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 ADMIRAL MICHAEL MULLEN IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Michael Mullen, declare as follows:

1. I am a retired Admiral of the United States Navy. From to 2007 to 2011, I served as the Chairman of the Joint Chiefs of Staff. In this capacity, I was the principal military advisor to Presidents George W. Bush and Barack Obama. I offer this declaration in my personal capacity and not as an expert witness.

**PERSONAL BACKGROUND**

2. I am a 1968 graduate from the United States Naval Academy in Annapolis. In 1985, I graduated from the Naval Postgraduate School in Monterey, California, with a Master of Science degree in Operations Research. In 1991, I completed the Harvard Business School Advanced Management Program.

3. I served over 43 years in the Navy. During my tenure, I served in the Bureau of Naval Personnel as Director, Chief of Planning and Provisions, Surface Officer Distribution and

in the Office of the Secretary of Defense on the staff of the Director, Operational Test and Evaluation. I also served as Deputy Director and Director of Surface Warfare and as Deputy Chief of Naval Operations for Resources, Requirements, and Assessments. From August 2003 to October 2004, I was the Vice Chief of Naval Operations. As Commander, U.S. Naval Forces Europe and Allied Joint Force Naples, I had operational responsibility for NATO missions in the Balkans, Iraq, and the Mediterranean. I was also responsible for providing overall command, operational control, and coordination of Naval forces in Europe. I then became Chief of Naval Operations, a position included among the Joint Chiefs of Staff, under the direction of the Vice Chairman and Chairman.

4. In June 2007, then Defense Secretary Robert M. Gates announced his intention to advise President George W. Bush to nominate me to be Chairman of the Joint Chiefs of Staff. After receiving the nomination, the Senate confirmed me. On October 1, 2007, I was sworn in as the 17th Chairman of the Joint Chiefs of Staff ("Chairman"), becoming the highest-ranking officer in the United States Armed Forces. I became Chairman in the midst of the Global War on Terrorism and two wars.

5. My duties and functions as Chairman are set forth in Department of Defense Directive 5100.01. The Chairman is the senior ranking member of the Armed Forces and principal military adviser to the President, Secretary of Defense, the National Security Council (NSC), the Homeland Security Council (HSC), and the Secretary of Defense. My duties as Chairman included, among other things, reporting to the Secretary of Defense on the responsiveness and readiness of the military, advising the Secretary of Defense with regard to joint personnel matters such as requirements for command and control, promulgating publications to provide military guidance for joint activities of the Armed Forces, and developing policies and procedures for education and training of service members.

**OPEN SERVICE BY TRANSGENDER SERVICE MEMBERS**

6. I concur with Defense Secretary Ash Carter's July 2015 assessment that the Defense regulations regarding transgender service members "[were] outdated and [were] causing uncertainty that distracted commanders from our core missions." I closely followed Secretary

Carter's direction to Armed Services leadership to evaluate the implications of allowing transgender personnel to serve openly in the military and the Pentagon's ensuing evaluation.

7. My understanding is that the military conducted a thorough research and evaluation process on the issue of open service by transgender troops and concluded that inclusive policy for transgender troops promotes readiness. I agree with this conclusion and support Secretary Carter's June 2016 directive to end the ban on open service by transgender people.

8. To reverse this policy by implementing a ban on open service would go against the best interests of thousands of service members currently serving. As the Pentagon has pointed out, it may also deprive our military of trained and skilled service members and leave vacancies that may not be easy to fill. This would harm military readiness as well as morale. The military's prior considered judgment on this matter should not be disregarded and we should not breach the faith of service members who defend our freedoms, including those who are transgender.

**PARALLELS TO END OF DON'T ASK, DON'T TELL**

9. In 2008, pursuant to my duties as Chairman, I ordered my staff to conduct a study about the Don't Ask, Don't Tell ("DADT") policy and its ramifications to the force. This policy barred gay, lesbian, and bisexual individuals from serving openly in the military.

10. During his January 2010 State of the Union Address, President Obama reiterated his pledge to end DADT. A week later, I testified and endorsed the President's plan before members of the Senate Armed Services Committee.

11. Part of that plan, as adopted by Congress, required the Pentagon to study the effects of allowing open military service by gay men, lesbians, and bisexuals. That study, which was released in late November of 2010, concluded that allowing such open service would present minimal risk to military effectiveness. President Obama subsequently signed the repeal of DADT into law. On September 20, 2011, nine months after Secretary Leon Panetta, President Obama, and I certified to Congress that the military was ready to execute the new policy, DADT officially ended.

12. In my 2010 testimony to the Senate Armed Services Committee regarding DADT, referenced above, I stated, "It is my personal belief that allowing gays and lesbians to serve openly would be the right thing to do." I also testified that "no matter how I look at the issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens." This is still my opinion. Just as gay and lesbian soldiers should not have to lie about who they are to serve, nor should transgender soldiers.

13. The now repealed DADT was problematic and flawed in similar ways as the ban on open service by transgender service members. Both DADT and the ban on open service by transgender individuals set apart a subset of brave women and men serving in uniform and treat them worse than other soldiers for no valid reason – and both policies potentially undermine military readiness.

14. When I led our armed forces under DADT, I saw firsthand the harm to readiness and morale when we fail to treat all service members according to the same standards. There are thousands of transgender Americans currently serving and there is no reason to single them out to exclude them or deny them the medical care that they require.

15. Moreover, I strongly believe that we should not return to the days of "forc[ing] young men and women to lie about who they are in order to defend their fellow citizens."

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: January 21, 2018

Michael Mullen

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF WASHINGTON**
**AT SEATTLE**

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*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 MARK J. EITELBERG IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Mark J. Eitelberg, declare as follows:

1. I am a Professor Emeritus at the Naval Postgraduate School in Monterey, California. I have personal knowledge of the matters stated in this declaration and can competently testify to these facts.

2. I received a Master of Public Administration degree from New York University in 1973 and a Ph.D. in Public Administration in 1979, also from New York University. I joined the faculty of the Naval Postgraduate School as an Adjunct Research Associate Professor in 1982. I was tenured as an Associate Professor in 1995 and promoted to Professor of Public Policy in 1999. I retired from federal service in April 2017. Upon retirement, in recognition of my distinguished service, I was designated Emeritus Professor of the Naval Postgraduate School. I served with the New Jersey Army National Guard and the U.S. Army Reserve from 1970 to 1976, the last two years as Staff Sergeant.

3. My teaching and research at the Naval Postgraduate School focused on military

manpower and personnel policy analysis and military sociology/psychology. Among my research interests are the following: population participation ("representation") in the military; the All-Volunteer Force; military force management and manpower policy; military manpower selection, classification, and utilization; and equal opportunity and diversity management. My honors include the Robert M. Yerkes Award (for outstanding contributions to military psychology by a non-psychologist) from the Society for Military Psychology, a division of the American Psychological Association, and the Department of the Navy Superior Civilian Service Award. I have served on the Board of Editors of the journals Armed Forces & Society and Military Psychology. I was Editor-in-Chief of Armed Forces & Society from 1998 through 2001. A true and correct copy of my curriculum vitae and a list of my publications are attached to this declaration as Exhibit A.

4. I am aware that, on June 30, 2016, the Department of Defense announced it would begin allowing transgender persons to serve openly in the military. As stated in the official announcement and news release (NR-246-16): "Effective immediately, service members may no longer be involuntarily separated, discharged or denied reenlistment solely on the basis of gender identity. Service members currently on duty will be able to serve openly." This change in policy followed a careful review by a comprehensive working group that included high-ranking uniformed and civilian personnel as well as medical experts and other highly knowledgeable persons. The new policy assured current service members that they could reveal their gender identity if they chose to do so. The policy also established procedures for transgender service members to receive appropriate medical care for gender transition. Subsequently, many transgender service members informed their chain of command and their peers that they are transgender.

5. I am also aware that, in a series of informal comments on July 26, 2017, and later in a formal memorandum on August 25, 2017, President Donald Trump directed that the policy allowing transgender individuals to serve openly in the military "return to the longstanding policy and practice" that prohibited transgender persons from serving in any capacity. Up to this point, for over one year previously, transgender service members were told that the Department

of Defense had "ended" its ban on transgender Americans serving in the U.S. military. Under this policy and a forthcoming implementation plan, transgender service members will once again be subject to discharge by the Department of Defense on March 23, 2018.

6. Based on my knowledge, experience, and research in the fields of military manpower and personnel policy, military sociology, and military psychology, the newly announced policy is significantly harming service members who have disclosed they are transgender. This is not merely a potential problem or future hardship due to the scheduled March 23, 2018 date on which they will become subject to being separated. The new policy prevents transgender service members from serving equally with their peers; it imposes substantial limitations on their opportunities within the military; and it negatively impacts their day-to-day relationships with co-workers and other service members.

7. Military service opportunities are generally structured through career tracking by occupational area within each separate service, with scheduled training and skill-level assessments, operational assignments (or tours) and deployments, windows for advancement, and increased responsibilities based on experience, time-in-service, conduct, and performance. At the same time, as with any occupation, discretionary judgments or decisions within a service member's chain of command can have a strong impact on one's job opportunities or daily life. Naturally, these decisions are influenced by expectations regarding a service member's future in the military. From an operational perspective, commanders understandably are reluctant to invest significant resources in the training or development of individuals who might leave military service in the near future, or to entrust them with important assignments. This dynamic is similar to what occurs in other large organizations when an employee is known to be departing several months in advance. Transgender service members who informed others of their gender identity based on the government's pledge that they could serve openly as of June 30, 2016, believing that "ending the ban" would not be temporary, have no secure future in the military beyond March 23, 2018.

8. Transgender service members leaving military service would likely be held in their present duty location, pending a confirmed date of their involuntary separation. Lost

opportunities and personal problems would ensue, particularly if the service member has a family, children in school, or other dependents. Previously scheduled training, deployment, change of duty station, or other planned career events would be canceled by the military to save related costs, minimize organizational disruption, and simplify discharge. Some of these service members would continue to work in their present positions until separation; others would be temporarily "stashed" in another work unit; and some might be placed in a "make-work" situation or "holding pattern" while awaiting separation. If the person has a particularly important skill, knowledge, or expertise, she or he may be asked to train a replacement. In other cases, an individual scheduled for discharge may be gradually relieved of duties or assignments as their responsibilities are delegated to others. Depending on the supervisor's views and management style, this might mean the person slated for discharge will be required to perform tasks no one else wants or be assigned less challenging, repetitive tasks that do not enhance their skill development.

9. Such reductions in responsibility have an impact even on service members whose departure from the military is voluntary and who have begun to make plans for their post-military life. The impact is much more severe for those who had been planning to remain in the military but are unexpectedly facing the prospect of involuntary separation, because their accumulated efforts to excel or advance and their career aspirations essentially disappear upon discharge. The potential harm to these women and men economically is undeniable; added to this is the psychological distress of being told that their performance in service to the nation is meaningless when measured against their gender identity. They had volunteered to serve their country, to accept the associated risks, and to perform well and honorably. The military considered them qualified to serve when they joined. Surely, many would want to understand why their gender identity now makes them unqualified to serve their country, and to such a degree that they should be removed from the military.

10. The President's memorandum also harms transgender service members in another way. According to the memorandum, "the previous Administration failed to identify a sufficient basis to conclude" that terminating the ban on transgender persons "would not hinder military

effectiveness and lethality, disrupt unit cohesion, or tax military resources." Consequently, "meaningful concerns" remain regarding the "negative effects" of removing a ban on transgender persons. In essence, the President's directive reestablishes the reasons for prohibiting military service by transgender persons prior to the policy change of June 30, 2016, negating the conclusions of the comprehensive working group that supported removing the ban as well as any training, guidance, regulations and forms, protocols, and supporting networks developed by the military to facilitate transition.

11. In reversing the previous policy, the President's directive instructs commanders and other service members that transgender individuals are detrimental to the military. No further explanation is provided, merely a statement that the present basis for concluding otherwise is insufficient. Although commanders would attempt to ensure that transgender personnel continue to be treated with dignity and respect, as emphasized in training, the President's directive to discharge transgender personnel erodes the value that members serving with them place on their contributions or performance. Reestablishing reasons for discharging transgender personnel legitimizes any bias or prejudice that may have existed among non- transgender members prior to training. As a result, the directive harms transgender personnel and restricts them artificially from being able to serve as equals with their peers.

12. In previous cases of involuntary discharge, service members slated for separation are viewed commonly as a nuisance and may be harassed by co-workers or treated differently by commanders prior to the member's departure. Additionally, as a service member approaches involuntary discharge, documented cases indicate that superiors may be less than complimentary in evaluating the member's performance, perhaps motivated to confirm the basis for separation. For transgender personnel facing involuntary discharge under the new policy, this could mean an unfairly low or negative performance rating rather than one based solely on merit. Consequently, the announced ban has the current effect of inducing conscious and unconscious bias among peers and commanders that ultimately harms transgender personnel by limiting their service opportunities and chances for advancement and promotion.

13. The President's memorandum identifies the potential disruption of unit cohesion

as a key factor in reversing the policy of June 2016 and discharging transgender service members. Clearly, unit cohesion is a critical element in the military. Historically, this purported concern has been used to justify U.S. military policies of racial and gender segregation. More recently, unit cohesion served as a reason for the policy known as "Don't Ask, Don't Tell" (DADT). DADT itself stimulated considerable research by scholars to better understand unit cohesion and how it can be improved in the military. Previous studies have identified "task cohesion" (compared with "social cohesion") as most important in accomplishing a military mission. Strong bonds among service members are important in undertaking a mission and are particularly apparent in smaller military units, among persons on deployments, and among those who serve under dangerous conditions.

14. As noted, the President's directive places transgender personnel in a "holding pattern," subject to involuntary discharge on March 23, 2018. Knowing this, military commanders and co-workers are obviously less likely to bond with transgender service members and more inclined to keep them at a distance. Transgender personnel are thus more prone to be viewed as unimportant to a unit's cohesiveness and treated as such when working with their peers. Mutual trust and respect erode as co-workers see transgender personnel as "them," on the way out. Clearly, working relationships, as well social relationships, will suffer. Transgender personnel may feel isolated and alone. Added to this is the understanding among co-workers and commanders alike that transgender personnel are identified by the new policy as a potential detriment to military effectiveness and unit cohesion. Based upon current understanding of unit cohesion, the President's directive will damage the bond between transgender personnel and their co-workers and thus disrupt the very unit cohesion that it seeks to protect. It also puts transgender troops in harm's way while serving, especially when deployed in active combat.

15. Being branded as disruptive or unworthy of service also carries consequences that are unique to the military context and differ from the dignitary harms suffered by those who face discrimination in civilian life. Military service is widely understood as an integral element of citizenship, and many regard it as a civic duty. Historically, the military has served as a path for members of minority groups, immigrants, and social outcasts to gain recognition as true and

loyal citizens. When the military adopts a policy that degrades or demeans a group of service members, the message goes out to the larger society that such treatment is acceptable. This is especially observable during times when the military is held in high esteem by the general public. Indeed, according to annual Gallup polling, the U.S. military is "the most trusted institution" in the country. This has been true from 1989 to 1996 and from 1998 to 2017, with 72 percent of adult Americans presently expressing "a great deal" or "quite a lot" of confidence in the military. Barring individuals who are physically, medically, intellectually, educationally, emotionally, and morally qualified to serve based on a personal characteristic that is irrelevant to their ability sends a powerful message that the government distrusts or disapproves of the excluded group or sees them as unfit. African-Americans, Japanese-Americans, women, and gay and lesbian people once faced such official disapproval. Barring demographic groups from equal service gives them the overt stigma of civic inferiority.

16. Being labeled unworthy to serve also impairs service members' ability to carry out their duties safely and effectively. Since people serving in the military depend upon each other so much, particularly under life-threatening circumstances, being isolated or mistrusted can have enormous consequences. If personnel see certain members in the unit as being of lesser value, they may not work as effectively with them or protect them as well as they would other unit members. And, unlike in civilian life, it is often difficult to escape the military workplace, which may be on a ship at sea, deployed overseas, or living on a base in close quarters with one's peers.

17. One final harm should be mentioned. The President's memorandum brands transgender personnel in a way that will follow them well into the future. Stained by the claim they are disruptive or damaging to a working unit's effectiveness—followed by their consequent separation from the military—transgender personnel may be irreparably harmed in finding post-service employment. Military recruiting advertisements often say that "it's a great place to start" and that military training and experience are invaluable to those seeking employment in the civilian job market. A natural result of the ban for transgender personnel is to diminish their

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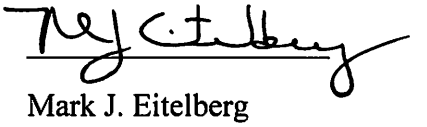
opportunities for civilian employment following military service.

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 21, 2018



Mark J. Eitelberg

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**DECLARATION OF DEBORAH LEE JAMES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Deborah Lee James, declare as follows:

**Background and Experience**

1. I served as the Secretary of the United States Air Force ("USAF") from December 20, 2013 to January 20, 2017.

2. I hold a Bachelor's Degree in Comparative Area Studies from Duke University (1979), and a Master's Degree in International Affairs from Columbia University (1981). From 1983 until 1993, I worked as a professional staff member for the Armed Services Committee of the United States House of Representatives, including as a senior advisor to the Subcommittee for Military Personnel and Compensation. From 1993 to 1998, I served as Assistant Secretary of Defense for Reserve Affairs, responsible for advising the Secretary of Defense on all matters pertaining to roughly 1.8 million National Guard and Reserve personnel. I then held a variety of senior positions at Science Applications International Corporation (SAIC), including as President

of the Technical and Engineering Sector overseeing more than 8,000 employees.

3. As Secretary of the USAF, I functioned as the chief executive of the Department of the Air Force, with the authority to conduct all of its affairs, subject to the authority, direction, and control of the Secretary of Defense. As Secretary, I had comprehensive oversight responsibility for (i) the Department of the Air Force's annual budget, (ii) overseeing the organization, training, supplying, equipping and mobilization of USAF personnel, and (iii) overseeing the construction and maintenance of military equipment, buildings, and structures. In connection with my personnel-related oversight responsibilities, I administered the development and implementation of recruitment, retention, and medical policies for active duty and reserve USAF personnel. Among the people who directly reported to me was the Chief of Staff of the USAF, the most senior uniformed USAF officer.

**The Air Force**

4. The USAF is the aerial warfare service branch of the United States Armed Forces. It is one of the three military departments of the Department of Defense ("DoD"). The USAF, with an annual budget of more than $139 billion, operates thousands of military and surveillance aircraft and controls hundreds of intercontinental ballistic missiles and military satellites. It employs over 600,000 Airmen and civilian employees. The USAF, including the Air Force Reserve and Air National Guard, operates over 300 flying squadrons, consisting of 8 to 24 aircraft each, worldwide. Air Force bases are located across the United States and span the globe.

5. The USAF has several core missions. First, it ensures American superiority in air and space across the globe. This superiority protects all of our other armed services from air attack during their operations. Second, the USAF is responsible for intelligence, surveillance, and reconnaissance, a function that is also essential to the integrated operation of the Armed Forces. Third, it is also a core mission to enable rapid global mobility. The USAF projects American power rapidly across the face of the earth and enables swift deployment as well as the ability to sustain operations by delivering essential equipment, supplies, and personnel. Fourth,

the USAF has its global strike capabilities as an essential mission. The ability to strike globally underlies our deterrence; the USAF's combat capabilities allow it to threaten, disable, or destroy any target around the globe. Lastly, the USAF is also charged with command and control. It provides access to reliable communications and information networks so that the military services as a whole can operate jointly in a coordinated fashion globally and at a high level of intensity.

6. The USAF is one of the most technologically sophisticated organizations on the planet, dwarfing the technological capabilities of individual companies in the private sector. Our aircraft, spacecraft, weapons, and surveillance equipment contain the most advanced new technologies devised by human ingenuity. Many USAF personnel train for years to function effectively in the USAF. Recruitment and retention of capable and qualified Airmen is of critical importance to the readiness of the USAF.

**Change and Development of DoD Policy**

7. By 2014, it had become clear that the United States Armed Service, including the USAF, had valued members who were transgender with specialized skills. Starting in 2014, the DoD took steps to consider military policy concerning the open service of transgender service members against the backdrop of the military's critical need for qualified personnel.

8. In August 2014, the Department of Defense issued a new regulation, DODI 1332.18, Disability Evaluation System (DES). The regulation eliminated a department-wide list of conditions that would disqualify persons from retention in military service, including the categorical ban on open service by transgender persons. This new regulation instructed each branch of the Armed Forces to reassess whether disqualification based on these conditions, including the ban on service by transgender persons, was justified. As of August 2014, there was no longer a department-wide position on whether transgender persons should be disqualified for retention.

9. On July 28, 2015, Secretary of Defense Ashton Carter ordered Brad Carson, Acting Undersecretary of Defense for Personnel and Readiness, to convene a working group to

identify the practical issues related to transgender Americans serving openly in the Armed Forces, and to develop an implementation plan that addressed those issues with the goal of maximizing military readiness (the "Working Group").

10. As Secretary of the Air Force, I was responsible for supervising the Department of the Air Force's participation in the Working Group. The Working Group met both as a whole and in smaller groups tasked with investigating and analyzing specific issues. I met regularly with members of the Working Group to discuss their progress and the Air Force's positions on the issues discussed.

11. The Working Group engaged in a comprehensive examination of the issues presented by permitting transgender people to serve openly. The goal was to be as comprehensive as possible, considering all available scholarly literature and evidence, and to thoroughly investigate any possible issues or concerns about how permitting open service might affect any aspect of military efficiency or readiness.

12. The Working Group included military and civilian personnel, readiness and medical experts from each of the services along with medical experts from the Defense Health Agency. It solicited information from both senior military personnel who supervised transgender service members and transgender people on active duty. It also examined the experiences of civilian employers and of foreign militaries who permit transgender people to serve openly.

13. The Working Group also considered a report from the RAND Corporation, a federally funded research center that regularly provides research and analysis to the Armed Forces. The RAND Corporation was asked by the Under Secretary of Defense for Personnel and Readiness to conduct a study ("RAND Report") "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 members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly."

14. The RAND Report concluded that the cost of caring for the medical needs of transgender personnel would amount to "an exceedingly small proportion of … overall DoD health care expenditures." It found that the Military Health Service (MHS) has the capacity to provide this care, and that doing so would improve the capacity of the MHS by helping MHS surgeons "maintain a vitally important skill required of military surgeons to effectively treat combat injuries." (8.) Considering a variety of utilization data, including data from the Veterans Health Administration, the RAND Report concluded that only a very small number of service members will access some type of gender transition-related treatment annually. (30.) The RAND Report found that the costs of providing health care for transgender service members would likewise be very small, amounting to an insignificant percentage of the overall DoD healthcare budget: "[E]ven in the most extreme scenario 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." (36.)

15. The RAND Report concluded that permitting transgender people to serve openly would have no significant impact on military readiness or efficiency. The RAND Report examined the deployability of transgender persons before transition, during transition, and post-transition. It concluded that even assuming the highest estimates of utilization rates, the impact of permitting transgender solders to serve openly and to obtain appropriate health care would be minimal, amounting to "0.0015 percent of available deployable labor-years across the AC and SR." (42.)

16. The RAND Report also found no evidence that permitting transgender soldiers to serve openly would have any significant negative impact on unit cohesion. Rather, the available evidence, including the experience of permitting service by openly gay personnel, suggests the opposite. In particular, the available evidence indicates that "direct interactions with transgender individuals significantly reduce negative perceptions and increase acceptance." (44.)

17. The RAND Report found that available research on foreign militaries showed no evidence that "allowing transgender people to serve openly has had any negative effects on

operational effectiveness, cohesion, or readiness." (45.) The Working Group also met directly with representatives from some of these foreign militaries, who confirmed that permitting open service had no significant deleterious effects.

18. The Working Group compared the potential loss of deployability associated with transition-related health care with the loss of deployability associated with other, much more common medical conditions. The Working Group considered impacts to readiness and advice from experts indicating that the circumstance should not be treated differently.

19. The Working Group also considered that both private and public employers increasingly are providing coverage for transition-related health care, including the health insurance coverage available to civilian federal employees.

20. The Working Group also considered that banning transgender service members results in the loss of otherwise qualified personnel, which may leave critical positions unexpectedly vacant, as well as the financial loss involved in having to replace trained and, in some instances, highly skilled personnel.

21. The Working Group also considered that barring service by transgender people reduces the pool of potential qualified recruits and irrationally excludes individuals based on a characteristic that has no relevance to their ability to serve.

22. Based on its comprehensive and careful review, the Working Group agreed that transgender people should be permitted both to enlist and to serve openly in the United States military.

23. With regard to accession, the Working Group agreed that transgender persons should be subject to the same medical standards applied to persons with other medical conditions. Those standards are designed to ensure that those entering service are free of medical conditions or physical defects that may require excessive time lost from duty. The Working Group therefore agreed that applicants with a history of gender dysphoria or of treatment for gender dysphoria be permitted to enlist only if they have completed all medical treatment associated with gender transition and been stable in the preferred gender for a specified

period of time.

24. The Working Group agreed upon a variety of other changes to related military policy, based on the same principle of securing equal treatment of transgender persons under existing standards.

25. On June 30, 2016, Secretary of Defense Ashton Carter issued Directive-type Memorandum (DTM) 16-005, entitled "Military Service of Transgender Service Members" ("DTM 16-005").

26. The purpose of DTM 16-005 was to "[e]stablish[ ] policy, assign[ ] responsibilities, and prescribe [ ] procedures for the standards for retention, accession, separation, in-service transition, and medical coverage for transgender personnel serving in the Military Services." DTM 16-005 was applicable to all Military Departments, including the USAF, as well as all organizational entities within the DoD, including the Joint Chiefs of Staff.

**Change, Development, and Implementation of USAF Policy**

27. To implement DTM 16-005 as applied to the Air Force, on October 6, 2016, I issued an Air Force Policy Memorandum entitled "Air Force Policy Memorandum for In-Service Transition for Airmen Identifying as Transgender" (the "AFPM") jointly with the U.S. Air Force Chief of Staff, General David Goldfein. General Goldfein is a fighter pilot who has served in the Air Force for over 30 years (including multiple combat deployments). A true and accurate copy of the AFPM is attached hereto as Exhibit A.

28. The policy and guidance in the AFPM, which was effective immediately for all USAF personnel, "provides unit personnel, supervisors, commanders, transgender Airmen and the medical community a construct by which transgender Airmen may transition gender while serving," and "outlines policies for accessing, separating, and retaining transgender Airmen." Further, the policies and procedures reflected in the AFPM "are premised on the conclusion that open service by transgender Airmen who are subject to the same standards and procedures as other members of the same gender with regard to their medical fitness for duty, physical fitness, dress and appearance standards, deployability, and retention, is consistent with military service

and readiness." The AFPM thus provides that "no otherwise qualified Airman may be involuntarily separated, discharged or denied reenlistment or continuation of service solely on the basis of their gender identity."

29. With respect to individuals presently serving in the USAF, the AFPM states that transgender Airmen will be responsible to meet all standards for uniforms and grooming, physical fitness, and use of facilities according to the Airmen's gender marker in the Military Personnel Data System ("MilPDS"), subject to the approval of an Exception to Policy ("ETP") request.

30. The AFPM further provides that when a transgender Airman's medical provider formally advises the Airman's commander that the Airman's transition is complete, the Airman can "provid[e] … either a certified copy of a state birth certificate reflecting the member's preferred gender, a certified copy of a court order reflecting the member's preferred gender, or a United States passport reflecting the member's preferred gender." And, per the AFPM, the Airman's commander may then authorize an update to the Airman's gender marker in MilPDS, which then "will be transmitted to and updated in DEERS." The Airman will thereafter be responsible for meeting all gender-related standards in accordance with the updated gender marker.

31. To allow USAF commanders to address medical needs in a manner consistent with military mission and readiness, the AFPM sets forth detailed procedures concerning medical treatment for transgender Airmen with a diagnosis from a medical military provider indicating that gender transition is medically necessary. Airmen with such a diagnosis must notify their commander and "identify all medically necessary care and treatment that is part of the Airman'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 MilPDS." A military medical provider's diagnosis must be confirmed by the Medical Multidisciplinary Team, taking into account "the severity of the transgender Airman's medical condition and the urgency of any proposed medical treatment." All gender transition plans must include timing, as approved by the

Airman's unit commander in consultation with the Airman and military medical personnel.

32. The AFPM also provides that "[t]ransgender Airmen selected for deployment will not be prevented from deploying if they are medically qualified." "Any determination that a transgender Airman is non-deployable at any time will be consistent with established Air Force standards, as applied to other Airmen whose deployability is similarly affected in comparable circumstances unrelated to gender transition."

33. In addition, the AFPM identified the following Air Force Instructions ("AFI") to be revised to conform with the updated DoD policy concerning service of transgender individuals, consistent with the policy announced in the AFPM: (i) AFI 36-3206, Administrative Discharge Procedures for Commissioned Officers; (ii) AFI 36-2905, Fitness Program; (iii) AFI 36-2903, Dress and Personal Appearance of Air Force Personnel; (iv) AFI 36-3208, Administrative Separation of Airmen; (v) AFI 36-3209, Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members; (vi) AFI 48-123, Medical Examinations and Standards; and (vii) AFI 32-6005, Unaccompanied Housing Management.

34. On September 30, 2016, the Department of Defense issued Transgender Service in the Military, An Implementation Handbook ("DoD Handbook"). The DoD Handbook is intended as a practical day-to-day guide to assist all service members in understanding the Department of Defense's policy of allowing the open service of transgender service members. To that end, the DoD Handbook instructs all service members:

> 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.

**The Harms Caused by the Recent Reversal of Policy**

35. Relying on the DTM 16-005 and the Air Force Policy Memorandum, many service members disclosed their transgender status to their commanding officers and took other steps in reliance on the policy permitting service by openly transgender personnel. I am unaware of any evidence that this caused any harm to Air Force operations.

36. On July 26, 2017, President Donald Trump issued a statement that transgender individuals will not be permitted to serve "in any capacity" in the Armed Forces.

37. On August 25, 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security to reverse the policy adopted in June 2016 that permitted military service by openly transgender persons. That memorandum stated: "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."

38. I am not aware of any evidence to support President Trump's stated rationales for reversing the policy permitting open service. The Working Group spent months carefully collecting and considering the available evidence related to this issue, including examining how permitting open service by transgender persons would affect the very factors referenced in the August 25 memorandum. The Working Group did not find that permitting transgender soldiers to serve would impose any significant costs or have a negative impact on military effectiveness or readiness. The Working Group also found that barring transgender people from military service causes significant harms to the military, including arbitrarily excluding potential qualified recruits based on a characteristic with no relevance to their ability to serve.

39. In addition to being contrary to the careful study performed and conclusions drawn by the Working Group and the Secretary of Defense, it is my assessment, based on my experience as Secretary of the Air Force and in other leadership positions within the DoD and other defense-related institutions, that banning transgender people from enlisting or openly serving in the military would harm both the military and the broader public interest, for several reasons.

40. **Loss of Qualified Personnel**. First, banning current transgender service members from enlisting or serving in the military will result in the loss of qualified recruits and trained

personnel, reducing readiness and operational effectiveness. Some transgender service members are senior and hold important leadership positions. The military has invested significant resources in the education and training of these personnel. Those resources are squandered when they are separated for reasons unrelated to their ability or performance.

41. The loss of qualified personnel as a result of separating transgender service members could be particularly acute at USAF. The USAF is currently facing a reduced pool of qualified potential recruits. Unlike many private-sector companies, which can fill vacancies by simply tapping an experienced and flexible labor pool, the USAF has to grow its own set of skilled specialists, and that can take years. If the USAF were to lose any pilots because of the ban on transgender service members, that would be especially expensive given the crisis level of pilots who cost millions of dollars to train.

