

[NOT YET SCHEDULED FOR ORAL ARGUMENT]

No. 18-5257

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JANE DOE 2, et al.,
Plaintiffs-Appellees,

v.

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

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX, VOLUME I (pp. 1-579)
Public Appendix—Material Under Seal in Separate Supplement

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**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-01597-CKK**

DOE et al v. TRUMP et al
Assigned to: Judge Colleen Kollar-Kotelly
Case in other court: USCA, 17-05267
USCA, 18-05257

Cause: 42:1983 Civil Rights Act

Non-Party Respondent

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Date Filed: 08/09/2017
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

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Theresa Roosevelt
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Plaintiff

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Plaintiff

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Plaintiff

JOHN DOE, 1

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ATTORNEY TO BE NOTICED

Plaintiff

JANE DOE 6

represented by **Kevin Matthew Lamb**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Alan E. Schoenfeld
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ATTORNEY TO BE NOTICED

Paul R.Q. Wolfson

Plaintiff

JANE DOE 7

represented by **Kevin Matthew Lamb**
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Alan E. Schoenfeld
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Paul R.Q. Wolfson
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Plaintiff

JOHN DOE 2

represented by **Kevin Matthew Lamb**
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Alan E. Schoenfeld
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ATTORNEY TO BE NOTICED

Paul R.Q. Wolfson
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ATTORNEY TO BE NOTICED

V.

Defendant

DONALD J. TRUMP
*in his official capacity as President of the
United States*

represented by **Andrew Evan Carmichael**
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TERMINATED: 06/07/2018

Defendant

JAMES N. MATTIS
*in his official capacity as Secretary of
Defense*

represented by **Andrew Evan Carmichael**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
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Defendant

JOSEPH F. DUNFORD, JR.
*in his official capacity as Chairman of the
Joint Chiefs of Staff*

represented by **Andrew Evan Carmichael**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

**UNITED STATES DEPARTMENT
OF THE ARMY**

represented by **Andrew Evan Carmichael**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

RYAN D. MCCARTHY
*in his official capacity as Secretary of the
Army*
TERMINATED: 04/06/2018

represented by **Andrew Evan Carmichael**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

**UNITED STATES DEPARTMENT
OF THE AIR FORCE**

represented by **Andrew Evan Carmichael**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

HEATHER A. WILSON
*in her official capacity as Secretary of the
Air Force*

represented by **Andrew Evan Carmichael**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

UNITED STATES COAST GUARD

represented by **Andrew Evan Carmichael**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

ELAINE C. DUKE
*in her official capacity as Secretary of
Homeland Security*
TERMINATED: 04/06/2018

represented by **Andrew Evan Carmichael**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

UNITED STATES OF AMERICA

represented by **Andrew Evan Carmichael**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

**UNITED STATES DEPARTMENT
OF THE NAVY**

represented by **Andrew Evan Carmichael**
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ATTORNEY TO BE NOTICED

Ryan Bradley Parker
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TERMINATED: 06/07/2018

Defendant

DEFENSE HEALTH AGENCY

represented by **Andrew Evan Carmichael**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
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TERMINATED: 06/07/2018

Defendant

RICHARD V. SPENCER
*in his official capacity as Secretary of the
Navy*

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

RAQUEL C. BONO
*in her official capacity as Director of the
Defense Health Agency*

represented by **Andrew Evan Carmichael**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

MARK T. ESPER

*In his Official Capacity as Secretary of
the Army*

represented by **Andrew Evan Carmichael**
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Ryan Bradley Parker
(See above for address)
TERMINATED: 06/07/2018

Defendant

KIRSTJEN M. NIELSEN

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Homeland Security*

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TERMINATED: 06/07/2018

Movant

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FAMILY PHYSICIANS**

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Movant

**AMERICAN ACADEMY OF
NURSING**

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Movant

**AMERICAN COLLEGE OF
PHYSICIANS**

represented by **Scott B. Wilkens**
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Movant

**AMERICAN MEDICAL WOMEN'S
ASSOCIATION**

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Movant

**AMERICAN NURSES
ASSOCIATION**

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Movant

**ASSOCIATION OF MEDICAL
SCHOOL PEDIATRIC
DEPARTMENT CHAIRS**

represented by **Scott B. Wilkens**
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Movant

ENDOCRINE SOCIETY

represented by **Scott B. Wilkens**
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Movant

**GLMA: HEALTH PROFESSIONALS
ADVANCING LGBT EQUALITY**

represented by **Scott B. Wilkens**
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ATTORNEY TO BE NOTICED

Movant

**NATIONAL ASSOCIATION OF
SOCIAL WORKERS**

represented by **Scott B. Wilkens**
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Movant

PEDIATRIC ENDOCRINE SOCIETY

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Movant

**WORLD PROFESSIONAL
ASSOCIATION FOR
TRANSGENDER HEALTH**

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Movant

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Movant

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Amicus

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HAWAII

Amicus

ILLINOIS

Amicus

IOWA

Amicus

MARYLAND

Amicus

NEW MEXICO

Amicus

NEW YORK

Amicus

OREGON

Amicus

PENNSYLVANIA

Amicus

RHODE ISLAND

Amicus

VERMONT

Amicus

RETIRED MILITARY OFFICERS
AND FORMER NATIONAL
SECURITY OFFICIALS

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Date Filed	#	Docket Text
08/09/2017	<u>1</u>	COMPLAINT <i>for Declaratory and Injunctive Relief</i> , against ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Filing fee \$ 400 receipt number 0090-5066975) filed by JANE DOE 3, JANE DOE 2, JANE DOE 1, JANE DOE 4, JANE DOE 5. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons – Trump, # <u>3</u> Summons – Mattis, # <u>4</u> Summons – Dunford, # <u>5</u> Summons – U.S. Army, # <u>6</u> Summons – McCarthy, # <u>7</u> Summons – U.S. Air Force, # <u>8</u> Summons – Wilson, # <u>9</u> Summons – U.S. Coast Guard, # <u>10</u> Summons – Duke, # <u>11</u> Summons – U.S.A.)(Wolfson, Paul) (Entered: 08/09/2017)
08/09/2017	<u>2</u>	MOTION to Proceed Under Pseudonyms , by JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5 (Attachments: # <u>1</u> Text of Proposed Order)(Wolfson, Paul) (Entered: 08/09/2017)
08/09/2017		Case Assigned to Judge Colleen Kollar-Kotelly. (sth) (Entered: 08/11/2017)
08/10/2017	<u>3</u>	ORDER granting <u>2</u> Motion for Plaintiffs to proceed under pseudonyms. Signed by Judge Amy Berman Jackson on 8/10/17. (sth) (Entered: 08/11/2017)
08/11/2017	<u>4</u>	SUMMONS (9) Issued Electronically as to ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, HEATHER A. WILSON. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons, # <u>5</u> Summons, # <u>6</u> Summons, # <u>7</u> Summons, # <u>8</u> Summons, # <u>9</u> Summons)(sth) (Entered: 08/11/2017)
08/11/2017		SUMMONS Not Issued as to US Attorney and the US Attorney General. (sth) (Entered: 08/11/2017)

08/11/2017	<u>5</u>	ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY. Signed by Judge Colleen Kollar-Kotelly on 08/11/2017. (DM) (Entered: 08/11/2017)
08/11/2017	<u>6</u>	SEALED DOCUMENT filed by JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5(This document is SEALED and only available to authorized persons.)(Wolfson, Paul) (Entered: 08/11/2017)
08/30/2017	<u>7</u>	NOTICE of Appearance by Kevin Matthew Lamb on behalf of JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5 (Lamb, Kevin) (Entered: 08/30/2017)
08/30/2017	<u>8</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Alan E. Schoenfeld, :Firm- Wilmer Cutler Pickering Hale and Dorr LLP, :Address- 7 World Trade Center, 250 Greenwich Street, New York, NY 10007. Phone No. - 212-937-7294. Fax No. - 212-230-8888 Filing fee \$ 100, receipt number 0090-5096409. Fee Status: Fee Paid. by JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5 (Attachments: # <u>1</u> Declaration of Alan E. Schoenfeld In Support of Motion for Admission Pro Hac Vice, # <u>2</u> Text of Proposed Order)(Lamb, Kevin) (Entered: 08/30/2017)
08/30/2017		MINUTE ORDER GRANTING <u>8</u> Motion for Leave to Appear Pro Hac Vice of Attorney Alan E. Schoenfeld, in order for him to appear as co-counsel for Plaintiffs, contingent on said attorney filing a declaration certifying familiarity with this Court's Local Rules by no later than SEPTEMBER 6, 2017. Counsel shall promptly register for this Court's CM/ECF system. Signed by Judge Colleen Kollar-Kotelly on 8/30/2017. (lcckk3) (Entered: 08/30/2017)
08/31/2017	<u>9</u>	AMENDED COMPLAINT for Declaratory and Injunctive Relief, against ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES OF AMERICA, HEATHER A. WILSON, UNITED STATES DEPARTMENT OF THE NAVY, DEFENSE HEALTH AGENCY, RICHARD V. SPENCER, RAQUEL C. BONO filed by JANE DOE 2, JANE DOE 1, JANE DOE 3, JANE DOE 4, JANE DOE 5, DYLAN KOHERE, REGAN V. KIBBY, JOHN DOE, 1. (Attachments: # <u>1</u> Summons - U.S. Department of the Navy, # <u>2</u> Summons - Defense Health Agency, # <u>3</u> Summons - Raquel C. Bono, # <u>4</u> Summons - Richard V. Spencer)(Lamb, Kevin) (Entered: 08/31/2017)
08/31/2017	<u>10</u>	REQUEST FOR SUMMONS TO ISSUE (<i>Summons - Air Force</i>) re <u>9</u> Amended Complaint,, filed by JANE DOE 2, JANE DOE 1, JANE DOE 3, DYLAN KOHERE, JANE DOE 4, JOHN DOE, 1, REGAN V. KIBBY, JANE DOE 5. Related document: <u>9</u> Amended Complaint,, filed by DYLAN KOHERE, JANE DOE 3, JANE DOE 2, JANE DOE 1, JANE DOE 4, JANE DOE 5, JOHN DOE, 1, REGAN V. KIBBY. (Attachments: # <u>1</u> Summons - Army, # <u>2</u> Summons - Coast Guard, # <u>3</u> Summons - Duke, # <u>4</u> Summons - Dunford, # <u>5</u> Summons - Mattis, # <u>6</u> Summons - McCarthy, # <u>7</u> Summons - Trump, # <u>8</u> Summons - United States, # <u>9</u> Summons - Wilson)(Lamb, Kevin) (Entered: 08/31/2017)
08/31/2017	<u>11</u>	SEALED DOCUMENT filed by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE(This document is SEALED and only available to authorized persons.)(Lamb, Kevin) (Entered: 08/31/2017)
08/31/2017	<u>12</u>	NOTICE of Appearance by Ryan Bradley Parker on behalf of All Defendants (Parker, Ryan) (Entered: 08/31/2017)
08/31/2017	<u>13</u>	MOTION for Preliminary Injunction with 65.1(d) Expedited Request, by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Kevin M. Lamb, # <u>2</u> Exhibit A-F (Lamb Dec.), # <u>3</u> Declaration of Brad R. Carson, # <u>4</u> Exhibit A-C (Carson Dec.), # <u>5</u> Declaration of Deborah Lee James, # <u>6</u> Exhibit A-D (James Dec.), # <u>7</u> Declaration of Eric K. Fanning, # <u>8</u> Exhibit A-F (Fanning Dec.), # <u>9</u> Declaration of Raymond Edwin Mabus, Jr., # <u>10</u> Exhibit A-F (Mabus Dec.), # <u>11</u> Declaration of George Richard Brown, MD, DFAPA, # <u>12</u> Exhibit A-D (Brown Dec.), # <u>13</u> Declaration of Margaret C. Wilmoth, # <u>14</u> Declaration of Regan V. Kibby, # <u>15</u>

		Declaration of Dylan Kohere, # <u>16</u> Text of Proposed Order)(Lamb, Kevin) (Entered: 08/31/2017)
08/31/2017	<u>14</u>	MOTION for Hearing <i>Request for Expedited Hearing and Statement of Facts Making Expedition Essential</i> , by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE re <u>13</u> MOTION for Preliminary Injunction with <i>65.1(d) Expedited Request</i> , (Lamb, Kevin) Modified event title on 9/1/2017 (znmw). (Entered: 08/31/2017)
08/31/2017	<u>15</u>	SEALED MOTION FOR LEAVE TO FILE DOCUMENT UNDER SEAL filed by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (This document is SEALED and only available to authorized persons.) (Attachments: # <u>1</u> Declaration of Christopher R. Looney, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Text of Proposed Order (SEALED))(Lamb, Kevin) (Entered: 08/31/2017)
09/01/2017	<u>16</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Jennifer Levi, :Firm– GLBTQ Legal Advocates & Defenders, :Address– 30 Winter St., Ste. 800, Boston, Massachusetts 02108. Phone No. – 617–426–1350. Filing fee \$ 100, receipt number 0090–5099052. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration Jennifer Levi, # <u>2</u> Text of Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>17</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Shannon P. Minter, :Firm– National Center for Lesbian Rights, :Address– 870 Market St., Ste. 370, San Francisco, California 94102. Phone No. – 415–392–6257. Filing fee \$ 100, receipt number 0090–5099060. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Shannon P. Minter, # <u>2</u> Text of Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>18</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Mary L. Bonauto, :Firm– GLBTQ Legal Advocates & Defenders, :Address– 30 Winter St., Ste. 800, Boston, Massachusetts 02108. Phone No. – 617–426–1350. Filing fee \$ 100, receipt number 0090–5099075. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Mary L. Bonauto, # <u>2</u> Text of Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>19</u>	NOTICE of Filing of Supplemental Declaration of Alan E. Schoenfeld in Support of Motion for Admission Pro Hac Vice by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE re Order on Motion for Leave to Appear Pro Hac Vice, (Attachments: # <u>1</u> Declaration of Alan E. Schoenfeld)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017		MINUTE ORDER. The Court held a teleconference in this matter on September 1, 2017 to set a briefing schedule for Plaintiffs' <u>13</u> Application for a Preliminary Injunction. At the parties' request, the Court entered the following schedule: Defendants shall file an opposition to Plaintiffs' Application by no later than SEPTEMBER 22, 2017. Plaintiffs shall file a reply by no later than SEPTEMBER 29, 2017. The parties were also ordered to file a notice with the Court by no later than SEPTEMBER 6, 2017 indicating their positions as to whether the Court's consideration of Plaintiffs' preliminary injunction application should be consolidated with its final determination of the merits of the case. Signed by Judge Colleen Kollar-Kotelly on 9/1/2017. (lcckk3) (Entered: 09/01/2017)
09/01/2017	<u>20</u>	SUMMONS (5) Issued Electronically as to RAQUEL C. BONO, DEFENSE HEALTH AGENCY, RICHARD V. SPENCER, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA. (znmw) (Entered: 09/01/2017)
09/01/2017	<u>21</u>	SUMMONS (9) Reissued Electronically as to ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, HEATHER A. WILSON (znmw) (Entered: 09/01/2017)

09/01/2017	<u>22</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Christopher R. Looney, :Firm- Wilmer Cutler Pickering Hale and Dorr LLP, :Address- 60 State Street, Boston, MA 02109. Phone No. - 617-526-6313. Fax No. - 617-526-5000 Filing fee \$ 100, receipt number 0090-5100097. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Christopher R. Looney, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>23</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Nancy Lynn Schroeder, :Firm- Wilmer Cutler Pickering Hale and Dorr LLP, :Address- 350 S. Grand Avenue, Suite 2100, Los Angeles, CA 90071. Phone No. - (213) 443-5393. Fax No. - (213) 443-5400 Filing fee \$ 100, receipt number 0090-5100160. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Nancy Lynn Schroeder, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>24</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Adam M. Cambier, :Firm- Wilmer Cutler Pickering Hale and Dorr LLP, :Address- 60 State Street, Boston, MA 02109. Phone No. - 617-526-6262. Fax No. - 617-526-5000 Filing fee \$ 100, receipt number 0090-5100204. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Adam M. Cambier, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>25</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Christopher F. Stoll, :Firm- National Center for Lesbian Rights, :Address- 870 Market St., Ste. 370, San Francisco, California 94102. Phone No. - 415-392-6257. Filing fee \$ 100, receipt number 0090-5100239. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Christopher F. Stoll, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017		Minute Entry for proceedings held before Judge Amy Berman Jackson: Telephone Conference on the record held on 9/1/2017. Defendants' Response to <u>13</u> due by 9/22/2017. Plaintiffs' Reply due by 9/29/2017. Joint Status Report due by 9/6/2017. (Court Reporter Janice Dickman.) (dot) (Entered: 09/01/2017)
09/01/2017	<u>26</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Amy Whelan, :Firm- National Center for Lesbian Rights, :Address- 870 Market St., Ste. 370, San Francisco, California 94102. Phone No. - 415-392-6257. Filing fee \$ 100, receipt number 0090-5100283. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declration of Amy Whelan, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>27</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Kathleen M. Brill, :Firm- Foley Hoag LLP, :Address- 155 Seaport Boulevard, Boston, MA 02210. Phone No. - 617-832-1229. Filing fee \$ 100, receipt number 0090-5100368. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Kathleen M. Brill, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>28</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Rachel C. Hutchinson, :Firm- Foley Hoag LLP, :Address- 155 Seaport Boulevard, Boston, MA 02210. Phone No. - 617-832-3063. Filing fee \$ 100, receipt number 0090-5100387. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Rachel C. Hutchinson, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>29</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Claire Laporte, :Firm- Foley Hoag LLP, :Address- 155 Seaport Boulevard, Boston, MA 02210. Phone No. - 617-832-1210. Filing fee \$ 100, receipt number 0090-5100401. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of

		Claire Laporte, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>30</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Michael J. Licker, :Firm- Foley Hoag LLP, :Address- 155 Seaport Boulevard, Boston, MA 02210. Phone No. - 617-832-1197. Filing fee \$ 100, receipt number 0090-5100412. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Michael J. Licker, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>31</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Daniel L. McFadden, :Firm- Foley Hoag LLP, :Address- 155 Seaport Boulevard, Boston, MA 02210. Phone No. - 617-832-1293. Filing fee \$ 100, receipt number 0090-5100477. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Daniel L. McFadden, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/01/2017	<u>32</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Matthew E. Miller, :Firm- Foley Hoag LLP, :Address- 155 Seaport Boulevard, Boston, MA 02210. Phone No. - 617-832-3041. Filing fee \$ 100, receipt number 0090-5100489. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Matthew E. Miller, # <u>2</u> Proposed Order)(Lamb, Kevin) (Entered: 09/01/2017)
09/05/2017		MINUTE ORDER GRANTING <u>16</u> , <u>17</u> , <u>18</u> , <u>22</u> , <u>23</u> , <u>24</u> , <u>25</u> , <u>26</u> , <u>27</u> , <u>28</u> , <u>29</u> , <u>30</u> , <u>31</u> and <u>32</u> Motions for Leave to Appear Pro Hac Vice for Attorneys Jennifer Levi, Shannon P. Minter, Mary L. Bonauto, Christopher R. Looney, Nancy Lynn Schroeder, Adam M. Cambier, Christopher F. Stoll, Amy Whelan, Kathleen M. Brill, Rachel C. Hutchinson, Claire Laporte, Michael J. Licker, Daniel L. McFadden and Matthew E. Miller in order for them to appear as co-counsel for Plaintiffs. Counsel shall promptly register for this Court's CM/ECF system. Signed by Judge Colleen Kollar-Kotelly on 9/5/2017. (lcckk3) (Entered: 09/05/2017)
09/06/2017	<u>33</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Harriet Hoder, :Firm- Wilmer Cutler Pickering Hale & Dorr LLP, :Address- 60 State Street, Boston, MA 02109. Phone No. - 617-526-6203. Fax No. - 617-526-5000 Filing fee \$ 100, receipt number 0090-5104723. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Harriet Hoder, # <u>2</u> Text of Proposed Order)(Lamb, Kevin) (Entered: 09/06/2017)
09/06/2017	<u>34</u>	NOTICE regarding Consolidation of Plaintiffs' Motion for a Preliminary Injunction and the Merits of Plaintiffs' Claims by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Exhibit Presidential Memorandum regarding Military Service by Transgender Individuals)(Parker, Ryan) (Entered: 09/06/2017)
09/06/2017	<u>35</u>	RESPONSE TO ORDER OF THE COURT re Order,,, filed by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Wolfson, Paul) (Entered: 09/06/2017)
09/08/2017		MINUTE ORDER GRANTING <u>33</u> Motion for Leave to Appear Pro Hac Vice for Attorney Harriet Hoder in order for her to appear as co-counsel for Plaintiffs. Counsel shall promptly register for this Court's CM/ECF system. There are now 16 attorneys who are appearing pro hac vice on behalf of Plaintiffs. The Court notes that attorneys for Plaintiffs only need to move to appear pro hac vice before the Court if they are actually going to participate in Court proceedings. LCvR 83.2(d). Signed by Judge Colleen Kollar-Kotelly on 9/8/2017. (lcckk3) (Entered: 09/08/2017)
09/10/2017	<u>36</u>	ORDER Regarding Plaintiffs' <u>13</u> Application for a Preliminary Injunction, <u>14</u> Request for Expedited Hearing and <u>15</u> Motion for Leave to File Documents under Seal. Signed

		by Judge Colleen Kollar-Kotelly on 9/10/2017. (lcckk3) (Entered: 09/10/2017)
09/12/2017	<u>37</u>	Joint MOTION for Protective Order by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Text of Proposed Order)(Parker, Ryan) (Entered: 09/12/2017)
09/13/2017	<u>38</u>	ORDER granting <u>37</u> Motion for Protective Order. Signed by Judge Colleen Kollar-Kotelly on 9/13/17. (dot) (Entered: 09/18/2017)
09/20/2017	<u>39</u>	Unopposed MOTION for Extension of Time to <i>Respond to Plaintiffs' Motion for a Preliminary Injunction</i> , Unopposed MOTION for Briefing Schedule by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Text of Proposed Order)(Parker, Ryan) (Entered: 09/20/2017)
09/20/2017		MINUTE ORDER. The Court is in receipt of Defendants' <u>39</u> Unopposed Motion for Extension of Time to Respond to Plaintiffs' Motion for Preliminary Injunction and for Entry of a Briefing Schedule. Defendants request an additional two weeks to file their opposition to Plaintiffs' Application for Preliminary Injunction and a motion to dismiss. They also request a briefing schedule on these motions that would not be complete until October 27, 2017. The Court will GRANT-IN-PART Defendants' motion. The parties shall adhere to the following schedule: Defendants shall file their opposition to Plaintiffs' Application for Preliminary Injunction and Motion to Dismiss by no later than OCTOBER 2, 2017. Plaintiffs shall file a reply in support of their Application and an opposition to Defendants' Motion to Dismiss by no later than OCTOBER 13, 2017. Defendants shall file a reply in support of their Motion to Dismiss by no later than OCTOBER 20, 2017. Signed by Judge Colleen Kollar-Kotelly on 9/20/2017. (lcckk3) (Entered: 09/20/2017)
09/21/2017	<u>40</u>	REDACTED DOCUMENT- Declaration of Christopher R. Looney in Support of Plaintiffs' Application for Preliminary Injunction to <u>13</u> MOTION for Preliminary Injunction <i>with 65.1(d) Expedited Request</i> , <u>36</u> Order by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Lamb, Kevin) (Entered: 09/21/2017)
09/29/2017	<u>41</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. RAQUEL C. BONO served on 9/5/2017; DEFENSE HEALTH AGENCY served on 9/5/2017; ELAINE C. DUKE served on 9/5/2017; JOSEPH F. DUNFORD, JR. served on 9/6/2017; JAMES N. MATTIS served on 9/6/2017; RYAN D. MCCARTHY served on 9/5/2017; RICHARD V. SPENCER served on 9/6/2017; DONALD J. TRUMP served on 9/11/2017; UNITED STATES COAST GUARD served on 9/5/2017; UNITED STATES DEPARTMENT OF THE AIR FORCE served on 9/5/2017; UNITED STATES DEPARTMENT OF THE ARMY served on 9/5/2017; UNITED STATES DEPARTMENT OF THE NAVY served on 9/5/2017; UNITED STATES OF AMERICA served on 9/6/2017; HEATHER A. WILSON served on 9/5/2017 (Attachments: # <u>1</u> Summons Executed as to AirForce, # <u>2</u> Summons Executed as to Army, # <u>3</u> Summons Executed as to Bono, # <u>4</u> Summons Executed as to Coast Guard, # <u>5</u> Summons Executed as to DHA, # <u>6</u> Summons Executed as to Duke, # <u>7</u> Summons Executed as to Dunford, # <u>8</u> Summons Executed as to Mattis, # <u>9</u> Summons Executed as to McCarthy, # <u>10</u> Summons Executed as to Navy, # <u>11</u> Summons Executed as to Spencer, # <u>12</u> Summons Executed as to USA, # <u>13</u> Summons Executed as to Wilson, # <u>14</u> Proof of Service as to U.S. Attorney General, # <u>15</u> Proof of Service as to U.S. Attorney's Office - District of D.C., # <u>16</u> Certificate of Service)(Schoenfeld, Alan) (Entered: 09/29/2017)
09/29/2017	<u>42</u>	MOTION for Extension of Time to <i>Respond to Plaintiffs' Motion for a Preliminary Injunction</i> by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C.

		DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Exhibit Interim Guidance, # <u>2</u> Text of Proposed Order)(Parker, Ryan) (Entered: 09/29/2017)
09/29/2017		MINUTE ORDER. The Court is in receipt of Defendants' <u>42</u> Opposed Motion for Extension of Time to Respond to Plaintiffs' Motion for Preliminary Injunction. Defendants request an additional two days to file their opposition to Plaintiffs' Application for Preliminary Injunction because they need additional time to prepare declarations and for senior Executive Branch officials to review their forthcoming pleadings. Defendants represent that Plaintiffs oppose this extension, but no opposition has yet been filed. Because the record supporting Plaintiffs' motion is large and the requested extension is brief, the Court will GRANT Defendants' motion over Plaintiffs' objection. Defendants shall file their opposition to Plaintiffs' Application for Preliminary Injunction and Motion to Dismiss by no later than OCTOBER 4, 2017. This is the final extension that will be granted. Additionally, the Court notes that Defendants' motion is untimely. The Order Establishing Procedures in this case states that "[m]otions for extensions of time must be filed at least four (4) business days prior to the first affected deadline." ECF No. 5 at 3. The Court expects all future motions to be filed on time. If Plaintiffs require additional time, they may file their reply and opposition by OCTOBER 16, 2017. Signed by Judge Colleen Kollar-Kotelly on 9/29/2017. (lcckk3) (Entered: 09/29/2017)
09/29/2017		Set/Reset Deadlines: Defendants' Response to <u>13</u> due by 10/4/2017. Reply due by 10/16/2017. (dot) (Entered: 10/02/2017)
09/29/2017	43	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 9/5/2017., RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 9/11/2017. (Answer due for ALL FEDERAL DEFENDANTS by 11/10/2017.) (See Docket Entry <u>41</u> to view document). (znmw) (Entered: 10/02/2017)
10/04/2017	<u>44</u>	MOTION for Leave to File <i>Brief as Amici Curiae in Support of Plaintiffs on Behalf of Medical, Nursing, Mental Health, and Other Health Care Organizations</i> by AMERICAN ACADEMY OF FAMILY PHYSICIANS, AMERICAN ACADEMY OF NURSING, AMERICAN COLLEGE OF PHYSICIANS, AMERICAN MEDICAL WOMEN'S ASSOCIATION, AMERICAN NURSES ASSOCIATION, ASSOCIATION OF MEDICAL SCHOOL PEDIATRIC DEPARTMENT CHAIRS, ENDOCRINE SOCIETY, GLMA: HEALTH PROFESSIONALS ADVANCING LGBT EQUALITY, NATIONAL ASSOCIATION OF SOCIAL WORKERS, PEDIATRIC ENDOCRINE SOCIETY, WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH (Attachments: # <u>1</u> Brief of Amici Curiae Medical, Nursing, Mental Health, and Other Health Care Organizations in Support of Plaintiffs, # <u>2</u> Proposed Order)(Wilkins, Scott) (Entered: 10/04/2017)
10/04/2017	<u>45</u>	MOTION to Dismiss < by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Exhibit Interim Guidance, # <u>2</u> Declaration of Robert B. Chadwick, # <u>3</u> Declaration of Robert O. Burns, # <u>4</u> Text of Proposed Order)(Parker, Ryan) . (Entered: 10/04/2017)
10/04/2017	<u>46</u>	SEALED MOTION FOR LEAVE TO FILE DOCUMENT UNDER SEAL filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (This document is SEALED and

		only available to authorized persons.) (Attachments: # <u>1</u> Declaration as to Jane Doe 1, # <u>2</u> Declaration as to Jane Doe 2, # <u>3</u> Declaration as to Jane Doe 3, # <u>4</u> Declaration as to Jane Doe 4, # <u>5</u> Declaration as to Jane Doe 5, # <u>6</u> Declaration as to John Doe 1)(Parker, Ryan) (Entered: 10/04/2017)
10/04/2017	<u>47</u>	Memorandum in opposition to re <u>13</u> MOTION for Preliminary Injunction <i>with 65.1(d) Expedited Request</i> , filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (See Docket Entry <u>45</u> to view document). (znmw) (Entered: 10/05/2017)
10/05/2017		MINUTE ORDER. The Court has received Defendant's <u>46</u> Consent Motion for Leave to File Documents Under Seal. That motion seeks leave to file under seal certain declarations that "contain information identifying the Plaintiffs who are proceeding in this action under pseudonyms." The motion also indicates that Defendants have "requested that Plaintiffs' counsel propose redactions to the declarations that will allow them to be filed on the public record without placing the Plaintiffs' identities at risk of disclosure." Having considered the familiar <i>Hubbard</i> factors for sealing, and given that the Court has previously permitted Plaintiffs to proceed under pseudonyms to protect their anonymity, the <u>46</u> Motion shall be GRANTED. <i>See EEOC v. Nat'l Childrens Ctr. Inc.</i> , 98 F.3d 1406, 1409 (D.C. Cir. 1996) (listing factors). However, this ruling is CONTINGENT on the parties filing mutually agreeable redacted versions of the declarations at issue on the public docket by OCTOBER 20, 2017. Any content in these documents that would not expose the identities of the Plaintiffs shall be made publicly available. Signed by Judge Colleen Kollar-Kotelly on 10/5/2017. (lcckk1) (Entered: 10/05/2017)
10/05/2017	<u>48</u>	SEALED DOCUMENT (Declarations) re <u>47</u> Memorandum in Opposition, <u>45</u> MOTION to Dismiss <i>and Opposition to Plaintiffs' Motion for a Preliminary Injunction</i> filed by RYAN D. MCCARTHY, UNITED STATES COAST GUARD, RICHARD V. SPENCER, UNITED STATES DEPARTMENT OF THE ARMY, DONALD J. TRUMP, UNITED STATES OF AMERICA, RAQUEL C. BONO, UNITED STATES DEPARTMENT OF THE AIR FORCE, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, UNITED STATES DEPARTMENT OF THE NAVY, HEATHER A. WILSON, ELAINE C. DUKE. (This document is SEALED and only available to authorized persons.) (Attachments: # <u>1</u> Declaration as to Jane Doe 2, # <u>2</u> Declaration as to Jane Doe 3, # <u>3</u> Declaration as to Jane Doe 4, # <u>4</u> Declaration as to Jane Doe 5, # <u>5</u> Declaration as to John Doe 1)(znmw) (Entered: 10/06/2017)
10/11/2017	<u>49</u>	MOTION for Leave to File <i>Amicus Curiae Brief</i> by TREVOR PROJECT (Attachments: # <u>1</u> Exhibit Proposed Amicus Brief, # <u>2</u> Text of Proposed Order)(Hogan, Howard) (Entered: 10/11/2017)
10/16/2017	<u>50</u>	AMICUS BRIEF by MASSACHUSETTS (td) Modified on 10/16/2017 as to filer(s) (jf). (Entered: 10/16/2017)
10/16/2017	<u>51</u>	Unopposed MOTION for Leave to File <i>Declarations in Opposition to the Government's Motion to Dismiss and in Further Support of Plaintiffs' Application for Preliminary Injunction</i> by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Raymond Edwin Mabus, # <u>2</u> Declaration of Deborah Lee Jones, # <u>3</u> Declaration of Eric K. Fanning, # <u>4</u> Declaration of Mark J. Eitelberg, # <u>5</u> Declaration of George R. Brown)(Wolfson, Paul) (Entered: 10/16/2017)
10/16/2017	<u>52</u>	MOTION for Leave to File <i>Brief of Amici Curiae</i> by NATIONAL CENTER FOR TRANSGENDER EQUALITY, TENNESSEE TRANSGENDER POLITICAL COALITION, TGI NETWORK OF RHODE ISLAND, TRANSGENDER ALLIES GROUP, TRANSGENDER LEGAL DEFENSE & EDUCATION FUND, TRANSOHIO, TRANSGENDER RESOURCE CENTER OF NEW MEXICO, SOUTHERN ARIZONA GENDER ALLIANCE (Attachments: # <u>1</u> Proposed Brief of Amici Curiae, # <u>2</u> Text of Proposed Order)(Manning, Susan) (Entered: 10/16/2017)

10/16/2017	<u>53</u>	NOTICE of Appearance by Susan Baker Manning on behalf of NATIONAL CENTER FOR TRANSGENDER EQUALITY, SOUTHERN ARIZONA GENDER ALLIANCE, TENNESSEE TRANSGENDER POLITICAL COALITION, TGI NETWORK OF RHODE ISLAND, TRANSGENDER ALLIES GROUP, TRANSGENDER LEGAL DEFENSE & EDUCATION FUND, TRANSGENDER RESOURCE CENTER OF NEW MEXICO, TRANSOHIO (Manning, Susan) (Entered: 10/16/2017)
10/16/2017	<u>54</u>	NOTICE of Appearance by Stephanie Schuster on behalf of NATIONAL CENTER FOR TRANSGENDER EQUALITY, SOUTHERN ARIZONA GENDER ALLIANCE, TENNESSEE TRANSGENDER POLITICAL COALITION, TGI NETWORK OF RHODE ISLAND, TRANSGENDER ALLIES GROUP, TRANSGENDER LEGAL DEFENSE & EDUCATION FUND, TRANSGENDER RESOURCE CENTER OF NEW MEXICO, TRANSOHIO (Schuster, Stephanie) (Entered: 10/16/2017)
10/16/2017	<u>55</u>	Memorandum in opposition to re <u>45</u> MOTION to Dismiss <i>and Opposition to Plaintiffs' Motion for a Preliminary Injunction</i> filed by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Wolfson, Paul) (Entered: 10/16/2017)
10/20/2017	<u>56</u>	NOTICE of Filing Redacted Declarations by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Declaration of Brian Judge pertaining to Jane Doe 1, # <u>2</u> Declaration pertaining to Jane Doe 2, # <u>3</u> Declaration pertaining to Jane Doe 3, # <u>4</u> Declaration pertaining to Jane Doe 4, # <u>5</u> Declaration of Daniel Sitterly pertaining to Jane Doe 5, # <u>6</u> Declaration pertaining to John Doe 1)(Parker, Ryan) (Entered: 10/20/2017)
10/20/2017	<u>57</u>	REPLY to opposition to motion re <u>45</u> MOTION to Dismiss filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Parker, Ryan) (Entered: 10/20/2017)
10/23/2017	<u>58</u>	ERRATA <i>Correcting Defendants' Reply In Support of Their Motion to Dismiss</i> by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON <u>57</u> Reply to opposition to Motion, filed by RYAN D. MCCARTHY, UNITED STATES COAST GUARD, RICHARD V. SPENCER, UNITED STATES DEPARTMENT OF THE ARMY, DONALD J. TRUMP, UNITED STATES OF AMERICA, RAQUEL C. BONO, UNITED STATES DEPARTMENT OF THE AIR FORCE, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., UNITED STATES DEPARTMENT OF THE NAVY, JAMES N. MATTIS, HEATHER A. WILSON, ELAINE C. DUKE. (Attachments: # <u>1</u> Defendants' Corrected Reply in Support of Their Motion to Dismiss)(Parker, Ryan) (Entered: 10/23/2017)
10/23/2017	<u>59</u>	NOTICE of Appearance by Christopher F. Stoll on behalf of All Plaintiffs (Stoll, Christopher) (Entered: 10/23/2017)
10/30/2017	<u>60</u>	ORDER GRANTING-IN-PART and DENYING-IN-PART Defendants' <u>45</u> Motion to Dismiss and Plaintiffs' <u>13</u> Motion for Preliminary Injunction. Signed by Judge Colleen Kollar-Kotelly on 10/30/2017. (lcckk3) (Entered: 10/30/2017)
10/30/2017	<u>61</u>	MEMORANDUM OPINION Regarding <u>60</u> ORDER GRANTING-IN-PART and DENYING-IN-PART Defendants' <u>45</u> Motion to Dismiss and Plaintiffs' <u>13</u> Motion for Preliminary Injunction. Signed by Judge Colleen Kollar-Kotelly on 10/30/2017.

		(lcckk3) (Entered: 10/30/2017)
11/10/2017	<u>62</u>	Joint STATUS REPORT in Response to October 30, 2017 Order by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Wolfson, Paul) (Entered: 11/10/2017)
11/14/2017	<u>63</u>	ORDER Regarding the parties' <u>62</u> Joint Status Report. Signed by Judge Colleen Kollar-Kotelly on 11/14/2017. (lcckk3) (Entered: 11/14/2017)
11/14/2017	<u>64</u>	ORDER FOR INITIAL SCHEDULING CONFERENCE. Signed by Judge Colleen Kollar-Kotelly on 11/14/2017. (lcckk3) (Entered: 11/14/2017)
11/17/2017		MINUTE ORDER. The parties shall file their Joint Statement addressing all topics listed in Local Rule 16.3(c) by no later than NOVEMBER 21, 2017. Signed by Judge Colleen Kollar-Kotelly on 11/17/2017. (lcckk3) (Entered: 11/17/2017)
11/21/2017	<u>65</u>	MEET AND CONFER STATEMENT. (Wolfson, Paul) (Entered: 11/21/2017)
11/21/2017	<u>66</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>60</u> Order on Motion for Leave to File, Order on Motion to Dismiss,,, Order on Motion for Preliminary Injunction by JAMES N. MATTIS, RAQUEL C. BONO, ELAINE C. DUKE, DEFENSE HEALTH AGENCY, RYAN D. MCCARTHY, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES COAST GUARD, DONALD J. TRUMP, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, HEATHER A. WILSON, UNITED STATES OF AMERICA, JOSEPH F. DUNFORD, JR., RICHARD V. SPENCER. Fee Status: No Fee Paid. Parties have been notified. (Carmichael, Andrew) (Entered: 11/21/2017)
11/22/2017	<u>67</u>	MOTION to Clarify Court's Order of October 30, 2017 by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Carmichael, Andrew) (Entered: 11/22/2017)
11/22/2017	<u>68</u>	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals docketing fee was not paid because the appeal was filed by the government re <u>66</u> Notice of Appeal to DC Circuit Court,,. (td) (Entered: 11/22/2017)
11/27/2017	<u>69</u>	Memorandum in opposition to re <u>67</u> MOTION to Clarify Court's Order of October 30, 2017 filed by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Wolfson, Paul) (Entered: 11/27/2017)
11/27/2017	<u>70</u>	ORDER Regarding Defendants' <u>67</u> Motion for Clarification of the Court's October 30, 2017 Order. Signed by Judge Colleen Kollar-Kotelly on 11/27/2017. (lcckk3) (Entered: 11/27/2017)
11/28/2017	<u>71</u>	SCHEDULING AND PROCEDURES ORDER. Signed by Judge Colleen Kollar-Kotelly on 11/28/2017. (lcckk3) (Entered: 11/28/2017)
11/28/2017		Minute Entry for proceedings held before Judge Colleen Kollar-Kotelly: Initial Scheduling Conference held on 11/28/2017. Amended Pleadings due by 12/15/2017. Discovery due by 3/30/2018. Joint Discovery Plan due by 12/15/2017. Initial Disclosure due by 12/15/2017. Proponent's Rule 26(a)(2)(B)&(C) Disclosures due by 2/5/2018; Opponent's Rule 26(a)(2)(B)&(C) Disclosures due by 3/5/2018; and Replies, if any due by 3/12/2018. Status Conference set for 4/6/2018 at 10:00 AM in Courtroom 28A before Judge Colleen Kollar-Kotelly. (Court Reporter Richard Ehrlich.) (dot) (Entered: 11/28/2017)
11/30/2017	<u>72</u>	TRANSCRIPT OF SCHEDULING CONFERENCE before Judge Colleen Kollar-Kotelly held on November 28, 2017; Page Numbers: 1 – 31. Date of Issuance: November 30, 2017. Court Reporter/Transcriber Richard D. Ehrlich, Telephone number (202) 354-3269, Transcripts may be ordered by submitting the <u>Transcript Order Form</u>

		For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 12/21/2017. Redacted Transcript Deadline set for 12/31/2017. Release of Transcript Restriction set for 2/28/2018.(Ehrlich, Richard) (Entered: 11/30/2017)
12/01/2017		USCA Case Number 17-5267 for <u>66</u> Notice of Appeal to DC Circuit Court,, filed by RYAN D. MCCARTHY, UNITED STATES COAST GUARD, RICHARD V. SPENCER, UNITED STATES DEPARTMENT OF THE ARMY, DONALD J. TRUMP, UNITED STATES OF AMERICA, RAQUEL C. BONO, UNITED STATES DEPARTMENT OF THE AIR FORCE, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., UNITED STATES DEPARTMENT OF THE NAVY, JAMES N. MATTIS, HEATHER A. WILSON, ELAINE C. DUKE. (zrdj) (Entered: 12/04/2017)
12/06/2017	<u>73</u>	MOTION to Stay <i>Portion of Preliminary Injunction Pending Appeal</i> by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Declaration of Lernes J. Herbert, # <u>2</u> Text of Proposed Order)(Parker, Ryan) (Entered: 12/06/2017)
12/07/2017		MINUTE ORDER. The Court is in receipt of Defendants' <u>73</u> Motion for Partial Stay of Preliminary Injunction Pending Appeal. Plaintiff shall file a response by no later than DECEMBER 8, 2017 at NOON. Defendants have waived their right to file a reply. Signed by Judge Colleen Kollar-Kotelly on 12/7/2017. (lcckk3) (Entered: 12/07/2017)
12/07/2017		Set/Reset Deadlines: Plaintiff's Response to Motion for Partial Stay of Preliminary Injunction due by 12/8/2017. (kt) (Entered: 12/07/2017)
12/08/2017	<u>74</u>	Memorandum in opposition to re <u>73</u> MOTION to Stay <i>Portion of Preliminary Injunction Pending Appeal</i> filed by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Wolfson, Paul) (Entered: 12/08/2017)
12/11/2017	<u>75</u>	ORDER DENYING Defendants' <u>73</u> Motion for a Partial Stay of the Court's Preliminary Injunction Pending Appeal. Signed by Judge Colleen Kollar-Kotelly on 12/11/2017. (lcckk3) (Entered: 12/11/2017)
12/15/2017	<u>76</u>	Joint STATUS REPORT <i>Setting Forth Detailed Discovery Plan</i> by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Parker, Ryan) (Entered: 12/15/2017)
12/22/2017	<u>77</u>	Joint STATUS REPORT <i>Supplementing Discovery Plan</i> by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Parker, Ryan) (Entered: 12/22/2017)

12/29/2017	<u>78</u>	ANSWER to <u>2</u> Amended Complaint,, by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON.(Parker, Ryan) (Entered: 12/29/2017)
01/04/2018	<u>79</u>	MANDATE of USCA as to <u>66</u> Notice of Appeal to DC Circuit Court,, filed by RYAN D. MCCARTHY, UNITED STATES COAST GUARD, RICHARD V. SPENCER, UNITED STATES DEPARTMENT OF THE ARMY, DONALD J. TRUMP, UNITED STATES OF AMERICA, RAQUEL C. BONO, UNITED STATES DEPARTMENT OF THE AIR FORCE, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., UNITED STATES DEPARTMENT OF THE NAVY, JAMES N. MATTIS, HEATHER A. WILSON, ELAINE C. DUKE ; USCA Case Number 17-5267. (Attachments: # <u>1</u> USCA Order)(ztd) (Entered: 01/05/2018)
01/08/2018		Set/Reset Hearings: Telephone Conference on the record set for 1/9/2018 at 1:30 PM in Chambers before Judge Colleen Kollar-Kotelly. (dot) (Entered: 01/09/2018)
01/09/2018	<u>80</u>	ORDER Regarding January 9, 2018 Teleconference. Signed by Judge Colleen Kollar-Kotelly on 1/9/2018. (Attachments: # <u>1</u> Exhibit A) (lcckk3) (Entered: 01/09/2018)
01/09/2018		Minute Entry for proceedings held before Judge Colleen Kollar-Kotelly: Telephone Conference held on 1/9/2018. (Court Reporter Sara Wick.) (dot) (Entered: 01/11/2018)
02/09/2018		MINUTE ORDER. The Court will hold a teleconference with the parties on the record on FEBRUARY 13, 2018 at 2:30 pm to discuss a discovery dispute. The parties shall jointly call chambers at a number provided by e-mail. Signed by Judge Colleen Kollar-Kotelly on 2/9/2018. (lcckk3) (Entered: 02/09/2018)
02/09/2018		Set/Reset Hearings: Telephone Conference on the record set for 2/13/2018 at 2:30 PM in Chambers before Judge Colleen Kollar-Kotelly. (dot) (Entered: 02/12/2018)
02/13/2018		Minute Entry for proceedings held before Judge Colleen Kollar-Kotelly: Telephone Conference on the record held on 2/13/2018. (Court Reporter Sara Wick.) (dot) (Entered: 02/13/2018)
02/13/2018		MINUTE ORDER. The Court held a teleconference with the parties today, February 13, 2018, to discuss a discovery dispute. The Court will hold another teleconference on Friday, FEBRUARY 16, 2018 at 2:30 PM to continue to discuss this dispute. In the meantime, the parties are to meet and confer. The parties shall be prepared during the next teleconference to discuss what information Defendants contend is covered by the presidential communications privilege that the Court can review in camera. The parties shall also meet and confer to resolve or narrow their dispute regarding the deliberative process privilege and, if the dispute cannot be fully resolved, Plaintiffs shall be prepared to identify the specific documents they would request the Court review in camera. Signed by Judge Colleen Kollar-Kotelly on 2/13/2018. (lcckk3) (Entered: 02/13/2018)
02/13/2018		Set/Reset Hearings: Telephone Conference on the record set for 2/16/2018 at 2:30 PM in Chambers before Judge Colleen Kollar-Kotelly. (dot) (Entered: 02/14/2018)
02/14/2018	<u>81</u>	Joint MOTION for Protective Order and Cross-Use Agreement and Fed.R.Evid. 502(D) Order by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Text of Proposed Order Proposed Protective Order and Cross Use Agreement, # <u>2</u> Text of Proposed Order Proposed Fed. R. Evid. 502(d) Order)(Parker, Ryan) Modified text on 2/15/2018 (td). (Entered: 02/14/2018)
02/14/2018	<u>82</u>	STIPULATION of Voluntary Partial Dismissal <i>as to Plaintiff Jane Doe 1 and Defendants United States Coast Guard and Kirstjen Nielsen, in her official capacity as Secretary of Homeland Security</i> by JOHN DOE, 1, JANE DOE 1, JANE DOE 2,

		JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Wolfson, Paul) Modified text on 2/15/2018 (td). (Entered: 02/14/2018)
02/14/2018	<u>84</u>	ORDER granting <u>81</u> Motion for Uniform Protective Order and Cross-Use Agreement. Signed by Judge Colleen Kollar-Kotelly on 2/14/18. (dot) (Entered: 02/16/2018)
02/14/2018	<u>85</u>	ORDER on the parties Joint Motion pursuant to Federal Rule of Evidence 502(d) and Local Civil Rule 16.3(c)(10). Signed by Judge Colleen Kollar-Kotelly on 2/14/18. (dot) (Entered: 02/16/2018)
02/15/2018	<u>83</u>	TRANSCRIPT OF TELEPHONE CONFERENCE before Judge Colleen Kollar-Kotelly held on 02/13/2018; Page Numbers: 35; Date of Issuance: 02/15/2018. Court Reporter/Transcriber: Sara A. Wick, Telephone number 202-354-3284. Transcripts may be ordered by submitting the <u>Transcript Order Form</u> For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 3/8/2018. Redacted Transcript Deadline set for 3/18/2018. Release of Transcript Restriction set for 5/16/2018.(Wick, Sara) (Entered: 02/15/2018)
02/16/2018	<u>86</u>	Letter from Plaintiffs and Defendants (Attachments: # <u>1</u> Letter, # <u>2</u> Exhibit Ex A 2017.12.15 Pltfs' 1st Set of INTs, # <u>3</u> Exhibit Ex B President Trump Interrogatory Objections - Served 2.6.18, # <u>4</u> Exhibit Ex C Secretary of Defense Mattis Interrogatory Responses - Served on 2.6, # <u>5</u> Exhibit Ex D 2018.01.25 Air Force's Objcs. and Resps. to Pltfs' 1st INTs, # <u>6</u> Exhibit Ex E Doe v. Trump - Updated Privilege Log - 2.7.18, # <u>7</u> Exhibit Ex F USDOE00061876 - with redactions, # <u>8</u> Exhibit Ex G USDOE00061945 - with redactions, # <u>9</u> Ex H President Trump RFA Objections - Served 2.6.18) "Let this be filed" signed 2/16/18 by Judge C. Kollar-Kotelly(td) (Main Document 86 replaced on 2/16/2018) (ztd). (Entered: 02/16/2018)
02/16/2018		MINUTE ORDER. The Court held a teleconference with the parties today, February 16, 2018, to discuss a discovery dispute. The dispute relates to Defendants' assertions of two privileges: the deliberative process privilege and the presidential communications privilege. With respect to the deliberative process privilege, Plaintiffs have provided Defendants with a list of documents that they contend were inappropriately withheld in full or in part. Defendants are going to review those documents and consult with Plaintiffs next week to discuss whether they are willing to release some or all of those documents, or at least provide Plaintiffs with more information about the documents so that Plaintiffs can consider the appropriateness of Defendants' assertions of privilege. The parties will then meet and confer and attempt to resolve their disputes without further Court intervention. If unsuccessful, Plaintiffs can contact the Court again. With respect to the presidential communications privilege, Defendants refuse to provide any information to the Court for it to review in camera in order to adjudicate the legality of Defendants' assertion of privilege. Defendants are to file a motion for a protective order on this particular presidential communications privilege issue by no later than FEBRUARY 27, 2018. Plaintiffs shall file a response by no later than MARCH 12, 2018. Defendants shall file a reply by no later than MARCH 19, 2018. Signed by Judge Colleen Kollar-Kotelly on 2/16/2018. (lcckk3) (Entered: 02/16/2018)
02/16/2018		Minute Entry for proceedings held before Judge Colleen Kollar-Kotelly: Telephone Conference on the record held on 2/16/2018. (Court Reporter Sara Wick.) (dot) (Entered: 02/20/2018)

02/20/2018		Set/Reset Deadlines: Defendant's motion for protective order due by 2/27/2018. Response due by 3/12/2018. Reply due by 3/19/2018. (tb) (Entered: 02/20/2018)
02/21/2018	<u>87</u>	TRANSCRIPT OF INITIAL SCHEDULING CONFERENCE before Judge Colleen Kollar-Kotelly held on November 28, 2017; Page Numbers: 1 – 31. Date of Issuance: December 15, 2017. Court Reporter/Transcriber Richard D. Ehrlich, Telephone number (202) 354-3269, Tape Number: NA. Transcripts may be ordered by submitting the <u>Transcript Order Form</u> For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 3/14/2018. Redacted Transcript Deadline set for 3/24/2018. Release of Transcript Restriction set for 5/22/2018.(Ehrlich, Richard) (Entered: 02/21/2018)
02/22/2018	<u>88</u>	TRANSCRIPT OF TELEPHONE CONFERENCE before Judge Colleen Kollar-Kotelly, held on 02/16/2018. Page Numbers: 11. Date of Issuance: 02/22/2018. Court Reporter/Transcriber Sara A. Wick. Transcripts may be ordered by submitting the <u>Transcript Order Form</u> For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 3/15/2018. Redacted Transcript Deadline set for 3/25/2018. Release of Transcript Restriction set for 5/23/2018.(Wick, Sara) (Entered: 02/22/2018)
02/27/2018	<u>89</u>	MOTION for Protective Order by RAQUEL C. BONO, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Text of Proposed Order)(Parker, Ryan) (Entered: 02/27/2018)
03/02/2018	<u>90</u>	MOTION for Judgment on the Pleadings <i>and Motion to Partially Dissolve the Preliminary Injunction</i> by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Text of Proposed Order)(Parker, Ryan). Added MOTION for Order to Partially Dissolve the Preliminary Injunction on 3/5/2018 (znmw). (Entered: 03/02/2018)

03/02/2018		MINUTE ORDER. The Court is in receipt of Defendants' <u>90</u> Partial Motion for Judgment on the Pleadings and to Partially Dissolve the Preliminary Injunction. Plaintiffs shall file a response by no later than MARCH 16, 2018. Defendants shall file a reply by no later than MARCH 23, 2018. Signed by Judge Colleen Kollar-Kotelly on 3/2/2018. (lcckk3) (Entered: 03/02/2018)
03/02/2018		Set/Reset Deadlines: Plaintiffs' Response to <u>90</u> due by 3/16/2018. Defendants' Reply due by 3/23/2018. (dot) (Entered: 03/02/2018)
03/12/2018	<u>91</u>	RESPONSE re <u>89</u> MOTION for Protective Order filed by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Attachments: # <u>1</u> Declaration Daniel McFadden, # <u>2</u> Exhibit A- E-Mail to Ryan Parker March 1, 2018, # <u>3</u> Exhibit B- E-Mail exchange July 27, 2017 regarding the transgender policy message, # <u>4</u> Exhibit C- Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories to General Dunford, # <u>5</u> Exhibit D- Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories to the Navy and Secretary Spencer, # <u>6</u> Exhibit E- Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories to the Army and Secretary Esper, # <u>7</u> Exhibit F- Air Force's Objections and Responses to Plaintiffs' First Set of Interrogatories, # <u>8</u> Exhibit G- Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories to the Defense Health Agency and Director Bono, # <u>9</u> Exhibit H- Privilege log produced by the Defendants on February 7, 2018, # <u>10</u> Exhibit I- Privilege log produced by the Defendants on February 6, 2018, # <u>11</u> Exhibit J- E-Mail exchange dated January 11-12, 2018 regarding "Proposed Discovery Response Schedule.") (Wolfson, Paul) (Entered: 03/12/2018)
03/16/2018	<u>92</u>	RESPONSE re <u>90</u> MOTION for Judgment on the Pleadings <i>and Motion to Partially Dissolve the Preliminary Injunction</i> MOTION for Order to <i>Partially Dissolve the Preliminary Injunction</i> filed by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE. (Wolfson, Paul) (Entered: 03/16/2018)
03/19/2018	<u>93</u>	REPLY to opposition to motion re <u>89</u> MOTION for Protective Order filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Parker, Ryan) (Entered: 03/19/2018)
03/23/2018	<u>94</u>	REPLY to opposition to motion re <u>90</u> MOTION for Judgment on the Pleadings <i>and Motion to Partially Dissolve the Preliminary Injunction</i> MOTION for Order to <i>Partially Dissolve the Preliminary Injunction</i> filed by RAQUEL C. BONO, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	<u>95</u>	NOTICE by ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Exhibit)(Parker, Ryan) (Entered: 03/23/2018)
03/23/2018	<u>96</u>	MOTION to Dissolve the Preliminary Injunction by RAQUEL C. BONO, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Declaration, # <u>6</u> Declaration)(Parker, Ryan) (Entered: 03/23/2018)

03/23/2018	<u>97</u>	MOTION for Protective Order by RAQUEL C. BONO, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RYAN D. MCCARTHY, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Text of Proposed Order)(Parker, Ryan) (Entered: 03/23/2018)
03/26/2018		MINUTE ORDER. The Court will hold a teleconference with the parties on MARCH 27, 2018 at 9:30 a.m. The parties shall jointly call chambers at a number to be provided by e-mail. Signed by Judge Colleen Kollar-Kotelly on 3/26/2018. (lcckk3) (Entered: 03/26/2018)
03/26/2018		Set/Reset Hearings: Telephone Conference on the record set for 3/27/2018 at 9:30 AM in Chambers before Judge Colleen Kollar-Kotelly. (dot) (Entered: 03/26/2018)
03/26/2018		MINUTE ORDER. The teleconference previously set for March 27, 2018 is hereby rescheduled for MARCH 28, 2018 at 10:30 a.m. Signed by Judge Colleen Kollar-Kotelly on 3/26/2018. (lcckk3) (Entered: 03/26/2018)
03/26/2018		Set/Reset Hearings: Telephone Conference on the record set for 3/28/2018 at 10:30 AM in Chambers before Judge Colleen Kollar-Kotelly. (dot) (Entered: 03/27/2018)
03/27/2018	<u>98</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Lauren Godles Milgroom, :Firm- Foley Hoag LLP, :Address- 155 Seaport Boulevard, Boston, MA 02210. Phone No. - 617-832-3052. Fax No. - 617-832-7000 Filing fee \$ 100, receipt number 0090-5391796. Fee Status: Fee Paid. by JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Lauren Godles Milgroom, # <u>2</u> Text of Proposed Order)(Lamb, Kevin) (Entered: 03/27/2018)
03/27/2018	<u>99</u>	MOTION to Intervene to Seek Access to March 28, 2018 Telephone Conference by BUZZFEED, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration of Zoe Tillman, # <u>3</u> Declaration of Matthew L. Schafer, # <u>4</u> Text of Proposed Order, # <u>5</u> Corporate Disclosure)(Schafer, Matthew) (Entered: 03/27/2018)
03/27/2018	<u>100</u>	NOTICE of Appearance by Matthew L. Schafer on behalf of BUZZFEED, INC. (Schafer, Matthew) (Entered: 03/27/2018)
03/28/2018		MINUTE ORDER. The Court is in receipt of putative intervenor Buzzfeed, Inc.'s ("Buzzfeed") <u>99</u> Motion to Intervene to Seek Access to March 28, 2018 Telephone Conference. This motion was filed on the evening before the telephone conference to which Buzzfeed seeks access. Other members of the press likewise have sought access to the teleconference by contacting courthouse personnel. Because the teleconference is scheduled for this morning, March 28, 2018, this Order addressing Buzzfeed's pending motion and other press inquiries must of necessity be brief. In its motion, Buzzfeed indicates that it does not know what the substance of this morning's teleconference will be. The Court hereby notifies Buzzfeed and other interested news outlets that the purpose of the March 28, 2018, telephone conference is solely to set a schedule for future proceedings. Buzzfeed also cites a number of opinions many of them in the criminal context in its motion about the appropriateness of sealed or in camera proceedings. This is a civil case, and the teleconference will not be sealed. The discussion will be transcribed, and the record will be available shortly afterwards. As its practice has been, the Court also shall issue a written order summarizing the teleconference and setting forth agreed dates for the ensuing briefing. Federal Rule of Civil Procedure 77(b) allows the Court to hold this teleconference with the parties in chambers. That rule states that "[e]very trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom," but "[a]ny other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district." Fed. R. Civ. P. 77(b). "Rule 77(b) simply articulates the traditional authority of a judge to speak privately with the parties to a suit, whether in bench conferences or in chambers." B.H. v. McDonald, 49 F.3d 294, 298 (7th Cir. 1995). The Court is under no obligation to allow any and all interested parties to join a teleconference held in its chambers, especially where the content of that conference does not address the merits of the case, will be memorialized in an Order, and will also be transcribed in a public transcript. Moreover, Buzzfeed frames its request as a motion to intervene under Rule 24, but does not specify whether it seeks intervention as of right (Rule 24(a)) or

		permissive intervention (Rule 24(b)). Language in its memorandum suggests that intervention is sought as of right, but BuzzFeed has not cited any federal statute that would give it "an unconditional right to intervene" (Rule 24(a)(1)), nor does it claim that the nature of this teleconferencea scheduling conferencewould "dispos[e] of the action" and thus "may as a practical matter impair or impede the movant's ability to protect its interest" (Rule 24(a)(2)). Even if BuzzFeed instead seeks permissive intervention pursuant to Rule 24(b), it has not argued that any federal statute accords it "a conditional right to intervene" (Rule 24(b)(1)) or that it "has a claim or defense that shares with the main action a common question of law or fact" (Rule 24(b)(2)). The Court is not persuaded that intervention is appropriate. Accordingly, the Court shall DENY BuzzFeed's <u>99</u> Motion to Intervene to Seek Access to March 28, 2018 Telephone Conference, as well as any other requests by the press to participate in this teleconference. Signed by Judge Colleen Kollar-Kotelly on 3/28/2018. (lcckk3) Modified to add link on 3/29/2018 (znmw). (Entered: 03/28/2018)
03/28/2018		MINUTE ORDER GRANTING <u>98</u> Motion for Leave to Appear Pro Hac Vice for Attorney Lauren Godles Milgroom in order for her to appear as co-counsel for Plaintiffs. Counsel shall promptly register for this Court's CM/ECF system. Signed by Judge Colleen Kollar-Kotelly on 3/28/2018. (lcckk3) (Entered: 03/28/2018)
03/28/2018	<u>101</u>	ORDER Regarding March 28, 2018 Teleconference. Signed by Judge Colleen Kollar-Kotelly on 3/28/2018. (lcckk3) (Entered: 03/28/2018)
03/28/2018		Minute Entry for proceedings held before Judge Colleen Kollar-Kotelly: Telephone Conference on the record held on 3/28/2018. (Court Reporter Richard Ehrlich.) (dot) (Entered: 03/28/2018)
03/28/2018	<u>102</u>	TRANSCRIPT OF TELEPHONIC CONFERENCE before Judge Colleen Kollar-Kotelly held on March 28, 2018; Page Numbers: 1 – 54. Date of Issuance: March 28, 2018. Court Reporter/Transcriber Richard D. Ehrlich, Telephone number (202) 354-3269, Transcripts may be ordered by submitting the <u>Transcript Order Form</u> For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from t he court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 4/18/2018. Redacted Transcript Deadline set for 4/28/2018. Release of Transcript Restriction set for 6/26/2018.(Ehrlich, Richard) (Entered: 03/28/2018)
03/29/2018	<u>103</u>	NOTICE of Appearance by Theresa Roosevelt on behalf of JOHN DOE, 1, JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, REGAN V. KIBBY, DYLAN KOHERE (Roosevelt, Theresa) (Entered: 03/29/2018)
04/04/2018	<u>104</u>	NOTICE of Change of Address by Mary L. Bonauto (Bonauto, Mary) (Entered: 04/04/2018)
04/04/2018	<u>105</u>	NOTICE of Change of Address by Jennifer Levi (Levi, Jennifer) (Entered: 04/04/2018)
04/06/2018	<u>106</u>	AMENDED COMPLAINT (<i>Second</i>) for Declaratory and Injunctive Relief against RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., JAMES N. MATTIS, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON, KIRSTJEN M. NIELSEN, MARK T. ESPER filed by JANE DOE 2, JANE DOE 3, DYLAN KOHERE, JANE DOE 4, JOHN DOE, 1, JANE DOE 5, REGAN V.

		KIBBY, JANE DOE 6, JANE DOE 7, JOHN DOE 2.(Wolfson, Paul) (Entered: 04/06/2018)
04/06/2018	<u>107</u>	SEALED DOCUMENT filed by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE re <u>106</u> Amended Complaint,, (This document is SEALED and only available to authorized persons.)(Wolfson, Paul) (Entered: 04/06/2018)
04/06/2018	<u>108</u>	Memorandum in opposition to re <u>97</u> MOTION for Protective Order filed by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. (Attachments: # <u>1</u> Declaration of Adam M. Cambier in Support of Plaintiffs' Opposition to Defendants' Motion for Protective Order, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F)(Wolfson, Paul) (Entered: 04/06/2018)
04/06/2018	<u>109</u>	MOTION to Compel <i>Compliance with Subpoenas for Production of Documents Directed to Nonparties Family Research Council and Heritage Foundation</i> by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Declaration of Lauren Milgroom, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H)(Wolfson, Paul) (Attachment 9 replaced to make page 4 non-fillable on 4/9/2018) (td). (Entered: 04/06/2018)
04/09/2018		MINUTE ORDER. The Court is in receipt of Plaintiffs' <u>109</u> Motion to Compel Compliance with Subpoenas for Production of Documents Directed to Nonparties Family Research Council and Heritage Foundation. Nonparties Family Research Council and Heritage Foundation, and/or Defendants, shall file a response by no later than APRIL 23, 2018. Plaintiffs shall file a reply by no later than APRIL 30, 2018. Signed by Judge Colleen Kollar-Kotelly on 4/9/2018. (lcckk3) (Entered: 04/09/2018)
04/09/2018		Set/Reset Deadlines: Nonparties Family Research Council and Heritage Foundation, and/or Defendants, shall file a Response to <u>109</u> by 4/23/2018. Plaintiffs' Reply due by 4/30/2018. (dot) (Entered: 04/09/2018)
04/12/2018	<u>110</u>	REPLY to opposition to motion re <u>97</u> MOTION for Protective Order filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Parker, Ryan) (Entered: 04/12/2018)
04/16/2018	<u>111</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by JANE DOE 2,JOHN DOE 1, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Slip Op., Karnoski v. Trump, No. 2:17-cv-01297-MJP (Apr. 13, 2018))(Wolfson, Paul) (Entered: 04/16/2018)
04/16/2018	<u>112</u>	ORDER Regarding Deposition of the Vice Chairman of the Joint Chiefs of Staff, General Paul J. Selva. Signed by Judge Colleen Kollar-Kotelly on 4/16/2018. (Attachments: # <u>1</u> Exhibit A) (lcckk3) (Entered: 04/16/2018)
04/18/2018	<u>113</u>	ORDER Regarding Deadline for Document Production and Privilege Disputes. Signed by Judge Colleen Kollar-Kotelly on 4/18/2018. (Attachments: # <u>1</u> Exhibit A) (lcckk3) (Entered: 04/18/2018)
04/18/2018	<u>114</u>	ORDER DENYING Defendants' <u>97</u> Motion for a Protective Order. Signed by Judge Colleen Kollar-Kotelly on 4/18/2018. (lcckk3) (Entered: 04/18/2018)
04/20/2018	<u>115</u>	MOTION to Dismiss , <i>or in the alternative</i> ., MOTION for Summary Judgment by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, RYAN D. MCCARTHY, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY,

		UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Text of Proposed Order Proposed Order, # <u>2</u> Exhibit Department of Defense Release No.: NR-272-15, # <u>3</u> Exhibit Agnes Gereben Schaefer, On RANDs Research Findings Regarding Transgender Military Personnel Policy, # <u>4</u> Exhibit Memorandum from Secretary Mattis: Terms of Reference)(Parker, Ryan) (Entered: 04/20/2018)
04/20/2018	<u>116</u>	MOTION To Dissolve The Preliminary Injunction by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, RYAN D. MCCARTHY, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Text of Proposed Order Proposed Order, # <u>2</u> Exhibit 2015 Statement, # <u>3</u> Exhibit RAND Blog Post, # <u>4</u> Exhibit Terms of Reference)(Parker, Ryan) (Entered: 04/20/2018)
04/23/2018	<u>117</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>116</u> MOTION To Dissolve The Preliminary Injunction , <u>115</u> MOTION to Dismiss , <i>or in the alternative</i> , MOTION for Summary Judgment by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Text of Proposed Order)(Wolfson, Paul) (Entered: 04/23/2018)
04/23/2018	<u>118</u>	ORDER Regarding Clawback Dispute. Signed by Judge Colleen Kollar-Kotelly on 4/23/2018. (Attachments: # <u>1</u> Exhibit A) (lcckk3) (Entered: 04/23/2018)
04/23/2018	<u>119</u>	Memorandum in opposition to re <u>109</u> MOTION to Compel <i>Compliance with Subpoenas for Production of Documents Directed to Nonparties Family Research Council and Heritage Foundation</i> filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, RYAN D. MCCARTHY, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Parker, Ryan) (Entered: 04/23/2018)
04/23/2018	<u>120</u>	NOTICE of Appearance by Heidi K. Abegg on behalf of Heritage Foundation (Abegg, Heidi) (Entered: 04/23/2018)
04/23/2018	<u>121</u>	Corporate Disclosure Statement by Heritage Foundation. (Abegg, Heidi) (Entered: 04/23/2018)
04/23/2018	<u>122</u>	Memorandum in opposition to re <u>109</u> MOTION to Compel <i>Compliance with Subpoenas for Production of Documents Directed to Nonparties Family Research Council and Heritage Foundation</i> filed by Heritage Foundation, FAMILY RESEARCH COUNCIL, INC.. (Attachments: # <u>1</u> Proposed Order)(Schaerr, Gene) (Entered: 04/23/2018)
04/23/2018	<u>123</u>	NOTICE of Appearance by Gene C. Schaerr on behalf of FAMILY RESEARCH COUNCIL, INC. (Schaerr, Gene) (Entered: 04/23/2018)
04/24/2018	<u>124</u>	RESPONSE TO ORDER OF THE COURT re <u>118</u> Order filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, RYAN D. MCCARTHY, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Attachments: # <u>1</u> Exhibit Notice of Recall, # <u>2</u> Exhibit Partially Redacted Presentation)(Parker, Ryan) (Entered: 04/24/2018)
04/24/2018	<u>125</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by FAMILY RESEARCH COUNCIL, INC. (Schaerr, Gene) (Entered: 04/24/2018)

04/24/2018		MINUTE ORDER. The Court is in receipt of Defendants' <u>116</u> Motion to Dissolve the Preliminary Injunction, which apparently supersedes Defendants' earlier <u>96</u> Motion to Dissolve the Preliminary Injunction. Defendants' earlier <u>96</u> Motion is accordingly DENIED as MOOT. Only Defendants' <u>116</u> Motion remains pending. Signed by Judge Colleen Kollar-Kotelly on 4/24/2018. (lcckk3) (Entered: 04/24/2018)
04/25/2018		MINUTE ORDER. The Court is in receipt of Plaintiffs' <u>117</u> Motion for Extension of Time. Plaintiffs request a seven day extension of time up to and including May 11, 2018, within which to file their Opposition to Defendants' Motion to Dissolve the Preliminary Injunction and Motion to Dismiss the Complaint or, in the Alternative, for Summary Judgment, because Plaintiffs represent that they need additional time to formulate their responses. This is the first request for an extension of this deadline and Defendants consent. Plaintiffs' motion is GRANTED. Plaintiffs' oppositions shall be filed no later than MAY 11, 2018. Granting Defendants an equivalent extension, Defendants' reply briefs shall be filed no later than MAY 24, 2018. Signed by Judge Colleen Kollar-Kotelly on 4/25/2018. (lcckk3) (Entered: 04/25/2018)
04/25/2018		Set/Reset Deadlines: Plaintiffs' Response due by 5/11/2018. Defendants' Reply due by 5/24/2018. (dot) (Entered: 04/26/2018)
04/30/2018	<u>126</u>	REPLY to opposition to motion re <u>109</u> MOTION to Compel <i>Compliance with Subpoenas for Production of Documents Directed to Nonparties Family Research Council and Heritage Foundation (Reply in Support of Motion to Compel)</i> filed by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. (Attachments: # <u>1</u> Declaration of Kevin M. Lamb in Support of Plaintiffs' Reply, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E)(Wolfson, Paul) (Entered: 04/30/2018)
04/30/2018	<u>127</u>	ERRATA by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE <u>126</u> Reply to opposition to Motion,, filed by JANE DOE 6, JOHN DOE 2, DYLAN KOHERE, JANE DOE 3, JANE DOE 2, JANE DOE 4, JANE DOE 5, JOHN DOE, 1, JANE DOE 7, REGAN V. KIBBY. (Attachments: # <u>1</u> Corrected Declaration of Kevin M. Lamb in Support of Plaintiffs' Reply)(Lamb, Kevin) (Entered: 04/30/2018)
05/11/2018	<u>128</u>	AFFIDAVIT (<i>Declaration of Lauren Godles Milgroom in Support of the Statement of Undisputed Material Facts</i>) by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U, # <u>22</u> Exhibit V, # <u>23</u> Exhibit W, # <u>24</u> Exhibit X, # <u>25</u> Exhibit Y, # <u>26</u> Exhibit Z, # <u>27</u> Exhibit AA, # <u>28</u> Exhibit BB, # <u>29</u> Exhibit CC, # <u>30</u> Exhibit DD, # <u>31</u> Exhibit EE, # <u>32</u> Exhibit FF, # <u>33</u> Exhibit GG, # <u>34</u> Exhibit HH, # <u>35</u> Exhibit II, # <u>36</u> Exhibit JJ, # <u>37</u> Exhibit KK, # <u>38</u> Exhibit LL, # <u>39</u> Exhibit MM, # <u>40</u> Exhibit NN, # <u>41</u> Exhibit OO, # <u>42</u> Exhibit PP, # <u>43</u> Exhibit QQ, # <u>44</u> Exhibit RR, # <u>45</u> Exhibit SS)(Schoenfeld, Alan) (Entered: 05/11/2018)
05/11/2018	<u>129</u>	SEALED MOTION FOR LEAVE TO FILE DOCUMENT UNDER SEAL filed by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE (This document is SEALED and only available to authorized persons.) (Attachments: # <u>1</u> Declaration of Adam M. Cambier in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss and Motion to Dissolve the Preliminary Injunction and Plaintiffs' Opposition to Defendants' Motion for Summary Judgment and Cross-Motion for Summary Judgment, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Text of Proposed Order)(Schoenfeld, Alan) (Entered: 05/11/2018)
05/11/2018	<u>130</u>	Memorandum in opposition to re <u>116</u> MOTION To Dissolve The Preliminary Injunction , <u>115</u> MOTION to Dismiss , or in the alternative, MOTION for Summary Judgment filed by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. (Schoenfeld, Alan) (Entered: 05/11/2018)

05/11/2018	<u>131</u>	Cross MOTION for Summary Judgment by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts, # <u>3</u> Text of Proposed Order)(Schoenfeld, Alan) (Entered: 05/11/2018)
05/11/2018	<u>132</u>	Memorandum in opposition to re <u>115</u> MOTION to Dismiss , <i>or in the alternative</i> , MOTION for Summary Judgment filed by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. (Attachments: # <u>1</u> Plaintiffs' Objections and Responses to Defendants' Statement of Facts)(Schoenfeld, Alan) (Entered: 05/11/2018)
05/14/2018	<u>133</u>	ERRATA by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE <u>128</u> Affidavit,,, filed by JANE DOE 6, JOHN DOE 2, DYLAN KOHERE, JANE DOE 3, JANE DOE 2, JANE DOE 4, JANE DOE 5, JOHN DOE, 1, JANE DOE 7, REGAN V. KIBBY. (Attachments: # <u>1</u> (Corrected) Declaration of Joshua D. Safer in Support of Plaintiffs' Opposition to Defendants' Motion to Dissolve the Preliminary Injunction)(Schoenfeld, Alan) (Entered: 05/14/2018)
05/17/2018	<u>134</u>	Consent MOTION for Extension of Time to File Response/Reply by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, RYAN D. MCCARTHY, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Carmichael, Andrew) (Entered: 05/17/2018)
05/17/2018	<u>135</u>	ORDER granting <u>134</u> Motion for Extension of Time. Defendants' reply in support of motions to dissolve the preliminary injunction, to dismiss the complaint, and/or in the alternative for summary judgment and opposition to Plaintiffs' cross-motion for summary judgment due by 6/6/2018. Plaintiffs' reply in support of cross-motion for summary judgment due by 6/22/2018. Signed by Judge Colleen Kollar-Kotelly on 5/17/18. (dot) (Entered: 05/21/2018)
05/21/2018	<u>136</u>	Consent MOTION for Leave to File <i>Amicus Curiae Brief</i> by Retired Military Officers and Former National Security Officials (Attachments: # <u>1</u> Exhibit Amicus Brief, # <u>2</u> Text of Proposed Order)(Spector, Phillip) (Entered: 05/21/2018)
05/24/2018	<u>137</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE (Attachments: # <u>1</u> Op. 73-74, Knight First Amend. Inst. at Columbia Univ. v. Trump, No. 17-cv-5205, # <u>2</u> Op., Grimm v. Gloucester County School Board, No. 15-cv-00054)(Wolfson, Paul) (Entered: 05/24/2018)
06/06/2018	<u>138</u>	Memorandum in opposition to re <u>131</u> Cross MOTION for Summary Judgment , filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, RYAN D. MCCARTHY, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10)(Carmichael, Andrew) Modified linkage on 6/11/2018 (ztd). (Entered: 06/06/2018)
06/06/2018	<u>139</u>	SEALED MOTION FOR LEAVE TO FILE DOCUMENT UNDER SEAL filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (This document is SEALED and

		only available to authorized persons.) (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Exhibit 11, # <u>3</u> Exhibit 12, # <u>4</u> Text of Proposed Order)(Carmichael, Andrew) (Entered: 06/06/2018)
06/06/2018	<u>140</u>	REPLY to opposition to motion re <u>116</u> MOTION To Dissolve The Preliminary Injunction filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, RYAN D. MCCARTHY, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. (Carmichael, Andrew) (Entered: 06/06/2018)
06/06/2018	144	REPLY to opposition to motion re <u>115</u> MOTION to Dismiss , <i>or in the alternative</i> , MOTION for Summary Judgment filed by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, ELAINE C. DUKE, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, RYAN D. MCCARTHY, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON; (SEE DOCKET ENTRY NO. <u>138</u> TO VIEW.) (ztd) (Entered: 06/13/2018)
06/07/2018	<u>141</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. Attorney Ryan Bradley Parker terminated. (Parker, Ryan) (Entered: 06/07/2018)
06/11/2018	<u>143</u>	ORDERED that the Motion is GRANTED. The documents attached to Defendant' motion are, hereby, placed under seal. the parties shall MEET AND CONFER regarding what redactions need to be made to these documents such that they can be filed on the public docket. Redacted versions shall be filed on the docket by no later than 6/25/2018. Signed by Judge Colleen Kollar-Kotelly on 6/11/18. (dot) (Entered: 06/12/2018)
06/11/2018	<u>146</u>	SEALED DOCUMENT filed by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. re <u>130</u> Memorandum in Opposition, filed by JANE DOE 6, JOHN DOE 2, DYLAN KOHERE, JANE DOE 3, JANE DOE 2, JANE DOE 4, JANE DOE 5, JOHN DOE, 1, JANE DOE 7, REGAN V. KIBBY, <u>131</u> Cross MOTION for Summary Judgment filed by JANE DOE 6, JOHN DOE 2, DYLAN KOHERE, JANE DOE 3, JANE DOE 2, JANE DOE 4, JANE DOE 5, JOHN DOE, 1, JANE DOE 7, REGAN V. KIBBY, <u>116</u> MOTION To Dissolve The Preliminary Injunction filed by RYAN D. MCCARTHY, UNITED STATES COAST GUARD, KIRSTJEN M. NIELSEN, UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE AIR FORCE, JAMES N. MATTIS, UNITED STATES DEPARTMENT OF THE NAVY, HEATHER A. WILSON, ELAINE C. DUKE, UNITED STATES DEPARTMENT OF THE ARMY, RICHARD V. SPENCER, MARK T. ESPER, DONALD J. TRUMP, RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., <u>115</u> MOTION to Dismiss , <i>or in the alternative</i> , MOTION for Summary Judgment filed by RYAN D. MCCARTHY, UNITED STATES COAST GUARD, KIRSTJEN M. NIELSEN, UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE AIR FORCE, JAMES N. MATTIS, UNITED STATES DEPARTMENT OF THE NAVY, HEATHER A. WILSON, ELAINE C. DUKE, MARK T. ESPER, RICHARD V. SPENCER, UNITED STATES DEPARTMENT OF THE ARMY, DONALD J. TRUMP, RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR.. (This document is SEALED and only available to authorized persons.)(ztd) (Entered: 06/20/2018)
06/11/2018	<u>147</u>	SEALED DOCUMENT filed by ASSOCIATION OF MEDICAL SCHOOL PEDIATRIC DEPARTMENT CHAIRS, RAQUEL C. BONO, DEFENSE HEALTH

		AGENCY, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON. re <u>138</u> Memorandum in Opposition,, filed by RYAN D. MCCARTHY, UNITED STATES COAST GUARD, KIRSTJEN M. NIELSEN, UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE NAVY, JAMES N. MATTIS, HEATHER A. WILSON, ELAINE C. DUKE, UNITED STATES DEPARTMENT OF THE ARMY, RICHARD V. SPENCER, MARK T. ESPER, DONALD J. TRUMP, RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR.. (This document is SEALED and only available to authorized persons.)(ztd) (Entered: 06/20/2018)
06/19/2018	<u>145</u>	ORDER Regarding the Deposition of Rear Admiral David Kriete. Signed by Judge Colleen Kollar-Kotelly on 6/19/2018. (Attachments: # <u>1</u> Exhibit A) (lcckk3) (Entered: 06/19/2018)
06/22/2018	<u>148</u>	ERRATA (<i>Notice of Errata</i>) by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE <u>128</u> Affidavit,,, filed by JANE DOE 6, JOHN DOE 2, DYLAN KOHERE, JANE DOE 3, JANE DOE 2, JANE DOE 4, JANE DOE 5, JOHN DOE, 1, JANE DOE 7, REGAN V. KIBBY. (Attachments: # <u>1</u> Exhibit B, # <u>2</u> Exhibit QQ)(Schoenfeld, Alan) (Entered: 06/22/2018)
06/22/2018	<u>149</u>	REPLY to opposition to motion re <u>131</u> Cross MOTION for Summary Judgment filed by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. (Schoenfeld, Alan) (Entered: 06/22/2018)
06/25/2018	<u>150</u>	NOTICE of Filing of Redacted Documents by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON re <u>138</u> Memorandum in Opposition,, (Attachments: # <u>1</u> Statement of Facts Redacted, # <u>2</u> Exhibit 11 Redacted, # <u>3</u> Exhibit 12 Redacted)(Carmichael, Andrew) (Entered: 06/25/2018)
07/03/2018	<u>151</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. Attorney Lauren Godles Milgroom terminated. (Milgroom, Lauren) (Entered: 07/03/2018)
07/03/2018	<u>152</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. Attorney Claire Laporte terminated. (McFadden, Daniel) (Entered: 07/03/2018)
07/06/2018	<u>153</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR., MARK T. ESPER, JAMES N. MATTIS, KIRSTJEN M. NIELSEN, RICHARD V. SPENCER, DONALD J. TRUMP, UNITED STATES COAST GUARD, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES OF AMERICA, HEATHER A. WILSON (Attachments: # <u>1</u> Trump v. Hawaii)(Carmichael, Andrew) (Entered: 07/06/2018)
08/06/2018	<u>154</u>	ORDER GRANTING Defendants' <u>90</u> Partial Motion for Judgment on the Pleadings and Motion to Partially Dissolve the Preliminary Injunction and DENYING Defendants' <u>89</u> Motion for a Protective Order. Signed by Judge Colleen Kollar-Kotelly on 8/6/2018. (lcckk3) (Entered: 08/06/2018)
08/06/2018	<u>155</u>	MEMORANDUM OPINION Regarding <u>154</u> ORDER GRANTING Defendants' <u>90</u> Partial Motion for Judgment on the Pleadings and Motion to Partially Dissolve the

		Preliminary Injunction and DENYING Defendants' <u>89</u> Motion for a Protective Order. Signed by Judge Colleen Kollar-Kotelly on 8/6/2018. (lcckk3) (Entered: 08/06/2018)
08/06/2018	<u>156</u>	ORDER DENYING Defendants' <u>115</u> Motion to Dismiss Plaintiffs' Second Amended Complaint, or, in the Alternative, Defendants' Motion for Summary Judgment, to the extent that Motion sought the dismissal of Plaintiffs' Second Amended Complaint for lack of jurisdiction or for failure to state a claim, and DENYING Defendants' <u>116</u> Motion to Dissolve the Preliminary Injunction. Signed by Judge Colleen Kollar-Kotelly on 8/6/2018. (lcckk3) (Entered: 08/06/2018)
08/06/2018	<u>157</u>	MEMORANDUM OPINION Regarding <u>156</u> ORDER DENYING Defendants' <u>115</u> Motion to Dismiss Plaintiffs' Second Amended Complaint, or, in the Alternative, Defendants' Motion for Summary Judgment, to the extent that Motion sought the dismissal of Plaintiffs' Second Amended Complaint for lack of jurisdiction or for failure to state a claim, and DENYING Defendants' <u>116</u> Motion to Dissolve the Preliminary Injunction. Signed by Judge Colleen Kollar-Kotelly on 8/6/2018. (lcckk3,) (Entered: 08/06/2018)
08/17/2018	<u>158</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. Attorney Daniel L. McFadden terminated. (McFadden, Daniel) (Entered: 08/17/2018)
08/24/2018	<u>159</u>	ORDER DENYING Defendants' <u>115</u> Motion to Dismiss Plaintiffs' Second Amended Complaint or, in the Alternative, Defendants' Motion for Summary Judgment, and DENYING Plaintiffs' <u>131</u> Cross-Motion for Summary Judgment. Signed by Judge Colleen Kollar-Kotelly on 8/24/2018. (lcckk3) (Entered: 08/24/2018)
08/24/2018	<u>160</u>	MEMORANDUM OPINION Regarding <u>159</u> ORDER DENYING Defendants' <u>115</u> Motion to Dismiss Plaintiffs' Second Amended Complaint or, in the Alternative, Defendants' Motion for Summary Judgment, and DENYING Plaintiffs' <u>131</u> Cross-Motion for Summary Judgment. Signed by Judge Colleen Kollar-Kotelly on 8/24/2018. (lcckk3) (Entered: 08/24/2018)
08/27/2018	<u>161</u>	ORDER GRANTING <u>136</u> Motion for Leave to File Amicus Brief. Signed by Judge Colleen Kollar-Kotelly on 8/27/2018. (lcckk3) (Entered: 08/27/2018)
08/27/2018		MINUTE ORDER. The parties shall meet and confer and file a Joint Status Report by no later than SEPTEMBER 10, 2018. The Joint Status Report shall propose a plan for moving forward toward a timely resolution of this case. In particular, the Joint Status Report shall include a proposed protocol for the efficient resolution of the parties' outstanding discovery disputes. Signed by Judge Colleen Kollar-Kotelly on 8/27/2018. (lcckk3) (Entered: 08/27/2018)
08/27/2018		Set/Reset Deadlines: Joint Status Report due by 10/10/2018. (dot) (Entered: 08/27/2018)
08/27/2018	<u>162</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>156</u> Order on Motion to Dismiss,, Order on Motion for Miscellaneous Relief, by JAMES N. MATTIS, MARK T. ESPER, KIRSTJEN M. NIELSEN, RAQUEL C. BONO, ELAINE C. DUKE, DEFENSE HEALTH AGENCY, RYAN D. MCCARTHY, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES COAST GUARD, DONALD J. TRUMP, UNITED STATES DEPARTMENT OF THE ARMY, UNITED STATES DEPARTMENT OF THE NAVY, HEATHER A. WILSON, UNITED STATES OF AMERICA, JOSEPH F. DUNFORD, JR., RICHARD V. SPENCER. Fee Status: No Fee Paid. Parties have been notified. (Carmichael, Andrew) (Entered: 08/27/2018)
08/27/2018	<u>163</u>	AMICUS BRIEF by RETIRED MILITARY OFFICERS AND FORMER NATIONAL SECURITY OFFICIALS. (ztd) (Entered: 08/28/2018)
08/28/2018	<u>164</u>	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals docketing fee was not paid because the appeal was filed by the government re <u>162</u> Notice of Appeal to DC Circuit Court,,. (ztd) (Entered: 08/28/2018)
08/29/2018		USCA Case Number 18-5257 for <u>162</u> Notice of Appeal to DC Circuit Court,, filed by RYAN D. MCCARTHY, UNITED STATES COAST GUARD, KIRSTJEN M.

		NIELSEN, UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE AIR FORCE, UNITED STATES DEPARTMENT OF THE NAVY, JAMES N. MATTIS, HEATHER A. WILSON, ELAINE C. DUKE, UNITED STATES DEPARTMENT OF THE ARMY, RICHARD V. SPENCER, MARK T. ESPER, DONALD J. TRUMP, RAQUEL C. BONO, DEFENSE HEALTH AGENCY, JOSEPH F. DUNFORD, JR. (zrdj) (Entered: 09/05/2018)
09/10/2018	<u>165</u>	Joint STATUS REPORT <i>IN RESPONSE TO AUGUST 27, 2018 ORDER</i> by JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. (Schoenfeld, Alan) (Entered: 09/10/2018)
09/10/2018		MINUTE ORDER. The Court is in receipt of parties' <u>165</u> Joint Status Report in Response to August 27, 2018 Order. In that Order, the Court instructed the parties to propose a plan for moving forward toward a timely resolution of this case. In their Joint Status Report, the parties agree that there remain numerous disputes regarding discovery. Accordingly, the parties propose a schedule for resolving the outstanding disputes before depositions and other discovery resume. The Court adopts the parties' agreed upon schedule. The Court ORDERS the parties to meet and confer to identify outstanding issues for the Court's resolution by SEPTEMBER 17, 2018. The Court OREDERS that parties report to the Court which issues have been identified for the subject matter of the motions by SEPTEMBER 21, 2018. The Court ORDERS the parties to file opening motions addressing outstanding issues identified during the meet and confer process by OCTOBER 9, 2018. The Court ORDERS the parties to file crossing response briefs by OCTOBER 30, 2018. The parties dispute whether reply briefs are necessary. The Court agrees with the government that reply briefs would assist the Court given the significance of the issues at stake. The Court ORDERS the parties to file crossing reply briefs by NOVEMBER 13, 2018. This is a generous schedule, so the Court expects no requests for extensions. Signed by Judge Colleen Kollar-Kotelly on 9-10-2018. (lcckk3) (Entered: 09/10/2018)
09/10/2018		Set/Reset Deadlines: Parties shall report to the Court which issues have been identified for the subject matter of the motions due by 9/21/2018. Parties to file opening motions addressing outstanding issues identified during the meet and confer process due by 10/9/2018. Parties to file crossing response briefs by 10/30/2018. Parties to file crossing reply briefs by 11/13/2018. (dot) (Entered: 09/13/2018)
09/12/2018	<u>166</u>	NOTICE OF WITHDRAWAL OF APPEARANCE as to JOHN DOE, 1, JANE DOE 2, JOHN DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, REGAN V. KIBBY, DYLAN KOHERE. Attorney Christopher R. Looney terminated. (Looney, Christopher) (Entered: 09/12/2018)

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

JANE DOE 2, *et al.*,

Plaintiffs

v.

JAMES N. MATTIS, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

MEMORANDUM OPINION
(August 24, 2018)

On July 26, 2017, President Donald J. Trump issued a statement via Twitter announcing that “the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.” A formal Presidential Memorandum followed on August 25, 2017. Before the 2017 Presidential Memorandum, the Department of Defense had announced that openly transgender individuals would be allowed to enlist in the military, effective January 1, 2018, and had prohibited the discharge of service members based solely on their gender identities. The 2017 Presidential Memorandum reversed these policies. It indefinitely extended the prohibition against transgender individuals entering the military (a process formally referred to as “accession”), and required the military to authorize the discharge of transgender service members. The President ordered Secretary of Defense James N. Mattis to submit a plan for implementing the policy directives of the 2017 Presidential Memorandum by February 2018. Plaintiffs filed suit and sought preliminary injunctive relief, which the Court granted.

Currently pending before the Court are Defendants’ [115] Motion to Dismiss Plaintiffs’ Second Amended Complaint or, in the Alternative, Defendants’ Motion for Summary Judgment, and Plaintiffs’ [131] Cross-Motion for Summary Judgment. The Court issued a Memorandum Opinion and Order denying Defendants’ Motion to the extent that it sought the dismissal of Plaintiffs’ claims on mootness and standing grounds. As an alternative form of relief,

Defendants' Motion also seeks summary judgment. Plaintiffs oppose Defendants' motion for summary judgment, and have filed their own cross-motion for summary judgment. However, Plaintiffs also ask this Court to defer ruling on summary judgment because Plaintiffs have not been able to conclude the discovery process to develop a record, due to Defendants' overly broad assertions of privilege.

Upon consideration of the pleadings,¹ the relevant legal authorities, and the record as a whole, the Court **DENIES** both parties' motions for summary judgment. Defendants claim that their decisions regarding transgender military service are owed great deference because they are the product of extensive deliberation, study and review. However, at the same time, Defendants have withheld information concerning this deliberation, study and review from Plaintiffs. As a result, there undeniably are factual disputes in this case. Among other areas of dispute, the parties disagree about the nature of the process that resulted in the challenged policies. The facts about that process are clearly material. They affect the threshold question that the Court must answer before assessing the constitutionality of Defendants' policy: what level of scrutiny the Court should apply. Because genuine disputes of material fact exist, summary judgment for either party cannot be entered. Instead, the Court will grant Plaintiffs' request to continue with discovery.

¹ The Court's consideration has focused on the following documents:

- Defs.' Mem. in Supp. of Mot. to Dismiss Pls.' 2d Am. Compl., or, in the Alternative, Defs.' Mot. for Summ. J., ECF No. 115 ("Defs.' Mem.");
- Pls.' Opp'n to Defs.' Mot. for Summ. J. and Cross-Mot. for Summ. J., ECF No. 131-1 ("Pls.' Opp'n and Cross-Mot.");
- Defs.' Reply in Supp. of their Mot. to Dismiss Pls.' 2d Am. Compl., or, in the Alternative, for Summ. J., and Opp'n to Pls.' Cross-Mot. for Summ. J., ECF No. 138 ("Defs.' Reply"); and
- Pls.' Reply in Support of their Cross-Mot. for Summ. J., ECF No. 149 ("Pls.' Reply").

In an exercise of its discretion, the Court finds that holding oral argument in this action would not be of assistance in rendering a decision. *See* LCvR 7(f).

I. BACKGROUND

Plaintiffs are current and aspiring transgender service members. Many have years of experience in the military. Some have decades. They have been deployed on active duty in Iraq and Afghanistan. They have and continue to serve with distinction. All fear that the directives of the 2017 Presidential Memorandum will have devastating impacts on their careers and their families. Accordingly, they filed this lawsuit challenging those directives and moved this Court to enjoin the implementation of the 2017 Presidential Memorandum. They claimed that the President's directives violate the fundamental guarantees of due process afforded by the Fifth Amendment to the United States Constitution.

On October 30, 2017, the Court issued a preliminary injunction in this case. The Court found that Plaintiffs had standing and were likely to succeed on their Fifth Amendment claim. The Court concluded that, as a form of government action that classifies people based on their gender identity, and disfavors a class of historically persecuted and politically powerless individuals, the President's directives were subject to heightened scrutiny. Plaintiffs claimed that the President's directives could not survive such scrutiny because they were not genuinely based on legitimate concerns regarding military effectiveness or budget constraints, but were instead driven by a desire to express disapproval of transgender people generally. The Court found that a number of factors—including the breadth of the exclusion ordered by the directives, the unusual circumstances surrounding the President's announcement of them, the fact that the reasons given for them did not appear to be supported by any facts, and the recent rejection of those reasons by the military itself—strongly suggested that Plaintiffs' Fifth Amendment claim was meritorious. Accordingly, the Court enjoined Defendants from enforcing the President's directives. The effect of the Court's preliminary injunction was to revert to the *status quo ante*

with regard to accession and retention that existed before the issuance of the 2017 Presidential Memorandum.

Defendants appealed, *see* Defs.’ Notice of Appeal, ECF No. 66, and moved this Court to stay the portion of its preliminary injunction that required Defendants to begin accepting transgender individuals into the military on January 1, 2018, *see* Defs.’ Mot. for Partial Stay of Prelim. Inj. Pending Appeal, ECF No. 73. On December 11, 2017, the Court denied Defendants’ motion to stay. *See* Dec. 11, 2017 Order, ECF No. 75.

Defendants then sought the same relief from the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”). On December 22, 2017, the D.C. Circuit denied Defendants’ motion to stay this Court’s preliminary injunction. *See Doe I v. Trump*, No. 17-5267, 2017 WL 6553389 (D.C. Cir. Dec. 22, 2017). The D.C. Circuit concluded that Defendants had not demonstrated that they had a strong likelihood of success on appeal, that they would be irreparably harmed absent a stay, or that the stay would not harm the other parties to the proceeding. *Id.* The D.C. Circuit explained that “in the balancing of equities, it must be remembered that all Plaintiffs seek during this litigation is to serve their Nation with honor and dignity, volunteering to face extreme hardships, to endure lengthy deployments and separation from family and friends, and to willingly make the ultimate sacrifice of their lives if necessary to protect the Nation, the people of the United States, and the Constitution against all who would attack them.” *Id.* at *3. After the D.C. Circuit’s opinion was issued, Defendants voluntarily dismissed their appeal of this Court’s preliminary injunction. The military began permitting openly transgender individuals to accede on January 1, 2018.

This case then moved forward into the discovery stage. Defendants strenuously resisted engaging in discovery. As noted above, the 2017 Presidential Memorandum had called for the

Secretary of Defense to submit a plan to implement the President's policy directives by February 2018. Defendants repeatedly argued that discovery should be halted until that plan was submitted. Defendants even argued at one point that Plaintiffs were not entitled to discovery in this case at all. The Court repeatedly rejected Defendants' arguments and ordered Defendants to cooperate with discovery so that this case could move forward efficiently toward an ultimate resolution on the merits. Despite the Court's orders, discovery remains unfinished because Defendants have asserted that a substantial portion of the documents and information sought by Plaintiffs are privileged (pursuant to the deliberative process privilege and the presidential communications privilege), and the parties' disputes about these assertions of privilege remain outstanding.

In related cases throughout the country, Defendants' assertions of privilege have not fared well. The courts in *Karnoski v. Trump*, No. 17-cv-1297-MJP (W.D. Wash.) and *Stone v. Trump*, No. 17-cv-2459-GLR (D. Md.) have recently rejected Defendants' arguments and ordered Defendants to produce much of the discovery that they have withheld.

In February 2018, as ordered by the 2017 Presidential Memorandum, Secretary of Defense Mattis presented a memorandum to the President that proposed a policy to effectively prevent transgender military service. *See* Defs.' Mot. to Dissolve the Preliminary Injunction, Ex. 1, ECF No. 96-1 (hereinafter, the "Mattis Implementation Plan"). The Mattis Implementation Plan, unlike the President's 2017 tweet and memorandum, purports not to be a blanket ban on all "transgender individuals." However, the plan effectively implements such a ban by targeting proxies of transgender status, such as "gender dysphoria" and "gender transition," and by requiring all service members to serve "in their biological sex." Based on the conclusion "that there are substantial risks associated with allowing the accession and retention of individuals

with a history or diagnosis of gender dysphoria and require, or have already undertaken, a course of treatment to change their gender,” Mattis Implementation Plan at 2, the Mattis Implementation Plan proposes the following policies:

- Transgender persons with a history or diagnosis of gender dysphoria are disqualified from military service, except under the following limited circumstances: (1) if they have been stable for 36 consecutive months in their biological sex prior to accession; (2) Service members diagnosed with gender dysphoria after entering into service may be retained if they do not require a change of gender and remain deployable within applicable retention standards; and (3) currently serving Service members who have been diagnosed with gender dysphoria since the previous administration’s policy took effect and prior to the effective date of this new policy, may continue to serve in their preferred gender and receive medically necessary treatment for gender dysphoria.
- Transgender persons who require or have undergone gender transition are disqualified from military service.
- Transgender persons without a history or diagnosis of gender dysphoria, who are otherwise qualified for service, may serve, like all other Service members, in their biological sex.

Id. at 2-3.

To summarize: under the Mattis Implementation Plan, individuals who require or have undergone gender transition are absolutely disqualified from military service; individuals with a history or diagnosis of gender dysphoria are largely disqualified from military service; and, to the extent that there are any individuals who identify as “transgender” but do not fall under the first two categories, they may serve, but only “in their biological sex.” By definition, transgender persons do not identify or live in accord with their biological sex, which means that the result of the Mattis Implementation Plan is that transgender individuals are generally not allowed to serve openly in the military. There is only one narrow class of transgender individuals who are allowed to serve as openly transgender under the Mattis Implementation

Plan. Pursuant to a “grandfather provision,” those “currently serving Service members who have been diagnosed with gender dysphoria since the previous administration’s policy took effect and prior to the effective date of” the policy set forth in the Mattis Implementation Plan, may continue to serve in their preferred gender.

The reasoning underlying the Mattis Implementation Plan is spelled out in a second memorandum that was sent from the Department of Defense to the President in February 2018. *See* Defs.’ Mot. to Dissolve the Preliminary Injunction, Ex. 2, ECF No. 96-2 (hereinafter, the “Panel Report”). Like the Mattis Implementation Plan, the Panel Report carefully avoids categorical language banning all transgender individuals. Instead, the document speaks in terms of individuals with “gender dysphoria” and those who have undergone or will require “gender transition” (both of which, again, are proxies for transgender status). Generally speaking, the Panel Report concludes that individuals with gender dysphoria or who have undergone or will require gender transition undermine the military. According to the report, these service members are fundamentally incompatible with the military’s mental health standards, physical health standards, and sex-based standards. The report suggests that they are a detriment to military readiness and unit cohesion. It likens gender dysphoria to conditions such as “bipolar disorder, personality disorder, obsessive-compulsive disorder, suicidal behavior, and even body dysmorphic disorder.” Panel Report at 20. It concludes that individuals with gender dysphoria or who have undergone or will require gender transition are more likely to have other mental health conditions and substance abuse problems, and to commit suicide. *Id.* at 21. The Panel Report also states that these individuals impose “disproportionate costs” on the military. *Id.* at 41. For the most part, in lieu of affirmative evidence, the Panel Report repeatedly cites “uncertainty” in the medical field about these individuals as a reason to urge that the military

“proceed with caution.” *Id.* at 6. Although not necessary to the outcome of this particular Memorandum Opinion, it is worth noting that these conclusions were immediately denounced by the American Psychological Association and the American Medical Association. *See* Decl. of Lauren Godles Milgroom, ECF No. 128 (“Milgroom Decl.”), Exs. GG, HH.

On March 23, 2018, Defendants filed a Notice informing the Court that President Trump had issued a second memorandum on military service by transgender individuals. *See* Defs.’ Notice, ECF No. 95. In the 2018 Presidential Memorandum, the President stated that he “revokes” his 2017 Presidential Memorandum, “and any other directive [he] may have made with respect to military service by transgender individuals.” *Id.* at 1. The President ordered that “[t]he Secretary of Defense, and the Secretary of Homeland Security, with respect to the U.S. Coast Guard, may exercise their authority to implement any appropriate policies concerning military service by transgender individuals.” *Id.* To be clear, as has just been laid out, the “appropriate policies” that the Secretaries intended to implement had already been developed and proposed to the President at the time he issued this memorandum.

