transition–related medical treatment?
- What are the costs associated with extending health care coverage for gender transition–related treatments?
- What are the potential readiness implications of allowing transgender service members to serve openly?
- What lessons can be learned from foreign militaries that permit transgender personnel to serve openly?
- Which DoD policies would need to be changed if transgender service members are allowed to serve openly?

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In the following sections, we summarize the findings associated with each research question.

What Are the Health Care Needs of the Transgender Population?

For the purposes of this analysis, we use *transgender* as an umbrella term to refer to individuals who identify with a gender different from the sex they were assigned at birth. Under the recently established criteria and terminology in the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), the American Psychiatric Association (APA) publication that provides standard language and criteria for classifying mental health conditions, transgender status alone does not constitute a medical condition (APA, 2013). Instead, under the revised diagnostic guidelines, only transgender individuals who experience significant related distress are considered to have a medical condition called *gender dysphoria* (GD). Some combination of psychosocial, pharmacologic (mainly but not exclusively hormonal), or surgical care may be medically necessary for these individuals. Psychotherapy to confirm a diagnosis of GD is a common first step in the process, often followed by hormone therapy and, perhaps, gender reassignment surgery involving secondary or primary sex characteristics. Not all individuals seek all forms of care.

A subset of transgender individuals may choose to *transition*, the term we use to refer to the act of living and working as a gender different from that assigned at birth. For some, the transition may be primarily social, with no accompanying medical treatment; we refer to this as *social transition*. For others, medical treatments, such as hormone therapy and hair removal, are important steps to align their physical body with their target gender. We refer to this as *medical transition*. A subset of those who medically transition may choose to undergo gender reassignment surgery to make their body as congruent as possible with their gender identity. This process of surgical transition is also often referred to as *sex* or *gender reassignment* or *gender confirmation*.

What Is the Estimated Transgender Population in the U.S. Military?

Estimates of the transgender population in the U.S. military and the analyses presented in this report should be interpreted with caution, as there have been no rigorous epidemiological studies of the size or health care needs of either the transgender population in the United States or the transgender population serving in the military. As a result, much existing research relies on self-reported, nonrepresentative survey samples. We applied a range of prevalence estimates from published research to fiscal year (FY) 2014 personnel numbers to estimate the number of transgender individuals serving in the U.S. military. We estimate that there are between 1,320 and

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6,630 transgender personnel serving in the active component (AC) and 830–4,160 in the Selected Reserve (SR). Combining survey evidence from multiple states and adjusting for the male/female distribution in the military gave us a midrange estimate of around 2,450 transgender personnel in the AC and 1,510 in the SR.

How Many Transgender Service Members Are Likely to Seek Gender Transition–Related Medical Treatment?

We developed two estimates of demand for gender transition–related medical treatments based on private health insurance data and self-reported data from the National Transgender Discrimination Survey (NTDS). Based on our analyses of available private health insurance data on transition-related health care utilization, we expect only a small number of AC service members to access transition-related health care each year. Our estimates based on private health insurance data ranged from 0.022 to 0.0396 annual claimants per 1,000 individuals. Applied to the AC population, these estimates led to a lower-bound estimate of 29 AC service members and an upper-bound estimate of 129 AC service members annually utilizing transition-related health care, out of a total AC force of 1,326,273 in FY 2014.

We also projected health care utilization using the estimated prevalence of transgender service members and self-reported survey data from the NTDS describing the proportion of the transgender population seeking transition-related treatments by age group. Based on these calculations, we estimated, as an upper-bound, 130 total gender transition–related surgeries and 140 service members initiating transition-related hormone therapy (out of a total AC force of 1,326,273 in FY 2014). To put these numbers in perspective, an estimated 278,517 AC service members accessed mental health services in FY 2014. Hence, we expect annual gender transition–related health care to be an extremely small part of the overall health care provided to the AC population.

What Are the Costs Associated with Extending Health Care Coverage for Gender Transition–Related Treatments?

To determine the budgetary implications of gender transition–related treatment for Military Health System (MHS) health care costs, we again used data from the private health insurance system on the cost of extending coverage for this care to the transgender personnel population. We estimate that AC MHS health care costs will increase by between $2.4 million and $8.4 million annually—an amount that will have little impact on and represents an exceedingly small proportion of AC health care expendi-

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tures (approximately $6 billion in FY 2014)[1] and overall DoD health care expenditures ($49.3 billion actual expenditures for the FY 2014 Unified Medical Program; Defense Health Agency, 2015, p. 22). These estimates imply small increases in annual health care costs; results that are consistent with the low prevalence of transgender personnel and the low annual utilization estimates that we identified.

What Are the Potential Readiness Implications of Allowing Transgender Service Members to Serve Openly?

Similarly, when assessing the readiness impact of a policy change, we found that less than 0.0015 percent of the total available labor-years would be affected, based on estimated gender transition–related health care utilization rates.[2] This is because even at upper-bound estimates, less than 0.1 percent of the total force would seek transition-related care that could disrupt their ability to deploy.[3] Existing data also suggest a minimal impact on unit cohesion as a result of allowing transgender personnel to serve openly. However, we caution that these results rely on data from the general civilian population and foreign militaries, as well as previous integration experiences in the military (e.g., gays, lesbians, women), which may not hold for transgender service members.

What Lessons Can Be Learned from Foreign Militaries That Permit Transgender Personnel to Serve Openly?

There are 18 countries that allow transgender personnel to serve openly in their militaries: Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, Netherlands, New Zealand, Norway, Spain, Sweden, and the United Kingdom (Polchar et al., 2014). Our analysis focused on the policies of the four countries—Australia, Canada, Israel, and the United Kingdom—with the most well-developed and publicly available policies on transgender military personnel. Several common themes emerged from our analysis of their experiences:

- The service member's gender is usually considered to have shifted to the target gender in areas such as housing, uniforms, identification cards, showers, and restrooms when a service member publicly discloses an intention to live as the target

[1] AC beneficiaries make up less than 15 percent of TRICARE beneficiaries (Defense Health Agency, 2015).

[2] We define a labor-year as the amount of work done by an individual in a year.

[3] We note that the ability to deploy is not exactly equivalent to readiness. A service member's readiness could be measured by the ability to participate in required training and exercises, which could be affected by treatments as well. Our estimates include days of inactivity due to medical treatments, which could also apply in these settings.

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gender and receives a diagnosis of gender incongruence. However, physical fitness standards typically do not fully shift until the medical transition is complete. In many cases, personnel are considered exempt from physical fitness tests during transition.

- Because the gender transition process is unique for each individual, issues related to physical standards and medical readiness are typically addressed on a case-by-case basis. This flexibility has been important in addressing the needs of transgender personnel.
- The foreign militaries we analyzed permit the use of sick leave for gender transition–related medical issues and cover some, if not all, medical or surgical treatments related to a service member's gender transition.
- In no case was there any evidence of an effect on the operational effectiveness, operational readiness, or cohesion of the force.

The case studies also suggested a number of key best practices:

- Ensure strong leadership support.
- Develop an explicit written policy on all aspects of the gender transition process.
- Provide education and training to the entire force on transgender personnel policy, but integrate this training with other diversity-related training and education.
- Develop and enforce a clear anti-harassment policy that addresses harassment aimed at transgender personnel alongside other forms of harassment.
- Make subject-matter experts and gender advisers serving within military units available to commanders seeking guidance or advice on gender identity issues.
- Identify and communicate the benefits of an inclusive and diverse workforce.

Which DoD Policies Would Need to Be Changed if Transgender Service Members Are Allowed to Serve Openly?

We reviewed 20 current accession, retention, separation, and deployment regulations across the services and the Office of the Secretary of Defense to assess the impact of changes that may be required to allow transgender individuals to serve openly. We also reviewed 16 other regulations that have been replaced by more recent regulations or that did not mention transgender personnel.[4] Based on the experiences of foreign militaries, we recommend that DoD issue clear and comprehensive policies.

[4] These additional policies can are listed in Appendix D of this report.

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Accession Policy

We recommend that DoD review and revise the language in accession instructions to match the DSM-5 for conditions related to mental fitness, ensuring the alignment of mental health–related language and facilitating appropriate screening and review processes for disorders that may affect fitness for duty. Similarly, physical fitness standards should specify physical requirements (rather than physical conditions). Finally, physical fitness policies should clarify when the service member's target gender requirements will begin to apply.

Retention Policy

We recommend that DoD expand and enhance its guidance and directives to clarify retention standards for review during and after medical transition. For example, evidence from Canada and Australia suggests that transgender personnel may need to be held medically exempt from physical fitness testing and requirements (Canadian Armed Forces, 2012; Royal Australian Air Force, 2015). However, after completing medical transition, the service member could be required to meet the standards of the acquired gender.

Separation Policy

DoD may wish to revise the current separation process based on lessons learned from the repeal of Don't Ask, Don't Tell. The current process relies on administrative decisions outside the purview of the standard medical and physical review process. This limits the documentation and review of discharges, and it could prove burdensome if transgender-related discharges become subject to re-review and redetermination. When medically appropriate, DoD may wish to establish guidance on when such discharge reviews should be handled through the existing medical fitness processes. We also recommend that DoD develop and disseminate clear criteria for assessing whether and how transgender-related conditions may interfere with duty performance.

Deployment Policy

The degree of austerity will differ across deployment environments, and some locations may be able to meet the health care needs of some transgender individuals. Moreover, recent advancements can minimize the invasiveness of treatments and allow for telemedicine or other forms of remote medical care.

Given this, DoD may wish to adjust some of its processes and deployment restrictions in the context of medical and technological advancements (e.g., minimally invasive treatments, telemedicine). Such reforms could minimize the readiness impact of medical procedures that are common among the transgender population. For example, current regulations specifying that conditions requiring regular laboratory visits that cannot be accommodated in a deployed environment can leave service members ineligible for deployment and would affect all individuals receiving hormone treatments

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(Office of the Assistant Secretary of Defense for Health Affairs, 2013, p. 3). These treatments require laboratory monitoring every three months for the first year as hormone levels stabilize (Hembree et al., 2009; Elders et al., 2014). To avoid this cost, DoD would need to either permit more flexible monitoring strategies[5] or provide training to deployed medical personnel.[6]

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[5] Some experts suggest that alternatives, such as telehealth reviews, would address this issue for rural populations with limited access to medical care (see, for example, World Professional Association for Transgender Health, 2011).

[6] "Independent duty corpsmen, physician assistants, and nurses can supervise hormone treatment initiated by a physician" (Elders et al., 2014).

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Abbreviations

AC	active component
APA	American Psychiatric Association
DoD	U.S. Department of Defense
DoDI	U.S. Department of Defense instruction
DSM-5	*Diagnostic and Statistical Manual of Mental Disorders*, fifth ed.
FY	fiscal year
GD	gender dysphoria
IDF	Israel Defense Forces
LGBT	lesbian, gay, bisexual, and transgender
MHS	Military Health System
MTF	military treatment facility
NTDS	National Transgender Discrimination Survey
SR	Selected Reserve
VHA	Veterans Health Administration
WPATH	World Professional Association for Transgender Health

CHAPTER ONE

Introduction

U.S. Department of Defense (DoD) policies have rendered both the physical and psychological aspects of "transgender conditions" disqualifying conditions for accession and allowed for the administrative discharge of service members who fall into these categories. However, in July 2015, Secretary of Defense Ashton Carter announced that DoD would "create a working group to study the policy and readiness implications of welcoming transgender persons to serve openly." In addition, he directed that "decision authority in all administrative discharges for those diagnosed with gender dysphoria[1] or who identify themselves as transgender be elevated to the Under Secretary of Defense (Personnel and Readiness), who will make determinations on all potential separations" (DoD, 2015b). It is against this backdrop that DoD is considering allowing transgender service members to serve openly. To assist in identifying the potential implications of such a policy change, the Office of the Under Secretary of Defense for Personnel and Readiness asked the RAND National Defense Research Institute to conduct a study to (1) identify 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 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.

Study Approach

Our study approach centered around the following research questions:

- What are the health care needs of the transgender population?
- What is the estimated transgender population in the U.S. military?

[1] *Gender dysphoria*, or GD, is "discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth" (World Professional Association for Transgender Health [WPATH], 2011, p. 2).

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- How many transgender service members are likely to seek gender transition–related medical treatment?
- What are the costs associated with extending health care coverage for gender transition–related treatments?
- What are the potential readiness implications of allowing transgender service members to serve openly?
- What lessons can be learned from foreign militaries that permit transgender personnel to serve openly?
- Which DoD policies would need to be changed if transgender service members are allowed to serve openly?

We explain our methodological approaches in detail in each chapter of this report, but, here, we present overviews of the various methodologies that we employed. We began our analysis by defining the term *transgender* and then identifying the health care needs of the transgender population. This entailed an extensive literature review of these health care needs, along with treatment standards and medical options—particularly for those who have been diagnosed with gender dysphoria (GD).

We then undertook a review of existing data to estimate the prevalence and likely utilization rates of the transgender population in the U.S. military. Based on our estimates of the potential utilization of gender transition–related health care services, we estimated the Military Health System (MHS) costs for transgender active-component (AC) service members and reviewed the potential effects on force readiness from allowing these service members to serve openly.

We adopted two distinct but related approaches to estimating health care utilization and readiness impact. The first is what we label the *prevalence-based approach*, in which we estimated the prevalence of transgender personnel in the military and applied information on rates of gender transition and reported preferences for different medical treatments to measure utilization and the implied cost and readiness impact. This approach has the benefit of including those who may seek other forms of accommodation, even if they do not seek medical care. It also provides detailed information on the types of medical treatments likely to be sought, which can improve the accuracy of cost and readiness estimates. However, this approach suffers from a lack of rigorous evidence in terms of the rates at which transgender individuals seek treatment and instead relies on the nonscientific National Transgender Discrimination Survey (NTDS). This approach also relies on prevalence measures from only two states, Massachusetts and California, which may not be directly applicable to military populations.

Using our second approach, which we label the *utilization-based approach*, we estimated the rates of utilization of gender transition–related medical treatment. This approach has the benefit of providing real-world measures of utilization, which may be more accurate and more rigorously collected than survey information. However, it suffers from a lack of large-scale evidence and instead relies on several case studies

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that may not be directly applicable to the U.S. military. Given the caveats described, these approaches provide the best available estimate of the potential number of transgender service members likely to seek medical treatment or require readiness-related accommodations.[2] In both cases, we applied measures of population prevalence and utilization to fiscal year (FY) 2014 DoD force size estimates to provide estimates of prevalence within the U.S. military.

We also reviewed the policies of foreign militaries that allow transgender service members to serve openly. Our primary method supporting the observations presented in this report was an extensive document review that included primarily publicly available policy documents, research articles, and news sources that discussed policies on transgender personnel in these countries. The information about the transgender personnel policies of foreign militaries came directly from the policies of these countries, as well as from research articles describing the policies and their implementation. Findings on the effects of open transgender service on cohesion and readiness drew largely from research articles that specifically examined this question using interviews and an analysis of studies completed by the foreign militaries themselves. Finally, insights on best practices and lessons learned emerged both directly from research articles describing the evolution of policy and experience and indirectly from commonalities in the policies and experiences of our four in-depth case studies. Recommendations provided in this report are based on these best practices and lessons learned, as well as a consideration of the unique characteristics of the U.S. military.

Finally, for our analysis of DoD policies, we reviewed 20 current accession, retention, separation, and deployment regulations across the services and the Office of the Secretary of Defense. We also reviewed 16 other regulations that have been replaced by more recent regulations or that did not mention transgender personnel.[3] Our review focused on transgender-specific DoD instructions (DoDIs) that may contain unnecessarily restrictive conditions and reflect outdated terminology and assessment processes. However, in simply removing these restrictions, DoD could inadvertently affect standards overall. While we focused on reforms to specific instructions and directives, we note that DoD may wish to conduct a more expansive review of personnel policies to ensure that individuals who join and remain in service can perform at the desired level, regardless of gender identity.

Limitations and Caveats

A critical limitation of such a comprehensive assessment is the lack of rigorous epidemiological studies of the size or health care needs of either the U.S. transgender population or the transgender population serving in the military. Indeed, much of the

[2] We define *accommodations* as adjustments in military rules and policies to allow individuals to live and work in their target gender.

[3] These additional policies are listed in Appendix D of this report.

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existing research on the transgender population relies on self-reported, nonrepresentative survey data, along with unstandardized calculations using results from available studies. Because there are no definitive data on this topic, the information presented here should be interpreted with caution and, therefore, we present the full range of estimates.

Organization of This Report

The report is organized around our seven research questions. Chapter Two defines what is meant by the term *transgender*, identifies the health care needs of the transgender population, explains the various treatment options for those diagnosed with GD, and examines the capacity of the MHS to provide treatment options to service members diagnosed with GD. Chapter Three estimates the number of transgender service members in the AC and Selected Reserve (SR). Chapter Four estimates how many transgender service members are likely to seek medical treatment. Chapter Five estimates the costs associated with extending health care coverage for gender transition–related treatments. Chapter Six assesses the potential readiness implications of allowing transgender service members to serve openly. Chapter Seven identifies lessons learned from foreign militaries that allow transgender personnel to serve openly. Chapter Eight offers recommendations regarding which DoD accession, retention, separation, and deployment policies would need to be changed if a decision is made to allow transgender service members to serve openly. Chapter Nine summarizes key findings presented in the report and suggests best practices for implementing policy changes.

Appendix A presents definitions of common terms related to gender transition and transgender identity. Appendix B provides a history of the historical nomenclature associated with transgender identity. Appendix C provides details on the psychosocial, pharmacologic, surgical, and other treatments for GD. Appendix D lists the DoD accession, retention, separation, and deployment policies that we reviewed.

CHAPTER TWO

What Are the Health Care Needs of the Transgender Population?

This report begins by describing the health care needs of the U.S. transgender population overall. To discern the potential impact of changing DoD policies to allow transgender military personnel to serve openly and to ensure appropriate health care for those who seek gender transition–related treatment, it is also important to consider whether the MHS has the capacity to provide this care.

Definitions of Key Terms and Concepts

A challenge to our efforts to understand the health care needs of the transgender population in general, as well as in the military, is the varied and shifting terminology used in the clinical literature. Consequently, here, we define a range of terms that we will use throughout this review.[1] Consistent with the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), the American Psychiatric Association (APA) publication that provides standard language and criteria for classifying mental health conditions, we use the term *transgender* to refer to "the broad spectrum of individuals who . . . identify with a gender different from their natal gender" (APA, 2013).[2] *Natal gender* or *birth sex*, which is the sex that an individual was assigned at birth and typically correlates with primary sex characteristics (e.g., genitalia).

We refer to the subset of the population whose gender identity does not conform with the expressions and behaviors typically associated with the sex to which they were assigned at birth as *transgender* or *gender nonconforming*. Many identities fall under these umbrella terms, including individuals who identify as androgynous, multigendered, third gender, and two-spirit people. The *gender nonconforming* category also includes individuals who *cross-dress*, which means they wear clothing that is traditionally worn by a gender different from that of their birth sex. The exact definitions of each of these identities vary under the term *gender nonconforming*, and individuals may

[1] A comprehensive list of terms and definitions is provided in Appendix A.

[2] A brief history of the DSM language and diagnostic criteria for related conditions is presented in Appendix B.

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fluidly change, blend, or alter their gender identity over time. For the purposes of this analysis, we use *transgender* as an umbrella term that refers to individuals who identify with a gender different from the sex they were assigned at birth.

Importantly, under the recently established criteria and terminology outlined in DSM-5, transgender status alone does not constitute a medical condition (APA, 2013). Instead, under the revised diagnostic guidelines, only transgender individuals who experience significant related distress are considered to have a medical condition called *gender dysphoria* (GD). Some combination of psychosocial, pharmacologic (mainly but not exclusively hormonal), or surgical care may be medically necessary for these individuals. Psychotherapy to confirm a diagnosis of GD is a common first step in the process, often followed by hormone therapy and, perhaps, by gender reassignment surgery involving secondary or primary sex characteristics. Not all patients seek all forms of care. However, recognized standards of care require documentation of 12 continuous months of hormone therapy and living in the target gender role consistently and in all aspects of life. Unfortunately, the diagnosis is newly established, and data from which to estimate the size of these subgroups are lacking. In the future, however, transgender individuals seeking gender transition–related treatment are likely to require a GD diagnosis as the clinical justification.

Among transgender individuals, a subset may choose to *transition*, the term used to refer to the act of living and working in a gender different from one's sex assigned at birth. For some individuals, this may involve primarily social change but no medical treatment; this is referred to as *social transition*. For others, medical treatments, such as hormone therapy and hair removal, are important steps to align their physical body with their target gender. This is referred to as *medical transition*. A subset of those who medically transition may choose to undergo *gender reassignment surgery* to make their physical body as congruent as possible with their gender identity. This process of *surgical transition* is also often referred to as *sex* or *gender reassignment* or *gender confirmation*.

Health Care Needs of the Transgender Population

The main types of gender transition–related treatments are psychosocial, pharmacologic (primarily but not exclusively hormonal), and surgical. While one or more of these types of treatments may be necessary for some transgender individuals with GD, the course of treatments varies and must be determined on an individual basis by patients and clinicians. Since little is known about currently serving transgender service members, the following discussion draws primarily from available research on nonmilitary transgender populations.[3]

[3] The 2015 DoD Health Related Behavior Survey of active-duty service members was being fielded concurrently to this research. It marked the first time a U.S. military survey asked questions relating to gender identity.

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Diagnosis and Treatments for Gender Dysphoria

Treatments deemed necessary for transgender populations have shifted over time based on research advancements and the accumulation of clinical knowledge. The World Professional Association for Transgender Health (WPATH) regularly publishes revised versions of its *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*; the most current at the time of our research was version 7. The standards are designed to guide the treatment of patients experiencing GD while recognizing that not all expressions of gender nonconformity require treatment (WPATH, 2011, p. 2). Some transgender individuals (again, the proportion is largely unknown) experience significant dysphoria (distress) with the sex and gender they were assigned at birth, and they meet formal DSM-5 diagnostic criteria for GD, as described in Appendix B of this report. For those diagnosed with GD, treatment options include psychotherapy, hormone therapy, surgery, and changes to gender expression and role (i.e., how people present themselves to the world; WPATH, 2011, pp. 9–10). We discuss these treatment options in detail in Appendix C.

Not all patients will prefer or need all or any of these options; however, when clinically indicated, appropriate care can "alleviate gender dysphoria by bringing one's physical characteristics into alignment with one's internal sense of gender" (Herman, 2013b, p. 4). There have been no randomized controlled trials of the effectiveness of various forms of treatment, and most evidence comes from retrospective studies. The widely endorsed consensus-based practice guidelines outlined in the WPATH *Standards of Care* suggest that transition-related mental health care, hormone therapy, and surgery are generally effective and constitute necessary health care for many individuals with GD.[4] The appropriate treatment plan is best determined collaboratively by patients and their health care providers. Optimally, specialized transgender health care will be provided by an interdisciplinary team (WPATH, 2011, p. 26).

Military Health System Capacity and Gender Transition–Related Treatment

To discern the potential impact of changing DoD policies to allow transgender military personnel to serve openly and to ensure appropriate health care for GD, it is also important to consider whether the MHS has the capacity to provide this care.

We anticipate that these survey results will provide additional information regarding how many transgender personnel currently serve in the U.S. military and their health behaviors.

[4] These standards are endorsed by the American Medical Association, American Psychological Association, American Academy of Family Physicians, National Association of Social Workers, World Professional Association for Transgender Health, and American College of Obstetricians and Gynecologists (see Lambda Legal, 2012). Major insurers, including Aetna and UnitedHealthcare, have incorporated many of these standards of care into their policies (see, for example UnitedHealthcare, 2015).

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Psychotherapy, Hormone Therapies, and Gender Transition–Related Surgery

Both psychotherapy and hormone therapies are available and regularly provided through the military's direct care system, though providers would need some additional continuing education to develop clinical and cultural competence for the proper care of transgender patients. Surgical procedures quite similar to those used for gender transition are already performed within the MHS for other clinical indications.

Reconstructive Surgery

Reconstructive 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. For instance, mastectomies are the same for breast cancer patients and female-to-male transgender patients. Perhaps most importantly, the surgical skills and competencies for some gender transition surgeries also overlap with skills required for the repair of genital injuries sustained in combat, which have increased dramatically among troops deployed to Afghanistan. From 2009 to 2010, the percentage of wounded troops with genitourinary injuries transiting through Landstuhl Regional Medical Center in Germany nearly doubled from 4.8 percent to 9.1 percent—a dramatic increase that led some health providers to call this the "new 'signature wound'" of Operation Enduring Freedom (D. Brown, 2011).[5] There are particular similarities to the procedures recommended to treat those experiencing dismounted complex blast injuries, which typically involve multiple amputations with other injuries, often to the genitals (Wallace, 2012). Providing high-quality surgery to treat the 5 percent of combat wounds that require penile reconstruction requires extensive knowledge and practice in reconstructive techniques (Williams and Jezior, 2013). Assuming the MHS continues to directly provide health services as it has in the past, there are at least two potential implications: First, military surgeons may currently have the competencies required to surgically treat patients with GD, and, second, performing these surgeries on transgender patients may help maintain a vitally important skill required of military surgeons to effectively treat combat injuries during a period in which fewer combat injuries are sustained.

Cosmetic Surgery

Recognition of the requirement for reconstructive plastic surgery as a result of the wartime mission drives the existing DoD policy for cosmetic surgery procedures in the MHS; the services have requirements and manpower authorizations for specialists who can perform reconstructive plastic surgery (Office of the Assistant Secretary of Defense

[5] Experimental penis transplants, expected to be performed for the first time within the next year at Johns Hopkins School of Medicine, are being developed in the United States specifically for combat-wounded veterans; however, there may be benefits for transgender patients as well (Welsh, 2015).

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for Health Affairs, 2005, p. 1). Cosmetic/reconstructive surgery skills need to be maintained with practice, and surgeons must also "meet board certification, recertification, and graduate medical education program requirements" (Office of the Assistant Secretary of Defense for Health Affairs, 2005, p. 1).

Current DoD policy draws a distinction between elective cosmetic plastic surgery performed "to improve the patient's appearance or self-esteem" and reconstructive plastic surgery performed on bodily structures that are abnormal due to health conditions to improve function or approximate a normal appearance (Office of the Assistant Secretary of Defense for Health Affairs, 2005, p. 3). While reconstructive surgeries constitute necessary treatment, access to elective cosmetic surgical procedures is subject to added constraints. For example, cosmetic procedures are performed on a space-available basis and restricted to those who will be TRICARE-eligible for at least six months. These procedures also require written permission from the commander of the service member's active-duty unit, and the patient must pay surgical, institutional, and anesthesia fees (Office of the Assistant Secretary of Defense for Health Affairs, 2005, p. 3).[6] DoD recognizes the need for these reconstructive surgery competencies and has crafted a policy to cover plastic surgeries to maintain providers' surgical skills and certification requirements.

Potential Consequences of Not Providing Necessary Gender Transition–Related Care

The discussion of the health care needs of transgender military personnel is incomplete without considering the potential unintended effects of constraining or limiting gender transition–related treatment. Little question remains that there are transgender personnel currently serving in the AC. Adverse consequences of not providing transition-related health care to transgender personnel could include avoidance of other necessary health care, such as important preventive services, as well as increased rates of mental and substance use disorders, suicide, and reduced productivity.

Research indicates that, "due to discrimination and problematic interactions with health care providers, transgender individuals frequently do not access health care, resulting in short and long-term adverse health outcomes" (Roller, Sedlak, and Draucker, 2015, p. 418).[7] Further, patients denied appropriate health care may turn to other solutions, such as injecting construction-grade silicone into their bodies to alter

[6] Interestingly, according to Elders et al. (2014, p. 19), there is no difference in leave policies related to recovery time between the two.

[7] For example, among NTDS respondents, 28 percent reported postponing or avoiding treatment when sick or injured, and 33 percent delayed or skipped preventive care due to discrimination or disrespect from health care providers (Grant et al., 2011, p. 76). In one study, transgender respondents had fewer self-reports of good health and were more likely to report limitations on daily activities due to health issues (Kates et al., 2015, p. 5).

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their shape (State of California, 2012, p. 12). There are also potential costs related to mental health care services for individuals who do not receive such care (Herman, 2013b, p. 20). Multiple observational studies have suggested significant and sometimes dramatic reductions in suicidality, suicide attempts, and suicides among transgender patients after receiving transition-related treatment (State of California, 2012, p. 10). A study by Padula, Heru, and Campbell (2015) found that removing exclusions on transgender care "could change the trajectory of health for all transgender persons" at a minimal cost per member per month.[8]

However, we caution that it is not known how well these findings generalize to military personnel. Moreover, while the existing data offer some indication of the needs for and costs of gender transition–related health care, it is important to note that none of these studies were randomized controlled trials (the gold standard for determining treatment efficacy). In the absence of quality randomized trial evidence, it is difficult to fully assess the outcomes of treatment for GD.

[8] Specifically, they found that insurance provider coverage for transgender-related services resulted in "greater effectiveness, and was cost-effective relative to no health benefits at 5 and 10 years from a willingness-to-pay threshold of $100,000/[quality-adjusted life year]."

CHAPTER THREE

What Is the Estimated Transgender Population in the U.S. Military?

This chapter provides several estimates of the number of transgender service members in the U.S. military. To date, there have been no systematic studies of the number of transgender individuals in the U.S. general population or in the U.S. military. Current studies rely on clinical samples of health care service utilizers, nonrepresentative samples assembled in ways that are difficult to replicate, and self-reported survey data from a small number of states.

General Population Estimates of Transgender Prevalence

The transgender prevalence in the U.S. general population is thought to be significantly less than 1 percent (Gates, 2011, p. 6; APA, 2013, p. 454). However, there have been no rigorous epidemiological studies in the general U.S. population that confirm this estimate. Our subsequent estimates must be qualified, therefore, as somewhat speculative; they are based on numerous sources, including health services claims data, representative state-level health surveillance survey data, a convenience (i.e., nonrepresentative) sample recruited by an advocacy network, the experiences of foreign militaries, and selected other data sources.

The Williams Institute at the University of California, Los Angeles, School of Law, calculated that, based on estimates from Massachusetts and California, 0.3 percent of the U.S. population is transgender (Gates, 2011, p. 6). The Massachusetts data were collected between 2007 and 2009 as part of the Massachusetts Behavioral Risk Factor Surveillance System initiative. The survey suggests that 0.5 percent of the population in Massachusetts identifies as "transgender" (95-percent confidence interval: 0.3 to 0.6 percent; Conron et al., 2012). The California data combine information on the percentage of individuals who are transgender from the California Lesbian, Gay, Bisexual, and Transgender (LGBT) Tobacco Survey and the percentage of the overall population that is LGBT from the 2009 California Health Interview Survey. Gates

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multiplies these values together to estimate that 0.1 percent of the population of California is transgender.[1]

To develop an estimate of transgender prevalence for the entire United States, Gates (2011) simply averages the Massachusetts and California values, yielding 0.25 percent, then rounds that up to 0.3 percent. This measure is very problematic, however. While survey-based estimates of transgender prevalence are likely to be accurate measures of true state-level transgender prevalence, it is not clear that taking an unweighted average from states with vastly different population sizes is appropriate for estimating national prevalence. For example, a weighted average calculation using the 2009 census population estimates for California and Massachusetts implies a 0.16 percent "national" prevalence estimate, as opposed to the 0.3 percent estimate calculated by Gates (2011)—a nearly 50-percent difference. We used this 0.16 percent weighted average as our combined, national estimate using the California and Massachusetts studies. This estimate was our midrange starting point, though we included both the 0.1 percent (from California) and 0.5 percent (from Massachusetts) as comparison points.

We note that there have been and continue to be other efforts to measure the prevalence of transgender identity in the general population. The two most prominent examples are the meta-analysis conducted by WPATH and a recent effort from the U.S. census. We did not use these estimates due to concerns that they systematically undercounted the prevalence of transgender identity for a variety of reasons detailed in the discussions that follow.

Separately, in 2007, the WPATH reviewed ten studies of prevalence with estimates for transgender individuals presenting for gender transition–related care, ranging from 1:11,900 to 1:45,000 for male-to-female transitions and 1:30,400 to 1:200,000 for female-to-male transitions (WPATH, 2011).[2] The studies cited were largely based on clinical usage. The WPATH authors note that these numbers should be considered "minimum estimates at best":

> The published figures are mostly derived from clinics where patients met criteria for severe gender dysphoria and had access to health care at those clinics. These estimates do not take into account that treatments offered in a particular clinic setting might not be perceived as affordable, useful, or acceptable by all self-identified gender dysphoric individuals in a given area. By counting only those people who

[1] Although Gates (2011) states that 3.2 percent of the LGBT population is transgender, we note that an earlier document (California Department of Health Services, 2004) reporting analyses from the same survey states that 2 percent of this population is transgender. We were not able to obtain the raw data and could not verify which of the two values is correct. We used the 3.2-percent estimate to calculate the California transgender prevalence estimate.

[2] The studies were Wålinder, 1968; Wålinder, 1971; Hoenig and Kenna, 1974; Eklund, Gooren, and Bezemer, 1988; Tsoi, 1988; Bakker et al., 1993; van Kesteren, Gooren, and Megens, 1996; Weitze and Osburg, 1996; De Cuypere et al., 2007; and Zucker and Lawrence, 2009.

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> present at clinics for a specific type of treatment, an unspecified number of gender dysphoric individuals are overlooked. (WPATH, 2011, p. 7)

Additionally, the information is based on utilization rates from the ten studies, mostly conducted in European countries, such as the United Kingdom, the Netherlands, Sweden, Germany, and Belgium. One study was conducted in Singapore. This raises concerns about the applicability of these estimates to the U.S. population due to differences in costs and social tolerance, both of which would likely make health utilization behavior in Europe significantly different from that in the United States. Moreover, the studies were conducted over a 30-year period in which utilization was dramatically increasing, suggesting that the estimates were not stable. This concern is reported in the WPATH report, with the authors noting that the trend (over time) was due to higher rates of individuals seeking care. In one example, the estimated transgender population doubled in just five years in the United Kingdom. If the numbers are increasing over time based on the use of clinics, then an estimate from ten to 15 years ago would likely be very low relative to utilization in those same places today, and again not representative of likely utilization in the United States.[3]

Harris (2015) used information on name and sex changes in Social Security Administration data files to estimate the number of transgender individuals in the U.S. population. Using information on male-to-female and female-to-male name changes, he estimates that there were 89,667 transgender individuals in the United States in 2010. Of this group, 21,833 (24 percent) also changed their sex, according to Social Security records; during some periods in U.S. history, this required documented proof of either initiation or completion of medical transition. Since name changes are not required, prevalence estimated in this manner is likely to be a lower-bound estimate of the true transgender prevalence rate in the United States. Using the 2010 population of adults age 18 and over as the denominator (234,564,071), 89,667 transgender cases implies a lower-bound transgender prevalence rate of 0.038 percent in the United States.

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[3] According to the WPATH authors,

> The trend appears to be towards higher prevalence rates in the more recent studies, possibly indicating increasing numbers of people seeking clinical care. Support for this interpretation comes from research by Reed and colleagues (2009), who reported a doubling of the numbers of people accessing care at gender clinics in the United Kingdom every five or six years. Similarly, Zucker and colleagues (2008) reported a four- to five-fold increase in child and adolescent referrals to their Toronto, Canada clinic over a 30-year period. (WPATH, 2011, p. 7)

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Prevalence-Based Approach to Estimating the Number of Transgender Service Members in the U.S. Military

Before discussing estimates of prevalence of transgender individuals in the U.S. military, it is important to note that, to our knowledge, no studies have directly measured the prevalence or incidence of transgender individuals currently serving in the active or reserve component.[4] To estimate prevalence in the military, we have constructed estimates using a combination of data sources.[5] One of those sources, the NTDS, provides detailed information on the choices and preferences of transgender individuals but it is not a randomized, representative sample of the military and thus is not generalizable.

We applied measures of population prevalence to DoD force size estimates to estimate prevalence in the U.S. military. We measured force size using information from DoD's 2014 demographics report (DoD, 2014; see Table 3.1). The demographics are separated into AC and SR. For much of the discussion of our medical care analysis, we focus on the AC. We did not include reserve-component service members, retirees, or dependents in the cost analyses because we did not have information on age and sex distribution within these beneficiary categories. Some of these beneficiary categories also have limited eligibility for health care provided through military treatment facilities (MTFs) and may receive their health care through TRICARE coverage in the purchased care setting or through other health insurance plans. For our readiness analysis, we included both the AC and SR because both components may be used for deployments. Although there are ongoing discussions regarding the feasibility of activating the Individual Ready Reserve, we excluded this population because we lacked the detailed information on gender and age needed to conduct our analysis.

Table 3.2 contains estimates of the number of transgender personnel in the AC and SR using the baseline prevalence from existing studies and shows the results of several tests that provide a range of estimates based on different assumptions in the literature. To estimate prevalence in the military, we conducted analyses using five values: (1) a lower-bound estimate of 0.1 percent based on a study in California

[4] G. Brown (1988) found that eight out of 11 evaluated natal males with severe GD had a military background; he explains his findings by positing a "hypermasculine" phase among transgender individuals that coincides with the age of enlistment. Since the sample size in that study was extremely small, we do not consider this good evidence for this theory. Gates and Herman (2014) used estimates from the NTDS, combined with estimates of transgender prevalence (0.3 percent) from Gates (2011) and history of military service in the U.S. population from the American Community Survey, to estimate transgender prevalence in the military. Data from the National College of Health Administration showed that military experience was significantly higher among transgender individuals than among those who did not identify as transgender (9.4 percent versus 2.1 percent; Blosnich, Gordon, and Fine, 2015). However, these data were collected from only 51 institutions, and the response rate for the survey was only 20 percent, which again raises questions regarding the validity of the estimates.

[5] Our estimates were constructed using Gates (2011), which combined estimates from the Massachusetts Behavioral Risk Factor Social Surveys with the California LGBT Tobacco Survey, and Gates and Herman (2014), which used data from the NTDS, Gates (2011), and the American Community Survey.

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Table 3.1
DoD Military Force Demographics

Category	Number	%
Active Component		
Sex		
Female	200,692	15
Male	1,125,581	85
Age		
<25	572,293	43
26–30	293,698	22
31–35	201,137	15
36–40	137,653	11
41+	121,492	9
Total	1,326,273	—
Selected Reserve		
Sex		
Female	149,759	18
Male	682,233	82
Age		
<25	285,494	34
26–30	156,983	19
31–35	124,179	15
36–40	86,151	10
41+	179,185	22
Total	831,992	—

SOURCE: DoD, 2014.

(Conron, 2012); (2) an upper-bound estimate of 0.5 percent based on a study in Massachusetts (Gates, 2011); (3) a population-weighted average of the California and Massachusetts studies, yielding a prevalence estimate of 0.16 percent; (4) an adjustment of this population-weighted approach based on the natal male/female distribution in the military, yielding a prevalence estimate of 0.19 percent; and (5) a doubling of the population-weighted, gender-adjusted value, yielding a prevalence estimate of 0.37 percent.

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Table 3.2
Prevalence-Based Estimates of the Number of Transgender Active-Component and Selected Reserve Service Members

Component	Total Force Size (FY 2014)	0.1%[a] (CA study)	0.16%[b] (combined, population-weighted CA + MA studies)	0.19%[c] (gender-adjusted rate)	0.37%[d] (twice gender-adjusted rate)	0.5%[e] (MA study)
Active	1,326,273	1,320	2,120	2,450	4,900	6,630
Selected Reserve	831,992	830	1,330	1,510	2,930	4,160

SOURCES: Estimates for force size are based on RAND calculations using FY 2014 data from DoD, 2014.

[a] Based on estimates of prevalence from a California study (Conron, 2012).

[b] Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state.

[c] Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state and applied specifically to the male/female distribution in the military components.

[d] Based on estimates of prevalence from NTDS, Gates (2011), and the American Community Survey (Gates and Herman, 2014) and applied specifically to the male/female distribution in the military.

[e] Based on estimates of prevalence from a Massachusetts study (Gates, 2011).

Based on the 0.1 percent lower bound, we estimate that there are approximately 1,320 transgender individuals in the AC and approximately 830 in the SR. Using the Massachusetts study (0.5 percent) as an upper bound, we estimate that there are approximately 6,630 transgender service members in the AC and 4,160 in the SR. Because these estimates are based on selected populations in the state and the variation in these populations is significant, we were concerned that they were not representative of broader national numbers, especially as they pertain to the gender mix of the military. Therefore, we adjusted the population-weighted combination of these estimates to account for the male/female distribution in the U.S. military populations. This gender adjustment is critical, as most research indicates that male-to-female transitions are two to three times more common than female-to-male transitions (APA, 2013; Horton, 2008; Gates, 2011; Grant et al., 2011). This assumption of a two to one difference in underlying prevalence across genders applied to the 0.16 percent aggregate estimate implies a natal male-specific prevalence of 0.2 percent and a natal female-specific prevalence of 0.1 percent. Assigning these values to the male/female AC distributions increases the military prevalence estimate from 0.16 percent to 0.19 percent, which implies that there are 2,450 transgender individuals in the AC and 1,510 in the SR.

The estimate of 0.37 percent doubles the gender-adjusted rate based on information provided by the NTDS that 20 percent of the transgender population in its sample reported a history of military service, which is twice the rate of the general population,

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as reported in the American Community Survey (Grant et al., 2011). We note that this is likely to be an overestimate of the overall transgender population for two reasons. First, given the highly tolerant environment in Massachusetts and California, the prevalence estimates in those two states are likely to overstate the nationwide prevalence.[6] Second, the evidence that transgender individuals are twice as likely to serve in the military is based on extrapolations from a nonrepresentative sample of individuals and not on direct, rigorous study of the transgender military population.

[6] For example, both California and Massachusetts are rated as "top places for LGBT rights" (Keen, 2015).

CHAPTER FOUR

How Many Transgender Service Members Are Likely to Seek Gender Transition–Related Medical Treatment?

We adopted two distinct but related approaches to estimate the health care utilization and impact on readiness of allowing transgender personnel to serve openly in the U.S. military. The first is what we label the *prevalence-based approach*, in which we estimated the prevalence of transgender individuals in the military and applied information on rates of gender transition and reported preferences for different medical treatments to measure utilization and the implied cost and readiness impact. This approach has the benefit of including those who may seek other forms of accommodation, even if they do not seek medical care. It also provides detailed information on the types of medical treatments likely to be sought, which can improve the accuracy of cost and readiness estimates. However, this approach suffers from a lack of rigorous evidence in terms of the rates at which transgender individuals seek treatment and instead relies on the nonscientific NTDS. It also relies on prevalence measures from only two states—Massachusetts and California—that may not be directly applicable to military populations.

We refer to our second approach as the *utilization-based approach*, which we used to estimate the rates of utilization of medical treatment. This approach has the benefit of providing real-world measures of utilization based on health insurance claims, which may be more accurate and more rigorously collected than survey information. However, this 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. Despite these caveats, these approaches provide the best available estimate of the range in the potential number of transgender service members likely to seek medical treatment or require readiness-related accommodations.[1]

In both cases, we applied measures of population prevalence and utilization to DoD force size demographics to provide estimates of prevalence within the U.S. military. As indicated in the previous chapter, our calculations of population prevalence and health care utilization used FY 2014 data from DoD's 2014 demographics report (DoD, 2014; see Table 3.1 in Chapter Three).

[1] Again, we define *accommodations* as adjustments in military rules and policies to allow individuals to live and work in their target gender.

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Prevalence-Based Approach to Estimating the Number of Gender Transition–Related Treatments in the U.S. Military

To estimate the utilization of gender transition–related health care treatments, we scaled the prevalence of transgender service members identified in Chapter Three by the rates of transition and reported take-up of medical treatments. We based our transition rates on self-reported transitions in the NTDS data. According to the NTDS, 55 percent of transgender individuals reported living and working as their target gender; we refer to this as *social transition*.[2] For others, medical treatments, such as hormone therapy and hair removal, are important steps to align their physical body with their target gender. We refer to this as *medical* or *surgical transition*.[3]

Using the prevalence estimates from Table 3.2 in Chapter Three, we used information from the NTDS on the age of transition for individuals under 25, 26–30, 31–35, 36–40, and over 40 and calibrated our estimates with the age distribution in the military. Fifty-five percent of NTDS respondents reported that they had socially transitioned over their lifetime, and the data indicate that male-to-female transition ages differ from female-to-male transition ages. Nearly 54 percent of female-to-male transitions occurred before the age of 25, compared with only 23 percent of male-to-female transitions.

We focus on social transition because we assess this as most relevant for individuals who may need accommodations as they live and work in a different gender. This was also used as the basis in some foreign militaries, as discussed in Chapter Seven. Table 4.1 presents the estimated number of individuals who may seek to transition each year under each of our prevalence assumptions. We found that a lower bound of 40 AC and 20 SR service members and an upper bound of 190 AC and 110 SR service members will seek to transition each year and may need some sort of accommodations. The population-weighted, gender-adjusted estimate implies a middle range of 65 AC and 40 SR service members who will seek to transition each year.

Next, we combine the estimates of the number of transgender service members with information on the proportion undergoing transition and the age-specific proportion undergoing gender transition–related treatment to generate the number of annual treatments. Surgical preference rates vary by transition type (male-to-female versus female-to-male transition; see Table 4.2). Surgeries are distributed evenly across

[2] We note that an additional 27 percent of those who had not yet socially transitioned wished to transition at some point in the future. Because the timeline and desire for transition are difficult to translate to concrete numbers, we used the estimate of 55 percent of transgender individuals living and working full-time as their target gender as our planning parameter for readiness accommodations.

[3] In the NTDS sample, 65 percent of transgender individuals had medically transitioned, and 33 percent had surgically transitioned. Note that the rate of medical transitions is higher than the rate of social transitions because some individuals receive hormone treatments but do not live full-time as their target gender.

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Table 4.1
Estimated Number of Transgender Service Members Who May Seek to Transition per Year

Estimate Source	Active Component (total force: 1,326,273)	Selected Reserve (total force: 831,992)
0.1% (CA study)[a]	40	20
0.16% (combined, population-weighted CA + MA studies)[b]	60	30
0.19% (gender-adjusted rate)[c]	65	40
0.37% (twice gender-adjusted rate)[d]	130	80
0.5% (MA study)[e]	190	110

SOURCES: Estimated proportions of subgroups based on Grant et al., 2011, p. 25. Estimates for the AC and SR are based on RAND calculations using FY 2014 data from DoD, 2014.

[a] Based on estimates of prevalence from a California study (Conron, 2012).

[b] Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state.

[c] Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state and applied specifically to the male/female distribution in the military components.

[d] Based on estimates of prevalence from NTDS, Gates (2011), and the American Community Survey (Gates and Herman, 2014) and applied specifically to the male/female distribution in the military.

[e] Based on estimates of prevalence from a Massachusetts study (Gates, 2011).

NOTE: The table excludes Individual and Inactive Ready Reserve members because comparable information on their demographics was not available for analysis.

four procedures for male-to-female transitions and primarily over two procedures for female-to-male transitions.

Recall, not all of the individuals seeking to transition would meet the diagnostic criteria for GD, which is a requirement for these surgeries. Moreover, even among individuals who transition in some manner, surgical treatment rates are typically only around 20 percent, with the exception of chest surgery among female-to-male transgender individuals (see Table 4.2).

Table 4.3 shows the estimated annual number of hormone therapy treatments and surgeries in the AC and SR calculated using the same prevalence assumptions described in Chapter Three (see Table 3.2). The surgeries included in the calculations are vaginoplasty, chest surgeries, orchiectomy, hysterectomy, metoidioplasty, and phalloplasty. Note that these estimates constitute the number of treatments, not necessarily the number of individuals. For hormone therapy recipients, the number of treatments and recipients is the same, and these estimates can be treated as counts of individuals. However, the number of individuals is likely smaller for surgical counts because the

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Table 4.2
Lifetime Surgery Preferences Among NTDS Survey Respondents

Procedure	Have Had (%)	Want Someday (%)	Do Not Want (%)
Male-to-female			
Augmentation mammoplasty	21	53	26
Orchiectomy	25	61	14
Vaginoplasty	23	64	14
Facial surgery	17	Not reported	Not reported
Female-to-male			
Chest surgery	43	50	7
Hysterectomy	21	58	21
Metoidioplasty	4	53	44
Phalloplasty	2	27	72

SOURCE: NTDS data (Grant et al., 2011).

NOTE: These estimates are from cross-sectional data; individuals likely received each treatment only once and varied in the age at treatment initiation.

same individual may receive more than one type of surgical treatment.[4] Using the lower-bound estimate from the California study and the upper-bound estimate from the Massachusetts study (see Table 4.3), we estimated that there will be between 45 and 220 hormone treatments and between 40 and 200 transition-related surgeries annually in the AC and SR. The combined population-weighted and gender-adjusted estimate indicates a midrange of 80 hormone treatments and 70 transition-related surgical treatments annually. Although surgical procedures are most likely to be one-time events, hormone therapy treatment rates are likely to be used indefinitely, and the cost and manpower effects will apply until individuals leave the MHS. We did not have information on the length of service conditional on age and therefore could not calculate the total number of service members who would be receiving hormone therapy at any given point in time. We recommend that this line of analysis be explored in the future.

Utilization-Based Approach to Estimating the Number of Gender Transition–Related Treatments in the U.S. Military

While the prevalence-based approach provides a tractable means to estimate potential utilization of gender transition–related care, there are a number of concerns regard-

[4] For example, a female-to-male transition might include both chest surgery and phalloplasty.

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Table 4.3
Estimated Annual Number of Surgeries and Hormone Therapy Users

	Active Component		Selected Reserve	
Assumption Regarding Underlying Prevalence	Annual Major Surgeries	Annual Hormone Therapy	Annual Major Surgeries	Annual Hormone Therapy
0.1% (CA study)[a]	25	30	15	15
0.16% (combined, population-weighted CA + MA studies)[b]	40	45	20	25
0.19% (gender-adjusted)[c]	45	50	25	30
0.37% (twice gender-adjusted rate)[d]	90	100	50	55
0.5% (MA study)[e]	130	140	70	80

SOURCE: RAND analysis.

[a] Based on estimates of prevalence from a California study (Conron, 2012).

[b] Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state.

[c] Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state and applied specifically to the male/female distribution in the military components.

[d] Based on estimates of prevalence from NTDS, Gates (2011), and the American Community Survey (Gates and Herman, 2014) and applied specifically to the male/female distribution in the military.

[e] Based on estimates of prevalence from a Massachusetts study (Gates, 2011).

NOTE: Hormone therapy is person-level; surgery statistics are counts of surgeries, and one person may have multiple surgeries.

ing the information on which these estimates rely. As stated previously, these concerns include both a reliance on prevalence estimates from just two states and a reliance on data from the NTDS, which were not collected from a random sample. Our utilization estimates were taken primarily from three sources:

- private health insurance utilization data on annual rates of enrollee transgender-related health care utilization in health insurance plans that cover transition-related health care, as reported by Herman (2013b)
- private health clinic data showing estimates of the rates of penectomies and bilateral mastectomies in the U.S. population in 2001, as reported by Horton (2008)[5]

[5] A penectomy is the surgical removal of the penis. A bilateral mastectomy is the surgical removal of both breasts.