42. **Deployability**. Allowing transgender service members to openly serve does not create any unique issues relating to deployability. Any time that a given service member cannot deploy, we rely on force management models, the reserve component, and in some cases, civilian support to meet mission requirements. Military processes exist to manage any exigencies as they arise. Responding to any deployability issues to the extent that they may arise for some individual transgender service members creates no greater challenges than those recently addressed by, for example, a change in maternity leave policies for pregnant service members.

43. **Erosion of Trust in Command**. Second, the President's abrupt reversal of policy is harmful to military readiness because it erodes service members' trust in their command structure and its professionalism. The military's effectiveness depends on a relationship of mutual trust between leaders and followers. That trust, and the prompt following of commands, is essential to the unit cohesion and rapid response required to address unexpected crises or challenges. Following the adoption of the policy permitting open service by transgender persons in 2016, military leaders instructed service members that they should not discriminate against their transgender colleagues. For that policy to be abruptly reversed will inevitably erode trust in the reliability and integrity of military decision making.

44. This sudden reversal is harmful both to transgender service members and to other formerly disfavored groups that have been recently integrated into the military and into combat roles. In 2011, the Don't Ask, Don't Tell policy prohibiting gay, lesbian and bisexual people from openly serving in the military was repealed. More recently, DoD also removed remaining barriers for women serving in certain combat positions. The sudden reversal of the DoD's recently adopted policy of inclusion sends a dangerous message that policies promoting the inclusion and equal treatment of other groups may similarly be arbitrarily reversed.

45. **Readiness and Morale**. Third, the sudden reversal of a policy adopted after substantial deliberation will also have a deleterious effect on morale, as it undermines the confidence of service members that important military policy decisions will be based on a rational, careful, and thoughtful process. Airmen and other service members must believe that the orders and policies they are required to follow are based on reasonable decisions, not impulse or whim. This trust in the rationality and professionalism of our military leadership is also a key factor in recruiting and retaining talented personnel. The sudden reversal of the June 2016 policy undermines that trust.

46. Banning openly transgender service members will also have a negative impact on recruitment and retention, which are critical concerns in our all-volunteer services. Such a ban will arbitrarily eliminate otherwise highly qualified and valuable individuals who wish to serve, including those who are already enrolled in Reserve Officer Training Corp programs and military academies, based on a characteristic that has no bearing on fitness for military service. Preventing the accession of transgender individuals who have met the rigorous requirements for enrollment in a military academy is particularly senseless and damaging and will result in the loss of extremely talented and well-qualified future leaders. The negative impact of such irrational and prejudicial policies on the public perception of the Armed Services—including the perception of potential recruits—should not be underestimated.

47. The impact to morale engendered by the abrupt reversal of the policy permitting open service by transgender people will not only have an effect on the morale of our current

service members. Any suggestion that those serving to protect and defend our country will not have the fullest support of their entire chain of command will also have a negative impact on the USAF's ability to recruit highly qualified candidates who can perform at the highest levels necessary to complete the USAF's core missions.

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 18, 2018

Deborah Lee James

THE SECRETARY OF THE AIR FORCE
CHIEF OF STAFF, UNITED STATES AIR FORCE
WASHINGTON DC

AFPM2016-36-01
06 October 2016

MEMORANDUM FOR DISTRIBUTION C
ALMAJCOM-FOA-DRU

SUBJECT: Air Force Policy Memorandum *for In-Service Transition for Airmen Identifying as Transgender*

This Air Force Policy Memorandum immediately establishes specific Air Force policy and provides guidance associated with in-service transition of Airmen identifying as transgender. Compliance with this memorandum is mandatory. To the extent the memorandum's directions are inconsistent with other Air Force publications, the information herein prevails, in accordance with AFI 33-360, Publications and Forms Management.

It implements DoD Instruction 1300.28, *In-Service Transition for Transgender Service Members*, 30 June 2016 (effective 1 October 2016), and DoD Directive-Type Memorandum (DTM) 16-005, *Military Service of Transgender Service Members*, 30 June 2016.

The policy guidance outlined in this memorandum is effective immediately and will be incorporated into AFI 36-2905, *Fitness Program*; AFI 36-2903, *Dress and Personal Appearance of Air Force Personnel*; AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*; AFI 36-3208, *Administrative Separation of Airmen*; AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*; AFI 48-123, *Medical Examinations and Standards*, and AFI 32-6005, *Unaccompanied Housing Management*.

There are no releasability restrictions on this publication. It applies to the Regular Air Force, Air Force Reserve, and Air National Guard. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of in accordance with Air Force Records Disposition Schedule (RDS) in the Air Force Records Information Management System (AFRIMS).

This Memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon publishing of a new Policy Directive permanently establishing this policy, whichever is earlier.

Deborah Lee James
Secretary of the Air Force

Dave Goldfein
General, USAF
Chief of Staff

Attachments:
1. Transgender Airmen Policy Guidance
2. Glossary of References and Supporting Information

Attachment 1

# TRANSGENDER AIRMEN POLICY GUIDANCE

## 1. Applicability

a. This memorandum provides policy and guidance for all military personnel serving in the United States Air Force, including those serving in the Reserve and Guard components of the Air Force. This guidance provides unit personnel, supervisors, commanders, transgender Airmen and the medical community a construct by which transgender Airmen may transition gender while serving. It further outlines policies for accessing, separating, and retaining transgender Airmen.

b. Policies and procedures are premised on the conclusion that open service by transgender Airmen who are subject to the same standards and procedures as other members of the same gender with regard to their medical fitness for duty, physical fitness, dress and appearance standards, deployability, and retention, is consistent with military service and readiness.

c. Exception to policy (ETP) requests will be made on a case-by-case basis and will be directed to the Service Central Coordination Cell (SCCC) via email at usaf.pentagon.saf-mr.mbx.af-central-coordination-cell@mail.mil for action.

## 2. Policy

a. It is Air Force policy that service in the United States Air Force should be open to all who can meet the rigorous standards for military service and readiness. Consistent with the policies set forth in this memorandum, transgender individuals shall be allowed to serve in the Air Force.

b. The Air Force recognizes a service member's gender by the member's gender marker in the Military Personnel Data System (MilPDS). A gender marker change must first be made in MilPDS and will flow to and update the Defense Enrollment Eligibility Reporting System (DEERS). Coincident with that gender marker, the Air Force applies, and the member is responsible to meet, all standards for uniforms and grooming; fitness; Military Drug Demand Reduction Program (DDRP) participation; and other military standards applied with consideration of the member's gender. Airmen will use lodging, bathroom and shower facilities that are subject to regulation by the military in accordance with their gender marker in DEERS unless provided an approved ETP.

c. 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. In today's Air Force, people of different moral and religious values work, live and fight together on a daily basis. This is possible because they treat each other with dignity and respect. Airmen will continue to respect and serve with others who may hold different views and beliefs.

d. Any medical care and treatment provided to a transgender Airman in the process of gender transition will be provided in the same manner as other medical care and treatment. Nothing in

this memorandum will be construed to authorize a commander to deny medically necessary treatment to a transgender Airman or authorize elective care not consistent with other medical protocols.

e. Any determination that a transgender Airman is non-deployable at any time will be consistent with established Air Force standards, as applied to other Airmen 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 memorandum. In applying the tools described in this memorandum, a commander will not accommodate biases against transgender Airmen.

g. If a transgender Airman is unable to meet standards or requires an ETP during a period of gender transition, all applicable tools, including the tools described in this memorandum and those presented in Directive-Type Memorandum (DTM) 16-005, *Military Service of Transgender Service Members*; Department of Defense Instruction (DoDI) 1300.28, *In-Service Transition for Transgender Service Members*; and Department of Defense (DoD) Handbook, *Transgender Service in the US Military: An Implementation Handbook,* will be available to commanders to minimize impacts to the mission and unit readiness.

h. When a military medical provider in coordination with the Medical Multidisciplinary Team (MMDT) determines that a transgender Airman's gender transition is complete (or when a civilian provider does so with validation by a military provider and coordination with the MMDT), and on a date approved by the commander, the service member's gender marker will be changed in MilPDS and the service member will be recognized in the preferred gender.

**3. Separation and Retention**

a. Effective June 30, 2016, no otherwise qualified Airman may be involuntarily separated, discharged or denied reenlistment or continuation of service solely on the basis of their gender identity.

b. Transgender Airmen 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 bases, but not due solely to their gender identity or an expressed intent to transition genders.

c. An Airman whose ability to serve is adversely affected by a medical condition or medical treatment related to their gender identity should be administratively processed, for purposes of separation and retention, in a manner consistent with other Airmen whose ability to serve is similarly affected.

**4. Accessions Standards**

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. Per DTM 16-005, not later than 1 July 2017, the Under Secretary of Defense (Personnel & Readiness) (USD (P&R)) will update Department of Defense Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, 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;

(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.

b. A history of sex reassignment or genital reconstruction surgery is disqualifying, **unless**, as certified by a licensed medical provider:

(1) a period of 18 months has elapsed since the date of the most recent surgery; and

(2) no functional limitations or complications persist, nor is any additional surgery required.

c. The Secretary of the Air Force may waive or reduce the 18-month periods, in whole or in part, in individual cases for applicable reasons.

d. The standards for accession described in DTM 16-005 will be reviewed no later than 24 months from the effective date of the 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.

**4.1. Initial Entry Training**

An Airman is subject to separation in an entry-level status during the period of initial training (defined as 180 days per DoDI 1332.14, *Enlisted Administrative Separations*) based on a medical condition that impairs the Airman's ability to complete such training.

**4.2. Pre-Commissioning Sources (AFROTC and USAFA)**
An individual participant is subject to separation from the Reserve Officers' Training Corps (ROTC) in accordance with DoDI 1215.08, *Senior Reserve Officers' Training Corps (ROTC) Programs*, or from the United States Air Force Academy (USAFA) IAW DoDI 1322.22, *Service Academies*, based on a medical condition that impairs the individual's ability to complete such training or to access into the Air Force, under the same terms and conditions applicable to participants in comparable circumstances not related to transgender persons or gender transition. As with all cadets who experience a medical condition while in the ROTC Program or USAFA, each situation is unique and will be evaluated based on the individual circumstances. Individuals are required, however, to meet medical accession standards as a prerequisite to appointment in the Armed Forces.

**5. In-Service Transition:** Gender transition while serving in the military presents unique challenges associated with addressing the needs of the Airman in a manner consistent with military mission and readiness. Where possible, gender transition should be conducted such that an Airman would meet all applicable standards and be available for world wide deployment in the birth gender prior to a change in the member's gender marker in MilPDS 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, with some requiring Real-Life Experience (RLE) in the preferred gender prior to a change of gender marker in MilPDS, the policies and procedures set forth herein provide flexibility to commanders in addressing transitions that may or may not follow this construct.

**5.1. Medical**
a. In accordance with DoDI 6025.19, *Individual Medical Readiness (IMR)*, and DoDI1215.13, *Ready Reserve Member Participation Policy*, all Airmen have a responsibility to maintain their health and fitness, meet individual medical readiness requirements, and report to their chain of command any medical and health issue (including mental health) that may affect their readiness to deploy or fitness to continue serving in an active status.

b. All Airmen, regardless of status and as a condition of continued participation in military service, will report significant health information to their chain of command. Airmen 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.

c. When an Airman receives a diagnosis from a military medical provider (or a diagnosis made by a civilian provider and validated by a military 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 Airman'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 MilPDS,.

d. When an Airman receives a diagnosis from a military medical provider, (or a diagnosis made by a civilian provider and validated by a military provider) indicating that gender transition is medically necessary for an Airman, it will be confirmed by the Medical Multidisciplinary Team

(MMDT). Recommendations from the military medical provider in coordination with the MMDT will address the severity of the transgender Airman'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 a transgender Airman's performance of official duties.

(1) Air Force Reserve (AFR) members (ARTs, TRs, and IMAs) must provide their supporting medical unit (Reserve Medical Unit (RMU) or Active Duty Medical Treatment Facility) all civilian medical and mental health documentation for review. The RMU or Active Duty Medical Treatment Facility will apply Code 31 and may request a Participation Waiver from AFRC/SGO. The RMU or Active Duty Medical Treatment Facility will forward all cases to AFRC/SGO for review. AFRC/SGO will forward all cases to the Active Duty (AD) MMDT to validate civilian diagnosis, treatment plan and to determine when transition is complete. AFRC medical providers do not validate diagnoses or provide treatment plans. After review of the case, the MMDT will advise the RMU or Active Duty Medical Treatment Facility on all future appropriate duty, fitness and deployment restrictions. AFR members on AGR tours will follow the same policies and procedures as RegAF members.

(2) ANG Airmen must provide their appropriate Guard Medical Unit (GMU) all required medical and mental health documents for review. The GMU shall forward the medical cases to NGB/SG for clinical and administrative review for appropriate case disposition. NGB/SG may forward cases to the AD MMDT for final endorsement and determine the prescribed transition treatment plan. All AGR Title 10 members will follow the same policies and procedures as RegAF members.

e. Continued Medical Care. A military medical provider in coordination with the MMDT (or a civilian medical provider validated by a military medical provider) may determine certain medical care and treatment to be medically necessary even after an Airman's gender marker is changed in MilPDS (e.g., cross-sex hormone therapy). A gender marker change does not preclude such care and treatment.

f. The MMDT will serve as the POC and consultant to all Military Treatment Facilities (MTFs) and commanders with any questions relating to medical concerns which may arise as part of a transgender Airmen's gender transition. The MMDT may be contacted at transgender.mmdt@us.af.mil.

**5.2. Requesting Transition**

a. A transgender Airman must receive a diagnosis from a military medical provider that is confirmed by the MMDT (or a diagnosis made by a civilian provider and validated by a military provider) indicating that gender transition is medically necessary. This is followed by notification to the Airman's unit commander and the development of a gender transition plan (transition plan will include timing, as approved by the commander in consultation with the transgender Airman and military medical personnel).

b. Gender transition concludes when the military medical provider in coordination with the MMDT reports to the Commander (or a civilian provider determines with validation by a military provider) that a transgender Airman's gender transition is complete, and the member is able to present appropriate legal documentation supporting a gender change. Such documentation consists of either a certified true copy of a state birth certificate reflecting the member's preferred gender, a certified true copy of a court order reflecting the member's preferred gender, or a United States passport reflecting the member's preferred gender. Upon submission of the commander's written approval and required legal documentation to the appropriate personnel servicing activity, the change in the Airman's gender marker will be entered in MilPDS and transmitted to and updated in DEERS, under the authority, direction, and control of the Defense Manpower Data Center (DMDC). When the MilPDS update is complete, the Airman will be recognized in the preferred gender. At this point in time, the Airman will be responsible for meeting all applicable standards to include medical fitness, physical fitness, dress and appearance, deployability, and retention standards of the gender indicated in MilPDS. They will also use military lodging, bathroom, and shower facilities associated with the gender indicated in MilPDS.

**5.3. Developing a Gender Transition Plan and Approval Process**

a. When an Airman is diagnosed that gender transition is medically necessary and is confirmed by MMDT (or a diagnosis is made by a civilian provider and validated by a military provider and the MMDT), the Airman 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 guidance in this memorandum and/or

(3) a change to the Airman's gender marker in MilPDS

b. The commander, informed by the recommendations of the military medical provider and the MMDT (or the recommendations of a civilian provider validated by a military provider and the MMDT), 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 Air Force 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 calendar days after receiving a request determined to be complete in accordance with the provisions of this issuance and Air Force 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 Airman and their military medical provider. A request that the commander determines to be incomplete will be returned to the Airman, with written notice of the deficiencies identified, as soon as practicable, but not later than 30 calendar days after receipt. (NOTE: Commanders of Traditional Reservists or Drill Status Guardsmen must return incomplete requests to the Airman NLT 60 calendar days after receipt.)

(4) at any time prior to the change of the transgender Airman's gender marker in MilPDS, 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 in this memorandum and upon review and consideration of all other factors prescribed in this memorandum. Notice of such modification will be provided to the Airman.

(5) approve, in writing, the change of a transgender Airman's gender marker in MilPDS, subsequent to receiving a recommendation from the military medical provider and the MMDT (or upon the recommendation of a civilian provider validated by a military provider and the MMDT) that the Airman's gender marker be changed and upon receipt of appropriate legal documentation supporting a gender change. Such documentation consists of either a certified true copy of a state birth certificate reflecting the member's preferred gender, a certified true copy of a court order reflecting the member's preferred gender, or a United States passport reflecting the member's preferred gender. Upon submission of the commander's written approval and required legal documentation to the appropriate personnel servicing activity, the change in the Airman's gender marker will be entered in MilPDS and transmitted to and updated in DEERS, under the authority, direction, and control of the Defense Manpower Data Center (DMDC).

**5.4. Considerations for Transitioning Airmen**

In cases where transgender Airmen may require accommodation in regard to military dress and appearance standards, fitness standards, or to use the designated facilities of their preferred gender, Airmen should submit an ETP to their unit commander (see attachment 2).

a. Fitness. Transgender Airmen undergoing cross-sex hormone treatment may request an exemption from taking the Fitness Assessment (FA) during their period of transition, prior to a gender marker change in MilPDS, by following the processes below. Members must submit their initial request to their unit commander or equivalent.

(1) In order to obtain a FA exemption, the member must provide evidence of a documented FA failure and their commander must certify the Airman made a full and clear effort to meet the FA standards of their current gender. In addition, members must provide documentation from their military medical provider

validating ongoing cross-sex hormone treatment as part of a gender transition plan.

(2) An Airman's commander must concur or non-concur on the request and forward the request through their chain of command (squadron CC, wing CC, MAJCOM A1 or equivalents) for further review and concurrence/non-concurrence. The MAJCOM A1 or equivalent will submit the request to the SCCC, for decision by the AF/A1. If the fitness exemption is approved by AF/A1, the owning unit will execute the exemption using the commander's composite exemption as found in AFI 36-2905, *Fitness Program*. Unit Fitness Program Managers (UFPM) will document the exemption in the Air Force Fitness Management System (AFFMS) II. Initial FA exemptions will be for a period of 6 months. To receive a new exemption, the Airman will provide the previously approved FA exemption memo and updated medical documentation showing proof of continued cross-sex hormone treatment to their unit commander, who may approve or deny any additional exemptions.

(3) Transgender Airmen who receive a fitness exemption will be expected to maintain a healthy lifestyle, participate in unit physical fitness, and work with their unit commander to ensure they are maintaining an active fitness regimen. Members are ultimately responsible for maintaining a healthy lifestyle which incorporates fitness. Unit commanders may use current Air Force Fitness Improvement Program options, such as BE WELL online, a Healthy Weight program, or Military OneSource Health Coaching to assist in formally monitoring members' fitness levels. Transgender Airmen should provide their unit commander a Fitness Maintenance Plan to ensure they have a verifiable plan to remain physically fit during their gender transition.

(4) The FA exemption will apply at the current duty station and future duty locations.

b. Dress and Appearance

(1) Current AF dress and appearance standards apply to male and female transgender Airmen. AFI 36-2903, *Dress and Personal Appearance of Air Force Personnel*, allows Exception to Policy (ETP) requests to current dress and appearance standards. AF/A1 is the approval authority for ETP requests.

(2) Transgender Airmen must adhere to applicable dress and appearance standards of the gender reflected in MilPDS. However, altered physical characteristics during gender transition may make dress and appearance standard changes appropriate prior to gender marker changes in MilPDS. Therefore, transgender Airmen may submit an ETP request IAW AFI 36-2903 to adhere to their preferred gender's dress and appearance standards prior to their official gender marker change in MilPDS. Until an ETP request has been approved, transgender Airmen must adhere to their current gender's dress and appearance standards as reflected in MilPDS. The request will require supporting justification, an assessment by their immediate commander, and

further recommendations by their chain of command, installation commander, and MAJCOM A1 before an AF/A1 decision.

(3) ETP requests will include:

a) a memorandum from the Airman requesting to adhere to the preferred gender's dress and appearance standards,

b) evidence of a medical diagnosis of gender dysphoria from a military medical provider confirmed by the MMDT (or the diagnosis of a civilian provider validated by a military provider and the MMDT), and

c) documentation that confirms the ETP request is a component of the Airman's gender transition plan.

(4) Commanders' assessment of dress and appearance issues for transitioning Airmen should include information about the Airman's professional military image in current and preferred gender's dress and appearance standards, fit and/or function of the uniforms, and potential impact on unit cohesion, good order and discipline (if any). The transgender Airman's immediate commander will recommend approval or disapproval and forward the request through their chain of command to the wing and/or installation commander as applicable for further recommendations. Wing and/or installation commanders will forward the request to the MAJCOM A1 for endorsement and forwarding to the SCCC to gain AF/A1's decision. If approved, the ETP will apply to both the wear of the preferred gender's dress and appearance standards at current and subsequent duty stations. Transgender Airmen approved for an ETP prior to gender marker change must ensure a copy of the approval memorandum is placed in their automated personnel records by visiting their local Military Personnel Section (MPS), Customer Service office. They must also carry a copy of their approval memorandum on their person until gender marker is changed in MilPDS.

Note: This guidance also applies to **Air Reserve Technicians** who are required to wear the military uniform while performing civilian duties as an Air Reserve Technician (ART) IAW AFI 36-801, *Uniforms for Civilian Employees.* Air Reserve Technicians must adhere to applicable dress and appearance standards IAW AFI 36-2903, *Dress and Personal Appearance of Air Force Personne*l, of the gender reflected in their military personnel record until the ETP request has been approved by AF/A1.

(5) All dress and appearance standards ETP requests must be submitted to SCCC NLT 20 calendar days for cases within CONUS and 30 calendar days for cases OCONUS from the date a transgender Airman submits the request to their immediate commander. (NOTE: Commanders of transgender Traditional Reserve or Drill Status Guardsmen must submit their dress and appearance ETP requests to the SCCC NLT 45 calendar days from the date the Airman submits the request to their immediate commander within CONUS and 60 calendar days for cases OCONUS.)

(6) The dress and appearance exemption will apply at the current duty station and future duty stations.

c. Facilities

(1) An Airman undergoing gender transition may request an ETP waiver to use facilities subject to regulation by the military in accordance with their preferred gender prior to a gender marker change in DEERS. The Airman's chain of command (unit CC, group CC, wing CC, or equivalents and applicable MAJCOM functionals) will provide concurrence/non-concurrence with the ETP request in addition to evidence that a military medical provider in coordination with the MMDT (or a civilian medical provider validated by a military medical provider in coordination with the MMDT) has confirmed a diagnosis of gender dysphoria and that the ETP request is a component of the member's gender transition plan.

(2) In executing any accommodation, the unit commander will take into account the physical construction of the facilities as well as the privacy of other members using the facilities in question. The unit commander should consider and balance the needs of the transgender individual and the needs of the command. The installation should explore no-cost facility options. No-cost options may include, but are not limited to, allowing the transgender member to use any family style restroom/shower area, providing additional time for the member to use the privacy of their domicile, or mandating wear of minimal articles of clothing for all.

(3) AFI 32-6005, *Unaccompanied Housing Management*, discusses quarters assignment. Currently, Airmen are assigned to quarters based on the gender reflected in the DEERS, consistent with policy in DoDI 1300.28. Any exceptions should be made consistent with the previous two paragraphs. Until an ETP is approved or gender is updated in DEERS, the transgender Airman will use the facilities associated with their gender marker in DEERS.

d. Deployment

Transgender Airmen selected for deployment will not be prevented from deploying if they are medically qualified. Any approved exceptions to policy regarding accommodation during transition should be coordinated with the deployed commander to ensure knowledge of transition and any potential accommodations required for the deployed environment.

e. For ARC Members

To the greatest extent possible, commanders and transgender Airmen will address periods of non-availability for any period of military duty, paid or unpaid, during the transgender Airman's gender transition with a view of mitigating unsatisfactory participation in accordance with DoDI 1215.13, *Reserve Component (RC) Member Participation Policy*, and DoDI 1300.28, *In-Service Transition for Transgender Service Members*.

**6. Completion of Transition**

a. In consultation with the transgender Airman, the military medical provider will formally advise the commander when the Airman's gender transition is complete, and recommend to the commander a time at which the Airman's gender marker may be changed in MilPDS.

b. When a transgender Airman has completed transition, they should take official documentation to their MPS to update their gender in MilPDS. Official documentation includes authorization from the Airman's unit commander and military medical provider to change the Airman's gender marker. In addition, the Airman must provide appropriate legal documentation supporting gender change to the MPS. Legal documentation must be either a certified true copy of a state birth certificate reflecting the transgender Airman's preferred gender, a certified true copy of a court order reflecting the transgender Airman's preferred gender, or a United States passport reflecting the transgender Airman's preferred gender. There will be no direct update in DEERS; the gender marker in MilPDS is what will update the DEERS system. A new Common Access Card (CAC) will be issued to reflect the updated gender data. ARTs are required to update their gender marker in MilPDS and DCPDS, as there is no integration between the two systems (with the exception of data reporting to DEERS from MilPDS and DCPDS).

**7. Post Transition**

Coincident with the gender marker change, except as noted below, the Air Force will apply, and the transgender Airman is responsible to meet, all standards for uniforms and grooming; fitness; DDRP participation; and, other military standards applied with consideration of their gender. Transgender Airmen will use military lodging, bathrooms and shower facilities associated with their gender marker in MilPDS.

Any determination that a transgender Airman is non-deployable at any time will be consistent with established Air Force standards, as applied to other Airmen whose deployability is similarly affected in comparable circumstances unrelated to gender transition.

A military medical provider may determine certain medical care and treatment to be medically necessary, even after a transgender Airman's gender marker is changed in MilPDS (e.g. cross-sex hormone therapy)

***Protection of Personally Identifiable Information (PII) and Protected Health Information***

In accordance with DoDD 5400.11, *DoD Privacy Program*, in cases in which there is a need to collect, use, maintain, or disseminate PII in furtherance of this memorandum or Air Force regulations, policies, or guidance, the Air Force will protect against unwarranted invasions of personal privacy and the unauthorized disclosure of such PII. The Air Force will maintain PII so as to protect individual's rights, consistent with federal law, regulation, and policy. Disclosure of protected health information will be consistent with DoD 6025.18-R, *DoD Health Information Privacy Regulation*.

***Personal Privacy Considerations.*** A commander may employ reasonable accommodations to respect the privacy interests of Airmen.

Attachment 2

**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION**

***References***

DTM 16-005, *Military Service of Transgender Service Members*, 30 June 2016

DoD 6025.18-R, *DoD Health Information Privacy Regulation, 24 January 2003*

DoDD 5400.11, *DoD Privacy Program*, 29 October 2014

DoDI 1300.28, *In-Service transition for Transgender Service Members*, 1 July 2016

DoDI 1332.14, *Enlisted Administrative Separations, 27 January 2014*

DoDI 1322.22, *Service Academies*, 24 September 2015

DoDI 1215.08, *Senior Reserve Officers' Training Corps (ROTC) Programs,* 26 June 2006

DoDI 1215.13, *Ready Reserve Member Participation Policy*, 5 May 2015

DoDI 6025.19, *Individual Medical Readiness (IMR)*, 9 June 2014

DoDI 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Service*, 28 April 2010

DoDI 6490.08, *Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members*, 17 August 2011

DoDI 1215.13, *Reserve Component (RC) Member Participation Policy, 5 May 2015*

DoD Handbook, *Transgender Service in the US Military: An Implementation Handbook*

AFI 32-6005, *Unaccompanied Housing Management*, 29 January 2016

AFI 36-2903, *Dress and Personal Appearance of Air Force Personnel*, 18 July 2011

AFI 36-2905, *Fitness Program*, 21 October 2013

AFI 36-801, *Uniforms for Civilian Employees*, 22 December 2015

AFI 90-507, Military Drug Demand Reduction Program, 22 September 2014

***Abbreviations and Acronyms***

AD – Active Duty
AFFMS II – Air Force Fitness Management System II
AFR—Air Force Reserve
AFRC—Air Force Reserve Command
AFSC – Air Force Specialty Code
AGR—Active Guard Reserve
ANG—Air National Guard
ART—Air Reserve Technician
CAC – Common Access Card
CONUS—Continental United States
DDRP—Drug Demand Reduction Program
DEERS – Defense Enrollment Eligibility Reporting System
DoDI – Department of Defense Instruction
DMDC – Defense Manpower Data Center
DTM—Directive-Type Memorandum
ETP – Exception to Policy
FA – Fitness Assessment
GMU—Guard Medical Unit
HIPAA—Health Insurance Portability and Accountability Act
MilPDS—Military Personnel Data System
MMDT – Medical Multidisciplinary Team
MTF – Military Treatment Facility
OCONUS—Outside the Continental United States
PII – Personally Identifiable Information
RLE – Real Life Experience
RMU—Reserve Medical Unit
ROTC – Reserve Officer Training Corps
SCCC – Service Central Coordination Cell
UFPM – Unit Fitness Program Manager
USD(P&R)—Under Secretary of Defense (Personnel & Readiness)
UTC – Unit Type Code

***Terms***

**Cross-Sex Hormone Therapy—**Feminizing or masculinizing hormone therapy—the administration of exogenous endocrine agents to induce feminizing or masculinizing changes. 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.

**Emergency Medical Care—**The care needed to diagnose and treat a medical condition without which the recipient's death or permanent impairment is likely to result.

**Gender Dysphoria—**Medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex.

**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 billeting, bathroom, and shower facilities in accordance with the DEERS gender marker. The Air Force recognizes a service member's gender by the member's gender marker in the Military Personnel Data System (MilPDS). A gender marker change must first be made in MilPDS and will flow to and update the Defense Enrollment Eligibility Reporting System (DEERS).

**Gender Role or Expression—**Characteristics in personality, appearance, and behavior that in a given culture and historical period are designated as masculine or feminine (that is, more typical of the male or female social role). All people tend to incorporate both masculine and feminine characteristics in their gender expression in varying ways and to varying degrees.

**Gender Transition Process**—A process that begins when a transgender Airman receives a diagnosis from a military medical provider for gender dysphoria that is confirmed by the MMDT (or a diagnosis is made by a civilian provider and validated by a military provider) indicating that gender transition is medically necessary. Processes that follow include notification to the member's commander and development of a gender transition plan. Gender transition concludes when the military medical provider in coordination with the MMDT determines (or a civilian provider determines with validation by a military provider) that a transgender Airman's gender transition is complete. Upon completion of these steps, the transgender Airman's gender marker will be changed in MilPDS and DEERS, and the transgender Airman will be recognized in the preferred gender. At this point in time, the transgender Airman will be responsible for meeting all applicable standards to include medical fitness, physical fitness, dress and appearance standards, deployability, and retention standards of the gender indicated in DEERS. They will use lodging, bathroom and shower facilities that are subject to regulation by the military in accordance with their gender marker in DEERS.

**Human and Functional Support Network—**Support network for a Service member that may be informal (friends, family, co-workers, social media, etc.) or formal (medical professionals, counselors, clergy, etc.).

**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.

**Medical Multidisciplinary Team**—A centrally located medical team comprised of a case manager, a mental health provider, an endocrinologist and/or a surgeon knowledgeable in transgender 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.

**Place of Duty**—The duty location assigned to military members by that member's commander or supervisor in order for that member to perform official duty for the unit or organization. Official duties may require members to report to alternate duty location in furtherance of the mission as determined by command and supervision, to include mandatory military functions.

**Preferred gender—**The gender that a person feels is their gender identity and the gender they desire to express. The gender in which a transgender Service member will be recognized post-transition.

**Real Life Experience (RLE)**—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. 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 bathroom, locker room, dormitory areas and showers.

**Service Central Coordination Cell (SCCC)**—Headquarters Air Force 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.