The events described above sparked a great debate between the parties as to the future of this case, and prompted the filing of numerous motions. First, Defendants moved to dismiss and to dissolve the preliminary injunction on the grounds that the Mattis Implementation Plan has changed the circumstances of this case. Defendants argued that the Mattis Implementation Plan represents a “new policy” divorced and distinct from the President’s 2017 policy directives that were previously enjoined by this Court. They also argued that the Mattis Implementation Plan does not harm the Plaintiffs in this case. Accordingly, Defendants sought the dismissal of Plaintiffs’ Second Amended Complaint for lack of jurisdiction because Plaintiffs lack standing and because their claims are moot. For largely the same reasons, Defendants also argued that the

Court's preliminary injunction should be dissolved. On August 6, 2018, the Court issued a Memorandum Opinion and Order rejecting these arguments and denying Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint and Defendants' Motion to Dissolve the Preliminary Injunction. *See Doe 2 v. Trump*, 315 F. Supp. 3d 474 (D.D.C. 2018).

Defendants have also moved for summary judgment. A major premise of Defendants' summary judgment argument is their contention that the Court should defer to Defendants' assessment about transgender military service because it was the product of a careful, independent examination of this issue. Plaintiffs oppose Defendants' motion for summary judgment, and have also filed a cross-motion for summary judgment. However, citing Federal Rule of Civil Procedure 56(d), Plaintiffs also ask this Court to defer ruling on the parties' cross-motions "[i]f the Court determines that resolution of the parties' cross-motions for summary judgment turns on whether or not the process that resulted in the Mattis Plan and the Panel Report reflected independent military judgment." Pls.' Opp'n and Cross-Mot. at 18 n.5. This is because, according to Plaintiffs, "Defendants have objected to virtually all discovery requests seeking evidence concerning whether, as a factual matter, the review process was an exercise of independent judgment." *Id.* Accordingly, "Plaintiffs seek the opportunity to complete fact discovery." *Id.*

The Court's August 6, 2018 Memorandum Opinion and Order left the parties' cross-motions for summary judgment unresolved. This Memorandum Opinion now addresses those motions. The Court **DENIES** both motions for summary judgment because genuine disputes of material fact remain. The parties dispute the facts related to the process used by Defendants to prepare the current proposed policy on transgender military service. Those facts are material because they affect the degree of deference owed by this Court to Defendants' policy decisions,

and the level of scrutiny this Court will apply to the challenged policy. The Court does not mean to imply that these are the only genuine disputes of material fact that remain in this case. But the existence of these disputes alone is sufficient to render summary judgment inappropriate. Accordingly, instead of summarily adjudicating this case, the Court will allow the parties to continue to engage in discovery.

II. LEGAL STANDARD

Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The mere existence of *some* factual dispute is insufficient on its own to bar summary judgment; the dispute must pertain to a “material” fact. *Id.* Accordingly, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Nor may summary judgment be avoided based on just any disagreement as to the relevant facts; the dispute must be “genuine,” meaning that there must be sufficient admissible evidence for a reasonable trier of fact to find for the non-movant. *Id.*

When faced with a motion for summary judgment, the district court may not make credibility determinations or weigh the evidence; instead, the evidence must be analyzed in the light most favorable to the non-movant, with all justifiable inferences drawn in its favor. *Id.* at 255. If material facts are genuinely in dispute, or undisputed facts are susceptible to divergent yet justifiable inferences, summary judgment is inappropriate. *Moore v. Hartman*, 571 F.3d 62, 66 (D.C. Cir. 2009). In the end, the district court’s task is to determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Liberty Lobby*, 477 U.S. at 251-52. In this

regard, the non-movant must “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Liberty Lobby*, 477 U.S. at 249-50 (internal citations omitted).

III. DISCUSSION

The Court cannot summarily adjudicate the claims in this case on the present record. There are two steps to the Court’s analysis of Plaintiffs’ constitutional claims. The first step is to determine what level of scrutiny the Court should apply, and how much deference should be given, when reviewing the challenged policy. Only once that threshold step has been completed can the Court move on to the second step: applying that level of scrutiny to the policy and determining whether or not it is constitutional. Due in part to Defendants’ refusal to provide discovery, summary judgment is not currently appropriate on the first step.

Defendants’ primary defense in this case thus far has been their argument that the Court should apply an extremely low level of scrutiny to their proposed policy on transgender military service. As support, Defendants primarily rely on *Rostker v. Goldberg*, 453 U.S. 57 (1981), another case regarding alleged discrimination in the military context. In *Rostker*, the United States Supreme Court assessed the constitutionality of a law that authorized the President to require the registration of males, but not females, for military service. *Id.* at 59. The Supreme Court in that case did not hold that courts must simply rubber stamp any allegedly discriminatory policy if it relates to military personnel. The Court expressly declined to hold that the heightened level of scrutiny that is generally applicable to gender discrimination does not apply in the context of the military. *Id.* at 69. However, that Court did hold—based on the particular

facts before it—that the district court in that case had not sufficiently deferred to the reasoned consideration and decision-making of Congress regarding female military registration.

Defendants argue that the military personnel decision in this case—largely excluding transgender persons from the military—deserves similar deference. When granting Plaintiffs’ motion for a preliminary injunction, this Court held that it was not convinced—at that preliminary stage—that *Rostker* required the Court to apply a low level of scrutiny in this case. *See Doe I v. Trump*, 275 F. Supp. 3d 167, 214 (D.D.C. 2017). This Court reasoned that the facts in *Rostker* were starkly different than the facts in this case. *Id.* The *Rostker* Court had noted that “Congress did not act unthinkingly or reflexively and not for any considered reason,” when it passed the challenged policy. *Rostker*, 453 U.S. at 72. To the contrary, the *Rostker* Court relied on Congress’ “studied choice of one alternative in preference to another,” and the fact that the policy at issue in that case had been “extensively considered by Congress in hearings, floor debate, and in committee.” *Id.* At the preliminary injunction stage, this Court held that such reasoned decision-making did not appear to have occurred in this case. *See Doe I*, 275 F. Supp. 3d at 214. The Court’s holding was, of course, based on the preliminary record at that time.

Now, Defendants contend that the military has conducted the sort of reasoned decision-making that warrants deference. According to Defendants, even if deference was not owed to the President’s original directives (a point Defendants do not concede), the Court must now engage in a “highly deferential form of review” because, after the President’s 2017 directives, the military conducted an “independent reexamination” of the issue that consisted of “an extensive deliberative process lasting over seven months and involving many of DoD’s high-ranking officials as well as experts in a variety of subjects.” Defs.’ Mot. at 35, 39. According to Defendants, they “received extensive evidence on the issue,” and their decision to propose the

policy set forth in the Mattis Implementation Plan “rested on the considered professional judgment of multiple military experts.” *Id.* at 37. Defendants argue that this process entitles them to the sort of deferential review discussed in *Rostker*. This is the crux of Defendants’ defense. It is restated in some form or another in nearly all of Defendants’ briefs.

But Plaintiffs do not agree that any legitimate, independent review of transgender military service has taken place. They contend that the only process that has occurred since the President’s 2017 Tweet and Memorandum was one merely to prepare a plan to implement an initial, unsupported, decision of the President to ban transgender military service. According to Plaintiffs, whatever process occurred was not meaningfully independent from, and indeed was constrained by, that initial decision. Because there was no independent assessment of the issue or independent exercise of military judgment, Plaintiffs argue that no special deference is owed.

Faced with this dispute, the Court holds that summary judgment is not appropriate at this stage. Summary judgment cannot be granted to the Plaintiffs or the Defendants if there are genuine disputes of material fact. *See* Fed. R. Civ. P. 56(a). The facts about the process leading up to the development of the Mattis Implementation Plan are both material and in dispute.

First, the facts are material—they go to the heart of the degree of deference owed, and the level of scrutiny to be applied, in this case. The military’s assessment of transgender military service is a primary reason Defendants cite for their argument that this Court must be highly deferential to their proposed policy. As the court in *Karnoski v. Trump* recently explained, the constitutionality of the challenged policy “necessarily turns on facts related to Defendants’ deliberative process.” *Karnoski v. Trump*, No. C17-1297-MJP, 2018 WL 3608401, at *4 (W.D. Wash. July 27, 2018). In ordering discovery on this issue, that court held that “Defendants may not simultaneously claim that deference is owed to the Ban because it is the product of

‘considered reason [and] deliberation,’ ‘exhaustive study,’ and ‘comprehensive review’ by the military . . . while also withholding access to information concerning these deliberations, including whether the military was even involved.” *Id.* “This information is central to the litigation.” *Id.* This Court agrees that this information is material to the parties’ dispute in this case.

Second, these material facts are still in dispute. The parties disagree about the fundamental nature of the process leading up to the issuance of the Mattis Implementation Plan, and both cite support for their positions in the (limited) record. For example, Defendants cite statements by Department of Defense officials regarding the “independent” nature of the process and the fact that their “review” was not affected by “external factors.” Plaintiffs cite other statements that suggest that the process was inherently circumscribed by an already-made decision of the President to exclude transgender persons from the military. This is a genuine factual dispute.

Citing Federal Rule of Civil Procedure 56(d), Plaintiffs have asked this Court to defer ruling on the parties’ cross-motions for summary judgment “[i]f the Court determines that resolution of the parties’ cross-motions for summary judgment turns on whether or not the process that resulted in the Mattis Plan and the Panel Report reflected independent military judgment.” Pls.’ Opp’n and Cross-Mot. at 18 n.5. This is because, Plaintiffs argue, “Defendants have objected to virtually all discovery requests seeking evidence concerning whether, as a factual matter, the review process was an exercise of independent judgment.” *Id.* Accordingly, “Plaintiffs seek the opportunity to complete fact discovery.” *Id.*

Plaintiffs are entitled to complete discovery. As already stated above, despite the fact that one of Defendants’ *main defenses* in this action is that their decisions regarding transgender

military service are owed great deference because they are the product of reasoned deliberation, study and review by the military, Defendants have withheld nearly all information concerning this alleged deliberation. This is not how civil litigation works. Defendants cannot prevent Plaintiffs from obtaining the facts about a disputed issue and then expect to be granted summary judgment on that issue. Because genuine disputes of material fact exist and Plaintiffs are entitled to continue pursuing discovery of those facts, the Court will not summarily adjudicate this case at this time.

IV. CONCLUSION

For the foregoing reasons, the parties' Cross-Motions for Summary Judgment will be **DENIED**. The level of scrutiny the Court must apply, and the degree of deference owed, are threshold questions that must be resolved before the Court can assess the constitutionality of the challenged policy. Summary judgment on this question is not appropriate at this time because the parties dispute the basic facts that will inform its answer, and Plaintiffs have asked for leave to finish discovery into these facts before summary judgment is entered. Instead of granting either of the parties' motions for summary judgment, the Court will allow Plaintiffs the opportunity to complete discovery. An appropriate Order accompanies this Memorandum Opinion.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

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

JANE DOE 2, *et al.*,

Plaintiffs

v.

JAMES N. MATTIS, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

ORDER
(August 24, 2018)

For the reasons set forth in the accompanying Memorandum Opinion, it is, this 24th day of August, 2018, hereby

ORDERED that Defendants' [115] Motion to Dismiss Plaintiffs' Second Amended Complaint or, in the Alternative, Defendants' Motion for Summary Judgment, is **DENIED** to the extent that Motion sought summary judgment. The Motion was previously denied in all other respects. It is further

ORDERED that Plaintiffs' [131] Cross-Motion for Summary Judgment is **DENIED**. In lieu of granting these motions, the Court will allow the parties to continue to engage in discovery.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

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

JANE DOE 2, *et al.*,

Plaintiffs

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

MEMORANDUM OPINION
(August 6, 2018)

On July 26, 2017, President Donald J. Trump issued a statement via Twitter announcing that “the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.” A formal Presidential Memorandum followed on August 25, 2017. Before the 2017 Presidential Memorandum, the Department of Defense had announced that openly transgender individuals would be allowed to enlist in the military, effective January 1, 2018, and had prohibited the discharge of service members based solely on their gender identities. The 2017 Presidential Memorandum reversed these policies. It indefinitely extended the prohibition against transgender individuals entering the military (a process formally referred to as “accession”), and required the military to authorize the discharge of transgender service members. The President ordered Secretary of Defense James N. Mattis to submit a plan for implementing the policy directives of the 2017 Presidential Memorandum by February 2018. Plaintiffs filed suit and sought preliminary injunctive relief, which the Court granted.

Currently pending before the Court are Defendants’ [115] Motion to Dismiss Plaintiffs’ Second Amended Complaint, or, in the Alternative, Defendants’ Motion for Summary Judgment, and Defendants’ [116] Motion to Dissolve the Preliminary Injunction. Upon consideration of the

pleadings,¹ the relevant legal authorities, and the record as a whole, the Court DENIES Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint, and DENIES Defendants' Motion to Dissolve the Preliminary Injunction.² Both of these motions are based on the same fundamental premise: that Defendants have recently proposed a "new policy" that will now allow transgender individuals to serve in the military. Based on this premise, Defendants argue in these motions that Plaintiffs no longer have standing, that their claims are moot, and that there is no longer any need for this Court's preliminary injunction. For reasons discussed in more detail below, the Court is not persuaded by these arguments. This case shall proceed, and the Court's preliminary injunction shall continue to maintain the *status quo ante*.

¹ The Court's consideration has focused on the following documents:

- Defs.' Mem. in Supp. of Mot. to Dismiss Pls.' 2d Am. Compl., or, in the Alternative, Defs.' Mot. for Summ. J., ECF No. 115 ("Defs.' Mem.");
- Defs.' Mot. to Dissolve the Prelim. Inj., ECF No. 116;
- Pls.' Opp'n to Defs.' Mot. to Dismiss and to Dissolve the Prelim. Inj., ECF No. 130 ("Pls.' Opp'n");
- Defs.' Reply in Supp. of their Mot. to Dismiss Pls.' 2d Am. Compl., or, in the Alternative, for Summ. J., and Opp'n to Pls.' Cross-Mot. for Summ. J., ECF No. 138 ("Defs.' Reply"); and
- Defs.' Reply in Support of their Mot. to Dissolve the Prelim. Inj., ECF No. 140.

In an exercise of its discretion, the Court finds that holding oral argument in this action would not be of assistance in rendering a decision. *See* LCvR 7(f).

² Although the parties' briefing mixes arguments about dismissal for lack of jurisdiction and summary judgment, the Court has exercised its discretion to first consider their arguments in the context of Defendants' motion to dismiss for lack of jurisdiction. Because those arguments largely resolve the issues raised in Defendants' Motion to Dissolve the Preliminary Injunction, the Court also addresses that motion in this Memorandum Opinion. However, this Opinion does *not* address the summary judgment aspects of Defendants' [115] Motion, nor does it address Plaintiffs' [131] Cross-Motion for Summary Judgment. Those motions will be dealt with separately. In addition, this Opinion does not address Defendants' argument that Plaintiffs do not have standing to press their claims against the President. This argument is moot because the Court has issued a separate Memorandum Opinion and Order today which dismisses the President as a party from this case.

I. BACKGROUND

Plaintiffs are current and aspiring transgender service members. Many have years of experience in the military. Some have decades. They have been deployed on active duty in Iraq and Afghanistan. They have and continue to serve with distinction. All fear that the directives of the 2017 Presidential Memorandum will have devastating impacts on their careers and their families. Accordingly, they filed this lawsuit challenging those directives and moved this Court to enjoin the implementation of the 2017 Presidential Memorandum. They claimed that the President's directives violate the fundamental guarantees of due process afforded by the Fifth Amendment to the United States Constitution.

On October 30, 2017, the Court issued a preliminary injunction in this case. As particularly relevant here, the Court found that Plaintiffs had standing and were likely to succeed on their Fifth Amendment claim. The Court concluded that, as a form of government action that classifies people based on their gender identity, and disfavors a class of historically persecuted and politically powerless individuals, the President's directives were subject to heightened scrutiny. Plaintiffs claimed that the President's directives could not survive such scrutiny because they were not genuinely based on legitimate concerns regarding military effectiveness or budget constraints, but were instead driven by a desire to express disapproval of transgender people generally. The Court found that a number of factors—including the breadth of the exclusion ordered by the directives, the unusual circumstances surrounding the President's announcement of them, the fact that the reasons given for them did not appear to be supported by any facts, and the recent rejection of those reasons by the military itself—strongly suggested that Plaintiffs' Fifth Amendment claim was meritorious. Accordingly, the Court enjoined Defendants from enforcing the President's directives. The effect of the Court's preliminary

injunction was to revert to the *status quo ante* with regard to accession and retention that existed before the issuance of the 2017 Presidential Memorandum.

Defendants appealed, *see* Defs.’ Notice of Appeal, ECF No. 66, and moved this Court to stay the portion of its preliminary injunction that required Defendants to begin accepting transgender individuals into the military on January 1, 2018, *see* Defs.’ Mot. for Partial Stay of Prelim. Inj. Pending Appeal, ECF No. 73. On December 11, 2017, the Court denied Defendants’ motion to stay. *See* Dec. 11, 2017 Order, ECF No. 75.

Defendants then sought the same relief from the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”). On December 22, 2017, the D.C. Circuit denied Defendants’ motion to stay this Court’s preliminary injunction. *See Doe I v. Trump*, No. 17-5267, 2017 WL 6553389 (D.C. Cir. Dec. 22, 2017). The D.C. Circuit concluded that Defendants had not demonstrated that they had a strong likelihood of success on appeal, that they would be irreparably harmed absent a stay, or that the stay would not harm the other parties to the proceeding. *Id.* It held that “given that the enjoined accession ban would directly impair and injure the ongoing educational and professional plans of transgender individuals and would deprive the military of skilled and talented troops, allowing it to take effect would be counter to the public interest.” *Id.* at *3. The D.C. Circuit also explained that “in the balancing of equities, it must be remembered that all Plaintiffs seek during this litigation is to serve their Nation with honor and dignity, volunteering to face extreme hardships, to endure lengthy deployments and separation from family and friends, and to willingly make the ultimate sacrifice of their lives if necessary to protect the Nation, the people of the United States, and the Constitution against all who would attack them.” *Id.* After the D.C. Circuit’s opinion was issued, Defendants

voluntarily dismissed their appeal of this Court's preliminary injunction. The military began permitting openly transgender individuals to accede on January 1, 2018.

This case then moved forward into the discovery stage. Defendants strenuously resisted engaging in discovery. As noted above, the 2017 Presidential Memorandum had called for the Secretary of Defense to submit a plan to implement the President's policy directives by February 2018. Defendants repeatedly argued that discovery should be halted until that plan was submitted. Defendants even argued at one point that Plaintiffs were not entitled to discovery in this case at all. The Court repeatedly rejected Defendants' arguments and ordered Defendants to cooperate with discovery so that this case could move forward efficiently toward an ultimate resolution on the merits. Despite the Court's orders, discovery remains unfinished because Defendants have asserted that a substantial portion of the documents and information sought by Plaintiffs are privileged (pursuant to the deliberative process privilege and the presidential communications privilege), and the parties' disputes about these assertions of privilege remain outstanding.³

In February 2018, as ordered by the 2017 Presidential Memorandum, Secretary of Defense Mattis presented a memorandum to the President that proposed a policy to effectively prevent transgender military service. *See* Defs.' Mot. to Dissolve the Preliminary Injunction, Ex. 1, ECF No. 96-1 (hereinafter, the "Mattis Implementation Plan"). The Mattis Implementation Plan, unlike the President's 2017 tweet and memorandum, purports not to be a blanket ban on all "transgender individuals." However, the plan effectively implements such a ban by targeting proxies of transgender status, such as "gender dysphoria" and "gender transition," and by

³ The Court is aware that the court in *Karnoski v. Trump*, No. C17-1297-MJP (W.D. Wash.), has recently ordered Defendants to produce materials that they have withheld on the basis of privilege and that Defendants have sought appellate review of that order.

requiring all service members to serve “in their biological sex.” Based on the conclusion “that there are substantial risks associated with allowing the accession and retention of individuals with a history or diagnosis of gender dysphoria and require, or have already undertaken, a course of treatment to change their gender,” Mattis Implementation Plan at 2, the Mattis Implementation Plan proposes the following policies:

- Transgender persons with a history or diagnosis of gender dysphoria are disqualified from military service, except under the following limited circumstances: (1) if they have been stable for 36 consecutive months in their biological sex prior to accession; (2) Service members diagnosed with gender dysphoria after entering into service may be retained if they do not require a change of gender and remain deployable within applicable retention standards; and (3) currently serving Service members who have been diagnosed with gender dysphoria since the previous administration’s policy took effect and prior to the effective date of this new policy, may continue to serve in their preferred gender and receive medically necessary treatment for gender dysphoria.
- Transgender persons who require or have undergone gender transition are disqualified from military service.
- Transgender persons without a history or diagnosis of gender dysphoria, who are otherwise qualified for service, may serve, like all other Service members, in their biological sex.

Id. at 2-3.

To summarize: under the Mattis Implementation Plan, individuals who require or have undergone gender transition are absolutely disqualified from military service; individuals with a history or diagnosis of gender dysphoria are largely disqualified from military service; and, to the extent that there are any individuals who identify as “transgender” but do not fall under the first two categories, they may serve, but only “in their biological sex.” By definition, transgender persons do not identify or live in accord with their biological sex, which means that the result of the Mattis Implementation Plan is that transgender individuals are generally not

allowed to serve openly in the military. There is only one narrow class of transgender individuals who are allowed to serve as openly transgender under the Mattis Implementation Plan. Pursuant to a “grandfather provision,” those “currently serving Service members who have been diagnosed with gender dysphoria since the previous administration’s policy took effect and prior to the effective date of” the policy set forth in the Mattis Implementation Plan, may continue to serve in their preferred gender.

The reasoning underlying the Mattis Implementation Plan is spelled out in a second memorandum that was sent from the Department of Defense to the President in February 2018. *See Defs.’ Mot. to Dissolve the Preliminary Injunction*, Ex. 2, ECF No. 96-2 (hereinafter, the “Panel Report”). Like the Mattis Implementation Plan, the Panel Report carefully avoids categorical language banning all transgender individuals. Instead, the document speaks in terms of individuals with “gender dysphoria” and those who have undergone or will require “gender transition” (both of which, again, are proxies for transgender status). Generally speaking, the Panel Report concludes that individuals with gender dysphoria or who have undergone or will require gender transition undermine the military. According to the report, these service members are fundamentally incompatible with the military’s mental health standards, physical health standards, and sex-based standards. The report suggests that they are a detriment to military readiness and unit cohesion. It likens gender dysphoria to conditions such as “bipolar disorder, personality disorder, obsessive-compulsive disorder, suicidal behavior, and even body dysmorphic disorder.” Panel Report at 20. It concludes that individuals with gender dysphoria or who have undergone or will require gender transition are more likely to have other mental health conditions and substance abuse problems, and to commit suicide. *Id.* at 21. The Panel Report also states that these individuals impose “disproportionate costs” on the military. *Id.* at

41. For the most part, in lieu of affirmative evidence, the Panel Report repeatedly cites “uncertainty” in the medical field about these individuals as a reason to urge that the military “proceed with caution.” *Id.* at 6. Although not necessary to the outcome of this particular Memorandum Opinion, it is worth noting that these conclusions were immediately denounced by the American Psychological Association and the American Medical Association. *See* Decl. of Lauren Godles Milgroom, ECF No. 128 (“Milgroom Decl.”), Exs. GG, HH.

On March 23, 2018, Defendants filed a Notice informing the Court that President Trump had issued a second memorandum on military service by transgender individuals. *See* Defs.’ Notice, ECF No. 95. In the 2018 Presidential Memorandum, the President stated that he “revokes” his 2017 Presidential Memorandum, “and any other directive [he] may have made with respect to military service by transgender individuals.” *Id.* at 1. The President ordered that “[t]he Secretary of Defense, and the Secretary of Homeland Security, with respect to the U.S. Coast Guard, may exercise their authority to implement any appropriate policies concerning military service by transgender individuals.” *Id.* To be clear, as has just been laid out, the “appropriate policies” that the Secretaries intended to implement had already been developed and proposed to the President at the time he issued this memorandum.

The events described above have sparked a great debate between the parties as to the future of this case, and prompted the filing of numerous motions. As relevant to this Memorandum Opinion, pending before the Court are Defendants’ Motion to Dismiss Plaintiffs’ Second Amended Complaint, or, in the Alternative, Defendants’ Motion for Summary Judgment, and Defendants’ Motion to Dissolve the Preliminary Injunction. Defendants argue that the Mattis Implementation Plan represents a “new policy” divorced and distinct from the President’s 2017 policy directives that were previously enjoined by this Court. They also contend that the

Mattis Implementation Plan does not harm the Plaintiffs in this case. Accordingly, Defendants seek the dismissal of Plaintiffs’ recently filed Second Amended Complaint for lack of jurisdiction because Plaintiffs lack standing and because their claims are now moot. For largely the same reasons, Defendants also argue that the Court’s preliminary injunction should be dissolved. In sum, it is Defendants’ view that they have preempted this lawsuit by drafting and issuing the Panel Report, the Mattis Implementation Plan, and the 2018 Presidential Memorandum. The Court disagrees.

Summary: This Memorandum Opinion sets forth the Court’s reasoning for denying Defendants’ Motion to Dismiss Plaintiffs’ Second Amended Complaint and Defendants’ Motion to Dissolve the Preliminary Injunction. The Court first concludes that Plaintiffs have standing because they would all be harmed if the Mattis Implementation Plan were allowed to take effect. The Court next concludes that the Mattis Implementation Plan has not mooted Plaintiffs’ claims because that plan is not a “new policy” that is meaningfully distinct from the President’s 2017 directives that were originally challenged in this case. Instead, at a fundamental level, the Mattis Implementation Plan is just that—a plan that *implements* the President’s directive that transgender people be excluded from the military. For largely the same reasons, the rationale for the Court’s preliminary injunction maintaining the *status quo ante* until the final resolution of this case remains intact. Nothing in this Memorandum Opinion represents a final adjudication of whether Defendants’ actions were constitutional. The Court merely holds that whatever legal relevance the Mattis Implementation Plan might have, it has not fundamentally changed the circumstances of this lawsuit such that Plaintiffs’ claims should be dismissed for lack of jurisdiction, or that the need for the Court’s preliminary injunction has dissipated.

II. LEGAL STANDARD

When a motion to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(1) is filed, a federal court is required to ensure that it has “the ‘statutory or constitutional power to adjudicate [the] case[.]’” *Morrow v. United States*, 723 F. Supp. 2d 71, 77 (D.D.C. 2010) (emphasis omitted) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998)). “Federal courts are courts of limited jurisdiction” and can adjudicate only those cases or controversies entrusted to them by the Constitution or an Act of Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In determining whether there is jurisdiction on a motion to dismiss, the Court may “consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Coal. for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003) (citations omitted). “Although a court must accept as true all factual allegations contained in the complaint when reviewing a motion to dismiss pursuant to Rule 12(b)(1),” the factual allegations in the complaint “will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim.” *Wright v. Foreign Serv. Grievance Bd.*, 503 F. Supp. 2d 163, 170 (D.D.C. 2007) (citations omitted).

III. DISCUSSION

The Court begins this Memorandum Opinion with an assessment of its jurisdiction. Article III of the Constitution limits the jurisdiction of this Court to the adjudication of “Cases” and “Controversies.” U.S. Const., Art. III, § 2. “In an attempt to give meaning to Article III’s case-or-controversy requirement, the courts have developed a series of principles termed ‘justiciability doctrines,’ among which are standing [and] mootness.” *Nat’l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1427 (D.C. Cir. 1996) (citing *Allen v. Wright*, 468 U.S.

737, 750 (1984)). Defendants argue that the issuance of the 2018 Presidential Memorandum, the Mattis Implementation Plan, and the Panel Report have rendered this case moot and have deprived all Plaintiffs of standing. They contend that the Court must therefore dismiss the case for lack of jurisdiction. Defendants are wrong. In addition, for largely the same reasons that the Court continues to have jurisdiction over Plaintiffs' claims, Defendants have not satisfied their burden of demonstrating that the Court's preliminary injunction should be dissolved.

1. Standing

Standing is an element of the Court's subject-matter jurisdiction, and requires, in essence, that a plaintiff have "a personal stake in the outcome of the controversy." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). A plaintiff cannot be a mere bystander or interested third-party, or a self-appointed representative of the public interest; he or she must show that the defendant's conduct has affected them in a "personal and individual way." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). "The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014). Consequently, the standing analysis is "especially rigorous when reaching the merits of the dispute would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). "[A] plaintiff must demonstrate standing for each claim he seeks to press" and for each form of relief sought, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006), but "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement," *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 53 (2006).

The familiar requirements of Article III standing are:

(1) that the plaintiff have suffered an “injury in fact”—an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) that there be a causal connection between the injury and the conduct complained of—the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) that it be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Bennett v. Spear, 520 U.S. 154, 167 (1997) (citing *Lujan*, 504 U.S. at 560–61); *see also Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). With respect to the “injury in fact” requirement, which is predominantly at issue in this case, “future injury may suffice if the threatened injury is ‘certainly impending,’ or there is a ‘substantial risk that the harm will occur.’” *Susan B. Anthony List*, 134 S. Ct. at 2341 (quoting *Clapper*, 568 U.S. at 409, 414 n.5).

The Court rejects Defendants’ argument that Plaintiffs no longer have standing because they are not harmed by the Mattis Implementation Plan. In its October 30, 2017 Memorandum Opinion, the Court explained in detail why the Plaintiffs in this case had standing. *See Doe I v. Trump*, 275 F. Supp. 3d 167, 192-203 (D.D.C. 2017). The Court will assume familiarity with that discussion and will not repeat it here (although it does expressly incorporate that discussion into this Memorandum Opinion as though stated in full). With the principles set forth in that earlier Opinion as a baseline, in this Opinion the Court focuses more narrowly on Defendants’ arguments about why the Mattis Implementation Plan has nullified Plaintiffs’ standing. As explained above, the effect of that plan would be that individuals who require or have undergone gender transition would be absolutely disqualified from military service, individuals with a history or diagnosis of gender dysphoria would be largely disqualified from military service, and, to the extent that there are any individuals who identify as “transgender” but do not fall under the first two categories, they would be allowed serve, but only “in their biological sex” (which

means that openly transgender persons would generally not be allowed to serve in conformance with their identity).

i. Current Service Members With Diagnoses of Gender Dysphoria Who Either Have Transitioned or Have Begun to Transition

Plaintiffs Regan Kibby, Jane Does 2 through 5, and John Doe 1 are current service members who have been diagnosed with gender dysphoria.⁴ The Mattis Implementation Plan generally bans individuals who have been diagnosed with gender dysphoria from military service on the grounds that they are mentally unstable and that their presence in the military disrupts unit cohesion, prevents good order and discipline, and is generally incompatible with military readiness and lethality. However, the Mattis Implementation Plan contains a limited exception from this ban for current service members who, like Plaintiffs Regan Kibby, Jane Does 2 through 5, and John Doe 1, were “diagnosed with gender dysphoria since the previous administration’s policy took effect and prior to the effective date of this new policy.” Mattis Implementation Plan at 2. This “grandfather provision” purports to be based on the military’s prior “commitment to these Service members” and “the substantial investment it has made in them.” Panel Report at 43. Defendants argue that the existence of this grandfather provision means that the Mattis Implementation Plan does not harm these Plaintiffs.

Defendants are wrong. The Mattis Implementation Plan clearly harms all current service members with gender dysphoria—even those who are allowed to remain in the military as a result of a narrow grandfather provision. It singles them out from all other service members and marks them as categorically unfit for military service. *See generally* Panel Report. It sends the message to their fellow service members and superiors that they cannot function in their

⁴ Plaintiff Regan Kibby is a midshipman at the U.S. Naval Academy. The parties agree that for the purposes of the Court’s standing analysis, he should be treated as a current service member.

respective positions. That they are mentally unstable. That their presence in the military is incompatible with military readiness, unit cohesion, good order, and discipline. In sum, it is an express statement that these individuals' very presence makes the military weaker and less combat-ready.

By singling these Plaintiffs out and stigmatizing them as members of an inherently inferior class of service members, the Mattis Implementation Plan causes Plaintiffs grave non-economic injuries that are alone sufficient to confer standing. *See Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (“[D]iscrimination itself, by perpetuating ‘archaic and stereotypic notions’ or by stigmatizing members of the disfavored group as ‘innately inferior’ and therefore as less worthy participants in the political community, can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.”) (internal citation omitted).

Defendants disagree that this “stigmatic” injury alone is sufficient to confer standing. They claim that “an alleged injury arising from discrimination ‘accords a basis for standing only to those persons who are personally denied equal treatment by the challenged discriminatory conduct.’” Defs.’ Reply at 11 (quoting *Allen*, 468 U.S. at 755). But the principal case Defendants cite in support of this argument, *Allen v. Wright*, is readily distinguishable. The plaintiffs in *Allen* were the parents of African American public school children. *Allen*, 468 U.S. at 739. They challenged the Internal Revenue Service’s grant of tax-exempt status to racially segregated private schools. *Id.* at 744-45. The *Allen* Court rejected the plaintiffs’ claim of standing based on the “stigmatic injury, or denigration” that is “suffered by all members of a racial group when the Government discriminates on the basis of race.” *Id.* at 754. The Supreme Court held that “[t]here can be no doubt that this sort of noneconomic injury is one of the most

serious consequences of discriminatory government action and is sufficient in some circumstances to support standing.” *Id.* at 755. However, it concluded that such stigmatic injury did not support standing for the particular plaintiffs in *Allen* because their children had never applied to any of the private schools at issue, and therefore they had not been “personally denied equal treatment.” *Id.* Instead, they had merely alleged an “abstract stigmatic injury” that would be equally applicable to “all members” of an entire racial group, nationwide. *Id.* at 756.

The situation here is fundamentally different. Plaintiffs are not merely concerned members of the public or bystanders presenting a generalized grievance. They are members of the precisely defined group that the Mattis Implementation Plan discriminates against by labelling as unsuited for military service. The Mattis Implementation Plan sends a blatantly stigmatizing message to all members of the military hierarchy that has a unique and damaging effect on a narrow and identifiable set of individuals, of which Plaintiffs are members. Moreover, unlike the alleged injury in *Allen*, the stigmatic injury alleged by Plaintiffs is caused by their receiving unequal treatment under the Mattis Implementation Plan. Under that plan, Plaintiffs would be allowed to remain in the military but, unlike any other service members, only pursuant to an exception to a policy that explicitly marks them as unfit for service. No other service members are so afflicted. These Plaintiffs are denied equal treatment because they will be the only service members who are allowed to serve only based on a technicality; as an exception to a policy that generally paints them as unfit. In their words, “[w]hile other service members will enjoy the security and status of serving as honored, respected, and equal members of the Armed Forces,” Plaintiffs “will serve only on conditional sufferance and therefore on objectively unequal terms.” Pls.’ Reply in Support of their Cross-Mot. for Summary Judgment,

ECF No. 149, at 23.⁵ Because their stigmatic injury derives from this unequal treatment, it is sufficient to confer standing.

Regardless, even assuming that the “stigmatic” aspects of Plaintiffs’ injuries were not alone sufficient to confer standing, the Mattis Implementation Plan does more than just stigmatize Plaintiffs. It creates a substantial risk that Plaintiffs will suffer concrete harms to their careers in the near future. There is a substantial risk that the plan will harm Plaintiffs’ career development in the form of reduced opportunities for assignments, promotion, training, and deployment. These harms are an additional basis for Plaintiffs’ standing.

Defendants argue that these alleged harms are too “speculative,” but the Court disagrees. The Secretary of Defense has personally issued a policy, with a lengthy supporting memorandum, that, in effect, instructs the entire armed forces that Plaintiffs’ service is harmful to the military. There is nothing speculative about the proposition that, having been so instructed by the very top of the military hierarchy, Plaintiffs’ supervisors will place less trust in Plaintiffs and be less likely to give Plaintiffs quality assignments and opportunities. The very nature of such a pronouncement from the Secretary of Defense creates a non-speculative and substantial risk that Plaintiffs’ experience, career development, and growth in the military will be hampered. To pretend otherwise is fanciful. This fairly obvious conclusion is buttressed by evidence of the effects of prior negative proclamations about transgender service. For instance, Jane Doe 2 declares that she received an unfavorable work detail to keep her “separated from the rest of [her] unit because [she is] transgender and because of the President’s ban, as [she] never had any

⁵ *In re Navy Chaplaincy*, 534 F.3d 756 (D.C. Cir. 2008) is also distinguishable. Unlike in that case, Plaintiffs here do not merely take offense to a message that can be *interpreted* from government action. Plaintiffs assert that they are directly injured by an *explicit government message* about their suitability as service members.

problems with this kind of treatment in [her] old unit and [does] not know of any other reason [why] she would be treated this way.” Decl. of Jane Doe 2, ECF No. 40-2, at ¶ 15. The detail requires Jane Doe 2 to “driv[e] far away from my base all day every day” and despite the fact that she is “supposed to be in charge of four or five other soldiers, [she has] yet to meet them.” *Id.* The conclusion is also supported by the declarations of the former United States Secretaries of the Army and Navy, and a Professor Emeritus at the Naval Postgraduate School in Monterey, California. *See, e.g.*, Supp. Decl. of Raymond E. Mabus, Jr., ECF No. 51-1, at ¶ 7 (“transgender service members are losing opportunities for assignments that they are capable of doing”); Supp. Decl. of Eric K. Fanning, ECF No. 51-3, at ¶ 6 (transgender service members’ “advancement and promotion opportunities in the military” are being substantially limited); Decl. of Mark J. Eitelberg, ECF No. 51-4, at ¶ 11 (directives “instruct[ing] commanders and other service members that transgender individuals are detrimental to the military . . . erode[] the value that members serving with them place on their contributions or performance” which “harm[s] and restrict[s] artificially” their ability to serve).⁶

The grandfather provision of the Mattis Implementation Plan does not alleviate these harms. That provision does not state, nor does it appear to be based on, a conclusion that those who will be allowed to remain in the military like Regan Kibby, Jane Does 2 through 5, and John Doe 1 are somehow more fit to serve than those who will be banned. Instead, the provision is based—purportedly—on a conclusion that discharging these particular individuals would be

⁶ Defendants argue that the statements of these individuals are all irrelevant because they predate the Mattis Implementation Plan, Defs.’ Reply at 13-14, but that argument assumes what the Court rejects in the latter portions of this Opinion: that the Mattis Implementation Plan is a “new policy” separate and distinct from the President’s 2017 directives. The Mattis Implementation Plan merely implements the basic policy directives in the President’s 2017 tweet and memorandum. Evidence about the effects of the 2017 directives is therefore relevant to assessing the impact of the Mattis Implementation Plan.

unfair because they relied on the military’s prior policy pronouncements, and also inefficient because the military has already invested time and money into their training. Accordingly, the message of the policy—that, under general circumstances, these Plaintiffs should not be in the military—remains intact. That message is substantially likely to harm Plaintiffs’ careers in very real ways. Accordingly, the Court finds that Plaintiffs Regan Kibby, Jane Does 2 through 5, and John Doe 1 have standing.

ii. Prospective Service Members Who Have Undergone Gender Transition

Jane Doe 7 and John Doe 2 are prospective service members who have already undergone, or are currently undergoing, gender transition, and are also actively taking steps toward enlistment. *See* Decl. of Jane Doe 7, at ¶ 1 (attesting that she “went through the process of gender transition seven years ago” and has “been trying to enlist in the Coast Guard”); Decl. of John Doe 2, at ¶¶ 8-13 (attesting that he has “completed transition” and been “actively working with [his] recruiter to enlist in the Army”). If the Mattis Implementation Plan takes effect, these individuals will be barred from military service because they have undergone gender transition. Being barred from service is clearly an “injury in fact” sufficient to give these Plaintiffs standing. *See Doe 1*, 275 F. Supp. 3d at 203 (explaining in Court’s prior Opinion that Plaintiffs have standing due to the “substantial risk that they will be denied accession or discharged from the military due to their transgender status”).

Defendants argue that the Mattis Implementation Plan deprives these Plaintiffs of standing because (if they rush to enlist) they can still join the military while this Court’s preliminary injunction is in effect and the Mattis Implementation Plan is not allowed to be implemented. *See* Defs.’ Mem. at 12-13. Distilled to its essence, Defendants’ argument is that because transgender service members who enlist before the Mattis Implementation Plan goes into effect will be allowed to remain in the military under the plan’s grandfather provision, Plaintiffs can and

should enlist now to avoid any harm. *Id.* If Plaintiffs do not enlist right now while the preliminary injunction is in effect and take advantage of the grandfather provision, their harm is self-inflicted. *Id.* Defendants argue that Plaintiffs cannot manufacture standing based on “self-inflicted” harm. *Id.*

This argument is based on a misunderstanding of the Court’s standing analysis. Plaintiffs challenge the constitutionality of the policies realized in the Mattis Implementation Plan, which Defendants are prepared to implement. Those policies, and that plan in particular, are not yet in effect, *but only because the Court granted Plaintiffs’ Motion for a Preliminary Injunction in this case*, not because Defendants have decided to allow Plaintiffs to enlist as transgender military personnel during this period. All indications suggest that the Defendants have every intention of enforcing the plan as soon as they are no longer enjoined from doing so and, in fact, Defendants have moved this Court and other courts to dissolve injunctions so that they can accomplish that goal. That the plan does not harm Plaintiffs so long as the preliminary injunction is in force, of course, does not mean that Plaintiffs lack standing. To assess whether Plaintiffs have standing, the Court must determine whether that plan would harm them if the Court *lifted* its injunction and allowed the plan to go into effect. There is no dispute that if the Court did so, Jane Doe 7 and John Doe 2 would be barred from military service by the Mattis Implementation Plan. Accordingly, they have standing.⁷

Moreover, even if these Plaintiffs did rush to enlist in the military while this Court’s injunction was in place and therefore fell into the Mattis Implementation Plan’s grandfather

⁷ Moreover, the very fact that these Plaintiffs are required to enlist in the military immediately, while the Court’s preliminary injunction remains in effect, or be forever banned, is a sufficient injury to confer standing. These Plaintiffs are harmed by such a “now-or-never” requirement because it subjects them to a barrier on their entry into the military that their competitors are not subject to.

provision, they would still be subject to the same stigmatic and career-damaging injuries that afflict those Plaintiffs who are current service members who have been diagnosed with gender dysphoria.

Finally, Defendants argue that, even assuming that the Mattis Implementation Plan has taken effect, and thus Jane Doe 7 and John Doe 2 are barred from military service, there would still be no injury because these Plaintiffs “would not be personally denied equal treatment.” Defs.’ Reply at 15. This is so, Defendants argue, because Plaintiffs “have not shown that they would be treated differently than any other individual who seeks to join the military with a preexisting medical condition.” *Id.* This argument “concerns the merits rather than the justiciability of plaintiffs’ claims.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2416 (2018). It has no relevance to the Court’s assessment of standing. When assessing standing, the Court assumes that the challenged policies in fact violate equal protection. *Schnitzler v. United States*, 761 F.3d 33, 40 (D.C. Cir. 2014) (“[T]he Supreme Court has made clear that when considering whether a plaintiff has Article III standing, a federal court must assume *arguendo* the merits of his or her legal claim.” (internal quotation marks omitted)).⁸

iii. Current Service Member Without a Diagnosis of Gender Dysphoria

Jane Doe 6 is a current service member who does not yet have a diagnosis of gender dysphoria. Jane Doe 6 had made a behavioral health appointment to obtain a transition plan and begin her gender transition, but—for obvious reasons—aborted that effort when President Trump tweeted that transgender individuals would not be permitted to serve. After that, Jane Doe 6 has

⁸ Defendants also argue that Plaintiffs who are prospective service members lack standing because, even though they are generally prohibited from acceding under the Mattis Implementation Plan, they may seek waivers from the policy. *See* Defs.’ Mem. at 12 n.4. The Court already explained in its October 30, 2017 Memorandum Opinion why the hypothetical potential for waivers does not divest Plaintiffs of standing. *See Doe I*, 275 F. Supp. 3d at 201.

not disclosed her transgender identity and has not received a military diagnosis of gender dysphoria because she is afraid that she will be discharged. Because she has not yet received a diagnosis of gender dysphoria, Jane Doe 6 would face discharge under the Mattis Implementation Plan if she sought such a diagnosis after the plan took effect.

As with Jane Doe 7 and John Doe 2, Defendants argue that the Mattis Implementation Plan has alleviated any harm Jane Doe 6 might have suffered under the President's 2017 directives. Defendants claim that if Jane Doe 6 seeks a diagnosis of gender dysphoria from a military doctor while this Court's preliminary injunction is still in place and the Mattis Implementation Plan has not yet gone into effect, she will be able to continue to serve under the plan's grandfather provision. Defs.' Reply at 14-15. Again, the Court rejects the logic of this argument. The Court asks whether the Mattis Implementation Plan, if allowed to go into effect, would harm Jane Doe 6. The answer is clear: it would. It would subject her to discharge if she sought a diagnosis of gender dysphoria and gender transition therapy.

Moreover, even if Jane Doe 6 were to obtain a diagnosis prior to the implementation of the plan and therefore fall within the grandfather provision, she would still be subject to the same stigmatic and career-damaging injuries that afflict those Plaintiffs who are current service members who have been diagnosed with gender dysphoria. Jane Doe 6 does not lack standing simply because she has the option of either remaining in the military and disavowing her identity as a transgender person, or coming out and serving as a member of an officially branded inferior class of service members. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007) (holding that where a plaintiff "eliminated the imminent threat of harm by simply not doing what he claimed the right to do," the court still had "subject-matter jurisdiction because the threat-eliminating behavior was effectively coerced").

iv. Dylan Kohere

Finally, Plaintiff Dylan Kohere—who is transgender and has begun working with medical professionals on a treatment plan for transition—has standing. Kohere is barred from joining his university’s ROTC program and ultimately will not be allowed to accede into the military. As the D.C. Circuit has already acknowledged, Kohere is injured by a policy that prevents him from acceding if for no other reason than because “inability to accede in the future . . . disqualifies [him] from educational opportunities now.” *Doe I*, 2017 WL 6553389, at *3.

Defendants argue that Kohere now lacks standing because “since DoD’s policy was announced in March 2018, Mr. Kohere has failed to respond to any of the cadre’s multiple requests to discuss his enrollment in ROTC and did not register for any ROTC classes in the upcoming fall semester,” nor did he apply for a scholarship. Defs.’ Reply at 17. In other words, Defendants appear to be implying that Kohere lacks standing because he is no longer interested in pursuing a military career. The Court is not convinced. Kohere has attested that his goal is “to spend [his] entire career in the military.” Decl. of Dylan Kohere, ECF No. 13-15, ¶ 2. The Mattis Implementation Plan would prevent him from doing so and deprive him of educational opportunities. This is enough to establish his standing.⁹

Finally, Defendants also argue that “[f]ar from being ‘categorically barred because he is transgender’ . . . under the new policy, Mr. Kohere would be allowed to serve in his biological sex.” Defs.’ Reply at 16. This argument misses the point. Mr. Kohere is *transgender*. That means that he *does not identify with his biological sex*. To serve in his biological sex would be to suppress his identity. To do so would be a harm in and of itself, sufficient to confer standing.

⁹ As with the Plaintiffs discussed above, the fact that Kohere could fall within the Mattis Implementation Plan’s grandfather provision does not change this analysis.

The fact that a plaintiff can avoid the effect of a discriminatory policy by renouncing the characteristic that leads to the discrimination in the first place does not mean that the plaintiff lacks standing.

* * *

In sum, each Plaintiff that remains in this case continues to have standing, despite the issuance of the 2018 Presidential Memorandum, the Mattis Implementation Plan, and the Panel Report. Defendants' motion to dismiss for lack of standing will be denied.

2. Mootness

Defendants also argue that Plaintiffs' claims should be dismissed as moot. Defendants' mootness argument reduces to the following points: Plaintiffs' lawsuit challenges President Trump's 2017 policy of banning transgender military service. The Mattis Implementation Plan does not completely ban transgender military service. It is instead a "new policy" that is distinct from the policy directives announced by President Trump in 2017. Because Defendants are no longer attempting to implement the challenged policy, Plaintiffs' suit is now moot.

The Supreme Court has commanded that a party asserting mootness through cessation of challenged conduct carries a "heavy burden." *Hardaway v. D.C. Hous. Auth.*, 843 F.3d 973, 980 (D.C. Cir. 2016) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). Defendants have not satisfied their burden here.

The Court begins by noting that even if it were to accept Defendants' argument that Plaintiffs' challenge to the President's 2017 directives is moot, Plaintiffs' lawsuit would not be dismissed in its entirety. Plaintiffs have recently amended their complaint to challenge the Mattis Implementation Plan, and that challenge is clearly still live. "[W]hen a plaintiff files a complaint in federal court and then voluntarily amends the complaint, courts look to the

amended complaint to determine jurisdiction.” *Rockwell Int’l Corp. v. United States*, 549 U.S. 457, 473-74 (2007). Plaintiffs’ Second Amended Complaint alleges that the Mattis Implementation Plan “expressly targets transgender individuals,” “prevents transgender individuals from serving consistent with their gender identity,” and violates the Fifth Amendment. Pls.’ 2d Am. Compl., ECF No. 106, at ¶¶ 86, 87, 92, 97. Accordingly, even if the Court were to accept Defendants’ arguments regarding claims focused on the President’s 2017 directives, Plaintiffs’ lawsuit would not be moot to the extent that it challenges the Mattis Implementation Plan.

Regardless, the Court *does not* accept Defendants’ argument that Plaintiffs’ challenge to the President’s 2017 directives is moot. This argument attempts to draw artificial and unwarranted boundaries between the various policy pronouncements in this case. As explained above, Defendants’ mootness argument is based upon the premise that the Mattis Implementation Plan is a new and different policy than the one announced by President Trump in 2017. But Defendants have not demonstrated that this is the case in any meaningful way. To the contrary, the Mattis Implementation Plan appears to be just that—an implementation plan. The plan *implements* the President’s 2017 directives that the military not allow transgender individuals to serve in the military.

The Court reaches this conclusion for three basic reasons. First, a plan to implement a policy prohibiting transgender military service is precisely what the President ordered be submitted to him by February 2018 in his 2017 Presidential Memorandum. Second, over the months following the issuance of the 2017 Presidential Memorandum, Department of Defense officials repeatedly stated that they were preparing such an implementation plan. And third, the

Mattis Implementation Plan was provided to the President in February 2018, and it in fact prohibits transgender military service.

First, the 2017 Presidential Memorandum directed the Department of Defense to submit, by February 2018, a plan to *implement* the President's directives that transgender service be prohibited. It did not ask for the submission of a "new policy" on transgender service. In the 2017 Presidential Memorandum, the President directed the military to return to a policy under which: (i) transgender individuals are generally prohibited from accession and (ii) the military is authorized to discharge individuals who are transgender. The 2017 Presidential Memorandum ordered the Secretary of Defense to prepare an "implementation plan" that was circumscribed to suggestions about how to "implement a policy under which transgender accession is *prohibited*, and discharge of transgender service members is *authorized*." *Doe I*, 275 F. Supp. 3d at 195. It is clear from the 2017 Presidential Memorandum that the "implementation plan" requested by the President was required to "prohibit transgender accession and authorize the discharge of transgender service members." *Id.* The plan was not intended to be a proposal for a "new policy" that *allowed* transgender service. *See Karnoski v. Trump*, No. C17-1297-MJP, 2018 WL 1784464, at *6 (W.D. Wash. Apr. 13, 2018) ("The 2017 Memorandum did not direct Secretary Mattis to determine *whether* or not the directives should be implemented, but instead ordered the directives to be implemented by specific dates and requested a plan for *how* to do so.") (emphasis in original).

Second, the actions and statements of Secretary Mattis, and the Department of Defense generally, during the time between the issuance of the 2017 Presidential Memorandum and the Mattis Implementation Plan indicate that the plan being developed was not a "new one" to propose to President Trump, but instead simply one to *implement* President Trump's 2017 policy

directives. In an August 29, 2017 Statement, Secretary Mattis stated that the Department of Defense had “received the [2017] Presidential Memorandum” and would “carry out the president’s policy direction.” Milgroom Decl., Ex. U. He further stated that he would establish a panel of experts not to consider “new policies,” but instead simply “to provide advice and recommendations on the *implementation of the president’s direction*.” *Id.* (emphasis added). After the “panel reports its recommendations and following . . . consultation with the secretary of Homeland Security,” Secretary Mattis stated that he would “provide [his] advice to the president concerning *implementation of his policy direction*.” *Id.* (emphasis added); *see also Doe 1*, 2017 WL 6553389, at *2 (noting that “the Secretary’s August 29, 2017 statement makes clear that his actions are being undertaken to ‘carry out the president’s policy direction’”).

In a September 14, 2017 document entitled “Military Service by Transgender Individuals – Interim Guidance,” Secretary Mattis again stated that he would present the President with a “plan *to implement the policy and directives* in the [2017] Presidential Memorandum.” Milgroom Decl., Ex. W, at 1 (emphasis added). The Interim Guidance further stated that the Department of Defense would “*carry out the President’s policy and directives*” and would “*comply with the [2017] Presidential Memorandum*.” *Id.* (emphasis added). A separate document issued to direct the implementation process stated that Secretary Mattis had convened a panel to “develop[] an Implementation Plan on military service by transgender individuals, *to effect the policy and directives of the Presidential Memorandum*.” Milgroom Decl., Ex. X, at 1 (emphasis added). That document further acknowledges that the Department was required to “return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016,” that is, the general prohibition on transgender service. *Id.* at 2. It stated that the Department had been “direct[ed]” to prohibit accession by transgender

individuals and asked the panel of experts merely how the “guidelines” for such a policy should be updated “to reflect currently accepted medical terminology.” *Id.* Acting Under Secretary of Defense for Personnel and Readiness, Anthony M. Kurta, also issued a memorandum in September 2017 that stated that the Department had convened a panel of experts “to support the . . . development of an Implementation Plan on military service by transgender individuals.” Milgroom Decl., Ex. Y.¹⁰

Third, and most importantly, the Mattis Implementation Plan *in fact prohibits transgender military service*—just as President Trump’s 2017 directives ordered. It is true that the plan takes a slightly less direct approach to accomplishing this goal than the President’s 2017 tweet and memorandum. Instead of expressly banning all “transgender individuals” from military service, the Mattis Implementation Plan works by absolutely disqualifying individuals who require or have undergone gender transition, generally disqualifying individuals with a history or diagnosis of gender dysphoria, and, to the extent that there are any individuals who identify as “transgender” but do not fall under the first two categories, only allowing them to serve “in their biological sex” (which means that openly transgender persons are generally not allowed to serve in conformance with their identity).

But it is not at all surprising that an implementation plan, crafted over the course of months (clearly with assistance from lawyers and an eye to pending litigation) is a longer, more nuanced expression of the President’s policy direction than the brief, blanket assertions made by the President himself in 2017. To determine whether Plaintiffs’ claims are moot, the Court must

¹⁰ Defendants cite statements from Secretary Mattis about the “independence” of the process that led to the creation of the Mattis Implementation Plan, but the context suggests that such “independence” related to *how*, not *whether*, to implement the President’s policy directives.

look past these surface-level differences and ask whether, in effect, the Mattis Implementation Plan accomplishes the President’s policy that is challenged in this case.

The Court concludes that the Mattis Implementation Plan does just that: it prevents service by transgender individuals. The plan succeeds at doing so in part by prohibiting individuals with traits associated with being transgender: those with “gender dysphoria” and who have undergone or require “gender transition.” In addition, although the plan purports to allow some transgender individuals (those without a diagnosis of gender dysphoria or who have not undergone or require gender transition) to serve in the military under certain narrow circumstances, even this purported allowance is illusory. Under the Mattis Implementation Plan, those transgender persons who are not summarily banned are only allowed in the military if they serve *in their biological sex*. But by definition—at least the definition relevant to Plaintiffs’ claims in this lawsuit—transgender persons *do not identify or live in accord with their biological sex*. Accordingly, the Mattis Implementation Plan effectively translates into a ban on transgender persons in the military. Tolerating a person with a certain characteristic only on the condition that they renounce that characteristic is the same as not tolerating them at all.¹¹ As Plaintiffs correctly argue, “[j]ust as a policy allowing Muslims to serve in the military if they

¹¹ Defendants argue that forcing all transgender service members to live in accordance with their biological sex is not the same as a ban on transgender service members because not all transgender individuals choose to come out as such and “live and work in accordance with [their] identity.” Defs.’ Reply at 21. That this would be the case is not at all surprising, and certainly does not demonstrate that Defendants’ policy is not a ban on transgender service members. Decisions about whether and when to admit one’s transgender identity and initiate the process of gender transition are presumably affected by many factors, including career considerations, medical considerations, and fear of discrimination. Service members in particular might reasonably choose to delay due to upcoming deployments or other opportunities. That not all transgender service members have openly admitted to their status as such and sought to live in accordance with their gender identities by personal choice does not mean that an official policy forbidding them from doing so is not discriminatory.

renounce their Muslim faith would be a ban of military service by Muslims, a policy requiring transgender individuals to serve in their birth sex *is* a ban on transgender service.” Pls.’ Opp’n at 10 (emphasis in original); *see also Karnoski*, 2018 WL 1784464, at *6 (“Requiring transgender people to serve in their ‘biological sex’ does not constitute ‘open’ service in any meaningful way, and cannot reasonably be considered an ‘exception’ to the Ban. Rather, it would force transgender service members to suppress the very characteristic that defines them as transgender in the first place.”). Accordingly, despite superficial differences between it and the President’s 2017 directives, the Mattis Implementation Plan essentially effectuates the policy announced by President Trump in 2017: the banning of military service by transgender individuals. It accordingly does not moot Plaintiffs’ claims. *See Glob. Tel*Link v. Fed. Commc’ns Comm’n*, 866 F.3d 397, 413-14 (D.C. Cir. 2017) (“replacing the challenged law ‘with one that differs only in some insignificant respect’ and ‘disadvantages [petitioners] in the same fundamental way’ does not moot the underlying challenge”) (quoting *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 (1993)).¹²

Finally, Defendants repeatedly argue that the 2017 Presidential Memorandum has been “revoked.” Even if the Court were to favor form over substance and accept this as an accurate description of what has genuinely occurred, it would not alone be enough to warrant a finding of mootness. As Defendants argue, “[w]hen a law is repealed and replaced, the relevant question is ‘whether the new [policy] is sufficiently similar to the repealed [one] that it is permissible to say

¹² Defendants argue that the Mattis Implementation Plan is similar to the currently operative policy on transgender service. *See, e.g.,* Defs.’ Reply at 1. The Court disagrees. Any similarities Defendants are able to find between the policies are red herrings. The policies are *fundamentally* different because one allows transgender individuals to serve in accordance with their gender identity, and the other does not (with the exception of a small group of individuals who will be allowed to remain in the armed forces under a grandfather provision).

that the challenged conduct continues,’ or, put differently, whether the policy ‘has been sufficiently altered so as to present a substantially different controversy from the one . . . originally decided.’” Defs.’ Mot. at 4 (quoting *Ne. Fla. Chapter of Associated Gen. Contractors of Am.*, 508 U.S. at 662 n.3). Even assuming that the 2017 Presidential Memorandum has been “revoked,” and the Mattis Implementation Plan could be viewed as a “new policy,” at the very least, the new plan is sufficiently “similar” to the President’s 2017 directives that Plaintiffs’ claims are not moot. As already discussed, like the 2017 Presidential Memorandum, the Mattis Implementation Plan generally bars service by transgender individuals.¹³

* * *

In sum, whatever legal relevance the Mattis Implementation Plan and associated documents might have, they are not sufficiently divorced from, or different than, the President’s 2017 directives such that Plaintiffs’ claims are now moot.¹⁴

¹³ Defendants argue that the voluntary cessation doctrine does not apply to them. Defs.’ Mem. at 3. This argument does not survive scrutiny for two reasons. First, because the Court finds that the Mattis Implementation Plan is simply a plan that implements the Presidential directives that were already at issue in this case, the challenged conduct simply has not ceased, and the Court need not rely on the voluntary cessation doctrine. Second, the Court is not persuaded that the Defendants in this case—various Executive Branch departments and officials—are all immune from the doctrine. In a separate Memorandum Opinion and Order issued today, the Court has dismissed the President as a party from this case. Accordingly, at most, the Court would be applying the voluntarily cessation doctrine to lower Executive Branch officials. Defendants have not brought to the Court’s attention any cases that hold that the voluntary cessation doctrine does not apply to such defendants. *See* Defs.’ Mem. at 3 (citing only *Clarke v. United States*, 915 F.2d 699 (D.C. Cir. 1990), which relates to Congress, not Executive Branch departments or officials). As indicated by the facts of this very case, the Executive Branch is able to change military policies back and forth with relative ease and speed, giving rise to the concerns that animate the voluntary cessation doctrine.

¹⁴ To the extent Defendants revive their motion to dismiss for failure to state a claim in this case, that motion is DENIED. The Court already explained in detail why Plaintiffs’ claims were likely meritorious in its October 30, 2017 Memorandum Opinion, and thus not subject to dismissal on the pleadings. *See Doe I*, 275 F. Supp. 3d at 205, 207-215. For the same reasons that the Mattis

3. Motion to Dissolve the Preliminary Injunction

Finally, as the discussion above has likely already made clear, the Court will not dissolve its preliminary injunction. It is true that a preliminary injunction “may be dissolved where, for instance, changed circumstances eviscerate the justification therefor.” *S.E.C. v. Vision Commc’ns, Inc.*, No. CIV. A. 94-0615 CRR, 1995 WL 109037, at *2 (D.D.C. Mar. 6, 1995). However, the party seeking relief from an injunction bears the burden of establishing that changed circumstances warrant relief. *See Am. Council of the Blind v. Mnuchin*, 878 F.3d 360, 366 (D.C. Cir. 2017). The Court is not persuaded that the circumstances of this case have in fact genuinely changed in such a way that the Court’s preliminary injunction is no longer warranted.¹⁵

Like Defendants’ mootness argument, the basic premise of Defendants’ argument in support of dissolving the preliminary injunction is that the Mattis Implementation Plan is a “new policy” that does not implement the 2017 directives that were preliminarily enjoined by this Court. For the reasons already set forth above, Defendants have not persuaded the Court that this is the case. Instead, the Court finds that the Mattis Implementation Plan effectively implements the policy directives that were already at issue when the Court’s preliminary injunction was ordered. Accordingly, Plaintiffs’ challenge to those directives is not moot, and the need remains intact for the Court’s preliminary injunction maintaining the *status quo ante* until the final resolution of this case on the merits.

Implementation Plan does not moot Plaintiffs’ claims, it also does not mean that their allegations now fail to state a claim.

¹⁵ Defendants argue, yet again, that the Court’s injunction should be dissolved insofar as it applies to anyone other than the Plaintiffs in this case. The Court has already rejected this argument, *see* Dec. 11, 2017 Order, ECF No. 75, at 7, and rejects it now for the same reasons.

The only material development that has occurred since the Court's preliminary injunction was issued is that the Defendants have prepared a plan to implement the enjoined directives, and a report that purportedly provides support for that plan. These developments do not change the Court's conclusion on any of the preliminary injunction factors.

On the merits, the Mattis Implementation Plan still accomplishes an extremely broad prohibition on military service by transgender individuals that appears to be divorced from any transgender individual's actual ability to serve. In the absence of the challenged policy, transgender individuals are subject to all of the same standards and requirements for accession and retention as any other service member. The Mattis Implementation Plan establishes a special *additional* exclusionary rule that precludes individuals who would otherwise satisfy the demanding standards applicable to all service members simply because they have certain traits that are associated with being transgender. Moreover, because the plan fundamentally implements the policy directives set forth by the President in 2017, the unusual factors associated with the issuance of the 2017 directives are still relevant. For example, the Court is still concerned that, immediately prior to the announcement of the 2017 Presidential directives, the military had studied the issue and found no reason to exclude transgender service members. The Court is likewise still concerned that the President's 2017 directives constituted an abrupt reversal in policy, and a *revocation* of rights, announced without any of the formality, deliberative process, or factual support usually associated with such a significant action. Although it makes no final ruling on the merits in this Memorandum Opinion, the Court is not convinced at this stage that the processes implemented by Defendants *after* President Trump's 2017 Presidential Memorandum, and the memoranda that they have issued since that time, resolve the constitutional issues that persuaded the Court that a preliminary injunction was

warranted in the first place. Based on the record before the Court, these *post hoc* processes and rationales appear to have been constrained by, and not truly independent from, the President's initial policy decisions.

With regard to irreparable injury, Defendants argue again that the Mattis Implementation Plan protects Plaintiffs from any injury. The Court has already rejected those arguments. If the Court were to dissolve its injunction and allow the Mattis Implementation Plan to go into effect, Plaintiffs would suffer very real harms. Defendants also argue that Plaintiffs will not be irreparably injured if the Court dissolves its preliminary injunction because other courts have since issued injunctions that are still in place. The Court rejects this argument as well. The fact that other courts¹⁶ have similarly concluded that Defendants' policy is likely unconstitutional and warrants being preliminarily enjoined is no reason for this Court to lift its own injunction. This is especially so given that Defendants have moved to dissolve those preliminary injunctions, and have appealed the decision of the first court to deny such a motion. Finally, the Court's assessment of the balance of equities and public interest in its preliminary injunction Opinion still stands. It should not be forgotten that the United States military remains engaged in numerous armed conflicts throughout the world, and service members are still being injured and killed in those conflicts. The public interest and equities lie with allowing young men and women who are qualified and willing to serve our Nation to do so.

In short, because the Mattis Implementation Plan would effectively implement the very policies preliminarily enjoined by the Court, the development of that plan is not a reason to dissolve that injunction. To avoid any possible need for clarification, the Court states expressly:

¹⁶ See *Karnoski v. Trump*, No. 17-cv-1297-MJP (W.D. Wash.); *Stone v. Trump*, No. 17-cv-2459-GLR (D. Md.); *Stockman v. Trump*, 17-cv-1799-JGB (C.D. Cal).

enforcing the Mattis Implementation Plan would violate the Court's October 30, 2017 preliminary injunction. All of the directives of that injunction remain in effect until further order of the Court.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss for lack of jurisdiction on standing and mootness grounds is DENIED. Defendants' Motion to Dissolve the Preliminary Injunction is also DENIED. The Court has made no final ruling on the merits of Plaintiffs' claims. It has simply held that all Plaintiffs still have standing to pursue their claims, this case is not moot, and there are no changed circumstances that justify dissolving the preliminary injunction. An appropriate Order accompanies this Memorandum Opinion.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

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

JANE DOE 2, *et al.*,

Plaintiffs

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

ORDER
(August 6, 2018)

For the reasons set forth in the accompanying Memorandum Opinion, it is, this 6th day of August, 2018, hereby

ORDERED that Defendants' [115] Motion to Dismiss Plaintiffs' Second Amended Complaint, or, in the Alternative, Defendants' Motion for Summary Judgment is **DENIED** to the extent that Motion sought the dismissal of Plaintiffs' Second Amended Complaint for lack of jurisdiction or for failure to state a claim. It is further

ORDERED that Defendants' [116] Motion to Dissolve the Preliminary Injunction is **DENIED**.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

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

JANE DOE 2, *et al.*,

Plaintiffs

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

MEMORANDUM OPINION

(August 6, 2018)

On July 26, 2017, President Donald J. Trump issued a statement via Twitter announcing that “the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.” This lawsuit followed. On October 30, 2017, the Court issued a preliminary injunction, the effect of which was to revert to the *status quo ante* with regard to military policy on transgender service.

Defendants have filed several motions which are currently pending before the Court, including Defendants’ [89] Motion for a Protective Order and [90] Partial Motion for Judgment on the Pleadings and Unopposed Motion to Partially Dissolve the Preliminary Injunction, both of which relate only to the status of President Donald J. Trump as a party in this litigation. In summary form, Defendants move for the dismissal of the President as a party in this case. In addition, Defendants move to dissolve the preliminary injunction as it applies to the President only. Finally, Defendants also move for an order that the President himself does not have to respond to certain discovery requests that Plaintiffs have issued to him as a party in this case.

Upon consideration of the pleadings,¹ the relevant legal authorities, and the record as a whole, the Court will GRANT Defendant’s Partial Motion for Judgment on the Pleadings and to

¹ The Court’s consideration has focused on the following documents:

Partially Dissolve the Preliminary Injunction only as to President Trump as a Defendant in this case. The President will be dismissed as a party and the Court's preliminary injunction will be dissolved only as it applies to the President. The Court shall not grant injunctive or declaratory relief directly against the President with respect to his discretionary acts that are the focus of this lawsuit. Because no relief will be granted directly against the President in this case, the Court will dismiss him as a party to avoid unnecessary constitutional confrontations. The Court emphasizes that, regardless of this decision, the Court is still able to review the legality of the President's actions, and Plaintiffs—if successful—can still obtain *all* of the relief that they seek. Given that the President is no longer a party to the case, the Court will DENY as MOOT Defendants' Motion for a Protective Order. That motion sought to prevent discovery that Plaintiffs had requested from the President as a party to this case. The President is no longer a party.

I. LEGAL STANDARD

Pursuant to Federal Rule 12(c), a party may move for judgment on the pleadings “[a]fter the pleadings are closed—but early enough not to delay trial.” The standard for reviewing a motion for judgment on the pleadings is virtually identical to that applied to a motion to dismiss

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- Defs.' Mot. for a Protective Order, ECF No. 89;
 - Defs.' Partial Mot. for Judgment on the Pleadings and Mot. to Partially Dissolve the Prelim. Inj., ECF No. 90 (“Defs.' Mot.”);
 - Pls.' Opp'n to Defs.' Mot. for a Protective Order, ECF No. 91;
 - Pls.' Opp'n to Defs.' Partial Mot. for Judgment on the Pleadings and Resp. to Mot. to Partially Dissolve the Prelim. Inj., ECF No. 92 (“Pls.' Opp'n”);
 - Defs.' Reply in Supp. of Mot. for a Protective Order, ECF No. 93; and
 - Defs.' Reply in Supp. of Partial Mot. for Judgment on the Pleadings and Mot. to Partially Dissolve the Prelim. Inj., ECF No. 94 (“Defs.' Reply”).

In an exercise of its discretion, the Court finds that holding oral argument in this action would not be of assistance in rendering a decision. *See* LCvR 7(f).

under Rule 12(b)(6). *See Haynesworth v. Miller*, 820 F.2d 1245, 1254 (D.C. Cir. 1987), *abrogated on other grounds by Hartman v. Moore*, 547 U.S. 250 (2006); *Jung v. Ass’n of Am. Med. Colleges*, 339 F.Supp.2d 26, 36 (D.D.C. 2004) (“[T]he standard of review for motions for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is essentially the same as that for motions to dismiss under Rule 12(b)(6).”). “The court is limited to considering facts alleged in the complaint, any documents attached to or incorporated in the complaint, matters of which the court may take judicial notice, and matters of public record.” *Baumann v. D.C.*, 744 F. Supp. 2d 216, 222 (D.D.C. 2010).

II. DISCUSSION

A. Partial Motion for Judgment on the Pleadings and Motion to Partially Dissolve the Preliminary Injunction

As an initial matter, Plaintiffs do not oppose the dissolution of the preliminary injunction insofar as it runs against the President. *See* Pls.’ Opp’n at 14. In fact, in their recently-filed Second Amended Complaint, Plaintiffs specify that they are no longer seeking preliminary (or permanent) injunctive relief from the President at all. *See* Second Amended Compl., ECF No. 106 (“Compl.”), at 20. Accordingly, the Court GRANTS Defendants’ motion to partially dissolve the preliminary injunction as unopposed. The Court will dissolve its October 30, 2017 preliminary injunction to the extent that the injunction applied to the President. *The injunction remains in force as it applies to all other Defendants.*

Next, the Court also GRANTS Defendants’ motion in that it will dismiss the President himself as a party to this case. Through this lawsuit, Plaintiffs ask this Court to enjoin a policy that represents an official, non-ministerial act of the President, and declare that policy unlawful. *See* Compl. at 20. Sound separation-of-power principles counsel the Court against granting these forms of relief against the President directly. *See Franklin v. Massachusetts*, 505 U.S. 788, 802-

03 (1992) (holding that “in general ‘this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties.’”) (quoting *State of Mississippi v. Johnson*, 71 U.S. 475, 501 (1866)); *Id.* at 827 (Scalia, J., concurring in part and concurring in the judgment) (“The apparently unbroken historical tradition supports the view, which I think implicit in the separation of powers established by the Constitution, that the principals in whom the executive and legislative powers are ultimately vested—viz., the President and the Congress (as opposed to their agents)—may not be ordered to perform particular executive or legislative acts at the behest of the Judiciary. For similar reasons, I think we cannot issue a declaratory judgment against the President.”); *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (“With regard to the President, courts do not have jurisdiction to enjoin him, and have never submitted the President to declaratory relief”) (internal citation omitted); *Swan v. Clinton*, 100 F.3d 973, 978 (D.C. Cir. 1996) (holding that courts do not have authority to enjoin the President in the performance of his official duties, and noting that the rationale for this limitation is “painfully obvious”); *Id.* at 976 n.1 (“similar considerations regarding a court’s power to issue relief against the President himself apply to [plaintiff’s] request for a declaratory judgment.”); *Newdow v. Bush*, 355 F. Supp. 2d 265, 280 (D.D.C. 2005) (“There is longstanding legal authority that the judiciary lacks the power to issue an injunction or declaratory judgment against the co-equal branches of the government—the President and the Congress.”).²

Given that the Court will not grant Plaintiffs the relief that they seek against the President himself, the President should be dismissed. “[O]ccasion[s] for constitutional confrontation

² Indeed, Plaintiffs themselves appear to recognize that at least the injunctive relief they originally sought in this case should not be entered against the President, as they have now amended their complaint to exempt the President from their prayer for that relief. *See Compl.* at 20.

between the two branches’ should be avoided whenever possible.” *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 389-90 (2004) (quoting *United States v. Nixon*, 418 U.S. 683, 692 (1974)). Confrontation can be easily avoided here, because dismissing the President will have little or no substantive effect on this litigation. Plaintiffs argue that the acts of the President himself are central to this case, and the Court agrees. But dismissing the President as a Defendant does not mean that those acts will not be subject to judicial review. The Court can still review those acts and, if Plaintiffs are successful in proving that they are unconstitutional, Plaintiffs can still obtain all of the relief that they seek from the other Defendants. *See* Defs.’ Mot. at 7 (conceding that “Plaintiffs could obtain full relief for their alleged injuries through injunctive relief against” the Defendants other than the President); *see also* *Swan*, 100 F.3d at 978 (“In most cases, any conflict between the desire to avoid confronting the elected head of a coequal branch of government and to ensure the rule of law can be successfully bypassed, because the injury at issue can be rectified by injunctive relief against subordinate officials.”).

Plaintiffs raise a number of arguments against dismissal of the President, but none of them are persuasive. First, Plaintiffs argue that the case law cited above addresses whether injunctive and declaratory relief is available against the President, not whether the President must be dismissed from a civil lawsuit altogether. This is true. However, the Court’s decision, informed by this case law, that it will not grant relief against the President still counsels in favor of dismissing him as a party from this case. It makes little sense to retain a party in a case from whom no relief will be granted under ordinary circumstances, and especially little sense when retaining that party risks unnecessary constitutional confrontations. By this ruling the Court does not, as Plaintiffs suggest, announce a new rule of “absolute immunity” for the President from civil suits for equitable relief. The Court merely holds that on the particular facts of this case—

where no relief is available from the President himself, the Court can review the policy at issue without the President as a party, and Plaintiffs can obtain all of the relief that they seek from other Defendants—there is no sound reason for risking constitutional confrontations by retaining the President as a Defendant.³

Second, Plaintiffs point out that Defendants did not move to dismiss the President earlier, and suggest that Defendants are only now seeking to do so now in order to avoid the President having to respond to pending discovery requests. Defendants’ motion was technically timely. A party may move for judgment on the pleadings “[a]fter the pleadings are closed—but early enough not to delay trial.” Fed. R. Civ. P. 12(c). More importantly, even assuming that Plaintiffs are correct about Defendants’ motive in moving to dismiss the President, the Court would hesitate to deny the motion on that basis. Regardless of the motivation for filing it, Defendants’ motion presents sound reasons for dismissing the President based on well-established separation of power principles set forth in United States Supreme Court and D.C. Circuit precedent. Plaintiffs argue that if the President is dismissed, seeking discovery from him will be more difficult. Pls.’ Opp’n at 1-2. But it would not be appropriate to retain the President as a party to this case simply because it will be more complicated to seek discovery from him if he is dismissed. To the extent that there exists relevant and appropriate discovery related to the President, Plaintiffs will still be able to obtain that discovery despite the President not being a party to the case.

³ Plaintiffs point to a number of cases where the President has been a named party. *See, e.g.*, Pls.’ Opp’n at 4. But in those cases, the issue of dismissing the President as a party does not appear to have been raised or analyzed. The Court is unwilling to interpret those Courts’ silence as an implicit holding on whether retaining the President under the present circumstances is appropriate. *Cf. Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 144 (2011) (“When a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed.”).

Third, Plaintiffs cite *Nat'l Treasury Employees Union v. Nixon*, 492 F.2d 587 (D.C. Cir. 1974) (“*NTEU*”) for the proposition that “no immunity established under any case known to this Court bars every suit against the President for injunctive, declaratory or mandamus relief.” *Id.* at 609. As an initial matter, *NTEU* predated the Supreme Court’s decision in *Franklin*—which warned that injunctive relief against the President personally is an extraordinary measure not lightly to be undertaken—and accordingly the D.C. Circuit has commented that “[i]t is not entirely clear, of course, whether, and to what extent, [that] decision[] remain[s] good law.” *Swan*, 100 F.3d at 978. Regardless, *NTEU* is distinguishable. That case dealt with the question—left open by *Mississippi v. Johnson*—of “whether a court can compel the President to perform a *ministerial act*” (in that case, adjusting the pay of federal employees as required by an act of Congress). *Id.* at 607 (emphasis added). “A ministerial duty . . . is one in respect to which nothing is left to discretion.” *State of Mississippi v. Johnson*, 71 U.S. at 498. “It is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law.” *Id.* The acts of the President at issue in this case cannot plausibly be considered “ministerial.” In addition, the court in *NTEU* distinguished the facts of that case from those in *Mississippi v. Johnson* by noting that “[i]n sharp contrast to *Mississippi v. Johnson* are the circumstances of this suit wherein failure to permit the President to be sued on the ground of separation of powers would prevent the appellant from enforcing its legal rights in federal court.” *NTEU* at 614-15. In this case, as discussed above, Plaintiffs will be able to enforce their legal rights and obtain all relief sought in this case without the President as a party.

In sum, the Court GRANTS Defendants’ Partial Motion for Judgment on the Pleadings and to Partially Dissolve the Preliminary Injunction. The President will be dismissed as a

Defendant and the Court's preliminary injunction will be dissolved only as it applies to the President.

B. Motion for a Protective Order

Through their Motion for a Protective Order, Defendants sought an order excusing the President himself from responding to certain discovery requests Plaintiffs had issued to him as a party in this case. Because the President will no longer be a party in this case, he will not personally be obligated to respond to those requests. Defendants' motion is accordingly MOOT and will be DENIED on that basis. However, the Court reiterates that dismissing the President as a party to this case does not mean that Plaintiffs are prevented from pursuing discovery related to the President. The Court understands that the parties dispute whether discovery related to the President which has been sought by Plaintiffs is precluded by the deliberative process or presidential communication privileges, and the Court makes no ruling on those disputes at this point.⁴ The Court will be issuing further opinions addressing other dispositive motions that have been filed in this case. After all of those opinions have been issued, if necessary, the Court will give the parties further guidance on the resolution of the discovery disputes in this case.⁵

⁴ The Court is aware that the court in *Karnoski v. Trump*, No. C17-1297-MJP (W.D. Wash.), has recently ordered Defendants to produce materials that they have withheld on the basis of privilege and that Defendants have sought appellate review of that order.

⁵ Restating the arguments in their Partial Motion for Judgment on the Pleadings and Motion to Partially Dissolve the Preliminary Injunction, Defendants argue in their recently-filed Motion to Dismiss that the Court should "dismiss Plaintiffs' claims against the President because any alleged injury caused by the President is not redressable." Defs.' Mem. in Support of Mot. to Dismiss Pls.' 2d Amended Compl. or, in the Alternative, for Summ. J., ECF No. 115, at 14-17. Because the President will be dismissed as a party, these aspects of Defendants' Motion to Dismiss are now moot.

III. CONCLUSION

For the foregoing reasons, the Court will GRANT Defendants' Partial Motion for Judgment on the Pleadings and to Partially Dissolve the Preliminary Injunction, and DENY as MOOT Defendants' Motion for a Protective Order. An appropriate Order accompanies this Memorandum Opinion.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE 2, *et al.*,

Plaintiffs

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

ORDER
(August 6, 2018)

For the reasons set forth in the accompanying Memorandum Opinion, it is, this 6th day of August, 2018, hereby

ORDERED that Defendants' [90] Partial Motion for Judgment on the Pleadings and Motion to Partially Dissolve the Preliminary Injunction is **GRANTED**. It is further

ORDERED that President Donald J. Trump is **DISMISSED** as a party from this case. It is further

ORDERED that the Court's October 30, 2017 preliminary injunction is **DISSOLVED** only to the extent that it ran against the President. *The injunction remains in force as it applies to all other Defendants.* It is further

ORDERED that Defendants' [89] Motion for a Protective Order is **DENIED** as **MOOT**.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

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

JANE DOE 1, *et al.*,

Plaintiffs

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

ORDER

(November 27, 2017)

The Court is in receipt of Defendants’ [67] Motion for Clarification of the Court’s October 30, 2017 Order (“Defs.’ Mot.”). Defendants seek clarification regarding whether the Court’s Order “prohibit[s] the Secretary of Defense from exercising his discretion to defer the January 1, 2018 effective date for the accessions provisions of DTM 16-005 for a limited period of time to further study whether the policy will impact military readiness and lethality or to complete further steps needed to implement the policy.” Defs.’ Mot. at 2. In other words, Defendants are asking whether the Court’s preliminary injunction Order bars the Secretary of Defense from deferring the January 1, 2018 deadline previously established to begin allowing transgender individuals to enlist in the military. Defendants argue that the Court could not “have enjoined the Secretary of Defense from exercising such discretion because Plaintiffs have not challenged the Secretary’s exercise of his independent authority to study whether the DTM 16-005 will impact military readiness and lethality.” *Id.* Plaintiffs have filed an opposition to Defendants’ motion claiming that Defendants are not genuinely seeking a clarification, but are in fact requesting a substantive change to the Court’s injunction. Plaintiffs argue that the Court lacks jurisdiction to grant Defendants the relief they seek as a result of Defendants’ appeal of the Court’s preliminary injunction Order.

The Court's clarification is as follows: In its October 30, 2017 Order, the Court preliminarily enjoined Defendants from enforcing the following directives of the Presidential Memorandum, referred to by the Court as the Accession and Retention Directives:

I am directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have the negative effects discussed above.

Presidential Memorandum § 1(b);

The Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, shall . . . maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that I find convincing”

Presidential Memorandum § 2(a).

The Court explained that the effect of its Order was to revert to the *status quo* with regard to accession and retention that existed before the issuance of the Presidential Memorandum—that is, the retention and accession policies established in the June 30, 2016 Directive-type Memorandum as modified by Secretary of Defense James Mattis on June 30, 2017. Those policies allowed for the accession of transgender individuals into the military beginning on January 1, 2018. Any action by any of the Defendants that changes this *status quo* is preliminarily enjoined.

SO ORDERED.

/s/

COLLEEN KOLLAR-KOTELLY
United States District Judge

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

JANE DOE 1, *et al.*,

Plaintiffs

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

MEMORANDUM OPINION
(October 30, 2017)

On July 26, 2017, President Donald J. Trump issued a statement via Twitter announcing that “the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.” A formal Presidential Memorandum followed on August 25, 2017. Before the Presidential Memorandum, the Department of Defense had announced that openly transgender individuals would be allowed to enlist in the military, effective January 1, 2018, and had prohibited the discharge of service members based solely on their gender identities. The Presidential Memorandum reversed these policies. First, the Memorandum indefinitely extends a prohibition against transgender individuals entering the military, a process formally referred to as “accession” (the “Accession Directive”). Second, the Memorandum requires the military to authorize, by no later than March 23, 2018, the discharge of transgender service members (the “Retention Directive”).

The Department of Defense is required to submit a plan implementing the directives of the Presidential Memorandum by February 21, 2018. On September 14, 2017, Secretary of Defense James Mattis promulgated Interim Guidance establishing Department of Defense policy toward transgender service members until the directives of the Presidential Memorandum take effect. Pursuant to the Presidential Memorandum and the Interim Guidance, the protections afforded to transgender service members against discharge lapse early next year.

Plaintiffs are current and aspiring service members who are transgender. Many have years of experience in the military. Some have decades. They have been deployed on active duty in Iraq and Afghanistan. They have and continue to serve with distinction. All fear that the directives of the Presidential Memorandum will have devastating impacts on their careers and their families. They have moved the Court to enjoin the directives of the Presidential Memorandum, believing that these directives violate the fundamental guarantees of due process afforded by the Fifth Amendment to the United States Constitution. Defendants have moved to dismiss this case, principally on the basis that the Court lacks jurisdiction. Although highly technical, these jurisdictional arguments reduce to a few simple points: the Presidential Memorandum has not effected a definitive change in military policy; rather, that policy is still subject to review; until that review is complete, transgender service members are protected; and any prospective injuries are too speculative to require judicial intervention.

These arguments, while perhaps compelling in the abstract, wither away under scrutiny. The Memorandum unequivocally directs the military to prohibit indefinitely the accession of transgender individuals and to authorize their discharge. This decision has already been made. These directives must be executed by a date certain, and there is no reason to believe that they will not be executed. Plaintiffs have established that they will be injured by these directives, due both to the inherent inequality they impose, and the risk of discharge and denial of accession that they engender. Further delay would only serve to harm the Plaintiffs. Given these circumstances, the Court is in a position to preliminarily adjudicate the propriety of these directives, and it does so here.

The Court holds that Plaintiffs are likely to succeed on their Fifth Amendment claim. As a form of government action that classifies people based on their gender identity, and disfavors a

class of historically persecuted and politically powerless individuals, the President's directives are subject to a fairly searching form of scrutiny. Plaintiffs claim that the President's directives cannot survive such scrutiny because they are not genuinely based on legitimate concerns regarding military effectiveness or budget constraints, but are instead driven by a desire to express disapproval of transgender people generally. The Court finds that a number of factors—including the sheer breadth of the exclusion ordered by the directives, the unusual circumstances surrounding the President's announcement of them, the fact that the reasons given for them do not appear to be supported by any facts, and the recent rejection of those reasons by the military itself—strongly suggest that Plaintiffs' Fifth Amendment claim is meritorious.

Accordingly, following an exhaustive review of the record, the pleadings,¹ and the relevant authorities, the Court GRANTS-IN-PART and DENIES-IN-PART Plaintiffs' Motion

¹ The Court's consideration has focused on the following documents: Pls.' App. for Preliminary Injunction, ECF No. 13 ("Pls.' Mem."); Defs.' Mot. to Dismiss and Opp'n to Pls.' App. for Preliminary Injunction, ECF No. 45 ("Defs.' Mem."); Pls.' Opp'n to Defs.' Mot. to Dismiss and Reply in Support of App. for Preliminary Injunction, ECF No. 55 ("Pls.' Reply"); and Defs.' Reply in Support of Mot. to Dismiss, ECF No. 57 ("Defs.' Reply"). The Court has also considered the declarations attached to these pleadings, including: Decl. of Kevin M. Lamb, ECF No. 13-1 ("Lamb Decl."); Decl. of Brad R. Carson, ECF No. 13-3 ("Carson Decl."); Decl. of Deborah L. James, ECF No. 13-5 ("James Decl."); Decl. of Eric K. Fanning, ECF No. 13-7 ("Fanning Decl."); Decl. of Raymond E. Mabus, Jr., ECF No. 13-9 ("Mabus Decl."); Decl. of George R. Brown, MD, ECF No. 13-11 ("Brown Decl."); Decl. of Margaret C. Wilmoth, ECF No. 13-13 ("Wilmoth Decl."); Decl. of Regan V. Kibby, ECF No. 13-14 ("Kibby Decl."); Decl. of Dylan Kohere, ECF No. 13-15 ("Kohere Decl."); Decl. of Christopher R. Looney, ECF No. 40 ("Looney Decl."); Decl. of Robert B. Chadwick, ECF No. 45-2 ("Chadwick Decl."); Decl. of Robert O. Burns, ECF No. 45-3 ("Burns Decl."); Supp. Decl. of Raymond E. Mabus, Jr., ECF No. 51-1 ("Mabus Supp. Decl."); Supp. Decl. of Deborah L. James, ECF No. 51-2 ("James Supp. Decl."); Supp. Decl. of Eric K. Fanning, ECF No. 51-3 ("Fanning Supp. Decl."); Decl. of Mark J. Eitelberg, ECF No. 51-4 ("Eitelberg Decl."); Supp. Decl. of George R. Brown, MD, ECF No. 51-5 ("Brown Supp. Decl."); Decl. Pertaining to Jane Doe 1, ECF No. 56-1 ("Decl. re Jane Doe 1"); Decl. Pertaining to Jane Doe 2, ECF No. 56-2 ("Decl. re Jane Doe 2"); Decl. Pertaining to Jane Doe 3, ECF No. 56-3 ("Decl. re Jane Doe 3"); Decl. Pertaining to Jane Doe 4, ECF No. 56-4 ("Decl. re Jane Doe 4"); Decl. Pertaining to Jane Doe 5, ECF No. 56-5 ("Decl. re Jane Doe 5"); Decl. Pertaining to John Doe 1, ECF No. 56-6 ("Decl. re John Doe 1").

for Preliminary Injunction. Defendants shall be preliminarily enjoined from enforcing the Accession and Retention Directives, corresponding with sections 1(b) and 2(a) of the Presidential Memorandum, until further order of the Court or until this case is resolved. The effect of the Court's Order is to revert to the *status quo* with regard to accession and retention that existed before the issuance of the Presidential Memorandum—that is, the retention and accession policies established in a June 30, 2016 Directive-type Memorandum and later modified by Secretary of Defense James Mattis on June 30, 2017.

The Court also GRANTS-IN-PART and DENIES-IN-PART Defendants' Motion to Dismiss. The Court has jurisdiction over and reaches the merits of Plaintiffs' Fifth Amendment claim as it pertains to the Accession and Retention Directives. Plaintiffs have also challenged the Presidential Memorandum's prohibition against the expenditure of military resources on sex reassignment surgeries. Because no Plaintiff has established a likelihood of being impacted by that prohibition, the Court lacks jurisdiction to adjudicate the propriety of this directive. Finally, Plaintiffs have also claimed relief under a theory of estoppel. At this time, that claim will be dismissed without prejudice because the Amended Complaint lacks allegations of the sort of particularized representations, reliance, or government misconduct that could justify estoppel against the government. Plaintiffs may file a further amended complaint with respect to estoppel.

In an exercise of its discretion, the Court finds that holding oral argument in this action would not be of assistance in rendering a decision. *See* LCvR 7(f).

I. BACKGROUND

A. The Military's Policy Toward Transgender Service

1. Military Policy Prior to 2014

Accession

Prior to 2014, Department of Defense Instruction (“DODI”) 6130.03 “contain[ed] a list of disqualifying physical and mental conditions that preclude[d] applicants from joining the military” Lamb Decl., Ex. B (Palm Center Report of the Transgender Service Commission), at 7. Disqualifying conditions included “defects of the genitalia including but not limited to change of sex,” and “[c]urrent or history of psychosexual conditions, including but not limited to transsexualism, . . . transvestism, . . . and other paraphilias.” *Id.*; *see also* Defs.’ Mem. at 4 (“For decades, [disqualifying] conditions [under DODI 6130.03] have included ‘transsexualism.’”).

DODI 6130.03 also requires that the “Secretaries of the Military Departments and Commandant of the Coast Guard shall . . . [a]uthorize the waiver of the standards in individual cases for applicable reasons and ensure uniform waiver determinations.” Lamb Decl., Ex. B, at 7. Service-specific implementing rules set forth the waiver process for each branch of the military. For example, under the applicable Army regulations, “[e]xaminees initially reported as medically unacceptable by reason of medical unfitness . . . may request a waiver of the medical fitness standards in accordance with the basic administrative directive governing the personnel action.” Army Reg. 40-501 (Standards of Medical Fitness), ¶ 1-6(b); *see also* Lamb Decl., Ex. B, at 7. Although Defendants contend that transgender-related conditions were and remain subject to waiver, *see* Defs.’ Mem. at 4, evidence in the record suggests otherwise. At least under the pertinent regulations as they existed prior to 2014, “because some conditions related to

transgender identity [were] grounds for discharge, and because recruiters [could not] waive a condition upon enlistment that would be disqualifying for retention, transgender individuals [could not] obtain medical waivers for entrance into the military.” Lamb Decl., Ex. B, at 8. A March 2014 report was unable to find “any instances in which transgender-related conditions have been waived for accession[.]” *id.*, and Defendants have adduced no evidence of waivers ever being granted for this purpose.

Retention

Pertinent regulations prior to 2014 also appear to have provided military commanders with discretion to separate enlisted personnel for transgender-related conditions. In particular, DODI 1332.14, which “controls administrative separations for enlisted persons,” provided that a “service member may be separated for the convenience of the government and at the discretion of a commander for ‘other designated physical or mental conditions,’ a category defined to include ‘sexual gender and identity disorders.’” Lamb Decl., Ex. B, at 8. Furthermore, DODI 1332.38, “which contains rules for retiring or separating service members because of physical disability” provided that “service members with conditions ‘not constituting a physical disability’ . . . can be separated administratively from military service at a commander’s discretion, without the opportunity to demonstrate medical fitness for duty or eligibility for disability compensation.” *Id.* This category of conditions, under prior iterations of the instruction, included “Sexual Gender and Identity Disorders, including Sexual Dysfunctions and Paraphilias.” *Id.*

2. August 2014 Regulation and July 28, 2015 Memorandum

At least with respect to retention, changes to this regulatory scheme were first enacted in August 2014, when “the Department of Defense issued a new regulation, DODI 1332.18,

Disability Evaluation System (DES).” Fanning Decl. ¶ 12. According to Former Secretary of the Army Eric K. Fanning and Former Secretary of the Air Force Deborah Lee James, the new regulation

eliminated a DoD-wide list of conditions that would disqualify persons from retention in military service, including the categorical ban on open service by transgender persons. This new regulation instructed each branch of the Armed Forces to reassess whether disqualification based on these conditions, including the ban on service by transgender persons, was justified. *As of August 2014, there was no longer a DoD-wide position on whether transgender persons should be disqualified for retention.*

Id. (emphasis added); James Decl. ¶ 8.

Subsequently, on July 28, 2015, then-Secretary of Defense Ash Carter issued a memorandum to the secretaries of the military departments directing that “[e]ffective as of July 13, 2015, no Service member shall be involuntarily separated or denied reenlistment or continuation of active or reserve service on the basis of their gender identity, without the personal approval of the Under Secretary of Defense for Personnel and Readiness.” Carson Decl., Ex. A. The memorandum further ordered the Undersecretary of Defense for Personnel and Readiness to “chair a working group composed of senior representatives from each of the Military Departments, Joint Staff, and relevant components from the Office of the Secretary of Defense to formulate policy options for the DoD regarding the military service of transgender Service members.” *Id.*

3. The Working Group and the RAND Report

The working group convened by the Undersecretary (“the Working Group”) consisted of senior uniformed officers and senior civilian officers from each department of the military. Carson Decl. ¶ 9. The Working Group sought to identify any possible issues related to open military service of transgender individuals. *Id.* ¶ 22. It considered a broad range of information

provided by senior military personnel, various types of experts, health insurance companies, civilian employers, transgender service members themselves, and representatives from the militaries of other nations who allow open service by transgender people. *Id.* ¶ 10. Finally, the Working Group commissioned the RAND Corporation’s National Defense Research Institute to conduct a study on the impact of permitting transgender service members to serve openly. *Id.* ¶ 11. RAND is a nonprofit research institution that provides research and analysis to the Armed Services. *Id.*

The RAND Corporation subsequently issued a 91-page report entitled “Assessing the Implications of Allowing Transgender Personnel to Serve Openly.” Carson Decl., Ex. B (“RAND Report”). The RAND Report found no evidence that allowing transgender individuals to serve would have any effect on “unit cohesion,” and concluded that any related costs or impacts on readiness would be “exceedingly small,” “marginal” or “negligible.” *Id.* at xi–xii, 39–47, 69–70. The RAND Report also found that “[i]n no case” where foreign militaries have allowed transgender individuals to serve “was there any evidence of an effect on the operational effectiveness, operational readiness, or cohesion of the force.” *Id.* at xiii.

Based on all of the information it collected, the Working Group unanimously concluded that transgender people should be allowed to serve openly in the military. Not only did the group conclude that allowing transgender people to serve would not significantly affect military readiness or costs, it found that *prohibiting* transgender people from serving undermines military effectiveness and readiness because it excludes qualified individuals on a basis that has no

relevance to one's fitness to serve, and creates unexpected vacancies requiring expensive and time-consuming recruitment and training of replacements.²

The Working Group communicated its conclusion to the Secretary of Defense, along with detailed recommendations for policies and procedures for open transgender service.

4. June 30, 2016 Directive-Type Memorandum 16-005

On June 30, 2016, the Secretary of Defense Ash Carter issued a Directive-type Memorandum ("DTM") establishing a policy, assigning responsibilities, and prescribing procedures for "the retention, accession, separation, in-service transition and medical coverage for transgender personnel serving in the Military Services." James Decl., Ex. B, at 1. The DTM took effect immediately. *Id.* In the DTM, the Secretary of Defense stated his conclusion that open service by transgender Americans was "consistent with military readiness and with strength

² See generally Carson Decl. ¶¶ 26–27 ("The Working Group . . . concluded that banning service by openly transgender persons would harm the military" and "unanimously resolved that transgender personnel should be permitted to serve openly in the military."); James Decl. ¶ 22 ("The Working Group did not find that permitting transgender soldiers to serve would impose any significant costs or have a negative impact on military effectiveness or readiness," but did find "that barring transgender people from military service causes significant harms to the military, including arbitrarily excluding potential qualified recruits based on a characteristic with no relevance to their ability to serve."); Fanning Decl. ¶¶ 25–26 ("At the conclusion of its discussion and analysis, the members of the Working Group did not identify any basis for a blanket prohibition on open military service of transgender people. Likewise, no one suggested to me that a bar on military service by transgender persons was necessary for any reason, including readiness or unit cohesion. The Working Group communicated its conclusions to the Secretary of Defense, including that permitting transgender people to serve openly in the United States military would not pose any significant costs or risks to readiness, unit cohesion, morale, or good order and discipline."); Mabus Decl. ¶ 21 (stating that "all members of the Working Group . . . expressed their agreement that transgender people should be permitted to serve openly in the United States Armed Forces" and that "President Trump's stated rationales for reversing the policy and banning military service by transgender people make no sense," "have no basis in fact and are refuted by the comprehensive analysis of relevant data and information that was carefully, thoroughly, and deliberately conducted by the Working Group"); Wilmoth Decl. ¶ 23 ("The Working Group concluded that there were no barriers that should prevent transgender service members from serving openly in the military.").

through diversity.” *Id.* at 2. Accordingly, the DTM stated that it was the policy of the Department of Defense that “service in the United States military should be open to all who can meet the rigorous standards for military service and readiness” and that, “consistent with the policies and procedures set forth in [the DTM], transgender individuals shall be allowed to serve in the military.” *Id.*

Retention

The DTM set forth procedures for the retention and accession of transgender military service members. It stated that “[e]ffective immediately, no otherwise qualified Service member may be involuntarily separated, discharged or denied reenlistment or continuation of service, solely on the basis of their gender identity,” or on their “expressed intent to transition genders.” James Decl., Ex. B, Attach. (Procedures), at 1. The DTM stated that “Transgender Service members will be subject to the same standards as any other Service member of the same gender; they may be separated, discharged, or denied reenlistment or continuation of service under existing processes and basis, but not due solely to their gender identity or an expressed intent to transition genders.” *Id.*

Accession

With respect to accession procedures, the DTM stated that by no later than July 1, 2017, DODI 6130.03 would be updated to allow for the accession of (i) individuals with gender dysphoria, (ii) individuals that have received medical treatment for gender transition, and (iii) individuals that have undergone sex reassignment surgeries. *Id.* at 1–2. The policies and procedures generally provided that these conditions would be disqualifying *unless* the acceding service member was medically stable in their chosen gender for at least 18 months. *Id.* The DTM also provided that, effective October 1, 2016, the Department of Defense would

“implement a construct by which transgender Service members may transition gender while serving.” *Id.* at 2.

Equal Opportunity

Finally, the DTM stated that it is “the Department’s position, consistent with the U.S. Attorney General’s opinion, that discrimination based on gender identity is a form of sex discrimination.” *Id.* at 2.

5. June 30, 2016 Remarks by Secretary of Defense Ash Carter

On June 30, 2016, then-Secretary of Defense Ash Carter announced from the Pentagon briefing room that “we are ending the ban on transgender Americans in the United States military.” Lamb Decl., Ex. F. He stated that “[e]ffective immediately, transgender Americans may serve openly, and they can no longer be discharged or otherwise separated from the military just for being transgender.” *Id.* Secretary Carter also announced that he had “directed that the gender identity of an otherwise qualified individual will not bar them from military service, or from any accession program.” *Id.* The Secretary stated that on June 30, 2017, after a year-long implementation period, “the military services will begin acceding transgender individuals who meet all standards—holding them to the same physical and mental fitness standards as everyone else who wants to join the military.” *Id.*

Secretary Carter gave three reasons for the Department’s decision. First, he stated that “the Defense Department and the military need to avail ourselves of all talent possible in order to remain what we are now—the finest fighting force the world has ever known.” *Id.* He added that “[w]e invest hundreds of thousands of dollars to train and develop each individual, and we want to take the opportunity to retain people whose talent we’ve invested in and who have proven themselves.” *Id.* Second, he stated that “the reality is that we have transgender service

members serving in uniform today,” and they and their commanders need “clearer and more consistent guidance than is provided by current policies.” *Id.* And third, he stated that, as a matter of principle, “Americans who want to serve and can meet our standards should be afforded the opportunity to come to do so.” *Id.*

6. September 30, 2016 Publication of “Transgender Service in the U.S. Military: An Implementation Handbook” and Military Department Policies

Consistent with the directives of Secretary Carter in his July 2015 memorandum and June 2016 memorandum and policy announcement, Acting Undersecretary of Defense for Personnel and Readiness Peter Levine published an “implementation handbook” entitled “Transgender Service in the U.S. Military.” Mabus Decl., Ex. F; *see also* James Decl., Ex. D. The document was “the product of broad collaboration among the Services” and was intended to serve as a “practical day-to-day guide” to assist Service members and commanders to understand and implement the policy of open transgender military service. James Decl., ¶ 34. The handbook is a lengthy, exhaustive document, providing an explanation of the basics of what it means to be transgender and to undergo gender transition; guidance on how transgender service members can request an in-service transition and communicate with their leadership about their transition process; and guidance for commanders interacting with transgender service members. It also includes extensive question-and-answer and hypothetical scenario sections, as well as a “roadmap” for gender transition for military personnel.

Individual implementing memoranda were subsequently issued by the branches of the Armed Forces. On November 4, 2016, the Secretary of the Navy issued SECNAV Instruction 1000.11, the stated purpose of which was to “establish Department of Navy . . . policy for the accession and service of transgender Sailors and Marines, to include the process for transgender Service Members to transition gender in-service.” Mabus Decl., Ex. D, at 1. The memorandum

stated that “transgender individual shall be allowed to serve openly in the [Department of the Navy].” *Id.* at 2.

The Air Force issued a Policy Memorandum on October 6, 2016, which stated that “[i]t is Air Force policy that service in the United States Air Force should be open to all who can meet the rigorous standards for military service and readiness. Consistent with the policies set forth in this memorandum, transgender individuals shall be allowed to serve in the Air Force.” James Decl., Ex. C.