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- Veterans Health Administration (VHA) claims data, which were used to calculate prevalence and incidence rates of gender identity disorder (now referred to as GD in DSM-5) from 2006 to 2013, as reported by Kauth et al. (2014).

Each of these data sources provides information on a different outcome, which makes understanding the results more complicated. However, collectively, the information taken from these three studies provides a broad, useful picture regarding potential gender transition–related health care utilization in the AC population. In the following sections, we review each of these studies in detail, identify key estimates from each, and apply the estimates to the AC population identified in Table 3.2 in Chapter Three.

Private Health Insurance Utilization Estimates

Herman (2013b) reports on the experiences of 34 employers that provided gender transition–related health care benefits to their employees and dependents via their health insurance plans. This study specifically reports on the annual number of enrollees who accessed "transition-related care." This information is derived from health insurance claims data and thus is dependent on the treatments that were covered by the health insurance companies.[6] The firms surveyed typically covered major gender transition–related surgeries and hormone therapy, but they varied in their coverage of other transition-related treatments, such as vocal cord surgery.[7]

Firms reviewed by Herman (2013b) also typically did not report information on the number of dependents covered but included dependents in their utilization estimates. Data from several sources (e.g., Sonier et al., 2013; Gould, 2012) imply an approximate average one-to-one ratio of employees to dependents in privately insured firms in the United States. Thus, not accounting for the role of dependents in these utilization estimates would overstate utilization by approximately 100 percent.[8] For

[6] If firms do not cover particular treatments, it is not possible to file a claim for reimbursement. If individuals in these firms utilized services that were not covered, thus paying for treatments out of pocket or through some other form of health insurance, these utilization estimates will be biased downward.

[7] One hundred percent of firms covered major gender transition–related surgeries, including hysterectomy, oophorectomy, metoidioplasty, phalloplasty, urethroplasty, vaginectomy, orchiectomy, vaginoplasty, labiaplasty, and clitoroplasty. Ninety-two percent of firms covered bilateral mastectomy for female-to-male patients, but only 59 percent covered female-to-male chest reconstruction, and only 59 percent covered male-to-female augmentation mammoplasty (breast augmentation). All firms covered hormone therapies, specifically estrogen, progesterone, spironolactone, and testosterone.

[8] We used two different data sources to determine the typical number of dependents covered by the main policyholder in private health insurance firms in the United States. First, we used information from the Robert Wood Johnson Foundation on the number of people who are covered by employer-sponsored health insurance and are the main policyholders and on the number of people who are covered by employer-sponsored health insurance and are dependents. Using these figures, we estimated a 1-to-0.99 policyholder-to-dependent ratio in employer-sponsored private health insurance. The Economic Policy Institute also reports information on this question using data from the U.S. census Current Population Survey. Using this information, we calculated a policyholder-to-dependent ratio of 1 to 0.94.

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firms that did not provide information on dependents, we imputed a one-to-one ratio of employees to dependents to identify the total number of enrolled individuals in a given health plan.

Table 4.4 presents the information from Herman (2013b) on the utilization of gender transition–related care in private health insurance firms. The first column shows available information on the identity of the firm. The second describes the number of firms in each category for which we had utilization estimates. The third contains our estimates regarding the total number of enrollees and dependents from all firms in that category. For confidentiality reasons, some surveyed data sources report only ranges for the number of employees in a firm. Therefore, we used the midpoint of the range to impute the number of employees in a particular firm, then assigned the total number of dependents based on this employee value. For example, we had utilization data from two firms in the "private 1,000–9,999 employees" category. Since we assume the midpoint value for firm size, this implies that there are 5,000 employees in each firm, or 10,000 total employees across the two firms. Assuming a one-to-one employee-to-dependent ratio implies an additional 10,000 covered individuals, resulting in a combined total of 20,000 enrollees.

The estimates presented in Table 4.4 indicate that utilization rates range from an annual low of zero individuals per 1,000 enrollees to an annual high of 0.064 individuals per 1,000 enrollees. To obtain a combined estimate of the different values, we constructed a weighted average using the existing utilization estimates, weighting by the number of covered individuals that generated each of the estimates in Table 4.4. A weighted average of all the estimates results in an overall utilization estimate of 0.0396 individuals per 1,000 enrollees.

Table 4.4
Enrollee Utilization of Gender Transition–Related Benefits in Private Health Insurance Firms

Private and Public Firms	Number of Firms	Total Contribution (enrollees + dependents)	Individual Claimants per 1,000 Enrollees
Private, fewer than 1,000 employees	1	1,000	0.0000
Private, 1,000–9,999 employees	2	20,000	0.0540
Private, 10,000–49,000 employees	5	250,000	0.0220
City and County of San Francisco	NA	80,000	0.0640
University of California	NA	100,000	0.0620
Weighted average per 1,000 enrollees			0.0396

SOURCE: Data from Herman, 2013b.

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We conducted two sets of calculations using these estimates. First, we used the lowest non-zero utilization figure (0.022 claimants per 1,000 enrollees);[9] then, we used the weighted average calculation of 0.0396 per 1,000 enrollees. Applying the 0.022 claimants per 1,000 figure to the AC population of 1,326,273 implies that 29 AC service members would receive gender transition–related care annually. Applying the weighted average estimate of 0.0396 per 1,000 enrollees to the AC population implies that 53 service members would receive gender transition–related care annually.

Sensitivity Analyses

We also conducted two additional sensitivity analyses to determine the full potential scope of gender transition–related health care utilization in the AC. A key consideration when applying estimates from civilian populations to the military is that the underlying male/female distribution in the AC is different, with 85 percent of the AC population being male (versus approximately 50 percent in the civilian population). Studies suggest that the prevalence of transgender individuals is higher in the male population than in the female population (APA, 2013; Horton, 2008; Gates, 2011; Grant et al., 2011), so applying civilian estimates directly to the AC would underestimate the true utilization rates.

Accurately accounting for this issue required sex-specific utilization estimates that we could then multiply with the male/female AC distribution (85 percent male, 15 percent female). Unfortunately, we could not identify any sex-specific utilization estimates in the available private health insurance data; the aggregate cost and utilization estimates that we were able to identify already included underlying prevalence differences between the sexes. We posited that utilization would be twice as large for male-to-female transitions than for female-to-male transitions based on an assumption of linearity between transgender prevalence, for which we have sex-specific estimates, and total utilization (Horton, 2008).

Combining this assumption about differing utilization rates with the fact that the male/female labor force participation in the civilian population is close to 50 percent male and 50 percent female, we were able to solve for the sex-specific utilization estimates implied by the aggregate lower-bound (0.022) and weighted average (0.0396) values. Solving for the sex-specific utilization estimates in this manner, for the 0.022 aggregate estimate, we estimated a utilization rate of 0.0293 per 1,000 natal male enrollees and a utilization rate of 0.0146 per 1,000 natal female enrollees.[10] Similarly, for the 0.0396 weighted average figure, solving for the natal sex–specific utiliza-

[9] The unadjusted version of this figure (0.0044 percent) was also used in Belkin (2015) to estimate health care utilization in the military.

[10] The equation we solved to calculate the natal male–specific and natal female–specific utilization rates is as follows: $0.5(x) + 0.5(2x) = 0.022$. In this equation, the variable x is the natal female–specific utilization rate, and solving for x results in a value of 0.0146. Since the natal male–specific utilization rate is assumed to be twice the natal female rate, it equals 0.0293.

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tion estimates, we identified a utilization rate of 0.0528 per 1,000 natal male enrollees and a utilization rate of 0.0264 per 1,000 natal female enrollees.

Applying these solved sex-specific estimates to the AC male/female distribution (1,125,581, or 85 percent male, versus 200,692, or 15 percent female) increased our initial lower-bound estimate of claimants from 29 to 36 and increased our estimate from applying the weighted average from 53 to 65.

Finally, the sociology and psychology literature speculates that there is a higher transgender prevalence in the military compared with the civilian population (G. Brown, 1988). Gates and Herman (2014) also calculated that transgender prevalence in the military is approximately twice the civilian prevalence (Gates, 2011; Gates and Herman, 2014).[11] Although we believe that the current body of empirical evidence validating this theory is weak, we take it seriously and consider the possible implications for transition-related health care utilization in the military. Assuming that transgender prevalence in the military is twice the transgender prevalence in the civilian population, and, again, assuming a direct relationship between prevalence and utilization, this would inflate our male/female distribution-adjusted estimates of individuals receiving transition-related care annually from 36 to 72, and from 65 to 129 in the AC. Table 4.5, which summarizes the results from applying the private health insurance estimates to the AC population, allows for a comparison of the different estimates.

Private Health Clinic Estimates

A second source of information regarding gender transition–related health care utilization comes from a survey of surgical clinics conducted by Horton (2008). In 2001, Horton surveyed all major clinics in the United States known to provide transition-related care to determine the number of penectomies and bilateral mastectomies performed on transgender patients. Table 4.6 reports surgery incidence estimates broken out by male-to-female transitions and female-to-male transitions. The third column shows estimates using clinic-reported data only. Horton also developed lower- and upper-bound estimates via assumptions regarding treatment counts for clinics with missing data, and these numbers are reported in the second and fourth columns of Table 4.6.[12] These data were collected in 2001 and coverage of gender transition-related benefits have increased over time, so it is also reasonable to assume that surgical tran-

[11] As stated previously, Gates and Herman (2014) used estimates from the NTDS and Gates (2011) for a transgender prevalence of 0.3 percent. That study also used data on history of military service in the U.S. population from the American Community Survey to estimate transgender prevalence in the military. Data from the National College of Health Administration show that military experience was significantly higher among transgender individuals than among those who did not identify as transgender (9.4 percent versus 2.1 percent; Blosnich, Gordon and Fine, 2015). However, data were collected from only 51 institutions, and the response rate for the survey was only 20 percent, which again raises questions regarding the validity of the estimates.

[12] Horton generated upper- and lower-bound estimates by assigning the largest and smallest surgical counts in the data to the clinics with missing values.

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Table 4.5
Utilization Estimates from Applying Private Health Insurance Parameters

		Estimates Using Private Employer Data		
Annual Individual Claimants	Estimate from the Literature	Baseline	Sensitivity Analysis 1[a]	Sensitivity Analysis 2[b]
Active component, lower-bound estimate	0.022 claimants per 1,000 individuals	29	36	72
Active component, weighted average estimate	0.0396 claimants per 1,000 individuals	53	65	129

NOTES: Each cell in the "Estimates Using Private Employer Data" columns represents a unique prediction for utilization in the AC population. In the second column of the table, we describe the estimate from the literature that is applied to the AC population. See the text for details on each of the calculations.

[a] Sensitivity Analysis 1: We calculated a set of estimates that accounted for differences in the male/female distribution between the civilian and AC populations.

[b] Sensitivity Analysis 2: We calculated a set of estimates that accounted for differences in the male/female distribution between the civilian and AC populations and the possibility that transgender prevalence is twice as high in the military population as in the civilian population.

Table 4.6
Incidence of Penectomies and Bilateral Mastectomies Performed on Transgender Individuals

	Incidence Estimates (%)		
Transition Type	Low	Clinic-Reported Data	High
Male-to-female	0.00048	0.00053	0.00103
Female-to-male	0.00020	0.00030	0.00084

SOURCE: 2001 data from Horton, 2008.

NOTE: The table includes data on penectomies and bilateral mastectomies only.

sitions have also increased over time. Thus, these utilization rates of penectomies and bilateral mastectomies should be considered lower-bound estimates.

Applying these estimates to the AC male/female distribution results in low, medium, and high annual estimates of 5.8, 6.6, and 13.2 AC service members receiving these two surgeries, respectively. We reiterate here that these estimates are not directly comparable to the private health insurance estimates presented in the previous section because these estimates apply to only two specific procedures, while the private health insurance estimates include any gender transition–related procedures that private health insurance firms cover. One would expect estimates for two specific surgeries from 2001 to be lower than estimates generated from the private health insurance system in the later 2000s. Indeed, they are, but it is more difficult to make other direct

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comparisons between these two estimates, given the private health insurance utilization data presented in Herman (2013b).

Veterans Health Administration Estimates

In this analysis, we used VHA data to calculate the expected annual incidence of gender identity disorder (the condition now known as GD in the DSM-5) in the AC population. As described previously, those with a gender identity disorder diagnosis are a subset of transgender individuals. Kauth et al. (2014) used VHA health claims data to identify incidence rates of new diagnoses. They also calculated prevalence rates of gender identity disorder in each year using previous yearly incidence rates. Because 2006 was the first year in their data set, the prevalence rate in the first year of their data is equivalent to the incidence rate. In the years after 2006, the prevalence rate is essentially a running total of the incidence rates in the previous years added to the most recent incidence rates.

The data in Table 4.7 imply that the incidence of gender identity disorder increased from 3.5 of 100,000 enrollees in FY 2006 to 6.7 of 100,000 enrollees in FY 2013 among veterans who use VHA health care (Kauth et al., 2014). Before applying these estimates to the AC population, we note two important points with respect to the analyses in Kauth et al. (2014). First, because the prevalence rate is simply a running total of new cases diagnosed since the first year of the study's data (2006), adding years of data prior to 2006 would mechanically increase the prevalence estimates. Thus, Kauth et al.'s prevalence calculations are a lower-bound for the total gender

Table 4.7
Prevalence and Incidence of Gender Identity Disorder Diagnoses in VHA Claims Data

Fiscal Year	New Diagnosis Rate (%)	Prevalence (%)
2006	0.0035	0.0035
2007	0.0034	0.0068
2008	0.0034	0.0098
2009	0.0038	0.0131
2010	0.0046	0.0172
2011	0.0051	0.0217
2012	0.0060	0.0270
2013	0.0067	0.0329

SOURCE: Kauth et al., 2014.

NOTE: The authors calculated new cases diagnosed and total existing cases in a given year based on the entirety of the data since 2006.

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identity disorder prevalence rate in this population. Second, estimates based on claims data will likely be lower-bound estimates of incidence and prevalence, since individuals are identified only if they interact with the health care system for reasons related to gender identity disorder. These two caveats should be kept in mind when interpreting the extrapolations here.

Applying estimates from the 2013 data in Table 4.7 to the AC population, one would expect approximately 90 new cases of gender identity disorder each year and that approximately 440 AC service members would be diagnosed with this condition. Although the male/female distribution in the VHA system mirrors that of the AC, veterans who use VHA health care services may have lower socioeconomic and health status than veterans who do not use VHA health care, other military retirees, and AC service members. The VHA population also differs by age and, potentially, by other unmeasured characteristics related to underlying health status. For these varied reasons, these estimates may not be generalizable to the military population overall.

Summarizing the Estimates

Table 4.8 summarizes the key results after applying the estimates from the various data sets to the AC and SR populations. The largest estimate—270 treatments (surgeries and hormone therapies)—was calculated by combining the upper-bound population-level transgender prevalence estimate from Massachusetts with information from the NTDS data on the age of those receiving common transition-related treatments. When applied to the AC population, estimates from VHA and the private health insurance literature imply that only 30–90 AC service members will receive some type of gender transition–related treatment annually.

To understand the full implications of our estimates regarding the expected annual number of AC service members likely to obtain gender transition–related care, in Figure 4.1 we compare the above utilization estimates with the number of AC service members who self-reported visiting a mental health care provider in a given year (21 percent) and the number of AC service members who visited a mental health care specialist in a given year (7 percent; Hoge et al., 2006; McKibben et al., 2013). We chose this outcome because mental health care among military populations is an important, well-studied topic, and data were readily accessible for us to conduct the comparison. The mental health care utilization estimates represent unique service members accessing health care; thus, they compare most directly to the estimates using the private health insurance data and the NTDS hormone therapy estimates. For clarity's sake, we do not present all of the private health insurance and NTDS hormone therapy estimates in Figure 4.1. We do include the smallest, middle, and largest estimates using the private health insurance data and the largest hormone therapy estimate drawn from the NTDS data.

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Table 4.8
Annual Gender Transition–Related Treatment Estimates from All Data Sources

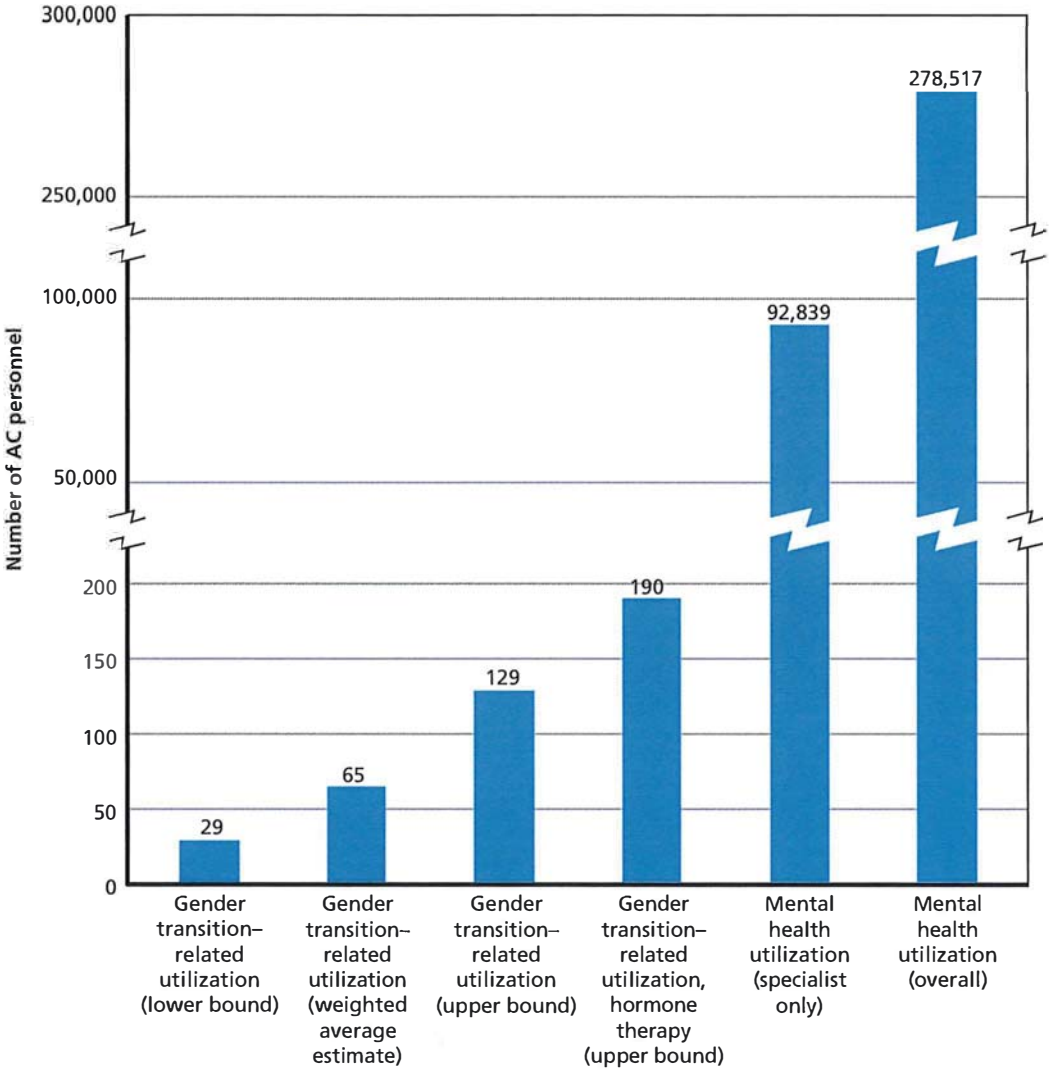
	Active Component			Selected Reserve		
Estimate Type	Hormone Treatment	Surgical Treatments	All Treatments	Hormone Treatment	Surgical Treatments	All Treatments
Prevalence-based estimates (using NTDS data)						
Annual treatments based on CA study estimate (0.1%)	30	25	55	15	15	30
Annual treatments based on combined, population-weighted, gender-adjusted rate (0.19%)	50	45	95	25	30	55
Annual treatments based on MA study estimate (0.5%)	140	130	270	70	80	150
Utilization-based estimates						
Private health insurance annual individual claimants (0.022 per 1,000)	NA	NA	29	NA	NA	20
Private health insurance annual individual claimants (0.0396 per 1,000)	NA	NA	53	NA	NA	30
VHA-based annual new diagnoses (0.0067%)	90	NA	NA	60	NA	NA
Clinical utilization of penectomies and bilateral chest surgeries (0.0005%)	NA	10	NA	NA	5	NA

SOURCE: RAND analysis.

As Figure 4.1 shows, our estimates of the number of AC personnel who will use the gender transition–related health care benefits are overwhelmingly small compared with the number of AC personnel who access mental health treatment. Overall, based on our calculations, we expect annual gender transition–related health care to be an extremely small part of overall health care provided to the AC population.

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Figure 4.1
Comparison of Annual Estimated Gender Transition–Related Health Care Utilization and Mental Health Care Utilization, Active Component



SOURCE: RAND analysis. Utilization rates in the figure are derived from both the prevalence-based and utilization-based approaches presented in Table 4.8.

NOTES: The non–hormone therapy transgender utilization estimates are from the application of estimates from the private health insurance data. The hormone therapy upper-bound transgender utilization estimate is from calculations using the NTDS data.

RAND *RR1350-4.1*

CHAPTER FIVE

What Are the Costs Associated with Extending Health Care Coverage for Gender Transition–Related Treatments?

In this chapter, we provide estimates for the costs associated with extending health care coverage for gender transition–related treatments. We focused on transgender service members in the AC because they have uniform MHS access. We did not include reserve-component service members in our analyses, but their MHS utilization and the associated cost will be negligible, given their highly limited military health care eligibility. Likewise, we did not include retirees or dependents in the cost analyses because we did not have information on age and sex distribution within these beneficiary categories. Some of these beneficiary categories also have limited eligibility for health care provided through MTFs and may receive their health care through TRICARE coverage in the purchased care setting or through other health insurance plans. Given these unknowns, it was only feasible to estimate the costs of gender transition–related care for AC service members; however, we recommend expanding these analyses in the future to include reserve-component members, as well as all individuals eligible for treatment under TRICARE. For the following analyses, we used demographic characteristics of the 2014 AC population to estimate the cost of providing such services.

Private Health Insurance Cost Estimates

To determine the potential costs of covering gender transition–related health care for transgender service members, we collected information on private health insurers' experiences with covering this care from two sources (Herman, 2013b; State of California, 2012). These actuarial estimates represent the expected increase in health care costs from covering a new set of treatments or a new group of beneficiaries. If employers decide to provide coverage for a particular treatment, these actuarial estimates are translated into premium increases for covered employees. These estimates should be thought of as the expected costs of extending coverage for gender transition–related care to transgender AC service members. Moreover, we note that the military may already be incurring the cost of some transgender treatments, as some patients and their providers use "omissions and ambiguities" to acquire needed care (Roller, Sedlak, and Draucker, 2015, p. 420). For example, a currently serving female-to-male patient

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who had undergone a hysterectomy reported taking only the testosterone and not the estrogen prescribed as part of hormone therapy with his endocrinologist's knowledge and tacit support, while another was trying to get breast reduction surgery due to back pain rather than GD (Parco, Levy, and Spears, 2015, pp. 235–236).

Table 5.1 presents available data from public employers and private firms on the actuarial costs of covering gender transition–related care. It identifies the particular institution, the number of employees and dependents covered, and the identified premium increases due to expanding benefits.

Data from Table 5.1 show, generally, that the actuarial estimates of providing benefits for gender transition–related care increased total premiums (employee + employer share) by only a small fraction of a percent—and, in the most extreme cases, by only approximately 1 percent. Taking a weighted average of most of the information,[1] we estimated that extending insurance coverage to transgender individuals would increase health care spending by 0.038 percent. Applying this figure to total AC health care spending of $6.27 billion,[2] we find that covering gender transition–related care will increase AC health care spending by approximately $2.4 million (see Table 5.2).

The data in Table 5.1 suggest that the University of California, with 100,000 enrollees in its health plan, is one of the key drivers of the 0.038-percent weighted

Table 5.1
Actuarial Estimated Costs of Gender Transition–Related Health Care Coverage from the Literature

Public Employer Data	Actuarially Calculated Premium Increase	Total Contribution (employees + dependents)
City of Seattle	0.19% increase in health care budget	23,090
City of Portland	0.08% increase in health care budget	18,000
City of San Francisco	0% increase in health care budget	100,000
University of California	0% increase in health care budget	100,000
Private Employer Data	**Estimate**	**Total Contribution (employees + dependents)**
22 firms	Many employers reported no actuarial costs to adding benefit; estimates range from 0 to 0.2%	Mix of firm sizes
2 firms	Approximately 1% increase in premiums	5,800
1 firm	Much less than 1% increase in premium	77,000

SOURCE: Estimates are from Herman, 2013b, and State of California, 2012.

[1] We did not use information about the firm with 77,000 enrollees because it is not clear what "much less than 1 percent" implies with respect to the premium increase.

[2] Pharmaceutical and direct and purchased care inpatient and outpatient data calculated from TRICARE costs in Defense Health Agency, 2015.

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average result. In addition to the actuarial increases, the University of California also reported a realized increase in health care spending of 0.05 percent, so we recalculated the weighted average figure by replacing the 0-percent estimate with the 0.05 percent estimate. This new calculation raised the overall cost estimate from 0.038 percent to 0.054 percent, or from $2.4 million to $3.4 million when applied to the AC. To summarize, our baseline estimates regarding expected gender transition–related health care costs in the AC are between $2.4 million and $3.4 million.

Sensitivity Analyses

To understand the potential full range of cost effects in the AC population, we conducted two additional sensitivity analyses similar to those described for our utilization ranges in Chapter Four. We used these sensitivity analyses to account for the skewed male/female distribution in the military population and for the possibility that transgender prevalence is higher in the military population. As in the utilization case, we were not able to identify any sex-specific effects on the premium increases. Thus, as in our utilization analysis, we assume that cost estimates are linearly related to prevalence,[3] and cost estimates for male-to-female transitions are twice the cost estimates for female-to-male transitions. Using this relationship, we again calculated natal male– and natal female–specific estimates from the aggregate estimates.

Given the assumption about differing cost effects, we calculated a natal male–specific cost estimate of 0.05 percent and a natal female–specific cost estimate of 0.025 percent for the aggregate premium estimate of 0.038 percent. Applying these sex-specific estimates to the AC male/female distribution increased our initial premium estimate from 0.038 percent to 0.047 percent. A similar calculation can be performed for our realized cost estimate of 0.054 percent. Assuming that gender transition–related health care costs are twice as large for male-to-female transitions as for female-to-male transitions, we calculated a natal male–specific cost effect of 0.072 percent and a natal female–specific cost effect of 0.036 percent. Applying these sex-specific estimates to the AC male/female distribution increased our initial premium estimate from 0.054 percent to 0.067 percent. Applying these newly calculated health care costs to the 2014 AC health care expenditures ($6.27 billion) increased our estimate of costs from the initial range of $2.4–3.4 million to a range of $2.9–4.2 million.

Finally, as noted previously, Gates (2011) and Gates and Herman (2014) calculated that transgender prevalence in the military is approximately twice that in civilian

[3] We also note that built into this linearity assumption and how it is applied in the two sensitivity analyses is the assumption that the cost of male-to-female transitions is the same as the cost of female-to-male transitions. Since there is no sex-specific information in the private health insurance cost data, the validity of the cost per case being equivalent is unknown. Padula, Heru, and Campbell (2015) estimated that a male-to-female surgical case is 33 percent more expensive than a female-to-male surgical case, but these estimates were not based on private employer data, so we did not directly incorporate this result into our calculations.

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populations. Assuming that this estimate is valid, and, again, assuming that health care costs are linearly related to underlying prevalence, this would increase the above calculated value of $2.9 million to $5.8 million and the calculated value of $4.2 million to $8.4 million. Table 5.2 summarizes the results from the calculations described in this section.

To better understand the relative importance of our estimates regarding expected AC annual gender transition–related health care spending, we compared our cost estimates to the MHS spending on mental health in 2012 and to total AC health care spending in FY 2014. As Figure 5.1 shows, gender transition–related health care spending is expected to be extremely small compared with MHS spending on mental health (Blakely and Jansen, 2013) and overall AC health care expenditures (Defense Health Agency, 2015).

Summarizing the Estimates

A direct application of estimates from the private health insurance system implies a baseline spending range between $2.4 million and $3.4 million for AC gender transition–related health care. Sensitivity analyses that attempt to account for the fact that the male/female distribution in the AC population skews more heavily male than the civilian population and that transgender prevalence might be higher in the military increase this initial range to $5.8 million to $8.4 million. The implication is that even in the most extreme scenario that we were able to identify using the private health insurance data, we expect only a 0.13-percent ($8.4 million out of $6.2 billion) increase in AC health care spending.[4]

Table 5.2
Estimated Annual MHS Costs of Gender Transition–Related Health Care, Active Component

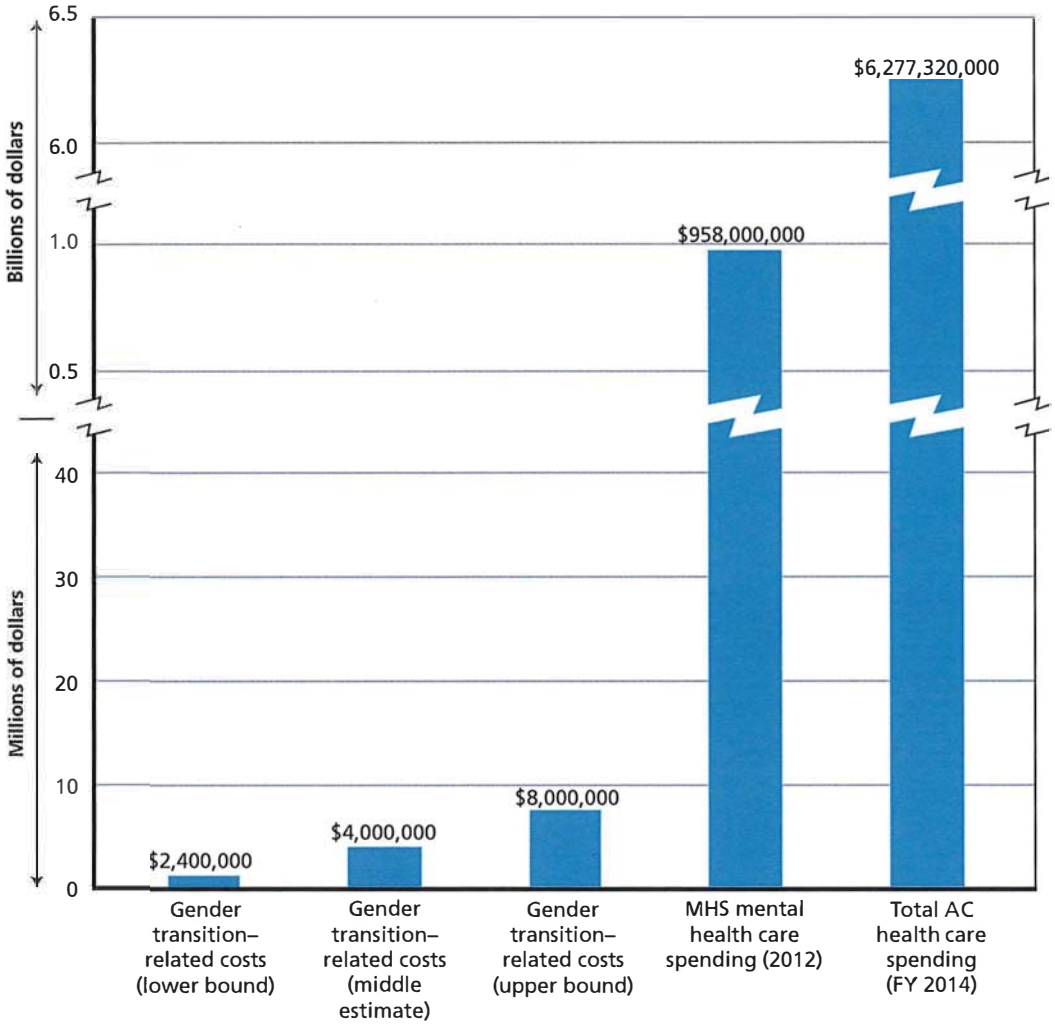
Analysis Type	Calculations Using Only Actuarial Premium Estimates 0.038% (actuarial)	Calculations Using Actuarial Premiums and Realized Values 0.054% (actuarial + realized)
Baseline	$2.4 million	$3.4 million
Sensitivity analysis 1: Adjusts for the male/female distribution in the AC population	$2.9 million	$4.2 million
Sensitivity analysis 2: Adjusts for the male/female distribution in the AC population and the assumption that transgender prevalence is twice as high in the military compared to the civilian population	$5.8 million	$8.4 million

SOURCE: RAND analysis.

[4] AC beneficiaries make up less than 15 percent of total TRICARE beneficiaries (Defense Health Agency, 2015).

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Figure 5.1
Gender Transition–Related Health Care Cost Estimates Compared with Total Health Spending, Active Component



SOURCES: RAND analysis; Blakely and Jansen, 2013; Defense Health Agency, 2015. Estimates of premium increased and realized costs are reported in Table 5.1.

NOTES: The lower-bound estimate refers to premium increases only. The middle estimate includes premium increases and realized costs after adjusting for male/female distribution in the military. The upper-bound estimate includes premium increases and realized costs after adjusting for male/female distribution in the military and assuming the prevalence rate of transgender individuals in the military is twice that of civilian populations.

RAND *RR1350-5.1*

CHAPTER SIX

What Are the Potential Readiness Implications of Allowing Transgender Service Members to Serve Openly?

As DoD considers whether to allow transgender personnel to serve openly and to receive transition-related treatment during the course of their military service, it must consider the implications of such a policy change on the service members' ability to deploy and potential reductions in unit cohesion. In prior legal challenges to the transgender military discharge policy, DoD has expressed concern that the medical needs of these service members would affect military readiness and deployability. To address these concerns, this chapter provides estimates of the potential effects on force readiness from a policy change allowing these service members to serve openly.

A critical limitation of such an assessment is that much of the current research on transgender prevalence and medical treatment rates relies on self-reported, nonrepresentative samples. Thus, the information cited here must be interpreted with caution because it may have varying degrees of reliability. In addition, to estimate effects on readiness, we focused on transgender personnel in the AC and SR only. We did not include the Individual Ready Reserve because of the lack of publicly available, detailed demographic information. We used the same approach that applied to our analysis of health care utilization, applying both the prevalence-based and utilization-based approaches to force size. We note that the prevalence-based approach was the only approach that allowed us to estimate the number of transgender service members who may seek to live and work as their target gender. Transition does not necessarily imply the use of medical treatments, and we emphasize that some of these service members may still require accommodations in terms of housing and administrative functions (e.g., military identification cards, restrooms).

Impact on Ability to Deploy

The most salient and complex issue in allowing transgender personnel to serve openly is how DoD should regulate and manage operational deployment requirements for these personnel in the context of their transition to their target gender.

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Pre-Transition

If transgender personnel are allowed to serve openly prior to transition, DoD will need to establish policies on when individuals may use the uniforms, physical standards, and facilities (e.g., barracks, restrooms) of their target gender. Additionally, DoD will need to clarify policies related to qualifications for deployment. Current deployment rules suggest that to qualify for deployment, individuals with diagnosed mental health disorders must show a "pattern of stability without significant symptoms or impairment for at least three months prior to deployment."[1] Ensuring appropriate screening will be critical to minimizing any mental health–related readiness issues. Secondary prevention measures prior to deployment, such as screening for GD, may be needed to ensure a pattern of stability and readiness for deployment.

During Transition

DoD would also need to determine when transitioning service members would be able to change uniforms and adhere to the physical standards of their target gender, as well as which facilities and identification cards they will use. Other countries have found that, in some cases, it may be necessary to restrict deployment of transitioning individuals to austere environments where their health care needs cannot be met. Deployment restrictions may also be required for individuals seeking medical treatment, including those seeking hormone therapy and surgical treatments.

We detail the constraints associated with transition-related medical treatments in Table 6.1. These constraints typically include a postoperative recovery period that would prevent any work and a period of restricted physical activity that would prevent deployment. The rightmost column of Table 6.1 presents the estimated number of nondeployable days we used to estimate the readiness impact. We note that these estimates do not account for any additional time required to determine medical fitness to deploy. Army guidelines, for example, do not permit deployment within six weeks of surgery. Nevertheless, there may be a significant difference between the estimated availability to deploy and the actual impact on deployability, as it is possible that transgender service members would time their medical treatments to minimize the effect on their eligibility to deploy.[2]

In addition to an expected, short-term inability to deploy during standard postoperative recovery time, some individuals experience postoperative complications that would render them unfit for duty. For instance, among those receiving vagino-

[1] Detailed guidance is provided in a memorandum from the Office of the Assistant Secretary of Defense for Health Affairs, 2013, p. 2.

[2] See for example, Personnel Policy Guidance Tab A (known as PPG-TAB A) that accompanies the medical guidelines document MOD TWELVE, Section 15.C, which articulates the minimal standards of fitness for deployment to the U.S. Central Command area of responsibility (U.S. Central Command, 2013).

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plasty surgery, 6–20 percent have complications.[3] This implies that between three and 11 service members per year would experience a long-term disability from gender reassignment surgery. Among those receiving phalloplasty surgery, as many as 25 percent experience some medical complications (Elders et al., 2014).

Table 6.1
Gender Transition–Related Readiness Constraints

Transition Type and Treatment	Recovery Time	Leave and Deployment Implications	Estimated Nondeployable Days
Male-to-Female			
Hormone therapy only	Long-term, no recovery required	None (pending accommodations)	N/A
Augmentation mammoplasty	1 week no work, 4–6 weeks restricted physical activity	Up to 14 days medical leave, up to 60 days medical disability	75
Genital surgery (orchiectomy, vaginoplasty)	4–6 weeks no work, 8+ weeks restricted physical activity	Up to 45 days medical leave, up to 90 days medical disability	135
Female-to-Male			
Hormone therapy only	Long-term, no recovery required	None (pending accommodations)	N/A
Chest surgery	1 week no work, 4–6 weeks restricted physical activity	Up to 14 days medical leave, up to 60 days medical disability	75
Hysterectomy	2 weeks no work, 4–8 weeks restricted physical activity	Up to 21 days medical leave, up to 90 days medical disability	111
Genital surgery (metoidioplasty, phalloplasty)	2–4 weeks no work, 4–6 weeks restricted physical activity	Up to 21 days medical leave, up to 60 days medical disability	81

SOURCES: Treatment times based on RAND research compiled for this study. Estimates of numbers of treatments based on rates in Gates, 2011. Estimated nondeployable days based on RAND calculations using FY 2014 data from DoD, 2014.

NOTES: The total population in the table includes AC and SR personnel. Estimates of treatments are non-unique per person. Individuals may (and likely will) seek multiple treatments simultaneously. As such, deployment days are measured per treatment, not per individual. Estimates of nondeployable days do not include estimated delays generated by Medical Evaluation Board/Physical Evaluation Board review, which may be required depending on service rules.

[3] According to Elders et al. (2014, p. 15), summarizing findings from 15 studies, "2.1 percent of patients had rectal-vaginal fistula, 6.2 percent with vaginal stenosis, 5.3 percent had urethral stenosis, 1.9 percent with clitoral necrosis, and 2.7 percent with vaginal prolapse," and approximately 2.3 percent of patients experienced complications after vaginoplasty.

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Taking the estimates for treatment and recovery time, we then applied the standards for leave and restricted physical activity.[4] We applied the recovery times and translated those into nondeployable days separated into medical leave, in which the service member is off the job, and medical disability, in which the service member can be at work but is subject to restricted physical requirements (e.g., no physical training, no heavy lifting). This provided us with the total number of nondeployable days per treatment type. We scaled this estimate by the number of days an individual can be deployed per year. For the AC, we assumed this to be 330 days per year (allowing 30 days of leave plus five days of processing time).[5] For the SR, we assumed 270 days per year (which allows nine months of deployment time). We counted each treatment separately and applied the number of treatments by treatment type shown in Table 6.1.

Note that because individuals may seek multiple treatments, sometimes at the same time, this number is not the same as the total number of individuals who will be nondeployable. Therefore, the estimates presented in Table 6.2 should be considered an upper bound in each category. Moreover, the prevalence-based estimates are significantly larger than the utilization-based estimates as shown in Table 4.8. Using the prevalence-based approach, we found that between eight and 43 of the available 1.2 million labor-years in the AC may be unavailable for deployment.[6] The combined, population-weighted, and gender-adjusted estimate implies that about 16 labor-years from the AC and about 11 labor-years from the SR may be nondeployable. This represents 0.0015 percent of available deployable labor-years across the AC and SR.

These estimates are based on surgical take-up rates ranging from 25 to 130 per year in the AC, with 55–270 total treatments, including hormone treatments. Similarly, the prevalence-based estimates imply 15–80 surgical treatments per year in the SR, with between 30 and 150 total treatments, including hormone therapy.

The utilization-based approach implies many fewer treatments. Although we could not estimate the impact on labor-years because we did not have information on specific treatments, based on usage rates in California, the utilization-based approach implies 30–50 total treatments, including surgeries and hormone therapy. Evidence from the VHA suggests that 90 service members in the AC and 50 in SR are diagnosed with GD in any given year. Such a diagnosis would be a prerequisite for any surgical treatments, suggesting that true utilization rates in the military may be significantly lower than suggested by the prevalence-based approach.

We caution that our labor-year estimates also likely overcount actual nondeployable time because our estimate captures "availability to deploy," rather than the deploy-

[4] For reference, we used the Army Regulation 40-501 (revised 2011), which governs leave and disability, and the Navy Medical Policy 07-009 (2007), which provides guidance on pre-clearance, accommodations for deployment readiness, and additional requirements in the U.S. Central Command area of operations.

[5] We based this estimate on Army Regulation 600-8-101 (2015).

[6] We define a labor-year as the amount of work done by an individual in a year.

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Table 6.2
Estimated Number of Nondeployable Man-Years Due to Gender Transition–Related Treatments

		Estimated Number of Nondeployable Labor-Years				
Component	Total Labor-Years Available (FY 2014)	0.1%[a] (CA study)	0.16%[b] (combined, population-weighted CA + MA studies)	0.19%[c] (gender-adjusted rate)	0.37%[d] (twice gender-adjusted rate)	0.5%[e] (MA study)
Active	1,199,096	8.2	13.7	16.2	32.3	42.8
Selected Reserve	615,446	5.9	9.9	10.7	21.3	29.9

SOURCES: Estimates for nondeployable labor-years are based on RAND calculations using FY 2014 data from DoD, 2014.

[a] Based on estimates of prevalence from a California study (Conron, 2012).

[b] Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state.

[c] Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state and applied specifically to the male/female distribution in the military components.

[d] Based on estimates of prevalence from NTDS, Gates (2011), and the American Community Survey (Gates and Herman, 2014) and applied specifically to the male/female distribution in the military.

[e] Based on estimates of prevalence from a Massachusetts study (Gates, 2011).

ment impact itself. This difference comes from three key assumptions that we make to calculate these estimates: (1) service members who are seeking treatment will also be deployed; (2) service members who are seeking treatment cannot time those treatments to avoid affecting their deployment eligibility; and (3) service members seek only one treatment at a time rather than having multiple treatments at the same time, which would allow concurrent (rather than sequential) recovery times. Thus, it is likely that a service member's care would have a substantial overall impact on readiness only if that service member worked in an especially unique military occupation, if that occupation was in demand at the time of transition, and if the service member needed to be available for frequent, unpredicted mobilizations.

Post-Transition

Having completed medical transition, a service member could resume activity in an operational unit if otherwise qualified. As in other cases in which a service member receives a significant medical treatment, DoD should review and ensure that any longer-term medical care or other accommodations relevant to the transgender service member's specific medical needs are addressed.

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Impact on Unit Cohesion

A key concern in allowing transgender personnel to serve openly is how this may affect unit cohesion—a critical input for unit readiness. The underlying assumption is that if service members discover that a member of their unit is transgender, this could inhibit bonding within the unit, which, in turn, would reduce operational readiness. Similar concerns were raised in debates over whether to allow gay and lesbian personnel to serve openly (Rostker et al., 1993; RAND National Defense Research Institute, 2010), as well as whether to allow women to serve in ground combat positions (Schaefer et al., 2015; Szayna et al., 2015). Evidence from foreign militaries and surveys of the attitudes of service members have indicated that this was not the case for women or for lesbian and gay personnel (Schaefer et al., 2015; Harrell et al., 2007; RAND National Defense Research Institute, 2010). In examining the experiences of foreign militaries, the limited publicly available data we found indicated that there has been no significant effect of openly serving transgender service members on cohesion, operational effectiveness, or readiness. (For a more in-depth discussion of this topic, see Chapter Seven.) However, we do not have direct survey evidence or other data to directly assess the impact on the U.S. military.

Evidence from the General U.S. Population

According to recent research on the U.S. general population, attitudes toward transgender individuals are significantly more negative than attitudes toward other sexual minorities (Norton and Herek, 2013). However, heterosexual adults' positive attitudes toward and acceptance of transgender individuals are strongly correlated with their attitudes and acceptance of gay, lesbian, and bisexual individuals (Flores, 2015). As such, similar to changes seen in public attitudes toward homosexuality, tolerance and acceptance toward the transgender population could change over time. Additionally, evidence does indicate that direct interactions with transgender individuals significantly reduce negative perceptions and increase acceptance (Flores, 2015), which would suggest that those who have previously interacted with transgender individuals would be more likely to be tolerant and accepting of them in the future. Similar findings have arisen from surveys and focus groups with service members regarding attitudes toward the integration of women into direct combat positions (Szayna et al., 2015) and attitudes toward allowing gay and lesbian service members to serve openly in the U.S. military (RAND National Defense Research Institute, 2010).[7]

[7] A recent article examined the attitudes of military academy, Reserve Officers' Training Corps, and civilian undergraduates in the United States toward transgender people in general, in the workplace, and in the military (see Ender, Rohall, and Matthews, 2016).

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Evidence from Foreign Militaries

While there are limited data on the effects of transgender personnel serving openly in foreign militaries, the available research revealed no significant effect on cohesion, operational effectiveness, or readiness. In the case of Australia, there is no evidence and there have been no reports of any effect on cohesion, operational effectiveness, or readiness (Frank, 2010). In the case of Israel, there has also been no reported effect on cohesion or readiness (Speckhard and Paz, 2014). Transgender personnel in these militaries have reported feeling supported and accommodated throughout their gender transition, and there is no evidence of any impact on operational effectiveness (Speckhard and Paz, 2014). In fact, commanders have reported that transgender personnel perform their military duties and contribute effectively to their units (Speckhard and Paz, 2014). Interviews with commanders in the United Kingdom also found no effect on operational effectiveness or readiness (Frank, 2010). Some commanders reported that increases in diversity had led to increases in readiness and performance. Interviews with these same commanders also found no effect on cohesion, though there were some reports of resistance to the policy change within the general military population, which led to a less-than-welcoming environment for transgender personnel. However, this resistance was apparently short-lived (Frank, 2010).

The most extensive research on the potential effects of openly serving transgender personnel on readiness and cohesion has been conducted in Canada. This research involved an extensive review of internal defense reports and memos, an analysis of existing literature, and interviews with military commanders. It found no evidence of any effect on operational effectiveness or readiness. In fact, the researchers heard from commanders that the increased diversity improved readiness by giving units the tools to address a wider variety of situations and challenges (Okros and Scott, 2015). They also found no evidence of any effect on unit or overall cohesion. However, there have been reports of bullying and hostility toward transgender personnel, and some sources have described the environment as somewhat hostile for transgender personnel (Okros and Scott, 2015).

To summarize, our review of the limited available research found no evidence from Australia, Canada, Israel, or the United Kingdom that allowing transgender personnel to serve openly has had any negative effect on operational effectiveness, cohesion, or readiness. However, it is worth noting that the four militaries considered here have had fairly low numbers of openly serving transgender personnel, and this may be a factor in the limited effect on operational readiness and cohesion.

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Costs of Separation Requirements Related to Transgender Service Members

We considered the costs and benefits of providing appropriate care to transgender service members, the requirements for those who would serve openly if the current policy changed, and the costs of continuing the current administrative separation process. We analyzed the costs of separation under several assumptions: (1) some transgender personnel are currently serving but are not able to reveal their transgender status, (2) some individuals who would be desirable recruits could be excluded for reasons only related to their gender identity, and (3) some individuals who are transgender are or have been separated for reasons only related to their gender identity, which imposes separation costs.

Separation and a continued ban on open service (i.e., manpower losses) are the alternatives to meeting the medical needs of transgender individuals. As detailed in Chapter Two, the continued ban on open service may result in worsening mental health status, declining productivity, and other negative outcomes due to lack of treatment for gender identity–related issues. In addition, if DoD actively pursues separation, the process can be tedious, especially now that it requires the approval of the Under Secretary of Defense for Personnel and Readiness. Under current DoD regulations, transgender personnel can be declared administratively unfit for service if their gender identity affects their ability to meet operational or duty requirements. A June 2015 revision to DoD policy requires that a discharge justification be based on inability to meet duty requirements. However, any "administratively unfit" finding prohibits the individual from being medically evaluated for continued service.[8] Absent this process, transgender service members do not have recourse to allow mental health experts or medical professionals to review their case concurrently. This can result in unnecessary and inconsistent approaches to discharging transgender service members. As was the case in enforcing the policy on homosexual conduct, this can involve costly administrative processes and result in the discharge of personnel with valuable skills who are otherwise qualified (U.S. Government Accountability Office, 2011).

Moreover, the total cost in lost days available for deployment is negligible and significantly smaller than the lack of availability due to medical conditions. For example, in 2015 in the Army alone, there were 102,500 nondeployable soldiers, 50,000 of whom were in the AC (Tan, 2015). This accounted for about 14 percent of the AC—personnel who were ineligible to deploy for legal, medical, or administrative reasons.

[8] These boards provide an established process and mechanism for evaluating whether a service member with an ailment or diagnosis, such as a mental health diagnosis, could continue military service. The services use the Medical Evaluation Board and Physical Evaluation Board systems to determine whether personnel "with an ailment or diagnosis, such as a mental health diagnosis, can continue . . . military service," based on a thorough review of fitness to serve (DoDI 1332.38, 1996).

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Of those, 37,000 could not deploy due to medical conditions.[9] Excluding those who were severely injured and required longer-term care, there were 28,490 service members who had either category 1 (up to 30 days) or category 2 (more than 30 days) restrictions. Assuming those in category 1 cannot deploy for 30 days and those in category 2 cannot deploy for 90 days, we estimate there are currently 5,300 nondeployable labor-years in the Army alone. Thus, we anticipate a minimal impact on readiness from allowing transgender personnel to serve openly.