**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.

**SAMPLE: Exception to Policy (ETP) Request Memorandum**

(Date)

MEMORANDUM FOR [Grade/Name of Immediate Commander]

FROM: [Grade, Name of Requester]

SUBJECT: Exception to Policy (ETP) to [military dress and appearance standards, use of designated facilities, and/or fitness standards]

1. I am a transgender [female/male] Airman in the process of gender transition. Therefore, I request an ETP to allow me to adhere to the requirements of the [insert preferred gender] gender with regard to [dress and appearance and/or use of lodging, bathroom, and shower facilities that are subject to regulation by the military] pending my gender marker change in the Defense Enrollment Eligibility Reporting System (DEERS) [AND/OR for exemption from my current gender Fitness Assessment standards while undergoing cross-sex hormone therapy pending a gender marker change in DEERS].

2. I have enclosed:

a. Medical diagnosis from a military medical provider (or a diagnosis made by a civilian provider and validated by a military provider) in consultation with the Medical Multidisciplinary Team (MMDT) that states gender transition is medically necessary.

b. Military medical provider confirmation validating ongoing cross-sex hormone treatment as part of my transition to the [insert preferred gender] gender. [If applicable]

c. DD Form 2870, *Authorization for Disclosure of Medical or Dental Information*, with Section II, number 6 filled out to state that my patient information will be released to my Unit Commander (Name, Rank, Duty Title, Unit Name) and servicing Military Personnel Support (MPS).

d. Fitness Assessment (FA) score card documenting a failure and evidence that I have made a clear effort to meet the FA standards of my current gender. [If applicable]

e. Documentation confirming the ETP request is a component of the Airman's gender transition plan. [Note this applies only if the ETP request is for dress and appearance and/or use of lodging, bathroom, and shower facilities that are subject to regulation by the military].

3. The point of contact for this memorandum is the undersigned at (insert telephone number and email address).

SERVICE MEMBER SIGNATURE BLOCK

Attachments

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 ERIC FANNING IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Eric K. Fanning, declare as follows:

**Background and Experience**

1. I served as Secretary of the Army from May 18, 2016, to January 20, 2017.

2. I received a Bachelor's Degree in History from Dartmouth College in 1990. From 1991 until 1996, I worked in various government positions in Washington, D.C., as a research assistant with the House Armed Services Committee, a special assistant in the Office of the Secretary of Defense, and Associate Director of Political Affairs at the White House. From 1997 to 1998, I worked on the national and foreign assignment desks at CBS News in New York. Subsequently, I worked at Robinson, Lerer & Montgomery, a strategic communications firm. From 2001 to 2006, I was Senior Vice President for Strategic Development at Business

Executives for National Security, a Washington, D.C.-based think tank, where I oversaw international programs and all regional office operations in six cities across the country. I next served as managing director at CMG, another strategic communications firm. From 2008 to 2009, I was Deputy Director of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, which issued its report in December 2008.

3. From 2009 to 2013, I served as the Deputy Under Secretary of the Navy and Deputy Chief Management Officer. In this role, I led the department's business transformation and governance processes and coordinated efforts to identify enterprise-wide efficiencies. From April 18, 2013, to February 17, 2015, I served as Under Secretary of the Air Force after being nominated by the President to that position and confirmed by the Senate. From June 21, 2013, through December 20, 2013, I served as Acting Secretary of the Air Force.

4. In March 2015, I was assigned as the Special Assistant to the Secretary and Deputy Secretary of Defense (Chief of Staff). In this role, I helped manage Secretary of Defense Ashton Carter's transition into office, built his leadership team, and oversaw the day-to-day staff activities of the Office of the Secretary of Defense.

5. On June 30, 2015, President Barack Obama directed me to serve as Acting Under Secretary of the Army and Chief Management Officer. In that position, I served as the Secretary of the Army's senior civilian assistant and principal adviser on matters related to the management and operation of the Army, including development and integration of the Army Program and Budget. From November 3, 2015, to January 11, 2016, I served as Acting Secretary of the Army. On November 3, 2015, President Obama nominated me to serve as Secretary of the Army, and the Senate confirmed my nomination on May 17, 2016.

6. As Secretary of the Army, I was head of the Department of the Army and had statutory responsibility for all matters relating to the United States Army: manpower, personnel, reserve affairs, installations, environmental issues, weapons systems and equipment acquisition, communications, and financial management. Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Army is responsible for all affairs of the

Department of the Army, including the morale and welfare of personnel. My personnel-related oversight responsibilities included the development and implementation of recruitment, training, retention, and medical policies for active duty and reserve Army personnel. For duties other than those as a member of the Joint Chiefs of Staff, the Chief of Staff of the Army—the most senior uniformed Army officer—operated under my authority, direction, and control.

**The Army**

7. The Army is the largest of the service branches of the United States Armed Forces and performs land-based military operations. The Department of the Army is one of the three military departments of the Department of Defense ("DoD"). The Army has an annual budget of more than $140 billion, inclusive of funding for Overseas Contingency Operations. For fiscal year 2017, the projected end strength for the Active Army is 460,000 soldiers, with an additional 335,000 soldiers in the Army National Guard, and 195,000 in the United States Army Reserve, for a total of 990,000. As of 2016, the Army had approximately 190,000 soldiers deployed to 140 countries in support of U.S. geographic Combatant Command missions. The Army's command structure includes three Army Commands, ten Army Service Component Commands, and thirteen Direct Reporting Units, operating in the field and from bases and facilities located across the United States and around the world.

8. The Army's core mission is to fight and win our Nation's wars by providing prompt, sustained land dominance across the full range of military operations and spectrum of conflict in support of combatant commanders. It does this by executing statutory directives, including organizing, equipping, and training forces for the conduct of prompt and sustained combat operations on land, and by accomplishing missions assigned by the President, Secretary of Defense, and combatant commanders.

9. The Army is the most formidable ground combat force on earth and one of the largest employers in the United States. The Army's continued excellence in executing its many missions is largely due to deliberate investments in soldier training, equipping, and leader development. Soldiers receive training at the highest level, not only in the classroom, but also

through rigorous instruction under intense pressure and realistic battlefield conditions. Many Army personnel are employed in highly technical roles that require lengthy and expensive specialized training. Particularly in light of these investments in personnel, recruitment, and retention of capable and qualified soldiers is crucial to Army readiness.

**Development of DoD Policy**

10. In 2010, Congress voted to repeal the so-called Don't Ask, Don't Tell statute that previously had prevented gay, lesbian, and bisexual persons from serving openly in the military. The repeal statute required the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff to certify that allowing individuals to serve openly regardless of their sexual orientation would be consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces. That certification was provided to Congress on July 22, 2011, following a process of review, both before and after passage of the repeal statute, of the impact of the change and of the training and other policy changes that would be necessary to implement it.

11. The repeal of Don't Ask, Don't Tell raised questions about the Armed Forces' policy on service by transgender individuals. Particularly among commanders in the field, there was an increasing awareness that there were already capable, experienced transgender service members in every branch, including on active deployment on missions around the world.

12. In August 2014, the Department of Defense issued a new regulation, DODI 1332.18, Disability Evaluation System (DES). The regulation eliminated a DoD-wide list of conditions that would disqualify persons from retention in military service, including the categorical ban on open service by transgender persons. This new regulation instructed each branch of the Armed Forces to reassess whether disqualification based on these conditions, including the ban on service by transgender persons, was justified. As of August 2014, there was no longer a DoD-wide position on whether transgender persons should be disqualified for retention.

13. In February 2015, just a few days after Secretary of Defense Ashton Carter took

office, I accompanied him on a trip to Kandahar, Afghanistan, in my capacity as his chief of staff. At an open town-hall-style meeting with service members, Secretary Carter was asked about his views on service by transgender service members in an austere environment like Afghanistan. The Secretary's response was that he had not given the issue much study, but his "fundamental starting point" was "that we want to make our conditions and experience of service as attractive as possible to our best people in our country." He stated that the "important criteria" was: "Are they going to be excellent service members?"

14. The Kandahar town hall received significant media coverage. As a result, senior officials, including the offices of the Joint Chiefs of Staff, began to inquire about the Secretary's plans concerning the policy on transgender service members.

15. On July 28, 2015, after consultations with the secretaries of the military departments, Secretary Carter directed Brad Carson, Acting Undersecretary of Defense for Personnel and Readiness, to convene a working group ("the "Working Group") to study the policy and readiness implications allowing transgender persons to serve openly in the Armed Forces. The Working Group was asked to start with the presumption that transgender persons could serve openly unless objective, practical impediments were identified, and to develop an implementation plan that addressed those issues with the goal of maximizing military readiness.

16. By the time Secretary Carter directed the formation of the Working Group, I had moved out of my position in his office to become Acting Under Secretary of the Army. Subsequently, from November 3, 2015, to January 11, 2016, I served as Acting Secretary of the Army, and then as Secretary of the Army beginning May 18, 2016. During my time as Acting Secretary and Secretary, I oversaw the Department of the Army's participation in the Working Group. The Working Group met as a whole and also assigned various sub-groups to research and analyze discrete issues and report their findings. I met regularly with members of the Working Group to discuss their progress and the Army's input on the issues discussed.

17. The Working Group considered information from a variety of sources, including medical and other experts, drawn from both within and outside of the Department of Defense;

senior military personnel who supervised transgender service members; and transgender people on active duty. The input of commanders reflected their high regard for the transgender staff serving under their command.

18. Members of the Working Group discussed the evidence relating to the costs of permitting transgender persons to serve openly in the military, and the evidence relating to the impact of service by transgender people on operational effectiveness and readiness. Members of the Working Group noted that while transgender service members might have short periods when they were not deployable due to their medical treatment, such periods are not unusual for service members generally, who may take time off due to medical conditions or other reasons.

19. The Working Group also considered that providing medical care for transgender individuals is becoming increasingly prevalent in both public and private sectors alike. Over a third of Fortune 500 companies currently offer employee health insurance plans with transgender-inclusive coverage. Similarly, nondiscrimination policies at two-thirds of Fortune 500 companies now cover gender identity.

20. With respect to the public sector, the Working Group learned that all civilian federal employees have access today to a health insurance plan that provides comprehensive coverage for transgender-related care and medical treatment.

21. Members of the Working Group also discussed the disruptive effect of banning service by transgender people, since such a ban necessitates the discharge of highly trained and experienced service members, leaving unexpected vacancies in operational units and requiring the expensive and time-consuming recruitment and training of replacement personnel.

22. Members of the Working Group also discussed the negative impact of continuing to ban service by transgender people on overall military readiness because it reduces the pool of potential, qualified recruits for military service.

23. The Working Group also considered the 2016 report of a study that the DoD had commissioned from the RAND Corporation, a federally funded research center sponsored by the Defense Secretary's Office, the Joint Staff, the Unified Combatant Command, and the defense

Intelligence Community, about the healthcare needs of transgender service members, the associated costs of extending healthcare coverage for transition-related treatments, and the potential readiness implications of allowing transgender service members to serve openly. The report was entitled *Assessing the Implications of Allowing Transgender Personnel to Serve Openly* (the "RAND Report").

24. The RAND Report concluded that the cost of caring for the medical needs of transgender personnel would amount to "an exceedingly small proportion of … overall DoD health care expenditures" (xi-xii). The RAND Report further noted that there was no evidence that allowing transgender people to serve openly would negatively impact unit cohesion, operational effectiveness, or readiness. Among other things, the RAND Report found that eighteen other countries that permit open service by transgender personnel—including Israel, Australia, the United Kingdom, and Canada—had not identified any negative impacts on operational effectiveness or readiness. Based on its analysis of allied militaries and the expected rate at which American transgender service members would require medical treatment that would affect their fitness for duty or deployability, RAND's analysis concluded that there would be "minimal impact on readiness from allowing transgender personnel to serve openly" (47).

25. At the conclusion of its discussion and analysis, the members of the Working Group did not identify any basis for a blanket prohibition on open military service of transgender people. Likewise, no one suggested to me that a bar on military service by transgender persons was necessary for any reason, including readiness or unit cohesion.

26. The Working Group communicated its conclusions to the Secretary of Defense, including that permitting transgender people to serve openly in the United States military would not pose any significant costs or risks to readiness, unit cohesion, morale, or good order and discipline.

27. The Working Group also agreed that the accession policy should be changed to allow transgender people to enlist. The Working Group agreed that the medical standards for accession into the Military Services by transgender persons should be based upon the same

standards applied to persons with other medical conditions, which seek to ensure that those entering service are free of medical conditions or physical defects that may require excessive time lost from duty. Based upon that standard, the Working Group agreed that an applicant with a history of gender dysphoria or of treatment for gender dysphoria should be able to accede when the applicant has completed all medical treatment associated with the applicant's medical condition and has been stable in the preferred gender for a specified period of time.

28. The Working Group also provided comprehensive input regarding all aspects of implementing any change to related military policy. That included addressing practical concerns, like housing and uniform standards for transgender personnel, including when a transitioning service member should be authorized to conform to the standard of the gender to which they were transitioning.

29. The guiding principle behind the Working Group deliberations was that all who are qualified to serve should have the opportunity to do so. The ban on transgender service members was the last categorical ban on otherwise qualified potential service members. No qualified American who can meet the enlistment and retention standards should be excluded from the opportunity to serve.

30. On June 30, 2016, Secretary of Defense Ashton Carter issued Directive-type Memorandum (DTM) 16-005, entitled "Military Service of Transgender Service Members" ("DTM 16-005").

31. The purpose of DTM 16-005 was to "[e]stablish[] policy, assign[] responsibilities, and prescribe [ ] procedures for the standards for retention, accession, separation, in-service transition, and medical coverage for transgender personnel serving in the Military Services." DTM 16-005 was applicable to all Military Departments, including the Army, as well as all organizational entities within the DoD, including the Joint Chiefs of Staff.

32. In DTM 16-005, the Secretary of Defense noted that 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." Consistent with and

in service to that requirement, DTM 16-005 set forth the policy of the DoD:

> 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.

33. In DTM 16-005, the Secretary of Defense set forth DoD's "position, consistent with the U.S. Attorney General's opinion, that discrimination based on gender identity is a form of sex discrimination."

34. Through DTM 16-005, the Secretary of Defense ordered the Secretaries of the Military Departments—including the Army—to identify all DoD, Military Department, and Service issuances in need of revision in light of the DoD change in policy, and to submit proposed revisions to the Undersecretary of Defense for Personnel and Readiness ("USD P&R"). USD P&R was tasked with drafting revisions to all necessary issuances consistent with DTM 16-005.

35. DTM 16-005 also detailed procedures with respect to military service of transgender individuals concerning (i) separation and retention, (ii) accessions, (iii) in-service transition, (iv) medical policy, (v) equal opportunity, (vi) education and training, and (vii) implementation and timeline.

36. With respect to separation and retention, DTM 16-005 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." In addition, transgender service members would "be subject to the same standards as any other Service member of the same gender."

37. Concerning accessions, DTM 16-005 required that, no later than July 1, 2017, USD P&R update DoD Instruction 6130.03, which establishes medical standards that, if not met, are grounds for rejection for military service. Specifically, DTM 16-005 instructed USD P&R to revise DoD Instruction 6130.03 to reflect that:

> (1) individuals with a history of gender dysphoria would not be disqualified from serving on that basis if a licensed medical provider certifies "the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months";
>
> (2) individuals with a history of medical treatment associated with gender transition would not be disqualified from serving on that basis if a licensed medical provider certifies "the applicant has completed all medical treatment associated with the applicant's gender transition[,] … has been stable in the preferred gender for 18 months," and … has been stable on any "cross-sex hormone therapy post-gender transition … for 18 months"; and
>
> (3) individuals with a history of sex reassignment or genital reconstruction surgery would not be disqualified from serving on that basis if a licensed medical service provider certifies that 18 months have elapsed since the surgery, and "no functional limitations or complications persist, nor is any additional surgery required."

38. DTM 16-005 further ordered that 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 [In-Service Transition for Transgender Service Members]." DoDI 1300.28 established a construct by which transgender service members may transition gender while serving, proscribed procedures for changing a service member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS), and specified medical treatment provisions for transgender service members.

39. Through DTM 16-005, the Secretary of Defense also ordered USD P&R to "develop and promulgate education and training materials to provide relevant, useful information for transgender Service members, commander, the force, and medical professionals regarding DoD policies and procedures on transgender service" no later than October 1, 2016. Each Military Department, including the Department of the Army, was also ordered to issue implementing guidance and a written force training and education plan no later than November 1, 2016, detailing the Department's plan and program for training and educating its assigned force, including medical professionals.

40. When Secretary Carter publicly announced the issuance of DTM 16-005 on July 1, 2016, he quoted at length the Army's senior general and Chief of Staff, Mark Milley, to

convey the principle that Americans who want to serve and can meet our standards should be afforded the opportunity to compete to do so: "The United States Army is open to all Americans who meet the standard, regardless of who they are. Embedded within our Constitution is that very principle, that all Americans are free and equal. And we as an Army are sworn to protect and defend that very principle. And we are sworn to even die for that principle. So if we in uniform are willing to die for that principle, then we in uniform should be willing to live by that principle."

**Change, Development, and Implementation of Army Policy**

41. To begin implementing DTM 16-005 as applied to the Army, on July 1, 2016, I issued Army Directive 2016-30, titled "Army Policy on Military Service of Transgender Soldiers." A true and accurate copy of Army Directive 2016-30 is attached to this declaration as Exhibit A.

42. Army Directive 2016-30 was effective immediately and applies to all personnel in the Active Army, U.S. Army Reserve, Army National Guard, and Army National Guard of the United States. It states:

> it is Army policy to allow open Service by transgender Soldiers. The Army is open to all who can meet the standards for military service and remains committed to treating all Soldiers with dignity and respect while ensuring good order and discipline. Transgender Soldiers will be subject to the same standards as any other Soldier of the same gender. An otherwise qualified Soldier will not be involuntarily separated, discharged, or denied reenlistment or continuation of service solely on the basis of gender identity.

The Directive required the Assistant Secretary of the Army for Manpower and Reserve Affairs (the "ASA (M&RA)") to establish, no later than July 5, 2016, a Transgender Service Implementation Group to develop policies and procedures for transgender service, as well as a Service Central Coordination Cell (SCCC), comprised of medical, legal, and military personnel experts, to serve as a resource for commanders' inquiries and requests. By October 1, 2016, the ASA (M&RA) was directed to recommend a policy addressing service of transgender soldiers, including "a process by which transgender soldiers may transition gender while serving

consistent with mission, training, operational, and readiness needs and a procedure where by a Soldier's gender marker will be changed in [the Defense Enrollment Eligibility Reporting System (DEERS)]." In the meantime, the Directive established a process whereby gender marker changes would be handled via Exceptions to Policy (ETPs) processed by the SCCC and ASA (MR&A), with weekly reports summarizing the ETPs to be provided to me and the Army Chief of Staff.

43. Army Directive 2016-30 also instructed the ASA (M&RA) to create a force-wide training and implementation plan no later than November 1, 2016, to be completed across the Army by July 1, 2017. By the end of 2016, the Army had completed the necessary training and education to ensure that all members of the force understood and could implement the core provisions of the Army's policy on the military service for transgender soldiers.

44. Army Directive 2016-30 also instructed that the Army would continue to provide medically necessary care to all soldiers, and that the Army would issue further guidance to its medical providers no later than 45 days following the publication of guidance from the DoD on medical care for transgender service members.

45. On October 7, 2016, I issued a further directive, Army Directive 2016-35, which "establishes policies and procedures for gender transition in the Army." A true and accurate copy of Army Directive 2016-35 is attached to this declaration as Exhibit B.

46. Army Directive 2016-35 provides that "a Soldier eligible for military medical care 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." The Directive provides that gender transition in the Army begins with a diagnosis that gender transition is medically necessary and ends when the Soldier's gender marker in DEERS is changed to show the Soldier's preferred gender. The Directive further states that for policies and standards that differ according to gender, the Army will recognize a Soldier's gender based on the gender marker that appears in DEERS. It states that "the Army applies, and Soldiers are expected to meet, all standards for uniforms and grooming, body composition

assessment, physical readiness testing, participation in the Military Personnel Drug Abuse Testing Program, and other military standards" according the gender marker in DEERS.

47. Army Directive 2016-35 includes detailed procedures to be followed by soldiers with a medical diagnosis indicating that gender transition is medically necessary. These procedures require consultation with the soldier's chain of command and differ depending on the soldier's duty status and eligibility for military medical care. When a soldier has completed gender transition and is stable in his or her preferred gender as confirmed by a military medical provider, the soldier may request approval of a change to their gender marker in DEERS, which must be supported by "legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender."

48. Army Directive 2016-35 also provides guidance for commanders, directing that they "should approach a Soldier undergoing a gender transition in the same way they would approach a Soldier undergoing any medically necessary treatment. . . . Commanders will balance the needs of the individual transitioning Soldier and the needs of the command in a manner that is comparable to the actions available to the commander in addressing comparable medical circumstances unrelated to gender transition." The Directive instructs commanders to consider actions, such as adjusting the dates of gender transition or discussing extended leave options, in the same manner as such actions would be considered for other medical circumstances unrelated to gender transition.

49. Army Directive 2016-35 also requires soldiers to use the billeting, bathroom, and shower facilities associated with their gender marker in DEERS. But commanders are given discretion to employ reasonable accommodations to respect the modesty and privacy interests of soldiers, provided that no soldier is required on the basis of gender identity to use a facility not required of other soldiers with the same gender marker.

50. On September 30, 2016, the Department of Defense issued Transgender Service in the Military, An Implementation Handbook ("DoD Handbook"). The DoD Handbook is

intended as a practical day-to-day guide to assist all service members in understanding the Department of Defense's policy of allowing the open service of transgender service members. To that end, the DoD Handbook instructs all service members:

> 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.

**Harms of Recent Announcements**

51. In reliance on the policy changes described above, many military personnel have disclosed their transgender status to their chains of command since 2016. During my time as Secretary of the Army, I did not receive any reports that such disclosures, or the presence of transgender soldiers generally, harmed the readiness, operational effectiveness, or morale of any Army units. To the contrary, I am aware of commanders who believed that transgender service members under their command were capable and well-qualified to serve.

52. On July 7, 2016, less than a week after Secretary Carter issued DTM 16-005, I visited Fort Jackson, South Carolina, where the Army's newest recruits received Basic Combat Training (BCT)—the introduction soldiers receive as they enter the Army. BCT takes 10 weeks to complete, and recruits undergo intensive training for 12-14 hours a day, Monday through Saturday. Fort Jackson is U.S. Army's main production center for BCT, and it trains 50 percent of the Army's BCT load and 60 percent of the women entering the Army each year. It also is home to the Army's Drill Sergeant School, which trains all active and Reserve component drill instructors.

53. During my visit, the Commanding General asked me if I'd like to meet a transgender drill instructor, Sergeant Ken Ochoa. Sergeant Ochoa and I met privately for nearly 30 minutes, and I inquired about his experience in the Army generally, and at Fort Jackson in particular. He told me that his experience at Fort Jackson was impressive, and although he was relieved at Secretary Carter's announcement that transgender soldiers could now serve openly, his command had already taken steps to ensure he was able to bring all of his abilities to his job

and present himself authentically. His principal concern, however, was that his next post would not be as accommodating, and without formal policies to change his gender marker in DEERS, he might be forced to wear a uniform inconsistent with his gender identity.

54. On July 26, 2017, President Donald Trump issued a statement that transgender individuals will not be permitted to serve in any capacity in the Armed Forces. On August 25, 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security to reverse the policy adopted in June 2016 that permitted military service by openly transgender persons. That memorandum stated: "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."

55. I am not aware of any evidence to support President Trump's stated rationale for a total ban on transgender individuals serving in the military. Despite months of research, the members of the Working Group did not find that permitting transgender soldiers to serve would hinder any of these interests. Nor did any senior Army leaders raise these concerns with me. Because I was responsible for all Army training and readiness, such concerns would have been of great interest to me, if they existed. But they did not.

56. Based on my experience as Secretary of the Army, my experience in military personnel and readiness challenges, and my service as a senior executive in within the DoD—as Chief of Staff to the Secretary of Defense—and in each of the three military departments, I believe a reversal of current DoD policy permitting open service by transgender service members would be profoundly harmful to the public interest and to our military and causes significant harm to current servicemembers who have already disclosed to their commanders their status as individuals who are transgender.

57. **Loss of Qualified Personnel.** Discharging current transgender service members

or prohibiting their reenlistment or continuation in service would result in the loss of highly qualified and trained personnel. Many transgender service members have specialized training or hold leadership positions. Their training and professional development has required a significant investment of taxpayer dollars, an investment whose return depends on their continued service. In addition to losing the benefit of that investment in training and leadership development, taxpayers would bear the cost of recruiting and training replacement personnel. With an all-volunteer military, recruiting is a particular challenge, especially with a strong economy in which the military is competing for talent with the private sector.

58. **Effects of Uncertainty on Military Readiness.** The policy announced by the President unnecessarily creates uncertainty and instability for current transgender service members and their commanders. After serving openly and without incident for many months if not much longer, commanders must deal with the prospect that key personnel may not be able to continue their service, thus impeding military readiness. This uncertainty also affects decisions about education, training, and promotion, as commanders will be required to consider the possibility that a service member will be discharged based on a factor such as gender identity which is irrelevant to competence or fitness to serve. At the level of military policymaking, the President's action disrupts years of careful research, planning, and implementation work, reopening an issue that senior officials had already addressed comprehensively, and creating a new distraction for senior leadership at a time when our country faces unprecedented military challenges around the world.

59. **Loss of Morale and Unit Cohesion.** The President's reversal of policy is deeply harmful to morale because it impairs service members' trust in their command structure and their ability to rely on established policy. Commanders have told the enlisted soldiers they command that they must treat transgender service members the same as all others. Now they are being directed by the Commander in Chief that those same soldiers are unfit to serve. The new policy reinstitutes discrimination with no factual basis to do so. Imposing new discriminatory standards without any justification is enormously disruptive to unit cohesion and undermines the principle

of mutual respect which is essential to the military's effectiveness.

60. In addition, forcing transgender soldiers to lie and hide their transgender status to avoid separation *undermines* unit cohesion by eroding the bonds of trust among soldiers. It puts non-transgender soldiers in the position of having to choose between reporting fellow soldiers or violating policy. When urging Congress to repeal the ban against service by openly lesbian, gay, and bisexual service members, Admiral Mullen, the former Chairman of the Joint Chiefs, said: "No matter how I look at this issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens. For me personally, it comes down to integrity—theirs as individuals and ours as an institution." The same is true of a policy that forces service members to lie about being transgender.

61. In the Army Directives described above, and in many other documents, the Armed Forces have told transgender service members that they may disclose their transgender status and serve openly, without fear of discharge based on their transgender status. Dramatically reversing course and now using that information as a basis for separating these soldiers from their service is an unprecedented betrayal of the trust that is so essential to achieving the mission of all of the armed forces.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: January 24 2018

Eric Fanning

SECRETARY OF THE ARMY
WASHINGTON

01 JUL 2016

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers)

1. References:

a. Department of Defense (DoD) Directive-type Memorandum (DTM) 16-005, Military Service of Transgender Service Members, June 30, 2016.

b. DoD Instruction 1300.28 (In-Service Transition for Transgender Service Members), June 30, 2016.

2. Pursuant to references a and b, it is Army policy to allow open service by transgender Soldiers. The Army is open to all who can meet the standards for military service and remains committed to treating all Soldiers with dignity and respect while ensuring good order and discipline. Transgender Soldiers will be subject to the same standards as any other Soldier of the same gender. An otherwise qualified Soldier shall not be involuntarily separated, discharged, or denied reenlistment or continuation of service solely on the basis of gender identity.

3. No later than July 5, 2016, the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA (M&RA)) will do the following.

a. Establish a Transgender Service Implementation Group (TSIG) to develop policies and procedures for transgender service. ASA (M&RA) will Chair the TSIG. Members of the TSIG will be in the rank/grade of General Officer, Civilian Senior Executive Service, or Command Sergeant Major/Sergeant Major and include representatives from the ASA (M&RA), Deputy Chief of Staff G-1, Deputy Chief of Staff G-3/5/7, Office of General Counsel, Office of the Judge Advocate General, Office of the Chief of Chaplains, the Assistant Chief of Staff for Installation Management, U.S. Army Forces Command, U.S. Army Training and Doctrine Command, Office of the Inspector General, and Office of the Surgeon General.

b. Establish and embed a Service Central Coordination Cell (SCCC) as a sub-committee within the TSIG. The SCCC will be comprised of medical, legal, and military personnel experts. The SCCC will serve as a resource for commanders, address commanders' inquires, and process requests for exceptions to policy.

4. All commands, organizations, activities, and personnel of the Department of the Army will fully support the ASA (M&RA), as chair of the TSIG, in the execution of the assigned tasks.

5. Exceptions to Policy (ETP). At present, the Army does not have codified procedures and policy for gender transition to include completing a gender marker change in the Defense Enrollment Eligibility Reporting System (DEERS). Until the Army establishes such procedures and policy, the following guidance concerning ETPs will apply:

a. For Soldiers whose gender transition is otherwise complete but are awaiting a change to their gender marker, their ETPs shall be processed within ten days after receipt of the ETP by the SCCC and shall be given a presumption in favor of approval. For the purposes of this provision, a Soldier's gender transition is complete when the Soldier has received a diagnosis indicating gender transition is medically necessary from a military medical provider, has completed medically necessary treatment, and has obtained the required documentation supporting a gender change. The Soldier's chain of command shall provide the SCCC with a recommendation for action on the ETP, and an assessment of an approved ETP on readiness and good order and discipline.

b. All other requests for ETPs from Soldiers will include the medical diagnosis from a military medical provider and an approved treatment plan with the expected date of completion. The chain of command will provide recommendations for action and an assessment of an approved ETP on readiness and good order and discipline.

c. All requests will be submitted through the first General Officer in the chain of command. Commanders shall forward all requests for ETPs related to gender transition (to include application of standards for uniform and grooming, body composition assessment, and physical readiness testing) through the chain of command to the SCCC for a recommendation to the ASA (M&RA), who will make the decision.

d. The ASA (M&RA) shall provide a report on a weekly basis to the Chief of Staff and me summarizing the requests for ETPs and the ASA (M&RA)'s decisions.

6. The ASA (M&RA), through the TSIG, is responsible for ensuring completion of the following tasks no later than the prescribed dates:

a. Training and educating the force is necessary to sustain readiness. The Army shall create a force-wide training and education plan no later than November 1, 2016. This training shall be completed across the Army no later than July 1, 2017.

b. The Army will continue to provide medically necessary care and treatment to all Soldiers, consistent with applicable laws, policies, and procedures. No later than 45 days following DoD Under Secretary of Defense for Personnel and Readiness published

guidance on the provision of medical care to transgender Service members, the Army shall issue guidance to its medical providers to ensure they are prepared to offer or arrange for all medically necessary care for our transgender Soldiers.

c. No later than October 1, 2016, the ASA (M&RA) will recommend a policy addressing the military service of transgender Soldiers, to include establishing a process by which transgender Soldiers may transition gender while serving consistent with mission, training, operational, and readiness needs and a procedure whereby a Soldier's gender marker will be changed in DEERS. In addition, the ASA (M&RA) will identify applicable Army issuances to be updated accordingly.

7. All Soldiers should be able to perform their duties free from unlawful discrimination. It is Army policy that discrimination based on gender identity is a form of sex discrimination. Army commanders shall promote an environment that is free from gender identity discrimination. No later than October 1, 2016, the Army's issuances implementing the DoD Military Equal Opportunity Program shall be updated to prohibit discrimination on the basis of gender identity and incorporate such prohibitions in all aspects of the Army MEO program.

8. The provisions of this directive are effective immediately and apply to all personnel in the Active Army, U.S. Army Reserve, Army National Guard, and Army National Guard of the United States. This directive shall be rescinded upon publication of revised issuances and updates to governing regulations.