The Army issued Directive 2016-30 (Army Policy on Military Service of Transgender Soldiers) on July 1, 2016. Fanning Decl., Ex. D. The Directive stated that

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

Id. at 1.

Army Directive 2016-35 was promulgated on October 7, 2016. Fanning Decl., Ex. E. It stated that “The Army allows transgender Soldiers to serve openly.” *Id.* at 1.

7. June 30, 2017 Press Release by Secretary James Mattis

On June 30, 2017, Secretary of Defense James Mattis deferred acceding transgender applicants into the military until January 1, 2018, stating that the “services will review their accession plans and provide input on the impact to the readiness and lethality of our forces.” Lamb Decl., Ex. C.

8. July 26, 2017 Statement by President Donald J. Trump

On July 26, 2017, President Donald J. Trump issued a statement via Twitter, in which he announced that³



³ The full text reads: "After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you." Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2017, 5:55 AM), <https://twitter.com/realDonaldTrump/status/890193981585444864>; Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2017, 6:04 AM), <https://twitter.com/realDonaldTrump/status/890196164313833472>; Donald J. Trump (@realDonaldTrump), Twitter (July 26, 2017, 6:08 AM), <https://twitter.com/realDonaldTrump/status/890197095151546369>.

9. August 25, 2017 Presidential Memorandum

On August 25, 2017, President Trump issued a memorandum entitled “Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security.” Lamb Decl., Ex. A (the “Presidential Memorandum”). The memorandum begins by stating that until “June 2016, the Department of Defense (DoD) and the Department of Homeland Security (DHS) (collectively, the Departments) generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals.” Presidential Memorandum § 1(a). According to the memorandum, “[s]hortly before President Obama left office, . . . his Administration dismantled the Departments’ established framework by permitting transgender individuals to serve openly in the military, authorizing the use of the Departments’ resources to fund sex-reassignment surgical procedures, and permitting accession of such individuals after July 1, 2017.” *Id.* The President stated that “the previous Administration failed to identify a sufficient basis to conclude that terminating the Departments’ longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources, and there remain meaningful concerns that further study is needed to ensure that continued implementation of last year’s policy change would not have those negative effects.” *Id.*

The memorandum has two operative sections, one general, and the other more specific. Section 1(b) directs “the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have the negative effects discussed above.” *Id.* § 1(b). As already stated, the memorandum

defines the pre-June 2016 policy as one under which the military “generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals.” *Id.* § 1(a). The directive set forth in section 1(b) takes effect on March 23, 2018. *Id.* § 3. The memorandum provides that the “Secretary of Defense, after consulting with the Secretary of Homeland Security, may advise [the President] at any time, in writing, that a change to this policy is warranted.” *Id.* § 1(b).

Section 2 contains two specific directives to the Secretary of Defense and the Secretary of Homeland Security. First, section 2(a) directs the Secretaries to “maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that [the President finds] convincing” *Id.* § 2(a). This section takes effect on January 1, 2018. *Id.*

Second, section 2(b) directs the Secretaries to “halt all use of DoD or DHS resources to fund sex reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.” *Id.* § 2(b). This section, like section 1(b), takes effect on March 23, 2018. *Id.* § 3.

By February 21, 2018, the Secretaries must submit a plan to the President “for implementing both the general policy set forth in section 1(b) of this memorandum and the specific directives set forth in section 2 of this memorandum.” *Id.* § 3. This implementation plan must “determine how to address transgender individuals currently serving in the United States military.” *Id.* Until that determination is made—and it must be made as part of the implementation plan, which must be submitted by February 21, 2018—“no action may be taken against such individuals under the policy set forth in section 1(b) of this memorandum.” *Id.*

That is, only after February 21, 2018, may the Secretaries take actions toward reverting to the pre-June 2016 policy, which by the terms of the memorandum is a policy under which the military “generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals.” *Id.* § 1(a).

Retention Directive

In sum, by March 23, 2018, the Secretaries *are required* by the plain text of the President’s directive to revert to a policy under which the military “authorized the discharge of [transgender] individuals.” *Id.* §§ 1(a), 1(b), 3. The protections of the memorandum with respect to discharge and other adverse action expire on February 21, 2018. *Id.* § 3.

Accession Directive

With respect to accession, the memorandum indefinitely delays the implementation of the accession policy of the June 2016 DTM, which was previously set for implementation on January 1, 2018, and by March 23, 2018, requires the Secretaries to revert to a policy by which the military “generally prohibit[s] openly transgender individuals from accession” *Id.* §§ 1(a), 1(b), 2(a), 3.

10. August 29, 2017 Statement by Secretary Mattis

On August 29, 2017, Secretary Mattis issued a statement concerning the Presidential Memorandum. Lamb Decl., Ex. D. He wrote that “[t]he [Department of Defense] will carry out the president’s policy direction, in consultation with the Department of Homeland Security,” and that “[a]s directed,” the Department of Defense will “develop a study and implementation plan, which will contain the steps that will promote military readiness, lethality, and unit cohesion, with due regard to budgetary constraints and consistent with applicable law.” *Id.* The plan, Secretary Mattis wrote, “will address accessions of transgender individuals and transgender

individuals currently serving in the United States military.” *Id.* Secretary Mattis stated that he would “establish a panel of experts serving within the Departments of Defense and Homeland Security to provide advice and recommendations on the implementation of the president’s direction.” *Id.* After the “panel reports its recommendations and following . . . consultation with the secretary of Homeland Security,” Secretary Mattis “will provide [his] advice to the president concerning implementation of his policy direction.” *Id.* In the interim, “current policy with respect to currently serving members will remain in place.” *Id.*

11. September 14, 2017 Interim Guidance

On September 14, 2017, Secretary Mattis issued interim guidance that took “effect immediately and will remain in effect until [he] promulgate[s] DoD’s final policy in this matter.” Defs.’ Mem., ECF No. 45, Ex. 1 (“Interim Guidance”). The Interim Guidance states that “[n]ot later than February 21, 2018, [Secretary Mattis] will present the President with a plan to implement the policy and directives in the Presidential Memorandum.” *Id.* at 1. The “implementation plan will establish the policy, standards and procedures for transgender individuals serving in the military.” *Id.*

Accession

With respect to accession, the Interim Guidance provides that the procedures previously set forth in a 2010 policy instruction, “which generally prohibit the accession of transgender individuals into the Military Services, remain in effect” *Id.* at 2.

Medical Care and Treatment

With respect to medical care and treatment, the Interim Guidance provides that “[s]ervice members who receive a gender dysphoria diagnosis from a military medical provider will be provided treatment for the diagnosed medical condition,” but that “no new sex reassignment

surgical procedures for military personnel will be permitted after March 22, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.” *Id.*

Retention

With respect to the separation or retention of transgender service members, the Interim Guidance provides that “[a]n otherwise qualified transgender Service member whose term of service expires while this Interim Guidance remains in effect, *may*, at the Service member’s request, be re-enlisted in service under existing procedures.” *Id.* (emphasis in original).

Finally, the Interim Guidance states that “[a]s directed by the [Presidential] Memorandum, no action may be taken to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender status.” *Id.*

B. The Plaintiffs

1. Jane Doe 1

Plaintiff Jane Doe 1 has served in the Coast Guard since 2003. Looney Decl., Ex. A (“Redacted Jane Doe 1 Decl.”), ¶ 1. Jane Doe 1 is transgender. The Coast Guard has made a substantial investment in educating and training Jane Doe 1, and she has done her “best to be hardworking, faithful, and loyal to the Coast Guard.” *Id.* ¶ 11. She is married and is the primary wage earner for her family. She and her spouse receive health insurance coverage, called TRICARE, based on her enlisted status. *Id.* ¶ 12. When she came to the realization of her transgender identity, Jane Doe 1, with her spouse’s support, sought professional help. *Id.* ¶ 14. She paid for this help herself, fearing that she may be separated from the Coast Guard if she went through military health channels. *Id.* She was diagnosed with gender dysphoria and has

received medical treatment for this condition. *Id.* ¶ 15. However, because TRICARE does not provide comprehensive gender transition healthcare, following the issuance of the June 2016 DTM, she was required to obtain waivers from the Defense Health Agency to obtain treatment. Because this process often led to delays, Jane Doe 1 has continued to pay for her care herself, including surgical care. *Id.* ¶ 21.

Following the President’s statement regarding transgender service members, issued via Twitter, Commandant of the Coast Guard Paul F. Zukunft stated, with respect to transgender service members, that “[w]e have made an investment in you and you have made an investment in the Coast Guard and I will not break faith.” *Id.* ¶ 23.

According to Jane Doe 1, the Presidential Memorandum has disrupted her medical care, and has had “serious consequences for [her] financial future.” *Id.* ¶¶ 29–30. For one, separation from the Coast Guard would mean loss of substantial pension benefits, and health insurance for her and her family. *Id.* ¶¶ 30–31. Separation also means the loss of “a central part of [her] identity.” *Id.* ¶ 36. In her own words: “As much as the Coast Guard has invested in me, I have invested in the Coast Guard. I love serving, . . . I had expected to continue serving as a Coast Guard officer for many years.” *Id.*

2. Jane Doe 2

Jane Doe 2 joined the Army National Guard in 2003, when she was 17. Looney Decl., Ex. B (“Redacted Jane Doe 2 Decl.”), ¶ 3. She met her wife while serving, who soon became pregnant. Jane Doe 2 then “made the decision to go on active duty with the U.S. Army so [she] could obtain health care benefits to support [her] growing family.” *Id.* ¶ 5. She now has three children. *Id.* While on active duty, she served in South Korea and was deployed to Kandahar in Afghanistan. *Id.* ¶ 7.

During active duty, Jane Doe 2 came out to her wife as transgender. *Id.* ¶ 9. She felt more connected to her wife and she stopped drinking. *Id.* After the Department of Defense promulgated new regulations in late 2015, she made a public post on Facebook stating that she was transgender. Redacted Jane Doe 2 Decl. ¶ 10. Her company commander was very supportive. *Id.* ¶ 11. She began to see an Army therapist, and following the June 2016 DTM, she obtained a formal gender dysphoria diagnosis which permitted her to receive transition treatment from military healthcare providers, and she began receiving hormone treatment. *Id.* ¶ 13.

Following the President's statement and the Presidential Memorandum, Jane Doe 2 believes that she has received an unfavorable work detail to keep her "separated from the rest of [her] unit because [she is] transgender and because of the President's ban, as [she] never had any problems with this kind of treatment in [her] old unit and [does] not know of any other reason [why] she would be treated this way." *Id.* ¶ 15. She also fears the loss of retirement benefits, which accrue following 20 years of service, and access to "health care services for [her] family on base." *Id.* ¶ 16. She has already accrued 12 to 13 years of service toward these benefits. *Id.* ¶¶ 16, 18. The directives of the Presidential Memorandum have "left [her] feeling excluded, and it hurts [her] that people like [her] are being singled out and told that [they] aren't good enough to serve our country based on a characteristic that has no relevance at all to our abilities or fitness to serve." *Id.* ¶ 19.

Jane Doe 2 "loves this country and [has] served it faithfully and well." *Id.* For her, to "be told that [she is] no longer worthy to serve is a terrible blow. It affects how [she sees herself]" *Id.* "All [she wants] is to be allowed to serve [her] country and to be evaluated based on [her] job performance rather than on [her] status as a transgender person." *Id.* ¶ 20.

3. Jane Doe 3

Jane Doe 3 serves in the Army. After completing her basic training, she was deployed to Afghanistan for six months. Looney Decl., Ex. C (“Redacted Jane Doe 3 Decl.”), ¶ 4. She is currently scheduled to deploy again to Iraq, where she will be going as a team leader, with soldiers reporting to her. *Id.* ¶ 6.

Jane Doe 3 has received a gender dysphoria diagnosis from an Army therapist. *Id.* ¶ 7. Although she has developed a transition plan in coordination with medical professionals, she has not begun any of the treatment steps, which include surgery. *Id.* ¶ 9.

Before the President’s statement regarding transgender individuals, Jane Doe 3 “had not come out to anyone in [her] chain of command.” *Id.* ¶ 10. However, after the statement, she had a conversation with her company commander, believing that she would receive support based on the June 2016 DTM. *Id.* She told her company commander that she was worried that she would not be deployed, and that she was committed to being deployed. *Id.*

The commander was not supportive—expressing shock and surprise—but she has received support from her squad leader, the platoon sergeant, and another friend in her unit. *Id.* ¶ 11. Since that conversation, she has continued to prepare for deployment, with the understanding that she will not be able to begin her treatment until she returns. *Id.* ¶ 12. In her words, she “will not put [her] personal needs ahead of the needs of the mission and [her] fellow soldiers.” *Id.*

Jane Doe 3 has “not told anyone else at [her] rank or below that [she] is transgender.” *Id.* ¶ 15. As a result, she “was able to hear an unfiltered reaction to the President’s announcement right after he tweeted it.” *Id.* “Some made ugly remarks about transgender service members, while others remarked [that] people who kill transgender people should not be punished.” *Id.*

According to Jane Doe 3, after “the tweets, people seemed emboldened to express hostility to transgender people.” *Id.* ¶ 15.

4. Jane Doe 4

Jane Doe 4 serves in the Army National Guard, but was previously on active duty with the Army. After basic training, she served in South Korea, and subsequently served a tour in Iraq after the 9/11 terrorist attacks. Looney Decl., Ex. D (“Redacted Jane Doe 4 Decl.”), ¶¶ 5–6. After she returned from Iraq, Jane Doe 4 enlisted in the Army National Guard, and then joined the Active Guard Reserve. *Id.* ¶ 7. In that capacity, she has been employed as a specialist by the Department of Defense. *Id.* ¶ 10.

Following the June 2016 DTM, Jane Doe 4 decided to come out as transgender to her chain of command. *Id.* ¶ 13. She first spoke to the senior non-commissioned officer of her unit, who said she supported her decision “100%.” She then spoke with her commanding officer, a Major, “who acknowledged that he was not very knowledgeable about the experiences of transgender people, but told [her] that he and the rest of [her] unit would support and work with [her] through the process” *Id.* According to Jane Doe 4, the “change in policy allowing transgender soldiers to serve openly . . . changed [her] life in the military.” *Id.* ¶ 14. Her “fellow soldiers in [her] unit and [her] senior leaders . . . told [her] that they . . . noticed how much happier [she was].” *Id.*

The President’s statement regarding transgender service members has been “devastating” to her, making her feel “ashamed” and “deeply saddened that he was ordering the Army, which [she] had been a part of for so long and which [she] loved so much, to stop treating [her] with respect.” *Id.* ¶ 15. She “went to work each day wondering whether [she] would be discharged,

not because of any problem with [her] job performance or [her] commitment to serve this country, but solely because of [her] gender identity.” *Id.*

Jane Doe 4 reenlisted effective August 24, 2017, and has extended her commitment to the Army until February 2020. *See* Defs.’ Mem. at 11 (citing Sealed Decl. relating to Jane Doe 4, ECF No. 56-4).

5. Jane Doe 5

“Jane Doe 5 has been an active duty member of the United States Air Force for nearly twenty years, serving multiple tours of duty abroad, including two in Iraq.” Am. Compl., ECF No. 9, ¶ 30. After June 2016, she notified her superiors that she is transgender. *Id.* ¶ 31. Her “livelihood depends on her military service[,]” and “[s]eparation from the military w[ould] have devastating financial and emotional consequences for her.” *Id.* ¶ 32.

6. John Doe 1

John Doe 1 serves in the Army. His family has “a proud history of serving in the Armed Forces.” Looney Decl., Ex. E (“Redacted John Doe 1 Decl.”), ¶ 3. His great grandfather served in Europe in World War II. *Id.* His father served in the Air Force and was awarded the Bronze Star for valor. His uncle was a United States Marine who was wounded and paralyzed by an improvised explosive during Operation Desert Storm. His aunt served in the military as well. *Id.* John Doe 1 has idolized military service since childhood. *Id.*

John Doe 1 entered college on a full academic scholarship. *Id.* ¶ 4. After graduating magna cum laude, he entered the Army Reserve Officers’ Training Corps (“ROTC”) program while pursuing a master’s degree. *Id.* ¶ 5. His fellow cadets in the program knew that he was transgender and were supportive, and his superiors were generally supportive as well. *Id.* ¶ 6. He was ranked third in his ROTC class, and was allowed to wear a male dress uniform as part of

his duties for the ROTC Color Guard. *Id.* ¶ 6. While serving in the ROTC program, John Doe 1 also joined the National Guard. *Id.* ¶ 7. He met his future wife, with whom he has a two-year-old son. *Id.* ¶ 9. He graduated in the top 20% of his ROTC class. *Id.* ¶ 12.

Following the June 2016 DTM, John Doe 1 began training at the Basic Officer Leadership Course (“BOLC”), at which time he came out to his platoon instructors, who were very supportive and treated him as male despite his official gender designation. *Id.* ¶¶ 14–15. After the BOLC, John Doe 1 was stationed as the executive officer for his unit, performing administrative tasks on behalf of and reporting directly to his commanding officer. *Id.* ¶ 16. He serves as both the maintenance and supply officer for his unit. *Id.* He is also in charge of preparing his unit for deployment. *Id.* Until recently, John Doe 1 was preparing to deploy to the Middle East with his unit in mid-2018. *Id.*; Am. Compl. ¶ 33.

During his first meeting with his commanding officer, John Doe 1 came out as transgender. Redacted John Doe 1 Decl. ¶ 17. He stressed that his “first priority was being a solider, and that in crafting an approved plan for medical treatment under the new policy, it was extremely important to [him] to make sure that [his] plan would not interfere with [his] duties.” *Id.* Both his company and battalion commanders have been very supportive “beyond [his] greatest expectations.” *Id.*

John Doe 1 has received an approved treatment plan, which includes a planned surgery. The surgery was “encouraged and supported by [his] command team at every level up to and including [his] Brigade Commander.” *Id.* ¶ 18. His official gender designation has been changed to male. *Id.* ¶ 19. John Doe 1 is scheduled for transition-related surgery on January 4, 2018. Defs.’ Mem. at 11 (citing Sealed Declaration relating to John Doe 1).

John Doe 1 has been “devastated by the President’s cancellation of the policy [he] had relied upon to notify command of the fact that [he is] transgender and to take steps forward in treatment for gender transition.” Redacted John Doe 1 Decl. ¶ 26. If he is discharged, he fears serious financial and medical consequences for him and his family. *Id.* ¶¶ 27–28.

7. Regan Kibby

Plaintiff Regan Kibby is a 19-year-old midshipman at the United States Naval Academy. Kibby Decl. ¶ 1. Kibby’s father served in the Navy, and Kibby has wanted to follow in his footsteps from an early age. *Id.* ¶¶ 2–3. He spent his summers in high school attending seminars at military academies. *Id.* ¶ 5. Despite being accepted with full scholarships to other schools, Kibby immediately decided to enroll at the Naval Academy when he was accepted. *Id.* ¶¶ 7–8. He has now successfully completed his first two years of school and hopes to become a Surface Warfare Officer in the Navy after graduation. *Id.* ¶ 9.

Kibby is transgender. *Id.* ¶ 1. After Secretary of Defense Carter announced that transgender people could not be separated on the basis of their gender identity during his first year at the Naval Academy, Kibby began to come out. *Id.* ¶¶ 13–14. Kibby’s Company Officer was very accepting and supportive, and put Kibby in contact with the Brigade Medical Officer to begin the process of preparing a medical treatment plan. *Id.* ¶¶ 16–19. The first step was to receive an official diagnosis, which Kibby did. *Id.* ¶ 20.

Working with the Brigade Medical Officer, Kibby determined that in order to comply with the 18 month stability requirement of the recently announced accession policy for transgender service members, he would have to take a year off from the Naval Academy to ensure that he had completed his transition plan prior to graduating and acceding. *Id.* ¶ 24. His Commandant and the Superintendent officially approved Kibby’s medical transition plan and his

request for a year-long medical leave of absence. *Id.* ¶ 26. Kibby is now on medical leave undergoing his medical transition and plans to return to the Academy in the fall of 2018. *Id.* ¶ 28.

When Plaintiff Kibby saw the President’s Tweet he “was devastated” and felt that “[t]he entire future [he] had been planning for [himself] was crumbling around [him].” *Id.* ¶ 31. When Kibby came out, he was relying on the recent pronouncements by the Secretary of Defense and the Navy that he would be able to enlist despite being transgender. *Id.* ¶ 33. He is now living in a state of uncertainty and great distress because if the Presidential Memorandum is allowed to stand, he will never be able to serve in the Armed Forces—something he has strived for since he was a child. *Id.* ¶¶ 33–34.

8. Dylan Kohere

Plaintiff Dylan Kohere is an 18-year-old student and member of the Army ROTC at the University of New Haven. Kohere Decl. ¶ 1. Both of Dylan’s grandfathers served in the military, and Dylan has wanted to serve since he was a young child. *Id.* ¶ 2. He entered the ROTC program to obtain the career opportunities that come with being a commissioned officer. *Id.* ¶ 2.

Dylan is transgender, and has come out as such to his Sergeant. *Id.* ¶ 9. He has started to work with medical professionals to begin a treatment plan for his transition. *Id.* ¶ 10. When the President declared on Twitter that transgender service members would no longer be allowed to serve in the military in any capacity, Dylan felt that the plan he had made for his life had been “thrown out the window.” *Id.* ¶¶ 12–13. He had come out as transgender in the ROTC in reliance on the military’s announcement that transgender people could serve openly. *Id.* ¶¶ 11, 15. He feels disheartened that if the Presidential Memorandum remains in force, he will “be

denied an opportunity to serve based on something that has nothing to do with [his] ability or performance.” *Id.* ¶ 15. If he is prevented from serving or completing ROTC because of his transgender status, he will lose educational and career opportunities, as well as the opportunity to apply for an ROTC scholarship. *Id.* ¶ 18.⁴

II. LEGAL STANDARDS

A. Motion to Dismiss for Lack of Jurisdiction

When a motion to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(1) is filed, a federal court is required to ensure that it has “the ‘statutory or constitutional power to adjudicate [the] case[.]’” *Morrow v. United States*, 723 F. Supp. 2d 71, 77 (D.D.C. 2010) (emphasis omitted) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998)). “Federal courts are courts of limited jurisdiction” and can adjudicate only those cases or controversies entrusted to them by the Constitution or an Act of Congress. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In determining whether there is jurisdiction on a motion to dismiss, the Court may “consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Coal. for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003) (citations omitted). “Although a court must accept as true all factual allegations contained in the complaint when reviewing a motion to dismiss pursuant to Rule 12(b)(1),” the factual allegations in the complaint “will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim.” *Wright v. Foreign Serv. Grievance Bd.*, 503 F. Supp. 2d 163, 170 (D.D.C. 2007) (citations omitted).

⁴ Plaintiffs’ Motion for Leave to File Declarations Under Seal, ECF No. 51, is GRANTED for the reasons set forth in the Court’s prior Order regarding sealing.

B. Motion to Dismiss for Failure to State a Claim

Under Rule 12(b)(6), a party may move to dismiss a pleading on the grounds that it “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “[A] complaint [does not] suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). Rather, a complaint, or counterclaim, must contain sufficient factual allegations that, if accepted as true, “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

C. Motion for Preliminary Injunction

Preliminary injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). A plaintiff seeking a preliminary injunction “must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (quoting *Sherley*, 644 F.3d at 392 (quoting *Winter*, 555 U.S. at 20) (alteration in original; quotation marks omitted)). When seeking such relief, “‘the movant has the burden to show that all four factors, taken together, weigh in favor of the injunction.’” *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014) (quoting *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009)). “The four factors have typically been evaluated on a ‘sliding scale.’” *Davis*, 571 F.3d at 1291 (citation

omitted). Under this sliding-scale framework, “[i]f the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” *Id.* at 1291–92.⁵

III. DISCUSSION

The Court’s Opinion will be divided into three parts. The first part of the Opinion assesses the Court’s jurisdiction and addresses Defendants’ arguments that Plaintiffs lack standing and that their claims are not ripe. The second part of the Opinion dismisses Plaintiffs’ estoppel cause of action for failure to state a claim. Finally, in the third part of the Opinion, the Court addresses Plaintiffs’ motion for preliminary injunction.

A. Subject Matter Jurisdiction

Article III of the Constitution limits the jurisdiction of this Court to the adjudication of “Cases” and “Controversies.” U.S. Const., Art. III, § 2. “In an attempt to give meaning to Article III’s case-or-controversy requirement, the courts have developed a series of principles termed ‘justiciability doctrines,’ among which are standing [and] ripeness.” *Nat’l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1427 (D.C. Cir. 1996) (citing *Allen v. Wright*, 468 U.S. 737, 750 (1984)). Defendants challenge the Court’s jurisdiction on the basis of standing and ripeness.

⁵ The Court notes that it is not clear whether this circuit’s sliding-scale approach to assessing the four preliminary injunction factors survives the Supreme Court’s decision in *Winter*. See *Save Jobs USA v. U.S. Dep’t of Homeland Sec.*, 105 F. Supp. 3d 108, 112 (D.D.C. 2015). Several judges on the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) have “read *Winter* at least to suggest if not to hold ‘that a likelihood of success is an independent, free-standing requirement for a preliminary injunction.’” *Sherley*, 644 F.3d at 393 (quoting *Davis*, 571 F.3d at 1296 (concurring opinion)). However, the D.C. Circuit has yet to hold definitively that *Winter* has displaced the sliding-scale analysis. See *id.*; see also *Save Jobs USA*, 105 F. Supp. 3d at 112. In any event, this Court need not resolve the viability of the sliding-scale approach today, as it finds that each of the preliminary injunctive factors favors awarding relief on the pending motion.

Plaintiffs bear the burden of establishing jurisdiction, and each “element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2342 (2014) (“*SBA List*”) (internal quotation marks omitted). On a motion for preliminary injunction, the plaintiff “must show a substantial likelihood of standing[,]” while on a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), the plaintiff must merely “state a plausible claim that they have suffered an injury in fact fairly traceable to the actions of the defendant that is likely to be redressed by a favorable decision on the merits.” *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015) (internal quotation marks and alterations omitted). Although Defendants have pressed their jurisdictional arguments in a motion to dismiss, the Court also has an independent duty to assess its jurisdiction for purposes of Plaintiffs’ pending motion for preliminary injunction. Consequently, the Court proceeds by applying the higher burden necessitated by a motion for preliminary injunction.

For the reasons stated below, the Court concludes that it has jurisdiction to adjudicate the propriety of the directives of the Presidential Memorandum with respect to the accession and retention of transgender individuals for military service, which corresponds with sections 1(b) and 2(a) of the Presidential Memorandum (*i.e.*, the Accession and Retention Directives). The Court does not have jurisdiction over section 2(b), which prohibits the use of military resources to fund sex reassignment surgical procedures, because no Plaintiff has demonstrated that they are substantially likely to be impacted by this directive (the “Sex Reassignment Surgery Directive”).

1. Standing

Standing is an element of the Court’s subject-matter jurisdiction, and requires, in essence,

that a plaintiff have “a personal stake in the outcome of the controversy” *Warth v. Seldin*, 422 U.S. 490, 498 (1975). A plaintiff cannot be a mere bystander or interested third-party, or a self-appointed representative of the public interest; he or she must show that the defendant’s conduct has affected them in a “personal and individual way.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). “The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches.” *SBA List*, 134 S. Ct. at 2341–42 (internal quotation marks omitted). Consequently, the standing analysis is “especially rigorous when reaching the merits of the dispute would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013).

The familiar requirements of Article III standing are:

(1) that the plaintiff have suffered an “injury in fact”—an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) that there be a causal connection between the injury and the conduct complained of—the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) that it be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Bennett v. Spear, 520 U.S. 154, 167 (1997) (citing *Lujan*, 504 U.S. at 560–61); *see also Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

The parties disagree only over the first element of standing: injury in fact. For the reasons stated below, Plaintiffs have carried their burden of demonstrating a substantial likelihood of standing on the basis of at least two distinct injuries. *First*, Plaintiffs are subject to a competitive barrier that violates equal protection. *Second*, they are subject to a substantial risk

of being denied accession, or being discharged from the military, due to their transgender status. Furthermore, Plaintiffs have demonstrated satisfactorily that both of these injuries are caused by the directives of the Presidential Memorandum, and that they are redressable by this Court.

a. The Import of the Presidential Memorandum

Before turning to the legal basis of the two injuries that support Plaintiffs' standing, the Court first addresses the crux of Defendants' arguments regarding standing, and indeed, this Court's subject-matter jurisdiction more generally.

According to Defendants, the Court lacks subject-matter jurisdiction with respect to the directives of the Presidential Memorandum because Plaintiffs have merely "brought a constitutional challenge to the President's policy directive to conduct further study before the military changes its longstanding policies regarding service by transgender individuals." Defs.' Mem. at 15. According to Defendants, Plaintiffs "challenge a notional policy regarding military service by transgender individuals, but as they concede, that policy is currently being studied and has not been implemented or applied to anyone, let alone Plaintiffs." Defs.' Reply at 1. Defendants also highlight the protections afforded by the Interim Guidance: "Secretary of Defense Mattis has put in place Interim Guidance that, by its terms, maintains the status quo for both current service members and those who seek to accede into the military." *Id.* In Defendants' view, the Court is being asked "to prejudge the constitutionality of a future Government policy regarding military service by transgender individuals and issue the extraordinary relief of a worldwide preliminary injunction." Defs.' Mem. at 1. They further contend that "it is unclear whether those currently serving members will be affected by the future policy regarding service by transgender individuals once it is finalized and implemented." *Id.* at 2.

According to Defendants, the President has only “directed the Secretary of Defense to determine how to address transgender individuals currently serving in the military and that *no action* be taken against such individuals until *after a policy review is completed*.” *Id.* at 1 (emphasis in original). In their words: “Secretary Mattis’s Memorandum is unambiguous: The Interim Guidance is the operative policy and will remain so until he promulgates DoD’s final policy regarding service by transgender individuals.” Defs.’ Reply at 3. “The Interim Guidance is equally clear: Transgender service members, including the service member Plaintiffs, continue to serve fully in the military.” *Id.* With respect to accession, Defendants contend that the operative policy is not a “ban” because transgender individuals are “subject to the normal waiver process.” *Id.* (internal quotation marks omitted). In sum, Defendants argue that Plaintiffs disregard the actual policy regarding transgender service members, and instead rely “on a hypothetical future policy on transgender military service.” *Id.*

Ultimately, all of these contentions can be summarized into a few overarching points: the Presidential Memorandum merely commissioned an additional policy review; that review is underway; nothing is set in stone, and what policy may come about is unknown; and regardless, Plaintiffs are protected by the Interim Guidance. And while accession by transgender individuals is not permitted, they may obtain waivers. In the Court’s view, the government’s jurisdictional arguments are a red herring.

The President controls the United States military. The directives of the Presidential Memorandum, to the extent they are definitive, are the operative policy toward military service by transgender service members. The Court must and shall assume that the directives of the Presidential Memorandum will be faithfully executed. *See Nat’l Mining Ass’n v. U.S. Army Corps of Engineers*, 145 F.3d 1399, 1408 (D.C. Cir. 1998) (assessing “faithful” application of

agency rule). Consequently, the Interim Guidance must be read as implementing the directives of the Presidential Memorandum, and any protections afforded by the Interim Guidance are necessarily limited to the extent they conflict with the express directives of the memorandum. Finally, to the extent there is ambiguity about the meaning of the Presidential Memorandum, the best guidance is the President's own statements regarding his intentions with respect to service by transgender individuals. To recount: On July 26, 2017, the President issued a statement announcing that the "United States government will not accept or allow transgender individuals to serve in any capacity in the U.S. military." On August 25, 2017, the President issued the Presidential Memorandum. There, the President states that until "June 2016, the [military] generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals." Finding subsequent changes to that policy unjustified, in section 1(b), the President directs the military "to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016" Accordingly, the military has been directed by section 1(b) to return to a policy under which: (i) transgender individuals are generally prohibited from accession; and (ii) the military is authorized to discharge individuals who are transgender.

This change in policy must occur by March 23, 2018, except that the prohibition on accession is extended indefinitely as of January 1, 2018. Likewise, as of March 23, 2018, the military is expressly prohibited from funding sex reassignment surgeries, except as necessary to protect the health of an already transitioning individual. The Memorandum provides that "[a]s part of the implementation plan, the Secretary of Defense . . . shall determine how to address transgender individuals currently serving in the United States military." "Until the Secretary has made that determination, no action may be taken against such individuals under the policy set

forth in section 1(b)” —that is, the directive that requires a return to the policy under which transgender individuals could not accede, and could be discharged. As these two clauses make clear, transgender individuals are immunized only until the Secretary of Defense makes the “determination”; the “determination” must be made “as part of the implementation plan”; and the “implementation plan” must be submitted to the President by February 21, 2018. This means that the “determination” must be made by February 21, 2018, and because the protections afforded to transgender individuals last only until the “determination” is made, those protections necessarily lapse by February 21, 2018, unless the “determination” is made earlier. Consequently, as of January 1, 2018, transgender individuals are prohibited from acceding to the military “until such time [that the President receives] a recommendation to the contrary that [he] find[s] convincing;” and as of March 23, 2018, the military must authorize the discharge of transgender service members. The protections afforded to these individuals by the terms of the Presidential Memorandum lapse, at the latest, by February 21, 2018.

Nothing in the August 2017 Statement by Secretary Mattis, or the Interim Guidance, can or does alter these realities. The Statement provides that Secretary Mattis will establish a panel of experts “to provide advice and recommendations on the implementation of the president’s direction.” After the “panel reports its recommendations and following . . . consultation with the secretary of Homeland Security,” Secretary Mattis will “provide [his] advice to the president concerning implementation of his policy direction.” Put differently, the military is studying how to implement the directives of the Presidential Memorandum. Such a policy review and implementation plan are likely necessitated by the fact that—as borne out by the RAND Report and the declarations submitted by the Pseudonym Plaintiffs—transgender service members occupy a variety of crucial positions throughout the military, including active duty postings in

war zones. Presumably, the removal and replacement of such individuals during a time of war cannot occur overnight. Accordingly, Defendants are correct that policy decisions are still being made. But the decisions that must be made are how to best implement a policy under which transgender accession is *prohibited*, and discharge of transgender service members is *authorized*. Unless the directives of the Presidential Memorandum are altered—and there is no evidence that they will be—military policy toward transgender individuals must fit within these confines.

Similarly, the Interim Guidance provides that “[n]ot later than February 21, 2018, [Secretary Mattis] will present the President with a plan to implement the policy and directives in the Presidential Memorandum[,]” and that the “implementation plan will establish the policy, standards and procedures for transgender individuals serving in the military.” True, the exact details of the plan to carry out the directives are unknown. But what is known, and what is the bedrock of Plaintiffs’ constitutional challenge, is that the implementation plan must prohibit transgender accession and authorize the discharge of transgender service members. Otherwise, the plan would be out of compliance with the requirements of the Presidential Memorandum, and the Court shall not presume the military to be unfaithful to the orders of the President. Consequently, while the Court cannot presently adjudicate the merits of the yet-undecided details of how the directives will be carried out, it can adjudicate the constitutionality of the directives themselves, which are definite, and *must* be implemented by the military.

Finally, although Defendants make much of the protections afforded by the Interim Guidance to transgender individuals, that protection is necessarily qualified by the Presidential Memorandum. The Interim Guidance provides that: “*As directed by the [Presidential] Memorandum*, no action may be taken to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender

status.” (Emphasis added). The protections afforded by the Presidential Memorandum lapse by February 21, 2018, and discharge must be authorized by March 23, 2018. The Interim Guidance can do nothing to obviate these facts. Nor is standing vitiated by the mere possibility that the President may alter the directives of the Presidential Memorandum. *See Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1022 (D.C. Cir. 2000) (“[A]ll laws are subject to change. Even that most enduring of documents, the Constitution of the United States, may be amended from time to time. The fact that a law may be altered in the future has nothing to do with whether it is subject to judicial review at the moment.”). Nor is there evidence that such a change may occur, given the President’s unequivocal pronouncement that “the United States government will not accept or allow transgender individuals to serve in any capacity in the U.S. military.” Accordingly, for purposes of its standing analysis, the Court concludes that there is a substantial likelihood that transgender individuals will be indefinitely prevented from acceding to the military as of January 1, 2018, and that the military shall authorize the discharge of current service members who are transgender as of March 23, 2018.

b. Equal Protection Injury

i. Relevant Case Law

The primary injury alleged by Plaintiffs, and which forms the basis of the Court’s decision on the merits, is that the directives of the Presidential Memorandum violate the guarantee of equal protection afforded by the Due Process Clause of the Fifth Amendment. For purposes of the standing analysis, the Court assumes *arguendo* that these directives are, in fact, violative of equal protection. *Schnitzler v. United States*, 761 F.3d 33, 40 (D.C. Cir. 2014) (“[T]he Supreme Court has made clear that when considering whether a plaintiff has Article III

standing, a federal court must assume *arguendo* the merits of his or her legal claim.” (internal quotation marks omitted)).

The Supreme Court and this Circuit have made clear that the “injury in fact element of standing in an equal protection case is the denial of equal treatment resulting from the imposition of the barrier.” *Am. Freedom Law Ctr. v. Obama*, 821 F.3d 44, 51 (D.C. Cir. 2016) (citing *Ne. Florida Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993) (Thomas, J.)), cert. denied, 137 S. Ct. 1069 (2017). In *City of Jacksonville*, the Supreme Court assessed a city ordinance that “required that 10% of the amount spent on city contracts be set aside each fiscal year for so-called ‘Minority Business Enterprises’ (MBE’s).” 508 U.S. at 658. “Once projects were earmarked for MBE bidding by the city’s chief purchasing officer, they were deemed reserved for minority business enterprises only.” *Id.* (internal quotation marks omitted). Plaintiff was an association of individuals and firms in the construction industry who did business in the city and most of whom did not qualify under the ordinance. *Id.* at 659. The members of the association alleged that they “regularly bid on and perform[ed] construction work for the City of Jacksonville,” and that they “would have bid on designated set aside contracts but for the restrictions imposed by the ordinance.” *Id.* (internal quotations marks and alterations omitted). In assessing the members’ standing to challenge the ordinance under these circumstances, the Court held that:

When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The “injury in fact” in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit. . . . And in the context of a challenge to a set-aside program, the “injury in fact” is the inability to compete on an equal footing in the bidding process, not the loss

of a contract. . . . To establish standing, therefore, a party challenging a set-aside program like Jacksonville’s need only demonstrate that it is *able and ready* to bid on contracts and that a discriminatory policy prevents it from doing so on an equal basis.

Id. at 666 (emphasis added) (citations omitted).

In *Adarand*, the Court assessed a requirement that federal agency contracts for general contractors contain a clause providing for additional compensation if the general contractor hired subcontractors “certified as small businesses controlled by socially and economically disadvantaged individuals,” where socially and economically disadvantaged individuals were deemed to include “Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities” *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 205 (1995) (internal quotation marks omitted). Plaintiff submitted a lower bid, but lost to a competing subcontractor that qualified the general contractor for additional compensation under the clause. *Id.* In assessing Plaintiff’s standing for purposes of prospective injunctive relief—that is, with respect to *future* injuries—the Court held that the “concrete and particularized” element of injury in fact was readily satisfied by Plaintiff’s “claim that the Government’s use of subcontractor compensation clauses denies it equal protection of the laws” *Id.* at 211. The Court was less certain, however, “that the future use of subcontractor compensation clauses will cause [the plaintiff] ‘imminent’ injury[,]” and consequently required a “showing that sometime in the relatively near future [the plaintiff] will bid on another Government contract that offers financial incentives to a prime contractor for hiring disadvantaged subcontractors.” *Id.* The plaintiff made a sufficient showing by demonstrating that it was “very likely” to bid on an affected contract at least once per year, and that in so bidding, the plaintiff often competed against small disadvantaged businesses. *Id.* at 212.

In *Gratz*, the plaintiffs, two students who were denied entrance to the University of Michigan, brought suit challenging the University's consideration of race as part of its undergraduate admissions process as violative of equal protection. *Gratz v. Bollinger*, 539 U.S. 244, 251 (2003) (Rehnquist, C.J.). The Court considered whether one of the plaintiffs had standing to seek prospective injunctive relief given his statement that he would not apply for admission as a transfer student until the race-based admissions policy was terminated. *Id.* at 261. Relying on *City of Jacksonville*, the Court found that the plaintiff had standing because "the University had denied him the opportunity to compete for admission on an equal basis." *Id.* at 262. In particular, "[a]fter being denied admission, [the plaintiff] demonstrated that he was 'able and ready' to apply as a transfer student should the University cease to use race in undergraduate admissions. He therefore [had] standing to seek prospective relief with respect to the University's continued use of race in undergraduate admissions." *Id.*

More recently, in *Parents Involved*, the Supreme Court assessed the use by several school districts of "student assignment plans that rely upon race to determine which public schools certain children may attend." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 709–10 (2007) (Roberts, C.J.). "In Seattle, this racial classification [was] used to allocate slots in oversubscribed high schools." *Id.* at 710. Consequently, Seattle argued that the members of the plaintiff organization would "only be affected if their children seek to enroll in a Seattle public high school and choose an oversubscribed school that is integration positive[.]" which in Seattle's view was "too speculative a harm to maintain standing." *Id.* at 718. The Court disagreed, finding that plaintiff had standing because its members had "children in the district's elementary, middle, and high schools[.]" and injunctive relief was sought on behalf of members whose children "may be denied admission to the high schools of their choice when

they apply for those schools in the future” *Id.* (internal quotation marks omitted). The injury was not eliminated merely because it was “possible that children of group members will not be denied admission to a school based on their race—because they choose an undersubscribed school or an oversubscribed school in which their race is an advantage” *Id.*

This line of authority was summarized by the D.C. Circuit in *Worth v. Jackson*, 451 F.3d 854 (D.C. Cir. 2006) (Tatel, J.). There, the plaintiff challenged written and unwritten employment policies by the Department of Housing and Urban Development (“HUD”) that allegedly discriminated on the basis of gender and race, and claimed standing for purposes of prospective injunctive relief by alleging that he intended “to apply for new positions and promotions at HUD on a regular basis in the future,” and that HUD would “violate his equal protection and civil rights” when he did so. *Id.* at 858 (internal quotation marks and alteration omitted). Reviewing *City of Jacksonville* and *Adarand*, the D.C. Circuit found no reason to distinguish “between contractors and job applicants[,]” and held that the source of the challenged policy—“whether a statute, a regulation, or agency guidelines”—did not control the standing inquiry. *Id.* at 859. Rather, according to the Circuit, “*Adarand* rests on the common-sense notion that when a contractor depends for its livelihood on competing for government contracts, and when the government has committed itself to doling out those contracts on a race-conscious basis, it stands to reason that the contractor will soon be competing on an uneven playing field.” *Id.* at 859. “Under *Adarand*, then, the relevant consideration is whether the agency is sufficiently committed to a particular race-conscious policy that the plaintiff will likely face a career impediment.” *Id.*

ii. Application to Plaintiffs

For purposes of the standing analysis, Plaintiffs fall into two groups: Named Plaintiffs—who have yet to accede—and the Pseudonym Plaintiffs—who are currently in the military and fear that they will be discharged. These two groups challenge the two fundamental directives of the Presidential Memorandum as unconstitutional: a reversion of accession and retention policy with respect to transgender individuals (i.e., the Accession and Retention Directives). For the following reasons, the Court concludes that: (i) the Accession and Retention Directives of the Presidential Memorandum impose a competitive barrier that the Named and Pseudonym Plaintiffs are substantially likely to encounter, and (ii) that this barrier constitutes an injury in fact sufficient to imbue the Named and Pseudonym Plaintiffs with standing to challenge the propriety of the Accession and Retention Directives of the Presidential Memorandum.

The Accession Directive

Plaintiff Kibby—one of the Named Plaintiffs—has demonstrated a substantial likelihood that he is able and ready to accede to the military in the relatively near future, and consequently, that he is in a position to challenge the Accession Directive to the extent it imposes a barrier on him from acceding based on his transgender status.

Plaintiff Kibby was inducted into the United States Naval Academy in Annapolis, Maryland as a midshipman on July 1, 2017, and has completed his first two years of education, out of four. Kibby Decl. ¶ 1. “[A]ll midshipmen are members of the military, [but] are still considered part of an accessions program since [they] do not receive [their] commission until graduation.” *Id.* ¶ 22. After graduation, Plaintiff Kibby hopes “to perform [his] service as a Surface Warfare Officer aboard a Navy ship.” *Id.* ¶ 9. Plaintiff Kibby informed his chain of command that he was transgender in early 2016. *Id.* ¶ 16. At the end of his last school year, in

May 2017, the Commandant and Superintendent “officially approved [Plaintiff’s] medical transition plan and the request for a year-long medical leave of absence.” *Id.* ¶ 26. The transition plan was created in coordination with the Brigade Medical Officer and the Transgender Care Team at Portsmouth’s Naval Medical Center.” *Id.* ¶¶ 24–25. The medical year of absence was taken to comply with the requirement under the June 2016 DTM that acceding transgender service members be fully transitioned to their chosen gender for at least 18 months prior to accession. *Id.* ¶ 24. Defendants represent that “Plaintiff Kibby currently is on medical leave and faces no impediment to returning to the Naval Academy when that leave ends in May 2018.” Defs.’ Mem. at 16. The Commandant of Midshipmen at the Naval Academy, Robert B. Chadwick, has represented that Plaintiff Kibby “was afforded much support from the Brigade Medical Unit, his chain of command, and [the Commandant’s] legal advisors in developing his [transition] plan and submitting his request [for medical leave].” Chadwick Decl. ¶ 4. According to the Commandant, the “purpose of the [medical] leave is to allow MIDN Kibby to undergo hormone treatment, and to [obtain] a period of gender stability of sufficient length under current policy and guidance to ensure his eligibility to accept a commission in May 2020 if he successfully completes the course of instruction upon return to [the Naval Academy].” *Id.* ¶ 10.

Upon his return, Plaintiff Kibby will be required to meet the male fitness requirements, which are more difficult than their female counterpart, as well as the Academy’s academic standards. *Id.* ¶¶ 15-16. Plaintiff Kibby has represented that during the medical year of absence, he is “completing a rigorous exercise and training regimen so that [he] will be able to meet the male fitness standards upon [his] return[,]” and that he “can already meet the male standards for push-ups and sit-ups and will be working hard on [his] run time.” Kibby Decl. ¶ 28. Given his

prior academic success at the Naval Academy, Kibby Decl. ¶ 39, the support afforded to his transition plan by senior officials, and his representations regarding his fitness training, the Court finds that Plaintiff Kibby has demonstrated a substantial likelihood that he will be able to meet the graduation requirements of the Naval Academy. Following graduation, he will be in a position to accede to the Navy or Marine Corps. Chadwick Decl. ¶ 16. Defendants have not argued or presented any evidence that Plaintiff Kibby will be unable to graduate from the Naval Academy—an unsurprising position, given that dismissal stemming from the inability of transgender individuals to accede would itself likely be an injury sufficient to confer standing to challenge the constitutionality of the Presidential Memorandum.

Consequently, Plaintiff Kibby has demonstrated that he is “able and ready” to apply for accession. Using the words of *Adarand*, he is “very likely” to apply for accession in the “relatively near future.” Indeed, Plaintiff Kibby has demonstrated a greater likelihood of his being subject to the competitive barrier than many of the plaintiffs in the equal protection cases discussed above. In *Parents Involved*, the members of the plaintiff organization had standing even though it was possible that they would not even apply to an affected high school—and nothing was said of the possibility that the students could fail to graduate from elementary or middle school. In *Gratz*, the plaintiff merely stated an intention to apply as a transfer student—surely it was possible that academic failures at his current institution, or other hardships, would have prevented him from applying. Here, Plaintiff Kibby is on a defined track toward graduation from the Naval Academy and accession to the military. The track has been approved and supported by his chain of command. Like any student at the Naval Academy, there are potential impediments to his graduation. But Plaintiff Kibby has provided affirmative evidence of his ability to overcome these impediments, and it is unlikely that his chain of command would have

adopted a transition plan if they doubted his ability to meet the Academy's graduation requirements. It is accordingly likely that he will graduate and attempt to accede. Anything else is the product of mere speculation.⁶

The remaining question is whether Plaintiff Kibby is substantially likely to "hit" a barrier when he applies for accession to the military. As of January 2018, transgender individuals shall be prohibited entry to the military, until such time that the President receives a recommendation to the contrary that he finds convincing. Given the President's pronouncement that "the United States government will not accept or allow transgender individuals to serve in any capacity in the U.S. military," there is no reason to believe that this directive will change by the time Plaintiff Kibby is ready to apply for accession in May 2020. Chadwick Decl. ¶ 17. In short, the only basis from which to conclude that the directive may change is the ever-present reality that every law is subject to change. But that is insufficient to deprive the Court of subject-matter jurisdiction. *Appalachian Power*, 208 F.3d at 1022. Nor does the potential availability of a waiver change this conclusion. First, Defendants have presented no evidence that waivers are actually made available to transgender individuals, or that they will be; and the only record evidence on this point suggests that transgender individuals are not entitled to waivers for accession purposes. *See supra* at 5–6. Second, even if a bona fide waiver process were made available, Plaintiff Kibby would still be subject to a competitive barrier due to his transgender

⁶ Because the Court concludes that Plaintiff Kibby has a substantial likelihood of attempting to accede, the Court need not and does not decide whether Plaintiff Kohere has also demonstrated a likelihood of accession sufficient to stake out an equal protection claim based on the Accession Directive. *See Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) ("At least one plaintiff must have standing to seek each form of relief requested in the complaint."); *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 53 (2006) ("the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement").

status. For accession purposes, he would be presumptively disqualified because of his transgender status, *unless* he obtains a waiver. Those who are not transgender are not subject to the same blanket proscription. Consequently, a waiver process would not vitiate the barrier that Plaintiff Kibby claims is violative of equal protection. Accordingly, Plaintiff Kibby has demonstrated that he is substantially likely to attempt to accede, and to encounter a competitive barrier at the time of his accession due to his status as a transgender individual, which he claims is violative of equal protection. This is sufficient to confer standing to challenge the Accession Directive at this preliminary stage.

With respect to the Pseudonym Plaintiffs, there is no real doubt that they will remain in the military for long enough to hit the “barrier” that they claim is violative of equal protection. Each has submitted a declaration stating, and/or alleged, their intention to remain in military service, and Defendants have submitted declarations for each Pseudonym Plaintiff stating that they shall not be discharged until the military’s new policy regarding transgender service members takes effect. *See supra* at 19–28; Defs.’ Mem at 10–12. There is also no real doubt that they will face a competitive barrier to their continued retention by the military. As of March 23, 2018, the military is required to effect a policy by which these service members can be discharged solely due to their transgender status. This barrier to their continued retention is imposed upon them, but not other service members. And Plaintiffs claim that this competitive barrier is violative of equal protection. Accordingly, at this preliminary stage, the Pseudonym Plaintiffs have demonstrated a substantial likelihood of standing to challenge the Presidential Memorandum’s Retention Directive. *See Worth*, 451 F.3d at 859 (“Under *Adarand*, . . . the relevant consideration is whether the agency is sufficiently committed to a particular race-conscious policy that the plaintiff will likely face a career impediment.”).

iii. Substantial Risk of Injury

Plaintiffs have also established a substantial risk of two future injuries: denial of accession and discharge from military service. The substantial risk of these two future injuries is sufficient to constitute an injury in fact. As explained by the Supreme Court, “[a]n allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.” *SBA List*, 134 S. Ct. at 2341 (internal quotation marks omitted; citing *Clapper*, 133 S. Ct. at 1147, 1150, n.5). Here, even assuming that the future injuries are not “certainly impending,” there is a “substantial risk” of their occurrence.

The D.C. Circuit has explained that “the proper way to analyze an increased-risk-of-harm claim is to consider the ultimate alleged harm . . . as the concrete and particularized injury and then to determine whether the increased risk of such harm makes injury to an individual citizen sufficiently imminent for standing purposes.” *Attias v. Carefirst, Inc.*, 865 F.3d 620, 627 (D.C. Cir. 2017) (internal quotation marks omitted). In some circumstances, the chain of events that is necessary for the putative future harm to occur is too attenuated to constitute a substantial risk of that harm and to render that harm imminent. Consequently, in *Clapper*, the Supreme Court declined to find standing because the plaintiffs’ “theory of standing [relied] on a highly attenuated chain of possibilities” 568 U.S. at 410. “Several links in this chain would have required the assumption that independent decisionmakers charged with policy discretion . . . and with resolving complex legal and factual questions . . . would exercise their discretion in a specific way. . . . With so many links in the causal chain, the injury that the plaintiffs feared was too speculative to qualify as ‘injury in fact.’” *Attias*, 865 F.3d at 626 (citation omitted). Meanwhile, in *Attias*, a personal data theft case, the D.C. Circuit found standing where the plaintiffs plausibly alleged that “an unauthorized party has already accessed personally

identifying data on [the] servers, and it [was] much less speculative . . . to infer that this party [had] both the intent and the ability to use that data for ill.” *Id.* at 628. Here, there is no doubt that the denial of accession and discharge from the military constitute concrete and particularized injuries. Whether these are also imminent, based on the reasoning of *Clapper* and *Attias*, requires an analysis of the degree to which these future harms are separated from the present by a “series of contingent events” *Id.*

In *Navy Chaplaincy*, the plaintiffs, military chaplains who were “non-liturgical Protestants,” alleged that “the Navy systematically discriminate[d] against members of their religious denominations in the awarding of promotions in violation” of the Establishment Clause. *In re Navy Chaplaincy*, 697 F.3d 1171, 1173 (D.C. Cir. 2012). The plaintiffs claimed standing for purposes of prospective injunctive relief on the basis that “they face[d] future injury because they [would] likely suffer discrimination on the basis of their religious denomination when they are considered for promotion” *Id.* at 1176. In the court’s view, the plaintiffs’ assertion of future injury depended on “two subsidiary premises: that plaintiffs will be considered for promotion by future selection boards and that selection boards will discriminate against them on the basis of their religious denomination.” *Id.* The court found that the plaintiffs had satisfactorily established both premises. With respect to the first, because the “Navy concede[d] that future selection boards may very well consider the promotion of at least some plaintiffs.” *Id.* With respect to the second, because “plaintiffs challenge[d] specific policies and procedures that they claim[ed] resulted in denominational discrimination” *Id.*

Plaintiffs have demonstrated a chain of causation leading to concrete and particularized injuries in which there are few links and each link is substantially likely to occur. With respect to the Accession Directive, Plaintiff Kibby will suffer an injury in fact if he: (i) graduates from

the Naval Academy; (ii) applies for accession; and (iii) is denied accession due to his transgender status. The first two links in this chain are substantially likely to occur for the reasons already stated. *See supra* at 43–46. The third is likely to occur because the Presidential Memorandum indefinitely delays the accession of transgender individuals, and the President has unequivocally stated that transgender individuals shall not be permitted to serve in the military. Given this actuality, it is speculative to assume that transgender individuals *will be permitted to accede* by May 2020. At present, there is a substantial risk that accession will remain forbidden, and Plaintiff Kibby will be precluded from military service.

For the Pseudonym Plaintiffs, the chain of causation is even shorter. They will suffer an injury in fact if: (i) they remain in the military; and (ii) are discharged based on their transgender status after March 23, 2018 due to the Retention Directive. On the first point, there is no disagreement that the Pseudonym Plaintiffs are qualified service members who desire to remain in military service. *See supra* at 19–28. On the second point, the available evidence is that the President—who ultimately controls the military—issued a statement that “the United States government will not . . . allow transgender individuals to serve in any capacity in the U.S. military,” and shortly thereafter, issued a Presidential Memorandum that requires the military to authorize the discharge of transgender service members by March 23, 2018. True, it is conceivable that the Pseudonym Plaintiffs will not be discharged from the military, despite the head of the military stating that they will be. But in the absence of a crystal ball, and in light of these unequivocal factual circumstances, at the present time, the Pseudonym Plaintiffs face a substantial risk of discharge. This confers upon them an injury in fact.

iv. Plaintiffs Have Standing to Challenge the Accession and Retention Directives

For the foregoing reasons, Plaintiffs have established two injuries in fact with respect to the Accession and Retention Directives. First, they have demonstrated a substantial likelihood that they will face a competitive barrier with respect to accession and retention due to their transgender status. Second, they have demonstrated a substantial risk that they will be denied accession or discharged from the military due to their transgender status. Defendants do not contest that these injuries are caused by the Accession and Retention Directives of the Presidential Memorandum, or that they are redressable by judicial intervention, and the Court finds that the causation and redressability elements of standing have been satisfied. Were it not for the Presidential Memorandum, the blanket prohibition against accession by transgender individuals would have expired on January 1, 2018. Because of the Presidential Memorandum, that prohibition is extended indefinitely. Furthermore, the Presidential Memorandum requires the reversion of military policy to one where individuals can be discharged solely based on their transgender status. Previously, such action was prohibited by the June 2016 DTM. The accession and retention injuries are caused by the Presidential Memorandum, and they would be redressed to the extent the Court invalidates the directives of the memorandum. Accordingly, Plaintiffs have standing to challenge the Accession and Retention Directives.

v. Plaintiffs Do Not Have Standing to Challenge the Sex Reassignment Surgery Directive

Although the Court concludes that Plaintiffs have standing to challenge the Accession and Retention Directives, none of the Plaintiffs have demonstrated an injury in fact with respect to the Sex Reassignment Surgery Directive. First, only some Plaintiffs are implicated by the provision at all. For those that are, the risk of being impacted by the Sex Reassignment Surgery Directive is not sufficiently great to confer standing.

Jane Doe 1 alleges that “a transition-related procedure Jane Doe 1 was scheduled for was summarily canceled by the Defense Health Agency.” Am. Compl. ¶ 16. However, Defendants have submitted a declaration representing that “Jane Doe 1’s application for the supplemental health care waiver necessary to receive a transition-related surgery is currently being processed by the Defense Health Agency.” Defs.’ Mem. at 10. Accordingly, Jane Doe 1 has not demonstrated that she will not receive the surgery prior to the effective date of the Sex Reassignment Surgery Directive.

Jane Doe 3 has developed a transition treatment plan, but will not begin her treatment until after she returns from active deployment in Iraq. *See supra* at 22. Given the possibility of discharge, the uncertainties attended by the fact that she has yet to begin any transition treatment, and the lack of certainty on when such treatment will begin, the prospective harm engendered by the Sex Reassignment Surgery Directive is too speculative to constitute an injury in fact with respect to Jane Doe 3. Furthermore, John Doe 1 is scheduled for transition related-surgery on January 4, 2018, and Defendants have represented that this date remains unaffected by the Presidential Memorandum. Defs.’ Mem. at 11. Finally, the Named Plaintiffs are not currently in the military and it is speculative whether they will need surgery while in military service. Plaintiff Kibby, in particular, has stated that he will transition prior to applying for accession. *See supra* at 26–27. Accordingly, no Plaintiffs have demonstrated that they are substantially likely to be impacted by the Sex Reassignment Surgery Directive, and none have standing to challenge that directive.

2. Ripeness

Defendants also challenge the Court’s subject-matter jurisdiction on the basis of ripeness. “Determining whether administrative action is ripe for judicial review requires [the Court] to

evaluate (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration.” *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 808 (2003). On the first prong, the Court must consider: “whether the issue is purely legal, whether consideration of the issue would benefit from a more concrete setting, and whether the agency’s action is sufficiently final.” *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Engineers*, 440 F.3d 459, 463–64 (D.C. Cir. 2006) (internal quotation marks omitted). On the second prong, the Court must consider “whether postponing judicial review would impose an undue burden on [the Plaintiffs] or would benefit the court.” *Id.* (internal quotation marks omitted).

A facial equal protection challenge is a purely legal question. *See Beach Commc’ns, Inc. v. FCC*, 959 F.2d 975, 986 (D.C. Cir. 1992). To the extent the Court considers factual issues with respect to the equal protection analysis, they are only those facts that are already established: namely, those going to the basis for the issuance of the Presidential Memorandum. Future factual development does not alter that basis, and is consequently irrelevant to the equal protection analysis. Defendants do not contest this point. *See XP Vehicles, Inc. v. Dep’t of Energy*, 118 F. Supp. 3d 38, 58 (D.D.C. 2015) (finding Fifth Amendment challenge to be a purely legal inquiry).

To a large extent, Defendants’ ripeness arguments have already been addressed in the standing context. The Court reiterates its conclusion here. While there is present uncertainty regarding the exact details of the military’s future policy towards transgender service members, there is no uncertainty regarding two directives of the Presidential Memorandum: the military must authorize the discharge of transgender service members, and accession by transgender individuals is prohibited, indefinitely. The Court does not adjudicate the details of that future policy, but rather, only assesses whether these directives in-and-of-themselves violate the

Constitution. The directives are known, and so are the circumstances under which they were issued. They cannot be more concrete, and future policy by the military—absent action from the President—cannot change what the directives require. There is no reason to believe that the President will alter these directives, and the Court must assume that they will be faithfully executed by the military. *See National Mining Association*, 145 F.3d at 1408; *Appalachian Power*, 208 F.3d at 1022. Consequently, the constitutionality of the Accession and Retention Directives is a matter fit for judicial resolution.

Furthermore, the nature of the equal protection analysis in this case, which assesses the facial validity of the Presidential Memorandum, means that the Court would not benefit from delay—the salient facts regarding the issuance of the Presidential Memorandum are not subject to change. This contrasts with the burden that delay would impose upon Plaintiffs, who must continue to serve or strive toward service, expending resources and declining other opportunities, while faced with the prospect of discharge and preclusion of military service, and the stigma that the Presidential Memorandum attaches to service by transgender individuals. *See supra* at 19–28. Accordingly, the propriety of the Accession and Retention Directives is a matter ripe for adjudication.

Because Plaintiffs have established standing and ripeness with respect to the Accession and Retention Directives of the Presidential Memorandum, the Court turns to the merits.

B. Defendants’ Motion to Dismiss for Failure to State a Claim

Plaintiffs assert two overarching claims in this case. Plaintiffs’ first broad claim is that, for a variety of reasons, the Presidential Memorandum violates the guarantees of the Due Process Clause of the Fifth Amendment. Plaintiffs’ second distinct claim is for estoppel. Defendants move to dismiss both claims under Federal Rule 12(b)(6). For the same reasons the Court concludes that Plaintiffs are likely to succeed on the merits of their Due Process Clause

challenge for the purposes of their motion for preliminary injunction—discussed below—the Court will not dismiss Plaintiffs’ Due Process Clause claims.

However, the Court will dismiss, without prejudice, Plaintiffs’ estoppel claim. The Supreme Court has expressed substantial skepticism with respect to government estoppel, noting that when “the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined.” *Heckler v. Cmty. Health Servs. of Crawford Cty., Inc.*, 467 U.S. 51, 60 (1984). Nonetheless, the Court has refused to adopt “a flat rule that estoppel may not in any circumstances run against the Government,” noting that “the public interest in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government.” *Id.* at 60–61; *see also Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 419 (1990) (“From our earliest cases, we have recognized that equitable estoppel will not lie against the Government as it lies against private litigants.”).

Defendants contend that Plaintiffs’ estoppel claim fails because there is no recognized federal cause of action for estoppel. Defs.’ Mem. at 37. The Court declines to dismiss Plaintiffs’ claim on this basis, however, because although judicial hostility has been expressed with respect to government estoppel, neither the Supreme Court or the D.C. Circuit have definitively ruled out the claim. In fact, recent decisions by the D.C. Circuit have at least assessed the claim on the merits. *See Masters Pharm., Inc. v. DEA*, 861 F.3d 206, 225 (D.C. Cir. 2017); *Morris Commc’ns, Inc. v. FCC*, 566 F.3d 184, 191 (D.C. Cir. 2009); *Graham v. SEC*, 222 F.3d 994, 1007 (D.C. Cir. 2000). Accordingly, at least by implication, the D.C. Circuit has recognized that

an estoppel claim may be brought against agency defendants—here, the Departments of Defense and Homeland Security—under certain circumstances.

The elements of a government estoppel claim are that “(1) the government made a ‘definite representation’; (2) on which the entity ‘relied in such a manner as to change its position for the worse’; (3) the entity’s reliance was reasonable; and (4) ‘the government engaged in affirmative misconduct.’” *Masters Pharm.*, 861 F.3d at 225 (citations and alterations omitted). The affirmative misconduct element requires a showing “that government agents engage[d]—by commission or omission—in conduct that can be characterized as misrepresentation or concealment, or, at least, behave[d] in ways that have or will cause an egregiously unfair result.” *GAO v. Gen. Accounting Office Pers. Appeals Bd.*, 698 F.2d 516, 526 (D.C. Cir. 1983).

Based on the allegations in the Amended Complaint, the Court concludes that the facts of this case are not actionable under an “estoppel” theory. Plaintiffs claim that the June 2016 DTM “constituted a definite representation to Plaintiffs that they would be able to serve openly.” Pls.’ Mem. at 26. However, the DTM was not a definite representation to any of the individuals Plaintiffs, but rather constituted a broad policy decision by the government that affected scores of individuals. The DTM did not specifically represent to any particular individual that he or she would be permitted to serve. The cases that Plaintiffs cite are distinguishable on this basis. For example, in *Watkins*, the Ninth Circuit estopped the Army from refusing to reenlist the plaintiff “on the basis of his homosexuality” because “the Army affirmatively acted in violation of its own regulations when it repeatedly represented that [the plaintiff] was eligible to reenlist, as well as when it reenlisted him time after time.” *Watkins v. U.S. Army*, 875 F.2d 699, 707–08, 731 (9th Cir. 1989). These representations were directed at the plaintiff, because on “the one

occasion when the record was unclear, [the plaintiff] sought clarification and his classification was immediately changed from ‘unknown’ to ‘eligible for reentry on active duty.’” *Id.* at 707. Similarly, in *Johnson*, the Ninth Circuit estopped the government from rescinding the plaintiff’s parole “after his parole computation had passed successfully through as many as eight administrative reviews” *Johnson v. Williford*, 682 F.2d 868, 872 (9th Cir. 1982).

It may be that some Plaintiffs have detrimentally relied upon specific representations from their chain of command that could more plausibly support a government estoppel claim, but if that is the case, those instances are not adequately alleged; only generalized assertions of reliance are asserted in the complaint. *See, e.g.*, Am. Compl. ¶ 3 (“Plaintiffs, along with many other service members, have followed protocol in informing their chain of command that they are transgender. They did so in reliance on the United States’ express promises that it would permit them to continue to serve their country openly.”); ¶ 14 (“In or around June 2016, in reliance on the issuance of the policy permitting open service by transgender service members, Jane Doe 1 notified her command that she is transgender.”); ¶ 31 (“After June 2016, in reliance on the announcement that transgender people would be permitted to serve openly, she notified her superiors that she is transgender. She has served in the intervening time without incident.”). Allowing estoppel claims to go forward based on such generalized theories of reliance would seem to implicate the reasonable concerns other courts have raised about government estoppel.

Furthermore, Plaintiffs have not plausibly alleged that government agents have engaged in specific instances of “affirmative misconduct.” No affirmative instances of misrepresentation or concealment have been plausibly alleged. While Plaintiffs point to the revocation of the June 2016 DTM—via the Presidential Memorandum—as “egregiously unfair,” they fail to articulate how that unfairness is the product of “misconduct” as the Court understands that term in this

context. *See* Pl.’s Mem. at 28. Because these specific facts have not been plausibly alleged, the Court shall not permit the estoppel claim to proceed at this time. Accordingly, the claim is dismissed without prejudice.

C. Plaintiffs’ Motion for Preliminary Injunction

Having determined that Plaintiffs have standing to challenge the Accession and Retention Directives and that their claims are ripe, the Court moves on to consider Plaintiffs’ motion for preliminary injunction. Plaintiffs ask the Court to enjoin the enforcement of the Accession and Retention Directives pending the final resolution of this lawsuit. The Court will grant Plaintiffs’ motion. The Court finds (1) that Plaintiffs have a likelihood of succeeding on their claim that the Accession and Retention Directives violate the Fifth Amendment, (2) that Plaintiffs would suffer irreparable injury in the absence of an injunction, and (3) that the balance of equities and the public interest favor granting injunctive relief.

1. Likelihood of Success on the Merits

Although Plaintiffs’ estoppel claim has been dismissed, the Court is convinced that Plaintiffs are likely to succeed in this lawsuit under the Fifth Amendment. The Due Process Clause of the Fifth Amendment provides that “No person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. Although Plaintiffs have suggested a number of different analytical frameworks for considering whether the Accession and Retention Directives violate this guarantee, the Court finds the framework applicable to the Due Process Clause’s equal protection component most relevant. “In numerous decisions, [the Supreme Court] ‘has held that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws.’” *Davis v. Passman*, 442 U.S. 228, 234 (1979) (quoting *Vance v. Bradley*, 440 U.S. 93, 94 n.1 (1979)); *see also United States v.*

Windsor, 133 S. Ct. 2675, 2695 (2013) (“The liberty protected by the Fifth Amendment’s Due Process Clause contains within it the prohibition against denying to any person the equal protection of the laws.”). To determine whether the Accession and Retention Directives violate the Due Process Clause’s guarantee because they deny the equal protection of the laws to transgender Americans, the Court must decide (a) the level of scrutiny applicable, and (b) whether the Accession and Retention Directives are likely to survive that level of scrutiny.⁷

a. Level of Scrutiny

The general rule is that government action that treats certain classes of people differently “is presumed to be valid and will be sustained if the classification drawn . . . is rationally related to a legitimate state interest.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). However, this general rule does not apply where the government action draws distinctions between individuals based on certain suspect or quasi-suspect classifications. *Id.* at 440–41. In those instances, the Court must apply a heightened degree of scrutiny. *Id.*

At this preliminary stage of the case, the Court is persuaded that it must apply a heightened degree of scrutiny to the Accession and Retention Directives. The Court reaches this conclusion for two reasons. First, on the current record, transgender individuals—who are alone targeted for exclusion by the Accession and Retention Directives—appear to satisfy the criteria of at least a quasi-suspect classification. “The Supreme Court has used several explicit criteria to identify suspect and quasi-suspect classifications.” *Padula v. Webster*, 822 F.2d 97, 102 (D.C. Cir. 1987). The Court has observed that a suspect class is one that has “experienced a ‘history of purposeful unequal treatment’ or been subjected to unique disabilities on the basis of stereotyped

⁷ At the threshold, Defendants argue that Plaintiffs’ claims are unlikely to succeed on the merits because Plaintiffs lack standing and their claims are not ripe. The Court has already found that Plaintiffs have standing and ripe claims.

characteristics not truly indicative of their abilities.” *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)). Also relevant is whether the group has been “relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Id.* Finally, the Supreme Court has also considered whether the group “exhibit[s] obvious, immutable, or distinguishing characteristics that define them as a discrete group.” *Lyng v. Castillo*, 477 U.S. 635, 638 (1986).

The transgender community satisfies these criteria. Transgender individuals have immutable and distinguishing characteristics that make them a discernable class. *See, e.g.*, Medical *Amici* Brief at 3-13 (describing what it means to be transgender).⁸ As a class, transgender individuals have suffered, and continue to suffer, severe persecution and discrimination. *See, e.g.*, State *Amici* Brief at 3 (describing the discrimination the transgender community suffers); Trevor Project *Amici* Brief at 10-12, 15-16 (discussing the harmful effects of discrimination against transgender youth); *see also Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (holding that “[t]here is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity,” and noting report by the National Center for Transgender Equality finding

⁸ The Motions for Leave to File Amici Curiae Briefs in Support of Plaintiffs filed by Medical, Nursing, Mental Health, and other Health Care Organizations, ECF No. 44 (“Medical *Amici* Brief”), The Trevor Project, ECF No. 49 (“Trevor Project *Amici* Brief”), Massachusetts, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and the District of Columbia, ECF No. 50 (“State *Amici* Brief”), and the National Center for Transgender Equality, the Tennessee Transgender Political Coalition, TGI Network of Rhode Island, the Transgender Allies Group, the Transgender Legal Defense & Education Fund, TransOhio, the Transgender Resource Center of New Mexico, and the Southern Arizona Gender Alliance, ECF No. 52, are GRANTED. These amici briefs have assisted the Court in reaching its decision.

that 78% of students who identify as transgender or as gender non-conformant report being harassed while in grades K-12). Despite this discrimination, the Court is aware of no argument or evidence suggesting that being transgender in any way limits one's ability to contribute to society. *See* State *Amici* Brief at 2; Medical *Amici* Brief at 2; Trevor Project *Amici* Brief at 9. The exemplary military service of Plaintiffs in this case certainly suggests that it does not. Finally, transgender people as a group represent a very small subset of society lacking the sort of political power other groups might harness to protect themselves from discrimination. *See* Medical *Amici* Brief at 4 (noting that recent estimates suggest that transgender individuals make up approximately 0.6 percent of the adult population in the United States); *see also Adkins v. City of New York*, 143 F. Supp. 3d 134, 140 (S.D.N.Y. 2015) (noting that there is “no indication that there have ever been any transgender members of the United States Congress or the federal judiciary”).

Although the Court is aware of no binding precedent on this issue, it has taken note of the findings and conclusions of a number of other courts from across the country that have also found that discrimination on the basis of someone's transgender identity is a quasi-suspect form of classification that triggers heightened scrutiny. *See Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017) (holding that “all of the indicia for the application of the heightened intermediate scrutiny standard are present” for transgender individuals); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep't of Educ.*, 208 F. Supp. 3d 850, 872–74 (S.D. Ohio 2016) (finding that “transgender status is a quasi-suspect class under the Equal Protection Clause”); *Adkins*, 143 F. Supp. 3d at 140 (“[T]he Court concludes that transgender people are a quasi-suspect class” and “[a]ccordingly, the Court must apply intermediate scrutiny to defendants' treatment of plaintiff”).

Second, the Court is also persuaded that the Accession and Retention Directives are a form of discrimination on the basis of gender, which is itself subject to intermediate scrutiny. It is well-established that gender-based discrimination includes discrimination based on non-conformity with gender stereotypes. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (“[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group”). The Accession and Retention Directives’ exclusion of transgender individuals inherently discriminates against current and aspiring service members on the basis of their failure to conform to gender stereotypes. The defining characteristic of a transgender individual is that their inward identity, behavior, and possibly their physical characteristics, do not conform to stereotypes of how an individual of their assigned sex should feel, act and look. *See Medical Amici Brief* at 3-13. By excluding an entire category of people from military service on this characteristic alone, the Accession and Retention Directives punish individuals for failing to adhere to gender stereotypes. *See Whitaker*, 858 F.3d at 1051 (holding that heightened scrutiny used for sex-based classifications applied to school policy requiring transgender student to use bathroom of sex listed on his birth certificate because it “treat[ed] transgender students . . . who fail to conform to the sex-based stereotypes associated with their assigned sex at birth, differently. . . . These students are disciplined under the School District’s bathroom policy if they choose to use a bathroom that conforms to their gender identity”); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (holding that “discrimination against a transgender individual because of her gender-nonconformity is sex discrimination”); *Smith v. City of Salem, Ohio*, 378 F.3d 566, 577 (6th Cir. 2004) (holding that the facts alleged by transsexual plaintiff to support his claims of gender discrimination on the basis of sex stereotyping “easily constitute a claim of sex discrimination

grounded in the Equal Protection Clause of the Constitution”). A service member who was born a male is punished by the Accession and Retention Directives if he identifies as a woman, whereas that same service member would be free to join and remain in the military if he was born a female, or if he agreed to act in the way society expects males to act. The Accession and Retention Directives are accordingly inextricably intertwined with gender classifications.

For these two reasons, the Court will apply an intermediate level of scrutiny to Defendants’ exclusion of transgender individuals from the military, akin to the level of scrutiny applicable in gender discrimination cases. Before moving on to that analysis, however, the Court pauses to note that meaningful scrutiny of the constitutionality of the Accession and Retention Directives is appropriate despite the fact that they pertain to decisions about military personnel. Although the Court recognizes that deference to the Executive and Congress is warranted in the military context, the Court is not powerless to assess whether the constitutional rights of America’s service members have been violated. The D.C. Circuit has explained that although “the operation of the military is vested in Congress and the Executive, and . . . it is not for the courts to establish the composition of the armed forces[,] . . . constitutional questions that arise out of military decisions regarding the composition of the armed forces are not committed to the other coordinate branches of government.” *Emory v. Sec’y of Navy*, 819 F.2d 291, 294 (D.C. Cir. 1987). “Where it is alleged, as it is here, that the armed forces have trenched upon constitutionally guaranteed rights through the promotion and selection process, the courts are not powerless to act.” *Id.* “The military has not been exempted from constitutional provisions that protect the rights of individuals” and, indeed, “[i]t is precisely the role of the courts to determine whether those rights have been violated.” *Id.*; *see also Chappell v. Wallace*, 462 U.S. 296, 304 (1983) (“This Court has never held, nor do we now hold, that military personnel are barred from

all redress in civilian courts for constitutional wrongs suffered in the course of military service.”); *Matlovich v. Sec’y of the Air Force*, 591 F.2d 852, 859 (D.C. Cir. 1978) (“It is established, of course, that the federal courts have the power and the duty to inquire whether a military discharge was properly issued under the Constitution.”).

b. Application of Intermediate Scrutiny

Having determined that an intermediate level of heightened scrutiny should apply to the Accession and Retention Directives’ discrimination against transgender individuals, the Court moves on to assessing whether Plaintiffs are likely to succeed when that level of scrutiny is actually applied. Under intermediate scrutiny, the government must demonstrate an “exceedingly persuasive justification” for its actions. *United States v. Virginia*, 518 U.S. 515, 531 (1996). “The burden of justification is demanding and it rests entirely on” the government. *Id.* at 533. The government “must show ‘at least that the [challenged] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.’” *Id.* (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982) (internal quotations omitted)). “The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.” *Id.* “And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.” *Id.* Finally, it is well established that “[t]he Constitution’s guarantee of equality ‘must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot’ justify disparate treatment of that group.” *Windsor*, 133 S. Ct. at 2693 (quoting *U. S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534-35 (1973)).

Applying these standards, the Court finds that Plaintiffs are likely to succeed in demonstrating that the Accession and Retention Directives’ exclusion of transgender individuals

from the military is unconstitutional. At the outset, the Court reiterates precisely what is at issue in this case: a policy banning the accession, and allowing the discharge, of an entire category of individuals from the military solely because they are transgender, despite their ability to meet all of the physical, psychological, and other standards for military service. Defendants argue that this policy is necessary for three reasons. First, Defendants argue that “at least some transgender individuals suffer from medical conditions that could impede the performance of their duties.” Defs.’ Mem. at 31. Second, Defendants argue that “there is room for the military to think” that certain medical conditions “may limit the deployability of transgender individuals as well as impose additional costs on the armed forces.” *Id.* at 32. Third, Defendants argue that “the President could reasonably conclude” that the presence of transgender individuals in the military would harm “unit cohesion.” *Id.* at 33.⁹

Plaintiffs do not dispute that maximizing military effectiveness, lethality and unit cohesion, and even budgetary considerations, are all important or at least legitimate government interests. Pls.’ Mem. at 17. They do challenge, however, whether Defendants can satisfy their burden of demonstrating that the discriminatory means that have been employed in the Presidential Memorandum—the Accession and Retention Directives—are “substantially related” to the achievement of these objectives. Based on the combined effect of a number of unusual factors, the Court finds it likely that Plaintiffs will succeed on this claim.

First, the reasons given for the decision to exclude transgender service members appear to be hypothetical and extremely overbroad. For instance, Defendants cite concerns that “some” transgender individuals “could” suffer from medical conditions that impede their duties, and

⁹ Plaintiffs note that similar arguments were proffered in support of prior policies precluding service members from being openly gay, maintaining racially segregated ranks and excluding women from military colleges.

assert that “there is room for the military to think” that transgender people may be limited in their deployability at times. As an initial matter, these hypothetical concerns could be raised about *any* service members. Moreover, these concerns do not explain the need to discharge and deny accession to *all* transgender people who meet the relevant physical, mental and medical standards for service. The Accession and Retention Directives are accordingly extremely overbroad when considered in the light of their proffered justifications. *See Romer v. Evans*, 517 U.S. 620, 632 (1996) (holding that law’s “sheer breadth is so discontinuous with the reasons offered for it that [it] seems inexplicable by anything but animus toward the class it affects”). The breadth of the Accession and Retention Directives is also discontinuous with the purported concern about costs, which, in addition to having been found to be minimal or negligible, apparently are primarily related to a surgical procedure that only a subset of transgender individuals will even need. Similarly, Defendants provide practically no explanation at all, let alone support, for their suggestion that the presence of transgender individuals may be harmful to “unit cohesion.”¹⁰ Indeed, Defendants themselves highlight the absence of any prior studies or evaluations supporting the proffered justifications by arguing that they must *now* conduct studies regarding transgender military service before they can adequately defend the President’s decision. At *most*, Defendants’ reasons appear therefore to be based on unsupported, “overbroad generalizations about the different talents, capacities, or preferences,” of transgender people. *Virginia*, 518 U.S. at 533.

¹⁰ To the extent this is a thinly-veiled reference to an assumption that other service members are biased against transgender people, this would not be a legitimate rationale for the challenged policy. “Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.” *See Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

Nonetheless, given the deference owed to military personnel decisions, the Court has not based its conclusion solely on the speculative and overbroad nature of the President's reasons. A second point is also crucial. As far as the Court is aware at this preliminary stage, all of the reasons proffered by the President for excluding transgender individuals from the military in this case were not merely unsupported, but were actually *contradicted* by the studies, conclusions and judgment of the military itself. As described above, the effect of transgender individuals serving in the military had been studied by the military immediately prior to the issuance of the Presidential Memorandum. In connection with the working group chaired by the Under Secretary of Defense for Personnel and Readiness, the RAND National Defense Research Institute conducted a study and issued a report largely debunking any potential concerns about unit cohesion, military readiness, deployability or health care costs related to transgender military service. The Department of Defense Working Group, made up of senior uniformed officers and senior civilian officers from each military department, unanimously concluded that there were no barriers that should prevent transgender individuals from serving in the military, rejecting the very concerns supposedly underlying the Accession and Retention Directives. In fact, the Working Group concluded that prohibiting transgender service members would undermine military effectiveness and readiness. Next, the Army, Air Force and Navy each concluded that transgender individuals should be allowed to serve. Finally, the Secretary of Defense concluded that the needs of the military were best served by allowing transgender individuals to openly serve. In short, the military concerns purportedly underlying the President's decision had been studied and rejected by the military itself.¹¹ This highly unusual

¹¹ This differentiates this case from *Goldman v. Weinberger*, 475 U.S. 503, 508 (1986), a case cited by Defendants, in which the court deferred to a decision that was based on the "considered professional judgment of the Air Force."

situation is further evidence that the reasons offered for the Accession and Retention Directives were not substantially related to the military interests the Presidential Memorandum cited.

Third, the Court has also considered the circumstances surrounding the announcement of the President's policy. "In determining whether a law is motivated by an improper animus or purpose, '[d]iscriminations of an unusual character' especially require careful consideration." *Windsor*, 133 S. Ct. at 2693 (quoting *Romer*, 517 U.S. at 633). The discrimination in this case was certainly of an unusual character. As explained above, after a lengthy review process by senior military personnel, the military had recently determined that permitting transgender individuals to serve would not have adverse effects on the military and had announced that such individuals were free to serve openly. Many transgender service members identified themselves to their commanding officers in reliance on that pronouncement. Then, the President abruptly announced, via Twitter—without any of the formality or deliberative processes that generally accompany the development and announcement of major policy changes that will gravely affect the lives of many Americans—that all transgender individuals would be precluded from participating in the military in any capacity. These circumstances provide additional support for Plaintiffs' claim that the decision to exclude transgender individuals was not driven by genuine concerns regarding military efficacy. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) (holding that "[t]he specific sequence of events leading up the challenged decision . . . may shed some light on the decisionmaker's purposes" and "[d]epartures from the normal procedural sequence also might afford evidence that improper purposes are playing a role").

In sum, even if none of the reasons discussed above alone would be sufficient for the Court to conclude that Plaintiffs were likely to succeed on their Fifth Amendment claim, taken

together they are highly suggestive of a constitutional violation. The likelihood of success factor accordingly weighs in favor of granting preliminary injunctive relief. For the same reasons, the Court will deny Defendants' motion to dismiss Plaintiffs' claims under the Due Process Clause.

Defendants make a few additional points regarding the merits of Plaintiffs' claims that must be addressed. First, Defendants argue that Plaintiffs cannot demonstrate a likelihood of success on the merits regarding the Presidential Memorandum's policy for enlisted service members in particular because Secretary Mattis' Interim Guidance is the "operative policy," and that guidance "does not impermissibly classify service members based on transgender status, but rather prohibits disparate treatment of existing service members based on transgender status." Defs.' Mem. at 24. This may be true, but the focus of Plaintiffs' Amended Complaint is not the Interim Guidance, but the Presidential Memorandum. The Accession and Retention Directives of the Presidential Memorandum require the return to a policy that "generally prohibit[s] openly transgender individuals from accession into the United States military and authorize[s] the discharge of such individuals." Presidential Memorandum § 1(a). This overt disparate treatment, which will become effective when Secretary Mattis' Interim Guidance elapses early next year, is the subject of Plaintiffs' lawsuit.

Second, Defendants cite a number of cases for the proposition that the Presidential Memorandum "is subject to a highly deferential form of review." Defs.' Mem. at 27. The Court has reviewed those cases and determined that none of them require the Court to apply a different level of scrutiny than has been applied here. Of primary importance is the Supreme Court's opinion in *Rostker v. Goldberg*, 453 U.S. 57 (1981). The Supreme Court in *Rostker* expressly declined to hold that the intermediate scrutiny applicable to gender discrimination did not apply in the military personnel context. *Id.* at 69. Instead, the Court reviewed the particular facts

before it and found that the district court in that case had not sufficiently deferred to the reasoned decision of Congress in the context of a particular military personnel-related decision.

The facts of that case are *strikingly* different than those presented here. In *Rostker*, the Court noted that “Congress did not act unthinkingly or reflexively and not for any considered reason,” when it passed the challenged policy. *Id.* at 72 (internal quotations omitted). To the contrary, the Court noted Congress’ “studied choice of one alternative in preference to another,” and relied on the fact that the policy at issue in that case had been “extensively considered by Congress in hearings, floor debate, and in committee.” *Id.* In other words, Congress had received extensive evidence on the issue, and simply chose one of two competing alternatives. The Supreme Court found that “[t]he District Court was quite wrong in undertaking an independent evaluation of this evidence, rather than adopting an appropriately deferential examination of *Congress’* evaluation of that evidence.” *Id.* at 82-83.

The study and evaluation of evidence that the *Rostker* Court found warranted judicial deference is completely absent from the current record. Contrary to Defendants’ assertion, this does not appear to be a case where the Court is required to pick sides in a “battle of experts.” Defs.’ Mem. at 32. To the contrary, the record at this stage of the case shows that the reasons offered for categorically excluding transgender individuals were not supported and were in fact contradicted by the only military judgment available at the time. Accordingly, unlike the district court in *Rostker*, the Court’s analysis in this Opinion has not been based on an independent evaluation of evidence or faulting of the President for choosing between two alternatives based on competing evidence.

Third, Defendants seem to argue that they are free of the obligation of rationalizing the Accession and Retention Directives because the directives are a mere continuation of a long-

standing policy. This is false. The Accession and Retention Directives constituted a *revocation* from transgender people of rights they were previously given. Before the Accession and Retention Directives, transgender people had already been given the right to serve openly and the right to accede by a date certain in early 2018. The Accession and Retention Directives took those rights away from transgender people and transgender people only. The targeted revocation of rights from a particular class of people which they had previously enjoyed—for however short a period of time—is a fundamentally different act than not giving those rights in the first place, and it will be the government’s burden in this case to show that *this* act was substantially related to important government objectives. *See Perry v. Brown*, 671 F.3d 1052, 1079-80 (9th Cir. 2012), *vacated and remanded sub nom. Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (“Withdrawing from a disfavored group the right to obtain a designation with significant societal consequences is different from declining to extend that designation in the first place, regardless of whether the right was withdrawn after a week, a year, or a decade.”). Targeted revocations of rights are a factor that has been present in a number of cases finding equal protection violations. *See Romer*, 517 U.S. at 627 (holding that law that “withdr[ew] from homosexuals, but no others, specific legal protection . . . and . . . forb[ade] reinstatement of these laws and policies” was unconstitutional); *Windsor*, 133 S. Ct. at 2695–96 (holding that the purpose of a law that “impose[d] a disability on [a] class by refusing to acknowledge a status” previously granted was to “disparage and to injure those” in that class).

Finally, Defendants argue that the military’s previous study of transgender service cannot forever bind future administrations from looking into the issue themselves. The Court fully agrees with this point. The Court by no means suggests that it was not within the President’s authority to order that additional studies be undertaken and that this policy be reevaluated. If the

President had done so and then decided that banning all transgender individuals from serving in the military was beneficial to the various military objectives cited, this would be a different case. But as discussed above, that is not the case before the Court. The Court can only assess Plaintiffs' equal protection claim based on the facts before it. At this time, it appears that the rights of a class of individuals were summarily and abruptly revoked for reasons contrary to the only then-available studies. As explained above, based on the cumulative effect of various unusual facts, the Court is convinced that Plaintiffs are likely to succeed on the merits of their Fifth Amendment claim. This finding in no way should be interpreted to prevent Defendants from continuing to study issues surrounding the service of transgender individuals in the military, as they have asserted that they intend to do.

The Court concludes this portion of its Memorandum Opinion with a caveat. This case comes before the Court on Plaintiffs' motion for a preliminary injunction and Defendants' motion to dismiss. It is accordingly still at its very earliest stages, and the record is necessarily limited. The Court's task at this time is to determine whether Plaintiffs have stated plausible claims and demonstrated a *likelihood*—not a certainty—of success based on the present record. The Court is persuaded that Plaintiffs have made these fairly modest showings, but this is not a final adjudication of the merits of Plaintiffs' claims.

2. Irreparable Injury

Next, the Court finds that Plaintiffs have demonstrated that they would suffer irreparable injury in the absence of preliminary injunctive relief. In order to satisfy the irreparable injury requirement, “[f]irst, the injury ‘must be both certain and great; it must be actual and not theoretical.’” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (citation omitted). “Second, the injury must be beyond remediation.” *Id.*

These elements are met here. Defendants argue that “for much the same reasons they lack standing, Plaintiffs cannot show that they will suffer certain, great, or any actual injuries if the Court does not enter an injunction.” Defs.’ Mem. at 21. The Court has already rejected those arguments in the context of finding that Plaintiffs have standing, at least with respect to the Accession and Retention Directives, and rejects them again in this context. Absent an injunction, Plaintiffs will suffer a number of harms that cannot be remediated after that fact even if Plaintiffs were to eventually succeed in this lawsuit. The impending ban brands and stigmatizes Plaintiffs as less capable of serving in the military, reduces their stature among their peers and officers, stunts the growth of their careers, and threatens to derail their chosen calling or access to unique educational opportunities. *See Elzie v. Aspin*, 841 F. Supp. 439, 443 (D.D.C. 1993) (holding that plaintiff would suffer irreparable injury in the absence of preliminary injunctive relief because “plaintiff faces the stigma of being removed from active duty as a sergeant in the Marine Corps—a position which he has performed in a sterling fashion for eleven years—and labeled as unfit for service solely on the basis of his sexual orientation, a criterion which has no bearing on his ability to perform his job”). Money damages or other corrective forms of relief will not be able to fully remediate these injuries once they occur. Moreover, these injuries are also imminent, in that they are either ongoing or, at the latest, will begin when the Accession and Retention Directives take effect early next year.

These injuries are irreparable for the additional reason that they are the result of alleged violations of Plaintiffs’ rights to equal protection of the laws under the Fifth Amendment. “It has long been established that the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Gordon v.*

Holder, 721 F.3d 638, 653 (D.C. Cir. 2013) (“[A] prospective violation of a constitutional right constitutes irreparable injury.”) (quoting *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998)); *Chaplaincy*, 454 F.3d at 305 (“By alleging that Appellees are engaging in conduct that violates the Establishment Clause, Appellants have satisfied the irreparable injury prong of the preliminary injunction framework.”). Under this line of authority, Plaintiffs’ allegation of constitutional injury is sufficient to satisfy the irreparable injury requirement for issuance of a preliminary injunction.

3. Balance of Equities and Public Interest

Finally, the Court finds that Plaintiffs have shown that the public interest and the balance of hardships weigh in favor of granting injunctive relief. “A party seeking a preliminary injunction must demonstrate both ‘that the balance of equities tips in [its] favor, and that an injunction is in the public interest.’” *FBME Bank Ltd. v. Lew*, 125 F. Supp. 3d 109, 127 (D.D.C. 2015) (quoting *Winter*, 555 U.S. at 20) (alteration in original). “These factors merge when the Government is the opposing party.” *Id.* (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

As already established, the Presidential Memorandum is causing Plaintiffs serious ongoing harms and will cause them further harms in the near future absent an injunction. On this record, there are no countervailing equities or public interest in precluding transgender service members from the military that outweigh those harms. Defendants argue that “[t]he public has a strong interest in national defense.” Defs.’ Mem. at 41. They also argue that the military “is in the process of gathering a panel of experts” to provide advice and recommendations regarding “the development and implementation of the policy on military service by transgender individuals,” and that “[g]ranteeing Plaintiffs their requested relief would directly interfere with the

panel's work and the military's ability to thoroughly study a complex and important issue regarding the composition of the armed forces." *Id.* at 40–41.

Neither point passes muster. A bare invocation of "national defense" simply cannot defeat every motion for preliminary injunction that touches on the military. On the record before the Court, there is absolutely no support for the claim that the ongoing service of transgender people would have *any* negative effective on the military at all. In fact, there is considerable evidence that it is the *discharge* and *banning* of such individuals that would have such effects. The Court also notes that fifteen States have filed an *amici* brief indicating that they and their residents will be harmed by the Presidential Memorandum if it is not enjoined. *See State Amici* Brief at 13-22. Moreover, the injunction that will be issued will in no way prevent the government from conducting studies or gathering advice or recommendations on transgender service. The balance of equities and public interest accordingly weigh in favor of granting Plaintiffs' motion.

IV. CONCLUSION

For the reasons set out above, the Court will GRANT-IN-PART and DENY-IN-PART Defendants' Motion to Dismiss and GRANT-IN-PART and DENY-IN-PART Plaintiffs' Motion for Preliminary Injunction. The Court will grant Defendants' motion to dismiss Plaintiffs' claims to the extent they are based on the Sex Reassignment Surgery Directive, as well as Plaintiffs' estoppel claim. Defendants' motion to dismiss is DENIED in all other respects. Plaintiffs' motion for preliminary injunction is DENIED with respect to the Sex Reassignment Surgery Directive. Plaintiffs' motion for preliminary injunction is GRANTED, however, in that the Court will preliminarily enjoin enforcement of the Accession and Retention Directives. The effect of the Court's Order is to revert to the *status quo* with regard to accession and retention

that existed before the issuance of the Presidential Memorandum—that is, the retention and accession policies established in the June 30, 2016 Directive-type Memorandum as modified by Secretary of Defense James Mattis on June 30, 2017. An appropriate Order accompanies this Memorandum Opinion.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

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

JANE DOE 1, *et al.*,

Plaintiffs

v.

DONALD J. TRUMP, *et al.*,

Defendants

Civil Action No. 17-1597 (CKK)

ORDER
(October 30, 2017)

For the reasons set forth in the accompanying Memorandum Opinion, it is, this 30th day of October, 2017, hereby

ORDERED that Defendants' [45] Motion to Dismiss is GRANTED-IN-PART and DENIED-IN-PART. The Court will grant Defendants' motion to dismiss Plaintiffs' claims to the extent they are based on the Sex Reassignment Surgery Directive, corresponding with section 2(b) of the Presidential Memorandum, as well as Plaintiffs' estoppel claim. Defendants' motion to dismiss is DENIED in all other respects. It is further

ORDERED that Plaintiffs' [13] Motion for Preliminary Injunction is GRANTED-IN-PART and DENIED-IN-PART. Plaintiffs' motion for preliminary injunction is DENIED with respect to the Sex Reassignment Surgery Directive. Plaintiffs' motion for preliminary injunction is GRANTED, however, in that the Court will preliminarily enjoin Defendants from enforcing the following directives of the Presidential Memorandum, referred to by the Court as the Accession and Retention Directives:

I am directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have the negative effects discussed above.

Presidential Memorandum § 1(b).

The Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, shall . . . maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that I find convincing”

Presidential Memorandum § 2(a).

The effect of the Court’s Order is to revert to the *status quo* with regard to accession and retention that existed before the issuance of the Presidential Memorandum—that is, the retention and accession policies established in the June 30, 2016 Directive-type Memorandum as modified by Secretary of Defense James Mattis on June 30, 2017.

In all other respects, the Presidential Memorandum is not enjoined. It is further

ORDERED that Plaintiffs are not required to pay a security deposit. Fed. R. Civ. P.

65(c). It is further

ORDERED that the parties shall file a Joint Status Report indicating how they propose to proceed in this matter by no later than November 10, 2017.

SO ORDERED.

/s/

COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE 1 *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP *et al.*,

Defendants.

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

DEFENDANTS' NOTICE OF APPEAL

Notice is hereby given that all Defendants appeal to the United States Court of Appeals for the District of Columbia Circuit from this Court's Order of August 6, 2018, ECF No. 156, denying Defendants' motion to dissolve the preliminary injunction.

Dated: August 27, 2017

Respectfully submitted,

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

JANE DOE 2¹, JANE DOE 3, JANE DOE 4,
JANE DOE 5, JANE DOE 6, JANE DOE 7,
JOHN DOE 1, JOHN DOE 2, REGAN V.
KIBBY, and DYLAN KOHERE,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States; JAMES N.
MATTIS, in his official capacity as Secretary of
Defense; JOSEPH F. DUNFORD, JR., in his
official capacity as Chairman of the Joint Chiefs
of Staff; the UNITED STATES DEPARTMENT
OF THE ARMY; MARK T. ESPER, in his
official capacity as Secretary of the Army; the
UNITED STATES DEPARTMENT OF THE
NAVY; RICHARD V. SPENCER, in his official
capacity as Secretary of the Navy; the UNITED
STATES DEPARTMENT OF THE AIR
FORCE; HEATHER A. WILSON, in her
official capacity as Secretary of the Air Force;
the UNITED STATES COAST GUARD;
KIRSTJEN M. NIELSEN, in her official
capacity as Secretary of Homeland Security; the
DEFENSE HEALTH AGENCY; RAQUEL C.
BONO, in her official capacity as Director of the
Defense Health Agency; and the UNITED
STATES OF AMERICA,

Defendants.

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

**SECOND AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This is a constitutional challenge to the ban on military service by transgender individuals (“transgender military ban” or “ban”). That policy, first announced last July by

¹ The parties agreed to the dismissal of the claims brought by Jane Doe 1, who is no longer in the Armed Forces.

President Trump and now more specifically set forth in a February 22, 2018 Memorandum for the President from Secretary of Defense James N. Mattis (“February 22 Memorandum”), excludes transgender people from military service, regardless of their fitness to serve.

2. The transgender military ban, as originally articulated in tweets from the President and as set forth in the February 22 Memorandum, inflicts immediate, concrete injury upon Plaintiffs. It violates both the Equal Protection component of the Fifth Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution.

3. This lawsuit seeks declaratory, preliminary, and permanent injunctive relief against implementation of the ban.

JURISDICTION AND VENUE

4. This court has jurisdiction over the claims under 28 U.S.C. §§ 1331 and 1343.

5. Venue is proper in this district under 28 U.S.C. § 1391(b) because the acts described in this Complaint occurred in this judicial district.

PLAINTIFFS

6. Plaintiffs are five active duty servicemembers in the United States military who serve openly as transgender people; one active duty servicemember who has not yet disclosed her transgender status; and four transgender people who seek admission to the military, either through the process of enlistment or through an academic program that leads to a commission. Some proceed under pseudonyms here to protect their privacy and for fear of retribution.

7. Jane Doe 2 has been enlisted in the National Guard since 2003 and has been on active duty in the United States Army since 2006.

8. Jane Doe 2 notified her command that she was transgender after the United States Department of Defense announced in June 2016 that it would allow transgender servicemembers to serve openly in the military.

9. In reliance on the Department's promise to allow transgender servicemembers to serve openly, Jane Doe 2 began to seek medical treatment relating to her gender transition in September 2016.

10. Since informing her command that she is transgender, Jane Doe 2 has continued serving in her post without incident.

11. Jane Doe 2's current contract with the military extends through November 2018. Under the transgender military ban, she will be forced to serve under a cloud of uncertainty about continued service, promotions, and health care; and she will suffer harm because her continued service will be permitted only under a conditional and limited exception to a policy that deems transgender people unfit for service.

12. Jane Doe 3 has served in the United States Army since 2015. She has previously been deployed to Afghanistan and is currently deployed to Iraq.

13. In or around June 2016, in reliance on the Department of Defense policy permitting transgender people to serve openly in the military, Jane Doe 3 notified her command that she was transgender. Since then, she has continued serving in her post without incident.

14. Jane Doe 3's current contract with the military extends through December 2018. She plans to renew her contract and is also interested in applying to become a warrant officer or making other career transitions that could be considered a new accession to the Army. Under the transgender military ban, it is unclear whether Jane Doe 3 will be able to make these career transitions. At a minimum, she will be forced to serve under a cloud of uncertainty about continued service and health care; and she will suffer harm because her continued service will be permitted only under a conditional and limited exception to a policy that deems transgender people unfit for service.

15. Jane Doe 4 has served in the United States Army since 2000.

16. In or around June 2016, in reliance on the Department of Defense policy permitting transgender people to serve openly in the military, Jane Doe 4 met with her commanding officer to identify herself as transgender. She began receiving medical treatment related to her gender transition in September 2016.

17. Since coming out as transgender, Jane Doe 4 has continued serving in her post without incident.

18. Jane Doe 4's current contract with the military extends through June 2018. She plans to renew her contract to complete two additional years of service following the expiration of her current contract so that she can reach twenty years of service and receive retirement benefits. Under the transgender military ban, Jane Doe 4 will be forced to serve under a cloud of uncertainty about continued service, promotions, and health care; and she will suffer harm because her continued service will be permitted only under a conditional and limited exception to a policy that deems transgender people unfit for service.

19. Jane Doe 5 has been an active duty member of the United States Air Force for nearly twenty years, serving multiple tours of duty abroad, including two in Iraq.

20. After June 2016, in reliance on the announcement that transgender people would be permitted to serve openly, she notified her superiors that she was transgender. Since she made this disclosure, she has continued to serve without incident.

21. Under the transgender military ban, Jane Doe 5 will be forced to serve under a cloud of uncertainty about continued service, promotions, and health care; and she will suffer harm because her continued service will be permitted only under a conditional and limited exception to a policy that deems transgender people unfit for service.

22. Jane Doe 6 joined the Army in 2014. She has received hundreds of hours of specialized training, above the basic training required for her position, in joint target development, joint battle assessment, unmanned aerial surveillance, and computer science.

23. Jane Doe 6 is transgender. She had made a behavioral health appointment to obtain a transition plan and begin her gender transition when President Trump tweeted his announcement that transgender people were no longer permitted to serve. As a result, Jane Doe 6 never came out to her doctors or chain of command as transgender.