[9] Rates of injury and nondeployability time as reported in Cox (2015).

CHAPTER SEVEN

What Lessons Can Be Learned from Foreign Militaries That Permit Transgender Personnel to Serve Openly?

As the U.S. military considers changes to its transgender personnel policy, revisions to several other policies may be necessary. Policies in need of change would cover a range of personnel, medical, and operational issues affecting individuals and units, including some policies that currently vary by gender. Examples of the latter would include housing assignments, restrooms, uniforms, and physical standards. While these are new questions for the U.S. military, there are other countries that already allow transgender personnel to serve openly in their militaries and have already addressed these policy issues.

We reviewed policies in foreign militaries that allow transgender service members to serve openly. Our primary source for the observations presented in this report was an extensive document review that included primarily publicly available policy documents, research articles, and news sources that discussed policies on transgender personnel in these countries. The information about the policies of foreign militaries came directly from the policies of these countries as well as from research articles describing the policies and their implementation. Our findings on the effects of policy changes on readiness draw largely from research articles that have specifically examined this question using interviews and analyses of studies completed by the militaries themselves. Finally, our insights on best practices and lessons learned emerged both directly from research articles describing the evolution of policy and the experiences of foreign militaries and indirectly from commonalities in the policies and experiences across our four case studies. Recommendations provided in this report are based on these best practices and lessons learned, as well as a consideration of unique characteristics of the U.S. military.

This review and analysis of the policies in foreign militaries can serve as a reference for U.S. decisionmakers as they consider possible policy revisions to support the integration of openly transgender personnel into the U.S. military. We include information on how, when, and why each country changed its policy. We also detail the policies of each country, covering such issues as the medical and administrative

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requirements before gender transition can begin, housing assignments, uniform wear, and physical fitness standards.

Policies on Transgender Personnel in Foreign Militaries

According to a report by the Hague Center for Security Studies, there are 18 countries that allow transgender personnel to serve openly in their militaries: Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, Netherlands, New Zealand, Norway, Spain, Sweden, and the United Kingdom (Polchar et al., 2014). This chapter describes the policies of the four countries—Australia, Canada, Israel, and the United Kingdom—with the most well-developed and publicly available policies on transgender military personnel. It focuses explicitly on policies that describe how these foreign militaries treat transgender personnel and how they address this population's gender transition needs. While the focus of the chapter is on the specific policies integrating openly transgender military personnel in these four foreign militaries, we also provide some information about what happened after the policy change, including bullying and harassment, and summarize best practices and challenges that emerged from our four case studies.[1]

The formal policies on transgender personnel in the four countries address a number of aspects of the gender transition process.[2] Generally, these policies do not explicitly address such issues as the recruitment or retention of transgender personnel, though we provide information on the qualification of transgender personnel to serve when it is available. They do generally address such issues as the requirements for transitioning, housing assignments, restroom use, uniforms, identity cards, and physical standards. They also address whether the transitioning personnel remain with their old units or shift to new ones and how other members of a unit should be informed. Finally, the policies address access to medical care and what is or is not covered by the military health care system.

In addition to addressing these crucial issues, foreign military policies on transgender personnel typically lay out a gender transition plan, which describes the timeline or steps in the transition process. However, it is worth noting that each individual's

[1] We looked for information on the policies of the other 14 countries but were unable to find any publicly available documents in English.

[2] We note a few interesting points about other countries that we investigated but for which we were unable to find sufficient publicly available information to construct a complete case. The Netherlands was the first country to allow transgender personnel to serve openly in its military, opening its ranks in 1974. New Zealand opened its military to transgender personnel in 1993; although we could not find a written policy, a 2014 report by Hague Center for Strategic Studies referred to New Zealand's as the most friendly military to transgender personnel. The New Zealand Defence Force also has an advocacy group, OverWatch, that provides support to lesbian, gay, bisexual, and transgender personnel (see Polchar et al., 2014).

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gender transition is unique. While some choose to undergo hormone therapy or gender reassignment surgery, this is not required for gender transition. As a result, the timelines outlined in the policies are intended to be examples only.

Australia

In 2010, the Australian Defence Force revoked the defense instruction that prohibited transgender individuals from serving openly, stating that excluding transgender personnel from service was discrimination that could no longer be tolerated (Ross, 2014). The Australian Department of Defence, with the advocacy group Defence Lesbian, Gay, Bisexual, Transgender, and Intersex Information Service, has produced guides to support commanders, transitioning service members, and the units in which transitioning members are serving (Royal Australian Air Force, 2015). The guide outlines five stages in the gender transition process: diagnosis, commencement of treatment, disclosure to commanders and colleagues, the post-transition experience, and, if applicable, gender reassignment surgery (Royal Australian Air Force, 2015). There is no public information on the number of transgender personnel in the Australian military or the costs associated with covering gender transition–related medical care.

A service member's gender transition begins after receiving a medical diagnosis of gender incongruence from a doctor approved by the Australian Defence Force. According to Australian Defence Force policy, once service members receive this diagnosis and present a medical certification form to their commanders, they can begin the "social transition," which policy defines as the time when an individual begins living publicly as the target gender. Under the current policy, after this point, the service member's administrative record is updated to indicate the target gender for the purposes of uniforms, housing, name, identification cards, showers, and restrooms (Royal Australian Air Force, 2015). This means that, after this point, the service member is assigned to housing of the target gender, may use the restrooms of the target gender, has an identification card with the target gender and new name, and can wear the uniform of the target gender.

During the social transition, the service member may undergo hormone therapy. However, neither hormone therapy nor gender reassignment surgery is required for the administrative changes to occur. Importantly, this shift in gender for military administrative purposes may not always match the legal transition (with respect to the Australian government) to the target gender (Royal Australian Air Force, 2015). Finally, when transgender service members choose to transition, they may choose whether to stay with their current unit or transfer to a different one. They may also choose how colleagues are informed of the gender transition—that is, whether they wish to tell colleagues themselves or have a senior leader do so.

Australia's policy also addresses matters related to physical standards and medical readiness. During the transition period, a service member may be downgraded in terms of physical readiness or declared unable to deploy for some time. However, this

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determination is decided on a person-by-person basis and is only temporary. According to the guide provided to service members and commanders, most individuals are placed on "MEC [Medical Employment Classification] 3—Rehabilitation" status during their medical transition or if they require four consecutive weeks of sick leave. Others may be able to remain "MEC 2—Employable and Deployable with Restrictions" for the majority of the gender transition period. In most cases, this determination is made by a certification board, though commanders are also given discretion to downgrade transitioning service members or declare them unfit to deploy, contingent on a stated inability to accommodate the service member's needs or a determination that the transitioning service member's presence would undermine the unit's performance. However, there is no public information available on the types of justifications a commander might give in making such a determination.

The deployment status of each individual will vary during the gender transition based on the transition path chosen (for example, whether hormone therapy or surgery is undertaken). Some of these treatments are covered by military health care. In Australia, medical treatments associated with gender transition, including both hormone therapy and gender reassignment surgery, are covered, but treatments considered "cosmetic" might not be (Royal Australian Air Force, 2015). However, it is not clear what is classified as cosmetic or what might be considered medically necessary. Importantly, gender transition–related medical procedures are provided only at certain facilities, so service members who wish to receive these treatments may need to make special requests for specific assignments where their needs can be met. In general, personnel are permitted to take sick leave to facilitate their medical transition (Royal Australian Air Force, 2015).

Transitioning service members' deployment status will also depend on their ability to meet physical fitness standards. During the transition period, a service member may be considered medically exempt from meeting physical fitness standards, with a coinciding readiness classification of nondeployable. Once deemed medically able to complete the test by a medical professional, the service member may be asked to meet the standards of the target gender. However, which gender standards the individual is required to meet and when is determined by the medical officer overseeing the gender transition (Royal Australian Air Force, 2015). Thus, the point at which each transitioning service member is required to meet the target-gender standards varies.

Canada

In Canada, a 1992 lawsuit from a member of the armed forces resulted in the repeal of a regulation banning gay, lesbian, and transgender individuals from serving openly in the military (Okros and Scott, 2015). In 1998, the Canadian military explicitly recognized gender identity disorder and agreed to cover gender reassignment surgery. In 2010, Canadian military policy was revised to clarify transgender personnel issues, such as name changes, uniforms, fitness standards, identity cards, and records (Okros

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and Scott, 2015). An updated policy, Military Personnel Instruction 01/11, "Management of Transsexual Members," was released in 2012 (Canadian Armed Forces, 2012). It stated, "The CF [Canadian Forces] shall accommodate the needs of CF transsexual members except where the accommodation would: constitute undue hardship; or cause the CF member to not meet, or to not be capable of meeting. . . . Minimum Operational Standards Relating to Universality of Service" (Canadian Armed Forces, 2012, p. 5). Other considerations that can be used to determine whether an accommodation is reasonable include cost and the safety of other service members and the public (Canadian Armed Forces, 2012, p. 5). Data suggest that there are approximately 265 transgender personnel serving openly and that the Canadian military pays for about one gender reassignment surgery per year (Okros and Scott, 2015).

Canada's policy on transgender personnel covers such issues as housing, identification cards, restrooms, physical standards, deployment, medical treatment, and uniforms. The process is similar in most ways to that in Australia, described earlier. In Canada, one of the first steps in the gender transition process is a medical assessment in which the individual is given a diagnosis of gender incongruence and assigned a temporary medical category that defines both employment limitations and accommodations that will be needed to support the service member during gender transition. After receiving this diagnosis, service members are responsible for informing their commanders and are asked to give commanders as much notice as possible before beginning their gender transition. After that, the service member, the service member's manager, and the unit's commanding officer are expected to meet to discuss the service member's gender transition plan and to addresses any necessary accommodations. The policy recommends frequent meetings between the service member and relevant leaders and medical professionals to ensure that the transitioning service member's needs are met. The policy also identifies subject-matter experts, such as chaplains and mental health professionals, who might be available to provide advice (Canadian Armed Forces, 2012).

The policy states that the gender transition plan should address housing, uniforms, deployments, and other administrative considerations. While the timeline will vary for each individual, in most cases, after receiving the diagnosis and informing the commander, the service member is able to begin living openly as the target gender. At this point, the service member is assigned to housing of the target gender, given ID cards with the target gender and new name, given uniforms of the target gender, and permitted to use restrooms of the target gender. However, while the individual is considered a member of the target gender for all administrative purposes within the military at this point, an official name and gender change in the military personnel system requires both medical certificates and legal documentation (Canadian Armed Forces,

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2012).[3] Finally, medals and awards earned by the service member prior to transitioning cannot be transferred to the new name when the service member transitions to the target gender (Okros and Scott, 2015).

While the policy expects accommodations to be made to meet the needs of transgender personnel, it also notes that commanders must strike a balance between meeting the needs and legal rights of transgender personnel and the privacy needs of other service members in restrooms, showers, and housing. It does not, however, provide guidance on how this should be accomplished (Canadian Armed Forces, 2012). The policy also makes clear that incidents of harassment must be dealt with according to the Canadian military's discrimination and harassment policy. Finally, if the transgender service member is assigned to a new unit permanently or temporarily, any required accommodations are to be communicated to the new commanding officer prior to the service member's arrival (Canadian Armed Forces, 2012).

The medical assessment and gender transition plan developed at the start of transition are also used to determine a service member's readiness status and deployability. The policy states that service members can be downgraded temporarily in terms of their readiness, ability to deploy, and eligibility for remote assignments until gender transition is complete (Canadian Armed Forces, 2012). This determination is made primarily by the medical professionals overseeing the service member's gender transition. After the gender transition is complete, the continued need for a reduced medical standard is decided on a case-by-case basis based on the service member's overall health, chronic conditions, and need for access to medical care. After beginning the gender transition, and based on the medical assessment, the service member is considered medically exempt from physical fitness testing and requirements until legally assuming the acquired or target gender (which, as noted earlier, requires provincial recognition). At that point, the fitness standards for the acquired or target gender apply. More specifically, once personnel are removed from the medical exemption list, they have 90 days to meet the new standards (Canadian Armed Forces, 2012).

A reduced medical readiness determination during gender transition is intended primarily to ensure that the service member has uninterrupted access to medical care. Once gender transition is complete, transgender service members and their commanders are responsible for identifying the service member's specific needs and how they will be addressed (Canadian Armed Forces, 2012). Gender reassignment surgery will not, however, automatically result in permanent deployment restrictions. As in Australia, gender reassignment surgery and hormone therapy are covered by military health care. The Canadian military paid for one gender reassignment surgery in 1998 and has paid for one or two surgeries per year since then (Canadian Armed Forces, 2012).

[3] Also note that the requirements for the legal change vary by province but typically involve only a statement that the individual has assumed the target gender and a medical certification from a doctor of a diagnosis of gender incongruence.

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Israel

The Israel Defense Forces (IDF) have allowed transgender personnel to serve openly since 1998 (Speckhard and Paz, 2014).[4] The IDF experience with transgender personnel is somewhat unique because Israel's military is composed largely of conscripts who serve two or three years and then serve in the reserves with extended periods of active service. As a result, a very high percentage of the population spends extended periods of time mixing military and civilian life. From the perspective of this report, this blending of civilian and military life creates unique challenges for transgender personnel, as they cannot be one person in their civilian life and then a different person in their military life. Some transgender individuals receive a discharge or exemption from their military service based on their gender incongruence, but this decision is currently at the discretion of the commander. There is no official IDF policy on transgender personnel, but according to one report, senior members of the IDF are working to draft one (Speckhard and Paz, 2014). In 2014, the IDF announced that it would support transgender individuals throughout the transition process. Under this new policy, transgender teens who have not yet begun to transition to another gender will be enlisted according to their birth sex, but after enlistment, they will be given support and assistance with the gender transition process (Zitun, 2014). As a result, Speckhard and Paz (2014) noted, experiences vary for transgender personnel in the IDF. Some individuals report that once they ask to transition, they are allowed to dress and serve as their target gender. However, it is unclear how generalizable this is.

Typically, IDF administrative records use the gender at that time of enlistment. Since conscription occurs at age 18, and because hormone treatment for gender incongruence cannot legally begin until age 18, the administrative records of most personnel show their birth gender. Under a newly announced policy, personnel enlisted using their birth gender who identify as transgender can immediately receive support and treatment to begin the gender transition (Zitun, 2014). Importantly, however, as of 2014, the military identification card carries the birth gender until a service member undergoes gender reassignment surgery, even if the service member is living publically as the target gender (Speckhard and Paz, 2014). It should be noted that, in Israel, only one hospital can perform gender reassignment surgery, and this surgery cannot be performed until age 21, though some people go abroad for it (Speckhard and Paz, 2014). This creates some complications for housing and other matters, discussed in more detail later. The new policy will also allow transgender recruits to receive support for gender transition after enlistment.

Available evidence suggests that, in the IDF, assignment of housing, restrooms, and showers is typically linked to the birth gender, which does not change in the military system until after gender reassignment surgery. Service members who are undergo-

[4] We do not know the exact date for this change because there was never a formal policy allowing or prohibiting transgender personnel from serving. It was in 1998 that the first openly transgender individual served in the IDF.

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ing gender transition are accommodated, however, through the use of ad hoc solutions, including giving transitioning personnel their own showers, housing, or restrooms (Speckhard and Paz, 2014). Once transitioning personnel have completed gender reassignment surgery, they can be assigned to the housing, restrooms, and showers of their acquired gender. It is also worth noting that the majority of noncombat personnel are able to live at home, off base. As a result, the housing issue does not affect a large number of transitioning personnel (Speckhard and Paz, 2014). The issue of uniforms is usually easier to address, and service members are able to wear the uniform of the target gender once they begin their gender transition.

In addition to addressing housing and other administrative matters for conscripts and career soldiers, the IDF must address transitioning reservists. The limited information available suggests that the approach to addressing the needs of this group also varies from person to person. Usually, if reserve members are in the process of transitioning or have transitioned when called to active duty, they are permitted to return to service as their target or acquired gender (following the same administrative policies described earlier). For example, a service member who served in an all-male combat unit and is transitioning to female may be moved to another position. Again, many reservists serve their duty while living at home, so housing is not usually an issue. Restroom and shower assignments are addressed on an ad hoc basis (Speckhard and Paz, 2014). Finally, some personnel who have transitioned or are in the process of transitioning are exempted from their reserve duty. However, this is becoming less common as the IDF strives to accommodate the needs of these personnel rather than exempting them from service (Speckhard and Paz, 2014).

The IDF does not have a formal policy on physical standards for transgender individuals serving their conscription duty, reserve duty, or as professional soldiers. Available information suggests only that transgender personnel can serve in any unit or occupation for which they meet the requirements, with the exception of a few male-only combat units and certain security-related positions (Speckhard and Paz, 2014). Personnel transitioning from female to male are able to serve in male-only combat units only if they can meet the requirements set for other men. Personnel transitioning from male to female cannot serve in male-only combat units once they begin hormone treatment (Speckhard and Paz, 2014).

There do appear to be some limitations on the assignment of transgender personnel, particularly in combat units. Because of austere living conditions in these types of units, necessary accommodations may not be available for service members in the midst of a gender transition. As a result, transitioning individuals are typically not assigned to combat units (Speckhard and Paz, 2014). Transgender personnel are also limited from assignment to certain security-related positions due to concerns about blackmail, based on the assumption that these service members might be open about their gender identity in the military but might not have told others, including family members. Keeping

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these types of secrets might make an individual susceptible to blackmail or extortion (Speckhard and Paz, 2014).

In the IDF, medical issues and matters related to the readiness of transgender personnel are addressed on a case-by-case basis, though a more formal policy is being developed. For conscripts, the only treatment that can be provided by the military is hormone therapy because gender reassignment surgery is possible in Israel only after age 21, by which point the conscription duty is usually completed (Speckhard and Paz, 2014). Those who choose to stay in the military full-time after the age of 21, as well as those in the reserve called to back to active service, may receive both hormone therapy and gender reassignment surgery. Those who choose to undergo surgery are permitted to take a period of sick leave for the surgery and recovery, as they can for any other medical treatment or surgery (Speckhard and Paz, 2014). Israel has nationalized health care that typically covers all treatments associated with gender transition, ranging from psychiatric care to pre- and postoperative care, hormone treatment, breast augmentation, and facial feminization. Apart from the approaches used to address physical standards for transitioning individuals (discussed earlier), there are no specific policies governing the readiness classification of transitioning IDF personnel, though some are in development (Zitun, 2014).

United Kingdom

The United Kingdom lifted the ban on transgender personnel in 2000 following a European Court of Human Rights ruling that the country's policy violated the right to privacy under the European Convention on Human Rights (Frank, 2010). The policy change was implemented with guidance to commanders, as well as a code of social conduct that allowed commanders to address inappropriate behavior toward transgender personnel by appealing to broader principles of tolerance and diversity and to guard operational effectiveness (Yerke and Mitchell, 2013). In 2009, the British Armed Forces released the "Policy for Recruitment and Management of Transsexual Personnel in the Armed Forces" to offer clearer guidance to commanders on how gender transition–related issues should be addressed (Yerke and Mitchell, 2013). While transgender personnel are able to serve openly, under the current policy, they can be excluded from sports that organize around gender to ensure the safety of the individual or other participants. The British Army also provides its official policy on transgender personnel on its website:

> The Army welcomes transgender personnel and ensures that all who apply to join are considered for service subject to meeting the same mental and physical entry standard as any other candidate. If you have completed transition you will be treated as an individual of your acquired gender. Transgender soldiers serve throughout the Army playing their part in the country's security. There is a formal network that operates in the Army to ensure that transgender soldiers can find advice and support with issues that affect their daily lives. (British Army, undated)

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However, the military encourages those who have not yet started their gender transition to complete their transition before joining (UK Ministry of Defence, 2009).

The 2009 UK policy is similar to those in Canada and Australia in terms of the areas covered and approaches to addressing key issues, though the UK policy provides some additional room for individual differences. The policy also includes an extensive discussion of the legal and privacy protections afforded to transgender personnel. These protections are important because they also apply to administrative and medical records in the military system.

The UK policy defines five stages of gender transition: diagnosis, social transition (the individual begins living openly as the target gender), medical treatment/hormone therapy, surgical reassignment, and postoperative transition. However, it also recognizes that the process of gender transition may be different for each person. The policy suggests that each individual work with commanders and service authorities to develop a plan that includes a timeline for transition. The gender transition plan agreed to by the service member and commanders should specify the timing of changes, such as to housing assignments and uniforms. The specific point at which a service member transitions for the purposes of name, uniform, housing, restrooms, and ID cards may vary from person to person. Typically, when service members begin living publicly as the target gender (the social transition) they are reassigned to housing of the target gender, use the restrooms and uniforms of the target gender, and are given an ID card indicating that they are a member of the target gender. Importantly, this shift in gender for administrative purposes does not have to correspond to the point at which an individual transitions gender within the UK legal system, a process that involves a diagnosis of gender incongruence and two years of living as the acquired gender (UK Ministry of Defence, 2009). The policy also notes that it is unlawful to force transgender personnel to use separate toilet or shower facilities or occupy separate housing accommodations from the rest of the force.

The gender transition plan addresses other logistics of the transition. For example, it should specify scheduled time off required for medical procedures, including gender reassignment surgery. In general, medical treatment associated with gender transition is treated like any other medical issue experienced by a service member. However, while hormone replacement therapy is covered by military health care, gender reassignment surgery is not (UK Ministry of Defence, 2009). The policy notes that the timeline and timing of the transition must take into consideration the needs of the service. As a result, at least four weeks notice is typically needed prior to the start of a service member's gender transition. The gender transition plan should also specify whether service members wish to transition in their current post or transfer to a new position and whether they want to tell their colleagues about the gender transition themselves or would like someone else to do this. This decision may depend on the size of the unit. In a small unit, it may be easy to inform fellow service members personally. In a larger organization, it may not be necessary to tell every individual. Commanders of units

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with transgender personnel are encouraged to consult members of the Service Equality and Diversity staff about how to approach education and management in matters associated with transgender service members.

The UK policy also addresses medical readiness and physical standards. Transgender personnel are evaluated for medical readiness and deployability on a case-by-case basis following a medical evaluation. During the transition period, specifically during hormone treatment and immediately before and after surgery, service members may receive a reduced Medical Employment Standard, which restricts deployability and sea service (UK Ministry of Defence, 2009). Transitioning service members who continue to meet physical standards throughout this period and are able to perform their jobs may retain normal readiness standards. Usually, those who do not undergo hormone therapy or gender reassignment surgery are able to maintain a fully deployable status throughout their gender transition (UK Ministry of Defence, 2009). Service members who are undergoing hormone therapy are able to deploy, as long as the hormone dose is steady and there are no major side effects. However, deployment to all areas may not be possible, depending on the needs associated with any medication (e.g., refrigeration). Some service members may also be required to have a psychiatric evaluation, but only if they show signs of mental health distress (UK Ministry of Defence, 2009). Individuals who have finished their gender transition and can meet the requirements of their legal gender are considered fully deployable. However, those who remain in a state of reduced readiness for an extended period may have to be discharged (UK Ministry of Defence, 2009). Importantly, the British military encourages individuals who are in the midst of their gender transition and are considering joining the military to wait until the gender transition is complete before joining, as the military may not always be able to provide the support the individual needs during gender transition.

The specific physical standards a transitioning individual must meet during and after the gender transition period are determined on a case-by-case basis. The policy allows that there may be a period of time—especially for individuals transitioning from female to male—during which a service member is not yet able to meet the standards of the target gender. In these cases, medical staff and commanders may assess the individual and determine the appropriate interim standards (UK Ministry of Defence, 2009). Once the gender transition is considered "complete," personnel are required to meet the standards of the target gender (UK Ministry of Defence, 2009). However, the policy recognizes that the point at which the gender transition is complete may vary: It may be complete after hormone therapy or after surgery, or simply after the individual begins living as the target gender. Therefore, the policy continues to allow for some flexibility in physical standards, even for members at the end of their gender transition process (UK Ministry of Defence, 2009). Modified standards may be set by medical staff and commanders, if necessary. Continued failure to meet whatever physical stan-

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dards are determined to be appropriate (modified or otherwise) can lead to administrative discharge (UK Ministry of Defence, 2009).

The policy also addresses positions that are "gender-restricted" or have unique standards. The United Kingdom still has a number of combat occupations closed to women. Personnel who are transitioning from male to female may not serve in male-only occupations as long as this policy remains in place. Those transitioning from female to male may hold these jobs, assuming that they are able to meet the physical standards (UK Ministry of Defence, 2009). Transgender personnel may hold positions that have unique standards related to the occupation, as long as they can meet the physical and other requirements for the specific position. Finally, according to the policy, service members may request that their medals be transferred to a new name by submitting the request in writing. They are allowed to continue wearing qualifications earned while serving as their birth gender. However, this may indicate their transgender status to others (UK Ministry of Defence, 2009).

Effects on Cohesion and Readiness

As indicated in Chapter Six, while there is limited research on the effects of transgender personnel serving openly in foreign militaries, the available evidence indicated no significant effect on cohesion, operational effectiveness, or readiness. In the Australian case, there is no evidence and there have been no reports of any effect on cohesion, operational effectiveness, or readiness (Frank, 2010). In the Israeli case, there has also been no reported effect on cohesion or readiness (Speckhard and Paz, 2014). Transgender personnel in these militaries report feeling supported and accommodated throughout their gender transition, and there has been no evidence of any effect on operational effectiveness (Speckhard and Paz, 2014). As noted earlier, commanders report that transgender personnel perform their military duties and contribute to their units effectively (Speckhard and Paz, 2014). Interviews with commanders in the United Kingdom also found no effect on operational effectiveness or readiness (Frank, 2010). Some commanders reported that increases in diversity had led to increases in readiness and performance. Interviews with these same commanders also found no effect on cohesion, though there were some reports of resistance to the policy change within the general military population, which led to a less-than-welcoming environment for transgender personnel. However, this resistance was apparently short-lived (Frank, 2010).

The most extensive research on the potential effects of openly serving transgender personnel on readiness and cohesion has been conducted in Canada. This research involved an extensive review of internal defense reports and memos, an analysis of existing literature, and interviews with military commanders. It found no evidence of any effect on operational effectiveness or readiness. In fact, the researchers

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heard from commanders that the increased diversity improved readiness by giving units the tools to address a wider variety of situations and challenges (Okros and Scott, 2015). They also found no evidence of any effect on unit or overall cohesion. However, there have been reports of bullying and hostility toward transgender personnel, and some sources have described the environment as somewhat hostile for transgender personnel (Okros and Scott, 2015).

To summarize, our review of the limited available research found no evidence from Australia, Canada, Israel, or the United Kingdom that allowing transgender personnel to serve openly has had any negative effect on operational effectiveness, cohesion, or readiness. However, it is worth noting that the four militaries considered here have had fairly low numbers of openly serving transgender personnel, and this may be a factor in the limited effect on operational readiness and cohesion.

Best Practices from Foreign Militaries

Several best practices and lessons learned emerged both directly from research articles describing the evolution of policy and the experiences of foreign militaries and indirectly from commonalities in the policies and experiences across our four case studies. The best practices that extended across all cases include the following:

The Importance of Leadership

Sources from each of our case-study countries stressed that leadership support was important to executing the policy change. Leaders provided the impetus to draft and implement new policies and were integral to communicating a message of inclusion to the entire force. Supportive leaders were also important in holding accountable those personnel who participated in discrimination (Okros and Scott, 2015; Speckhard and Paz, 2014). Each of the cases underscores the importance of having strong leadership support to back and enforce the policy change, along with clearly written policies that are linked to national policy wherever possible (Frank, 2010). The militaries found that presenting a "business case" for diversity and emphasizing the advantages of an inclusive military, including better retention and recruiting, can help reduce resistance to a policy change (Frank, 2010).

Awareness Through Broad Diversity Training

The most effective way to educate the force on matters related to transgender personnel is to integrate training on these matters into the diversity and harassment training already given to the entire force. This training addresses all forms of harassment and bullying, including that based on religion, race, and ethnicity (Frank, 2010; Okros and Scott, 2015; Belkin and McNichol, 2000–2001).

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In the four cases we reviewed in-depth, we found that targeting only commanders with training and information on what it means to be transgender is not as effective in fostering an inclusive and supportive environment as training that targets the entire force and is integrated into broader forcewide diversity training. The foreign militaries that we examined train not only units with transitioning individuals but also the entire force by including gender identity alongside sexual orientation, religion, ethnicity, and other markers of difference in diversity training and education. However, efforts must be made simultaneously to protect the privacy of transitioning service members. In some cases, telling a unit that a transgender member is arriving before that individual arrives can be counterproductive (Frank, 2010).

The Importance of an Inclusive Environment

An all-inclusive military environment—not just as it pertains to transgender personnel, sexual orientation, or gender identity, but a culture that embraces diversity—can support the integration of openly serving transgender personnel. In this context, gender identity is just one marker of diversity.[5]

Ensuring Availability of Subject-Matter Experts to Advise Commanders

Most of the four countries we examined in-depth also make subject-matter experts (e.g., chaplains, psychiatrists) and gender advisers (individuals who have special training in gender awareness and gender mainstreaming in the military context) available to commanders tasked with the integration of transgender personnel. Gender advisers were originally intended to deal primarily with issues associated with integrating women into male-dominated military environments, but they could also help with other gender-related matters, including transgender personnel policy. They serve directly within military units and are a readily available resource to commanders. Adopting a similar practice of integrating advisers with expertise in the area of transgender personnel policy and gender transition-related matters might also support the integration of transgender service members in the U.S. military.

Lessons Learned and Issues to Consider for U.S. Military Policy

Based on these best practices and the broader experiences of four foreign militaries, there are some key lessons to be learned and possible issues to consider when crafting U.S. military transgender personnel policy. First, in each of the four foreign militaries, there were some reports of resistance, bullying, and harassment of transgender personnel who made their gender transition public. This harassment ranged from exclusion to more aggressive behavior. In most cases, this behavior was relatively limited; however,

[5] Remarks by a Canadian subject-matter expert in a phone discussion with RAND researchers, November 2015.

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in some cases, it did contribute to a hostile work environment for transgender personnel and had the effect of discouraging these personnel from being open about their gender transition or gender identity (Okros and Scott, 2015; Frank, 2010). Although the foreign militaries we examined tended to adopt a policy of no tolerance for this type of harassment, some bullying behavior may have gone unreported (Okros and Scott, 2015; Frank, 2010). In the case of Canada, the issue of restrooms for transgender personnel is an ongoing topic of discussion, and restrooms have been a common site of harassment and discrimination (Okros and Scott, 2015).

A second lesson learned is related to problems caused by the lack of an explicit, clearly written policy. For instance, in the IDF, without a clear policy, some transitioning individuals are placed in difficult and uncomfortable situations. For example, in some cases, personnel who have been permitted to begin hormone therapy cannot be housed with members of their target gender or grow their hair and fingernails (in the case of individuals transitioning from male to female). Others have been isolated, assigned to separate housing, or asked to use separate restrooms (Speckhard and Paz, 2014). Recognizing these challenges, IDF leadership is working to design a clear and explicit policy. In the Israeli case, transgender individuals were allowed to serve openly before a formal policy was written. Only when it was faced with questions about the integration of transgender personnel did the IDF begin to create a formal policy.[6] In Canada, a similar policy gap arose when transgender personnel were allowed to serve openly following a national policy revision that ended discrimination based on sexual orientation or gender. However, the focus at that point was on gay and lesbian service members, and no formal policy was created to address transgender personnel explicitly. When matters related to the medical care of transgender personnel arose, Canadian defense leaders developed a policy that just addressed this narrow, pressing issue, and did not develop policies to address the other matters (e.g., housing, restrooms, name changes). Commanders complained that the original policy was too vague and lacked sufficient details. A new, revised policy was written in 2012, and commanders have responded with positive feedback.[7] The lack of a clear, written policy has also been an issue in Australia.

A third and final issue that has come up in at least two of the countries we surveyed is that of awards and medals. In the UK case, medals and awards received prior to gender transition can be transferred to the service member's post-transition name (UK Ministry of Defence, 2009). In the Canadian case, this is not possible, and the awards remain associated only with the original name. This is a cause for concern among transgender personnel in the Canadian military, but Canadian officials have responded that they cannot rewrite history (Okros and Scott, 2015). This is a policy area that the United States should consider alongside other administrative policies.

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6 Remarks by a Canadian subject-matter expert in a phone discussion with RAND researchers, November 2015.

7 Remarks by a Canadian subject-matter expert in a phone discussion with RAND researchers, November 2015.

CHAPTER EIGHT

Which DoD Policies Would Need to Be Changed if Transgender Service Members Are Allowed to Serve Openly?

This chapter reviews DoD accession, retention, separation, and deployment policies and provides an assessment of the impact of changes required to allow transgender personnel to serve openly. For our analysis of DoD policies, we reviewed 20 current accession, retention, separation, and deployment regulations across the services and the Office of the Secretary of Defense. We also reviewed 16 other regulations that have been replaced by more recent regulations or did not mention transgender policies.[1] DoDI 6130.03 establishes medical standards for entry into military service, including a list of disqualifying physical and mental conditions, some of which are transgender-related.[2] Current DoD policy also authorizes, but no longer requires, the discharge of transgender personnel for reasons related to both medical conditions that generate disabilities, as well as mental health concerns.[3] However, a July 2015 directive from the Office of the Secretary of Defense elevated decisions to administratively separate transgender service members to the Office of the Under Secretary of Defense for Personnel and Readiness (DoD, 2015b).

Note that our review focused on transgender-specific DoD instructions that may contain unnecessarily restrictive conditions and reflect outdated terminology and assessment processes. However, in simply removing these restrictions, DoD could inadvertently affect overall standards. While we focus on reforms to specific instruc-

[1] These additional policies are listed in Appendix D.

[2] The instruction specifies conditions that disqualify accessions, including "current or history of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias"; "history of major abnormalities or defects of the genitalia including but not limited to change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis"; and "history of major abnormalities or defects of the genitalia such as change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis" (DoDI 6130.03, 2011, enclosure 4).

[3] "Sexual gender and identity disorders" are specified as medical conditions that may generate disabilities under DoDI 1332.38, enclosure 5 (2006). Mental health conditions are specified in DoDI 1332.14 (2014) and DoDI 1332.30 (2013) for enlisted and officers, respectively. DoDI 1332.18, issued on August 5, 2014, updated these guidelines and established general criteria for referral for disability evaluation and defers to service-specific standards for retention. However, a recent review of this revision suggests that service-specific regulations may still disqualify transgender personnel, and the new guidance may not overrule those service policies (Pollock and Minter, 2014).

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tions and directives, we note that DoD may wish to conduct a more expansive review of personnel policies to ensure that individuals who join and remain in service can perform at the desired level, regardless of gender identity.

Accession Policy

The language pertaining to transgender individuals in accession instructions does not match that used in DSM-5.[4] This results in restrictions in DoD policy that do not match current medical understanding of gender identity issues and thus may be misapplied or difficult to interpret in the context of current medical treatments and diagnoses. Under current guidelines, otherwise qualified individuals could be excluded for conditions that are unlikely to affect their military service, and individuals with true restrictions may be more difficult to screen for and identify. Modernizing the terminology to match current psychological and medical understanding of gender identity would help ensure that existing procedures do not inadvertently exclude otherwise qualified individuals who might want to join the military. We recommend that DoD review and revise the language to match the DSM-5 for conditions related to mental fitness so that mental health screening language matches current disorders and facilitates appropriate screening and review processes for disorders that may affect fitness for duty. Similarly, physical fitness standards should specify physical requirements, rather than physical conditions. Finally, the physical fitness language should clarify when in the transition process the service member's target gender requirements will begin to apply.

Retention Policy

We recommend that DoD expand and enhance its guidance and directives to clarify and adjust, where necessary, standards for retention of service members during and after gender transition. Evidence from Canada and Australia suggests that transgender personnel may need to be held medically exempt from physical fitness testing and requirements during transition (Canadian Armed Forces, 2012; Royal Australian Air Force, 2015). However, after completing transition, the service member could be required to meet the standards of the acquired gender. The determination of when the service member is "medically ready" to complete the physical fitness test occurs on a case-by-case basis and is typically made by the unit commander.

[4] Two key changes are that the term *transsexualism* has been replaced, and *gender dysphoria* is no longer in the chapter "Sexual Desire Disorders, Sexual Dysfunctions, and Paraphilias" but, rather, has its own chapter (Milhiser, 2014).

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Separation Policy

DoD may wish to revise the current separation process based on lessons learned from the repeal of Don't Ask, Don't Tell. The current process relies on administrative decisions outside the purview of the standard medical and physical review process. This limits the available documentation and opportunities for review, and it could prove burdensome if transgender-related discharges become subject to re-review. When medically appropriate, DoD may wish to establish guidance on when and how such discharge reviews should be handled. We also recommend that DoD develop and disseminate clear criteria for assessing whether transgender-related conditions may interfere with duty performance.

Deployment Policy

Deployment conditions vary significantly based on the unique environment of each deployment, with some deployed environments able to accommodate transgender individuals, even those who are undergoing medical treatments. Moreover, recent medical advancements can minimize the invasiveness of treatments and allow for telemedicine or other forms of remote medical care. Given medical and technological advances, DoD may wish to adjust some of its processes and deployment restrictions to minimize the impact on readiness. For example, current regulations specify that conditions requiring regular laboratory visits make service members ineligible for deployment, including all service members who are receiving hormone treatments,[5] since such treatments require laboratory monitoring every three months for the first year as hormone levels stabilize (Hembree et al., 2009; Elders et al., 2014). Such a change would require DoD to either permit more flexible monitoring strategies[6] or provide training to deployed medical personnel.[7] Similarly, the use of refrigerated medications is a disqualifying condition for deployment,[8] even though nearly all hormone therapies are available in other formats that do not require refrigeration.

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[5] Current regulations state that "medications that require laboratory monitoring or special assessment of a type or frequency that is not available or feasible in a deployed environment" disqualify an individual from deployment (Office of the Assistant Secretary of Defense for Health Affairs, 2013, p. 3).

[6] Some experts suggest that alternatives, such as telehealth reviews, would address this issue for rural populations with limited access to medical care (see, for example, WPATH, 2011).

[7] "Independent duty corpsmen, physician assistants, and nurses can supervise hormone treatment initiated by a physician" (Elders et al., 2014).

[8] The memo issued by the Office of the Assistant Secretary of Defense for Health Affairs states, "Medications that disqualify an individual for deployment include . . . [m]edications that have special storage considerations, such as refrigeration (does not include those medications maintained at medical facilities for inpatient or emergency use)" (Office of the Assistant Secretary of Defense for Health Affairs 2013, p. 3).

CHAPTER NINE

Conclusion

By many measures, there are currently serving U.S. military personnel who are transgender. Overall, our study found that the number of U.S. transgender service members who are likely to seek transition-related care is so small that a change in policy will likely have a marginal impact on health care costs and the readiness of the force. We estimate, based on state-level surveys of transgender prevalence, that between 1,320 and 6,630 transgender personnel may be serving in the AC, and 830–4,160 may be serving in the SR. Estimates based on studies from multiple states, weighted for population and the gender distribution in the military, imply that there are around 2,450 transgender service members in the AC and 1,510 in the SR.[1]

However, only a small proportion of these service members will seek gender transition–related treatment each year. Employing utilization and cost data from the private health insurance system, we estimated the potential impact of providing this care to openly serving transgender personnel on AC health care utilization and costs. Directly applying private health insurance utilization rates to the AC military population indicated that a very small number of service members will access gender transition–related care annually. Our estimates based on private health insurance data ranged from a lower-bound estimate of 29 AC service members to an upper-bound estimate of 129 annually using care, including those seeking both surgical and other medical treatments.

Using estimates from two states and adjusting for the male/female AC distribution, we also estimate a total of 45 gender transition–related surgeries, with 50 service members initiating transition-related hormone therapy annually in the AC.[2] We estimate 30 gender transition-related surgeries and 25 service members initiating hormone therapy treatments in the SR. These are likely to be upper-bound estimates, given the nonrepresentative sample selection procedures used in the NTDS. Furthermore, the best prevalence estimates that we were able to identify were from two of the more transgender-tolerant states in the country, and the empirical evidence that trans-

[1] Estimates are based on FY 2014 AC and SR personnel numbers.

[2] For hormone therapy recipients, the number of treatments and recipients is the same, and these estimates can be treated as counts of individuals.

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gender prevalence is higher in the military than in the general population is weak. As a point of comparison, we also compared these estimated values to mental health utilization in the AC population overall. Using data from McKibben et al. (2013), we calculated that approximately 278,517 AC service members accessed mental health care treatment in 2014, the implication being that health care for the transgender population will be a very small part of the total health care provided to AC service members across the MHS.

With respect to health care costs, actuarial estimates from the private health insurance sector indicate that covering gender transition–related care for transgender employees increased premiums by less than 1 percent. Taking a weighted average of the identified firm-level data, we estimate that covering transgender-related care for service members will increase the U.S. military's AC health care spending by only 0.038–0.054 percent. Using these baseline estimates, we estimate that MHS health care costs will increase by between $2.4 million and $8.4 million. These numbers represent only a small proportion of FY 2014 AC health care expenditures ($6.27 billion) and the FY 2014 Unified Medical Program budget ($49.3 billion). This is consistent with our estimate of relatively low AC rates of gender transition–related health care utilization in the MHS.

Similarly, when considering the impact on readiness, we found that using either the prevalence-based approach or the utilization-based approach yielded an estimate of less than 0.0015 percent of total labor-years likely to be affected by a change in policy. This is much smaller than the current lost labor-years due to medical care in the Army alone.

Even if transgender personnel serve in the military at twice the rate of their prevalence in the general population and we use the upper-bound rates of health care utilization, the total proportion of the force that is transgender and would seek treatment would be less than 0.1 percent, with fewer than 130 AC surgical cases per year even at the highest utilization rates. Given this, true usage rates from civilian case studies imply only 30 treatments in the AC, suggesting that the total number of individuals seeking treatment may be substantially smaller than 0.1 percent of the total force. Thus, we estimate the impact on readiness to be negligible.

We conclude with some general recommendations and insights based on the experiences of foreign militaries that permit transgender individuals to serve openly—specifically, Australia, Canada, Israel, and the United Kingdom. Our case studies provide some guidance that policymakers should consider as they develop policies to govern the employment of transgender personnel in the U.S. military. These cases also suggested a number of key implementation practices if a decision is made to allow transgender service members to serve openly:

- Ensure strong leadership support.
- Develop an explicit written policy on all aspects of the gender transition process.

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- Provide education and training to the rest of the force on transgender personnel policy, but integrate this training with other diversity-related training and education.
- Develop and enforce a clear anti-harassment policy that addresses harassment aimed at transgender personnel alongside other forces of harassment.
- Make subject-matter experts and gender advisers serving within military units available to commanders seeking guidance or advice on gender transition-related issues.
- Identify and communicate the benefits of an inclusive and diverse workforce.

APPENDIX A

Terminology

Augmentation mammoplasty: breast augmentation involving implants or lipofilling

Buccal administration: placement of medication between the gums and cheek

Chest surgery: surgery to create a contoured, male-looking chest

Clitoroplasty: surgical creation/restoration of a clitoris

Cross-dresser: someone who dresses in the clothes of the other gender, not always on a full-time basis

Female-to-male: those assigned female sex at birth who identify as male; transgender men; transmen

Gender: an individual's gender identity, which is influenced by societal norms and expectations; public, lived role as male or female

Gender assignment: initial assignment at birth as male or female; yields "natal gender" (APA, 2013, p. 451)

Gender atypical: behaviors not typical for one's gender "in a given society and historical era" (APA, 2013, p. 451)

Gender identity: "one's inner sense of one's own gender, which may or may not match the sex assigned at birth" (Office of Personnel Management, 2015, p. 2)

Gender dysphoria: "discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics)" (WPATH, 2011, p. 2).

Gender nonconformity: "the extent to which a person's gender identity, role, or expression differs from the cultural norms prescribed for people of a particular sex" (WPATH, 2011, p. 5, citing Institute of Medicine definition)

Gender transition–related surgery/gender-confirming surgery/sex reassignment surgery: surgery to mitigate distress associated with gender dysphoria by aligning sex characteristics with gender identity

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Genderqueer: those who "define their gender outside the construct of male or female, such as having no gender, being androgynous, or having elements of multiple genders" (Roller, Sedlak, and Draucker, 2015, p. 417)

Gluteal augmentation: buttocks augmentation involving implants or lipofilling

Hormone therapy: "the administration of exogenous endocrine agents to induce feminizing or masculinizing changes" (WPATH, 2011, p. 33)

Hysterectomy: surgery to remove the uterus

Intersex: "a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male" (Intersex Society of North America, undated)

Labiaplasty: plastic surgery for altering or creating the labia

Lipofilling: injection of fat rather than artificial implants

Male-to-female: those assigned male sex at birth who identify as female; transgender females; transwomen

Mastectomy: surgical removal of one or both breasts

Metoidioplasty: surgically relocating a clitoris that has been enlarged by hormone therapy to a more forward position that more closely resembles that of a penis; average length is 1.5–2 inches

Oophorectomy: surgical removal of one or both ovaries

Orchiectomy: surgical removal of one or both testicles

Ovariectomy: surgical removal of one or both ovaries

Parenteral administration: intravenous injection (into a vein) or intramuscular infusion (into muscle) of medication

Penectomy: surgical removal of the penis

Phalloplasty: surgical creation/reconstruction of a penis using one of a variety of techniques including free or pedicled (attached) flap (see Rashid and Tamimy, 2013)

Primary sex characteristics: physical characteristics/sex organs directly involved in reproduction

Salpingo-oophorectomy: removal of the ovaries and fallopian tubes

Scrotoplasty: surgical creation/reconstruction of testicles; in transmen, native labia tissue is used; testicular implants can be used

Secondary sex characteristics: physical characteristics that appear at puberty and vary by sex but are not directly involved in reproduction (e.g., breasts)

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Sex: a person's biological status as male or female based on chromosomes, gonads, hormones, and genitals (intersex is a rare exception)

Sexual orientation: sexual identity in relation to the gender to which someone is attracted: heterosexual, homosexual, or bisexual

Thyroid chondroplasty: removal or reduction of the Adam's apple

Transdermal administration: delivery of medication across the skin with patches

Transgender: "an umbrella term used for individuals who have sexual identity or gender expression that differs from their assigned sex at birth" (Roller, Sedlak, and Draucker, 2015, p. 417)

Transsexual: someone whose gender identity is inconsistent with their assigned sex and who desires to permanently transition their physical characteristics to match their inner sense of their own gender

Urethroplasty: surgical reconstruction or fabrication of the urethra.

Vaginectomy (colpectomy): surgical removal of all or part of the vagina

Vaginoplasty: surgical creation/reconstruction of a vagina

Vulvoplasty: surgical creation/reconstruction of the vulva

APPENDIX B

History of DSM Terminology and Diagnoses

A brief historical understanding of the evolving diagnostic nomenclature pertaining to transgender status is important to discussions of related health care. DSM-III (APA, 1980) first contained the diagnosis of transsexualism. DSM-III-R (APA, 1987) introduced gender identity disorder, non-transsexual type. In DSM-IV (APA, 1994), these two diagnoses were merged and called *gender identity disorder*. Gender identity disorder, together with the paraphilias (disorders of extreme, dangerous, or abnormal sexual desire, including transvestic fetishism, sometimes referred to as cross-dressing), constituted the DSM-IV section "Sexual and Gender Identity Disorders."

With DSM-5 (APA, 2013) came the migration from *gender identity disorder* to *gender dysphoria*. The clinical significance of the shift in DSM-5 was great: For the first time, without accompanying symptoms of distress, transgender individuals were no longer considered to have a diagnosable mental disorder. The historical parallel with homosexuality is hard to miss: In 1980, DSM-III similarly normalized the DSM-II diagnosis of homosexuality, moving instead to ego-dystonic homosexuality, a diagnosis reserved only for gay persons who felt related distress. In the next DSM iteration, DSM-III-R, all reference to homosexuality as a diagnostic term was removed. In the aftermath of depathologizing gender nonconformity, a similar move relating to transgender status appears to be underway.

As noted in this report, there is a consensus among clinicians and their professional organizations that transition-related treatment with hormones or surgery constitutes necessary health care, though there is a divide over whether it serves as "a strategy to diminish the serious suffering" of the patient or "a method to assist people in finding self-actualization" (Gijs and Brewaeys, 2007, p. 184). The conclusion that transition-related surgery "is an effective treatment for gender identity disorder in adults" is based primarily on retrospective studies of satisfaction rather than randomized controlled trials or prospective studies (Gijs and Brewaeys, 2007, p. 199). The prevalence of postoperative regret is very low, though "little empirical research has been done" on related risk and protective factors (Gijs and Brewaeys, 2007, pp. 201, 204). Overall, surgery is considered "the most appropriate treatment to alleviate the suffering of extremely gender dysphoric individuals," but rigorous controlled-outcome studies evaluating its

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effectiveness should be conducted despite feasibility and ethical challenges (Gijs and Brewaeys, 2007, pp. 215–216; Buchholz, 2015, p. 1786).

DSM-5 Diagnostic Criteria: Gender Dysphoria in Adolescents and Adults 302.85 (F64.1)

A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:
   1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
   2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
   3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
   4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
   5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
   6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

APPENDIX C

Treatments for Gender Dysphoria

In this appendix, we provide additional details about psychosocial, pharmacologic, surgical, and other treatments for gender dysphoria (GD).

Psychotherapy

The emphasis of psychotherapy for this population today is on "affirming a unique transgender identity," rather than focusing on gender transition (Institute of Medicine, 2011, p. 52). Mental health professionals can also help patients presenting with GD navigate the process of coming out to family, friends, and peers; treat comorbid mental health conditions;[1] weigh options related to gender identity, gender expression, and transition-related treatment interventions; and conduct assessments, make referrals, and guide preparation for and provide support through the transition-related treatment process (WPATH, 2011, pp. 22–26). Referral from a mental health professional is necessary under the standards of care for those seeking breast/chest or genital surgeries, and the latter also requires confirmation from an independent mental health provider (WPATH, 2011, p. 27). Mental health providers may also serve an important role on behalf of their patients by providing education and advocacy within the community and supporting changes to identity documents (WPATH, 2011, p. 31).

Of note, treatment aimed at changing one's gender identity to align with the sex assigned at birth has proven unsuccessful and is no longer considered ethical care; mental health providers who are unwilling or unable to provide appropriate care should refer patients to a provider who is (WPATH, 2011, p. 32).

Hormone Therapy

Hormone therapy is necessary for many individuals with GD (WPATH, 2011, p. 33). It has two major goals: (1) reduce naturally occurring hormones to minimize secondary sex characteristics and (2) maximize desired feminization/masculinization using the principles and medications used for hormone replacement in non-transgender patients who do not produce enough hormones, such as women who have had hyster-

[1] Co-occurring mental health conditions could range from anxiety and depression, which are common among the transgender population, to more severe and rare illnesses, such as schizophrenia or bipolar disorder.