Eric K. Fanning

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SUBJECT: Army Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers)

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SECRETARY OF THE ARMY
WASHINGTON

07 OCT 2016

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)

1. References. A complete list of references is at enclosure 1.

2. The Army is open to all who can meet the standards for military service and readiness and remains committed to treating all Soldiers with dignity and respect while ensuring good order and discipline. The Army allows transgender Soldiers to serve openly. Consistent with this policy, the following principles shall apply:

a. No otherwise qualified Soldier may be involuntarily separated, discharged, or denied reenlistment or continuation of service solely on the basis of the Soldier's gender identity.

b. Army medical providers will diagnose and provide medically necessary care and treatment for transgender Soldiers eligible for military medical care in accordance with the guidance for transgender care issued by the Assistant Secretary of Defense (Health Affairs) and the Army Surgeon General. Consistent with that guidance, a Soldier eligible for military medical care 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.

c. For policies and standards that apply differently to Soldiers according to gender, the Army recognizes a Soldier's gender by the Soldier's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS). Coincident with that gender marker, the Army applies, and Soldiers are expected to meet, all standards for uniforms and grooming, body composition assessment, physical readiness testing, participation in the Military Personnel Drug Abuse Testing Program, and other military standards applied with consideration of the member's gender. For facilities subject to regulation by the Army, a Soldier uses those billeting, bathroom, and shower facilities associated with the Soldier's gender marker in DEERS.

3. This directive establishes policies and procedures for gender transition in the Army. Gender transition in the Army begins when a Soldier receives a diagnosis from a military medical provider (or a civilian medical provider if the Soldier is ineligible for military medical care) indicating that gender transition is medically necessary. Gender transition ends when the Soldier's gender marker in DEERS is changed to show the Soldier's preferred gender.

SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)

a. Any Soldier with a diagnosis indicating that gender transition is medically necessary must ensure that his or her chain of command is informed of the diagnosis and projected schedule for medical treatment that is part of the Soldier's medical treatment plan, including an estimated date for a change in the Soldier's gender marker, and must request that the chain of command approve the timing of the medical treatment. The Soldier must notify his or her chain of command of any change to the medical treatment plan, the projected schedule for such treatment, or the estimated date for the change in the Soldier's gender marker.

b. The exact procedures Soldiers, military medical providers, and commanders are to follow in relation to a Soldier's gender transition depend on the Soldier's duty status and eligibility for military medical care. Procedures for Soldiers on active duty and eligible for military medical care are in enclosure 2. Procedures for Soldiers serving in the Selected Reserve in the U.S. Army Reserve or Army National Guard, including Individual Mobilization Augmentees, are in enclosure 3. Procedures for Soldiers serving in the Standby Reserve or Individual Ready Reserve are in enclosure 4. Procedures for Soldiers serving in the Inactive National Guard are in enclosure 5.

c. When the Soldier is stable in his or her preferred gender, as determined or confirmed by a military medical provider, the Soldier may request approval of a change to their gender marker in DEERS through the procedures identified in enclosures 2 through 5. The request for a change in gender marker must be supported by a medical diagnosis from a military medical provider (or a civilian medical provider if the Soldier is ineligible for military medical care) indicating that gender transition is medically necessary; confirmation from a military medical provider that the Soldier is stable in the preferred gender; and legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

d. Within 30 days after receiving a request for a change to a Soldier's gender marker and all required documentation (within 60 days for reserve component Soldiers), the applicable approval authority identified in enclosures 2 through 5 will approve a change to the Soldier's gender marker in DEERS to show the Soldier's preferred gender. The approval will be in writing and state the effective date of the change to the Soldier's gender marker.

e. The Soldier's gender marker will be changed upon submission of the written approval to the Commander, U.S. Army Human Resources Command. Human Resources Command will make the change in the Army personnel information systems, which in turn will update the gender marker in DEERS.

f. After the gender marker in DEERS is changed to show a Soldier's preferred gender, the Soldier will be expected to adhere to Army standards applicable to the preferred gender, as described in paragraph 2c.

g. The change to the gender marker in DEERS does not preclude additional medically necessary care.

4. Commanders are responsible and accountable for the overall readiness of their command. Commanders are also responsible for the collective morale, welfare, good order, and discipline of their unit; for the command climate; and for ensuring that all members of the command are treated with dignity and respect.

a. Commanders should approach a Soldier undergoing gender transition in the same way they would approach a Soldier undergoing any medically necessary treatment. Commanders will continue to minimize effects to the mission and ensure continued unit readiness. Commanders will balance the needs of the individual transitioning Soldier and the needs of the command in a manner that is comparable to the actions available to the commander in addressing comparable medical circumstances unrelated to gender transition. Commanders may consider the following actions:

(1) Adjusting the date on which the Soldier's gender transition, or any component of the gender transition process, will begin.

(2) Advising a Soldier of the availability of options for extended leave status or participation in other voluntary absence programs during the gender transition process, in accordance with Army Regulation (AR) 600-8-10 (Leaves and Passes).

(3) Processing requests for exceptions to policy (ETPs) associated with gender transition in accordance with paragraph 5.

(4) Establishing or adjusting local policies on the use of billeting, bathroom, and shower facilities subject to regulation by the military during the gender transition process, consistent with paragraphs 4b and 4c.

(5) Referring the Soldier for a determination of fitness in the disability evaluation system in accordance with DoD Instruction 1332.18 (Disability Evaluation System (DES)) and AR 40-501 (Standards of Medical Fitness).

(6) Taking other actions, including the initiation of administrative or other proceedings, comparable to actions that could be initiated for other Soldiers whose ability to serve is similarly affected for reasons unrelated to gender transition.

b. Soldiers must accept living and working conditions that are often austere, primitive, and characterized by little or no privacy. All Soldiers will use the billeting, bathroom, and shower facilities associated with their gender marker in DEERS. However, commanders have discretion to employ reasonable accommodations to respect the modesty or privacy interests of Soldiers, including discretion to alter billeting assignments or adjust local policies on the use of bathroom and shower facilities, in accordance with Army policy, in the interest of maintaining morale, good order, and discipline and consistent with performance of the mission. Nevertheless, no commander may order a Soldier on the basis of his or her gender identity or transitioning status to use a billeting, bathroom, or shower facility not required of other Soldiers with the same gender marker.

c. Facilities will not be designated, modified, or constructed to make transgender-only areas. If modifications are made to accommodate the modesty or privacy concerns of a Soldier, they must be made available for all Soldiers to use. Commanders will accommodate privacy concerns using existing facilities and furnishings where possible and will modify facilities only when other options are ineffective.

d. Commanders should remain mindful of the privacy of personal or health-related information concerning the Soldiers in their command. Personal information regarding transgender Soldiers should be safeguarded to the same extent as comparable information regarding any other Soldier.

e. The Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) has established a Service Central Coordination Cell composed of medical, legal, and military personnel experts to provide advice and assistance to commanders, address their inquiries, and process requests for ETPs in connection with gender transition for decision by the ASA (M&RA).

5. In general, Soldiers are expected to comport with the standards of their gender marker in DEERS. In the event that a Soldier undergoing gender transition is unable to meet a particular Army standard as a result of medical treatment or other aspects of the Soldier's gender transition, the Soldier's chain of command, together with the Soldier and/or the military medical provider, should consider options (for example, adjusting the date of a physical fitness test or extended leave options) other than requesting an ETP to depart from Army standards. If submitted, a request for an ETP to depart from the standards of a Soldier's gender marker in DEERS must be processed according to the procedures outlined in this paragraph and will be evaluated on a case-by-case basis.

a. An active duty or Selected Reserve Soldier should submit the ETP request through the Soldier's chain of command. An Individual Ready Reserve or Standby Reserve Soldier should submit the ETP request to the Commander, Human Resources

Command. An Inactive National Guard Soldier should submit the ETP request to the Director, Army National Guard.

b. When submitting an ETP request, the Soldier must identify the specific policy for which the Soldier is seeking an exception and explain the reason for the request. The request must be accompanied by a medical diagnosis from a military medical provider (or a civilian medical provider if the Soldier is ineligible for military medical care), an approved medical treatment plan identifying medically necessary treatment and a projected schedule for such treatment, and an estimated date for completion of the treatment pursuant to the medical treatment plan.

c. As soon as practicable, but no later than 60 days after receipt of an ETP request, the recipient of the request (as identified in paragraph 5a) must forward the request through the first general officer in the chain of command to the Service Central Coordination Cell or, if disestablished, to the relevant policy proponent in Headquarters, Department of the Army. Informed, as appropriate, by advice from a military medical provider, the recipient must provide a recommendation for action on the ETP request and an assessment of the expected effects, if any, the ETP will have on mission readiness and the good order and discipline of the unit. Commanders should include in their assessment a discussion of what other actions not requiring deviation from Army policies they considered or used and why the actions were ineffective or inadequate.

d. The ASA (M&RA) has withheld the authority to decide requests for ETPs in relation to a Soldier's gender transition.

6. Effective immediately, the following regulations will be revised in accordance with the language in enclosure 6: AR 40-501, AR 135-178, AR 600-20, AR 600-85, AR 635-200, and AR 638-2. The Deputy Chief of Staff (DCS), G-1, the proponent of AR 601-270 and AR 670-1, will review those regulations for consistency with this directive and references a and b and update those regulations as necessary. In addition, the Army will take the following actions:

a. Training and educating the force is necessary to sustain readiness. No later than 1 November 2016, the Army will develop the necessary training and education to ensure that all members of the force understand the core principles of Army policy on the military service of transgender Soldiers. Training and education via chain teaching across the Army will be completed no later than 1 July 2017. In addition, by 1 July 2017, the Army will adjust existing blocks of instruction throughout the Army to sustain the training and education of the Army policy concerning transgender military service.

b. This directive does not alter Army accessions policy. No later than 1 July 2017, the Under Secretary of Defense (Personnel and Readiness) will update the policies and procedures governing accessions for transgender applicants in DoD Instruction 6130.03

SUBJECT: Army Directive 2016-35 (Army Policy on Military Service of Transgender Soldiers)

(Medical Standards for Appointment, Enlistment, or Induction in the Military Services). No later than 60 days after those policies and procedures are published, the Army will update its accessions policy.

c. No later than 1 October 2017, the ASA (M&RA) will provide the Secretary of the Army with an assessment of whether the Service Central Coordination Cell should be continued, disestablished, or become a permanent body. At that time, the ASA (M&RA) will also reassess whether the ASA (M&RA) should continue to retain approval authority for ETPs associated with gender transition or should delegate the authority to the proponents of the underlying policy.

d. No later than 1 October 2018, The Inspector General will provide the Secretary of the Army with a report of inspection on the Army's compliance with reference b and this directive. This report will be used for assessing and overseeing compliance; identifying compliance deficiencies, if any; initiating timely corrective action, as appropriate; and identifying best practices and lessons learned.

e. All Army activities will review local regulations and policies for consistency with this directive and references a and b and update those regulations and policies as necessary.

7. The provisions of this directive are effective immediately and apply to all personnel in the Active Army, Army National Guard/Army National Guard of the United States, and Army Reserve. The directive will be rescinded upon publication of revised issuances and updated to governing regulations. The ASA (M&RA) is the proponent for this policy. The point of contact is Chief, Accessions Division, DCS, G-1, 703-695-7693, DSN 312-225-7693.

Encls

Eric K. Fanning

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Commander, U.S. Army Accessions Command
Commander, U.S. Army War College
Commander, Second Army

CF:
Director, Army National Guard
Director of Business Transformation
Commander, Eighth U.S. Army

## REFERENCES

a. Department of Defense (DoD) Directive-type Memorandum (DTM) 16-005 (Military Service of Transgender Service Members), June 30, 2016.

b. DoD Instruction 1300.28 (In-Service Transition for Transgender Service Members), July 1, 2016.

c. DoD Instruction 1332.18 (Disability Evaluation System (DES)), August 5, 2014.

d. DoD Instruction 6130.03 (Medical Standards for Appointment, Enlistment, or Induction in the Military Services), April 28, 2010, Incorporating Change 1, September 13, 2011.

e. Army Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers), 1 July 2016.

f. Army Regulation (AR) 40-501 (Standards of Medical Fitness), 14 December 2007, Including Rapid Action Revision Issued 4 August 2011.

g. AR 135-178 (Enlisted Administrative Separations), 18 March 2014.

h. AR 600-8-10 (Leaves and Passes), 15 February 2006, Including Rapid Action Revision Issued 4 August 2011.

i. AR 600-20 (Army Command Policy), 6 November 2014.

j. AR 600-85 (The Army Substance Abuse Program), 28 December 2012.

k. AR 601-270 (Army Retention Program), 1 April 2016.

l. AR 635-200 (Active Duty Enlisted Administrative Separations), 6 June 2005, Including Rapid Action Revision Issued 6 September 2011.

m. AR 638-2 (Army Mortuary Affairs Program), 23 June 2015.

n. AR 670-1 (Wear and Appearance of Army Uniforms and Insignia), 10 April 2015.

## GENDER TRANSITION FOR ACTIVE DUTY SOLDIERS

1. The gender transition process for a Soldier serving on active duty and eligible for military medical care begins when the Soldier receives a diagnosis from a military medical provider indicating that gender transition is medically necessary. The Soldier must ensure that his or her brigade-level commander is informed, through command channels, of the diagnosis and projected schedule for medical treatment that is part of the Soldier's medical treatment plan, including an estimated date for a change in the Soldier's gender marker. The Soldier must request that the brigade-level commander approve the timing of the medical treatment. The Soldier must also notify his or her brigade-level commander of any change to the medical treatment plan, the projected schedule for such treatment, or the estimated date for the change in the Soldier's gender marker.

2. Upon establishing a diagnosis indicating that gender transition is necessary, the military medical provider is responsible for developing a medical treatment plan and presenting the plan through command channels to the Soldier's brigade-level commander. The provider must advise the brigade-level commander on the medical diagnosis applicable to the Soldier, including the provider's assessment of medically necessary care and treatment, the urgency of the proposed care and treatment, the likely effect of the care and treatment on the individual's readiness and deployability, and the extent of the human and functional support network needed to support the individual.

3. The Soldier's brigade-level commander is responsible for approving the timing, or adjustments to the timing, of medical treatment associated with gender transition and must:

- consider the Soldier's individual facts and circumstances, including the Soldier's medical treatment plan;
- ensure military readiness by minimizing effects to the mission (including deployment, operational, training, and exercise schedules, and critical skills availability); and
- maintain the morale, welfare, good order, and discipline of the unit.

Upon receipt of the Soldier's request, the brigade-level commander will notify the Service Central Coordination Cell (SCCC) and consult the SCCC in responding to the request. The brigade-level commander will approve the timing of the medical treatment in writing. The timing of the treatment may be adjusted, after consulting with the medical provider, based on unscheduled requirements.

4. The medical provider, in consultation with the Soldier, must advise the brigade-level commander when the Soldier has completed the medical treatment necessary to achieve stability in the preferred gender and recommend to the brigade-level commander when the Soldier's gender marker should be changed in the Defense

Enrollment Eligibility Reporting System (DEERS). At that point, the Soldier may request that the brigade-level commander approve a change to the Soldier's gender marker.

a. In support of the request, the Soldier must ensure that the brigade-level commander receives:

- a medical diagnosis from a military medical provider indicating that gender transition is medically necessary;
- confirmation from the military medical provider that the Soldier is stable in the preferred gender; and
- legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

b. Upon receipt of the Soldier's request for a change to his or her gender marker, the brigade-level commander will notify the SCCC and consult the SCCC in responding to the request. The brigade-level commander will return incomplete requests to the Soldier with written notice of the identified deficiencies as soon as practicable, but no later than 30 days after receipt. Within 30 days after receiving all required information from the Soldier, the brigade-level commander will approve the request, including the date when the Soldier's gender marker should be changed in Army personnel information systems, which will initiate the gender marker change in DEERS.

c. A Soldier's gender marker will be changed when his or her brigade-level commander submits written approval to the Commander, U.S. Army Human Resources Command (HRC-PDF), 1600 Spearhead Division Avenue, Fort Knox, Kentucky 40122. Human Resources Command will make the change in Army personnel information systems, which will update the gender marker in DEERS.

## GENDER TRANSITION FOR U.S ARMY RESERVE AND ARMY NATIONAL GUARD SELECTED RESERVE SOLDIERS

1. The gender transition process for a Soldier serving in the Selected Reserve in the Army Reserve or Army National Guard (ARNG), including Individual Mobilization Augmentees, who is not eligible for military medical care begins when the Soldier receives a diagnosis from a civilian or military medical provider indicating that gender transition is medically necessary. The Soldier must submit the diagnosis through command channels to his or her brigade-level commander, accompanied by a projected schedule for medical treatment and an estimated date for a change in the Soldier's gender marker, and request that the commander approve the timing of the medical treatment. The Soldier must also notify the brigade-level commander in the event of any change to the medical treatment plan, the projected schedule for such treatment, or the estimated date for the change in the Soldier's gender marker.

2. The Soldier's brigade-level commander is responsible for approving the timing, or adjustments to the timing, of medical treatment associated with gender transition and must:

- consider the Soldier's individual facts and circumstances, including the Soldier's expected medical treatment schedule;
- ensure military readiness by minimizing effects to the mission (including deployment, operational, training, and exercise schedules, and critical skills availability); and
- maintain the morale, welfare, good order, and discipline of the unit.

Upon receipt of the Soldier's request, the brigade-level commander will inform the Service Central Coordination Cell (SCCC) and consult the SCCC in responding to the request. Before approving the request, the brigade-level commander will submit the Soldier's request and diagnosis to, as appropriate, U.S. Army Reserve Command's Command Surgeon or the Chief Surgeon, ARNG, who will confirm any civilian medical diagnosis that gender transition is medically necessary. The brigade-level commander's approval of the timing of medical treatment will be in writing. The timing of the treatment may be adjusted, after consulting with the medical provider, based on unscheduled requirements.

3. After the brigade-level commander approves the timing of medical treatment and once the Soldier's medical provider determines that the Soldier has completed medical treatment necessary to achieve stability in the preferred gender, the Soldier may request, through command channels, that the brigade-level commander approve a change to the Soldier's gender marker.

a. In support of the request, the Soldier must include:

- the medical diagnosis indicating that gender transition is medically necessary;

- confirmation from a medical provider that the Soldier's medical treatment plan is complete and that the Soldier has achieved stability in the preferred gender; and

- legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

b. Upon receipt of the Soldier's request for a change to his or her gender marker, the brigade-level commander will inform the SCCC and consult the SCCC in responding to the request. Before taking action, the brigade-level commander will submit the Soldier's request to, as appropriate, Reserve Command's Command Surgeon or the Chief Surgeon, ARNG for confirmation of the medical determination that the Soldier has achieved stability in the preferred gender.

c. The brigade-level commander will return incomplete requests to the Soldier with written notice of the identified deficiencies as soon as practicable, but no later than 30 days after receipt. Within 60 days after receiving all required information from the Soldier, the brigade-level commander will approve the request, including the date when the Soldier's gender marker should be changed, and will submit the written approval to the Commander, U.S. Army Human Resources Command (HRC-PDF), 1600 Spearhead Division Avenue, Fort Knox, Kentucky 40122. Human Resources Command will make the change in Army personnel information systems, which will cause the gender marker in the Defense Enrollment Eligibility Reporting System to change as well.

## GENDER TRANSITION FOR SOLDIERS SERVING IN THE STANDBY RESERVE OR INDIVIDUAL READY RESERVE

1. The gender transition process for a Soldier serving in the Standby Reserve or Individual Ready Reserve begins when the Soldier receives a diagnosis from a civilian or military medical provider indicating that gender transition is medically necessary. The Soldier must submit the diagnosis to the Commander, Human Resources Command (HRC), accompanied by a projected schedule for medical treatment with an estimated date for a change in the Soldier's gender marker, and request that the Commander, HRC approve the timing of the medical treatment. The Soldier must also notify the Commander, HRC in the event of any change to the projected schedule for such treatment or the estimated date for the change in the Soldier's gender marker.

2. Upon receipt of a request, the Commander, HRC is responsible for approving the timing, or adjustments to the timing, of medical treatment associated with gender transition. Factors the Commander, HRC should consider when reviewing the request include the likelihood of the Soldier's return to active service as well as any military necessity that may warrant the mobilization or activation of the Soldier. Upon receipt of the Soldier's request, the Commander, HRC will inform the Service Central Coordination Cell (SCCC) and consult the SCCC in responding to the request. Before approving the timing of any medical treatment, the Commander, HRC will also ensure that the HRC Command Surgeon confirms any civilian medical diagnosis that gender transition is medically necessary. The timing of the approval will be noted in a memorandum HRC provides to the Soldier. The Commander, HRC may adjust the timing, after consulting with the medical provider, based on unscheduled requirements.

3. After the Commander, HRC approves the timing of medical treatment and the Soldier's medical provider determines that the Soldier has completed medical treatment necessary to achieve stability in the preferred gender, the Soldier may ask the commander to approve a change to the Soldier's gender marker.

a. In support of the request, the Soldier must include:

- the medical diagnosis indicating that gender transition is medically necessary;
- confirmation from a medical provider that the Soldier's medical treatment plan is complete and the Soldier has achieved stability in the preferred gender; and
- legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

b. Upon receipt of the Soldier's request for a change to his or her gender marker, the Commander, HRC will inform the SCCC and consult the SCCC in responding to the request. Before taking action, the Commander, HRC will ensure that the HRC

Command Surgeon confirms the medical diagnosis that the Soldier has achieved stability in the preferred gender.

c. The Commander, HRC will return incomplete requests to the Soldier with written notice of the identified deficiencies as soon as practicable, but no later than 30 days after receipt. Within 60 days after receiving all required information from a Soldier, the Commander, HRC will approve the request, including the effective date of the gender marker change, and change the Soldier's gender marker in Army personnel information systems. This will cause the gender marker in the Defense Enrollment Eligibility Reporting System to change as well.

## GENDER TRANSITION FOR SOLDIERS SERVING IN THE INACTIVE NATIONAL GUARD

1. The gender transition process for a Soldier serving in the Inactive National Guard begins when the Soldier receives a diagnosis from a civilian or military medical provider indicating that gender transition is medically necessary. The Soldier must submit the diagnosis to the Director, Army National Guard (ARNG), accompanied by a projected schedule for medical treatment and an estimated date for a change in the Soldier's gender marker, and request that the Director, ARNG approve the timing of the medical treatment. The Soldier must also notify the Director in the event of any change to the projected schedule for the treatment or the estimated date for the change in the Soldier's gender marker.

2. Upon receipt of a request, the Director, ARNG is responsible for approving the timing, or adjustments to the timing, of medical treatment associated with gender transition. Factors the Director, ARNG should consider when reviewing the request include the likelihood of the Soldier's return to active status or active duty, as well as any military necessity that may warrant the mobilization or activation of the Soldier. Upon receipt of the Soldier's request, the Director, ARNG will inform the Service Central Coordination Cell (SCCC) and consult the SCCC in responding to the request. Before approving any treatment plan, the Director, ARNG will also ensure that the Chief Surgeon, ARNG confirms any civilian medical diagnosis that gender transition is medically necessary. The Director may adjust the timing of the treatment, after consulting with the medical provider, based on unscheduled requirements.

3. After the Director, ARNG approves the timing of the medical treatment and after the Soldier's medical provider determines that the Soldier has completed medical treatment necessary to achieve stability in the preferred gender, the Soldier may ask the Director, ARNG to approve a change in the Soldier's gender marker.

a. In support of the request, the Soldier must provide:

- the medical diagnosis indicating that gender transition is medically necessary;
- confirmation from a medical provider that the Soldier's medical treatment plan is complete and the Soldier has achieved stability in the preferred gender; and
- legal documentation supporting a gender change, consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender.

b. Upon receipt of the Soldier's request for a change to his or her gender marker, the Director, ARNG will inform the SCCC and consult the SCCC in responding to the request. Before taking action, the Director will ensure that the Chief Surgeon, ARNG confirms the medical diagnosis that the Soldier has achieved stability in the preferred gender.

c. The Director, ARNG will return incomplete requests to the Soldier with written notice of the identified deficiencies as soon as practicable, but no later than 30 days after receipt. Within 60 days after receiving all required information from a Soldier, the Director, ARNG will approve the request, including the effective date of the gender marker change, and submit the written approval to the Commander, U.S. Army Human Resources Command (HRC-PDF), 1600 Spearhead Division Avenue, Fort Knox, Kentucky 40122. HRC will make the change in Army personnel information systems, which will cause the gender marker in the Defense Enrollment Eligibility Reporting System to change as well.

## PROPOSED REVISIONS TO ARMY REGULATIONS

**AR 40-501 (Standards of Medical Fitness), 14 December 2007:**

*Contents, page iii, line 15 should be revised to read:*

Personality, psychosexual conditions, ~~transsexual, gender identity,~~ exhibitionism, transvestism, voyeurism, other paraphilias, or factitious disorders; disorders of impulse control not elsewhere classified • 3–35, page 33

*Paragraph 2-14a(5) should be revised to read:*

(5) History of major abnormalities or defects of the genitalia such as ~~change of sex (P64.5),~~ hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis (752.7), or dysfunctional residuals from surgical correction of these conditions does not meet the standard.

*Paragraph 2-14d should be revised to read:*

d. History of major abnormalities or defects of the genitalia, such as ~~a change of sex (P64.5),~~ hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis (752.7), or dysfunctional residuals from surgical correction of these conditions does not meet the standard.

*Paragraph 2-27n should be revised to read:*

n. Current or history of psychosexual conditions (302), including, but not limited to ~~transsexualism,~~ exhibitionism, transvestism, voyeurism, and other paraphilias, do not meet the standard.

*Paragraph 3-35 should be revised to read:*

**3-35. Personality, psychosexual conditions, ~~transsexual, gender identity,~~exhibitionism, transvestism, voyeurism, other paraphilias, or factitious disorders; disorders of impulse control not elsewhere classified**

a. A history of, or current manifestations of, personality disorders, disorders of impulse control not elsewhere classified, transvestism, voyeurism, other paraphilias, or factitious disorders, psychosexual conditions~~transsexual, gender identity disorder to include major abnormalities or defects of the genitalia such as change of sex or a current attempt to change sex~~,hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis or dysfunctional residuals from surgical correction of these conditions render an individual administratively unfit.

**AR 135-178 (Enlisted Administrative Separations), 18 March 2014:**

Lines 25-26 on the Summary of Change should be revised to read:

~~o Adds transsexualism/gender transformation in accordance with AR 40-501 as a basis for separation. (para 6-7a).~~

Paragraph 6-7a should be revised to read:

a. *Criteria.* The separation authority (para 1–10, of this regulation) may approve discharge under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) that potentially interfere with assignment to or performance of military duty. Such conditions may include, but are not limited to, chronic airsickness or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, personality disorder, transvestism, ~~gender identity disorder or gender dysphoria,~~ and other related conditions in accordance with AR 40–501, paragraph 3–35~~. Transsexualism/gender transformation in accordance with AR 40–501,~~ and other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to perform military duties effectively is significantly impaired.

**AR 600-20 (Army Command Policy), 6 November 2014**

Replace all references to discrimination based on sex or gender with "sex (including gender identity)."

**AR 600–85 (The Army Substance Abuse Program), 28 December 2012**

Appendix E, paragraph E-4b(2) should be revised to read:

(2) Optional wide mouth collection cup ~~(for females)~~.

Appendix E, paragraph E-5h should be revised to read:

h. If the Soldier ~~is female~~ requires use of the optional wide mouth collection cup, the ~~optional wide mouth collection~~ cup will be issued to the Soldier at this time.

Appendix E, paragraph E-5m should be revised to read:

m. The following procedure applies to ~~female~~ Soldiers who use~~tilize~~ the wide mouth collection cups:

**AR 635-200 (Active Duty Enlisted Administrative Separations), 6 June 2005**

Paragraph 5-17a should be revised to read:

a. Commanders specified in paragraph 1–19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) and excluding conditions appropriate for separation processing under paragraph 5–11 or 5–13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to—

(1) Chronic airsickness.
(2) Chronic seasickness.
(3) Enuresis.
(4) Sleepwalking.
(5) Dyslexia.
(6) Severe nightmares.
(7) Claustrophobia.
(8) ~~Transsexualism/gender transformation in accordance with AR 40-501 paragraph 3-35.~~
~~(9)~~ Other disorders manifesting disturbances of perception, thinking, emotional control, or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired. Soldiers with 24 months or more of active duty service may be separated under this paragraph based on a diagnosis of personality disorder. For Soldiers who have been deployed to an area designated as an imminent danger pay area, the diagnosis of personality disorder must be corroborated by the MTF Chief of Behavioral Health (or an equivalent official). The corroborated diagnosis will be forwarded for final review and confirmation by the Director, Proponency of Behavioral Health, Office of the Surgeon General (DASG-HSZ). Medical review of the personality disorder diagnosis will consider whether PTSD, Traumatic Brain Injury (TBI), and/or other comorbid mental illness may be significant contributing factors to the diagnosis. If PTSD, TBI, and/or other comorbid mental illness are significant contributing factors to a mental health diagnosis, the Soldier will not be processed for separation under this paragraph, but will be evaluated under the physical disability system in accordance with AR 635-40.

**AR 638–2 (Army Mortuary Affairs Program), 23 June 2015**

Paragraph 2-9b(1) should be revised to read:

(1) No uniform is authorized; dark suit only or equivalent for females ~~and transgenders~~.

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 RAYMOND EDWIN MABUS, JR. IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Raymond Edwin Mabus, Jr., declare as follows:

**Background and Experience**

1. I served as the United States Secretary of the Navy from May 19, 2009 to January 20, 2017.

2. Prior to serving as Secretary of the Navy, I earned a Bachelor's degree in English and Political Science from the University of Mississippi in 1969, a Master's Degree in political science from Johns Hopkins University in 1970, and a J.D. from Harvard Law School in 1976. Prior to attending law school, I served from 1970 until 1972 in the Navy aboard the cruiser USS Little Rock, achieving the rank of Lieutenant, junior grade. Following law school, I worked as a law clerk in the United States Court of Appeals for the Fifth Circuit. From 1977 until 1978, I worked as legal counsel for the Cotton Subcommittee of the Agriculture Committee of the United States House of Representatives. From 1979 to 1980, I was an associate at the law firm of

Fried, Frank, Harris, Shriver and Kampleman in Washington, D.C. and from 1980 to 1983, I was Legal Counsel and Legislative Assistant to the Governor of Mississippi. From 1984 to 1988, I served as Mississippi State Auditor (an elected position), and from 1988 to 1992 as Governor of Mississippi. From 1994 to 1996 I served as the United States Ambassador to Saudi Arabia. From 1998 to 2000 I served as President of Frontline Global Services, a consulting company. From 2003-2007 I served as Chairman of Foamex, Incorporated, a public manufacturing company, and from 2006 to 2007 as Foamex's Chief Executive Officer as well.

3. As Secretary of the Navy, I functioned as the chief executive of the Department of the Navy, with the authority to conduct all of its affairs. As Secretary, I had comprehensive oversight responsibility for (i) the Department of the Navy's annual budget, (ii) overseeing the recruitment, organization, training, supplying, equipping, mobilizing, and demobilizing of Navy personnel, and (iii) overseeing the construction, outfitting, and repair of naval equipment, ships, and facilities. I was also responsible for the formulation and implementation of policies and programs that are consistent with the national security policies and objectives established by the President and the Secretary of Defense.

4. In connection with my personnel-related oversight responsibilities, I oversaw the administration of recruitment, retention, and medical policies for active duty and reserve Navy personnel. As Secretary, I performed these duties before, during, and after the end of the "Don't Ask, Don't Tell" ban on gay service members serving openly in the military in 2011.

5. Also during this period, I oversaw the Navy and the Marine Corps through the end of United States military operations in Iraq and the surge of tens of thousands of United States troops in Afghanistan. I am keenly aware that the recruitment and retention of capable and qualified service members is of critical importance to the readiness of the Navy and the Marines.

**The Navy**

6. The Department of the Navy comprises two uniformed Services of the United States Armed Forces: the United States Navy and the United States Marine Corps. It is one of the three military departments of the Department of Defense ("DoD"). The Navy, with an annual budget of more than $160 billion, maintains more than 270 deployable battle force ships,

operates more than 3,700 military aircraft, and employs nearly 900,000 active duty, reserve, and civilian employees.

