



U.S. Department of Justice
Civil Division, Appellate Staff
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December 20, 2017

Mark Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., NW
Washington, DC 20001

RE: *Doe v. Trump*, No. 17-5267 (D.C. Cir.)

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j), we write in response to Plaintiffs' letter of December 19, 2017. Plaintiffs contend that United States Military Entrance Processing Command (USMEPCOM) Policy Memorandum 2-5 undercuts the government's explanation that rushed compliance with the January 1 deadline will harm our armed forces. That accusation misses the mark for at least two reasons.

First, all that this memorandum shows is that the military is scrambling to comply with the injunction by, *inter alia*, issuing guidance. That should come as no surprise to plaintiffs—who invoked recent Defense Department statements to make the precise argument they advance now, *see* Opp. 17-18—and “says nothing about whether the process will unduly burden [the military] by ... resulting in the accession of individuals who are not prepared for the rigors of military duties,” Mot. Reply 8. As military leadership explained, proper implementation of the Carter policy requires providing adequate “guidance, resources, and training.” Add. 108. Memorandum 2-5 is an effort to furnish some guidance, but it is no substitute for the training necessary to ensure that the Carter policy is implemented properly. Indeed, in a December 19, 2017 USMEPCOM clarifying memorandum (attached), the military established a framework for providing responses to medical inquiries from recruiters “[d]ue to the complexity of this new medical standard.” Obviously, it would be far preferable to thoroughly train recruiters rather than

point them to a hotline. Our armed forces should not be prejudiced by attempting to do all that they can to comply with a court order on a rushed deadline.

Second, Memorandum 2-5 has no bearing on the fact that the district court precluded Secretary Mattis from deferring implementation of the Carter policy, wholly apart from the President's directive, to study the issue further, just as he did in June 2017. Even adopting plaintiffs' erroneous assumption that rushed compliance would not harm military readiness, Secretary Mattis cannot, without risking contempt, exercise his independent authority to give the military more time to consider a momentous change to its accession standards. That alone is a significant injury to our armed forces.

Sincerely,

/s/ Catherine Dorsey

Catherine H. Dorsey
Attorney, Appellate Staff

cc: all counsel via CM/ECF

encl.



DEPARTMENT OF DEFENSE
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MECD

DEC 19 2017

MEMORANDUM FOR SECTOR COMMANDERS
BATTALION COMMANDERS
MEPS COMMANDERS
DIRECTORS AND SPECIAL STAFF OFFICERS

SUBJECT: Clarifying Guidance to USMEPCOM Policy Memorandum 2-5, Transgender Applicant Processing

References:

- (a) United States Military Entrance Processing Command Policy Memorandum 2-5, "Transgender Applicant Processing," dated December 8, 2017.
- (b) Deputy Secretary of Defense Memorandum, "Medical Standards for Appointment, Enlistment, or Induction of Transgender Applicants into the Military Services," dated December 8, 2017.
- (c) USMEPCOM Regulation 40-1, "Medical Qualification Program," dated July 24, 2017.
- (d) Army Regulation 601-270/OPNAVINST 1100.4C CH-2/AFI 36-2003/MCO 1100.75/COMDTINST M. 1100.2E, "Military Entrance Processing Station," RAR dated September 13, 2011.

PURPOSE. This memorandum provides clarifying guidance to Reference (a). This memorandum does not cancel or replace Reference (a). This clarifying guidance memorandum shall remain in effect until Reference (a) is expressly revoked.

APPLICABILITY. This clarifying guidance applies to all USMEPCOM personnel and activities.

CLARIFYING POLICY GUIDANCE.

Processing: USMEPCOM policy on processing is not intended to eliminate the recruiter's ability to perform preliminary screening of applicants as allowed in existing policy and regulations. This policy guidance was intended to emphasize the use of existing access to local MEPS medical departments, enabling recruiting personnel to obtain answers to questions concerning an applicant's medical condition(s) in accordance with USMEPCOM Regulation, Medical Qualification Program (UMR 40-1), para 2-1a-d, "MEPS Dial-A-Doc/Email-A-Doc" programs. Due to the complexity of this new medical standard, the use of these existing programs will ensure recruiters are making an informed preliminary screening determination on medical conditions that were previously disqualifying.

MEPS Medical Departments will ensure timely response to recruiter inquires through the Dial-A-Doc/Email-A-Doc programs. As outlined in Reference (c) medical inquiries that require

additional policy clarification will be forwarded to the MEPCOM Operations Center (MOC) through the established MOC ticket system.

The point of contact for operational aspects of this policy is the Accession Division, J-3/MEOP-AD, (847) 688-3680 ext. 7519, email osd.north-chicago.usmepcom.list.hq-j3-meop-accession-division@mail.mil. The point of contact for all medical related questions is the Clinical Operations Division, J-7/MEMD-COD, (847) 688-3680 ext. 7132, email osd.north-chicago.usmepcom.list.hq-j7-memd-clinical-ops-div@mail.mil.



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