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ectomies or men with low testosterone (WPATH, 2011, p. 33; Hembree et al., 2009). As with most medications, there are risks, which may increase in the presence of some health conditions or behaviors (such as smoking); these should be evaluated and managed (Hembree et al., 2009).

For those transitioning from female to male, hormone therapy should lead to "deepened voice, clitoral enlargement (variable, 3–8 cm), growth in facial and body hair, cessation of menses, atrophy of breast tissue, increased libido, and increased percentage of body fat." For those transitioning from male to female, hormone therapy should lead to "breast growth (variable), decreased libido and erections, decreased testicular size, and increased percentage of body fat" (WPATH, 2011, p. 36). The timeline for these and other physical changes varies by individual; expected onset is within months, and maximum expected effect (such as body fat and muscle mass changes) is generally achieved in three or more years. Feminizing hormone therapy typically involves both estrogen and antiandrogens.[2] Masculinizing hormone therapy consists primarily of testosterone, which is available in oral, transdermal, parenteral (intravenous/intramuscular), buccal (cheek), and implantable administrations; brief use of progestin can help stop menstrual periods early in treatment (WPATH, 2011, p. 49). Detailed clinical practice guidelines are available from the Endocrine Society (Hembree et al., 2009).

Gender Transition–Related Surgery

As noted, gender transition–related surgery (also called sex reassignment surgery or gender-confirming surgery) is necessary for some transgender patients. Under the standards of care, mental health professionals must refer patients for surgery; in addition, criteria for both breast/chest and genital surgery include persistent and well-documented GD, the capacity to make informed decisions and to consent, and for other mental or general health concerns to be reasonably well controlled if present (WPATH, 2011, p. 59). Hormone therapy is not a prerequisite for breast/chest (also called "top") surgery, though it is recommended for 12–24 months for male-to-female patients to achieve optimal results (Hembree et al., 2009).

For genital (also called "bottom") surgery, 12 continuous months of hormone therapy are required prior to oophorectomy or orchiectomy (surgical removal of ovaries or testicles), unless contraindicated; health record documentation of "12 continuous months of living in a gender role that is congruent with their gender identity . . . consistently, on a day-to-day basis and across all settings of life" is also required for metoidioplasty (surgical relocation of an enlarged clitoris), phalloplasty (surgical creation of a penis), or vaginoplasty (surgical creation of a vagina; WPATH, 2011,

[2] Transdermal rather than oral estrogen is recommended. Common antiandrogens include spironolactone (an antihypertensive agent that requires electrolyte monitoring); cyproterone acetate (not approved in the United States); GnRH agonists, such as gosrelin, buserelin, or triptorelin (available as injectables or implants); and 5-alpha reductase inhibitors, such as finasteride and dutasteride (WPATH, 2011, p. 48).

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pp. 60–61). Mastectomy is often the only surgery undertaken by the female-to-male population; for those who do undergo genital surgery, phalloplasty is relatively uncommon, as it often requires multiple procedures and has frequent complications (WPATH, 2011, pp. 63–64). Surgeons should work closely with patients and other care providers, if needed, to ensure that the advantages, disadvantages, and risks of various treatments and procedures are well understood.

Other Treatments

Aside from breast/chest and genital surgery, other surgical interventions may include liposuction, lipofilling, and various aesthetic procedures. For male-to-female patients, these may include "facial feminization surgery, voice surgery, thyroid cartilage reduction, gluteal augmentation (implants/lipofilling), [and] hair reconstruction"; female-to-male patients may seek pectoral implants (WPATH, 2011, pp. 57–58). There is ongoing debate regarding whether these and other transition-related treatments are "medically necessary" (and therefore covered by insurance). For example, in some circumstances, facial hair removal for male-to-female patients may constitute necessary transition-related treatment: One study found that those who have undergone the procedure were "less likely to experience harassment in public spaces," and harassment can "have a negative impact on the success of a person's treatment for gender dysphoria" (Herman, 2013b, p. 19). In addition, voice and communication therapy to develop vocal characteristics and nonverbal communication patterns congruent with gender identity may prevent "vocal misuse and long-term vocal damage" (WPATH, 2011, pp. 52–54).

APPENDIX D

Review of Accession, Retention, and Separation Regulations

Directive	Date	Department
Air Force Instruction 36-2002, *Regular Air Force and Special Category Accessions*	4/7/1999, revised 6/2/2014	Air Force
Air Force Instruction Guidance Memorandum AFI48-123_AFGM2015-01, "Guidance Memorandum: AFI 48-123, *Medical Examinations and Standards*"	8/27/2015	Air Force
Air Force Instruction Guidance Memorandum 48-123_AFGM4, "Air Force Guidance Memorandum to AFI 48-123, *Medical Examinations and Standards*"	1/29/2013	Air Force
Air Force Recruiting Service Instruction 36-2001, *Recruiting Procedures for the Air Force*	8/1/2012	Air Force
Air Force Instruction 41-210, *TRICARE Operations and Patient Administration Functions*	6/6/2012	Air Force
U.S. Army Recruiting Command, *Pocket Recruiter Guide*	7/1/2013	Army
Army Regulation 635-40, *Physical Evaluation for Retention, Retirement, or Separation*	3/20/2012	Army
Army Regulation 601-280, *Army Retention Program*	9/15/2011	Army
Army Regulation 40-501, *Standards of Medical Fitness*	8/4/2011	Army
Army Regulation 40-66, *Medical Record Administration and Healthcare Documentation*	1/4/2010	Army
Army Regulation 635-200, *Active Duty Enlisted Administrative Separations*	9/6/2011	Army
Army Regulation 601-210, *Active and Reserve Components Enlistment Program*	3/12/2013	Army
DoDI 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*	4/28/2010, revised 9/13/11	DoD
DoDI 1332.18, *Disability Evaluation System (DES)*	8/5/2014	DoD
Office of the Under Secretary of Defense for Personnel and Readiness, *Disability Evaluation System (DES) Pilot Operations Manual*	12/2008	DoD

Directive	Date	Department
Marine Corps Order 1040.31, *Enlisted Retention and Career Development Program*	9/8/2010	Marine Corps
Marine Corps Order 6110.3, *Marine Corps Body Composition and Military Appearance Program*	8/8/2008	Marine Corps
Marine Administrative Message 064/11, "Amplification to Testing Accession Standards for the Purpose of Application to Marine Office Commissioning Programs"	1/26/2011	Marine Corps
Navy Military Personnel Manual 1306-964, "Recruiting Duty"	5/9/2014	Navy
Navy Medicine Manual P-117, *Manual of the Medical Department*, Chapter 15, Article 15-31, "Waivers of Physical Standards"	5/3/2012	Navy and Marine Corps

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APA—*See* American Psychiatric Association.

Army Regulation 40-501, *Standards of Medical Fitness*, December 14, 2007, revised August 4, 2011.

Army Regulation 600-8-101, *Personnel Processing (In-, Out-, Soldier Readiness, and Deployment Cycle)*, February 19, 2015.

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Current U.S. Department of Defense (DoD) policy bans transgender personnel from serving openly in the military. DoD has begun considering changes to this policy, but the prospect raises questions regarding access to gender transition–related health care, the range of transition-related treatments that DoD will need to provide, the potential costs associated with these treatments, and the impact of these health care needs on force readiness and the deployability of transgender service members. A RAND study identified the health care needs of the transgender population and transgender service members in particular. It also examined the costs of covering transition-related treatments, assessed the potential readiness implications of a policy change, and reviewed the experiences of foreign militaries that permit transgender service members to serve openly.



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

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Transgender Service Members

JUL 28 2015

Effective as of July 13, 2015, 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 personal approval of the Under Secretary of Defense for Personnel and Readiness. This approval authority may not be further delegated.

The Under Secretary of Defense for Personnel and Readiness will chair a working group composed of senior representatives from each of the Military Departments, Joint Staff, and relevant components from the Office of the Secretary of Defense to formulate policy options for the DoD regarding the military service of transgender Service members. The working group will 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, and shall present its recommendations to me within 180 days. Pending the issuance of DoD-wide policy following the submission of the working group's report, any interim guidance issued by the Military Departments will be coordinated with, and subject to the prior personal approval of, the Under Secretary of Defense for Personnel and Readiness. If questions relating to the service of transgender members arise, the Military Departments should address them to the Under Secretary of Defense for Personnel and Readiness.

Ash Carter

cc:
DepSecDef
CJCS
USDs
DoD, GC
ASD(LA)
ATSD(PA)

IMMEDIATE RELEASE

Statement by Secretary of Defense Ash Carter on DOD Transgender Policy

Press Operations

Release No: NR-272-15
July 13, 2015

Over the last fourteen years of conflict, the Department of Defense has proven itself to be a learning organization. This is true in war, where we have adapted to counterinsurgency, unmanned systems, and new battlefield requirements such as MRAPs. It is also true with respect to institutional activities, where we have learned from how we repealed "Don't Ask, Don't Tell," from our efforts to eliminate sexual assault in the military, and from our work to open up ground combat positions to women. Throughout this time, transgender men and women in uniform have been there with us, even as they often had to serve in silence alongside their fellow comrades in arms.

The Defense Department's current regulations regarding transgender service members are outdated and are causing uncertainty that distracts commanders from our core missions. At a time when our troops have learned from experience that the most important qualification for service members should be whether they're able and willing to do their job, our officers and enlisted personnel are faced with certain rules that tell them the opposite. Moreover, we have transgender soldiers, sailors, airmen, and Marines - real, patriotic Americans - who I know are being hurt by an outdated, confusing, inconsistent approach that's contrary to our value of service and individual merit.

Today, I am issuing two directives to deal with this matter. First, DoD will create a working group to study over the next six months the policy and readiness implications of welcoming transgender persons to serve openly. Led by (Acting) Under Secretary of Defense for Personnel and Readiness Brad Carson, and composed of military and civilian personnel representing all the military services and the Joint Staff, this working group will report to Deputy Secretary of Defense Bob Work. At my direction, the working group will 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. Second, I am directing that decision authority in all administrative discharges for those diagnosed with gender dysphoria or who identify themselves as transgender be elevated to Under Secretary Carson, who will make determinations on all potential separations.

As I've said before, we must ensure that everyone who's able and willing to serve has the full and equal opportunity to do so, and we must treat all our people with the dignity and respect they deserve. Going forward, the Department of Defense must and will continue to improve how we do both. Our military's future strength depends on it.

Department of Defense
INSTRUCTION

NUMBER 6130.03
April 28, 2010
Incorporating Change 1, September 13, 2011

USD(P&R)

SUBJECT: Medical Standards for Appointment, Enlistment, or Induction in the Military Services

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Reissues DoD Directive (DoDD) 6130.3 (Reference (a)) as a DoD Instruction (DoDI) in accordance with the authority in DoDD 5124.02 (Reference (b)) to establish policy, assign responsibilities, and prescribe procedures for physical and medical standards for appointment, enlistment, or induction in the Military Services.

b. Establishes medical standards, which, if not met, are grounds for rejection for military service. Other standards may be prescribed for a mobilization for a national emergency.

c. Incorporates and cancels DoDI 6130.4 (Reference (c)).

2. APPLICABILITY. This Instruction applies to:

a. OSD, the Military Departments (including the Coast Guard at all times, including when it is a service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

b. The Reserve Components, which include the Army and the Air National Guards of the United States, in accordance with title 10, United States Code (Reference (d)).

c. The United States Merchant Marine Academy in accordance with section 310.56 of title 46, Code of Federal Regulations (Reference (e)).

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy to:

a. Utilize common physical standards for the appointment, enlistment, or induction of Service personnel and eliminate inconsistencies and inequities based on race, sex, or location of examination in the application of these standards by the Military Services.

b. Precisely define any medical condition that causes a personnel action, such as separation, medical waiver, or assignment limitation, by utilizing the International Classification of Diseases (ICD) (Reference (f)), Current Procedural Terminology (CPT) (Reference (g)), and the Healthcare Common Procedure Coding System (HCPCS) (Reference (h)), and annotate qualification decisions by standard medical terminology, rather than codes. The standards in this Instruction shall be for the acquisition of personnel in the Military Services.

c. Ensure that individuals under consideration for appointment, enlistment, or induction into the Military Services are:

(1) Free of contagious diseases that probably will endanger the health of other personnel.

(2) Free of medical conditions or physical defects that may require excessive time lost from duty for necessary treatment or hospitalization, or probably will result in separation from the Service for medical unfitness.

(3) Medically capable of satisfactorily completing required training.

(4) Medically adaptable to the military environment without the necessity of geographical area limitations.

(5) Medically capable of performing duties without aggravation of existing physical defects or medical conditions.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3 for Medical and Personnel Executive Steering Committee (MEDPERS) information. Procedures and standards for implementation are in Enclosure 4.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at http://www.dtic.mil/whs/directives.

8. EFFECTIVE DATE. This Instruction is effective immediately.

Clifford L. Stanley
Under Secretary of Defense for
Personnel and Readiness

Enclosures
1. References
2. Responsibilities
3. Medical and Personnel Executive Steering Committee
4. Medical Standards for Appointment, Enlistment, or Induction

Glossary

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ENCLOSURE 1

REFERENCES

(a) DoD Directive 6130.3, "Physical Standards for Appointment, Enlistment, or Induction," December 15, 2000 (hereby cancelled)
(b) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
(c) DoD Instruction 6130.4, "Medical Standards for Appointment, Enlistment, or Induction in the Armed Forces," January 18, 2005 (hereby cancelled)
(d) Title 10, United States Code
(e) Section 310.56 of title 46, Code of Federal Regulations
(f) International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM)[1]
(g) American Medical Association, Current Procedural Terminology (CPT®), Fourth Edition, 2010 Revision, Chicago, IL, 2010[2]
(h) 2010 Healthcare Common Procedure Coding System (HCPCS) Level II Codes from Centers for Medicare and Medicaid Services (CMS)[2]
(i) American National Standards Institute ANSI S3.6-2004, "Specification for Audiometers"[3]
(j) Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Terms," current edition

[1] Available at http://www.cdc.gov/NCHS/icd/icd9cm.htm.
[2] Available at https://catalog.ama-assn.org/Catalog/cpt/cpt_home.jsp
[3] Available from the American National Standards Institute, 1819 L Street, N.W., Washington, D.C. 20036 or on the Internet at http://www.ansi.org/

ENCLOSURE 2

RESPONSIBILITIES

1. PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (PDUSD(P&R)). The PDUSD(P&R), under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), shall:

a. Ensure that the standards in Enclosure 4 are implemented throughout the U.S. Military Entrance Processing Command.

b. Eliminate inconsistencies and inequities based on race, sex, or location of examination in the application of these standards by the Military Services.

c. Convene the MEDPERS under the joint guidance of the Deputy Under Secretary of Defense for Military Personnel Policy (DUSD(MPP)) and Principal Deputy Assistant Secretary of Defense for Health Affairs (PDASD(HA)). MEDPERS responsibilities are in Enclosure 3.

2. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). The ASD(HA), under the authority, direction, and control of the USD(P&R), shall:

a. Review, approve, and issue to the Secretaries of the Military Departments technical modifications to the standards in Enclosure 4.

b. Provide guidance to the DoD Medical Examination Review Board to implement the standards in Enclosure 4.

c. Eliminate inconsistencies and inequities based on race, sex, or location of examination in the application of these standards by the Military Services.

3. SECRETARIES OF THE MILITARY DEPARTMENTS AND COMMANDANT OF THE COAST GUARD. The Secretaries of the Military Departments and Commandant of the Coast Guard shall:

a. Direct their respective Services to apply and uniformly implement the standards contained in this Instruction.

b. Authorize the waiver of the standards in individual cases for applicable reasons and ensure uniform waiver determinations.

c. Authorize the changes in Service-specific visual standards (particularly for officer accession programs) and establish other standards for special programs. Notification of any

proposed changes in standards shall be provided to the ASD(HA) at least 60 days before implementation.

d. Ensure that accurate ICD codes are assigned to all medical conditions resulting in a personnel action, such as separation, waiver, or assignment limitation, and that such codes are included in all records of such actions.

e. Eliminate inconsistencies and inequities based on race, sex, or examination location in the application of these standards by the Military Services.

ENCLOSURE 3

MEDPERS

1. MEDPERS convenes quarterly under the joint guidance of the DUSD(MPP) and PDASD(HA).

2. MEDPERS shall:

a. Provide policy oversight and guidance to the accession medical and physical standards setting process through the Accession Medical Standards Working Group.

b. Direct research and studies as necessary to produce evidence-based accession standards utilizing the Accession Medical Standards Analysis and Research Activity.

c. Ensure medical and personnel community coordination when formulating policy changes that affect each community and other relevant DoD *and* Department of Homeland Security~~, and Department of Transportation~~ organizations.

ENCLOSURE 4

MEDICAL STANDARDS FOR APPOINTMENT, ENLISTMENT, OR INDUCTION

1. APPLICABILITY. The medical standards in this enclosure apply to:

a. Applicants for appointment as commissioned or warrant officers in the Active and Reserve Components.

b. Applicants for enlistment in the Military Services. For medical conditions or defects predating original enlistment, these standards apply to enlistees' first 6 months of active duty.

c. Applicants for enlistment in the Reserve Components and federally recognized units or organizations of the National Guard. For medical conditions or defects predating original enlistment, these standards apply during the enlistees' initial period of active duty for training until their return to Reserve or National Guard units.

d. Applicants for reenlistment in Regular and Reserve Components and in federally recognized units or organizations of the National Guard after a period of more than 12 months have elapsed since discharge.

e. Applicants for the Scholarship or Advanced Course Reserve Officer Training Corps (ROTC), and all other Military Services' special officer personnel procurement programs.

f. Cadets and midshipmen at the U.S. Service academies and students enrolled in ROTC scholarship programs applying for retention in their respective programs.

g. Individuals on the Temporary Disability Retired List (TDRL) who have been found fit on reevaluation by the Physical Disability Evaluation System (PDES) and who elect to return to active duty or to active status in the Reserve Components within the time standards prescribed by Service Regulations. These individuals are exempt from this Instruction for the conditions for which they were found fit on reevaluation by the PDES.

h. All individuals being inducted into the Military Services.

2. MEDICAL STANDARDS. Throughout this enclosure, ICD, CPT and HCPCS codes are included with most medical conditions and procedures, usually parenthetically, to aid cross-referencing. Unless otherwise stipulated, the conditions listed in this enclosure are those that do NOT meet the standard by virtue of current diagnosis, or for which the candidate has a verified past medical history. The medical standards for appointment, enlistment, or induction into the Military Services are classified by the general systems described in *sections* 3-~~30~~*31* of this enclosure.

3. HEAD

a. Deformities of the skull, face, or mandible (738.19, 744.9, 754.0) of a degree that shall prevent the individual from the proper wearing of a protective mask or military headgear.

b. Loss, or absence of the bony substance of the skull (756.0 or 738.19) not successfully corrected by reconstructive materials, or leaving any residual defect in excess of 1 square inch (6.45 square centimeters), or the size of a 25-cent piece.

4. EYES

a. Lids

(1) Current symptomatic blepharitis (373.0x).

(2) Current blepharospasm (333.81).

(3) Current dacryocystitis, acute (375.32), or chronic (375.42).

(4) Defect or deformity of the lids or other disorders affecting eyelid function (374.4x, 374.50, 374.85, 374.89, 743.62), complete, or significant ptosis (374.3x, 743.61), sufficient to interfere with vision or impair protection of the eye from exposure.

(5) Current growths or tumors of the eyelid (173.1, 198.2, 216.1, 232.1, 238.8, 239.89), other than small, non-progressive, asymptomatic, benign lesions.

b. Conjunctiva

(1) Current acute or chronic conjunctivitis (372.1x, 077.0). Seasonal allergic conjunctivitis (372.14) DOES meet the standard.

(2) Current pterygium (372.4x) if condition encroaches on the cornea in excess of 3 millimeters, interferes with vision, is progressive, or a history of recurrence after any prior surgical removal (372.45).

c. Cornea

(1) Corneal dystrophy or degeneration of any type (371.x), including but not limited to keratoconus (371.6x) of any degree.

(2) History of any incisional corneal surgery including, but not limited to, partial or full thickness corneal transplant, radial keratotomy (RK), astigmatic keratotomy (AK), or corneal implants (Intacs®)

(3) Corneal refractive surgery performed with an excimer laser, including but not limited to photorefractive keratectomy (PRK) (HCPCS S0810), laser epithelial keratomileusis (LASEK), and laser-assisted in situ keratomileusis (LASIK) (HCPCS S0900) (ICD-9 code for each is P11.7) if any of the following conditions are met:

(a) Pre-surgical refractive error in either eye exceeded a spherical equivalent of +8.00 or -8.00 diopters.

(b) Pre-surgical astigmatism exceeded 3.00 diopters.

(c) For corneal refractive surgery, at least 180 days recovery period has not occurred between last refractive surgery or augmenting procedure and accession medical examination.

(d) There have been complications and/or medications or ophthalmic solutions, or any other therapeutic interventions such as sunglasses, are required.

(e) Post-surgical refraction in each eye is not stable as demonstrated by at least two separate refractions at least 1 month apart, with initial refraction at least 90 days post-procedure, and the most recent of which demonstrates more than +/- 0.50 diopters difference for spherical vision and/or more than +/- 0.50 diopters for cylinder vision.

(4) Current or recurrent keratitis (370.xx)

(5) Documented herpes simplex virus keratitis (054.42, 054.43).

(6) Current corneal neovascularization, unspecified (370.60), or corneal opacification (371.00, 371.03) from any cause that is progressive or reduces vision below the standards prescribed in this Instruction.

(7) Current or history of uveitis or iridocyclitis (364.00-364.3).

d. Retina

(1) Current or history of any abnormality of the retina (361.00-362.89, 363.14-363.22), choroid (363.00-363.9) or vitreous (379.2x).

e. Optic Nerve

(1) Any current or history of optic nerve disease (377.3), including but not limited to optic nerve inflammation (363.05), optic nerve swelling, or optic nerve atrophy (377.12, 377.14).

(2) Any optic nerve anomaly.

f. Lens

(1) Current aphakia (379.31, 743.35), history of lens implant (V45.61, V43.1) (CPT 66982-66986), or current or history of dislocation of a lens (379.32-379.34, 743.37).

(2) Current or history of opacities of the lens (366.xx), including cataract (366.9).

g. Ocular Mobility and Motility

(1) Current or recurrent diplopia (368.2).

(2) Current nystagmus (379.5x) other than physiologic "end-point nystagmus."

(3) Esotropia (378.0x), exotropia (378.1x), and hypertropia (378.31): For entrance into Service academies and officer programs, the individual Military Services may set additional requirements. The Military Services shall determine special administrative criteria for assignment to certain specialties.

h. Miscellaneous Defects and Diseases

(1) Current or history of abnormal visual fields (368.9) due to diseases of the eye or central nervous system (368.4x), or trauma.

(2) Absence of an eye (V43.0, V45.78), clinical anophthalmos, unspecified congenital (743.00) or acquired, or current or history of other disorders of globe (360.xx).

(3) Current unilateral or bilateral exophthalmoses (376.21-376.36).

(4) Current or history of glaucoma (365.xx), ocular hypertension, pre-glaucoma (365.0-365.04), or glaucoma suspect.

(5) Any abnormal pupillary reaction to light (379.4x) or accommodation (367.5x).

(6) Asymmetry of pupil size greater than 2mm.

(7) Current night blindness (264.5, 368.6x).

(8) Current or history of intraocular foreign body (360.50-360.69, 871.x).

(9) Current or history of ocular tumors (190.0, 190.8-190.9, 198.4, 224.0, 224.8-224.9, 234.0, 238.8, 239.89, V10.84).

(10) Current or history of any abnormality of the eye (360) or adnexa (376, 379.9), not specified in subparagraphs 4.h.(1)-(9) of this enclosure, which threatens vision or visual function V41.0-V41.1, V52.2, V59.5).

5. VISION

a. Current distant visual acuity of any degree that does not correct with spectacle lenses to at least one of the following (367):

(1) 20/40 in one eye and 20/70 in the other eye (369.75).

(2) 20/30 in one eye and 20/100 in the other eye (369.75).

(3) 20/20 in one eye and 20/400 in the other eye (369.73).

b. Current near visual acuity of any degree that does not correct to 20/40 in the better eye (367.1-367.32).

c. Current refractive error (hyperopia (367.0), myopia (367.1), astigmatism (367.2x)), in excess of -8.00 or +8.00 diopters spherical equivalent or astigmatism in excess of 3.00 diopters.

d. Any condition requiring contact lenses for adequate correction of vision, such as corneal scars and opacities (370.0x) and irregular astigmatism (367.22).

e. Color vision (368.5x) requirements shall be set by the individual Services.

6. EARS

a. Current atresia of the external ear (744.02) or severe microtia (744.23), congenital or acquired stenosis (380.5x), chronic otitis externa (380.15-380.16, 380.23), or severe external ear deformity (380.32, 738.7, 744.01, 744.3) that prevents or interferes with the proper wearing of hearing protection.

b. Current or history of Ménière's Syndrome or other chronic diseases of the vestibular system (386.xx).

c. History of cochlear implant.

d. Current or history of cholesteatoma (385.3x)

e. History of any inner (P20) (CPT 69801-69930) or middle (P19) (CPT 69631-69636, 69676) ear surgery excluding successful tympanoplasty (CPT 69635) performed during the preceding 180 days.

f. Current perforation of the tympanic membrane (384.2x) or history of surgery to correct perforation during the preceding 180 days (P19) (CPT 69433, 69436, 69610, 69631-69646).

g. Chronic Eustachian tube dysfunction as evidenced by retracted tympanic membrane, or recurrent otitis media, or the need for pressure-equalization (PE) tube within the last 3 years.

7. HEARING All hearing defects are coded with ICD-9 code 389.xx.

a. Audiometric hearing levels are measured by audiometers calibrated to the standards in American National Standards Institute (ANSI S3.6-2004) (Reference (i)) and shall be used to test the hearing of all applicants.

b. Current hearing threshold level in either ear greater than that described in subparagraphs 7.b.(1)-(3) of this enclosure does not meet the standard:

(1) Pure tone at 500, 1000, and 2000 cycles per second for each ear of not more than 30 decibels (dB) on the average with no individual level greater than 35 dB at those frequencies.

(2) Pure tone level not more than 45 dB at 3000 cycles per second or 55 dB at 4000 cycles per second for each ear.

(3) There is no standard for 6000 cycles per second.

c. Current or history of hearing aid use (V53.2).

8 NOSE, SINUSES, MOUTH, AND LARYNX

a. Current cleft lip or palate defects (749.xx) not satisfactorily repaired by surgery or that interfere with use or wear of military equipment, or that prevent drinking from a straw.

b. Current ulceration of oral mucosa, including tongue (528.6), excluding apthous ulcers.

c. Current chronic conditions of larynx including vocal cord paralysis (478.3x) or history of laryngeal papillomatosis.

d. History of non-benign polyps, (478.4) chronic hoarseness (78.49), chronic laryngitis (476.0) or spasmodic dysphonia.

e. Current anosmia or parosmia (781.1).

f. History of recurrent epistaxis with more than one episode per week of bright red blood from the nose occurring over a 3-month period (784.7) within the last 3 years.

g. Current nasal polyp or history of nasal polyps (471.x), unless more than 12 months have elapsed since nasal polypectomy (CPT 30110, 30115, 31237-31240) and/or sinus surgery, and asymptomatic.

h. Current perforation of nasal septum (478.1, 478.19, 748.1).

i. Current chronic sinusitis (473) as evidenced by chronic purulent discharge, symptoms requiring frequent medical attention, or computed tomography (CT) scan.

j. Current or history of deformities, or conditions or anomalies of the upper alimentary tract (750.9), mouth (750.26), tongue (750.1x), palate, throat, pharynx, larynx (748.3), and nose (748.1), that interfere with chewing (V41.6), swallowing, speech, or breathing.

9 DENTAL

a. Current diseases or pathology of the jaws or associated tissues that prevent normal functioning. Those diseases or conditions include but are not limited to temporomandibular disorders (524.6x) and/or myofascial pain (784.0). A minimum of 6 months healing time must elapse for any individuals completing surgical treatment of any maxillofacial pathology lesions.

b. Current severe malocclusion (524.00-524.29, 524.4), which interferes with normal chewing or requires immediate and protracted treatment, or a relationship between the mandible and maxilla that prevents satisfactory future prosthodontic replacement.

c. Eight or more grossly (visually) cavitated and/or carious teeth (521.0x). Applicants who are edentulous must have functioning dentures. Lack of a serviceable prosthesis that prevents adequate biting and chewing of a normal diet. Individuals undergoing endodontic care are acceptable for entry into the Delayed Entry Program (DEP) only if a civilian or military dentist or endodontist provides documentation that active endodontic treatment shall be completed prior to being sworn to active duty.

d. Current orthodontic appliances (mounted or removable, i.e., Invisalign®) for continued active treatment (V53.4). Permanent or removable retainers are permissible. Individuals undergoing active orthodontic care are acceptable for accession (including DEP) only if a civilian or military orthodontist provides documentation that active orthodontic treatment shall be completed prior to being sworn into active duty. Entrance to active duty will not occur until all orthodontic treatment is documented to be completed.

10 NECK

a. Current symptomatic cervical ribs (756.2).

b. Current congenital cyst(s) (744.4x) of branchial cleft origin or those developing from the remnants of the thyroglossal duct (759.2).

c. Current contraction (723.5, 754.1)) of the muscles of the neck, spastic or non-spastic, or cicatricial contracture of the neck to the extent it interferes with the proper wearing of a uniform or military equipment, or is so disfiguring as to interfere with or prevent satisfactory performance of military duty.

11. LUNGS, CHEST WALL, PLEURA, AND MEDIASTINUM

a. Current abnormal elevation of the diaphragm (either side) (756.6). Any nonspecific abnormal findings on radiological and other examination of body structure, such as lung field (793.1) or other thoracic or abdominal organ (793.2).

b. Current abscess of the lung (513.0) or mediastinum (513.1).

c. Current or history of recurrent acute infectious processes of the lung, including but not limited to viral pneumonia (480.x), pneumococcal pneumonia (481), bacterial pneumonia (482.xx), pneumonia due to other specified organism (483.x), pneumonia infectious disease classified elsewhere (484.x), bronchopneumonia (organism unspecified) (485), and pneumonia (organism unspecified) (486).

d. Airway hyper responsiveness including asthma (493.xx), reactive airway disease, exercise-induced bronchospasm (519.11) or asthmatic bronchitis (493.90), reliably diagnosed and symptomatic after the 13th birthday.

(1) Reliable diagnostic criteria may include any of the following elements: substantiated history of cough, wheeze, chest tightness, and/or dyspnea which persists or recurs over a prolonged period of time, generally more than 12 months.

(2) Individuals *DO* MEET the standard if within the past 3 years they meet ALL of the criteria in subparagraphs 11.d.(2)(a)-(d).

(a) No use of controller or rescue medications (including, but not limited to inhaled corticosteroids, leukotriene receptor antagonists, or short-acting beta agonists).

(b) No exacerbations requiring acute medical treatment.

(c) No use of oral steroids.

(d) A current normal spirometry (within the past 90 days), performed in accordance with American Thoracic Society (ATS) guidelines and as defined by current National Heart, Lung, and Blood Institute (NHLBI) standards.

e. Chronic obstructive pulmonary disease (491).

(1) Current or history of bullous or generalized pulmonary emphysema (492).

(2) Current bronchitis (490), acute or chronic symptoms over 3 months occurring at least twice a year (491).

f. Current or history of bronchiectasis (494). Bronchiectasis during the first year of life is not disqualifying if there are no residual or sequelae.

g. Current or history of bronchopleural fistula (510.0), unless resolved with no sequelae.

h. Current chest wall malformation (754.89), including but not limited to pectus excavatum (754.81) or pectus carinatum (754.82), if these conditions interfere with vigorous physical exertion.

i. History of empyema (510.9).

j. Pulmonary fibrosis (515).

k. Current foreign body in lung (934.8, 934.9), trachea (934.0), or bronchus (934.1).

l. History of thoracic surgery (32-33), (CPT 32035-32999, 33010-33999, 43020-43499) including open and endoscopic procedures.

m. Current or history of pleurisy with effusion (511.9) within the previous 2 years.

n. Current or history of pneumothorax (512) occurring during the year preceding examination if due to trauma (860) or surgery, or occurring during the 2 years preceding examination from spontaneous (512.8) origin.

o. Recurrent spontaneous pneumothorax (512.8).

p. History of chest wall surgery (34-34.9), including breast (85-85.9), during the preceding 6 months, or with persistent functional limitations.

12. HEART

a. History of valvular repair or replacement (CPT 33400-33478).

(1) Current or history of the following valvular conditions as defined by the current American College of Cardiology and American Heart Association guidelines:

(a) Severe pulmonic regurgitation.

(b) Severe tricuspid regurgitation.

(c) Moderate pulmonic regurgitation unless documented mean pulmonary artery pressure is less than 25 mmHg.

(d) Moderate tricuspid regurgitation unless documented mean pulmonary artery pressure is less than 25 mmHg.

(e) Moderate or severe mitral regurgitation.

(f) Mild, moderate, or severe aortic regurgitation.

(2) The following are considered normal variants that meet accession standards:

(a) Trace or mild pulmonic regurgitation.

(b) Trace or mild tricuspid regurgitation.

(c) Trace or mild mitral regurgitation in the absence of mitral valve prolapse.

(d) Trace aortic insufficiency.

b. Mitral valve prolapsed (396.3) with normal exercise tolerance not requiring medical therapy DOES meet the standard.

c. Bicuspid aortic valve (746.4), in the absence of stenosis or regurgitation as in *sub*paragraph*s* 12.a.*(1)(a)-(f)*, DOES meet the standard.

d. All valvular stenosis (396).

e. Current or history of atherosclerotic coronary artery disease (410).

f. Current or history of pacemaker or defibrillator implantation (CPT 3320-33249).

g. History of supraventricular tachycardia (427.0).

(1) History of recurrent atrial fibrillation (427.31) or flutter (427.32).

(2) Supraventricular tachycardia (427.0) associated with an identifiable reversible cause and no recurrence during the preceding 2 years while off all medications DOES meet the standard.

(3) Those with identified atrioventricular nodal reentrant tachycardia or atrioventricular reentrant tachycardia (such as Wolff-Parkinson-White (WPW) syndrome) (426.7) who have undergone successful ablative therapy with no recurrence of symptoms after 3 months and with documentation of normal electrocardiograph (ECG) meet the standard.

h. Premature atrial or ventricular contractions sufficiently symptomatic to require treatment, or result in physical or psychological impairment.

i. Abnormal ECG patterns (794.31):

(1) Long QT (426.82).

(2) Brugada pattern.

(3) WPW syndrome (426.7) pattern unless associated with low risk accessory pathway by appropriate diagnostic testing.

j. Current or history of ventricular arrhythmias (427.1) including ventricular fibrillation, tachycardia, or multifocal premature ventricular contractions. Occasional asymptomatic unifocal premature ventricular contractions meet the standard.

k. Current or history of conduction disorders, including but not limited to disorders of sinus arrest, asystole, Mobitz type II second-degree atrioventricular (AV) block (426.12), and third-degree AV block (426.0).

l. In the absence of cardiovascular symptoms, the following meet the standard:

(1) Sinus arrhythmia.

(2) First degree AV block (426.11).

(3) Left axis deviation of less than -45 degrees.

(4) Early repolarization.

(5) Incomplete right bundle branch block.

(6) Wandering atrial pacemaker (427.89) or ectopic atrial rhythm (427.89).

(7) Sinus bradycardia (427.81).

(8) Mobitz type I second-degree AV block (426.13).

m. Current or history of conduction disturbances such as left anterior hemiblock (426.2), right or left bundle branch block (426.4) do not meet the standard unless asymptomatic with a normal echocardiogram.

n. Current or history of cardiomyopathy (425), cardiomegaly, hypertrophy (defined as septal wall thickness of 15 mm or greater), dilation (429.3), or congestive heart failure (428).

o. History of myocarditis (422) or pericarditis (420) unless the individual is free of all cardiac symptoms, does not require medical therapy, and has normal echocardiography for at least 1 year.

p. Current persistent tachycardia (785.0) (as evidenced by average heart rate of 100 beats per minute or greater over a 24-hour period of continuous monitoring).

q. Current or history of congenital anomalies of heart and great vessels (746). The following conditions meet the standard with an otherwise normal current (within 6 months) echocardiogram.

(1) Dextrocardia (746.87) with situs inversus (759.3) without any other anomalies.

(2) Ligated or occluded patent ductus arteriosus (747.0).

(3) Corrected atrial septal defect (745.9) or patent foramen ovale (745.5) without residua.

(4) Corrected ventricular septal defect (745.4) without residua.

r. History of recurrent syncope and or presyncope (780.2), including black out, fainting, loss or alteration of level of consciousness (excludes vasovagal reactions with identified trigger such as venipuncture) unless there has been no recurrence during the preceding 2 years while off all medication.

s. Unexplained ongoing or recurring cardiopulmonary symptoms (to include but not limited to syncope, presyncope, chest pain, palpitations, and dyspnea on exertion) that impairs a physically active lifestyle.

t. History of rheumatic fever (390).

13. ABDOMINAL ORGANS AND GASTROINTESTINAL SYSTEM

a. Esophageal Disease

(1) Current or history of esophageal disease (530.0-530-9), including but not limited to ulceration, varices, fistula, or achalasia.

(2) Gastro-Esophageal Reflux Disease (GERD) (530.81), with complications~~, including stricture, or maintenance on acid suppression medication, other dysmotility disorders; or chronic or recurrent esophagitis (530.1)~~.

(a) Stricture or B-ring.

(b) Dysphagia.

(c) Recurrent symptoms or esophagitis despite maintenance medication.

(d) Barrett's esophagitis.

(e) Extraesophageal complications; reactive airway disease; recurrent sinusitis or dental complications.

~~(3) Current or history of reactive airway disease associated with GERD (530.81).~~

(~~4~~*3*) History of surgical correction *(fundoplication or dilation)* for GERD within 6 months ~~(P42 esophageal correction, P43 stomach correction, and P45 intestinal correction) (CPT 43257)~~*(45.89)*.

(~~5~~*4*) Current or history of dysmotility disorders ~~and chronic or recurrent esophagitis (530).~~*, to include diffuse esophageal spasm, nutcracker esophagus, non-specific motility disorder, and achalasia.*

(5) Eosinophilic esophagitis.

(6) Other esophageal strictures, for example lye or other caustic ingestion.

b. Stomach and Duodenum

(1) Current ~~gastritis, chronic or severe (535), or non-ulcerative dyspepsia that requires maintenance medication~~ *dyspepsia requiring medication; or history of dyspepsia lasting 3 or more consecutive months and requiring medication within the preceding 12 months.*

(2) ~~Current or history of ulcer of the stomach or duodenum confirmed by X-ray or endoscopy (533).~~ *Gastric or duodenal ulcers:*

(a) Current ulcer or history of treated ulcer within the last 3 months.

(b) Recurrent or complicated by bleeding, obstruction, or perforation within preceding 5 years confirmed by endoscopy.

(3) History of surgery for peptic ulceration or perforation (533.0-599.9).

(4) History of gastroparesis.

(5) History of bariatric surgery of any type (e.g., lap-band or gastric bypass surgery for weight loss).

(6) History of gastric varices.

c. Small and Large Intestine

(1) Current or history of inflammatory bowel disease, including but not limited to ~~unspecified~~ *indeterminate* (558.9), ~~regional enteritis or~~ Crohn's disease (555), ulcerative colitis (556), or ulcerative proctitis (556.2).

(2) Current infectious colitis not otherwise specified (009.1).

(~~2~~*3*) Current or history of intestinal malabsorption syndromes (579.9), including but not limited to *celiac sprue, pancreatic insufficiency,* post-surgical and idiopathic (579). Lactase

deficiency does not meet the standard only if of sufficient severity to require frequent intervention, or to interfere with normal function.

(~~3~~*4*) Current or history of gastrointestinal functional and motility disorders within the past 2 years, including but not limited to pseudo-obstruction, megacolon, history of volvulus, or chronic constipation (564.0) and or diarrhea (787.91), regardless of cause, persisting or symptomatic in the past 2 years.

(~~4~~*5*) History of gastrointestinal bleeding (578), including positive occult blood (792.1), if the cause has not been corrected. Meckel's diverticulum (751.0), if surgically corrected more than 6 months prior DOES meet the standard.

(~~5~~*6*) Current or history of irritable bowel syndrome (564.1) of sufficient severity to require frequent intervention *or prescription medication* or to interfere with normal function.

(~~6~~*7*) History of bowel resection (CPT 44202-44203).

(~~7~~*8*) Current or history of symptomatic diverticular disease of the intestine (562).

(9) Personal or family history of familial adenomatous polyposis syndrome or hereditary non-polyposis colon cancer syndrome.

d. Hepatic-Biliary Tract

(1) Current acute or chronic hepatitis, hepatitis carrier state (070), hepatitis in the preceding 6 months or persistence of symptoms after 6 months, or objective evidence of impairment of liver function.

(2) Current or history of cirrhosis (571), hepatic cysts (573.8), abscess (572.0), or sequelae of chronic liver disease (571.3).

(3) Current or history of symptomatic cholecystitis (575.10), unless successfully surgically corrected~~, acute or chronic, with or without cholelithiasis (574)~~; postcholecystectomy syndrome; or other disorders of the gallbladder and biliary system (576). Cholecystectomy DOES meet the standard if performed more than 6 months prior to examination and patient remains asymptomatic. ~~Fiberoptic~~ *Endoscopic* procedure to correct ~~sphincter dysfunction or cholelithiasis~~ *choledocholithiasis*, if performed more than 6 months prior to examination and patient remains asymptomatic, MAY meet the standard.

(4) History of sphincter of Oddi dysfunction.

(5) Choledochocyst.

(6) Primary biliary cirrhosis or primary sclerosing cholangitis.

(~~4~~*7*) Current or history of pancreatitis, acute (577.0) or chronic (577.1).

(8) Pancreatic cyst.

(9) History of pancreatic surgery.

(~~5~~*10*) Current or history of metabolic liver disease, including but not limited to hemochromatosis (275.0), Wilson's disease (275.1), or alpha-1 anti-trypsin deficiency (273.4). *Gilbert's syndrome DOES meet the standard.*

(~~6~~*11*) Current enlargement of the liver from any cause (789.1).

e. Anorectal

(1) Current anal fissure or anal fistula (565).

(2) Current or history of anal or rectal polyp (569.0), prolapse (569.1), stricture (569.2), or fecal incontinence (787.6), within the last 2 years. *History of removal of juvenile or inflammatory polyp DOES meet the standard.*

(3) Current hemorrhoid (internal or external), when large, symptomatic, or with a history of bleeding (455) within the last 60 days.

~~f. Spleen~~

~~(1) Current splenomegaly (789.2).~~

~~(2) History of splenectomy (P41.5) (CPT 38100-38129), except when resulting from trauma.~~

~~g~~*f*. Abdominal Wall

(1) Current hernia (except for small or asymptomatic umbilical hernias), including but not limited to uncorrected inguinal (550) and other abdominal wall hernias (553).

(2) History of open or laparoscopic abdominal surgery (CPT 22900-22999, 43500-49999) during the preceding 6 months (P54). Uncomplicated laparoscopic appendectomies (CPT 44970) meet the standard after 3 months.

~~h~~*g*. Obesity. History of any gastrointestinal procedure for the control of obesity (CPT 43644-43645, 43770-43775, 43842-43848, 43886-43888) or artificial openings, including but not limited to ostomy (V44).

14. FEMALE GENITALIA

a. Current or history of abnormal ~~uterine bleeding (626.2)~~ *menstruation unresponsive to medical management within the last 12 months*, including but not limited to menorrhagia, metrorrhagia, or polymenorrhea.

b. ~~Current unexplained~~ *Primary* amenorrhea (626.0).

c. Current unexplained secondary amenorrhea (626.0).

~~c~~*d*. Current ~~or history of~~ dysmenorrhea (625.3) that is *unresponsive to medical therapy and is* incapacitating to a degree recurrently ~~necessitating~~ *requiring* absences of more than a few hours from routine activities.

~~d~~*e*. ~~Current or history of e~~*E*ndometriosis (617) *that is unresponsive to medical therapy*.

~~e~~*f*. History of major abnormalities or defects of the genitalia ~~such as~~ *including but not limited to* change of sex (P64.5) (CPT 55970, 55980), hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis (752.7).

~~f~~*g*. ~~Current or history of~~ *Persistent or clinically significant* ovarian cyst(s) (620.2) ~~when persistent or symptomatic~~.

h. Polycystic ovarian syndrome (256.4) with metabolic complications.

~~g~~*i*. ~~Current p~~*P*elvic inflammatory disease (614) ~~or history of recurrent pelvic inflammatory disease. Current or history of chronic pelvic pain or unspecified symptoms associated with female genital organs (625.9)~~ *within the preceding 30 days*.

j. Chronic pelvic pain or unspecified symptoms associated with female genital organs (625.9).

~~h~~*k*. ~~Current p~~*P*regnancy (V22), ~~until~~ *through* 6 months after the ~~end~~ *completion* of the pregnancy (CPT 59150, 59151, 59400, 59409, 59510, 59514, 59610, 59612, 59812-59857).

~~i. History of congenital absence of the uterus (752.3).~~

~~j~~*l*. ~~Current~~ *Symptomatic* uterine enlargement due to any cause (621.2).

~~k~~*m*. Current or history of *g*enital infection or ulceration, including but not limited to herpes genitalis (054.11) or condyloma acuminatum (078.11), if of sufficient severity ~~requiring~~ *to require* frequent intervention or to interfere with normal function. *Herpes does not meet the standard if:*

(1) Current lesions are present.

(2) Chronic suppressive therapy is needed.

(3) There are three or more outbreaks per year.

(4) Any outbreak in the past 12 months interfered with normal function.

(5) Treatment included hospitalization or intravenous therapy.

~~l~~*n*. ~~Current or history of a~~*A*bnormal gynecologic cytology *within the preceding 2 years*, including but not limited to unspecified abnormalities of the Papanicolaou smear of the cervix (795.0), excluding atypical squamous cells of undetermined significance without human papillomavirus (079.4) and confirmed low-grade squamous intraepithelial lesion (622.9). For the purposes of this Instruction, confirmation is by colposcopy or repeat cytology.

15. MALE GENITALIA

a. Absence of one or both testicles, congenital (752.89) or undescended (752.51). ~~Unilateral loss of a testis, unrelated to cancer, DOES meet the standard.~~

b. Current *or history of* epispadias (752.62) ~~or hypospadias (752.61), when accompanied by evidence of urinary tract infection, urethral stricture, or voiding dysfunction~~.

c. Current or history of surgery for proximal hypospadias (752.61).

d. Distal (coronal) hypospadias without history of surgery DOES meet the standard.

e. Distal (coronal) hypospadias treated with surgery when accompanied by evidence of urinary tract infection, urethral stricture, or voiding dysfunction.

~~c~~*f*. Current enlargement or mass of testicle ~~or~~, epididymis (608.9), *or spermatic cord*.

~~d~~*g*. Current *or history of recurrent* orchitis or epididymitis (604.90).

~~e~~*h*. History of penis amputation (878.0) (CPT 54125, 54130-54135).

i. Current penile curvature if associated with pain.

~~f~~*j*. Current or history of genital infection or ulceration, including but not limited to herpes genitalis (054.13) or condyloma acuminatum (078.11), if of sufficient severity to require frequent intervention or to interfere with normal function. *Herpes does not meet the standard if:*

(1) Current lesions are present.

(2) Use of chronic suppressive therapy is needed.

(3) There are three or more outbreaks per year.

(4) Any outbreak in the past 12 months interfered with normal function.

(5) Treatment included hospitalization or intravenous therapy.

k. Current or history of urethral condyloma acuminatum.

~~g~~*l*. Current acute prostatitis (601.0) ~~or~~, chronic prostatitis (601.1), *or chronic pelvic pain syndrome*.

~~h~~*m*. Current hydrocele (603) ~~with greatest dimension of 4 centimeters or greater or symptomatic~~ *or spermatacele associated with pain or which precludes a complete exam of the scrotal contents*.

~~i~~*n*. Left varicocele (456.4), if *painful or* symptomatic, or associated with testicular atrophy, or varicocele larger than the testis.

o. Left varicocele (456.4) that does not reduce or decompress completely when supine.

~~j~~*p*. ~~Any~~ *Bilateral or* right varicocele (456.4).

~~k~~*q*. Current or history of chronic *or recurrent* scrotal pain or unspecified symptoms associated with male genital organs (608.9).

~~l~~*r*. History of major abnormalities or defects of the genitalia such as change of sex (P64.5) (CPT 55970, 55980), hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis (752.7).

16. URINARY SYSTEM

a. Current ~~cystitis,~~ or history of chronic ~~or~~/ recurrent cystitis (595)*, interstitial cystitis, or painful bladder syndrome*.

b. Current urethritis, or history of chronic or recurrent urethritis (597.80).

c. History ~~of enuresis (788.30) or incontinence of urine (788.30), or the control of it with medication or other treatment past the 15th birthday.~~ *or treatment of the following voiding symptoms within the previous 12 months:*

(1) Urinary frequency or urgency more than every 2 hours on a daily basis.

(2) Nocturia more than two episodes during sleep period.

(3) Enuresis (788.30).

(4) Incontinence of urine, such as urge or stress.

(5) Urinary retention.

(6) Dysuria.

d. History of need for urinary catheterization with intermittent or indwelling catheter for any period greater than 2 weeks.

e. History of bladder augmentation, urinary diversion, or urinary tract reconstruction.

~~d~~*f*. Current ~~hematuria (599.7), pyuria, or other findings indicative of urinary tract disease (599).~~ *or history of abnormal urinary findings:*

(1) Gross hematuria (599.7).

(2) Microscopic hematuria (3 or more red blood cells per high-powered field on 2 of 3 properly collected urinalyses).

(3) Pyuria (6 or more white blood cells per high-powered field in 2 or 3 properly collected urinalyses).

~~e~~*g*. Current or recurrent urethral *or ureteral* stricture (598) or fistula (599.1) *involving the urinary tract*.

~~f~~*h*. Conditions associated with the kidneys, including:

(1) Current absence of one kidney, congenital (753.0) or acquired (V45.73) (CPT 50220-50236).

(2) Asymmetry in size or function of kidneys.

(3) History of renal transplant.

(~~2~~*4*) Current *chronic or recurrent* pyelonephritis (590.0) ~~(chronic or recurrent),~~ or any other unspecified infections of the kidney (590.9).

(~~3~~*5*) Current or history of polycystic kidney (753.1).

(~~4~~*6*) Current or history of horseshoe kidney (753.3).

(~~5~~*7*) Current or history of hydronephrosis (591).

(~~6~~*8*) Current or history of acute (580) *nephritis* or chronic (582) ~~nephritis~~ *kidney disease* of any type.

(9) History of acute kidney injury requiring dialysis.