7. The mission of the Navy is to maintain, train and equip combat-ready Naval forces capable of winning wars, deterring aggression and maintaining freedom of the seas.

**Development of DoD Policy Relating to Service by Openly Transgender Persons**

8. On July 28, 2015, Secretary of Defense Ashton Carter ordered Brad Carson, Acting Undersecretary of Defense for Personnel and Readiness, to convene a working group to identify and address the practical issues related to transgender Americans serving openly in the Armed Forces, and to develop an implementation plan that addressed those issues with the goal of maximizing military readiness (the "Working Group"). A true and accurate copy of this order is attached hereto as Exhibit A. The Working Group was ordered to present its findings and recommendations to the Secretary of Defense within 180 days. In the interim, pursuant to the July 28, 2015 order, 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 personal approval of the Under Secretary of Defense for Personnel and Readiness."

9. As Secretary of the Navy, I was responsible for supervising the Department of the Navy's participation in the Working Group. The Working Group met as a whole and also assigned various sub-groups to research and analyze discrete issues and report their findings. I met multiple times per week with my deputy to the Working Group, the Navy General Counsel, who would update me on the progress of the Working Group and the Navy's positions on the issues discussed.

10. The Working Group was tasked with evaluating the hurdles, impediments, and concerns potentially raised by open service of transgender service members. They sought to identify all potential impacts on the Services and develop recommendations to address them.

11. The Working Group met and engaged in a detailed, deliberative, carefully run process. The goal was to ensure that the input of the Services would be fully considered before any changes in policy were made and that the Services were on board with those changes.

12. The Working Group conducted a comprehensive review of relevant evidence,

including: research and data; information obtained from medical, personnel, and readiness experts; and information obtained from discussions with transgender service members and commanders who supervised transgender service members. The Working Group also considered the experiences of civilian employers and insurance companies.

13. The Working Group also considered a study that the DoD commissioned from the RAND Corporation. That study examined all of the available research about the healthcare needs of transgender service members, the anticipated costs of providing healthcare coverage for transition-related treatments, and the potential readiness implications of allowing transgender service members to serve openly. A true and accurate copy of the report, entitled Assessing the Implications of Allowing Transgender Personnel to Serve Openly ("RAND Report"), is attached as Exhibit B.

14. The RAND Report concluded that the cost of caring for the medical needs of transgender personnel would be extremely small and that there was no evidence that allowing transgender people to serve openly would negatively impact unit cohesion, operational effectiveness, or readiness. The RAND Report also concluded that the Military Health Service could provide appropriate transition-related healthcare to transgender persons. The RAND Report also identified various DoD policies that would need to be changed to permit transgender service members to serve openly, including "transgender-specific DoD instructions that may contain unnecessarily restrictive conditions and reflect outdated terminology and assessment processes."

15. Members of the Working Group discussed the full range of considerations relevant to assessing the potential impacts of permitting transgender service members to serve openly, including evidence relating to the costs of providing appropriate healthcare and evidence relating to the impact of service by transgender people on operational effectiveness and readiness. For example, the Working Group considered that while some transgender service members might be undeployable for short periods due to medical treatments, the overall loss of deployable time would not be significant and was consistent with the standard applied to other service members, who may take time off due to comparable medical treatments.

16. The Working Group also noted that many private and public health insurance plans now cover transition-related care and that all civilian federal employees have access to a health insurance plan that provides comprehensive coverage for such care. This was helpful to ascertain both the costs of providing such care and utilization rates, as well as to demonstrate the need for the military to keep pace with contemporary medical science and practice in the provision of healthcare to our service members.

17. The Working Group also consulted with representatives from the Armed Forces of other nations that permit openly transgender persons to serve. Those consultations confirmed that permitting such service is not disruptive to military readiness and has not led to significantly increased costs or posed any other significant problems. The RAND Report considered the experiences of other countries as well and found no evidence of any adverse impacts. Noting the most extensive research on how a policy of open service affects readiness and unit cohesion has been conducted in Canada, the RAND Report noted that "the researchers heard from commanders that the increased diversity improved readiness."

18. The Working Group considered that banning service by openly transgender people has numerous negative impacts, including requiring the discharge of highly trained and experienced service members, causing unexpected vacancies in operational units, and requiring the expensive and time-consuming recruitment and training of replacement personnel.

19. The Working Group also recognized that despite a ban on transgender service members, transgender persons continued to serve in the military, but were forced to lie about and hide their identities, to the detriment both of those service members and of the military as a whole. As a result, the Working Group recognized that the primary impact of the policy was to cause harms similar to those caused by "Don't Ask, Don't Tell."

20. During the period in which the Working Group was in operation, the proceedings of the Working Group were reported to and reviewed by upper level Department of Defense personnel at meetings attended by the Joint Chiefs of Staff, the Chairman, the Vice Chairman, the Service Secretaries, the Secretary of Defense, and the Assistant Secretary of Defense. At these meetings, the activities of the Working Group would be shared along with their preliminary

views. The meeting attendees would then discuss any comments they may have had on those views.

21. By the conclusion of its discussions and analysis, all members of the Working Group (including the senior uniformed military personnel) expressed their agreement that transgender people should be permitted to serve openly in the United States Armed Forces.

22. In or around April 2016, the Working Group communicated its view to the Secretary of Defense along with detailed recommendations regarding the full range of relevant policies and practical concerns, such as guidelines involving access to healthcare, housing and uniform standards, and when a transitioning service member should be authorized to conform to the standard of the gender to which they were transitioning.

23. On June 30, 2016, Secretary of Defense Ashton Carter accepted the recommendations of the Working Group, and issued Directive-type Memorandum (DTM) 16-005, entitled "Military Service of Transgender Service Members" ("DTM 16-005"), a true and accurate copy of which is attached as Exhibit C.

**Change, Development, and Implementation of Navy Policy**

24. Following the Secretary of Defense's announcement, the Navy's implementation of the new policy was straightforward. We focused on the administrative tasks of promulgating and implementing the appropriate processes. Having presided over the Navy during the rollout of prior policy changes such as the repeal of "Don't Ask, Don't Tell" and the complete integration of women into ground combat, I can confirm that the implementation of open service for transgender service members was relatively low-key, triggered fewer emotional responses, and was viewed as "no big deal."

25. To implement DTM 16-005 as applied to the Navy, on November 4, 2016, I issued SECNAV Instruction 1000.11 concerning Service of Transgender Sailors and Marines (the "Instruction"). A true and accurate copy of the Instruction is attached hereto as Ex. D.

26. The policy and guidance in the Instruction, which was effective immediately for all Department of Navy ("DON") personnel, established "policy for the accession and service of transgender Sailors and Marines, to include the process for transgender Service Members to

transition to transgender in-service." The policies and procedures in the Instruction "are based on the premise that open service by transgender persons who are subject to the same medical, fitness for duty, physical fitness, uniform and grooming, deployability, and retention standards and procedures is consistent with military service and readiness." The Instruction provides that "transgender individuals shall be allowed to serve openly in the DON," and that any "discrimination based on gender identity is a form of sex discrimination."

27. Pursuant to the Instruction, on November 7, 2016, Chief of Naval Personnel, Vice Admiral R. P. Burke, issued interim guidance in NAVADMIN 248/16 (the "Policy") regarding "policy, regulations and procedures related to the service of transgender Navy personnel." The Policy, which "applies to all Navy military personnel," remains in effect "until superseded or cancelled." A true and accurate copy of the Policy is attached hereto as Ex. E.

28. As with the Instruction, the Policy provides that "transgender individuals shall be allowed to serve openly in the Navy. The Policy was "premised on the conclusion that transgender persons are fully qualified and are subject to the same standards and procedures as other Service Members with regard to their medical fitness for duty, physical fitness, uniform and grooming standards, deployability, and retention." The Policy thus declares that "[n]o otherwise qualified Service Member may be involuntarily separated, discharged, or denied reenlistment or continuation of service solely on the basis of gender identity or an expressed intent to transition gender."

29. With respect to individuals serving in the Navy or Marine Corps, the Instruction and Policy state that transgender Sailors and Marines will be responsible to meet all standards for uniforms and grooming, body composition assessment, physical readiness testing, Military Personnel Drug Abuse Testing Program participation and other military standards according to their gender marker in DEERS, subject to the approval of an Exception to Policy ("ETP") request.

30. To allow DON commanders to address medical needs in a manner consistent with military mission and readiness, the Policy sets forth detailed procedures concerning medical treatment for transgender service members with a diagnosis from a medical military provider

indicating that gender transition is medically necessary. Service members with such a diagnosis must notify their commanding officer and request commanding officer approval for the timing of medical treatment associated with gender transition. The commanding officer is the final approval authority for a transition plan. Commanding officers must respond to a gender transition 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 the morale, welfare, and good order and discipline of the command." Furthermore, the Policy provides that timing of a medical treatment plan "should consider the individual's planned rotation date (PRD), deployment or other operational schedules, and potential impact on major career milestones, whenever possible."

31. The Policy further provides detailed instructions regarding an in-service transition. The transition plan is considered complete once (1) a military medical provider documents that the service member has completed the care outlined in a medical treatment plan; (2) the service member obtains an appropriate document showing legal proof of gender change; (3) the service member's commanding officer provides written permission to change the gender marker in the Navy Personnel Administrative Systems/DEERS; (4) the service member submits for the gender marker change; and (5) the gender marker is changed in the Navy Personnel Administrative Systems/DEERS.

32. As set forth in the Policy, in order to have a gender marker changed in the Navy Personnel Administrative Systems/DEERS, the service member must submit the required documentation showing legal proof of gender change and the commanding officer's written approval to Navy Personnel Command.

33. The Policy also provides that "[a]ll Service Members are world-wide assignable as their medical fitness for duty permits." "Any determination that a transgender Sailor or Marine is non-deployable at any time will be consistent with established DON standards, as applied to other Sailors and Marines whose deployability is similarly affected in comparable circumstances unrelated to gender transition."

34. Both the Instruction and Policy provide that effective July 1, 2017, the Navy and

Marine Corps will begin accessing transgender applicants who meet all standards.

35. In addition, the Policy included policy changes related to: (1) privacy in berthing and showering facilities as set forth in OPNAVINST 3120,32D, Standard Organization Regulations of the U.S. Navy; (2) drug testing and urinalysis as set forth in OPNAVINST 5350.4D, Navy Alcohol and Drug Abuse Prevention and Control Program; and (3) physical fitness assessment standards as set forth in OPNAVINST 6110.1J, Physical Readiness Program.

36. On September 30, 2016, the Department of Defense issued Transgender Service in the Military, An Implementation Handbook ("DoD Handbook"). A true and accurate copy of the DoD Handbook is attached hereto at Exhibit F. The DoD Handbook is intended as a practical day-to-day guide to assist all service members in understanding the Department of Defense's policy of allowing the open service of transgender service members. To that end, the DoD Handbook instructs all service members:

> 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.

**The Impact of Reversing the Policy Permitting Service by Openly Transgender People**

37. Numerous military personnel disclosed their transgender status to the military in 2016 and 2017 in reliance upon the Department of Defense's statements that it would not discharge them on that basis, as articulated in DTM 16-005 and other documents. I did not receive any reports that such disclosures harmed the operational effectiveness of any Navy units.

38. On July 26, 2017, President Donald Trump issued a statement that transgender individuals will not be permitted to serve in any capacity in the Armed Forces due to "the tremendous medical costs and disruption that transgender in the military would entail."

39. On August 25, 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security to reverse the policy adopted in June 2016 that permitted military service by openly transgender persons. That memorandum stated: "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."

40. President Trump's stated rationales for reversing the policy and banning military service by transgender people make no sense. They have no basis in fact and are refuted by the comprehensive analysis of relevant data and information that was carefully, thoroughly, and deliberately conducted by the Working Group.

41. As discussed above, the RAND Report concluded that any costs associated with providing appropriate healthcare to transgender service members would be "exceedingly small." In fact, the maximum financial impact estimated by the RAND Report is an amount so small it was considered to be "budget dust," hardly even a rounding error, by military leadership.

42. The claim that permitting transgender people to serve openly would be "disruptive" has no foundation. The same claim was used to oppose racial integration of the military in the 1940s, the increased recruiting of women in the 1970s, and the repeal of "Don't Ask Don't Tell." In each case, the prediction that disruption would ensue has not been borne out. Studies have shown that diversity actually improves unit cohesion. Units become closer when individual service members are respected for who they are.

43. Any evidence that permitting such service would be disruptive is entirely lacking. Since the policy permitting open service went into effect, transgender service members have been able to serve openly and have caused no disruption.

44. In addition to being contrary to the overwhelming weight of the evidence considered by the Working Group and the Secretary of Defense, a reversal of the DoD policy permitting open service and the banning of accessions by transgender people, in my assessment, based on my experience as Secretary of the Navy, disserves the public interest, for several reasons.

45. **Loss of Qualified Personnel**. First, banning transgender service members will produce vacancies in the Services, creating an immediate negative impact on readiness. The

United States Armed Forces rely on an all-volunteer force, some portion of which are transgender service members. The impact of the loss of those individuals, who serve at all levels of service, is significant. Banning transgender service members will cause the loss of competent and experienced individuals, who will be difficult to replace. The Navy has invested in their education, and training. In addition to losing any return on that investment, taxpayers will bear the cost of identifying, recruiting, and training replacement personnel. Our ability to replace those individuals will also be hampered by the parallel reduction in the size of our potential recruiting pool. Artificial exclusionary barriers like this weaken the military.

46. **Unit Cohesion**. Second, banning transgender service members negatively impacts unit cohesion, a fundamental component of readiness. The only relevant qualification for the job of serving in the Armed Forces is whether an individual is capable of performing the job. Diversity in the form of nationality, religion, race, who one loves, gender, or gender identity only strengthens the force. Conversely, when the military asks people to lie about who they are in order to enlist or remain in the military, it weakens the military and has a negative impact on unit cohesion. Members of units know each other well and develop strong bonds. Unit members can tell when other unit members are lying. A policy that forces unit members to be dishonest with one another, including a ban on service by openly transgender people, weakens these bonds.

47. **Erosion of Trust in Command**. Third, arbitrary decisionmaking erodes trust in military leadership. I was dismayed by the abrupt reversal, because so much careful thought had gone into development of the policy, with consensus at the highest levels of military leadership. Furthermore, the initial directive to reverse policy through the Twitter medium was delivered entirely outside the normal pathway of legitimate orders issued through the chain of command, and the most recent memorandum of August 25, 2017 was also issued in a highly unusual manner. It is also unprecedented to reverse policy in such an abrupt manner. I cannot recall another instance in United States military history of such a stark and unfounded reversal of policy, or of any example in our nation's history in which a minority group once permitted to serve has been excluded from the military after its members had been allowed to serve openly and honestly.

48. Even individuals who had reservations at the time the Working Group was announced trusted in the process and believed it was a fair and deliberative process that met the high standards of the military. This abrupt reversal leaves the impression among service members that military decision making is instead arbitrary and subject to political whims.

49. For transgender service members themselves, the reversal represents the ultimate mistreatment and breach of trust. In DTM-005 and in other documents issued by the Department of Defense, the military informed transgender service members that they could come forward to disclose their transgender status and serve openly, rather than facing discharge. Many transgender service members came forward based on those statements. They risked their jobs, housing, and progress towards retirement benefits in reliance on our word that we would treat their disclosures fairly and in good faith. Using that information now as a basis for separating these soldiers from their service is an unprecedented betrayal of the trust that is so essential to achieving the mission of all of the armed forces. The reversal penalizes transgender service members for doing what DoD encouraged them to do. Transgender service members, their chain of command, and their colleagues who may lose people on whom they rely, must now deal with this enormous distraction, thus detracting from military readiness.

50. This sudden reversal also undermines the morale and readiness of other groups who must now deal with the stress and uncertainty created by this dangerous precedent, which represents a stark departure from the foundational principle that military policy will be based on military, not political, considerations. In 2011, the "Don't Ask, Don't Tell" policy prohibiting gay, lesbian, and bisexual people from openly serving in the military (Department of Defense Directive 1304.26) was repealed. More recently, DoD also removed remaining barriers for women serving in certain ground combat positions. The sudden reversal of the DoD's policy with respect to transgender service members sets a precedent suggesting that these policies may be abruptly reversed for baseless reasons as well.

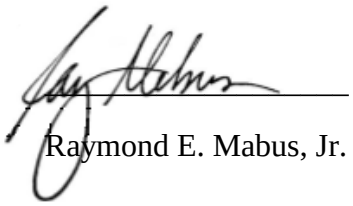
51. This sudden reversal may also have a chilling effect on the confidence of other service members that they will continue to be able to serve. Religious and ethnic minorities who have seen an increase in discrimination under the current administration may fear that the

military may seek to ban them next, creating a culture of fear that is anathema to the stability and certainty that makes for an effective military.

52. This sudden reversal undermines the confidence of all service members that important military policy decisions will be made under careful review and consistent with established process. Rational decisionmaking in the adoption of and change to policy impacts the military's ability to recruit and retain competent, high-performing people. The sudden reversal of policy makes recruitment and retention more difficult, as does the damage done to the military's image and reputation as promoting fairness and equality and of being open to all qualified Americans. That image and reputation are critical to the military's ability to attract talented and idealistic young people. Actions that tarnish that reputation cause real harm.

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, 2018



Raymond E. Mabus, Jr.

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAVINST 1000.11
ASN (M&RA)
4 Nov 16

SECNAV INSTRUCTION 1000.11

From: Secretary of the Navy

Subj: SERVICE OF TRANSGENDER SAILORS AND MARINES

Ref: (a) DoD Instruction 1300.28 of 1 July 2016
(b) DTM 16-005, Military Service of Transgender Service Members of 30 June 2016
(c) ASD(HA) Memo, Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members of 29 July 2016
(d) USD Memo, Clarification of Procedures to Identify Sex Code Changes for Transgender Service Members of 21 September 2016
(e) SECNAVINST 5300.28E
(f) DoD Instruction 6130.03, CH 1 of 13 September 2011
(g) DoD Instruction 1332.18 of 5 August 2014

Encl: (1) Responsibilities
(2) Service Implementing Policy and Procedures

1. Purpose. To establish Department of the Navy (DON) policy for the accession and service of transgender Sailors and Marines, to include the process for transgender Service Members to transition gender in-service.

2. Definitions. Definitions are provided in reference (a).

3. Applicability. This instruction applies to all DON military personnel. Specific considerations for Reserve Component personnel are included in reference (a). Refer all DON civilian transgender questions to the DON Office of Civilian Human Resources or the DON Office of the General Counsel. Refer all questions regarding transgender contractors to the Contracting Officer's Representative.

4. Policy

a. Consistent with the policies and procedures set forth in references (a) and (b), transgender individuals shall be allowed to serve openly in the DON.

b. References (a) through (d) provide Sailors and Marines an in-service process to transition to their preferred gender. These policies are based on the premise that open service by transgender persons who are subject to the same medical, fitness for duty, physical fitness, uniform and grooming, deployability, and retention standards and procedures is consistent with military service and readiness.

c. The DON recognizes a Sailor's or Marine's gender by their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS). Coincident with that gender marker, the Navy and Marine Corps shall apply, and the Service 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 Service Member's gender.

(1) For facilities subject to regulation by the military, the Sailor or Marine will use those berthing, bathroom, and shower facilities associated with the Service Member's gender marker in DEERS.

(2) As the tactical situation allows, Commanders are expected to implement appropriate policies to ensure the privacy protection of individual Sailors and Marines out of courtesy to all and to maintain good order and discipline.

(3) Reference (e) clarifies policy for the direct observation of urinalysis specimen collection. MPDATP policy considers the terms "sex" and "gender marker" as equivalent. Therefore, transgender Service Members providing a urinalysis specimen will be observed by an individual with the same gender marker indicated in DEERS. In selecting an observer, a Commander may employ reasonable accommodations to respect the privacy interests of the Service Members. The selection of an observer must be made in a manner that ensures the integrity of

the urinalysis program and provides both the Service Member being tested and the observer an environment free from harassment/discrimination.

d. Sailors and Marines with a diagnosis from a military medical provider indicating that gender transition is medically necessary will be provided the medically necessary care and treatment. A medical treatment plan developed by the military medical provider will outline the severity of the Service Member's medical condition, the urgency of any proposed medical treatment, projected timeline for completion of gender transition, and estimated periods of non-deployability and absence. Medical advice to Commanders and Commanding Officers 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.

e. Any medical care and treatment provided to an individual Sailor or Marine in the process of gender transition will be provided in the same manner as other medical care and treatment. Nothing in this instruction will be construed to authorize a Commander or Commanding Officer to deny medically necessary treatment to a Sailor or Marine.

f. Any determination that a transgender Sailor or Marine is non-deployable at any time will be consistent with established DON and Service standards, as applied to other Sailors and Marines whose deployability is similarly affected in comparable circumstances unrelated to gender transition.

g. Commanders and Commanding Officers will assess expected impacts on mission and readiness after consideration of the advice of military medical providers and will address such following this instruction and references (a) and (b). In applying the tools described in reference (a), a Commander or Commanding Officer will not accommodate biases against transgender individuals. If a Sailor or Marine is unable to meet standards or requires an exception to policy (ETP) during a period of gender transition, all applicable tools, including those described in references (a) through (d), will be available to Commanders and Commanding Officers to minimize impacts to the mission and unit readiness. Gender transition dates in the transition plan may be adjusted per reference (a) and enclosure (2) as necessary to support organizational needs.

h. When the military medical provider determines that a Service Member's gender transition is complete, and at a time approved by the Commander or Commanding Officer in consultation with the transgender Sailor or Marine, the Service Member may submit a request for gender marker change in DEERS, per reference (d). Once the gender marker is changed in DEERS, the Service Member will be recognized in the preferred gender and held to preferred gender standards from that point forward.

i. Policy for service during initial entry training and considerations associated with the first term of service are outlined in reference (a).

j. All Sailors and Marines 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 of Defense (DoD) and DON's position, consistent with the U.S. Attorney General's opinion, that discrimination based on gender identity is a form of sex discrimination. All personnel will continue to treat each other with dignity and respect. There is zero tolerance for harassing, hazing, or bullying in any form.

5. Responsibilities. See enclosure (1).

6. Accessions

a. Per reference (b), no later than 1 July 2017, the Navy and Marine Corps will begin accessing transgender applicants who meet all standards. The gender identity of an otherwise qualified individual will not bar them from joining the Navy or Marine Corps, from admission to the United States Naval Academy, or from participating in Naval Reserve Officers Training Corps or any other accession program.

b. Medical standards for accession into the Naval service (in reference (f)) help to ensure that those entering service are free from medical conditions or physical defects that may require excessive time lost from duty due to necessary medical treatment or hospitalization, or result in separation from the Service for medical unfitness.

c. 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.

d. A history of medical treatment associated with gender transition is disqualifying, unless, as certified by a licensed medical provider:

(1) The applicant has completed all medical treatment associated with the applicant's gender transition; and

(2) The applicant has been stable in the preferred gender for 18 months; and

(3) If the applicant is presently receiving cross-sex hormone therapy post-gender transition, the individual has been stable on such hormones for 18 months.

e. A history of sex reassignment or genital reconstruction surgery is disqualifying, unless, as certified by a licensed medical provider:

(1) A period of 18 months has elapsed since the date of the most recent such surgery; and

(2) No functional limitations or complications persist, nor is any additional surgery required.

f. The 18-month periods may be waived or reduced, in whole or in part, in individual cases for applicable reasons. Requests for waiver or reduction of the 18-month periods shall be sent to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) for adjudication.

(1) ASN (M&RA) may approve requests for waiver or reduction. ASN (M&RA) may also delegate this approval authority to the Deputy Chief of Naval Operations (Manpower, Personnel, Training, and Education) (DCNO (N1)) and the Deputy Commandant (Manpower and Reserve Affairs (DC (M&RA)). This approval authority may not be further delegated.

(2) Any requests for waiver or reduction with a recommendation for disapproval shall be sent to the Secretary of the Navy (SECNAV) for decision.

7. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed per SECNAV Manual 5210.1 of January 2012.

8. Reports. The reporting requirements within enclosure (1), paragraphs 1a and 1i are exempt from information control per SECNAV M-5214.1 of January 2012, Part IV, paragraphs 7j and 7o respectively.

RAY MABUS

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**RESPONSIBILTIES**

1. CNO and CMC shall:

a. Issue policy and procedures addressing the military service of transgender Service Members, to include establishing a process by which transgender Sailors and Marines may transition gender while serving, consistent with mission, training, operational, and readiness needs, and a procedure whereby a Service Member's gender marker will be changed in DEERS. Additional detail on Service implementing policy and procedures is outlined in enclosure (2).

b. Ensure uniform standards, grooming standards, BCA standards, PRT standards, MPDATP standards, and other standards applied with consideration of a Service Member's gender, are applicable to the Service Member's gender marker as reflected in DEERS.

c. Direct the use of berthing, bathroom, and shower facilities according to the Service Member's gender marker as reflected in DEERS, for facilities that are subject to regulation by the military.

d. Provide appropriate privacy for all Sailors and Marines. This may be achieved through expenditure of funds to modify bathroom and shower facilities at Navy and Marine Corps military installations that do not provide reasonable privacy.

e. Ensure that policies and procedures governing Service urinalysis testing program are performed using accepted and established operating procedures which conform to the requirements outlined in reference (e).

f. Ensure medically necessary treatment to transgender Active Duty Service Members is available, in alignment with reference (c).

g. No later than 15 November 2016, create a Service-wide training and education plan, to include specialized training for Commanders and Commanding Officers. The training of Sailors and Marines across the DON shall be completed no later than 1 July 2017.

h. No later than 1 February 2018, provide an assessment of Navy and Marine Corps transgender service policy, summarizing the impact on military readiness, effectiveness, unit cohesion, recruiting, and retention. The assessment should be informed by surveys and data collected and include any recommended adjustments to DoD and DON policy.

i. Beginning in 2018 and triennially thereafter, support Naval Inspector General Special Inspections of Service compliance with DoD, DON, and Service transgender service policy and procedures.

j. Ensure that all Sailors and Marines are able to perform their duties free from unlawful discrimination and harassment.

k. Ensure the protection of personally identifiable information and personal privacy considerations in the implementation of references (a) through (f), this instruction, and Service regulations, policy, and guidance.

2. Assistant Secretary of the Navy (Manpower and Reserve Affairs) shall:

a. Assess Navy and Marine Corps compliance with references (a) through (d) with coordination from Chief of Naval Operations (CNO) and Commandant of the Marine Corps (CMC) (no later than 1 February 2018) and review of triennial Inspector General Special Inspections.

b. Review requests for waiver or reduction of the 18-month periods of stability for new accessions and submit all requests with a disapproval recommendation to SECNAV for decision.

3. Naval Inspector General shall, beginning in 2018 and triennially thereafter, conduct a Special Inspection of Navy and Marine Corps compliance with references (a) through (d), this instruction, and Service regulations, policy, and guidance.

4. Chief, Bureau of Medicine and Surgery shall:

a. Provide or arrange consultation for medically necessary treatment to Active Duty Service Members per references (c) and (d), ensuring standardized healthcare.

b. Ensure referral for a determination of fitness in the disability evaluation system per reference (g).

c. No later than 15 November 2016, develop an education and training plan for both privileged and non-privileged medical personnel.

d. For Reserve Component Service Members not on active duty for more than 30 days, review and approve medical diagnosis and treatment plans, in alignment with references (a), (c), and (d).

**SERVICE IMPLEMENTING POLICY AND PROCEDURES**

1. The CNO and CMC shall establish policy and procedures per references (a) through (d) and this instruction, 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 transition. Such policies and procedures may address the means and timing of transition, procedures for responding to an ETP prior to the change of a Service Member's gender marker in DEERS, appropriate duty statuses, and tools for addressing an inability to serve throughout the gender transition process. Any such actions available to the Commander or Commanding Officer 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 or Commanding Officer in addressing comparable Service Member circumstances unrelated to gender transition. Such actions may include:

a. Adjustments to the date on which the Sailor's or Marine's gender transition, or any component of the transition process, will commence.

b. Advising the Sailor or Marine 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 Sailor or Marine 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 Service Member's physical appearance and body composition during gender transition, such as accommodations in the application of standards for uniforms and grooming 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. 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. The CNO and CMC shall establish policies and procedures, consistent with references (a) through (d) and this instruction, whereby a Sailor's or Marine'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 or Commanding Officer, issued in consultation with the Service Member; and production by the Service Member of documentation indicating gender change. Guidance on such documentation is outlined in reference (a).

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 GEORGE R. BROWN, M.D., D.F.A.P.A. IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, George R. Brown, M.D., D.F.A.P.A., declare as follows:

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation.

2. The purpose of this declaration is to offer my expert opinion on: (1) the medical condition known as gender dysphoria; (2) the prevailing treatment protocols for gender dysphoria; (3) the United States military's pre-2016 ban on the enlistment and retention of men and women who are transgender; (4) the subsequent lifting of that ban; and (5) the unfounded medical justifications for banning individuals who are transgender from serving in the United States military.

3. I have knowledge of the matters stated in this declaration and have collected and cite to relevant literature concerning the issues that arise in this litigation.



NEWMAN DU WORS LLP

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(206) 274-2800

**PROFESSIONAL BACKGROUND**

4. I am a Professor of Psychiatry and the Associate Chairman for Veterans Affairs in the Department of Psychiatry at the East Tennessee State University, Quillen College of Medicine. My responsibilities include advising the Chairman; contributing to the administrative, teaching, and research missions of the Department of Psychiatry; consulting on clinical cases at the University and at Mountain Home Veterans Health Administration ("VHA") Medical Center, where I also hold an appointment; and acting as a liaison between the VHA Medical Center and the East Tennessee State University Department of Psychiatry. The majority of my work involves researching, teaching, and consulting about health care in military and civilian transgender populations.

5. I also hold a teaching appointment related to my expertise with health care for transgender individuals and research at the University of North Texas Health Services Center ("UNTHSC"). My responsibilities include teaching and consultation with UNTHSC and the Federal Bureau of Prisons staff regarding health issues for transgender individuals.

6. In 1979, I graduated *Summa Cum Laude* with a double major in biology and geology from the University of Rochester in Rochester, New York. I earned my Doctor of Medicine degree with Honors from the University of Rochester School of Medicine in 1983. From 1983-1984, I served as an intern at the United States Air Force Medical Center at Wright-Patterson Air Force Base in Ohio. From 1984-1987, I worked in and completed the United States Air Force Integrated Residency Program in Psychiatry at Wright State University and Wright-Patterson Air Force Base in Dayton, Ohio. A true and correct copy of my Curriculum Vitae is attached hereto as Exhibit A.

7. I first began seeing patients in 1983. I have been a practicing psychiatrist since 1987, when I completed my residency. From 1987-1991, I served as one of the few U.S. Air Force teaching psychiatrists. In this capacity, I performed more than 200 military disability evaluations and served as an officer on medical evaluation boards at the largest hospital in the Air Force.

8. During the last 33 years, I have evaluated, treated, and/or conducted research in person with 600-1,000 individuals with gender disorders, and during the course of research, conducted chart reviews of more than 5,100 additional patients with gender dysphoria. The vast majority of the patients I have worked with have been active duty military personnel or veterans.

9. For three decades, my research and clinical practice has included extensive study of the health care for transgender individuals, including three of the largest studies focused on the health care needs of transgender service members and veterans. Throughout that time, I have done research with, taught on, and published peer-reviewed professional publications specifically addressing the needs of transgender military service members. *See* Brown Ex. A (CV).

10. I have authored or coauthored 40 papers in peer-reviewed journals and 19 book chapters on topics related to gender dysphoria and health care for transgender individuals, including the chapter concerning gender dysphoria in Treatments of Psychiatric Disorders (3d ed. 2001), a definitive medical text published by the American Psychiatric Association.

