

1 I, Andrew E. Carmichael, swear under penalty of perjury under the laws of the United
2 States to the following:

3 1. I am a Trial Attorney at the United States Department of Justice and counsel of
4 record for Defendants in this action. I submit this declaration in support of Defendants' Motion
5 to Stay Compliance with the Court's Order and Stay Discovery of the President of the United
6 States Pending Resolution of Petition for Writ of Mandamus.

7 2. Attached to this declaration as Exhibit 1 is a true and correct copy of the
8 declaration of Gineen Bresso, General Counsel of the Office of Administration.

9 3. Attached to this declaration as Exhibit 2 is a true and correct copy of the
10 declaration of Robert Easton, Director of the Office of Litigation Counsel.

11
12 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
13 and correct.

14
15 EXECUTED this 31st day of July, 2018.

16 */s/ Andrew E. Carmichael*
17 Andrew E. Carmichael
18 Trial Attorney
19 United States Department of Justice
20 Civil Division, Federal Programs Branch
21 20 Massachusetts Ave., N.W.
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25 *Counsel for Defendants*

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Exhibit 1 to Andrew Carmichael Declaration

Declaration of Gineen Bresso, dated July 31, 2018

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

NO. 2:17-CV-1297-MJP

**DECLARATION OF GINEEN
BRESSO IN SUPPORT OF
DEFENDANTS' MOTION TO STAY
COMPLIANCE WITH THE COURT'S
ORDER PENDING RESOLUTION OF
PETITION FOR WRIT OF
MANDAMUS**

I, Gineen Bresso, do hereby state and declare as follows:

1. I currently hold the position of General Counsel of the Office of Administration. I have held this position since July 10, 2017. As General Counsel of the Office of Administration, my responsibilities include advising and assisting the Office of Administration on a wide variety of matters, including on records management, litigation, and management of discovery for the Executive Office of President.
2. I submit this declaration in response to the Court's July 27, 2018 Order Granting Motion to Compel and Denying Motion for a Protective Order, Dkt. 299. I base this declaration on my personal knowledge, information made available to me in the

performance of my official duties, and my knowledge of the issues being litigated in the above-captioned case.

3. On December 29, 2017, Plaintiffs in the above-captioned litigation served their first set of requests for production on the President. In this first set of requests, Plaintiffs directed 25 separate requests for documents to the Executive Office of the President. Many of these requests specifically targeted information subject to the presidential communications privilege. For example, request 6 sought “[a]ll Documents and Communications relating to, including all drafts of, the August 25, 2017, memorandum entitled ‘Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security.’” Request 7 sought “[a]ll Documents and Communications related to President Trump’s consultation with employees, agents, contractors, or consultants of the United States Armed Forces regarding transgender military service or related healthcare.” And request 10 sought “[f]or the period starting January 20, 2017 up to and including July 28, 2017, all Communications between any member of Congress and President Trump or any individual within the Executive Office of the President concerning military service by transgender people or healthcare for current or prospective transgender service members, and any Documents constituting, summarizing, reflecting, or evidencing such Communications.”
4. In response to these requests and separate requests for production in the related cases of *Doe v. Trump*, No. 17-cv-1597 (D.D.C.), and *Stone v. Trump*, No. 1:17-cv-02459 (D. Md.), White House staff took the following steps: (i) notified all White House staff of the need to preserve information and data relevant to the litigation, including information beyond what White House staff are required to preserve under the Presidential Records Act; (ii) identified 41 custodians who might have information responsive to these requests; (iii) identified for each custodian what information may be responsive to the requests; (iv) collected approximately 114,000 documents that were potentially responsive to Plaintiffs’ requests from these custodians; (v) loaded these potentially responsive documents into a litigation database; (vi) reviewed the potentially

responsive documents to determine which ones were actually responsive to Plaintiffs' requests; and (vii) reviewed the documents that were responsive to Plaintiffs' requests for privileged information. In total, this collection and review process took 17 White House staff members (including 12 attorneys) hundreds of hours over more than six weeks to complete.

5. In conjunction with this collection and review process, White House staff created a privilege log to record the documents being withheld and the justifications for their withholding. *See* Exh. A. This privilege log recorded approximately 3,600 documents that were being withheld for various privileges, including the presidential communications privilege. The creation of this log required an attorney to review each document, ascertain if privileges applied, and identify those privileges that did apply. To describe the nature of the documents without revealing any privileged information, as permitted under Federal Rule of Civil Procedure 26(b)(5)(A)(ii), the documents were grouped into 52 separate categories, and the attorneys creating the privilege log included a description of each category of documents, instead of a more specific description of each individual document. For example, one category of documents is described on the privilege log as containing "Discussions between senior White House policy aides and other members of the Executive Office of the President as to the formulation or implementation of the President's policies regarding military lethality and readiness and the service of transgender individuals in the military leading up to a policy recommendation to the President, which predate a final policy decision on transgender individuals' service in the military" from January 20, 2017 through July 25, 2017. *See* Exh. A at 3. The attorneys creating the privilege log also included descriptions of the authors and recipients and their titles, instead of specific identities. For example, some categories of documents were sent to "Senior members of the National Security Council or their staffers or other EOP or DOD Staffers" from "Senior members of the National Security Council or their staffers or other EOP or DOD Staffers." *See* Exh. A at 3-4. This categorical privilege log was provided to the

Plaintiffs in the above-captioned case as well as the plaintiffs in the related litigation. In total, the creation of this privilege log took 13 White House staff members (including 11 attorneys) hundreds of hours to complete.