24. Under the transgender military ban, if Jane Doe 6 notifies her command that she is transgender and seeks health care for the distress she experiences from having to serve in a manner inconsistent with her gender identity, she faces separation from the military. Separation would have serious consequences for Jane Doe 6. She would be ineligible for a military pension and other benefits upon which she relies. A separation would also have serious negative repercussions for her career and livelihood. In addition, the transgender military ban causes Jane Doe 6 the immediate harms of curtailing her access to health care and forcing her to live inconsistently with her gender identity to avoid separation from the military.

25. Jane Doe 7 is a transgender woman who was seeking to join the Coast Guard when the Trump administration announced its implementation plan banning service by transgender people on March 23, 2018. Jane Doe 7 went through the process of gender transition seven years ago.

26. Under the transgender military ban, Jane Doe 7 will be unable to join the Coast Guard. She will be deprived of the opportunity to serve her country and the many benefits that enlistment in the Coast Guard would afford her.

27. John Doe 1 was a Reserve Officers' Training Corps ("ROTC") cadet from 2014 to 2016 and has served as a Second Lieutenant in the United States Army since July 2016.

28. John Doe 1 advised his superiors in ROTC that he is transgender. He was commissioned as a Second Lieutenant shortly after the Department of Defense announced that transgender people would be permitted to serve openly. In reliance on that policy, John Doe 1 notified his command that he was transgender. John Doe 1 has served since that time and has been praised for his commitment to excellence.

29. After the President's tweets, John Doe 1's transition-related care was subject to prolonged delays and substantial disruption. He did, however, undergo transition-related surgery in January 2018 and is currently ready to be deployed. His unit is now on standby to deploy to PACOM (Pacific Command) and is scheduled for deployment to CENTCOM (Central Command) next spring.

30. Under the transgender military ban, John Doe 1 will be forced to serve under a cloud of uncertainty about continued service and health care; and he will suffer harm because his continued service will be permitted only under a conditional and limited exception to a policy that deems transgender people unfit for service.

31. John Doe 2 is a transgender man who was in the process of enlisting in the Army when the Trump administration announced its implementation plan banning service by transgender people on March 23, 2018, specifically prohibiting enlistment for anyone who has undergone gender transition. John Doe 2 went through the process of gender transition almost a decade ago. He disclosed his transgender status to the recruiter when he began the enlistment process.

32. Under the transgender military ban, John Doe 2 will be unable to join the Army. He will be deprived of the opportunity to serve his country, including the financial and career benefits that enlistment in the Army will afford him.

33. Regan V. Kibby is a midshipman at the United States Naval Academy. In reliance on the policy permitting transgender people to serve openly, he told the Naval Academy that he is transgender. He was approved for a medical leave of absence so that his transition would be complete in time for him to receive his commission in the U.S. Navy upon graduation.

34. Under the transgender military ban, it is unclear whether Plaintiff Kibby will be permitted to return to the Naval Academy or to join the U.S. Navy as a commissioned officer. If he is permitted to return to the Naval Academy and join the U.S. Navy as a commissioned officer, he will be forced to serve under a cloud of uncertainty about continued service and health care; and he will suffer harm because his service will be permitted only under a conditional and limited exception to a policy that deems transgender people unfit for service.

35. Dylan Kohere is a first-year college student who is taking academic ROTC classes at the university he attends. He is also transgender. After President Trump's announcement of a ban on transgender people serving in the military, he was barred from joining the ROTC Program, including being denied the ability to partake in physical training or ROTC labs. While Plaintiff Kohere has continued to take ROTC academic classes, he never enrolled in the ROTC Program because of the ban.

36. Under the transgender military ban, Plaintiff Kohere is barred from enlisting in the military and, as a result, is not permitted to enroll in the ROTC program or to receive an ROTC scholarship.

DEFENDANTS

37. Defendant Donald J. Trump is President of the United States and Commander in Chief of the Armed Forces. On July 26, 2017, President Trump stated on Twitter that transgender people would not be permitted to serve “in any capacity in the U.S. military.”

38. Defendant James N. Mattis is the United States Secretary of Defense and the leader of the Department of Defense. Pursuant to a directive issued by President Trump on August 25, 2017, Secretary Mattis led an effort to develop a plan to implement the President’s ban. He transmitted that plan to the President in February 2017, and it was released to the public on March 23, 2018.

39. Defendant Joseph F. Dunford, Jr. is a United States Marine Corps General and serves as the current Chairman of the Joint Chiefs of Staff.

40. Defendant Department of the Army is one of three military departments of the Department of Defense and is responsible for the administration and operation of the United States Army.

41. Defendant Mark T. Esper is the United States Secretary of the Army. He is the leader of the Department of the Army.

42. Defendant Department of the Navy is one of three military departments of the Department of Defense and is responsible for the administration and operation of the United States Navy.

43. Defendant Richard V. Spencer is the United States Secretary of the Navy. He is the leader of the Department of the Navy.

44. Defendant Department of the Air Force is one of three military departments of the Department of Defense and is responsible for the administration and operation of the United States Air Force.

45. Defendant Heather A. Wilson is the United States Secretary of the Air Force. She is the leader of the Department of the Air Force.

46. Defendant United States Coast Guard is one of the five branches of the United States Armed Forces.

47. Defendant Kirstjen M. Nielsen is the United States Secretary of Homeland Security. She is the leader of the Department of Homeland Security. The Department of Homeland Security is responsible for the administration and operation of the United States Coast Guard.

48. Defendant Defense Health Agency is a Combat Support Agency that administers health care services for the U.S. Army, U.S. Navy, and U.S. Air Force. The Defense Health Agency exercises management responsibility for the TRICARE Health Plan, which is the health care program for all uniformed servicemembers in the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Coast Guard, and certain other commissioned corps.

49. Defendant Raquel C. Bono is a Vice Admiral and serves as Director of the Defense Health Agency.

50. Defendant United States of America includes all federal government agencies and departments responsible for the implementation of the President's decision.

51. All of the Defendants are sued in their official capacities.

STATEMENT OF FACTS

Adoption and Implementation of Open Service Policy

52. In May 2014, then-Secretary of Defense Chuck Hagel, a decorated U.S. Army combat veteran, recommended that the military conduct a review of whether transgender people should be permitted to serve openly in the Armed Forces.

53. In August 2014, the Department of Defense issued a new regulation that eliminated its categorical ban on open service by transgender people and instructed each branch of the Armed Forces to reassess whether maintaining a service-wide ban on service by openly transgender persons was justified. *See* Department of Defense Instruction 1332.18.

54. Secretary Hagel explained that “[e]very qualified American who wants to serve our country should have an opportunity to do so if they fit the qualifications and can do it.”

55. Secretary Hagel was succeeded as Secretary of Defense by Ashton B. Carter, who had previously served many years within the Department, including as Deputy Secretary of Defense, Under Secretary of Defense for Acquisition, Technology and Logistics, Assistant Secretary of Defense for International Security Policy, and as a member of the Defense Policy Board and the Defense Science Board. In July 2015, Secretary Carter announced that the military would begin a comprehensive analysis of whether to maintain the prohibition on military service by transgender people.

56. In an order establishing a working group to carry out this analysis, made effective as of July 13, 2015, Secretary Carter directed that no servicemember could be involuntarily separated or denied reenlistment or continuation of active or reserve status on the basis of his or her gender identity without the approval of the Under Secretary of Defense for Personnel and Readiness.

57. Over the course of a year, Secretary Carter oversaw a comprehensive review of this issue by a working group of the military and civilian leadership of the Armed Services, the Joint Chiefs of Staff, the service secretaries, and personnel, training, readiness, and medical specialists from across the Department of Defense.

58. That year-long process examined copious data on the relevant issues, including but not limited to existing studies and research and input from transgender servicemembers and their commanders, outside expert groups, and medical professionals.

59. The process also included a careful review of the eighteen other countries that permit military service by openly transgender people.

60. The process also included consultation with doctors, employers, and insurance companies regarding the provision of medical care to transgender people.

61. The Department of Defense also commissioned the RAND Corporation, an organization formed after World War II to connect military planning with research and development decisions and which now operates as an independent think tank financed by the U.S. government, to analyze relevant data and studies to determine the impact of permitting transgender servicemembers to serve openly. Specifically, the RAND Corporation was tasked with (1) identifying the health care needs of the transgender population and the health care costs associated with providing transition-related care; (2) assessing the readiness implications of allowing transgender servicemembers to serve openly; and (3) reviewing the experiences of foreign militaries that permit transgender individuals to serve openly.

62. The study, titled “Assessing the Implications of Allowing Transgender Personnel to Serve Openly” (the “RAND Study”) and issued in May 2016, concluded that allowing transgender people to serve openly would “cost little and have no significant impact on unit readiness.”

63. The RAND Study noted that the Military Health System already provides the types of health care required by transgender servicemembers and concluded that health care costs for transgender servicemembers would represent “an exceedingly small proportion of [the

Department of Defense's] overall health care expenditures." The RAND Study also concluded that this minimal incremental cost would likely be offset by savings through diminished rates of other health care costs that would be achieved by providing servicemembers with necessary transition-related medical care.

64. Based on the results of this comprehensive, year-long review process and on the RAND Study, the Department of Defense concluded that the needs of the military would be best met by permitting openly transgender people to serve.

65. As laid out by Secretary Carter in remarks delivered on June 30, 2016, that conclusion was based on a number of considerations, including: the need to "recruit[] and retain[] the soldier, sailor, airman, or Marine who can best accomplish the mission" of our nation's Armed Forces; the fact that thousands of "talented and trained" transgender people are already serving and that the military has already invested "hundreds of thousands of dollars to train and develop each" transgender servicemember; the benefits to the military of retaining individuals who are already trained and who have already proven themselves; the need to provide both transgender servicemembers and their commanders with "clear[] and consistent guidance" on questions such as deployment and medical treatment; and the principle that "Americans who want to serve and can meet our standards should be afforded the opportunity to compete to do so."

66. On June 30, 2016, Secretary Carter announced that "[e]ffective immediately, transgender Americans may serve openly. They can no longer be discharged or otherwise separated from the military just for being transgender."

67. Also on June 30, 2016, Secretary Carter issued Directive-Type Memorandum 16-005, titled "Military Service of Transgender Service Members." It states: "The policy of the Department of Defense is that service in the United States military should be open to all who can

meet the rigorous standards for military service and readiness. Consistent with the policies and procedures set forth in this memorandum, transgender individuals shall be allowed to serve in the military. These policies and procedures are premised on my conclusion that open service by transgender Service members while being subject to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming, deployability, and retention, is consistent with military readiness and with strength through diversity.”

68. The year-long review process by the Department of Defense also concluded that openly transgender people should be permitted to accede to the military so long as they had completed all medical treatment associated with their transitions and had been stable in their gender for eighteen months. The accession policy was scheduled to take effect on July 1, 2017 to allow the branches of the Armed Forces additional time to develop necessary standards and policies.

69. In September 2016, the Department of Defense issued an implementation handbook entitled “Transgender Service in the United States Military.” The 71-page document set forth guidance and instructions to both military servicemembers and commanders about how to implement and understand the new policies enabling open service of transgender servicemembers.

70. On October 1, 2016, the Office of the Undersecretary of Defense for Personnel and Readiness issued “DoD Instruction 1300.28—In-Service Transition for Transgender Service Members.” The instruction set forth further guidance to ensure open service by transgender servicemembers, including details regarding revisions to medical treatment provisions. This instruction was further implemented by a memorandum issued by the Acting Assistant Secretary of Defense for Health Affairs entitled “Guidance for Treatment of Gender Dysphoria for Active and

Reserve Component Service Members.” The Department of Defense also issued medical guidance for providing transition-related care to transgender servicemembers.

71. Over the next nine months, between October 2016 and June 2017, the services conducted training of the force based on detailed guidance and training materials regarding the policy change.

72. On November 29, 2016, the Department of Defense revised “DoD Directive 1020.02E—Diversity Management and Equal Opportunity in the DoD” to prohibit discrimination and harassment on the basis of gender identity.

The Ban on Transgender Servicemembers

73. On June 30, 2017, the day before the policy permitting transgender people to accede to the military was to take effect, Secretary Mattis extended the period for the development of relevant standards by six months.

74. Early in the morning of July 26, 2017, without any prior indication that he would address military transgender policy, President Trump announced in a series of tweets that the military would no longer permit the service of transgender Americans.

75. His tweets read: “After consultation with my generals and military experts, please be advised that the United States government will not accept or allow transgender individuals to serve in any capacity in the U.S. military. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail.”

76. This announcement met with substantial criticism from members of Congress belonging to both political parties. These critics included Senator John McCain, Chairman of the Senate Armed Services Committee and a decorated combat veteran of the Navy, who said in a

statement that “there is no reason to force servicemembers who are able to fight, train, and deploy to leave the military—regardless of their gender identity.” Senator Joni Ernst, another Republican member of the Senate Armed Services Committee and a combat veteran who served in the Iowa National Guard, also publicly expressed opposition to the new policy.

77. Upon information and belief, the President did not consult either the Joint Chiefs of Staff or the Department of Defense before making his announcement. General Joseph Dunford, the Chairman of the Joint Chiefs of Staff and the President’s most senior uniformed military advisor, wrote to the Joint Chiefs that the President’s announcement was “unexpected” and that that he “was not consulted.”

78. Shortly after the announcement, fifty-six former generals and admirals issued a public statement denouncing the new policy. Commandant Admiral Paul Zukunft of the United States Coast Guard also criticized the proposed policy and expressly reached out to all openly transgender members of the Coast Guard, vowing not to “turn [his] back” on transgender servicemembers.

79. On August 25, 2017, the President released a memorandum (“August 25 Memorandum”) containing a formal directive to the Secretary of Defense and the Secretary of Homeland Security. It required the military to return to its pre-June 2016 policy forbidding transgender people from joining or serving in the military, effective March 23, 2018.

80. The August 25 Memorandum also required the ban on accessions to be extended indefinitely beyond January 1, 2018; halted all use of government resources to “fund sex-reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex,” effective March 23, 2018; and required the Secretary of Defense, in consultation with

Homeland Security, to “submit to [the President] a plan for implementing” the ban within six months.

81. On September 14, 2017, Secretary of Defense Mattis issued a Memorandum directing the implementation process. Secretary Mattis affirmed that “DoD will carry out the President’s policy and directives” and will “comply with” the President’s August 25 directive. Secretary Mattis directed the Department of Defense to “develop[] an Implementation Plan on military service by transgender individuals, to effect the policy and directives” issued by President Trump on August 25. Secretary Mattis also indicated that the implementation plan would be released within the six months prescribed by the President.

82. In a separate Memorandum entitled “Terms of Reference – Implementation of Presidential Memorandum on Military Service by Transgender Individuals” (“Terms of Reference”), also issued on September 14, 2017, Secretary Mattis “direct[ed] the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff to lead the [Department] in developing an Implementation Plan on military service by transgender individuals, to effect the policy and directives in Presidential Memorandum, Military Service by Transgender Individuals, dated August 25, 2017.” The Terms of Reference required that, in carrying out the duties delegated to them, the Deputy Secretary and Vice Chairman would be “supported by a panel of experts,” comprised of “the Military Department Under Secretaries, Service Vice Chiefs, and Service Senior Enlisted Advisors” and chaired by the Under Secretary of Defense for Personnel and Readiness.

83. The panel was tasked with developing a plan to implement the President’s policy as announced in his tweets and promulgated to the Department of Defense in his August 25 Memorandum. The Terms of Reference explained that “[t]he Presidential Memorandum directs

that the Department return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016” and “also allows the Secretary to determine how to address transgender individuals currently serving in the Armed Forces.” It directed the Panel to “set forth, in a single policy document, the standards and procedures applicable to military service by transgender persons, with specific attention to addressing transgender persons currently serving.” The Terms of Reference also explained that “[t]he Presidential Memorandum directs DoD to maintain the policy currently in effect, which generally prohibits accession of transgender individuals into military service.”

84. On October 30, 2017, this Court issued a preliminary injunction that, among other things, ordered Defendants to “revert to the status quo with regard to accession and retention that existed before the [August 25, 2017] issuance of the Presidential Memorandum.” Pursuant to that order, the Armed Forces began permitting openly transgender people to accede to the service beginning on January 1, 2018.

85. On February 22, 2018, Secretary Mattis sent a Memorandum to the President endorsing policies set out in an attached report entitled “Department of Defense Report and Recommendations on Military Service by Transgender Persons.” The February 22 Memorandum and its attachment were released to the public on March 23, 2018. The policy set forth in the February 22 Memorandum and its attachment expressly targets transgender individuals; they do not apply to non-transgender individuals at all.

86. The policy prevents any transgender individual from serving consistent with their gender identity, including by excluding anyone who “require[s] or ha[s] undergone gender transition” and by requiring proof that applicants are “stable ... in their biological sex.”

87. The policy also includes a limited and conditional provision permitting continued service by servicemembers “who were diagnosed with gender dysphoria by a military medical provider” during the period when open service by transgender servicemembers was allowed. The policy also states that “should its decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption instead is and should be deemed severable from the rest of the policy.”

88. In addition, although the provision permitting continued service by some small number of transgender servicemembers states that they will “continue to receive all medically necessary treatment,” the substance of what may be provided may fall short of servicemembers’ actual medical needs. The policy set forth in the February 22 Memorandum and its attachment rejects the established medical consensus confirming the safety and efficacy of gender-transition related medical care and instead concludes that the available scientific evidence is “unclear.” As a result, transgender servicemembers who remain in provisional and conditional service face the likely denial of surgical and other care for transgender health needs.

89. The American Psychological Association responded to the February 22 Memorandum and its attachment, stating that it was “alarmed by the administration’s misuse of psychological science to stigmatize transgender Americans and justify limiting their ability to serve in uniform and access medically necessary health care.” The American Medical Association also responded in a statement saying that “there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude transgender individuals from military service” and denouncing the Memorandum because it “mischaracterized and rejected the wide body of peer-reviewed research on the effectiveness of transgender medical care.” And the American

Psychiatric Association released a statement confirming that transgender people “suffer no impairment whatsoever in their judgment or ability to work.”

COUNT I

(Fifth Amendment – Equal Protection)

90. All previous paragraphs are incorporated as though fully set forth herein.

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

92. The policies excluding transgender people from military service discriminate against Plaintiffs based on their sex and transgender status, without lawful justification, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment.

93. The exclusion of transgender people from military service lacks a rational basis, is arbitrary, and cannot be justified by sufficient federal interests.

94. Through the actions above, Defendants have violated the Equal Protection component of the Due Process Clause of the Fifth Amendment.

COUNT II²

(Fifth Amendment – Due Process)

95. All previous paragraphs are incorporated as though fully set forth herein.

96. The Due Process Clause of the Fifth Amendment requires, at a minimum, that government action have some rational basis.

97. The policies excluding transgender people from military service are arbitrary and capricious and lack any rational basis.

² The Court has dismissed Count III. Plaintiffs reserve all rights to appeal that dismissal but do not repeat the Count here.

98. Defendants' 2016 policy permitting transgender people to serve openly in the military, together with Plaintiffs' reliance on that policy in notifying their superiors of their transgender status, created a protected interest in Plaintiffs' ability to continue serving in the military as openly transgender servicemembers.

99. Defendants' arbitrary reversal of the United States' June 2016 policy threatens to exclude Plaintiffs from continued military service because they are transgender, thus depriving Plaintiffs of those interests without due process of law.

100. Defendants' arbitrary reversal of the United States' June 2016 policy also impermissibly selectively burdens Plaintiffs' fundamental rights to autonomy and privacy.

101. Through the actions above, Defendants have violated the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

Plaintiffs ask the Court to grant the following relief:

1. Issue a declaratory judgment that the President's directive to categorically exclude transgender people from military service is unconstitutional;
2. Issue a preliminary and permanent injunction, against all Defendants other than President Trump, prohibiting the categorical exclusion of transgender people from military service, including ordering that:
 - a. Defendants shall revert to the status quo with regard to accession and retention that existed before the August 25, 2017 issuance of the Presidential Memorandum.
 - b. Plaintiffs Jane Doe 2, Jane Doe 3, Jane Doe 4, Jane Doe 5, Jane Doe 6, and John Doe 1 may not be separated from the military, denied reenlistment, demoted, denied promotion, denied medically necessary treatment on a timely basis, or otherwise receive adverse treatment or differential terms of service on the basis that they are transgender;

c. Plaintiff Regan V. Kibby may not be denied the opportunity to continue his attendance at the U.S. Naval Academy on the basis that he is transgender, and may not be denied the opportunity to accede to military service thereafter, or be denied promotion, reenlistment, or any other equal terms of service on the basis that he is transgender;

d. Plaintiff Dylan Kohere may not be denied the opportunity to fully enroll and participate in the Reserve Officers' Training Corps program on the basis that he is transgender, and may not be denied the opportunity to accede to military service thereafter, or be denied promotion, reenlistment, or any other equal terms of service on the basis that he is transgender; and

e. Plaintiffs Jane Doe 7 and John Doe 2 may not be denied the opportunity to accede to military service on the basis that they are transgender, and may not be denied promotion, reenlistment, or any other equal terms of service on the basis that they are transgender.

3. Award Plaintiffs their reasonable costs and attorneys' fees;
4. Issue any other relief the Court deems appropriate.

April 6, 2018

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DoD INSTRUCTION 6130.03

MEDICAL STANDARDS FOR APPOINTMENT, ENLISTMENT, OR INDUCTION INTO THE MILITARY SERVICES

Originating Component: Office of the Under Secretary of Defense for Personnel and Readiness

Effective: May 6, 2018

Releasability: Cleared for public release. Available on the Directives Division Website at <http://www.esd.whs.mil/DD/>.

Reissues and Cancells: DoD Instruction 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services," April 28, 2010, as amended

Approved by: Robert L. Wilkie, Under Secretary of Defense for Personnel and Readiness

Purpose: This issuance, in accordance with the authority in DoD Directive 5124.02, establishes policy, assigns responsibilities, and prescribes procedures for physical and medical standards for appointment, enlistment, or induction into the Military Services. It was approved by Mr. Wilkie on March 30, 2018, and will take effect 30 days after publication on the Directives Division Website.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This issuance applies to:

(1) OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

(2) The Reserve Components, which include the Army and the Air National Guards of the United States, in accordance with Title 10, United States Code (U.S.C.).

(3) The United States Merchant Marine Academy in accordance with Section 310.56 of Title 46, Code of Federal Regulations.

b. The entities in Paragraphs 1.1.a.(1) through 1.1.a.(3) are referred to collectively in this issuance as the “DoD Components.”

c. This issuance does not apply to any medical issue associated with gender dysphoria or gender transition; such medical accession standards are addressed in separate guidance. Any questions regarding such medical accessions standards or procedures should be directed to the Commander, U.S. Military Entrance Processing Command (USMEPCOM).

1.2. POLICY. It is DoD policy to:

a. Use the guidance in this issuance for appointment, enlistment, or induction of personnel into the Military Services.

b. Use common medical standards for appointment, enlistment, or induction of personnel into the Military Services and eliminate inconsistencies and inequities in the DoD Components based on race, sex, or location of examination when applying these standards.

c. Ensure that individuals considered for appointment, enlistment, or induction into the Military Services are:

(1) Free of contagious diseases that may endanger the health of other personnel.

(2) Free of medical conditions or physical defects that may reasonably be expected to require excessive time lost from duty for necessary treatment or hospitalization, or may result in separation from the Military Service for medical unfitness.

(3) Medically capable of satisfactorily completing required training and initial period of contracted service.

(4) Medically adaptable to the military environment without geographical area limitations.

(5) Medically capable of performing duties without aggravating existing physical defects or medical conditions.

d. Allow applicants who do not meet the physical and medical standards in this issuance to be considered for a medical waiver.

1.3. INFORMATION COLLECTIONS. DD Form 2807-1, “Report of Medical History;” DD Form 2807-2, “Accessions Medical Prescreen Report;” DD Form 2808, “Report of Medical Examination;” and the supplemental health documents referred to in Paragraph 2.3.d. of this issuance have been assigned Office of Management and Budget control number 0704-0413 in accordance with the procedures in Volume 2 of DoD Manual 8910.01. The expiration date of this information collection is listed on the DoD Information Collections System at <https://apps.sp.pentagon.mil/sites/dodiic/Pages/default.aspx>.

SECTION 2: RESPONSIBILITIES

2.1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R):

- a. Ensures that the standards in Section 5 are implemented throughout the DoD Components.
- b. Eliminates inconsistencies and inequities based on race, sex, or location of examination in DoD Component application of these standards.
- c. Maintains and convenes the chartered Medical and Personnel Executive Steering Committee (MEDPERS).

2.2. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). Under the authority, direction, and control of the USD(P&R), the ASD(HA):

- a. Reviews, approves, and issues technical modifications to the standards in Section 5 to the Secretaries of the Military Departments.
- b. Provides guidance to the DoD Medical Examination Review Board to implement the standards in Section 5.

2.3. SECRETARIES OF THE MILITARY DEPARTMENTS AND COMMANDANT, UNITED STATES COAST GUARD. The Secretaries of the Military Departments and the Commandant, United States Coast Guard:

- a. Direct their respective Military Services to apply and uniformly implement the standards contained in this issuance.
- b. Authorize the medical waiver of the standards in individual cases for applicable reasons and ensure uniform waiver determinations.
- c. Ensure that accurate International Classification of Diseases codes are assigned to all medical conditions resulting in a personnel action, such as separation, waiver, or assignment limitation, and that such codes are included in all records of such actions.
- d. Ensure that medical information for “Existed Prior to Service” discharges is provided to the USMEPCOM by Service training centers conducting basic military training. This information will include:
 - (1) A copy of the trainee’s medical discharge summary and related medical documents.
 - (2) Copies of DD Forms 2807-2, 2807-1, and 2808, including supplemental behavioral health screening documents.

(3) Consultation reports or other medical documentation used in the enlistment process and qualification decision.

e. Eliminate inconsistencies and inequities based on race, sex, or examination location in the application of these standards by the DoD Components.

2.4. SECRETARY OF THE NAVY. In addition to the responsibilities in Paragraph 2.3., the Secretary of the Navy will direct the medical processing for applicants seeking entry into the Military Services from Guam and environs while applying and uniformly implementing the standards contained within this issuance.

SECTION 3: MEDPERS

3.1. ORGANIZATION. The MEDPERS convenes at least twice a year under the joint guidance of the Deputy Assistant Secretary of Defense for Military Personnel Policy and the Deputy Assistant Secretary of Defense for Health Services Policy and Oversight and in accordance with the MEDPERS charter.

3.2. AGENDA. The MEDPERS:

- a. Provides the Accession Medical Standards Working Group with guidance and oversight on setting standards for accession medical and physical processes.
- b. Directs research and studies as necessary to produce evidence-based accession standards using the Accession Medical Standards Analysis and Research Activity.
- c. Ensures medical and personnel community coordination when changing policies that affect each community and other relevant DoD Components.

SECTION 4: MEDICAL STANDARDS FOR APPOINTMENT, ENLISTMENT, OR INDUCTION

4.1. APPLICABILITY. The medical standards in Section 5 apply to:

- a. Applicants for appointment as commissioned or warrant officers in the Active and Reserve Components.
- b. Applicants for enlistment in the Military Services. For medical conditions or defects that predate the current enlistment and were not aggravated in the line of duty during the current enlistment, these standards apply to enlistees during the first 6 months of the current period of active duty.
- c. Applicants for accession in the Reserve Components and federally recognized units or organizations of the National Guard. For medical conditions or defects that predate the original term of service and were not aggravated in the line of duty during such term of service, these standards apply during the applicant's initial period of active duty for training until their return to the Reserve Components.
- d. Applicants for re-accession in Regular and Reserve Components and in federally recognized units or organizations of the National Guard after a period of more than 12 months have elapsed since the separation physical.
- e. Applicants for the Service academies, Reserve Officer Training Corps, Uniformed Services University of the Health Sciences, and all other DoD Component special officer personnel procurement programs.
- f. Cadets and midshipmen at the Service academies and students enrolled in Reserve Officer Training Corps scholarship programs applying for retention in their respective programs.
- g. Individuals on the Temporary Disability Retired List who have been found fit when reevaluated by the Disability Evaluation System and who elect to return to active duty or to active status in the Reserve Components within the time standards prescribed by Service regulations. These individuals are exempt from the procedures in this issuance only for the conditions for which they were found fit on reevaluation by the Disability Evaluation System. Applicants must meet all other medical standards contained in this section with the exception of the medical condition for which they were placed on the Temporary Disability Retired List.
- h. All individuals being inducted into the Military Services.

4.2. PROCEDURES.

- a. Applicants for appointment, enlistment, or induction into the Military Services will:
 - (1) Fully disclose all medical history.

(2) Submit all medical documentation related to medical history as requested to the USMEPCOM and DoD Medical Examination Review Board, including the names of their medical insurer and past medical providers.

(3) Provide authorization for the DoD Components to request and obtain their medical records.

(a) Authorize the DoD to request medical or behavioral health data holders (e.g. healthcare providers, clinics, hospitals, insurance companies, pharmacy benefit managers, pharmacies, health information exchanges, and federal and State agencies) release complete transcripts of health data to the DoD medical authority for the processing of their application for military service.

(b) Authorize holders of their health data to report to the DoD whether any data they hold or have held about them has been amended or restricted.

(4) Acknowledge that information provided constitutes an official statement, and that any persons making false statements could face fines, penalties, and imprisonments pursuant to Section 1001 of Title 18, U.S.C. If the applicant is selected for enlistment, commission, or entrance into a commissioning program based on a false statement, the applicant can be tried by court-martial or meet an administrative board for discharge and could receive a less than honorable discharge.

b. The USMEPCOM and DoD Medical Examination Review Board will:

(1) Render medical qualification decisions by using standard medical terminology to describe a medical condition, rather than International Classification of Disease codes.

(2) Use coding to document personnel actions in order to collect information to enable research, analyses, and support for evidence-based medical standards.

c. The DoD Components:

(1) May initiate and request a medical waiver. Each DoD Component's waiver authority for medical conditions will make a determination based on all available information regarding the issue or condition, as well as the specific needs of the Military Service.

(2) Will specify any medical condition which causes a personnel action, such as separation, medical waiver, or assignment limitation, by utilizing standard medical terminology, the International Classification of Diseases, Current Procedural Terminology, or the Healthcare Common Procedure Coding System for data collection and analysis in support of evidence based standards.

SECTION 5: DISQUALIFYING CONDITIONS

5.1. MEDICAL STANDARDS. Unless otherwise stipulated, the conditions listed in this section are those that do **not** meet the standard by virtue of current diagnosis, or for which the candidate has a verified past medical history. The medical standards for appointment, enlistment, or induction into the Military Services are classified into general systems in Paragraphs 5.2. through 5.30.

5.2. HEAD.

- a. Deformities of the skull, face, or mandible of a degree that may reasonably be expected to prevent the individual from properly wearing a protective mask or military headgear.
- b. Loss, or absence of the bony substance of the skull not successfully corrected by reconstructive materials, or leaving any residual defect in excess of 1 square inch (6.45 square centimeters), or the size of a U.S. quarter coin.

5.3. EYES.

a. Lids.

- (1) Current symptomatic blepharitis.
- (2) Current blepharospasm.
- (3) Current dacryocystitis, acute or chronic.
- (4) Defect or deformity of the lids or other disorders affecting eyelid function, including ptosis, sufficient to interfere with vision, require head posturing, or impair protection of the eye from exposure.
- (5) Current growths or tumors of the eyelid, other than small, non-progressive, asymptomatic, benign lesions.

b. Conjunctiva.

- (1) Current acute or chronic conjunctivitis excluding seasonal allergic conjunctivitis.
- (2) Current pterygium if condition encroaches on the cornea in excess of 3 millimeters (mm), is symptomatic, interferes with vision, or is progressive.
- (3) History of pterygium recurrence after any prior surgical removal.

c. Cornea.

(1) Corneal dystrophy or degeneration of any type, including but not limited to keratoconus of any degree.

(2) History of any incisional corneal surgery including, but not limited to, partial or full thickness corneal transplant, radial keratotomy, astigmatic keratotomy, or corneal implants (e.g., Intacs®).

(3) Corneal refractive surgery performed with an excimer or femtosecond laser, including but not limited to photorefractive keratectomy, laser epithelial keratomileusis, laser-assisted in situ keratomileusis, and small incision lenticule extraction, if any of the following conditions are met:

(a) Pre-surgical refractive error in either eye exceeded a spherical equivalent of +8.00 or -8.00 diopters.

(b) Pre-surgical astigmatism exceeded 3.00 diopters.

(c) Within 180 days of accession medical examination.

(d) Complications, ongoing medications, ophthalmic solutions, or any other therapeutic interventions required beyond 180 days of procedure.

(e) Post-surgical refraction in each eye is not stable as demonstrated by at least two separate refractions at least 1 month apart, with initial refraction at least 90 days post-procedure, and the most recent of which demonstrates either more than +/- 0.50 diopters difference for spherical vision or more than +/- 0.50 diopters for cylinder vision.

(4) Current or recurrent keratitis.

(5) History of herpes simplex virus keratitis.

(6) Current corneal neovascularization, unspecified, or corneal opacification from any cause that is progressive or reduces vision.

(7) Any history of uveitis or iridocyclitis.

d. Retina. Any history of any abnormality of the retina, choroid, or vitreous.

e. Optic Nerve.

(1) Any history of optic nerve disease, including but not limited to optic nerve inflammation, optic nerve swelling, or optic nerve atrophy.

(2) Any optic nerve anomaly.

f. Lens.

(1) Current aphakia, history of lens implant to include implantable collamer lens, or any history of dislocation of a lens.

(2) Any history of opacities of the lens, including cataract.

g. Ocular Mobility and Motility.

(1) Current or recurrent diplopia.

(2) Current nystagmus other than physiologic “end-point nystagmus.”

(3) Esotropia, exotropia, and hypertropia.

(4) History of restrictive ophthalmopathies.

h. Miscellaneous Defects and Diseases.

(1) History of abnormal visual fields.

(2) Absence of an eye.

(3) History of disorders of globe.

(4) Current unilateral or bilateral exophthalmoses.

(5) History of glaucoma, ocular hypertension, pre-glaucoma, or glaucoma suspect.

(6) Any abnormal pupillary reaction to light or accommodation.

(7) Asymmetry of pupil size greater than 2 mm.

(8) Current night blindness.

(9) History of intraocular foreign body, or current corneal foreign body.

(10) History of ocular tumors.

(11) History of any abnormality of the eye or adnexa, not specified in Paragraphs 5.3.h.(1)-(10), which threatens vision or visual function.

5.4. VISION.

a. Current distant visual acuity of any degree that does not correct with spectacle lenses to at least 20/40 in each eye.

- b. For entrance into Service academies and officer programs, the individual DoD Components may set additional requirements. The DoD Components will determine special administrative criteria for assignment to certain specialties.
- c. Current near visual acuity of any degree that does not correct to 20/40 in the better eye.
- d. Current refractive error (hyperopia, myopia, astigmatism) in excess of -8.00 or +8.00 diopters spherical equivalent or astigmatism in excess of 3.00 diopters.
- e. Any condition that specifically requires contact lenses for adequate correction of vision, such as corneal scars and opacities and irregular astigmatism.
- f. Color vision requirements will be set by the individual DoD Components.

5.5. EARS.

- a. Current defect that would require either recurrent evaluation or treatment or that may reasonably be expected to prevent or interfere with the proper wearing or use of military equipment (including hearing protection) to include atresia of the external ear or severe microtia, congenital or acquired stenosis, chronic otitis externa, or severe external ear deformity.
- b. Any history of Ménière's Syndrome or other chronic diseases of the vestibular system.
- c. History of any surgically implanted hearing device.
- d. History of cholesteatoma.
- e. History of any inner or middle ear surgery.
- f. Current perforation of the tympanic membrane or history of surgery to correct perforation during the preceding 180 days.
- g. Chronic Eustachian tube dysfunction within the last 3 years as evidenced by retracted tympanic membrane, or recurrent otitis media, or the need for pressure-equalization tube.

5.6. HEARING.

- a. Audiometric hearing levels are measured by audiometers calibrated to the standards in American National Standards Institute S3.6-2010 and will be used to test the hearing of all applicants.
- b. Current hearing threshold level in either ear that exceeds:
 - (1) Pure tone at 500, 1000, and 2000 cycles per second for each ear of more than 25 decibels (dB) on the average with any individual level greater than 30 dB at those frequencies.

(2) Pure tone level more than 35 dB at 3000 cycles per second or 45 dB at 4000 cycles per second for each ear.

(3) There is no standard for 6000 cycles per second.

c. History of using hearing aids.

5.7. NOSE, SINUSES, MOUTH, AND LARYNX.

a. Current cleft lip or palate defects not satisfactorily repaired by surgery or that prevent drinking from a straw or that may reasonably be expected to interfere with using or wearing military equipment.

b. Current ulceration of oral mucosa or tongue, excluding aphthous ulcers.

c. Symptomatic vocal cord dysfunction to include but not limited to vocal cord paralysis, paradoxical vocal cord movement, spasmodic dysphonia, non-benign polyps, chronic hoarseness, or chronic laryngitis (lasting longer than 21 days). History of vocal cord dysfunction with respiratory symptoms or exercise intolerance.

d. Current olfactory deficit.

e. Recurrent, unexplained epistaxis requiring medical intervention within the last 2 years.

f. Current chronic sinusitis, current nasal polyp or polypoid mass(es) or history of sinus surgery within the last 2 years, excluding antralchoanal polyp or sinus mucosal retention cyst.

g. Current symptomatic perforation of nasal septum.

h. History of deformities, or conditions or anomalies of the upper alimentary tract, mouth, tongue, palate, throat, pharynx, larynx, and nose, that interfered with chewing, swallowing, speech, or breathing.

5.8. DENTAL.

a. Current diseases or pathology of the jaws or associated tissues that prevent the jaws' normal functioning. A minimum of 6 months healing time must elapse for any individual who completes surgical treatment of any maxillofacial pathology lesions.

b. Temporomandibular disorders or myofascial pain that has been symptomatic or required treatment within the last 12 months.

c. Current severe malocclusion, which interferes with normal chewing or requires immediate and protracted treatment, or a relationship between the mandible and maxilla that prevents satisfactory future prosthodontic replacement.

d. Eight or more grossly (visually) cavitated or carious teeth. Applicants who are edentulous must have functioning dentures. Lack of a serviceable prosthesis that prevents adequate biting and chewing of a normal diet. Individuals undergoing endodontic care are acceptable for entry into the Delayed Entry Program only if a civilian or military dentist or endodontist provides documentation that active endodontic treatment will be completed prior to being sworn to active duty.

e. Current orthodontic appliances (mounted or removable, e.g., Invisalign®) for continued active treatment unless:

- (1) The appliance is permanent or removable retainer(s); or
- (2) An orthodontist (civilian or military) provides documentation that:
 - (a) Active orthodontic treatment will be completed before being sworn in to active duty; or
 - (b) All orthodontic treatment will be completed before beginning active duty.

5.9. NECK.

- a. Current symptomatic cervical ribs.
- b. Current congenital mass, including cyst(s) of branchial cleft origin or those developing from the remnants of the thyroglossal duct or history of surgical correction, within 12 months.
- c. Current contraction of the muscles of the neck, spastic or non-spastic, or cicatricial contracture of the neck to the extent that it may reasonably be expected to interfere with properly wearing a uniform or military equipment, or is so disfiguring as to reasonably be expected to interfere with or prevent satisfactorily performing military duty.

5.10. LUNGS, CHEST WALL, PLEURA, AND MEDIASTINUM.

- a. Any abnormal findings on imaging or other examination of body structure, such as the lungs, diaphragm, or other thoracic or abdominal organs, unless the findings have been evaluated and further surveillance or treatment is not required.
- b. Current abscess of the lung or mediastinum.
- c. Infectious pneumonia within the last 3 months.
- d. History of recurrent (2 or more episodes within an 18 month period) infectious pneumonia after the 13th birthday.
- e. History of airway hyper responsiveness including asthma, reactive airway disease, exercise-induced bronchospasm or asthmatic bronchitis, after the 13th birthday.

(1) Symptoms suggestive of airway hyper responsiveness include but are not limited to cough, wheeze, chest tightness, dyspnea or functional exercise limitations after the 13th birthday.

(2) History of prescription or use of medication (including but not limited to inhaled or oral corticosteroids, leukotriene receptor antagonists, or any beta agonists) for airway hyper responsiveness after the 13th birthday.

f. Chronic obstructive pulmonary disease including but not limited to bullous or generalized pulmonary emphysema or chronic bronchitis.

g. Bronchiectasis (after the 1st birthday).

h. Bronchopleural fistula, unless resolved with no sequelae.

i. Current chest wall malformation, including but not limited to pectus excavatum or pectus carinatum which has been symptomatic, interfered with vigorous physical exertion, has been recommended for surgery, or may interfere with wearing military equipment.

j. History of empyema unless resolved with no sequelae.

k. Interstitial lung disease including pulmonary fibrosis.

l. Current foreign body in lung, trachea, or bronchus.

m. History of thoracic surgery including open and endoscopic procedures.

n. Pleurisy or pleural effusion within the previous 3 months.

o. History of spontaneous pneumothorax occurring within the past 2 years, or pneumothorax due to trauma or surgery occurring within the past year.

p. Recurrent spontaneous pneumothorax.

q. History of chest wall surgery, including breast, during the preceding 6 months, or with persistent functional limitations.

r. Tuberculosis:

(1) History of active pulmonary or extra-pulmonary tuberculosis in the previous 2 years or history of active pulmonary or extra-pulmonary tuberculosis without reliable documentation of adequate treatment, or

(2) History of latent tuberculosis infection, as defined by current Centers for Disease Control and Prevention guidelines, unless documentation of completion of appropriate treatment.

s. History of pulmonary or systemic embolus.

t. History of other disorders, including but not limited to cystic fibrosis or porphyria, that prevent satisfactorily performing duty, or require frequent or prolonged treatment.

u. History of nocturnal ventilation support, respiratory failure, pulmonary hypertension, or any requirement for chronic supplemental oxygen use.

5.11. HEART.

a. History of valvular repair or replacement.

b. History of the following valvular conditions as listed in the current American College of Cardiology and American Heart Association guidelines and evidenced by echocardiogram within the last 12 months:

(1) Moderate or severe pulmonic regurgitation.

(2) Moderate or severe tricuspid regurgitation.

(3) Moderate or severe mitral regurgitation.

(4) Mild, moderate, or severe aortic regurgitation.

(5) Mitral valve prolapse associated with:

(a) Mild or greater mitral regurgitation.

(b) Cardiopulmonary symptoms.

(c) Medical therapy specifically for this condition.

c. Bicuspid aortic valve with any degree of stenosis or regurgitation or aortic dilatation.

d. All valvular stenosis.

e. History of atherosclerotic coronary artery disease.

f. History of pacemaker or defibrillator implantation.

g. History of supraventricular tachycardia if:

(1) History of atrial fibrillation or flutter.

(2) Any atrioventricular nodal reentrant tachycardia or atrioventricular reentrant tachycardia (e.g., Wolff-Parkinson-White syndrome) unless successfully treated with ablative therapy, no recurrence of symptoms after 3 months, and documentation of normal electrocardiograph.

h. Premature atrial or ventricular contractions sufficiently symptomatic to require treatment, or result in physical or psychological impairment.

i. The following abnormal electrocardiograph patterns:

- (1) Long QT.
- (2) Brugada pattern.
- (3) Pre-excitation pattern, unless it is asymptomatic and associated with low-risk accessory pathway by appropriate diagnostic testing.
- j. History of ventricular arrhythmias including ventricular fibrillation, tachycardia, or multifocal premature ventricular contractions other than occasional asymptomatic unifocal premature ventricular contractions.
- k. History of conduction disorders, including but not limited to disorders of sinus arrest, asystole, Mobitz type II second-degree atrioventricular (AV) block, and third-degree AV block.
- l. Any conductive disorder, if symptomatic, including but not limited to:
 - (1) Sinus arrhythmia.
 - (2) First degree AV block.
 - (3) Left axis deviation of less than -45 degrees.
 - (4) Early repolarization.
 - (5) Incomplete right bundle branch block.
 - (6) Wandering atrial pacemaker or ectopic atrial rhythm.
 - (7) Sinus bradycardia.
 - (8) Mobitz type I second-degree AV block.
- m. History of conduction disturbances, including right bundle branch block, unless it is asymptomatic with a normal echocardiogram.
- n. All left bundle branch block, left anterior/posterior hemiblock.
- o. History of myocardial infarction, cardiomyopathy, cardiomegaly, hypertrophy (defined as septal wall thickness of 15 mm or greater), or congestive heart failure.
- p. History of myocarditis or pericarditis unless the individual is free of all cardiac symptoms, does not require medical therapy, and has normal echocardiography for at least 1 year after the event.
- q. History of recurrent myocarditis or pericarditis.
- r. Current persistent tachycardia (as evidenced by an average heart rate of 100 beats per minute or greater over a 24-hour period of continuous monitoring).

s. History of congenital anomalies of the heart and great vessels other than the following conditions. Excepted conditions require an otherwise normal current echocardiogram within the last 12 months.

- (1) Dextrocardia with situs inversus without any other anomalies.
- (2) Ligated or occluded patent ductus arteriosus.
- (3) Corrected atrial septal defect without residua.
- (4) Patent foramen ovale.
- (5) Corrected ventricular septal defect without residua.

t. History of recurrent syncope or presyncope, including black out, fainting, loss or alteration of level of consciousness (excludes single episode of vasovagal reaction with identified trigger such as venipuncture) unless it has not recurred during the preceding 2 years while off all medication for treatment of this condition.

u. Unexplained ongoing or recurring cardiopulmonary symptoms (to include but not limited to syncope, presyncope, chest pain, palpitations, and dyspnea on exertion).

v. History of Postural Orthostatic Tachycardia Syndrome.

w. History of rheumatic fever if associated with rheumatic heart disease or indication for ongoing prophylactic medication.

5.12. ABDOMINAL ORGANS AND GASTROINTESTINAL SYSTEM.

a. Esophageal Disease.

(1) History of Gastro-Esophageal Reflux Disease, with complications, including, but not limited to:

- (a) Stricture.
- (b) Dysphagia.
- (c) Recurrent symptoms or esophagitis despite maintenance medication.
- (d) Barrett's esophagus.
- (e) Extraesophageal complications such as: reactive airway disease; recurrent sinusitis or dental complications; unresponsive to acid suppression.

(2) History of surgical correction (e.g., fundoplication) for Gastro-Esophageal Reflux Disease within 6 months or with complications.

(3) History of dysmotility disorders to include but not limited to diffuse esophageal spasm, nutcracker esophagus, and achalasia.

(4) History of eosinophilic esophagitis.

(5) History of other esophageal strictures (e.g., from ingesting lye).

(6) History of esophageal disease not specified above; including but not limited to neoplasia, ulceration, varices, or fistula.

b. Stomach and Duodenum.

(1) Current dyspepsia, gastritis, or duodenitis despite medication (over the counter or prescription).

(2) Current gastric or duodenal ulcers, including but not limited to peptic ulcers and gastrojejunal ulcers:

(a) History of a treated ulcer within the last 3 months.

(b) Recurrent or complicated by bleeding, obstruction, or perforation within the previous 5 years.

(3) History of surgery for peptic ulceration or perforated ulcer.

(4) History of gastroparesis of greater than 6 week's duration, confirmed by scintigraphy or equivalent test.

(5) History of bariatric surgery of any type (e.g., lap-band or gastric bypass surgery for weight loss).

(6) History of gastric varices.

c. Small and Large Intestine.

(1) History of inflammatory bowel disease, including but not limited to Crohn's disease, ulcerative colitis, ulcerative proctitis, or indeterminate colitis.

(2) Current infectious colitis.

(3) History of intestinal malabsorption syndromes, including but not limited to celiac sprue, pancreatic insufficiency, post-surgical and idiopathic.

(4) Dietary intolerances that may interfere with military duty or consuming military rations. Lactase deficiency does not meet the standard only if of sufficient severity to require frequent intervention, or to interfere with military duties.

(5) History of gastrointestinal functional or motility disorders including but not limited to volvulus within the past 24 months, or any history of pseudo-obstruction or megacolon.

(6) Current chronic constipation, requiring prescription medication or medical interventions (e.g., pelvic floor physical therapy, biofeedback therapy).

(7) History of diarrhea of greater than 6 weeks duration, regardless of cause, persisting or symptomatic in the past 2 years.

(8) History of gastrointestinal bleeding, including positive occult blood, if the cause requires treatment and has not been corrected.

(9) History of irritable bowel syndrome of sufficient severity to require frequent intervention or prescription medication or that may reasonably be expected to interfere with military duty.

(10) History of symptomatic diverticular disease of the intestine.

(11) Personal or family history of familial adenomatous polyposis syndrome or hereditary non-polyposis colon cancer (Lynch syndrome).

d. Hepatic-Biliary Tract.

(1) History of chronic Hepatitis B unless successfully treated and the cure is documented. A documented cure for Hepatitis B is viral clearance manifested by Hepatitis B surface antigen negative/Hepatitis B surface antibody positive/Hepatitis B core antibody positive.

(2) History of chronic Hepatitis C, unless successfully treated and with documentation of a cure 12 weeks after completion of a full course of therapy.

(3) Other acute hepatitis in the preceding 6 months, or persistence of symptoms or abnormal serum aminotransferases after 6 months, or objective evidence of impairment of liver function.

(4) History of cirrhosis, hepatic abscess, or complications of chronic liver disease.

(5) History of symptomatic gallstones or gallbladder disease unless successfully treated.

(6) History of sphincter of Oddi dysfunction.

(7) History of choledochal cyst.

(8) History of primary biliary cirrhosis or primary sclerosing cholangitis.

(9) History of metabolic liver disease, excluding Gilbert's syndrome. This includes but is not limited to hemochromatosis, Wilson's disease, or alpha-1 anti-trypsin deficiency.

(10) History of alcoholic or non-alcoholic fatty liver disease if there is evidence of chronic liver disease, manifested as impairment of liver function or hepatic fibrosis.

(11) History of traumatic injury to the liver within the preceding 6 months.

e. Pancreas. History of:

- (1) Pancreatic insufficiency.
- (2) Acute pancreatitis, unless due to cholelithiasis successfully treated by cholecystectomy.
- (3) Chronic pancreatitis.
- (4) Pancreatic cyst or pseudocyst.
- (5) Pancreatic surgery.

f. Anorectal.

- (1) Current anal fissure or anal fistula.
- (2) History of rectal prolapse or stricture within the last 2 years.
- (3) History of fecal incontinence after the 13th birthday.
- (4) Current hemorrhoid (internal or external), if symptomatic or requiring medical intervention within the last 60 days.

g. Abdominal Wall.

- (1) Current abdominal wall hernia other than small (less than 2 centimeters (cm) in size), asymptomatic inguinal or umbilical hernias.
- (2) History of open or laparoscopic abdominal surgery during the preceding 3 months.
- (3) The presence of any ostomy (gastrointestinal or urinary).

5.13. FEMALE GENITAL SYSTEM.

- a. Abnormal uterine bleeding (period greater than 7 days, or more frequent than 21 days or greater than 35 days, or soaking more than one pad per hour for several hours) within the last 12 months.
- b. Primary amenorrhea.
- c. Current unexplained secondary amenorrhea.
- d. Dysmenorrhea resulting in recurrent absences or activity modification within the last 6 months.
- e. History of symptomatic endometriosis.

- f. History of major abnormalities or defects of the genitalia, such as hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis.
- g. Current ovarian cyst(s) greater than 5 cm.
- h. Polycystic ovarian syndrome unless no evidence of metabolic complications as specified by National Heart, Lung, and Blood Institute and American Heart Association Guidelines.
- i. Pelvic inflammatory disease within the preceding 6 months.
- j. History of chronic pelvic pain (6 months or longer) within the last 24 months.
- k. Pregnancy through 6 months after the completion of the pregnancy.
- l. Uterine enlargement due to any cause.
- m. History of genital infection or ulceration, including but not limited to herpes genitalis or condyloma acuminatum, if any of the following apply:
 - (1) Current lesions are present.
 - (2) Use of chronic suppressive therapy is needed.
 - (3) There have been three or more outbreaks per year.
 - (4) Any outbreak in the past 12 months that interfered with normal life activities.
 - (5) After the initial outbreak, treatment that included hospitalization or intravenous therapy.
- n. Abnormal gynecologic cytology within the preceding 3 years, including but not limited to unspecified abnormalities of the Papanicolaou smear of the cervix, excluding atypical squamous cells of undetermined significance without human papillomavirus and confirmed low-grade squamous intraepithelial lesion. For the purposes of this issuance, confirmation is by colposcopy or repeat cytology.
- o. History of abnormal cervical, vaginal, or vulvar cytology or pathology to include atypical squamous cells that cannot exclude high grade squamous intraepithelial lesions, low-grade squamous intraepithelial lesions, high-grade squamous intraepithelial lesions, cervical intraepithelial neoplasia grades 2 or 3, vaginal intraepithelial neoplasia grades 2 or 3, vulvar intraepithelial neoplasia grades 2 or 3 without demonstrated resolution in accordance with American Society for Colposcopy and Cervical Pathology guidelines.
- p. History of abnormal endometrial pathology within the last 3 years (e.g., simple or complex hyperplasia with or without atypia) without demonstrated resolution in accordance with American Society for Colposcopy and Cervical Pathology guidelines.

5.14. MALE GENITAL SYSTEM.

- a. Absence of both testicles, current undescended testicle, or congenital absence of one testicle not verified by surgical exploration.
- b. History of epispadias or hypospadias when accompanied by history of urinary tract infection, urethral stricture, urinary incontinence, symptomatic chordee, or voiding dysfunction or surgical intervention for these issues within the past 24 months.
- c. Current enlargement or mass of testicle, epididymis, or spermatic cord, in addition to those described elsewhere in Paragraph 5.14.
- d. Current hydrocele or spermatocele associated with pain or which precludes a complete exam of the scrotal contents.
- e. Current varicocele, unless it is:
 - (1) On the left side only.
 - (2) Asymptomatic and smaller than the testes.
 - (3) Reducible.
 - (4) Without associated testicular atrophy.
- f. Current or history of recurrent orchitis or epididymitis.
- g. History of penis amputation.
- h. Current penile curvature if associated with pain.
- i. History of genital infection or ulceration, including but not limited to herpes genitalis or condyloma acuminatum, if:
 - (1) Current lesions are present;
 - (2) Use of chronic suppressive therapy is needed;
 - (3) There are three or more outbreaks per year;
 - (4) Any outbreak in the past 12 months interfered with normal activities; or
 - (5) After the initial outbreak, treatment included hospitalization or intravenous therapy.
- j. History of urethral condyloma acuminatum.
- k. History of acute prostatitis within the last 24 months, history of chronic prostatitis, or history of chronic pelvic pain syndrome.

l. History of chronic or recurrent scrotal pain or unspecified symptoms associated with male genital organs.

m. History of major abnormalities or defects of the genitalia such as hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis.

5.15. URINARY SYSTEM.

a. History of interstitial cystitis or painful bladder syndrome.

b. Lower urinary tract infection (cystitis):

(1) For males, any cystitis not related to an indwelling catheter during a hospitalization.

(2) For females, current cystitis or recurrent cystitis of greater than two episodes per year, or requiring daily suppressive antibiotics, or non-responsive to antibiotics for 10 days.

c. Current urethritis.

d. History or treatment of the following voiding symptoms within the previous 12 months in the absence of a urinary tract infection:

(1) Urinary frequency or urgency more than every 2 hours on a daily basis.

(2) Nocturia more than two episodes during sleep period.

(3) Enuresis.

(4) Incontinence of urine, such as urge or stress.

(5) Urinary retention.

(6) Dysuria.

e. History of neurogenic bladder or other functional disorder of the bladder that requires urinary catheterization with intermittent or indwelling catheter for any period greater than 2 weeks.

f. History of bladder augmentation, urinary diversion, or urinary tract reconstruction.

g. History of abnormal urinary findings in the absence of urinary tract infection:

(1) Gross hematuria.

(2) Persistent microscopic hematuria (3 or more red blood cells per high-powered field on properly collected urinalyses, unless urology evaluation determines benign essential hematuria).

(3) Pyuria (6 or more white blood cells per high-powered field in 2 of 3 properly collected urinalyses).

- h. Current or recurrent urethral or ureteral stricture or fistula involving the urinary tract.
- i. Absence of one kidney, congenital or acquired.
- j. Asymmetry in size or function of kidneys.
- k. History of renal transplant.
- l. Chronic or recurrent pyelonephritis or any other unspecified infections of the kidney.
- m. History of polycystic kidney.
- n. History of horseshoe kidney.
- o. Hydronephrosis on most recent imaging not related to pregnancy.
- p. History of acute nephritis or chronic kidney disease of any type as evidenced by 3 months or longer of:

(1) Estimated glomerular filtration rate of less than 60cc per minute per 1.73 square meter of body surface area or abnormal renal imaging;

(2) Casturia; or

(3) Abnormal renal biopsy.

- q. History of acute kidney injury requiring dialysis.
- r. History of proteinuria with a protein-to-creatinine ratio greater than 0.2 in a random urine sample, more than 48 hours after strenuous activity, excluding benign orthostatic proteinuria.
- s. Urolithiasis if any of the following apply:
 - (1) Current stone of 3 mm or greater.
 - (2) Current multiple stones of any size.
 - (3) History of symptomatic urolithiasis within the preceding 12 months.
 - (4) History of nephrocalcinosis, bilateral renal calculi, or recurrent urolithiasis at any time.
 - (5) History of urolithiasis requiring a procedure.

5.16. SPINE AND SACROILIAC JOINT CONDITIONS.

- a. Ankylosing spondylitis or other inflammatory spondylopathies.
- b. History of any condition, in the last 2 years, or any recurrence, including but not limited to the spine or sacroiliac joints, with or without objective signs, if:
 - (1) It prevents the individual from successfully following a physically active avocation in civilian life, or is associated with local or radicular pain, muscular spasms, postural deformities, or limitation in motion;
 - (2) It requires external support;
 - (3) It requires limitation of physical activity or frequent treatment; or
 - (4) It requires the applicant to use medication for more than 6 weeks.
 - (5) It causes one or more episodes of back pain lasting greater than 6 weeks requiring treatment other than self-care.
- c. Current deviation or curvature of the spine from normal alignment, structure, or function if:
 - (1) It prevents the individual from following a physically active avocation in civilian life;
 - (2) It can reasonably be expected to interfere with the proper wearing of military uniform or equipment;
 - (3) It is symptomatic; or
 - (4) There is lumbar or thoracic scoliosis greater than 30 degrees, or thoracic kyphosis greater than 50 degrees when measured by the Cobb Method.
- d. History of congenital fusion involving more than 2 vertebral bodies or any surgical fusion of spinal vertebrae.
- e. Current dislocation of the vertebra.
- f. Vertebral fractures including but not limited to:
 - (1) Any cervical spine fracture.
 - (2) History of fracture of lumbar or thoracic vertebral body that exceeds 25 percent of the height of a single vertebra or that has occurred within the last 12 months or is symptomatic.
 - (3) A history of fractures of the transverse or spinous process if currently symptomatic.
- g. History of juvenile epiphysitis with any degree of residual change indicated by X-ray or Scheuermann's kyphosis.

- h. History of uncorrected herniated nucleus pulposus associated with any treatment, symptoms, or activity limitations.
- i. History of surgery to correct herniated nucleus pulposus other than a single-level lumbar or thoracic discectomy that is currently asymptomatic with full resumption of unrestricted activity for at least 12 months.
- j. Spinal dysraphisms other than spina bifida occulta.
- k. History of spondylolysis or spondylolisthesis, congenital or acquired.

5.17. UPPER EXTREMITY CONDITIONS.

a. **Limitation of Motion.** Current active joint ranges of motion less than:

(1) Shoulder.

- (a) Forward elevation to 130 degrees.
- (b) 130 degrees abduction.
- (c) 60 degrees external and internal rotation at 90 degrees abduction.
- (d) Cross body reaching 115 degrees adduction.

(2) Elbow.

- (a) Flexion to 130 degrees.
- (b) Extension to 30 degrees.

(3) **Wrist.** A total range of 60 degrees (extension plus flexion), or radial and ulnar deviation combined are 30 degrees.

(4) Hand.

- (a) Pronation to 45 degrees.
- (b) Supination to 45 degrees.

(5) **Fingers and Thumb.** Inability to clench fist, pick up a pin, grasp an object, or touch tips of at least three fingers with thumb.

b. **Hand and Fingers.**

- (1) Absence of the distal phalanx of either thumb.
- (2) Absence of any portion of the index finger.

(3) Absence of 2 or more distal and middle phalanges of the middle, ring, or small finger of either hand.

(4) Absence of 2 or more distal phalanges of any finger on either hand.

(5) Absence of hand or any portion thereof, except for specific absence of fingers as noted in Paragraphs 5.17.b.(1)-(4).

(6) Current polydactyly or syndactyly.

(7) Intrinsic paralysis or weakness of upper limbs, including but not limited to nerve paralysis, carpal tunnel, and cubital syndromes, lesion of ulnar, median, or radial nerve, sufficient to produce physical findings in the hand such as muscle atrophy and weakness.

c. Residual Weakness and Pain. Current disease, injury, or congenital condition with residual weakness, pain, sensory disturbance, or other symptoms that may reasonably be expected to prevent satisfactory performance of duty, including but not limited to chronic joint pain associated with the shoulder, the upper arm, the forearm, and the hand; or chronic joint pain as a late effect of fracture of the upper extremities, as a late effect of sprains without mention of injury, and as late effects of tendon injury.

5.18. LOWER EXTREMITY CONDITIONS.

a. General.

(1) Current deformities, disease, or chronic joint pain of pelvic region, thigh, lower leg, knee, ankle or foot that prevent the individual from following a physically active avocation in civilian life, or that may reasonably be expected to interfere with walking, running, weight bearing, or with satisfactorily completing training or military duty.

(2) Current discrepancy in leg-length that causes a limp.

b. Limitation of Motion. Current active joint ranges of motion less than:

(1) Hip.

- (a) Flexion to 90 degrees.
- (b) No demonstrable flexion contracture.
- (c) Extension to 10 degrees (beyond 0 degrees).
- (d) Abduction to 45 degrees.
- (e) Rotation of 60 degrees (internal and external combined).

(2) Knee.

- (a) Full extension to 0 degrees.
- (b) Flexion to 110 degrees.

(3) Ankle.

- (a) Dorsiflexion to 10 degrees.
- (b) Planter flexion to 30 degrees.
- (c) Subtalar eversion and inversion totaling 5 degrees.

c. Foot and Ankle.

(1) Current absence of a foot or any portion thereof, other than absence of a single lesser toe that is asymptomatic and does not impair function of the foot.

(2) Deformity of the toes that may reasonably be expected to prevent properly wearing military footwear or impair walking, marching, running, maintaining balance, or jumping.

(3) Symptomatic deformity of the toes (acquired or congenital), including but not limited to conditions such as hallux valgus, hallux varus, hallux rigidus, hammer toe(s), claw toe(s), or overriding toe(s).

(4) Clubfoot or pes cavus that may reasonably be expected to properly wearing military footwear or causes symptoms when walking, marching, running, or jumping.

(5) Rigid or symptomatic pes planus (acquired or congenital).

(6) Current ingrown toenails, if infected or symptomatic.

(7) Current or recurrent plantar fasciitis.

(8) Symptomatic neuroma.

d. Leg, Knee, Thigh, and Hip.

(1) Current loose or foreign body in the knee joint.

(2) History of uncorrected anterior or posterior cruciate ligament injury.

(3) History of surgical reconstruction of knee ligaments within the last 12 months, or which is symptomatic or unstable or shows signs of thigh or calf atrophy.

(4) Recurrent anterior cruciate ligament reconstruction.

(5) Current medial or lateral meniscal injury with symptoms or limitation of activity.

(6) Surgical meniscal repair, within the last 6 months or with residual symptoms or limitation of activity.

(7) Surgical partial meniscectomy within the last 3 months or with residual symptoms or limitation of activity.

(8) Meniscal transplant.

(9) Symptomatic medial and lateral collateral ligament instability.

(10) History of developmental dysplasia (congenital dislocation) of the hip, osteochondritis of the hip (Legg-Calve-Perthes Disease), or slipped capital femoral epiphysis of the hip.

(11) History of hip dislocation.

(12) Symptomatic osteochondritis of the tibial tuberosity (Osgood-Schlatter Disease) within the past 12 months.

(13) Stress fractures, either recurrent or a single episode occurring during the past 12 months.

5.19. MISCELLANEOUS CONDITIONS OF THE EXTREMITIES.

a. History of chondromalacia, including but not limited to chronic patello-femoral pain syndrome and retro-patellar pain syndrome, osteoarthritis, or traumatic arthritis.

b. Dislocation of patella if two or more episodes, or any occurring within the last 12 months.

c. History of any dislocation, subluxation, or instability of the hip, knee, ankle, subtalar joint, foot, shoulder, wrist, elbow except for “nursemaid’s elbow” or dislocated finger.

d. Acromioclavicular separation within the last 12 months or if symptomatic.

e. History of osteoarthritis or traumatic arthritis of isolated joints that has interfered with a physically active lifestyle, or that may reasonably be expected to prevent satisfactorily performing military duty.

f. Fractures, if:

(1) Current malunion or non-union of any fracture (except asymptomatic ulnar styloid process fracture).

(2) Current retained hardware (including plates, pins, rods, wires, or screws) used for fixation that is symptomatic or may reasonably be expected to interfere with properly wearing military equipment or uniforms. Retained hardware is not disqualifying if fractures are healed, ligaments are stable, and there is no pain.

g. Current orthopedic implants or devices to correct congenital or post-traumatic orthopedic abnormalities except for bone anchor and hardware as allowed in accordance with Paragraph 5.19.f.(2).

h. History of contusion of bone or joint if:

(1) The injury is of more than a minor nature with or without fracture, nerve injury, open wound, crush, or dislocation which occurred within the last 6 months;

(2) Recovery has not been sufficiently completed or rehabilitation has not been sufficiently resolved;

(3) The injury may reasonably be expected to interfere with or prevent performance of military duty; or

(4) The contusion requires frequent or prolonged treatment.

i. History of joint replacement or resurfacing of any site.

j. History of hip arthroscopy or femoral acetabular impingement.

k. History of neuromuscular paralysis, weakness, contracture, or atrophy not completely resolved and of sufficient degree to reasonably be expected to interfere with or prevent satisfactory performing military duty.

l. Current symptomatic osteochondroma or history of two or more osteochondral exostoses.

m. History of atraumatic fractures or bone mineral density below the expected range for age with risk factors for low bone density.

n. Osteopenia, osteoporosis, or history of fragility fracture.

o. History of osteomyelitis within the past 12 months, or history of recurrent osteomyelitis.

p. History of osteochondral defect, formerly known as osteochondritis dissecans.

q. History of cartilage surgery, including but not limited to cartilage debridement or chondroplasty for Grade III or greater chondromalacia, microfracture, or cartilage transplant procedure.

r. History of any post-traumatic or exercise-induced compartment syndrome.

s. History of osteonecrosis of any bone.

t. History of recurrent tendon disorder, including but not limited to tendonitis, tendonopathy, tenosynovitis.

5.20. VASCULAR SYSTEM.

- a. History of abnormalities of the arteries, including but not limited to aneurysms, arteriovenous malformations, atherosclerosis, or arteritis (e.g., Kawasaki's disease).
- b. Current or medically-managed hypertension. Hypertension is defined as systolic pressure greater than 140 millimeters of mercury (mmHg) or diastolic pressure greater than 90 mmHg confirmed by manual blood pressure cuff averaged over two or more properly measured, seated, blood pressure readings on separate days within a 5-day period (isolated, single-day blood pressure elevation is not disqualifying unless confirmed on 2 separate days within a 5-day period).
- c. History of peripheral vascular disease, including but not limited to diseases such as Raynaud's Disease and vasculitides.
- d. History of venous diseases, including but not limited to recurrent thrombophlebitis, thrombophlebitis during the preceding year, or evidence of venous incompetence, such as edema, skin ulceration, or symptomatic varicose veins that would reasonably be expected to limit duty or properly wearing military uniform or equipment.
- e. History of deep venous thrombosis.
- f. History of operation or endovascular procedure on the arterial or venous systems, including but not limited to vena cava filter, angioplasty, venoplasty, thrombolysis, or stent placement.
- g. History of Marfan's Syndrome, Loey-Dietz, or Ehlers Danlos IV.

5.21. SKIN AND SOFT TISSUE CONDITIONS.

- a. Applicants under treatment with systemic retinoids, including, but not limited to isotretinoin (e.g. Accutane®), do not meet the standard until 4 weeks after completing therapy.
- b. Severe nodulocystic acne, on or off antibiotics.
- c. History of dissecting scalp cellulitis, acne inversa, or hidradenitis suppurativa.
- d. History of atopic dermatitis or eczema after the 12th birthday. History of residual or recurrent lesions in characteristic areas (face, neck, antecubital or popliteal fossae, occasionally wrists and hands).
- e. History of recurrent or chronic non-specific dermatitis within the past 2 years to include contact (irritant or allergic) or dyshidrotic dermatitis requiring more than treatment with topical corticosteroid.
- f. Cysts, if:

(1) The current cyst (other than pilonidal cyst) is of such a size or location as to reasonably be expected to interfere with properly wearing military equipment.

(2) The current pilonidal cyst is associated with a tumor mass or discharging sinus, or is a surgically resected pilonidal cyst that is symptomatic, unhealed, or less than 6 months post-operative. A pilonidal cyst that has been simply incised and drained does not meet the military accession medical entrance standard.

g. History of bullous dermatoses, including but not limited to dermatitis herpetiformis, pemphigus, and epidermolysis bullosa.

h. Current or chronic lymphedema.

i. History of furunculosis or carbuncle if extensive, recurrent, or chronic.

j. History of severe hyperhidrosis of hands or feet unless controlled by topical medications.

k. History of congenital or acquired anomalies of the skin, such as nevi or vascular tumors that may interfere with military duties or cause constant irritation.

l. History of severe keloid formation.

m. History of pseudofolliculitis barbae or keloidalis nuchae, severe enough to prevent daily shaving or would reasonably be expected to interfere with wearing military equipment.

n. Current lichen planus (either cutaneous or oral).

o. History of oculocutaneous albinism, Neurofibromatosis I (Von Recklinghausen's Disease), Neurofibromatosis II, and tuberous sclerosis.

p. History of photosensitivity, including but not limited to any primary sun-sensitive condition, such as polymorphous light eruption or solar urticaria, or any dermatosis aggravated by sunlight, such as lupus erythematosus, porphyria, and xeroderma pigmentosa.

q. History of psoriasis excluding non-recurrent childhood guttate psoriasis.

r. History of chronic radiation dermatitis (radiodermatitis).

s. History of scleroderma.

t. History of chronic urticaria lasting longer than 6 weeks even, if it is asymptomatic when controlled by daily maintenance therapy.

u. Current symptomatic plantar wart(s).

v. Current scars that can reasonably be expected to interfere with properly wearing military clothing or equipment, or to interfere with satisfactorily performing military duty due to pain or decreased range of motion, strength, or agility.

w. Prior burn injury involving 18 percent or more body surface area (including graft sites), or resulting in functional impairment to such a degree, due to scarring, as to interfere with satisfactorily performing military duty due to pain or decreased range of motion, strength, temperature regulation, or agility.

x. Current localized fungal infections, if they can be reasonably expected to interfere with properly wearing military equipment or performing military duties. For systemic fungal infections, refer to Paragraph 5.23.s.

y. History of any medical condition severe enough to warrant use of systemic steroids for greater than 2 months, or any use of other systemic immunosuppressant medications.

z. Conditions with malignant potential in the skin including but not limited to basal cell nevus syndrome, oculocutaneous albinism, xeroderma pigmentosum, Muir-Torre Syndrome, Dyskeratosis Congenita, Gardner Syndrome, Peutz-Jeghers Syndrome, Cowden Syndrome, Multiple Endocrine Neoplasia, Familial Atypical Multiple Mole Melanoma Syndrome, and Birt-Hogg-Dube Syndrome.

aa. History of cutaneous malignancy before the 25th birthday including but not limited to basal cell carcinoma and squamous cell carcinoma. History of the following skin cancers at any age: malignant melanoma, Merkel cell carcinoma, sebaceous carcinoma, Paget's disease, extramammary Paget's disease, microcystic adnexal carcinoma, other adnexal neoplasms, and cutaneous lymphoma including mycosis fungoides.

ab. History of lupus erythematosus.

ac. History of congenital disorders of cornification including but not limited to ichthyosis vulgaris, x-linked ichthyosis, lamellar ichthyosis, Darier's Disease, Epidermal Nevus Syndrome, and any palmo-plantar keratoderma.

ad. History of congenital disorder of the hair and nails including but not limited to pachyonychia congenita or ectodermal dysplasia.

ae. History of dermatomyositis.

5.22. BLOOD AND BLOOD FORMING SYSTEM.

a. Current hereditary or acquired anemia.

b. History of coagulation defects.

c. Any history of chronic, or recurrent thrombocytopenia.

d. History of deep venous thrombosis or pulmonary embolism.

e. History of chronic or recurrent agranulocytosis or leukopenia.

f. History of chronic polycythemia, chronic leukocytosis or chronic thrombocytosis.

g. Disorders of the spleen including:

- (1) Current splenomegaly.
- (2) History of splenectomy.

5.23. SYSTEMIC CONDITIONS.

a. History of disorders involving the immune mechanism, including immunodeficiencies.

b. Presence of human immunodeficiency virus or laboratory evidence of infection or false-positive screening test(s) with ambiguous results by supplemental confirmation test(s).

c. Tuberculosis.

(1) History of active pulmonary or extra pulmonary tuberculosis in the previous 2 years or history of active pulmonary or extra-pulmonary tuberculosis without reliable documentation of adequate treatment.

(2) History of latent tuberculosis infection, as defined by current Centers for Disease Control guidelines, unless documentation of completion of appropriate treatment.

d. History of syphilis without appropriate documentation of treatment and cure.

e. History of anaphylaxis. Anaphylaxis is highly likely when any one of the following three criteria are fulfilled:

(1) Acute onset of an illness (minutes to several hours) with involvement of the skin, mucosal tissue, or both (e.g., generalized hives, pruritus or flushing, swollen lips-tongue-uvula) and at least one of the following:

(a) Respiratory compromise (e.g., dyspnea, wheeze-bronchospasm, stridor, reduced peak expiratory flow, hypoxemia); or

(b) Reduced blood pressure (BP) or associated symptoms of end-organ dysfunction (e.g., hypotonia [collapse], syncope, incontinence).

(2) Two or more of the following that occur rapidly after exposure to a likely allergen for that patient (minutes to several hours):

(a) Involvement of the skin-mucosal tissue (e.g., generalized hives, itch-flush, swollen lips-tongue-uvula).

(b) Respiratory compromise (e.g., dyspnea, wheeze-bronchospasm, stridor, reduced peak expiratory flow, hypoxemia).

(c) Reduced BP or associated symptoms (e.g., hypotonia [collapse], syncope, incontinence).

(d) Persistent gastrointestinal symptoms (e.g., crampy, abdominal pain, vomiting).

(3) Reduced blood pressure after exposure to known allergen for that patient (minutes to several hours):

(a) **Infants and Children:** Low systolic BP (less than 70 mmHg from 1 month to 1 year, less than $(70 \text{ mmHg} + [2 \times \text{age}])$ from 1 to 10 years, and less than 90 mm Hg from 11 to 17 years) or greater than 30 percent decrease in systolic blood pressure.

(b) **Adults:** Systolic BP of less than 90 mmHg or greater than 30 percent decrease from that person's baseline.

f. History of systemic allergic reaction to biting or stinging insects, unless it was limited to a large local reaction, a cutaneous only reaction (including hives) occurring under the age of 16, or unless there is documentation of 3-5 years of maintenance venom immunotherapy.

g. History of acute allergic reaction to fish, shellfish, peanuts, or tree nuts including the presence of a food-specific immunoglobulin E antibody if accompanied by a correlating clinical history.

h. History of cold urticaria.

i. History of malignant hyperthermia.

j. History of industrial solvent or other chemical intoxication with sequelae.

k. History of motion sickness resulting in recurrent incapacitating symptoms.

l. History of rheumatic fever if associated with rheumatic heart disease or indication for ongoing prophylactic medication.

m. History of muscular dystrophies or myopathies.

n. History of amyloidosis.

o. History of eosinophilic granuloma and all other forms of histiocytosis except for healed eosinophilic granuloma, when occurring as a single localized bony lesion and not associated with soft tissue or other involvement.

p. History of polymyositis or dermatomyositis complex with or without skin involvement.

q. History of rhabdomyolysis.

r. History of sarcoidosis.

s. Current active systemic fungus infections or ongoing treatment for systemic fungal infection. History of systemic fungal infection unless resolved or treated without sequelae.

5.24. ENDOCRINE AND METABOLIC CONDITIONS.

- a. Current adrenal dysfunction or any history of adrenal dysfunction requiring treatment or hormone replacement.
- b. Diabetic disorders, including:
 - (1) History of diabetes mellitus.
 - (2) History of unresolved pre-diabetes mellitus (as defined by the American Diabetes Association) within the last 2 years.
 - (3) History of gestational diabetes mellitus.
 - (4) Current persistent glycosuria, when associated with impaired glucose metabolism or renal tubular defects.
- c. History of pituitary dysfunction except for resolved growth hormone deficiency.
- d. History of pituitary tumor unless proven non-functional, less than 1 cm and stable in size for the last 12 months.
- e. History of diabetes insipidus.
- f. History of primary hyperparathyroidism unless surgically corrected.
- g. History of hypoparathyroidism.
- h. Current goiter.
- i. Thyroid nodule unless a solitary thyroid nodule less than 5 mm or less than 3 cm with benign histology or cytology, and that does not require ongoing surveillance.
- j. History of complex thyroid cyst or simple thyroid cyst greater than 2 cm.
- k. Current hypothyroidism unless asymptomatic and demonstrated euthyroid by normal thyroid stimulating hormone testing within the preceding 12 months.
- l. History of hyperthyroidism unless treated successfully with surgery or radioactive iodine.
- m. Current nutritional deficiency diseases, including but not limited to beriberi, pellagra, and scurvy.
- n. Dyslipidemia with low-density lipoprotein greater than 200 milligrams per deciliter (mg/dL) or triglycerides greater than 400 mg/dL. Dyslipidemia requiring more than one medication or low-density lipoprotein greater than 190 mg/dL on therapy. All those on medical management must have demonstrated no medication side effects (e.g., myositis, myalgias, or transaminitis) for a period of 6 months.

o. Metabolic syndrome, as defined in accordance with the 2005 National Heart, Lung, and Blood Institute and American Heart Association Scientific Statement as any three of the following:

(1) Medically-controlled hypertension or elevated blood pressure of greater than 130 mmHg systolic or greater than 85 mmHg diastolic.

(2) Waist circumference greater than 35 inches for women and greater than 40 inches for men.

(3) Medically controlled dyslipidemia or triglycerides greater than 150 mg/dL.

(4) Medically controlled dyslipidemia or high-density lipoprotein less than 40 mg/dL in men or less than 50 mg/dL in women.

(5) Fasting glucose greater than 100 mg/dL.

p. Metabolic bone disease including but not limited to:

(1) Osteopenia, osteoporosis, or low bone mass with history of fragility fracture.

(2) Paget's disease.

(3) Osteomalacia.

(4) Osteogenesis imperfecta.

q. History of hypogonadism that is congenital, treated with hormonal supplementation, or of unexplained etiology.

r. History of islet-cell tumors, nesideoblastosis, or hypoglycemia.

s. History of gout.

5.25. RHEUMATOLOGIC CONDITIONS.

a. History of mixed connective tissue disease variant or systemic lupus erythematosus.

b. History of progressive systemic sclerosis, including calcinosis, Raynaud's phenomenon, esophageal dysmotility, scleroderma, or telangiectasia syndrome.

c. History of reactive arthritis (formerly known as Reiter's disease).

d. History of rheumatoid arthritis.

e. History of Sjögren's syndrome.

f. History of vasculitis, including but not limited to polyarteritis nodosa, arteritis, Behçet's, Takayasu's arteritis, and Anti Neutrophil Cytoplasmic Antibody associated vasculitis.

g. History of Henoch-Schonlein Purpura occurring after the 19th birthday or within the last 2 years.

h. History of non-inflammatory myopathy including but not limited to metabolic myopathy such as glycogen storage disease, lipid storage disease, and mitochondrial myopathy.

i. History of fibromyalgia or myofascial pain syndrome.

j. History of chronic wide-spread pain requiring prescription medication for greater than 6 weeks within the last 2 years.

k. History of chronic fatigue syndrome, systemic exertion intolerance disease, or chronic multisystem illness.

l. History of spondyloarthritis including but not limited to ankylosing spondyloarthritis, psoriatic arthritis, reactive arthritis, or spondyloarthritis associated with inflammatory bowel disease.

m. History of joint hypermobility syndrome (formerly Ehler's Danlos syndrome, Type III).

n. Any history of connective tissue disease including but not limited to Ehlers-Danlos syndrome, Marfan syndrome, Pseudoxanthoma Elasticum, and osteogenesis imperfecta.

o. History of scleroderma.

p. History of IgG-4 related disease.

q. History of polymyositis or dermatomyositis complex, with or without skin involvement.

5.26. NEUROLOGIC CONDITIONS.

a. History of cerebrovascular conditions, including but not limited to subarachnoid or intracerebral hemorrhage, vascular stenosis, aneurysm, stroke, transient ischemic attack or arteriovenous malformation.

b. History of congenital or acquired anomalies of the central nervous system or meningocele.

c. History of disorders of meninges, including but not limited to cysts except for asymptomatic incidental arachnoid cysts demonstrated to be stable by neurological imaging over a 6-month or longer time period.

d. History of neurodegenerative disorders, including but not limited to those disorders affecting the cerebrum, basal ganglia, cerebellum, spinal cord, peripheral nerves, or muscles.

e. History of headaches, including but not limited to, migraines and tension headaches that:

(1) Are severe enough to disrupt normal activities (e.g., loss of time from school or work) more than twice per year in the past 2 years;

(2) Require prescription medications more than twice per year within the last 2 years; or

(3) Are associated with neurological deficit other than scotoma.

f. Cluster headaches.

g. History of moderate or severe brain injury if associated with:

(1) Post-traumatic seizure(s) occurring more than 30 minutes after injury;

(2) Persistent motor, sensory, vestibular, visual, or any other focal neurological deficit;

(3) Persistent impairment of cognitive function;

(4) Persistent alteration of personality or behavior;

(5) Cerebral traumatic findings, including but not limited to epidural, subdural, subarachnoid, or intracerebral hematoma on neurological imaging;

(6) Associated abscess or meningitis;

(7) Cerebrospinal fluid rhinorrhea or otorrhea persisting more than 7 days;

(8) Penetrating head trauma to include radiographic evidence of retained foreign body or bony fragments secondary to the trauma, or operative procedure in the brain; or

(9) Any skull fracture.

h. History of mild brain injury if:

(1) The injury occurred within the past month;

(2) Neurological evaluation shows residual symptoms, dysfunction or activity limitations, or complications;

(3) Two episodes of mild brain injury occurred with or without loss of consciousness within the last 12 months; or

(4) Three or more episodes of mild brain injury.

i. History of persistent post-concussive symptoms that interfere with normal activities or have duration of more than 1 month. Symptoms include but are not limited to headache, vomiting, disorientation, spatial disequilibrium, impaired memory, poor mental concentration, shortened attention span, dizziness, or altered sleep patterns.

j. History of infectious processes of the central nervous system, including but not limited to encephalitis, neurosyphilis, or brain abscess.

k. History of meningitis within the last 12 months or with persistent neurologic defects.

l. History of paralysis, weakness, lack of coordination, chronic pain syndrome (including but not limited to complex regional pain syndrome or neuralgias), or sensory disturbance or other specified paralytic syndromes, including but not limited to Guillain-Barre Syndrome.

m. Any atraumatic seizure occurring after the 6th birthday, unless the applicant has been free of seizures for a period of 5 years while taking no medication for seizure control, and has a normal sleep-deprived electroencephalogram and normal neurology evaluation while taking no medications for seizure control.

n. Chronic nervous system disorders, including but not limited to myasthenia gravis, multiple sclerosis, tremor, and tic disorders (e.g., Tourette's Syndrome).

o. History of central nervous system shunts of all kinds including endoscopic third ventriculocisternostomy.

p. Syncope or atraumatic loss of consciousness. History of recurrent syncope or presyncope, including blackout, fainting, loss or alteration of level of consciousness (excludes single episode of vasovagal reaction with identified trigger such as venipuncture), unless there has been no recurrence during the preceding 2 years while off all medication for treatment of this condition.

q. History of muscular dystrophies or myopathies.

5.27. SLEEP DISORDERS.

a. Chronic insomnia as defined by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, or the use of medications or other substances to promote sleep 15 or more times over the past year.

b. Current diagnosis or treatment of sleep-related breathing disorders, including but not limited to sleep apnea.

c. History of narcolepsy, cataplexy, or other hypersomnia disorders.

d. Circadian rhythm disorders requiring treatment or special accommodation.

e. History of parasomnia, including but not limited to sleepwalking, or night terrors, after the 13th birthday.

f. Current diagnosis or treatment of sleep-related movement disorders to include but not limited to restless leg syndrome (i.e., Willis-Ekbom Disease) for which prescription medication is recommended.

5.28. LEARNING, PSYCHIATRIC, AND BEHAVIORAL DISORDERS.

a. Attention Deficit Hyperactivity Disorder, if with:

(1) A recommended or prescribed Individualized Education Program, 504 Plan, or work accommodations after the 14th birthday;

(2) A history of comorbid mental disorders;

(3) Prescribed medication in the previous 24 months; or

(4) Documentation of adverse academic, occupational, or work performance.

b. History of learning disorders after the 14th birthday, including but not limited to dyslexia, if any of the following apply:

(1) With a recommended or prescribed Individualized Education Program, 504 Plan, or work accommodations after the 14th birthday;

(2) With a history of comorbid mental disorders; or

(3) With documentation of adverse academic, occupational, or work performance.

c. Autism spectrum disorders.

d. History of disorders with psychotic features such as schizophrenic disorders, delusional disorders, or other unspecified psychoses or mood disorders with psychotic features.

e. History of bipolar and related disorders (formerly identified as mood disorders not otherwise specified) including but not limited to cyclothymic disorders and affective psychoses.

f. Depressive disorder if:

(1) Outpatient care including counseling required for longer than 12 cumulative months;

(2) Symptoms or treatment within the last 36 months;

(3) The applicant required any inpatient treatment in a hospital or residential facility;

(4) Any recurrence; or

(5) Any suicidality (in accordance with Paragraph 5.28.m.).

g. History of a single adjustment disorder if treated or symptomatic within the previous 6 months, or any history of chronic (lasting longer than 6 months) or recurrent episodes of adjustment disorders.

h. History of disruptive, impulse control and conduct disorder to include but not limited to oppositional defiant and other behavior disorders.

i. Any personality disorder including unspecified personality disorder or maladaptive personality traits demonstrated by:

(1) Repeated inability to maintain reasonable adjustment in school, with employers or fellow workers, other social groups, or psychological testing revealing that the degree of immaturity, instability, of personality inadequacy, impulsiveness, or dependency may reasonably be expected to interfere with their adjustment to the Military Services;

(2) Recurrent encounters with law enforcement agencies (excluding minor traffic violations) or antisocial behaviors are tangible evidence of impaired capacity to adapt to military service; or

(3) Any behavioral health issues that have led to incarceration for any period.

j. Encopresis after 13th birthday.

k. History of any feeding or eating disorder.

l. Any current communication disorder that significantly interferes with producing speech or repeating commands.

m. Suicidality, including suicidal ideation with a plan, suicidal gesture(s), or attempt(s).

n. History of self-mutilation.

o. History of obsessive-compulsive disorder.

p. History of post-traumatic stress disorder.

q. History of anxiety disorders if:

(1) Outpatient care including counseling was required for longer than 12 cumulative months.

(2) Symptomatic or treatment within the last 36 months.

(3) The applicant required any inpatient treatment in a hospital or residential facility.

(4) Any recurrence.

(5) Any suicidality (in accordance with Paragraph 5.28.m.).

r. History of dissociative disorders.

s. History of somatic symptoms and related disorders.

t. History of paraphilic disorders.

- u. Any history of substance-related and addictive disorders (except using caffeine or tobacco).
- v. History of other mental disorders that may reasonably be expected to interfere with or prevent satisfactory performance of military duty.
- w. Prior psychiatric hospitalization for any cause.

5.29. TUMORS AND MALIGNANCIES.

- a. Current benign tumors or conditions that would reasonably be expected to interfere with function, to prevent properly wearing the uniform or protective equipment, or would require frequent specialized attention.
- b. History of malignancy.
- c. History of cutaneous malignancy, meeting criteria in Paragraph 5.21.aa.

5.30. MISCELLANEOUS CONDITIONS.

- a. Any current acute pathological condition, including but not limited to communicable, infectious, parasitic, or tropical diseases, until recovery has occurred without relapse or sequelae.
- b. History of porphyria.
- c. History of cold-related disorders, including but not limited to frostbite, chilblain, and immersion foot.
- d. History of angioedema, including hereditary angioedema.
- e. History of receiving organ or tissue transplantation other than dental.
- f. History of pulmonary or systemic embolism.
- g. History of untreated acute or chronic metallic poisoning (including but not limited to lead, arsenic, silver, beryllium, or manganese), or current complications or residual symptoms of such poisoning.
- h. History of heatstroke, or heat injury with evidence of organ or muscle damage, or recurrent heat exhaustion.
- i. History of any condition that may reasonably be expected to interfere with the successful performance of military duty or training or limit geographical assignment.
- j. History of any medical condition severe enough to warrant use of systemic steroids for greater than 2 months, or any use of other systemic immunosuppressant medications.

GLOSSARY

G.1. ACRONYMS.

ASD(HA)	Assistant Secretary of Defense for Health Affairs
AV	atrioventricular
BP	blood pressure
cm	centimeters
dB	decibel
MEDPERS	Medical and Personnel Executive Steering Committee
mg/dL	milligrams per deciliter
mm	millimeters
mmHg	millimeters of mercury
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USMEPCOM	United States Military Entrance Processing Command

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

504 Plan. The 504 Plan is a plan developed to ensure that a child who has a disability identified under Section 504 of the Rehabilitation Act of 1973 as amended and codified at Section 701 of Title 29, U.S.C. and is attending an elementary or secondary educational institution, receives accommodations that will ensure their academic success and access to the learning environment.

accession. An enlistment that increases the incremental strength of the Regular or Reserve Components of the Military Services. Personnel enlisted under the Delayed Entry Program are not involved in this category.

existed prior to Service. A term used to signify there is clear and unmistakable evidence that the disease or injury, or the underlying condition producing the disease or injury, existed prior to the individual's entry into military service.

induction. Transition from civilian to military status for a period of definite military obligation under Chapter 49 of Title 50, U.S.C. also known as the "Military Selective Service Act."

medical waiver. A formal request to consider the suitability for service of an applicant who, because of current or past medical conditions, does not meet medical standards. Upon the completion of a thorough review, the applicant may be considered for a waiver. The applicant must have displayed sufficient mitigating circumstances/provided medical documentation that

clearly justify waiver consideration. The Secretaries of the Military Departments may delegate the final approval authority for all waivers.

mild head injury. Unconsciousness of less than 30 minutes post-injury, or amnesia or disorientation of person, place, or time, alone or in combination, of less than 24 hours post-injury.

MEDPERS. Includes leaders from the medical and personnel communities to develop, discuss, and make decisions about common medical issues that require resolution. The primary focus is the nexus of medical and personnel systems that impact the total force to include those seeking entry into the armed forces and those who must depart prior to completion of an enlistment or career.

Military Department. Defined in the DoD Dictionary of Military and Associated Terms.

moderate brain injury. Unconsciousness of more than 30 minutes but less than 24 hours, or amnesia, or disorientation of person, place or time, alone or in combination, lasting more than 24 hours but less than 7 days after the injury.

National Heart, Lung, and Blood Institute. An agency within the National Institutes of Health that provides global leadership for a research, training, and education program to promote the prevention and treatment of heart, lung, and blood diseases and enhance the health of all individuals so that they can live longer and more fulfilling lives.

severe brain injuries. Unconsciousness of 24 hours or more post injury, or amnesia or disorientation of person, place or time longer than 7 days after the-injury.

REFERENCES

2010 Healthcare Common Procedure Coding System (HCPCS) Level II Codes from Centers for Medicare and Medicaid Services (CMS)¹
American Diabetes Association, “Diagnosis and Classification of Diabetes Mellitus,” current edition
American Heart Association/American College of Cardiology, “Guidelines for the Management of Patients with Valvular Heart Disease,” current edition
American Medical Association, “Current Procedural Terminology (CPT®),” Fourth Edition, 2010 Revision, Chicago, IL, 20102
American National Standards Institute S3.6-2010, “Specification for Audiometers”²
American Society to Colposcopy and Cervical Pathology, “Guidelines on the Management of Women with Abnormal Cervical Cancer Screening Tests and Cancer Precursors,” current edition
Centers for Disease Control and Prevention, “Tuberculosis Guidelines,” current edition
Code of Federal Regulations, Title 46, Section 310.56
Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition
DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
DoD Manual 8910.01, Volume 2, “DoD Information Collections: Procedures for DoD Public Information Collections,” June 30, 2014, as amended
International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM)³
National Heart, Lung, and Blood Institute and American Heart Association Scientific Statement, “Diagnosis and management of metabolic syndrome,” October 25, 2005
Under Secretary of Defense for Personnel and Readiness, Medical and Personnel Executive Steering Committee (MEDPERS) Charter, September 2012
Office of the Chairman of the Joint Chiefs of Staff, “DoD Dictionary of Military and Associated Terms,” current edition
United States Code, Title 10
United States Code, Title 18, Section 1001
United States Code, Title 29, Section 701 (also known as the “Rehabilitation Act of 1973”)
United States Code, Title 50, Chapter 49 (also known as the “Military Selective Service Act”)

¹ Available at https://catalog.ama-assn.org/Catalog/cpt/cpt_home.jsp

² Available for purchase at <http://www.ansi.org/>

³ Available at <http://www.cdc.gov/nchs/icd/icd10cm.htm#icd2016>.

THE WHITE HOUSE

WASHINGTON

March 23, 2018

MEMORANDUM FOR THE SECRETARY OF DEFENSE
THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Military Service by Transgender Individuals

Pursuant to my memorandum of August 25, 2017, "Military Service by Transgender Individuals," the Secretary of Defense, in consultation with the Secretary of Homeland Security, submitted to me a memorandum and report concerning military service by transgender individuals.

These documents set forth the policies on this issue that the Secretary of Defense, in the exercise of his independent judgment, has concluded should be adopted by the Department of Defense. The Secretary of Homeland Security concurs with these policies with respect to the U.S. Coast Guard.

Among other things, the policies set forth by the Secretary of Defense state that transgender persons with a history or diagnosis of gender dysphoria -- individuals who the policies state may require substantial medical treatment, including medications and surgery -- are disqualified from military service except under certain limited circumstances.

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. I hereby revoke my memorandum of August 25, 2017, "Military Service by Transgender Individuals," and any other directive I may have made with respect to military service by transgender individuals.

Sec. 2. The Secretary of Defense, and the Secretary of Homeland Security, with respect to the U.S. Coast Guard, may exercise their authority to implement any appropriate policies concerning military service by transgender individuals.

Sec. 3. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

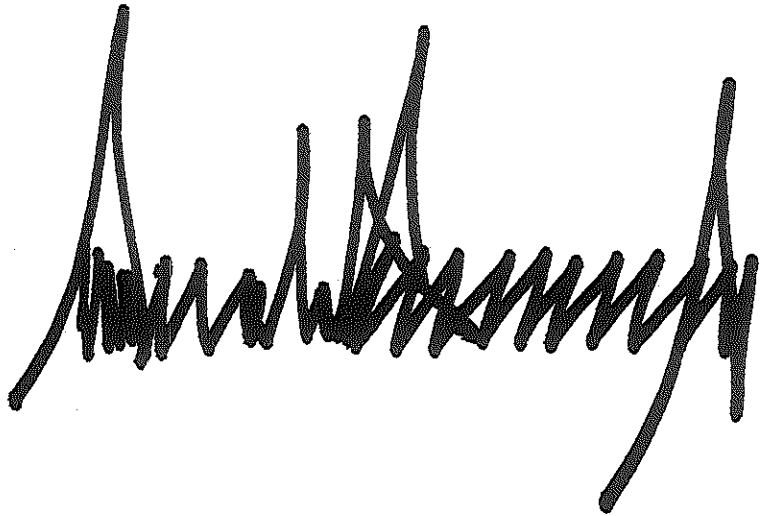
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

A large, stylized handwritten signature in black ink, appearing to be a cursive representation of a name, possibly "Andrew" or "Anthony", with a long horizontal stroke and a final vertical flourish.

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SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

FEB 22 2018

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Military Service by Transgender Individuals

"Transgender" is a term describing those persons whose gender identity differs from their biological sex. A subset of transgender persons diagnosed with gender dysphoria experience discomfort with their biological sex, resulting in significant distress or difficulty functioning. Persons diagnosed with gender dysphoria often seek to transition their gender through prescribed medical treatments intended to relieve the distress and impaired functioning associated with their diagnosis.

Prior to your election, the previous administration adopted a policy that allowed for the accession and retention in the Armed Forces of transgender persons who had a history or diagnosis of gender dysphoria. The policy also created a procedure by which such Service members could change their gender. This policy was a departure from decades-long military personnel policy. On June 30, 2017, before the new accession standards were set to take effect, I approved the recommendation of the Services to delay for an additional six months the implementation of these standards to evaluate more carefully their impact on readiness and lethality. To that end, I established a study group that included the representatives of the Service Secretaries and senior military officers, many with combat experience, to conduct the review.

While this review was ongoing, on August 25, 2017, you sent me and the Secretary of Homeland Security a memorandum expressing your concern that the previous administration's new policy "failed to identify a sufficient basis" for changing longstanding policy and that "further study is needed to ensure that continued implementation of last year's policy change would not have ... negative effects." You then directed the Department of Defense and the Department of Homeland Security to reinstate the preexisting policy concerning accession of transgender individuals "until such time as a sufficient basis exists upon which to conclude that terminating that policy" would not "hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources." You made clear that we could advise you "at any time, in writing, that a change to this policy is warranted."

I created a Panel of Experts comprised of senior uniformed and civilian Defense Department and U.S. Coast Guard leaders and directed them to consider this issue and develop policy proposals based on data, as well as their professional military judgment, that would enhance the readiness, lethality, and effectiveness of our military. This Panel included combat veterans to ensure that our military purpose remained the foremost consideration. I charged the Panel to provide its best military advice, based on increasing the lethality and readiness of America's armed forces, without regard to any external factors.

The Panel met with and received input from transgender Service members, commanders of transgender Service members, military medical professionals, and civilian medical

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professionals with experience in the care and treatment of individuals with gender dysphoria. The Panel also reviewed available information on gender dysphoria, the treatment of gender dysphoria, and the effects of currently serving individuals with gender dysphoria on military effectiveness, unit cohesion, and resources. Unlike previous reviews on military service by transgender individuals, the Panel's analysis was informed by the Department's own data obtained since the new policy began to take effect last year.

Based on the work of the Panel and the Department's best military judgment, the Department of Defense concludes that there are substantial risks associated with allowing the accession and retention of individuals with a history or diagnosis of gender dysphoria and require, or have already undertaken, a course of treatment to change their gender. Furthermore, the Department also finds that exempting such persons from well-established mental health, physical health, and sex-based standards, which apply to all Service members, including transgender Service members without gender dysphoria, could undermine readiness, disrupt unit cohesion, and impose an unreasonable burden on the military that is not conducive to military effectiveness and lethality.

The prior administration largely based its policy on a study prepared by the RAND National Defense Research Institute; however, that study contained significant shortcomings. It referred to limited and heavily caveated data to support its conclusions, glossed over the impacts of healthcare costs, readiness, and unit cohesion, and erroneously relied on the selective experiences of foreign militaries with different operational requirements than our own. In short, this policy issue has proven more complex than the prior administration or RAND assumed.

I firmly believe that compelling behavioral health reasons require the Department to proceed with caution before compounding the significant challenges inherent in treating gender dysphoria with the unique, highly stressful circumstances of military training and combat operations. Preservation of unit cohesion, absolutely essential to military effectiveness and lethality, also reaffirms this conclusion.

Therefore, in light of the Panel's professional military judgment and my own professional judgment, the Department should adopt the following policies:

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

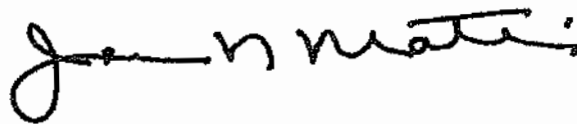
- Transgender persons without a history or diagnosis of gender dysphoria, who are otherwise qualified for service, may serve, like all other Service members, in their biological sex.

I have consulted with the Secretary of Homeland Security, and she agrees with these proposed policies.

By its very nature, military service requires sacrifice. The men and women who serve voluntarily accept limitations on their personal liberties – freedom of speech, political activity, freedom of movement - in order to provide the military lethality and readiness necessary to ensure American citizens enjoy their personal freedoms to the fullest extent. Further, personal characteristics, including age, mental acuity, and physical fitness – among others – matter to field a lethal and ready force.

In my professional judgment, these policies will place the Department of Defense in the strongest position to protect the American people, to fight and win America's wars, and to ensure the survival and success of our Service members around the world. The attached report provided by the Under Secretary of Defense for Personnel and Readiness includes a detailed analysis of the factors and considerations forming the basis of the Department's policy proposals.

I therefore respectfully recommend you revoke your memorandum of August 25, 2017, regarding Military Service by Transgender Individuals, thus allowing me and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to implement appropriate policies concerning military service by transgender persons.



Attachment:
As stated

cc:
Secretary of Homeland Security



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

FEB 14 2018

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
CHIEF, NATIONAL GUARD BUREAU
DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION

SUBJECT: DoD Retention Policy for Non-Deployable Service Members

In July, the Secretary of Defense directed the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) to lead the Department's effort to identify changes to military personnel policies necessary to provide more ready and lethal forces. In his initial memorandum to the Department, Secretary Mattis emphasized, "[e]very action will be designed to ensure our military is ready to fight today and in the future." Given the Secretary's guidance, OUSD(P&R) moved forward from the underlying premise that all Service members are expected to be world-wide deployable. Based on the recommendations of the Military Personnel Policy Working Group, the Deputy Secretary of Defense determined that DoD requires a Department-wide policy establishing standardized criteria for retaining non-deployable Service members. The objective is to both reduce the number of non-deployable Service members and improve personnel readiness across the force.

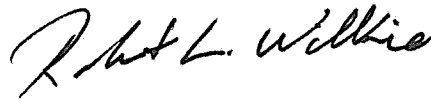
The Deputy Secretary of Defense directed the following interim policy guidance, which will remain in effect until the Department issues a DoD Instruction on reporting and retention of non-deployable Service members:

- Service members who have been non-deployable for more than 12 consecutive months, for any reason, will be processed for administrative separation in accordance with Department of Defense Instruction (DoDI) 1332.14, *Enlisted Administrative Separations*, or DoD Instruction 1332.30, *Separation of Regular and Reserve Commissioned Officers*, or will be referred into the Disability Evaluation System in accordance with DoDI 1332.18, *Disability Evaluation System (DES)*. Pregnant and post-partum Service members are the only group automatically excepted from this policy.
- The Secretaries of the Military Departments are authorized to grant a waiver to retain in service a Service member whose period of non-deployability exceeds the 12 consecutive months limit. This waiver authority may be delegated in writing to an official at no lower than the Military Service headquarters level.