11. In 2014, I coauthored a study along with former Surgeon General Joycelyn Elders and other military health experts, including a retired General and a retired Admiral. The study was entitled "Medical Aspects of Transgender Military Service." *See* Elders J, Brown GR, Coleman E, Kolditz TA, *Medical Aspects of Transgender Military Service*. ARMED FORCES AND SOCIETY, 41(2): 199-220, 2015; published online ahead of print, DOI: 10.1177/0095327X1454 5625 (Aug. 2014) (the "Elders Commission Report"). The military peer-reviewed journal, Armed Forces and Society, published the Elders Commission Report. A true and correct copy of that report is attached hereto as Exhibit B.

12. I have served for more than 15 years on the Board of Directors of the World Professional Association for Transgender Health ("WPATH"), the leading international organization focused on health care for transgender individuals. WPATH has more than 2,000 members throughout the world and is comprised of physicians, psychiatrists, psychologists, social workers, surgeons, and other health professionals who specialize in the diagnosis and treatment of gender dysphoria.

13. I was a member of the WPATH committee that authored and published in 2011 the current version of the WPATH Standards of Care ("SoC") (Version 7). The SoC are the operative collection of evidence-based treatment protocols for addressing the health care needs of transgender individuals. I also serve as a chapter Co-Lead on the WPATH committee that will author and publish the next edition of the Standards of Care (Version 8).

14. Without interruption, I have been an active member of WPATH since 1987. Over the past three decades, I have frequently presented original research work on topics relating to gender dysphoria and the clinical treatment of transgender people at the national and international levels.

15. I have testified or otherwise served as an expert on the health issues of transgender individuals in numerous cases heard by several federal district and tax courts. A true and correct list of federal court cases in which I have served as an expert is contained in the "Forensic Psychiatry Activities" section of my Curriculum Vitae, which is attached hereto as Exhibit A.

16. I have conducted and continue to provide trainings on transgender health issues for the VHA as well as throughout the Department of Defense ("DoD"). After the DoD announced the policy that allowed for transgender individuals to serve openly in the Armed Forces in 2016, I conducted the initial two large military trainings on the provision of health care to transgender service members. The first training in Spring 2016 was for the Marine Corps. The second training in Fall 2016 was for a tri-service (Army, Navy, and Air Force) meeting of several hundred active duty military clinicians, commanders, and Flag officers.

17. Since the issuance of DoD Instruction ("DoDI") 1300.28 in October 2016, I have led trainings for a national group of military examiners (MEPCOM) in San Antonio, Texas (May, 2017) and for Army clinicians at Fort Knox, Kentucky (July, 2017). Among other things, DoDI 1300.28 implemented the policies and procedures in Directive-type

Memorandum 16-005, established a construct by which transgender service members may transition gender while serving, and required certain trainings for the military.

18. I have been centrally involved in the development, writing, and review of all national directives in the VHA relating to the provision of health care for transgender veterans. I also coauthored the national formulary that lists the medications provided by the VHA for the treatment of gender dysphoria in veterans. Finally, I regularly consult with VHA leadership regarding the training of VHA clinicians on transgender clinical care of veterans nationally.

**GENDER DYSPHORIA**

19. The term "transgender" is used to describe someone who experiences any significant degree of misalignment between their gender identity and their assigned sex at birth.

20. Gender identity describes a person's internalized, inherent sense of who they are as a particular gender (*i.e.*, male or female). For most people, their gender identity is consistent with their assigned birth sex. Most individuals assigned female at birth grow up, develop, and manifest a gender identity typically associated with girls and women. Most individuals assigned male at birth grow up, develop, and manifest a gender identity typically associated with boys and men. For transgender people, that is not the case. Transgender women are individuals assigned male at birth who have a persistent female identity. Transgender men are individuals assigned female at birth who have a persistent male identity.

21. Experts agree that gender identity has a biological component, meaning that each person's gender identity (transgender and non-transgender individuals alike) is the result of biological factors, and not just social, cultural, and behavioral ones.

22. Regardless of the precise origins of a person's gender identity, there is a medical consensus that gender identity is deep-seated, set early in life, and impervious to external influences.

23. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (2013) ("DSM-5") is the current, authoritative handbook on the diagnosis of

mental disorders. Mental health professionals in the United States, Canada, and other countries throughout the world rely upon the DSM-5. The content of the DSM-5 reflects a science-based, peer-reviewed process by experts in the field.

24. Being transgender is not a mental disorder. *See* DSM-5. Men and women who are transgender have no impairment in judgment, stability, reliability, or general social or vocational capabilities solely because of their transgender status.

25. Gender dysphoria is the diagnostic term in the DSM-5 for the condition that can manifest when a person suffers from clinically significant distress or impairment associated with an incongruence or mismatch between a person's gender identity and their assigned sex at birth.

26. The clinically significant emotional distress experienced as a result of the incongruence of one's gender with their assigned sex and the physiological developments associated with that sex is the hallmark symptom associated with gender dysphoria.

27. Only the *subset* of transgender people who have clinically significant distress or impairment qualify for a diagnosis of gender dysphoria.

28. Individuals with gender dysphoria may live for a significant period of their lives in denial of these symptoms. Some transgender people may not initially understand the emotions associated with gender dysphoria and may not have the language or resources for their distress to find support until well into adulthood.

29. Particularly as societal acceptance towards transgender individuals grows and there are more examples of high-functioning, successful transgender individuals represented in media and public life, younger people in increasing numbers have access to medical and mental health resources that help them understand their experience and allow them to obtain medical support at an earlier age and resolve the clinical distress associated with gender dysphoria.

**TREATMENT FOR GENDER DYSPHORIA**

30. Gender dysphoria is a condition that is amenable to treatment. *See* WPATH SoC (Version 7); Elders Commission Report at 9-16; Agnes Gereben Schaefer et al., *Assessing the*

*Implications of Allowing Transgender Personnel to Serve Openly*, RAND Corporation (2016) at 7 ("RAND Report") (a true and correct copy of the report is attached hereto as Exhibit C).

31. With appropriate treatment, individuals with a gender dysphoria diagnosis can be fully cured of *all* symptoms.

32. Treatment of gender dysphoria has well-established community standards and is highly effective.

33. The American Medical Association ("AMA"), the Endocrine Society, the American Psychiatric Association, and the American Psychological Association all agree that medical treatment for gender dysphoria is medically necessary and effective. *See* American Medical Association (2008), Resolution 122 (A-08); American Psychiatric Association, Position Statement on Discrimination Against Transgender & Gender Variant Individuals (2012); Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline (2009); American Psychological Association Policy Statement on Transgender, Gender Identity and Gender Expression Nondiscrimination (2009). Additional organizations that have made similar statements include the American Academy of Child & Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Nursing, American College of Nurse Midwives, American College of Obstetrics and Gynecology, American College of Physicians, American Medical Student Association, American Nurses Association, American Public Health Association, National Association of Social Workers, and National Commission on Correctional Health Care.

34. The protocol for the treatment of gender dysphoria is set forth in the WPATH SoC and in the Endocrine Society Guidelines.[1] First developed in 1979 and currently in their seventh version, the WPATH SoC set forth the authoritative protocol for the evaluation and treatment of gender dysphoria. This approach is followed by clinicians caring for individuals with gender dysphoria, including veterans in the VHA. As stated above, I was a member of the

[1] *Available at* https://academic.oup.com/jcem/article/102/11/3869/4157558 .

WPATH committee that authored the SoC (Version 7), published in 2011. A true and correct copy of that document is attached hereto as Exhibit D.

35. Depending on the needs of the individual, a treatment plan for persons diagnosed with gender dysphoria may involve components that are psychotherapeutic (*i.e.*, counseling as well as social role transition – living in accordance with one's gender in name, dress, pronoun use); pharmacological (*i.e.*, hormone therapy); and surgical (*i.e.*, gender confirmation surgeries, like hysterectomy for those transitioning to the male gender and orchiectomy for those transitioning to the female gender). Under each patient's treatment plan, the goal is to enable the individual to live all aspects of one's life consistent with his or her gender identity, thereby eliminating the distress associated with the incongruence.

36. There is a wide range in the treatments sought by those suffering from gender dysphoria. For example, some patients need both hormone therapy and surgical intervention, while others need just one or neither. Generally, medical intervention is aimed at bringing a person's body into some degree of conformity with their gender identity.

37. As outlined further below, treatment protocols for gender dysphoria are comparable to those for other mental health and medical conditions, including those regularly treated within the United States military. *See* RAND Report at 8-9; Elders Commission Report at 13 ("the military consistently retains non-transgender men and women who have conditions that may require hormone replacement").

**PRE-2016 MILITARY POLICY**

38. Prior to 2016, military policy treated transgender individuals with gender dysphoria differently than people with other curable conditions.

***Former Enlistment Policy***

39. DODI 6130.03 established the medical standards for accession/entry into military service. Enclosure 4 of the enlistment instruction contains an extensive list of physical and mental conditions that disqualify a person from enlisting in the military. For instance, persons with autism, schizophrenia, or delusional disorders (or a history of treatment for these

conditions) are excluded from enlistment. Prior to 2016, that list also contained "change of sex" and "transsexualism," which were outdated references to transgender individuals and individuals with gender dysphoria. *See* Elders Commission Report at 7.

40. The enlistment policy allows for the possibility of waivers for a variety of medical conditions. The instruction, however, specifies that entry waivers will not be granted for conditions that would disqualify an individual from the possibility of retention. As discussed further below, because certain conditions related to being transgender ("change of sex") were formerly grounds for discharge from the military, men and women who are transgender could not obtain medical waivers to enter the military. *Id.* at 7-8.

41. Under military instructions, the general purpose of disqualifying applicants based on certain physical and mental conditions is to ensure that service members are: (1) free of contagious diseases that endanger others, (2) free of conditions or defects that would result in excessive duty-time lost and would ultimately be likely to result in separation, (3) able to perform without aggravating existing conditions, and (4) capable of completing training and adapting to military life. *Id.* at 7.

42. Because gender dysphoria, as described above, is a treatable and curable condition, unlike other excluded conditions, its inclusion on the list of disqualifying conditions was inappropriate. Individuals with gender dysphoria (or under the language at the time – those who had a "change of sex") were disqualified from joining the military, despite having a completely treatable, or already treated, condition.

43. The enlistment policy treated transgender individuals in an inconsistent manner compared with how the military addressed persons with other curable medical conditions. The result of this inconsistency was that transgender personnel were excluded or singled out for disqualification from enlistment, even when they were mentally and physically healthy.

44. For example, persons with certain medical conditions, such as Attention Deficit Hyperactivity Disorder ("ADHD") and simple phobias, could be admitted when their conditions could be managed without imposing undue burdens on others. Individuals with ADHD are

prohibited from enlisting unless they meet five criteria, including documenting that they maintained a 2.0 grade point average after the age of 14. Similarly, individuals with simple phobias are banned from enlisting, unless they meet three criteria including documenting that they have not required medication for the past 24 continuous months.

45. In short, even though the DoD generally allowed those with manageable conditions to enlist, the former regulation barred transgender service without regard to the condition's treatability and the person's ability to serve.

***Former Separation Policy***

46. The medical standards for retiring or separating service members who have already enlisted are more accommodating and flexible than the standards for new enlistments.

47. Until recently, the medical standards for separation were set forth in DoDI 1332.38. On August 5, 2014, the DoD replaced DoDI 1332.38 with DoDI 1332.18, which permits greater flexibility for the service branches to provide detailed medical standards.

48. The separation instructions divide potentially disqualifying medical conditions into two different tracks. Service members with "medical conditions" are placed into the medical system for disability evaluation. Under this evaluation system, a medical evaluation board ("MEB") conducts an individualized inquiry to determine whether a particular medical condition renders a service member medically unfit for service. If a service member is determined to be medically unfit, the service member may receive benefits for medical separation or retirement, or may be placed on the Temporary Duty Retirement List with periodic reevaluations for fitness to return to duty. While in the U.S. Air Force, I served as an officer on at least two hundred of these MEBs.

49. Under the separation instruction, service members with genitourinary conditions, endocrine system conditions, and many mental health conditions are all evaluated through the medical disability system. *See* DoDI 1332.38 §§ E4.8, E4.11, E4.13; AR 40-501 §§ 2-8, 3-11, 3-17, 3-18, 3-31, 3-32; SECNAVIST 180.50_4E §§ 8008, 8011, 8013; U.S. Airforce Medical Standards Directory §§ J, M, Q.

50. By contrast, under the separation instructions, a small number of medical and psychiatric conditions are not evaluated through the medical evaluation process. Instead, these conditions are deemed to render service members "administratively unfit." Service members with "administratively unfit" conditions do not have the opportunity to demonstrate medical fitness for duty or eligibility for disability compensation.

51. Under DoDI 1332.38, the "administratively unfit" conditions were listed in Enclosure 5 of the instruction. Since August 5, 2014, when DoDI 1332.18 replaced 1332.38, the "administratively unfit" conditions are determined by the service branches, as set forth in AR 40-501 § 3-35; SECNAVIST § 2016; and AFI36-3208 § 5.11.

52. Enclosure 5 of DoDI 1332.38 included, among other conditions, bed-wetting, sleepwalking, learning disorders, stuttering, motion sickness, personality disorders, mental retardation, obesity, shaving infections, certain allergies, and repeated infections of venereal disease. It also included "Homosexuality" and "Sexual Gender and Identity Disorders, including Sexual Dysfunctions and Paraphilias." *See* Elders Commission Report at 8.

53. Similarly, the "administratively unfit" conditions in the service branches included "psychosexual conditions, transsexual, gender identity disorder to include major abnormalities or defects of the genitalia such as change of sex or a current attempt to change sex," AR 40-501 § 3-35(a); "Sexual Gender and Identity Disorders and Paraphilias," SECNAVIST § 2016(i)(7); and "Transsexualism or Gender Identity Disorder of Adolescence or Adulthood, Nontranssexual Type (GIDAANT)," AFI36-3208 § 5.11.9.5. The service branches retained these bars to service by transgender individuals after DoDI 1332.18 replaced DoDI 1332.38.

54. DoDI 1332.14 controlled administrative separations for enlisted persons. Under the instruction, a service member may be separated for the convenience of the government and at the discretion of a commander for "other designated physical or mental conditions." Before 2016, this particular separation category included "sexual gender and identity disorders." *Id.*

55. Because service members with gender dysphoria were deemed to be "administratively unfit," they were not evaluated by MEBs and had no opportunity to

demonstrate that their condition did not affect their fitness for duty. They were disqualified from remaining in the military despite having a completely treatable condition.

56. This was inconsistent with the treatment of persons with other curable medical conditions, who are given the opportunity to demonstrate medical fitness for duty or eligibility for disability compensation. For example, mood and anxiety disorders are not automatically disqualifying for retention in military service. Service members can receive medical treatment and obtain relief in accordance with best medical practices. Mood and anxiety disorders result in separation only if they significantly interfere with duty performance and remain resistant to treatment. In contrast, transgender individuals were categorically disqualified from further service without consideration of their clinical symptoms and any impact on their service.

57. The result of this inconsistency was that transgender personnel were singled out for separation, even when they were mentally and physically healthy, solely because they were transgender.

**OPEN SERVICE DIRECTIVE**

58. The DoD lifted the ban on open service by transgender military personnel following a June 30, 2016 announcement made by then-Secretary of Defense Ash Carter ("Open Service Directive").

59. Based on my extensive research and clinical experiences treating transgender individuals over decades, the Open Service Directive is consistent with medical science.

60. The Open Service Directive also aligns with the conclusions reached by the RAND National Defense Research Institute, the Elders Commission, and the AMA.

61. The RAND Report concluded that the military already provides health care comparable to the services needed to treat transgender individuals: "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 [Medical Health System] for other clinical indications." *See* RAND Report at 8.

62. The earlier Elders Commission, on which I served, concluded that "[t]ransgender medical care should be managed in terms of the same standards that apply to all medical care, and there is no medical reason to presume transgender individuals are unfit for duty. Their medical care is no more specialized or difficult than other sophisticated medical care the military system routinely provides." *See* Elders Commission Report at 4.

63. Additionally, in a unanimous resolution published on April 29, 2015, the AMA announced its support for lifting the ban on open transgender service in the military, based on the AMA's conclusion that there is no grounding in medical science for such a ban.[2]

***Enlistment Policy for Transgender Individuals***

64. The Open Service Directive's enlistment procedures are carefully designed to ensure that transgender individuals who enlist in the military do not have any medical needs that would make them medically unfit to serve or interfere with their deployment.

65. Under these standards, transgender individuals whose condition was stable for 18 months at the time of enlistment would be eligible to enlist, assuming a licensed medical provider certified that they met certain conditions. DTM-16-005 Memorandum and Attachment (June 30, 2016). For example, those seeking to enlist who had been treated with any counseling, cross-sex hormone therapy, or gender confirmation surgeries must have medical confirmation that they have been stable for the last 18 months. Similarly, those applicants taking maintenance cross-sex hormones as follow-up to their transition would also need certification that they had been stable on such hormones for 18 months.

***Retention Policy for Transgender Individuals***

66. Under the Open Service Directive, gender dysphoria is treated like other curable medical conditions. Individuals with gender dysphoria receive medically necessary care. Service

[2] *Available at* http://archive.palmcenter.org/files/A-15%20Resoultion%20011.pdf.

members who are transgender are subject to the same standards of medical and physical fitness as any other service member.[3]

67. The Open Service Directive also permits commanders to have substantial say in the timing of any future transition-related treatment for transgender service members. The needs of the military can also take precedence over an individual's need to transition, if the timing of that request interferes with critical military deployments or trainings.

**MEDICAL JUSTIFICATIONS FOR BANNING TRANSGENDER SERVICE MEMBERS ARE UNFOUNDED**

68. Based upon: (1) my extensive research and experience treating transgender people, most of whom have served this country in uniform, (2) my involvement reviewing the medical implications of a ban on transgender service members, and (3) my participation in implementing the Open Service Directive allowing transgender individuals to serve openly, it is my opinion that any medical objections to open service by transgender service members are wholly unsubstantiated and inconsistent with medical science and the ways in which other medical conditions are successfully addressed within the military.

***Mental Health***

69. Arguments based on the mental health of transgender persons to justify prohibiting individuals from serving in the military are wholly unfounded and unsupported in medical science. Being transgender is not a mental defect or disorder. Scientists have long abandoned psychopathological understandings of transgender identity, and do not classify the incongruity between a person's gender identity and assigned sex at birth as a mental illness. To the extent the misalignment between gender identity and assigned birth sex creates clinically significant distress (gender dysphoria), that distress is curable through appropriate medical care.

70. Sixty years of clinical experience have demonstrated the efficacy of treatment of the distress resulting from gender dysphoria. *See* Elders Commission Report at 10 ("a significant

[3] *Available at* https://www.defense.gov/Portals/1/features/2016/0616_policy/Guidance_for_Treatment_of_Gender_Dysphoria_Memo_FINAL_SIGNED.pdf.

body of evidence shows that treatment can alleviate symptoms among those who do experience distress"). Moreover, "empirical data suggest that many non-transgender service members continue to serve despite psychological conditions that may not be as amenable to treatment as gender dysphoria." *Id.* at 11.

71. The availability of a cure distinguishes gender dysphoria from other mental health conditions, such as autism, bipolar disorder, or schizophrenia, for which there are no cures. There is no reason to single out transgender personnel for separation, limitation of service, or bars to enlistment, based only on the diagnosis or treatment of gender dysphoria. Determinations can and should be made instead on a case-by-case basis depending on the individual's fitness to serve, as is done with other treatable conditions.

72. The military already provides mental health evaluation services and counseling, which is the first component of treatment for gender dysphoria. *See* RAND Report at 8.

73. Concerns about suicide and substance abuse rates among transgender individuals are also unfounded when it comes to military policy. At enlistment, all prospective military service members undergo a rigorous examination to identify any pre-existing mental health diagnoses that would preclude enlistment. Once someone is serving in the military, they must undergo an annual mental and physical health screen, which includes a drug screen. If such a screening indicates that a person suffers from a mental illness or substance abuse, then that would be the potential impediment to retention in the military. The mere fact that a person is transgender, however, does not mean that person has a mental health or substance abuse problem or is suicidal.

***Hormone Treatment***

74. The argument that cross-sex hormone treatment should be a bar to service for transgender individuals is not supported by medical science or current military medical protocols.

75. Hormone therapy is neither too risky nor too complicated for military medical personnel to administer and monitor. The risks associated with use of cross-sex hormone therapy

to treat gender dysphoria are low and not any higher than for the hormones that many non-transgender active duty military personnel currently take. There are active duty service members currently deployed in combat theaters who are receiving cross-sex hormonal treatment, following current DoD instructions, without reported negative impact upon readiness or lethality.

76. The military has vast experience with accessing, retaining, and treating non-transgender individuals who need hormone therapies or replacement, including for gynecological conditions (*e.g.*, dysmenorrhea, endometriosis, menopausal syndrome, chronic pelvic pain, male hypogonadism, hysterectomy, or oophorectomy) and genitourinary conditions (*e.g.*, renal or voiding dysfunctions). Certain of these conditions are referred for a fitness evaluation only when they affect duty performance. *See* Elders Commission at 13.

77. In addition, during service when service members develop hormonal conditions whose remedies are biologically similar to cross-sex hormone treatment, those members are not discharged and may not even be referred for a MEB. Examples include male hypogonadism, menstrual disorders, and current, or history of, pituitary dysfunction. *Id.*

78. Military policy also allows service members to take a range of medications, including hormones, while deployed in combat settings. *Id.* Under DoD policy only a "few medications are inherently disqualifying for deployment," and none of those medications are used to treat gender dysphoria. *Id.* (quoting Dept. of Defense, Policy Guidance for Deployment-Limiting Psychiatric Conditions and Medications, 2006 at para. 4.2.3). Similarly, Army regulations provide that "[a] psychiatric condition controlled by medication should not automatically lead to non-deployment." *See* AR 40-501 § 5-14(8)(a).

79. Access to medication is predictable, as "[t]he Medical Health Service maintains a sophisticated and effective system for distributing prescription medications to deployed service members worldwide." *See* Elders Commission at 13. At least as to cross-sex hormones, clinical monitoring for risks and effects is not complicated, and with training and/or access to consultations, can be performed by a variety of medical personnel in the DoD, just as is the case in the VHA. This is the military services' current practice in support of the limited medical needs

of their transgender troops in CONUS (Continental United States) and in deployment stations worldwide.

80. The RAND Corporation confirms the conclusions I draw from my experience with the military and the Elders Commission. Specifically, the RAND Report notes that the Medical Health System maintains and supports all of the medications used for treatment of gender dysphoria and has done so for treatment of non-transgender service members. In other words, all of the medications utilized by transgender service members for treatment of gender dysphoria are used by other service members for conditions unrelated to gender dysphoria. *See* RAND Report at 8 ("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"). Part of my role with the DoD over the past 18 months has been to provide this continuing education.

***Surgery***

81. There is no basis in science or medicine to support the argument that a transgender service member's potential need for surgical care to treat gender dysphoria presents risks or burdens to military readiness. The risks associated with gender-confirming surgery are low, and the military already provides similar types of surgeries to non-transgender service members. *See* Elders Commission Report at 14; RAND Report at 8-9.

82. For example, the military currently performs reconstructive breast/chest and genital surgeries on service members who have had cancer, been in vehicular and other accidents, or been wounded in combat. *See* RAND Report at 8. The military also permits service members to have elective cosmetic surgeries, like LeFort osteotomy and mandibular osteotomy, at military medical facilities. *See* Elders Commission Report at 14. The RAND Report notes that 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." *See* RAND Report at 8.

83. There is no reason to provide such surgical care to treat some conditions and withhold identical care and discharge individuals needing such care when it is provided to treat gender dysphoria. Based on risk and deployability alone, there is no basis to exclude transgender individuals from serving just because in some cases they may require surgical treatment that is already provided to others.

84. The RAND Report also notes the benefit of military medical coverage of transgender-related surgeries because of the contribution it can make to surgical readiness and training. *Id.* ("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").

85. The suggestion by some critics that when it comes to enlistment, individuals would join the military just to receive surgical care, is completely unfounded. The level of commitment and dedication to service makes it unlikely that someone would enlist and complete a years-long term of initial service simply to access health care services. Moreover, because medically-necessary care for gender dysphoria is now increasingly available in the civilian context, there would be limited need to join the military in order to obtain treatment.

***Deployability***

86. Critics have also cited non-deployability, medical readiness, and constraints on fitness for duty as reasons to categorically exclude transgender individuals from military service. Such arguments are unsubstantiated and illogical.

87. Transgender service members – including service members who receive hormone medication – are just as capable of deploying as service members who are not transgender. DoD rules expressly permit deployment, without need for a waiver, for a number of medical conditions that present a much more significant degree of risk in a harsh environment than being transgender. For example, hypertension is not disqualifying if controlled by medication, despite the inherent risks in becoming dehydrated in desert deployment situations. Heart attacks experienced while on active duty or treatment with coronary artery bypass grafts are also not

disqualifying, if they occur more than a year preceding deployment. Service members may deploy with psychiatric disorders, if they demonstrate stability under treatment for at least three months. *See* DoDI 6490.07, Enclosure 3.

88. Moreover, although a service member undergoing surgery may be temporarily non-deployable, that is not a situation unique to people who are transgender. Numerous non-transgender service members are temporarily or permanently non-deployable, including pregnant individuals, who are not separated as a result. *See* Elders Commission Report at 17.

89. Finally, the RAND Report ultimately concluded that the impact of open service of men and women who are transgender on combat readiness would be "negligible." *See* RAND Report at 70. Based on the available evidence of over 18 foreign militaries, RAND found that open service has had "no significant effect on cohesion, operational effectiveness, or readiness." *Id.* at 60. This includes the experience of Canada, which has permitted open service for over 20 years. *Id.* at 52.

## CONCLUSION

90. There is no evidence that being transgender alone affects military performance or readiness. There is no medical or psychiatric justification for the categorical exclusion of transgender individuals from the Armed Forces.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 23, 2018

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# Medical Aspects of Transgender Military Service

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## Abstract

At least eighteen countries allow transgender personnel to serve openly, but the United States is not among them. In this article, we assess whether US military policies that ban transgender service members are based on medically sound rationales. To do so, we analyze Defense Department regulations and consider a wide range of medical data. Our conclusion is that there is no compelling medical reason for the ban on service by transgender personnel, that the ban is an unnecessary barrier to health care access for transgender personnel, and that medical care for transgender individuals should be managed using the same standards that apply to all others. Removal of the military's ban on transgender service would improve health outcomes, enable commanders to better care for their troops, and reflect the military's commitment to providing outstanding medical care for all military personnel.

## Keywords

transgender service members, medical care, mental health, "don't ask, don't tell"

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## Introduction

At least eighteen countries allow transgender personnel to serve openly, but the United States is not among them.[1] When "don't ask, don't tell" was overturned in 2011, gay, lesbian, and bisexual personnel were allowed to serve openly, but regulations banning transgender military service remained in place. Unlike the rationales that justified excluding gays, lesbians, and bisexuals, and that emphasized operational issues including readiness, cohesion, recruitment and morale, the rules barring transgender military service are, for the most part, embedded in medical regulations, and are premised on assumptions about the medical fitness of transgender personnel.[2] Despite the repeal of "don't ask, don't tell," and the fact that the Veterans Health Administration (VHA) enacted a 2011 policy mandating the provision of health care benefits to transgender veterans, medical regulations that bar the service of transgender personnel have not been updated.[3] In this article, we conduct the first-ever analysis of the plausibility of rationales that justify regulations prohibiting transgender service.[4] After a brief introduction, we discuss Defense Department regulations barring transgender service as well as the four medical rationales that justify them. Then, we assess the plausibility of each rationale.

The term *transgender* is a broad, umbrella term that refers to individuals who do not identify with the physical gender that they were assigned at birth.[5] There are an estimated 700,000 transgender American adults, representing 0.3 percent of the nation's adult population. While some military regulations and legal cases that we discuss refer to *transsexuals*, and while some transgender people use the term transsexual to describe someone who lives permanently with a gender different from their sex at birth, many view the term as outdated and no longer use it, which is why we use the term transgender in this article.

There is no single medical treatment for transgender individuals who undergo gender transition. Surgical transition refers to the use of gender-confirming surgery to change one's gender while medical transition refers to the use of surgery and/or cross-sex hormone therapy (CSH) to do so. Survey data indicate that 76 percent of transgender individuals have had cross-sex hormone therapy and that only a small minority have had genital reconstructive surgery.[6] The transition period for most people lasts between one and six months.[7]

Scholars estimate that 15,500 transgender individuals serve in the US armed forces, including 8,800 in the active component and 6,700 in the National Guard and Reserve components, and that 134,000 veterans are transgender.[8] Transgender adult citizens are more than twice as likely as non-transgender Americans (2.2 percent transgender vs. 0.9 percent non-transgender) to serve currently in the military.[9] We are only aware, however, of approximately two dozen service members who have been discharged because of their transgender identity in recent years.[10]

## Defense Department Regulations Barring Transgender Service

Transgender individuals are not allowed to enlist or serve in the US armed forces, and the rules barring their participation in the military are articulated in medical regulations that govern accession and retention. Medical standards for enlistment and retention are designed to ensure that service members are free of conditions that would interfere with duty performance, endanger oneself or others, or impose undue burdens for medical care, and current regulations contain a list of disqualifying conditions that preclude applicants from joining or remaining in the military. Accession regulations that are articulated in Department of Defense Instruction (DODI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services* disqualify physical conditions including "abnormalities or defects of the genitalia including but not limited to change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis" and "learning, psychiatric, and behavioral" conditions such as "current or history of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias."[11] Thus, the accession prohibition against transgender military service includes both a physical component barring "change of sex" and a psychological component barring "psychosexual conditions, including but not limited to transsexualism."

Retention regulations contained in DODI 1332.14, *Enlisted Administrative Separations* include "sexual gender and identity disorders" as grounds for administrative separation at the discretion of a commander.[12] Even though retention regulations do not include a physical component such as "change of sex," gender-confirming surgery would surely be taken as evidence of a "sexual gender and identity disorder" and would thus subject any service member who changed their gender surgically to discharge. Even transgender service members who do not wish to take hormones, have surgery, or undergo any other aspect of gender transition are subject to discharge under the psychological components of the accession and retention regulations.

Medical regulations generally allow for waivers of accession standards under some circumstances. Under DODI 6130.03, the services shall "Authorize the waiver of the standards [for entry] in individual cases for applicable reasons and ensure uniform waiver determinations."[13] Service-specific implementing rules affirm the possibility of accession waivers. By Army rules, for example, "Examinees initially reported as medically unacceptable by reason of medical unfitness ... may request a waiver of the medical fitness standards in accordance with the basic administrative directive governing the personnel action."[14]

While accession standards allow for the possibility of waivers, they also specify that accession waivers will not be granted for conditions that would disqualify an individual for the possibility of retention: "Waivers for initial enlistment or appointment, including entrance and retention in officer procurement programs, will not be

granted if the applicant does not meet the retention standards."[15] As discussed previously, because some conditions related to transgender identity are grounds for discharge, and because recruiters cannot waive a condition upon enlistment that would be disqualifying for retention, transgender individuals cannot obtain medical waivers for entrance into the military.

We conducted a comprehensive review of all Department of Defense (DOD)-wide as well as Army and Navy/Marine regulations governing transgender service, but we do not address service-specific rules here because they are largely consistent with DOD-wide regulations discussed in this section.[16] Air Force medical standards governing enlistment and retention were removed from public access upon the latest revision of Air Force Instruction 48-123, *Medical Examinations and Standards*, in November 2013.

US military policies that ban transgender service members do not include rationales that explain why the armed forces prohibit them from serving, although the policies are embedded in comprehensive medical and other regulations that are designed to preserve health and good order. While regulations do not offer reasons for banning transgender service members, several transgender individuals have challenged the policy in court and military representatives have presented rationales via testimony and affidavit. In *Doe v. Alexander*, a federal district court noted "evidence that transsexuals would require medical maintenance to ensure their correct hormonal balances and continued psychological treatment and that the army would have to acquire the facilities and expertise to treat the endocrinological complications which may stem from the hormone therapy. The army might well conclude that those factors could cause plaintiff to lose excessive duty time and impair her ability to serve in all corners of the globe."