6. On April 26, 2018, Plaintiffs served their second set of requests for production on the President. In this second set of requests, Plaintiffs made an additional 10 requests for documents from the Executive Office of the President. For example, request 32 sought “[a]ll Documents or Communications relating or referring to President Trump’s March 23, 2018, Memorandum for the Secretary of Defense and the Secretary of Homeland Security with Subject: Military Service by Transgender Individuals (the ‘March 23, 2018, Memorandum’), including without limitation: (a) all documents reviewed, considered, or relied upon in preparing the March 23, 2018, Memorandum; and (b) all drafts of the March 23, 2018, Memorandum.” Request 33 sought “[a]ll Documents or Communications reflecting, referring, or relating to any policies that were considered as alternatives, modifications, or refinements to the policies set forth in the March 23, 2018, Memorandum.” And request 34 sought “[a]ll Communications, on or after January 20, 2017 to the present, between the President, the Executive Office of the President, the Vice President, and/or the Office of the Vice President, on the one hand, and Secretary Mattis and/or the Department of the Defense, on the other hand, relating or referring to military service by transgender people, public policy regarding transgender people, medical treatment for transgender people, and/or transgender people in general.”
7. In response to this second set of requests from Plaintiffs, and further requests for production in one of the related cases, *Stone v. Trump*, No. 1:17-cv-02459 (D. Md.), White House staff repeated the efforts described in paragraph 4 above. In total, this second collection and review process took 10 White House staff members (including six attorneys) hundreds of hours to complete.
8. In conjunction with this second collection and review process, the Office of the President supplemented its prior privilege log. *See* Exh. B. This supplemental privilege

log recorded approximately 5,500 additional documents that were being withheld for various privileges, including the presidential communications privilege. The creation of this log once again required attorneys to review each document, ascertain if privileges applied, and identify those privileges that did apply. And again, to describe the nature of the documents without revealing any privileged information as permitted under Federal Rule of Civil Procedure 26(b)(5)(A)(ii), the documents were grouped into separate categories (66 in the supplemental privilege log) and the attorneys creating the privilege log included a description of each category of documents, instead of a more specific description of each individual document. For example, one category of documents contains “Discussions between senior members or staffers of the National Security Council and other members of the Executive Office of the President or Department of Defense as part of the development of a recommendation to the President regarding the implementation of his policy concerning the service of transgender individuals in the military” from August 26, 2017 through February 12, 2018. *See* Exh. B at 5. The attorneys creating the privilege log also included descriptions of the authors and recipients and their titles, instead of specific identities. For example, some categories of documents were sent to “Senior member of the WH Domestic Policy Council or other EOP Staffer (including some attorneys)” from “Senior member of the WH Domestic Policy Council or other EOP Staffer (including some attorneys).” *See* Exh. B at 4–5. This supplemental privilege log was then provided to the Plaintiffs. In total, the creation of this supplemental privilege log took 10 White House staff members (including six attorneys) hundreds of hours to complete.

9. The Court’s July 27, 2018 Order requires the Office of the President to revise its supplemental privilege log and to “(a) identify individual author(s) and recipient(s); and (b) include *specific, non-boilerplate* privilege descriptions *on a document-by-document basis*...within 10 days of that date of [the] Order.” This Order would require the creation of a new privilege log that records the required information for approximately 9,000 individual entries instead of 66 categorical ones. This task is expected to require

at least twice as much time as the creation of the first two logs combined and would require the White House to reallocate staff away from other pressing responsibilities. Given the limited resources available within the Executive Office of the President, it would be virtually impossible to create a document-by-document privilege log in the short time period required by the Court's Order.

10. As explained in paragraphs 5 and 8 above, the Office of the President has created privilege logs to comply with Federal Rule of Civil Procedure 26(b)(5)(A)(ii), which requires a party to describe the nature of the requested discovery without revealing any information that is itself privileged or protected. The Court's order requires the Office of the President to "(a) identify individual author(s) and recipient(s); and (b) include specific, non-boilerplate privilege descriptions on a document-by-document basis." Revealing information that is itself subject to the presidential communications privilege would reveal the inner workings of the President's deliberative process and would be disruptive of the President's decision making and performance of his constitutional responsibilities.

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

Executed this 31st day of July 2018, Washington, D.C.