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- The Military Services have until October 1, 2018, to begin mandatory processing of non-deployable Service members for administrative or disability separation under this policy, but they may begin such processing immediately.
- The Military Services may initiate administrative or disability separation upon determination that a Service member will remain non-deployable for more than 12 consecutive months; they are not required to wait until the Service member has been non-deployable for 12 consecutive months.
- The Military Services will continue to provide monthly non-deployable reports to OUSD(P&R) in the format established by the Military Personnel Policy Working Group.

My office will issue a DoDI to provide additional policy guidance and codify non-deployable reporting requirements. Publication of the DoDI will supersede and cancel this policy memorandum.



Robert L. Wilkie

cc:

Assistant Secretary of the Army
for Manpower and Reserve Affairs
Assistant Secretary of the Navy
for Manpower and Reserve Affairs
Assistant Secretary of the Air Force
for Manpower and Reserve Affairs
Senior Enlisted Advisor to the Chairman
of the Joint Chiefs of Staff
Deputy Chief of Staff, G-1, U.S. Army
Chief of Naval Personnel, U.S. Navy
Deputy Chief of Staff for Personnel and Services,
U.S. Air Force
Deputy Commandant for Manpower and Reserve
Affairs, U.S. Marine Corps
Director, Reserve and Military Personnel,
U.S. Coast Guard
Director, Manpower and Personnel, Joint Staff
National Guard Bureau, J-1

**DEPARTMENT OF DEFENSE REPORT AND RECOMMENDATIONS
ON
MILITARY SERVICE BY TRANSGENDER PERSONS**



FEBRUARY 2018

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Executive Summary

It is a bedrock principle of the Department of Defense that any eligible individual¹ who can meet the high standards for military service without special accommodations should be permitted to serve. This is no less true for transgender persons than for any other eligible individual. This report, and the recommendations contained herein, proceed from this fundamental premise.

The starting point for determining a person's qualifications for military duty is whether the person can meet the standards that govern the Armed Forces. Federal law requires that anyone entering into military service be "qualified, effective, and able-bodied."² Military standards are designed not only to ensure that this statutory requirement is satisfied but to ensure the overall military effectiveness and lethality of the Armed Forces.

The purpose of the Armed Forces is to fight and win the Nation's wars. No human endeavor is more physically, mentally, and emotionally demanding than the life and death struggle of battle. Because the stakes in war can be so high—both for the success and survival of individual units in the field and for the success and survival of the Nation—it is imperative that all Service members are physically and mentally able to execute their duties and responsibilities without fail, even while exposed to extreme danger, emotional stress, and harsh environments.

Although not all Service members will experience direct combat, standards that are applied universally across the Armed Forces must nevertheless account for the possibility that any Service member could be thrust into the crucible of battle at any time. As the Department has made clear to Congress, "[c]ore to maintaining a ready and capable military force is the understanding that each Service member is required to be available and qualified to perform assigned missions, including roles and functions outside of their occupation, in any setting."³ Indeed, there are no occupations in the military that are exempt from deployment.⁴ Moreover, while non-combat positions are vital to success in war, the physical and mental requirements for those positions should not be the barometer by which the physical and mental requirements for all positions, especially combat positions, are defined. Fitness for combat must be the metric against which all standards and requirements are judged. To give all Service members the best chance of success and survival in war, the Department must maintain the highest possible standards of physical and mental health and readiness across the force.

While individual health and readiness are critical to success in war, they are not the only measures of military effectiveness and lethality. A fighting unit is not a mere collection of individuals; it is a unique social organism that, when forged properly, can be far more powerful than the sum of its parts. Human experience over millennia—from the Spartans at Thermopylae to the band of brothers of the 101st Airborne Division in World War II, to Marine squads fighting building-to-building in Fallujah—teaches us this. Military effectiveness requires

¹ 10 U.S.C. §§ 504, 505(a), 12102(b).

² 10 U.S.C. § 505(a).

³ Under Secretary of Defense for Personnel and Readiness, "Fiscal Year 2016 Report to Congress on the Review of Enlistment of Individuals with Disabilities in the Armed Forces," pp. 8-9 (Apr. 2016).

⁴ *Id.*

transforming a collection of individuals into a single fighting organism—merging multiple individual identities into one. This transformation requires many ingredients, including strong leadership, training, good order and discipline, and that most intangible, but vital, of ingredients—unit cohesion or, put another way, human bonding.

Because unit cohesion cannot be easily quantified, it is too often dismissed, especially by those who do not know what Justice Oliver Wendell Holmes called the “incommunicable experience of war.”⁵ But the experience of those who, as Holmes described, have been “touched with fire” in battle and the experience of those who have spent their lives studying it attest to the enduring, if indescribable, importance of this intangible ingredient. As Dr. Jonathan Shay articulated it in his study of combat trauma in Vietnam, “[s]urvival and success in combat often require soldiers to virtually read one another’s minds, reflexively covering each other with as much care as they cover themselves, and going to one another’s aid with little thought for safety.”⁶ Not only is unit cohesion essential to the health of the unit, Dr. Shay found that it was essential to the health of the individual soldier as well. “Destruction of unit cohesion,” Dr. Shay concluded, “cannot be overemphasized as a reason why so many psychological injuries that might have healed spontaneously instead became chronic.”⁷

Properly understood, therefore, military effectiveness and lethality are achieved through a combination of inputs that include individual health and readiness, strong leadership, effective training, good order and discipline, and unit cohesion. To achieve military effectiveness and lethality, properly designed military standards must foster these inputs. And, for the sake of efficiency, they should do so at the least possible cost to the taxpayer.

To the greatest extent possible, military standards—especially those relating to mental and physical health—should be based on scientifically valid and reliable evidence. Given the life-and-death consequences of warfare, the Department has historically taken a conservative and cautious approach in setting the mental and physical standards for the accession and retention of Service members.

Not all standards, however, are capable of scientific validation or quantification. Instead, they are the product of professional military judgment acquired from hard-earned experience leading Service members in peace and war or otherwise arising from expertise in military affairs. Although necessarily subjective, this judgment is the best, if not only, way to assess the impact of any given military standard on the intangible ingredients of military effectiveness mentioned above—leadership, training, good order and discipline, and unit cohesion.

For decades, military standards relating to mental health, physical health, and the physiological differences between men and women operated to preclude from military service transgender persons who desired to live and work as the opposite gender.

⁵ *The Essential Holmes: Selections from the Letters, Speeches, Judicial Opinions, and Other Writings of Oliver Wendell Holmes, Jr.*, p. 93 (Richard Posner, ed., University of Chicago Press 1992).

⁶ Jonathan Shay, *Achilles in Vietnam*, p. 61 (Atheneum 1994).

⁷ *Id.* at 198.

Relying on a report by an outside consultant, the RAND National Defense Research Institute, the Department, at the direction of Secretary Ashton Carter, reversed that longstanding policy in 2016. Although the new policy—the “Carter policy”—did not permit all transgender Service members to change their gender to align with their preferred gender identity, it did establish a process to do so for transgender Service members who were diagnosed with gender dysphoria—that is, the distress or impairment of functioning that is associated with incongruity between one’s biological sex and gender identity. It also set in motion a new accession policy that would allow applicants who had a history of gender dysphoria, including those who had already transitioned genders, to enter into military service, provided that certain conditions were met. Once a change of gender is authorized, the person must be treated in all respects in accordance with the person’s preferred gender, whether or not the person undergoes any hormone therapy or surgery, so long as a treatment plan has been approved by a military physician.

The new accession policy had not taken effect when the current administration came into office. Secretary James Mattis exercised his discretion and approved the recommendation of the Services to delay the Carter accession policy for an additional six months so that the Department could assess its impact on military effectiveness and lethality. While that review was ongoing, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security with respect to the U.S. Coast Guard expressing that further study was needed to examine the effects of the prior administration’s policy change. The memorandum directed the Secretaries to reinstate the longstanding preexisting accession policy until such time that enough evidence existed to conclude that the Carter policy would not have negative effects on military effectiveness, lethality, unit cohesion, and military resources. The President also authorized the Secretary of Defense, in consultation with the Secretary of Homeland Security, to address the disposition of transgender individuals who were already serving in the military.

Secretary Mattis established a Panel of Experts that included senior uniformed and civilian leaders of the Department and U.S. Coast Guard, many with experience leading Service members in peace and war. The Panel made recommendations based on each Panel member’s independent military judgment. Consistent with those recommendations, the Department, in consultation with the Department of Homeland Security, recommends the following policy to the President:

A. Transgender Persons Without a History or Diagnosis of Gender Dysphoria, Who Are Otherwise Qualified for Service, May Serve, Like All Other Service Members, in Their Biological Sex. Transgender persons who have not transitioned to another gender and do not have a history or current diagnosis of gender dysphoria—i.e., they identify as a gender other than their biological sex but do not currently experience distress or impairment of functioning in meeting the standards associated with their biological sex—are qualified for service, provided that they, like all other persons, satisfy all standards and are capable of adhering to the standards associated with their biological sex. This is consistent with the Carter policy, under which transgender persons without a history or diagnosis of gender dysphoria must serve, like everyone else, in their biological sex.

B. Transgender Persons Who Require or Have Undergone Gender Transition Are Disqualified. Except for those who are exempt under this policy, as described below, and except where waivers or exceptions to policy are otherwise authorized, transgender persons who are diagnosed with gender dysphoria, either before or after entry into service, and require transition-related treatment, or have already transitioned to their preferred gender, should be ineligible for service. For reasons discussed at length in this report, the Department concludes that accommodating gender transition could impair unit readiness; undermine unit cohesion, as well as good order and discipline, by blurring the clear lines that demarcate male and female standards and policies where they exist; and lead to disproportionate costs. Underlying these conclusions is the considerable scientific uncertainty and overall lack of high quality scientific evidence demonstrating the extent to which transition-related treatments, such as cross-sex hormone therapy and sex reassignment surgery—interventions which are unique in psychiatry and medicine—remedy the multifaceted mental health problems associated with gender dysphoria.

C. Transgender Persons With a History or Diagnosis of Gender Dysphoria Are Disqualified, Except Under Certain Limited Circumstances. Transgender persons who are diagnosed with, or have a history of, gender dysphoria are generally disqualified from accession or retention in the Armed Forces. The standards recommended here are subject to the same procedures for waiver or exception to policy as any other standards. This is consistent with the Department's handling of other mental conditions that require treatment. As a general matter, only in the limited circumstances described below should persons with a history or diagnosis of gender dysphoria be accessed or retained.

1. *Accession of Individuals Diagnosed with Gender Dysphoria.* Persons with a history of gender dysphoria may access into the Armed Forces, provided that they can demonstrate 36 consecutive months of stability (i.e., absence of gender dysphoria) immediately preceding their application; they have not transitioned to the opposite gender; and they are willing and able to adhere to all standards associated with their biological sex.

2. *Retention of Service Members Diagnosed with Gender Dysphoria.* Consistent with the Department's general approach of applying less stringent standards to retention than to accession in order to preserve the Department's substantial investment in trained personnel, Service members who are diagnosed with gender dysphoria after entering military service may be retained without waiver, provided that they are willing and able to adhere to all standards associated with their biological sex, the Service member does not require gender transition, and the Service member is not otherwise non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months).⁸

3. *Exempting Current Service Members Who Have Already Received a Diagnosis of Gender Dysphoria.* Transgender Service members who were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter policy, but before the effective date of any new policy, may continue to receive all medically necessary care,

⁸ Under Secretary of Defense for Personnel and Readiness, "DoD Retention Policy for Non-Deployable Service Members" (Feb. 14, 2018).

to change their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS), and to serve in their preferred gender, even after the new policy commences. This includes transgender Service members who entered into military service after January 1, 2018, when the Carter accession policy took effect by court order. The Service member must, however, adhere to the Carter policy procedures and may not be deemed to be non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months). While the Department believes that its solemn promise to these Service members, and the investment it has made in them, outweigh the risks identified in this report, should its decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption is and should be deemed severable from the rest of the policy.

Although the precise number is unknown, the Department recognizes that many transgender persons who desire to serve in the military experience gender dysphoria and, as a result, could be disqualified under the recommended policy set forth in this report. Many transgender persons may also be unwilling to adhere to the standards associated with their biological sex as required by longstanding military policy. But others have served, and are serving, with distinction under the standards for their biological sex, like all other Service members. Nothing in this policy precludes service by transgender persons who do not have a history or diagnosis of gender dysphoria and are willing and able to meet all standards that apply to their biological sex.

Moreover, nothing in this policy should be viewed as reflecting poorly on transgender persons who suffer from gender dysphoria, or have had a history of gender dysphoria, and are accordingly disqualified from service. The vast majority of Americans from ages 17 to 24—that is, 71%—are ineligible to join the military without a waiver for mental, medical, or behavioral reasons.⁹ Transgender persons with gender dysphoria are no less valued members of our Nation than all other categories of persons who are disqualified from military service. The Department honors all citizens who wish to dedicate, and perhaps even lay down, their lives in defense of the Nation, even when the Department, in the best interests of the military, must decline to grant their wish.

Military standards are high for a reason—the trauma of war, which all Service members must be prepared to face, demands physical, mental, and moral standards that will give all Service members the greatest chance to survive the ordeal with their bodies, minds, and moral character intact. The Department would be negligent to sacrifice those standards for any cause. There are serious differences of opinion on this issue, even among military professionals, but in the final analysis, given the uncertainty associated with the study and treatment of gender dysphoria, the competing interests involved, and the vital interests at stake—our Nation's defense and the success and survival of our Service members in war—the Department must proceed with caution.

⁹ The Lewin Group, Inc., "Qualified Military Available (QMA) and Interested Youth: Final Technical Report," p. 26 (Sept. 2016).

History of Policies Concerning Transgender Persons

For decades, military standards have precluded the accession and retention of certain transgender persons.¹⁰ Accession standards—i.e., standards that govern induction into the Armed Forces—have historically disqualified persons with a history of “transsexualism.” Also disqualified were persons who had undergone genital surgery or who had a history of major abnormalities or defects of the genitalia. These standards prevented transgender persons, especially those who had undergone a medical or surgical gender transition, from accessing into the military, unless a waiver was granted.

Although retention standards—i.e., standards that govern the retention and separation of persons already serving in the Armed Forces—did not require the mandatory processing for separation of transgender persons, it was a permissible basis for separation processing as a physical or mental condition not amounting to a disability. More typically, however, such Service members were processed for separation because they suffered from other associated medical conditions or comorbidities, such as depression, which were also a basis for separation processing.

At the direction of Secretary Carter, the Department made significant changes to these standards. These changes—i.e., the “Carter policy”—prohibit the separation of Service members on the basis of their gender identity and allow Service members who are diagnosed with gender dysphoria to transition to their preferred gender.

Transition-related treatment is highly individualized and could involve what is known as a “medical transition,” which includes cross-sex hormone therapy, or a “surgical transition,”

¹⁰ For purposes of this report, the Department uses the broad definition of “transgender” adopted by the RAND National Defense Institute in its study of transgender service: “an umbrella term used for individuals who have sexual identity or gender expression that differs from their assigned sex at birth.” RAND National Defense Research Institute, *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, p.75 (RAND Corporation 2016), available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR1500/RR1530/RAND_RR1530.pdf (“RAND Study”). According to the Human Rights Campaign, “[t]he transgender community is incredibly diverse. Some transgender people identify as male or female, and some identify as genderqueer, nonbinary, agender, or somewhere else on or outside of the spectrum of what we understand gender to be.” Human Rights Campaign, “Understanding the Transgender Community,” <https://www.hrc.org/resources/understanding-the-transgender-community> (last visited Feb. 14, 2018). A subset of transgender persons are those who have been diagnosed with gender dysphoria. According to the *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association, “gender dysphoria” is a “marked incongruence between one’s experienced/expressed gender and assigned gender” that “is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.” American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, pp. 452-53 (5th ed. 2013). Based on these definitions, a person can be transgender without necessarily having gender dysphoria (i.e., the transgender person does not suffer “clinically significant distress or impairment” on account of gender incongruity). A 2016 survey of active duty Service members estimated that approximately 1% of the force—8,980 Service members—identify as transgender. Office of People Analytics, Department of Defense, “2016 Workplace and Gender Relations Survey of Active Duty Members, Transgender Service Members,” pp. 1-2. Currently, there are 937 active duty Service members who have been diagnosed with gender dysphoria since June 30, 2016. In addition, when using the term “biological sex” or “sex,” this report is referring to the definition of “sex” in the RAND study: “a person’s biological status as male or female based on chromosomes, gonads, hormones, and genitals (intersex is a rare exception).” RAND Study at 75.

which includes sex reassignment surgery. Service members could also forego medical transition treatment altogether, retain all of their biological anatomy, and live as the opposite gender—this is called a “social transition.”

Once the Service member’s transition is complete, as determined by the member’s military physician and commander in accordance with his or her individualized treatment plan, and the Service member provides legal documentation of gender change, the Carter policy allows for the Service member’s gender marker to be changed in the DEERS. Thereafter, the Service member must be treated in every respect—including with respect to physical fitness standards; berthing, bathroom, and shower facilities; and uniform and grooming standards—in accordance with the Service member’s preferred gender. The Carter policy, however, still requires transgender Service members who have not changed their gender marker in DEERS, including persons who identify as other than male or female, to meet the standards associated with their biological sex.

The Carter policy also allows accession of persons with gender dysphoria who can demonstrate stability in their preferred gender for at least 18 months. The accession policy did not take effect until required by court order, effective January 1, 2018.

The following discussion describes in greater detail the evolution of accession and retention standards pertaining to transgender persons.

Transgender Policy Prior to the Carter Policy

A. Accession Medical Standards

DoD Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, establishes baseline accession medical standards used to determine an applicant’s medical qualifications to enter military service. This instruction is reviewed every three to four years by the Accession Medical Standards Working Group (AMSWG), which includes medical and personnel subject matter experts from across the Department, its Military Services, and the U.S. Coast Guard. The AMSWG thoroughly reviews over 30 bodily systems and medical focus areas while carefully considering evidence-based clinical information, peer-reviewed scientific studies, scientific expert consensus, and the performance of existing standards in light of empirical data on attrition, deployment readiness, waivers, and disability rates. The AMSWG also considers inputs from non-government sources and evaluates the applicability of those inputs against the military’s mission and operational environment, so that the Department and the Military Services can formally coordinate updates to these standards.

Accession medical standards are based on the operational needs of the Department and are designed to ensure that individuals are physically and psychologically “qualified, effective, and able-bodied persons”¹¹ capable of performing military duties. Military effectiveness requires that the Armed Forces manage an integrated set of unique medical standards and qualifications because all military personnel must be available for worldwide duty 24 hours a day without

¹¹ 10 U.S.C. § 505(a).

restriction or delay. Such duty may involve a wide range of demands, including exposure to danger or harsh environments, emotional stress, and the operation of dangerous, sensitive, or classified equipment. These duties are often in remote areas lacking immediate and comprehensive medical support. Such demands are not normally found in civilian occupations, and the military would be negligent in its responsibility if its military standards permitted admission of applicants with physical or emotional impairments that could cause harm to themselves or others, compromise the military mission, or aggravate any current physical or mental health conditions that they may have.

In sum, these standards exist to ensure that persons who are under consideration for induction into military service are:

- free of contagious diseases that probably will endanger the health of other personnel;
- free of medical conditions or physical defects that may require excessive time lost from duty for necessary treatment or hospitalization, or probably will result in separation from service for medical unfitness;
- medically capable of satisfactorily completing required training;
- medically adaptable to the military environment without the necessity of geographical area limitations; and
- medically capable of performing duties without aggravation of existing physical defects or medical conditions.¹²

Establishing or modifying an accession standard is a risk management process by which a health condition is evaluated in terms of the probability and effect on the five listed outcomes above. These standards protect the applicant from harm that could result from the rigors of military duty and help ensure unit readiness by minimizing the risk that an applicant, once inducted into military service, will be unavailable for duty because of illness, injury, disease, or bad health.

Unless otherwise expressly provided, a current diagnosis or verified past medical history of a condition listed in DoDI 6130.03 is presumptively disqualifying.¹³ Accession standards reflect the considered opinion of the Department's medical and personnel experts that an applicant with an identified condition should only be able to serve if they can qualify for a waiver. Waivers are generally only granted when the condition will not impact the individual's assigned specialty or when the skills of the individual are unique enough to warrant the additional risk. Waivers are not generally granted when the conditions of military service may aggravate the existing condition. For some conditions, applicants with a past medical history may nevertheless be eligible for accession if they meet the requirements for a certain period of "stability"—that is, they can demonstrate that the condition has been absent for a defined period

¹² Department of Defense Instruction 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services* (Apr. 28, 2010), incorporating Change 1, p. 2 (Sept. 13, 2011) ("DoDI 6130.03").

¹³ *Id.* at 10.

of time prior to accession.¹⁴ With one exception,¹⁵ each accession standard may be waived in the discretion of the accessing Service based on that Service's policies and practices, which are driven by the unique requirements of different Service missions, different Service occupations, different Service cultures, and at times, different Service recruiting missions.

Historically, mental health conditions have been a great concern because of the unique mental and emotional stresses of military service. Mental health conditions frequently result in attrition during initial entry training and the first term of service and are routinely considered by in-service medical boards as a basis for separation. Department mental health accession standards have typically aligned with the conditions identified in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), which is published by the American Psychiatric Association (APA). The DSM sets forth the descriptions, symptoms, and other criteria for diagnosing mental disorders. Health care professionals in the United States and much of the world use the DSM as the authoritative guide to the diagnosis of mental disorders.

Prior to implementation of the Carter policy, the Department's accession standards barred persons with a "[h]istory of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias."¹⁶ These standards were consistent with DSM-III, which in 1980, introduced the diagnosis of transsexualism.¹⁷ In 1987, DSM-III-R added gender identity disorder, non-transsexual type.¹⁸ DSM-IV, which was published in 1994, combined these two diagnoses and called the resulting condition "gender identity disorder."¹⁹ Due to challenges associated with updating and publishing a new iteration of DoDI 6130.03, the DoDI's terminology has not changed to reflect the changes in the DSM, including further changes that will be discussed later.

DoDI 6130.03 also contains other disqualifying conditions that are associated with, but not unique to, transgender persons, especially those who have undertaken a medical or surgical transition to the opposite gender. These include:

- a history of chest surgery, including but not limited to the surgical removal of the breasts,²⁰ and genital surgery, including but not limited to the surgical removal of the testicles;²¹

¹⁴ See, e.g., *id.* at 47.

¹⁵ The accession standards for applicants with HIV are not waivable absent a waiver from both the accessing Service and the Under Secretary of Defense for Personnel and Readiness. See Department of Defense Instruction 6485.01, *Human Immunodeficiency Virus (HIV) in Military Service Members* (Jun. 7, 2013).

¹⁶ DoDI 6130.03 at 48.

¹⁷ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-III)*, pp. 261-264 (3rd ed. 1980).

¹⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)*, pp. 76-77 (3rd ed. revised 1987).

¹⁹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)*, pp. 532-538 (4th ed. 1994).

²⁰ DoDI 6130.03 at 18.

²¹ *Id.* at 25-27.

- a history of major abnormalities or defects of the genitalia, including but not limited to change of sex, hermaphroditism, penis amputation, and pseudohermaphroditism;²²
- mental health conditions such as suicidal ideation, depression, and anxiety disorder;²³ and
- the use of certain medications, or conditions requiring the use of medications, such as hormone therapies and anti-depressants.²⁴

Together with a diagnosis of transsexualism, these conditions, which were repeatedly validated by the AMSWG, provided multiple grounds for the disqualification of transgender persons.

B. Retention Standards

The standards that govern the retention of Service members who are already serving in the military are generally less restrictive than the corresponding accession standards due to the investment the Department has made in the individual and their increased capability to contribute to mission accomplishment.

Also unlike the Department's accession standards, each Service develops and applies its own retention standards. With respect to the retention of transgender Service members, these Service-specific standards may have led to inconsistent outcomes across the Services, but as a practical matter, before the Carter policy, the Services generally separated Service members who desired to transition to another gender. During that time, there were no express policies allowing individuals to serve in their preferred gender rather than their biological sex.

Previous Department policy concerning the retention (administrative separation) of transgender persons was not clear or rigidly enforced. DoDI 1332.38, *Physical Disability Evaluation*, now cancelled, characterized "sexual gender and identity disorders" as a basis for allowing administrative separation for a condition not constituting a disability; it did not require mandatory processing for separation. A newer issuance, DoDI 1332.18, *Disability Evaluation System (DES)*, August 5, 2014, does not reference these disorders but instead reflects changes in how such medical conditions are characterized in contemporary medical practice.

Earlier versions of DoDI 1332.14, *Enlisted Administrative Separations*, contained a cross reference to the list of conditions not constituting a disability in former DoDI 1332.38. This was how "transsexualism," the older terminology, was used as a basis for administrative separation. Separation on this basis required formal counseling and an opportunity to address the issue, as well as a finding that the condition was interfering with the performance of duty. In practice, transgender persons were not usually processed for administrative separation on account of gender dysphoria or gender identity itself, but rather on account of medical comorbidities (e.g., depression or suicidal ideation) or misconduct due to cross dressing and related behavior.

²² Id.

²³ Id. at 47-48.

²⁴ Id. at 48.

The Carter Policy

At the direction of Secretary Carter, the Department began formally reconsidering its accession and retention standards as they applied to transgender persons with gender dysphoria in 2015. This reevaluation, which culminated with the release of the Carter policy in 2016, was prompted in part by amendments to the DSM that appeared to change the diagnosis for gender identity disorder from a disorder to a treatable condition called gender dysphoria. Starting from the assumption that transgender persons are qualified for military service, the Department sought to identify and remove the obstacles to such service. This effort resulted in substantial changes to the Department's accession and retention standards to accommodate transgender persons with gender dysphoria who require treatment for transitioning to their preferred gender.

A. Changes to the DSM

When the APA published the fifth edition of the DSM in May 2013, it changed "gender identity disorder" to "gender dysphoria" and designated it as a "condition"—a new diagnostic class applicable only to gender dysphoria—rather than a "disorder."²⁵ This change was intended to reflect the APA's conclusion that gender nonconformity alone—without accompanying distress or impairment of functioning—was not a mental disorder.²⁶ DSM-5 also decoupled the diagnosis for gender dysphoria from diagnoses for "sexual dysfunction and paraphilic disorders, recognizing fundamental differences between these diagnoses."²⁷

According to DSM-5, gender dysphoria in adolescents and adults is "[a] marked incongruence between one's experience/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following":

- A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
- A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).

²⁵ See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, pp. 451-459 (5th ed. 2013) ("DSM-5").

²⁶ RAND Study at 77; see also Hayes Directory, "Sex Reassignment Surgery for the Treatment of Gender Dysphoria" (May 15, 2014), p. 1 ("This change was intended to reflect a consensus that gender nonconformity is not a psychiatric disorder, as it was previously categorized. However, since the condition may cause clinically significant distress and since a diagnosis is necessary for access to medical treatment, the new term was proposed."); Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, pp. 1182-83 (2016) ("In the DSM-5, [gender dysphoria] has replaced the diagnosis of 'gender identity disorder' in order to place the focus on the dysphoria and to diminish the pathology associated with identity incongruence.").

²⁷ Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1183 (2016).

- A strong desire for the primary and/or secondary sex characteristics of the other gender.
- A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
- A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
- A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

Importantly, DSM-5 observed that gender dysphoria “is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.”²⁸

B. The Department Begins Review of Transgender Policy

On July 28, 2015, then Secretary Carter issued a memorandum announcing that no Service members would be involuntarily separated or denied reenlistment or continuation of service based on gender identity or a diagnosis of gender dysphoria without the personal approval of the Under Secretary of Defense for Personnel and Readiness.²⁹ The memorandum also created the Transgender Service Review Working Group (TSRWG) “to study the policy and readiness implications of welcoming transgender persons to serve openly.”³⁰ The memorandum specifically directed the working group to “start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective practical impediments are identified.”³¹

As part of this review, the Department commissioned the RAND National Defense Research Institute to conduct a study to “(1) identify the health care needs of the transgender population, transgender Service members’ potential health care utilization rates, and the costs associated with extending health care coverage for transition-related treatments; (2) assess the potential readiness impacts of allowing transgender Service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender Service members to serve openly.”³² The resulting report, entitled *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, reached several conclusions. First, the report estimated that there are between 1,320 and 6,630 transgender Service members already serving in the active component of the Armed Forces and 830 to 4,160 in the Selected Reserve.³³ Second, the report predicted “annual gender transition-related health care to be an extremely small part of the overall health care provided to the [active component] population.”³⁴ Third, the report estimated that active component “health care costs will increase by between \$2.4 million and \$8.4 million annually—an amount that will have little impact on and represents an exceedingly small proportion of

²⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, p. 453 (5th ed. 2013).

²⁹ Memorandum from Ashton Carter, Secretary of Defense, “Transgender Service Members” (July 28, 2015).

³⁰ *Id.*

³¹ *Id.*

³² RAND Study at i.

³³ *Id.* at x-xi.

³⁴ *Id.* at xi.

[active component] health care expenditures (approximately \$6 billion in FY 2014).³⁵ Fourth, the report “found that less than 0.0015 percent of the total available labor-years would be affected, based on estimated gender transition-related health care utilization rates.”³⁶ Finally, the report concluded that “[e]xisting data suggest a minimal impact on unit cohesion as a result of allowing transgender personnel to serve openly.”³⁷ “Overall,” according to RAND, “our study found that the number of U.S. transgender Service members who are likely to seek transition-related care is so small that a change in policy will likely have a marginal impact on health care costs and the readiness of the force.”³⁸

The RAND report thus acknowledged that there will be an adverse impact on health care utilization and costs, readiness, and unit cohesion, but concluded nonetheless that the impact will be “negligible” and “marginal” because of the small estimated number of transgender Service members relative to the size of the active component of the Armed Forces. Because of the RAND report’s macro focus, however, it failed to analyze the impact at the micro level of allowing gender transition by individuals with gender dysphoria. For example, as discussed in more detail later, the report did not examine the potential impact on unit readiness, perceptions of fairness and equity, personnel safety, and reasonable expectations of privacy at the unit and sub-unit levels, all of which are critical to unit cohesion. Nor did the report meaningfully address the significant mental health problems that accompany gender dysphoria—from high rates of comorbidities and psychiatric hospitalizations to high rates of suicide ideation and suicidality—and the scope of the scientific uncertainty regarding whether gender transition treatment fully remedies those problems.

C. New Standards for Transgender Persons

Based on the RAND report, the work of the TSRWG, and the advice of the Service Secretaries, Secretary Carter approved the publication of DoDI 1300.28, *In-service Transition for Service Members Identifying as Transgender*, and Directive-type Memorandum (DTM) 16-005, “Military Service of Transgender Service Members,” on June 30, 2016. Although the new retention standards were effective immediately upon publication of the above memoranda, the accession standards were delayed until July 1, 2017, to allow time for training all Service members across the Armed Forces, including recruiters, Military Entrance Processing Station (MEPS) personnel, and basic training cadre, and to allow time for modifying facilities as necessary.

1. *Retention Standards.* DoDI 1300.28 establishes the procedures by which Service members who are diagnosed with gender dysphoria may administratively change their gender. Once a Service member receives a gender dysphoria diagnosis from a military physician, the physician, in consultation with the Service member, must establish a treatment plan. The treatment plan is highly individualized and may include cross-sex hormone therapy (i.e., medical transition), sex reassignment surgery (i.e., surgical transition), or simply living as the opposite gender but without any cross-sex hormone or surgical treatment (i.e., social

³⁵ Id. at xi-xii.

³⁶ Id. at xii.

³⁷ Id.

³⁸ Id. at 69.

transition). The nature of the treatment is left to the professional medical judgment of the treating physician and the individual situation of the transgender Service member. The Department does not require a Service member with gender dysphoria to undergo cross-sex hormone therapy, sex reassignment surgery, or any other physical changes to effectuate an administrative change of gender. During the course of treatment, commanders are authorized to grant exceptions from physical fitness, uniform and grooming, and other standards, as necessary and appropriate, to transitioning Service members. Once the treating physician determines that the treatment plan is complete, the Service member's commander approves, and the Service member produces legal documentation indicating change of gender (e.g., certified birth certificate, court order, or U.S. passport), the Service member may request a change of gender marker in DEERS. Once the DEERS gender marker is changed, the Service member is held to all standards associated with the member's transitioned gender, including uniform and grooming standards, body composition assessment, physical readiness testing, Military Personnel Drug Abuse Testing Program participation, and other military standards congruent to the member's gender. Indeed, the Service member must be treated in all respects in accordance with the member's transitioned gender, including with respect to berthing, bathroom, and shower facilities. Transgender Service members who do not meet the clinical criteria for gender dysphoria, by contrast, remain subject to the standards and requirements applicable to their biological sex.

2. *Accession Standards.* DTM 16-005 directed that the following medical standards for accession into the Military Services take effect on July 1, 2017:

- (1) A history of gender dysphoria is disqualifying, unless, as certified by a licensed medical provider, the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months.
- (2) A history of medical treatment associated with gender transition is disqualifying, unless, as certified by a licensed medical provider:
 - (a) the applicant has completed all medical treatment associated with the applicant's gender transition; and
 - (b) the applicant has been stable in the preferred gender for 18 months; and
 - (c) if the applicant is presently receiving cross-sex hormone therapy post-gender transition, the individual has been stable on such hormones for 18 months.
- (3) A history of sex reassignment or genital reconstruction surgery is disqualifying, unless, as certified by a licensed medical provider:
 - (a) a period of 18 months has elapsed since the date of the most recent of any such surgery; and

- (b) no functional limitations or complications persist, nor is any additional surgery required.³⁹

³⁹ Memorandum from Ashton Carter, Secretary of Defense, "Directive-type Memorandum (DTM) 16-005, 'Military Service of Transgender Service Members,'" Attachment, pp. 1-2 (June 30, 2016).

Panel of Experts Recommendation

The Carter policy's accession standards for persons with a history of gender dysphoria were set to take effect on July 1, 2017, but on June 30, after consultation with the Secretaries and Chiefs of Staff of each Service, Secretary Mattis postponed the new standards for an additional six months "to evaluate more carefully the impact of such accessions on readiness and lethality."⁴⁰ Secretary Mattis specifically directed that the review would "include all relevant considerations" and would last for five months, with a due date of December 1, 2017.⁴¹ The Secretary also expressed his desire to have "the benefit of the views of the military leadership and of the senior civilian officials who are now arriving in the Department."⁴²

While Secretary Mattis's review was ongoing, President Trump issued a memorandum, on August 25, 2017, directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to reinstate longstanding policy generally barring the accession of transgender individuals "until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice" would not "hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources."⁴³ The President found that "further study is needed to ensure that continued implementation of last year's policy change would not have those negative effects."⁴⁴ Accordingly, the President directed both Secretaries to maintain the prohibition on accession of transgender individuals "until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary" that is convincing.⁴⁵ The President made clear that the Secretaries may advise him "at any time, in writing, that a change to this policy is warranted."⁴⁶ In addition, the President gave both Secretaries discretion to "determine how to address transgender individuals currently serving" in the military and made clear that no action be taken against them until a determination was made.⁴⁷

On September 14, 2017, Secretary Mattis established a Panel of Experts to study, in a "comprehensive, holistic, and objective" manner, "military service by transgender individuals, focusing on military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law."⁴⁸ He directed the Panel to "conduct an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members."⁴⁹

⁴⁰ Memorandum from James N. Mattis, Secretary of Defense, "Accession of Transgender Individuals into the Military Services" (June 30, 2017).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Memorandum from Donald J. Trump, President of the United States, "Military Service by Transgender Individuals" (Aug. 25, 2017).

⁴⁴ *Id.* at 1.

⁴⁵ *Id.* at 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Memorandum from James N. Mattis, Secretary of Defense, "Terms of Reference—Implementation of Presidential Memorandum on Military Service by Transgender Individuals," pp. 1-2 (Sept. 14, 2017).

⁴⁹ *Id.* at 2.

The Panel consisted of the Under Secretaries of the Military Departments (or officials performing their duties), the Armed Services' Vice Chiefs (including the Vice Commandant of the U.S. Coast Guard), and the Senior Enlisted Advisors, and was chaired by the Under Secretary of Defense for Personnel and Readiness or an official performing those duties. The Secretary of Defense selected these senior leaders because of their experience leading warfighters in war and peace or their expertise in military operational effectiveness. These senior leaders also have the statutory responsibility to organize, train, and equip military forces and are uniquely qualified to evaluate the impact of policy changes on the combat effectiveness and lethality of the force. The Panel met 13 times over a span of 90 days.

The Panel received support from medical and personnel experts from across the Departments of Defense and Homeland Security. The Transgender Service Policy Working Group, comprised of medical and personnel experts from across the Department, developed policy recommendations and a proposed implementation plan for the Panel's consideration. The Medical and Personnel Executive Steering Committee, a standing group of the Surgeons General and Service Personnel Chiefs, led by Personnel and Readiness, provided the Panel with an analysis of accession standards, a multi-disciplinary review of relevant data, and information about medical treatment for gender dysphoria and gender transition-related medical care. These groups reported regularly to the Panel and responded to numerous queries for additional information and analysis to support the Panel's review and deliberations. A separate working group tasked with enhancing the lethality of our Armed Forces also provided a briefing to the Panel on their work relating to retention standards.

The Panel met with and received input from transgender Service members, commanders of transgender Service members, military medical professionals, and civilian medical professionals with experience in the care and treatment of individuals with gender dysphoria. The Panel also reviewed information and analyses about gender dysphoria, the treatment of gender dysphoria, and the effects of currently serving individuals with gender dysphoria on military effectiveness, unit cohesion, and resources. Unlike past reviews, the Panel's analysis was informed by the Department's own data and experience obtained since the Carter policy took effect.

To fulfill its mandate, the Panel addressed three questions:

- Should the Department of Defense access transgender individuals?
- Should the Department allow transgender individuals to transition gender while serving, and if so, what treatment should be authorized?
- How should the Department address transgender individuals who are currently serving?

After extensive review and deliberation, which included evidence in support of and against the Panel's recommendations, the Panel exercised its professional military judgment and made recommendations. The Department considered those recommendations and the information underlying them, as well as additional information within the Department, and now proposes the following policy consistent with those recommendations.

Recommended Policy

To maximize military effectiveness and lethality, the Department, after consultation with and the concurrence of the Department of Homeland Security, recommends cancelling the Carter policy and, as explained below, adopting a new policy with respect to the accession and retention of transgender persons.

The Carter policy assumed that transgender persons were generally qualified for service and that their accession and retention would not negatively impact military effectiveness. As noted earlier, Secretary Carter directed the TSRWG, the group charged with evaluating, and making recommendations on, transgender service, to “start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective practical impediments are identified.”⁵⁰ Where necessary, standards were adjusted or relaxed to accommodate service by transgender persons. The following analysis makes no assumptions but instead applies the relevant standards applicable to everyone to determine the extent to which transgender persons are qualified for military duty.

For the following reasons, the Department concludes that transgender persons should not be disqualified from service solely on account of their transgender status, provided that they, like all other Service members, are willing and able to adhere to all standards, including the standards associated with their biological sex. With respect to the subset of transgender persons who have been diagnosed with gender dysphoria, however, those persons are generally disqualified unless, depending on whether they are accessing or seeking retention, they can demonstrate stability for the prescribed period of time; they do not require, and have not undergone, a change of gender; and they are otherwise willing and able to meet all military standards, including those associated with their biological sex. In order to honor its commitment to current Service members diagnosed with gender dysphoria, those Service members who were diagnosed after the effective date of the Carter policy and before any new policy takes effect will not be subject to the policy recommended here.

Discussion of Standards

The standards most relevant to the issue of service by transgender persons fall into three categories: mental health standards, physical health standards, and sex-based standards. Based on these standards, the Department can assess the extent to which transgender persons are qualified for military service and, in light of that assessment, recommend appropriate policies.

A. Mental Health Standards

Given the extreme rigors of military service and combat, maintaining high standards of mental health is essential to military effectiveness and lethality. The immense toll that the burden and experience of combat can have on the human psyche cannot be overstated. Therefore, putting individuals into battle, who might be at increased risk of psychological injury, would be reckless, not only for those individuals, but for the Service members who serve beside them as well.

⁵⁰ Memorandum from Ashton Carter, Secretary of Defense, “Transgender Service Members” (July 28, 2015).

The Department's experience with the mental health issues arising from our wars in Afghanistan and Iraq, including post-traumatic stress disorder (PTSD), only underscores the importance of maintaining high levels of mental health across the force. PTSD has reached as high as 2.8% of all active duty Service members, and in 2016, the number of active duty Service members with PTSD stood at 1.5%.⁵¹ Of all Service members in the active component, 7.5% have been diagnosed with a mental health condition of some type.⁵² The Department is mindful of these existing challenges and must exercise caution when considering changes to its mental health standards.

Most mental health conditions and disorders are automatically disqualifying for accession absent a waiver. For example, persons with a history of bipolar disorder, personality disorder, obsessive-compulsive disorder, suicidal behavior, and even body dysmorphic disorder (to name a few) are barred from entering into military service, unless a waiver is granted.⁵³ For a few conditions, however, persons may enter into service without a waiver if they can demonstrate stability for 24 to 36 continuous months preceding accession. Historically, a person is deemed stable if they are without treatment, symptoms, or behavior of a repeated nature that impaired social, school, or work efficiency for an extended period of several months. Such conditions include depressive disorder (stable for 36 continuous months) and anxiety disorder (stable for 24 continuous months).⁵⁴ Requiring a period of stability reduces, but does not eliminate, the likelihood that the individual's depression or anxiety will return.

Historically, conditions associated with transgender individuals have been automatically disqualifying absent a waiver. Before the changes directed by Secretary Carter, military mental health standards barred persons with a "[h]istory of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias."⁵⁵ These standards, however, did not evolve with changing understanding of transgender mental health. Today, transsexualism is no longer considered by most mental health practitioners as a mental health condition. According to the APA, it is not a medical condition for persons to identify with a gender that is different from their biological sex.⁵⁶ Put simply, transgender status alone is not a condition.

Gender dysphoria, by contrast, is a mental health condition that can require substantial medical treatment. Many individuals who identify as transgender are diagnosed with gender dysphoria, but "[n]ot all transgender people suffer from gender dysphoria and that distinction," according to the APA, "is important to keep in mind."⁵⁷ The DSM-5 defines gender dysphoria as

⁵¹ Deployment Health Clinical Center, "Mental Health Disorder Prevalence among Active Duty Service Members in the Military Health System, Fiscal Years 2005-2016" (Jan. 2017).

⁵² *Id.*

⁵³ DoDI 6130.03 at 47-48.

⁵⁴ *Id.*

⁵⁵ *Id.* at 48.

⁵⁶ DSM-5 at 452-53.

⁵⁷ American Psychiatric Association, "Expert Q & A: Gender Dysphoria," available at <https://www.psychiatry.org/patients-families/gender-dysphoria/expert-qa> (last visited Feb. 14, 2018). Conversely, not all persons with gender dysphoria are transgender. "For example, some men who are disabled in combat, especially if their injury includes genital wounds, may feel that they are no longer men because their bodies do not conform to their concept of manliness. Similarly, a woman who opposes plastic surgery, but who must undergo mastectomy because of breast

a “marked incongruence between one’s experience/expressed gender and assigned gender, of at least 6 months duration,” that is manifested in various specified ways.⁵⁸ According to the APA, the “condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.”⁵⁹

Transgender persons with gender dysphoria suffer from high rates of mental health conditions such as anxiety, depression, and substance use disorders.⁶⁰ High rates of suicide ideation, attempts, and completion among people who are transgender are also well documented in the medical literature, with lifetime rates of suicide attempts reported to be as high as 41% (compared to 4.6% for the general population).⁶¹ According to a 2015 survey, the rate skyrockets to 57% for transgender individuals without a supportive family.⁶² The Department is concerned that the stresses of military life, including basic training, frequent moves, deployment to war zones and austere environments, and the relentless physical demands, will be additional contributors to suicide behavior in people with gender dysphoria. In fact, there is recent evidence that military service can be a contributor to suicidal thoughts.⁶³

Preliminary data of Service members with gender dysphoria reflect similar trends. A review of the administrative data indicates that Service members with gender dysphoria are eight times more likely to attempt suicide than Service members as a whole (12% versus 1.5%).⁶⁴

cancer, may find that she requires reconstructive breast surgery in order to resolve gender dysphoria arising from the incongruence between her body without breasts and her sense of herself as a woman.” M. Jocelyn Elders, George R. Brown, Eli Coleman, Thomas Kolditz & Alan Steinman, “Medical Aspects of Transgender Military Service,” *Armed Forces & Society*, p. 5 n.22 (Mar. 2014).

⁵⁸ DSM-5 at 452.

⁵⁹ DSM-5 at 453.

⁶⁰ Cecilia Dhejne, Roy Van Vlerken, Gunter Heylens & Jon Arcelus, “Mental health and gender dysphoria: A review of the literature,” *International Review of Psychiatry*, Vol. 28, pp. 44-57 (2016); George R. Brown & Kenneth T. Jones, “Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study,” *LGBT Health*, Vol. 3, p. 128 (Apr. 2016).

⁶¹ Ann P. Haas, Philip L. Rodgers & Jody L. Herman, *Suicide Attempts among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey*, p. 2 (American Foundation for Suicide Prevention and The Williams Institute, University of California, Los Angeles, School of Law 2014), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>; H.G. Virupaksha, Daliboyina Muralidhar & Jayashree Ramakrishna, “Suicide and Suicide Behavior among Transgender Persons,” *Indian Journal of Psychological Medicine*, Vol.38, pp. 505-09 (2016); Claire M. Peterson, Abigail Matthews, Emily Copps-Smith & Lee Ann Conard, “Suicidality, Self-Harm, and Body Dissatisfaction in Transgender Adolescents and Emerging Adults with Gender Dysphoria,” *Suicide and Life Threatening Behavior*, Vol. 47, pp. 475-482 (Aug. 2017).

⁶² Ann P. Haas, Philip L. Rodgers & Jody L. Herman, *Suicide Attempts among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey*, pp. 2, 12 (American Foundation for Suicide Prevention and The Williams Institute, University of California, Los Angeles, School of Law 2014), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>.

⁶³ Raymond P. Tucker, Rylan J. Testa, Mark A. Reger, Tracy L. Simpson, Jillian C. Shipherd, & Keren Lehavot, “Current and Military-Specific Gender Minority Stress Factors and Their Relationship with Suicide Ideation in Transgender Veterans,” *Suicide and Life Threatening Behavior* DOI: 10.1111/sltb.12432 (epub ahead of print), pp. 1-10 (2018); Craig J. Bryan, AnnaBelle O. Bryan, Bobbie N. Ray-Sannerud, Neysa Etienne & Chad E. Morrow, “Suicide attempts before joining the military increase risk for suicide attempts and severity of suicidal ideation among military personnel and veterans,” *Comprehensive Psychiatry*, Vol. 55, pp. 534-541 (2014).

⁶⁴ Data retrieved from Military Health System data repository (Oct. 2017).

Service members with gender dysphoria are also nine times more likely to have mental health encounters than the Service member population as a whole (28.1 average encounters per Service member versus 2.7 average encounters per Service member).⁶⁵ From October 1, 2015 to October 3, 2017, the 994 active duty Service members diagnosed with gender dysphoria accounted for 30,000 mental health visits.⁶⁶

It is widely believed by mental health practitioners that gender dysphoria can be treated. Under commonly accepted standards of care, treatment for gender dysphoria can include: psychotherapy; social transition—also known as “real life experience”—to allow patients to live and work in their preferred gender without any hormone treatment or surgery; medical transition to align secondary sex characteristics with patients’ preferred gender using cross-sex hormone therapy and hair removal; and surgical transition—also known as sex reassignment surgery—to make the physical body—both primary and secondary sex characteristics—resemble as closely as possible patients’ preferred gender.⁶⁷ The purpose of these treatment options is to alleviate the distress and impairment of gender dysphoria by seeking to bring patients’ physical characteristics into alignment with their gender identity—that is, one’s inner sense of one’s own gender.⁶⁸

Cross-sex hormone therapy is a common medical treatment associated with gender transition that may be commenced following a diagnosis of gender dysphoria.⁶⁹ Treatment for women transitioning to men involves the administration of testosterone, whereas treatment for men transitioning to women requires the blocking of testosterone and the administration of estrogens.⁷⁰ The Endocrine Society’s clinical guidelines recommend laboratory bloodwork every 90 days for the first year of treatment to monitor hormone levels.⁷¹

As a treatment for gender dysphoria, sex reassignment surgery is “a unique intervention not only in psychiatry but in all of medicine.”⁷² Under existing Department guidelines

⁶⁵ Data retrieved from Military Health System data repository (Oct. 2017). Study period was Oct. 1, 2015 to July 26, 2017.

⁶⁶ Data retrieved from Military Health System data repository (Oct. 2017).

⁶⁷ RAND Study at 5-7, Appendices A & C; see also Hayes Directory, “Sex Reassignment Surgery for the Treatment of Gender Dysphoria,” p. 1 (May 15, 2014) (“The full therapeutic approach to [gender dysphoria] consists of 3 elements or phases, typically in the following order: (1) hormones of the desired gender; (2) real-life experience for 12 months in the desired role; and (3) surgery to change the genitalia and other sex characteristics (e.g., breast reconstruction or mastectomy). However, not everyone with [gender dysphoria] needs or wants all elements of this triadic approach.”); Irene Folaron & Monica Lovasz, “Military Considerations in Transsexual Care of the Active Duty Member,” *Military Medicine*, Vol. 181, p. 1183 (Oct. 2016) (“The Endocrine Society proposes a sequential approach in transsexual care to optimize mental health and physical outcomes. Generally, they recommend initiation of psychotherapy, followed by cross-sex hormone treatments, then [sex reassignment surgery].”).

⁶⁸ RAND Study at 73.

⁶⁹ Wylie C. Hembree, Peggy Cohen-Kettenis, Lous Gooren, Sabine Hannema, Walter Meyer, M. Hassan Murad, Stephen Rosenthal, Joshua Safer, Vin Tangpricha, & Guy T’Sjoen, “Endocrine Treatment of Gender-Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline,” *The Journal of Clinical Endocrinology & Metabolism*, Vol. 102, pp. 3869-3903 (Nov. 2017).

⁷⁰ *Id.* at 3885-3888.

⁷¹ *Id.*

⁷² Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, “Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden,” *PLoS One*, Vol. 6, pp. 1-8 (Feb. 2011); see also Hayes Directory, “Sex Reassignment Surgery for the Treatment of

implementing the Carter policy, men transitioning to women may obtain an orchiectomy (surgical removal of the testicles), a penectomy (surgical removal of the penis), a vaginoplasty (surgical creation of a vagina), a clitoroplasty (surgical creation of a clitoris), and a labiaplasty (surgical creation of the labia). Women transitioning to men may obtain a hysterectomy (surgical removal of the uterus), a mastectomy (surgical removal of the breasts), a metoidioplasty (surgical enlargement of the clitoris), a phalloplasty (surgical creation of a penis), a scrotoplasty (surgical creation of a scrotum) and placement of testicular prostheses, a urethroplasty (surgical enlargement of the urethra), and a vaginectomy (surgical removal of the vagina). In addition, the following cosmetic procedures may be provided at military treatment facilities as well: abdominoplasty, breast augmentation, blepharoplasty (eyelid lift), hair removal, face lift, facial bone reduction, hair transplantation, liposuction, reduction thyroid chondroplasty, rhinoplasty, and voice modification surgery.⁷³

The estimated recovery time for each of the surgical procedures, even assuming no complications, can be substantial. For example, assuming no complications, the recovery time for a hysterectomy is up to eight weeks; a mastectomy is up to six weeks; a phalloplasty is up to three months; a metoidioplasty is up to eight weeks; an orchiectomy is up to six weeks; and a vaginoplasty is up to three months.⁷⁴ When combined with 12 continuous months of hormone therapy, which is required prior to genital surgery,⁷⁵ the total time necessary for surgical transition can exceed a year.

Although relatively few people who are transgender undergo genital reassignment surgeries (2% of transgender men and 10% of transgender women), we have to consider that the rate of complications for these surgeries is significant, which could increase a transitioning Service member's unavailability.⁷⁶ Even according to the RAND study, 6% to 20% of those receiving vaginoplasty surgery experience complications, meaning that "between three and 11 Service members per year would experience a long-term disability from gender reassignment

Gender Dysphoria," p. 2 (May 15, 2014) (noting that gender dysphoria "does not readily fit traditional concepts of medical necessity since research to date has not established anatomical or physiological anomalies associated with [gender dysphoria]"); Hayes Annual Review, "Sex Reassignment Surgery for the Treatment of Gender Dysphoria" (Apr. 18, 2017).

⁷³ Memorandum from Defense Health Agency, "Information Memorandum: Interim Defense Health Agency Procedures for Reviewing Requests for Waivers to Allow Supplemental Health Care Program Coverage of Sex Reassignment Surgical Procedures" (Nov. 13, 2017); see also RAND Study at Appendix C.

⁷⁴ University of California, San Francisco, Center of Excellence for Transgender Health, "Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People," available at <http://transhealth.ucsf.edu/trans?page=guidelines-home> (last visited Feb. 16, 2018); Discussion with Dr. Loren Schechter, Visiting Clinical Professor of Surgery, University of Illinois at Chicago (Nov. 9, 2017).

⁷⁵ RAND Study at 80; see also Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1184 (Oct. 2016) (noting that Endocrine Society criteria "require that the patient has been on continuous cross-sex hormones and has had continuous [real life experience] or psychotherapy for the past 12 months").

⁷⁶ Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet & Ma'ayan Anafi, *The Report of the 2015 U.S. Transgender Survey*, pp. 100-103 (National Center for Transgender Equality 2016) available at <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

surgery.”⁷⁷ The RAND study further notes that of those receiving phalloplasty surgery, as many as 25%—one in four—will have complications.⁷⁸

The prevailing judgment of mental health practitioners is that gender dysphoria can be treated with the transition-related care described above. While there are numerous studies of varying quality showing that this treatment can improve health outcomes for individuals with gender dysphoria, the available scientific evidence on the extent to which such treatments fully remedy all of the issues associated with gender dysphoria is unclear. Nor do any of these studies account for the added stress of military life, deployments, and combat.

As recently as August 2016, the Centers for Medicare and Medicaid Services (CMS) conducted a comprehensive review of the relevant literature, over 500 articles, studies, and reports, to determine if there was “sufficient evidence to conclude that gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria.”⁷⁹ After reviewing the universe of literature regarding sex reassignment surgery, CMS identified 33 studies sufficiently rigorous to merit further review, and of those, “some were positive; others were negative.”⁸⁰ “Overall,” according to CMS, “the quality and strength of evidence were low due to mostly observational study designs with no comparison groups, subjective endpoints, potential confounding . . . small sample sizes, lack of validated assessment tools, and considerable [number of study subjects] lost to follow-up.”⁸¹ With respect to whether sex reassignment surgery was “reasonable and necessary” for the treatment of gender dysphoria, CMS concluded that there was “not enough high quality evidence to determine whether gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria and whether patients most likely to benefit from these types of surgical intervention can be identified prospectively.”⁸²

Importantly, CMS identified only six studies as potentially providing “useful information” on the effectiveness of sex reassignment surgery. According to CRS, “the four best designed and conducted studies that assessed the quality of life before and after surgery using validated (albeit, non-specific) psychometric studies did not demonstrate clinically significant changes or differences in psychometric test results after [sex reassignment surgery].”⁸³

⁷⁷ RAND Study at 40-41.

⁷⁸ *Id.* at 41.

⁷⁹ Tamara Jensen, Joseph Chin, James Rollins, Elizabeth Koller, Linda Gousis & Katherine Szarama, “Final Decision Memorandum on Gender Reassignment Surgery for Medicare Beneficiaries with Gender Dysphoria,” Centers for Medicare & Medicaid Services, p. 9 (Aug. 30, 2016) (“CMS Report”).

⁸⁰ *Id.* at 62.

⁸¹ *Id.*

⁸² *Id.* at 65. CMS did not conclude that gender reassignment surgery can never be necessary and reasonable to treat gender dysphoria. To the contrary, it made clear that Medicare insurers could make their own “determination of whether or not to cover gender reassignment surgery based on whether gender reassignment surgery is reasonable and necessary for the individual beneficiary after considering the individual’s specific circumstances.” *Id.* at 66. Nevertheless, CMS did decline to require all Medicare insurers to cover sex reassignment surgeries because it found insufficient scientific evidence to conclude that such surgeries improve health outcomes for persons with gender dysphoria.

⁸³ *Id.* at 62.

Additional studies found that the “cumulative rates of requests for surgical reassignment reversal or change in legal status” were between 2.2% and 3.3%.⁸⁴

A sixth study, which came out of Sweden, is one of the most robust because it is a “nationwide population-based, long-term follow-up of sex-reassigned transsexual persons.”⁸⁵ The study found increased mortality and psychiatric hospitalization for patients who had undergone sex reassignment surgery as compared to a healthy control group.⁸⁶ As described by CMS: “The mortality was primarily due to completed suicides (19.1-fold greater than in [the control group]), but death due to neoplasm and cardiovascular disease was increased 2 to 2.5 times as well. We note, mortality from this patient population did not become apparent until after 10 years. The risk for psychiatric hospitalization was 2.8 times greater than in controls even after adjustment for prior psychiatric disease (18%). The risk for attempted suicide was greater in male-to-female patients regardless of the gender of the control.”⁸⁷

According to the Hayes Directory, which conducted a review of 19 peer-reviewed studies on sex reassignment surgery, the “evidence suggests positive benefits,” including “decreased [gender dysphoria], depression and anxiety, and increased [quality of life],” but “because of serious limitations,” these findings “permit only weak conclusions.”⁸⁸ It rated the quality of evidence as “very low” due to the numerous limitations in the studies and concluded that there is

⁸⁴ *Id.*

⁸⁵ Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, “Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden,” *PLoS One*, Vol. 6, p. 6 (Feb. 2011); see also *id.* (“Strengths of this study include nationwide representativity over more than 30 years, extensive follow-up time, and minimal loss to follow-up. . . . Finally, whereas previous studies either lack a control group or use standardised mortality rates or standardised incidence rates as comparisons, we selected random population controls matched by birth year, and either birth or final sex.”).

⁸⁶ *Id.* at 7; see also at 6 (“Mortality from suicide was strikingly high among sex-reassigned persons, also after adjustment for prior psychiatric morbidity. In line with this, sex-reassigned persons were at increased risk for suicide attempts. Previous reports suggest that transsexualism is a strong risk factor for suicide, also after sex reassignment, and our long-term findings support the need for continued psychiatric follow-up for persons at risk to prevent this. Inpatient care for psychiatric disorders was significantly more common among sex-reassigned persons than among matched controls, both before and after sex reassignment. It is generally accepted that transsexuals have more psychiatric ill-health than the general population prior to the sex reassignment. It should therefore come as no surprise that studies have found high rates of depression, and low quality of life, also after sex reassignment. Notably, however, in this study the increased risk for psychiatric hospitalization persisted even after adjusting for psychiatric hospitalization prior to sex reassignment. This suggests that even though sex reassignment alleviates gender dysphoria, there is a need to identify and treat co-occurring psychiatric morbidity in transsexual persons not only before but also after sex reassignment.”).

⁸⁷ CMS Report at 62. It bears noting that the outcomes for mortality and suicide attempts differed “depending on when sex reassignment was performed: during the period 1973-1988 or 1989-2003.” Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, “Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden,” *PLoS One*, Vol. 6, p. 5 (Feb. 2011). Even though both mortality and suicide attempts were greater for transsexual persons than the healthy control group across both time periods, this did not reach statistical significance during the 1989-2003 period. One possible explanation is that mortality rates for transsexual persons did not begin to diverge from the healthy control group until after 10 years of follow-up, in which case the expected increase in mortality would not have been observed for most of the persons receiving sex reassignment surgeries from 1989-2003. Another possible explanation is that treatment was of a higher quality from 1989-2003 than from 1973-1988.

⁸⁸ Hayes Directory, “Sex Reassignment Surgery for the Treatment of Gender Dysphoria,” p. 4 (May 15, 2014).

not sufficient “evidence to establish patient selection criteria for [sex reassignment surgery] to treat [gender dysphoria].”⁸⁹

With respect to hormone therapy, the Hayes Directory examined 10 peer-reviewed studies and concluded that a “substantial number of studies of cross-sex hormone therapy each show some positive findings suggesting improvement in well-being after cross-sex hormone therapy.”⁹⁰ Yet again, it rated the quality of evidence as “very low” and found that the “evidence is insufficient to support patient selection criteria for hormone therapy to treat [gender dysphoria].”⁹¹ Importantly, the Hayes Directory also found: “Hormone therapy and subsequent [sex reassignment surgery] failed to bring overall mortality, suicide rates, or death from illicit drug use in [male-to-female] patients close to rates observed in the general male population. It is possible that mortality is nevertheless reduced by these treatments, but that cannot be determined from the available evidence.”⁹²

In 2010, Mayo Clinic researchers conducted a comprehensive review of 28 studies on the use of cross-sex hormone therapy in sex reassignment and concluded that there was “very low quality evidence” showing that such therapy “likely improves gender dysphoria, psychological functioning and comorbidities, sexual function and overall quality of life.”⁹³ Not all of the studies showed positive results, but overall, after pooling the data from all of the studies, the researchers showed that 80% of patients reported improvement in gender dysphoria, 78% reported improvement in psychological symptoms, and 80% reported improvement in quality of life, after receiving hormone therapy.⁹⁴ Importantly, however, “[s]uicide attempt rates decreased after sex reassignment but stayed higher than the normal population rate.”⁹⁵

The authors of the Swedish study discussed above reached similar conclusions: “This study found substantially higher rates of overall mortality, death from cardiovascular disease and suicide, suicide attempts, and psychiatric hospitali[z]ations in sex-reassigned transsexual individuals compared to a healthy control population. This highlights that post[-]surgical transsexuals are a risk group that need long-term psychiatric and somatic follow-up. Even though surgery and hormonal therapy alleviates gender dysphoria, it is apparently not sufficient to remedy the high rates of morbidity and mortality found among transsexual persons.”⁹⁶

Even the RAND study, which the Carter policy is based upon, confirmed that “[t]here have been no randomized controlled trials of the effectiveness of various forms of treatment, and

⁸⁹ Id. at 3.

⁹⁰ Hayes Directory, “Hormone Therapy for the Treatment of Gender Dysphoria,” pp. 2, 4 (May 19, 2014).

⁹¹ Id. at 4.

⁹² Id. at 3.

⁹³ Mohammad Hassan Murad, Mohamed B. Elamin, Magaly Zumaeta Garcia, Rebecca J. Mullan, Ayman Murad, Patricia J. Erwin & Victor M. Montori, “Hormonal therapy and sex reassignment: a systematic review and meta-analysis of quality of life and psychosocial outcomes,” *Clinical Endocrinology*, Vol. 72, p. 214 (2010).

⁹⁴ Id. at 216.

⁹⁵ Id.

⁹⁶ Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, “Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden,” *PLoS One*, Vol. 6, pp. 1-8 (Feb. 2011).

most evidence comes from retrospective studies.”⁹⁷ Although noting that “[m]ultiple observational studies have suggested significant and sometimes dramatic reductions in suicidality, suicide attempts, and suicides among transgender patients after receiving transition-related treatment,” RAND made clear that “none of these studies were randomized controlled trials (the gold standard for determining treatment efficacy).”⁹⁸ “In the absence of quality randomized trial evidence,” RAND concluded, “it is difficult to fully assess the outcomes of treatment for [gender dysphoria].”⁹⁹

Given the scientific uncertainty surrounding the efficacy of transition-related treatments for gender dysphoria, it is imperative that the Department proceed cautiously in setting accession and retention standards for persons with a diagnosis or history of gender dysphoria.

B. Physical Health Standards

Not only is maintaining high standards of mental health critical to military effectiveness and lethality, maintaining high standards of physical health is as well. Although technology has done much to ease the physical demands of combat in some military specialties, war very much remains a physically demanding endeavor. Service members must therefore be physically prepared to endure the rigors and hardships of military service, including potentially combat. They must be able to carry heavy equipment sometimes over long distances; they must be able to handle heavy machinery; they must be able to traverse harsh terrain or survive in ocean waters; they must be able to withstand oppressive heat, bitter cold, rain, sleet, and snow; they must be able to endure in unsanitary conditions, coupled with lack of privacy for basic bodily functions, sometimes with little sleep and sustenance; they must be able to carry their wounded comrades to safety; and they must be able to defend themselves against those who wish to kill them.

Above all, whether they serve on the frontlines or in relative safety in non-combat positions, every Service member is important to mission accomplishment and must be available to perform their duties globally whenever called upon. The loss of personnel due to illness, disease, injury, or bad health diminishes military effectiveness and lethality. The Department’s physical health standards are therefore designed to minimize the odds that any given Service member will be unable to perform his or her duties in the future because of illness, disease, or injury. As noted earlier, those who seek to enter military service must be free of contagious diseases; free of medical conditions or physical defects that could require treatment, hospitalization, or eventual separation from service for medical unfitness; medically capable of satisfactorily completing required training; medically adaptable to the military environment; and medically capable of performing duties without aggravation of existing physical defects or medical conditions.¹⁰⁰ To access recruits with higher rates of anticipated unavailability for deployment thrusts a heavier burden on those who would deploy more often.

⁹⁷ RAND Study at 7.

⁹⁸ Id. at 10 (citing only to a California Department of Insurance report).

⁹⁹ Id.

¹⁰⁰ DoDI 6130.03 at 2.

Historically, absent a waiver, the Department has barred from accessing into the military anyone who had undergone chest or genital surgery (e.g., removal of the testicles or uterus) and anyone with a history of major abnormalities or defects of the chest or genitalia, including hermaphroditism and pseudohermaphroditism.¹⁰¹ Persons with conditions requiring medications, such as anti-depressants and hormone treatment, were also disqualified from service, unless a waiver was granted.¹⁰²

These standards have long applied uniformly to all persons, regardless of transgender status. The Carter policy, however, deviates from these uniform standards by exempting, under certain conditions, treatments associated with gender transition, such as sex reassignment surgery and cross-sex hormone therapy. For example, under the Carter policy, an applicant who has received genital reconstruction surgery may access without a waiver if a period of 18 months has elapsed since the date of the most recent surgery, no functional limitations or complications persist, and no additional surgery is required. In contrast, an applicant who received similar surgery following a traumatic injury is disqualified from military service without a waiver.¹⁰³ Similarly, under the Carter policy, an applicant who is presently receiving cross-sex hormone therapy post-gender transition may access without a waiver if the applicant has been stable on such hormones for 18 months. In contrast, an applicant taking synthetic hormones for the treatment of hypothyroidism is disqualified from military service without a waiver.¹⁰⁴

C. Sex-Based Standards

Women have made invaluable contributions to the defense of the Nation throughout our history. These contributions have only grown more significant as the number of women in the Armed Forces has increased and as their roles have expanded. Today, women account for 17.6% of the force,¹⁰⁵ and now every position, including combat arms positions, is open to them.

The vast majority of military standards make no distinctions between men and women. Where biological differences between males and females are relevant, however, military standards do differentiate between them. The Supreme Court has acknowledged the lawfulness of sex-based standards that flow from legitimate biological differences between the sexes.¹⁰⁶ These sex-based standards ensure fairness, equity, and safety; satisfy reasonable expectations of privacy; reflect common practice in society; and promote core military values of dignity and respect between men and women—all of which promote good order, discipline, steady leadership, unit cohesion, and ultimately military effectiveness and lethality.

¹⁰¹ Id. at 25-27.

¹⁰² Id. at 46-48.

¹⁰³ Id. at 26-27.

¹⁰⁴ Id. at 41.

¹⁰⁵ Defense Manpower Data Center, Active and Reserve Master Files (Dec. 2017).

¹⁰⁶ For example, in *United States v. Virginia*, the Court noted approvingly that “[a]dmitting women to [the Virginia Military Institute] would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements, and to adjust aspects of the physical training programs.” 518 U.S. 515, 550-51 n.19 (1996) (citing the statute that requires the same standards for women admitted to the service academies as for the men, “except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals”).

For example, anatomical differences between males and females, and the reasonable expectations of privacy that flow from those differences, at least partly account for the laws and regulations that require separate berthing, bathroom, and shower facilities and different drug testing procedures for males and females.¹⁰⁷ To maintain good order and discipline, Congress has even required by statute that the sleeping and latrine areas provided for “male” recruits be physically separated from the sleeping and latrine areas provided for “female” recruits during basic training and that access by drill sergeants and training personnel “after the end of the training day” be limited to persons of the “same sex as the recruits” to ensure “after-hours privacy for recruits during basic training.”¹⁰⁸

In addition, physiological differences between males and females account for the different physical fitness and body fat standards that apply to men and women.¹⁰⁹ This ensures equity and fairness. Likewise, those same physiological differences also account for the policies that regulate competition between men and women in military training and sports, such as boxing and combatives.¹¹⁰ This ensures protection from injury.

¹⁰⁷ See, e.g., Department of the Army, Training and Doctrine Command, TRADOC Regulation 350-6, “Enlisted Initial Entry Training Policies and Administration,” p. 56 (Mar. 20, 2017); Department of the Air Force, Air Force Instruction 32-6005, “Unaccompanied Housing Management,” p. 35 (Jan 29., 2016); Department of the Army, Human Resources Command, AR 600-85, “Substance Abuse Program” (Dec. 28, 2012) (“Observers must . . . [b]e the same gender as the Soldier being observed.”).

¹⁰⁸ See 10 U.S.C. § 4319 (Army), 10 U.S.C. § 6931 (Navy), and 10 U.S.C. § 9319 (Air Force) (requiring the sleeping and latrine areas provided for “male” recruits to be physically separated from the sleeping and latrine areas provided for “female” recruits during basic training); 10 U.S.C. § 4320 (Army), 10 U.S.C. § 6932 (Navy), and 10 U.S.C. § 9320 (Air Force) (requiring that access by drill sergeants and training personnel “after the end of the training day” be limited to persons of the “same sex as the recruits”).

¹⁰⁹ See, e.g., Department of the Army, Army Regulation 600-9, “The Army Body Composition Program,” pp. 21-31 (June 28, 2013); Department of the Navy, Office of the Chief of Naval Operations Instruction 6110.1J, “Physical Readiness Program,” p. 7 (July 11, 2011); Department of the Air Force, Air Force Instruction 36-2905, “Fitness Program,” pp. 86-95, 106-146 (Aug. 27, 2015); Department of the Navy, Marine Corps Order 6100.13, “Marine Corps Physical Fitness Program,” (Aug. 1, 2008); Department of the Navy, Marine Corps Order 6110.3A, “Marine Corps Body Composition and Military Appearance Program,” (Dec. 15, 2016); see also United States Military Academy, Office of the Commandant of Cadets, “Physical Program Whitebook AY 16-17,” p. 13 (specifying that, to graduate, cadets must meet the minimum performance standard of 3:30 for men and 5:29 for women on the Indoor Obstacle Course Test); Department of the Army, Training and Doctrine Command, TRADOC Regulation 350-6, “Enlisted Initial Entry Training Policies and Administration,” p. 56 (Mar. 20, 2017) (“Performance requirement differences, such as [Army Physical Fitness Test] scoring arc based on physiological differences, and apply to the entire Army.”).

¹¹⁰ See, e.g., Headquarters, Department of the Army, TC 3-25.150, “Combatives,” p. A-15 (Feb. 2017) (“Due to the physiological difference between the sexes and in order to treat all Soldiers fairly and conduct gender-neutral competitions, female competitors will be given a 15 percent overage at weigh-in.”); id. (“In championships at battalion-level and above, competitors are divided into eight weight class brackets. . . . These classes take into account weight and gender.”); Major Alex Bedard, Major Robert Peterson & Ray Barone, “Punching Through Barriers: Female Cadets Integrated into Mandatory Boxing at West Point,” *Association of the United States Army* (Nov. 16, 2017), <https://www.ausea.org/articles/punching-through-barriers-female-cadets-boxing-west-point> (noting that “[i]n]atching men and women according to weight may not adequately account for gender differences regarding striking force” and that “[w]hile conducting free sparring, cadets must box someone of the same gender”); RAND Study at 57 (noting that, under British military policy, transgender persons “can be excluded from sports that organize around gender to ensure the safety of the individual or other participants”); see also International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogensim (Nov. 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_

Uniform and grooming standards, to a certain extent, are also based on anatomical differences between males and females. Even those uniform and grooming standards that are not, strictly speaking, based on physical biology nevertheless flow from longstanding societal expectations regarding differences in attire and grooming for men and women.¹¹¹

Because these sex-based standards are based on legitimate biological differences between males and females, it follows that a person's physical biology should dictate which standards apply. Standards designed for biological males logically apply to biological males, not biological females, and vice versa. When relevant, military practice has long adhered to this straightforward and logical demarcation.

By contrast, the Carter policy deviates from this longstanding practice by making military sex-based standards contingent, not necessarily on the person's biological sex, but on the person's gender marker in DEERS, which can be changed to reflect the person's gender identity.¹¹² Thus, under the Carter policy, a biological male who identifies as a female (and changes his gender marker to reflect that gender) must be held to the standards and regulations for females, even though those standards and regulations are based on female physical biology, not female gender identity. The same goes for females who identify as males. Gender identity alone, however, is irrelevant to standards that are designed on the basis of biological differences.

Rather than apply only to those transgender individuals who have altered their external biological characteristics to fully match that of their preferred gender, under the Carter policy, persons need not undergo sex reassignment surgery, or even cross-sex hormone therapy, in order to be recognized as, and thus subject to the standards associated with, their preferred gender. A male who identifies as female could remain a biological male in every respect and still must be treated in all respects as a female, including with respect to physical fitness, facilities, and uniform and grooming. This scenario is not farfetched. According to the APA, not "all individuals with gender dysphoria desire a complete gender reassignment. . . . Some are satisfied with no medical or surgical treatment but prefer to dress as the felt gender in public."¹¹³ Currently, of the 424 approved Service member treatment plans, at least 36 do not include cross-

consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf; NCAA Office of Inclusion; NCAA Inclusion of Transgender Student-Athletes (Aug. 2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

¹¹¹ "The difference between men's and women's grooming policies recognizes the difference between the sexes; sideburns for men, different hairstyles and cosmetics for women. Establishing identical grooming and personal appearance standards for men and women would not be in the Navy's best interest and is not a factor in the assurance of equal opportunity." Department of the Navy, Navy Personnel Command, Navy Personnel Instruction 156651, "Uniform Regulations," Art. 2101.1 (July 7, 2017); see also Department of the Army, Army Regulation 670-1, "Wear and Appearance of Army Uniforms and Insignia," pp. 4-16 (Mar. 31, 2014); Department of the Air Force, Air Force Instruction 26-2903, "Dress and Personal Appearance of Air Force Personnel," pp. 17-27 (Feb. 9, 2017); Department of the Navy, Marine Corps Order P1020.34G, "Marine Corps Uniform Regulations," pp. 1-9 (Mar. 31, 2003).

¹¹² Department of Defense Instruction 1300.28, *In-service Transition for Service Members Identifying as Transgender*, pp. 3-4 (June 30, 2016).

¹¹³ American Psychiatric Association, "Expert Q & A: Gender Dysphoria," available at <https://www.psychiatry.org/patients-families/gender-dysphoria/expert-qa> (last visited Feb. 14, 2018).

sex hormone therapy or sex reassignment surgery.¹¹⁴ And it is questionable how many Service members will obtain any type of sex reassignment surgery. According to a survey of transgender persons, only 25% reported having had some form of transition-related surgery.¹¹⁵

The variability and fluidity of gender transition undermine the legitimate purposes that justify different biologically-based, male-female standards. For example, by allowing a biological male who retains male anatomy to use female berthing, bathroom, and shower facilities, it undermines the reasonable expectations of privacy and dignity of female Service members. By allowing a biological male to meet the female physical fitness and body fat standards and to compete against females in gender-specific physical training and athletic competition, it undermines fairness (or perceptions of fairness) because males competing as females will likely score higher on the female test than on the male test and possibly compromise safety. By allowing a biological male to adhere to female uniform and grooming standards, it creates unfairness for other males who would also like to be exempted from male uniform and grooming standards as a means of expressing their own sense of identity.

These problems could perhaps be alleviated if a person's preferred gender were recognized only after the person underwent a biological transition. The concept of gender transition is so nebulous, however, that drawing any line—except perhaps at a full sex reassignment surgery—would be arbitrary, not to mention at odds with current medical practice, which allows for a wide range of individualized treatment. In any event, rates for genital surgery are exceedingly low—2% of transgender men and 10% of transgender women.¹¹⁶ Only up to 25% of surveyed transgender persons report having had some form of transition-related surgery.¹¹⁷ The RAND study estimated that such rates “are typically only around 20 percent, with the exception of chest surgery among female-to-male transgender individuals.”¹¹⁸ Moreover, of the 424 approved Service member treatment plans available for study, 388 included cross-sex hormone treatment, but only 34 non-genital sex reassignment surgeries and one genital surgery have been completed thus far. Only 22 Service members have requested a waiver for a genital sex reassignment surgery.¹¹⁹

Low rates of full sex reassignment surgery and the otherwise wide variation of transition-related treatment, with all the challenges that entails for privacy, fairness, and safety, weigh in favor of maintaining a bright line based on biological sex—not gender identity or some variation thereof—in determining which sex-based standards apply to a given Service member. After all, a person's biological sex is generally ascertainable through objective means. Moreover, this approach will ensure that biologically-based standards will be applied uniformly to all Service members of the same biological sex. Standards that are clear, coherent, objective, consistent, predictable, and uniformly applied enhance good order, discipline, steady leadership, and unit cohesion, which in turn, ensure military effectiveness and lethality.

¹¹⁴ Data reported by the Departments of the Army, Navy, and Air Force (Oct. 2017).

¹¹⁵ *Id.*

¹¹⁶ Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet & Ma'ayan Anaf, *The Report of the 2015 U.S. Transgender Survey*, pp. 100-103 (National Center for Transgender Equality 2016) available at <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

¹¹⁷ *Id.* at 100.

¹¹⁸ RAND Study at 21.

¹¹⁹ Defense Health Agency, Supplemental Health Care Program Data (Feb. 2018).

New Transgender Policy

In light of the forgoing standards, all of which are necessary for military effectiveness and lethality, as well as the recommendations of the Panel of Experts, the Department, in consultation with the Department of Homeland Security, recommends the following policy:

A. Transgender Persons Without a History or Diagnosis of Gender Dysphoria. Who Are Otherwise Qualified for Service, May Serve, Like All Other Service Members, in Their Biological Sex.

Transgender persons who have not transitioned to another gender and do not have a history or current diagnosis of gender dysphoria—i.e., they identify as a gender other than their biological sex but do not currently experience distress or impairment of functioning in meeting the standards associated with their biological sex—are eligible for service, provided that they, like all other persons, satisfy all mental and physical health standards and are capable of adhering to the standards associated with their biological sex. This is consistent with the Carter policy, under which a transgender person's gender identity is recognized only if the person has a diagnosis or history of gender dysphoria.

Although the precise number is unknown, the Department recognizes that many transgender persons could be disqualified under this policy. And many transgender persons who would not be disqualified may nevertheless be unwilling to adhere to the standards associated with their biological sex. But many have served, and are serving, with great dedication under the standards for their biological sex. As noted earlier, 8,980 Service members reportedly identify as transgender, and yet there are currently only 937 active duty Service members who have been diagnosed with gender dysphoria since June 30, 2016.

B. Transgender Persons Who Require or Have Undergone Gender Transition Are Disqualified.

Except for those who are exempt under this policy, as described below in C.3, and except where waivers or exceptions to policy are otherwise authorized, persons who are diagnosed with gender dysphoria, either before or after entry into service, and require transition-related treatment, or have already transitioned to their preferred gender, should be disqualified from service. In the Department's military judgment, this is a necessary departure from the Carter policy for the following reasons:

1. *Undermines Readiness.* While transition-related treatments, including real life experience, cross-sex hormone therapy, and sex reassignment surgery, are widely accepted forms of treatment, there is considerable scientific uncertainty concerning whether these treatments fully remedy, even if they may reduce, the mental health problems associated with gender dysphoria. Despite whatever improvements in condition may result from these treatments, there is evidence that rates of psychiatric hospitalization and suicide behavior remain higher for persons with gender dysphoria, even after treatment, as compared to persons without gender dysphoria.¹²⁰ The persistence of these problems is a risk for readiness.

¹²⁰ See *supra* at pp. 24-26.

Another readiness risk is the time required for transition-related treatment and the impact on deployability. Although limited and incomplete because many transitioning Service members either began treatment before the Carter policy took effect or did not require sex reassignment surgery, currently available in-service data already show that, cumulatively, transitioning Service members in the Army and Air Force have averaged 167 and 159 days of limited duty, respectively, over a one-year period.¹²¹

Transition-related treatment that involves cross-sex hormone therapy or sex reassignment surgery could render Service members with gender dysphoria non-deployable for a significant period of time—perhaps even a year—if the theater of operations cannot support the treatment. For example, Endocrine Society guidelines for cross-sex hormone therapy recommend quarterly bloodwork and laboratory monitoring of hormone levels during the first year of treatment.¹²² Of the 424 approved Service member treatment plans available for study, almost all of them—91.5%—include the prescription of cross-sex hormones.¹²³ The period of potential non-deployability increases for those who undergo sex reassignment surgery. As described earlier, the recovery time for the various sex reassignment procedures is substantial. For non-genital surgeries (assuming no complications), the range of recovery is between two and eight weeks depending on the type of surgery, and for genital surgeries (again assuming no complications), the range is between three and six months before the individual is able to return to full duty.¹²⁴ When combined with 12 continuous months of hormone therapy, which is recommended prior to genital surgery,¹²⁵ the total time necessary for sex reassignment surgery could exceed a year. If the operational environment does not permit access to a lab for monitoring hormones (and there is certainly debate over how common this would be), then the Service member must be prepared to forego treatment, monitoring, or the deployment. Either outcome carries risks for readiness.

Given the limited data, however, it is difficult to predict with any precision the impact on readiness of allowing gender transition. Moreover, the input received by the Panel of Experts varied considerably. On one hand, some commanders with transgender Service members

¹²¹ Data reported by the Departments of the Army and Air Force (Oct. 2017).

¹²² Wylie C. Hembree, Peggy Cohen-Kettenis, Lous Gooren, Sabine Hannema, Walter Meyer, M. Hassan Murad, Stephen Rosenthal, Joshua Safer, Vin Tangpricha, & Guy T'Sjoen, "Endocrine Treatment of Gender-Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline," *The Journal of Clinical Endocrinology & Metabolism*, Vol. 102, pp. 3869-3903 (Nov. 2017).

¹²³ Data reported by the Departments of the Army, Navy, and Air Force (Oct. 2017). Although the RAND study observed that British troops who are undergoing hormone therapy are generally able to deploy if the "hormone dose is steady and there are no major side effects," it nevertheless acknowledged that "deployment to all areas may not be possible, depending on the needs associated with any medication (e.g., refrigeration)." RAND Study at 59.

¹²⁴ For example, assuming no complications, the recovery time for a hysterectomy is up to eight weeks; a mastectomy is up to six weeks; a phalloplasty is up to three months; a metoidioplasty is up to 8 weeks; an orchiectomy is up to 6 weeks; and a vaginoplasty is up to three months. See University of California, San Francisco, Center of Excellence for Transgender Health, "Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People," available at <http://transhealth.ucsf.edu/trans?page=guidelines-home> (last visited Feb. 16, 2018); see also Discussion with Dr. Loren Schechter, Visiting Clinical Professor of Surgery, University of Illinois at Chicago (Nov. 9, 2017).

¹²⁵ RAND Study at 80; see also id. at 7; Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1184 (Oct. 2016) (noting that Endocrine Society criteria "require that the patient has been on continuous cross-sex hormones and has had continuous [real life experience] or psychotherapy for the past 12 months").

reported that, from the time of diagnosis to the completion of a transition plan, the transitioning Service members would be non-deployable for two to two-and-a-half years.¹²⁶ On the other band, some commanders, as well as transgender Service members themselves, reported that transition-related treatment is not a burden on unit readiness and could be managed to avoid interfering with deployments, with one commander even reporting that a transgender Service member with gender dysphoria under his command elected to postpone surgery in order to deploy.¹²⁷ This conclusion was echoed by some experts in endocrinology who found no harm in stopping or adjusting hormone therapy treatment to accommodate deployment during the first year of hormone use.¹²⁸ Of course, postponing treatment, especially during a combat deployment, has risks of its own insofar as the treatment is necessary to mitigate the clinically significant distress and impairment of functioning caused by gender dysphoria. After all, “when Service members deploy and then do not meet medical deployment fitness standards, there is risk for inadequate treatment within the operational theater, personal risk due to potential inability to perform combat required skills, and the potential to be sent home from the deployment and render the deployed unit with less manpower.”¹²⁹ In short, the periods of transition-related non-availability and the risks of deploying untreated Service members with gender dysphoria are uncertain, and that alone merits caution.

Moreover, most mental health conditions, as well as the medication used to treat them, limit Service members’ ability to deploy. Any DSM-5 psychiatric disorder with residual symptoms, or medication side effects, which impair social or occupational performance, require a waiver for the Service member to deploy.¹³⁰ The same is true for mental health conditions that pose a substantial risk for deterioration or recurrence in the deployed environment.¹³¹ In managing mental health conditions while deployed, providers must consider the risk of exacerbation if the individual were exposed to trauma or severe operational stress. These determinations are difficult to make in the absence of evidence on the impact of deployment on individuals with gender dysphoria.¹³²

The RAND study acknowledges that the inclusion of individuals with gender dysphoria in the force will have a negative impact on readiness. According to RAND, foreign militaries that allow service by personnel with gender dysphoria have found that it is sometimes necessary to restrict the deployment of transitioning individuals, including those receiving hormone therapy and surgery, to austere environments where their healthcare needs cannot be met.¹³³ Nevertheless, RAND concluded that the impact on readiness would be minimal—e.g., 0.0015% of available deployable labor-years across the active and reserve components—because of the

¹²⁶ Minutes, Transgender Review Panel (Oct. 13, 2017).

¹²⁷ *Id.*

¹²⁸ Minutes, Transgender Review Panel (Nov. 9, 2017).

¹²⁹ Institute for Defense Analyses, “Force Impact of Expanding the Recruitment of Individuals with Auditory Impairment,” pp. 60-61 (Apr. 2016).

¹³⁰ Modification Thirteen to U.S. Central Command Individual Protection and Individual, Unit Deployment Policy, Tab A, p. 8 (Mar. 2017).

¹³¹ *Id.*

¹³² See generally Memorandum from the Assistant Secretary of Defense for Health Affairs, “Clinical Practice Guidance for Deployment-Limiting Mental Disorders and Psychotropic Medications,” pp. 2-4 (Oct. 7, 2013).

¹³³ RAND Study at 40.

exceedingly small number of transgender Service members who would seek transition-related treatment.¹³⁴ Even then, RAND admitted that the information it cited “must be interpreted with caution” because “much of the current research on transgender prevalence and medical treatment rates relies on self-reported, nonrepresentative samples.”¹³⁵ Nevertheless, by RAND’s standard, the readiness impact of many medical conditions that the Department has determined to be disqualifying—from bipolar disorder to schizophrenia—would be minimal because they, too, exist only in relatively small numbers.¹³⁶ And yet that is no reason to allow persons with those conditions to serve.

The issue is not whether the military can absorb periods of non-deployability in a small population; rather, it is whether an individual with a particular condition can meet the standards for military duty and, if not, whether the condition can be remedied through treatment that renders the person non-deployable for as little time as possible. As the Department has noted before: “[W]here the operational requirements are growing faster than available resources,” it is imperative that the force “be manned with Service members capable of meeting all mission demands. The Services require that every Service member contribute to full mission readiness, regardless of occupation. In other words, the Services require all Service members to be able to engage in core military tasks, including the ability to deploy rapidly, without impediment or encumbrance.”¹³⁷ Moreover, the Department must be mindful that “an increase in the number of non-deployable military personnel places undue risk and personal burden on Service members qualified and eligible to deploy, and negatively impacts mission readiness.”¹³⁸ Further, the Department must be attuned to the impact that high numbers of non-deployable military personnel places on families whose Service members deploy more often to backfill or compensate for non-deployable persons.

In sum, the available information indicates that there is inconclusive scientific evidence that the serious problems associated with gender dysphoria can be fully remedied through transition-related treatment and that, even if it could, most persons requiring transition-related treatment could be non-deployable for a potentially significant amount of time. By this metric, Service members with gender dysphoria who need transition-related care present a significant challenge for unit readiness.

2. *Incompatible with Sex-Based Standards.* As discussed in detail earlier, military personnel policy and practice has long maintained a clear line between men and women where their biological differences are relevant with respect to physical fitness and body fat standards; berthing, bathroom, and shower facilities; and uniform and grooming standards. This line promotes good order and discipline, steady leadership, unit cohesion, and ultimately military

¹³⁴ Id. at 42.

¹³⁵ Id. at 39.

¹³⁶ According to the National Institute of Mental Health, 2.8% of U.S. adults experienced bipolar disorder in the past year, and 4.4% have experienced the condition at some time in their lives. National Institute of Mental Health, “Bipolar Disorder” (Nov. 2017) <https://www.nimh.nih.gov/health/statistics/bipolar-disorder.shtml>. The prevalence of schizophrenia is less than 1%. National Institute of Mental Health, “Schizophrenia” (Nov. 2017) <https://www.nimh.nih.gov/health/statistics/schizophrenia.shtml>.

¹³⁷ Under Secretary of Defense for Personnel and Readiness, “Fiscal Year 2016 Report to Congress on the Review of Enlistment of Individuals with Disabilities in the Armed Forces,” p. 9 (Apr. 2016).

¹³⁸ Id. at 10.

effectiveness and lethality because it ensures fairness, equity, and safety; satisfies reasonable expectations of privacy; reflects common practice in the society from which we recruit; and promotes core military values of dignity and respect between men and women. To exempt Service members from the uniform, biologically-based standards applicable to their biological sex on account of their gender identity would be incompatible with this line and undermine the objectives such standards are designed to serve.

First, a policy that permits a change of gender without requiring any biological changes risks creating unfairness, or perceptions thereof, that could adversely affect unit cohesion and good order and discipline. It could be perceived as discriminatory to apply different biologically-based standards to persons of the same biological sex based on gender identity, which is irrelevant to standards grounded in physical biology. For example, it unfairly discriminates against biological males who identify as male and are held to male standards to allow biological males who identify as female to be held to female standards, especially where the transgender female retains many of the biological characteristics and capabilities of a male. It is important to note here that the Carter policy does not require a transgender person to undergo any biological transition in order to be treated in all respects in accordance with the person's preferred gender. Therefore, a biological male who identifies as female could remain a biological male in every respect and still be governed by female standards. Not only would this result in perceived unfairness by biological males who identify as male, it would also result in perceived unfairness by biological females who identify as female. Biological females who may be required to compete against such transgender females in training and athletic competition would potentially be disadvantaged.¹³⁹ Even more importantly, in physically violent training and competition, such as boxing and combatives, pitting biological females against biological males who identify as female, and vice versa, could present a serious safety risk as well.¹⁴⁰

This concern may seem trivial to those unfamiliar with military culture. But vigorous competition, especially physical competition, is central to the military life and is indispensable to the training and preparation of warriors. Nothing encapsulates this more poignantly than the words of General Douglas MacArthur when he was superintendent of the U.S. Military Academy and which are now engraved above the gymnasium at West Point: "Upon the fields of friendly

¹³⁹ See *supra* note 109. Both the International Olympic Committee (IOC) and the National Collegiate Athletic Association (NCAA) have attempted to mitigate this problem in their policies regarding transgender athletes. For example, the IOC requires athletes who transition from male to female to demonstrate certain suppressed levels of testosterone to minimize any advantage in women's competition. Similarly, the NCAA prohibits an athlete who has transitioned from male to female from competing on a women's team without changing the team status to a mixed gender team. While similar policies could be employed by the Department, it is unrealistic to expect the Department to subject transgender Service members to routine hormone testing prior to biannual fitness testing, athletic competition, or training simply to mitigate real and perceived unfairness or potential safety concerns. See, e.g., International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogenism (Nov. 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf; NCAA Office of Inclusion, NCAA Inclusion of Transgender Student-Athletes (Aug. 2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

¹⁴⁰ See *supra* note 109.

strife are sown the seeds that, upon other fields, on other days will bear the fruits of victory.”¹⁴¹ Especially in combat units and in training, including the Service academies, ROTC, and other commissioning sources, Service members are graded and judged in significant measure based upon their physical aptitude, which is only fitting given that combat remains a physical endeavor.

Second, a policy that accommodates gender transition without requiring full sex reassignment surgery could also erode reasonable expectations of privacy that are important in maintaining unit cohesion, as well as good order and discipline. Given the unique nature of military service, Service members of the same biological sex are often required to live in extremely close proximity to one another when sleeping, undressing, showering, and using the bathroom. Because of reasonable expectations of privacy, the military has long maintained separate berthing, bathroom, and shower facilities for men and women while in garrison. In the context of recruit training, this separation is even mandated by Congress.¹⁴²

Allowing transgender persons who have not undergone a full sex reassignment, and thus retain at least some of the anatomy of their biological sex, to use the facilities of their identified gender would invade the expectations of privacy that the strict male-female demarcation in berthing, bathroom, and shower facilities is meant to serve. At the same time, requiring transgender persons who have developed, even if only partially, the anatomy of their identified gender to use the facilities of their biological sex could invade the privacy of the transgender person. Without separate facilities for transgender persons or other mitigating accommodations, which may be unpalatable to transgender individuals and logistically impracticable for the Department, the privacy interests of biological males and females and transgender persons could be anticipated to result in irreconcilable situations. Lieutenants, Sergeants, and Petty Officers charged with carrying out their units’ assigned combat missions should not be burdened by a change in eligibility requirements disconnected from military life under austere conditions.

The best illustration of this irreconcilability is the report of one commander who was confronted with dueling equal opportunity complaints—one from a transgender female (i.e., a biological male with male genitalia who identified as female) and the other from biological females. The transgender female Service member was granted an exception to policy that allowed the Service member to live as a female, which included giving the Service member access to female shower facilities. This led to an equal opportunity complaint from biological females in the unit who believed that granting a biological male, even one who identified as a female, access to their showers violated their privacy. The transgender Service member responded with an equal opportunity complaint claiming that the command was not sufficiently supportive of the rights of transgender persons.¹⁴³

The collision of interests discussed above are a direct threat to unit cohesion and will inevitably result in greater leadership challenges without clear solutions. Leaders at all levels

¹⁴¹ Douglas MacArthur, *Respectfully Quoted: A Dictionary of Quotations* (1989), available at <http://www.bartleby.com/73/1874.html>.

¹⁴² See *supra* note 108.

¹⁴³ Minutes, Transgender Review Panel (Oct. 13, 2017). Limited data exists regarding the performance of transgender Service members due to policy restrictions in Department of Defense 1300.28, *In-Service Transition for Transgender Service Members* (Oct. 1, 2016), that prevent the Department from tracking individuals who may identify as transgender as a potentially unwarranted invasion of personal privacy.

already face immense challenges in building cohesive military units. Blurring the line that differentiates the standards and policies applicable to men and women will only exacerbate those challenges and divert valuable time and energy from military tasks.

The unique leadership challenges arising from gender transition are evident in the Department's handbook implementing the Carter policy. The handbook provides guidance on various scenarios that commanders may face. One such scenario concerns the use of shower facilities: "A transgender Service member has expressed privacy concerns regarding the open bay shower configuration. Similarly, several other non-transgender Service members have expressed discomfort when showering in these facilities with individuals who have different genitalia." As possible solutions, the handbook offers that the commander could modify the shower facility to provide privacy or, if that is not feasible, adjust the timing of showers. Another scenario involves proper attire during a swim test: "It is the semi-annual swim test and a female to male transgender Service member who has fully transitioned, but did not undergo surgical change, would like to wear a male swimsuit for the test with no shirt or other top coverage." The extent of the handbook's guidance is to advise commanders that "[i]t is within [their] discretion to take measures ensuring good order and discipline," that they should "counsel the individual and address the unit, if additional options (e.g., requiring all personnel to wear shirts) are being considered," and that they should consult the Service Central Coordination Cell, a help line for commanders in need of advice.

These vignettes illustrate the significant effort required of commanders to solve challenging problems posed by the implementation of the current transgender service policies. The potential for discord in the unit during the routine execution of daily activities is substantial and highlights the fundamental incompatibility of the Department's legitimate military interest in uniformity, the privacy interests of all Service members, and the interest of transgender individuals in an appropriate accommodation. Faced with these conflicting interests, commanders are often forced to devote time and resources to resolve issues not present outside of military service. A failure to act quickly can degrade an otherwise highly functioning team, as will failing to seek appropriate counsel and implementing a faulty solution. The appearance of unsteady or seemingly unresponsive leadership to Service member concerns erodes the trust that is essential to unit cohesion and good order and discipline.

The RAND study does not meaningfully address how accommodations for gender transition would impact perceptions of fairness and equity, expectations of privacy, and safety during training and athletic competition and how these factors in turn affect unit cohesion. Instead, the RAND study largely dismisses concerns about the impact on unit cohesion by pointing to the experience of four countries that allow transgender service—Australia, Canada, Israel, and the United Kingdom.¹⁴⁴ Although the vast majority of armed forces around the world do not permit or have policies on transgender service, RAND noted that 18 militaries do, but only four have well-developed and publicly available policies.¹⁴⁵ RAND concluded that "the available research revealed no significant effect on cohesion, operational effectiveness, or

¹⁴⁴ RAND Study at 45.

¹⁴⁵ Id. at 50.

readiness.”¹⁴⁶ It reached this conclusion, however, despite noting reports of resistance in the ranks, which is a strong indication of an adverse effect on unit cohesion.¹⁴⁷ Nevertheless, RAND acknowledged that the available data was “limited” and that the small number of transgender personnel may account for “the limited effect on operational readiness and cohesion.”¹⁴⁸

Perhaps more importantly, however, the RAND study mischaracterizes or overstates the reports upon which it rests its conclusions. For example, the RAND study cites *Gays in Foreign Militaries 2010: A Global Primer* by Nathaniel Frank as support for the conclusions that there is no evidence that transgender service has had an adverse effect on cohesion, operational effectiveness, or readiness in the militaries of Australia and the United Kingdom and that diversity has actually led to increases in readiness and performance.¹⁴⁹ But that particular study has nothing to do with examining the service of transgender persons; rather, it is about the integration of homosexual persons into the military.¹⁵⁰

With respect to transgender service in the Israeli military, the RAND study points to an unpublished paper by Anne Speckhard and Reuven Paz entitled *Transgender Service in the Israeli Defense Forces: A Polar Opposite Stance to the U.S. Military Policy of Barring Transgender Soldiers from Service*. The RAND study cites this paper for the proposition that “there has been no reported effect on cohesion or readiness” in the Israeli military and “there is no evidence of any impact on operational effectiveness.”¹⁵¹ These sweeping and categorical claims, however, are based only on “six in-depth interviews of experts on the subject both inside and outside the [Israeli Defense Forces (IDF)]: two in the IDF leadership—including the spokesman’s office; two transgender individuals who served in the IDF, and two professionals who serve transgender clientele—before, during and after their IDF service.”¹⁵² As the RAND report observed, however: “There do appear to be some limitations on the assignment of transgender personnel, particularly in combat units. Because of the austere living conditions in these types of units, necessary accommodations may not be available for Service members in the midst of a gender transition. As a result, transitioning individuals are typically not assigned to combat units.”¹⁵³ In addition, as the RAND study notes, under the Israeli policy at the time, “assignment of housing, restrooms, and showers is typically linked to the birth gender, which does not change in the military system until after gender reassignment surgery.”¹⁵⁴ Therefore, insofar as a Service member’s change of gender is not recognized until after sex reassignment

¹⁴⁶ Id. at 45.

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ Id.

¹⁵⁰ Nathaniel Frank, “Gays in Foreign Militaries 2010: A Global Primer,” p. 6 *The Palm Center* (Feb. 2010), <https://www.palmcenter.org/wpcontent/uploads/2017/12/FOREIGNMILITARIESPRIMER2010FINAL.pdf> (“This study seeks to answer some of the questions that have been, and will continue to be, raised surrounding the instructive lessons from other nations that have lifted their bans on openly gay service.”).

¹⁵¹ Rand Study at 45.

¹⁵² Anne Speckhard & Reuven Paz, “Transgender Service in the Israeli Defense Forces: A Polar Opposite Stance to the U.S. Military Policy of Barring Transgender Soldiers from Service,” p. 3 (2014), <http://www.researchgate.net/publication/280093066>.

¹⁵³ RAND Study at 56.

¹⁵⁴ Id. at 55.

surgery, the Israeli policy—and whatever claims about its impact on cohesion, readiness, and operational effectiveness—are distinguishable from the Carter policy.

Finally, the RAND study cites to a journal article on the Canadian military experience entitled *Gender Identity in the Canadian Forces: A Review of Possible Impacts on Operational Effectiveness* by Alan Okros and Denise Scott. According to RAND, the authors of this article “found no evidence of any effect on unit or overall cohesion.”¹⁵⁵ But the article not only fails to support the RAND study’s conclusions (not to mention the article’s own conclusions), but it confirms the concerns that animate the Department’s recommendations. The article acknowledges, for example, the difficulty commanders face in managing the competing interests at play:

Commanders told us that the new policy fails to provide sufficient guidance as to how to weigh priorities among competing objectives during their subordinates’ transition processes. Although they endorsed the need to consult transitioning Service members, they recognized that as commanding officers, they would be called on to balance competing requirements. They saw the primary challenge to involve meeting trans individual’s expectations for reasonable accommodation and individual privacy while avoiding creating conditions that place extra burdens on others or undermined the overall team effectiveness. To do so, they said that they require additional guidance on a range of issues including clothing, communal showers, and shipboard bunking and messing arrangements.¹⁵⁶

Notwithstanding its optimistic conclusions, the article also documents serious problems with unit cohesion. The authors observe, for instance, that the chain of command “has not fully earned the trust of the transgender personnel,” and that even though some transgender Service members do trust the chain of command, others “expressed little confidence in the system,” including one who said, “I just don’t think it works that well.”¹⁵⁷

In sum, although the foregoing considerations are not susceptible to quantification, undermining the clear sex-differentiated lines with respect to physical fitness; berthing, bathroom, and shower facilities; and uniform and grooming standards, which have served all branches of Service well to date, risks unnecessarily adding to the challenges faced by leaders at all levels, potentially fraying unit cohesion, and threatening good order and discipline. The Department acknowledges that there are serious differences of opinion on this subject, even among military professionals, including among some who provided input to the Panel of Experts,¹⁵⁸ but given the vital interests at stake—the survivability of Service members, including

¹⁵⁵ Id. at 45.

¹⁵⁶ Alan Okros & Denise Scott, “Gender Identity in the Canadian Forces,” *Armed Forces and Society* Vol. 41, p. 8 (2014).

¹⁵⁷ Id. at 9.

¹⁵⁸ While differences of opinion do exist, it bears noting that, according to a Military Times/Syracuse University’s Institute for Veterans and Military Families poll, 41% of active duty Service members polled thought that allowing gender transition would hurt their unit’s readiness, and only 12% thought it would be beneficial. Overall, 57% had a negative opinion of the Carter policy. Leo Shane III, “Poll: Active-duty troops worry about military’s transgender

transgender persons, in combat and the military effectiveness and lethality of our forces—it is prudent to proceed with caution, especially in light of the inconclusive scientific evidence that transition-related treatment restores persons with gender dysphoria to full mental health.