(~~7~~*10*) Current or history of proteinuria (791.0) ~~greater than 200 milligrams in 24 hours or~~ *with* a protein-to-creatinine ratio greater than 0.2 in a random urine sample~~, if greater~~ *more* than 48 hours after strenuous activity~~, unless consultation determines the condition to be benign orthostatic proteinuria~~. *Benign orthostatic proteinuria MEETS the standard.*

(~~8~~*11*) Current or history of *symptomatic* urolithiasis (592) within the preceding 12 months. ~~Recurrent calculus, nephrocalcinosis, or bilateral renal calculi at any time.~~

(12) History of stone(s) greater than 4mm in size, recurrent calculus, nephrocalcinosis, or bilateral renal calculi at any time.

(13) History of urolithiasis requiring surgical treatment or intervention requiring hospitalization.

17. SPINE AND SACROILIAC JOINTS

a. Ankylosing spondylitis or other inflammatory spondylopathies (720).

b. Current or history of any condition, including but not limited to the spine or sacroiliac joints, with or without objective signs, if:

(1) It prevents the individual from successfully following a physically active vocation in civilian life (724), or is associated with local or referred pain to the extremities, muscular spasms, postural deformities, or limitation in motion.

(2) It requires external support.

(3) It requires limitation of physical activity or frequent treatment.

c. Current deviation or curvature of spine (737) from normal alignment, structure, or function if:

(1) It prevents the individual from following a physically active vocation in civilian life.

(2) It interferes with the proper wearing of a uniform or military equipment.

(3) It is symptomatic.

(4) There is lumbar or thoracic scoliosis greater than 30 degrees, or kyphosis and lordosis greater than 50 degrees when measured by the Cobb Method.

d. History of congenital fusion (756.15) involving more than two vertebral bodies or any surgical fusion of spinal vertebrae (P81.0) (CPT 22532-22812).

e. Current or history of fracture or dislocation of the vertebra (805).

(1) Vertebral fractures that do NOT meet the standard:

(a) Compression fractures involving more than or equal to 25 percent of a single vertebra.

(b) Compression fractures involving less than 25 percent of a single vertebra occurring within the past 12 months or it is symptomatic.

(c) Any compression fracture that is symptomatic.

(2) Vertebral fractures that DO MEET the standard:

(a) Compression fractures involving less than 25 percent of a single vertebra if it occurred more than 1 year before the accession examination and the applicant is asymptomatic.

(b) A history of fractures of the transverse or spinous process IF the applicant is asymptomatic.

f. History of juvenile epiphysitis (732.6) with any degree of residual change indicated by X-ray or kyphosis.

g. Current herniated nucleus pulposus (722) or history of surgery to correct (CPT 63001-63200). A surgically corrected asymptomatic single-level lumbar or thoracic diskectomy with full resumption of unrestricted activity DOES meet the standard.

h. Current or history of spina bifida (741) when symptomatic, when there is more than one vertebral level involved, or with dimpling of the overlying skin. History of surgical repair of spina bifida.

i. Current or history of spondylolysis congenital (756.10-756.12) or acquired (738.4).

j. Current or history of spondylolisthesis congenital (756.12) or acquired (738.4).

18. UPPER EXTREMITIES

a. Limitation of Motion. Current active joint ranges of motion less than:

(1) Shoulder (726.1)

(a) Forward elevation to 90 degrees.

(b) Abduction to 90 degrees.

(2) Elbow (726.3)

(a) Flexion to 130 degrees.

(b) Extension to 15 degrees.

(3) Wrist (726.4). A total range of 60 degrees (extension plus flexion), or radial and ulnar deviation combined arc 30 degrees.

(4) Hand (726.4)

(a) Pronation to 45 degrees.

(b) Supination to 45 degrees.

(5) Fingers and Thumb (726.4). Inability to clench fist, pick up a pin, grasp an object, or touch tips of at least three fingers with thumb.

b. Hand and Fingers

(1) Absence of the distal phalanx of either thumb (885).

(2) Absence of any portion of the index finger.

(3) Absence of distal and middle phalanx of the middle or ring finger of either hand irrespective of the absence of the little finger (886).

(4) Absence of more than the distal phalanx of any two of the following: index, middle, or ring finger of either hand (886).

(5) Absence of hand or any portion thereof (887), except for specific absence of fingers as noted in subparagraphs 18.b.(1)-(4).

(6) Current polydactyly (755.0).

(7) Intrinsic paralysis or weakness of upper limbs, including but not limited to nerve paralysis, carpal tunnel and cubital syndromes, lesion of ulnar, median, or radial nerve (354), sufficient to produce physical findings in the hand such as muscle atrophy and weakness.

c. Residual Weakness and Pain. Current disease, injury, or congenital condition with residual weakness or symptoms that prevents satisfactory performance of duty, including but not limited to chronic joint pain associated with the shoulder (719.41), the upper arm (719.42), the forearm (719.43), and the hand (719.44); or chronic joint pain as a late effect of fracture of the

upper extremities (905.2), as a late effect of sprains without mention of injury (905.7), and as late effects of tendon injury (905.8).

19. LOWER EXTREMITIES

a. General

(1) Current deformities, disease, or chronic joint pain of pelvic region, thigh (719.45), lower leg (719.46), knee (717.9), ankle and or foot (719.47) that have interfered with function to such a degree as to prevent the individual from following a physically active vocation in civilian life, or that would interfere with walking, running, weight bearing, or the satisfactory completion of training or military duty.

(2) Current leg-length discrepancy resulting in a limp (736.81).

b. Limitation of Motion. Current active joint ranges of motion less than:

(1) Hip (due to disease (726.5) or injury (905.2))

(a) Flexion to 90 degrees.

(b) No demonstrable flexion contracture.

(c) Extension to 10 degrees (beyond 0 degrees).

(d) Abduction to 45 degrees.

(e) Rotation of 60 degrees (internal and external combined).

(2) Knee (due to disease (726.6) or injury (905.4))

(a) Full extension to 0 degrees.

(b) Flexion to 110 degrees.

(3) Ankle (due to disease (726.7) or injury (905.4) or congenital)

(a) Dorsiflexion to 10 degrees.

(b) Planter flexion to 30 degrees.

(c) Subtalar eversion and inversion totaling 5 degrees.

c. Foot and Ankle

(1) Current absence of a foot or any portion thereof (896).

(2) Absence of a single lesser toe or any portion thereof that is asymptomatic and does not impair function DOES meet the standard.

(3) Deformity of the toes (735.9) that prevents the proper wearing of military footwear or impairs walking, marching, running, maintaining balance, or jumping.

(4) Symptomatic deformity of the toes (acquired (735) or congenital (755.66)), including but not limited to conditions such as hallux valgus (735.0), hallux varus (735.1), hallux rigidus (735.2), hammer toe(s) (735.4), claw toe(s) (735.5), or overriding toe(s) (735.8).

(5) Clubfoot (754.70) or pes cavus (754.71) that prevents the proper wearing of military footwear or causes symptoms when walking, marching, running, or jumping.

(6) Rigid or symptomatic pes planus (acquired (734) or congenital (754.61)).

(7) Current ingrown toenails (703.0), if infected or symptomatic.

(8) Current or history of recurrent plantar fasciitis (728.71).

(9) Symptomatic neuroma (355.6).

d. Leg, Knee, Thigh, and Hip

(1) Current loose or foreign body in the knee joint (717.6).

(2) History of uncorrected anterior (717.83) or posterior (717.84) cruciate ligament injury.

(3) History of surgical reconstruction of knee ligaments (P81.4) (CPT 27427-27429) DOES meet the standard if 12 months has elapsed since reconstruction, and the knee is asymptomatic and stable.

(4) Recurrent ACL reconstruction (CPT 27427, 27407).

(5) Symptomatic medial (717.82) or lateral (717.42) meniscal injury. The following DOES meet the standard if asymptomatic and released to full and unrestricted activity:

(a) Meniscal repair (CPT 27403), more than 6 months after surgery.

(b) Partial meniscectomy (CPT 27332-27333) more than 3 months after surgery.

(6) Meniscal transplant (CPT 29868).

(7) Symptomatic medial (844.1) and lateral (844.0) collateral ligament instability.

(8) Current or history of congenital dislocation of the hip (754.3), osteochondritis of the hip (Legg-Calve-Perthes Disease) (732.1), or slipped capital femoral epiphysis of the hip (732.2).

(9) Hip dislocation (835) within 2 years preceding examination. Hip dislocation after 2 years DOES meet the standard if asymptomatic and released to full unrestricted activity.

(10) Symptomatic osteochondritis of the tibial tuberosity (Osgood-Schlatter Disease) (732.4) within the past year.

(11) Stress fractures (733.95, V13.52), recurrent or single episode during the past year.

20. MISCELLANEOUS CONDITIONS OF THE EXTREMITIES

a. Current or history of chondromalacia (717.7), including but not limited to chronic patello-femoral pain syndrome and retro-patellar pain syndrome (719.46), osteoarthritis (715.3), or traumatic arthritis (716.1).

b. Current joint dislocation if unreduced, or history of recurrent dislocation, subluxation or instability of the hip (835), elbow (832), ankle (837), or foot.

c. History of any dislocation, subluxation or instability of the knee (718.86) or shoulder.

d. Current or history of osteoarthritis (715.3) or traumatic arthritis (716.1) of isolated joints that has interfered with a physically active lifestyle, or that prevents the satisfactory performance of military duty.

e. Fractures

(1) Current malunion or non-union of any fracture (733.8) (except asymptomatic ulnar styloid process fracture).

(2) Current retained hardware (including plates, pins, rods, wires, or screws) used for fixation that is symptomatic or interferes with proper wearing of equipment or military uniform. Retained hardware is not disqualifying if fractures are healed, ligaments are stable, and there is no pain.

f. Current orthopedic implants or devices to correct congenital or post-traumatic orthopedic abnormalities (V43).

g. Current or history of contusion of bone or joint (923, 924), ; an injury of more than a minor nature that shall interfere or prevent performance of military duty, or shall require frequent or prolonged treatment, without fracture, nerve injury, open wound, crush, or dislocation, that occurred in the preceding 6 months and recovery has not been sufficiently completed or rehabilitation resolved.

h. History of joint replacement or resurfacing of any site (V43.6) (CPT 24363, 27130-27132, 27447).

i. Current or history of neuromuscular paralysis, weakness, contracture, or atrophy (728) of sufficient degree to interfere with or prevent satisfactory performance of military duty, or requires frequent or prolonged treatment.

j. Current symptomatic osteochondroma or history of multiple osteocartilaginous exostoses (727.82).

k. Current osteoporosis (733.0) as demonstrated by a reliable test such as a dual energy x-ray absorptiometry scan (DEXA).

l. Current osteopenia (733.9) until resolved.

m. Current osteomyelitis (730.0) or history of recurrent osteomyelitis.

n. Current or history of *osteochondral defect, formerly known as* osteochondritis dissecans (732.7).

o. History of cartilage surgery, including but not limited to cartilage debridement, chondroplasty, microfracture, or cartilage transplant procedure (CPT 20910, 20912, 21230, 21235, 27412, 27415, 29866-29867).

p. Current or history of any post-traumatic (958.9) or exercise-induced (729.7-79) compartment syndrome.

q. Current or history of avascular necrosis of any bone.

r. Current or history of recurrent tendon disorder, including but not limited to tendonitis, tendonopathy, tenosynovitis.

21. VASCULAR SYSTEM

a. Current or history of abnormalities of the arteries (447), including but not limited to aneurysms (442), arteriovenous malformations, atherosclerosis (440), or arteritis (such as Kawasaki's disease) (446).

b. Current or medically managed hypertension (401). Hypertension is defined as systolic pressure greater than 140 mmHg and or diastolic pressure greater than 90 mmHg confirmed by manual blood pressure cuff averaged over two or more properly measured, seated, blood pressure readings on each of 2 or more consecutive days (isolated, single-day blood pressure elevation is not disqualifying unless confirmed on 2 or more consecutive days).

c. Current or history of peripheral vascular disease (443.9), including but not limited to diseases such as Raynaud's Disease (443.0) and vasculidities.

d. Current or history of venous diseases, including but not limited to recurrent thrombophlebitis (451), thrombophlebitis during the preceding year, or evidence of venous incompetence, such as large or symptomatic varicose veins, edema, or skin ulceration (454).

e. Current or history of deep venous thrombosis (453.40).

f. History of operation or endovascular procedure on the arterial or venous systems, including but not limited to vena cava filter, angioplasty, venoplasty, thrombolysis, or stent placement (CPT 34001-37799).

g. History of Marfan's Syndrome (759.82).

22. SKIN AND CELLULAR TISSUES

a. Current diseases of sebaceous glands including severe and or cystic acne (706), or hidradenitis suppurativa (704-705), if extensive involvement of the neck, scalp, axilla, groin, shoulders, chest, or back is present or shall be aggravated by or interfere with the proper wearing of military equipment. Applicants under treatment with systemic retinoids, including, but not limited to isotretinoin (Accutane®), do not meet the standard until 8 weeks after completion of therapy.

b. Current or history of atopic dermatitis (691) or eczema (692.9) after the 12th birthday.

(1) Atopic Dermatitis. Active or history of residual or recurrent lesions in characteristic areas (face, neck, antecubital and or popliteal fossae, occasionally wrists and hands).

(2) Non-Specific Dermatitis. Current or history of recurrent or chronic non-specific dermatitis to include contact (692) (irritant or allergic), or dyshidrotic dermatitis (705.81) requiring more than treatment with over the counter medications.

c. Cysts if:

(1) The current cyst (706.2) (other than pilonidal cyst) is of such a size or location as to interfere with the proper wearing of military equipment.

(2) The current pilonidal cyst (685) is evidenced by the presence of a tumor mass or a discharging sinus, or is a surgically resected pilonidal cyst (CPT 11770-11772) that is symptomatic, unhealed, or less than 6 months post-operative.

d. Current or history of bullous dermatoses (694), including but not limited to dermatitis herpetiformis, pemphigus, and epidermolysis bullosa, (757.39). Resolved bullous impetigo DOES meet the standard.

e. Current or chronic lymphedema (457.1).

f. Current or history of furunculosis or carbuncle (680) if extensive, recurrent, or chronic.

g. Current or history of severe hyperhidrosis of hands or feet (705.2, 780.8) unless controlled by topical medications.

h. Current or history of congenital (757) or acquired (216) anomalies of the skin, such as nevi or vascular tumors that interfere with function, or are exposed to constant irritation. History of Dysplastic Nevus Syndrome (232).

i. Current or history of keloid formation (701.4), including but not limited to pseudofolliculitis and keloidalis nuchae (706.1), if that tendency is marked or interferes with the proper wearing of military equipment.

j. Current lichen planus (cutaneous and/or oral) (697.0).

k. Current or history of neurofibromatosis (Von Recklinghausen's Disease) (237.7).

l. History of photosensitivity (692.72), including but not limited to any primary sun-sensitive condition, such as polymorphous light eruption or solar urticaria, or any dermatosis aggravated by sunlight, such as lupus erythematosus.

m. Current or history of psoriasis (696.1).

n. Current or history of radiodermatitis (692.82).

o. Current or history of scleroderma (710.1).

p. Current or history of chronic urticaria lasting longer than 6 weeks or recurrent episodes of urticaria (708.8) within the past 24 months not associated with angioedema, hereditary angioedema (277.6), or maintenance therapy for chronic urticaria, even if not symptomatic.

q. Current symptomatic plantar wart(s) (078.19).

r. Current scars (709.2), or any other chronic skin disorder of a degree or nature that requires frequent outpatient treatment or hospitalization, which in the opinion of the certifying authority shall interfere with proper wearing of military clothing or equipment, or which exhibits a tendency to ulcerate or interferes with the satisfactory performance of duty.

s. Prior burn (949) injury involving 18 percent or more body surface area (including graft sites), or resulting in functional impairment to such a degree, due to scarring, as to interfere with the satisfactory performance of military duty due to decreased range of motion, strength, or agility.

t. Current localized types of fungus infections (117), interfering with the proper wearing of military equipment or the performance of military duties. For systemic fungal infections, refer to paragraph 24.~~w~~*q*. of this enclosure.

23. BLOOD AND BLOOD-FORMING TISSUES

a. Current hereditary or acquired anemia, which has not been corrected with therapy before appointment or induction. ICD-9 codes for diagnosed anemia include hereditary hemolytic anemia (282), sickle cell disease (282.6), acquired hemolytic anemia (283), aplastic anemia (284), or unspecified anemias (285).

b. Current or history of coagulation defects (286), including but not limited to von Willebrand's Disease (286.4), idiopathic thrombocytopenia (287), or Henoch-Schönlein Purpura (287.0).

c. Current or history of diagnosis of any form of chronic or recurrent agranulocytosis and/or leukopenia (288.0).

d. Spleen

(1) Current splenomegaly (789.2).

(2) History of splenectomy (P41.5) (CPT 38100-38129), except when accomplished for trauma or conditions unrelated to the spleen or for hereditary spherocytosis (282.0).

24. SYSTEMIC

a. Current or history of disorders involving the immune mechanism, including immunodeficiencies (279).

b. Presence of human immunodeficiency virus or serologic evidence of infection (042, V08) or false-positive screening test(s) with ambiguous results on confirmatory immunologic testing.

~~c. Current or history of lupus erythematosus (710.0) or mixed connective tissue disease variant (710.9).~~

~~d. Current or history of progressive systemic sclerosis (710.1), including Calcinosis, Raynaud's phenomenon, Esophogeal dysmotility, sclerodactyly, telangiectasia (CREST) Variant.~~

~~e. Current or history of Reiter's disease (099.3).~~

~~f. Current or history of rheumatoid arthritis (714.0).~~

~~g. Current or history of Sjögren's syndrome (710.2).~~

~~h. Current or history of vasculitis, including but not limited to polyarteritis nodosa and allied conditions (446.0), arteritis (447.6), Behçet's (136.1), and Wegener's granulomatosis (446.4).~~

~~i~~*c*. Tuberculosis (010)

(1) Current active tuberculosis or substantiated history of active tuberculosis in any form or location, regardless of past treatment, in the previous 2 years.

(2) Current residual physical or mental defects from past tuberculosis that shall prevent the satisfactory performance of duty.

(3) Individuals with a past history of active tuberculosis more than 2 years before appointment, enlistment, or induction meet the standard if they have received a complete course of standard chemotherapy for tuberculosis.

(4) Current or history of untreated latent tuberculosis (positive Purified Protein Derivative with negative chest X-ray) (795.5). Individuals with a tuberculin reaction in accordance with ATS and United States Public Health Service (USPHS) guidelines are eligible for enlistment, induction, and appointment, provided they have received chemoprophylaxis in accordance with ATS and USPHS guidelines. A negative QuantiFERON®-TB Gold (QFT®-G) with a positive tuberculin skin test DOES meet the standard.

~~j~~*d*. Current untreated syphilis (097).

~~k~~*e*. History of anaphylaxis (995.0).

(1) History of anaphylaxis to stinging insects (989.5). A cutaneous only reaction to a stinging insect under the age of 16 DOES meet the standard. Applicants who have been treated for 3-5 years with maintenance venom immunotherapy DO meet the standard.

(2) History of systemic allergic reaction to food or food additives (995.60-995.69). Systemic allergic reaction may be defined as a temporally related, systemic, often multi-system, reaction to a specific food. The presence of a food-specific immunoglobulin E antibody without a correlated clinical history DOES meet the standard.

(3) Oral allergy syndrome.

(4) Hypersensitivity to latex (V15.07).

(5) Exercise-induced anaphylaxis (with or without food).

(6) Idiopathic anaphylaxis (995.0).

(7) Acute, early, or immediate anaphylactic onset.

(8) History of systemic allergic reaction or angioedema.

~~l~~*f*. Current residual of tropical fevers, including but not limited to fevers, such as malaria (084) and various parasitic or protozoan infestations that prevent the satisfactory performance of military duty.

~~m~~*g*. History of malignant hyperthermia (995.86).

~~n~~*h*. History of industrial solvent or other chemical intoxication (982) with sequelae.

~~o~~*i*. History of motion sickness (994.6) resulting in recurrent incapacitating symptoms or of such a severity to require pre-medication in the previous 3 years.

~~p~~*j*. History of rheumatic fever (390).

~~q~~*k*. Current or history of muscular dystrophies (359) or myopathies.

~~r~~*l*. Current or history of amyloidosis (277.3).

~~s~~*m*. Current or history of eosinophilic granuloma (277.8) and all other forms of histiocytosis (202.3). Healed eosinophilic granuloma, when occurring as a single localized bony lesion and not associated with soft tissue or other involvement, DOES meet the standard.

~~t~~*n*. Current or history of polymyositis (710.4) or dermatomyositis complex (710.3) with skin involvement.

~~u~~*o*. History of rhabdomyolysis (728.88).

~~v~~*p*. Current or history of sarcoidosis (135).

~~w~~*q*. Current systemic fungus infections (117). For localized fungal infections, refer to paragraph 22.t. of this enclosure.

25. ENDOCRINE AND METABOLIC

a. Current ~~or history of~~ adrenal dysfunction (255).

b. ~~Current or history of diabetes mellitus (249.xx, 250.xx).~~ *Diabetes mellitus (250) disorders, including:*

(1) Current or history of diabetes mellitus (250).

(2) Current or history of pre-diabetes mellitus defined as fasting plasma glucose 110-125 milligrams per deciliter (mg/dL) and glycosylated hemoglobin greater than 5.7 percent.

(3) History of gestational diabetes mellitus.

(4) Current persistent glycosuria, when associated with impaired glucose tolerance (250) or renal tubular defects (271.4).

c. Current or history of pituitary dysfunction (253), *to include history of growth hormone use. Non-functional microadenoma (less than 1cm) DOES meet the standard.*

d. Current or history of ~~gout (274).~~ *diabetes insipidus.*

e. Current or history of hyperparathyroidism (252.0) or hypoparathyroidism (252.1).

f. The following thyroid disorders:

(1) Current goiter (240). *Symmetrical simple goiter less than two times normal size with no nodules by ultrasound and normal thyroid function tests DOES meet the standard.*

(2) Thyroid nodule (241.0). A solitary thyroid nodule less than 5mm or less than 3cm with benign histology or cytology DOES meet the standard.

(~~2~~*3*) Current hypothyroidism (244) ~~uncontrolled by medication~~. *Individuals with two normal thyroid stimulating hormone tests within the preceding 6 months DOES meet the standard.*

(~~3~~*4*) Current or history of hyperthyroidism (242.9). *In remission off of anti-thyroidal medication with normal thyroid function tests for a minimum of 12 months and without evidence of thyroid associated ophthalmopathy DOES meet the standard.*

~~(4) Current thyroiditis (245).~~

g. Current nutritional deficiency diseases, including but not limited to beriberi (265.0), pellagra (265.2), and scurvy (267).

~~h. Current persistent glucosuria, when associated with impaired glucose tolerance (250) or renal tubular defects (271.4).~~

~~i.~~*h.* Current or history of acromegaly, including but not limited to gigantism (253.0), or other disorders of pituitary function (253).

~~j.~~*i.* Dyslipidemia ~~on medical management requiring more than one medication.~~ *with low-density lipoprotein (LDL) greater than 200mg/dL or triglycerides greater than 400 mg/dL. Dyslipidemia requiring more than one medication or LDL greater than 190 mg/dL on therapy.* All those on medical management must have demonstrated no medication side effects (such as myositis, myalgias, or transaminitis) for a period of 6 months.

~~k.~~*j.* Metabolic syndrome beyond the 35th birthday. Metabolic syndrome is defined in accordance with NHLBI and American Heart Association (2005) as any three of the following:

(1) Medically controlled hypertension or elevated blood pressure of greater than 130 mmHg systolic or greater than 85 mmHg diastolic.

(2) Waist circumference greater than 35 inches for women and greater than 40 inches for men.

(3) Medically controlled dyslipidemia or triglycerides greater than 150 mg/dl.

(4) Medically controlled dyslipidemia or high-density lipoprotein less than 40 mg/dl in men or less than 50 mg/dl in women.

(5) Fasting glucose greater than 100 mg/dl.

k. Metabolic bone disease.

(1) Osteopenia, osteoporosis, or low bone mass with history of fragility fracture.

(2) Paget's disease.

(3) Osteomalacia.

(4) Osteogenesis imperfecta.

l. Male hypogonadism.

m. Current or history of islet-cell tumors, nesideoblastosis, or hypoglycemia.

26. RHEUMATOLOGIC

a. Current or history of lupus erythematosus (710.0) or mixed connective tissue disease variant (710.9).

b. Current or history of progressive systemic sclerosis (710.1), including calcinosis, Raynaud's disease or phenomenon, esophogeal dysmotility, sclerodactyly, telangiectasia (CREST) variant.

c. Current or history of Reiter's disease (099.3).

d. Current or history of rheumatoid arthritis (714.0).

e. Current or history of Sjögren's syndrome (710.2).

f. Current or history of vasculitis, including but not limited to polyarteritis nodosa and allied conditions (446.0), arteritis (447.6), Behçet's (136.1), and Wegener's granulomatosis (446.4). Henoch-Schonlein Purpura occurring before the age of 19 with 2 years remission and no sequelae DOES meet the standard.

g. History of congenital fusion (756.15) involving more than two vertebral bodies or any surgical fusion of spinal vertebrae (P81.0).

h. Current or history of gout (274).

i. Current or history of inflammatory myopathy including polymyositis or dermatomyositis.

j. Current or history of non-inflammatory myopathy to include but not limited to metabolic myopathy such as glycogen storage disease, lipid storage disease, and mitochondrial myopathy.

k. Current or history of fibromyalgia, myofascial pain, or chronic wide-spread pain.

l. Current or history of chronic fatigue syndrome.

m. Current or history of spondyloarthritis including ankylosing spondyloarthritis, psoriatic arthritis, reactive arthritis, or spondyloarthritis associated with inflammatory bowel disease.

n. Current or history of joint hypermobility syndrome.

o. Current or history of hereditary connective tissue disorders including but not limited to Marfan's syndrome, Ehlers-Danlos syndrome, and osteogenesis imperfecta.

2~~6~~*7*. NEUROLOGIC

a. Current or history of cerebrovascular conditions, including but not limited to subarachnoid (430) or intracerebral (431) hemorrhage, vascular stenosis, aneurysm, stroke, transient ischemic attack or arteriovenous malformation (437).

b. History of congenital or acquired anomalies of the central nervous system (742) or meningocele (741.9).

c. Current or history of disorders of meninges, including but not limited to cysts (349.2). Asymptomatic incidental arachnoid cyst demonstrated to be stable by neurological imaging over a 6-month or greater time period DO meet the standard.

d. Current or history of neurodegenerative disorders, including but not limited to those disorders affecting the cerebrum (330), basal ganglia (333), cerebellum (334), spinal cord (335), peripheral nerves (337), or muscles (728).

e. History of headaches (784.0), including but not limited to migraines (346) and tension headaches (307.81) that:

(1) Are severe enough to disrupt normal activities (such as loss of time from school or work) ~~of~~ more than twice per year in the past 2 years.

(2) Require prescription medications more than twice per year within the last 2 years.

f. Migraine (346) or migraine variant (346.2) associated with neurological deficits other than scotoma.

g. Cluster headaches (339.0).

h. History of head injury (854.0) if associated with:

(1) Post-traumatic seizure(s) occurring more than 30 minutes after injury.

(2) Persistent motor, sensory, vestibular, visual, or any other focal neurological deficit.

(3) Persistent impairment of cognitive function.

(4) Persistent alteration of personality or behavior.

(5) Unconsciousness of 24 hours or more post-injury

(6) Amnesia or disorientation of person, place, or time of 7 days duration or longer post-injury.

(7) Cerebral traumatic findings, including but not limited to epidural, subdural, subarachnoid, or intracerebral hematoma on neurological imaging until resolved and 12 months has elapsed since injury.

(8) Associated abscess (326) or meningitis (958.8).

(9) Cerebrospinal fluid rhinorrhea (349.81) or otorrhea (388.61) persisting more than 7 days.

(10) Penetrating brain injury to include radiographic evidence of retained foreign body or bony fragments secondary to the trauma and/or operative procedure in the brain.

i. History of moderate head injury (854.03).

(1) Moderate head injuries are defined as:

(a) Unconsciousness of more than 30 minutes but less than 24 hours, or

(b) Amnesia, or disorientation of person, place, or time, alone or in combination, more than 24 hours but less than 7 days duration post-injury, or

(c) Linear skull fracture.

(2) After 12 months post-injury, applicants may be qualified if neurological examination shows no residual dysfunction or complications.

j. History of mild head injury (854.02).

(1) Mild head injury is defined as:

(a) Unconsciousness of less than 30 minutes post-injury.

(b) Amnesia or disorientation of person, place, or time, alone or in combination, of less than 24 hours post-injury.

(2) After 1 month post-injury, applicants may be qualified if neurological examination shows no residual dysfunction or complications.

k. History of persistent post-concussive symptoms (310.2) that interfere with normal activities or have duration of more than 1 month. Such symptoms include but are not limited to headache, vomiting, disorientation, spatial disequilibrium, impaired memory, poor mental concentration, shortened attention span, dizziness, or altered sleep patterns.

l. Current or history of infectious processes of the central nervous system, including but not limited to meningitis (322), encephalitis (323), neurosyphilis (094), or brain abscess (324), if occurring within 1 year before examination, required surgical treatment, or if there are residual neurological defects.

m. Current or history of paralysis, weakness, lack of coordination, chronic pain (including but not limited to chronic regional pain syndrome or neuralgias), or sensory disturbance or other specified paralytic syndromes (344), including but not limited to Guillain-Barre Syndrome (357.0).

n. Any seizure occurring beyond the 6th birthday, unless the applicant has been free of seizures for a period of 5 years while taking no medication for seizure control, and has a normal sleep-deprived electroencephalogram and normal neurology evaluation while taking no medications for seizure control.

o. Chronic nervous system disorders, including but not limited to myasthenia gravis (358.0), multiple sclerosis (340), tremor (333.1), and tic disorders (307.20) (e.g., Tourette's (307.23)).

p. Current or history of central nervous system shunts of all kinds (V45.2).

q. Syncope or atraumatic loss of consciousness. History of recurrent syncope or presyncope (780.2), including blackout, fainting, loss or alteration of level of consciousness (excludes single episode of vasovagal reaction with identified trigger such as venipuncture), unless there has been no recurrence during the preceding 2 years while off all medication for treatment of this condition.

2~~7~~*8*. SLEEP DISORDERS

a. Chronic insomnia (780.5). Within the past year, had difficulty sleeping, or used medications to promote sleep for more than 3 nights per week, over a period of 3 months.

b. Sleep-related breathing disorders (327). Current diagnosis or treatment of sleep-related breathing disorders, including but not limited to sleep apnea (327.2).

c. Current or history of narcolepsy, cataplexy (347-347.11), or other hypersomnia disorders (327.13-19).

d. Circadian rhythm disorders requiring treatment (307.45).

e. Current or history of parasomnia (327.44, 327.49), including but not limited to sleepwalking, enuresis, or night terrors (307.46), after the age of 15.

f. Current diagnosis or treatment of sleep-related movement disorders to include restless leg syndrome (327.5).

2~~8~~*9*. LEARNING, PSYCHIATRIC, AND BEHAVIORAL

a. Attention Deficit Hyperactivity Disorder (ADHD) (314) UNLESS the following criteria are met:

(1) The applicant has not required an Individualized Education Program or work accommodations since the age of 14.

(2) There is no history of comorbid mental disorders.

(3) The applicant has never taken more than a single daily dosage of medication or has not been prescribed medication for this condition for more than 24 cumulative months after the age of 14.

(4) During periods off of medication after the age of 14, the applicant has been able to maintain at least a 2.0 grade point average without accommodations.

(5) Documentation from the applicant's prescribing provider that continued medication is not required for acceptable occupational or work performance.

(6) Applicant is required to enter service and pass Service-specific training periods with no prescribed medication for ADHD.

b. History of learning disorders (315), including but not limited to dyslexia (315.02), UNLESS applicants demonstrated passing academic and employment performance without utilization of academic and or work accommodations at any time since age 14.

c. Pervasive developmental disorders (299 series) including Asperger Syndrome, autistic spectrum disorders, and pervasive developmental disorder-not otherwise specified (299.9).

d. Current or history of disorders with psychotic features such as schizophrenic disorders (295), delusional disorders (297), or other and unspecified psychoses (298).

e. History of bipolar disorders (296.4-7) and affective psychoses (296.8).

f. History of depressive disorders, including but not limited to major depression (296), dysthymic disorder (300.4), and cyclothymic disorder requiring outpatient care for longer than 12 months by a physician or other mental health professional (to include V65.40), or any inpatient treatment in a hospital or residential facility.

g. Depressive disorder not otherwise specified (311), or unspecified mood disorder (296.90), UNLESS:

(1) Outpatient care was not required for longer than 24 months (cumulative) by a physician or other mental health professional (to include V65.40).

(2) The applicant has been stable without treatment for the past 36 continuous months.

(3) The applicant did not require any inpatient treatment in a hospital or residential facility.

h. History of a single adjustment disorder (309) within the previous 3 months, or recurrent episodes of adjustment disorders.

i. Current or history of disturbance of conduct (312), impulse control (312.3), oppositional defiant (313.81), other behavior disorders (313), or personality disorder (301).

(1) History (demonstrated by repeated inability to maintain reasonable adjustment in school, with employers or fellow workers, or other social groups), interview, or psychological testing revealing that the degree of immaturity, instability, of personality inadequacy, impulsiveness, or dependency shall likely interfere with adjustment in the Military Services.

(2) Recurrent encounters with law enforcement agencies (excluding minor traffic violations) or antisocial behaviors are tangible evidence of impaired capacity to adapt to military service.

j. Encopresis (307.7) after 13th birthday.

k. History of anorexia nervosa (307.1) or bulimia (307.51).

l. Other eating disorders (307.50; 52-54) including unspecified disorders of eating (307.59) occurring after the 13th birthday.

m. Any current receptive or expressive language disorder, including but not limited to any speech impediment or stammering and stuttering (307.0) of such a degree as to significantly interfere with production of speech or *the ability* to repeat commands.

n. History of suicidal behavior, including gesture(s) or attempt(s) (300.9) or history of self-mutilation or injury used as a way of dealing with life and emotions.

o. History of obsessive-compulsive disorder (300.3) or post-traumatic stress disorder (309.81).

p. History of anxiety disorders (300.01), anxiety disorder not otherwise specified (300.00), panic disorder (300.2), agoraphobia (300.21, 300.22), social phobia (300.23), simple phobias (300.29), other acute reactions to stress (308) UNLESS:

(1) The applicant did not require any treatment in an inpatient or residential facility.

(2) Outpatient care was not required for longer than 12 months (cumulative) by a physician or other mental health professional (to include V65.40).

(3) The applicant has not required treatment (including medication) for the past 24 continuous months.

(4) The applicant has been stable without loss of time from normal pursuits for repeated periods even if of brief duration; and without symptoms or behavior of a repeated nature that impaired social, school, or work efficiency for the past 24 continuous months.

q. Current or history of dissociative, conversion, or factitious disorders (300.1), depersonalization (300.6), hypochondriasis (300.7), somatoform disorders (300.8), or pain disorder related to psychological factors (307.80 and .89).

r. Current or history of psychosexual conditions (302), including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias.

s. Current or history of alcohol dependence (303), drug dependence (304), alcohol abuse (305.0), or other drug abuse (305.2 thru 305.9).

t. Current or history of other mental disorders (all 290-319 not listed) that, in the opinion of the civilian or military medical examiner, shall interfere with or prevent satisfactory performance of military duty.

u. Prior psychiatric hospitalization for any cause.

~~29~~*30*. TUMORS AND MALIGNANCIES

a. Current benign tumors ~~(M8000)~~ or conditions that interfere with function, prevent the proper wearing of the uniform or protective equipment, shall require frequent specialized attention, or have a high malignant potential, such as Dysplastic Nevus Syndrome.

b. Current or history of malignant tumors (V10).

c. Skin cancer (other than malignant melanoma) that is removed with no residual DOES meet the standard.

3~~0~~*1*. MISCELLANEOUS

a. Current or history of parasitic diseases, if symptomatic or carrier state, including but not limited to filariasis (125), trypanosomiasis (086), schistosomiasis (120), hookworm (uncinariasis) (126.9), or unspecified infectious and parasitic disease (136.9).

b. Current or history of other disorders, including but not limited to cystic fibrosis (277.0) or porphyria (277.1), that prevent satisfactory performance of duty, or require frequent or prolonged treatment.

c. Current or history of cold-related disorders, including but not limited to frostbite, chilblain, immersion foot (991), or cold urticaria (708.2).

d. Current residual effects of cold-related disorders (991.9), including but not limited to paresthesias, easily traumatized skin, cyanotic amputation of any digit, ankylosis, trench foot, or deep-seated ache.

e. History of angioedema, including hereditary angioedema (277.6).

f. History of receiving organ or tissue transplantation (V42).

g. History of pulmonary (415) or systemic embolization (444).

h. History of untreated acute or chronic metallic poisoning, including but not limited to lead, arsenic, silver (985), beryllium (985.3), or manganese (985.2), or current complications or residual symptoms of such poisoning.

i. History of heat pyrexia (992.0), heatstroke (992.0), or sunstroke (992.0).

j. History of three or more episodes of heat exhaustion (992.3).

k. Current or history of a predisposition to heat injuries (992.0-992.8), including disorders of sweat mechanism (705.0-705.9), combined with a previous serious episode.

l. Current or history of any unresolved sequelae of heat injury (992.0-992.8), including but not limited to nervous, cardiac, hepatic, or renal systems.

m. Current or history of any condition that, in the opinion of the medical officer, shall significantly interfere with the successful performance of military duty or training (should use specific ICD code whenever possible, or 796.9).

n. Any current acute pathological condition, including but not limited to acute communicable diseases, until recovery has occurred without sequelae.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ADHD	Attention Deficit Hyperactivity Disorder
ANSI	American National Standards Institute
ASD(HA)	Assistant Secretary of Defense for Health Affairs
ATS	American Thoracic Society
AV	atrioventricular
CPT	Current Procedural Terminology
CREST	Calcinosis, Raynaud's phenomenon, Esophogeal dysmotility, sclerodactyly, telangiectasia
dB	decibel
DEP	Delayed Entry Program
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DUSD(MPP)	Deputy Under Secretary of Defense for Military Personnel Policy
ECG	electrocardiograph
GERD	Gastro-Esophageal Reflux Disease
HCPCS	Healthcare Common Procedure Coding System
HHS	Department of Health and Human Services
ICD	International Classification of Diseases
LASEK	laser epithelial keratomileusis
LASIK	laser-assisted in situ keratomileusis
LDL	*low-density lipoprotein*
LTBI	latent tuberculosis infection
MEDPERS	Medical and Personnel Executive Steering Committee
mg/dl	milligrams per deciliter
mmHg	millimeters of mercury
NHLBI	National Heart, Lung, and Blood Institute
NIH	National Institutes of Health
PRK	photorefractive keratectomy
PDASD(HA)	Principal Deputy Assistant Secretary of Defense for Health Affairs
PDES	Physical Disability and Evaluation System
PDUSD(P&R)	Principal Deputy Under Secretary of Defense for Personnel and Readiness

QFT®-G	QuantiFERON®-TB Gold
ROTC	Reserve Officer Training Corps
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USPHS	United States Public Health Service
WPW	Wolff-Parkinson-White

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this Instruction.

anemia. A hemoglobin level of less than 13.5 for males and less than 12 for females.

Department of Health and Human Services (HHS). The U.S. Government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves.

Military Department. Defined in Joint Publication 1-02 (Reference (j)).

Military Service(s). Defined in Reference (j).

NHLBI. An agency within the National Institutes of Health (NIH) that provides global leadership for a research, training, and education program to promote the prevention and treatment of heart, lung, and blood diseases and enhance the health of all individuals so that they can live longer and more fulfilling lives.

NIH. An agency within the HHS that serves as the steward of medical and behavioral research for the Nation. Its mission is science in pursuit of fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to extend healthy life and reduce the burdens of illness and disability.

QFT®-G. An in vitro laboratory diagnostic test using a whole blood specimen. It is an indirect test for Mycobacterium tuberculosis-complex (i.e., M. tuberculosis, M. bovis, M. africanum, M. microti, M. canetti) infection, whether tuberculosis disease or latent tuberculosis infection (LTBI). It cannot distinguish between tuberculosis disease and LTBI, and is intended for use in conjunction with risk assessment, radiography, and other medical and diagnostic evaluations.

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

DECLARATION OF STEPHANIE A. BARNA

I, Stephanie A. Barna, do hereby declare as follows:

1. I am the Acting Assistant Secretary of Defense (Manpower and Reserve Affairs), Performing the Duties of the Under Secretary of Defense for Personnel and Readiness, within the Department of Defense (DoD). In this capacity, I am responsible for Total Force management, including military readiness and training, and military personnel requirements. I have served in this capacity since March 30, 2018. From June 2014 through March 2018, I served first as the Acting Assistant Secretary of Defense (Readiness and Force Management) and subsequently performed both the duties of the Assistant Secretary of Defense (Manpower and Reserve Affairs) and the duties of the Principal Deputy Under Secretary of Defense for Personnel and Readiness. In these roles, I served as principal advisor to the Secretary of Defense and the Under Secretary of Defense (Personnel and Readiness) on all personnel matters,

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Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20530
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including civilian and military personnel policies, reserve affairs, Total Force Planning and Requirements, and diversity. I also served in senior leadership positions in the Department of the Army as a career senior executive, and retired from the U.S. Army Reserve in 2011 in the grade of Colonel.

2. In my current role, I have oversight responsibility for the drafting and implementation of policy concerning military service by transgender individuals.

3. In the exercise of my official duties, I have been made aware of this lawsuit and the related litigation involving DoD transgender service policy. The information in this declaration is based on my personal knowledge and on information made available to me in my official capacity.

4. On February 22, 2018, the Secretary of Defense, with the agreement of the Secretary of Homeland Security, sent the President a memorandum proposing a new policy regarding military service by transgender persons. The memorandum was accompanied by a 44-page report detailing the proposed policy and explaining the rationale for it. On March 23, 2018, the President issued a memorandum that revoked his August 2017 memorandum and any other directive he may have made on military service by transgender persons, thereby allowing the Secretaries of Defense and Homeland Security to implement their proposed policy.

5. The proposed 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. 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." *Id.*

6. The Department included this exemption because of its commitment to honor the reasonable expectations of Service members "who were diagnosed with gender dysphoria and either entered or remained in service following the announcement of the Carter policy and the court orders requiring transgender accession and retention" and because of the "substantial

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investment" it has made in them. *Id.* Consistent with these purposes, the 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.

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

Executed on May 18, 2018

STEPHANIE A. BARNA

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20530
Tel: (202) 514-4336

Stenographic Transcript
Before the

COMMITTEE ON
ARMED SERVICES

UNITED STATES SENATE

HEARING TO RECEIVE TESTIMONY ON THE DEPARTMENT OF DEFENSE BUDGET POSTURE IN REVIEW OF THE DEFENSE AUTHORIZATION REQUEST FOR FISCAL YEAR 2019 AND THE FUTURE YEARS DEFENSE PROGRAM

Thursday, April 26, 2018

Washington, D.C.

ALDERSON COURT REPORTING
1155 CONNECTICUT AVENUE, N.W.
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(202) 289-2260
www.aldersonreporting.com

Senator Gillibrand: And a list of all experts you consulted, please.

Secretary Mattis: Pardon?

Senator Gillibrand: I would like a list of all the experts, medical experts, that were consulted for that report, please.

Secretary Mattis: Right now, this is under litigation. I will see what I can provide or when I can provide it. I will do that, Senator.

But at the same time, basically my responsibility is to give the best advice I can for making a lethal force. And I think that right now the Carter policy is still in effect, and we have the four cases being litigated.

Why these issues like this would not come to the service chief level during this was a very, very, I would call it, newsworthy situation. And the reason is that under the Carter policy, the reporting is opaque. We cannot report that a problem emanated from a transgender. We cannot under the Carter policy do that. So the question you have asked the service chiefs and the Chairman are ones that right now the Carter policy prohibited that very information from coming up because it is private information. And it is specifically called out in his policy statement. So it is impossible for them to have responded to you.

And I would just say that right now we look at medical

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

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

DECLARATION OF JANE DOE IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Jane Doe, declare as follows:

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

2. I am a 29-year-old woman, and I am currently serving in the U.S. military.

3. I am also transgender, although I have not yet transitioned to living openly as a woman. Because of the federal government's recently announced policy with respect to transgender service members, I am limiting the information in my testimony to exclude identifying information, for fear that I would be separated from the military on the basis of my transgender status or face other negative consequences.

4. I joined the military to serve my country and for the security and stability that a military career provides. I enjoy the challenge my military career provides, and I take pride in my role in protecting our country and helping others save innocent lives.

5. I desire to continue serving in the military for the maximum number of years I am permitted to do so openly. My re-enlistment window opens within the year.

6. I was assigned the sex of male at birth. However, I have felt since I was 11 years old, and known since I was 20 years old, that I am female. I have long hoped to be able to transition to living openly as a woman, but the prospect of doing so felt unattainable in the past, without a supportive environment in which to transition.

7. On or around June 30, 2016, I became aware that the ban on open military service by transgender individuals had been lifted. I was very excited and nervous about the possibility of serving openly as a woman. In October 2016, I began extensively reviewing the materials the military was releasing to implement the lifting of the ban. In December 2016, I attended my command-level training on the new policy. Around that time, I decided to come out as transgender to select colleagues whom I felt I could trust. I also researched what was required to formally change my gender marker in the military's Defense Enrollment Eligibility Reporting System.

8. I decided to begin my legal and medical transition and begin the process of officially changing my gender marker once I was posted at my next assigned location. I planned to time and structure my transition so that it was as smooth as possible for me and others. I wanted to work carefully with military medical personnel and my Commanding Officer, giving him plenty of time to prepare my unit so that my transition would go smoothly for everyone. I also wanted the other service members at my next assigned location to get to know me as a valuable individual member of the team. I additionally wanted to give myself some time to come out to individuals to whom I could look for support. I transferred to this assigned location in July 2017.

9. On July 26, 2017, President Trump posted three tweets that said that transgender people would not be able to serve in the military "in any capacity." After I saw the President's tweets, I decided to put my plans to transition, come out as transgender, live openly as a woman, and change my gender marker, on hold.

10. Because of this change in policy, I have not come out to anyone in my chain of

command. I am open to a few select individuals with whom I serve, as well as a group of veterans with whom I communicate about my gender identity for support and friendship.

11. I have been extremely anxious and stressed about what to do next. I have placed my life "on hold." I have not come out as transgender to any additional people in my life; I have not pursued any of the steps required for me to transition; and I no longer know if I will be able to continue serving in the military, a career that I love and wish to continue. This is all due to the announced policy banning transgender people like me from serving openly in the military. Because lawsuits regarding the policy are still pending and have not been finally resolved, I remain concerned that the military could ultimately implement a ban on transgender service members. If I were to come out in the interim, then I could lose everything if I were subject to discharge based on my transgender status.

12. Furthermore, I am aware that the President issued a memorandum on August 25, 2017 mandating that the federal government stop providing transition-related surgical care as of March 23, 2018. This ban on surgical care contains a limited exception for situations in which surgical care is "necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex." Because I have not yet transitioned to living openly as female, I have not "begun a course of treatment to reassign [my] sex," even assuming the other conditions for the exception were satisfied.

13. Based on my individual circumstances, I will need surgical care as part of my transition. However, the President's policy prohibits that care. Furthermore, because I have not yet begun my transition, I do not qualify for the limited exception contained in the policy.

14. I am terrified that my career will be brought to an early end because of the President's decision to ban transgender individuals from military service.

15. The ban on open service for transgender military personnel harms my mental and emotional health by causing me to continue living as if I were a man, even though I am a woman, and by indefinitely delaying, if not altogether prohibiting, my medical and legal transition to living openly as female.

16. In short, I am caught between a rock and a hard place. If I transition, I lose my

career and everything that comes with it—including my current income, my benefits, my future employability outside the military, and my identity as a service member. If I do not transition, then I give up the expression of who I am on the most fundamental level and, instead, must continue living as someone that I am not.

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

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 22, 2017

Jane Doe

Jane Doe

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al., *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., *Defendants*.	Case No. 2:17-cv-01297-MJP **DECLARATION OF CONNER CALLAHAN IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Conner Callahan, declare as follows:

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

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

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

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

5. I would like to put my investigative and problem-solving skills to use for the military. In 2014, with the help of a U.S. Air Force recruiter in Kent, Ohio, I identified the

enlisted position I would like to pursue: Explosive Ordnance Disposal ("EOD").

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

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

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

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

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

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

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

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

14. As a 29-year-old man, I have a finite amount of time to enlist in the military. It has been my life's goal and it has been difficult to try to make other plans for my future when

this is so clearly the best path for me. I want to serve my country and have felt immense regret that I have not yet been able to do so based upon illegitimate considerations.

15. However, in reliance upon the preliminary injunction granted by this court, I officially began the process of enlistment to serve in the United States Air Force Reserves on January 5, 2018, by speaking with a national Air Force recruiter by telephone. Should I be successful, enlisting in the Reserves will enable me to retain my primary employment as a Public Safety Officer, in the event the ban is not permanently enjoined.

16. The officer I spoke with at the National Air Force Recruitment office connected me with the closest Air Force Reserves Recruitment office, which is located in Duluth, Georgia. I made an appointment to meet at this office on January 24, 2018, to begin processing my enlistment application.

17. However, on January 16, 2018, I was informed me that I would need to gather approximately ten legal documents in advance of the appointment. These documents include medical releases regarding my medical care, as well as my original birth certificate, social security card, driver's license, high school diploma, college transcript, and copies of any other legal documents.

18. In working to collect these documents, medical staff informed me that it can sometimes take 30 days to receive the paperwork I requested. As a result of this information, my appointment to complete my enlistment application will likely occur in February, allowing me to progress to the next stage of the enlistment process.

19. I am cautiously optimistic that this process will be a smooth one, and that I will be able to fulfill my dream of serving in the Air Force Reserves, although I continue to worry about the climate President Trump has created in the military after July 2017 with respect to transgender service members.

20. I have shared my excitement as well as my trepidation with my friends and loved ones. I hope that I will be able to serve my country, as so many people before me have done, regardless of their race, sexual orientation, or gender. All that I want is to live openly as the man

///

I am and to serve my country with respect and dignity.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 25, 2018

Conner Callahan

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al., *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., *Defendants*.	Case No. 2:17-cv-01297-MJP **DECLARATION OF MEGAN WINTERS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Megan Winters, declare as follows:

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

2. I am a 29-year-old woman, and I live in Alexandria, Virginia.

3. I am a Petty Officer Second Class in the U.S. Navy and am currently stationed at Hopper Information Service Center, in the Office of Naval Intelligence, out of Washington, D.C.