GINEEN BRESSO
General Counsel
Office of Administration

Exhibit A to Gineen Bresso Declaration

Privilege Log, served June 4, 2018

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

104	(Generally pre-decisional) emails and documents drafted by senior members of the National Security Council in order to advise the President regarding the formulation and implementation of his policy concerning the service of transgender individuals in the military and to deliberate re same	7/26/2017-8/25/2017	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Presidential Communications Privilege (in many cases, also covered by Deliberative Process Privilege, Attorney Client Privilege, or Work Product Privilege)	Discussions between senior members or staffers of the National Security Council and other members of the Executive Office of the President or Department of Defense as part of the development of a recommendation to the President regarding the impact of the service of transgender individuals on military lethality and readiness, which predate a final policy decision on transgender individuals' service in the military; emails and documents discussing confidential legal advice concerning anticipated or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
6	(Generally pre-decisional) emails and documents drafted by senior members of the National Security Council in order to advise the President regarding the implementation of his policy concerning the service of transgender individuals in the military and to deliberate re same	8/26/2017-1/4/2018	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Presidential Communications Privilege (in many cases, also covered by Deliberative Process Privilege, Attorney Client Privilege, or Work Product Privilege)	Discussions between senior members or staffers of the National Security Council and other members of the Executive Office of the President or Department of Defense as part of the development of a recommendation to the President regarding the implementation of his policy concerning the service of transgender individuals in the military; emails and documents discussing confidential legal advice concerning anticipated or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
8	Emails and documents drafted by attorneys within the White House Counsel's Office, the Executive Office of the President's Office of Administration, and the Department of Justice regarding discovery in the four pending cases challenging the 8/25/2017 Presidential Memorandum	11/3/2017-1/8/2018	Attorneys from WHCO, OA, or DOJ	Attorneys from WHCO, OA, or DOJ	Work Product (in many cases, also covered by Attorney Client Privilege or Deliberative Process Privilege)	Emails and documents drafted in anticipation of litigation or for pending litigation, as the attorneys within the White House Counsel's Office, the Executive Office of the President's Office of Administration, or the Department of Justice discussed how to meet their discovery obligations in the four pending suits challenging the 8/25/2017 Presidential Memorandum; emails and documents from Attorneys from WHCO, OA, or DOJ providing or seeking confidential legal advice concerning the four pending suits; emails and documents reflecting WHCO deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
113	Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress	1/20/2017-7/25/2017	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs
109	Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress	7/26/2017-8/25/2018	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs
185	Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress	8/26/2017-1/10/2018	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs
15	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with DOD staff regarding interactions with Congress (and members of Congress) and advancing the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military before Congress	7/11/2017-9/12/2017	Members of the President's Legislative Affairs team and/or DOD staff	Members of the President's Legislative Affairs team and/or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with DOD regarding legislative efforts impacting the service of transgender individuals in the military
26	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD staff regarding the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military	1/25/2017-7/25/2017	Members and staff of the National Security Council or DOD staff	Members and staff of the National Security Council or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD regarding the service of transgender individuals in the military (in some cases, leading up to giving advice to the President)
35	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD staff regarding the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military	7/26/2017-1/3/2018	Members and staff of the National Security Council or DOD staff	Members and staff of the National Security Council or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD regarding the service of transgender individuals in the military (in some cases, leading up to giving advice to the President)
26	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality and the service of transgender individuals in the military	1/20/2017-7/25/2017	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation; emails and documents prepared in anticipation of litigation, at the direction of counsel, concerning the service of transgender individuals in the military
27	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality and the service of transgender individuals in the military	7/26/2017-8/25/2017	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege or Work Product Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
65	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality, the service of transgender individuals in the military, and implementation of the 8/25/2017 Presidential Memorandum	8/26/2017-1/9/2018	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege, and in some cases also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning pending litigation; emails and documents prepared for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
67	Emails and documents touching on military service by transgender individuals drafted by members of the White House Staff, National Security Council Staff, and agency staff as part of the Staff Secretary or National Security Council Executive Secretary process in order to advise the President or to produce a document for Presidential signing or review	6/16/2017-9/19/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Presidential Communications Privilege (in most cases, also covered by Deliberative Process Privilege; in some cases, also covered by Attorney Client Privilege, or Work Product Privilege)	Emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President, which predate a final policy decision on transgender individuals' service in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military

34	Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including materials that were ultimately reviewed by the President and records of his briefings	1/20/2017-7/25/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning anticipated litigation; emails and documents prepared in anticipation of litigation, at the direction of counsel, concerning the service of transgender individuals in the military
37	Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including drafts of the 8/25/2017 Presidential Memorandum, including materials that were ultimately reviewed by the President and records of his briefings	7/26/2017-8/25/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
14	Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including materials that were ultimately reviewed by the President and records of his briefings	8/26/2017-10/6/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning pending litigation; emails and documents prepared for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
50	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	1/20/2017-7/25/2017	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
251	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	7/26/2017-8/25/2017	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
29	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	8/26/2017-1/11/2018	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
19	Pre-decisional emails and documents drafted by White House Policy Staff and outside parties from whom they solicited information for use in advising the President	1/20/2017-8/25/2017	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Policy staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
2	Pre-decisional emails and documents drafted by White House Policy Staff and outside parties from whom they solicited information for use in advising the President	8/26/2017-1/11/2018	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Policy staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations in some cases, these communications would lead up to advice to the President