3. *Imposes Disproportionate Costs.* Transition-related treatment is also proving to be disproportionately costly on a per capita basis, especially in light of the absence of solid scientific support for the efficacy of such treatment. Since implementation of the Carter policy, the medical costs for Service members with gender dysphoria have increased nearly three times—or 300%—compared to Service members without gender dysphoria.¹⁵⁹ And this increase is despite the low number of costly sex reassignment surgeries that have been performed so far.¹⁶⁰ As noted earlier, only 34 non-genital sex reassignment surgeries and one genital surgery have been completed,¹⁶¹ with an additional 22 Service members requesting a waiver for genital surgery.¹⁶² We can expect the cost disparity to grow as more Service members diagnosed with gender dysphoria avail themselves of surgical treatment. As many as 77% of the 424 Service member treatment plans available for review include requests for transition-related surgery, although it remains to be seen how many will ultimately obtain surgeries.¹⁶³ In addition, several commanders reported to the Panel of Experts that transition-related treatment for Service members with gender dysphoria in their units had a negative budgetary impact because they had to use operations and maintenance funds to pay for the Service members' extensive travel throughout the United States to obtain specialized medical care.¹⁶⁴

Taken together, the foregoing concerns demonstrate why recognizing and making accommodations for gender transition are not conducive to, and would likely undermine, the inputs—readiness, good order and discipline, sound leadership, and unit cohesion—that are essential to military effectiveness and lethality. Therefore, it is the Department's professional military judgment that persons who have been diagnosed with, or have a history of, gender dysphoria and require, or have already undergone, a gender transition generally should not be eligible for accession or retention in the Armed Forces absent a waiver.

C. Transgender Persons With a History or Diagnosis of Gender Dysphoria Are Disqualified, Except Under Certain Limited Circumstances.

policies," *Military Times* (July 27, 2017) available at <https://www.militarytimes.com/news/pentagon-congress/2017/07/27/poll-active-duty-troops-worry-about-militarys-transgender-policies/>.

¹⁵⁹ Minutes, Transgender Review Panel (Nov. 21, 2017).

¹⁶⁰ Minutes, Transgender Review Panel (Nov. 2, 2017).

¹⁶¹ Data retrieved from Military Health System Data Repository (Nov. 2017).

¹⁶² Defense Health Agency Data (as of Feb. 2018).

¹⁶³ Data reported by the Departments of the Army, Navy, and Air Force (Oct. 2017).

¹⁶⁴ Minutes, Transgender Review Panel (Oct. 13, 2017); see also Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," *Military Medicine*, Vol. 181, p. 1185 (Oct. 2016) ("As previously discussed, a new diagnosis of gender dysphoria and the decision to proceed with gender transition requires frequent evaluations by the [mental health professional] and endocrinologist. However, most [military treatment facilities] lack one or both of these specialty services. Members who are not in proximity to [military treatment facilities] may have significant commutes to reach their required specialty care. Members stationed in more remote locations face even greater challenges of gaining access to military or civilian specialists within a reasonable distance from their duty stations.").

As explained earlier in greater detail, persons with gender dysphoria experience significant distress and impairment in social, occupational, or other important areas of functioning. Gender dysphoria is also accompanied by extremely high rates of suicidal ideation and other comorbidities. Therefore, to ensure unit safety and mission readiness, which is essential to military effectiveness and lethality, persons who are diagnosed with, or have a history of, gender dysphoria are generally disqualified from accession or retention in the Armed Forces. The standards recommended here are subject to the same procedures for waiver as any other standards. This is consistent with the Department's handling of other mental conditions that require treatment. As a general matter, only in the limited circumstances described below should persons with a history or diagnosis of gender dysphoria be accessed or retained.

1. *Accession of Individuals Diagnosed with Gender Dysphoria.* Given the documented fluctuations in gender identity among children, a history of gender dysphoria should not alone disqualify an applicant seeking to access into the Armed Forces. According to the DSM-5, the persistence of gender dysphoria in biological male children "has ranged from 2.2% to 30%," and the persistence of gender dysphoria in biological female children "has ranged from 12% to 50%."¹⁶⁵ Accordingly, persons with a history of gender dysphoria may access into the Armed Forces, provided that they can demonstrate 36 consecutive months of stability—i.e., absence of gender dysphoria—immediately preceding their application; they have not transitioned to the opposite gender; and they are willing and able to adhere to all standards associated with their biological sex. The 36-month stability period is the same standard the Department currently applies to persons with a history of depressive disorder. The Carter policy's 18-month stability period for gender dysphoria, by contrast, has no analog with respect to any other mental condition listed in DoDI 6130.03.

2. *Retention of Service Members Diagnosed with Gender Dysphoria.* Retention standards are typically less stringent than accession standards due to training provided and on-the-job performance data. While accession standards endeavor to predict whether a given applicant will require treatment, hospitalization, or eventual separation from service for medical unfitness, and thus tend to be more cautious, retention standards focus squarely on whether the Service member, despite his or her condition, can continue to do the job. This reflects the Department's desire to retain, as far as possible, the Service members in which it has made substantial investments and to avoid the cost of finding and training a replacement. To use an example outside of the mental health context, high blood pressure does not meet accession standards, even if it can be managed with medication, but it can meet retention standards so long as it can be managed with medication. Regardless, however, once they have completed treatment, Service members must continue to meet the standards that apply to them in order to be retained. Therefore, Service members who are diagnosed with gender dysphoria after entering military service may be retained without waiver, provided that they are willing and able to adhere to all standards associated with their biological sex, the Service member does not require gender transition, and the Service member is not otherwise non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months).¹⁶⁶

¹⁶⁵ DSM-5 at 455.

¹⁶⁶ Under Secretary of Defense for Personnel and Readiness, "DoD Retention Policy for Non-Deployable Service Members" (Feb. 14, 2018).

3. *Exempting Current Service Members Who Have Already Received a Diagnosis of Gender Dysphoria.* The Department is mindful of the transgender Service members who were diagnosed with gender dysphoria and either entered or remained in service following the announcement of the Carter policy and the court orders requiring transgender accession and retention. The reasonable expectation of these Service members that the Department would honor their service on the terms that then existed cannot be dismissed. Therefore, transgender Service members who were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter policy, but before the effective date of any new policy, may continue to receive all medically necessary treatment, to change their gender marker in DEERS, and to serve in their preferred gender, even after the new policy commences. This includes transgender Service members who entered into military service after January 1, 2018, when the Carter accession policy took effect by court order. The Service member must, however, adhere to the procedures set forth in DoDI 1300.28, and may not be deemed to be non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months). While the Department believes that its commitment to these Service members, including the substantial investment it has made in them, outweigh the risks identified in this report, should its decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption instead is and should be deemed severable from the rest of the policy.

Conclusion

In making these recommendations, the Department is well aware that military leadership from the prior administration, along with RAND, reached a different judgment on these issues. But as the forgoing analysis demonstrates, the realities associated with service by transgender individuals are more complicated than the prior administration or RAND had assumed. In fact, the RAND study itself repeatedly emphasized the lack of quality data on these issues and qualified its conclusions accordingly. In addition, that study concluded that allowing gender transition would impede readiness, limit deployability, and burden the military with additional costs. In its view, however, such harms were negligible in light of the small size of the transgender population. But especially in light of the various sources of uncertainty in this area, and informed by the data collected since the Carter policy took effect, the Department is not convinced that these risks could be responsibly dismissed or that even negligible harms should be incurred given the Department's grave responsibility to fight and win the Nation's wars in a manner that maximizes the effectiveness, lethality, and survivability of our most precious assets—our Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen.

Accordingly, the Department weighed the risks associated with maintaining the Carter policy against the costs of adopting a new policy that was less risk-favoring in developing these recommendations. It is the Department's view that the various balances struck by the recommendations above provide the best solution currently available, especially in light of the significant uncertainty in this area. Although military leadership from the prior administration reached a different conclusion, the Department's professional military judgment is that the risks associated with maintaining the Carter policy—risks that are continuing to be better understood as new data become available—counsel in favor of the recommended approach.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

ACTION MEMO

JAN 11 2018

TO: SECRETARY OF DEFENSE

THROUGH: DEPUTY SECRETARY OF DEFENSE
VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

FROM: Robert Wilkie, Under Secretary of Defense for Personnel and Readiness *Robert Wilkie*

SUBJECT: Recommendations by the Transgender Review Panel of Experts

- On September 14, 2017, you directed the establishment of a Panel of Experts to review and recommend changes to Department of Defense policies regarding the service of transgender individuals (Tab A), in accordance with direction from the President on August 25, 2017 (Tab B).
- The Panel, which I chaired, comprised the officials performing the duties of the Under Secretaries of the Military Departments, the Uniformed Services' Vice Chiefs, and Senior Enlisted Advisors.
- You directed the Panel to conduct its review and render recommendations consistent with military readiness, lethality, deployability, budgetary constraints, and applicable law.
- The Panel was informed by testimony from commanders with transgender troops, currently-serving transgender Service members, military physicians, and other health experts.
- The Panel considered available DoD data and information on currently-serving transgender personnel and relevant external research and studies.
- Based on the individual and collective experience leading warfighters and their expertise in military operational and institutional effectiveness, the Panel makes the following recommendations:
 - Transgender individuals should be allowed to enter the military in their biological sex, subject to meeting all applicable accession standards. A diagnosis of gender dysphoria is disqualifying for accessions unless medical documentation establishes stability in his/her biological sex for no less than 36 consecutive months—as determined by a qualified Department of Defense medical provider—at the time of application. [*Gender Dysphoria*: a medical diagnosis involving significant distress or problems functioning resulting from a difference between the gender with which an individual identifies and the individual's biological sex]

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- Transgender Service members should be permitted to serve openly, but only in their biological sex and without receiving cross-sex hormone therapy or surgical transition support.
- In order to keep faith with those transgender Service members who receive a diagnosis of gender dysphoria from a qualified military medical provider prior to the implementation of a revised DoD policy in 2018, they should be authorized all medically necessary and appropriate care and treatment, including cross-sex hormone therapy and medically necessary surgery. Such care and treatment should be authorized and provided at government expense even if it is determined to be necessary and appropriate only after the implementation of a revised policy in 2018.
- Transgender Service members should be subject to the same retention standards applicable to all other Service members.
- To ensure consistent application of the policies, procedures, and guidance currently in effect with regard to the accession¹ and in-service transition² of transgender individuals, I intend to issue a memorandum clarifying existing guidance regarding privacy concerns that may arise.

RECOMMENDATION: As discussed, based on your review of these recommendations, and other information and input you elect to consider, we will develop a writing by which you would advise the President of your conclusions and recommendations in this matter.

COORDINATION: TAB C

Attachments:

As stated

¹ As required by court order.

² As authorized by DoDI 1300.28, *In-Service, Transition for Transgender Service members*, dated July 1, 2016.



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

9/14/17

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDANT, U.S. COAST GUARD
DEPUTY CHIEF MANAGEMENT OFFICER
CHIEF, NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTOR, STRATEGIC CAPABILITIES OFFICE
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Military Service by Transgender Individuals - Interim Guidance

The Department of Defense ("DoD") has received the Presidential Memorandum, *Military Service by Transgender Individuals*, dated August 25, 2017 ("Presidential Memorandum"). DoD will carry out the President's policy and directives in consultation with the Department of Homeland Security ("DHS") with respect to the U.S. Coast Guard. Not later than February 21, 2018, I will present the President with a plan to implement the policy and directives in the Presidential Memorandum. Consistent with military effectiveness and lethality, budgetary constraints, and applicable law, the implementation plan will establish the policy, standards and procedures for transgender individuals serving in the military. The Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff, supported by a panel of experts ("Panel"), shall propose for my consideration recommendations supported by appropriate evidence and information.

To comply with the Presidential Memorandum, ensure the continued combat readiness of the force, and maximize flexibility in the development of the implementation plan, the attached Interim Guidance takes effect immediately and will remain in effect until I promulgate DoD's final policy in this matter. By agreement with the Acting Secretary of Homeland Security, this Interim Guidance also applies to the U.S. Coast Guard.

Attachment:
As stated

John M. Mattis

cc:
Secretary of Homeland Security



JA315

Interim Guidance

First and foremost, we will continue to treat every Service member with dignity and respect.

Accessions: The procedures set forth in Department of Defense Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, dated April 28, 2010 (Change 1), which generally prohibit the accession of transgender individuals into the Military Services, remain in effect because current or history of gender dysphoria or gender transition does not meet medical standards, subject to the normal waiver process.

Medical Care and Treatment: Service members who receive a gender dysphoria diagnosis from a military medical provider will be provided treatment for the diagnosed medical condition. As directed by the Memorandum, no new sex reassignment surgical procedures for military personnel will be permitted after March 22, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.

In-Service Transition for Transgender Service Members: The policies and procedures set forth in DoDI 1300.28, *In-Service Transition for Transgender Service Members*, dated July 1, 2016, remain in effect until I promulgate DoD's final guidance in this matter.

Separation and Retention of Transgender Service members:

Service members who have completed their gender transition process and whose gender marker has been changed in DEERS will continue to serve in their preferred gender while this Interim Guidance remains in effect.

An otherwise qualified transgender Service member whose term of service expires while this Interim Guidance remains in effect, *may*, at the Service member's request, be re-enlisted in service under existing procedures.

As directed by the Memorandum, no action may be taken to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender status. Transgender Service members are subject to the same standards as any other Service member of the same gender; they may be separated or discharged under existing bases and processes, but not on the basis of a gender dysphoria diagnosis or transgender status.

Reestablishment of the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) Central Coordination Cell: The OUSD(P&R) will reestablish the Central Coordination Cell (CCC) to provide expert advice and assistance to the Military Departments and Services and to commanders with regard to this Interim Guidance. The CCC may be reached at <https://ra.sp.pentagon.mil/DoDCCC/SitePages/HomePage.aspx>.



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

9/14/17

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDANT, U.S. COAST GUARD
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CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTOR, STRATEGIC CAPABILITIES OFFICE
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Terms of Reference - Implementation of Presidential Memorandum on Military
Service by Transgender Individuals

Reference: Military Service by Transgender Individuals – Interim Guidance

I direct the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff to lead the Department of Defense (DoD) in developing an Implementation Plan on military service by transgender individuals, to effect the policy and directives in Presidential Memorandum, *Military Service by Transgender Individuals*, dated August 25, 2017 ("Presidential Memorandum"). The implementation plan will establish the policy, standards and procedures for service by transgender individuals in the military, consistent with military readiness, lethality, deployability, budgetary constraints, and applicable law.

The Deputy Secretary and the Vice Chairman, supported by a panel of experts drawn from DoD and the Department of Homeland Security (DHS) ("Panel"), shall propose for my consideration recommendations supported by appropriate evidence and information, not later than January 15, 2018. The Deputy Secretary and the Vice Chairman will be supported by the Panel, which will be comprised of the Military Department Under Secretaries, Service Vice Chiefs, and Service Senior Enlisted Advisors. The Deputy Secretary and Vice Chairman shall



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designate personnel to support the Panel's work to ensure Panel recommendations reflect senior civilian experience, combat experience, and expertise in military operational effectiveness. The Panel and designated support personnel shall bring a comprehensive, holistic, and objective approach to study military service by transgender individuals, focusing on military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law. The Panel will be chaired by the Under Secretary of Defense for Personnel and Readiness and will report to the Deputy Secretary and the Vice Chairman at least every 30 days and address, at a minimum, the following three areas:

Accessions: The Presidential Memorandum directs DoD to maintain the policy currently in effect, which generally prohibits accession of transgender individuals into military service. The Panel will recommend updated accession policy guidelines to reflect currently accepted medical terminology.

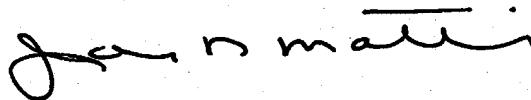
Medical Care: The Presidential Memorandum halts the use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, effective March 23, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex. The implementation plan will enumerate the specific surgical procedures associated with sex reassignment treatment that shall be prohibited from DoD or DHS resourcing unless necessary to protect the health of the Service member.

Transgender Members Serving in the Armed Forces: The Presidential Memorandum directs that the Department return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016. The Presidential Memorandum also allows the Secretary to determine how to address transgender individuals currently serving in the Armed Forces. The Panel will set forth, in a single policy document, the standards and procedures applicable to military service by transgender persons, with specific attention to addressing transgender persons currently serving. The Panel will develop a universal retention standard that promotes military readiness, lethality, deployability, and unit cohesion.

To support its efforts, the Panel will conduct an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members. The study will be planned and executed to inform the Implementation Plan. The independent multi-disciplinary review and study will address aspects of medical care and treatment, personnel management, general policies and practices, and other matters, including the effects of the service of transgender persons on military readiness, lethality, deployability, and unit cohesion.

The Panel may obtain advice from outside experts on an individual basis. The recommendations of the Deputy Secretary and the Vice Chairman will be coordinated with senior civilian officials, the Military Departments, and the Joint Staff.

All DoD Components will cooperate fully in, and will support the Deputy Secretary and the Vice Chairman in their efforts, by making personnel and resources available upon request in support of their efforts.



cc:
Secretary of Homeland Security

THE WHITE HOUSE

WASHINGTON

August 25, 2017

MEMORANDUM FOR THE SECRETARY OF DEFENSE
THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Military Service by Transgender Individuals

Section 1. Policy. (a) Until June 2016, the Department of Defense (DoD) and the Department of Homeland Security (DHS) (collectively, the Departments) generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals. Shortly before President Obama left office, however, his Administration dismantled the Departments' established framework by permitting transgender individuals to serve openly in the military, authorizing the use of the Departments' resources to fund sex-reassignment surgical procedures, and permitting accession of such individuals after July 1, 2017. The Secretary of Defense and the Secretary of Homeland Security have since extended the deadline to alter the currently effective accession policy to January 1, 2018, while the Departments continue to study the issue.

In my judgment, the previous Administration failed to identify a sufficient basis to conclude that terminating the Departments' longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources, and there remain meaningful concerns that further study is needed to ensure that continued implementation of last year's policy change would not have those negative effects.

(b) Accordingly, by the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States under the Constitution and the laws of the United States of America, including Article II of the Constitution, I am directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists

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upon which to conclude that terminating that policy and practice would not have the negative effects discussed above. The Secretary of Defense, after consulting with the Secretary of Homeland Security, may advise me at any time, in writing, that a change to this policy is warranted.

Sec. 2. Directives. The Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, shall:

(a) maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that I find convincing; and

(b) halt all use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.

Sec. 3. Effective Dates and Implementation. Section 2(a) of this memorandum shall take effect on January 1, 2018. Sections 1(b) and 2(b) of this memorandum shall take effect on March 23, 2018. By February 21, 2018, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall submit to me a plan for implementing both the general policy set forth in section 1(b) of this memorandum and the specific directives set forth in section 2 of this memorandum. The implementation plan shall adhere to the determinations of the Secretary of Defense, made in consultation with the Secretary of Homeland Security, as to what steps are appropriate and consistent with military effectiveness and lethality, budgetary constraints, and applicable law. As part of the implementation plan, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine how to address transgender individuals currently serving in the United States military. Until the Secretary has made that determination, no action may be taken against such individuals under the policy set forth in section 1(b) of this memorandum.

Sec. 4. Severability. If any provision of this memorandum, or the application of any provision of this memorandum, is held to be invalid, the remainder of this

memorandum and other dissimilar applications of the provision shall not be affected.

Sec. 5. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

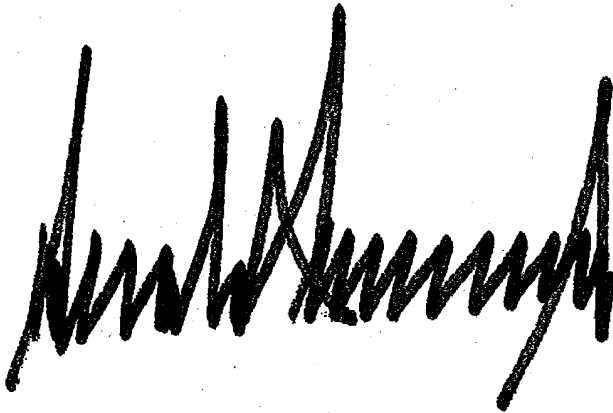
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

A large, stylized handwritten signature in black ink, appearing to be 'Andrew M. Ross', is written across the lower half of the page.

Hormone Therapy Issues in Transgender Service Members

Cross-sex hormone therapy (CSHT) is a treatment for individuals who are transgender with gender dysphoria (GD), which facilitates their transition from birth gender to desired gender. Though data is limited in cross-sex hormone therapy, the long-term monitoring requirements, adverse outcomes, and deployment opportunities are similar to other common hormone-based therapies. In the case of the female to male CSHT, the transition requires simply the administration of testosterone. In the case of the male to female CSHT, the transition requires blocking the production of testosterone and the administration of estrogens.

For the management of GD, the MHS policy is based on the clinical practice guidelines proposed by the Endocrine Society in their 2017 paper, *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*. This document provides guidelines for the diagnosis, mental health, hormonal and surgical treatment for GD. It includes hormone dosing and monitoring recommendations as well as recommended criteria for surgery

HORMONES FOR TRANSITION

	Transgender Female (M to F)	Transgender Male (F to M)
Medications	Anti-androgens (block testosterone) Estrogen Oral Transdermal patch Parental (IM injections)	Testosterone Parenteral (IM or SQ injections) Transdermal patch
Routes	Oral, parenteral or transdermal preparations	Parenteral or transdermal preparations
Comments	More complex than the transgender male regimen (F to M)	Follows the general principle of hormone replacement treatment for male hypogonadism
Selected Results	Breast development is generally maximal at 2 years after initiating hormones. Over a long period of time, the prostate gland and testicles will undergo atrophy.	Results in cessation of menses, increased muscle mass and decreased fat mass, increased facial hair and acne, male pattern baldness in those genetically predisposed, and increased sexual desire

MONITORING TESTS

The tests associated with monitoring hormone therapy for GD include:

1. Complete Blood Count (CBC)
2. Electrolytes (Sodium, Potassium, Chloride and Bicarbonate)
3. Liver Function Tests (LFTs) and Lipids (LFTs - Liver transaminases (AST or SGOT and ALT or SGPT), albumin and bilirubin)
4. Estradiol
5. Prolactin
6. Total Testosterone

Hormone Therapy Issues in Transgender Service Members

Monitoring of Transgender Persons on Gender-Affirming Hormone Therapy 2017 Endocrine Society Recommendations							
Transgender Male (F to M)				Transgender Female (M to F)			
		Initial	Follow up			Initially	Follow up
Bloodwork	Testosterone	Every 3 months until reaches normal physiologic male range	1 – 2 times per year	Bloodwork	Testosterone	Every 3 months	1 – 2 times per year
	Hematocrit & Hemoglobin	Every 3 months for first year	1 - 2 time per year		Estradiol	Every 3 months	1 – 2 times per year
	Lipids	Regular intervals			Electrolytes (K)	Every 3 months for first year	Yearly
					Prolactin	Annually during transition	Every 2 years when stable
Physical Exam		Every 3 months for first year	1 - 2 times per year	Physical Exam		Every 3 months for first year	1 - 2 times per year
Other	Screening for osteoporosis		Yearly if indicated	Other	Routine Cancer screening		Yearly as indicated
	Female cancer screening as appropriate		Yearly if indicated		Osteoporosis		Begin at age 60
	Cardiovascular Risks		Yearly if indicated		Cardiovascular Risks		Yearly if indicated

Hormone Therapy Issues in Transgender Service Members

For deployability, a change in the type of estrogen or testosterone administration from injections to oral or patch usually requires 2 to 3 months of monitoring to ensure stability.

MHS TESTING LOCATIONS

All of the listed tests can be obtained in all CONUS facilities. Larger MTFs usually have capability to perform these tests in-house. Smaller MTFs can either mail specimens to larger MTFs in the same geographic location or send to them to commercial labs for specimen processing. Anything not done in house is referred to a civilian commercial network with no issue.

OCONUS fixed facilities (Landstuhl, Tripler, Okinawa, Rota, Guam etc.) all have capability to perform CBCs, Electrolytes and LFTs. Larger OCONUS fixed facilities such as Landstuhl and Tripler, have capability to perform Estradiol, Total Testosterone and Prolactin (i.e. hormone levels). Landstuhl and Tripler serve as regional testing centers for smaller OCONUS fixed facilities in AFRICOM/EUCOM, CENTCOM and PACOM. Specimens are flown on a regular basis from smaller MTFs to the regional testing centers.

Deployed/mobilized facilities can provide basic blood work to include CBCs, Electrolytes and LFTs, but not hormone levels. Larger Role 3 facilities in Bagram, Kandahar and Kuwait can successfully ship specimens to Landstuhl within 1-5 days. Forward Role 2 bases and smaller units have difficulty with reliable shipping for hormone levels. It may take up to 16 days for a specimen to make it to the referring clinical site and the ability to keep samples frozen throughout that time period is problematic.

There is capability on some ships to perform CBCs, LFTs, and electrolytes. There is no capability to perform hormone levels. There are multiple shipping, turn-around time, and IT connectivity issues with samples that need to be shipped out, depending on the location of the ship. For ships in port with a MTF in close proximity, specimens can be sent to the MTF for processing. Deployed ships must depend on the mail system for shipping specimens out for processing. Mail services are usually available during replenishment at sea, but there is no guarantee that mail services will be available during every replenishment. And there can be two to three weeks between replenishments. As with Role 2 and smaller deployed facilities, the ability to keep a specimen frozen from the time it is drawn to the time it reaches the referral clinical site is problematic.

SPECIMEN PROCESSING

Typically, a specimen is good for 30 days or longer while frozen and as long as the frozen chain is not broken. Specimens are packed on dry ice for shipping where capability to do so exists. There is limited time before the dry ice evaporates and the sample is lost. The amount of dry ice used for transport usually will typically provide for 3-5 days of transit. In a mobilized/deployed environment, however there is limited to no dry ice availability and units must rely on frozen packs for transport. Frozen packs may be able to keep a specimen frozen for up to 48 hours.

Hormone Therapy Issues in Transgender Service Members

Large Role 3 bases (i.e. Bagram, Kandahar, Kuwait) can successfully ship to Landstuhl within 1-5 days. Role 2 and more forward bases experience difficulty with reliable weekly ground or air transport to the ship out point.

Shipment requirements to Landstuhl are generally as follows:

Estradiol: refrigerated 48 hrs., frozen >48 hrs.

Total Testosterone: refrigerated 24 hrs., frozen >24 hrs.

Prolactin: refrigerated 48 hrs., frozen >24 hrs.

Specimen stability requirements for two civilian commercial labs are shown in the table below.

Commercial Requirements for Specimens – Specimen Stability					
TEST	Specimen	Commercial Labs			
		MAYO		QUEST	
		Refrigerated	Frozen	Refrigerated	Frozen
Testosterone	Serum	14 days	60 days	7 days	21 days
Estradiol	Serum	28 days	28 days	7 days	6 months

RISKS OF STOPPING HORMONES

We are unable to find any data in the scientific literature regarding the risks or effects of Transgender individuals stopping cross-sex hormones, or any references to any concerns specific to this.

Anecdotally, there are a number of instances of transgender men (natal female) who have stopped testosterone in order to produce oocytes for pregnancy with no references to any type of “withdrawal syndrome”. Also transgender women (natal male) routinely stop estrogens prior to vaginoplasty and for several weeks post-surgery. Some of these transgender women have reported emotional effects from stopping estrogen, but that is not a universal finding.

There are abundant literature references and internet blogs regarding the consequences of abrupt withdrawal of testosterone in natal males taking testosterone for “Low T”, hypogonadism and physical effects (body/strength enhancement). Many of these reports concern men with normal testosterone levels taking high doses of testosterone for the physical effects. Common symptoms reported include anxiety, mild depression, fatigue, headaches, muscle loss and low libido, among others. Most reports state withdrawal symptoms are relatively mild and usually resolve in a matter of weeks to months. The length of time the symptoms persist is highly dependent on the length of time the individual has been taking testosterone and the dose or amount of testosterone taken, with higher doses taken for a long period of time resulting in a longer period of symptoms.

Similarly, there is abundant literature on the effects of loss of estrogen in natal females, the most common reason being menopause.

Hormone Therapy Issues in Transgender Service Members

In their June 17, 2016 publication "*Guidelines for the Primary and Gender Affirming Care of Transgender and Gender Nonbinary People*" authors at the University of California, San Francisco (UCSF) Center of Excellence for Transgender Health discuss the effects of stopping cross-sex hormones in older transgender individuals:

Older transgender women: Since the mean age of menopause in the U.S. is 49, it is reasonable in transgender women who have undergone gonadectomy to consider stopping hormone therapy around age 50. Expected effects of this may be similar to non-transgender women experiencing menopause. Transgender women who retain their gonads but withdraw hormone therapy may experience return of virilization. (Section 9 - Overview of feminizing hormone therapy)

Older transgender men: Older transgender men: No upper age limit exists for testosterone replacement in non-transgender men. As such, there is no age recommendation for the termination of testosterone therapy in transgender men. It is reasonable to consider discontinuing hormone therapy at or around age 50, the age at which non-transgender women undergo menopause. Regardless of the presence of gonads at this age, withdrawal of testosterone will result in reduced muscle mass, body hair and libido. (Section 10- Overview of masculinizing hormone therapy)

NON-TRANSGENDER MEDICAL CONDITIONS REQUIRING REGULAR MONITORING

An MDR data pull was performed to identify ADSMs with two conditions that require regular laboratory monitoring, diabetes and hypothyroidism.

Diabetics on oral hypoglycemic medications require frequent Hemoglobin A1c testing to adjust the dosage, monitor the response to therapy and determine stability on treatment. The American Diabetes Association recommends:

A1C testing should be performed routinely in all patients with diabetes at initial assessment and as part of continuing care. Measurement approximately every 3 months determines whether patients' glycemic targets have been reached and maintained. The frequency of A1C testing should depend on the clinical situation, the treatment regimen, and the clinician's judgment. The use of point-of-care A1C testing may provide an opportunity for more timely treatment changes during encounters between patients and providers. Patients with type 2 diabetes with stable glycemia well within target may do well with A1C testing only twice per year. Unstable or intensively managed patients (e.g., pregnant women with type 1 diabetes) may require testing more frequently than every 3 months (Glycemic Targets: Standards of Medical Care in Diabetes – 2018; Diabetes Care 2018;41(Suppl.1):S55–S64)

Likewise, individuals with hypothyroidism require regular laboratory testing to ensure adequate blood levels of thyroid hormone and stability on their treatment regimen. The American Thyroid Association in collaboration with the American Association of Endocrinologists recommends:

Patients being treated for established hypothyroidism should have serum TSH measurements done at 4-8 weeks after initiating treatment or after a change in dose. Once an adequate

Hormone Therapy Issues in Transgender Service Members

replacement dose has been determined, periodic TSH measurements should be done after 6 months and then at 12-month intervals, or more frequently if the clinical situation dictates otherwise (Clinical Practice Guidelines for Hypothyroidism in Adults: Cosponsored by the American Association of Clinical Endocrinologists and The American Thyroid Association; Ata/Aace Guidelines for Hypothyroidism in Adults, *Endocr Pract.* 2012;18(No. 6))

Service members with Type 2 diabetes and hypothyroidism who are stable on oral treatment regimens for at least one year are deployable. The following table shows the results of the MDR data pull including the number of service members with ICDM-10 codes for one of the two diagnoses, the number on oral medications and the number deployed over the previous 2 year period.

Number of Active Duty and Activated Guard/Reserve with a Primary Diagnosis of Interest - FY2016-17					
Condition	# w Diagnosis	# w Diagnosis and on RX	# Deployed 2016-2017 after Dx	# Deployed 2016-2017 after Dx and RX	Testing Frequency
AD with a diagnosis of diabetes?	5,945	2,334	528	108	Every 3 months until stable, then every 6 months
AD with a diagnosis of hypothyroidism	10,473	6,136	992	620	Measurements done at 4-8 weeks after initiating treatment or after a change in dose; then periodic TSH measurements should be done after 6 months and then at 12-month intervals

Examples of other diagnoses that require periodic blood testing include HIV, malignancy, gout and anemia. Many of these conditions, including diabetes and hypothyroidism, fall under Service categories for assignment limitations and may require COCOM approval for deployment.

Hormone Therapy Issues in Transgender Service Members

There are also non-transgender ADSMs who have ICDM-10 codes for low testosterone and low estrogen conditions who are receiving testosterone and estrogen therapy. Individuals who are stable on their regimens are deployable. The following table shows the results of the MDR data pull including the number of service members with ICDM-10 codes for one of the two diagnoses, the number on oral medications and the number deployed over the previous 2 year period.

Number of Active Duty and Activated Guard/Reserve with a Primary Diagnosis of Interest - FY2016-17					
Condition	# w Diagnosis	# w Diagnosis and on Rx	# Deployed 2016-2017 after Dx	# Deployed 2016-2017 after Dx and Rx	Testing Frequency
AD men with a diagnosis of "Low Testosterone", "Hypogonadism" and/or "Hypogonadotropic hypogonadism"	9,547	4,176	813	352	Every 3 months until stable, then every 6-12 months
AD women with a diagnosis of estrogen deficiency such as menopause, perimenopause, hypoestrogenism due to hypogonadism, castration or primary ovarian failure, polycystic ovarian syndrome or prevention of osteoporosis	2,952	544	180	19	Every 3 months for first year, then annually

SPECIMEN PROCESSING FOR DIABETES AND HYPOTHYROIDISM MONITORING

The same issues discussed above in regards to specimen processing for testosterone and estradiol apply to HgBA1c and TSH testing.

Shipment requirements to Landstuhl are generally as follows:

HGB A1c: refrigerated

TSH, Free T3, Free T4: refrigerated 48 hrs., frozen >48 hrs.

Hormone Therapy Issues in Transgender Service Members

Specimen stability requirements for two civilian commercial labs are shown in the table below.

Commercial Requirements for Specimens – Specimen Stability					
TEST	Specimen	Commercial Labs			
		MAYO		QUEST	
		Refrigerated	Frozen	Refrigerated	Frozen
HgBA1c	Whole blood	7 days	None given	7 days	6 months
TSH	Serum	7 days	30 days	7 days	28 days

OTHER CONSIDERATIONS

Forward deployed service members on hormonal therapy could be evacuated back to larger in-theater MTFs for periodic blood draws to mitigate the challenges with specimen processing. The dollar costs associated with such a medivac as well as the cost to unit readiness and mission accomplishment would need to be determined. Also the risk of movement would need to be factored in.

Case-by-case deployment waivers may be provided by COCOM for a Service member on injectable medications for certain medical conditions when that Service member is in a critical mission essential role and is collocated with a larger medical unit.

Until such time as the MHS has amassed sufficient experience and data to develop guidelines specific to the military setting, MHS policy for the treatment of gender dysphoria is based on the 2017 Endocrine Society guidelines. The Endocrine Society guidelines are recommendations for the care of gender dysphoria in the civilian sector and may not be fully applicable to the military setting. While the Endocrine Society guidelines recommend 12 months of lab work and exams for monitoring initial stabilization, many military endocrinologists are reporting achieving stability in Service members with gender dysphoria in 6 to 9 months.

Prepared by [REDACTED]



DEPARTMENT OF DEFENSE
HEADQUARTERS, UNITED STATES MILITARY ENTRANCE PROCESSING COMMAND
2834 GREEN BAY ROAD
NORTH CHICAGO, ILLINOIS 60064-3091

MECD

DEC 08 2017

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

SUBJECT: Policy Memorandum 2-5, Transgender Applicant Processing

References:

- (a) Deputy Secretary of Defense Memorandum, "Medical Standards for Appointment, Enlistment, or Induction of Transgender Applicants into the Military Services," dated December 8, 2017.
- (b) DoDI 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services."
- (c) DoDI 1300.28, "In-Service Transition for Transgender Service Members," dated June 30, 2016.
- (d) USMEPCOM Regulation 40-1, "Medical Qualification Program," dated July 24, 2017.
- (e) 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 interim policy guidance for processing transgender applicants for military service in accordance with Reference (a). This policy memorandum supersedes Policy Memorandum 2-5 dated August 11, 2016. This policy memorandum shall remain in effect until expressly revoked.

APPLICABILITY. This policy applies to all USMEPCOM personnel and activities.

BACKGROUND. The medical accession standards set forth in reference (a) will be implemented on January 1, 2018. The new standard permits accession of qualified transgender applicants. Implementation of the new standard, effective January 1, 2018, is mandatory. Prior to that date, the civilian and military team of USMEPCOM must prepare to implement the necessary procedural adjustments to ensure a seamless processing experience for transgender applicants. Based on references (a) – (e), this policy memorandum establishes standard operating procedures and specific processing guidance that will be applied across the command. It is an administrative tool, not a health management tool or health policy document and does not confer rights, procedural or substantive, for applicants. Any provision of USMEPCOM or individual Military Entrance Processing Station (MEPS) policy or guidance inconsistent with this memorandum is hereby superseded. The following guidance will remain in effect until expressly revoked.

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USMEPCOM mission requirements and physical space limitations often will not afford the opportunity for completely private screening procedures. All applicants, including those who are transgender, may express concern about privacy in bathrooms, ortho-neuro rooms, applicant hotel rooms, or similar venues. In these cases, Commanders may employ reasonable alternate measures to provide greater privacy, should daily capacity allow. Commanders or their representatives should review standard operating procedures during the morning Commander's brief, highlighting the rights, sensitivities, and privacy needs of all applicants, while acknowledging that the daily production environment may limit a Commander's ability to provide individual screening procedures.

As always, every applicant will be treated with dignity and respect. Applicants will be evaluated per established DoD standards for the purpose of qualifying for Military Service. Out of respect for all applicants, an individual's gender identity history should not be disclosed without his/her permission, unless disclosure is made for official use in accordance with applicable law and policy. Requests for privacy should be reviewed and adjudicated so as to avoid stigmatizing of any applicant.

I have the utmost confidence that the actions of the USMEPCOM team will continue to exemplify our core values of Integrity, Teamwork, Professionalism, and Respect. Ultimately, Commanders are responsible for upholding and maintaining the high standards of the U. S. military at all times, and in all places.

POLICY.

Identity Validation: Per reference (e), identity validation is the responsibility of Military Service recruiting command personnel. To ensure appropriate enrollment in the Defense Enrollment Eligibility Reporting System (DEERS) following accession, for transgender applicants, Service recruiting command personnel are responsible for notifying USMEPCOM (or the servicing MEPS) of an individual's identity, using one of the following documents to validate an applicant's gender, consistent with reference (c): a certified true copy of a state birth certificate reflecting preferred gender, a certified true copy of a court order reflecting preferred gender, or a U.S. Passport reflecting preferred gender.

Processing: Due to the complexity of this new medical standard, during the routine preliminary screening of applicants required by reference (e), recruiters shall refrain from screening out transgender applicants based on the information contained in the Accessions Medical Prescreen Report (DD Form 2807-2), and will instead allow the MEPS medical provider to perform a medical pre-screening of all transgender applicants for military service.

For the purposes of military entrance processing, the applicant's preferred gender will be used on all forms asking for the "sex" of the applicant. For example, if the applicant was born male but currently identifies as female, female will be selected in the "sex" category. The only form on which any difference between birth sex and preferred gender will be indicated is the DD Form 2807-2.

For applicants who do not identify with either male or female, their birth sex will be used on all forms when asking for the "sex" of the applicant. For example: if applicant was born male and does not identify as male or female, male will be selected in the "sex" category.

Services will submit the USMEPCOM Form 680-3A-E, Request for Examination (UMF 680-3A-E), indicating in block 6 the preferred gender with which the applicant identifies, not the applicant's birth sex. If an applicant's preferred gender is different than the applicant's birth sex, recruiters must verify the applicant's preferred gender through review of the applicant's birth certificate, court order, or passport. These three means to verify a gender change are the only valid means by which to do so, per reference (c) and this policy guidance.

Pending release of the updated DD Form 2807-2, the current DD Form 2807-2 "SECTION III-APPLICANT COMMENTS" will be used to identify transgender applicants to the medical department. The following annotations will be placed in Section III for **ALL APPLICANTS**, "Birth Sex: (male or female)" and "Preferred Gender: (male or female)." If birth sex and preferred gender are different, the recruiter will:

- a. Verify preferred gender using only a birth certificate, court order, or passport, per reference (c) and this policy guidance.
- b. Obtain the letter/s from the appropriate licensed medical provider/s, attesting that the applicant has been medically stable according to the standards prescribed in reference (a).
- c. Include with the prescreen submission the letter/s and all related medical documents provided by the applicant (e.g., documentation of counseling, surgery, hormone treatments) that facilitated the applicant's gender transition.

All projections and processing actions will be based on the preferred gender of the applicant. Transgender applicants will be addressed by their preferred gender name and pronoun. To avoid confusion, MEPS personnel will ask the applicant for his/her preferred name.

A transgender male (birth sex female, preferred gender male) will be projected by the Services as a male; a transgender female (birth sex male, preferred gender female) will be projected by the Services as a female. Room assignment, height/weight standards, ortho-neuro exam, specimen observation, underwear requirements, chaperone, and bathroom assignments will be made based on the applicant's preferred gender identified by the sponsoring Service. However, although an individual might identify with a preferred gender, he/she may retain the anatomical characteristics of their birth sex. Medical examinations and labs may need to be tailored to the specific anatomical characteristics presented by the applicant.

Transgender male applicants who have not undergone surgical/hormone therapy will wear undergarments consistent with their physical anatomy (as per routine in the USMEPCOM regulations for all applicants), will be administered a pregnancy test, and will receive medical review and examination specific to female anatomical characteristics during the physical examination portion of processing.

Transgender female applicants who have not undergone surgical/hormone therapy will wear undergarments consistent with their physical anatomy (as per routine in the USMEPCOM regulations for all applicants), will not be administered a pregnancy test, and will receive medical review and examination specific to male anatomical characteristics during the physical examination portion of processing.

The gender of the chaperone will be the same as the applicant's preferred gender. The examining provider must confirm whether the applicant "does" or "does not" want a chaperone before beginning the medical examination (where the applicant will be in a state of undress). When the gender of the examiner is the opposite of the applicant's preferred gender, a chaperone must be provided while the applicant is in a state of undress. When the examiner's gender is the same as the applicant's preferred gender, a chaperone will be provided on request of either the applicant or the medical provider. The applicant or medical provider may request a chaperone at any time, and the examination will not proceed further until a chaperone is provided.

FOR MEPS MEDICAL DEPARTMENT

In accordance with Reference (a):

a. As to a transgender male (birth sex female, preferred gender male), a history of sex reassignment surgery or major genital reconstruction is disqualifying, unless, as certified by a licensed surgeon whose scope of practice includes the attested surgical procedure(s) (to include OB/GYN, urology, or plastic surgery):

1) A period of 18 months has elapsed since the date of the most recent of any such surgery during which period no further surgical follow-up or monitoring was required; and

2) No functional limitations or complications persist, nor is any additional surgery required; and

3) The applicant is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning.

b. As to a transgender female (birth sex male, preferred gender female), a history of sex reassignment surgery or major genital reconstruction is disqualifying, unless, as certified by a licensed surgeon whose scope of practice includes the attested surgical procedure(s) (to include urology or plastic surgery):

1) A period of 18 months has elapsed since the date of the most recent of any such surgery, during which period no further surgical follow-up or monitoring was required; and

2) No functional limitations or complications persist, nor is any additional surgery required; and

3) The applicant is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning.

c. As to any transgender applicant, a history of medical treatment associated with gender transition is disqualifying, unless, as certified by a licensed medical provider who treats gender dysphoria, such as a primary care provider, endocrinologist, or licensed mental health provider (psychiatrist, clinical psychologist, clinical social worker with a master's degree or doctorate in clinical social work, or psychiatric nurse practitioner):

1) The applicant has completed all elements of a medical treatment plan associated with the applicant's gender transition; and

2) The applicant has been stable, without clinically significant distress or impairment in social, occupational, or other important areas of functioning, in the preferred gender for the previous 18 months; and

3) If the applicant is presently receiving cross-sex hormone therapy post gender transition, the individual has been stable without adverse side effects, functional limitations, or complications on such hormones for at least the 18 consecutive months immediately preceding examination by the MEPS medical department.

d. As to any transgender applicant, a history of gender dysphoria is disqualifying, unless, as certified by a licensed mental health provider (psychiatrist, clinical psychologist, clinical social worker with a master's degree or doctorate in clinical social work, or psychiatric nurse practitioner) who treats gender dysphoria, the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for at least the 18 consecutive months immediately preceding examination by the MEPS medical department.

e. Licensed medical provider is defined as "a health care professional who is licensed, credentialed, and granted clinical practice privileges to provide health care services within the provider's scope of practice, in a medical treatment facility."

f. For the purpose of accession, transgender applicants must be stable in the preferred gender for a period of 18 consecutive months post gender transition. "Stable in the preferred gender" is defined as "medical and surgical interventions for gender transition are complete, with the exception of continued use of a stable cross-sex hormone protocol, if applicable, no functional limitations or complications persist, and the individual is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning."

g. The following action will be taken for applicants, who during processing at the MEPS, disclose that they are transgender, but who have not taken the legal and/or medical steps to transition to their preferred gender or to demonstrate stability in their preferred gender as defined in this guidance: Applicant will be interviewed by a MEPS medical provider. If the applicant discloses to the MEPS medical provider that his/her preferred gender is other than the applicant's birth sex, as recorded on the applicant's DD Form 2807-2, or discloses additional medical information that calls into question whether stability in their preferred gender has been demonstrated, the applicant will be placed in open status (S-O), if medical treatment records are requested; or in temporary disqualified status (S-3T), if medical treatment records substantiate stability, but do not substantiate that the applicant meets the requirement that he/she be stable for 18

months in the preferred gender. In the latter case, the applicant will be given a Reevaluation Believed Justified (RBJ) date on the DD Form 2808 of 18 months minus the period of previously documented stability. In addition, in cases in which a transgender applicant is temporarily disqualified because he/she does not meet the 18 month stability requirement in the preferred gender, the sponsoring Service may request a Medical Exception to Policy (ETP), using the procedures in reference (d) to submit the applicant for consideration for a medical waiver by the Service Medical Waiver Review Authority (SMWRA), as authorized by reference (a).

h. The following action will be taken for applicants, who during prescreening, disclose that they are transgender, but who have not taken the legal and/or medical steps to transition to their preferred gender or to demonstrate stability in their preferred gender as defined this guidance: The MEPS medical provider will determine if Processing is Authorized (PA) in accordance with paragraph 2-3 of reference (d). If medical treatment records substantiate stability, but do not substantiate that the applicant meets the requirement that he/she is stable for 18 months in the preferred gender, the applicant will be given a Return Justified (RJ) date on the DD Form 2807-2 of 18 months minus the period of previously documented stability. In cases during prescreening in which an RJ date has been assigned, or in cases in which the MEPS medical provider has determined Processing is Not Justified (PNJ), the SMWRA (upon request of the Service) may Request Processing (PRW) in accordance with the procedures contained in paragraph 2-3 of reference (d).

i. For consistency, as USMEPCOM implements this new standard, and given the complexity and inter-dimensionality of medical qualification decisions, copies of the medical processing records: DD Form 2807-2, Report of Medical History (DD Form 2807-1), Report of Medical Examination (DD Form 2808), and the supporting medical records for all transgender applicant will be submitted to the USMEPCOM Medical Plans and Policy Directorate (J-7) for review after MEPS medical providers have rendered a medical qualification determination in regard to that applicant. The J-7 review is instituted to ensure consistency in the application of the new standard and to gather best practices and lessons learned as they pertain to this guidance. Supplemental guidance may be provided following J-7 review. J-7 review will not delay accession of transgender applicants determined to be qualified under the foregoing standards.

j. The Services must submit DD Form 2807-2 with substantiating and supporting medical documents, as specified in the USMEPCOM Medical Prescreen Documents List, together with all other documentation requested by the MEPS provider, for an applicant to be considered for a medical examination at the MEPS, IAW USMEPCOM Regulation, Medical Qualification Program (UMR 40-1), para 2-2c.

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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NOV 13 2017

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND
RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND
RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER
AND RESERVE AFFAIRS)

SUBJECT: Information Memorandum: Interim Defense Health Agency Procedures for
Reviewing Requests for Waivers to Allow Supplemental Health Care Program
Coverage of Sex Reassignment Surgical Procedures

The purpose of this memorandum is to share with you the procedures the Defense Health Agency (DHA) will follow to consider requests for a Supplemental Health Care Program (SHCP) waiver to allow coverage of sex reassignment surgical procedures.

Background

The 2016 Department of Defense (DoD) transgender service policy change included medical guidance that unless and until adequate surgical capabilities are established in military medical treatment facilities, requests for transgender surgery would be considered for DoD payment to non-DoD facilities under the SHCP and would require a waiver from the DHA Director.¹ That guidance noted that there are applicable statutory limitations. The statutory limitations include that DoD may not pay for surgery in non-DoD facilities for "sex gender changes," but this is subject to "such exceptions as the Secretary of Defense considers necessary," as long as they do not involve "elective private treatment."²

The Presidential Memorandum of August 25, 2017, "Military Service by Transgender Individuals," included direction that, effective March 23, 2018, the Military Health System halt all use of appropriations to fund sex-reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex. The Secretary of Defense Memorandum of September 14, 2017, "Military Service by Transgender Individuals – Interim Guidance," included direction that Service members who receive a gender dysphoria diagnosis from a military medical provider will be provided treatment for the diagnosed medical condition. The effect of this is to continue the July 2016 medical guidance until the Secretary promulgates final policy implementing the direction from the Commander In Chief of the Armed Forces.

¹ Assistant Secretary of Defense (Health Affairs) Memorandum, "Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members," July 29, 2016.

² 10 U.S.C. 1074(c)(2)(A), 1079(a)(11), 1074(c)(1).

This memorandum addresses procedures for considering requests for waivers under the SHCP for sex reassignment surgical procedures.³ This memorandum does not apply to non-surgical care, nor to surgical care provided in military medical treatment facilities; those matters remain under the procedures of the Military Department concerned, consistent with the July 2016 guidance from the Assistant Secretary of Defense for Health Affairs, which remains in effect.

In evaluating potential coverage of otherwise non-covered services, the TRICARE regulation calls for review under the established hierarchy of reliable evidence,⁴ which considers peer-reviewed publications of well controlled studies of clinically meaningful endpoints and published formal technology assessments as stronger than professional opinions, policy positions, and reports. (Although the TRICARE regulation is not binding on the SHCP, it provides a useful frame of reference). The effectiveness of gender transition surgery as a treatment for gender dysphoria is not well documented under this hierarchy of reliable evidence.⁵

Criteria for Considering SHCP Waiver Requests

Use of the Secretary's discretionary authority to waive the prohibition on paying for sex-reassignment surgery⁶ under the SHCP will consider all relevant information in a case-by-case

³ 32 CFR 199.16(f) provides that generally applicable exclusions may be waived by the DHA based on a determination that such waiver is necessary to assure adequate availability of health care services to active duty members.

⁴ 32 C.F.R. 199.2.

⁵ Consistent with this hierarchy of reliable evidence, DoD often relies on health technology assessments conducted by Hayes, Inc. Hayes, Inc. uses a five-tier rating system. Under the most recent Hayes, Inc. assessment (Haynes Directory and Annual Review, May 15, 2014 and April 18, 2017 (updated)), for sex reassignment surgery (SRS) to treat gender dysphoria (GD) in adults for whom a qualified mental health professional has made a formal diagnosis of GD, have undergone hormone therapy and psychotherapy, and have undergone a Real-Life Experience, the rating reflects the reporting of some positive evidence but with serious limitations in the evidence of both effectiveness and safety. The evidence is rated a "C", which is a middle tier in the rating system, indicating there is potential but unproven benefit. Some published evidence suggests that safety and impact on health outcomes are at least comparable to standard treatment/testing. However, the "C" rating indicates that substantial uncertainty remains about safety and/or impact on health outcomes because of poor-quality studies, sparse data, conflicting study results, and/or other concerns.

⁶ For purposes of this memorandum, sex reassignment surgery is defined as all surgical procedures related to transition from the birth sex to the preferred gender. These procedures include but are not limited to mastectomy, hysterectomy, gonadectomy, genital reassignment, breast augmentation, and cosmetic procedures to enhance the characteristics of the preferred gender. See Attachment for a more inclusive list.

review of the patient's record and circumstances, including the expected clinical benefit if the surgery is provided, the expected adverse effect on the patient's health if the surgery is not provided, and the potential impact of the requested health care service on the Service member's fitness for duty and military readiness. Updating guidance applicable to the SHCP, DHA's clinical review will adhere to the surgical care provisions of the 2017 Endocrine Society's Standards of Care, "Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline,"⁷ to provide consistent, evidence-based care. The standards applicable to surgical care are summarized in the Attachment. Use of SHCP funding for any proposed sex-reassignment surgical procedures requires case-by-case authorization from the DHA Director.

Requests for waivers require appropriate clinical documentation and a recommendation for approval by the Surgeon General concerned. Absent emergency circumstances, SHCP surgery should not be scheduled until a waiver has been approved by the Director, DHA.

My point of contact for this matter is Dr. John Kugler, Chief, Clinical Support Division, Operations Directorate (J-3). Dr. Kugler can be reached via email at john.p.kugler.civ@mail.mil.



R. C. BONO
VADM, MC, USN
Director

Attachments:
As stated

cc:
Assistant Secretary of Defense for Health Affairs
Surgeon General of the Army
Surgeon General of the Navy
Surgeon General of the Air Force
Joint Staff Surgeon
Medical Officer of the Marine Corps
Director, Health, Safety, and Work Life, U.S. Coast Guard

⁷ The 2017 Endocrine Society guideline uses the terms "gender-reassignment surgery," "gender-confirming surgery" and "gender-affirming surgery." For purposes of this memorandum, the term "sex reassignment surgery" is interchangeable with the 2017 Endocrine Society guideline terms.

ATTACHMENT

SURGICAL PROCEDURES FOR GENDER DYSPHORIA

1. SRS GUIDELINES. Medically necessary sex reassignment surgery (SRS) may be considered when all of the following criteria are met:

- a. Cross-sex hormones have been used continuously and responsibly for the required/recommended time according to the type of surgery;
- b. Regular participation in psychotherapy throughout the transition period at a frequency determined jointly by the patient and the mental health provider has been completed if required;
- c. Knowledge of all practical aspects of surgery (e.g., cost, required length of hospitalization, likely complications, post-surgical rehabilitation, SHCP policy including limitations, etc.) has been demonstrated;
- d. Progress in consolidating one's gender identity has been demonstrated;
- e. Progress in dealing with work, family, and interpersonal issues resulting in a significantly better state of mental health has been demonstrated; and
- f. The endocrinologist or the physician responsible for endocrine treatment and the mental health provider must certify that the individual satisfies the eligibility and readiness criteria for SRS.

2. MEDICALLY NECESSARY PROCEDURES. Subject to receiving the relevant diagnosis/validation from an appropriate military medical provider, the following procedures may be recognized as "medically necessary" by DoD and may be funded through SHCP:

- a. Female-to-Male

PROCEDURE	CPT Codes	CRITERIA
Hysterectomy and salpingo-oophorectomy (removal of uterus and ovaries)	58262/58291	1. Meet SRS Guidelines in Attachment 1, section 1, required 2. 12 months of hormonal therapy required (unless medically contraindicated) 3. 12 months of full time RLE required
Mastectomy (removal of breast)	19301/19303/19304	1. Meet SRS Guidelines in Attachment 1, section 1, required 2. 12 months of hormonal

		therapy recommended (unless medically contraindicated) 3. 12 months of full time RLE recommended
Metoidioplasty (enlargement/lengthening of clitoris)	55899	1. Meet SRS Guidelines in Attachment 1, section 1, required 2. 12 months of hormonal therapy required (unless medically contraindicated) 3. 12 months of continuous full time RLE required
Phalloplasty (construction of "new" phallus from skin or muscle grafts)	55899	
Placement of testicular prostheses	54660	
Scrotoplasty (re-arrangement of labia to create scrotum)	55175	
Urethroplasty (creation of longer urethra from skin to enable standing voiding)	53430	
Vaginectomy (removal of vagina)	57106	

b. Male-to-Female

PROCEDURE	CPT Codes	CRITERIA
Orchiectomy (removal of testicles)	54520/54690	1. Meet SRS Guidelines in Attachment 1, section 1, required 2. 12 months of hormonal therapy required (unless medically contraindicated) 3. 12 months of full time RLE required
Penectomy (removal of penis)	54125	
Vaginoplasty (construction of "new" vagina from skin or intestinal tube)	57335	
Clitoroplasty (rearrangement of penile tissues to create "new" clitoris)	56805	
Labiaplasty (rearrangement of scrotum to create "new" labia)	58999	

3. COSMETIC PROCEDURES. The following procedures are considered "cosmetic procedures" by DoD and are not funded through SHCP (although some may be provided in an MTF subject to MTF capability and current Cosmetic Surgery Policy payment rules; this list is not all-inclusive):

- a. Abdominoplasty (unless standard medical necessity criteria met)
- b. Breast Augmentation⁸
- c. Blepharoplasty (eyelid lift) (unless standard medical necessity criteria met)
- d. Hair removal/Electrolysis⁹
- e. Face-lift
- f. Facial bone reduction
- g. Hair transplantation
- h. Liposuction
- i. Reduction thyroid chondroplasty (Adam's Apple surgery)
- j. Rhinoplasty
- k. Voice modification surgery

4. OTHER SURGICAL CONSIDERATIONS

- a. Cryopreservation of oocytes and/or sperm is not funded by DoD
- b. Reversal of SRS is not funded by DoD

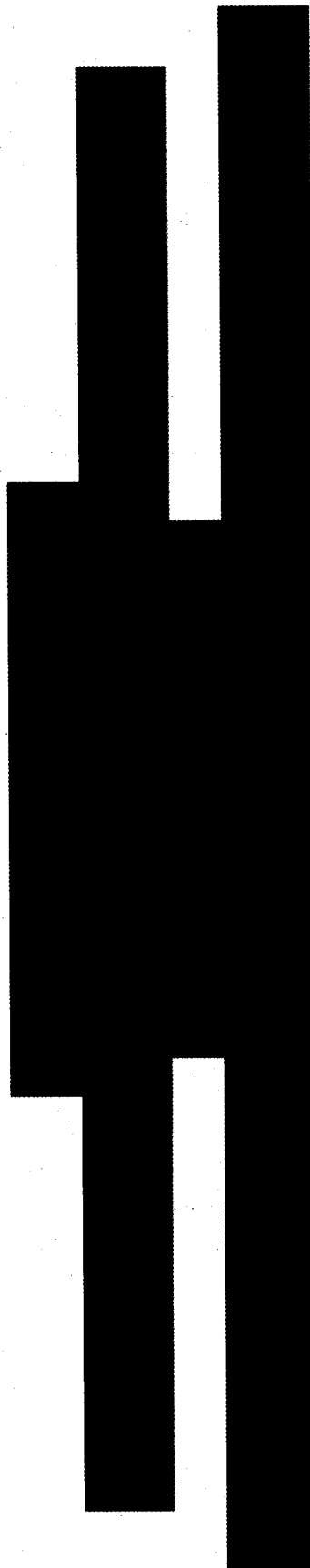
⁸ A waiver for breast augmentation (CPT code 19324/19325) may be authorized when the ADSM has undergone 24 months of feminizing hormone therapy (unless medically contraindicated) with insufficient breast development.

⁹ A waiver for hair removal by laser or electrolysis (CPT codes 17380) may be authorized when the ADSM meets one of the following criteria for planned SRS:

A. The defined area of hair removal is to treat tissue donor site(s) for a planned phalloplasty.

B. The defined area of hair removal is to treat tissue donor site(s) for planned vaginoplasty.

Health Data for Service Members with Gender Dysphoria



JA343

Briefing Overview

Briefing Type	
Informational	
Briefing Overview (BLUF)	
• As of July 26, 2017 there are 994 AD SMs coded for Gender Dysphoria with full data • Since the ban on Service by TG individuals was lifted, there have been 34 surgeries performed at MTFs for gender transition which include mastectomies, hysterectomies, and excision of testes • There are currently 18 requests for genital reassignment surgery (either consults or surgery) through the Supplemental Health Care Program	
Decision(s) Required	
• N/A	

Definitions for this Presentation

- **Service members (SMs) with gender dysphoria (GD)**
 - Service members presenting to the military health system (MHS) with a diagnosis code of gender dysphoria
- **“Coded for”, “diagnosis code” or ICD-10 codes**
 - International Classification of Disease (ICD) version 10 - in health care, for payment or tracking these codes are used
 - For diagnoses, symptoms and procedures
- **Transgender Service (TG) members**
 - SMs who may or may not have gender dysphoria but whose sense of personal identity does not correspond with the gender assigned to them at birth
- **Direct care**
 - Term used in the MHS referring to care rendered at military treatment facilities (MTFs)
- **Purchased care**
 - Term used in the MHS referring to care purchased at civilian facilities
- **Sex Reassignment Surgeries (SRS)**
 - For the purposes of this presentation, refers to any surgery performed for purposes of gender transition

JA345

Other Reports that Estimate Number of TG SMS

	Number of Transgender Service Members		Transgender Prevalence Estimates and Other Assumptions	Source
	AD	1,320 - 6,630 Midrange: 2,450		
RAND	G/R	830 - 4,160 Midrange: 1,510	0.1% - 0.5%	Service members: DMDC FY14; Prevalence: Lower bound (0.1%): Gates 2011 from CA; Upper bound (0.5%): Conron 2012 from population-based estimate in MA
	Total	2,150 – 10,790 Midrange: 3,960		
		15,450*		
Palm Center			0.3%. Also assumes transgender prevalence in the armed forces is approximately twice adults in the U.S.	Gates, 2014
SPARTA		15,000	Unknown	Unknown
Williams Institute		15,500 8,800 AD		Gates and Herman 2014 National Transgender Discrimination Survey
Office of People Analytics 2016 Survey of W&GR Q on AD TG Members		8,980		Self Reporting Survey
*This number cites Gates 2014, which was not final when Palm Center report was published. The updated number in Gates 2014 is 15,550.				

JA346

Assumptions and Caveats

- Not all individuals who are transgender carry the diagnosis of gender dysphoria
- We cannot assume all SMs who are transgender presented to the health care system or their commanders after the ban was lifted
- These numbers cannot be considered precise and therefore the data presented should only be used to show trends in health care utilization and cost

JA347

Data Sources

- Decision not to count TG SMs or to collect data so have to rely on administrative data
- Military Health System Administrative Data
 - MHS Data Repository (MDR)
 - MHS Mart (M2)
 - These are MEDICAL administrative data banks and limited in the types of information they contain
- Data Call to the Services

JA348

DoD Data Limitations

- Administrative data
 - Subject to misclassification errors
 - Details are limited
 - Lag in data input of 30-90 days
- Do not have access to data on out-of-pocket expenditures by AD SMs with GD
- Generalizations cannot be made because of small sample size of population
- Early in policy implementation, therefore cannot generalize conclusions of this data to the longitudinal impacts

JA349

Study Cohort

- Includes SMs identified by GD ICD-10 codes October 1, 2015 to July 26, 2017 = 994 SMs
- For cost data, a subset of the study cohort was identified that had full health care cost data available – AD SMs who are TRICARE Prime
 - This data does not include any care purchased with personal funds

JA350

Study Cohort of Service Members with GD

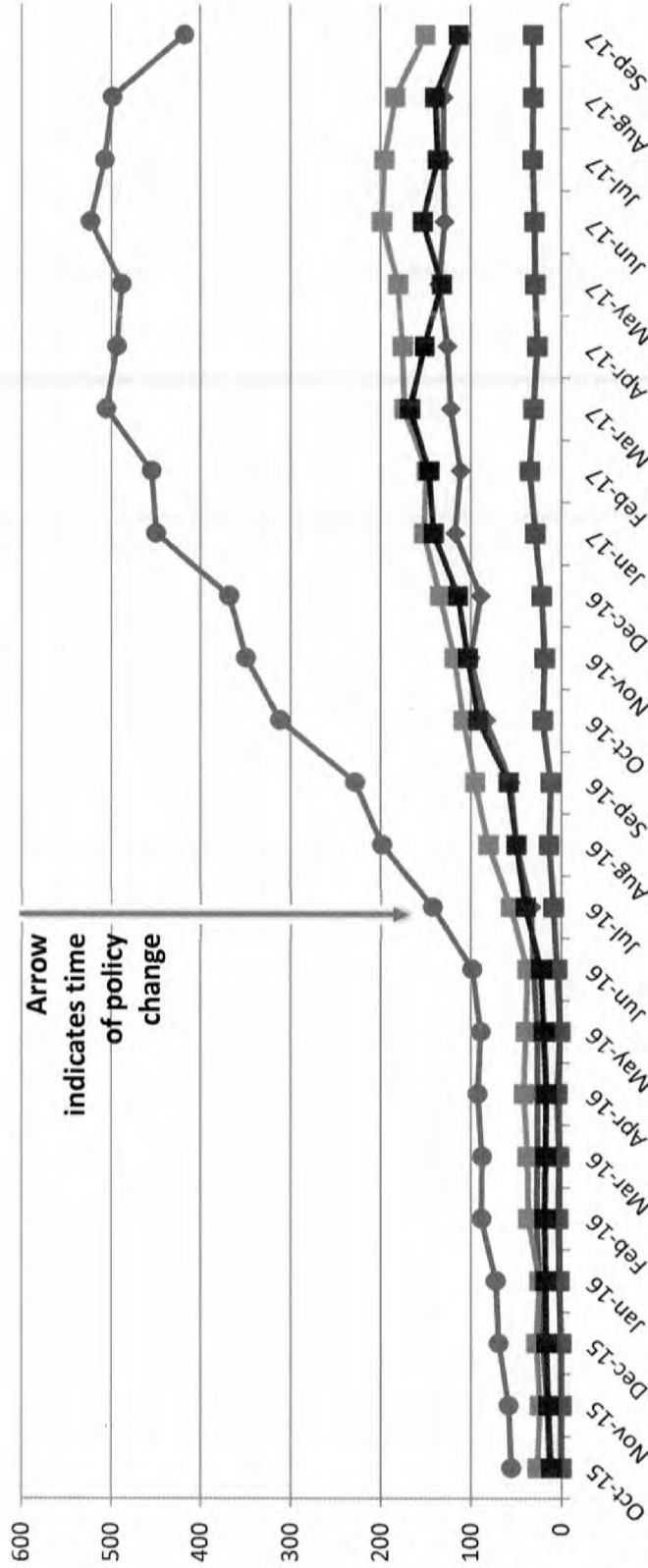
(FY16 to July 27, 2017)

SMs Diagnosed with Gender Dysphoria FY 2016 to July 26, 2017			
	Active Duty	Guard/Reserve	Total
Air Force	240	5	245
Army	331	33	364
Coast Guard	20	0	20
Marine Corps	61	2	63
Navy	294	4	298
Other	4	0	4
Total	950	44	994

JA351

Number of SMs with GD Diagnoses Seen Per Month

By Month and Service
FY 2016 to September 2017



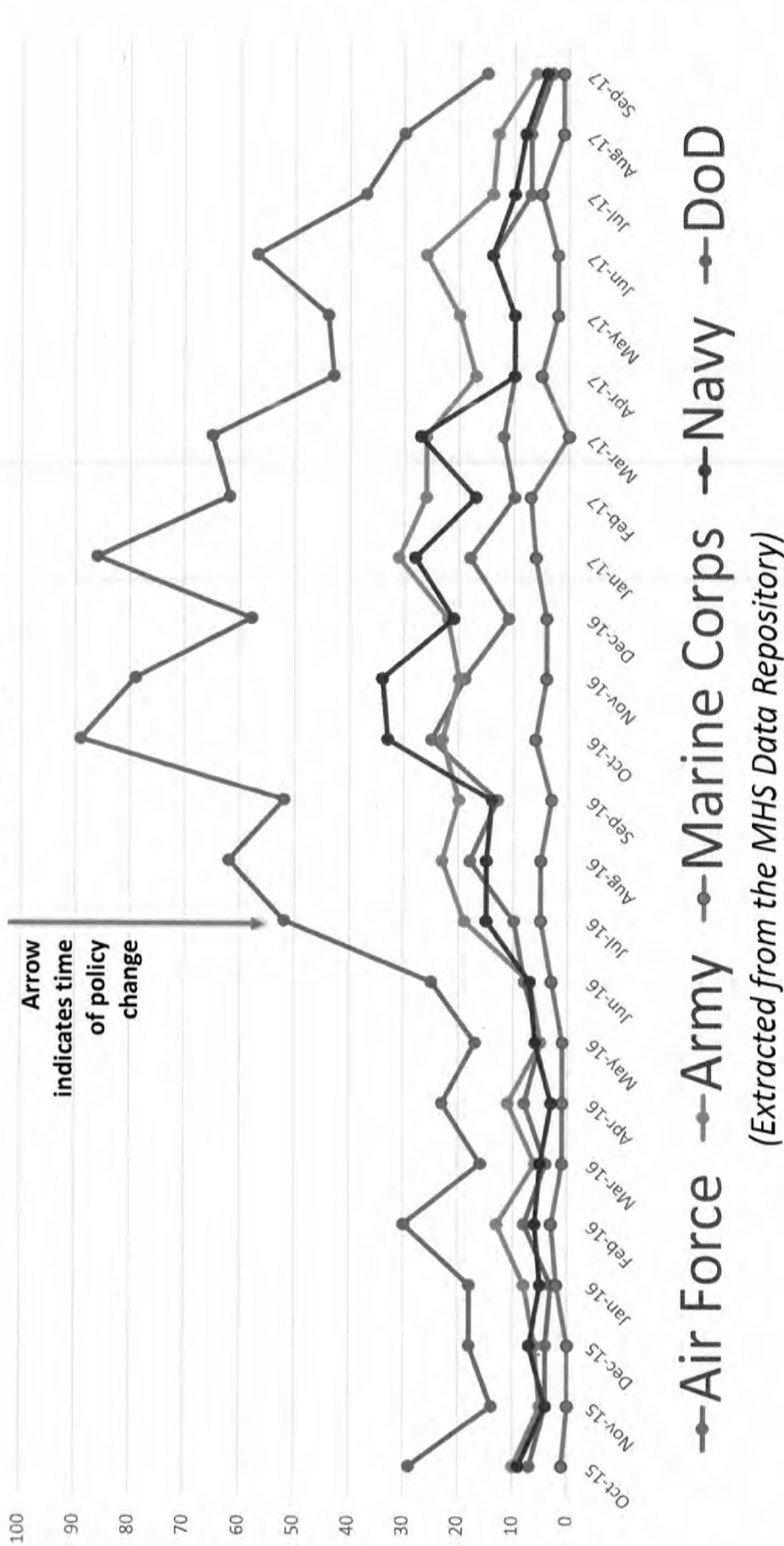
◆ Air Force ■ Army ■ Marine Corps ■ Navy ◆ DoD

(Data Extracted from the MHS Data Repository July 26, 2017 Note: Other and Coast Guard not shown)

JA352

New Cases of Gender Dysphoria Diagnoses

By Month and Service
FY 2016 to September 2017



JA353

Medical Utilization for Study Cohort

(Oct 1, 2015 through Oct 3, 2017)

Includes Direct Care and Purchased Care

	Any Mental Health		Psychotherapy		Hormone Therapy		Surgery		Total FY2016 to Present
	Individuals	Encounters	Individuals	Encounters	Individuals	Scripts	Individuals	Encounters	
Air Force	Active	240	7,367	240	5,155	906	2	3	240
	Reserve	5	35	5	44	2	0	0	5
	Total	245	7,402	245	5,199	908	2	3	245
Army	Active	328	11,163	326	7,543	1,899	11	13	331
	Reserve	31	730	32	558	433	1	1	33
	Total	359	11,893	358	8,101	2,332	12	14	364
Coast Guard	Active	20	461	20	205	127	0	0	20
	Active	61	1,485	61	1,188	110	6	7	61
	Reserve	2	55	2	35	2	0	0	2
Marine Corps	Total	63	1,540	63	1,223	112	0	0	63
	Active	292	8,269	283	4,773	1,160	9	9	294
	Reserve	4	205	3	128	51	1	1	4
Navy	Total	296	8,474	286	4,901	1,211	10	10	298
	Total	4	239	4	126	64	0	0	4
Other	Active	945	28,984	934	18,990	4,266	28	32	950
	Reserve	42	1,025	42	765	488	2	2	44
	Total	987	30,009	976	19,755	4,754	30	34	994

*Data Extracted October 3, 2017 from MHS Data Repository (MDR); Cohort from July 27, 2017 extract

Surgeries in Study Cohort, FY2016 to Present

Direct Care and Purchased Care

SERVICE	Resection of Uterus/ Hysterectomy		Mastectomy		Excision Procedures on the Testes	
	Active Duty	3				3
Air Force	Guard/Reserve					
	Active Duty	6	5	2		13
Army	Guard/Reserve		1			1
	Active Duty	1	6			7
Marine Corps	Reserve					
	Active Duty	4	3	2		9
Navy	Guard/Reserve	1				1
		15	15	4		34
Totals						

33 procedures were performed in MTFs, 1 in Purchased Care.

Of the 34 procedures performed, 25 were for an indication of GD

JA355

13

Surgery Waivers

Supplemental Health Care Program

- MTFs do not have capability to perform genital reassignment surgeries
- Since ban lifted in July 2016, there have been 18 applications for waivers for surgical consultation
 - 2 SMs who have completed consults have applications for waivers for surgery pending
- To date, no one has had surgery through the SHCP

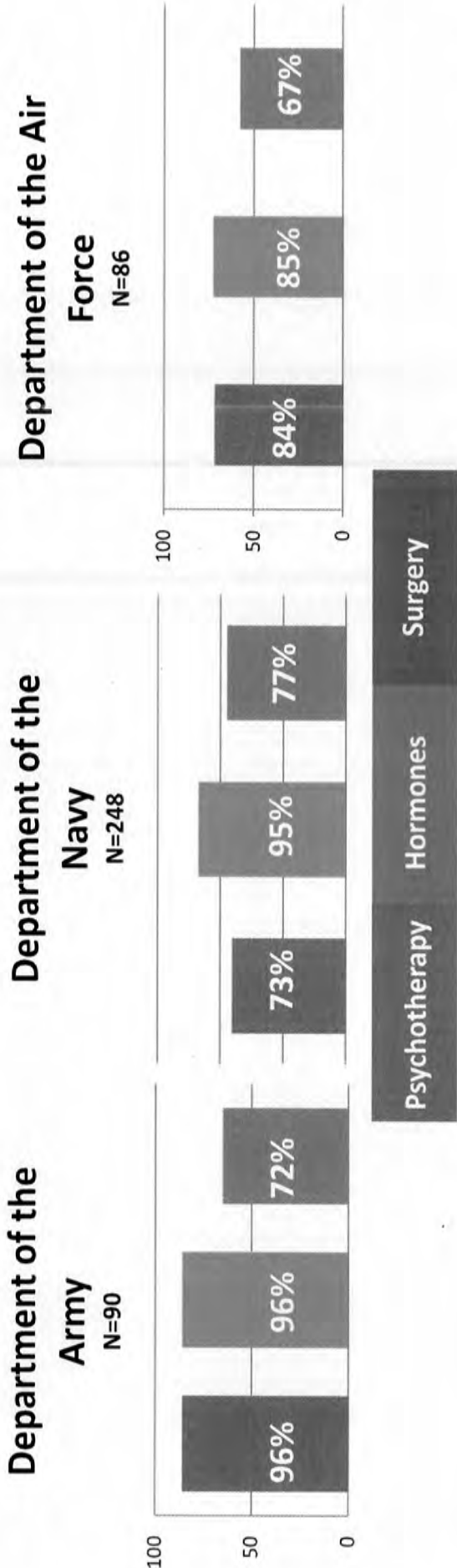
JA356

Service Data Request

- Data collection covered the time period from **September 1, 2016** to **August 31, 2017**
- Data request included:
 - Number of SMs with approved treatment plans
 - Number of SMs receiving psychotherapy and cross-sex hormones as part of the treatment plan
 - Number of SMs with sex reassignment surgery as part of the treatment plan
 - Total number of profiles/LIMDU and days on restricted duty for each transitioning SM
 - Total number of days on profile/LIMDU/restricted duty
- Army, Navy and Air Force coordinated definitions and methodologies of collection for data elements

JA357

Service Data – Approved Treatment Plans*



	ARMY	NAVY	AIR FORCE
Number of Service Members with surgeries as part of treatment plan^	65	190	58
Percent of Treatment Plans with surgery included	72%	77%	67%

*Services only had access to treatment plans submitted to their TG care teams (TGCT/MMMDT)
^A Civilian study shows that 23% of MtF and 2% FtM TG individuals initially wanting surgery actually have surgery.

JA358

SERVICE DATA

Types of Surgeries Included in Treatment Plans

	Department of the Army	Department of the Navy	Department of the Air Force
Hysterectomy/Oophorectomy	7	97	14
Orchiectomy	2	61	12
Mastectomy/Augmentation	10	113	38
Genital Reassignment	14	118	19
Other	11	-	27

* An individual service member may have more than one surgical procedure in their treatment plan

** Department of the Army information does not include 24 medical plans that are “still evaluating and/or considering” procedures. Many plans included phrases like “surgeries may include...” or “may include, but not limited to...”

JA359

SERVICE DATA – Profiles/LIMDUUs/Restricted Duty

	Department of the Army*	Department of the Navy**	Department of the Air Force***
Number of Service Members with a diagnosis of Gender Dysphoria on Profile/LIMDUU/Restricted Duty	87 (90)	22 (248)	52 (86)
Average Number of Profiles/LIMDUUs/Restricted Duty per transitioning SM	3.4	0.1	1.9
Average number of days a transitioning Service Member is in a Profile/LIMDUU/Restricted Duty status	167.4	1-90	159
		90-180	
		180-270	
		270-360	
		>360	
Range of Days on Profile	0 - 537	1 - 360+	1 - 365

* **Army** – profiles for SMs with GD; indication for profile not known; could be for transition or for other indications.

** **Navy** - policy dictates no LIMDUU for gender transition. All LIMDUUs are for non-transition indications. SMs undergoing transition are non-deployable for the first 3 to 6 months of hormone therapy but not put on LIMDUU. Navy provided Avg. Number of days on LIMDUU in block times.

*** **Air Force** - profiles are for transition.

UPDATED 2 NOV

18

UNCLASSIFIED//FOUO – Not for Distribution Draft Deliberative Document

As of 0900 2 November 2017

Costs and Cost Comparisons

JA361

19

UNCLASSIFIED//FOUO – Not for Distribution Draft Deliberative Document

As of 0900 2 November 2017

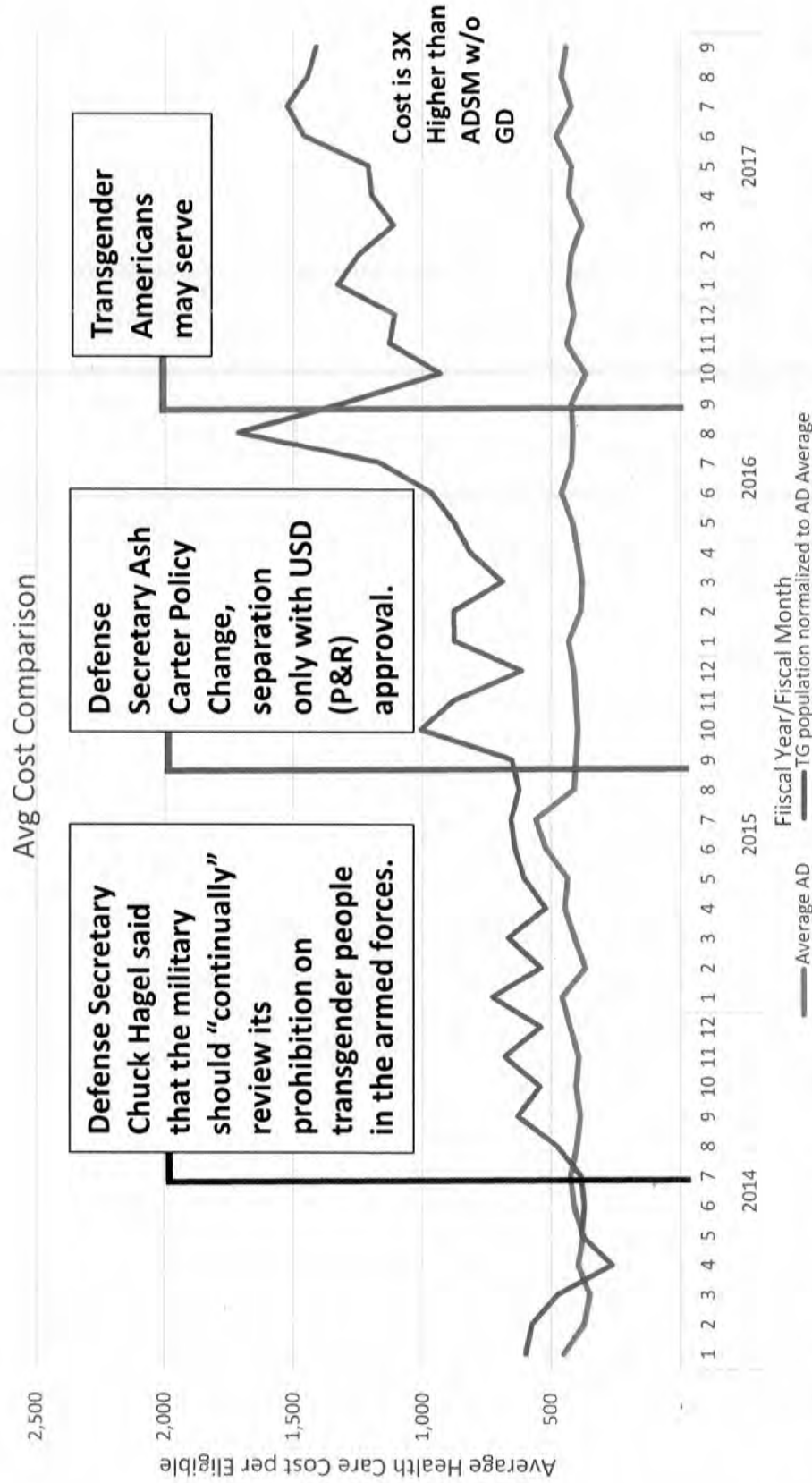
Cost of Services for Gender Dysphoria

(Purchased Care Paid Costs; Direct Care Estimated Costs)

	FY14	FY15	FY16	FY17	TOTAL
Direct Care	\$ 82,558	\$ 83,563	\$ 650,492	\$ 2,172,849	\$ 2,989,462
Purchased Care	\$ 5,421	\$ 3,884	\$ 10,094	\$ 16,509	\$ 35,908
Pharmacy	\$ 1,264	\$ 2,693	\$ 3,406	\$ 6,130	\$ 13,493
TOTAL	\$ 89,243	\$ 90,140	\$ 663,992	\$ 2,195,488	\$ 3,038,863

JA362

Average Health Care Expenditures: Transgender Active Duty (TRICARE Prime) vs Average Active Duty



Source: M2 (Purchased Care: Inpatient (TED-I); Professional (TED-NI)); (Direct Care: Inpatient (SIDR); Professional (CAPER)); Pharmacy (PDS); Population (DEERS)

QUESTIONS

JA364

Transgender Personnel Policy Working Group

Kickoff Meeting – October 02, 2017

JA365



Agenda

Introductions

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Introductions

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POTUS memo to the SECDEF, 25 AUG 17
SECDEF Interim Guidance, 14 SEP 17
SECDEF Terms of Reference, 14 SEP 17

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Guidance

lieve any individual who meets the physical and mental standards, is worldwide deployable and is currently serving, should be afforded opportunity to continue to serve.”

General Joseph F. Dunford
Chairman, Joint Chiefs of Staff
Testimony given to the SASC
September 26, 2017

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Deliverables

transgender accessions policy (MEDPERS)

Multi-Disciplinary review and study of relevant data (MEDPERS)

Authorized gender dysphoria medical procedures policy (MEDPERS)

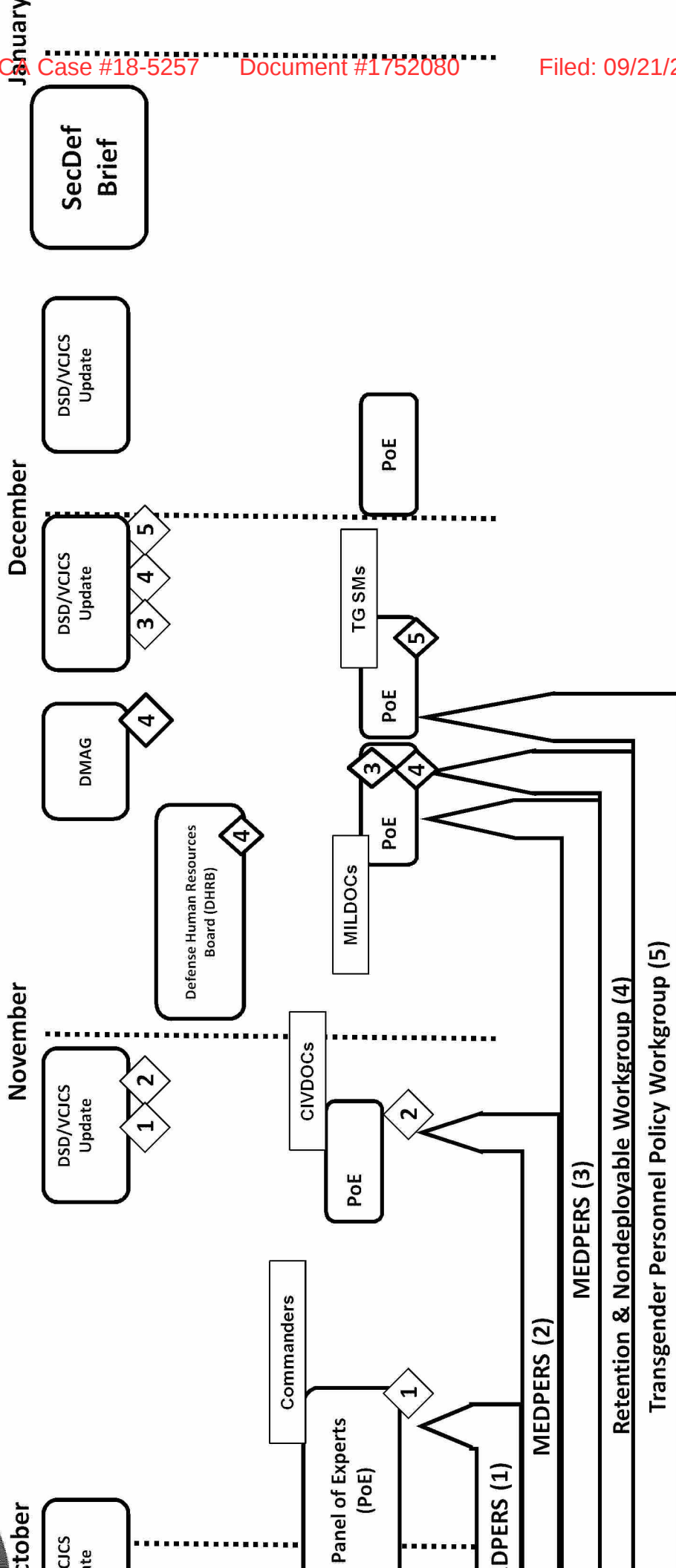
Universal deployability retention standards (Ret & Non-Dep WG)

Single policy document for current transgender service members (Personnel)

Policy WG)

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Timeline



Beyond December	Final recommendations
Meeting Frequency	• DSD update: Monthly • DHRB/DMAG: 8 Nov (DHRB), 15 Nov (DMAG) • Panel of Experts; meetings the week of 30 Oct-3 Nov, 13-18 Nov, 20-24 Nov, 4-8 Dec • Medical Personnel Executive Steering Committee (MEDPERS): Week of 16-20 Oct, 30 Oct- 3 Nov • Retention & Nondeployable WG: Weekly • Transgender Personnel Policy WG: Weekly
Deliverables/Milestones	Discussions policy disciplinary review and study of relevant data Medical GD medical procedures policy Personal deployability retention standards policy document for current transgender service members

Timeline Matrix

MEDPERS	R&N WG	TG Pers Policy WG	Panel of Experts	DSD/VC
	Weekly meeting to develop universal ret and Nondep standard (Del #4).	Weekly meeting, begin work on DoDI (Del #5) Email: 27 SEP 17		Receive inbrief from approve process
	Weekly meeting to develop #4.	2 OCT: Kickoff meeting; Review DoDI 1300.28 – Sections 1 and 2	Introductory meeting Review DoDI Accessions language	
	Weekly meeting to develop #4.	Friday, 13 OCT: Review DoDI 1300.28 – Sections 1 and 2		
Meet to discuss Del #1 and #2. Prepare to brief findings	Weekly meeting to develop #4.	16 OCT: Review DoDI 1300.28 – Sections 1 and 2		
	Weekly meeting to develop #4.	Tuesday, 24 OCT @1000: Review DoDI 1300.28 – Section 3	Receive MEDPERS brief on 1 & 2; app progress / provide guidance	
	Weekly meeting to develop #4.	30 OCT: Review DoDI 1300.28 – Section 3		Receive briefing on D
Meet to discuss Del #3. Prepare to brief findings	Weekly meeting to develop #4.	6 NOV: Review DoDI 1300.28 – Section 3		
	15 NOV: Brief DMAG universal ret and Nondep standard (4); brief PoE upon completion.	13 NOV: Finalize DoDI 1300.28 –	Receive brief from MEDPERS on 3, R&N WG on 4; approve progress and provide guidance	
		TBD: Brief PoE on Deliverable #5	Receive brief from TG WG on 5; app progress/provide guidance	
				Receive briefing on D
			Receive pre-brief on SECDEF briefing	
JA372				Receive pre-brief on briefing

b1es:

policy
review and study of relevant data
medical procedure policy

4 – Universal deployability and retention standards

5 – Single policy document for current TG

carrier member

SecDef Brief: 22 December

Navy_00040991

USDOE000063231

USCA Case #16-5257

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Questions?

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Review of Last WG Product

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Policy Guidance

After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you."

President Donald Trump

26 July 2017

JA375

DoD Definition of Transgender SM

Transgender Service Member Per DoDI 1300.28: A Service member who has received a medical diagnosis indicating that gender transition is medically necessary, including any Service member who intends to begin transition, is undergoing transition, or has completed transition and is stable in the preferred gender.

Military Transgender population as of 26 Jul 17 ~ 994

Gender transition process: Gender transition in the military begins when the Service member receives a diagnosis from a military medical provider indicating that the members gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in the preferred gender.

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Assumptions

Deliberative Process Privilege

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Deliberative Process Privilege



COAs

How

When

Medically Necessary Care

USCA Case #18-5257

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Courses of Action

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Service Academy / ROTC Populations

Deliberative Process Privilege

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Questions?



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
COMMANDANT OF THE COAST GUARD
CHIEF, NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Military Service by Transgender Individuals – Panel of Experts

Per Secretary of Defense memorandum of September 14, 2017, “Terms of Reference – Implementation of Presidential Memorandum on Military Service by Transgender Individuals,” I will chair a Panel of Experts (“Panel”), drawn from the Department of Defense (DoD) and the Department of Homeland Security (DHS), to support the Deputy Secretary of Defense and Vice Chairman of the Joint Chiefs of Staff in their development of an Implementation Plan on military service by transgender individuals. The Panel will be comprised of the Military Department Under Secretaries, Service Vice Chiefs, and Service Senior Enlisted Advisors.

The Panel will meet as needed, with an initial meeting to be held the week of October 9, 2017, and provide updates to the Deputy Secretary and the Vice Chairman no less frequently than every two weeks. I will publish an agenda for each meeting 72 hours prior, with any read ahead material in order for our time to be as productive as possible. The final recommendations of the Deputy Secretary and Vice Chairman will be coordinated with senior civilian officials, the Military Departments, and the Joint Staff, and provided to the Secretary of Defense no later than the week of December 18, 2017.

To gather the information and promote the analysis demanded by this task, the Panel will be supported by three Working Groups, each with specifically assigned areas of focus and expertise. The Working Groups will be responsible for developing and analyzing data and information, and formulating recommendations and courses of action for consideration by the Panel. To the extent necessary and appropriate, each Working Group may obtain advice and assistance from subject matter experts from within, and external to, the DoD.

(1) Medical and Personnel Executive Steering Committee (MEDPERS). Co-chaired by the Deputy Assistant Secretary of Defense (Military Personnel Policy) and the Principal Deputy Assistant Secretary of Defense (Health Affairs), this Working Group will meet the week of October 2, 2017, and regularly thereafter, to review:

- a. Accessions Medical Standards, including but not limited to gender dysphoria.
- b. Data and information maintained by the Department pertaining to currently-serving transgender Service members to inform the development of the Implementation Plan. This multi-disciplinary review will address all aspects of

medical care and treatment, personnel management, general policies and practices, and other matters, including the effects of the service of transgender persons on military readiness, lethality, deployability, and unit cohesion.

- c. Medical data and information from the Transgender Care Integrated Process Team (TG-IPT), to inform findings and recommendations regarding specific surgical procedures associated with sex reassignment that should not be resourced from DoD or DHS funding.
- (2) Retention & Non-Deployability Working Group. Chaired by the Director, Officer and Enlisted Personnel Management, this Working Group has been meeting biweekly and is developing a universal DoD policy for the retention and separation of non-deployable Service members.
- (3) Transgender Personnel Policy Working Group. Chaired by the Director, Accession Policy, this Working Group will meet biweekly to review current policies and practices pertaining to transgender individuals currently serving in the Armed Forces and revise the current DoDI that sets forth the standards and processes that will apply to such Service members. Service transgender policy experts, as you choose, will comprise the expertise of this group.

We will use the MAX.GOV website to disseminate products and meeting minutes. I request your full cooperation in providing the advice, assistance, data, information and personnel necessary to fulfill our directed tasking on time.



A.M. Kurta
Performing the Duties of
Under Secretary of Defense
for Personnel and Readiness

Cc:
Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Personnel and Readiness
Chief of the National Guard Bureau
Assistant Secretary of the Army for
Manpower and Reserve Affairs
Assistant Secretary of the Navy for
Manpower and Reserve Affairs
Assistant Secretary of the Air Force for
Manpower and Reserve Affairs
Director, Washington Headquarters Services



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

9/14/17

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDANT, U.S. COAST GUARD
DEPUTY CHIEF MANAGEMENT OFFICER
CHIEF, NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTOR, STRATEGIC CAPABILITIES OFFICE
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Military Service by Transgender Individuals - Interim Guidance

The Department of Defense ("DoD") has received the Presidential Memorandum, *Military Service by Transgender Individuals*, dated August 25, 2017 ("Presidential Memorandum"). DoD will carry out the President's policy and directives in consultation with the Department of Homeland Security ("DHS") with respect to the U.S. Coast Guard. Not later than February 21, 2018, I will present the President with a plan to implement the policy and directives in the Presidential Memorandum. Consistent with military effectiveness and lethality, budgetary constraints, and applicable law, the implementation plan will establish the policy, standards and procedures for transgender individuals serving in the military. The Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff, supported by a panel of experts ("Panel"), shall propose for my consideration recommendations supported by appropriate evidence and information.

To comply with the Presidential Memorandum, ensure the continued combat readiness of the force, and maximize flexibility in the development of the implementation plan, the attached Interim Guidance takes effect immediately and will remain in effect until I promulgate DoD's final policy in this matter. By agreement with the Acting Secretary of Homeland Security, this Interim Guidance also applies to the U.S. Coast Guard.

Attachment:
As stated

John M. Mattis

cc:
Secretary of Homeland Security



Interim Guidance

First and foremost, we will continue to treat every Service member with dignity and respect.

Accessions: The procedures set forth in Department of Defense Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, dated April 28, 2010 (Change 1), which generally prohibit the accession of transgender individuals into the Military Services, remain in effect because current or history of gender dysphoria or gender transition does not meet medical standards, subject to the normal waiver process.

Medical Care and Treatment: Service members who receive a gender dysphoria diagnosis from a military medical provider will be provided treatment for the diagnosed medical condition. As directed by the Memorandum, no new sex reassignment surgical procedures for military personnel will be permitted after March 22, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.

In-Service Transition for Transgender Service Members: The policies and procedures set forth in DoDI 1300.28, *In-Service Transition for Transgender Service Members*, dated July 1, 2016, remain in effect until I promulgate DoD's final guidance in this matter.

Separation and Retention of Transgender Service members:

Service members who have completed their gender transition process and whose gender marker has been changed in DEERS will continue to serve in their preferred gender while this Interim Guidance remains in effect.

An otherwise qualified transgender Service member whose term of service expires while this Interim Guidance remains in effect, *may*, at the Service member's request, be re-enlisted in service under existing procedures.

As directed by the Memorandum, no action may be taken to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender status. Transgender Service members are subject to the same standards as any other Service member of the same gender; they may be separated or discharged under existing bases and processes, but not on the basis of a gender dysphoria diagnosis or transgender status.

Reestablishment of the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) Central Coordination Cell: The OUSD(P&R) will reestablish the Central Coordination Cell (CCC) to provide expert advice and assistance to the Military Departments and Services and to commanders with regard to this Interim Guidance. The CCC may be reached at <https://ra.sp.pentagon.mil/DoDCCC/SitePages/HomePage.aspx>.



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

9/19/17

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDANT, U.S. COAST GUARD
DEPUTY CHIEF MANAGEMENT OFFICER
CHIEF, NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF
DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTOR, STRATEGIC CAPABILITIES OFFICE
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Terms of Reference - Implementation of Presidential Memorandum on Military
Service by Transgender Individuals

Reference: Military Service by Transgender Individuals – Interim Guidance

I direct the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff to lead the Department of Defense (DoD) in developing an Implementation Plan on military service by transgender individuals, to effect the policy and directives in Presidential Memorandum, *Military Service by Transgender Individuals*, dated August 25, 2017 ("Presidential Memorandum"). The implementation plan will establish the policy, standards and procedures for service by transgender individuals in the military, consistent with military readiness, lethality, deployability, budgetary constraints, and applicable law.

The Deputy Secretary and the Vice Chairman, supported by a panel of experts drawn from DoD and the Department of Homeland Security (DHS) ("Panel"), shall propose for my consideration recommendations supported by appropriate evidence and information, not later than January 15, 2018. The Deputy Secretary and the Vice Chairman will be supported by the Panel, which will be comprised of the Military Department Under Secretaries, Service Vice Chiefs, and Service Senior Enlisted Advisors. The Deputy Secretary and Vice Chairman shall



JA403

designate personnel to support the Panel's work to ensure Panel recommendations reflect senior civilian experience, combat experience, and expertise in military operational effectiveness. The Panel and designated support personnel shall bring a comprehensive, holistic, and objective approach to study military service by transgender individuals, focusing on military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law. The Panel will be chaired by the Under Secretary of Defense for Personnel and Readiness and will report to the Deputy Secretary and the Vice Chairman at least every 30 days and address, at a minimum, the following three areas:

Accessions: The Presidential Memorandum directs DoD to maintain the policy currently in effect, which generally prohibits accession of transgender individuals into military service. The Panel will recommend updated accession policy guidelines to reflect currently accepted medical terminology.

Medical Care: The Presidential Memorandum halts the use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, effective March 23, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex. The implementation plan will enumerate the specific surgical procedures associated with sex reassignment treatment that shall be prohibited from DoD or DHS resourcing unless necessary to protect the health of the Service member.

Transgender Members Serving in the Armed Forces: The Presidential Memorandum directs that the Department return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016. The Presidential Memorandum also allows the Secretary to determine how to address transgender individuals currently serving in the Armed Forces. The Panel will set forth, in a single policy document, the standards and procedures applicable to military service by transgender persons, with specific attention to addressing transgender persons currently serving. The Panel will develop a universal retention standard that promotes military readiness, lethality, deployability, and unit cohesion.

To support its efforts, the Panel will conduct an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members. The study will be planned and executed to inform the Implementation Plan. The independent multi-disciplinary review and study will address aspects of medical care and treatment, personnel management, general policies and practices, and other matters, including the effects of the service of transgender persons on military readiness, lethality, deployability, and unit cohesion.

The Panel may obtain advice from outside experts on an individual basis. The recommendations of the Deputy Secretary and the Vice Chairman will be coordinated with senior civilian officials, the Military Departments, and the Joint Staff.

All DoD Components will cooperate fully in, and will support the Deputy Secretary and the Vice Chairman in their efforts, by making personnel and resources available upon request in support of their efforts.



cc:
Secretary of Homeland Security

IMMEDIATE RELEASE

Statement by Secretary of Defense Jim Mattis on Military Service by Transgender Individuals

Press Operations

Release No: NR-312-17

Aug. 29, 2017

The Department of Defense has received the Presidential Memorandum, dated August 25, 2017, entitled "Military Service by Transgender Individuals." The department will carry out the president's policy direction, in consultation with the Department of Homeland Security. As directed, we will develop a study and implementation plan, which will contain the steps that will promote military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law. The soon arriving senior civilian leadership of DOD will play an important role in this effort. The implementation plan will address accessions of transgender individuals and transgender individuals currently serving in the United States military.

Our focus must always be on what is best for the military's combat effectiveness leading to victory on the battlefield. To that end, I will establish a panel of experts serving within the Departments of Defense and Homeland Security to provide advice and recommendations on the implementation of the president's direction. Panel members will bring mature experience, most notably in combat and deployed operations, and seasoned judgment to this task. The panel will assemble and thoroughly analyze all pertinent data, quantifiable and non-quantifiable. Further information on the panel will be forthcoming.

Once the panel reports its recommendations and following my consultation with the secretary of Homeland Security, I will provide my advice to the president concerning implementation of his policy direction. In the interim, current policy with respect to currently serving members will remain in place. I expect to issue interim guidance to the force concerning the president's direction, including any necessary interim adjustments to procedures, to ensure the continued combat readiness of the force until our final policy on this subject is issued.

Presidential Documents

Memorandum of August 25, 2017

Military Service by Transgender Individuals

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

Section 1. Policy. (a) Until June 2016, the Department of Defense (DoD) and the Department of Homeland Security (DHS) (collectively, the Departments) generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals. Shortly before President Obama left office, however, his Administration dismantled the Departments' established framework by permitting transgender individuals to serve openly in the military, authorizing the use of the Departments' resources to fund sex-reassignment surgical procedures, and permitting accession of such individuals after July 1, 2017. The Secretary of Defense and the Secretary of Homeland Security have since extended the deadline to alter the currently effective accession policy to January 1, 2018, while the Departments continue to study the issue.

In my judgment, the previous Administration failed to identify a sufficient basis to conclude that terminating the Departments' longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources, and there remain meaningful concerns that further study is needed to ensure that continued implementation of last year's policy change would not have those negative effects.

(b) Accordingly, by the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States under the Constitution and the laws of the United States of America, including Article II of the Constitution, I am directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have the negative effects discussed above. The Secretary of Defense, after consulting with the Secretary of Homeland Security, may advise me at any time, in writing, that a change to this policy is warranted.

Sec. 2. Directives. The Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, shall:

(a) maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that I find convincing; and

(b) halt all use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.

Sec. 3. Effective Dates and Implementation. Section 2(a) of this memorandum shall take effect on January 1, 2018. Sections 1(b) and 2(b) of this memorandum shall take effect on March 23, 2018. By February 21, 2018, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall submit to me a plan for implementing both the general policy set forth in section 1(b) of this memorandum and the specific directives

set forth in section 2 of this memorandum. The implementation plan shall adhere to the determinations of the Secretary of Defense, made in consultation with the Secretary of Homeland Security, as to what steps are appropriate and consistent with military effectiveness and lethality, budgetary constraints, and applicable law. As part of the implementation plan, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine how to address transgender individuals currently serving in the United States military. Until the Secretary has made that determination, no action may be taken against such individuals under the policy set forth in section 1(b) of this memorandum.