4. I am a member of the American Military Partner Association ("AMPA"), the nation's largest organization of lesbian, gay, bisexual, and transgender ("LGBT") military families and their allies.

5. I have served in the U.S. Navy for approximately five and a half years.

6. I have always been dedicated to the mission of the United States Navy—to

maintain, train and equip combat-ready Naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. During my 5 and a half years of naval service, I have delivered responsive, reliable, and adaptable intelligence mission systems, applications, and services in support of sustained global maritime and joint intelligence operations.

7. I have served one main role within the Navy: Information Systems Technician. I have spent the majority of my career receiving specialized training and provided mission-related information technology and services to the Office of Naval Intelligence, its subordinate commands, the Fleet, and Joint Forces commands. I have performed these duties with honor and precision in support of the Global War on Terrorism.

8. I joined the Navy to serve my country and for the security and stability that a military career provides.

9. I am transgender. I was assigned the sex of male at birth. However, I have known for many years, since approximately 2001, that I am female.

10. After struggling for many years to receive family acceptance, I began to come to terms with accepting and living openly in my gender identity, approximately two years ago. I thereafter started to see a mental health professional who diagnosed me with gender dysphoria.

11. On June 30, 2016, I was working in a server room of a sensitive compartmented information facility and had no access to news or media. I was therefore initially unaware that the ban on open transgender military service had been lifted. Another service member notified me of the change in policy. After leaving work, I verified the news through social media postings and was absolutely ecstatic.

12. I had informed my family that I was transgender immediately prior to the announcement that the transgender ban was lifted, while I was on leave. I realized then that I needed to finally live my true, authentic life, and hoped to do so while continuing my service to my country in the Navy. I began living openly as a woman in July 2016.

13. I began scheduling the necessary medical appointments and phone interviews to acquire the required transition-related paperwork to submit to my Commanding Officer.

14. I am taking medical steps to bring my body into conformity with my female

gender identity. In consultation with my physician, I began hormone therapy in July 2016.

15. I have also taken legal steps to transition. I have legally changed my first and middle names to Megan Dawn. I have also changed my name on my driver's license and social security card and records.

16. I have worked with my chain of command throughout my transition.

17. Since coming out, others have mostly addressed me by female pronouns, which match my gender identity. In general, my peers know and treat me as the woman that I am, though some officers have called me "sir," despite the request to use female pronouns, and despite the custom that "sir' is not used with enlisted service members.

18. The fact that I am transgender has not prevented me from doing my job in the military. I perform a valuable service for the Navy that strengthens military readiness—providing information technology and services that, in turn, allows other service members to do their jobs. Conversely, my exclusion from the military on the basis of my transgender status would weaken military readiness.

19. On July 26, 2017, President Trump posted three tweets that said that transgender people would not be able to serve in the military "in any capacity."

20. When I first saw the President's tweets, I was temporarily assigned to another command with other service members from my office, for additional training in the information systems technology field. I began receiving scores of messages on my phone from individuals that were worried about my safety and the safety of other transgender service members. Bewildered, I excused myself from the class to verify the distressing news.

21. I was overcome with anxiety and emotionally concerned about myself and my fellow transgender members of the military. I felt helpless and hopeless. I began reaching out to my medical providers, my chain of command, and other service members whom I know to be transgender to give and receive words of encouragement. Grappling with fear, anger, and insecurity, I realized the necessity of continuing to support my command's mission. I returned to work for the rest of the day.

22. I have been dismayed and enraged to watch people claiming to be experts

publicly question my capacity—and that of an entire group of people like me—to serve in the military, all based on a characteristic that has no relation to ability. At the most basic level, I have abided by every instruction placed in front of me and my work product, military demeanor, and physical readiness have been of the utmost quality, regardless of my gender identity. Having served in silence for so long, at a great personal cost, it adds insult to injury that my gender identity prevents these uninformed persons from acknowledging that not only do I help accomplish the military's mission, but I do it well.

23. Unfortunately, within a month after the President's tweets, I received a notification from Naval headquarters at Millington that administrative separation proceedings were being initiated against me, with a cited reason relating directly to the fact that I am transgender.

24. Specifically, Naval command notified me that a basis for the separation proceedings was Military Personnel Manual (MILPERSMAN) 1910-120 "Separation By Reason of Convenience of the Government – Physical or Mental Conditions." Of the list of conditions in that policy, the only one that applies to me is "(13) Sexual gender and identity disorders paraphilias." This is a reference to my gender dysphoria diagnosis.

25. I understand that the military now contends the notification of a pending separation or discharge was issued in "error," but it was terrifying to be put in that position.

26. Beginning in July 2016, I followed every order regarding my treatment plan as indicated by Navy medical officers. This treatment plan did not impact my duty status or my operational readiness.

27. I continually provided my chain of command with military medical paperwork which affirmed that my fitness for duty was not affected. To the contrary, my command validated my status as "fit for full duty" and worldwide deployable in May 2017 and again on September 6, 2017.

28. Following the lifting of the ban on open service by transgender military personnel in June of 2016, Navy medical officers created an individualized treatment plan for my gender transition, which I have followed with their continued supervision and guidance.

29. My Medical Treatment Plan for Gender Transition was signed and approved on December 7, 2016, by my then Commanding Officer, Captain Susan Bryerjoyner.

30. The transition plan states that "P02 Winters has received the diagnosis of Gender Dysphoria from a military Behavioral Health provider and a determination that gender transition is medically necessary on 10 June 2016." It also states that "[t]his medical treatment plan is unlikely to impact the readiness and deployability of the Service member."

31. The first step of my treatment plan included the initiation of hormone replacement therapy, pursuing a legal name change, and updating my gender marker in the Defense Enrollment Eligibility Reporting System ("DEERS").

32. As I discussed with Captain Bryerjoyner in 2017, the second step of my treatment includes medically necessary surgical treatment. I do not anticipate that this treatment will take place by March 23, 2018. Because TRICARE does not outright cover these procedures, I am required to submit and have granted a Defense Health Agency ("DHA") waiver in order for TRICARE to consider payment.

33. I submitted a DHA waiver to the TRICARE office at Portsmouth for transition-related surgical care as part of my Navy medical approved treatment plan on August 24, 2017.

34. On the following day, August 25, 2017, the White House released its memo directing the Department of Defense to halt all planned surgical treatment for transgender service members. Since August 25, 2017, I have been attempting to make contact with TRICARE personnel at Portsmouth to determine if my paperwork is still in process or has been rejected. As of this date, the decision to grant or deny my medical waiver is still pending.

35. Serving in the United States Navy truly means everything to me. Growing up as the child of a veteran, the military's core values and creeds have been ingrained into every aspect of my life from a young age. Nothing makes me prouder than being able to hold my head high as I wear the cloth of this country.

36. I live and breathe military service, and have never seen a future for myself without a long and decorated military career. For me, news of the ban felt like the ripping apart of a core aspect of my identity, something as important and sacred as my gender identity. The

deep shame that comes from rejection has caused me immeasurable emotional pain, the scars of which I will carry with me forever.

37. Despite the preliminary injunction, I am living in fear and anxiety that my career may still be in jeopardy because the injunction is not permanent. I understand that it remains possible that the military could, in the future, implement a ban on open transgender service, depending on how the litigation is ultimately resolved.

38. If the ban on open service for transgender military personnel were implemented, it would deprive me of highly specialized educational opportunities that I cannot attain elsewhere. I am honored to serve in the Navy intelligence community, and have received an incredible and costly education in order to do so, but my education must continue in order for me to remain competitive in my field. The Navy provides specialized opportunities that I cannot attain elsewhere.

39. The implementation of the ban on open service for transgender military personnel would rob me of the hard-earned respect I have cultivated with my fellow service members and chain of command. The loss of such respect would not only impact my self-confidence but also my future employability in the private sector, should I in fact be discharged from the military.

40. I have demonstrated professionalism and commitment to serving appropriately in the military by following orders regarding open transgender service. I waited to come out and to pursue the medical treatment I needed until the military deemed it appropriate. I have followed guidance and orders to the letter and am proud to be a disciplined service member in every aspect of my life. I believe these qualities make me a strong asset to the military each day of my service.

41. I disclosed my transgender status and expressed my gender identity openly in reliance upon the open service ban being lifted in the summer of June 2016 and now, despite the preliminary injunction, I cannot shake the feelings of fear, anxiety and betrayal that follow me from day to day.

42. I want to continue to live authentically as a transgender military professional but I remain afraid to speak openly because I may be punished for doing so if the ban is not

permanently enjoined.

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

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 25, 2018

Megan Winters

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

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

DECLARATION OF PHILLIP STEPHENS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Phillip Stephens, declare as follows:

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

2. I am a 30-year-old man, and I live in Crestview, Florida with my wife and daughter.

3. I am a Petty Officer Second Class in the U.S. Navy and am currently stationed out of Eglin Air Force Base, Florida.

4. I am a member of the American Military Partner Association ("AMPA"), the nation's largest organization of lesbian, gay, bisexual, and transgender ("LGBT") military families and their allies.

5. I have served in the U.S. Navy for approximately five and a half years.

6. I have always been dedicated to the mission of the United States Navy—to maintain, train, and equip combat-ready Naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. During my five years of naval service, I have ensured the safety of countless Navy pilots both during active combat and training exercises.

7. I have served one main role within the Navy: Aviation Structural Mechanic. I have worked on the flight deck of an aircraft carrier ensuring Navy aircraft pilots are able to safely eject from their aircraft in the event of an emergency. I have performed this duty with honor and precision both during simulated and active duty scenarios of a deployment to the Persian Gulf.

8. I joined the Navy to serve my country and provide my wife and our young child the security, stability, and benefits that a military career provides.

9. I am transgender. I was assigned the sex of female at birth. However, I have known for many years, since I was a young child, that I am male.

10. I began to come to terms with my gender identity approximately two and a half years ago. I thereafter started to see a mental health professional who diagnosed me with gender dysphoria.

11. On June 30, 2016, I was on deployment in the Persian Gulf and had limited access to news or media and was therefore initially unaware that the ban on open transgender military service had been lifted. My wife sent me a link about the policy and I read the posting on the AMPA Facebook page over and over again, filled with incredible relief and joy.

12. When the transgender ban was lifted, I realized that I could do both the best thing for me and for my wife and child—remain in the Navy and transition. I began living openly as a man in August 2016, as soon as I returned home from deployment.

13. I began scheduling the necessary medical appointments and phone interviews to acquire the required transition-related paperwork to submit to my Commanding Officer.

14. I am taking medical steps to bring my body into conformity with my male gender identity by following my Medical Treatment Plan for Gender Transition. The plan was signed by the Chair of the Transgender Care Team, Melissa D. Hiller Lauby, Ph.D. and sent to

Commanding Officer, VFA-136 in March of 2016.

15. The transition plan states that, "A military behavioral health provider has diagnosed the member with Gender Dysphoria. Consistent with currently accept standards of care, medical transition for Gender Dysphoria is clinically appropriate and medically necessary." The plan also states that I am "psychologically stable and fit for full duty."

16. In consultation with my physician, I began hormone therapy in November 2016, shortly after the Department of Defense released guidance on providing transition-related care to service members. This approved transition plan includes surgical procedures, which it acknowledges "are considered medically necessary," but I do not anticipate that they will take place prior to March 23, 2018. Accordingly, if the ban on transition-related care is implemented, it will bar me from obtaining this medically necessary care.

17. I am also taking legal steps to transition. I will be legally changing my first name to Phillip. I will also be changing my name and gender marker on my driver's license and social security card and records.

18. I have worked with my chain of command throughout my transition, and both they and other enlisted personnel have been supportive of me.

19. Since coming out to my chain of command, other service members have addressed me by male pronouns, which match my gender identity. I have been known, accepted, and treated as the man I am.

20. The fact that I am is transgender has not prevented me from doing my job in the military. I perform a valuable service for the Navy that strengthens military readiness—keeping our nation's aircraft systems safe and operational. Conversely, my exclusion from the military on the basis of my transgender status would weaken military readiness.

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

22. When I first saw the President's tweets, I was at work and started to receive messages from my wife and friends sending me support. Confused, I again checked the AMPA Facebook page, where I learned this devastating news.

23. I was at a complete and utter loss for what to do, but I knew that I could not stay at work. I went home and sat alone in the dark of my living room, trying and failing to shut out the world and this terrifying reality. I juggled my own feelings of anger, fear, and despair, with the unanswerable question of how I would be able to provide solace and support to my family when I myself felt so hopeless.

24. I watched with intermittent rage and shock as White House officials and ignorant people in the media have questioned my capacity to serve in the military, as if I had not already been competently doing so for several years. It adds insult to the injury of living in silence for so long, and it makes a mockery of the sacrifices I make daily at great personal cost to support my family and serve my country.

25. Serving in the United States Navy is everything to me. It makes me profoundly proud to support my wife and our young daughter with my work. I can walk through the world with my head held high, as a proud father, husband, and man.

26. Despite the preliminary injunction, I am living in fear and anxiety that my career may still be in jeopardy because the injunction is not permanent. I understand that it remains possible that the military could, in the future, implement a ban on open transgender service, depending on how the litigation is ultimately resolved. It is painful for me to consider a future without service to my country.

27. I relied upon the lifting of the open service ban for transgender service members before coming out about my transgender status and sharing my true gender identity with my command and colleagues. It would be utterly devastating to have this action, which I took in good faith, used against me to relieve me of my well-established position in the United States Navy.

28. Despite my continued fear and anxiety, I continue to go to work every day and perform my duties with precision and honor, and I will continue to do so up until the minute that the military discharges me.

29. Should the ban on open service for transgender military personnel be implemented, it would deprive me of educational and economic opportunities upon which my

family and I have relied in planning our lives. I cannot afford to attend college without the G.I. Bill, which is another means to bettering myself and ensuring financial security for my wife and child.

30. Implementing the ban on open service for transgender military personnel would also impair my ability to support and comfort my family because I would no longer feel supported by the country to which I have dedicated my life in service.

31. As an African-American man, there was also a time when the military would have treated me differently just because of my race. But the military eliminated racial discrimination—and became stronger because of it. Similarly, allowing transgender individuals like me to serve openly only make the military stronger because it removes an exclusion to service that has no bearing on my ability to do my job.

32. I have engaged in speech and conduct as enlisted Navy service member regarding my gender identity and status as a transgender person. Despite the temporary halting of the ban, I remain fearful for my ability to continue to do so without retribution or punishment given that the litigation has not yet been ultimately resolved.

33. Being able to serve openly as a transgender man enables me to continue to serve as a productive member of my shop team, without the distress that would otherwise accompany untreated gender dysphoria. Coming out to my fellow service members and commanding officers helped us form stronger, more honest working relationships, and deepened our trust of one another, which is of serious import in the high stakes and stressful environment in which we serve.

34. If permitted to do so, I would re-enlist in the military by my re-enlistment deadline of October 10, 2018, before the expiration of my term of service in 2019. Indeed, I would, if I could, serve honorably in the military until the age of retirement.

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

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 25, 2018

Phillip Stephens

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al., *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., *Defendants*.	Case No. 2:17-cv-01297-MJP **DECLARATION OF TERECE LEWIS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Terece Lewis, do hereby state as follows:

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

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

3. I am a Petty Officer First Class in the U.S. Navy and am currently stationed at Naval Base Kitsap in Bremerton, Washington on the U.S.S. John C. Stennis.

4. I have served in the U.S. Navy for approximately fourteen and a half years.

5. I have always been dedicated to the mission of the United States Navy—to maintain, train, and equip America's combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. During my over fourteen years of

naval service, I have defended oil platforms in the Arabian Gulf, boarded vessels and seized tons of cocaine in route to the United States from South America, protected shipping lanes off the coast of Africa from Somali pirates, and defended freedom of navigation in the South China Sea. In 2009 and 2011, I served in Operation Enduring Freedom, which is the name for the U.S. government's Global War on Terrorism between 2001 and 2014.

6. Over the past fourteen and a half years, I have served in a variety of roles within the Navy. I have worked as a mechanic, as both an Engineman and Machinists Mate. I currently serve in the latter role, which involves marine mechanics work and the maintenance and repair of auxiliary systems. I have worked on the flight deck of an aircraft carrier ensuring mail and critical parts get to their proper destination. I have been the public affairs officer for a major shore command. I have been a career counselor advising Sailors of their career options. I have stood watch as naval security forces ensure the safety and security of valuable government assets.

7. I have received awards and decorations for my service including five Navy and Marine Corps Achievement Medals, four Good Conduct Medals, a National Defense Service Medal, a Global War on Terror Expeditionary Medal, Rifle Marksmanship Expert Medal, and a Coast Guard Special Operations Service Ribbon.

8. I have continued to serve because of my commitment to my country and to my family. In addition, my son was born with multiple medical complications that now require constant care from physical therapists and medical staff, which has been covered by TRICARE, the military's health care program. My choice to reenlist, near the close of my previous term of service, ensured that my son has the proper medical care and physical therapy necessary to prosper. I am currently the sole provider for my household.

9. I am transgender. I was assigned the sex of male at birth. However, I have known for many years, since approximately early 2013, that I am female.

10. I began to come to terms with my gender identity approximately three years ago. I thereafter started to see a mental health professional who diagnosed me with gender dysphoria.

11. When the ban on open service by transgender service members was lifted in June

2016, I decided to remain in the Navy and transition, which was the best course of action for both me and my family. In late 2016, I began taking the steps necessary with my chain of command to lay the groundwork for my transition.

12. I began living openly as a woman in late 2016.

13. I am taking medical steps to bring my body into conformity with my female gender identity. In consultation with my physician, I began hormone therapy on July 25, 2017, one day before President Trump released the transgender military ban by tweet, which has given me a much more typically feminine appearance.

14. I have taken legal steps to transition. I legally changed my first name to Terece, which is reflected on my driver's license, social security card, and all other personal records.

15. I have worked with my chain of command throughout my transition. I have found a tremendous amount of support from both them and my enlisted peers and they have become a crucial part of my personal support network during my transition.

16. My military medical transition plan, as designed by the Navy Medicine West Transgender Care Team, specifically by Dr. Melissa Hiller Lauby, was approved on or around March 1, 2017. That plan states that "[c]onsistent with currently accepted standards of care, medical transition for Gender Dysphoria is clinically appropriate and medically necessary." The plan further confirms that I am "psychologically stable and fit for full duty."

17. In addition to hormone therapy, my transition plan also includes transition-related surgeries that cannot be performed until after March 2018. According to the plan, "[t]hese surgical procedures are considered medically necessary." However, I am not medically eligible for these procedures until I have received hormone therapy for at least 12 months.

18. The fact that I am is transgender has not prevented me from doing my job in the military. I perform a valuable service for the Navy that strengthens military readiness. Conversely, my exclusion from the military on the basis of my transgender status would weaken military readiness.

19. I was blindsided by President Trump's announcement that he would be banning transgender people like me from serving in the military.

20. Particularly in light of the steps that the military had taken to lift the ban against open service, I feel as though I was lured out with the promise that I would have a safe environment in which to transition, while continuing to carry out my duties and responsibilities in the Navy. Now, with no warning, I am facing a new regime that says I have no place in the military, the institution for which I have sacrificed and served for the entirety of my adult life.

21. I am distressed and appalled by the aspersions cast by White House officials about my ability to serve in the military. I lived in silence for several years and it was very upsetting to have to sit on the sidelines and have people in power and in the media talk about transgender people as if we are unfit to serve even though we are able and willing to put our lives on the line for our country.

22. The White House memorandum implementing the ban solidified my fear that I will be presumptively deemed ineligible to serve based solely on my transgender status. It has caused me to feel like my future and my ability to provide for my family is now on quicksand. The fear of being unable to provide for my child and care for his medical needs eats away at me constantly. Due to my son's medical conditions, he has several appointments throughout the week, nearly every day. No parent should feel as helpless as I have felt in protecting and providing for my child.

23. Still, I continue to perform my duties with honor, doing everything that is expected of me.

24. I feel a profound sense of rejection and betrayal. I face the loss of everything I have worked so hard to achieve—the loss of my career, a critical part of my moral support network, the ability to support my family, and the health insurance on which my family depends—not based on my service or aptitude, but rather based on prejudice, ignorance, lies, and politics.

25. Being able to serve openly as a transgender woman has makes me a stronger asset for the military. I am able to function as a productive, healthy member of the military, without the distress that would otherwise accompany untreated gender dysphoria, and I am able to forge stronger relationships with others in my unit, without having to pretend to live as someone who I

am not. Being transgender has not negatively impacted the ability for members of my unit to work together to accomplish our tasks. All of us come from different backgrounds—from how we were raised, to the religion we practice, to the political beliefs we hold—but we are able to put those things aside, come together as a team, and focus on the work that needs to be done, as the military has trained us to do.

26. If permitted to do so, I would re-enlist in the military following the expiration of my term of service. Indeed, I would, if I could, serve honorably in the military until the age of retirement.

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

28. All that I want is to live openly as the woman I am and to be treated with respect and dignity by the military.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 22, 2018



Terece Lewis

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

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

DECLARATION OF LINDSEY MULLER IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Lindsey Muller, declare as follows:

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

2. I am a 36-year-old woman, and I live in Pyeongtaek, South Korea with my wife, who is a veteran of the Marine Corps.

3. I am a Chief Warrant Officer Three in the U.S. Army and am currently stationed at U.S. Army Garrison Humphreys Army Base in Pyeongtaek, South Korea.

4. I enlisted in the U.S. Army in 2000. I have been serving for more than seventeen years.

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

NEWMAN DU WORS LLP
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Seattle, Washington 98121
(206) 274-2800

6. I chose the military as a career path for the opportunities that it can provide and in fact has provided me. I grew up in a very low-income household in Poplar Buff, Missouri where the only job opportunities were in agriculture and factories that did not provide much opportunity for upward mobility. I wanted specialized education and training, but college was not an option for me because of the expense. I also wanted to elevate myself economically and see more of the world. These goals, together with my strong sense of patriotism, led me to meet with a military recruiter and to enlist in the Army. I have stood shoulder to shoulder with fellow soldiers in combat and have been there to collect their remains after hostile engagements with enemy forces. I genuinely love and am proud of what I do.

7. My military occupation specialty is AH-64D Apache Longbow Attack Helicopter Pilot/Aviator within the Army and I currently perform duties as a Battalion Aviation Safety Officer. Currently, my duties involve providing combat support and combat service support to various echelons of commands up to the division level, including one headquarters support company, one distribution company, one Aviation Intermediate Maintenance company, and one signal company. I am the principle advisor to Company and Battalion level Commanders on all aviation and ground related safety matters. I protect more than 1,100 Soldiers and their families and over 300 vehicles and rolling stock valued at over $70 million. I am responsible for managing the Battalion Commander's Safety Program and developing safety policies, safety goals, mission objectives, priorities, and integrating them into daily operations. I also assist Commanders with quarterly Command Safety Councils, develop risk assessments, and mitigate risks to ensure a safe and effective Aviation Support Battalion.

8. Before my current role, I performed duties as a Team Leader, Squad Leader, Army Recruiter, Instructor/Writer, Proponent Chief, Pilot in Command, and Air Mission Commander.

9. I served in Operation Iraqi Freedom, Operation Enduring Freedom, and multiple assignments to the Republic of Korea.

10. I have extensive training. My military and civilian education include the Army

Combat Communications Course, Expert Infantry Badge; Combat Infantry Badge; Master Breacher Demolition Course; Master Driver Trainer Course; Air Assault Badge; U.S. Army Recruiting School; Advanced Leaders Course; Army Family Team Building Instructor (Levels I, II, III); Survival, Evasion, Resistance & Escape School (SERE B – C/High Risk); U.S. Army Warrant Officer Course; Aviation WOBC, Aviation Life Support Equipment Course; AH-64D Longbow Apache Qualification Course; Aviation Safety Officer Course; Commander's Safety Course; Aircraft Mishap Investigation Course; Foundation Instructor Facilitator Course; Small Group Instructor Training Course; OSHA Standards for General Inspector; and Federal Aviation Administration Commercial Pilot.

11. The military has invested significant resources in training me. Based on my previous experience as a flight instructor, I understand that the military has invested approximately $1.5 million in the training associated with my specific aircraft skillset alone. My skills make me a highly valued member of the military.

12. My performance has been consistently recognized throughout my time in military service. My awards and decorations include the Army Commendation Medal 2 oak leaf clusters (2 OLC), Army Achievement Medal (2 OLC), Valorous Unit Award, Meritorious Unit Award, Army Superior Unit Award, Army Good Conduct Medal (2nd award), National Defense Service Medal, Iraq Campaign Medal Campaign Star, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, Non-Commissioned Officer Professional Development Ribbon (2nd award), Army Service Ribbon, Overseas Service Ribbon (2nd award), , Expert Infantry Badge, Combat Infantry Badge, Army Aviator Badge, and Air Assault Badge. Additionally I served for a time as an Army Recruiter and earned every recognition achievable for that position including: three gold achievement stars for my Basic Recruiter Bade, the Gold Recruiter Bade with three sapphire achievement stars, the Army Recruiter Ring, and the Glenn. E. Morrell Medallion.

13. If I could, I would continue serving in the army as long as I am physically able to do so. I have served more than fifty percent of my life in military uniform, serving the citizens

of the Unites States of America and desperately wish to continue to do so.

14. I am transgender. I was assigned the sex of male at birth. I have known for more than thirteen years that I am female.

15. I began to come to terms with my gender identity approximately six years ago. At that time, I started to see a mental health professional who diagnosed me with gender dysphoria.

16. I began living openly as a woman in 2014.

17. In consultation with health care professionals, I have taken clinically appropriate steps to transition, and I have further transition-related health care needs—including medically necessary surgical treatment.

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

19. I came out in the military as transgender in 2014, my commander was incredibly supportive. In fact, every person within my chain of command was supportive of my transition and asked me to stay on in the military even though I had offered to resign, in light of the then-existing bar against open service. Additionally, other enlisted personnel have been supportive of me throughout my transition process. Being transgender has not negatively impacted the ability for members of my unit to work together to accomplish our tasks. In fact serving openly has actually had a positive effect allowing me to be open with my gender identity and inspire others by leading by example.

20. Despite the fact that my command was supportive of my transition, I was temporarily medically grounded, meaning that I could not pilot a military aircraft, because of my transition. I was told that I was grounded for two reasons: (1) because I was on hormone replacement therapy and (2) because I intended to transition. Under the guidance in 2014, I was deemed administratively unfit to fly because I wanted to pursue transition.

21. Since then, I have pursued a waiver in order to perform full flight duties. I have also been cleared by four aeromedical psychologists as competent to perform full flight duties.

Because I have not yet had surgeries I require as part of my transition, I take a testosterone blocker, which has been cited as a reason for my grounding. It is my understanding by the guidance provided by five flight surgeons that non-transgender people on hormone replacement therapy routinely receive waivers to qualify to fly.

22. If I were permitted to complete the course of treatment that is part of my transition plan, including required surgeries, then I would no longer be required to take spironolactone and would therefore no longer need of a waiver to fly.

23. The fact that I am transgender has not prevented me from doing my job as Aviation Safety Officer nor has my gender identity prevented others from doing their jobs in the military. I perform valuable services for the Army, and my performance of those duties strengthen our nation's military readiness. In fact, in a recent evaluation, my Brigade Commander noted that I am the best Battalion Safety Officer within the Brigade and am, in his view, one of the top 25% of all Warrant Officers within the Brigade. Within the review he recommended me for promotion.

24. Being able to serve openly as a transgender woman has made me a stronger asset to the military. I am able to function as a productive, healthy member of the military, and I am able to forge stronger relationships with others in my unit. Additionally, my openness as a senior leader has given other service members the confidence that they need to seek mental health care without fear of reprisal. When members who are in need of mental health service seek that care, that improves readiness because it reduces suicidality, reduces instability in the unit, and therefore, reduces the number of members who could be found unfit to serve based on untreated mental health issues.

25. On June 30, 2016, Secretary of Defense Ash Carter announced a new military-wide policy lifting the ban on transgender service. This change in policy permitted other people, similarly situated to me, to come out and serve openly as transgender members of the military without fear of forced separation based on their transgender status. When the ban was lifted, I felt a great weight lifted from my shoulders. I also considered the new inclusive policy from my

perspective as an officer; I immediately wanted to know what regulatory changes would be implemented to support the medical and legal needs of transgender service members. I believe that the policies and protocols implemented over the last year or so have provided support to both openly serving transgender members and to their commanding officers.

26. On October 1, 2016, the DoD issued instructions for implementing the new inclusive policy. Among the provisions were procedures for how transgender service members may transition, for medical treatment, and for changing a service member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS).

27. In February 2017, I changed my gender marker in DEERS. Since that time, I have followed female standards for dress, grooming, and physical fitness.

28. Over the last year or so, the DoD has been implementing the new inclusive policy, including through transgender-specific trainings. I have assisted in the provision of these trainings to fellow service members and to dozens of command teams. All told, I have reached hundreds of service members and I know that my voice, as coming from a Senior Chief Warrant Officer, has helped to alleviate concerns of members in command positions because I perceive issues that could affect military readiness through the lens of an officer.

29. On July 26, 2017, President Trump posted three tweets that indicated a shift in policy towards open service by transgender military members.

30. Since the tweeted policy change and the memorandum directing a ban on service by openly transgender service members were released, I have felt like the rug has been pulled out from under me and my anxiety has been extremely high. Knowing that my Commander-in-Chief and his military advisors view my service as a burden has utterly crippled my morale. It was a devastating blow that wounded me more than any combat injury could, because this discriminatory policy cuts to the core of *who I am*. I feel that my career is being destroyed by discrimination and prejudice.

31. It has been difficult for me to go to work thinking that I am viewed as an inconvenience, in spite of the recognition and awards I have received for my work. It is

challenging to perform to standards when I am afraid of losing my job at any moment. I cannot express how hurt I am by this policy—it is sending a public message denouncing thousands of loyal soldiers and dedicated professionals, who have proven their competence time and time again, many through multiple tours of duty throughout fifteen years of military conflict.

32. Because of the change in policy, I faced anxiety attacks, but seeking help for this issue places me in a difficult position of potentially facing a medical evaluation board regarding my fitness to serve as an aviator. Nonetheless, I requested anxiety medication from my doctor after the President posted the tweets because my interpretation was that I was being fired after more than seventeen years of honorable service. Additionally, I have a family and my healthcare, pension, and retirement benefits are now all in jeopardy.

33. My wife and I are struggling to come to grips with all the consequences of losing my career and benefits. My wife also is transgender as well as a Veteran of the Marine Corps. We are in constant fear that we will lose many protections that shield us from discrimination within the military system.

34. My wife and I both rely on TriCare for all of our medical needs. Upon my separation from the Army, we would lose access to our health care, which would be incredibly stressful.

35. My primary care physician has determined that it is medically necessary for my transition plan that I receive genital surgical treatment. In early July, my doctor was arranging the date for the surgery with a visiting military urologist. However, just days after President Trump's announcement of the change in policy through Twitter, all efforts to arrange the surgery were called off and following attempts to reschedule were denied.

36. Had the policy towards inclusive transgender service and provision of medically necessary transition-related care not been reversed, I would have received genital surgical treatment. After I receive that treatment, I will no longer need to take a testosterone blocker. Therefore, I would no longer need a waiver to fly and may return to my full flight duties. This would enhance my unit's military readiness because we would have additional attack aviation

capacity.

37. Military medical staff have developed a treatment timeline for my transition, which contemplates surgical treatment among other medical care. My commanding officer, Lieutenant Colonel Jonathan Easley, has reviewed that timeline and stated in a memorandum dated December 8, 2017 that he "[saw] no reason it should conflict with military necessity or current unit requirements." I am currently in the process of pursuing surgical treatment.

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

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 23, 2017

Lindsey R. Muller

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants.

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

DECLARATION OF D.L. IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, D.L., declare as follows:

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

2. I am a 17 year-old man and I live in Corpus Christi, Texas. I recently graduated from high school.

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

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

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

5. I understand that the requirements for transgender people to join the military have changed over time, including as a result of developments in this case, although I have been ready and willing to join the military, as I can join at 17 years of age with parental consent. My mother and next friend, Laura Garza, supports me in my decision. Based on the requirements currently in place, it is my understanding that I need to wait until 18 months after medical treatment associated with gender transition to join the military. Although I do not yet meet that 18-month requirement, I continue to prepare and do what I can in order to join once I meet this requirement.

6. In preparation for enlistment, I began communicating with an Air Force recruiter in early July 2017. When I disclosed to the recruiter that I am transgender, the recruiter stopped communicating with me. Given recent developments in this case, I intend to resume communications with Air Force recruiters and express my ongoing commitment and desire to join the military as soon as I meet the requirements above.

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

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

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

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

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

> 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

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

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

14. I had put all my energy and focus into joining the military. I was planning to enlist upon graduation from high school, if not for being barred from doing so, and I still plan to enlist when I meet the current requirements. I have not made other plans. I was counting on pursuing a military career, and still feel called to do so. The President's decision to ban people

like me from the military feels like someone pulled the rug out from under me. It has caused me tremendous stress and difficulty.

15. I want to be able to join the military as soon as possible. Any delays will hurt my long-term career possibilities. It also makes it incredibly hard for me to plan my life, not knowing if I will be able to join the military when I meet the requirements. My peers can all pick out their future careers, and then pursue that career, but I cannot do that. Plus, the military will lose out on a capable, committed, and ready service member. I know there are many people like myself who would add strength to our military and serve honorably if we were only given the chance. We should be able to do so, and should judged like everyone else – based on our abilities – and not our personal traits such as our gender identity.

16. If not for the President's tweets and ban on open service by transgender individuals, I would seek to enlist. I am ready and able to begin pursuing my career in the military and do not want to be prevented any longer. As noted above, when I meet the current requirements to enlist, I intend to do so, and I hope that I will not be denied this opportunity merely because I am a transgender man.

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

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 22, 2018

D.L

D.L.

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al., *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., *Defendants*.	Case No. 2:17-cv-01297-MJP **DECLARATION OF CATHRINE SCHMID IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, CATHRINE SCHMID, declare as follows:

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

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

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

4. I enlisted in the U.S. Army in 2005. I have been serving for nearly thirteen years.

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

6. I was exposed to military life at an early age. My father served in the military when I was a child. I have always been a patriotic American with a desire to serve others and

was drawn to opportunities presented by serving in the Army. I am proud to put on my uniform each day and serve my country.

7. My military occupation specialty is Signals Intelligence Analyst within the Army and I currently perform duties as Multifunction Team Leader. Before my current role, I performed duties as a Signals Intelligence Analyst, All-Source Analysis System Master Analyst, Human Intelligence Collector, and Counterintelligence Agent.

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

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

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

11. In consultation with health care professionals, I have taken clinically appropriate steps to transition. I also have further transition-related health care needs, including medically necessary surgical treatment, which is currently scheduled for April 2018.

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

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

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

15. I have received awards and decorations for my service including a Joint Service Commendation Medal, two Army Commendation Medals, two Joint Service Achievement Medals, an Army Achievement Medal, a Joint Meritorious Unit Award, an Army Superior Unit Award, four Army Good Conduct Medals, a National Defense Service Medal, a Korean Service

Medal, a Global War on Terrorism Service Medal, two Non-Commissioned Officer Professional Development Ribbons, an Army Service Ribbon, two Overseas Service Ribbons, a Marksmanship Qualification Badge-Expert with Rifle, and a Marksmanship Qualification Badge-Sharpshooter with Pistol.

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

17. Being able to serve openly as a transgender woman has made me a stronger asset to the military. I am able to function as a productive, healthy member of the military, and I am able to forge stronger relationships with others in my unit. Comradery is an absolute necessity in any unit and honesty is the single most important factor in cohesiveness. If members of the unit can be honest with each other, then they can trust each other. Now that I can be open about who I am, I have noticed that others are more open about themselves in my presence because they can perceive my trust in them. Being transgender has not negatively impacted the ability for members of my unit to work together to accomplish our tasks.

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

19. On October 1, 2016, the DoD issued instructions for implementing the new inclusive policy. Among the provisions were procedures for how transgender service members may transition, for medical treatment, and for changing a service member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS).

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

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

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

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

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

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

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

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

28. My military career has already been harmed because of discrimination on the

basis of my transgender status. In June 2017, I submitted an application to become an Army warrant officer, which my commanding officers had encouraged me to do. A warrant officer is a highly specialized expert and trainer in a technical area such as aviation, military police, or, in my case, intelligence.

29. Unless enjoined, the military's accessions bar would not only exclude transgender individuals from enlistment but also from becoming officers, even where an individual is already serving in the military. I was informed in writing in July 2017 by Human Resources Command G3 Special Programs Office at Army Recruiting Command Headquarters that my application was placed on hold, and thus was not being considered further at the time, because of the accessions bar.

30. I was therefore deprived of an equal opportunity to become a warrant officer solely because I am transgender. Although the accessions ban has now been preliminarily enjoined, it prevented me from advancing in my career in a timely manner and foreclosed future opportunities only open to warrant officers. It prevented me from applying my skillset to positively influence the military in a more impactful way than my current position allows. I know that I could better serve the Army as a warrant officer.

31. An enlisted service member must apply to be a Warrant Officer within the first twelve years of their service. I reached twelve years of service in February 2017. I submitted a waiver request with my application in June 2017. Since the preliminary injunction was issued, my waiver request was approved.

32. My Warrant Officer packet is now at the juncture in the application process where it will go before the Warrant Officer Selection Board.

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

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expressing my gender identity.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January _22_, 2017

Cathrine Schmid

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al., *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., *Defendants*.	Case No. 2:17-cv-01297-MJP **DECLARATION OF RYAN KARNOSKI IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Ryan Karnoski, declare as follows:

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

2. I am a 23-year-old man and I live in Seattle, Washington with my wife. I am currently registered with the Selective Service.

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

4. I am a mental health clinician in Seattle, Washington, and I would like to put my social work skills to use for the military. Social work is an area for which there can be significant need in the military, including in the Army and the Navy.

5. I hold a Masters in Social Work from the University of Washington School of Social Work's Child Welfare Training Advancement Program. Given that I hold a master's

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

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

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

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

9. I began living openly as male in 2014.

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

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

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

13. On June 30, 2016 Secretary of Defense Ash Carter announced a new policy that lifted the ban on current transgender service.

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

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

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

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

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

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

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

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

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

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

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

22. I intend to join the military, although I also want to be reasonably certain that I would not be at risk of discharge for being transgender before I do so. I understand that it remains possible that the military could nonetheless discharge transgender service members in the future, depending on the ultimate outcome of litigation. Because joining the military involves significant sacrifice, such as potentially foregoing stable employment and relocating, I want to be sure the rug will not be pulled out from under me again.

23. In addition, the precise path I take to join the military depends on the outcome of my application to a PhD program at UC Berkeley's School of Social Welfare. If accepted into the program, which would begin in the fall, I would likely pursue the Army or Navy Reserve or the National Guard, which would allow me to pursue my degree at the same time. If not, I would likely seek commission into the military for active duty.

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

25. All that I want is to live openly as the man I am and to be treated with respect and

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dignity by the military.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: January 20, 2017

Ryan Karnoski

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al., Plaintiffs, v. DONALD TRUMP, in his official capacity as President of the United States; the UNITED STATES OF AMERICA; JAMES N. MATTIS, in his official capacity as Secretary of Defense; and the UNITED STATES DEPARTMENT OF DEFENSE, Defendants.	Case No: 2:17-cv-1297 DECLARATION OF DAVID POSTMAN IN SUPPORT OF WASHINGTON STATE'S MOTION TO INTERVENE

Pursuant to 28 U.S.C. § 1746(2), I, DAVID POSTMAN, hereby declare as follows:

1. I am over 18 years of age, have personal knowledge of the facts set forth in this declaration and am competent to testify about them.

2. I am the Chief of Staff for Washington State Governor Jay Inslee and have served as such since December 14, 2015. Prior to becoming Chief of Staff, I served as Governor Inslee's Executive Director of Communications from 2013 to 2015.

3. As Chief of Staff for the Governor, I oversee all operations of state government under the purview of the Governor. This includes, but is not limited to, management of the Governor's policy, legal, communications and legislative staff, as well as primary supervision of the

Governor's cabinet, including the Military Department. As Chief of Staff, I serve as the Governor's primary advisor and ensure that his priorities and policy directions are carried out by state agencies.

4. The Governor is the chief executive of the State. The Governor is responsible for overseeing the operations of the State and ensuring the faithful execution of its laws, including but not limited to the Washington Law Against Discrimination, which, among other things, prohibits discrimination based on gender or sexual orientation in employment. Chapter 49.60 RCW.

5. The Governor sets policy and priorities to protect both the physical and economic well-being of the State and its residents. The Governor implements these policies and priorities with the assistance of department and agency heads.

6. As chief executive of the State, the Governor is responsible for protecting Washingtonians in emergencies and disasters. The Washington National Guard is an integral part of Washington's emergency preparedness and disaster recovery planning as well as a member of Washington's militia. Wash. Rev. Code § 38.04.030.

7. As commander-in-chief, the Governor has the authority to deploy the Washington National Guard to respond to emergencies and disasters in order to safeguard lives, property, and the economy of Washington State by providing in-state disaster recovery and assistance. Wash. Rev. Code § § 38.08.020, 38.08.040. When the Governor deploys the Guard for in-state service, such activation is called State Active Duty.

8. Currently, there are more than 8,000 citizen soldiers and airmen in the Washington National Guard. Since 2007, the Guard has been deployed eight times intrastate to fight forest fires, battle flooding, and provide rescue services to communities devastated by landslides.

9. When the Governor deploys the Washington National Guard for emergencies that occur in State, the State pays Guard members for their service. When the Guard is on State Active

Duty, Guard members are paid with State funds at the same rate of pay for their rank or grade as their active duty counterparts. The State also ensures that all costs and expenses incurred by the Guard during State Active Duty are paid. The State also maintains records to ensure that accurate accounting records are kept.

10. Between 2007 and September 2017, the Governor has deployed the Washington National Guard eight times to respond to emergencies in Washington State. The State has paid the below amounts for these State duty activations:

YEAR	DEPLOYMENT	ACTIVATED WASHINGTON NAT'L GUARD MEMBERS	NG STATE ACTIVE DUTY EXPENDITURE
2007-2008	Flooding – Western Washington	480	$272,232.00
2009	Flooding - Thurston and Pierce Counties	340	$401,775.00
2012	Taylor Bridge Fire Complex	15	$396,410.00
2014	SR530 Landslide (Oso Mudslide)	700	$1,969,570.00
2014	Wildfire Support	800	$4,969,045.00
2015	Wildfire Support	1500	$8,058,795.00
2017	March Flooding Eastern WA	41	$59,526.00
2017	Sep 2017 Wildfire Activation (Note - includes the total for all fires)	356	Currently mobilized and costs not available yet
		4,232	

11. To ensure that Guard members have the appropriate knowledge, tools, and training when utilized in wildfire response, Washington State annually spends $392,000 to fund a special Fire Land training.

12. Although the federal government primarily funds the Washington National Guard and its operations, Washington State is responsible for funding the following three full-time positions: Adjutant General and two Assistant Adjutant Generals. The salary and benefits cost per year for these three positions is $605,615.00.

13. Washington State also provides $2,795,512 per year to maintain the buildings utilized by the Washington National Guard. This amount equals 25% of the funding necessary to keep the buildings operational.

14. In 2016, the Department of Defense ("DoD") directed that members who openly identified as transgender would be permitted to join and serve openly in the military. The Washington National Guard conducted training on this policy and was prepared to implement it on its effective date of July 1, 2017.

15. On June 30, 2017, the DoD issued a directive delaying accession by openly transgender individuals to the military, including the Guard, until January 1, 2018.

16. The Washington National Guard currently has one soldier that identifies as transgender. This individual has not taken steps to change their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS). Due to this soldier's gender transition, the soldier desired to leave the Washington National Guard, and with the Washington National Guard's approval, this soldier voluntarily agreed to assume inactive status until the soldier's term of service expired. This member entered service on March 7, 2012 and is currently in an inactive status approaching their military Expiration of Term of Service (ETS) on March 6, 2018, which means that their military service obligation is complete.

Executed September 22, 2017 in Olympia, Washington.