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

Exhibit B to Gineen Bresso Declaration

Privilege Log, served July 16, 2018

# of Documents*	Description**	Date Range	To	From	Primary Privilege Asserted	Privilege Description
239	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding the policies governing transgender individuals' service in the military and regarding anticipated litigation	1/20/2017-7/25/2017	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys in anticipation of litigation during the period when the President and his advisors were deliberating regarding whether to implement the 2016 Secretary of Defense Memorandum; deliberations occurred in anticipation of litigation and included assessments of litigation risk; emails and documents to and from attorneys in the White House Counsel's Office seeking and providing confidential legal advice concerning transgender individuals' service in the military and the 2016 Secretary of Defense Memorandum; emails and documents reflecting White House Counsel's Office legal deliberations concerning issues surrounding transgender individuals' service in the military, which predate a policy decision on transgender individuals' service in the military
218	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding the formulation of the 8/25 Presidential Memorandum and regarding anticipated litigation, including drafts of the 8/25/2017 Presidential Memorandum	7/26/2017-8/8/2017	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys in anticipation of litigation regarding the drafting, form, and legality of the 8/25/2017 Presidential Memorandum; emails and documents to and from attorneys in the White House Counsel's Office seeking and providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and anticipated litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum, which predate the issuance of the 8/25/2017 Presidential Memorandum
124	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding policies governing the formulation of the 8/25 Presidential Memorandum and regarding pending litigation, including drafts of the 8/25/2017 Presidential Memorandum	8/9/2017-8/25/2017	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys after litigation had commenced (the Doe Complaint was filed 8/9/2017) regarding the drafting, form, and legality of the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents to and from attorneys in the White House Counsel's Office providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum, which predate the issuance of the 8/25/2017 Presidential Memorandum
836	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding the implementation of the 8/25 Presidential Memorandum and regarding pending litigation	8/26/2017-1/9/2018	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys after litigation had commenced regarding pending litigation and regarding the implementation of the 8/25/2017 Memorandum; emails and documents to and from attorneys in the White House Counsel's Office providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum and legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
433	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding the implementation of the 8/25 Presidential Memorandum, the formulation of the 3/23 Presidential Memorandum, and regarding pending litigation	1/10/2018 - 2/9/2018	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys after litigation had commenced regarding pending litigation and regarding the implementation of the 8/25/2017 Memorandum and formulation of the 3/23/2018 Memorandum; emails and documents to and from attorneys in the White House Counsel's Office providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum and legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military.
388	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding the formulation of the 3/23 Presidential Memorandum and regarding pending litigation	2/10/2018 - 3/23/2018	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys after litigation had commenced regarding pending litigation and regarding the formulation of the 3/23/2018 Memorandum; emails and documents to and from attorneys in the White House Counsel's Office providing confidential legal advice concerning the 3/23/2018 Presidential Memorandum and pending litigation.
241	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Office of Legal Counsel to deliberate regarding the formulation, form and legality, and implementation of the 8/25/2017 Presidential Memorandum, including drafts of the 8/25/2017 Presidential Memorandum	6/30/2017 - 8/25/2017	WHCO and OLC Attorneys	WHCO and OLC Attorneys (in some cases, attorneys from DOD or from other DOJ components are also recipients or cc ed)	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys in anticipation of litigation, or after litigation had commenced, assessing the form and legality of the 8/25/2017 Presidential Memorandum and implementation thereof; emails and documents to and from attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Office of Legal Counsel seeking and providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum, which predate the issuance of the 8/25/2017 Presidential Memorandum; emails and documents reflecting White House Counsel's Office deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
85	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Office of Legal Counsel to deliberate regarding the formulation, form and legality, and implementation of the 3/23/2018 Presidential Memorandum, including drafts of the 3/23/2018 Presidential Memorandum	8/26/2017 - 3/23/2018	WHCO and OLC Attorneys	WHCO and OLC Attorneys (in some cases, attorneys from DOD or from other DOJ components are also recipients or cc ed)	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys after litigation had commenced assessing the implementation of the 8/25/2017 Presidential Memorandum and the form and legality of the 3/23/2018 Presidential Memorandum and implementation thereof; emails and documents to and from attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Office of Legal Counsel seeking and providing confidential legal advice concerning the 3/23/2018 Presidential Memorandum; emails and documents reflecting White House Counsel's Office deliberations concerning the 3/23/2018 Presidential Memorandum, which predate the issuance of the 3/23/2018 Presidential Memorandum; emails and documents reflecting White House Counsel's Office deliberations concerning legal issues surrounding transgender individuals' service in the military.
458	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Civil Division regarding pending litigation	8/9/2017-1/11/2018	WHCO and DOJ-Civil Division Attorneys (and, occasionally, attorneys from other DOJ components or from DOD)	WHCO and DOJ-Civil Division Attorneys (and, occasionally, attorneys from other DOJ components or from DOD)	Work Product (in many cases, also covered by Attorney Client Privilege, Deliberative Process Privilege, and Presidential Communications Privilege)	Emails and documents drafted by attorneys during pending litigation regarding litigation strategy, updates, and filings; emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Civil Division seeking and providing confidential legal advice concerning pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
372	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Civil Division regarding pending litigation	1/12/2018 - 3/23/2018	WHCO and DOJ-Civil Division Attorneys (and, occasionally, attorneys from other DOJ components or from DOD)	WHCO and DOJ-Civil Division Attorneys (and, occasionally, attorneys from other DOJ components or from DOD)	Work Product (in many cases, also covered by Attorney Client Privilege, Deliberative Process Privilege, and Presidential Communications Privilege)	Emails and documents drafted by attorneys during pending litigation regarding litigation strategy, updates, and filings; emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Civil Division seeking and providing confidential legal advice concerning pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning legal issues surrounding transgender individuals' service in the military, many of which predate a final policy decision on transgender individuals' service in the military