In testimony for *Leyland v. Orr*, an Air Force consulting physician testified that assigning individuals who had undergone a sex change operation to remote geographic areas "would be equivalent to placing an individual with known coronary artery disease in a remote location without readily available coronary care." Finally, in *DeGroat v. Townsend*, an Air Force consulting physician stated that "Individuals who have undergone sex change procedures would not be qualified for world-wide service" in part because they could be "without access to potentially acute specialized tertiary medical care, which would only be available at major medical centers. Overall, it is neither in the best interest of the individual patient to have their access to necessary health care limited during potential Air Force duties nor is it in the best interest of the Air Force to have to provide the medical care that these individuals may require."[17]

The regulations, in short, appear to be premised on the notion that in four different ways, transgender personnel are not medically fit and that addressing their medical needs would place an undue burden on commanders and doctors. Specifically, the regulations appear to be justified by the notions that (1) transgender personnel are too prone to mental illness to serve, (2) cross-sex hormone therapy is too risky for medical personnel to administer and monitor, (3) gender-confirming surgery is too

complex and too prone to postoperative complications to permit, and (4) transgender personnel are not medically capable of deploying safely.[18] We address each of these rationales in turn.

## Mental Health

Some of the regulatory provisions that prohibit transgender service emphasize psychological factors. In turn, scholars have found that some transgender service members report poor mental health. One recent study concluded that the transgender community faces "elevated rates of suicide, risk for HIV infection, exposure to trauma, and other health challenges."[19] In a sample of 1,261 transgender respondents with prior military service, 40 percent had attempted suicide. Among seventy veterans evaluated for gender identity disorder between 1987 and 2007, 4 percent "had actively harmed their genitals," 61 percent "revealed a history of serious suicidal thoughts," and 43 percent "had additional psychiatric diagnoses exclusive of [gender identity disorder]."[20]

Despite such data, arguments based on mental health are not convincing rationales for prohibiting transgender military service for two reasons. First, and as discussed in greater detail subsequently, DODI 6130.03, the document that lays out medical standards that bar service for transgender personnel, is based on the outdated view that simply having a transgender identity is a mental illness.[21] Indeed, scientists have abandoned psychopathological understandings of transgender identity, and no longer classify gender nonconformity as a mental illness. Second, in contrast to rules categorically barring all transgender personnel regardless of fitness for duty, military regulations governing most psychological conditions strike a careful balance between admitting those whose conditions can be managed without imposing undue burdens on commanders or doctors while excluding those whose conditions would impair their service. Given that many service members diagnosed with a range of psychological conditions are allowed to serve and, as discussed subsequently, having a transgender identity is no longer considered a mental illness, it is implausible to suggest that the military must ban transgender personnel because they are not mentally fit to serve.

While mental health professionals used to consider transgender identity as a mental illness, this is no longer the case. In the newest edition of the *Diagnostic and Statistical Manual* (*DSM-5*), a comprehensive classification of psychological conditions and mental disorders that reflects the most up-to-date medical understandings, gender identity disorder has been replaced with gender dysphoria, a diagnostic term that refers to an incongruence between a person's gender identity and the physical gender that they were assigned at birth, and to clinically significant distress that may follow from that incongruence.[22] While gender identity disorder was pathologized as an all-encompassing mental illness, gender dysphoria is understood as a condition that is amenable to treatment.[23] And mental health professionals agree that not all transgender individuals suffer from dysphoria. In addition, the World Health

Organization's Working Group on the Classification of Sexual Disorders and Sexual Health (WGCSDSH) has recommended that the forthcoming version of the *International Statistical Classification of Diseases and Related Health Problems* (*ICD*-11), due for publication in 2015, "abandon the psychopathological model of transgender people based on 1940's conceptualizations of sexual deviance."[24]

The reclassification of transgender identity in both *DSM* and *ICD* is based, in part, on the understanding among scientists and medical practitioners that distress can be the result of prejudice and stigmatization, not mental illness, and that many individuals who do not identify with the physical gender that they were assigned at birth do not suffer from clinically significant distress, and therefore do not have a medical or psychological condition.[25] WGCSDSH members wrote recently that "there are individuals who today present for gender reassignment who may be neither distressed nor impaired."[26] The high reported rates of distress among transgender veterans and service members have been based on clinical samples that overrepresented patients requiring psychological care. In addition, a significant body of evidence shows that treatment can alleviate symptoms among those who do experience distress. A meta-analysis of more than 2,000 patients in seventy-nine studies published between 1961 and 1991 found "Favorable effects of therapies that included both hormones and surgery ... Most patients reported improved psychosocial outcomes, ranging between 87% for MTF patients and 97% for FTM patients." Satisfaction rates have increased over time: "studies have been reporting a steady improvement in outcomes as the field becomes more advanced."[27]

Defense Department rules concerning mental health, deployment, and fitness for duty do not regulate gender identity in a manner that is consistent with the management of other psychological conditions, and have the effect of singling out transgender personnel for punishment even when they are mentally healthy. Defense Department rules categorically ban all recruits who have a "learning, psychiatric, and behavioral" condition such as a "current or history of psychosexual conditions, including but not limited to transsexualism," as well as all currently serving personnel with a "sexual gender and identity disorder," regardless of whether the individual in question is fit for duty or suffers from any mental distress. By contrast, Defense Department regulations governing many other psychological conditions carefully balance between admitting those whose conditions can be managed without imposing undue burdens on commanders or doctors while excluding those whose conditions would impair their service. For example, DODI 6130.03 prohibits individuals suffering from serious mental illnesses such as autistic, schizophrenic, and delusional disorders from enlisting in the armed forces. Yet for less serious disorders, regulations strike a careful balance. Thus, individuals with attention deficit hyperactivity disorder are prohibited from enlisting unless they meet a number of criteria, including documenting that they maintained a 2.0 grade point average after the age of fourteen, and individuals with simple phobias are banned from enlisting unless they meet other criteria, including documenting that they have not required medication for the past twenty-four continuous months.

Retention regulations strike a balance as well. For those who develop mood or anxiety disorders while in the military, regulations require a referral for physical disability evaluation only if their condition requires extended or recurrent hospitalization or interferes with duty performance. Service members requiring medication for mood and anxiety disorders are not categorically barred from deployment. The determination depends on the seriousness and stability of the condition, logistical difficulties in providing medication, and the need for clinical monitoring.

Finally, empirical data suggest that many non-transgender service members continue to serve despite psychological conditions that may not be as amenable to treatment as gender dysphoria. A 2012 meta-analysis of available scholarship estimated that 5.7 percent of active-duty service members who had never been deployed suffered from major depressive disorder and that the prevalence rate among deployed service members was approximately 12 percent.[28] In 2009, at least 15,328 service members were hospitalized for mental health disorders, and the *Los Angeles Times* reported in 2012 that "110,000 active-duty Army troops last year were taking prescribed antidepressants, narcotics, sedatives, antipsychotics and anti-anxiety drugs."[29] According to the Congressional Research Service, "Between 2001 and 2011 ... [a] total of 936,283 servicemembers, or former servicemembers during their period of service, have been diagnosed with at least one mental disorder over this time period ... Nearly 49 percent of these servicemembers were diagnosed with more than one mental disorder."[30] During manpower shortages, non-transgender individuals whose psychological well-being has not met entrance standards outlined in DODI 6130.03 have been able to obtain waivers allowing them to enlist in the military. According to the National Academy of Sciences, 1,468 of the 4,303 applicants (34 percent) who failed to meet psychiatric entrance standards from May 1, 2003, through April 30, 2005, received waivers.[31]

While regulations are intended to prevent individuals with significant psychological impairments from serving, the regulations themselves pose significant obstacles to the well-being of some troops. Current restrictions discourage transgender individuals from getting the care they need, exacerbating symptoms and in some cases leading to dependence on alcohol or drugs.[32] And, research has also shown that policies that force individuals to conceal their identities can have significant mental health consequences.[33] The British regulatory provision on mental health and transgender military service may warrant consideration at this point: "Although transsexual people generally may have an increased risk of suicide, depression and self-harm, transsexual applicants should not automatically be referred to a Service Psychiatrist. Transsexual applicants with no history of mental health problems or deliberate self-harm who meet other fitness standards should be passed as being fit to join the Armed Forces."[34]

## Cross-sex Hormone Treatment

Military representatives cited previously have indicated that cross-sex hormone treatment is too risky and complicated for medical personnel to administer and

monitor. Our argument, by contrast, is that the risks associated with cross-sex hormone treatment are low and that despite various restrictions that prohibit military members from seeking medical treatments, the military's unwillingness to allow any transgender service members to undergo cross-sex hormone therapy is inconsistent with the fact that many non-transgender personnel are permitted to take hormones.[35]

Many, but not all, transgender people wish to take cross-sex hormones in order to achieve feminization or masculinization of their hair and fat distribution, genitalia, and musculature, and to achieve and maintain a gender presentation consistent with their gender identity. Hormonal therapy for male-to-female (MTF) reassignment involves medications that block the production and effects of testosterone (antiandrogen therapy) and simultaneously produce feminizing effects (estrogen therapy). For female-to-male (FTM) patients, the main treatment for hormonal reassignment is testosterone, which can be administered through patches, gels, or injection and which usually produces satisfactory results. Most effects take place beginning at eight weeks and maximize at about two years and vary depending on age and genetic makeup.

Despite some mild risks associated with cross-sex hormone therapy, over fifty years of clinical experience have demonstrated that hormones are an effective treatment for gender dysphoria, that psychological benefits follow from cross-sex hormone administration, and that the incidence of complications is quite low.[36] Studies looking at the risk of blood clots from estrogen found an occurrence of anywhere from 0 to 142 blood clots per 10,000 people per year, with much lower rates in more recent studies with newer estrogens and non-oral administration.[37] Clinics with a high volume of transgender patients on estrogen therapy report having "rarely seen adverse effects."[38]

While the use of hormones may entail some risk, the military consistently retains non-transgender men and women who have conditions that may require hormone replacement. For example, the military lists several gynecological conditions (dysmenorrhea, endometriosis, menopausal syndrome, chronic pelvic pain, hysterectomy, or oophorectomy) as requiring referral for evaluation only when they affect duty performance. And the only male genitourinary conditions that require referral for evaluation involve renal or voiding dysfunctions. The need for cross-sex hormone treatment is not listed as a reason for referral for either men or women. The military also allows enlistment in some cases despite a need for hormone replacement. DODI 6130.03, for example, does not disqualify all female applicants with hormonal imbalance. Polycystic ovarian syndrome is not disqualifying unless it causes metabolic complications of diabetes, obesity, hypertension, or hypercholesterolemia. Virilizing effects, which can be treated by hormone replacement, are expressly not disqualifying.

Hormonal conditions whose remedies are biologically similar to cross-sex hormone treatment are grounds neither for discharge nor even for referral for medical evaluation, if service members develop them once they join the armed forces. Male hypogonadism, for example, is a disqualifying condition for enlistment, but does not

require referral for medical evaluation if a service member develops it after enlisting. Similarly, DODI 6130.03 lists "current or history of pituitary dysfunction" and various disorders of menstruation as disqualifying enlistment conditions, but personnel who develop these conditions once in service are not necessarily referred for evaluation. Conditions directly related to gender dysphoria are the only gender-related conditions that carry over from enlistment disqualification and continue to disqualify members during military service, and gender dysphoria appears to be the only gender-related condition of any kind that requires discharge irrespective of ability to perform duty.

Military policy allows service members to take a range of medications, including hormones, while deployed in combat settings. According to a Defense Department study, 1.4 percent of all US service members (approximately 31,700 service members) reported prescription anabolic steroid use during the previous year, of whom 55.1 percent (approximately 17,500 service members) said that they obtained the medications from a military treatment facility. One percent of US service members exposed to high levels of combat reported using anabolic steroids during a deployment.[39] According to Defense Department deployment policy, "There are few medications that are inherently disqualifying for deployment."[40] And, Army deployment policy requires that "A minimum of a 180-day supply of medications for chronic conditions will be dispensed to all deploying Soldiers." A former primary behavioral health officer for brigade combat teams in Iraq and Afghanistan told *Army Times* that "Any soldier can deploy on anything."[41] Although Tricare officials claimed not to have estimates of the amounts and types of medications distributed to combat personnel, Tricare data indicated that in 2008, "About 89,000 antipsychotic pills and 578,000 anti-convulsants [were] being issued to troops heading overseas."[42] The Military Health Service maintains a sophisticated and effective system for distributing prescription medications to deployed service members worldwide.[43]

## Gender-confirming Surgery

According to the official policies of the American Medical Association, American Psychological Association, Endocrine Society, and World Professional Association for Transgender Health, gender-confirming surgeries can be medically necessary for some transgender individuals to mitigate distress associated with gender dysphoria.[44] Surgeries may include chest reconstruction and surgeries to create testes (scrotoplasty) and penises (phalloplasty or metoidioplasty, with or without urethral lengthening) for FTMs, and facial feminization, breast augmentation and surgeries to remove testes (orchiectomy) and create vaginas (vaginoplasty) for MTFs. That said, other transgender individuals do not want or require surgery to alleviate symptoms. A recent study noted that "As the field matured, health professionals recognized that while many individuals need both hormone therapy and surgery to alleviate their gender dysphoria, others need only one of these treatment options and some need neither."[45]

In considering the question of gender-confirming surgery among military personnel, it is important to recognize that regulations permit service members to have elective cosmetic surgeries at military medical facilities and that some of those elective procedures risk postoperative complications that can be more serious than those of medically necessary gender-confirming surgeries.[46] For example, the LeFort osteotomy procedures and mandibular osteotomies that service members may elect to have are associated with a number of possible complications based upon the technique, surgical level, and anatomic site at which the surgery/osteotomies are performed.[47] The incidence of complications in craniofacial surgery depends upon the type of surgery and anatomic location at which the procedure is performed, and infection rates may range from approximately 1 to 3 percent.[48] Treatment for these complications may require additional surgical or other interventional procedures, antibiotics, and/or local wound care.

Even if the Military Health Service provided gender-confirming surgeries, however, the demand for such procedures would be low. Research on civilian employers whose insurance plans cover transition-related health care has found that very few employees submit claims for such benefits in any given year. If extrapolated to the active, Guard and Reserve components of the military, the data suggest that if transgender service members were allowed to serve, and if the military covered medically necessary care related to gender transition, fewer than 2 percent of transgender service members, a total of 230 individuals, would seek gender-confirming surgery in any particular year.[49] A recent study reported the average cost of transition-related health care at US$29,929.[50]

As with any surgical procedures, gender-confirming surgeries entail a risk of short-term and chronic postoperative complications.[51] Yet, despite the presence of risk, research shows that the complications rate is low. Across fifteen studies from 1986 to 2001, 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.[52] A follow-up study of eighty women who had vaginoplasties found three postoperative complications and another determined that among eighty-nine vaginoplasties, there was one major complication.[53] If transgender service members were allowed to serve and to have gender-confirming surgery while in the military, we estimate that ongoing postoperative complications would render ten MTF service members unfit for duty each year.[54]

Research suggests that a minority of individuals having FTM genital surgery may expect long-term complications that would require ongoing care.[55] Yet, very few FTMs have genital surgery, and of the 1,594 FTMs who responded to a recent survey, only forty-eight individuals (3 percent) had genital surgery, including twenty-four who had metoidioplasty and phalloplasty, one who had just phalloplasty, and twenty-three who had just metoidioplasty.[56] Given such low demand, even using conservative assumptions, it is estimated that only six postoperative FTM transgender men would become unfit for duty each year as a result of ongoing, postoperative complications following genital surgery.[57]

In sum, while the risks of genital surgery are real, they are no higher than risks associated with other genitourinary procedures, and they are lower than risks that accompany some elective non-transgender-related surgeries which the military allows and which, unlike genital surgeries for transgender individuals, are cosmetic and not medically necessary. As well, the low rate of demand for genital surgeries would mean that in absolute and relative terms, allowing such procedures would place almost no burden on the military.

## Deployment

In explaining the rationale for the military's ban on transgender service, spokespersons have emphasized non-deployability, medical readiness, and constraints on fitness for duty.[58] While personnel policy must be designed to promote deployability and medical readiness, arguments invoked to oppose transgender service on these grounds do not withstand scrutiny. With few exceptions, transgender service members are deployable and medically ready. As noted in other sections of this article, cross-sex hormone treatment and mental health considerations do not, in general, impede the deployability of transgender service members, and the public record includes instances in which transgender individuals deployed after having undergone transition. With two exceptions, all transgender service members who are otherwise fit would be as deployable as their non-transgender peers. The first exception is postoperative transgender service members whose genital surgeries result in long-term complications. Using conservative assumptions, an estimated maximum of sixteen postoperative service members (ten MTF transgender women and six FTM transgender men) would become permanently undeployable each year as a result of ongoing postoperative medical complications following genital surgery.

The second exception would be those undergoing surgical transition while in service. But as discussed, the number of service members undergoing surgical transition in any given period would be low, both in relative and absolute terms, either because they would have already transitioned prior to joining the military, would prefer to wait until the end of military service to transition, or would not want to surgically transition, regardless of the timing. Thus, with very few exceptions, transgender service members would be deployable and medically ready on a continuous basis.

Straightforward and fair-minded regulatory options are available for managing transgender military service and deployability. According to Army regulations (which do not apply to transgender-related conditions), "Personnel who have existing medical conditions may deploy" if deployment is unlikely to aggravate the condition, if an unexpected worsening of the condition would not pose a grave threat, if health care and medications are immediately available in theater, and if "no need for significant duty limitation is imposed by the medical condition."[59] British military policy concerning transgender service and deployability is equally sensible: "Applicants who are about to undergo, or are still recovering from surgery to change the

external appearance of their body into that of the acquired gender should be graded P8 [medically unfit], as with any other condition that is being treated or requires surgery at the time of application, until they are fully recovered from the surgery."[60]

Many non-transgender service members are temporarily or permanently non-deployable, but they are not automatically discharged as a result, and military policies accommodate them within reason. Defense Department regulations confirm that when evaluating a service member's fitness for duty, non-deployability is not grounds for a determination of unfitness: "Inability to perform the duties of his or her office, grade, rank, or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of unfitness." Even service members who are permanently constrained by serious medical conditions and defects are allowed, under some circumstances, to remain in the military. According to DODI 1332.38, "A service member who has one or more of the listed conditions or physical defects is not automatically unfit," including systemic diseases such as tuberculosis, leprosy, lymphoma, leukemia, or Hodgkin's disease. Regulations provide service members suffering from these and other serious, non-transgender-related, medical conditions with opportunities to serve in a limited capacity and to recover: "A member previously determined unfit and continued in a permanent limited duty status ... may be determined fit when the member's condition has healed or improved so that the member would be capable of performing his or her duties in other than a limited duty status."[61]

Although deployability is a crucial component of readiness, many non-transgender service members are temporarily or permanently non-deployable. According to a 2011 Defense Department study of health-related behaviors, 16.6 percent of active duty service members (244,000 service members) were unable to deploy for a variety of reasons during the twelve-month period prior to the survey's administration, including 22.5 percent of Marines.[62] Yet, non-deployable service members (who are not transgender) are not automatically banned, and policies accommodate them to the extent possible. Indeed, the services have adopted leave and assignment policies that provide for prolonged absences and restrictions on duty as a result of medical conditions, as well as life choices that service members make. These include ordinary and advance leave. By law, members of the armed forces are entitled to thirty days of paid leave per year (generally referred to as "ordinary" or "annual" leave), accruing at a rate of 2½ days per month.[63] Service members need not provide any justification in order to take their annual leave. On the contrary, military commanders "shall encourage and assist all Service members to use" their leave.[64] Leave is scheduled "consistent with operational requirements, training workloads, and the desires of the Service member," including "at least one extended leave period each year of approximately 14 consecutive days in length or longer."[65]

Service members may also be granted special leave on top of their ordinary leave. This leave is in addition to the thirty days per year provided for by federal law and is not counted against the member's ordinary leave balance. And in addition to the elective leave programs, the services provide for situations in which a member may

be absent owing to a medical condition or procedure. A member unable to be present for duty due to hospitalization is excused from duty while hospitalized, and the absence is not counted against the member's leave balance.[66]

Military convalescent leave policy does not discriminate against elective procedures such as Botox treatments and "plastic surgery for unacceptable cosmetic appearance."[67] Soldiers receiving such procedures may be expected to reimburse the service for their cost, but they "will be afforded convalescent leave and will not be required to use regular leave for their post-operative recovery."[68] Finally, the services recognize that members may on occasion have medical conditions which limit their availability to be assigned overseas. Members with such medical conditions may be deferred from reassignment for up to twelve months.[69] Personnel with more persistent medical needs are given assignment limitation codes and may be excluded from overseas service altogether, while still remaining on active duty.[70]

While the operational needs of the service are critical considerations, existing military law and policy contemplate that members may be absent from duty for extended periods of time. Despite concerns expressed by those such as the judge in the 1981 *Alexander* case, existing military policies and procedures are designed to ensure a capable fighting force while at the same time anticipating and providing for prolonged absences by service members based on medical conditions, elective medical procedures, personal life choices, and morale and personal welfare. Transgender service members, however, are automatically discharged, in part because of assumed constraints on their deployability and medical readiness, even though such constraints would apply to no more than a few hundred transgender service members at any one time and would normally last less than the twelve months allowed for deferrals of reassignment. In contrast, non-transgender service members are given multiple opportunities to demonstrate their deployability and fitness for duty despite medical limitations, and many are retained even if they are not fully deployable or fit. Even those service members deemed permanently unfit "may be retained as an exception to the general policy rule" if their skills or experience warrant continuing service.[71]

## Conclusion

Medical standards are designed to ensure that service members are free of conditions that would interfere with performance or burden the military. Current regulations, however, bar the service of transgender individuals regardless of ability to perform or degree of medical risk. They include transgender conditions on a list of disqualifying, maladaptive traits assumed to be resistant to treatment and inconsistent with either fitness for duty or good order and discipline. Unlike other medical disqualifications, however, which are based on the latest medical expertise and military experience, it is the transgender bar itself that is inconsistent with current medical understanding and is based on standards that are decades out-of-date.

Medical regulations requiring the discharge of transgender personnel are inconsistent with how the military regulates all other medical and psychological conditions,

and transgender-related conditions appear to be the only gender-related conditions that require discharge irrespective of fitness for duty. Transgender medical care should be managed in terms of the same standards that apply to all medical care, and there is no medical reason to presume transgender individuals are unfit for duty. Their medical care is no more specialized or difficult than other sophisticated medical care the military system routinely provides, and existing policies and practices are adequate for identifying rare and extreme circumstances that may affect duty performance.

Simply treating transgender service members in accordance with established medical practices and standards, as it does with the provision of all medical care, is all that's needed to end the unnecessary and harmful policy of discrimination against transgender service. While no new medical rules are needed, the Defense Department could look to foreign military experiences as it formulates administrative guidance to address fitness testing, records and identification, uniforms, housing, and privacy. As mentioned previously, at least eighteen countries allow transgender personnel to serve. Foreign military regulations that apply to transgender military service are straightforward, sensible, and fair, offering a sound model for US military policy. In light of the research presented here, taking these steps to reform current military policy governing transgender service would improve care for US service members without burdening the military's pursuit of its vital missions.

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## Notes

1. In an earlier, self published version of this article, we referred to twelve countries that allow transgender military service. Since that time, scholars at the Hague Centre for Strategic Studies have published a comprehensive study of rules governing gay, lesbian, bisexual, and transgender service in 103 countries. While the report does not include a list of nations allowing transgender military service, we are grateful to its authors, who provided us with their data indicating that 18 nations allow transgender military service while 9 nations prob ably allow it, but could not be confirmed. The 18 confirmed cases are Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, Netherlands, New Zealand, Norway, Spain, Sweden, and United Kingdom. See Joshua Polchar et al., *LGBT Military Personnel; A Strategic Vision for Inclusion* (The Hague, the Netherlands: The Hague Centre for Strategic Studies, 2014).
2. Aaron Belkin et al., "Readiness and DADT Repeal: Has the New Policy of Open Service Undermined the Military?," *Armed Forces & Society* 39, 4 (2013): 587 601; Robert

MacCoun, Elizabeth Kier, and Aaron Belkin, "Does Social Cohesion Determine Motivation in Combat? An Old Question with an Old Answer," *Armed Forces & Society* 32, 4 (2006): 646 54.

3. Veterans Health Administration (VHA) updated the policy in 2013. See Department of Veterans Affairs, VHA Directive 2013 003, *Providing Health Care for Transgender and Intersex Veterans*, February 8, 2013. The VHA provides cross sex hormone therapy, but not gender confirming surgery.
4. In this article, we do not address cross dressing, which is governed by grooming and uniform regulations that are distinct from the medical rules that apply to transgender military service.
5. For most people, gender identity is a stable, deep seated component of their sense of self. For a broader discussion of gender identity, see Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimi nation Survey* (Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 24 25.
6. Although fewer than 20 percent of transgender women and 5 percent of transgender men have had genital reconstructive surgeries, more have had other types of gender confirming surgery such as breast augmentation, and demand for surgeries could increase if they were affordable and available. Grant, Mottet, and Tanis, *Injustice at Every Turn*, 78 79.
7. See, for example, durations associated with variants of cross sex hormone therapy in Eli Coleman et al., "Standards of Care for the Health of Transsexual, Transgender, and Gender nonconforming People, Version 7," *International Journal of Transgenderism* 13, 4 (2011): 188 89.
8. Gary Gates and Jody Herman, *Transgender Military Service in the United States* (Los Angeles, CA: Williams Institute, 2014), accessed July 18, 2014, http://williamsinstitute. law.ucla.edu/wp content/uploads/Transgender Military Service May 2014.pdf. At the time of writing, the active, Guard and Reserve components included 2,280,875 personnel.
9. In response to a recent Freedom of Information Act request for discharge data submitted by the Palm Center, a Pentagon spokesperson said that the military does not track the number of service members who have been separated for transgender related reasons.
10. Private communication between staff of Sparta, an organization representing currently serving transgender service members, and Palm Center research staff.
11. Department of Defense Instruction (DODI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, April 28, 2010, Incorporating Change 1, September 13, 2011. Paraphilia is sexual arousal to an atypical object. See American Psychiatric Association, *Diagnostic and Statistical Manual*, 5th ed. (Arlington, VA: American Psychiatric Publishing, 2013).
12. Department of Defense Instruction (DODI) 1332.14, *Enlisted Administrative Separa tions*, August 28, 2008, Incorporating Change 3, September 30, 2011, Enclosure 3, at ¶ 3(a)8. DODI 1332.14 incorporates a list of administratively disqualifying conditions, including sexual gender and identity disorders, found in Enclosure 5 to DODI 1332.38,

*Physical Disability Evaluation*, November 14, 1996, Incorporating Change 2, April 10, 2013.

13. Department of Defense Instruction 6130.03, *Medical Standards for Appointment*, Enclosure 2, at ¶ 3(b).
14. Army Regulation 40 501, *Standards of Medical Fitness*, December 14, 2007 (updated August 4, 2011), at ¶ 1 6(b).
15. AR 40 501, *Standards of Medical Fitness*, at ¶ 1 6(h).
16. See AR 40 501, *Standards of Medical Fitness* ¶¶ 2 14, 3 35(a), (b); NAVMED P 117, U. S. Navy Manual of the Medical Department, Chapter 15, §§ 15 45, 15 46, 15 58; SEC NAV Instruction 1850.4E, Department of the Navy Disability Evaluation Manual, Enclo sure 8, § 8013(a); SECNAV Instruction 1850.4E, Enclosure 8, Attachment (b) (page 8 43); and NAVMED P 117, Chapter 18, § 18 5(3).
17. *Doe v. Alexander*, 510 F. Supp. 900 (D. Minn. 1981); *Leyland v. Orr*, 828 F. 2d 584 (9th Cir. 1987); *DeGroat v. Townsend*, 495 F. Supp. 2d 845 (S.D. Ohio 2007).
18. We consider deployability to be a medical aspect of military service because deployment regulations specifically address medical readiness. See, for example, DODI 6490.07, *Deployment Limiting Medical Conditions for Service Members and DOD Civilian Employ ees*, February 5, 2010; or Department of Defense, Assistant Secretary of Defense for Health Affairs Memorandum, *Policy Guidance for Deployment Limiting Psychiatric Conditions and Medications*. (Washington, DC: Department of Defense, November 7, 2006).
19. Jillian C. Shipherd et al., "Male to female Transgender Veterans and VA Health Care Utilization," *International Journal of Sexual Health* 24, 1 (2012): 85.
20. Jack Harrison Quintana and Jody L. Herman, "Still Serving in Silence: Transgender Service Members and Veterans in the National Transgender Discrimination Survey," *LGBTQ Policy Journal at the Harvard Kennedy School* 3, accessed July 18, 2014, http://williamsinstitute.law.ucla.edu/wp content/uploads/Harrison Quintana Herman LGBTQ Policy Journal 2013.pdf; Everett McDuffie and George R. Brown, "Seventy U.S. Veterans with Gender Identity Disturbances: A Descriptive Study," *International Journal of Transgenderism* 12, 1 (2010): 21 30.
21. Department of Defense Instruction 6130.03 requires a reference to diagnostic codes in the International Classification of Diseases (*ICD* 9), and the *ICD* does list diagnoses for both transsexualism and gender identity disorder. Department of Defense translates *DSM IV* diagnoses to the closest ICD code.
22. In the World Professional Association for Transgender Health Standards of Care, dysphoria refers to the distress itself, not the incongruence between gender identity and assigned sex. See Coleman et al., "Standards of Care for the Health of Transsexual, Transgender, and Gender nonconforming People, Version 7," 168. Indeed, non transgender people can expe rience gender dysphoria. 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 plas tic surgery, but who must undergo mastectomy because of breast 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.

23. Coleman et al., "Standards of Care for the Health of Transsexual, Transgender, and Gender nonconforming People, Version 7," 168.
24. Jack Drescher, Peggy Cohen Kettenis, and Sam Winter, "Minding the Body: Situating Gender Identity Diagnoses in the ICD 11," *International Review of Psychiatry* 24, 6 (2012): 575, 569, 574.
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26. Drescher, Cohen Kettenis, and Winter, "Minding the Body," 573.
27. Coleman et al., "Standards of Care for the Health of Transsexual, Transgender, and Gender nonconforming People, Version 7," 230, citing findings of multiple studies including Richard Green and Davis Fleming, "Transsexual Surgery Follow up: Status in the 1990s," *Annual Review of Sex Research* 1, 1 (1990): 163 74. See Coleman et al. for additional references.
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29. Kim Murphy, "A Fog of Drugs and War," *Los Angeles Times,* April 7, 2012, accessed July 18, 2014, http://articles.latimes.com/2012/apr/07/nation/la na army medication 20120408.
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31. Paul R. Sackett and Anne S. Mavor, eds., *Assessing Fitness for Military Enlistment Phys ical, Medical, and Mental Health Standards* (Washington, DC: The National Academies Press, 2006), 144.
32. Adam F. Yerke and Valory Mitchell, "Transgender People in the Military: Don't Ask? Don't Tell? Don't Enlist!," *Journal of Homosexuality* 60, 2 3 (2013): 445. Also see Drescher, Cohen Kettenis, and Winter, "Minding the Body," 573.
33. Meyer and Northridge, *The Health of Sexual Minorities*, 2007.
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36. H. Asscheman et al., "A Long term Follow up Study of Mortality in Transsexuals Receiving Treatment with Cross sex Hormones," *European Journal of Endocrinology* 164, 4 (2011): 635 42; Paul Van Kesteren et al., "Mortality and Morbidity in Transsexual Subjects Treated with Cross sex Hormones," *Clinical Endocrinology* 47, 3 (1997): 337 43; M. Colizzi, R. Costa, and O. Todarello, "Transsexual Patients' Psychiatric Comor bidity and Positive Effect of Cross sex Hormonal Treatment on Mental Health: Results from a Longitudinal Study," *Psychoneuroendocrinology* 39 (2014): 65 73.