DAVID POSTMAN
Chief of Staff for the Governor of Washington State

APPEAL,PROTO

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:17-cv-01297-MJP

Karnoski et al v. Trump et al
Assigned to: Judge Marsha J. Pechman
Case in other court: 9th Circuit Court of Appeals, 17-36009
9th Circuit Court of Appeals, 18-35347
Cause: 28:451 Employment Discrimination

Date Filed: 08/28/2017
Jury Demand: None
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
08/28/2017	1	COMPLAINT against All Defendants (Receipt # 0981-4994679) Attorney Derek Alan Newman added to party Laura Garza(pty:pla), Attorney Derek Alan Newman added to party Gender Justice League(pty:pla), Attorney Derek Alan Newman added to party Human Rights Campaign(pty:pla), Attorney Derek Alan Newman added to party Ryan Karnoski(pty:pla), Attorney Derek Alan Newman added to party Cathrine Schmid(pty:pla), filed by Laura Garza, Cathrine Schmid, Human Rights Campaign, Ryan Karnoski, Gender Justice League. (Attachments: # 1 Civil Cover Sheet, # 2 Summons)(Newman, Derek) (Entered: 08/28/2017)
08/28/2017	2	CORPORATE DISCLOSURE STATEMENT Filed pursuant to Fed.R.Civ.P 7.1. Filed by Human Rights Campaign (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	3	CORPORATE DISCLOSURE STATEMENT Filed pursuant to Fed.R.Civ.P 7.1. Filed by Gender Justice League (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	4	APPLICATION OF ATTORNEY Jon W. Davidson FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4995239 (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	5	APPLICATION OF ATTORNEY Jordan M. Heinz FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4995279 (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	6	APPLICATION OF ATTORNEY James F. Hurst FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4995289 (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	7	APPLICATION OF ATTORNEY Kara N. Ingelhart FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Laura Garza, Gender Justice League,

		Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4995299 (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	8	APPLICATION OF ATTORNEY Natalie Nardecchia FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4995304 (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	9	APPLICATION OF ATTORNEY Peter E. Perkowski FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4995318 (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	10	APPLICATION OF ATTORNEY Peter C. Renn FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4995325 (Newman, Derek) (Entered: 08/28/2017)
08/28/2017	11	ORDER re 4 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Jon W Davidson for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) Modified on 8/28/2017 (DS). (Entered: 08/28/2017)
08/28/2017	12	ORDER re 5 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Jordan M Heinz for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) Modified on 8/28/2017 (DS). (Entered: 08/28/2017)
08/28/2017	13	ORDER re 6 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney James F. Hurst for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017	14	

		NOTICE of Appearance by attorney Tara Borelli on behalf of Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid. (Borelli, Tara) (Entered: 08/28/2017)
08/28/2017	15	ORDER re 7 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Kara N. Ingelhart for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017	16	ORDER re 8 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Natalie Nardecchia for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017	17	ORDER re 9 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Peter E Perkowski for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017	18	ORDER re 10 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Peter C Renn for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski,and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017		Judge James L. Robart added. (RE) (Entered: 08/28/2017)
08/28/2017		**NOTICE TO FILER: SUMMONS FORM INCOMPLETE - DEFENDANT ADDRESS BLOCK LEFT BLANK:**The block for

		defendants name and address is blank. The block must contain at a minimum the defendants name. Please re-post your corrected summons(es) using the event Praecipe For A Summons under Other Documents. All summons(es) should be posted under this one event. Thank you. (RE) (Entered: 08/28/2017)
08/28/2017	19	PRAECIPE TO ISSUE SUMMONS by Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Attachments: # 1 Summons, # 2 Summons, # 3 Summons, # 4 Summons) (Newman, Derek) (Entered: 08/28/2017)
08/29/2017	20	Summons(es) electronically issued as to defendant(s) James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Summons-US Attorney Hayes, # 2 Summons-US Attorney-Sessions, # 3 Summons-Mattis, # 4 Summons-Department of Defense)(RE) (Entered: 08/29/2017)
08/29/2017	21	APPLICATION OF ATTORNEY Carl Charles FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4997512 (Newman, Derek) (Entered: 08/29/2017)
08/29/2017	22	APPLICATION OF ATTORNEY Sasha J. Buchert FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4997569 (Newman, Derek) (Entered: 08/29/2017)
08/29/2017	23	APPLICATION OF ATTORNEY Camilla B. Taylor FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4997580 (Newman, Derek) (Entered: 08/29/2017)
08/30/2017	24	ORDER re 21 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Carl Charles for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/30/2017)
08/30/2017	25	ORDER re 22 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Sasha J Buchert for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/30/2017)

08/30/2017	26	ORDER re 23 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Camilla B Taylor for Plaitiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski and Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/30/2017)
09/01/2017		Case Reassigned to Judge Marsha J. Pechman. Judge James L. Robart no longer assigned to the case. All future pleadings shall bear Case No. C17-1297MJP. (AD) (Entered: 09/01/2017)
09/06/2017	27	NOTICE of Pendency of Other Action in District of Columbia, District of Maryland, Central District of California, case number in other court 17-cv-1597-CKK, 1:17-cv-02459-MJG, 17-cv-6516 ; filed by Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid. (Newman, Derek) (Entered: 09/06/2017)
09/14/2017	28	AFFIDAVIT of Service of Summons and Complaint on United States Department of Defense by serving Denise Shellman, Paralegal, authorized to accept service on 8/30/2017, filed by Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid. (Newman, Derek) (Entered: 09/14/2017)
09/14/2017	29	AFFIDAVIT of Service of Summons and Complaint on James N. Mattis, in his official capacity as Secretary of Defense, by serving Denise Shellman, Paralegal, authorized to accept service on 8/30/2017, filed by Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid. (Newman, Derek) (Entered: 09/14/2017)
09/14/2017	30	AMENDED COMPLAINT against All Defendants Attorney Samantha Everett added to party D.L.(pty:pla), Attorney Samantha Everett added to party Laura Garza(pty:pla), Attorney Samantha Everett added to party Gender Justice League(pty:pla), Attorney Samantha Everett added to party Human Rights Campaign(pty:pla), Attorney Samantha Everett added to party Ryan Karnoski (pty:pla), Attorney Samantha Everett added to party Cathrine Schmid(pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Lindsey Muller (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Terece Lewis (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Phillip Stephens (pty:pla, Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie

		Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Megan Winters (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Jane Doe (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Conner Callahan (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party American Military Partner Association (pty:pla), filed by Human Rights Campaign, Ryan Karnoski, D.L., Cathrine Schmid, Gender Justice League, Laura Garza, Lindsey Muller, Terece Lewis, Phillip Stephens, Megan Winters, Jane Doe, Conner Callahan, and American Military Partner Association (Everett, Samantha) Modified on 9/14/2017 (KB). (Entered: 09/14/2017)
09/14/2017		NOTICE of Docket Text Modification re 30 Amended Complaint: Modified to correctly reflect additional parties added by Amended Complaint. (KB) (Entered: 09/14/2017)
09/14/2017	31	MOTION to Proceed Under Pseudonym , filed by Plaintiff Jane Doe. (Attachments: # 1 Proposed Order) Noting Date 9/29/2017, (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	32	MOTION for Preliminary Injunction , filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 10/6/2017, (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	33	DECLARATION of Jane Doe filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 31 MOTION to Proceed Under Pseudonym , 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	34	DECLARATION of Samantha Everett filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18)(Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	35	DECLARATION of Ryan Karnoski filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender

		Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	36	DECLARATION of Catherine Schmid filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	37	DECLARATION of D.L. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	38	DECLARATION of Lindsey Muller filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	39	DECLARATION of Terece Lewis filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	40	DECLARATION of Phillip Stephens filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	41	DECLARATION of Megan Winters filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	42	DECLARATION of Conner Callahan filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)

09/14/2017	43	DECLARATION of Sarah Warbelow filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	44	DECLARATION of Danni Askini filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	45	DECLARATION of Ashley Broadway filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	46	DECLARATION of Brad R. Carson filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	47	DECLARATION of George R. Borwn filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	48	DECLARATION of Raymond Edwin Mabus, Jr. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	49	DECLARATION of Admiral Michael Mullen filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/15/2017	50	

		NOTICE of Appearance by attorney Ryan Bradley Parker on behalf of Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Parker, Ryan) (Entered: 09/15/2017)
09/16/2017	51	AFFIDAVIT of Service of Summons and Complaint on United States of America, via Attorney General Jeff Sessions, by serving Andre Harrington, agent, authorized to accept service on 8/30/2017, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Everett, Samantha) (Entered: 09/16/2017)
09/21/2017	52	Stipulated MOTION *for a Briefing Schedule*, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. Noting Date 9/21/2017, (Parker, Ryan) (Entered: 09/21/2017)
09/22/2017	53	ORDER granting 52 Stipulated Motion Setting Briefing Schedule re Plaintiffs' 32 motion for preliminary injunction and Defendants' motion to dismiss. Defendants' opposition to Plaintiffs' motion 32 and filing of motion to dismiss due 10/16/2017; Plaintiffs' reply in support of their motion 32 and opposition to Defendants' motion due 11/1/2017; Defendants' reply in support of their motion to dismiss due 11/9/2017. Signed by Judge Marsha J. Pechman. (PM) (Entered: 09/22/2017)
09/22/2017	54	AFFIDAVIT of Service of Summons and Complaint on United States of America, via Annette Hayes US Attorney for the Western District of Washington, by serving on the government entity "US Attorney's Office" to Patricia Peterut, a deputy administrative officer on 8/30/2017, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Everett, Samantha) (Entered: 09/22/2017)
09/25/2017	55	MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp), filed by Intervenor Plaintiff State of Washington. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 10/13/2017, (Baker, La Rond) (Entered: 09/25/2017)
09/25/2017	56	DECLARATION of La Rond Baker filed by Intervenor Plaintiff State of Washington re 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp) (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Baker, La Rond) (Entered: 09/25/2017)
09/25/2017	57	DECLARATION of David Postman filed by Intervenor Plaintiff State of Washington re 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp) (Baker, La Rond) (Entered: 09/25/2017)
10/06/2017	58	STIPULATION AND PROPOSED ORDER *Extending the Time to Respond to the State of Washington's Motion to Intervene* by parties (Parker, Ryan) (Entered: 10/06/2017)
10/09/2017	59	

		APPLICATION OF ATTORNEY Vanessa Barsanti FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington (Fee Paid) Receipt No. 0981-5045532 (Newman, Derek) (Entered: 10/09/2017)
10/09/2017	60	APPLICATION OF ATTORNEY Scott Lerner FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington (Fee Paid) Receipt No. 0981-5045547 (Newman, Derek) (Entered: 10/09/2017)
10/09/2017	61	APPLICATION OF ATTORNEY Daniel I. Siegfried FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington (Fee Paid) Receipt No. 0981-5045548 (Newman, Derek) (Entered: 10/09/2017)
10/10/2017	62	ORDER granting Plaintiff Jane Doe's 31 Motion to Proceed under Pseudonym, signed by Judge Marsha J. Pechman. (SWT) (Entered: 10/10/2017)
10/10/2017	63	ORDER re 59 Application for Leave to Appear Pro Hac Vice,. The Court ADMITS Attorney Vanessa Barsanti for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 10/10/2017)
10/10/2017	64	ORDER re 60 Application for Leave to Appear Pro Hac Vice,. The Court ADMITS Attorney Scott Lerner for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 10/10/2017)

10/10/2017	65	ORDER re 61 Application for Leave to Appear Pro Hac Vice,. The Court ADMITS Attorney Daniel I Siegfried for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 10/10/2017)
10/10/2017	66	STIPULATION AND ORDER extending time to respond to the State of Washington's 55 MOTION to Intervene. Response due 10/16/2017; Reply due 10/20/2017. Signed by Judge Marsha J. Pechman. (PM) (Entered: 10/10/2017)
10/11/2017	67	STIPULATION AND PROPOSED ORDER *Specifying Page Limitations for the Parties' Combined Filings* by parties (Parker, Ryan) (Entered: 10/11/2017)
10/16/2017	68	STIPULATION AND ORDER re 32 MOTION for Preliminary Injunction. Defendants' combined motion to dismiss and opposition to Plaintiffs' motion for a preliminary injunction shall not exceed forty-five (45) pages; and Plaintiffs' combined opposition to Defendants' motion to dismiss and reply in support of their motion for a preliminary injunction shall not exceed thirty-five (35) pages. Signed by Judge Marsha J. Pechman. (PM) (Entered: 10/16/2017)
10/16/2017	69	MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction*, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~. (Attachments: # 1 Exhibit Interim Guidance, # 2 Proposed Order) Noting Date 11/9/2017, (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to Motion for PI. (PM). (Entered: 10/16/2017)
10/16/2017	70	DECLARATION of Timothy J. McCracken filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	71	DECLARATION of Phillip A. Layman filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington,~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)

10/16/2017	72	DECLARATION of Jonathan Easley filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	73	DECLARATION of Gregory C. Huffman filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	74	DECLARATION of Nicholas Good filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	75	DECLARATION of Susan Bryerjoyner filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	76	RESPONSE, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp). (Parker, Ryan) (Entered: 10/16/2017)
10/16/2017	77	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp). (Everett, Samantha) (Entered: 10/16/2017)
10/17/2017		NOTICE of Docket Text Modification re 75 Declaration, 73 Declaration, 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction*, 72 Declaration, 74 Declaration, 70 Declaration, 71 Declaration: edited text to strike State of WA as a filer per phone call from counsel. (PM) (Entered: 10/17/2017)
10/18/2017	78	NOTICE of Hearing 32 MOTION for Preliminary Injunction : ORAL ARGUMENT/Motion Hearing set for 11/28/2017 at 10:00 AM in Courtroom

		14206 before Judge Marsha J. Pechman. Each side is allowed thirty minutes for argument, including rebuttal. (RM) (Entered: 10/18/2017)
10/19/2017	79	NOTICE of Rescheduled Hearing 32 MOTION for Preliminary Injunction : ORAL ARGUMENT/Motion Hearing set for 11/21/2017 at 1:30 PM in Courtroom 14206 before Judge Marsha J. Pechman. Each side is allowed thirty minutes for argument, including rebuttal. (RM) (Entered: 10/19/2017)
10/19/2017	80	NOTICE of Request for Video Recording of motion for preliminary injunction on 11/21/2017 at 1:30 PM before Marsha J. Pechman. Parties must submit PARTY RESPONSE TO REQUEST FOR VIDEO RECORDING before 10/27/2017. **Please Note: This form must not be filed electronically with the Court.** (RM) (Entered: 10/19/2017)
10/20/2017	81	REPLY, filed by Intervenor Plaintiff State of Washington, TO RESPONSE to 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp) (Baker, La Rond) (Entered: 10/20/2017)
10/24/2017	82	NOTICE of Hearing 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp) : ORAL ARGUMENT/Motion Hearing set for 11/14/2017 at 02:00 PM in Courtroom 14206 before Judge Marsha J. Pechman. Each side is allowed twenty minutes for argument, including rebuttal. (RM) (Entered: 10/24/2017)
10/24/2017	83	NOTICE of Request for Video Recording of Motion to Intervene on 11/14/2017 at 2:00 PM before Marsha J. Pechman. Parties must submit PARTY RESPONSE TO REQUEST FOR VIDEO RECORDING before 11/3/2017. **Please Note: This form must not be filed electronically with the Court.** (RM) (Entered: 10/24/2017)
11/01/2017	84	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 32 MOTION for Preliminary Injunction , 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction*. (Everett, Samantha) (Entered: 11/01/2017)
11/01/2017	85	DECLARATION of Mark J. Eitelberg filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction , 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction* (Attachments: # 1 Exhibit A) (Everett, Samantha) (Entered: 11/01/2017)
11/01/2017	86	DECLARATION of Raymond Edwin Mabus, Jr. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction , 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction* (Everett, Samantha) (Entered: 11/01/2017)

11/06/2017	87	NOTIFICATION REGARDING PROPOSED VIDEO RECORDING. All parties have consented to the video recording of the motion to intervene on 11/14/2017 at 2:00 PM. Unless otherwise ordered by the presiding judge, the proceeding will be video recorded as part of the CAMERAS Pilot Project. (RM) (Entered: 11/06/2017)
11/06/2017	88	NOTIFICATION REGARDING PROPOSED VIDEO RECORDING. All parties have consented to the video recording of the Motion for Preliminary Injunction on 11/21/2017 at 1:30 PM. Unless otherwise ordered by the presiding judge, the proceeding will be video recorded as part of the CAMERAS Pilot Project. (RM) (Entered: 11/06/2017)
11/07/2017	89	NOTICE/MOTION *of Supplemental Authority and Request for a Stay of Proceedings* ; filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Exhibit Doe v. Trump - Opinion and Order)(Parker, Ryan) Modified on 11/8/2017 to turn into a motion per direction of chambers (PM). (Entered: 11/07/2017)
11/08/2017		Noting Date Set per direction of chambers re 89 NOTICE/MOTION of Supplemental Authority and Request for a Stay of Proceedings: Noting Date 11/10/2017. (PM) (Entered: 11/08/2017)
11/09/2017	90	REPLY, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, TO RESPONSE to 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction* (Parker, Ryan) (Entered: 11/09/2017)
11/09/2017	91	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 89 MOTION. (Everett, Samantha) (Entered: 11/09/2017)
11/09/2017	92	Supplemental DECLARATION of Jane Doe filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 89 MOTION (Everett, Samantha) (Entered: 11/09/2017)
11/09/2017	93	RESPONSE, by Intervenor Plaintiff State of Washington, to 89 MOTION. (Baker, La Rond) (Entered: 11/09/2017)
11/11/2017	94	MINUTE ORDER by Judge Marsha J. Pechman. RE: 89 MOTION filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. The following MINUTE ORDER is made by direction of the Court, the Honorable Marsha J. Pechman, United States District Judge: Defendants filed a request to stay proceedings on November 7, 2017. Dkt. #89. The Court has reviewed Defendants' request (Dkt. #89), Plaintiffs' and the State of Washington's responses (Dkts. #9193), and will DENY Defendants' request. A further written order will follow. (YH) (Entered: 11/11/2017)

11/14/2017	95	NOTICE of Appearance by attorney Gerald Brinton Lucas on behalf of Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Lucas, Gerald) (Entered: 11/14/2017)
11/14/2017	96	MINUTE ENTRY for proceedings held before Judge Marsha J. Pechman- Dep Clerk: *Rhonda Miller*; Pla Counsel: *LaRond Baker, Peter Renn, Derek Newman, Kara Ingelhart*; Def Counsel: *Gerald Brinton Lucas, Andrew Carmichael*; CR: *Debbie Zurn*; **Motion Hearing** held on 11/14/2017 55 MOTION to Intervene filed by State of Washington. Oral argument presented. As stated orally on the record, the motion to intervene is GRANTED. A written order will follow in ten days. (RM) (Entered: 11/15/2017)
11/17/2017	97	STATEMENT re 32 MOTION for Preliminary Injunction by Intervenor Plaintiff State of Washington (Baker, La Rond) (Entered: 11/17/2017)
11/20/2017	98	ORDER denying Defendants' 89 Motion for Stay of Proceedings signed by Judge Marsha J. Pechman. (PM) (Entered: 11/20/2017)
11/21/2017	99	NOTICE of Appearance by attorney Colleen M Melody on behalf of Intervenor Plaintiff State of Washington. (Melody, Colleen) (Entered: 11/21/2017)
11/21/2017	100	MINUTE ENTRY for proceedings held before Judge Marsha J. Pechman- Dep Clerk: *Rhonda Miller*; Pla Counsel: *Peter Renn, Natalie Nardecchia, Derek Newman, LaRond Baker, Colleen Melody*; Def Counsel: *Gerald Brinton Lucas, Ryan Bradley Parker*; CR: *Andrea Ramirez*; **Motion to Dismiss and Preliminary Injunction Hearing** held on 11/21/2017. Oral argument presented. Court will issue written opinion by 12/8/2017. (RM) (Entered: 11/21/2017)
11/27/2017	101	ORDER granting State of Washington's 55 Motion to Intervene. Signed by Judge Marsha J. Pechman. (PM) (Entered: 11/27/2017)
12/08/2017	102	MINUTE ORDER authorized by Judge Marsha J. Pechman. On Monday, December 11, 2017 the Court will issue a ruling on Plaintiffs' 32 MOTION for Preliminary Injunction. (PM) (Entered: 12/08/2017)
12/11/2017	103	ORDER granting in part and denying in part Defendants' 69 Motion to Dismiss; Order granting Plaintiffs' 32 Motion for Preliminary Injunction. 1. The Court GRANTS Defendants' Motion to Dismiss with respect to Plaintiffs' procedural due process claim; 2. The Court DENIES Defendants' Motion to Dismiss with respect to Plaintiffs' equal protection, substantive due process, and First Amendment claims; 3. The Court GRANTS Plaintiffs' Motion for a Preliminary Injunction, and hereby enjoins Defendants and their officers, agents, servants, employees, and attorneys, and any other person or entity subject to their control or acting directly or indirectly in concert or participation with Defendants from taking any action relative to transgender individuals that is inconsistent with the status quo that existed prior to President Trump's July 26, 2017 announcement. This Preliminary Injunction shall take effect immediately and shall remain in effect pending resolution of this action on the merits or further order of this Court. Signed by Judge Marsha J. Pechman. (PM) (Entered: 12/11/2017)

12/14/2017	104	COMPLAINT *Intervenor-Plaintiff* against defendant(s) James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, Elaine C. Duke, Department of Homeland Security (Receipt # 0981-5128967: FEE REFUNDED, Not Required), filed by State of Washington. (Attachments: # 1 Summons Elaine C. Duke, # 2 Summons James N. Mattis, # 3 Summons Donald Trump, # 4 Summons United States of America, # 5 Summons US Department of Defense, # 6 Summons US Department of Homeland Security)(Baker, La Rond) Modified on 12/15/2017 to reflect the filing fee was refunded; Counsel notified (PM). (Entered: 12/14/2017)
12/14/2017	105	NOTICE OF APPEAL to Ninth Circuit (17-36009) re 103 Order on Motion for Preliminary Injunction,,,,,, Order on Motion to Dismiss,,,, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Parker, Ryan) Modified on 12/19/2017 to add CCA # (CDA). (Entered: 12/14/2017)
12/15/2017	106	MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal , filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 12/29/2017, (Parker, Ryan) (Entered: 12/15/2017)
12/15/2017	107	DECLARATION of Lernes J. Hebert filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Parker, Ryan) (Entered: 12/15/2017)
12/15/2017		NOTICE of Docket Text Modification re 104 Complaint in Intervention by State of Washington: Filing fee refunded; not required. Counsel has been notified. (PM) (Entered: 12/15/2017)
12/15/2017	108	Summons Electronically Issued as to defendant Elaine C. Duke (main document) (Attachments: # 1 Summons James N. Mattis, # 2 Summons Donald Trump, # 3 Summons United States of America, # 4 Summons US Department of Defense, # 5 Summons US Department of Homeland Security) (PM) (Entered: 12/15/2017)
12/15/2017	109	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Motion to Dismiss/Preliminary Injunction held on 11/21/2017 before Judge Marsha J. Pechman. Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov.

		To purchase a copy of the transcript, contact court reporter Andrea Ramirez, andrea_ramirez@wawd.uscourts.gov, 206-370-8509. Release of Transcript Restriction set for 3/15/2018, (AR) (Entered: 12/15/2017)
12/15/2017	110	CERTIFICATE OF SERVICE by Intervenor Plaintiff State of Washington re 104 Complaint,, *Intervenor-Plaintiff* (Baker, La Rond) (Entered: 12/15/2017)
12/15/2017	111	USCA Case Number 17-36009 for 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. (CDA) (Entered: 12/19/2017)
12/15/2017	112	ORDER of USCA (17-36009) as to 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump (CDA) (Entered: 12/19/2017)
12/20/2017	113	CORPORATE DISCLOSURE STATEMENT Filed pursuant to Fed.R.Civ.P 7.1. Filed by American Military Partner Association (Everett, Samantha) (Entered: 12/20/2017)
12/27/2017	114	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal . (Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	115	DECLARATION of G. R. Brown filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	116	DECLARATION of D. L. James filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	117	DECLARATION of R. E. Mabus filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	118	DECLARATION of S. Everett filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 106 MOTION

		for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9)(Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	119	RESPONSE, by Intervenor Plaintiff State of Washington, to 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal . (Baker, La Rond) (Entered: 12/27/2017)
12/27/2017	120	DECLARATION of La Rond Baker filed by Intervenor Plaintiff State of Washington re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Attachments: # 1 Exhibit Exhibit A)(Baker, La Rond) (Entered: 12/27/2017)
12/29/2017	121	ORDER denying Defendants' 106 Motion for Clarification and Motion for Partial Stay of Preliminary Injunction Pending Appeal, signed by Judge Marsha J. Pechman. (SWT) (Entered: 12/29/2017)
12/30/2017	122	ORDER of USCA (NOT THE MANDATE 17-36009) as to 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. **DISMISSED** (CDA) (Entered: 01/02/2018)
01/03/2018	123	ORDER of USCA (17-36009) as to 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. The mandate shall issue 7 days after the filing date of this order. (CDA) (Entered: 01/04/2018)
01/05/2018	124	ORDER REGARDING INITIAL DISCLOSURES AND JOINT STATUS REPORT Joint Status Report due by 2/16/2018, FRCP 26f Conference Deadline is 2/2/2018, Initial Disclosure Deadline is 2/9/2018, by Judge Marsha J. Pechman. (RM) (Entered: 01/05/2018)
01/10/2018	125	APPLICATION OF ATTORNEY Joseph B. Tyson FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters (Fee Paid) Receipt No. 0981-5157687 (Newman, Derek) (Entered: 01/10/2018)
01/10/2018	126	ORDER re 125 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Joseph B Tyson for American Military Partner Association,Joseph B Tyson for Plaintiffs Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens and for Megan Winters, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 01/10/2018)

01/11/2018	127	MANDATE of USCA (17-36009) as to 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. The judgment of this Court, entered December 30, 2017, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. DISMISSED. (SG) (Entered: 01/11/2018)
01/12/2018	128	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Jon W Davidson for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Everett, Samantha) (Entered: 01/12/2018)
01/25/2018	129	MOTION for Summary Judgment , filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 2/16/2018, (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	130	DECLARATION of Ryan Karnoski filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	131	DECLARATION of Cathrine Schmid filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	132	DECLARATION of D.L. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	133	DECLARATION of Lindsey Muller filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	134	DECLARATION of Terece Lewis filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	135	DECLARATION of Phillip Stephens filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender

		Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	136	DECLARATION of Megan Winters filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	137	DECLARATION of Conner Callahan filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	138	DECLARATION of Jane Doe filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	139	DECLARATION of Sarah Warbelow filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	140	DECLARATION of Danni Askini filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	141	DECLARATION of Ashley Broadway filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	142	DECLARATION of Brad R. Carson filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	143	DECLARATION of George R. Brown filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129

		MOTION for Summary Judgment (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	144	DECLARATION of Raymond Edwin Mabus, Jr. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	145	DECLARATION of Eric Fanning filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	146	DECLARATION of Deborah Lee James filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	147	DECLARATION of Mark J. Eitelberg filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	148	DECLARATION of Admiral Michael Mullen filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	149	DECLARATION of Derek Newman filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	150	MOTION for Summary Judgment , filed by Intervenor Plaintiff State of Washington. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 2/16/2018, (Baker, La Rond) (Entered: 01/25/2018)

01/26/2018	151	NOTICE of Appearance by attorney Michael J Ewart on behalf of Amicus Retired Military Officers and Former National Security Officials. (Ewart, Michael) (Entered: 01/26/2018)
01/26/2018	152	Agreed MOTION for Leave to File *Amicus Brief in Support of Plaintiffrs' Motion for Summary Judgment*, filed by Amicus Retired Military Officers and Former National Security Officials. (Attachments: # 1 Proposed Order, # 2 Exhibit A) Noting Date 1/26/2018, (Ewart, Michael) (Entered: 01/26/2018)
01/29/2018		~~Attorney Michael S Scott added as counsel~~ for Retired Military Officers and Former National Security Officials per 151 Notice of Appearance. (PM) Modified on 1/29/2018: Michael S. Scott entered in error; removed from docket. (PM). (Entered: 01/29/2018)
01/29/2018		Attorney Michael Ramsey Scott added for Retired Military Officers and Former National Security Officials. Attorney Michael S Scott terminated as he was added in error: per 151 Notice of Appearance. (PM) (Entered: 01/29/2018)
01/30/2018	153	ORDER granting Retired Military Officers and Former National Security Officials' 152 Agreed Motion for Leave to File to File Amicus Brief in Support of Plaintiffs' Motion for Summary Judgment. The amicus brief attached as Exhibit A to the Motion for Leave is hereby deemed filed. Signed by Judge Marsha J. Pechman. (PM) (Entered: 01/31/2018)
01/31/2018	154	NOTICE of Appearance by attorney Katherine C. Chamberlain on behalf of Amicus Commonwealth of Massachusetts. (Chamberlain, Katherine) (Entered: 01/31/2018)
01/31/2018	155	NOTICE of Appearance by attorney Joseph R Shaeffer on behalf of Amicus Commonwealth of Massachusetts. (Shaeffer, Joseph) (Entered: 01/31/2018)
01/31/2018	156	APPLICATION OF ATTORNEY Kimberly A. Parr FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Commonwealth of Massachusetts (Fee Paid) Receipt No. 0981-5182970 (Chamberlain, Katherine) (Entered: 01/31/2018)
01/31/2018	157	ORDER re 156 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Kimberly A. Parr for Amicus Commonwealth of Massachusetts, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 01/31/2018)
01/31/2018	158	NOTICE of Appearance by attorney Abha Khanna on behalf of Amicus Constitutional Accountability Center. (Khanna, Abha) (Entered: 01/31/2018)
01/31/2018	159	APPLICATION OF ATTORNEY Ashwin P. Phatak FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Constitutional Accountability Center (Fee Paid) Receipt No. 0981-5184097 (Khanna, Abha) (Entered: 01/31/2018)
01/31/2018	160	

		APPLICATION OF ATTORNEY Brianne J. Gorod FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Constitutional Accountability Center (Fee Paid) Receipt No. 0981-5184104 (Khanna, Abha) (Entered: 01/31/2018)
01/31/2018	161	APPLICATION *OF ATTORNEY* David H. Gans *FOR LEAVE TO APPEAR PRO HAC VICE* by Amicus Constitutional Accountability Center *Receipt No. 0981-5184113* (Khanna, Abha) Modified on 2/1/2018 to edit receipt number. (RE) (Entered: 01/31/2018)
01/31/2018	162	APPLICATION OF ATTORNEY Elizabeth B. Wydra FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Constitutional Accountability Center (Fee Paid) Receipt No. 0981-5184121 (Khanna, Abha) (Entered: 01/31/2018)
01/31/2018	163	Agreed MOTION for Leave to File *Brief of Amicus Curiae Constitutional Accountability Center in Support of Plaintiffs' 129 150 Motions for Summary Judgment*, filed by Amicus Constitutional Accountability Center. (Attachments: # 1 Exhibit Brief of Amicus Curiae Consitutional Accountability Center in Support of Plaintiffs Motions for Summary Judgment, # 2 Proposed Order) Noting Date 1/31/2018, (Khanna, Abha) Modified on 2/1/2018 to add link to s/j motions (PM). (Entered: 01/31/2018)
02/01/2018	164	ORDER re 159 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Ashwin P Phatak for Amicus Constitutional Accountability Center, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 02/01/2018)
02/01/2018	165	ORDER re 160 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Brianne J. Gorod for Amicus Constitutional Accountability Center, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 02/01/2018)
02/01/2018	166	ORDER re 161 Application. The Court ADMITS Attorney David H Gans for Amicus Constitutional Accountability Center, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 02/01/2018)
02/01/2018	167	ORDER re 162 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Elizabeth B Wydra for Amicus Constitutional

		Accountability Center, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 02/01/2018)
02/01/2018		Attorney William B. Stafford added as counsel for Constitutional Accountability Center per 158 Notice of Appearance. (PM) (Entered: 02/01/2018)
02/01/2018	168	NOTICE of Appearance by attorney Lauren Watts Staniar, Amanda J Beane, Sara Ainsworth on behalf of Amicus Legal Voice f/k/a Northwest Women's Law Center. (Staniar, Lauren) (Entered: 02/01/2018)
02/01/2018	169	Agreed MOTION for Leave to File *Amicus Brief In Support of Plaintiffs' Motion for Summary Judgment*, filed by Amicus Legal Voice f/k/a Northwest Women's Law Center. (Attachments: # 1 Proposed Order) Noting Date 2/1/2018, (Staniar, Lauren) (Entered: 02/01/2018)
02/01/2018	170	Agreed MOTION for Leave to File *Amicus Brief*, filed by Amicus Commonwealth of Massachusetts. (Attachments: # 1 Proposed Order, # 2 Exhibit Proposed Amicus Brief) Noting Date 2/1/2018, (Parr, Kimberly) (Entered: 02/01/2018)
02/02/2018	171	ORDER granting *Amicus Curiae* Constitutional Accountability Center's 163 Motion for Leave to File Brief of *Amicus curiae*. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/02/2018)
02/02/2018	172	ORDER granting amici Legal Voice's 169 Agreed Motion for Leave to File Amicus Curiae Brief. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/02/2018)
02/02/2018	173	APPLICATION OF ATTORNEY Cristina Sepe FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Legal Voice (Fee Paid) Receipt No. 0981-5186816 (Staniar, Lauren) (Entered: 02/02/2018)
02/02/2018	174	ORDER re 173 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Cristina Sepe for Legal Voice, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(CDA) (Entered: 02/02/2018)
02/05/2018	175	ORDER granting Massachusetts, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia's 170 Motion for Leave to File an *Amicus Curiae* Brief in support of Plaintiffs' and Intervenor-Plaintiff's motions for summary judgment. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/05/2018)

02/09/2018	176	NOTICE of Hearing 129 MOTION for Summary Judgment , 150 MOTION for Summary Judgment : ORAL ARGUMENT/Motion Hearing set for 3/27/2018 at 10:00 AM in Courtroom 14206 before Judge Marsha J. Pechman. Each side is allowed 30 minutes for argument, including rebuttal. (RM) (Entered: 02/09/2018)
02/09/2018	177	NOTICE of request for video recording of oral argument/motion hearing scheduled for 3/27/2018 at 10:00 AM before Judge Marsha J. Pechman. Parties must submit PARTY RESPONSE TO REQUEST FOR VIDEO RECORDING before 2/14/2018. **Please Note: This form must not be filed electronically with the Court.** (RM) (Entered: 02/09/2018)
02/12/2018	178	RESPONSE, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 129 MOTION for Summary Judgment , 150 MOTION for Summary Judgment . (Parker, Ryan) (Entered: 02/12/2018)
02/12/2018	179	DECLARATION of Ryan B. Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 129 MOTION for Summary Judgment , 150 MOTION for Summary Judgment (Parker, Ryan) (Entered: 02/12/2018)
02/12/2018	180	Joint MOTION for Protective Order , filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Attachments: # 1 Declaration of Samantha Everett) Noting Date 2/23/2018, (Everett, Samantha) (Entered: 02/12/2018)
02/12/2018	181	Joint MOTION for Order *re: FED. R. EVID. 502(D)*, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Noting Date 2/12/2018, (Everett, Samantha) (Entered: 02/12/2018)
02/14/2018	182	STIPULATED FED. R. EVID. 502(D) ORDER re: 181 Joint Motion for Order. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/14/2018)
02/14/2018	183	STIPULATED UNIFORM PROTECTIVE ORDER AND CROSS-USE AGREEMENT PROTECTIVE ORDER re 180 Joint MOTION for Protective Order. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/14/2018)
02/16/2018	184	JOINT STATUS REPORT signed by all parties estimated Trial Days: 5-10. Filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters.(Everett, Samantha) (Entered: 02/16/2018)
02/16/2018	185	REPLY, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid,

		Phillip Stephens, Megan Winters, TO RESPONSE to 129 MOTION for Summary Judgment (Everett, Samantha) (Entered: 02/16/2018)
02/16/2018	186	DECLARATION of Jordan Heinz filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A)(Everett, Samantha) (Entered: 02/16/2018)
02/16/2018	187	REPLY, filed by Intervenor Plaintiff State of Washington, TO RESPONSE to 150 MOTION for Summary Judgment (Attachments: # 1 Declaration of La Rond Baker, # 2 Exhibit A, # 3 Exhibit B)(Baker, La Rond) (Entered: 02/16/2018)
02/20/2018	188	NOTIFICATION REGARDING PROPOSED VIDEO RECORDING. All parties have consented to the video recording of the hearing on 129 MOTION for Summary Judgment & 150 MOTION for Summary Judgment set for 3/27/2018 at 10:00 AM in Courtroom 14206 before Judge Marsha J. Pechman. Unless otherwise ordered by the presiding judge, the proceeding will be video recorded as part of the CAMERAS Pilot Project. (RM) (Entered: 02/20/2018)
02/21/2018	189	ORDER denying Defendants' 178 Rule 56(d) Motion. Defendants are ORDERED to file any opposition to Plaintiffs' and Washington's 129 , 150 Motions for Summary Judgment within seven (7) days of the date of this Order. Thereafter, Plaintiffs and Washington will have seven (7) days to reply. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/21/2018)
02/22/2018	190	MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES*, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Attachments: # 1 Proposed Order) Noting Date 3/9/2018, (Everett, Samantha) (Entered: 02/22/2018)
02/22/2018	191	DECLARATION of Vanessa Barsanti filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 190 MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Everett, Samantha) (Entered: 02/22/2018)
02/26/2018	192	ANSWER to 104 Complaint,, by James N Mattis, Donald J. Trump, United States Department of Defense, United States of America.(Parker, Ryan) (Entered: 02/26/2018)
02/26/2018	193	ANSWER to 30 Amended Complaint,,,,,,,,,, by James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Parker, Ryan) (Entered: 02/26/2018)
02/28/2018	194	CROSS MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment*, filed by Defendants James N

		Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 3/23/2018, (Parker, Ryan) Modified on 3/2/2018 to identify this as a cross motion(PM). (Entered: 02/28/2018)
02/28/2018	195	DECLARATION of Maria Martinez filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Parker, Ryan) (Entered: 02/28/2018)
02/28/2018	196	DECLARATION of Jonathan Easley filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Parker, Ryan) (Entered: 02/28/2018)
02/28/2018	197	DECLARATION of Ryan Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Parker, Ryan) (Entered: 02/28/2018)
03/02/2018	198	MINUTE ORDER re: Defendants' 194 Cross-MOTION for Partial Summary Judgment. Any response to the Cross-Motion filed by Plaintiffs shall be filed separately from their reply in support of their Motion for Summary Judgment, and shall be limited to no more than 12 pages. Defendants' reply shall not exceed 6 pages. Authorized by Judge Marsha J. echman. (PM) (Entered: 03/02/2018)
03/05/2018	199	RESPONSE, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 190 MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES*. (Parker, Ryan) (Entered: 03/05/2018)
03/05/2018	200	DECLARATION of Ryan B. Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 190 MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES* (Parker, Ryan) (Entered: 03/05/2018)
03/07/2018	201	REPLY, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, TO RESPONSE to 129 MOTION for Summary Judgment (Everett, Samantha) (Entered: 03/07/2018)
03/07/2018	202	REPLY, filed by Intervenor Plaintiff State of Washington, TO RESPONSE to 150 MOTION for Summary Judgment (Baker, La Rond) (Entered: 03/07/2018)
03/09/2018	203	REPLY, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, TO RESPONSE to 190 MOTION to Compel

		DEFENDANTS INITIAL DISCLOSURES (Everett, Samantha) (Entered: 03/09/2018)
03/14/2018	204	ORDER granting Plaintiffs' 190 Motion to Compel. Signed by Judge Marsha J. Pechman. (PM) (Entered: 03/14/2018)
03/19/2018	205	MOTION For Clarification And, If Necessary, For Reconsideration re 204 Order on Motion to Compel , filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. Noting Date 3/19/2018, (Parker, Ryan) (Entered: 03/19/2018)
03/19/2018	206	DECLARATION of Ryan B. Parker filed by Defendants Donald J. Trump, United States Department of Defense, United States of America re 205 MOTION For Clarification And, If Necessary, For Reconsideration re 204 Order on Motion to Compel (Attachments: # 1 Exhibit, # 2 Exhibit)(Parker, Ryan) (Entered: 03/19/2018)
03/19/2018	207	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment*. (Everett, Samantha) (Entered: 03/19/2018)
03/19/2018	208	DECLARATION of Samantha Everett filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Attachments: # 1 Exhibit 1) (Everett, Samantha) (Entered: 03/19/2018)
03/19/2018	209	RESPONSE, by Intervenor Plaintiff State of Washington, to 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment*. (Baker, La Rond) (Entered: 03/19/2018)
03/20/2018	210	ORDER denying Defendants' 205 Motion for Clarification and Reconsideration. The Court expects Defendants to comply with its Order (Dkt. No. 204) no later than 5:00 PM Pacific Daylight Time on March 22, 2018. Signed by Judge Marsha J. Pechman. (PM) (Entered: 03/20/2018)
03/22/2018	211	RESPONSE by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 210 Order on Motion for Miscellaneous Relief, (Parker, Ryan) (Entered: 03/22/2018)
03/23/2018	212	REPLY, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, TO RESPONSE to 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	213	NOTICE ; filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States

		Department of Defense, United States of America. (Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	214	DECLARATION of Ryan B. Parker re 213 Notice-Other by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America (Attachments: # 1 Exhibit)(Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	215	MOTION to Dissolve the Preliminary Injunction , filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 4/13/2018, (Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	216	STRICKEN per direction of chambers. Declaration re-filed as Dkt. # 224 . ~~DECLARATION of Ryan B. Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 215 MOTION to Dissolve the Preliminary Injunction (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)~~(Parker, Ryan) Modified on 4/3/2018 (PM). (Entered: 03/23/2018)
03/23/2018	217	MOTION for Protective Order , filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 4/6/2018, (Parker, Ryan) (Entered: 03/23/2018)
03/26/2018	218	APPLICATION OF ATTORNEY Stephen R. Patton FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters (Fee Paid) Receipt No. 0981-5253044 (Newman, Derek) (Entered: 03/26/2018)
03/26/2018	219	ORDER re 218 Application for Leave to Appear Pro Hac Vice,. The Court ADMITS Attorney Stephen R Patton for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, and Megan Winters, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to* ***sign all filings*** *and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 03/26/2018)
03/26/2018	220	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Michael Ramsey Scott for Amicus Retired Military Officers and Former National Security Officials. (Scott, Michael) (Entered: 03/26/2018)
03/27/2018	221	

		MINUTE ENTRY for proceedings held before Judge Marsha J. Pechman- Dep Clerk: *Rhonda Miller*; Pla Counsel: *Joseph Tyson, Peter Renn, Steve Patton, Natalie Nardecchia, La Rond Baker*; Def Counsel: *Ryan Parker, Brett Shumate*; CR: *Debbie Zurn*; **Motion Hearing** held on 3/27/2018 re 129 MOTION for Summary Judgment filed by Cathrine Schmid, Jane Doe, Megan Winters, Terece Lewis, Phillip Stephens, Gender Justice League, American Military Partner Association, Conner Callahan, Lindsey Muller, D.L., Ryan Karnoski, Laura Garza, Human Rights Campaign, re 150 MOTION for Summary Judgment filed by State of Washington. Oral argument presented. Court will issue written opinion after parties provide additional briefing on the new transgender policy memorandum issued 3/23/2018. Simultaneous briefing shall not exceed ten pages and is due within seven days. Defendants are ordered to refile and re-note their pending motions in the proper form and format as required by the local rules. (RM) (Entered: 03/27/2018)
03/29/2018	222	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Motion Hearing held on 3/27/2018 before Judge Marsha J. Pechman. Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov. To purchase a copy of the transcript, contact court reporter Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504. Release of Transcript Restriction set for 6/27/2018, (DZ) (Entered: 03/29/2018)
03/29/2018	223	MOTION to Dissolve the Preliminary Injunction , filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 4/27/2018, (Parker, Ryan) (Entered: 03/29/2018)
03/29/2018	224	DECLARATION of Ryan Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 223 MOTION to Dissolve the Preliminary Injunction (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Parker, Ryan) (Entered: 03/29/2018)
03/29/2018	225	MOTION for Protective Order , filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 4/13/2018, (Parker, Ryan) (Entered: 03/29/2018)
04/03/2018	226	SUPPLEMENT *In Opposition to Plaintiffs' and Intervenor's 129 150 Motions for Summary Judgment* by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America (Parker, Ryan)

		Modified on 4/4/2018 to create docket relationship to 129 , 150 . (PM). (Entered: 04/03/2018)
04/03/2018	227	SUPPLEMENT re 201 Reply to Response to Motion, *129 for Summary Judgment* by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters (Everett, Samantha) Modified on 4/4/2018 to create docket relationship to 129 motion.(PM). (Entered: 04/03/2018)
04/03/2018	228	SUPPLEMENT re 150 MOTION for Summary Judgment by Intervenor Plaintiff State of Washington (Baker, La Rond) (Entered: 04/03/2018)
04/10/2018	229	NOTICE of Appearance by attorney Jason Sykes on behalf of Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 04/10/2018)
04/11/2018	230	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 225 MOTION for Protective Order . (Attachments: # 1 Exhibit 1)(Sykes, Jason) (Entered: 04/11/2018)
04/11/2018	231	RESPONSE, by Intervenor Plaintiff State of Washington, to 225 MOTION for Protective Order . (Baker, La Rond) (Entered: 04/11/2018)
04/13/2018	232	REPLY, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, TO RESPONSE to 225 MOTION for Protective Order (Parker, Ryan) (Entered: 04/13/2018)
04/13/2018	233	ORDER granting in part and denying in part Plaintiffs' 129 Motion for Summary Judgment; granting in part and denying in part the State of Washington's 150 Motion for Summary Judgment; granting in part and denying in part Defendants' 194 Cross Motion for Partial Summary Judgment; striking Defendants' 223 Motion to Dissolve the Preliminary Injunction. The preliminary injunction previously entered otherwise remains in full force and effect. Signed by Judge Marsha J. Pechman. (PM) (Entered: 04/13/2018)
04/18/2018	234	MINUTE ORDER: The parties are ordered to file an updated joint status report no later than 5/4/2018. Authorized by Judge Marsha J. Pechman. (RM) (Entered: 04/18/2018)
04/19/2018	235	ORDER denying Defendants' 225 Motion for Protective Order and ordering discovery in the case to proceed. Signed by Judge Marsha J. Pechman. (PM) (Entered: 04/19/2018)
04/30/2018	236	NOTICE OF APPEAL to Ninth Circuit (18-35347) re 233 Order on Motion for Summary Judgment, Order on Motion for Partial Summary Judgment,,, Order on Motion for Miscellaneous Relief, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America.

		(Parker, Ryan) Modified on 4/30/2018 to add CCA # (CDA). (Entered: 04/30/2018)
04/30/2018	237	USCA Case Number 18-35347 for 236 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. (CDA) (Entered: 04/30/2018)
04/30/2018	238	MOTION to Stay *Preliminary Injunction Pending Appeal*, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 5/18/2018, (Parker, Ryan) (Entered: 04/30/2018)
04/30/2018	239	DECLARATION of Ryan Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit)(Parker, Ryan) (Entered: 04/30/2018)
05/02/2018	240	MINUTE ORDER re Defendants' 238 MOTION to Stay *Preliminary Injunction Pending Appeal*. The Court declines to issue an expedited ruling on the Motion, and will issue its ruling following the noting date. The response is due no later than May 14, 2018. The reply is due no later than May 18, 2018. Authorized by Judge Marsha J. Pechman. (TH) (Entered: 05/02/2018)
05/04/2018	241	JOINT STATUS REPORT signed by all parties estimated Trial Days: 5-10. (Sykes, Jason) (Entered: 05/04/2018)
05/09/2018	242	ORDER SETTING TRIAL DATE AND RELATED DATES; Length of Trial: *5-10 DAY* Bench Trial is set for 4/8/2019 at 09:00 AM in Courtroom 14206 before Judge Marsha J. Pechman. Joinder of Parties due by 6/6/2018, Amended Pleadings due by 6/18/2018, Expert Witness Disclosure/Reports under FRCP 26(a)(2) due by 9/10/2018, Motions due by 10/10/2018, Discovery completed by 11/9/2018, The Court will not change the number of depositions per side at this time. Plaintiff may make a renewed request, if needed. Dispositive motions due by 12/10/2018, Motions in Limine due by 3/4/2019, Pretrial Order due by 3/27/2019, Trial briefs to be submitted by 3/27/2019, Proposed Findings of Fact and Conclusions of Law to be submitted by 3/27/2019, Pretrial Conference set for 3/29/2019 at 01:30 PM in Courtroom 14206 before Judge Marsha J. Pechman. (RM) (Entered: 05/09/2018)
05/10/2018	243	MOTION for Order to Show Cause , filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 5/25/2018, (Sykes, Jason) (Entered: 05/10/2018)
05/10/2018	244	DECLARATION of Vanessa Barsanti filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 243 MOTION for Order to Show Cause (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Sykes, Jason) (Entered: 05/10/2018)

05/10/2018	245	MOTION to Compel *DEFENDANTS DISCOVERY WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE*, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 5/25/2018, (Sykes, Jason) (Entered: 05/10/2018)
05/10/2018	246	DECLARATION of Daniel Siegfried filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 245 MOTION to Compel *DEFENDANTS DISCOVERY WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28)(Sykes, Jason) (Entered: 05/10/2018)
05/10/2018	247	NOTICE *of Difficult Filing* re 246 Declaration,,, ; filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 05/10/2018)
05/11/2018	248	RESPONSE, by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 243 MOTION for Order to Show Cause . (Parker, Ryan) (Entered: 05/11/2018)
05/11/2018	249	DECLARATION of Ryan Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 243 MOTION for Order to Show Cause (Attachments: # 1 Exhibit Defendants' Supplemental Initial Disclosures)(Parker, Ryan) (Entered: 05/11/2018)
05/11/2018	256	RECEIPT of Filing in Physical Form with the Clerk's Office: Thumb Drive (Exhibits 11-27, native format) re: 246 Declaration of Daniel Siegfried re: 245 Motion to Compel. (Placed on Clerk's Office filing shelf in one expando folder) (PM) (Entered: 05/14/2018)
05/14/2018	250	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 238 MOTION to Stay *Preliminary Injunction Pending Appeal*. (Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	251	DECLARATION of George R. Brown filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis,

		Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	252	DECLARATION of Brad R. Carson filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	253	DECLARATION of Lindsey Muller filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	254	DECLARATION of Cathrine Schmid filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	255	DECLARATION of Daniel Siegfried filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16)(Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	257	RESPONSE, by Intervenor Plaintiff State of Washington, to 238 MOTION to Stay *Preliminary Injunction Pending Appeal*. (Baker, La Rond) (Entered: 05/14/2018)
05/14/2018	258	DECLARATION of La Rond Baker in support of Washington's Response filed by Intervenor Plaintiff State of Washington re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Baker, La Rond) Per Counsel, added last name of declarant to docket text. Modified on 5/16/2018 (vb). (Entered: 05/14/2018)
05/14/2018		NOTICE of Docket Text Modification re 258 Declaration, : Per Counsel, added last name of declarant to docket text. (vb) (Entered: 05/16/2018)
05/16/2018	259	

		NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Samantha Everett for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 05/16/2018)
05/16/2018	260	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Natalie Nardecchia for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 05/16/2018)
05/18/2018	261	REPLY, filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, TO RESPONSE to 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Parker, Ryan) (Entered: 05/18/2018)
05/18/2018	262	DECLARATION of Ryan Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit, # 2 Exhibit)(Parker, Ryan) (Entered: 05/18/2018)
05/18/2018	263	DECLARATION of Stephanie Barna filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Parker, Ryan) (Entered: 05/18/2018)
05/18/2018	264	REPLY, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, TO RESPONSE to 243 MOTION for Order to Show Cause (Sykes, Jason) (Entered: 05/18/2018)
05/18/2018		~~NOTE: Appearance of attorney Ryan B. Parker is not proper, and notices of electronic filing will not be sent until corrected. Signatures must be in accordance with FRCP 11 and LCR 83.2(a) and must comply with ECF Filing Procedures. This deficiency can be cured by filing a notice of appearance.~~ (SWT) Modified to strike notice on 5/21/2018 (SWT). (Entered: 05/21/2018)
05/18/2018		***Motion terminated: 243 MOTION for Order to Show Cause per plaintiff's 264 Reply Withdrawing Motion(SWT) (Entered: 05/21/2018)
05/21/2018		NOTICE of Docket Text Modification re Note re compliance with LCR 83.2, : Notice stricken. Sent in error. (SWT) (Entered: 05/21/2018)
05/21/2018	265	NOTICE of Appearance by attorney Andrew E Carmichael on behalf of Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Carmichael, Andrew) (Entered: 05/21/2018)

05/21/2018	266	RESPONSE, by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 245 MOTION to Compel *DEFENDANTS DISCOVERY WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE*. (Parker, Ryan) (Entered: 05/21/2018)
05/21/2018	267	DECLARATION of Ryan Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 245 MOTION to Compel *DEFENDANTS DISCOVERY WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE* (Attachments: # 1 Exhibit, # 2 Exhibit)(Parker, Ryan) (Entered: 05/21/2018)
05/21/2018	268	MOTION for Protective Order , filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 6/1/2018, (Parker, Ryan) (Entered: 05/21/2018)
05/21/2018	269	DECLARATION of Ryan Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 268 MOTION for Protective Order (Attachments: # 1 Exhibit, # 2 Exhibit)(Parker, Ryan) (Entered: 05/21/2018)
05/22/2018	270	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Joseph B Tyson for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 05/22/2018)

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		applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).(DS) Modified on 8/28/2017 (DS). (Entered: 08/28/2017)
08/28/2017	13	ORDER re 6 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney James F. Hurst for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017	14	NOTICE of Appearance by attorney Tara Borelli on behalf of Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid. (Borelli, Tara) (Entered: 08/28/2017)
08/28/2017	15	ORDER re 7 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Kara N. Ingelhart for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017	16	ORDER re 8 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Natalie Nardecchia for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017	17	ORDER re 9 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Peter E Perkowski for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017	18	

		ORDER re 10 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Peter C Renn for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski,and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/28/2017)
08/28/2017		Judge James L. Robart added. (RE) (Entered: 08/28/2017)
08/28/2017		**NOTICE TO FILER: SUMMONS FORM INCOMPLETE - DEFENDANT ADDRESS BLOCK LEFT BLANK:**The block for defendants name and address is blank. The block must contain at a minimum the defendants name. Please re-post your corrected summons(es) using the event Praecipe For A Summons under Other Documents. All summons(es) should be posted under this one event. Thank you. (RE) (Entered: 08/28/2017)
08/28/2017	19	PRAECIPE TO ISSUE SUMMONS by Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Attachments: # 1 Summons, # 2 Summons, # 3 Summons, # 4 Summons) (Newman, Derek) (Entered: 08/28/2017)
08/29/2017	20	Summons(es) electronically issued as to defendant(s) James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Summons-US Attorney Hayes, # 2 Summons-US Attorney-Sessions, # 3 Summons-Mattis, # 4 Summons-Department of Defense)(RE) (Entered: 08/29/2017)
08/29/2017	21	APPLICATION OF ATTORNEY Carl Charles FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4997512 (Newman, Derek) (Entered: 08/29/2017)
08/29/2017	22	APPLICATION OF ATTORNEY Sasha J. Buchert FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4997569 (Newman, Derek) (Entered: 08/29/2017)
08/29/2017	23	APPLICATION OF ATTORNEY Camilla B. Taylor FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid (Fee Paid) Receipt No. 0981-4997580 (Newman, Derek) (Entered: 08/29/2017)
08/30/2017	24	ORDER re 21 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Carl Charles for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only.

		NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).(DS) (Entered: 08/30/2017)
08/30/2017	25	ORDER re 22 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Sasha J Buchert for Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski and for Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/30/2017)
08/30/2017	26	ORDER re 23 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Camilla B Taylor for Plaitiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski and Cathrine Schmid, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 08/30/2017)
09/01/2017		Case Reassigned to Judge Marsha J. Pechman. Judge James L. Robart no longer assigned to the case. All future pleadings shall bear Case No. C17-1297MJP. (AD) (Entered: 09/01/2017)
09/06/2017	27	NOTICE of Pendency of Other Action in District of Columbia, District of Maryland, Central District of California, case number in other court 17-cv-1597-CKK, 1:17-cv-02459-MJG, 17-cv-6516 ; filed by Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid. (Newman, Derek) (Entered: 09/06/2017)
09/14/2017	28	AFFIDAVIT of Service of Summons and Complaint on United States Department of Defense by serving Denise Shellman, Paralegal, authorized to accept service on 8/30/2017, filed by Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid. (Newman, Derek) (Entered: 09/14/2017)
09/14/2017	29	AFFIDAVIT of Service of Summons and Complaint on James N. Mattis, in his official capacity as Secretary of Defense, by serving Denise Shellman, Paralegal, authorized to accept service on 8/30/2017, filed by Plaintiffs D.L., Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Cathrine Schmid. (Newman, Derek) (Entered: 09/14/2017)
09/14/2017	30	AMENDED COMPLAINT against All Defendants Attorney Samantha Everett added to party D.L.(pty:pla), Attorney Samantha Everett added to party Laura Garza(pty:pla), Attorney Samantha Everett added to party Gender Justice

		League(pty:pla), Attorney Samantha Everett added to party Human Rights Campaign(pty:pla), Attorney Samantha Everett added to party Ryan Karnoski (pty:pla), Attorney Samantha Everett added to party Cathrine Schmid(pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Lindsey Muller (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Terece Lewis (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Phillip Stephens (pty:pla, Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Megan Winters (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Jane Doe (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party Conner Callahan (pty:pla), Attorneys Samantha Everett, Derek Newman, Tara Borelli, Jon Davidson, Camilla Taylor, Peter Renn, Natalie Nardecchia, Sasha Buchert, Kara Ingelhart, Carl Charles, Peter Perkowski, James Hurst, and Jordan Heinz added to party American Military Partner Association (pty:pla), filed by Human Rights Campaign, Ryan Karnoski, D.L., Cathrine Schmid, Gender Justice League, Laura Garza, Lindsey Muller, Terece Lewis, Phillip Stephens, Megan Winters, Jane Doe, Conner Callahan, and American Military Partner Association (Everett, Samantha) Modified on 9/14/2017 (KB). (Entered: 09/14/2017)
09/14/2017		NOTICE of Docket Text Modification re 30 Amended Complaint: Modified to correctly reflect additional parties added by Amended Complaint. (KB) (Entered: 09/14/2017)
09/14/2017	31	MOTION to Proceed Under Pseudonym , filed by Plaintiff Jane Doe. (Attachments: # 1 Proposed Order) Noting Date 9/29/2017, (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	32	MOTION for Preliminary Injunction , filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 10/6/2017, (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	33	DECLARATION of Jane Doe filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey

		Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 31 MOTION to Proceed Under Pseudonym , 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	34	DECLARATION of Samantha Everett filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18)(Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	35	DECLARATION of Ryan Karnoski filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	36	DECLARATION of Catherine Schmid filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	37	DECLARATION of D.L. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	38	DECLARATION of Lindsey Muller filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	39	DECLARATION of Terece Lewis filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	40	DECLARATION of Phillip Stephens filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32

		MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	41	DECLARATION of Megan Winters filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	42	DECLARATION of Conner Callahan filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	43	DECLARATION of Sarah Warbelow filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	44	DECLARATION of Danni Askini filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	45	DECLARATION of Ashley Broadway filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	46	DECLARATION of Brad R. Carson filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	47	DECLARATION of George R. Borwn filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Everett, Samantha) (Entered: 09/14/2017)

09/14/2017	48	DECLARATION of Raymond Edwin Mabus, Jr. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Everett, Samantha) (Entered: 09/14/2017)
09/14/2017	49	DECLARATION of Admiral Michael Mullen filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction (Everett, Samantha) (Entered: 09/14/2017)
09/15/2017	50	NOTICE of Appearance by attorney Ryan Bradley Parker on behalf of Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Parker, Ryan) (Entered: 09/15/2017)
09/16/2017	51	AFFIDAVIT of Service of Summons and Complaint on United States of America, via Attorney General Jeff Sessions, by serving Andre Harrington, agent, authorized to accept service on 8/30/2017, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Everett, Samantha) (Entered: 09/16/2017)
09/21/2017	52	Stipulated MOTION *for a Briefing Schedule*, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. Noting Date 9/21/2017, (Parker, Ryan) (Entered: 09/21/2017)
09/22/2017	53	ORDER granting 52 Stipulated Motion Setting Briefing Schedule re Plaintiffs' 32 motion for preliminary injunction and Defendants' motion to dismiss. Defendants' opposition to Plaintiffs' motion 32 and filing of motion to dismiss due 10/16/2017; Plaintiffs' reply in support of their motion 32 and opposition to Defendants' motion due 11/1/2017; Defendants' reply in support of their motion to dismiss due 11/9/2017. Signed by Judge Marsha J. Pechman. (PM) (Entered: 09/22/2017)
09/22/2017	54	AFFIDAVIT of Service of Summons and Complaint on United States of America, via Annette Hayes US Attorney for the Western District of Washington, by serving on the government entity "US Attorney's Office" to Patricia Peterut, a deputy administrative officer on 8/30/2017, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Everett, Samantha) (Entered: 09/22/2017)
09/25/2017	55	MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp), filed by Intervenor Plaintiff State of Washington. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 10/13/2017, (Baker, La Rond) (Entered: 09/25/2017)

09/25/2017	56	DECLARATION of La Rond Baker filed by Intervenor Plaintiff State of Washington re 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp) (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Baker, La Rond) (Entered: 09/25/2017)
09/25/2017	57	DECLARATION of David Postman filed by Intervenor Plaintiff State of Washington re 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp) (Baker, La Rond) (Entered: 09/25/2017)
10/06/2017	58	STIPULATION AND PROPOSED ORDER *Extending the Time to Respond to the State of Washington's Motion to Intervene* by parties (Parker, Ryan) (Entered: 10/06/2017)
10/09/2017	59	APPLICATION OF ATTORNEY Vanessa Barsanti FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington (Fee Paid) Receipt No. 0981-5045532 (Newman, Derek) (Entered: 10/09/2017)
10/09/2017	60	APPLICATION OF ATTORNEY Scott Lerner FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington (Fee Paid) Receipt No. 0981-5045547 (Newman, Derek) (Entered: 10/09/2017)
10/09/2017	61	APPLICATION OF ATTORNEY Daniel I. Siegfried FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington (Fee Paid) Receipt No. 0981-5045548 (Newman, Derek) (Entered: 10/09/2017)
10/10/2017	62	ORDER granting Plaintiff Jane Doe's 31 Motion to Proceed under Pseudonym, signed by Judge Marsha J. Pechman. (SWT) (Entered: 10/10/2017)
10/10/2017	63	ORDER re 59 Application for Leave to Appear Pro Hac Vice,. The Court ADMITS Attorney Vanessa Barsanti for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 10/10/2017)

10/10/2017	64	ORDER re 60 Application for Leave to Appear Pro Hac Vice,. The Court ADMITS Attorney Scott Lerner for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 10/10/2017)
10/10/2017	65	ORDER re 61 Application for Leave to Appear Pro Hac Vice,. The Court ADMITS Attorney Daniel I Siegfried for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, Intervenor Plaintiff State of Washington by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 10/10/2017)
10/10/2017	66	STIPULATION AND ORDER extending time to respond to the State of Washington's 55 MOTION to Intervene. Response due 10/16/2017; Reply due 10/20/2017. Signed by Judge Marsha J. Pechman. (PM) (Entered: 10/10/2017)
10/11/2017	67	STIPULATION AND PROPOSED ORDER *Specifying Page Limitations for the Parties' Combined Filings* by parties (Parker, Ryan) (Entered: 10/11/2017)
10/16/2017	68	STIPULATION AND ORDER re 32 MOTION for Preliminary Injunction. Defendants' combined motion to dismiss and opposition to Plaintiffs' motion for a preliminary injunction shall not exceed forty-five (45) pages; and Plaintiffs' combined opposition to Defendants' motion to dismiss and reply in support of their motion for a preliminary injunction shall not exceed thirty-five (35) pages. Signed by Judge Marsha J. Pechman. (PM) (Entered: 10/16/2017)
10/16/2017	69	MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction*, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~. (Attachments: # 1 Exhibit Interim Guidance, # 2 Proposed Order) Noting Date 11/9/2017, (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to Motion for PI. (PM). (Entered: 10/16/2017)
10/16/2017	70	DECLARATION of Timothy J. McCracken filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to

		Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	71	DECLARATION of Phillip A. Layman filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington,~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	72	DECLARATION of Jonathan Easley filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	73	DECLARATION of Gregory C. Huffman filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	74	DECLARATION of Nicholas Good filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	75	DECLARATION of Susan Bryerjoyner filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, ~~Intervenor Plaintiff State of Washington~~ re 69 MOTION to Dismiss *and Opposition to Plaintiffs' 32 Motion for a Preliminary Injunction* (Parker, Ryan) Modified on 10/17/2017: edited text to strike State of WA as a filer per phone call from counsel (PM). Modified on 10/17/2017 to add link to motion for P.I. (PM). (Entered: 10/16/2017)
10/16/2017	76	RESPONSE, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp). (Parker, Ryan) (Entered: 10/16/2017)
10/16/2017	77	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights

		Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp). (Everett, Samantha) (Entered: 10/16/2017)
10/17/2017		NOTICE of Docket Text Modification re 75 Declaration, 73 Declaration, 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction*, 72 Declaration, 74 Declaration, 70 Declaration, 71 Declaration: edited text to strike State of WA as a filer per phone call from counsel. (PM) (Entered: 10/17/2017)
10/18/2017	78	NOTICE of Hearing 32 MOTION for Preliminary Injunction : ORAL ARGUMENT/Motion Hearing set for 11/28/2017 at 10:00 AM in Courtroom 14206 before Judge Marsha J. Pechman. Each side is allowed thirty minutes for argument, including rebuttal. (RM) (Entered: 10/18/2017)
10/19/2017	79	NOTICE of Rescheduled Hearing 32 MOTION for Preliminary Injunction : ORAL ARGUMENT/Motion Hearing set for 11/21/2017 at 1:30 PM in Courtroom 14206 before Judge Marsha J. Pechman. Each side is allowed thirty minutes for argument, including rebuttal. (RM) (Entered: 10/19/2017)
10/19/2017	80	NOTICE of Request for Video Recording of motion for preliminary injunction on 11/21/2017 at 1:30 PM before Marsha J. Pechman. Parties must submit PARTY RESPONSE TO REQUEST FOR VIDEO RECORDING before 10/27/2017. **Please Note: This form must not be filed electronically with the Court.** (RM) (Entered: 10/19/2017)
10/20/2017	81	REPLY, filed by Intervenor Plaintiff State of Washington, TO RESPONSE to 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp) (Baker, La Rond) (Entered: 10/20/2017)
10/24/2017	82	NOTICE of Hearing 55 MOTION to Intervene Attorney La Rond Baker added to party State of Washington(pty:intvp) : ORAL ARGUMENT/Motion Hearing set for 11/14/2017 at 02:00 PM in Courtroom 14206 before Judge Marsha J. Pechman. Each side is allowed twenty minutes for argument, including rebuttal. (RM) (Entered: 10/24/2017)
10/24/2017	83	NOTICE of Request for Video Recording of Motion to Intervene on 11/14/2017 at 2:00 PM before Marsha J. Pechman. Parties must submit PARTY RESPONSE TO REQUEST FOR VIDEO RECORDING before 11/3/2017. **Please Note: This form must not be filed electronically with the Court.** (RM) (Entered: 10/24/2017)
11/01/2017	84	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 32 MOTION for Preliminary Injunction , 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction*. (Everett, Samantha) (Entered: 11/01/2017)
11/01/2017	85	DECLARATION of Mark J. Eitelberg filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis,

		Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction , 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction* (Attachments: # 1 Exhibit A) (Everett, Samantha) (Entered: 11/01/2017)
11/01/2017	86	DECLARATION of Raymond Edwin Mabus, Jr. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 32 MOTION for Preliminary Injunction , 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction* (Everett, Samantha) (Entered: 11/01/2017)
11/06/2017	87	NOTIFICATION REGARDING PROPOSED VIDEO RECORDING. All parties have consented to the video recording of the motion to intervene on 11/14/2017 at 2:00 PM. Unless otherwise ordered by the presiding judge, the proceeding will be video recorded as part of the CAMERAS Pilot Project. (RM) (Entered: 11/06/2017)
11/06/2017	88	NOTIFICATION REGARDING PROPOSED VIDEO RECORDING. All parties have consented to the video recording of the Motion for Preliminary Injunction on 11/21/2017 at 1:30 PM. Unless otherwise ordered by the presiding judge, the proceeding will be video recorded as part of the CAMERAS Pilot Project. (RM) (Entered: 11/06/2017)
11/07/2017	89	NOTICE/MOTION *of Supplemental Authority and Request for a Stay of Proceedings* ; filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Exhibit Doe v. Trump - Opinion and Order)(Parker, Ryan) Modified on 11/8/2017 to turn into a motion per direction of chambers (PM). (Entered: 11/07/2017)
11/08/2017		Noting Date Set per direction of chambers re 89 NOTICE/MOTION of Supplemental Authority and Request for a Stay of Proceedings: Noting Date 11/10/2017. (PM) (Entered: 11/08/2017)
11/09/2017	90	REPLY, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, TO RESPONSE to 69 MOTION to Dismiss *and Opposition to Plaintiffs' Motion for a Preliminary Injunction* (Parker, Ryan) (Entered: 11/09/2017)
11/09/2017	91	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 89 MOTION. (Everett, Samantha) (Entered: 11/09/2017)
11/09/2017	92	Supplemental DECLARATION of Jane Doe filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 89 MOTION (Everett, Samantha) (Entered: 11/09/2017)

11/09/2017	93	RESPONSE, by Intervenor Plaintiff State of Washington, to 89 MOTION. (Baker, La Rond) (Entered: 11/09/2017)
11/11/2017	94	MINUTE ORDER by Judge Marsha J. Pechman. RE: 89 MOTION filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. The following MINUTE ORDER is made by direction of the Court, the Honorable Marsha J. Pechman, United States District Judge: Defendants filed a request to stay proceedings on November 7, 2017. Dkt. #89. The Court has reviewed Defendants' request (Dkt. #89), Plaintiffs' and the State of Washington's responses (Dkts. #9193), and will DENY Defendants' request. A further written order will follow. (YH) (Entered: 11/11/2017)
11/14/2017	95	NOTICE of Appearance by attorney Gerald Brinton Lucas on behalf of Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Lucas, Gerald) (Entered: 11/14/2017)
11/14/2017	96	MINUTE ENTRY for proceedings held before Judge Marsha J. Pechman- Dep Clerk: *Rhonda Miller*; Pla Counsel: *LaRond Baker, Peter Renn, Derek Newman, Kara Ingelhart*; Def Counsel: *Gerald Brinton Lucas, Andrew Carmichael*; CR: *Debbie Zurn*; **Motion Hearing** held on 11/14/2017 55 MOTION to Intervene filed by State of Washington. Oral argument presented. As stated orally on the record, the motion to intervene is GRANTED. A written order will follow in ten days. (RM) (Entered: 11/15/2017)
11/17/2017	97	STATEMENT re 32 MOTION for Preliminary Injunction by Intervenor Plaintiff State of Washington (Baker, La Rond) (Entered: 11/17/2017)
11/20/2017	98	ORDER denying Defendants' 89 Motion for Stay of Proceedings signed by Judge Marsha J. Pechman. (PM) (Entered: 11/20/2017)
11/21/2017	99	NOTICE of Appearance by attorney Colleen M Melody on behalf of Intervenor Plaintiff State of Washington. (Melody, Colleen) (Entered: 11/21/2017)
11/21/2017	100	MINUTE ENTRY for proceedings held before Judge Marsha J. Pechman- Dep Clerk: *Rhonda Miller*; Pla Counsel: *Peter Renn, Natalie Nardecchia, Derek Newman, LaRond Baker, Colleen Melody*; Def Counsel: *Gerald Brinton Lucas, Ryan Bradley Parker*; CR: *Andrea Ramirez*; **Motion to Dismiss and Preliminary Injunction Hearing** held on 11/21/2017. Oral argument presented. Court will issue written opinion by 12/8/2017. (RM) (Entered: 11/21/2017)
11/27/2017	101	ORDER granting State of Washington's 55 Motion to Intervene. Signed by Judge Marsha J. Pechman. (PM) (Entered: 11/27/2017)
12/08/2017	102	MINUTE ORDER authorized by Judge Marsha J. Pechman. On Monday, December 11, 2017 the Court will issue a ruling on Plaintiffs' 32 MOTION for Preliminary Injunction. (PM) (Entered: 12/08/2017)
12/11/2017	103	ORDER granting in part and denying in part Defendants' 69 Motion to Dismiss; Order granting Plaintiffs' 32 Motion for Preliminary Injunction. 1. The Court GRANTS Defendants' Motion to Dismiss with respect to Plaintiffs'

		procedural due process claim; 2. The Court DENIES Defendants' Motion to Dismiss with respect to Plaintiffs' equal protection, substantive due process, and First Amendment claims; 3. The Court GRANTS Plaintiffs' Motion for a Preliminary Injunction, and hereby enjoins Defendants and their officers, agents, servants, employees, and attorneys, and any other person or entity subject to their control or acting directly or indirectly in concert or participation with Defendants from taking any action relative to transgender individuals that is inconsistent with the status quo that existed prior to President Trump's July 26, 2017 announcement. This Preliminary Injunction shall take effect immediately and shall remain in effect pending resolution of this action on the merits or further order of this Court. Signed by Judge Marsha J. Pechman. (PM) (Entered: 12/11/2017)
12/14/2017	104	COMPLAINT *Intervenor-Plaintiff* against defendant(s) James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, Elaine C. Duke, Department of Homeland Security (Receipt # 0981-5128967: FEE REFUNDED, Not Required), filed by State of Washington. (Attachments: # 1 Summons Elaine C. Duke, # 2 Summons James N. Mattis, # 3 Summons Donald Trump, # 4 Summons United States of America, # 5 Summons US Department of Defense, # 6 Summons US Department of Homeland Security)(Baker, La Rond) Modified on 12/15/2017 to reflect the filing fee was refunded; Counsel notified (PM). (Entered: 12/14/2017)
12/14/2017	105	NOTICE OF APPEAL to Ninth Circuit (17-36009) re 103 Order on Motion for Preliminary Injunction,,,,,, Order on Motion to Dismiss,,,,, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Parker, Ryan) Modified on 12/19/2017 to add CCA # (CDA). (Entered: 12/14/2017)
12/15/2017	106	MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal , filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 12/29/2017, (Parker, Ryan) (Entered: 12/15/2017)
12/15/2017	107	DECLARATION of Lernes J. Hebert filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Parker, Ryan) (Entered: 12/15/2017)
12/15/2017		NOTICE of Docket Text Modification re 104 Complaint in Intervention by State of Washington: Filing fee refunded; not required. Counsel has been notified. (PM) (Entered: 12/15/2017)
12/15/2017	108	Summons Electronically Issued as to defendant Elaine C. Duke (main document) (Attachments: # 1 Summons James N. Mattis, # 2 Summons Donald Trump, # 3 Summons United States of America, # 4 Summons US Department of Defense, # 5 Summons US Department of Homeland Security) (PM) (Entered: 12/15/2017)
12/15/2017	109	

		NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Motion to Dismiss/Preliminary Injunction held on 11/21/2017 before Judge Marsha J. Pechman. Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov. To purchase a copy of the transcript, contact court reporter Andrea Ramirez, andrea_ramirez@wawd.uscourts.gov, 206-370-8509. Release of Transcript Restriction set for 3/15/2018, (AR) (Entered: 12/15/2017)
12/15/2017	110	CERTIFICATE OF SERVICE by Intervenor Plaintiff State of Washington re 104 Complaint,, *Intervenor-Plaintiff* (Baker, La Rond) (Entered: 12/15/2017)
12/15/2017	111	USCA Case Number 17-36009 for 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. (CDA) (Entered: 12/19/2017)
12/15/2017	112	ORDER of USCA (17-36009) as to 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump (CDA) (Entered: 12/19/2017)
12/20/2017	113	CORPORATE DISCLOSURE STATEMENT Filed pursuant to Fed.R.Civ.P 7.1. Filed by American Military Partner Association (Everett, Samantha) (Entered: 12/20/2017)
12/27/2017	114	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal . (Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	115	DECLARATION of G. R. Brown filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	116	DECLARATION of D. L. James filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey

		Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	117	DECLARATION of R. E. Mabus filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	118	DECLARATION of S. Everett filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9)(Everett, Samantha) (Entered: 12/27/2017)
12/27/2017	119	RESPONSE, by Intervenor Plaintiff State of Washington, to 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal . (Baker, La Rond) (Entered: 12/27/2017)
12/27/2017	120	DECLARATION of La Rond Baker filed by Intervenor Plaintiff State of Washington re 106 MOTION for Clarification and, if necessary, a Partial Stay of Preliminary Injunction Pending Appeal (Attachments: # 1 Exhibit Exhibit A)(Baker, La Rond) (Entered: 12/27/2017)
12/29/2017	121	ORDER denying Defendants' 106 Motion for Clarification and Motion for Partial Stay of Preliminary Injunction Pending Appeal, signed by Judge Marsha J. Pechman. (SWT) (Entered: 12/29/2017)
12/30/2017	122	ORDER of USCA (NOT THE MANDATE 17-36009) as to 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. **DISMISSED** (CDA) (Entered: 01/02/2018)
01/03/2018	123	ORDER of USCA (17-36009) as to 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. The mandate shall issue 7 days after the filing date of this order. (CDA) (Entered: 01/04/2018)
01/05/2018	124	ORDER REGARDING INITIAL DISCLOSURES AND JOINT STATUS REPORT Joint Status Report due by 2/16/2018, FRCP 26f Conference Deadline is 2/2/2018, Initial Disclosure Deadline is 2/9/2018, by Judge Marsha J. Pechman. (RM) (Entered: 01/05/2018)
01/10/2018	125	APPLICATION OF ATTORNEY Joseph B. Tyson FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey

		Muller, Cathrine Schmid, Phillip Stephens, Megan Winters (Fee Paid) Receipt No. 0981-5157687 (Newman, Derek) (Entered: 01/10/2018)
01/10/2018	126	ORDER re 125 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Joseph B Tyson for American Military Partner Association,Joseph B Tyson for Plaintiffs Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens and for Megan Winters, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 01/10/2018)
01/11/2018	127	MANDATE of USCA (17-36009) as to 105 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. The judgment of this Court, entered December 30, 2017, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. DISMISSED. (SG) (Entered: 01/11/2018)
01/12/2018	128	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Jon W Davidson for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Everett, Samantha) (Entered: 01/12/2018)
01/25/2018	129	MOTION for Summary Judgment , filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 2/16/2018, (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	130	DECLARATION of Ryan Karnoski filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	131	DECLARATION of Cathrine Schmid filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	132	DECLARATION of D.L. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey

		Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	133	DECLARATION of Lindsey Muller filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	134	DECLARATION of Terece Lewis filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	135	DECLARATION of Phillip Stephens filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	136	DECLARATION of Megan Winters filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	137	DECLARATION of Conner Callahan filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	138	DECLARATION of Jane Doe filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	139	DECLARATION of Sarah Warbelow filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	140	DECLARATION of Danni Askini filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	141	DECLARATION of Ashley Broadway filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender

		Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	142	DECLARATION of Brad R. Carson filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	143	DECLARATION of George R. Brown filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	144	DECLARATION of Raymond Edwin Mabus, Jr. filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	145	DECLARATION of Eric Fanning filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	146	DECLARATION of Deborah Lee James filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	147	DECLARATION of Mark J. Eitelberg filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	148	DECLARATION of Admiral Michael Mullen filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re

		129 MOTION for Summary Judgment (Newman, Derek) (Entered: 01/25/2018)
01/25/2018	149	DECLARATION of Derek Newman filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10)(Newman, Derek) (Entered: 01/25/2018)
01/25/2018	150	MOTION for Summary Judgment , filed by Intervenor Plaintiff State of Washington. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 2/16/2018, (Baker, La Rond) (Entered: 01/25/2018)
01/26/2018	151	NOTICE of Appearance by attorney Michael J Ewart on behalf of Amicus Retired Military Officers and Former National Security Officials. (Ewart, Michael) (Entered: 01/26/2018)
01/26/2018	152	Agreed MOTION for Leave to File *Amicus Brief in Support of Plaintiffrs' Motion for Summary Judgment*, filed by Amicus Retired Military Officers and Former National Security Officials. (Attachments: # 1 Proposed Order, # 2 Exhibit A) Noting Date 1/26/2018, (Ewart, Michael) (Entered: 01/26/2018)
01/29/2018		~~Attorney Michael S Scott added as counsel~~ for Retired Military Officers and Former National Security Officials per 151 Notice of Appearance. (PM) Modified on 1/29/2018: Michael S. Scott entered in error; removed from docket. (PM). (Entered: 01/29/2018)
01/29/2018		Attorney Michael Ramsey Scott added for Retired Military Officers and Former National Security Officials. Attorney Michael S Scott terminated as he was added in error: per 151 Notice of Appearance. (PM) (Entered: 01/29/2018)
01/30/2018	153	ORDER granting Retired Military Officers and Former National Security Officials' 152 Agreed Motion for Leave to File to File Amicus Brief in Support of Plaintiffs' Motion for Summary Judgment. The amicus brief attached as Exhibit A to the Motion for Leave is hereby deemed filed. Signed by Judge Marsha J. Pechman. (PM) (Entered: 01/31/2018)
01/31/2018	154	NOTICE of Appearance by attorney Katherine C. Chamberlain on behalf of Amicus Commonwealth of Massachusetts. (Chamberlain, Katherine) (Entered: 01/31/2018)
01/31/2018	155	NOTICE of Appearance by attorney Joseph R Shaeffer on behalf of Amicus Commonwealth of Massachusetts. (Shaeffer, Joseph) (Entered: 01/31/2018)
01/31/2018	156	APPLICATION OF ATTORNEY Kimberly A. Parr FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Commonwealth of Massachusetts (Fee Paid) Receipt No. 0981-5182970 (Chamberlain, Katherine) (Entered: 01/31/2018)
01/31/2018	157	ORDER re 156 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Kimberly A. Parr for Amicus Commonwealth of

		Massachusetts, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 01/31/2018)
01/31/2018	158	NOTICE of Appearance by attorney Abha Khanna on behalf of Amicus Constitutional Accountability Center. (Khanna, Abha) (Entered: 01/31/2018)
01/31/2018	159	APPLICATION OF ATTORNEY Ashwin P. Phatak FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Constitutional Accountability Center (Fee Paid) Receipt No. 0981-5184097 (Khanna, Abha) (Entered: 01/31/2018)
01/31/2018	160	APPLICATION OF ATTORNEY Brianne J. Gorod FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Constitutional Accountability Center (Fee Paid) Receipt No. 0981-5184104 (Khanna, Abha) (Entered: 01/31/2018)
01/31/2018	161	APPLICATION *OF ATTORNEY* David H. Gans *FOR LEAVE TO APPEAR PRO HAC VICE* by Amicus Constitutional Accountability Center *Receipt No. 0981-5184113* (Khanna, Abha) Modified on 2/1/2018 to edit receipt number. (RE) (Entered: 01/31/2018)
01/31/2018	162	APPLICATION OF ATTORNEY Elizabeth B. Wydra FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Constitutional Accountability Center (Fee Paid) Receipt No. 0981-5184121 (Khanna, Abha) (Entered: 01/31/2018)
01/31/2018	163	Agreed MOTION for Leave to File *Brief of Amicus Curiae Constitutional Accountability Center in Support of Plaintiffs' 129 150 Motions for Summary Judgment*, filed by Amicus Constitutional Accountability Center. (Attachments: # 1 Exhibit Brief of Amicus Curiae Consitutional Accountability Center in Support of Plaintiffs Motions for Summary Judgment, # 2 Proposed Order) Noting Date 1/31/2018, (Khanna, Abha) Modified on 2/1/2018 to add link to s/j motions (PM). (Entered: 01/31/2018)
02/01/2018	164	ORDER re 159 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Ashwin P Phatak for Amicus Constitutional Accountability Center, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 02/01/2018)
02/01/2018	165	ORDER re 160 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Brianne J. Gorod for Amicus Constitutional Accountability Center, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the*

		applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).(DS) (Entered: 02/01/2018)
02/01/2018	166	ORDER re 161 Application. The Court ADMITS Attorney David H Gans for Amicus Constitutional Accountability Center, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 02/01/2018)
02/01/2018	167	ORDER re 162 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Elizabeth B Wydra for Amicus Constitutional Accountability Center, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 02/01/2018)
02/01/2018		Attorney William B. Stafford added as counsel for Constitutional Accountability Center per 158 Notice of Appearance. (PM) (Entered: 02/01/2018)
02/01/2018	168	NOTICE of Appearance by attorney Lauren Watts Staniar, Amanda J Beane, Sara Ainsworth on behalf of Amicus Legal Voice f/k/a Northwest Women's Law Center. (Staniar, Lauren) (Entered: 02/01/2018)
02/01/2018	169	Agreed MOTION for Leave to File *Amicus Brief In Support of Plaintiffs' Motion for Summary Judgment*, filed by Amicus Legal Voice f/k/a Northwest Women's Law Center. (Attachments: # 1 Proposed Order) Noting Date 2/1/2018, (Staniar, Lauren) (Entered: 02/01/2018)
02/01/2018	170	Agreed MOTION for Leave to File *Amicus Brief*, filed by Amicus Commonwealth of Massachusetts. (Attachments: # 1 Proposed Order, # 2 Exhibit Proposed Amicus Brief) Noting Date 2/1/2018, (Parr, Kimberly) (Entered: 02/01/2018)
02/02/2018	171	ORDER granting *Amicus Curiae* Constitutional Accountability Center's 163 Motion for Leave to File Brief of *Amicus curiae*. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/02/2018)
02/02/2018	172	ORDER granting amici Legal Voice's 169 Agreed Motion for Leave to File Amicus Curiae Brief. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/02/2018)
02/02/2018	173	APPLICATION OF ATTORNEY Cristina Sepe FOR LEAVE TO APPEAR PRO HAC VICE for Amicus Legal Voice (Fee Paid) Receipt No. 0981-5186816 (Staniar, Lauren) (Entered: 02/02/2018)
02/02/2018	174	

		ORDER re 173 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Cristina Sepe for Legal Voice, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(CDA) (Entered: 02/02/2018)
02/05/2018	175	ORDER granting Massachusetts, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia's 170 Motion for Leave to File an *Amicus Curiae* Brief in support of Plaintiffs' and Intervenor-Plaintiff's motions for summary judgment. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/05/2018)
02/09/2018	176	NOTICE of Hearing 129 MOTION for Summary Judgment , 150 MOTION for Summary Judgment : ORAL ARGUMENT/Motion Hearing set for 3/27/2018 at 10:00 AM in Courtroom 14206 before Judge Marsha J. Pechman. Each side is allowed 30 minutes for argument, including rebuttal. (RM) (Entered: 02/09/2018)
02/09/2018	177	NOTICE of request for video recording of oral argument/motion hearing scheduled for 3/27/2018 at 10:00 AM before Judge Marsha J. Pechman. Parties must submit PARTY RESPONSE TO REQUEST FOR VIDEO RECORDING before 2/14/2018. **Please Note: This form must not be filed electronically with the Court.** (RM) (Entered: 02/09/2018)
02/12/2018	178	RESPONSE, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 129 MOTION for Summary Judgment , 150 MOTION for Summary Judgment . (Parker, Ryan) (Entered: 02/12/2018)
02/12/2018	179	DECLARATION of Ryan B. Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 129 MOTION for Summary Judgment , 150 MOTION for Summary Judgment (Parker, Ryan) (Entered: 02/12/2018)
02/12/2018	180	Joint MOTION for Protective Order , filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Attachments: # 1 Declaration of Samantha Everett) Noting Date 2/23/2018, (Everett, Samantha) (Entered: 02/12/2018)
02/12/2018	181	Joint MOTION for Order *re: FED. R. EVID. 502(D)*, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Noting Date 2/12/2018, (Everett, Samantha) (Entered: 02/12/2018)
02/14/2018	182	

		STIPULATED FED. R. EVID. 502(D) ORDER re: 181 Joint Motion for Order. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/14/2018)
02/14/2018	183	STIPULATED UNIFORM PROTECTIVE ORDER AND CROSS-USE AGREEMENT PROTECTIVE ORDER re 180 Joint MOTION for Protective Order. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/14/2018)
02/16/2018	184	JOINT STATUS REPORT signed by all parties estimated Trial Days: 5-10. Filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters.(Everett, Samantha) (Entered: 02/16/2018)
02/16/2018	185	REPLY, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, TO RESPONSE to 129 MOTION for Summary Judgment (Everett, Samantha) (Entered: 02/16/2018)
02/16/2018	186	DECLARATION of Jordan Heinz filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 129 MOTION for Summary Judgment (Attachments: # 1 Exhibit A)(Everett, Samantha) (Entered: 02/16/2018)
02/16/2018	187	REPLY, filed by Intervenor Plaintiff State of Washington, TO RESPONSE to 150 MOTION for Summary Judgment (Attachments: # 1 Declaration of La Rond Baker, # 2 Exhibit A, # 3 Exhibit B)(Baker, La Rond) (Entered: 02/16/2018)
02/20/2018	188	NOTIFICATION REGARDING PROPOSED VIDEO RECORDING. All parties have consented to the video recording of the hearing on 129 MOTION for Summary Judgment & 150 MOTION for Summary Judgment set for 3/27/2018 at 10:00 AM in Courtroom 14206 before Judge Marsha J. Pechman. Unless otherwise ordered by the presiding judge, the proceeding will be video recorded as part of the CAMERAS Pilot Project. (RM) (Entered: 02/20/2018)
02/21/2018	189	ORDER denying Defendants' 178 Rule 56(d) Motion. Defendants are ORDERED to file any opposition to Plaintiffs' and Washington's 129 , 150 Motions for Summary Judgment within seven (7) days of the date of this Order. Thereafter, Plaintiffs and Washington will have seven (7) days to reply. Signed by Judge Marsha J. Pechman. (PM) (Entered: 02/21/2018)
02/22/2018	190	MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES*, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Attachments: # 1 Proposed Order) Noting Date 3/9/2018, (Everett, Samantha) (Entered: 02/22/2018)
02/22/2018	191	DECLARATION of Vanessa Barsanti filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender

		Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 190 MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Everett, Samantha) (Entered: 02/22/2018)
02/26/2018	192	ANSWER to 104 Complaint,, by James N Mattis, Donald J. Trump, United States Department of Defense, United States of America.(Parker, Ryan) (Entered: 02/26/2018)
02/26/2018	193	ANSWER to 30 Amended Complaint,,,,,,,,,, by James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Parker, Ryan) (Entered: 02/26/2018)
02/28/2018	194	CROSS MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment*, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 3/23/2018, (Parker, Ryan) Modified on 3/2/2018 to identify this as a cross motion(PM). (Entered: 02/28/2018)
02/28/2018	195	DECLARATION of Maria Martinez filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Parker, Ryan) (Entered: 02/28/2018)
02/28/2018	196	DECLARATION of Jonathan Easley filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Parker, Ryan) (Entered: 02/28/2018)
02/28/2018	197	DECLARATION of Ryan Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Parker, Ryan) (Entered: 02/28/2018)
03/02/2018	198	MINUTE ORDER re: Defendants' 194 Cross-MOTION for Partial Summary Judgment. Any response to the Cross-Motion filed by Plaintiffs shall be filed separately from their reply in support of their Motion for Summary Judgment, and shall be limited to no more than 12 pages. Defendants' reply shall not exceed 6 pages. Authorized by Judge Marsha J. echman. (PM) (Entered: 03/02/2018)
03/05/2018	199	RESPONSE, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 190 MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES*. (Parker, Ryan) (Entered: 03/05/2018)
03/05/2018	200	DECLARATION of Ryan B. Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of

		America re 190 MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES* (Parker, Ryan) (Entered: 03/05/2018)
03/07/2018	201	REPLY, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, TO RESPONSE to 129 MOTION for Summary Judgment (Everett, Samantha) (Entered: 03/07/2018)
03/07/2018	202	REPLY, filed by Intervenor Plaintiff State of Washington, TO RESPONSE to 150 MOTION for Summary Judgment (Baker, La Rond) (Entered: 03/07/2018)
03/09/2018	203	REPLY, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, TO RESPONSE to 190 MOTION to Compel *DEFENDANTS INITIAL DISCLOSURES* (Everett, Samantha) (Entered: 03/09/2018)
03/14/2018	204	ORDER granting Plaintiffs' 190 Motion to Compel. Signed by Judge Marsha J. Pechman. (PM) (Entered: 03/14/2018)
03/19/2018	205	MOTION For Clarification And, If Necessary, For Reconsideration re 204 Order on Motion to Compel , filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. Noting Date 3/19/2018, (Parker, Ryan) (Entered: 03/19/2018)
03/19/2018	206	DECLARATION of Ryan B. Parker filed by Defendants Donald J. Trump, United States Department of Defense, United States of America re 205 MOTION For Clarification And, If Necessary, For Reconsideration re 204 Order on Motion to Compel (Attachments: # 1 Exhibit, # 2 Exhibit)(Parker, Ryan) (Entered: 03/19/2018)
03/19/2018	207	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment*. (Everett, Samantha) (Entered: 03/19/2018)
03/19/2018	208	DECLARATION of Samantha Everett filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Attachments: # 1 Exhibit 1) (Everett, Samantha) (Entered: 03/19/2018)
03/19/2018	209	RESPONSE, by Intervenor Plaintiff State of Washington, to 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment*. (Baker, La Rond) (Entered: 03/19/2018)
03/20/2018	210	

		ORDER denying Defendants' 205 Motion for Clarification and Reconsideration. The Court expects Defendants to comply with its Order (Dkt. No. 204) no later than 5:00 PM Pacific Daylight Time on March 22, 2018. Signed by Judge Marsha J. Pechman. (PM) (Entered: 03/20/2018)
03/22/2018	211	RESPONSE by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 210 Order on Motion for Miscellaneous Relief, (Parker, Ryan) (Entered: 03/22/2018)
03/23/2018	212	REPLY, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, TO RESPONSE to 194 MOTION for Partial Summary Judgment *and Opposition to Plaintiffs' and Intervenor's Motions for Summary Judgment* (Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	213	NOTICE ; filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	214	DECLARATION of Ryan B. Parker re 213 Notice-Other by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America (Attachments: # 1 Exhibit)(Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	215	MOTION to Dissolve the Preliminary Injunction , filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 4/13/2018, (Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	216	STRICKEN per direction of chambers. Declaration re-filed as Dkt. # 224 . ~~DECLARATION of Ryan B. Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 215 MOTION to Dissolve the Preliminary Injunction (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)~~(Parker, Ryan) Modified on 4/3/2018 (PM). (Entered: 03/23/2018)
03/23/2018	217	MOTION for Protective Order , filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 4/6/2018, (Parker, Ryan) (Entered: 03/23/2018)
03/26/2018	218	APPLICATION OF ATTORNEY Stephen R. Patton FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters (Fee Paid) Receipt No. 0981-5253044 (Newman, Derek) (Entered: 03/26/2018)

03/26/2018	219	ORDER re 218 Application for Leave to Appear Pro Hac Vice,. The Court ADMITS Attorney Stephen R Patton for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, and Megan Winters, by Clerk William M McCool. No document associated with this docket entry, text only. *NOTE TO COUNSEL: Local counsel agrees to* ***sign all filings*** *and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).*(DS) (Entered: 03/26/2018)
03/26/2018	220	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Michael Ramsey Scott for Amicus Retired Military Officers and Former National Security Officials. (Scott, Michael) (Entered: 03/26/2018)
03/27/2018	221	MINUTE ENTRY for proceedings held before Judge Marsha J. Pechman- Dep Clerk: *Rhonda Miller*; Pla Counsel: *Joseph Tyson, Peter Renn, Steve Patton, Natalie Nardecchia, La Rond Baker*; Def Counsel: *Ryan Parker, Brett Shumate*; CR: *Debbie Zurn*; **Motion Hearing** held on 3/27/2018 re 129 MOTION for Summary Judgment filed by Cathrine Schmid, Jane Doe, Megan Winters, Terece Lewis, Phillip Stephens, Gender Justice League, American Military Partner Association, Conner Callahan, Lindsey Muller, D.L., Ryan Karnoski, Laura Garza, Human Rights Campaign, re 150 MOTION for Summary Judgment filed by State of Washington. Oral argument presented. Court will issue written opinion after parties provide additional briefing on the new transgender policy memorandum issued 3/23/2018. Simultaneous briefing shall not exceed ten pages and is due within seven days. Defendants are ordered to refile and re-note their pending motions in the proper form and format as required by the local rules. (RM) (Entered: 03/27/2018)
03/29/2018	222	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Motion Hearing held on 3/27/2018 before Judge Marsha J. Pechman. Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov. To purchase a copy of the transcript, contact court reporter Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504. Release of Transcript Restriction set for 6/27/2018, (DZ) (Entered: 03/29/2018)
03/29/2018	223	

		MOTION to Dissolve the Preliminary Injunction , filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 4/27/2018, (Parker, Ryan) (Entered: 03/29/2018)
03/29/2018	224	DECLARATION of Ryan Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 223 MOTION to Dissolve the Preliminary Injunction (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Parker, Ryan) (Entered: 03/29/2018)
03/29/2018	225	MOTION for Protective Order , filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 4/13/2018, (Parker, Ryan) (Entered: 03/29/2018)
04/03/2018	226	SUPPLEMENT *In Opposition to Plaintiffs' and Intervenor's 129 150 Motions for Summary Judgment* by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America (Parker, Ryan) Modified on 4/4/2018 to create docket relationship to 129 , 150 . (PM). (Entered: 04/03/2018)
04/03/2018	227	SUPPLEMENT re 201 Reply to Response to Motion, *129 for Summary Judgment* by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters (Everett, Samantha) Modified on 4/4/2018 to create docket relationship to 129 motion.(PM). (Entered: 04/03/2018)
04/03/2018	228	SUPPLEMENT re 150 MOTION for Summary Judgment by Intervenor Plaintiff State of Washington (Baker, La Rond) (Entered: 04/03/2018)
04/10/2018	229	NOTICE of Appearance by attorney Jason Sykes on behalf of Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 04/10/2018)
04/11/2018	230	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 225 MOTION for Protective Order . (Attachments: # 1 Exhibit 1)(Sykes, Jason) (Entered: 04/11/2018)
04/11/2018	231	RESPONSE, by Intervenor Plaintiff State of Washington, to 225 MOTION for Protective Order . (Baker, La Rond) (Entered: 04/11/2018)
04/13/2018	232	REPLY, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, TO RESPONSE to 225 MOTION for Protective Order (Parker, Ryan) (Entered: 04/13/2018)
04/13/2018	233	ORDER granting in part and denying in part Plaintiffs' 129 Motion for Summary Judgment; granting in part and denying in part the State of Washington's 150 Motion for Summary Judgment; granting in part and

		denying in part Defendants' 194 Cross Motion for Partial Summary Judgment; striking Defendants' 223 Motion to Dissolve the Preliminary Injunction. The preliminary injunction previously entered otherwise remains in full force and effect. Signed by Judge Marsha J. Pechman. (PM) (Entered: 04/13/2018)
04/18/2018	234	MINUTE ORDER: The parties are ordered to file an updated joint status report no later than 5/4/2018. Authorized by Judge Marsha J. Pechman. (RM) (Entered: 04/18/2018)
04/19/2018	235	ORDER denying Defendants' 225 Motion for Protective Order and ordering discovery in the case to proceed. Signed by Judge Marsha J. Pechman. (PM) (Entered: 04/19/2018)
04/30/2018	236	NOTICE OF APPEAL to Ninth Circuit (18-35347) re 233 Order on Motion for Summary Judgment, Order on Motion for Partial Summary Judgment,,, Order on Motion for Miscellaneous Relief, by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Parker, Ryan) Modified on 4/30/2018 to add CCA # (CDA). (Entered: 04/30/2018)
04/30/2018	237	USCA Case Number 18-35347 for 236 Notice of Appeal, filed by James N Mattis, United States Department of Defense, United States of America, Donald J. Trump. (CDA) (Entered: 04/30/2018)
04/30/2018	238	MOTION to Stay *Preliminary Injunction Pending Appeal*, filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Attachments: # 1 Proposed Order) Noting Date 5/18/2018, (Parker, Ryan) (Entered: 04/30/2018)
04/30/2018	239	DECLARATION of Ryan Parker filed by Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit)(Parker, Ryan) (Entered: 04/30/2018)
05/02/2018	240	MINUTE ORDER re Defendants' 238 MOTION to Stay *Preliminary Injunction Pending Appeal*. The Court declines to issue an expedited ruling on the Motion, and will issue its ruling following the noting date. The response is due no later than May 14, 2018. The reply is due no later than May 18, 2018. Authorized by Judge Marsha J. Pechman. (TH) (Entered: 05/02/2018)
05/04/2018	241	JOINT STATUS REPORT signed by all parties estimated Trial Days: 5-10. (Sykes, Jason) (Entered: 05/04/2018)
05/09/2018	242	ORDER SETTING TRIAL DATE AND RELATED DATES; Length of Trial: *5-10 DAY* Bench Trial is set for 4/8/2019 at 09:00 AM in Courtroom 14206 before Judge Marsha J. Pechman. Joinder of Parties due by 6/6/2018, Amended Pleadings due by 6/18/2018, Expert Witness Disclosure/Reports under FRCP 26(a)(2) due by 9/10/2018, Motions due by 10/10/2018, Discovery completed by 11/9/2018, The Court will not change the number of depositions per side at this time. Plaintiff may make a renewed request, if needed. Dispositive motions due by 12/10/2018, Motions in Limine due by 3/4/2019, Pretrial Order due by 3/27/2019, Trial briefs to be submitted by 3/27/2019, Proposed Findings of Fact and Conclusions of Law to be submitted by 3/27/2019, Pretrial

		Conference set for 3/29/2019 at 01:30 PM in Courtroom 14206 before Judge Marsha J. Pechman. (RM) (Entered: 05/09/2018)
05/10/2018	243	MOTION for Order to Show Cause , filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 5/25/2018, (Sykes, Jason) (Entered: 05/10/2018)
05/10/2018	244	DECLARATION of Vanessa Barsanti filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 243 MOTION for Order to Show Cause (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Sykes, Jason) (Entered: 05/10/2018)
05/10/2018	245	MOTION to Compel *DEFENDANTS DISCOVERY WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE*, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 5/25/2018, (Sykes, Jason) (Entered: 05/10/2018)
05/10/2018	246	DECLARATION of Daniel Siegfried filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 245 MOTION to Compel *DEFENDANTS DISCOVERY WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28)(Sykes, Jason) (Entered: 05/10/2018)
05/10/2018	247	NOTICE *of Difficult Filing* re 246 Declaration,,, ; filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 05/10/2018)
05/11/2018	248	RESPONSE, by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 243 MOTION for Order to Show Cause . (Parker, Ryan) (Entered: 05/11/2018)
05/11/2018	249	DECLARATION of Ryan Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 243

		MOTION for Order to Show Cause (Attachments: # 1 Exhibit Defendants' Supplemental Initial Disclosures)(Parker, Ryan) (Entered: 05/11/2018)
05/11/2018	256	RECEIPT of Filing in Physical Form with the Clerk's Office: Thumb Drive (Exhibits 11-27, native format) re: 246 Declaration of Daniel Siegfried re: 245 Motion to Compel. (Placed on Clerk's Office filing shelf in one expando folder) (PM) (Entered: 05/14/2018)
05/14/2018	250	RESPONSE, by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, to 238 MOTION to Stay *Preliminary Injunction Pending Appeal*. (Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	251	DECLARATION of George R. Brown filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	252	DECLARATION of Brad R. Carson filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	253	DECLARATION of Lindsey Muller filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	254	DECLARATION of Cathrine Schmid filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	255	DECLARATION of Daniel Siegfried filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11,

		# 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16)(Sykes, Jason) (Entered: 05/14/2018)
05/14/2018	257	RESPONSE, by Intervenor Plaintiff State of Washington, to 238 MOTION to Stay *Preliminary Injunction Pending Appeal*. (Baker, La Rond) (Entered: 05/14/2018)
05/14/2018	258	DECLARATION of La Rond Baker in support of Washington's Response filed by Intervenor Plaintiff State of Washington re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Baker, La Rond) Per Counsel, added last name of declarant to docket text. Modified on 5/16/2018 (vb). (Entered: 05/14/2018)
05/14/2018		NOTICE of Docket Text Modification re 258 Declaration, : Per Counsel, added last name of declarant to docket text. (vb) (Entered: 05/16/2018)
05/16/2018	259	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Samantha Everett for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 05/16/2018)
05/16/2018	260	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Natalie Nardecchia for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 05/16/2018)
05/18/2018	261	REPLY, filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, TO RESPONSE to 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Parker, Ryan) (Entered: 05/18/2018)
05/18/2018	262	DECLARATION of Ryan Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Attachments: # 1 Exhibit, # 2 Exhibit)(Parker, Ryan) (Entered: 05/18/2018)
05/18/2018	263	DECLARATION of Stephanie Barna filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 238 MOTION to Stay *Preliminary Injunction Pending Appeal* (Parker, Ryan) (Entered: 05/18/2018)
05/18/2018	264	REPLY, filed by Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters, TO RESPONSE to 243 MOTION for Order to Show Cause (Sykes, Jason) (Entered: 05/18/2018)

05/18/2018		~~NOTE: Appearance of attorney Ryan B. Parker is not proper, and notices of electronic filing will not be sent until corrected. Signatures must be in accordance with FRCP 11 and LCR 83.2(a) and must comply with ECF Filing Procedures. This deficiency can be cured by filing a notice of appearance.~~ (SWT) Modified to strike notice on 5/21/2018 (SWT). (Entered: 05/21/2018)
05/18/2018		***Motion terminated: 243 MOTION for Order to Show Cause per plaintiff's 264 Reply Withdrawing Motion(SWT) (Entered: 05/21/2018)
05/21/2018		NOTICE of Docket Text Modification re Note re compliance with LCR 83.2, : Notice stricken. Sent in error. (SWT) (Entered: 05/21/2018)
05/21/2018	265	NOTICE of Appearance by attorney Andrew E Carmichael on behalf of Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. (Carmichael, Andrew) (Entered: 05/21/2018)
05/21/2018	266	RESPONSE, by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America, to 245 MOTION to Compel *DEFENDANTS DISCOVERY WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE*. (Parker, Ryan) (Entered: 05/21/2018)
05/21/2018	267	DECLARATION of Ryan Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 245 MOTION to Compel *DEFENDANTS DISCOVERY WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE* (Attachments: # 1 Exhibit, # 2 Exhibit)(Parker, Ryan) (Entered: 05/21/2018)
05/21/2018	268	MOTION for Protective Order , filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 6/1/2018, (Parker, Ryan) (Entered: 05/21/2018)
05/21/2018	269	DECLARATION of Ryan Parker filed by Intervenor Defendants Department of Homeland Security, Elaine C. Duke, Defendants James N Mattis, Donald J. Trump, United States Department of Defense, United States of America re 268 MOTION for Protective Order (Attachments: # 1 Exhibit, # 2 Exhibit)(Parker, Ryan) (Entered: 05/21/2018)
05/22/2018	270	NOTICE OF WITHDRAWAL OF COUNSEL: Attorney Joseph B Tyson for Plaintiffs American Military Partner Association, Conner Callahan, D.L., Jane Doe, Laura Garza, Gender Justice League, Human Rights Campaign, Ryan Karnoski, Terece Lewis, Lindsey Muller, Cathrine Schmid, Phillip Stephens, Megan Winters. (Sykes, Jason) (Entered: 05/22/2018)

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2018, I filed the foregoing excerpts of record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Catherine H. Dorsey
Catherine H. Dorsey