16	(Generally pre-decisional) emails and documents drafted by senior members of the President's Domestic Policy Council to deliberate with other EOP staffers regarding the formulation and implementation of the President's policy concerning the service of transgender individuals in the military and in order to advise the President re same	8/26/2017 - 1/28/2018	Senior member of the WH Domestic Policy Council or other EOP Staffer (including some attorneys)	Senior member of the WH Domestic Policy Council or other EOP Staffer (including some attorneys)	Presidential Communications Privilege (in many cases, also covered by Deliberative Process Privilege, Attorney Client Privilege, or Work Product Privilege)	Discussions between senior White House policy aides and other members of the Executive Office of the President as to the implementation of the President's policies regarding military lethality and readiness and the service of transgender individuals in the military leading up to policy recommendations to the President, which predate a final policy decision on transgender individuals' service in the military; emails and documents discussing confidential legal advice concerning anticipated or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
44	(Generally pre-decisional) emails and documents drafted by senior members of the President's Domestic Policy Council to deliberate with other EOP staffers regarding the formulation and implementation of the President's policy concerning the service of transgender individuals in the military and in order to advise the President re same	1/29/2018 - 2/25/2018	Senior member of the WH Domestic Policy Council or other EOP Staffer (including some attorneys)	Senior member of the WH Domestic Policy Council or other EOP Staffer (including some attorneys)	Presidential Communications Privilege (in many cases, also covered by Deliberative Process Privilege, Attorney Client Privilege, or Work Product Privilege)	Discussions between senior White House policy aides and other members of the Executive Office of the President as to the implementation of the President's policies regarding military lethality and readiness and the service of transgender individuals in the military leading up to policy recommendations to the President, which predate a final policy decision on transgender individuals' service in the military; emails and documents discussing confidential legal advice concerning anticipated or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
78	(Generally pre-decisional) emails and documents drafted by senior members and staff of the National Security Council in order to advise the President regarding the formulation and implementation of his policy concerning the service of transgender individuals in the military and to deliberate re same	1/20/2017- 7/25/2017	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Presidential Communications Privilege (in many cases, also covered by Deliberative Process Privilege, Attorney Client Privilege, or Work Product Privilege)	Discussions between senior members or staffers of the National Security Council and other members of the Executive Office of the President or Department of Defense as part of the development of a recommendation to the President regarding the impact of the service of transgender individuals on military lethality and readiness, which predate a final policy decision on transgender individuals' service in the military; emails and documents discussing confidential legal advice concerning anticipated litigation; emails and documents prepared in anticipation of litigation, at the direction of counsel, concerning the service of transgender individuals in the military
136	(Generally pre-decisional) emails and documents drafted by senior members of the National Security Council in order to advise the President regarding the formulation and implementation of his policy concerning the service of transgender individuals in the military and to deliberate re same	7/26/2017- 8/25/2017	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Presidential Communications Privilege (in many cases, also covered by Deliberative Process Privilege, Attorney Client Privilege, or Work Product Privilege)	Discussions between senior members or staffers of the National Security Council and other members of the Executive Office of the President or Department of Defense as part of the development of a recommendation to the President regarding the impact of the service of transgender individuals on military lethality and readiness, which predate a final policy decision on transgender individuals' service in the military; emails and documents discussing confidential legal advice concerning anticipated or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
10	(Generally pre-decisional) emails and documents drafted by senior members of the National Security Council in order to advise the President regarding the implementation of his policy concerning the service of transgender individuals in the military and to deliberate re same	8/26/2017- 2/12/2018	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Senior members of the National Security Council or their staffers or other EOP or DOD Staffers	Presidential Communications Privilege (in many cases, also covered by Deliberative Process Privilege, Attorney Client Privilege, or Work Product Privilege)	Discussions between senior members or staffers of the National Security Council and other members of the Executive Office of the President or Department of Defense as part of the development of a recommendation to the President regarding the implementation of his policy concerning the service of transgender individuals in the military; emails and documents discussing confidential legal advice concerning anticipated or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
122	Emails and documents drafted by attorneys within the White House Counsel's Office, the Executive Office of the President's Office of Administration, and the Department of Justice regarding discovery in the four pending cases challenging the 8/25/2017 Presidential Memorandum	11/3/2017- 2/6/2018	Attorneys from WHCO, OA, or DOJ	Attorneys from WHCO, OA, or DOJ	Work Product (in many cases, also covered by Attorney Client Privilege or Deliberative Process Privilege)	Emails and documents drafted in anticipation of litigation or for pending litigation, as the attorneys within the White House Counsel's Office, the Executive Office of the President's Office of Administration, or the Department of Justice discussed how to meet their discovery obligations in the four pending suits challenging the 8/25/2017 Presidential Memorandum; emails and documents from Attorneys from WHCO, OA, or DOJ providing or seeking confidential legal advice concerning the four pending suits; emails and documents reflecting WHCO deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
142	Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress	1/20/2017- 7/25/2017	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs
144	Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress	7/26/2017- 8/25/2017	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs
248	Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress	8/26/2017- 1/16/2018	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs
24	Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress	1/17/2018 - 3/22/2018	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs
59	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with DOD staff regarding interactions with Congress (and members of Congress) and advancing the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military before Congress	7/11/2017- 3/23/2018	Members of the President's Legislative Affairs team and/or DOD staff	Members of the President's Legislative Affairs team and/or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with DOD regarding legislative efforts impacting the service of transgender individuals in the military
45	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD staff regarding the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military	1/25/2017- 7/25/2017	Members and staff of the National Security Council or DOD staff	Members and staff of the National Security Council or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD regarding the service of transgender individuals in the military (in some cases, leading up to giving advice to the President)
43	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD staff regarding the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military	7/26/2017- 1/3/2018	Members and staff of the National Security Council or DOD staff	Members and staff of the National Security Council or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD regarding the service of transgender individuals in the military (in some cases, leading up to giving advice to the President)