Sec. 4. Severability. If any provision of this memorandum, or the application of any provision of this memorandum, is held to be invalid, the remainder of this memorandum and other dissimilar applications of the provision shall not be affected.

Sec. 5. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

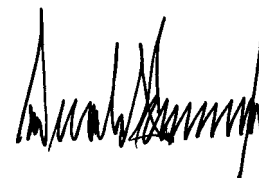
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 25, 2017



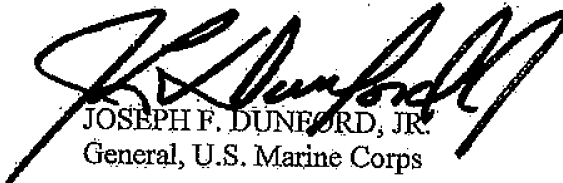
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
WASHINGTON, DC 20318-9999

CM-0179-17
27 July 2017

MEMORANDUM FOR CHIEFS OF THE MILITARY SERVICES
CHIEF, NATIONAL GUARD BUREAU
SENIOR ENLISTED LEADERS OF THE MILITARY SERVICES

SUBJECT: Transgender Policy

1. I know there are questions about yesterday's announcement by the President on the transgender policy. There will be no modifications to the current policy until the President's direction has been received by the Secretary of Defense and the Secretary has issued implementation guidance.
2. In the meantime, we will continue to treat all of our personnel with respect. As importantly, given the current fight and the challenges we face, we will all remain focused on accomplishing our assigned missions.


JOSEPH F. DUNFORD, JR.
General, U.S. Marine Corps

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JA408

USDOE00036612

Summary of Changes

USMEPCOM Regulation 40-1 Medical Qualification Program

Immediate revisions have been made to this regulation and are formatted in **red text**; information that is obsolete and will be deleted is formatted in **red text** with **strikethrough**. It is highly recommended that this regulation be reviewed in its entirety to have a clear understanding of all revisions.

Incorporating changes effective July 24, 2017

- Paragraph 2-3e(1): Redefines “Processing Authorized (PA)” to include MEPS profilers authorizing medical examinations for applicants disqualified during the medical prescreening process because there is the possibility for a Service medical waiver after the medical examination is complete.
- Paragraph 2-3e(2): Clarifies the definition of “Processing Requested by SMWRA (PRW)” for those instances when the SMWRAs request an applicant disqualified during the medical prescreening process be allowed to come to the MEPS for a medical examination.
- Paragraph 11-1d(59): clarifies that either a T or O in the profile signifies that the PULHES is not complete and therefore should not be signed (bottom-lined) by the profiling provider.

DEPARTMENT OF DEFENSE
HEADQUARTERS, UNITED STATES MILITARY ENTRANCE PROCESSING COMMAND
2834 GREEN BAY ROAD, NORTH CHICAGO, ILLINOIS 60064-3091

*USMEPCOM Regulation
No. 40-1

July 24, 2017

Effective date: July 24, 2017

Medical Qualification Program

FOR THE COMMANDER

OFFICIAL:

D.R. O'Brien
Deputy Commander/Chief of Staff

R. D. Wesler
Chief, Services Division

DISTRIBUTION:
A (Electronic only publication)

Executive Summary. This regulation prescribes policy and procedures for administration of the United States Military Entrance Processing Command (HQUSMEPCOM) Medical Qualification Program.

Applicability. This regulation applies to all elements of USMEPCOM and to the recruiting and liaison personnel of all military components insofar as their duties relate to all aspects of applicant medical processing required under this and related regulations.

Supplementation. Supplementation of this regulation is prohibited without prior approval from Headquarters, United States Military Entrance Processing Command (HQ USMEPCOM), ATTN: J-7/MEMD, 2834 Green Bay Road, North Chicago, IL 60064-3091.

Suggested Improvements. The proponent agency of this regulation is HQ USMEPCOM, [J-7/MEMD]. Users are invited to send comments and suggested improvements on Department of the Army (DA) Form 2028, Recommended Changes to Publications and Blank Forms, or memorandum, to HQ USMEPCOM, ATTN: J-7/MEMD, 2834 Green Bay Road, North Chicago, IL 60064-3091.

Internal Control Process. This regulation contains internal control provisions and provides an internal control evaluation checklist, in [Appendix B](#), for use in conducting internal controls.

* This regulation supersedes USMEPCOM Regulation 40-1, February 27, 2017

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Chapter 1
General

1-1. Purpose

The purpose of this regulation is to establish policies and procedural guidance for the USMEPCOM Medical Qualification Program of the USMEPCOM Medical Program. The Medical Qualification Program is executed at USMEPCOM locations such as Military Entrance Processing Stations (MEPS) and remote processing sites and is applicable to all applicants medically processing for accession into the Military Services and other federal organizations as approved by higher authority. The Medical Qualification Program consists of performing medical services including performing medical prescreening; performing medical examinations which consist of medical history interviews, physical screening examinations, medical tests, specimen collections, determining whether medical processing is warranted, determining additional medical information and consultative services required; and determining medical qualification. Medical qualification decisions include determining if an applicant does or does not meet Department of Defense (DoD) accession medical standards and when requested by the Services and approved by USMEPCOM, Service specific medical standards. USMEPCOM designated physicians are the DoD medical authority for applicants processing with USMEPCOM for determining if an applicant medically meets the requirements of Title 10 to be qualified, effective, and able-bodied prior to enlistment. USMEPCOM provides medical services support to other federal organizations approved by Accession Policy; services provided are determined through a memorandum of agreement arrangement with the organization requesting medical services.

1-2. References

References are listed in [Appendix A](#).

1-3. Abbreviations and Terms

Abbreviations and terms used in this regulation are explained in [Appendix C, Glossary](#).

1-4. Responsibilities

a. J-7/Medical Plans and Policy, (J-7/MEMD) Director will:

(1) Exercise primary staff responsibility and develop policies and procedures for applicant medical processing and related matters for the USMEPCOM Medical Qualification Program.

(2) Ensure the execution and quality of the USMEPCOM Medical Qualification Program in accordance with (IAW) DoD and Commander, USMEPCOM policies.

(3) Provide a single point of contact for all applicant daily medical processing issues to facilitate standardized applicant medical processing, services and decisions.

b. J-7/MEMD, Deputy Director will:

(1) Formulate and manage policy concerning the USMEPCOM Medical Qualification Program.

(2) Ensure policies set forth in this regulation are complied with across the Command.

(3) Be responsible for daily applicant medical processing mission support.

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(4) Manage systematic feedback and support to Sector and Battalion Commanders on the USMEPCOM Medical Qualification Program.

(5) Provide supervision of personnel assigned to J-7/MEMD divisions including the Clinical Operations Division (J-7/MEMP-COD) consisting of a division chief, HIV/DAT Program Office (J-7/MEMD-COD-HPO), ~~Battalion-Support Accession Medicine~~ Branches (J-7/MEMD-COD-BD, J-7/MEMD-COD-BL, and J-7/MEMD-COD-BR); and the Clinical Quality Division (J-7/MEMD-QD) consisting of the division Chief, Medical Informatics Officer, and Medical Program Business Manager; Quality and Requirements Branch (J-7/MEMD-QD-QDO); Clinical Management Branch (J-7/MEMD-QD-QDM) and Programs Branch (J-7/MEMD-QD-QDP).

c. J-7/MEMD, Clinical Operations Division Chief will:

(1) Ensure the MEPS comply with the policies and guidance set forth in this regulation.

(2) Manage the applicant Human Immunodeficiency Virus (HIV) testing program, the drug and alcohol testing (DAT) programs.

(3) Manage J-7/MEMD applicant daily medical support for MEPS medical processing issues through the Operations Center (MOC) ticket system.

(4) Formulate medical policies and procedures for applicant HIV testing program, DAT testing program, and medical operational aspects of the USMEPCOM Medical Qualification Program.

(5) Develop and provide training for Command personnel on medical policies and procedures for HIV testing program, DAT testing program, and medical operational aspects of the USMEPCOM Medical Qualification Program.

(6) Ensure collaboration by Clinical Operations Division personnel with Clinical Quality Division personnel. Participate in Quality Medical Assessment Teams, when assigned.

(7) Provide oversight of Clinical Operations Division continuous performance improvement efforts for the USMEPCOM Medical Program balanced scorecard, trend analysis, and metrics planning and execution.

(8) Provide supervision of the HIV/DAT Program Office and ~~Battalion-Support Accession Medicine~~ Branches.

(9) Develop the curriculum for the annual medical training seminar for MEPS medical leadership including Chief Medical Officers (CMOs), Assistant CMOs (ACMOs), Assistant Medical Officers (AMOs) and MEPS medical department paraprofessional staff.

d. J-7/MEMD, HIV/DAT Program Officer will:

(1) Manage the USMEPCOM Applicant Drug and Alcohol and Human Immunodeficiency Virus (HIV) Programs in accordance with (IAW) [USMEPCOM Regulation \(UMR\) 40-8](#) (Department of Defense (DoD) Drug and Alcohol Testing (DAT) Program and Human Immunodeficiency Virus (HIV) Testing Program.

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(2) Respond to HIV/DAT MOC tickets in support of daily applicant medical processing.

(3) Collaborate with the USMEPCOM Contracting Officer Representative (COR) for the HIV contract to ensure USMEPCOM compliance with contract requirements.

e. **J-7/MEMD, ~~Battalion Support~~ Accession Medicine Branch (BSB) Chiefs will:**

(1) Formulate medical policies and procedures for medical operational aspects of the USMEPCOM Medical Qualification Program as a fully qualified accessions medical officers.

(2) Execute the J-7/MEMD clinical operational aspects of the USMEPCOM Medical Qualification Program ensuring collaboration for quality aspects of the program with the Clinical Quality Division for adherence to DoD medical standards and USMEPCOM policies and guidelines.

(3) Ensure the MEPS comply with the policies and guidance set forth in this regulation.

(4) Respond to MOC tickets and other inquiries (congressional, inspector general, special action, etc.) requiring physician input in support of applicant medical processing.

(5) Engage Service Medical Waiver Review Authorities (SMWRAs) as appropriate to facilitate applicant medical processing while authorizing use of medical funds effectively.

(6) Provide medical provider evaluation visits and quality medical assessment team support and visits to the MEPS including evaluation and assessment of USMEPCOM regulatory medical policy in USMEPCOM Regulations (UMRs) 40-1, [40-2](#), [40-8](#), and [40-9](#).

(7) Provide clinical support for business process reengineering efforts, assigned medical projects and continuous performance improvement efforts for the USMEPCOM Medical Program balanced scorecard, trend analysis, and metrics planning and execution.

(8) Develop and provide training/training guides for MEPS medical providers on current and pending medical processes to facilitate consistent implementation of medical policies and procedures.

(9) Perform applicant medical examinations at MEPS when required.

(10) Provide feedback to MEPS CMOs on Existed Prior to Service (EPTS) cases received from the training bases.

(11) Provide supervision of the Medical Management Analysts (MMAs).

f. **J-7/MEMD, ~~BSB~~ Accession Medicine Branch MMAs will:**

(1) Be responsible for the medical paraprofessional staff aspects of the USMEPCOM Medical Qualification Program as fully qualified accessions medical specialists.

(2) Provide staff assistance visits (SAVs), individual training visits (ITVs), and medical reassessment visits (MRVs) to MEPS including evaluation and assessment of USMEPCOM regulatory medical policy in USMEPCOM regulations and policies.

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(3) Ensure completion of MOC tickets applicable to the USMEPCOM Medical Qualification Program.

(4) Review and recommend updates to USMEPCOM regulations and policies.

(5) Provide medical technical support for business process reengineering efforts, assigned medical projects and continuous performance improvement efforts for the USMEPCOM Medical Program balanced scorecard, trend analysis, and metrics planning and execution.

(6) Provide medical technical coding support for the EPTS program.

(7) Manage the Command-wide participation in the College of American Pathology/Clinical Laboratory Improvement Program (CAP/CLIP).

(8) Provide management analyst support to the HIV/DAT programs.

g. J-7/MEMD, Clinical Quality Division (QD) Chief will:

(1) Formulate medical policies and procedures for medical quality/performance improvement and contract management aspects of the USMEPCOM Medical Qualification Program.

(2) Manage the business needs of the USMEPCOM Medical Qualification Program.

(3) Manage USMEPCOM medical contracts associated with the USMEPCOM Medical Qualification Program. Provide contracting officer representative (COR) and alternate COR (ACOR) personnel for managing completion of workload associated with medical contracts.

(4) Manage the medical aspects of USMEPCOM special programs as assigned.

(5) Coordinate with the J-7/MEMD staff on the medical aspects of future initiatives including requirements definition and studies.

(6) Manage United States Military Entrance Processing Command Integrated Resource System (USMIRS) medical changes and manage user acceptance of these changes. Provide technical expertise in support of future technical initiatives impacting the Medical Qualification Program.

(7) Provide supervision for the medical informatics officer, medical program business manager, Quality and Requirements Branch, Quality Management Branch, and Programs Branch.

h. MEPS Commanders will:

(1) Ensure MEPS personnel comply with this regulation.

(2) Hire the chief medical officer (CMO), assistant CMO (ACMO), and assistant medical officer (AMO) including physician assistants (PAs) and Certified Nurse Practitioners (CNP) through the local servicing civilian personnel activity IAW [USMEPCOM \(UMR\) Regulation 40-2](#).

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(3) Ensure Fee Basis Provider (FBP) training and administrative requirements are met IAW [UMR 40-2](#) before allowing an FBP to conduct aspects of the USMEPCOM Medical Program.

(4) Ensure any deviation from USMEPCOM policy in this regulation has an approved exception to policy (ETP) signed by the J-7/MEMD Director (or designated representative) prior to implementation.

i. MEPS Operations Officers (OPSOs) will:

(1) Responsible for **monitoring** applicant flow through the MEPS and the Medical Department.

(2) Keep the MEPS Commander abreast of applicant flow and current processing concerns.

(3) Ensure medical processing is complete and an applicant is medically qualified to "ship" per the MEPS CMO (or CMO designated medical lead) during Quality Review Program (QRP).

(4) Ensure USMIRS is updated with medical data in a timely and accurate manner.

(5) Ensure reconciliation between the medical process results and medical processing **departments** [USMEPCOM Form \(UMF\) 727-E](#) is accomplished.

j. MEPS CMOs will:

(1) Supervise and manage the MEPS Medical Department and the execution of the Medical Qualification Program at the local MEPS level to ensure program quality.

(2) Supervise and provide written evaluations on ACMOs and MEPS Medical NCOICs/ SUP MTs.

(3) Serve as the principal MEPS medical officer and local authority in all accession medicine decisions, including but not limited to, requesting laboratory studies, radiographic procedures, ancillary services, and specialty consultations; requesting and reviewing applicants' medical documents; counseling applicants with regard to medical problems discovered during their MEPS evaluation, qualification/disqualification decisions, and recommendations for medical waivers. MEPS Commanders and other non-medical personnel cannot reverse the professional accession medicine decisions of CMOs/ACMOs and contract physicians working as Fee Basis-CMOs (FB-CMOs).

(4) Establish a professional working relationship with the Medical Non-Commissioned Officers in Charge (Medical NCOIC)/Supervisory Medical Technician (SUP MT) and provide them the support to execute CMO decisions and medical policies.

(5) Ensure medical staff (government and contract medical providers and paraprofessional staff) is fully trained in conducting all aspects of the USMEPCOM Medical Qualification Program.

(6) Ensure assigned requirements associated with USMEPCOM medical contracts are executed at the local MEPS level including documentation of issues where contract providers are not providing quality medical services.

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(7) Ensure applicant's medical documents are appropriately reviewed for completeness and accuracy.

(8) Prepare and conduct quarterly training and inspection of the entire medical department.

(9) Ensure Occupational Safety and Health Administration (OSHA) requirements are met for all medical personnel.

(10) Respond to Dial-A-Doc/Email-A-Doc questions promptly.

(11) Ensure MEPS medical personnel training requirements are met.

(12) Act as the appointed Lab Director.

k. MEPS Medical Non-Commissioned Officers in Charge/Supervisory Medical Technicians will:

(1) Establish a professional working relationship with the CMO as well as the rest of the medical department.

(2) Support and follow through with CMO-directed medical decisions and policies.

(3) Supervise and provide written evaluations on all medical technicians to ensure the quality of the USMEPCOM Medical Qualification Program.

(4) Ensure each medical station is properly staffed for an efficient applicant flow through the medical department processes.

(5) Serve as the government point of contact for USMEPCOM medical contracts and ensure compliance with COR assigned responsibilities.

(6) Ensure quality control of medical packets with complete and legible entries.

(7) Act as the primary trainer for the medical department and ensure technicians are thoroughly trained and capable in all phases of the Medical Qualification Program.

(8) Responsible for the daily checks, calibration, periodic maintenance, and timely repairs of medical equipment to optimize functionality.

(9) Coordinate scheduling of annual biomedical equipment maintenance.

(10) Ensure daily organization, professional appearance, and cleanliness of the MEPS medical department.

(11) Coordinate with the other MEPS departments and Service Liaisons on medical matters impacting applicant flow.

(12) Ensure disruptive applicants are managed appropriately.

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(13) Aid the Commander and the CMO in the requirements of UMR 40-1, [40-2](#), [40-8](#), and [40-9](#) to include ensuring contract providers only provide medical services appropriate to their Designated Provider Category (DPC).

(14) Ensure quality review process (QRP) of projected applicants' medical packets is accomplished at least two working days before the applicant processes at the MEPS.

(15) Ensure weekly and quarterly departmental and CMO-directed training is accomplished.

(16) Ensure OSHA requirements are met for all medical personnel.

(17) Establish verification and validation procedures for invoice reconciliation to ensure data accuracy for all medical contracts.

(18) Complete all required taskings within the established time period.

(19) Ensure accuracy of USMIRS data entry.

l. MEPS Lead Medical Technicians will:

(1) Establish a professional working relationship with the CMO and Medical NCOIC/SUP MT as well as the rest of the medical department.

(2) Support and follow through with CMO and Medical NCOIC/SUP MT-directed medical decisions and policies.

(3) Lead all medical technicians to ensure the quality of the USMEPCOM Medical Qualification Program in the absence of a Medical NCOIC/SUP MT.

(4) Assist the Medical NCOIC/SUP MT with the duties outlined in the preceding section.

(5) Ensure accuracy of USMIRS data entry.

m. MEPS Medical Technicians will:

(1) Establish a professional working relationship with the CMO and NCOIC/SUP MT.

(2) Support and follow through with CMO and NCOIC/SUP MT/Lead Medical Technician-directed medical decisions and policies.

(3) Perform quality checks accurately and daily.

(4) Accurately execute applicant vision and hearing testing, specimen collections, and other assigned medical services.

(5) Perform accurate and daily USMIRS, FBP, and Invoice Reconciliation Program (IRP) application entries.

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(6) Complete the technician portion of the USMIRS and **Training Standardization** Job Task Sheets (TSJTS) within 90 working days after arrival.

(7) Ensure that documents and Department of Defense (DD) Form 2807-2 are completed accurately and timely and are tracked accordingly.

(8) Ensure QRP of projected applicants' medical packets is accomplished at least two working days before the applicant processes at the MEPS.

(9) Comply with all training requirements for all phases of the Medical Qualification Program as well as additional USMEPCOM training as established by NCOIC/SUP MT.

(10) Ensure accuracy of USMIRS data entry.

n. **FBP responsibilities.** FBPs will conduct accession medical services at the MEPS according to established guidance and the individual Service directives.

o. **J-4/Facilities and Acquisition Directorate will:**

(1) Provide medical logistics support to the USMEPCOM Medical Qualification Program.

(2) Provide acquisition support for medical contracts associated with the USMEPCOM Medical Qualification Program.

1-5. General Policy

a. **Medical Services Execution.** All personnel performing medical services for USMEPCOM will adhere to current version of DoD Instruction (DoDI) 6130.03_(Medical Standards for Appointment, Enlistment, or Induction in the Armed Forces), this regulation, [UMR 40-2](#), [UMR 40-8](#), and [UMR 40-9](#).

b. **Applicant Medical Qualification Decisions.** Profiling is a critical part of applicant processing. Profiling duties are done by USMEPCOM medical providers with a DPC Level of 3 or higher. The accuracy of the final applicant profile is the responsibility of the CMO. When profiling proficiency has been demonstrated by an FBP to the satisfaction of the CMO, a modification of DPC level to allow profiling can be requested (DPC Level 3). An FBP will not profile unless specifically assigned by the J-7/MEMD Director (or designated J-7/MEMD representative). An FBP will not be designated as FB-CMO if not assigned to DPC Level 4 which includes the ability to profile.

c. **Designation of FB-CMO.** If the CMO is absent from the MEPS or if the MEPS has a CMO vacancy, MEPS with ACMOs will have the ACMO be administratively in charge of the medical department and perform any required CMO duties as designated by the MEPS Commander. If there is no ACMO, then a FB-CMO can be requested from the contractor. Only FBPs assigned to DPC Level 4 will be designated as the FB-CMO. FB-CMOs will conduct applicant accession medical services including medical prescreening and examinations and are clinically responsible for the MEPS medical department and will respond to requests from the MEPS Commander to attend meetings and provide technical advice and medical guidance to the medical department. Medical processing questions that cannot be resolved at the local level will be referred to J-7/MEMD via MOC ticket.

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1-6. Use of Reserve Component and National Guard Practitioners

MEPS Commanders will contact J-7/MEMD for guidance when there are requests for Armed Forces Reserve and National Guard (NG) practitioners in drill status or on active duty for training (ADT) for duty at the MEPS. When working in a MEPS as FBPs, reserve component providers cannot be paid through the contract if they are in a duty status. Providers must meet the requirements in [UMR 40-2](#) to have their initial credentials reviewed by J-7/MEMD, before performing medical examinations or associated MEPS duties.

1-7. MEPS Communication with J-7/ MEMD

a. The USMEPCOM MOC ticket system will be used for applicant medical processing issues. If immediate help is needed after submitting a MOC ticket, contact the appropriate J-7/MEMD personnel using the [contact list](#) provided on the USMEPCOM intranet, Sharing, Policy, Experience and Resources ([SPEAR](#)), on the J-7/MEMD home page.

b. Use the following address for mailing information to J-7/MEMD

HQ USMEPCOM
ATTN: J-7/MEMD (position or person who should receive the mail)
2834 Green Bay Road
North Chicago, IL 60064-3091

c. Use the following facsimile number for faxing information to J-7/MEMD. If faxing personal or medical information, call J-7/MEMD first and verify someone is available to immediately retrieve the fax from the machine.

FAX: (847) 688-2453

d. J-7/MEMD has group email addresses for a number of areas. These addresses are in the USMEPCOM [global address list](#) and are listed on the J-7/MEMD [SPEAR](#) page. Emails containing personal and medical information must always be sent encrypted.



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

JUN 30 2017

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Accession of Transgender Individuals into the Military Services

Since becoming the Secretary of Defense, I have emphasized that the Department of Defense must measure each policy decision against one critical standard: will the decision affect the readiness and lethality of our armed forces? Put another way, how will the decision affect the ability of America's military forces to defend the Nation? It is against this standard that I provide the following guidance on the way forward in accessing transgender individuals into the military Services.

Under existing DoD policy, such accessions were anticipated to begin on July 1, 2017. The Deputy Secretary directed the Services to assess their readiness to begin accessions. Building upon that work and after consulting with the Service Chiefs and Secretaries, I have determined that it is necessary to defer the start of accessions for six months. We will use this additional time to evaluate more carefully the impact of such accessions on readiness and lethality. This review will include all relevant considerations.

My intent is to ensure that I personally have the benefit of the views of the military leadership and of the senior civilian officials who are now arriving in the Department. This action in no way presupposes the outcome of the review, nor does it change policies and procedures currently in effect under DoD Instruction 1300.28, "In-Service Transition for Transgender Service Members." I am confident we will continue to treat all Service members with dignity and respect.

The Under Secretary of Defense for Personnel and Readiness will lead this review and will report the results to me not later than December 1, 2017.

A handwritten signature in black ink, which appears to read "John Mattis", is located in the bottom right area of the page.

JA425

IMMEDIATE RELEASE

Statement by Chief Pentagon Spokesperson Dana W. White on Transgender Accessions

Press Operations

Release No: NR-250-17

June 30, 2017

Secretary Mattis today approved a recommendation by the services to defer accessing transgender applicants into the military until Jan. 1, 2018.

The services will review their accession plans and provide input on the impact to the readiness and lethality of our forces.

USCENTCOM 231245Z MAR 17 MOD THIRTEEN TO USCENTCOM INDIVIDUAL PROTECTION AND INDIVIDUAL-UNIT DEPLOYMENT POLICY

UNCLASSIFIED//

SUBJ/MOD THIRTEEN TO USCENTCOM INDIVIDUAL PROTECTION AND INDIVIDUAL/UNIT DEPLOYMENT POLICY//

REF/A/MSG/CDRUSCENTCOM/SG/032024ZOCT2001//
AMPN/ORIGINAL USCINCCENT INDIVIDUAL PROTECTION AND INDIVIDUAL UNIT DEPLOYMENT POLICY MESSAGE//

REF/B/MSG/CDRUSCENTCOM/SG/021502ZDEC2013//
AMPN/MOD TWELVE TO USCENTCOM INDIVIDUAL PROTECTION AND UNIT DEPLOYMENT POLICY MESSAGE. MOD TWELVE IS NO LONGER VALID AND IS SUPERSEDED BY MOD THIRTEEN//

REF/C/DOC/USD(P&R)/11AUG2006, CERTIFIED 30SEP2011//
AMPN/DODI 6490.03/DEPLOYMENT HEALTH//

REF/D/DOC/USD(P&R)/09JUN2014//
AMPN/DODI 6025.19/INDIVIDUAL MEDICAL READINESS//

REF/E/DOC/COMDT CG/22AUG2014//
AMPN/COMDTINST M6000.1F/COAST GUARD MEDICAL MANUAL//

REF/F/DOC/SECAF/AS UPDATED 27AUG2015//
AMPN/AFI 48-123/MEDICAL EXAMINATIONS AND STANDARDS //

REF/G/DOC/HQDA/14DEC2007 WITH RAR 04AUG2011//
AMPN/AR 40-501/STANDARDS OF MEDICAL FITNESS//

REF/H/DOC/BUMED/11JUN2015//
AMPN/NAVMED P-117/MANUAL OF THE MEDICAL DEPARTMENT//

REF/I/DOC/USD(P&R)/05FEB2010//
AMPN/DODI 6490.07/DEPLOYMENT-LIMITING MEDICAL CONDITIONS FOR SERVICE MEMBERS AND DOD CIVILIAN EMPLOYEES//

REF/J/DOC/USD(P&R)/20DEC2011//
AMPN/DODI 3020.41/OPERATIONAL CONTRACT SUPPORT//

REF/K/ORD/CFC/010458ZJUL2006//
AMPN/CFC FRAGO 09-1038/CONTRACTOR CARE IN THE USCENTCOM AOR//

REF/L/DOC/USD(P&R)/23JAN2009//
AMPN/DODD 1404.10/DOD CIVILIAN EXPEDITIONARY WORKFORCE//

REF/M/DOC/ASD(FMP)/11MAR2002, AS AMENDED 26DEC2002//
AMPN/DODI 1100.21/VOLUNTARY SERVICES IN THE DEPARTMENT OF DEFENSE//

REF/N/DOC/DEPSECDEF/12OCT2006//
AMPN/DEPUTY SECRETARY OF DEFENSE MEMO/ANTHRAX VACCINE IMMUNIZATION PROGRAM//

REF/O/DOC/ASD(P&R)/09OCT2004//
AMPN/DODD 6200.04/FORCE HEALTH PROTECTION (FHP)//

REF/P/DOC/USD(P&R)/09FEB2006//
AMPN/UNDER SECRETARY OF DEFENSE MEMO/POLICY GUIDANCE FOR MEDICAL DEFERRAL
PENDING DEPLOYMENT TO THEATERS OF OPERATION//

REF/Q/DOC/HQDA/BUMED/SECAF/07OCT2013//
AMPN/AR 40-562, BUMEDINST 6230.15B, AFI 48-110 IP, CG COMDTINST M6230.4G/
IMMUNIZATIONS AND CHEMOPROPHYLAXIS FOR THE PREVENTION OF INFECTIOUS DISEASES//

REF/R/DOC/DEPSECDEF/12NOV2015//
AMPN/DEPUTY SECRETARY OF DEFENSE MEMO/CLARIFYING GUIDANCE FOR SMALLPOX AND
ANTHRAX VACCINE IMMUNIZATION PROGRAMS//

REF/S/DOC/ASD(HA)/31JUL2009//
AMPN/ASSISTANT SECRETARY OF DEFENSE MEMO/CLINICAL POLICY FOR THE
ADMINISTRATION OF THE ANTHRAX VACCINE ABSORBED//

REF/T/DOC/USD(P&R)/07JUN2013//
AMPN/DODI 6485.01/HUMAN IMMUNODEFICIENCY VIRUS (HIV) IN MILITARY SERVICE MEMBERS//

REF/U/DOC/ASD(HA)/14MAR2006//
AMPN/ASSISTANT SECRETARY OF DEFENSE MEMO/POLICY FOR PRE AND POST DEPLOYMENT
SERUM COLLECTION//

REF/V/DOC/ASD(P&R)/17JUL2015//
AMPN/DODI 6465.1/ERYTHROCYTE GLUCOSE-6-PHOSPHATE DEHYDROGENASE DEFICIENCY
(G6PD) AND SICKLE CELL TRAIT SCREENING PROGRAMS//

REF/W/DOC/ASD(HA)/12DEC2015//
AMPN/DODI 5154.30/ARMED FORCES INSTITUTE OF PATHOLOGY OPERATIONS//

REF/X/DOC/ASD(HA)/20APR2012//
AMPN/ASSISTANT SECRETARY OF DEFENSE MEMO/GUIDELINE FOR TUBERCULOSIS
SCREENING AND TESTING//

REF/Y/DOC/ASD(HA)/26JUL2012//
AMPN/ASSISTANT SECRETARY OF DEFENSE MEMO/IMPLEMENTATION OF REVISED
DEPARTMENT OF DEFENSE FORMS 2795, 2796 AND 2900//

REF/Z/DOC/USD(P&R)/11SEP2015//

AMPN/DODI 6490.13/COMPREHENSIVE POLICY ON TRAUMATIC BRAIN INJURY-RELATED
NEUROCOGNITIVE ASSESSMENTS BY THE MILITARY SERVICES//

REF/AA/USD(P&R)/ 26FEB2013, AS AMENDED 25JAN2017//
AMPN/DODI 6490.12/MENTAL HEALTH ASSESSMENT FOR SERVICE MEMBERS DEPLOYED IN
CONNECTION WITH A CONTINGENCY OPERATION//

REF/BB/USD(I)/20MAR2009, AS AMENDED 02SEP2014//
AMPN/DODI 6420.01/NATIONAL CENTER MEDICAL INTELLIGENCE (NCMI)//

REF/CC/DOC/ASD(HA)/15APR2013//
AMPN/GUIDANCE ON MEDICATIONS FOR THE PROPHYLAXIS OF MALARIA//

REF/DD/DOC/ASD(HA)/12AUG2013//
AMPN/ASSISTANT SECRETARY OF DEFENSE MEMO/NOTIFICATION FOR HEALTHCARE
PROVIDERS OF MEFLUQUINE BOX WARNING//

REF/EE/DOC/ASD(HA)/18MAY2007//
AMPN/ASSISTANT SECRETARY OF DEFENSE MEMO/UPDATED POLICY FOR PREVENTION OF
ARTHROPOD-BORNE DISEASES AMONG DEPARTMENT OF DEFENSE PERSONNEL DEPLOYED
TO ENDEMIC AREAS//

REF/FF/DOC/J4/02NOV2007//
AMPN/MCM-0028-07/PROCEDURES FOR DEPLOYMENT HEALTH SURVEILLANCE//

REF/GG/DOC/CC/08MAR2016//
AMPN/CCR 40-2/DEPLOYMENT FORCE HEALTH PROTECTION//

REF/HH/DOC/AFHSC/MAR2012//
AMPN/ARMED FORCES REPORTABLE MEDICAL EVENTS GUIDELINES & CASE DEFINITIONS//

REF/III/DOC/CENTCOM/OCT2012//
AMPN/UNITED STATES CENTRAL COMMAND HEALTHCARE INFORMATION SYSTEM USE POLICY//

REF/JJ/DOC/USD(P&R)/18SEP2012//
AMPN/DODI 6490.11/DOD POLICY GUIDANCE FOR MANAGEMENT OF MILD TRAUMATIC BRAIN
INJURY/ AND CONCUSSION IN THE DEPLOYED SETTING//

REF/KK/DOC/ASD(HA)/07OCT2013//
AMPN/ASSISTANT SECRETARY OF DEFENSE MEMO/CLINICAL PRACTICE GUIDELINES FOR
DEPLOYMENT LIMITING MENTAL DISORDERS AND PSYCHOTROPIC MEDICATIONS//

RMKS/1. (U) THIS IS MODIFICATION THIRTEEN TO USCENTCOM INDIVIDUAL PROTECTION AND
INDIVIDUAL/UNIT DEPLOYMENT POLICY. IN SUMMARY, MODIFICATIONS HAVE BEEN MADE TO
PARAGRAPH 15 FROM MOD TWELVE, REF B.

1.A. PARAGRAPH 15 REQUIRED NUMEROUS CHANGES; THEREFORE, IT IS BEING
REPUBLISHED IN ITS ENTIRETY. MOD 13 SUPERSEDES ALL PREVIOUS VERSIONS.

1.B. PARAGRAPH 15 OF REF A HAS BEEN TOTALLY REWRITTEN AS FOLLOWS:

15.A. DEFINITIONS.

15.A.1. DEPLOYMENT. FOR MEDICAL PURPOSES, THE DEFINITION OF DEPLOYMENT IS TRAVEL TO OR THROUGH THE USCENTCOM AREA OF RESPONSIBILITY (AOR), WITH EXPECTED OR ACTUAL TIME IN COUNTRY (PHYSICALLY PRESENT, EXCLUDING IN-TRANSIT OR TRAVEL TIME) FOR A PERIOD OF GREATER THAN 30 DAYS, EXCLUDING SHIPBOARD OPERATIONS, AS DEFINED IN REF C.

15.A.2. TEMPORARY DUTY (TDY). TDY MISSIONS ARE THOSE MISSIONS WITH TIME IN COUNTRY OF 30 DAYS OR LESS.

15.A.3. PERMANENT CHANGE OF STATION (PCS). PCS PERSONNEL, INCLUDING EMBASSY PERSONNEL, WILL COORDINATE WITH THEIR RESPECTIVE SERVICE COMPONENT MEDICAL PERSONNEL FOR MEDICAL GUIDANCE AND REQUIREMENTS FOR PCS TO SPECIFIC COUNTRIES IN THE USCENTCOM AOR. AUTHORIZED DEPENDENTS MUST PROCESS THROUGH THE OVERSEAS SCREENING PROCESS AND EXCEPTIONAL FAMILY MEMBER PROGRAM (EFMP), IF REQUIRED. ALL PERSONNEL MUST BE CURRENT WITH ADVISORY COMMITTEE ON IMMUNIZATION PRACTICES (ACIP) IMMUNIZATION GUIDELINES AND DOD TRAVEL GUIDELINES IAW REF C. HOST NATION IMMUNIZATION AND MEDICAL SCREENING REQUIREMENTS APPLY. PORTIONS OF MOD 13 WILL APPLY AS DELINEATED IN TAB B.

15.A.4. SHIPBOARD PERSONNEL. ALL SHIPBOARD PERSONNEL WHO DEPLOY INTO THE AOR MUST HAVE CURRENT SEA DUTY SCREENING AND REMAIN FULLY MEDICALLY READY FOLLOWING ANNUAL PERIODIC HEALTH ASSESSMENT (PHA). DEPLOYMENT HEALTH ASSESSMENT PER 15.H APPLIES IF DEPLOYED TO OCONUS FOR GREATER THAN 30 DAYS WITH NON-FIXED U.S. MEDICAL TREATMENT FACILITIES (MTFS).

15.B. APPLICABILITY. THIS MOD APPLIES TO U. S. MILITARY PERSONNEL, TO INCLUDE ACTIVATED RESERVE AND NATIONAL GUARD PERSONNEL, DOD CIVILIANS, DOD CONTRACTORS, DOD SUB-CONTRACTORS, VOLUNTEERS, AND THIRD COUNTRY NATIONALS (TCN) TRAVELING OR DEPLOYING TO THE CENTCOM AOR AND WORKING UNDER THE AUSPICES OF THE DOD. LOCAL NATIONALS (LN) SHOULD MEET THE MINIMAL MEDICAL STANDARDS ADDRESSED IN SECTION 15.C.1.F.

15.C. MEDICAL DEPLOYABILITY. DEPLOYED HEALTH SERVICE SUPPORT INFRASTRUCTURE IS DESIGNED AND PRIORITIZED TO PROVIDE ACUTE AND EMERGENCY SUPPORT TO THE EXPEDITIONARY MISSION. ALL PERSONNEL (UNIFORMED SERVICE MEMBERS, GOVERNMENT CIVILIAN EMPLOYEES, VOLUNTEERS, DOD CONTRACTOR EMPLOYEES) TRAVELING TO THE CENTCOM AOR MUST BE MEDICALLY, DENTALLY AND PSYCHOLOGICALLY FIT. INDIVIDUALS DEEMED UNABLE TO COMPLY WITH CENTCOM DEPLOYMENT REQUIREMENTS ARE DISQUALIFIED FOR DEPLOYMENT IAW SERVICE POLICY AND MOD 13. PERSONNEL FOUND TO BE MEDICALLY NON-DEPLOYABLE WHILE OUTSIDE OF THE CENTCOM AOR FOR ANY LENGTH OF TIME WILL NOT ENTER OR RE-ENTER THE THEATER UNTIL THE NON-DEPLOYABLE CONDITION IS COMPLETELY RESOLVED OR AN APPROVED WAIVER FROM A CENTCOM WAIVER AUTHORITY IS OBTAINED. SEE REF D, E, F, G AND H. DOD CIVILIAN EMPLOYEES ARE COVERED BY THE REHABILITATION ACT OF 1973. AS SUCH, AN APPARENTLY DISQUALIFYING MEDICAL CONDITION NEVERTHELESS REQUIRES THAT AN INDIVIDUALIZED ASSESSMENT BE MADE TO DETERMINE WHETHER THE EMPLOYEE CAN PERFORM THE ESSENTIAL FUNCTIONS OF THEIR POSITION IN THE DEPLOYED ENVIRONMENT, WITH OR WITHOUT REASONABLE ACCOMMODATION, WITHOUT CAUSING UNDUE HARDSHIP. IN EVALUATING UNDUE HARDSHIP, THE NATURE OF THE ACCOMMODATION AND THE LOCATION OF THE DEPLOYMENT MUST BE CONSIDERED. FURTHER, THE EMPLOYEE'S MEDICAL CONDITION MUST NOT POSE A SUBSTANTIAL RISK OF SIGNIFICANT HARM TO THE EMPLOYEE OR OTHERS WHEN TAKING INTO ACCOUNT THE CONDITIONS OF THE RELEVANT DEPLOYED ENVIRONMENT. SEE REF I. THE FINAL AUTHORITY OF WHO MAY DEPLOY TO THE CENTCOM AOR RESTS WITH THE CENTCOM SURGEON AND/OR THE SERVICE COMPONENT SURGEON'S WAIVER AUTHORITY, NOT THE

INDIVIDUAL'S MEDICAL EVALUATING ENTITY OR DEPLOYING PLATFORM.

15.C.1. MEDICAL FITNESS, INITIAL AND ANNUAL SCREENING.

15.C.1.A. MEDICAL READINESS PROCESSING. THE MEDICAL SECTION OF THE DEPLOYMENT SCREENING SITE MAY PUBLISH GUIDANCE, IAW MOD 13 AND SERVICE STANDARDS, TO ASSIST IN DETERMINING MEDICAL DEPLOYMENT FITNESS. DEPLOYING PERSONNEL MUST HAVE AN EVALUATION BY A MEDICAL PROVIDER TO DETERMINE IF THEY CAN SAFELY DEPLOY AND OBTAIN AN APPROVED WAIVER FOR ANY DISQUALIFYING MEDICAL CONDITION(S) FROM THE COMPONENT SURGEON OR CENTCOM SURGEON PRIOR TO DEPLOYING.

15.C.1.B. FITNESS INCLUDES, BUT IS NOT LIMITED TO, THE ABILITY TO ACCOMPLISH ALL REQUIRED TASKS AND DUTIES, BY SERVICE REQUIREMENTS OR DUTY POSITION, CONSIDERING THE ENVIRONMENTAL AND OPERATIONAL CONDITIONS OF THE DEPLOYED LOCATION. AT A MINIMUM, PERSONNEL MUST BE ABLE TO WEAR BALLISTIC, RESPIRATORY, SAFETY, CHEMICAL, AND BIOLOGICAL PERSONAL PROTECTIVE EQUIPMENT; USE REQUIRED PROPHYLACTIC MEDICATIONS; AND INGRESS/EGRESS IN EMERGENCY SITUATIONS WITH MINIMAL RISK TO THEMSELVES OR OTHERS.

15.C.1.C. EXAMINATION INTERVALS. AN EXAMINATION WITH ALL MEDICAL ISSUES AND REQUIREMENTS ADDRESSED WILL REMAIN VALID FOR A MAXIMUM OF 15 MONTHS FROM THE DATE OF THE PHYSICAL, OR 12 MONTHS FOLLOWING DEPLOYMENT, WHICHEVER IS FIRST. SEE TAB A AND REF D, J, K, L AND M FOR FURTHER GUIDANCE. GOVERNMENT CIVILIAN EMPLOYEES, VOLUNTEERS, AND DOD CONTRACTOR PERSONNEL DEPLOYED FOR MULTIPLE OR EXTENDED TOURS OF MORE THAN 12 MONTHS MUST BE RE-EVALUATED FOR FITNESS TO STAY DEPLOYED. ANNUAL IN-THEATER RESCREENING MAY BE FOCUSED ON HEALTH CHANGES, VACCINATION CURRENCY, AND MONITORING OF EXISTING CONDITIONS RATHER THAN BEING COMPREHENSIVE, BUT SHOULD CONTINUE TO MEET ALL MEDICAL GUIDANCE AS PRESCRIBED IN MOD 13. UNLESS SPECIFICALLY OBLIGATED BY CONTRACTUAL ARRANGEMENT, EXPEDITIONARY MILITARY MEDICAL ASSETS ARE NOT TO BE USED FOR RE-EVALUATION TO STAY DEPLOYED. IF INDIVIDUALS ARE UNABLE TO ADEQUATELY COMPLETE THEIR MEDICAL SCREENING EVALUATION IN THE AOR, THEY SHOULD BE REDEPLOYED TO ACCOMPLISH THIS YEARLY REQUIREMENT. PERIODIC HEALTH SURVEILLANCE REQUIREMENTS AND PRESCRIPTION NEEDS ASSESSMENTS SHOULD REMAIN CURRENT THROUGH THE DEPLOYMENT PERIOD.

15.C.1.D. SPECIALIZED GOVERNMENT CIVILIAN EMPLOYEES WHO MUST MEET SPECIFIC PHYSICAL STANDARDS (E.G., FIREFIGHTERS, SECURITY GUARDS, POLICE, AVIATORS, AVIATION CREW MEMBERS, AIR TRAFFIC CONTROLLERS, DIVERS, MARINE CRAFT OPERATORS, COMMERCIAL DRIVERS, ETC.) MUST MEET THOSE STANDARDS WITHOUT EXCEPTION, IN ADDITION TO BEING FOUND FIT FOR THE SPECIFIC DEPLOYMENT BY A MEDICAL AND DENTAL EVALUATION PRIOR TO DEPLOYMENT IAW MOD 13. CERTIFICATIONS MUST REMAIN VALID THROUGHOUT THE ENTIRETY OF THE DEPLOYMENT. IT IS UP TO THE INDIVIDUAL TO PLAN FOR AND RECERTIFY THEIR RESPECTIVE REQUIREMENTS.

15.C.1.E. DOD CONTRACTOR EMPLOYEES MUST MEET SIMILAR STANDARDS OF FITNESS AS MILITARY AND DOD CIVILIAN PERSONNEL, AND MUST BE DOCUMENTED TO BE FIT FOR THE PERFORMANCE OF THEIR DUTIES, WITHOUT LIMITATIONS, BY MEDICAL AND DENTAL EVALUATION PRIOR TO DEPLOYMENT IAW MOD 13. CONTRACTORS MUST COMPLY WITH REF J AND SPECIFICALLY ENCLOSURE 3 FOR MEDICAL REQUIREMENTS. EVALUATIONS SHOULD BE COMPLETED PRIOR TO ARRIVAL AT THE DEPLOYMENT PLATFORM.

15.C.1.E.1. PREDEPLOYMENT AND/OR TRAVEL MEDICINE SERVICES FOR CONTRACTOR EMPLOYEES, INCLUDING COMPLIANCE WITH IMMUNIZATION, DNA, AND PANOGRAPH REQUIREMENTS, EVALUATION OF FITNESS, AND ANNUAL SCREENING ARE THE RESPONSIBILITY OF THE CONTRACTING AGENCY PER THE CONTRACTUAL REQUIREMENTS.

QUESTIONS SHOULD BE SUBMITTED TO THE SUPPORTED COMMAND'S CONTRACTING AND MEDICAL AUTHORITY. SEE TAB A AND REF J FOR FURTHER GUIDANCE.

15.C.1.E.2. ALL CONTRACTING AGENCIES ARE RESPONSIBLE FOR PROVIDING THE APPROPRIATE LEVEL OF MEDICAL SCREENING FOR THEIR EMPLOYEES. SCREENING MUST BE COMPLETED BY A MEDICAL PROVIDER LICENSED IN A COUNTRY WITH OVERSIGHT AND ACCOUNTABILITY OF THE MEDICAL PROFESSION, AND A COPY OF THE COMPLETED MEDICAL SCREENING DOCUMENTATION, IN ENGLISH, MUST BE MAINTAINED BY THE CONTRACTOR. DOCUMENTATION MAY BE REQUESTED BY BASE OPERATIONS CENTER PERSONNEL PRIOR TO ISSUANCE OF ACCESS BADGES AS WELL AS BY MEDICAL PERSONNEL FOR COMPLIANCE REVIEWS. INSTALLATION COMMANDERS, IN CONCERT WITH THEIR LOCAL MEDICAL ASSETS AND CONTRACTING REPRESENTATIVES, MAY CONDUCT QUALITY ASSURANCE AUDITS TO VERIFY THE VALIDITY OF MEDICAL SCREENINGS.

15.C.1.E.3. CONTRACTOR EXPENSE. IAW REF J, CONTRACTORS WILL PROVIDE PREDEPLOYMENT MEDICAL AND DENTAL EVALUATIONS. ANNUAL IN THEATER RESCREENING, IF REQUIRED, WILL BE AT CONTRACTOR EXPENSE. REQUIRED IMMUNIZATIONS OUTLINED IN THE FOREIGN CLEARANCE GUIDE ([HTTPS://WWW.FCG.PENTAGON.MIL](https://www.fcg.pentagon.mil)) FOR THE COUNTRIES TO BE VISITED, AS WELL AS THOSE OUTLINED IN PARAGRAPH 15.F. OF THIS MOD, WILL BE DONE AT CONTRACTOR EXPENSE. THE SOLE EXCEPTION TO THIS POLICY IS ANTHRAX VACCINE, WHICH WILL BE PROVIDED AT MILITARY EXPENSE. SEE REF C, J, AND N. A DISQUALIFYING MEDICAL CONDITION, AS DETERMINED BY AN IN-THEATER COMPETENT MEDICAL AUTHORITY, WILL BE IMMEDIATELY REPORTED TO THE CONTRACTOR EMPLOYEE'S CONTRACTING OFFICER WITH A RECOMMENDATION THAT THE CONTRACTOR BE IMMEDIATELY REDEPLOYED AND REPLACED AT CONTRACTOR EXPENSE UNLESS AN APPROVED WAIVER IS OBTAINED. ALL THE ABOVE EXPENSES WILL BE COVERED BY THE CONTRACTOR UNLESS OTHERWISE SPECIFIED IN THE CONTRACT.

15.C.1.F. LN AND TCN EMPLOYEES. MINIMUM SCREENING REQUIREMENTS INCLUDE:

15.C.1.F.1. PRE-EMPLOYMENT AND ANNUAL MEDICAL SCREENING OF LN AND TCN EMPLOYEES IS NOT TO BE PERFORMED IN MILITARY MTFS. LOCAL CONTRACTING AGENCIES MUST KEEP DOCUMENTATION IAW PARA. 15.C.1.E.1.

15.C.1.F.2. ALL LN AND TCN EMPLOYEES WHOSE JOB REQUIRES CLOSE OR FREQUENT CONTACT WITH NON-LN/TCN PERSONNEL (E.G., DINING FACILITY WORKERS, SECURITY PERSONNEL, INTERPRETERS, ETC.) MUST BE SCREENED FOR TUBERCULOSIS (TB) USING AN ANNUAL SYMPTOM SCREEN. A TUBERCULIN SKIN TEST (TST) IS UNRELIABLE AS A STAND-ALONE SCREENING TEST FOR TB DISEASE IN LN/TCN PERSONNEL AND SHOULD NOT BE USED. SPECIFIC QUESTIONS REGARDING APPROPRIATE SCREENING OF DETAINEES, PRISON GUARDS AND OTHER HIGHER RISK POPULATIONS SHOULD BE REFERRED TO THE THEATER PREVENTIVE MEDICINE CONSULTANT THROUGH UNIT MEDICAL PERSONNEL.

15.C.1.F.3. LN AND TCN EMPLOYEES INVOLVED IN FOOD SERVICE, WATER, AND ICE PRODUCTION MUST BE SCREENED ANNUALLY FOR SIGNS AND SYMPTOMS OF INFECTIOUS DISEASE. CONTRACTORS MUST ENSURE EMPLOYEES RECEIVE TYPHOID AND HEPATITIS A VACCINATIONS AND THIS INFORMATION MUST BE DOCUMENTED IN THE EMPLOYEES' MEDICAL RECORD / SCREENING DOCUMENTATION.

15.C.1.F.4. FURTHER GUIDANCE REGARDING MEDICAL SUITABILITY OR FORCE HEALTH PROTECTION MAY BE PROVIDED BY THE LOCAL TASK FORCE COMMANDER OR EQUIVALENT IN CONSULTATION WITH THEIR MILITARY MEDICAL ASSETS.

15.C.2. UNFIT PERSONNEL. CASES OF IN-THEATER/DEPLOYED PERSONNEL IDENTIFIED AS UNFIT, IAW THIS MOD 13, DUE TO CONDITIONS THAT EXISTED PRIOR TO DEPLOYMENT WILL BE FORWARDED TO THE APPROPRIATE COMPONENT SURGEON FOR DETERMINATION REGARDING POTENTIAL MEDICAL WAIVER OR REDEPLOYMENT. FINDINGS/ACTIONS WILL BE

FORWARDED TO THE CENTCOM SURGEON AT CENTCOM.MACDILL.CENTCOM-HQ.MBX.CCSG-WAIVER@MAIL.MIL.

15.C.3. MEDICAL WAIVERS.

15.C.3.A. MEDICAL WAIVER APPROVAL AUTHORITY.

15.C.3.A.1. MEDICAL WAIVER APPROVAL AUTHORITY LIES AT THE COMBATANT COMMAND SURGEON LEVEL IAW REF I, O, AND P, AND IS DELEGATED TO THE USCENTCOM COMPONENT SURGEONS FOR ALL DEPLOYING PERSONNEL WITHIN THEIR RESPECTIVE COMPONENT FOR ALL HEALTH CONDITIONS, EXCLUDING BEHAVIORAL HEALTH CONDITIONS. BEHAVIORAL HEALTH WAIVERS WILL INITIALLY BE EVALUATED BY THE RESPECTIVE SERVICE COMPONENT, BUT THE FINAL DETERMINATION FOR APPROVAL RESIDES WITH THE CENTCOM SURGEON. SENDING UNIT COMMANDERS ARE NOT AUTHORIZED TO OVERRIDE A MEDICAL DEPLOYABILITY DETERMINATION, HOWEVER, COMMAND ENDORSEMENT OF SERVICE MEMBER WAIVERS IS REQUIRED PRIOR TO SUBMISSION.

15.C.3.A.2. CONTRACTORS' AND SUB CONTRACTORS' RESPECTIVE SERVICE AFFILIATION IS DETERMINED BY THE 'CONTRACTOR ISSUING AGENCY' BLOCK ON THEIR 'LETTER OF AUTHORIZATION', AND WAIVERS SHOULD BE SENT TO THE APPROPRIATE SERVICE COMPONENT WAIVER AUTHORITY. SEE SECTION 15.C.3.C. THE CENTCOM SURGEON IS THE WAIVER AUTHORITY FOR DOD CIVILIANS, CONTRACTORS, AND ORGANIZATIONS SUCH AS DEFENSE INTELLIGENCE AGENCY, AMERICAN RED CROSS, ETC., WHO ARE NOT DIRECTLY ASSOCIATED WITH A PARTICULAR CENTCOM COMPONENT.

15.C.3.A.3. EXCEPT IN THE CASE OF DOD CIVILIAN EMPLOYEES WHO ARE COVERED BY THE REHABILITATION ACT OF 1973, AN INDIVIDUAL MAY BE DENIED DEPLOYMENT BY THE LOCAL MEDICAL AUTHORITY OR CHAIN OF COMMAND. AN INDIVIDUALIZED ASSESSMENT IS STILL REQUIRED FOR DOD. SEE PARA. 15.C AND REF I. AUTHORITY TO APPROVE DEPLOYMENT OF ANY PERSON (UNIFORMED OR CIVILIAN) WITH DISQUALIFYING MEDICAL CONDITIONS LIES SOLELY WITH THE CENTCOM SURGEON AND THE CENTCOM SERVICE COMPONENT SURGEONS WHO HAVE BEEN DELEGATED THIS AUTHORITY BY THE CENTCOM SURGEON.

15.C.3.A.4. ALL ADJUDICATING SURGEONS WILL MAINTAIN A WAIVER DATABASE AND RECORD ALL WAIVER REQUESTS.

15.C.3.A.5. ADJUDICATION SHOULD ACCOUNT FOR SPECIFIC MEDICAL SUPPORT CAPABILITIES IN THE LOCAL REGION OF THE AOR. THE COMPONENT SURGEON WILL RETURN THE SIGNED WAIVER FORM TO THE REQUEST ORIGINATOR FOR INCLUSION IN THE PATIENT'S DEPLOYMENT MEDICAL RECORD AND THE ELECTRONIC MEDICAL RECORD (EMR).

15.C.3.B. WAIVER PROCESS. IF A MEDICAL WAIVER IS DESIRED, LOCAL MEDICAL PERSONNEL WILL INFORM THE NON-DEPLOYABLE INDIVIDUAL AND THE UNIT COMMAND/SUPERVISOR ABOUT THE WAIVER PROCESS AS FOLLOWS.

15.C.3.B.1. AUTHORIZED AGENTS (LOCAL MEDICAL PROVIDER, COMMANDER/SUPERVISOR, REPRESENTATIVE, OR INDIVIDUAL MEMBER) WILL FORWARD A COMPLETED MEDICAL WAIVER REQUEST FORM (TAB C), TO BE ADJUDICATED BY THE APPROPRIATE SURGEON IAW PARAGRAPH 15.C.3.C. WAIVER SUBMISSION BY OR THROUGH A MEDICAL AUTHORITY IS STRONGLY ENCOURAGED TO AVOID UNNECESSARY ADJUDICATION DELAYS DUE TO INCOMPLETE INFORMATION. UNIFORMED PERSONNEL MUST OBTAIN COMMAND ENDORSEMENT OF THE WAIVER PRIOR TO SUBMISSION. THE CASE SUMMARY PORTION OF THE WAIVER SHOULD INCLUDE A SYNOPSIS OF THE CONCERNING CONDITION(S) AND ALL SUPPORTING DOCUMENTATION TO INCLUDE THE PROVIDER'S ASSESSMENT OF ABILITY TO DEPLOY.

15.C.3.B.2. DISAPPROVALS MUST BE DOCUMENTED AND SHOULD NOT BE GIVEN TELEPHONICALLY.

15.C.3.B.3. A CENTCOM WAIVER DOES NOT PRECLUDE THE NEED FOR SERVICE-SPECIFIC MEDICAL WAIVERS (E.G., SMALL ARMS WAIVERS) OR OCCUPATIONAL MEDICAL WAIVERS (E.G., AVIATORS, COMMERCIAL TRUCK DRIVERS, ETC.) IF REQUIRED.

15.C.3.B.4. APPEAL PROCESS. IF THE SENDING UNIT DISAGREES WITH THE COMPONENT SURGEON'S DECISION, AN APPEAL MAY BE SUBMITTED TO THE CENTCOM SURGEON. IF THE DISAGREEMENT IS WITH THE CENTCOM SURGEON'S DECISION, AN APPEAL MAY BE SUBMITTED THROUGH THE CHAIN OF COMMAND TO THE CENTCOM CHIEF OF STAFF.

15.C.3.B.5. WAIVERS ARE APPROVED FOR A MAXIMUM OF 12 MONTHS OR FOR THE TIMEFRAME SPECIFIED ON THE WAIVER (TAB C). WAIVER COVERAGE BEGINS ON THE DATE OF THE INITIAL DEPLOYMENT AND REMAINS IN EFFECT FOR EITHER THE TIME PERIOD SPECIFIED ON THE WAIVER OR A MAXIMUM TIME OF 12 MONTHS.

15.C.3.B.6. WAIVERS MAY BE APPROVED, AT THE WAIVER AUTHORITY'S SOLE DISCRETION, FOR PERIODS OF TIME (E.G. 90 DAYS) SHORTER THAN THE SCHEDULED DEPLOYMENT DURATION IN ORDER TO REQUIRE REASSESSMENT OF A MEDICAL CONDITION. SUCH WAIVERS WILL INCLUDE RESUBMISSION INSTRUCTIONS. ALL LABS, ASSESSMENTS, ETC. REQUIRED FOR RESUBMISSION ARE THE RESPONSIBILITY OF THE EMPLOYEE TO OBTAIN AND SUBMIT.

15.C.3.C. CONTACTS FOR WAIVERS

15.C.3.C.1. CENTCOM SURGEON. CENTCOM.MACDILL.CENTCOM-HQ.MBX.CCSG-WAIVER@MAIL.MIL;

CML: 813.529.0361; DSN: 312.529.0361

15.C.3.C.2. AFCENT SURGEON. USCENTAFSG.ORGBOX@AFCENT.AF.MIL;

CML: 803.717.7101; DSN: 313.717.7101

15.C.3.C.3. ARCENT SURGEON. USARMY.SHAW.USARCENT.MBX.SURG-WAIVER@MAIL.MIL;

CML: 803.885.7946; DSN: 312.889.7946

15.C.3.C.4. MARCENT SURGEON. FORCE.SURGEON@MARCENT.USMC.MIL;

CML: 813.827.7175; DSN: 312.651.7175

15.C.3.C.5. NAVCENT SURGEON. CUSNC.MEDWAIVERS@ME.NAVY.MIL;

CML: 011.973.1785.4558; DSN: 318.439.4558

15.C.3.C.6. SOCCENT SURGEON. SOCCENT.SG@SOCCENT.CENTCOM.MIL;

CML: 813.828.4351; DSN: 312.968.4351

15.D. PHARMACY.

15.D.1. SUPPLY. PERSONNEL WHO REQUIRE MEDICATION AND WHO ARE DEPLOYING TO THE CENTCOM AOR WILL DEPLOY WITH NO LESS THAN A 180 DAY SUPPLY (OR APPROPRIATE AMOUNT FOR SHORTER DEPLOYMENTS) OF THEIR MAINTENANCE MEDICATIONS WITH ARRANGEMENTS TO OBTAIN A SUFFICIENT SUPPLY TO COVER THE REMAINDER OF THE DEPLOYMENT USING A FOLLOW-ON REFILL PRESCRIPTION. TRICARE ELIGIBLE PERSONNEL WILL OBTAIN FOLLOW-ON REFILL PRESCRIPTIONS FROM THE TRICARE MAIL ORDER PHARMACY (TMOP) DEPLOYED PRESCRIPTION PROGRAM (DPP) OR EXPRESS SCRIPTS. INFORMATION ON THIS PROGRAM MAY BE FOUND AT [HTTPS://WWW.EXPRESS-SCRIPTS.COM/TRICARE/TOOLS/DEPLOYEDRX.SHTML](https://www.express-scripts.com/tricare/tools/deployedrx.shtml).

15.D.2. EXCEPTIONS. EXCEPTIONS TO THE 180 DAY PRESCRIPTION QUANTITY REQUIREMENT INCLUDE:

15.D.2.A. PERSONNEL REQUIRING MALARIA CHEMOPROPHYLACTIC MEDICATIONS (DOXYCYCLINE, ATOVAQUONE/PROGUANIL, ETC.) WILL DEPLOY WITH EITHER ENOUGH MEDICATION FOR THEIR ENTIRE DEPLOYMENT OR WITH ENOUGH TO COVER APPROXIMATELY HALF OF THE DEPLOYMENT WITH PLANS TO RECEIVE THE REMAINDER OF THEIR MEDICATION IN THEATER (EXCLUDING PRIMAQUINE FOR TERMINAL PROPHYLAXIS) BASED ON UNIT PREFERENCE. UNITS WILL DISTRIBUTE TERMINAL PROPHYLAXIS UPON REDEPLOYMENT. THE DEPLOYMENT PERIOD WILL BE CONSIDERED TO INCLUDE AN ADDITIONAL 28 DAYS AFTER

LEAVING THE MALARIA RISK AREA (FOR DOXYCYCLINE) OR 7 DAYS (FOR MALARONE) TO ACCOUNT FOR REQUIRED PRIMARY PROPHYLAXIS. TERMINAL PROPHYLAXIS WITH PRIMAQUINE FOR 14 DAYS SHOULD BEGIN ONCE THE INDIVIDUAL MEMBER HAS LEFT THE AREA OF MALARIA RISK.

15.D.2.B. PSYCHOTROPIC MEDICATION MAY BE DISPENSED FOR UP TO A 180 DAY SUPPLY WITH NO REFILL.

15.D.2.B.1. IF REQUIRED, THE PROVIDER MAY PRESCRIBE A LIMITED QUANTITY (I.E., AT LEAST A 90 DAY SUPPLY) WITH NO REFILLS TO FACILITATE CLINICAL FOLLOW-UP IN THEATER.

15.D.2.B.2. PSYCHOTROPIC MEDICATIONS AUTHORIZED FOR UP TO A 180 DAYS SUPPLY INCLUDE, BUT ARE NOT LIMITED TO; ANTI-DEPRESSANTS, ANTI-ANXIETY (NON CONTROLLED SUBSTANCES), NON-CLASS 2 (CII) STIMULANTS, AND ANTI-SEIZURE MEDICATIONS USED FOR MOOD DISORDERS. THIS TERM ALSO ENCOMPASSES THE GENERIC EQUIVALENTS OF THE ABOVE MEDICATION CATEGORIES WHEN USED FOR NON-PSYCHOTROPIC INDICATIONS.

15.D.2.C. ALL FDA CONTROLLED SUBSTANCES (SCHEDULE I-V) ARE LIMITED TO A 90 DAY SUPPLY WITH NO REFILLS. AN APPROVED WAIVER MUST BE OBTAINED FROM THE CENTCOM WAIVER AUTHORITY PRIOR TO DEPLOYMENT, AND WILL BE REQUIRED FOR ALL RENEWALS. CLINICAL FOLLOW-UP IN THEATER SHOULD BE SOUGHT AT THE EARLIEST OPPORTUNITY TO OBTAIN MEDICATION RENEWALS.

15.D.3. PRESCRIPTION MEDICATION ANALYSIS AND REPORTING TOOL (PMART). SOLDIER READINESS PROCESSING (SRP) AND OTHER DEPLOYMENT PLATFORM PROVIDER/PHARMACY AND UNIT MEDICAL OFFICER PERSONNEL WILL MAXIMIZE THE USE OF THE PRESCRIPTION MEDICATION ANALYSIS AND REPORTING TOOL (PMART) TO SCREEN DEPLOYING PERSONNEL FOR HIGH-RISK MEDICATIONS, AS WELL AS TO IDENTIFY MEDICATIONS WHICH ARE TEMPERATURE-SENSITIVE, OVER THE COUNTER (FOR SITUATIONAL AWARENESS REGARDING MEDICATION INTERACTION), OR NOT AVAILABLE ON THE CENTCOM FORMULARY AND/OR THROUGH THE TMOP/DPP. CONTACT THE DHA PHARMACY ANALYTICS SUPPORT SECTION AT 1.866.275.4732 OR USARMY.JBSA.MEDCOM-AMEDDCS.MBX.PHARMACOECONOMIC-CENTER@MAIL.MIL FOR INFORMATION ON HOW TO OBTAIN A PMART REPORT. INFORMATION REGARDING PMART AS WELL AS THE CENTCOM FORMULARY CAN BE FOUND AT THE HEALTH.MIL WEBSITE AT: WWW.HEALTH.MIL/PMART.

15.D.4. TRICARE MAIL ORDER PHARMACY (TMOP). PERSONNEL REQUIRING ONGOING PHARMACOTHERAPY WILL MAXIMIZE USE OF THE TMOP/DPP SYSTEM (TO INCLUDE MEDICATIONS LISTED IN 15.D.2.B AND 15.D.2.C) WHEN POSSIBLE. THOSE ELIGIBLE FOR TMOP WILL COMPLETE ON-LINE ENROLLMENT AND REGISTRATION PRIOR TO DEPLOYMENT IF POSSIBLE. INSTRUCTIONS CAN BE FOUND AT [HTTPS://WWW.EXPRESS-SCRIPTS.COM/TRICARE/TOOLS/DEPLOYEDRX.SHTML](https://WWW.EXPRESS-SCRIPTS.COM/TRICARE/TOOLS/DEPLOYEDRX.SHTML)

15.E. MEDICAL EQUIPMENT.

15.E.1. PERMITTED EQUIPMENT. PERSONNEL WHO REQUIRE MEDICAL EQUIPMENT (E.G., CORRECTIVE EYEWEAR, HEARING AIDS) MUST DEPLOY WITH ALL REQUIRED ITEMS IN THEIR POSSESSION TO INCLUDE TWO PAIRS OF EYEGASSES, PROTECTIVE MASK EYEGASS INSERTS, BALLISTIC EYEWEAR INSERTS, AND HEARING AID BATTERIES. SEE REF D

15.E.2. NON-PERMITTED EQUIPMENT. PERSONAL DURABLE MEDICAL EQUIPMENT (NEBULIZERS, SCOOTERS, WHEELCHAIRS, CATHETERS, DIALYSIS MACHINES, INSULIN PUMPS, IMPLANTED DEFIBRILLATORS, SPINAL CORD STIMULATORS, CEREBRAL IMPLANTS, ETC.) IS NOT PERMITTED. MEDICAL MAINTENANCE, LOGISTICAL SUPPORT, AND INFECTION CONTROL PROTOCOLS FOR PERSONAL MEDICAL EQUIPMENT ARE NOT AVAILABLE AND ELECTRICITY IS OFTEN UNRELIABLE. A WAIVER FOR A MEDICAL CONDITION REQUIRING PERSONAL DURABLE MEDICAL EQUIPMENT WILL ALSO BE CONSIDERED APPLICABLE TO THE EQUIPMENT. DURABLE MEDICAL EQUIPMENT THAT IS NOT MEDICALLY COMPULSORY BUT USED FOR RELIEF OR

MAINTENANCE OF A MEDICAL CONDITION WILL REQUIRE A WAIVER. WAIVERS SHOULD COMPELLINGLY ARGUE FOR CONTINUED READINESS DESPITE PRESUMED FAILURE OF THE EQUIPMENT. MAINTENANCE AND RESUPPLY OF NON-PERMITTED EQUIPMENT IS THE RESPONSIBILITY OF THE INDIVIDUAL.

15.E.3. CONTACT LENSES.

15.E.3.A. ARMY, NAVY, AND MARINE PERSONNEL WILL NOT DEPLOY WITH CONTACT LENSES EXCEPT IAW SERVICE POLICY.

15.E.3.B. AIR FORCE PERSONNEL (NON-AIRCREW) WILL NOT DEPLOY WITH CONTACT LENSES UNLESS WRITTEN AUTHORIZATION IS PROVIDED BY THE DEPLOYING UNIT COMMANDER. CONTACT LENSES ARE LIFE SUPPORT EQUIPMENT FOR USAF AIRCREWS AND THEREFORE ARE EXEMPT IAW SERVICE GUIDELINES. AIR FORCE PERSONNEL DEPLOYING WITH CONTACT LENSES MUST RECEIVE PRE-DEPLOYMENT EDUCATION IN THE SAFE WEAR AND MAINTENANCE OF CONTACT LENSES IN THE DEPLOYED ENVIRONMENT. THEY MUST ALSO DEPLOY WITH TWO PAIRS OF EYEGLASSES AND A SUPPLY OF CONTACT LENS MAINTENANCE ITEMS (E.G., CLEANSING SOLUTION) ADEQUATE FOR THE DURATION OF THE DEPLOYMENT.

15.E.4. MEDICAL WARNING TAGS. DEPLOYING PERSONNEL REQUIRING MEDICAL WARNING TAGS (MEDICATION ALLERGIES, G6PD DEFICIENCY, DIABETES, SICKLE CELL DISEASE, ETC.) WILL DEPLOY WITH RED MEDICAL WARNING TAGS WORN IN CONJUNCTION WITH THEIR PERSONAL IDENTIFICATION TAGS.

15.E.4.A. MEDICAL PERSONNEL IDENTIFY NEED FOR MEDICAL WARNING TAGS AND PREPARE DOCUMENTATION.

15.E.4.B. INSTALLATION OR ORGANIZATION COMMANDERS WILL DIRECT EMBOSSING ACTIVITIES TO PROVIDE TAGS IAW SERVICE PROCEDURES.

15.F. IMMUNIZATIONS.

15.F.1. ADMINISTRATION. ALL IMMUNIZATIONS WILL BE ADMINISTERED IAW REF Q. REFER TO THE DHA-IMMUNIZATION HEALTHCARE BRANCH WEBSITE [HTTP://WWW.HEALTH.MIL/MILITARY-HEALTH-TOPICS/HEALTH-READINESS/IMMUNIZATION-HEALTHCARE/VACCINE-RECOMMENDATIONS/VACCINE-RECOMMENDATIONS-BY-AOR](http://www.health.mil/military-health-topics/health-readiness/immunization-healthcare/vaccine-recommendations/vaccine-recommendations-by-aor) OR CONTACT THE CENTCOM DHA-IMMUNIZATION HEALTHCARE BRANCH ANALYST BRIAN.D.CANTERBURY.CIV@MAIL.MIL FOR QUESTIONS AND CLARIFICATIONS.

15.F.2. REQUIREMENTS. ALL PERSONNEL (TO INCLUDE PCS AND SHIPBOARD PERSONNEL) TRAVELING FOR ANY PERIOD OF TIME TO THE THEATER WILL BE CURRENT WITH ADVISORY COMMITTEE ON IMMUNIZATION PRACTICES (ACIP) IMMUNIZATION GUIDELINES AND SERVICE INDIVIDUAL MEDICAL READINESS (IMR) REQUIREMENTS IAW REF C. CURRENT DOD IMMUNIZATIONS REQUIREMENTS AND RECOMMENDATIONS CAN BE FOUND AT THE DEFENSE HEALTH AGENCY WEBSITE, ON THE CENTCOM TAB, AT [HTTP://WWW.HEALTH.MIL/MILITARY-HEALTH-TOPICS/HEALTH-READINESS/IMMUNIZATION-HEALTHCARE/VACCINE-RECOMMENDATIONS/VACCINE-RECOMMENDATIONS-BY-AOR](http://www.health.mil/military-health-topics/health-readiness/immunization-healthcare/vaccine-recommendations/vaccine-recommendations-by-aor). IN ADDITION, ALL TDY PERSONNEL MUST COMPLY WITH FOREIGN CLEARANCE GUIDELINES FOR THE COUNTRIES TO OR THROUGH WHICH THEY ARE TRAVELING. MANDATORY VACCINES FOR DOD PERSONNEL (MILITARY, CIVILIAN & CONTRACTORS) TRAVELING FOR ANY PERIOD OF TIME IN THEATER ARE:

15.F.2.A. TETANUS/DIPHTHERIA. RECEIVE A ONE-TIME DOSE OF TDAP IF NO PREVIOUS DOSE(S) RECORDED. RECEIVE TETANUS (TD) IF ≥ 10 YEARS SINCE LAST TDAP OR TD BOOSTER.

15.F.2.B. VARICELLA. REQUIRED DOCUMENTATION OF ONE OF THE FOLLOWING: BORN BEFORE 1980 (HEALTH CARE WORKERS MAY NOT USE THIS EXEMPTION), DOCUMENTED PREVIOUS INFECTION (CONFIRMED BY EITHER EPIDEMIOLOGIC LINK OR LABORATORY RESULT), SUFFICIENT VARICELLA TITER, OR DOCUMENTED ADMINISTRATION OF VACCINE (2 DOSES).

15.F.2.C. MEASLES / MUMPS / RUBELLA. REQUIRED DOCUMENTATION OF ONE OF THE FOLLOWING: BORN BEFORE 1957, DOCUMENTATION OF EFFECTIVE IMMUNITY BY TITER, OR DOCUMENTED ADMINISTRATION OF 2 LIFETIME DOSES OF MMR.

15.F.2.D. POLIO. REQUIRED FOR TRAVEL TO/THROUGH AFGHANISTAN OR PAKISTAN FOR ≥4 WEEKS.

15.F.2.D.1 BOOSTER DOSE OF EITHER ORAL (OPV) OR INACTIVATED (IPV) VACCINE (IPV IS THE ONLY POLIO VACCINE CURRENTLY AVAILABLE IN THE UNITED STATES) BETWEEN 4 WEEKS AND 12 MONTHS OF DEPARTURE FROM AFGHANISTAN OR PAKISTAN.

15.F.2.D.2. IMMUNIZATION SHOULD BE DOCUMENTED ON THE CDC-731 CERTIFICATE OF VACCINATION OR PROPHYLAXIS (YELLOW SHOT RECORD) IN ADDITION TO THE DD2766C TO MEET INTERNATIONAL STANDARDS.

15.F.2.D.3. MEDICAL ASSUMED (MA) AND MEDICAL IMMUNE (MI) EXEMPTIONS ARE NOT ACCEPTED FOR THIS REQUIREMENT.

15.F.2.D.4. IAW WORLD HEALTH ORGANIZATION (WHO) OR ACIP DISEASE OUTBREAK GUIDANCE, MORE STRINGENT VACCINATION REQUIREMENTS MAY BE RECOMMENDED.

15.F.2.E. SEASONAL INFLUENZA (INCLUDING EVENT-SPECIFIC INFLUENZA, E.G., H1N1).

15.F.2.F. HEPATITIS A. AT LEAST ONE DOSE PRIOR TO DEPLOYMENT WITH SUBSEQUENT COMPLETION OF SERIES IN THEATER.

15.F.2.G. HEPATITIS B. AT LEAST ONE DOSE PRIOR TO DEPLOYMENT WITH SUBSEQUENT COMPLETION OF SERIES IN THEATER.

15.F.2.H. TYPHOID. BOOSTER DOSE OF TYPHIM VI VACCINE IF GREATER THAN TWO YEARS SINCE LAST VACCINATION WITH INACTIVATED / INJECTABLE VACCINE OR GREATER THAN FIVE YEARS SINCE RECEIPT OF LIVE / ORAL VACCINE. ORAL VACCINE IS AN ACCEPTABLE OPTION ONLY IF TIME ALLOWS FOR RECEIPT AND COMPLETION OF ALL FOUR DOSES PRIOR TO DEPLOYMENT.

15.F.3. ANTHRAX. PERSONNEL WITHOUT A MEDICAL CONTRAINDICATION TRAVELING IN THE CENTCOM THEATER FOR 15 DAYS OR MORE WILL COMPLY WITH THE MOST CURRENT DOD ANTHRAX REQUIREMENTS, CURRENTLY A SERIES OF 5 VACCINES AND ANNUAL BOOSTER. SEE REF N, R, AND S AND EXCEPTIONS FOR VACCINATION IN 15.F.6.

15.F.3.A. MILITARY PERSONNEL. REQUIRED.

15.F.3.B. DOD CIVILIANS. REQUIRED AT GOVERNMENT EXPENSE, FOR EMERGENCY ESSENTIAL PERSONNEL IAW REF N.

15.F.3.C. DOD CONTRACTORS. REQUIRED AT GOVERNMENT EXPENSE AS DIRECTED IN THE CONTRACT.

15.F.3.D. VOLUNTEERS. VOLUNTARY AT GOVERNMENT EXPENSE.

15.F.4. SMALLPOX. AS OF 16 MAY 2014, SMALLPOX VACCINATION IS NO LONGER REQUIRED FOR THE CENTCOM AOR. SEE REF R.

15.F.5. RABIES. PRE-EXPOSURE VACCINATION SHOULD BE ACCOMPLISHED AS BELOW, OR OTHERWISE CONSIDERED FOR PERSONNEL WHO ARE NOT REASONABLY EXPECTED TO RECEIVE PROMPT MEDICAL EVALUATION AND RISK-BASED RABIES POST-EXPOSURE PROPHYLAXIS WITHIN 72 HOURS OF EXPOSURE TO A POTENTIALLY RABID ANIMAL. FOR ALREADY-VACCINATED PERSONNEL, BOOSTER DOSES ARE REQUIRED EVERY TWO YEARS OR WHEN TITERS INDICATE. EXCEPTIONS MAY BE IDENTIFIED BY UNIT SURGEONS.

15.F.5.A. HIGH RISK PERSONNEL: PRE-EXPOSURE VACCINATION IS REQUIRED FOR VETERINARY PERSONNEL, MILITARY WORKING DOG HANDLERS, ANIMAL CONTROL PERSONNEL, CERTAIN SECURITY PERSONNEL, CIVIL ENGINEERS AT RISK OF EXPOSURE TO RABID ANIMALS, AND LABORATORY PERSONNEL WHO WORK WITH RABIES SUSPECT SAMPLES.

15.F.5.B. SPECIAL OPERATIONS FORCES (SOF)/SOF ENABLERS: ALL PERSONNEL DEPLOYING IN SUPPORT OF SOF WILL BE ADMINISTERED THE PRE-EXPOSURE RABIES VACCINE SERIES AS INDICATED BELOW.

15.F.5.B.1. AFGHANISTAN. PERSONNEL WITH PRIMARY DUTIES OUTSIDE OF FIXED BASES.

15.F.5.B.2. PAKISTAN. ALL PERSONNEL.

15.F.5.B.3. OTHER AREAS. PER USSOCOM SERVICE-SPECIFIC POLICIES. CONTACT USSOCOM PREVENTIVE MEDICINE OFFICER AT DSN (312) 299-5051 FOR MORE INFORMATION.

15.F.6. EXCEPTIONS. REQUIRED IMMUNIZATIONS WILL BE ADMINISTERED PRIOR TO DEPLOYMENT, WITH THE FOLLOWING POSSIBLE EXCEPTIONS:

15.F.6.A. THE FIRST VACCINE IN A REQUIRED SERIES MUST BE ADMINISTERED PRIOR TO DEPLOYMENT WITH ARRANGEMENTS MADE FOR SUBSEQUENT IMMUNIZATIONS TO BE GIVEN IN THEATER.

15.F.6.B. IAW REF S, ANTHRAX MAY BE ADMINISTERED UP TO 120 DAYS PRIOR TO DEPLOYMENT. IT IS HIGHLY ADVISABLE TO GET THE FIRST TWO ANTHRAX IMMUNIZATIONS OR SUBSEQUENT DOSE/BOOSTER PRIOR TO DEPLOYMENT IN ORDER TO AVOID UNNECESSARY STRAIN ON THE DEPLOYED HEALTHCARE SYSTEM.

15.F.7. ADVERSE MEDICAL EVENTS RELATED TO IMMUNIZATIONS SHOULD BE REPORTED THROUGH REPORTABLE MEDICAL EVENTS (RME) IF CASE DEFINITIONS ARE MET. ALL IMMUNIZATION RELATED UNEXPECTED ADVERSE EVENTS ARE TO BE REPORTED THROUGH THE VACCINE ADVERSE EVENTS REPORTING SYSTEM (VAERS) AT [HTTP://WWW.VAERS.HHS.GOV](http://www.vaers.hhs.gov).

15.F.8. USCENTCOM AND COMPONENTS WILL MONITOR IMMUNIZATION COMPLIANCE VIA THE COCOM IMMUNIZATION REPORTING DATABASE. SUBORDINATE COMMANDS WILL REQUEST ACCESS TO THE COCOM IMMUNIZATION REPORTING DATABASE BY CONTACTING CCSG AT BRIAN.CANTERBURY2@CENTCOM.MIL OR CCSG-PMO@CENTCOM.SMIL.MIL.

15.G. MEDICAL / LABORATORY TESTING.

15.G.1. HIV TESTING. HIV LAB TESTING, WITH DOCUMENTED NEGATIVE RESULT, WILL BE WITHIN 120 DAYS PRIOR TO DEPLOYMENT OR DEPARTURE FOR ANY REQUIRED DEPLOYMENT TRAINING IF TRAINING IS EN ROUTE TO DEPLOYMENT LOCATION. IAW REF I AND T, THE COGNIZANT COMBATANT COMMAND SURGEON SHALL BE DIRECTLY CONSULTED IN ALL INSTANCES OF HIV SEROPOSITIVITY BEFORE MEDICAL CLEARANCE FOR DEPLOYMENT.

15.G.2. SERUM SAMPLE. SAMPLE WILL BE TAKEN WITHIN THE PREVIOUS 365 DAYS. IF THE INDIVIDUAL'S HEALTH STATUS HAS RECENTLY CHANGED OR HAS HAD AN ALTERATION IN OCCUPATIONAL EXPOSURES THAT INCREASES HEALTH RISKS, A HEALTH CARE PROVIDER MAY CHOOSE TO HAVE A SPECIMEN DRAWN CLOSER TO THE ACTUAL DATE OF DEPLOYMENT. SEE REF U.

15.G.3. G6PD TESTING. DOCUMENTATION OF ONE-TIME GLUCOSE-6-PHOSPHATE DEHYDROGENASE (G6PD) DEFICIENCY TESTING IS IAW REF V. ENSURE RESULT IS IN MEDICAL RECORD OR DRAW PRIOR TO DEPARTURE. PRE-DEPLOYMENT MEDICAL SCREENERS WILL RECORD THE RESULT OF THIS TEST IN THE SERVICE MEMBER'S PERMANENT MEDICAL RECORD, DEPLOYMENT MEDICAL RECORD (DD FORM 2766) AND SERVICE SPECIFIC ELECTRONIC MEDICAL RECORD. (REF V) IF AN INDIVIDUAL IS FOUND TO BE G6PD-DEFICIENT, THEY SHOULD BE ISSUED MEDICAL WARNING TAGS (SEE 15.E.4.) THAT STATE "G6PD DEFICIENT: NO PRIMAQUINE". IF PRIMAQUINE IS GOING TO BE ISSUED TO A DOD CIVILIAN OR DOD CONTRACTOR, COMPLETE THE TESTING AT GOVERNMENT EXPENSE.

15.G.4. HCG. REQUIRED WITHIN 30 DAYS OF DEPLOYMENT FOR ALL WOMEN, AS WELL THOSE FEMALE TO MALE TRANSGENDERED INDIVIDUALS WHO HAVE RETAINED FEMALE ANATOMY. ABOVE INDIVIDUALS WITH A DOCUMENTED HISTORY OF A HYSTERECTOMY ARE EXEMPT. PREGNANCY WILL BE RULED OUT PRIOR TO ANY IMMUNIZATION (EXCEPT INFLUENZA) AND

MEDICAL CLEARANCE FOR DEPLOYMENT.

15.G.5. DNA SAMPLE. REQUIRED FOR ALL DOD PERSONNEL, INCLUDING CIVILIANS AND CONTRACTORS. OBTAIN SAMPLE OR CONFIRM SAMPLE IS ON FILE BY CONTACTING THE DOD DNA SPECIMEN REPOSITORY (COMM: 301.319.0366, DSN: 285; FAX 301.319.0369); [HTTP://WWW.AFMES.MIL](http://www.afmes.mil) . SEE REF C, D, AND W.

15.G.6. TUBERCULOSIS (TB) TESTING. SEE REF X.

15.G.6.A. TUBERCULOSIS TESTING FOR SERVICE MEMBERS WILL BE PERFORMED AND DOCUMENTED IAW SERVICE POLICY. CURRENT POLICY IS TO AVOID UNIVERSAL TESTING, AND INSTEAD USE TARGETED TESTING BASED UPON RISK ASSESSMENT, USUALLY PERFORMED WITH A SIMPLE QUESTIONNAIRE. DEPLOYMENT TO TB ENDEMIC COUNTRIES, EVEN FOR PERIODS IN EXCESS OF A YEAR, HAS NOT BEEN SHOWN TO BE A RISK FACTOR FOR TB FOR MOST AVERAGE-RISK SERVICE MEMBERS. TB TESTING FOR DOD CIVILIANS, CONTRACTORS, VOLUNTEERS, AND OTHER PERSONNEL SHOULD BE SIMILARLY TARGETED IAW CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) GUIDELINES, WITH TESTING FOR TB TO BE ACCOMPLISHED WITHIN 90 DAYS OF DEPLOYMENT IF INDICATED. IF TESTING IS PERFORMED TUBERCULIN SKIN TEST (TST) OR AN INTERFERON-GAMMA RELEASE ASSAY MAY BE USED UNLESS OTHERWISE INDICATED.

15.G.6.B. POSITIVE TB TESTS WILL BE HANDLED IAW SERVICE POLICY AND CDC GUIDELINES. PERSONNEL WITH A POSITIVE TB TEST SHOULD BE EVALUATED AND COUNSELED. EVALUATION WILL INCLUDE AT LEAST A SYMPTOM QUESTIONNAIRE FOR ACTIVE TB DISEASE, EXPOSURE HISTORY, AND CHEST X-RAY.

15.G.6.C. THE DECISION TO TREAT LTBI IN U.S. FORCES AND CIVILIANS DURING DEPLOYMENT INSTEAD OF AFTER REDEPLOYMENT SHOULD INCLUDE CONSIDERATION OF THE RISKS AND BENEFITS OF TREATMENT DURING DEPLOYMENT, INCLUDING: RISK OF TB ACTIVATION, RISK OF ADVERSE EVENTS FROM LTBI TREATMENT, TIME REMAINING IN DEPLOYMENT, AVAILABILITY OF MEDICAL PERSONNEL TRAINED IN LTBI TREATMENT, AVAILABILITY OF FOLLOW-UP DURING TREATMENT, AND AVAILABILITY OF MEDICATION. LACK OF TREATMENT FOR LTBI IS NOT A CONTRAINDICATION FOR DEPLOYMENT INTO THE CENTCOM AOR AND NO WAIVERS ARE REQUIRED FOR A DIAGNOSIS OF LTBI IF APPROPRIATE EVALUATION AND COUNSELING, AS NOTED ABOVE, IS COMPLETED.

15.G.6.D. UNIT-BASED / LARGE GROUP OR INDIVIDUAL LTBI TESTING SHOULD NOT BE PERFORMED IN THE AOR EXCEPT AMONG CLOSE CONTACTS OF CASES OF KNOWN TB DISEASE.

15.G.6.E. U.S. FORCES AND DOD CIVILIANS WITH TB DISEASE WILL BE EVACUATED FROM THEATER FOR DEFINITIVE TREATMENT. EVALUATION AND TREATMENT OF TB AMONG U.S. CONTRACTORS, LOCAL NATIONALS (LN) AND THIRD COUNTRY NATIONAL (TCN) EMPLOYEES WILL BE AT CONTRACTOR EXPENSE. EMPLOYEES WITH SUSPECTED OR CONFIRMED PULMONARY TB DISEASE WILL BE EXCLUDED FROM WORK UNTIL CLEARED BY THE THEATER PREVENTIVE MEDICINE CONSULTANT FOR RETURN TO WORK.

15.G.7. OTHER LABORATORY TESTING. OTHER TESTING MAY BE PERFORMED AT THE CLINICIAN'S DISCRETION COMMENSURATE WITH RULING OUT OR MONITORING NON-DEPLOYABLE CONDITIONS AND ENSURING PERSONNEL MEET STANDARDS OF FITNESS IAW PARAGRAPH 15.C.2.

15.H. HEALTH ASSESSMENTS.

15.H.1. HEALTH ASSESSMENTS AND EXAMS. PERIODIC HEALTH ASSESSMENTS MUST BE CURRENT IAW SERVICE POLICY AT TIME OF DEPLOYMENT AND SPECIAL DUTY EXAMS MUST BE CURRENT FOR THE DURATION OF TRAVEL OR DEPLOYMENT PERIOD. SEE REF D, J.

15.H.2. PRE-DEPLOYMENT HEALTH ASSESSMENT (DD FORM 2795).

15.H.2.A. ALL DOD PERSONNEL (MILITARY, CIVILIAN, CONTRACTOR) TRAVELING TO THE

THEATER FOR MORE THAN 30 DAYS WILL COMPLETE OR CONFIRM AS CURRENT A PRE-DEPLOYMENT HEALTH ASSESSMENT WITHIN 120 DAYS OF THE EXPECTED DEPLOYMENT DATE IAW REF Y. THIS ASSESSMENT WILL BE COMPLETED ON A DD FORM 2795 IAW REF C. THIS DOES NOT APPLY TO PCS PERSONNEL, SHIPBOARD PERSONNEL, OR PERSONNEL LOCATED WITH A DHP FUNDED FIXED MEDICAL TREATMENT FACILITY (E.G. BAHRAIN) IAW REF C.

15.H.2.A.1. PERSONNEL TRAVELING TO THE THEATER FOR 15 TO 30 DAYS MAY CONSIDER COMPLETING A PRE-DEPLOYMENT HEALTH ASSESSMENT IN ORDER TO DOCUMENT THEIR HEALTH STATUS AND ADDRESS ANY HEALTH CONCERNS PRIOR TO TRAVEL TO THEATER. THIS IS ESPECIALLY RELEVANT TO THOSE WHOSE POSITION REQUIRES FREQUENT TRAVEL TO THE AOR. THESE INDIVIDUALS ARE ENCOURAGED TO COMPLETE AT LEAST ONE PRE-DEPLOYMENT HEALTH ASSESSMENT EACH YEAR, ALONG WITH A CORRESPONDING POST-DEPLOYMENT HEALTH ASSESSMENT FOR THE SAME YEAR.

15.H.2.B. FOLLOWING COMPLETION OF THE DEPLOYER PORTION OF THE DD FORM 2795, THE DEPLOYER WILL HAVE A PERSON-TO-PERSON DIALOGUE WITH A TRAINED AND CERTIFIED HEALTH CARE PROVIDER (PHYSICIAN, PHYSICIAN ASSISTANT, NURSE PRACTITIONER, ADVANCED PRACTICE NURSE, INDEPENDENT DUTY CORPSMAN, SPECIAL FORCES MEDICAL SERGEANT, INDEPENDENT DUTY MEDICAL TECHNICIAN, OR INDEPENDENT HEALTH SERVICES TECHNICIAN) TO COMPLETE THE ASSESSMENT.

15.H.2.C. THE COMPLETED ORIGINAL DD FORM 2795 WILL BE PLACED IN THE DEPLOYER'S PERMANENT MEDICAL RECORD, A PAPER COPY IN THE DEPLOYMENT MEDICAL RECORD (DD FORM 2766), AND AN ELECTRONIC COPY TRANSMITTED TO THE DEFENSE MEDICAL SURVEILLANCE SYSTEM (DMSS) AT THE ARMED FORCES HEALTH SURVEILLANCE CENTER (AFHSC). CONTRACT PERSONNEL ARE NOT REQUIRED TO ELECTRONICALLY SUBMIT THE DD FORM 2795; A PAPER VERSION WILL SUFFICE.

15.H.3. AUTOMATED NEUROPSYCHOLOGICAL ASSESSMENT METRIC (ANAM).

ALL SERVICE MEMBERS AS DESIGNATED IN REF Z WILL UNDERGO ANAM TESTING WITHIN 12 MONTHS PRIOR TO DEPLOYMENT. ANAM TESTING WILL BE RECORDED IN APPROPRIATE SERVICE DATABASE AND ELECTRONIC MEDICAL RECORD. CONTRACTORS, PCS AND SHIPBOARD PERSONNEL ARE NOT REQUIRED TO UNDERGO ANAM TESTING.

15.H.4. POST-DEPLOYMENT HEALTH ASSESSMENT (DD FORM 2796).

15.H.4.A. ALL PERSONNEL WHO WERE REQUIRED TO COMPLETE A PRE-DEPLOYMENT HEALTH ASSESSMENT WILL COMPLETE A POST-DEPLOYMENT HEALTH ASSESSMENT ON A DD FORM 2796. THE POST-DEPLOYMENT HEALTH ASSESSMENT MUST BE COMPLETED NO EARLIER THAN 30 DAYS BEFORE EXPECTED REDEPLOYMENT DATE AND NO LATER THAN 30 DAYS AFTER REDEPLOYMENT.

15.H.4.A.1. INDIVIDUALS WHO WERE NOT REQUIRED TO COMPLETE A PRE-DEPLOYMENT HEALTH ASSESSMENT, BUT WHO COMPLETED ONE TO COVER MULTIPLE TRIPS TO THEATER EACH OF 30 DAYS OR LESS DURATION, SHOULD COMPLETE A POST-DEPLOYMENT HEALTH ASSESSMENT AT LEAST ONCE A YEAR TO DOCUMENT ANY POTENTIAL EXPOSURES OF CONCERN RESULTING FROM ANY SUCH TRAVEL AND THE POTENTIAL NEED FOR MEDICAL FOLLOW-UP.

15.H.4.A.2. INDIVIDUALS WHO WERE NOT REQUIRED TO COMPLETE A PRE-DEPLOYMENT HEALTH ASSESSMENT MAY BE REQUIRED (BY THE COMBATANT COMMANDER, SERVICE COMPONENT COMMANDER, OR COMMANDER EXERCISING OPERATIONAL CONTROL) TO COMPLETE A POST-DEPLOYMENT HEALTH ASSESSMENT IF ANY HEALTH THREATS EVOLVED OR OCCUPATIONAL AND/OR CBRN EXPOSURES OCCURRED DURING THE DEPLOYMENT THAT WARRANT MEDICAL ASSESSMENT OR FOLLOW-UP. (SEE REF C).

15.H.4.B. ALL REDEPLOYING PERSONNEL WILL UNDERGO A PERSON-TO-PERSON HEALTH ASSESSMENT WITH AN INDEPENDENT PRACTITIONER. THE ORIGINAL COMPLETED COPY OF

THE DD FORM 2796 MUST BE PLACED IN THE INDIVIDUAL'S MEDICAL RECORD AND TRANSMIT AN ELECTRONIC COPY TO THE DMSS AT THE AFHSC. CONTRACT PERSONNEL ARE NOT REQUIRED TO ELECTRONICALLY SUBMIT THE DD FORM 2796; A PAPER VERSION WILL SUFFICE.

15.H.5. MENTAL HEALTH ASSESSMENT. ALL SERVICE MEMBERS WILL UNDERGO A PERSON-TO-PERSON MENTAL HEALTH ASSESSMENT WITH A LICENSED MENTAL HEALTH PROFESSIONAL OR TRAINED AND CERTIFIED HEALTH CARE PERSONNEL (SPECIFICALLY A PHYSICIAN, PHYSICIAN ASSISTANT, NURSE PRACTITIONER, ADVANCED PRACTICE NURSE, INDEPENDENT DUTY CORPSMAN, SPECIAL FORCES MEDICAL SERGEANT, INDEPENDENT DUTY MEDICAL TECHNICIAN, OR INDEPENDENT HEALTH SERVICES TECHNICIAN). ASSESSMENTS WILL BE ACCOMPLISHED WITHIN 120 DAYS PRIOR TO DEPLOYMENT, ONCE DURING EACH 180-DAY PERIOD DURING WHICH A MEMBER IS DEPLOYED (IN-THEATER MENTAL HEALTH ASSESSMENT), AND AFTER REDEPLOYMENT WITHIN 3 TIMEFRAMES (3-6, 7-18, AND 18-30 MONTHS AFTER REDEPLOYMENT), OR AS REQUIRED BY SERVICE POLICY. ASSESSMENTS WILL BE ADMINISTERED AT LEAST 90 DAYS APART. CURRENTLY ADMINISTERED PERIODIC AND OTHER PERSON-TO-PERSON HEALTH ASSESSMENTS, SUCH AS THE POST-DEPLOYMENT HEALTH REASSESSMENT, WILL MEET THE TIME REQUIREMENTS IF THEY CONTAIN ALL PSYCHOLOGICAL AND SOCIAL QUESTIONS IAW REF AA.

15.H.5.A. IN-THEATER MENTAL HEALTH ASSESSMENTS WILL BE CONDUCTED BY PERSONNEL IN DEPLOYED UNITS WHOSE RESPONSIBILITIES INCLUDE PROVIDING UNIT HEALTH CARE SERVICES IF SUCH PERSONNEL ARE AVAILABLE AND THE USE OF SUCH PERSONNEL FOR THE ASSESSMENTS WOULD NOT IMPAIR THE CAPACITY OF SUCH PERSONNEL TO PERFORM HIGHER PRIORITY TASKS.

15.H.5.A.1. PERSONNEL CONDUCTING ASSESSMENTS MUST MEET REQUIREMENTS IN PARAGRAPH 15.H.5.

15.H.5.A.2. SCHEDULING IN-THEATER MENTAL HEALTH ASSESSMENTS MUST BE MADE IN CONSIDERATION OF AND SEEK TO LESSEN POTENTIAL IMPACTS ON THE OPERATIONAL MISSION.

15.H.5.B. MENTAL HEALTH ASSESSMENT GUIDANCE DOES NOT DIRECTLY APPLY TO DOD CONTRACTORS UNLESS SPECIFIED IN THE CONTRACT OR THERE IS A CONCERN FOR A MENTAL HEALTH ISSUE. ALL RELATED MENTAL HEALTH EVALUATIONS WILL BE AT THE CONTRACTOR'S EXPENSE.

15.H.6. POST-DEPLOYMENT HEALTH RE-ASSESSMENT (DD FORM 2900). ALL PERSONNEL WHO WERE REQUIRED TO COMPLETE A PRE- AND POST-DEPLOYMENT HEALTH ASSESSMENT WILL COMPLETE A POST-DEPLOYMENT HEALTH REASSESSMENT (DD FORM 2900) 90 TO 180 DAYS AFTER RETURN TO HOME STATION. SEE WWW.PDHEALTH.MIL FOR ADDITIONAL INFORMATION ON PRE- AND POST-DEPLOYMENT HEALTH ASSESSMENTS. CONTRACT PERSONNEL ARE NOT REQUIRED TO ELECTRONICALLY SUBMIT THE DD FORM 2900; A PAPER VERSION WILL SUFFICE.

15.I. MEDICAL RECORD. SEE REF C.

15.I.1. DEPLOYED MEDICAL RECORD. THE DD FORM 2766, ADULT PREVENTIVE AND CHRONIC CARE FLOWSHEET, OR EQUIVALENT, WILL BE USED INSTEAD OF DEPLOYING AN INDIVIDUAL'S ENTIRE MEDICAL RECORD. THE DEPLOYED DD FORM 2766 SHOULD BE RE-INTEGRATED INTO THE MAIN MEDICAL RECORD AS PART OF THE REDEPLOYMENT PROCESS.

15.I.1.A. DEPLOYED PERSONNEL (MORE THAN 30 DAYS). DD2766 IS REQUIRED.

15.I.1.B. TDY PERSONNEL (15 – 30 DAYS). DD FORM 2766 IS HIGHLY ENCOURAGED, ESPECIALLY FOR THOSE WHO TRAVEL FREQUENTLY TO THEATER, TO DOCUMENT THEATER-SPECIFIC VACCINES AND CHEMOPROPHYLAXIS, AS REQUIRED.

15.I.1.C. TDY PERSONNEL (LESS THAN 15 DAYS). DD2766 IS NOT REQUIRED.

15.I.1.D. PCS PERSONNEL. FOLLOW SERVICE GUIDELINES FOR MEDICAL RECORD MANAGEMENT.

15.I.2. MEDICAL INFORMATION. THE FOLLOWING HEALTH INFORMATION MUST BE PART OF AN ACCESSIBLE ELECTRONIC MEDICAL RECORD FOR ALL PERSONNEL (SERVICE MEMBERS, CIVILIANS AND CONTRACTORS), OR BE HAND-CARRIED AS PART OF A DEPLOYED MEDICAL RECORD:

15.I.2.A. ANNOTATION OF BLOOD TYPE AND RH FACTOR, G6PD, HIV, AND DNA.

15.I.2.B. CURRENT MEDICATIONS AND ALLERGIES. INCLUDE ANY FORCE HEALTH PROTECTION PRESCRIPTION PRODUCT (FHPPP) PRESCRIBED AND DISPENSED TO AN INDIVIDUAL.

15.I.2.C. SPECIAL DUTY QUALIFICATIONS.

15.I.2.D. ANNOTATION OF CORRECTIVE LENS PRESCRIPTION.

15.I.2.E. SUMMARY SHEET OF CURRENT AND PAST MEDICAL AND SURGICAL CONDITIONS.

15.I.2.F. MOST RECENT DD FORM 2795, PREDEPLOYMENT HEALTH ASSESSMENT.

15.I.2.G. DOCUMENTATION OF DENTAL STATUS CLASSES I OR CLASS II.

15.I.2.H. IMMUNIZATION RECORD. MEDICAL DEPLOYMENT SITES WILL ENTER IMMUNIZATION DATA INTO SERVICE ELECTRONIC TRACKING SYSTEMS, (ARMY-MEDPROS, AIR FORCE-AFCITA, COAST GUARD-MRRS, NAVY-MRRS (ASHORE) OR SAMS (AFLOAT) AND MARINE CORPS-MRRS).

15.I.2.I. ALL APPROVED MEDICAL WAIVERS.

15.J. PRE-DEPLOYMENT TRAINING. SEE REF C.

15.J.1. SCOPE. GENERAL ISSUES TO BE ADDRESSED. INFORMATION REGARDING KNOWN AND SUSPECTED HEALTH RISKS AND EXPOSURES, HEALTH RISK COUNTERMEASURES AND THEIR PROPER EMPLOYMENT, PLANNED ENVIRONMENTAL AND OCCUPATIONAL SURVEILLANCE MONITORING, AND THE OVERALL OPERATIONAL RISK MANAGEMENT PROGRAM.

15.J.2. CONTENT. SHOULD INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING AREAS: COMBAT/OPERATIONAL STRESS CONTROL AND RESILIENCE; POST-TRAUMATIC STRESS AND SUICIDE PREVENTION; MILD TRAUMATIC BRAIN INJURY RISK, IDENTIFICATION AND TRACKING; NUCLEAR, BIOLOGICAL, CHEMICAL THREATS; ENDEMIC PLANT, ANIMAL, REPTILE AND INSECT HAZARDS AND INFECTIONS; COMMUNICABLE DISEASES; VECTORBORNE DISEASES; ENVIRONMENTAL CONDITIONS; SAFETY; OCCUPATIONAL HEALTH.