37. H. Asscheman et al., "Venous Thrombo embolism as a Complication of Cross sex Hormone Treatment of Male to Female Transsexual Subjects: A Review," *Andrologia*, August 14, 2013. doi: 10.1111/and.12150.
38. Tom Waddell Health Center, *Protocols for Hormonal Reassignment of Gender*, 2006, accessed November 6, 2013, http://www.sfdph.org/dph/comupg/oservices/medSvs/hlthCtrs/TransGendprotocols122006.pdf.
39. Department of Defense, *Health Related Behaviors Survey of Active Duty Military Personnel 2011* (Washington, DC: Department of Defense, 2013), 119 20, 130 31, 248, 264 65.
40. Department of Defense, *Policy Guidance for Deployment limiting Psychiatric Conditions and Medications* (Washington, DC: Department of Defense, 2006) at ¶ 4.2.3.
41. Andrew Tilghman, "'Any Soldier Can Deploy on Anything': Pentagon Rules Bar Some Drugs from Combat Zone, but Oversight Is Suspect," *Army Times*, March 17, 2010, accessed July 18, 2014, http://www.armytimes.com/article/20100317/NEWS/3170310/ 8216 Any soldier can deploy anything .
42. Tilghman, "Any Soldier Can Deploy on Anything," 2010.
43. Department of the Army, *Personnel Policy Guidance for Overseas Contingency Operations* (Washington, DC: Department of the Army, 2009), at ¶ 7 13(b)1.
44. See, for example, American Medical Association, Resolution 122 (A 08), 2008, accessed July 18, 2014, http://www.tgender.net/taw/ama resolutions.pdf.
45. Coleman et al., "Standards of Care for the Health of Transsexual, Transgender, and Gender nonconforming People, Version 7," 170 71.
46. For a list of 313 allowable, elective cosmetic procedures, see Tricare Management Activity, Uniform Business Office, *Provider's Guide to the Elective Cosmetic Surgery Superbill*. (Falls Church, VA: TRICARE Management Activity, Uniform Business Office, 2013).
47. Patel, Morris, and Gassman show that these complications may include "airway, vascular, hemorrhage, vascular compromise, neurologic, infectious, skeletal, unfavorable osteotomy, tooth injury, nonunion, postoperative malocclusion, temporomandibular joint disorders, and unfavorable aesthetic results." See P. Patel, D. Morris, and A. Gassman, "Complications of Orthognathic Surgery," *Journal of Craniofacial Surgery* 18, 4 (2007): 975 85. The military allows personnel to have elective cosmetic surgeries on a space available basis and at their own expense.
48. Patel, Morris, and Gassman, "Complications of Orthognathic Surgery," 2007; F. Kramer et al., "Intra and Perioperative Complications of the LeFort I Osteotomy: A Prospective Evaluation of 1000 Patients," *Journal of Craniofacial Surgery* 15, 6 (2004): 971 77; K. Jones, "Le Fort II and Le Fort III Osteotomies for Midface Reconstruction and Considerations for Internal Fixation," in *Craniomaxillofacial Reconstructive and Corrective Bone Surgery*, eds. A. Greenberg and J. Prein (New York: Springer, 2006), 667 68.
49. Herman found in a recent study that the highest annualized utilization rate for large employers is 0.044 claimants per thousand employees annually (Table 8). If the military were similar to civilian firms, and given that the active, Guard and Reserve components currently include 2,280,875 personnel, then one would expect $0.044 \times 2{,}281 = 100$ claimants per year if the Military Health System covered gender confirming surgery.

However, transgender people are over represented in the military (15,450/2,280,875 million = 0.68 percent military as compared to 0.3 percent of the civilian adult population), and so the figure of 100 claimants per year should be adjusted upward by .68/.3 = 2.3×. Hence, if the military paid for transition related surgery, one would expect 2.3 × 100 = 230 claims per year. See Jody L. Herman, *Costs and Benefits of Providing Transition related Health Care Coverage in Employee Health Benefits Plans* (Los Angeles, CA: Williams Institute, 2013).

50. Herman, *Costs and Benefits of Providing Transition related Health Care Coverage in Employee Health Benefits Plans*, 6.
51. Short term surgical complications can include rectal injury, infection, delayed wound healing, bleeding, venous thromboembolism, and/or urethral stream abnormalities. While many of these complications are either self limited or may be treated with local wound care, antibiotics, or anticoagulants, some, such as rectal injury, may require additional surgical procedures such as a temporary colostomy. Long term complications can include vaginal stenosis and unsatisfactory appearance of the surgically reconstructed genitalia, and vaginal stenosis may require additional procedures such as skin grafts or intestinal transposition.
52. A. A. Lawrence, "Patient reported Complications and Functional Outcomes of Male to female Sex Reassignment Surgery," *Archives of Sexual Behavior* 35, 6 (2006): 717 27.
53. Cameron Bowman and Joshua M. Goldberg, "Care of the Patient Undergoing Sex Reassignment Surgery," *International Journal of Transgenderism* 9, 3 4 (2006): 135 65; Miroslav L. Djordjevic, Dusan S. Stanojevic, and Marta R. Bizic, "Rectosigmoid Vaginoplasty: Clinical Experience and Outcomes in 86 Cases," *Journal of Sexual Medicine* 8, 12 (2011): 3487 94; Ji Xiang Wu et al., "Laparoscopic Vaginal Reconstruction Using an Ileal Segment," *International Journal of Gynecology and Obstetrics* 107, 3 (2009): 258 61; L. Jarolím et al., "Gender Reassignment Surgery in Male to female Transsexualism: A Retrospective 3 month Follow up Study with Anatomical Remarks," *Journal of Sexual Medicine* 6, 6 (2009): 1635 44; S. V. Perovic, D. S. Stanojevic, and M. L. J. Djordjevic, "Vaginoplasty in Male Transsexuals Using Penile Skin and a Urethral Flap," *BJU International* 86, 7 (2000): 843 50.
54. Presumably, any postoperative MTF individuals with ongoing complications would be screened out at the time of enlistment. Hence, the only MTF troops who would be unfit for duty would be those experiencing ongoing postoperative complications from genital surgeries they elected to have after joining the military. As explained previously, if the Military Health Service paid for transition related care, one would expect 230 claimants per year. Approximately 90 percent of transgender troops are MTF's, thus suggesting .9 × 230 = 207 claimants per year for MTF transition related coverage. If 5 percent of such claims entailed ongoing postoperative complications, this would mean that ten MTF transgender troops would become permanently unfit for duty each year.
55. For example, see S. Baumeister et al., "Phalloplasty in Female to male Transsexuals: Experience from 259 Cases [Article in German]," *Handchir Mikrochir Plast Chir* 43, 4 (2011): 215 21; J. E. Terrier et al., "Surgical Outcomes and Patients' Satisfaction with Suprapubic Phalloplasty," *Journal of Sexual Medicine* 11, 1 (September 12, 2013):

288 98; P. A. Sutcliffe et al., "Evaluation of Surgical Procedures for Sex Reassignment: A Systematic Review," *Journal of Plastic, Reconstructive and Aesthetic Surgery* 62, 3 (2009): 294 306.

56. These figures are derived from raw data that informed Grant, Mottet, and Tanis, *Injustice at Every Turn*, 2011.
57. Presumably, any postoperative FTM individuals with ongoing complications would be screened out at the time of enlistment. Hence, the only FTM troops who, as a class, would be unfit for duty would be those experiencing ongoing postoperative complications from genital surgeries they elected to have after joining the military. As explained previously, if the Military Health Service paid for transition related care, one would expect 230 clai mants per year. However, only 10 percent of transgender troops are FTMs, thus suggest ing $.1 \times 230 = 23$ claimants per year for FTM transition related coverage. If one quarter of such claims entailed ongoing postoperative complications, this would mean that six FTM transgender troops would become permanently unfit for duty each year.
58. Chris Johnson, "Pentagon's Gay inclusive Human Goals Charter Omits Trans People," *Washington Blade*, April 28, 2014, accessed July 18, 2014, http://www.washingtonblade. com/2014/04/28/pentagons gay inclusive human rights charter omits trans people/.
59. Department of the Army, *Personnel Policy Guidance for Overseas Contingency Opera tions*, 2009, 7 9(e).
60. Ministry of Defence, *Policy for the Recruitment and Management of Transsexual Person nel in the Armed Forces*, 2009.
61. DODI 1332.38, *Physical Disability Evaluation,* Enclosure 3, at ¶¶ P3.4.1.3, P3.4.3, and Enclosure 4, at ¶ 1.1.2.
62. Department of Defense, *Health Related Behaviors Survey of Active Duty Military Per sonnel 2011*, 2013.
63. United States Code, Title 10, Section 701(a).
64. Department of Defense Instruction 1327.06, *Leave and Liberty Policy and Procedures*, June 16, 2009, Incorporating Change 2, effective August 13, 2013, Enclosure 2, at ¶ 1c.
65. DODI 1327.06, *Leave and Liberty Policy*, Enclosure 2, at ¶¶ 1j(1), 1a.
66. Army Regulation 600 8 10, *Leave and Passes* (August 4, 2011 revision), at ¶ 5 3e.
67. Army Medical Command, OTSG/MEDCOM Policy Memo 12 076, *Revised Policy for Cosmetic Surgery Procedures and Tattoo/Brand Removal/Alteration in the Military Health System* (November 20, 2012), at ¶¶ 5e(15), 5f(2).
68. Army Medical Command, *Revised Policy for Cosmetic Surgery*, at ¶ 5(e)(7).
69. See, for example, Department of the Air Force Instruction 36 2110, *Assignments* (Change 2, June 8, 2012), at ¶ 2.17.1.
70. Department of the Air Force Instruction 36 2110, *Assignments,* at ¶ 2.17.3 and table 2.2.
71. DODI 1332.38, *Physical Disability Evaluation*, Enclosure 3, at ¶ P7.3.

## Author Biographies

**M. Joycelyn Elders** was appointed the sixteenth surgeon general of the United States by President Clinton in 1993 and was the second woman to head the US

Public Health Service. After high school, she earned a scholarship to the all-black liberal arts Philander Smith College in Little Rock. She then joined the Army and trained in physical therapy at the Brooke Army Medical Center at Fort Sam Houston, Texas. After discharge in 1956, she enrolled at the University of Arkansas Medical School on the G.I. Bill. She did an internship in pediatrics at the University of Minnesota, and in 1961 returned to the University of Arkansas for her residency. She became chief resident in charge of the all-white, all-male residents and interns, earned her master's degree in biochemistry in 1967 and became an assistant professor of pediatrics at the university's medical school in 1971 and full professor in 1976. Over the next twenty years, she combined her clinical practice with research in pediatric endocrinology, publishing well over a hundred articles, most dealing with problems of growth and juvenile diabetes. She left office in 1994 and in 1995 she returned to the University of Arkansas as a faculty researcher and professor of pediatric endocrinology at the Arkansas Children's Hospital. In 1996, she wrote her autobiography, *Joycelyn Elders, M.D.: From Sharecropper's Daughter to Surgeon General of the United States of America*. Now retired from practice, she is a professor emeritus at the University of Arkansas, School of Medicine and remains active in public health education.

**George R. Brown** is an associate chairman and professor of psychiatry at East Tennessee State University in Johnson City, TN. He is currently serving his third term on the Board of Directors for the World Professional Association for Transgender Health, where he also serves as a member of the Incarceration/Institutionalization Committee and the Standards of Care Committee. He is a coauthor on the last three versions of the Standards of Care. He served as chief of psychiatry at Mountain Home VAMC for eighteen years and served twelve years in the US Air Force as a psychiatrist. He has served as an expert witness in several national precedent-setting cases that have benefitted transgender persons. He has published over 135 articles and scientific abstracts, as well as twenty-two book chapters, many of which have been on transgender health care issues. He has presented his work on transgender issues at one-third of the medical schools in the United States as well as in seven nations. He is a University of Rochester School of Medicine graduate who subsequently did residency at Wright State University as an officer in the USAF. He is board certified in General Psychiatry and a Distinguished Fellow in the American Psychiatric Association. His areas of expertise include gender identity disorders/gender dysphoria and psychopharmacology.

**Eli Coleman** is the director of the program in human sexuality, Department of Family Medicine and Community Health, University of Minnesota Medical School in Minneapolis, where he holds the first and only endowed academic chair in sexual health. He has authored articles and books on a variety of sexual health topics, including compulsive sexual behavior, sexual orientation, and gender dysphoria. He is the founding editor of the *International Journal of Transgenderism* and founding and current editor of the *International Journal of Sexual Health*. He is past president of the Society for the Scientific Study of Sexuality, the World Professional

Association for Transgender Health, the World Association for Sexual Health, and the International Academy for Sex Research. In 2013, he was elected President of the Society for Sex Therapy and Research for a two-year term. He has been the recipient of numerous awards including the US Surgeon General's Exemplary Service Award for his role as senior scientist on *Surgeon General's Call to Action to Promote Sexual Health and Responsible Sexual Behavior*, released in 2001. In 2007, he was awarded the gold medal for his lifetime contributions to the field of sexual health by the World Association for Sexual Health. In 2007, he was appointed the first endowed Chair in Sexual Health at the University of Minnesota Medical School.

**Thomas Kolditz** is a professor in the Practice of Leadership and Management and director of the Leadership Development Program at the Yale School of Management. A professor emeritus at the US Military Academy, he led the Department of Behavioral Sciences and Leadership at West Point for twelve years. He served for two years as a leadership and human resources policy analyst in the Pentagon, and a year as a concept developer in the Center for Army Leadership, and was the founding director of the West Point Leadership Center. He is also the managing member of Saxon Castle LLC, a leader development consultancy. He has published extensively across a diverse array of academic and leadership trade journals, and serves on the editorial and advisory boards of several academic journals. He is a fellow in the American Psychological Association and is a member of the Academy of Management. His most recent book is *In Extremis Leadership: Leading as if Your Life Depended on It.* In 2009, he was named to the Council of Senior Advisors, Future of Executive Development Forum.

**Alan M. Steinman** was first commissioned in the United States Public Health Service as a lieutenant in July 1972 and served in a number of senior medical officer capacities at the USCG. In 1993, he was selected for promotion to flag officer for the position of Director of Health and Safety at USCG HQ. Steinman retired from the Coast Guard and the Public Health Service in 1997. His educational degrees include a Bachelor of Science from the Massachusetts Institute of Technology, a Doctor of Medicine from the Stanford University School of Medicine, and a Master of Public Health from the University of Washington. He also graduated from the US Navy School of Aerospace Medicine. He is board certified in Occupational Medicine and is a Fellow of the American College of Preventive Medicine. He also served as the director of the Coast Guard's Safety and Environmental Health programs, overseeing the safety of all USCG personnel. He has an international reputation in cold-weather medicine, hypothermia, and sea survival, and he is widely published in these areas, including numerous articles in medical journals and chapters in textbooks of emergency medicine and cold-weather medicine. He currently serves as a consultant in cold-weather medicine and holds the position of professional affiliate with the Health, Leisure and Human Performance Research Institute at the University of Manitoba. For the past five years, he has lectured to college classes on Joint Base Lewis-McChord on the issue of gays and lesbians in the military.

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF WASHINGTON**
**AT SEATTLE**

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| RYAN KARNOSKI, et al.,<br><br>*Plaintiffs*,<br><br>v.<br><br>DONALD J. TRUMP, in his official capacity as President of the United States, et al.,<br><br>*Defendants*. | Case No. 2:17-cv-01297-MJP<br><br>**DECLARATION OF BRAD R. CARSON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** |

I, Brad R. Carson, declare as follows:

1. As set forth in my previous declaration in this matter, I served as the Acting Under Secretary of Defense for Personnel and Readiness ("USD P&R") from April 2, 2015 to April 8, 2016. In that capacity, and at the direction of the Secretary of Defense, I led a group of senior personnel drawn from all of the armed services to develop, over many months of information collection and analysis, a Department-wide policy regarding service by transgender people, all as more fully described below.

**PROFESSIONAL BACKGROUND**

2. I attended Baylor University and obtained an undergraduate degree in history in 1989. After college, I attended Trinity College in Oxford, England on a Rhodes Scholarship and earned a Master's degree in Politics, Philosophy, and Economics. When I returned to the United States, I attended the University of Oklahoma College of Law, graduating with a law degree in

1994.

3. After I graduated law school, I practiced as an attorney at the law firm Crowe & Dunlevy. From 1997 to 1998 I served as a White House Fellow, where I worked as a Special Assistant to the Secretary of Defense. From 2001 to 2005, I served in Congress as the Representative for the State of Oklahoma's 2nd District.

4. In addition to my civilian career, I am also a commissioned officer in the United States Navy Reserve. I currently serve in the Individual Ready Reserve. I deployed to Iraq in 2008 as Officer-in-Charge of intelligence teams embedded with the U.S. Army's 84th Explosive Ordnance Disposal Battalion. In Iraq, our teams were responsible for investigation of activities relating to improvised explosive devices and the smuggling of weapons and explosives. For my service in Iraq, I was awarded the Bronze Star Medal and other awards.

5. I have held several leadership positions within the Department of Defense ("DoD"). In 2011, I was nominated by the President to serve as General Counsel to the United States Army and unanimously confirmed by the U.S. Senate. As General Counsel, my duties included providing legal advice to the Secretary, Under Secretary, and Assistant Secretaries of the Army regarding the regulation and operation of the U.S. Army. I also assisted in the supervision of the Office of the Judge Advocate General. I served as General Counsel to the United States Army until March 2014.

6. In late 2013, while serving in that position, I was nominated by the President to serve as Under Secretary of the Army. I was unanimously confirmed by the U.S. Senate in February 2014 and sworn in on March 27, 2014. As Under Secretary of the Army, I was the second ranking civilian official in the Department of the Army. My responsibilities included the welfare of roughly 1.4 million active and reserve soldiers and other Army personnel, as well as a variety of matters relating to Army readiness, including oversight of installation management and weapons and equipment procurement. With the assistance of two Deputy Under Secretaries, I directly supervised the Assistant Secretaries of the Army for Manpower and Reserve Affairs; Acquisition, Logistics and Technology; Financial Management and Comptroller; Installations, Energy and Environment; and Civil Works. My responsibilities involved the management and

allocation of an annual budget amounting to almost $150 billion.

7. I was appointed by the President to serve as acting USD P&R in April 2015. In that capacity, I functioned as the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense for Total Force Management with respect to readiness; National Guard and Reserve component affairs; health affairs; training; and personnel requirements and management, including equal opportunity, morale, welfare, recreation, and quality of life matters. My responsibilities over these matters extended to more than 2.5 million military personnel.

**DEVELOPMENT OF POLICY REGARDING TRANSGENDER SERVICE MEMBERS**

8. On July 28, 2015, then-Secretary of Defense Ashton B. Carter ordered me, in my capacity as USD P&R, to convene a working group to formulate policy options for DoD regarding transgender service members (the "Working Group"). Secretary Carter ordered the Working Group to present its recommendations within 180 days. In the interim, transgender service members were not to be discharged or denied reenlistment or continuation of service on the basis of gender identity without my personal approval.

9. The Working Group included roughly twenty-five members. Each branch of military service was represented by a senior uniformed officer (generally a three-star admiral or general), a senior civilian official, and various staff members. The Surgeons General and senior representatives of the Chaplains for each branch of service also attended the Working Group meetings.

10. The Working Group formulated its recommendations by collecting and considering evidence from a variety of sources, including a careful review of all available scholarly evidence and consultations with medical experts, personnel experts, readiness experts, health insurance companies, civilian employers, and commanders whose units included transgender service members.

**THE FINDINGS OF THE RAND REPORT**

11. On behalf of the Working Group, I requested that RAND, a nonprofit research institution that provides research and analysis to the Armed Services, complete a comprehensive

study of the health care needs of transgender people, including potential health care utilization and costs, and to assess whether allowing transgender service members to serve openly would affect readiness.

12. In 2016, RAND presented the results of its exhaustive study in a report entitled Assessing the Implications of Allowing Transgender Personnel to Serve Openly ("RAND Report").

13. The RAND Report explained that according to the American Psychiatric Association, the term transgender refers to "the broad spectrum of individuals who identify with a gender different from their natal sex." The RAND Report also explained that "transgender status alone does not constitute a medical condition," and that "only transgender individuals who experience significant related distress are considered to have a medical condition called gender dysphoria (GD)." For those individuals, the recognized standard of care includes some combination of psychosocial, pharmacological, and/or surgical care. "Not all patients seek all forms of care." "While one or more of these types of treatments may be medically necessary for some transgender individuals with GD, the course of treatment varies and must be determined on an individual basis by patients and clinicians."

14. The RAND Report evaluated the capacity of the military health system (MHS) to provide necessary care for transgender service members. The RAND Report determined that necessary psychotherapeutic and pharmacological care are available and regularly provided through the MHS, and that surgical procedures "quite similar to those used for gender transition are already performed within the MHS for other clinical indications." In particular, the MHS already performs reconstructive surgeries on patients who have been injured or wounded in combat. "The skills and competencies required to perform these procedures on transgender patients are often identical or overlapping." In addition, the RAND Report noted that "performing these surgeries on transgender patients may help maintain a vitally important skill required of military surgeons to effectively treat combat injuries."

15. The RAND Report also examined all available actuarial data to determine how many transgender service members are likely to seek gender transition-related medical treatment.

The RAND Report concluded that "we expect annual gender transition-related health care to be an extremely small part of overall health care provided to the AC [Active Component] population."

16. The RAND Report similarly concluded that the cost of extending health care coverage for gender transition-related treatments is expected to be "an exceedingly small proportion of DoD's overall health care expenditure."

17. The RAND Report found no evidence that allowing transgender people to serve openly would negatively impact unit cohesion, operational effectiveness, or readiness.

18. The RAND Report found that the estimated loss of days available for deployment due to transition-related treatments "is negligible." Based on estimates assuming the highest utilization rates, it concluded that the number of nondeployable man-years due to gender transition-related treatments would constitute 0.0015 percent of all available deployable labor-years across both the Active Component and Select Reserves.

19. The RAND Report also found no evidence that permitting openly transgender people to serve in the military would disrupt unit cohesion. The RAND Report noted that while similar concerns were raised preceding policy changes permitting open service by gay and lesbian personnel and allowing women to serve in ground combat positions, those concerns proved to be unfounded. The RAND Report found no evidence to expect a different outcome for open service by transgender persons.

20. The RAND Report examined the experience of eighteen other countries that permit open service by transgender personnel—including Israel, Australia, the United Kingdom, and Canada. The Report found that all of the available research revealed no negative effect on cohesion, operational effectiveness, or readiness. Some commanders reported that "increases in diversity led to increases in readiness and performance."

21. The Rand Report also identified significant costs associated with separation and a ban on open service, including "the discharge of personnel with valuable skills who are otherwise qualified."

**ISSUES CONSIDERED BY THE WORKING GROUP**

22. The Working Group sought to identify and address all relevant issues relating to service by openly transgender persons, including deployability. In addition to taking into consideration the conclusions of the RAND Report, the Working Group discussed that while some transgender service members might not be deployable for short periods of time due to their treatment, this is not unusual, as it is common for service members to be non-deployable for periods of time due to medical conditions such as pregnancy, orthopedic injuries, obstructive sleep apnea, appendicitis, gall bladder disease, infectious disease, and myriad other conditions. For example, the RAND Report estimated that at the time of the report, 14 percent of the active Army personnel—or 50,000 active duty soldiers—were ineligible to deploy for legal, medical, or administrative reasons.

23. The Working Group also addressed the psychological health and stability of transgender people. In addition to taking into account the conclusions of the RAND Report, the Working Group concluded, based on discussions with medical experts and others, that being transgender is not a psychological disorder. While some transgender people experience gender dysphoria, that condition is resolved with appropriate medical care. In addition, the Working Group noted the positive track record of transgender people in civilian employment, as well as the positive experiences of commanders with transgender service members in their units.

24. The Working Group also concluded that transgender service members would have ready access to any relevant necessary medication while deployed in combat settings. It determined that military policy and practice allows service members to use a range of medications, including hormones, while in such settings. The MHS has an effective system for distributing prescribed medications to deployed service members across the globe, including those in combat settings.

25. The Working Group also concluded that banning service by openly transgender persons would require the discharge of highly trained and experienced service members, leaving unexpected vacancies in operational units and requiring the expensive and time-consuming recruitment and training of replacement personnel.

26. The Working Group also concluded that banning service by openly transgender persons would harm the military by excluding qualified individuals based on a characteristic with no relevance to a person's fitness to serve.

27. I concluded my service as USD P&R on April 8, 2016. By that time, the Working Group was unanimously resolved that transgender personnel should be permitted to serve openly in the military.

**REVERSAL OF POLICY**

28. On July 26, 2017, President Donald Trump issued a statement that transgender individuals will not be permitted to serve in any capacity in the Armed Forces. On August 25, 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security to reverse the policy adopted in June 2016 that permitted military service by openly transgender persons. That memorandum stated: "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."

29. President Trump's stated rationale for a ban on military service by openly transgender service members is unfounded and refuted by the comprehensive investigation and review performed by the Working Group.

30. In addition to contravening the Working Group's conclusions and the exhaustive supporting evidence that was collected, I believe that prohibiting transgender individuals from serving openly in the military is harmful to the public interest for several reasons. My belief is based on my experience as USD P&R and in other leadership positions within DoD, and upon my active duty experience in Iraq.

31. First, a prohibition on service by openly transgender individuals would degrade military readiness and capabilities. Many military units include transgender service members who are highly trained and skilled and who perform outstanding work. Separating these service

members will deprive our military and our country of their skills and talents.

32. Second, banning military service by openly transgender persons would impose significant costs that far outweigh the minimal cost of permitting them to serve. A study authored in August 2017 by the Palm Center and professors associated with the Naval Postgraduate School estimated that separating transgender service members currently serving in the military would cost $960 million, based on the costs of recruiting and training replacements. A true and correct copy of the August 2017 Palm Center study is attached hereto at Exhibit A.

33. Third, the sudden and arbitrary reversal of the DoD policy allowing openly transgender personnel to serve will cause significant disruption and thereby undermine military readiness and lethality. This policy bait-and-switch, after many service members disclosed their transgender status in reliance on statements from the highest levels of the chain of command, conveys to service members that the military cannot be relied upon to follow its own rules or maintain consistent standards.

34. Fourth, in addition to the breach of transgender service members' trust resulting in the deprivation of their careers and livelihood, the President's policy reversal will cause other historically disadvantaged groups in the military, including women and gay and lesbian service members, to question whether their careers and ability to serve as equal members of the military may also be sacrificed.

35. Fifth, those serving in our Armed Forces are expected to perform difficult and dangerous work. The President's reversal of policy puts tremendous additional and unnecessary stress on transgender service members, their command leaders, and those with whom they serve.

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36. In short, the President's reversal of the policy permitting military service by openly transgender individuals has had, and will continue to have, a deleterious effect on readiness, force morale, and trust in the chain of command in the Armed Services.

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 18, 2018

Brad R. Carson

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT**
**ESTERN DISTRICT OF ASHIN TON AT SEATTLE**

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| RYAN KARNOSKI, et al.,<br><br>*Plaintiffs*,<br><br>v.<br><br>DONALD J. TRUMP, in his official capacity as President of the United States, et al.,<br><br>*Defendants*. | Case No. 2-17-cv-01297-MJP<br><br>**DECLARATION OF ASHLEY BROAD AY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY UD MENT** |

I, Ashley Broadway, declare as follows:

1. I have actual knowledge of the matters stated in this declaration.

2. The American Military Partner Association ("AMPA") is a 501(c)(3) non-profit organization based in Washington, D.C. With more than 50,000 members and supporters across the country and around the world, AMPA is the nation's largest organization of lesbian, gay, bise ual, and transgender ("LGBT") military families and their allies. AMPA's mission is to connect, support, honor, and serve the partners, spouses, families, and allies of America's LGBT service members and veterans.

3. I serve as the President of AMPA. I am married to a service member, and we are raising two beautiful children. My spouse, Heather, and I spent the first fourteen years of our relationship under the threat of a 1993 statute commonly referred to as "Don't Ask, Don't Tell" ("DADT"), which allowed for the discharge of lesbian, gay, and bise ual service members based

solely on their se ual orientation. Living in the shadows of that policy, and e periencing first-hand the toll that the threat of discharge can take on families, made me passionate about furthering AMPA's mission first as a founding board member, and currently, as its President. AMPA's goal is to make sure that not one more service member, spouse, or child has to live in fear of having the service member's career ended, their family life turned upside down, or their financial security stripped because of who that service member is, rather than what kind of soldier they are.

4. AMPA began in 2009 as a "Campaign for Military Partners" by Servicemembers United, an organization focused on repealing DADT. When DADT was repealed in 2011, Servicemembers United wound down its affairs and AMPA was formed AMPA incorporated in 2012. The partners of active duty service members founded AMPA to connect the families of LGBT service members and veterans, support them through the challenges of military-related and post-military life, and advocate on their behalf. AMPA provides assistance and education to veterans and their spouses in accessing the benefits earned through military service. It also advocates for policy changes to improve the lives of LGBT service members, veterans, and their families.

5. AMPA's members include transgender individuals currently serving in the United States military, including for e ample, U.S. Army Chief Warrant Officer Lindsey Muller, U.S. Army Staff Sergeant Cathrine Schmid, U.S. Navy Petty Officer Second Class Phillip Stephens, and U.S. Navy Petty Officer Second Class Megan Winters, who also are plaintiffs in the present lawsuit. AMPA's members also include transgender individuals who wish to access into the military, including for e ample Ryan Karnoski, who is also a plaintiff in the present lawsuit. AMPA sues on behalf of its individual transgender members who are directly affected by the ban on open service by transgender men and women in the military.

6. After President Trump tweeted on July 26, 2017 that the government would not allow transgender individuals to serve in the military "in any capacity," we were flooded with

in uiries from panicked service members and their families, whose professional and personal lives were being upended.

7. Many transgender service members have arranged their personal, professional, and family lives around the desire to serve their country. Some families rely solely or primarily on the transgender service member as the family breadwinner, while the other spouse devotes all of his or her energy to raising their family. Many of those families also rely on the military for health care coverage for the spouse and children, some of whom may have serious medical conditions and an urgent need for secure access to health coverage.

8. Raising a family while serving in the military already re uires great sacrifice. Some service members must spend significant time away from their family, and some families have had to cope with fre uent moves to follow the service member's career. Laying those sacrifices to waste by arbitrarily discharging transgender service members feels particularly cruel to us, because our work is a constant reminder that it is not just the service member who loses under this discriminatory ban, but their spouse and children too. The career trajectory of a service member before that discharge can never be fully restored after the fact nor can the family stability that was lost when the service member loses the career in which the entire family has invested.

9. If not permanently enjoined, the ban on open service by transgender men and women will have other harmful effects such as destabilizing family finances by shunting the costs of medical care onto the family of the discharged service member. Where other families can securely rely on the service member's military employment for health coverage, the families of transgender service members will have to manage with fewer resources for their household and children. That harm is compounded by the President's directive that, absent limited e ceptions, transgender service members be denied transition-related surgery after March of this year. Whereas other families could take this coverage for granted, transgender service members and their families will either have to do without medically necessary care, or make do without the family resources that now must be diverted to medical bills.

10. If the ban on open service by transgender individuals is not permanently enjoined, AMPA's transgender members in the military will suffer significant and direct harms that will ripple throughout the entire family of those transgender members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 30th, 2018

Ashley Broadway-Mack

Ashley Broadway, President
The American Military Partner Association

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Supplemental 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 on June 26, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Peter C. Renn
Peter C. Renn