57	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD staff regarding the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military, including regarding the formulation of the 3/23/2018 Presidential Memorandum	1/4/2018 - 3/23/2018	Members and staff of the National Security Council or DOD staff	Members and staff of the National Security Council or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD regarding the service of transgender individuals in the military (in some cases, leading up to giving advice to the President), including the formulation of the 3/23/2018 Presidential Memorandum.
28	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality and the service of transgender individuals in the military	1/20/2017-7/25/2017	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege, and in some cases also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation; emails and documents prepared in anticipation of litigation, at the direction of counsel, concerning the service of transgender individuals in the military
30	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality and the service of transgender individuals in the military	7/26/2017-8/25/2017	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege, and in some cases also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
91	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality, the service of transgender individuals in the military, and implementation of the 8/25/2017 Presidential Memorandum	8/26/2017-1/9/2018	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege, and in some cases also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning pending litigation; emails and documents prepared for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
104	Emails and documents touching on military service by transgender individuals drafted by members of the White House Staff, National Security Council Staff, and agency staff as part of the Staff Secretary or National Security Council Executive Secretary process in order to advise the President or to produce a document for Presidential signing or review	6/16/2017-9/19/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Presidential Communications Privilege (in most cases, also covered by Deliberative Process Privilege; in some cases, also covered by Attorney Client Privilege, or Work Product Privilege)	Emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President, which predate a final policy decision on transgender individuals' service in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
41	Emails and documents touching on military service by transgender individuals drafted by members of the White House Staff, National Security Council Staff, and agency staff as part of the Staff Secretary or National Security Council Executive Secretary process in order to advise the President or to produce a document for Presidential signing or review	9/20/2017 - 3/23/2018	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Presidential Communications Privilege (in most cases, also covered by Deliberative Process Privilege; in some cases, also covered by Attorney Client Privilege, or Work Product Privilege)	Emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President, which predate a final policy decision on transgender individuals' service in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
39	Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including materials that were ultimately reviewed by the President and records of his briefings	1/20/2017-7/25/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning anticipated litigation; emails and documents prepared in anticipation of litigation, at the direction of counsel, concerning the service of transgender individuals in the military
48	Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including drafts of the 8/25/2017 Presidential Memorandum, including materials that were ultimately reviewed by the President and records of his briefings	7/26/2017-8/25/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
28	Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including materials that were ultimately reviewed by the President and records of his briefings.	8/26/2017-10/6/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning pending litigation; emails and documents prepared for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military
61	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	1/20/2017-7/25/2017	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
408	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	7/26/2017-8/25/2017	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations. In some cases, these communications would lead up to advice to the President
64	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	8/26/2017-1/11/2018	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President

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

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

Exhibit 2 to Andrew Carmichael Declaration

Declaration of Robert Easton, dated July 31, 2018

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 2:17-cv-1297-MJP

**DECLARATION OF ROBERT E.
EASTON IN SUPPORT OF
DEFENDANTS' MOTION TO
STAY COMPLIANCE WITH THE
COURT'S ORDER PENDING
RESOLUTION OF PETITION
FOR WRIT OF MANDAMUS**

DECLARATION OF ROBERT E. EASTON

I, Robert E. Easton, do hereby declare as follows:

1. I currently serve as the Director, Office of Litigation Counsel, within the Department of Defense ("DoD") Office of General Counsel. I have held this position since 2006. In this capacity, I supervise the conduct and oversight of litigation of Departmental significance, including matters involving senior Department of Defense (DoD) leaders, and to coordinate litigation among the Military Departments, Defense Agencies, and Field Activities.

2. In the exercise of my official duties, I have been made aware of this lawsuit and the three other cases involving the DoD policy on service by transgender individuals.

3. I submit this declaration in response to the Court's July 27, 2018 Order Granting Plaintiffs' Motion to Compel and Denying Defendants' Motion for Protective Order, Dkt. 299 ("Order"). I base this declaration on my personal knowledge and on information made available to me in the performance of my official duties.

Background

4. On December 29, 2017, Plaintiffs served their first set of requests for production on DoD. Plaintiffs sought 25 separate categories of documents. Many of these requests specifically targeted information subject to the deliberative process privilege. For example, Request 15 sought "[a]ll documents or communications relating to Secretary of Defense Ash Carter's Directive Type Memo 16-005, issued on June 30, 2016, regarding transgender military service and related healthcare." Request 23 sought "All Documents or Communications relating to the reasons, grounds, or bases for the decision set forth in a June 30, 2017, Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff from Secretary James Mattis with Subject: Accession of Transgender Individuals in the Military Services."

5. On April 26, 2018, Plaintiffs served a second set of requests for production. This set sought an additional 10 categories of documents from DoD. Like the first set, many of these requests specifically targeted information subject to the deliberative process privilege. For example, Request 27 sought all "[d]ocuments or Communications relating or referring to Secretary James Mattis's February 22, 2018, Memorandum for the President with Subject: Military Service by Transgender Individuals (the "February 22, 2018, Memorandum"), including without limitation: (a) all documents reviewed, considered, or relied upon in preparing the February 22, 2018, Memorandum; and (b) all drafts of the February 22, 2018, Memorandum."

Request 28 sought “[a]ll Documents or Communications reflecting, referring, or relating to any policies that were considered as alternatives, modifications, or refinements to the policies set forth in the final draft of the February 22, 2018, Memorandum.” Request 30 sought “[a]ll Documents or Communications reflecting, referring, or relating to any policies that were considered as alternatives, modifications, or refinements to the policies set forth in the Report and Recommendations.”

Purpose of this Declaration

6. This declaration is submitted in support of Defendants’ motion to stay the Court’s July 27, 2018 Order. That Order requires that Defendants “turn over those documents that have been withheld solely under the deliberative process privilege within 10 days.” It also requires that Defendants produce revised privilege logs that “(a) identify individual author(s) and recipient(s); and (b) include *specific, non-boilerplate* privilege descriptions *on a document-by-document basis*,” also within 10 days.

Information Subject to the Deliberative Process Privilege

7. The discovery sought by Plaintiffs in this case has been extremely broad. The current DoD policy on military service by transgender individuals has been under development since the Obama administration, and internal deliberative discussions regarding the policy began in earnest as far back as 2015. Several of Plaintiff’s Requests for Production span nearly three years of policy development and reach multiple components of DoD, including each of the Military Services, the Office of the Secretary of Defense (OSD), and the Defense Health Agency (DHA). For example, in Request 14, Plaintiffs sought “[a]ll Documents and Communications relating to the RAND Report.” In Request #23, Plaintiff’s sought “[a]ll Documents or Communications relating to the reasons, grounds, or bases for the decision set forth in a June 30, 2017, Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of

Staff from Secretary James Mattis with Subject: Accession of Transgender Individuals in the Military Services.”

8. In response to these and Plaintiffs’ other broad Requests, OSD alone has identified 33,395 responsive documents. In addition, the uniformed Services performed their own searches for responsive materials. They identified and collected hundreds of thousands of responsive documents in this case. From the outset, discovery in this case has consumed vast amounts of resources and manpower to meet the timelines established by the Court.

9. Of the 33,395 responsive documents maintained by OSD alone, 28,704 documents have been identified as protected by the deliberative process privilege. A subset of these documents (8,934) are attorney work product or are also protected by other privileges including the attorney-client privilege. That leaves 19,770 responsive documents that are protected only by the deliberative process privilege and thus must be produced under the Court’s Order.

10. The Order requires disclosure of highly sensitive deliberative material reflecting the pre-decisional thought processes of very senior DoD officials. For example, one document consists of a lengthy memo from the Deputy Secretary of Defense, dated June 28, 2017, in which he provides candid advice to the Secretary on DoD’s transgender policy (DOD00096903/USDOE00219987) and the cover letter (DOD00004685/USDOE000083257) on which there are handwritten notes by the Secretary. Another, consisting of a draft letter to the President, reflects the Secretary’s thoughts on the developing transgender policy (DOD00084379/USDOE00304412). A third example is an email from a senior DoD official to the Under Secretary of Defense for Personnel and Readiness advising him on several courses of action and providing a book of policy options to consider before the formulation of the original DoD transgender policy in 2016 (DoD00003993/USDOE00075584). A fourth example is a read

ahead that the Secretary received prior to his briefing from the Under Secretary of Defense for Personnel and Readiness and the Deputy Secretary of Defense on the recommendations from the Panel of Experts (DoD0088408/USDOE00208679). A fifth and final example is a memorandum from the Secretary of the Air Force to the Deputy Secretary of Defense dated May 31, 2017 describing the Air Force's experience under the DoD transgender policy at the time (AF_0008131). Each of these examples reflects deliberations at the most senior levels of the Department concerning the history and future of the Department's approach to service by transgender individuals. Such sensitive information should not be disclosed without a careful document-by-document review that assesses both the heightened burden for such release and the effect of disclosure on senior leaders' decision-making process.

11. Before any privileged documents can be produced, however, they must be reviewed again so that deliberative and pre-decisional information that is not relevant to this case can be redacted. Many deliberative and pre-decisional documents that contain responsive information also contain information that is not material to this case, but until these documents are reviewed, we cannot know exactly how many such documents there are. The information collected in this case dates back nearly three years and therefore includes deliberative information not relevant to this litigation that is closely comingled with relevant and responsive, privileged information. Documents withheld pursuant to the deliberative process privilege may contain, among other things, information that relates to disciplinary activities, other activities by DoD offices, and other legal materials. For example, a document listed on DoD privilege log 14 includes information on a DoD policy for recruiting and retention of individuals with critical skills who are non-U.S. citizens (DoD00037586/USDOE00198236). Another document on DoD privilege log 14 includes non-relevant information for a press briefing that also includes

information on the DoD transgender policy (DoD00084191/USDOE00202679). And on DoD privilege log 5, a document consisting of a May 2016 communication about service members who gave consent to share their personal information with a state service organization also includes relevant deliberative information concerning the DoD transgender policy (/DoD00011181/USDOE00089089). Each of these examples reflects types of non-responsive information that is prevalent and comingled with responsive transgender material.

12. In addition, due to global operations with varying degrees of classification within DoD, some non-responsive information contained in responsive documents is considered Controlled Unclassified Information (“CUI”).¹ CUI may include draft briefings to senior DoD leaders on various initiatives, draft policy, pre-decisional commentary on various DoD policies, or commentary on foreign government activities. CUI can be comingled with other information relevant to the DoD transgender policy and responsive to Plaintiffs’ Requests. Both the CUI and the information regarding the DoD transgender policy can be deliberative and pre-decisional. For example, a document listed on privilege log 14 is considered CUI because it concerns high-level deliberations and the DoD’s strategic response to protests in Iran (DoD00082773/USDOE00201495). Another document on privilege log 14 is considered CUI because it contains information regarding deliberation on activities in Afghanistan and deliberations regarding North Korea (DoD00083928/ USDOE00202327). For these reasons, documents containing CUI that have been withheld pursuant to the deliberative process privilege must be reviewed again and redacted before they can be produced under the Order.

13. In addition to concerns about CUI, some responsive documents identified as deliberative and pre-decisional contain classified information. There are approximately 974

¹ See generally *DoD Information Security Program: Controlled Unclassified Information (CUI)*, DoDM 5200.01, Volume 4, February 24, 2012.

documents that contain information responsive to Plaintiffs' requests but were withheld solely pursuant to the deliberative process privilege and that are currently and properly classified SECRET or SECRET//NOFORN.² The presence of this information was disclosed to Plaintiffs in a privilege log served on June 22, 2018. These documents contain classified information that is closely comingled with transgender policy material. Declassification of these records, review and segregation of non-responsive material, and production to Plaintiffs cannot under any circumstance occur within the Order's prescribed 10-day timeline.

14. The Court's Order also presents practical obstacles. The Office of Litigation Counsel (OLC), which handles discovery-related matters for OSD, has only six attorneys and two paralegals. In addition to the transgender litigation, these attorneys and paralegals are responsible for many other ongoing cases of importance to DoD. In extraordinary circumstances, OLC can obtain the assistance of up to four additional attorneys and staff in the Office of General Counsel who work on litigation involving the Freedom of Information Act (FOIA), but to do so would impair DoD's ability to timely satisfy its obligations in ongoing FOIA litigation. Typically, OLC obtains litigation support when needed from the Military Services, but in this case, the Military Services require all of their assigned personnel to comply with the Service's own obligations in litigation related to the military's transgender policy. In light of these personnel limitations, the review and segregation of all non-responsive material, including CUI and classified information, from the 19,770 responsive documents are not feasible within the ten-day timeline ordered by the Court.

15. In addition to the above logistical, production, and personnel concerns, and perhaps most importantly, release of DoD information protected by the deliberative process

² See generally Exec. Order No. 12,356 (Apr. 2, 1982).

privilege would have a substantial and immediate chilling effect on policy deliberation and development within DoD. The DoD decision-making apparatus is reliant on open and candid conversations between leadership, advisors, and policy analysts to advise and inform DoD policy makers across the military services on various courses of action for any decision. Due to the geographically dispersed nature of DoD activities and the high operational tempo with which many of the Department's activities are conducted, deliberative and pre-decisional conversations frequently occur over email. The forced release of such communications would directly and immediately impair the open and candid discussions occurring at both the operational and strategic level if participants knew that their thoughts, impressions, and opinions on various topics, both related to DoD transgender policy and other non-transgender policies, would be open to scrutiny, regardless of any judicial protective order.

16. Indicative of the DoD decision making process, to address issues surrounding military service by transgender individuals, the Secretary established a Panel of Experts comprised of the Under Secretaries of the Military Departments (or officials performing their duties), the Armed Services Vice Chiefs (including the Vice Commandant of the U.S. Coast Guard), and the Armed Services Senior Enlisted Advisors and chaired by the Under Secretary of Defense for Personnel and Readiness (or an official performing those duties). The Panel received input from transgender service members, commanders of transgender service members, military medical professionals, and civilian medical professionals with experience in the care and treatment of individuals with gender dysphoria. Participants in this panel were encouraged to speak candidly and openly about their experiences and opinions. This input was understood to be confidential. The input from service members included perspectives from enlisted personnel and junior officers and from across the uniformed services.

17. The Panel also received input from various working groups to more fully inform its opinions. The Transgender Service Policy Working Group, which was comprised of medical and personnel experts from across DoD, developed policy recommendations and various implementation plans for the Panel's consideration. The Medical and Personnel Executive Steering Committee, a standing group of the Surgeons General and Service Personnel Chiefs, provided the Panel with an analysis of accession standards, a multi-disciplinary review of relevant data, and information about medical treatment for gender dysphoria and gender transition-related medical care. The groups reported regularly to the Panel and responded to numerous queries for information and analysis to support the Panel's review and deliberations. In so doing, these groups were asked to provide candid and honest analysis.

18. The disclosure of deliberative, pre-decisional input, analysis, and opinions from these individuals would breach DoD's commitment to maintain the confidentiality of their honest deliberations regarding the sensitive topic of transgender service and would irreparably harm DoD's ability to obtain candid and honest input on any subject in the future, not just the subject of transgender service.

19. Without assurance that their opinions on aspects of transgender policy would be protected from disclosure, individuals will be much more likely to withhold their participation and honest views in the future. This is especially true given the high-profile and controversial nature of this issue, as well as the allegations of irrational discriminatory treatment made by Plaintiffs against DoD. Subject matter experts, including those with battlefield experience, will decline to lend their unique expertise for fear that they would be subject to unfair accusations and opprobrium. As a result, DoD's decision-making process would suffer because it would not

benefit from the practical first-hand experiences of those most qualified to opine on unique aspects of military experience.

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

EXECUTED this 31st day of July 2018, Arlington, VA.

A handwritten signature in black ink, reading "Robert E. Easton", written in a cursive style. The signature is positioned above a solid horizontal line.

ROBERT E. EASTON
Director, Office of Litigation Counsel