15.K. MEDICAL CBRN DEFENSE MATERIEL (MCDM) / CHEMICAL BIOLOGICAL RADIOLOGICAL NUCLEAR (CBRN) RESPONSE.

15.K.1. MCDM ITEMS. CJTF-OIR, USFOR-A, AND USCENTCOM SERVICE COMPONENT COMMANDS WILL DETERMINE MCDM AVAILABILITY REQUIREMENTS, BASED UPON BEST ESTIMATES OF RISK AND COMMAND POLICY, FOR ALL FORCES THAT FALL UNDER THEIR RESPECTIVE FORCE PROTECTION AUTHORITIES AS IDENTIFIED IN ANNEX J OF USCENTCOM OPOD 05-02, IN THE FOLLOWING MINIMUM ESSENTIAL QUANTITIES. CONTRACTORS WILL RECEIVE THESE ITEMS PER THEIR CONTRACT.

15.K.1.A. ANTIDOTE TREATMENT NERVE AGENT AUTOINJECTOR (ATNAA) (6505-01-362-7427); RECOMMEND THREE EACH PER AFFECTED INDIVIDUAL.

15.K.1.B. DIAZEPAM INJECTION (CONVULSANT ANTIDOTE NERVE AGENT - CANA) (6505-01-274-0951); RECOMMEND ONE EACH PER AFFECTED INDIVIDUAL.

15.K.1.C. M291A SKIN DECONTAMINATION KIT OR REACTIVE SKIN DECONTAMINATION LOTION (RSDL). RECOMMEND ONE M291A KIT OR ONE POUCH CONTAINING 3 PACKETS OF RSDL PER AFFECTED INDIVIDUAL.

15.K.1.D. CIPROFLOXACIN 500MG TABS OR DOXYCYCLINE 100MG TABS; RECOMMEND SIX TABS (BLISTER PACKS PREFERABLE) PER AFFECTED INDIVIDUAL OF EITHER MEDICATION TO COVER INITIAL DOSAGE AND SUPPORT PROPHYLAXIS AND/OR TREATMENT FOR THREE DAYS PER INDIVIDUAL. AVAILABILITY OF COMPLETE 30-DAY COURSE OF MEDICATION (60 TABLETS) SHOULD BE CONSIDERED GIVEN MISSION REQUIREMENTS. INDIVIDUALS USING DOXYCYCLINE FOR MALARIA PROPHYLAXIS MAY BE CONSIDERED TO BE COVERED FOR THESE REMAINING DOSES.

15.K.1.E. INDIVIDUAL DEPLOYERS RECEIVING MCDM MEDICATIONS AND/OR EQUIPMENT DURING PRE-DEPLOYMENT PROCESSING SHOULD TURN IN THESE ITEMS TO THEIR UNIT UPON ARRIVAL IN THE AOR.

15.K.2. CBRN COUNTERMEASURES.

15.K.2.A. TO PROTECT AGAINST POSSIBLE AND POTENTIALLY INDICATED CBRN THREATS WITHIN THE AOR, SERVICE COMPONENTS WILL BPT ACQUIRE AND ISSUE, IAW SERVICE POLICY OR ON ORDER FROM THE CENTCOM COMMANDER, THE FOLLOWING TYPES AND QUANTITIES OF MCDM ITEMS FOR THEIR IN-THEATER FORCES.

15.K.2.B. PYRIDOSTIGMINE BROMIDE (PB) 30MG TABS (SOMAN NERVE AGENT PRETREATMENT PYRIDOSTIGMINE - SNAPP); 42 TABLETS PER AFFECTED INDIVIDUAL.

15.K.2.B.1. POTASSIUM IODIDE (KI) TABLETS (FOR BETA/GAMMA RADIATION EXPOSURE); 14 TABS PER AFFECTED INDIVIDUAL.

15.K.2.B.2. SERVICE COMPONENTS AND/OR JTFS WITH BASE OPERATING SUPPORT (BOS) RESPONSIBILITY FOR BASES IN THEATER THAT ARE KEY TRANSPORTATION AND SUPPORT NODES WILL ENSURE ADEQUATE AMOUNTS OF THE MCDM ITEMS LISTED IN PARAGRAPH 15.K. ARE PRE-POSITIONED AND STORED TO SUPPORT THE TRANSIENT POPULATION (NON DEPLOYERS, PCS PERSONNEL, ETC.) THAT MAY RESIDE OR BE PRESENT AT THESE LOCATIONS FOR ANY PERIOD OF TIME AND ANY INDIVIDUAL DEPLOYERS NOT ATTACHED TO A TROOP UNIT MOVEMENT.

15.L. THEATER FORCE HEALTH PROTECTION.

15.L.1. DISEASE RISK ASSESSMENT.

15.L.1.A. MALARIA RISK ASSESSMENT AND GUIDELINES. IN THE ABSENCE OF A LOCAL RISK ASSESSMENT CONDUCTED IAW THE GUIDANCE PROVIDED IN PARAGRAPH 15.L.1.B., THE FOLLOWING COUNTRIES AND TIMEFRAMES REQUIRE CHEMOPROPHYLAXIS. THESE ARE MINIMUM REQUIREMENTS.

15.L.1.A.1. AFGHANISTAN: YEAR ROUND.

15.L.1.A.2. PAKISTAN: YEAR ROUND.

15.L.1.A.3. TAJIKISTAN: APRIL THROUGH OCTOBER.

15.L.1.A.4. YEMEN: YEAR ROUND.

15.L.1.B. LOCAL COMPONENT/JTF SURGEONS ARE ENCOURAGED TO CONDUCT EVIDENCE-BASED ENTOMOLOGICAL AND EPIDEMIOLOGICAL ASSESSMENTS OF MALARIA RISK AT FIXED BASES WHERE SIGNIFICANT NUMBERS OF PERSONNEL ARE ASSIGNED FOR PROLONGED PERIODS. IN CONDUCTING SUCH A RISK ASSESSMENT, SURGEONS SHOULD REVIEW THE MOST RECENT ASSESSMENTS AND RISK MAPS PRODUCED BY THE NATIONAL CENTER FOR MEDICAL INTELLIGENCE (NCMI) AT [HTTPS://WWW.NCMI.DETRICK.ARMY.MIL/](https://www.ncmi.detrick.army.mil/) (UNCLASSIFIED) OR [HTTPS://WWW.NCMI.DIA.SMIL.MIL](https://www.ncmi.dia.smil.mil/) (CLASSIFIED).

15.L.1.B.1. BASED ON NCMI RISK ASSESSMENTS AND IN CONSULTATION WITH THE THEATER PREVENTIVE MEDICINE CONSULTANT, RECOMMENDATIONS FOR MODIFIED CHEMOPROPHYLAXIS POLICY MAY BE PROVIDED TO COMMANDERS USING REF BB OR SIMILAR RISK ANALYSIS.

15.L.1.B.2. MANEUVER FORCES WITH INTERMITTENT AND UNPREDICTABLE EXPOSURES TO RISK AREAS SHOULD EMPLOY CHEMOPROPHYLAXIS BASED ON THE HIGHEST RISK AREAS. UNITS AND INDIVIDUALS WITH VERY SHORT TERM EXPOSURE (I.E., AIRCREW NOT STATIONED IN THE AOR) SHOULD HAVE RISK AND CHEMOPROPHYLAXIS USE DETERMINED IAW SERVICE POLICY.

15.L.2. MALARIA CHEMOPROPHYLAXIS UTILIZATION.

15.L.2.A. ALL THERAPEUTIC/CHEMOPROPHYLACTIC MEDICATIONS, INCLUDING ANTIMALARIALS AND MCDM WILL BE PRESCRIBED IAW FDA GUIDELINES, REF C, BB, CC, AND DD.

15.L.2.B. DOXYCYCLINE OR ATOVAQUONE/PROGUANIL (MALARONE®) ARE GENERALLY ACCEPTABLE AS A PRIMARY MALARIA CHEMOPROPHYLACTIC AGENT. MEFLOROQUINE SHOULD BE CONSIDERED THE DRUG OF LAST RESORT FOR PERSONNEL WITH CONTRAINDICATIONS TO DOXYCYCLINE OR MALARONE®, SHOULD BE USED WITH CAUTION IN PERSONS WITH A HISTORY OF TBI OR PTSD, AND IS CONTRAINDICATED IN PERSONNEL WITH PSYCHIATRIC DIAGNOSES. EACH MEFLOROQUINE PRESCRIPTION WILL BE ISSUED WITH A WALLET CARD AND CURRENT FDA SAFETY INFORMATION INDICATING THE POSSIBILITY THAT THE NEUROLOGIC SIDE EFFECTS MAY PERSIST OR BECOME PERMANENT IAW REF DD. OTHER FDA APPROVED AGENTS MAY BE USED TO MEET SPECIFIC SITUATIONAL REQUIREMENTS.

15.L.2.C. PERSONNEL SHOULD DEPLOY WITH EITHER THEIR ENTIRE PRIMARY PROPHYLAXIS COURSE IN HAND (EXCLUDING TERMINAL PRIMAQUINE) OR WITH ENOUGH MEDICATION TO COVER HALF OF THE DEPLOYMENT WITH PLANS TO RECEIVE THE REMAINDER OF THEIR MEDICATION IN THEATER BASED ON UNIT PREFERENCE. TERMINAL PROPHYLAXIS (PRIMAQUINE) SHOULD BE DISTRIBUTED UPON REDEPLOYMENT AND ONLY AFTER VERIFYING G6PD STATUS (SEE 15.G.3.). A COMPLETE COURSE OF PRIMARY PROPHYLAXIS BEGINS 2 DAYS PRIOR TO ENTERING THE RISK AREA FOR DOXYCYCLINE AND MALARONE® (2 WEEKS FOR MEFLOROQUINE) AND COMPLETES AFTER 4 WEEKS OF DOXYCYCLINE OR MEFLOROQUINE AFTER LEAVING THE AT RISK AREA, OR (1 WEEK OF MALARONE®). TERMINAL PROPHYLAXIS IS REQUIRED AND CONSISTS OF TAKING PRIMAQUINE FOR 2 WEEKS AFTER LEAVING THE RISK AREA. INDIVIDUALS WHO ARE NOTED TO BE G6PD-DEFICIENT, IAW PARAGRAPH 15.G.3., WILL NOT BE PRESCRIBED PRIMAQUINE.

15.L.2.D. MISSING ONE DOSE OF MEDICATION OR NOT USING THE DOD INSECT REPELLENT SYSTEM WILL PLACE PERSONNEL AT INCREASED RISK FOR MALARIA.

15.L.2.E. COMMANDERS AND SUPERVISORS AT ALL LEVELS WILL ENSURE THAT ALL INDIVIDUALS FOR WHOM THEY ARE RESPONSIBLE HAVE TERMINAL PROPHYLAXIS ISSUED TO THEM IMMEDIATELY UPON REDEPLOYMENT FROM THE AT RISK MALARIA AREA(S).

15.L.3. PERSONAL PROTECTIVE MEASURES. A SIGNIFICANT RISK OF DISEASE CAUSED BY INSECTS AND TICKS EXISTS YEAR-ROUND IN THE AOR. THE THREAT OF DISEASE WILL BE MINIMIZED BY USING THE DOD INSECT REPELLANT SYSTEM AND BED NETS;
[HTTP://WWW.AFPMB.ORG](http://www.afpmb.org). SEE REF EE.

15.L.3.A. PERMETHRIN TREATMENT OF UNIFORMS. UNIFORMS ARE AVAILABLE FOR ISSUE WHICH ARE FACTORY-TREATED WITH PERMETHRIN. THE UNIFORM LABEL INDICATES WHETHER IT IS FACTORY TREATED. UNIFORMS WHICH ARE NOT FACTORY TREATED SHOULD BE TREATED WITH THE INDIVIDUAL DYNAMIC ABSORPTION (IDA) KIT (NSN: 6840-01-345-0237) OR 2 GALLON SPRAYER PERMETHRIN TREATMENT. BOTH ARE EFFECTIVE FOR APPROXIMATELY 50 WASHINGS. A MATRIX OF WHICH UNIFORMS MAY BE EFFECTIVELY TREATED IS AVAILABLE ON THE AFPMB WEBSITE AT [HTTP://WWW.AFPMB.ORG](http://www.afpmb.org).

15.L.3.B. APPLY DEET CREAM (NSN: 6840-01-284-3982) TO EXPOSED SKIN. ONE APPLICATION LASTS 6-12 HOURS; MORE FREQUENT APPLICATION IS REQUIRED IF HEAVY SWEATING AND/OR IMMERSION IN WATER. A SECOND OPTION IS 'SUNSECT CREAM' (20% DEET/SPF 15), NSN: 6840-01-288-2188.

15.L.3.C. WEAR TREATED UNIFORM PROPERLY TO MINIMIZE EXPOSED SKIN (SLEEVES DOWN AND PANTS TUCKED INTO BOOTS).

15.L.3.D. USE PERMETHRIN TREATED BEDNETS PROPERLY IN AT RISK AREAS TO MINIMIZE EXPOSURE DURING REST/SLEEP PERIODS. PERMETHRIN TREATED POP UP BEDNETS ARE AVAILABLE: NSN 3740-01-516-4415

15.L.4. HEALTH SURVEILLANCE. SEE REF C AND FF.

15.L.4.A. JOINT MEDICAL WORKSTATION (JMEWS) THROUGH MSAT AT
[HTTPS://MSAT.FHP.SMIL.MIL/PORTAL](https://msat.fhp.smil.mil/portal)

15.L.4.A.1. DEPLOYED UNITS WILL USE JMEWS AS THE PRIMARY DATA ENTRY POINT FOR DISEASE AND INJURY (DI) REPORTING. UNITS WILL ENSURE ALL SUBORDINATE UNITS COMPLETE JOINING AND DEPARTING REPORTS AS REQUIRED WITHIN JMEWS. SHIPBOARD UNITS SHOULD UTILIZE SAMS OR TMIP-M FOR DI REPORTING AND FIXED MTF'S SHOULD UTILIZE AHLTA.

15.L.4.A.2. UNITS WILL COORDINATE JMEWS TRAINING PRIOR TO DEPLOYMENT FOR APPROPRIATE PERSONNEL TO THE MAXIMUM EXTENT POSSIBLE. CURRENTLY, THE ARMY USES MC4 TRAINERS TO TRAIN JMEWS, THE AIR FORCE USES THEATER MEDICAL INFORMATION PROGRAM (TMIP-AF). INFORMATION MANAGERS, OTHER SERVICES DO NOT HAVE DIRECTED TRAINERS AT THIS TIME.

15.L.4.B. DI SURVEILLANCE, SEE REF GG.

15.L.4.B.1. THE LIST OF DI REPORTING CATEGORIES, THEIR DEFINITIONS, AND THE ESSENTIAL ELEMENTS OF THE STANDARD DI REPORT CAN BE FOUND IN ENCLOSURE C OF REF FF.

15.L.4.B.2. COMPONENT AND JTF SURGEONS ARE RESPONSIBLE FOR ENSURING UNITS WITHIN THEIR AOR ARE COLLECTING THE PRESCRIBED DI DATA AND REPORTING THAT DATA THROUGH THE JMEWS OR OTHER STANDARDIZED REPORTING PROCESSES ON A WEEKLY BASIS.

15.L.4.B.3. MEDICAL PERSONNEL AT ALL LEVELS WILL ANALYZE THE DI DATA FROM THEIR UNIT AND THE UNITS SUBORDINATE TO THEM AND MAKE CHANGES AND RECOMMENDATIONS AS REQUIRED TO REDUCE DI AND MITIGATE THE EFFECTS OF DI UPON OPERATIONAL READINESS.

15.L.4.C. OCCUPATIONAL AND ENVIRONMENTAL HEALTH SURVEILLANCE (OEHS)

15.L.4.C.1. AUTHORITY. AN OEHS IS A JOINT APPROVED PRODUCT USED TO PROVIDE A COMPREHENSIVE ASSESSMENT OF BOTH OCCUPATIONAL AND ENVIRONMENTAL HEALTH HAZARDS ASSOCIATED WITH DEPLOYMENT LOCATIONS AND ACTIVITIES AND MISSIONS THAT OCCUR THERE ESTABLISHED BY REF D AND FF.

15.L.4.C.2 TIMEFRAME. AN OEHS IS INITIATED WITHIN 30 DAYS OF DATE OF ESTABLISHMENT AND COMPLETED WITHIN THREE MONTHS FOR ALL PERMANENT AND SEMI-PERMANENT BASE CAMPS. OEHS ARE CONDUCTED TO VALIDATE ACTUAL OR POTENTIAL HEALTH THREATS, EVALUATE EXPOSURE PATHWAYS, AND DETERMINE COURSES OF ACTION AND COUNTERMEASURES TO CONTROL OR REDUCE THE HEALTH THREATS AND PROTECT THE HEALTH OF DEPLOYED PERSONNEL.

15.L.4.C.3. CLASSIFICATION/PUBLICATION/ACCESS. OEHS WILL BE SENT BY THE COMPLETING UNIT THROUGH THE DESIGNATED SERVICE COMPONENT OR JTF PM/FHP OFFICER FOR REVIEW AND SUBMITTED DIRECTLY TO THE DEFENSE OCCUPATIONAL AND ENVIRONMENTAL READINESS SYSTEM (DOEHS) AT [HTTPS://DOEHRS-IH.CSD.DISA.MIL/](https://doehrs-ih.csd.disa.mil/). SEE APPENDIX J TO REFERENCE EE FOR DOEHS REQUIREMENTS. IF THE SUBMITTER DOES NOT HAVE ACCESS TO DOEHS SUBMIT THE OEHS TO THE MILITARY EXPOSURE SURVEILLANCE LIBRARY (MESL) [HTTPS://MESL.APGEA.ARMY.MIL/MESL/](https://mesl.apgea.army.mil/mesl/). IF THE MESL IS NOT AVAILABLE, EMAIL THE DOCUMENT TO OEHS.DATA@US.ARMY.MIL. CLASSIFIED EXPOSURE DATA SHOULD BE SUBMITTED DIRECTLY TO MESL-S [HTTPS://MESL.CSD.DISA.SMIL.MIL/](https://mesl.csd.disa.smil.mil/). IF ACCESS TO THE MESL-S IS NOT AVAILABLE, EMAIL THE DOCUMENT TO OEHS@USACHPPM.ARMY.SMIL.MIL.

15.L.4.C.4. RESPONSIBILITIES. SERVICE COMPONENTS AND JTFS ARE RESPONSIBLE FOR APPROVING OEHS COMPLETION AND WILL SUBMIT A MONTHLY REPORT IAW PROCEDURES OUTLINED IN REFERENCE GG.

15.L.4.D. PERIODIC OCCUPATIONAL AND ENVIRONMENTAL MONITORING SUMMARY (POEMS).

15.L.4.D.1. AUTHORITY. POEMS IS A JOINT APPROVED PRODUCT USED TO ADDRESS ENVIRONMENTAL EXPOSURE DOCUMENTATION REQUIREMENTS ESTABLISHED BY REF D AND FF.

COMMANDERS AND DEPLOYED PERSONNEL FOR MEDICAL THREATS, COUNTERMEASURES TO THOSE THREATS, AND THE NEED FOR ANY MEDICAL FOLLOW-UP.

15.L.6.C. DI, RME, AND OCCUPATIONAL AND ENVIRONMENTAL HEALTH (OEH) RISK ASSESSMENTS WITH RECOMMENDED COUNTERMEASURES WILL BE PROVIDED TO COMMANDERS AND DEPLOYED PERSONNEL ON A REGULAR BASIS AS WELL AS A SITUATIONAL BASIS WHEN A SIGNIFICANT CHANGE IN ANY ASSESSMENT OCCURS.

15.L.7. HEALTH CARE MANAGEMENT.

15.L.7.A. JOINT TRAUMA SYSTEM (JTS) CLINICAL PRACTICE GUIDELINES (CPGS) MAY BE OBTAINED AT THE UNITED STATES ARMY INSTITUTE OF SURGICAL RESEARCH (USAISR) WEBSITE AT [HTTP://WWW.USAISR.AMEDD.ARMY.MIL/CPGS.HTML](http://www.usaisr.amedd.army.mil/cpgs.html).

15.L.7.B. DOCUMENTATION OF ALL MEDICAL AND DENTAL CARE RECEIVED WHILE DEPLOYED WILL BE IAW CENTCOM MEDICAL INFORMATION MANAGEMENT GUIDELINES. SEE REF II.

15.L.7.C. IT IS A COMMANDER'S RESPONSIBILITY TO ENSURE THAT ALL PERSONNEL POTENTIALLY AFFECTED BY A BLAST OR OTHER POTENTIALLY CONCUSSIVE EVENT (PCE) ARE EVALUATED FOR TRAUMATIC BRAIN INJURY (TBI) BY A MEDICAL PROVIDER AND DOCUMENTATION IS COMPLETED IAW REF JJ.

15.L.8. UNIT MASCOTS AND PETS.

15.L.8.A. PER CENTCOM GENERAL ORDER 1.C, DEPLOYED PERSONNEL WILL AVOID CONTACT WITH LOCAL ANIMALS (E.G., LIVESTOCK, CATS, DOGS, BIRDS, REPTILES, ARACHNIDS, AND INSECTS) IN THE DEPLOYED SETTING AND WILL NOT FEED, ADOPT, OR INTERACT WITH THEM IN ANY WAY.

15.L.8.B. ANY CONTACT WITH LOCAL ANIMALS, WHETHER INITIATED OR NOT, THAT RESULTS IN A BITE, SCRATCH OR POTENTIAL EXPOSURE TO THE ANIMAL'S BODILY FLUIDS (SALIVA, VENOM, ETC.) WILL BE IMMEDIATELY REPORTED TO THE CHAIN OF COMMAND AND MEDICAL PERSONNEL FOR EVALUATION AND FOLLOW-UP.

15.L.9. FOOD AND WATER SOURCES.

15.L.9.A. ALL WATER (INCLUDING ICE) IS CONSIDERED NON-POTABLE UNTIL TESTED AND APPROVED BY APPROPRIATE MEDICAL PERSONNEL (ARMY OR NAVY PREVENTIVE MEDICINE, AIR FORCE BIOENVIRONMENTAL ENGINEERING, INDEPENDENT DUTY MEDICAL TECHNICIAN/CORPSMAN). COMMERCIAL SOURCES OF DRINKING WATER MUST ALSO BE APPROVED BY THE U.S. ARMY PUBLIC HEALTH CENTER.

15.L.9.B. NO FOOD SOURCES WILL BE UTILIZED UNLESS INSPECTED AND APPROVED BY U.S. ARMY PUBLIC HEALTH CENTER (I.E. VETERINARY PERSONNEL).

15.L.9.C. COMMANDERS WILL ENSURE THE NECESSARY SECURITY TO PROTECT WATER AND FOOD SUPPLIES AGAINST TAMPERING BASED ON RECOMMENDATIONS PROVIDED IN FOOD/WATER VULNERABILITY ASSESSMENTS. MEDICAL PERSONNEL WILL PROVIDE CONTINUAL VERIFICATION OF QUALITY AND PERIODIC INSPECTION OF STORAGE AND PREPARATION FACILITIES.

15.L.10. ENVIRONMENTAL EXPOSURES OF CONCERN.

15.L.10.A. COLD INJURY RISK WILL DEPEND ON THE SPECIFIC REGION. HYPOTHERMIA, A LIFE-THREATENING CONDITION, MOSTLY OCCURS UP TO 55 DEGREES FAHRENHEIT AIR TEMPERATURE. RISK OF COLD INJURY INCREASES FOR PERSONS WHO ARE IN POOR PHYSICAL CONDITION, DEHYDRATED, WET, OR AT INCREASED ALTITUDE. COUNTERMEASURES INCLUDE PROPER WEAR OF CLOTHING AND COVER. EXPOSED SKIN IS MORE LIKELY TO DEVELOP FROSTBITE. ENSURE CLOTHING IS CLEAN, LOOSE, LAYERED, AND DRY. COVER THE HEAD TO CONSERVE HEAT.

15.L.10.B. HEAT STRESS/ SOLAR INJURIES/ILLNESS. HEAT INJURIES MAY BE THE GREATEST OVERALL THREAT TO MILITARY PERSONNEL DEPLOYED TO WARM CLIMATES. ACCLIMATIZATION TO INCREASED TEMPERATURE AND HUMIDITY MAY TAKE 10 TO 14 DAYS.

HEAT INJURIES CAN INCLUDE DEHYDRATION, SUNBURN, HEAT SYNCOPE, HEAT EXHAUSTION AND HEAT STROKE. ENSURE PROPER WORK-REST CYCLES, ADEQUATE HYDRATION, AND COMMAND EMPHASIS ON HEAT INJURY PREVENTION. ENSURE AVAILABILITY AND USE OF INDIVIDUAL PROTECTION SUPPLIES AND EQUIPMENT SUCH AS SUNSCREEN, LIP BALM, SUN GOGGLES/GLASSES, AND POTABLE WATER.

15.L.10.C. ALTITUDE. OPERATIONS AT HIGH ALTITUDES (OVER 9888 FT) CAN CAUSE A SPECTRUM OF ILLNESSES, INCLUDING ACUTE MOUNTAIN SICKNESS; HIGH ALTITUDE PULMONARY EDEMA, HIGH ALTITUDE CEREBRAL EDEMA, OR RED BLOOD CELL SICKLING IN SERVICE MEMBERS WITH SICKLE CELL TRAIT. ASCEND GRADUALLY, IF POSSIBLE. TRY NOT TO GO DIRECTLY FROM LOW ALTITUDE TO >9,888 FT (3,013 M) IN ONE DAY. A HEALTH CARE PROVIDER MAY PRESCRIBE ACETAZOLAMIDE (DIAMOX) OR DEXAMETHASONE (DECADRON) TO SPEED ACCLIMATIZATION IF ABRUPT ASCENT IS UNAVOIDABLE. TREAT AN ALTITUDE HEADACHE WITH SIMPLE ANALGESICS; MORE SERIOUS COMPLICATIONS REQUIRE OXYGEN AND IMMEDIATE DESCENT.

15.L.10.D. GOOD FIELD SANITATION PRACTICES ARE ESSENTIAL TO MAINTAIN FORCE HEALTH. THEY INCLUDE: FREQUENT HANDWASHING, PROPER DENTAL CARE, CLEAN AND DRY CLOTHING (ESPECIALLY SOCKS, UNDERWEAR, AND BOOTS), BATHING AND DENTAL CARE WITH WATER FROM A POTABLE SOURCE. CHANGE SOCKS FREQUENTLY, FOOT POWDER HELPS PREVENT FUNGAL INFECTIONS.

15.M. ALL OTHER INSTRUCTIONS AND GUIDANCE SPECIFIED IN INITIAL POLICY MESSAGE REMAIN IN EFFECT. MOD TWELVE IS NOW INVALID.

15.N. THE USCENTCOM POC FOR PREVENTIVE MEDICINE/FORCE HEALTH PROTECTION IS CCSG, DSN 312-529-0345; COMM: 813-529-0345; SIPR: CCSG-PMO@CENTCOM.SMIL.MIL OR KEVIN.CRON@CENTCOM.SMIL.MIL; NIPR: CENTCOM.MACDILL.CENTCOM-HQ.MBX.CCSG-WAIVER@MAIL.MIL OR KEVIN.M.CRON.MIL@MAIL.MIL//

PPG-TAB A: AMPLIFICATION OF THE MINIMAL STANDARDS OF FITNESS FOR DEPLOYMENT TO THE CENTCOM AOR; TO ACCOMPANY MOD TWELVE TO USCENTCOM INDIVIDUAL PROTECTION AND INDIVIDUAL/UNIT DEPLOYMENT POLICY

1. General. This PPG-TAB A accompanies MOD TWELVE, Section 15.C. and provides amplification of the minimal standards of fitness for deployment to the CENTCOM area of responsibility (AOR), including a list of medical conditions that may be sufficient to deny medical clearance for or to disapprove deployment of a service member, civilian employee, volunteer, or contractor's employee. The list of deployment-limiting conditions is not comprehensive; there are many other conditions that may result in denial of medical clearance for deployment. Possession of one or more of the conditions listed in this tab does not automatically imply that the individual may not deploy. Conversely, in addition to any specified disqualifying condition, one must also take into account the totality of one's medical conditions and the medical capabilities present at that individual's deployed location. This imposes the requirement to obtain a knowledgeable physician's opinion as to the deployability status of the individual and a valid deployment medical waiver from the appropriate waiver authority for the potentially medically disqualifying condition. "Medical conditions" as used here also include those health conditions usually referred to as dental, psychological and/or emotional.

- A. Uniformed Service Members will be evaluated for fitness according to service regulations and policies, in addition to the guidance in the parent PPG Modification (MOD). See MOD TWELVE REF E, F, G, H, O, Q and HH.
- B. DoD civilian personnel with apparently disqualifying medical conditions could still possibly deploy based upon an individualized medical assessment, waiver submission and disposition by the appropriate CENTCOM waiver authority (which shall be consistent with subparagraph 4.g.(3)(c) of DoDD 1404.10 and The Rehabilitation Act of 1973, as amended).
- C. DoD Contract personnel will be evaluated for fitness according to DoDI 3020.41 (REF J).
- D. Waivers for Uniformed Service Members, DoD civilian personnel and DoD Contract personnel will be considered only if all the following general conditions are met:
 - 1. The condition is not of such a nature or duration that an unexpected worsening or physical trauma is likely to have a grave medical outcome or negative impact on mission execution.
 - 2. The condition is stable and reasonably anticipated by the pre-deployment medical evaluator not to worsen during the deployment in light of physical, physiological, psychological, and nutritional effects of the duties and location.
 - 3. The condition does not require frequent clinical visits (more than quarterly) or ancillary tests (more than twice/year), does not necessitate significant limitations of physical activity or constitutes increased risk of illness, injury, or infection.
 - 4. There is no need for routine evacuation out of theater for continuing diagnostics or their evaluations. (All such evaluations must be accomplished before deployment.).
 - 5. Any required, ongoing health care or medications anticipated to be needed for the duration of the deployment are available in theater within the Military Health System or equivalent. Medication must have no special handling, storage, or other requirements

15.L.4.D.2. TIMEFRAME. POEMS WILL BE CREATED AND VALIDATED FOR EVERY MAJOR DEPLOYMENT SITE AS SOON AS SUFFICIENT DATA IS AVAILABLE. IN GENERAL, POEMS ARE A SUMMARY OF INFORMATION REFLECTING A YEAR OR MORE OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH DATA TO ENSURE ADEQUATE COLLECTION OF EXPOSURE INFORMATION.

15.L.4.D.3. CLASSIFICATION/PUBLICATION/ACCESS. POEMS WILL BE UNCLASSIFIED BUT POSTED ON THE PASSWORD PROTECTED DEPLOYMENT OCCUPATIONAL AND ENVIRONMENTAL HEALTH SURVEILLANCE DATA PORTAL AT [HTTPS://MESL.APGEA.ARMY.MIL/MESL/](https://MESL.APGEA.ARMY.MIL/MESL/) WHERE JOINT OCCUPATIONAL AND ENVIRONMENTAL HEALTH SURVEILLANCE DATA AND REPORTS ARE STORED. THE POEMS TEMPLATE CAN BE FOUND AT [HTTP://PHC.AMEDD.ARMY.MIL](http://PHC.AMEDD.ARMY.MIL).

15.L.4.D.4. RESPONSIBILITIES. SERVICE COMPONENTS AND JTFs ARE RESPONSIBLE FOR ENSURING POEMS ARE COMPLETED FOR SITES IN THEIR RESPECTIVE AOR. THEY SHOULD DEVELOP SITE PRIORITIZATION LISTS AND ENLIST THE SUPPORT OF SERVICE PUBLIC HEALTH ORGANIZATIONS (E.G., U.S. ARMY PUBLIC HEALTH CENTER (USAPHC)) TO DRAFT THE CONTENT OF A SITE POEMS. THE USAPHC OVERSEES THE DATA ARCHIVAL WEBSITE FOR PUBLICATION OF FINAL POEMS AND ASSOCIATED DOCUMENTS; HOWEVER, APPROVAL OF "FINAL" POEMS MUST COME FROM THE SERVICE COMPONENT/JTF FHP OFFICER WITH INPUT FROM PREVENTIVE MEDICINE RESOURCES IN DIRECT OR GENERAL AREA SUPPORT.

15.L.5. REPORTABLE MEDICAL EVENT (RME) SURVEILLANCE. SEE REF O, GG.

15.L.5.A. THE LIST OF DISEASES AND CONDITIONS THAT MUST BE REPORTED CAN BE FOUND IN THE TRI-SERVICE REPORTABLE EVENTS GUIDELINES AND CASE DEFINITIONS AT [HTTP://WWW.AFHSC.MIL](http://WWW.AFHSC.MIL) OR REF HH.

15.L.5.B. COMPONENT AND JTF SURGEONS ARE RESPONSIBLE FOR ENSURING UNITS WITHIN THEIR AO ARE COLLECTING THE APPROPRIATE RME DATA AND REPORTING THAT DATA THROUGH THEIR SERVICE SPECIFIC REPORTING MECHANISMS.

15.L.5.B.1. IT IS ONLY REQUIRED TO COPY CCSG FOR THE FOLLOWING RMES AT CCSG-PMO@CENTCOM.SMIL.MIL OR CENTCOM.MACDILL.CENTCOM-HQ.MBX.CCSG-WAIVER@MAIL.MIL: ANTHRAX; BOTULISM; CBRN AND TOXIC INDUSTRIAL CHEMICAL/MATERIAL (TIC/TIM) EXPOSURE; SEVERE COLD WEATHER/HEAT INJURIES; DENGUE FEVER; HANTAVIRUS DISEASE; HEMORRHAGIC FEVER; HEPATITIS B OR C, ACUTE; HIV; MALARIA; MEASLES; MENINGOCOCCAL DISEASE; MIDDLE EASTERN RESPIRATORY SYNDROME CORONAVIRUS (MERS-COV); NOROVIRUS; OUTBREAK OR DISEASE CLUSTER; PLAGUE; PNEUMONIA, EOSINOPHILIC; Q- FEVER; RABIES, HUMAN; SEVERE ACUTE RESPIRATORY INFECTIONS (SARI); STREPTOCOCCUS, INVASIVE GROUP A; TETANUS; TUBERCULOSIS, ACTIVE; TULAREMIA; TYPHOID FEVER; VARICELLA

15.L.5.C. RME REPORTING IS TO OCCUR AS SOON AS REASONABLY POSSIBLE AFTER THE EVENT HAS OCCURRED. EVENTS WITH BIOTERRORISM POTENTIAL OR RAPID OUTBREAK POTENTIAL ARE CONSIDERED URGENT RME AND IMMEDIATE REPORTING IS REQUIRED (WITHIN FOUR HOURS).

15.L.6. HEALTH RISK COMMUNICATION. SEE REF C.

15.L.6.A. DURING ALL PHASES OF DEPLOYMENT, PROVIDE HEALTH INFORMATION TO EDUCATE, MAINTAIN FIT FORCES, AND CHANGE HEALTH RELATED BEHAVIORS FOR THE PREVENTION OF DISEASE AND INJURY DUE TO RISKY PRACTICES AND UNPROTECTED EXPOSURES.

15.L.6.B. CONTINUAL HEALTH RISK ASSESSMENTS ARE ESSENTIAL ELEMENTS OF THE HEALTH RISK COMMUNICATION PROCESS DURING THE DEPLOYMENT PHASE. MEDICAL PERSONNEL AT ALL LEVELS WILL PROVIDE WRITTEN AND ORAL RISK COMMUNICATION PRODUCTS TO

(e.g., refrigeration, cold chain, or electrical power requirements). Medication must be well tolerated within harsh environmental conditions (e.g. heat or cold stress, sunlight) and should not cause significant side effects in the setting of moderate dehydration.

6. It is determined, based upon an individualized assessment, that the member can perform the essential functions of the position in the deployed environment, with or without a reasonable accommodation, without causing undue hardship. In evaluating undue hardship, the nature of the accommodation and the location of the deployment must be considered. Further, the member's medical condition must not pose a significant risk of substantial harm to the member or others taking into account the condition of the relevant deployed environment, with particular consideration of areas of armed conflict in the AOR. See REF Q.
7. The medical condition does not prevent the wear of personal protective equipment, including protective mask, ballistic helmet, body armor, and chemical/biological protective garments.
8. The medical condition does not prohibit required theater immunizations (other than smallpox & anthrax per current guidance) or medications (such as antimalarials, chemical and biological antidotes, and other chemoprophylactic antibiotics).
9. Any unresolved acute illness or injury should not impair one's duty performance during the duration of the deployment.

2. The provider evaluating personnel for deployment must bear in mind that in addition to the individual's duties, the environmental conditions that may impact health include extremes of temperature, physiologic demand (water, mineral, salt, and heat management), and poor air quality (especially particulates), while the operating conditions impose extremes of diet (to include fat, salt, and caloric levels), sleep deprivation, emotional stress, and sleep disturbance. If maintaining an individual's health requires avoidance of these extremes or conditions, she/he should not deploy.

3. The rules and facts listed in paragraph 2 should assist the evaluating medical authority to make qualified judgments as to whether an individual with an existing condition is suitable for deployment. Any condition that markedly impairs an individual's daily function is grounds for disapproval. Evaluation of functional capacity to determine fitness in conditions of physiologic demand is encouraged to make a decision. This includes such things as a complete cardiac evaluation to include stress imaging, when there is coronary artery disease or significant risk thereof or an official functional capacity exam (FCE) as determined by the initial evaluating provider. The evaluating provider should pay special attention to hematologic, cardiovascular, pulmonary, orthopedic, neurological, endocrine, dermatological, psychological, visual, and auditory conditions which may present a hazard to the individual or others and/or preclude performing functional requirements in the deployed setting. Also, the type and amount of medications being taken, their suitability, and availability in the theater environment must be considered as potential limitations. Pre-deployment processing centers may vary in medical examination/screening procedures; individuals should contact their respective mobilization site for availability of a processing checklist.

4. The guidance in this document should not be construed as authorizing use of defense health program or military health system resources for such evaluations unless previously authorized. Generally, Defense Health Agency and Military Health System resources are not authorized for the purpose of pre-deployment or travel medicine evaluations for contractor employees IAW REF J. Local command, legal, contracting and resource management authorities should be consulted for questions on this matter.

5. Shipboard operations that are not anticipated to involve operations ashore are exempt from the deployment-limiting medical conditions listed below and will follow Service specific guidance.

6. The general guidance from MOD TWELVE section 15.C applies to:

A. All personnel (uniformed service members, government civilian employees, volunteers, and DoD contractor employees) deploying to theater must be medically, dentally and psychologically fit for deployment and possess a current Periodic Health Assessment (PHA) or physical. Fitness specifically includes the ability to accomplish tasks and duties unique to a particular operation and the ability to tolerate environmental and operational conditions of the deployed location.

B. The existence of a chronic medical condition may not necessarily require a waiver to deploy. Personnel with existing conditions, other than those outlined in this document, may deploy if either:

1. An approved medical waiver, IAW Section 15.C.3, is documented in the medical record.

OR

2. The conditions in Para. 1.D.1-1.D.9 are met and for most conditions, 90 days is a reasonable timeframe to determine stability, and assess need for further care, subject to the examining provider's judgment. The exception to this is noted in paragraph 7.G. Psychiatric Conditions.

7. Documented medical conditions precluding medical clearance. A list of all possible diagnoses and their severity that may cause an individual to be non-deployable would be too expansive. *Rather than relying solely on a specific list of medical conditions, the medical evaluator must carefully consider whether the climate, altitude, nature of available food and housing, availability of medical, behavioral health, dental, surgical, and laboratory services, or whether other environmental and operational factors may be hazardous to the deploying person's health because of a known physical or psychological condition.* The following list of conditions should not be considered exhaustive. Other conditions may render an individual medically non-deployable (see paragraph 6). Medical clearance to deploy with any of the following documented medical conditions may be granted, except where otherwise noted, IAW MOD TWELVE Section 15.C. If an individual is found deployed with a *pre-existing* non-deployable condition and without a waiver for that condition, a waiver request to remain deployed should be submitted to the respective Component Surgeon. If the waiver request is denied, the individual will be redeployed out of the CENTCOM AOR. **Individuals with the following conditions will not deploy without an approved waiver:**

A. Specific Medical Conditions / Restrictions:

1. Asthma or other respiratory conditions that have a Forced Expiratory Volume-1 $\leq$ 50% of predicted despite appropriate therapy, that has required hospitalization in the past 12 months, or that requires daily systemic (not inhaled) steroids. Respiratory conditions that have been well controlled for 6 months and are evaluated to pose no risk of deterioration in the deployed environment may be considered for waiver.
2. Seizure disorder, either within the last year or currently on anticonvulsant medication for prior seizure disorder/activity. Persons on a stable anticonvulsant regimen, who have been seizure-free for one year, may be considered for waiver.
3. Diabetes mellitus, type 1 or 2, on pharmacotherapy or with $HgA_1C > 7.0$.

- a. Type 1 diabetes or insulin-requiring type 2 diabetes..
 - b. Type 2 diabetes, on oral agents only, with no change in medication within the last 90 days and HgA1C ≤ 7.0 does not require a waiver if the calculated 10-year Framingham coronary heart disease risk percentage is less than 15% based on the NCEP ATP III guidelines. If the calculated 10-year risk is 15% or greater, further evaluation is required prior to waiver submission. See B.8. for more detailed instructions.
 - c. Newly diagnosed diabetics will require 90 days of stability, either on oral medications or with lifestyle changes, before a waiver will be considered. They should also have documentation of a complete initial diabetic evaluation (eye exam, foot exam, nutrition counseling, etc.).
4. History of heat stroke. No multiple episodes, no persistent sequelae or organ damage and no episode within the last 24 months may be considered for waiver.
 5. Meniere's disease or other vertiginous/motion sickness disorder, unless well controlled on medications available in theater.
 6. Recurrent syncope for any reason. Waiver request should include the etiology and diagnosis of the condition.
 7. Any musculoskeletal condition that significantly impairs performance of duties in a deployed environment. If there are concerns, an official functional capacity exam (FCE) should be performed and results included with the waiver request.
 8. Renolithiasis, recurrent or currently symptomatic.
 9. Pregnancy.
 10. Obstructive sleep apnea (OSA). The OSA is diagnosed with an attended, in-laboratory polysomnography (PSG) with a minimum of 2 hours of total sleep time, that yields an apnea-hypopnea index (AHI), and/or respiratory disturbance index (RDI), of greater than 5 / hour. Unattended, home PSG is not acceptable for deployment purposes. For individuals previously diagnosed with OSA, updated or repeat PSG is not required unless clinically indicated (i.e. significant change in body habitus, corrective surgery or return of OSA symptoms). Individuals treated with an oral appliance require PSG documentation that OSA is controlled with its use. Individuals who are treated with automatic positive airway pressure (APAP), continuous positive airway pressure (CPAP) and bi-level positive airway pressure (BPAP) are acceptable as long as the condition being treated is OSA and not a more complex respiratory disorder. Complex OSA, central sleep apnea or OSA that requires advanced modes of ventilation such as adaptive servo-ventilation (ASV) or average volume assured pressure support (AVAPS) is generally non-deployable. Individuals using PAP therapy should deploy with a machine that has rechargeable battery back-up and sufficient supplies (air filters, tubing and interfaces/masks) for the duration of the deployment. Individuals deploying with PAP therapy to a location where the sleep environment has unfiltered air will typically not be granted waivers if a waiver is otherwise required per the guidance below. The following guidelines are designed to ensure that individuals with OSA are adequately treated and that their condition is not of the severity that would pose a safety risk should they be required to go without their PAP therapy for a significant length of time.
 - a. Symptomatic OSA (i.e. excessive daytime sleepiness) of any severity, with or without any treatment.
 - b. Asymptomatic mild OSA (diagnostic AHI and RDI $< 15/\text{hr}$): Deployable with or without treatment (PAP or otherwise). **No waiver required.**

- c. Moderate OSA (diagnostic AHI or RDI $\geq 15/\text{hr}$ and $< 30/\text{hr}$): **No waiver required** to deploy if successfully treated (CPAP or otherwise), except to Afghanistan, Iraq or Yemen.
- d. Severe OSA (AHI or RDI $\geq 30/\text{hr}$): Once successfully treated (PAP or otherwise), requires a waiver for deployment to any location in the AOR.
- e. For moderate and severe OSA, adherence to positive airway pressure (PAP) therapy must be documented prior to deployment. Adherence is defined as PAP machine data download (i.e. compliance report) that reveals the machine is being used for at least 4 hours per night for greater than 70% of nights over the previous 30 day period.

11. History of clinically diagnosed traumatic brain injury (mTBI/TBI) of any severity, including mild. Such history does not necessitate a waiver request, but does require pre-deployment evaluation, which may include both neurological and psychological components. This is in accordance with DoDI 6490.11, Enclosure 3, paragraph 4, policy guidance for management of mild TBI. This document can be found at http://www.usaisr.amedd.army.mil/clinical_practice_guidelines.html. Individuals who have a history of a single mild Traumatic Brain Injury may deploy once released by a medical provider after 24 hours symptom free. Individuals who have sustained a second mTBI within a 12 month period, may deploy after seven days symptom free and release by a medical provider. Individuals who have had three clinically diagnosed TBIs (of any severity, including mild) since their last full neurological and psychological DoDI 6490.11 defined evaluation are required to have such an evaluation completed prior to deployability determination.

12. BMI > 35 with serious comorbidities such as; diabetes, cardiovascular disease, hypertension, sleep apnea, obesity-related cardiomyopathy, severe joint disease, etc.

13. Any medical conditions (except OSA-see 10 above) that require certain durable medical equipment or appliances (e.g., nebulizers, catheters, spinal cord stimulators) or that requires periodic evaluation/treatment by medical specialists not readily available in theater.

B. Cardiovascular Conditions:

- 1. Symptomatic coronary artery disease. Also, see B.8.
- 2. Myocardial infarction within one year of deployment. Also, see B.8.
- 3. Coronary artery bypass graft, coronary artery angioplasty, carotid endarterectomy, other arterial stenting, or aneurysm repair within one year of deployment. Also, see B.8.
- 4. Cardiac dysrhythmias or arrhythmias, either symptomatic or requiring medication, electro-physiologic control, or automatic implantable cardiac defibrillator or other implantable cardiac devices.
- 5. Hypertension that is controlled with a medication or lifestyle regimen that has been stable for 90 days and requires no changes does not require a waiver. Single episode hypertension found on predeployment physical should be accompanied by serial blood pressure checks (3 day BP checks) to ensure hypertension is not persistent.
- 6. Heart failure or history of heart failure.
- 7. Morbid obesity (BMI ≥ 40 or weight greater than 300 pounds) in accordance with National Heart Lung and Blood Institute guidelines without any significant comorbidities. Military personnel in compliance with service body fat guidelines do not require a waiver.

Civilians and contractors should submit a body fat worksheet with the waiver request. A BMI calculator is located at <http://www.nhlbi.nih.gov/guidelines/obesity/BMI/bmicalc.htm>

8. Civilian personnel who are 40 years of age or older must have a Framingham 10-year CHD risk percentage calculated (online calculator is available at <http://cvdrisk.nhlbi.nih.gov/calculator.asp>). If the individual's calculated 10-year CHD risk is 15% or greater, the individual should be referred for further cardiology work-up and evaluation, to include at one of the following: graded exercise stress test with a myocardial perfusion scintigraphy (SPECT scan) or stress echocardiography as determined by the evaluating cardiologist. Results of the evaluation (physical exam, Framingham results, etc.) and testing, along with the evaluating physician's recommendation regarding suitability for deployment, should be included in a waiver request to deploy.

9. Uncontrolled hyperlipidemia. Lipid screening should be accomplished IAW Service specific guidelines for lipid assessment. All others (e.g. civilians, contractors) ≥35 years old should have a lipid screening profile performed prior to deployment. While hyperlipidemia should be addressed IAW clinical treatment guidelines, hyperlipidemia values that are outside any of the following (Total Cholesterol > 260, LDL > 190, Triglycerides > 500), either treated or untreated, requires a waiver to be submitted.

C. Infectious Disease:

1. Blood-borne diseases (Hepatitis B, Hepatitis C, HTLV) that may be transmitted to others in a deployed environment. Waiver requests for persons testing positive for a blood borne disease should include a full test panel for the disease, including all antigens, antibodies and viral load.
2. Confirmed HIV infection is disqualifying for deployment, IAW References Q and Y, service specific policies, and agreements with host nations.
3. Latent tuberculosis (LTBI). Individuals who are newly diagnosed with LTBI by either TST or IGRA testing will be evaluated for TB disease with at least a symptom screen, a chest x-ray and they will have documented LTBI evaluation and counseling for consideration of treatment. Those with untreated or incompletely treated LTBI, including those with newly diagnosed LTBI, previously diagnosed LTBI, and those currently under treatment for LTBI will be provided information regarding the risks and benefits of LTBI treatment during deployment (see paragraph 15.G.6.C). Individuals meeting the above criteria **do not require a waiver** for deployment. Active duty TST convertors who have documented completion of public health nursing evaluation for TB disease and counseling for LTBI treatment described above **may deploy without a waiver** as long as all Service specific requirements are met.
4. History of active tuberculosis (TB). Must have documented completion of full treatment course prior to deployment. Those currently on treatment for TB disease may not deploy.
5. A CENTCOM waiver cannot override host or transit nation infectious disease or immunization restrictions. Active duty must comply with status of forces agreements; civilian deployers should contact the nation's embassy for up-to-date information.

D. Eye, Ear, Nose, Throat, Dental Conditions:

1. Vision loss. Best corrected visual acuity must meet job requirements to safely perform duties. Bilateral blindness or visual acuity that is unsafe for the combat environment per the examining provider.

2. Refractive eye surgery. Personnel who have had laser refractive surgery must have a satisfactory period for post-surgical recovery before deployment. There is a large degree of patient variability which prevents establishing a set timeframe for full recovery. The attending ophthalmologist or optometrist will determine when recovery is complete.

a. Personnel are non-deployable while still using ophthalmic steroid drops post-procedure.

b. Photorefractive keratectomy (PRK). Personnel are non-deployable for three months following uncomplicated PRK unless a waiver is granted. Related "surface ablation" procedures such as laser epithelial keratomileusis (LASEK) and epithelial LASIK are to be considered equivalent to PRK. Waiver request should include clearance from treating ophthalmologist or optometrist.

c. Laser assisted in situ keratomileusis (LASIK). Personnel are non-deployable for one month following uncomplicated LASIK unless a waiver is granted. Waiver request should include clearance from treating ophthalmologist or optometrist.

3. Hearing loss. Service members must meet all service-specific requirements. Individuals must have sufficient unaided hearing to perform duties safely and waiver requests should reflect this. Those deploying to combat areas should have an occupationally focused assessment of ability to hear and wake up to emergency alarms unaided and hear instructions in the absence of visual cues such as lip reading. If there is any safety question, Speech Recognition In Noise Test (SPRINT) or equivalent is a recommended adjunct.

4. Tracheostomy or aphonia.

5. Patients without a dental exam within 12 months of deployment, or those who are likely to require evaluation or treatment during the period of deployment for oral conditions that are likely to result in a dental emergency.

a. Individuals being evaluated by a non-DoD civilian dentist should use a DD Form 2813, or equivalent, as proof of dental examination.

b. Individuals with orthodontic equipment require a waiver to deploy. Waiver requests to deploy should include a current evaluation by their treating orthodontic provider and include a statement that wires with neutral force are in place.

E. Cancer:

1. Cancer for which the individual is receiving continuing treatment or requiring frequent subspecialist examination and/or laboratory testing during the anticipated duration of the deployment.

2. Precancerous lesions that have not been treated and/or evaluated and that require treatment/evaluation during the anticipated duration of the deployment.

3. All cancers should be in complete remission for at least a year before a waiver is submitted.

F. Surgery:

1. Any medical condition that requires surgery (e.g., unrepaired hernia) or for which surgery has been performed and the patient requires ongoing treatment, rehabilitation or additional surgery to remove devices (e.g., external fixator placement).

2. Individuals who have had surgery requiring follow up during the deployment period or who have not been cleared/released by their surgeon (excludes minor procedures).
3. Individuals who have had surgery (open or laparoscopic) within 6 weeks of deployment.

G. Psychiatric Conditions: Waiver required for all conditions listed below (list is not exclusive). For detailed guidance on deployment-limiting psychiatric conditions or psychotropic medications, refer to Health Affairs Policy Memorandum, "Clinical Practice Guidelines for Deployment-Limiting Mental Disorders and Psychotropic Medications", October 7, 2013 (or most up to date Health Affairs Memorandum).

1. Psychotic and Bipolar Disorders.
2. DSM IV or DSM 5 diagnosed psychiatric disorders with residual symptoms, or medication side effects, which impair social and/or occupational performance.
3. Mental health conditions that pose a substantial risk for deterioration and/or recurrence of impairing symptoms in the deployed environment.
4. Chronic insomnia that requires the use of sedative hypnotics/amnestics, benzodiazepines, and antipsychotics for greater than three months.
5. Psychiatric hospitalization within the last 12 months
6. Suicidal Ideation or Suicide Attempt with the last 12 months
7. Enrollment in substance abuse program (inpatient, service specific substance abuse program or outpatient) within the last 12 months
 - a. Substance abuse disorders (not in remission), actively enrolled in Service Specific substance abuse programs.
8. Use of antipsychotics or anticonvulsants for stabilization of DSM IV or DSM-5 diagnosis
9. Use of 3 psychotropics (antidepressants, anticonvulsants, antipsychotics and benzodiazepines) for stabilization
10. Psychiatric disorders with fewer than three months of demonstrated stability from the last change in treatment regimen (medication, either new or discontinued, or dose change).
11. Psychiatric disorders newly diagnosed during deployment do not immediately require a waiver or redeployment. Disorders that are deemed treatable, stable, and having no impairment of performance or safety by a credentialed mental health provider do not require a waiver to remain in theater.

H. Medications – although not exhaustive, use of any of the following medications (specific medication or class of medication) is disqualifying for deployment, unless a waiver is granted:

1. Blood modifiers:
 - a. Therapeutic Anticoagulants: warfarin (Coumadin®), rivaroxaban (Xarelto®).
 - b. Platelet Aggregation Inhibitors or Reducing Agents: clopidogrel (Plavix®), anagrelide (Agrylin®), Dabigatran (Pradaxa®), Aggrenox®, Ticlid (Ticlopidine®), Prasugrel (Effient®), Pentoxifylline (Trental®), Cilostazol (Pletal®). Note: Aspirin use in theater is to be limited to individuals who have been advised to continue use by their healthcare provider for medical reasons; such use must be documented in the medical record.

- c. Hematopoietics: filgrastim (Neupogen®), sargramostim (Leukine®), erythropoietin (Epogen®, Procrit®).
 - d. Antihemophilics: Factor VIII, Factor IX.
2. Antineoplastics (oncologic or non-oncologic use): e.g., antimetabolites (methotrexate, hydroxyurea, mercaptopurine, etc.), alkylators (cyclophosphamide, melphalan, chlorambucil, etc.), antiestrogens (tamoxifen, etc.), aromatase inhibitors (anastrozole, exemestane, etc.), medroxyprogesterone (except use for contraception), interferons, etoposide, bicalutamide, bexarotene, oral tretinoin (Vesanoid®).
 3. Immunosuppressants: e.g., chronic systemic steroids.
 4. Biologic Response Modifiers (immunomodulators) e.g., abatacept (Orencia®), adalimumab (Humira®), anakinra (Kineret®), etanercept (Enbrel®), infliximab (Remicade®), leflunomide (Arava®), etc.
 5. Benzodiazepines: Chronic use or newly prescribed: lorazepam (Ativan), alprazolam (Xanax), diazepam (Valium), clonazepam (Klonopin), etc.
 6. CII Stimulants taken for treatment of ADHD/ADD: Ritalin, Concerta, Adderall, Dexedrine, Focalin XR, Vyvanse, etc.
 7. Sedative Hypnotics/Amnestics: Taken for greater than three months for treatment of chronic insomnia: zolpidem (Ambien, Ambien CR), eszopiclone (Lunesta), zaleplon (Sonata), estazolam (ProSom), triazolam (Halcion), temazepam (Restoril), flurazepam (Dalmane), etc.
 8. Antipsychotics. Including atypical antipsychotic medication.
 9. Antimanic (bipolar) agents: e.g., lithium.
 10. Anticonvulsants, used for seizure control or psychiatric diagnoses.
 - a. Anticonvulsants (except those listed below) which are used for *non-psychiatric* diagnoses, such as migraine, chronic pain, neuropathic pain, and post-herpetic neuralgia, are not deployment limiting as long as those conditions meet the criteria set forth in this document and accompanying MOD TWELVE. No waiver required.
 - b. Valproic acid (Depakote®, Depakote ER®, Depacon®, etc.).
 - c. Carbamazepine (Tegretol®, Tegretol XR®, etc.).
 11. Varenicline (Chantix®).
 12. Opioids, opioid combination drugs, or tramadol (Ultram®) for chronic use (greater than 30 days).
 12. Insulin and exenatide (Byetta®).
 13. Injectable medications of any type.

The background of the page is a photograph of a submarine's conning tower and deck. The sun is setting or rising, creating a warm, golden glow over the ocean and the ship. The conning tower is prominent in the center, with its various masts and antennas visible. The deck in the foreground shows circular hatch covers and other equipment.

United States Navy Transgender and Gender Transition Commanding Officer's Toolkit

This guide is intended as a supplement to the *Transgender Service in the US Military: An Implementation Handbook*. The Department of Defense (DoD) handbook addresses many topics to assist in understanding transgender terms, definitions, and related issues which are not fully repeated in this guide. The DoD guide and this guide are not all-encompassing. Should Commanding Officers have questions or discover situations which are not adequately addressed, they are encouraged to contact the USN Service Central Coordination Cell (SCCC) listed at the end of this guide for policy assistance.

Existing standards of conduct shall continue to apply to all Service Members with the continued expectation of treating each other with dignity, respect, and professionalism.

Commanding Officers should use this opportunity to review their local standards of personal and professional conduct to ensure that they provide adequate guidance in relevant areas, apply uniformly to all personnel, and promote an environment free from personal, social or institutional barriers. Place special emphasis during such review on the following areas: berthing, shower and head facilities, dress and appearance, and zero tolerance for harassment and hazing. Standards of conduct must clearly address the responsibility of leaders, supervisors, and subordinate personnel to foster unit cohesion, good order and discipline, respect for authority, and mission accomplishment.

Commanding Officers must promote the dignity and respect of all personnel to include transgender Sailors, prevent discrimination and harassment based on gender identity, and provide guidance to command personnel as required regarding gender transition by military personnel.

Understanding the Transition Process

Gender Transition Process

Though the **Gender Transition** process (the process of changing the physical appearance of an individual to align with their preferred gender identity) involves medical, social, and administrative components, the starting point will always be a medical diagnosis. If a Sailor expresses to command leadership feelings of gender non-conformity, which in some cases can cause significant distress or anxiety, it is important to recognize the Sailor is likely under psychological strain that may place them in a vulnerable position. Assist the Sailor in obtaining an appointment with mental health professionals to obtain a medical diagnosis at the first available opportunity. Leadership needs to assure the Sailor of the command's support, address personal privacy concerns, and reiterate zero tolerance for any discrimination or harassment.

A medical diagnosis is a fundamental first step in a transition process. When a medical diagnosis of **Gender Dysphoria** (a medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their birth gender and their sex and that may cause them difficulty in functioning in their social or work environment) indicates Gender Transition is necessary, the Sailor, Military Medical Provider (MMP), and Commanding Officer (CO) will jointly develop a **Transition Plan**.

Gender Dysphoria is a condition that will rarely require emergency care/medical intervention or removal from a command. A diagnosis of Gender Dysphoria involves a multi-visit, comprehensive medical review conducted at an appropriate Military Medical Treatment Facility. Transition will not be initiated simply on the basis of a declaration of a Gender Identity issue by the Sailor. There must be a medical diagnosis and medical treatment plan on record as developed by the MMP in conjunction with the BUMED Regional Transgender Care Team (TGCT) (See BUMEDNOTE 6000).

Medical courses of treatment vary from person to person and may include any or all of the following: behavioral health counseling, cross-sex hormone therapy, surgery, and real-life experience (RLE). Goals are to minimize impact to both the Command and the Sailor, and to maintain the Sailor's fitness for duty, or return the Sailor to duty as quickly as possible following periods of limited duty. A CO may not disapprove medically-necessary Gender Transition care or timing of urgent care, but may work with the Sailor's medical provider and the Sailor to adjust timing of periods of limited duty to support operational or work requirements.

Transition: A period of time when individuals change from the gender role associated with their sex assigned at birth to a different gender role. For many people, this involves learning how to live socially in another gender role, for others this means finding a gender role and expression that are most comfortable for them. Transition may or may not include feminization or masculinization of the body through cross-sex hormone therapy or other medical procedures. The nature and duration of transition are variable and individualized.

Understanding the Transition Process

The Sailor's CO will approve the Transition Plan, which will include the **Medical Treatment Plan** as outlined and approved by the MMP, guidance regarding the immediacy and timing of recommended treatment, guidance on RLE, operational and mission requirements, length of the treatment plan, discussion on the expectation of maintaining standards based on the gender marker in personnel administrative systems/DEERS, communication requirements to include timing of disclosure to the workforce and taking the Sailor's desires into consideration.

Due to Navy operational requirements, transition should be completed within 18 months and no later than 24-months with waiver following the date the CO approves a Sailor's Transition Plan. However, there is not a standardized transition timeline. Once the Transition Plan is completed, there may be other medical procedures undertaken by the individual but these would be considered as a routine medical procedure and not to be affiliated with the Transition Plan. Each Sailor's transition will be handled on a case-by-case basis with medical determination of fitness for duty the controlling factor. A command-approved Transition Plan will detail the Sailor's anticipated transition timeline based on the individual's diagnosis and Medical Treatment Plan. Similar to other medical conditions, complications or unforeseen issues may arise which alter the treatment plan timeline.



Gender Transition Process: Gender transition in the military begins when a Service Member receives a diagnosis from a military medical provider indicating that the member's gender transition is medically necessary, and concludes when the Service Member's gender marker in DEERS is changed and the member is recognized in the preferred gender.

Understanding the Transition Process

Real Life Experience (RLE): RLE is the phase in the gender transition process during which the individual commences living socially in the gender role consistent with their preferred gender. RLE may or may not be preceded by the commencement of cross-sex hormone therapy, depending on the medical treatment associated with the individual Service Member's gender transition. The RLE phase is also a necessary precursor to certain medical procedures, including gender transition surgery. RLE generally encompasses dressing in the new gender, as well as using preferred gender berthing, bathroom, and shower facilities.

Real Life Experience

RLE refers to a period of time during transition when a transgender person changes outward gender expression and lives in their preferred gender.

- This will often start prior to an official administrative change of gender during off-duty hours and may include socialization, clothing, and appearance (hair style, cosmetic, etc.) changes. A transgender Sailor may desire to engage in RLE during a leave period or after duty hours.
- RLE expectations and timing must be discussed and codified in the Medical Treatment Plan and the Transition Plan. A Sailor who is undergoing transition and has been approved by the CO to conduct RLE in accordance with the agreement in the Sailor's Transition Plan is not considered to be cross-dressing. A more extensive discussion of cross-dressing and the limitations of such are listed on the Navy Personnel Command website under Support & Services/21st Century Sailor/LGBT Resources.
- There is no ability to conduct RLE shipboard/underway. Clear expectations for RLE in various social settings should be communicated and is typically not authorized at military functions in or out of uniform unless the CO has documented and approved.
- There are three situations where RLE may occur, each with its own considerations or restrictions:
 - Foreign Locations. Commands need to be cognizant of host-nation laws and social norms when considering RLE in an off-duty status in foreign nations. Travel warnings, the State Department's country-specific website, the DoD Foreign Clearance Guide, and any U.S. regional military Commander directives should be reviewed and heeded.
 - Stationed in the United States, Shipboard. When a Service Member is onboard a ship, they are considered in an on-duty status, even after working hours. In accordance with DoDI 1300.28, RLE takes place away from the working environment. As part of the approved Transition Plan, COs may allow for embarkation and debarkation from the ship for Sailors going on liberty to commence after-hours RLE.

Understanding the Transition Process

- Stationed in the United States, Shore Based. When a Service Member is stationed at a shore facility, they may execute RLE away from the workplace.

Transition Process Complete

When the MMP determines that the Medical Treatment Plan is complete, the Sailor obtains the required State or Federal legal documents, as outlined in DoDI 1300.28 (amended passport, updated birth certificate, or court order). Following CO written approval (sample on pg. 25), the Sailor may submit a request to execute the gender marker change in DEERS.

When the Service Member's gender marker in personnel administrative systems/DEERS is changed (as completed per MILPERSMAN 1000-131), apply the preferred gender standards for uniform, grooming, PFA, and Military Personnel Drug Abuse Testing Program (MPDATP). The requirement to meet preferred gender standards after the gender marker change must be clearly communicated to the transitioning Sailor so that they are prepared, particularly for the PFA.

Direct the use of military berthing, head, and shower facilities according to the Service Member's gender marker as reflected in DEERS.



Gender Transition Complete: Service Member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the preferred gender. The Service member obtains appropriate documentation and the Commanding Officer provides written permission to change the gender marker in personnel administrative system/DEERS.

Counseling Tips

Transgender Service Member: , Service Member who has received a medical diagnosis indicating that gender transition is medically necessary, including any Service Member who intends to begin transition, is undergoing transition, or has completed transition and is stable in the preferred gender.

First Steps for Commanding Officers

When a Sailor Informs the Commanding Officer that they are/suspect they are Transgender

The CO should be supportive, respect privacy concerns, and describe the basic tenets of policies and processes outlined in instruction and the DoD Handbook relevant to Navy transgender personnel. Be cognizant that the Sailor may know very little or have incorrect information about existing DoD and Navy transgender policy, what options are available to them, and what, if any, immediate actions will be taken. Assure the Sailor that any actions regarding performance of duties will be based on readiness and the Sailor's ability to perform tasks as determined by medical evaluations and operational requirements. This will likely be a good opportunity to discuss the basics of how gender transition might typically occur, to include the need for medical diagnosis, a Medical Treatment Plan, and development of a Transition Plan which will detail the steps and timing of the Sailor's gender transition, in the event their personal decision includes transition. Tips for discussion:

- The timing of undergoing transition. There are distinct differences between shipboard and shore-based transitions. Ideally, transitions are conducted in a shore environment to allow greater access to health care, greater opportunity to conduct real-life experience and to reduce the added stressors of operational requirements. The timing discussion should include any potential career implications, especially with regard to sea duty completion, and whether Sailor may prefer transfer or staying in the current command.
- The CO may not deny medically necessary care but may adjust the timing of transition or surgical procedures based on mission unless the care is medically urgent as determined by the MMP. While the care outlined in the Medical Treatment Plan is considered medically necessary, it is typically not medically urgent. This can be verified through the MMP.

Counseling Tips

- If a Sailor desires to remain shipboard during transition, they are required to maintain standards up to and through the legal change (must maintain birth gender grooming and appearance standards and use birth gender head, shower, and berthing facilities until the CO receives medical proof of transition complete and provides the Sailor the written approval to make the DEERS gender marker change per MILPERSMAN 1000-131). Once a Sailor's gender marker is changed in DEERS, they will shift grooming and uniform standards and use the head, shower, and berthing facilities associated with their preferred gender. This shift should be accompanied by communications with shipmates in the work center and shared living spaces. The transitioning Sailor should be consulted on how this will be communicated.
- In either case (shipboard or shore-based transitions), Sailors should be counseled that they will be required to meet all gender standards associated with their gender marker in DEERS. This means that upon completing their transition they are expected to be able to meet their new physical fitness requirements.
- The Navy will allow up to 18 months for gender transition completion. Waivers for an additional 6 months up to two years maximum for transition may be considered. If Sailors desire additional medical procedures after the legal transition is complete, it is considered to be as any other medical procedure but is not considered part of the transition process by the Navy.



Gender Marker: Data element in DEERS that identifies a Service Member's gender. A Service Member is expected to adhere to all military standards associated with the member's gender marker in DEERS and use military berthing, bathroom, and shower facilities in accordance with the DEERS gender marker.

Counseling Tips

Stable in Preferred Gender: Medical care identified or approved by a military medical provider in a documented medical treatment plan is complete, no functional limitations or complications persist, and the individual is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning. Continuing medical care, including but not limited to cross-sex hormone therapy, may be required to maintain a state of stability.

- Physical Fitness Assessment (PFA). Since PRIMS gender marker data is fed by personnel systems, there is no ability to change testing standards until the legal gender marker change in DEERS. Personnel will be subject to assessment standards of their birth gender prior to the change in DEERS unless medically waived as required like any other medical condition.
- Sailors requiring adjustments to a Transition Plan may do so with CO approval. CO's may adjust the Transition Plan as required or as it makes sense in consultation with the Sailor.

Communication

Communication between the CO and Sailor is critical throughout the transition process. Discuss who will communicate the Sailor's transition to shipmates - the Sailor, CO, or together. A Department Head or another senior member of the command may also be chosen to communicate to the Sailor's work center, but the CO will want to ensure the message content is appropriately non-stigmatizing.

The goal is to keep the transitioning Sailor and other command members as comfortable as possible throughout the entire process. While the transitioning Sailor's privacy is to be respected, there will be a point where other members of the command will notice changes and communication is necessary.



Grooming and Uniform Standards / Facilities Use

Uniform and Grooming Standards

Standards for uniform and grooming must match the official gender as annotated in DEERS, therefore, a transgender Sailor's shift of uniform and grooming standards will occur concurrently with the administrative change of gender in DEERS. Sailors who transition gender will not receive a special uniform allowance for uniforms of their acquired gender. Service Members will be responsible for purchasing any required uniforms after completing a Gender Transition using their current clothing replacement allowance (CRA). An adjustment in the type of clothing allowance (male-to-female or female-to-male) will be made when DFAS is made aware of a gender change. The rate change may not be reflected in the Service Member's pay account until the next year of their anniversary. Keep in mind the NWU are unisex, there are not male and female versions. Optional items (such as skirts, relax fit jackets, sweaters) are not funded as part of the clothing allowance. Remember that Service uniforms and Service Dress White uniforms have a 24-month wear life and the Service Dress Blue has a 36-month wear life and should be replaced accordingly or as required to maintain a neat and professional appearance. Sailors are provided the full amount of a new uniform in their annual CRA during the wear life of each uniform. The key to this and all important decisions that involve fiscal expenditures is planning.

Berthing

Updated Standard Organization and Regulations Manual (SORM) guidance will be published via NAVADMIN and included at a future date in OPNAVINST 3120.32D. COs should consider developing command modesty policies as required. Courteous behavior and individual privacy of each command member should be addressed. The creation of separate living quarters based on gender identity is prohibited, and the CO is not authorized to establish practices that physically segregate Service Members according to gender identity.

Berthing assignment must match gender as annotated in DEERS, therefore, a transgender Sailor's shift of berthing will occur concurrently with an administrative change of gender in DEERS. Prior to the DEERS gender marker change, the Sailor will be assigned to the corresponding berthing of their birth gender. After the DEERS change, the Sailor will be assigned to the corresponding berthing of their preferred gender.

Preferred Gender: the gender in which a transgender Service Member will be recognized when that member's gender transition is complete and the member's gender marker in DEERS is changed.

Grooming and Uniform Standards / Facilities Use

Head/Restroom and Shower Facilities (referred to as “facilities”) Usage

Similar to assignment of berthing, head and shower facilities use must match gender as annotated in DEERS, therefore, a transgender Sailor’s shift of facilities usage will occur concurrently with administrative change of gender in personnel administrative systems/DEERS upon submission of legal documentation of gender change in accordance with MILPERSMAN 1000-131.



Physical Fitness Assessment (PFA) and Urinalysis

Physical Fitness Assessment (PFA) Program standards

There are no separate or distinct standards for transgender Service Members. Service Members must adhere to applicable fitness program standards commensurate with the gender marker currently reflected in DEERS. Service Members and MMPs must carefully consider the time required to adjust to new PRT standards as part of the medical treatment and transition planning process.

Sailors who complete transition are expected to meet Navy standards of the preferred gender at the same time as the administrative gender marker change in DEERS. MMPs should take this into account when signing off transitioning individuals as complete.

Military Personnel Drug Abuse Testing (Urinalysis) Program (MPDATP)

Transgender personnel are subject to all urinalysis program requirements, and direct observation of urine collection by a trained observer is required. Not all transgender people who transition gender make the full surgical change – therefore, COs retain the discretionary authority in assigning observers to ensure the dignity of the transgender Sailor and the designated observer are upheld while maintaining the requirements of the urinalysis program. An observer is not required to conduct this duty if they are uncomfortable doing so. Examples of allowances include:

- Use of medical personnel as observers if available and/or as authorized by the medical command.
- Finding an observer who is comfortable observing a transgender Sailor who may have different genitalia than the gender marker listed in DEERS.



Transfer / Reassignment

Command Transfer/Reassignment

Recommended duty reassignments based on a medical diagnosis and a treatment plan will be coordinated on a case-by-case basis consistent with other medical conditions that may require transfer for medically indicated reassignment.

As a general rule, Gender Transitions will only be allowable shipboard if a transitioning Service Member can maintain deployability standards, with exceptions for minor convalescent leave periods, up to and through the legal change (birth gender standards up to legal change and then preferred gender standards will apply after the gender marker is changed in DEERS). Berthing and head reassignment will only occur after this point.

During a Gender Transition, Service Members may enter periods of non-deployability during a Gender Transition. Each transition will be different. Timing of a Transition Plan should include consideration of a Sailor's planned rotation date (PRD) and planned deployment/operational requirements. Service Members should normally attempt to finalize transition during one tour to avoid interrupting medical treatment and having to coordinate a new Transition Plan at the next command, where operational requirements may be different. It is the Service Member's and their MMP's responsibility to inform leadership regarding an unforeseen medical condition when, as a result of any medical treatment, the Service Member will or has become non-deployable. For Active Duty Service Members, after a diagnosis has been made, while the treatment and Transition Plan are being created with involvement of the Service Member, their CO, and the MMP, part of the process will be discussing timing of treatment and procedures to minimize impact on potential deployments or mission readiness. Communication between the Service Member/CO and the Service Member's community manager/detailer will also be important. The Service Member may need to discuss with their MMP and CO whether they want to transition while in their current unit or upon arrival at a new unit, as there are advantages and disadvantages to both. Transferring during transition is typically not a good idea as it will require a new Transition Plan signed by the new CO in order to account for the new command's operational requirements.

Career Specialty / Assignment

Community assignment restrictions will be in accordance with the Navy's Bureau of Medicine (BUMED) current assessment of disqualifying medical status. Individuals undergoing medical or surgical treatment may have periods of being restricted from flight duty and diving operations. Refer questions to the BUMED Regional Transgender Care Teams or the SCCC.

Similarly, there are impacts with Service Members who are part of the **Personnel Reliability Program (PRP)** with regards to being diagnosed and initiating a Gender Transition:

- **Medication use:** If any treatment (not just related to transgender service) involves a new medication, the Service Member will be suspended until the effects of the medication can be understood. For hormone treatment, this may result in a period of 6 months to evaluate the side effects/stability on the medication.
- **Mental health:** Just like any major life stressor/change, BUMED PRP medical authority requires a mental health evaluation to assess a member's stability and reliability as it relates to PRP.
- **Surgery:** Just as in any other surgical treatment a member must be pronounced fit for full duty by their surgeon and stable on any pain medication. If the pain medication calls into question a person's attentiveness or may cause sudden or subtle incapacitation, this medication would be grounds for suspension. With regards to surgery, not every transition includes sex reassignment surgery (SRS).
- **Suspension** is the term that is used for anything from being SIQ for a day or an issue that could last for one year. After one year, the member must be decertified. Decertification is NOT permanent but does require a board for reinstatement.



Cross-sex Hormone Therapy: the use of feminizing hormones in an individual assigned male at birth based on traditional biological indicators or the use of masculinizing hormones in an individual assigned female at birth. A common medical treatment associated with gender transition.

Initial Entry Education / Training

Gender Transitions are generally not supportable during entry-level training due to the rigorous military requirements and schedule. In general, the compressed training timeline does not permit transitions to be accommodated at Recruit Training Command (RTC), U.S. Naval Academy (USNA) or in a Reserve Officers Training Corps (ROTC) program though situations will be evaluated on a case-by-case basis.

RTC

A Service Member is subject to separation in an entry-level status during the period of initial training (defined as 180 days per DoDI 1332.14) based on a medical condition that impairs the Service Member's ability to complete such training.

Transitioning USNA and ROTC Midshipmen

Midshipmen must continue to meet medical accession standards while at USNA or enrolled in ROTC. If midshipmen do not maintain the standards for appointment into the U.S. Military Services, a one-year Medical Leave of Absence (MLOA) may be warranted as determined by the Secretary of the Navy or designee. When an MLOA is recommended, a medical record review will determine whether the health-related incapacity or condition presents clear evidence that, following medical treatment, the midshipman will be able to meet the physical standards for appointment into the Navy within a reasonable period of time. USNA midshipmen who cannot meet medical accession standards and become medically disqualified may be disenrolled in accordance with DoDI 1322.22.



Reserve Component

Reserve Component Applicability

DoD and Navy policies regarding accessing and retaining transgender personnel are applicable to both Active Component (AC) and Reserve Component (RC) Sailors. Unique aspects of policy application and execution for the Reserve Component are listed below.

Medical Diagnosis

In accordance with DoDI 6025.19 Individual Medical Readiness, Sailors must report significant health information to their chain of command. RC Sailors must consult with a MMP concerning the potential impact on military readiness of any medical diagnosis and proposed treatment. Any member receiving a diagnosis of Gender Dysphoria must report the diagnosis and submit relevant medical information to their Navy Reserve Activity (NRA) Medical Department Representative (MDR), in addition to informing their Reserve Unit leadership. Once the NRA CO receives a Gender Transition request, the member becomes Temporarily Not Physically Qualified (TNPQ) and the MPQ (temporarily not physically qualified for mobilization) Manpower Availability Status (MAS) code will be applied to the member. The MPQ MAS code will indicate the member is awaiting validation of the diagnosis and treatment plan. The medical diagnosis and treatment plan for Gender Dysphoria may be provided by a civilian medical provider but must be forwarded for validation to the BUMED Medical Support Cell that services the USN Service Central Coordination Cell (SCCC). Once the diagnosis and Medical Treatment Plan are approved, a Transition Plan can be developed.

Transition Plan Approval

The Transition Plan (see *Create a Transition Plan* section) serves as documentation of the Reserve Sailor's anticipated timeline for the medical, social, and administrative aspects of Gender Transition in the Navy. The NRA CO with administrative responsibility for mobilization readiness is the approval authority for a transitioning Reserve Sailor's Transition Plan. The plan must be developed by the NRA CO in coordination with the Navy Reserve Force Surgeon (COMNAVRESFORCOM N9), the Reserve Unit CO, and the Sailor.



Reserve Component

Readiness Implications

Individual Medical Readiness (IMR) status will be determined on a case-by-case basis as dictated by the Transition Plan. Generally, the MPQ MAS code will remain in effect until the Reserve Sailor's Transition Plan is completed, or if at any time during the transition a medical condition arises to warrant a change in medical status, or if the Transition Plan is not approved.

Administration of the Temporarily Not Physically Qualified (TNPQ) status is well established and supports documentation of readiness for many different medical conditions. The MPQ MAS code will be applied in accordance with RESPERSMAN 6000-010.

Entitlement Participation (IDT/AT) and Assignment

The inherent flexibility of entitlement participation, to include rescheduling Inactive Duty Training (IDT) periods, granting Authorized Absences (AAs), and waiving Annual Training (AT), should be maximized to provide the Sailor an opportunity to achieve satisfactory participation and unit readiness during the transition process. In certain situations where significant operational tasking is anticipated, reassignment to a different Reserve Unit may best enable a smooth transition. Guidelines for assignment flexibility will be in accordance with RESPERSMAN articles 1570-010 and 1570-020. Sailors will not be summarily assigned to the IRR unless that is the Sailor's choice.

Restrictions on Mobilization and Other Participation

Once the NRA CO receives a Gender Transition request, the member initially becomes TNPQ and the MPQ MAS code (temporarily not physically qualified for mobilization) will be applied to the member in accordance with RESPERSMAN 6000-010. This appropriately identifies the member as having a medical condition and supports documentation of readiness in the same manner as other medical conditions. The Service Member's mobilization status will be reviewed monthly to determine their physical readiness status. Transitioning Sailors may have periods of ineligibility for participation, including AT and other active duty assignments (Active Duty for Training (ADT), Active Duty for Special Work (ADSW), and definite recalls) due to planned medical procedures in accordance with the approved treatment plan. Members classified as TNPQ may be authorized drill participation but are limited to performing IDT drills and completing correspondence courses. They may not perform any other type of training or active duty orders including AT, ADT, ADSW, IDTT, or recall in accordance with BUPERSINST 1001.39F. However, RESPERSMAN article 6000-010 allows members in a TNPQ status to request consideration for Inactive Duty Training Travel (IDTT), AT, and ADT on a case-by-case basis for periods of less than 29 days within CONUS.

Reserve Component

RC Sailors on Temporary Active Duty Orders

RC Sailors serving on active duty orders (e.g., ADT, ADSW, mobilization, definite recall) for a finite period will generally be precluded from beginning the Gender Transition process. Comparable to AC Sailors, RC Sailors may also be released from active duty based on a medical determination. Determinations will be made on a case-by-case basis by the chain of command in coordination with the USN Service Central Coordination Cell (SCCC) and the BUMED Medical Support Cell.

Implication of Transferring Between AC and RC

Members will be treated according to the same medical standards as any other Sailor transferring from AC to RC. Members should be counseled on the physical qualification processes and timing of affiliation with the Navy Reserve per MANMED 15-22.

IRR to SELRES

Members transferring from the IRR to SELRES are subject to the same affiliation policies and medical standards as any other member.



Privacy Concerns



Personal privacy is a concern for all Service Members. Members of the Armed Forces accept living and working conditions that are often austere, primitive, and characterized by close quarters with little or no privacy. Consistent with current policy, COs retain discretion to alter berthing or billeting assignments to maintain morale and good order and discipline when consistent with mission accomplishment in accordance with Service policy. The creation of separate head and shower facilities or living quarters for transgender personnel is prohibited. During development of the Sailor's Transition Plan, there should include discussion regarding Service Member and unit privacy concerns. There may be points where communication with the work force is necessary to attempt to ensure that all Sailors' privacy needs are being met. Ask the transgender Sailor how they would like to do this to include them in the decision making.

Personally Identifiable Information (PII)

The Navy is required to protect personally identifiable information (PII) at all times in accordance with instruction and annual training. For transgender personnel specifically, when a Sailor's Gender Transition is complete, there should be no requirement to communicate the individual's transgender status when transferring commands. This should be left up to the individual.

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

Health Insurance Portability and Accountability Act of 1996 (HIPAA) only applies to the "covered entity" or in other words the medical facility or health care provider. Once the information is released pursuant to a HIPAA exception to an outside entity (i.e. CO), HIPAA no longer applies and only the Privacy Act would apply to further releases by a CO. Health care providers can only release the "minimum necessary" medical information to COs. In the case of transgender personnel, providers will be able to coordinate with COs the timing of the treatment plan and the effect that such treatment will have on the member's ability to perform his/her duties, but will not be able to release specific medical information.

Records

Service records, awards, FITREPS, and Evaluations are considered historical documents and any previous name/gender used will not be changed. All documents created after the DEERS gender marker change will reflect the preferred gender. Navy Personnel Command already incorporated board precept language into board proceedings to prohibit discrimination based on gender identity or taking into account an individual's transgender status as relevant.

Other Considerations

Standards of Conduct

A CO has a powerful role in setting the tone and defining the degree of inclusion within your Command. Your leadership and attitude towards transgender Service Members will have a strong impact on whether transgender Service Members feel they can be themselves in the command, and how others treat them.

Protect the Service member's privacy consistent with their wishes. Some will prefer socialization of their desire to transition with shipmates and others will not. Information management is very important.

Listen to the Service Member's wishes with respect to disclosure to the workcenter and the broader command.

Be open with your transitioning Sailor. Feel free to ask them questions.

Exceptions to Policy (ETP)

Service Members shall comply with all standards of the gender marker currently in Navy personnel administrative systems/DEERS. Individual Service Members and COs may request exceptions to policy (ETP) via the first Flag Officer in the chain of command to Deputy Chief of Naval Operations for Manpower, Personnel, Training, and Education (DCNO N1) for any service policy waivers as part of the approved Transition Plan in accordance with DoDI 1300.28 and SECNAVINST 1000.11, when it is in the best interest of the individual and as it makes sense for good order and discipline within the command. Examples of ETPs requiring DCNO N1 approval include grooming, uniform and appearance standards, change of berthing, head and shower facilities, and preferred gender urinalysis observation, prior to completion of the gender marker change in DEERS. Physical readiness testing, body composition assessment standards or deployability determinations require medical waivers.

Pronoun Usage

Pronoun usage can be a confusing issue for people when addressing someone who is transitioning gender. Since the transitioning Sailor is required to be in birth gender standards prior to the gender marker change (unless the Sailor has an OPNAV N1-approved exception to policy for uniform, grooming and appearance standards), it is appropriate to retain birth gender pronouns and shift to preferred gender pronouns after the gender marker change.



Other Considerations

Discuss this topic with the transitioning Sailor and remind them that people may make mistakes for a bit but also remind coworkers that it is inappropriate to intentionally mix pronoun usage.

If there is an ETP (as described above) in place, then it would be appropriate to use preferred gender pronouns. Discuss the Sailor's preferences, in this case, on name and pronoun usage and help them communicate that to the workforce.

Addressing Foreign Port Visits and/or Cultures that may Present Challenges when Sailors are Ashore (in a Duty or Liberty Status)

Service Members will continue to be eligible for world-wide assignment without consideration of gender identity. Existing Commander's authority and discretion in enforcing guidelines for appropriate civilian attire during liberty remains unchanged.

Moral and Religious Concerns/Freedom of Speech Policy Changes

None. Existing policies remain in place.

Security Clearances

Any change in a Service Member's status (e.g. marriage, divorce, addition of dependents) is reportable to the command security manager in order to maintain a national security clearance. This includes changes to name and gender. A Standard Form 86 Certification (SF 86C) allows reporting of changes in previously reported information on the SF 86.



Create a Transition Plan

Transition Plan

A notification of intention to undergo transition obligates the Navy to consider a transgender member's needs. This requires a Transition Plan tailored to the coordination of each individual on a case-by-case basis to ensure diagnosis, treatment timeline, operational requirements, and medical, social, and administrative needs. Communication between the transitioning Sailor and the CO is an integral part of this process. The Transition Plan will outline anticipated stages of the transition process which includes but is not limited to:

Starting the Process

- Visit to Military Treatment Facility
- Diagnosis of Gender Dysphoria
- Develop Medical Treatment Plan with the MMP

Medical Treatment Plan and Timeline

- Plan must be approved by the CO, considering personal readiness and operational schedule / deployability impact, if any
- Hormone Replacement Therapy and resulting personal readiness impact, if any
- Other anticipated medical procedures and resulting personal readiness impact, if any

Social Transition

- Timing and strategy for engagement with non-military family and friends
- Strategy, timing, and manner of engagement with remaining Command personnel
- Off-duty RLE prior to administrative change in gender
- Timing for a change in berthing, facilities (heads), uniform/grooming standards, PFA standards (gender marker change or ETP)



Create a Transition Plan

Administrative

- Only ONE of the following is required: amended passport, updated birth certificate, or court order. No other federal or state documentation is considered sufficient.
<https://travel.state.gov/content/passports/en/passports/information/gender.html>
- CO written approval certifying a Sailor as transition complete and eligible to make the gender marker change in DEERS
- Change in personnel administrative systems/Defense Enrollment Eligibility Reporting System (DEERS) Gender Marker per MILPERSMAN 1000-131



travel.state.gov > Passports & International Travel > Your Passports > Gender
Transition Applicants

Print Email

Gender Transition Applicants

We can issue two different kinds of passports to you depending on where you are in your gender transition. You must provide extra documentation in both cases.

Status of Gender Transition	Kind of Passport	Validity of Passport
Completed	Full Validity	10 years
In Process	Limited Validity	2 years*

*A limited validity passport book can be extended to the full ten-year validity book with no additional fee by submitting Form DS-5504 within two years of the passport issue date.

Requirements

If you are in the process of or have had clinical treatment for a gender transition, please note that you must apply using the DS-11. Your supporting documentation should include the following, in addition to the normally required documents:

WHERE TO APPLY

Make an Appointment

Call the National Passport Information Center 24 hours a day to make an appointment at a passport agency.

1-877-487-2778;
TDD/TTY: 1-888-874-7793



Enroll in STEP

Enrolling in this free service will allow us to better assist you in case of an emergency while you are abroad.

ENROLL

Create a Transition Plan

Transition Plan Draft Sample



5000

From: Commanding Officer, COMMAND
To: Sailor Y, USN

Subj: GENDER TRANSITION PLAN

Ref: (a) Directive-type Memorandum (DTM) 16-005
(b) DODI 1300.28 In-Service Transition for Transgender Service Members
(c) ALNAV 053/16 dtg 051937Z AUG 16 SUBJ/SERVICE OF TRANSGENDER SAILORS AND MARINES INTERIM GUIDANCE
(d) Your request of DD MON YR

1. In accordance with references (a) through (c), I approve your request to transition gender.
2. In accordance with reference (b), you must complete the following steps prior to requesting my approval for your gender marker to change in the Defense Enrollment Eligibility Reporting System (DEERS). Report completion of each step through your chain of command and provide copies of any relevant supporting documentation.
 - a. Establish a medical treatment plan with your military medical provider.
 - b. Live in your preferred gender while in an off-duty status, off the ship and off base, for a timeframe as recommended by your military medical provider.
 - c. Submit any leave requests necessary for gender reassignment procedures in advance to minimize impact to Command readiness.
 - d. Receive a determination from your military medical provider that you are stable in your preferred gender.
 - e. Legally record your gender change with the appropriate state vital records department.
 - f. Submit your gender marker change to DEERS via the Command Admin Department after receiving my written approval.

Create a Transition Plan

Transition Plan Draft Sample (Continued)

3. You may seek guidance from your chain of command, your medical provider, psychologist, or Command Judge Advocate.

A. B. Charlie

Date: _____

FIRST ENDORSEMENT

From: Sailor Y, USN

To: Commanding Officer, COMMAND

I acknowledge receipt of the above Gender Transition Plan and agree to the terms and milestones contained therein.

X. Z. Yankee

Gender Marker Change

Sample CO Approval Letter

5000
Ser XXX/XXX
DD MM YY

ENDORSEMENT on LT John V. Doe, XXX-XX-XXXX/XXX, USN, ltr of DD MM YY

From: Commanding Officer, USS Neversail (XXX XX)
To: NSIPS HELPDASK

Ref: (a) DoD Instruction 1300.28
(b) SECNAVINST 1000.11
(c) MPM 1000-130

Encl: (1) LT Doe ltr of DD MM YY
(2) Copy of State or Federal document with preferred gender (as appropriate)

1. Forward recommending approval.
2. Pursuant to references (a) and (b) and in accordance with reference (c), LT Doe has my approval to request a gender marker change via the Navy Standard Integrated Personnel System (NSIPS) help desk.
3. In consultation with LT Doe's Military Medical Provider, I determined that LT Doe completed the command-approved transition plan.
4. My admin point of contact in this matter is LCDR XXXXX, who can be reached by email at xxxx.xxxx@navy.mil or by phone at XXX-XXX-XXXX.

J. P. Jones

Frequently Asked Questions

Q1: What are the reasons behind this policy change?

A1: In July 2015, the Secretary of Defense directed the Department of Defense to identify the practical issues related to transgender Americans serving openly in the military and to develop an implementation plan that addresses those issues consistent with military readiness. On June 30, 2016, the Secretary announced a new policy allowing open service of transgender Service Members and outlined three reasons for this policy change:

- 1) The Army, Navy, Air Force, Marine Corps, and Coast Guard need to avail themselves of all available talent in order to remain the finest fighting force the world has ever known. The mission to defend this country requires that the Services do not have barriers unrelated to a person's qualification to serve or preventing the Department of Defense (DoD) from recruiting or retaining Service Members.
- 2) There are transgender Service Members in uniform today. DoD has a responsibility to them and their commanders to provide clearer and more consistent guidance.
- 3) Individuals who want to serve and can meet the Department's standards should be afforded the opportunity to compete to do so.

Q2: Will the military pay for the transition costs?

A2: Medical care for Gender Transition is managed in the same way as other medical conditions. The military will pay for all medically necessary care to resolve any feelings of Gender Dysphoria and any ongoing cross-sex hormone therapy and mental health requirements. Additional procedures are considered elective and may be covered in the MTF on a space-available cost basis as with any other Service Member who desires an elective medical procedure. Reserve health care requirements are typically accomplished through a civilian health care provider.

Q3: What about my privacy rights?

A3: To the extent feasible, a commander may employ reasonable accommodations to protect the privacy interests of all Service Members, while avoiding a stigmatizing impact to any Service Member. This is a common question from Sailors who will be required to share berthing, head, and shower facilities with transgender Sailors who may not make the full surgical change. Most transgender personnel will want to be accepted fully in their preferred gender and will likely attempt to maintain personal privacy so as not to be seen as different from their preferred gender counterparts.

Frequently Asked Questions

The Navy SORM is being updated to require a minimum standard of coverage for all personnel in berthing, head, and shower facilities. The new language is outlined in the policy NAVADMIN until the SORM can be updated. Bottom line, this is a leadership issue that requires conversation to further understanding of transgender personnel and may take time to achieve a level of comfort with this policy change. Commanders are encouraged to consult with their SCCC for guidance.

Q4: How do exceptions to policy work?

A4: In cases where a transitioning Service Member is unable to meet standards or requests an ETP during the Gender Transition there are actions that may be taken to balance the needs of the individual Service Member and unit readiness. A Sailor may request an ETP through the CO and the first flag officer in the chain of command to Deputy Chief of Naval Operations for Manpower, Personnel, Training and Education (DCNO N1) for adjudication. ETP requests for application of standards for uniforms and grooming, MPDATP participation (urinalysis observation) and the use of berthing, bathroom, and shower facilities may be requested. Questions on ETPs may be addressed to the SCCC after review of Navy policy.



Resources and References

Service Central Coordination Cell (SCCC): , service-level cell of experts created to provide multi-disciplinary (e.g., medical, legal) advice and assistance to commanders regarding transgender Service Members and gender transition in the military.

Navy Transgender Service Central Coordination Cell (SCCC)

The SCCC was established to assist COs in the execution of the DoD, and Navy policies and procedures on transgender service, and to provide multi-disciplinary (e.g., medical, legal) expert advice to COs regarding service by transgender Service Members and Gender Transition in the military. Individuals are encouraged to work with their chain of command prior to contacting the SCCC.

For questions contact the SCCC:

Office of the Chief of Naval Personnel
Transgender Service Central Coordination Cell
701 South Courthouse Road
Room 3R180
Arlington VA 22204

SCCC email address:

usn_navy_sccc@navy.mil

Navy 311 contact information:

1-855-628-9311

1-855-NAVY311

NAVY311@navy.mil

US Navy LGBT Resources:

http://www.public.navy.mil/bupers-npc/support/21st_Century_Sailor/lgbt/Pages/default.aspx

On-line training for all personnel will also be available on the LGBT Resources website:

http://www.public.navy.mil/bupers-npc/support/21st_Century_Sailor/lgbt/Pages/default.aspx

Resources and References

Commander's Toolkit References

The references below were used to develop the content of the Commanders Toolkit. Additional information can be found by following the Web links.

American Psychological Association Website:

<http://www.apa.org/topics/lgbt/transgender.aspx>

HRC Workplace Gender Transition Guidelines:

<http://www.hrc.org/resources/workplace-gender-transition-guidelines>

Kime, Patricia. "Advocates: Transgender care costs not a barrier to service." Aug 31, 2015. Military Times

<http://www.militarytimes.com/story/military/benefits/health-care/2015/08/07/advocates-transgender-care-costs-not-barrier-service/31285327/>

Lewis, Tanya. "Bruce Jenner's Transition: How Many Americans Are Transgender?" Live Science Website. Apr 27, 2015

<http://www.livescience.com/50635-bruce-jenner-transgender-prevalence.html>

Monash University of Medicine, Nursing, and Health Sciences Website

<http://www.med.monash.edu.au/gendermed/identity.html>



Resources and References

DoD Instructions

Department of Defense Directive-type Memorandum (DTM) 16-005,
“Military Service of Transgender Service Members”

Department of Defense Instruction (DoDI) 1300.28, In-Service Transition for
Transgender Service Members, October 1, 2016

Department of Defense Instruction (DoDI) 1322.22, Service Academies,
September 24, 2015

DoDI 6130.03 Incorporating Change 1, Effective September 13, 2011,
“Medical Standards for Appointment, Enlistment, or Induction in the Military
Services”

MILPERSMAN Instructions

MILPERSMAN 1000-130, Name Change of Member

MILPERSMAN 1000-131, Member Gender Marker Change

SECNAV Instructions

Secretary of the Navy Instruction (SECNAV) 1000.11 Service of Transgender
Sailors and Marines

Secretary of the Navy Instruction (SECNAV) M-5510.30 Secretary of the
Navy Security regulations

OPNAV Instructions

OPNAV Instruction 3120.32E, “Standard Organization and Regulations of the
U.S. Navy”

OPNAV Instruction 5354.1 Series, “Navy Equal Opportunity Policy”

OPNAV Instruction 5350.4D4E, “Navy Alcohol and Drug Abuse Prevention
and Control”

BUMED Instructions

BUMED Note 6000, Medical Treatment of Transgender Service Members –
Interim Guidance



DoD INSTRUCTION 1300.28

IN-SERVICE TRANSITION FOR TRANSGENDER SERVICE MEMBERS

Originating Component: Office of the Under Secretary of Defense for Personnel and Readiness

Effective: October 1, 2016

Releasability: Cleared for public release. Available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

Cancels: Secretary of Defense Memorandum, "Transgender Service Members," July 28, 2015

Approved by: Ashton Carter, Secretary of Defense

Purpose: This issuance:

- Establishes a construct by which transgender Service members may transition gender while serving.
- Enumerates prerequisites and prescribes procedures for changing a Service member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS).
- Specifies medical treatment provisions for Active Component (AC) and Reserve Component (RC) transgender Service members.
- Implements the policies and procedures in Directive-type Memorandum 16-005.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security, by agreement with that Department, and in all regards, except as to the requirement to submit issuances implementing this issuance to the Office of the Under Secretary of Defense for Personnel and Readiness 30 days in advance of publication in accordance with Paragraphs 2.1c and 2.2e), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

1.2. POLICY.

a. DoD and the Military Departments will institute policies to provide Service members a process by which, while serving, they may transition gender. These policies are premised on the conclusion that open service by transgender persons who are subject to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming standards, deployability, and retention, is consistent with military service and readiness.

b. The Military Departments and Services recognize a Service member's gender by the member's gender marker in the DEERS. Coincident with that gender marker, the Services apply, and the member is responsible to meet, all standards for uniforms and grooming; body composition assessment (BCA); physical readiness testing (PRT); Military Personnel Drug Abuse Testing Program (MPDATP) participation; and other military standards applied with consideration of the member's gender. As to facilities subject to regulation by the military, the Service member will use those berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

c. Service members with a diagnosis from a military medical provider indicating that gender transition is medically necessary, will be provided medical care and treatment for the diagnosed medical condition. Recommendations of a military medical provider will address the severity of the Service member's medical condition and the urgency of any proposed medical treatment. Medical advice to commanders will be provided in a manner consistent with processes used for other medical conditions that may limit the Service member's performance of official duties.

d. Any medical care and treatment provided to an individual Service member in the process of gender transition will be provided in the same manner as other medical care and treatment. Nothing in this issuance will be construed to authorize a commander to deny medically necessary treatment to a Service member.

e. Any determination that a transgender Service member is non-deployable at any time will be consistent with established Military Department and Service standards, as applied to other Service members whose deployability is similarly affected in comparable circumstances unrelated to gender transition.

f. Commanders will assess expected impacts on mission and readiness after consideration of the advice of military medical providers and will address such impacts in accordance with this issuance. In applying the tools described in this issuance, a commander will not accommodate biases against transgender individuals. If a Service member is unable to meet standards or requires an exception to policy (ETP) during a period of gender transition, all applicable tools, including the tools described in this issuance, will be available to commanders to minimize impacts to the mission and unit readiness.

g. When the military medical provider determines that a Service member's gender transition is complete, and at a time approved by the commander in consultation with the transgender Service member, the member's gender marker will be changed in DEERS and the Service member will be recognized in the preferred gender.

SECTION 2: RESPONSIBILITIES

2.1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R):

- a. Updates existing DoD issuances, or promulgate new issuances, as appropriate, in accordance with the provisions of this issuance.
- b. Expeditiously develops and promulgates education and training materials to provide relevant, useful information for transgender Service members, commanders, military medical providers, and the force.
- c. Ensures that the text of proposed revisions to existing Military Department and Service regulations, policies, and guidance, and of any proposed new Military Department and Service issuance, is consistent with this issuance.
- d. Issues guidance to the Military Departments, establishing the prerequisites and procedures for changing a Service member's gender marker in DEERS.

2.2. SECRETARIES OF THE MILITARY DEPARTMENTS AND COMMANDANT, UNITED STATES COAST GUARD (USCG). The Secretaries of the Military Departments and the Commandant, USCG:

- a. Adhere to all provisions of this issuance.
- b. Administer their respective programs, and update existing Military Department regulations, policies, and guidance, or promulgate new issuances, as appropriate, in accordance with the provisions of this issuance.
- c. Establish a Service Central Coordination Cell (SCCC) to provide multi-disciplinary (e.g., medical, legal, military personnel management) expert advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military and to assist commanders in the execution of DoD, Military Department, and Service policies and procedures.
- d. Educate their AC and RC forces to ensure appropriate understanding of the policies and procedures pertaining to gender transition in the military.
- e. Submit to the USD(P&R) the text of any proposed revision to existing Military Department and Service regulations, policies, and guidance, and of any proposed new issuance, not later than 30 days in advance of the proposed publication date.
- f. Ensure the protection of personally identifiable information (PII) and personal privacy considerations in the implementation of this issuance and Military Department and Service regulations, policies, and guidance.

g. Implement processes for the assessment and oversight of compliance with DoD, Military Department, and Service policies and procedures applicable to service by transgender persons, in accordance with Paragraph 3.8 of this issuance.

SECTION 3: GENDER TRANSITION

3.1. SPECIAL MILITARY CONSIDERATIONS. Gender transition while serving in the military presents unique challenges associated with addressing the needs of the Service member in a manner consistent with military mission and readiness. Where possible, gender transition should be conducted such that a Service member would meet all applicable standards and be available for duty in the birth gender prior to a change in the member's gender marker in DEERS and would meet all applicable standards and be available for duty in the preferred gender after the change in gender marker. Recognizing, however, that every transition is unique, the policies and procedures set forth herein provide flexibility to the Military Departments, Services, and commanders, in addressing transitions that may or may not follow this construct. These policies and procedures are applicable, in whole or in relevant part, to those Service members who intend to begin transition, are beginning transition, who already may have started transition, and who have completed gender transition and are stable in their preferred gender.

a. Medical.

(1) In accordance with DoD Instructions (DoDIs) 6025.19 and 1215.13, all Service members have a responsibility to maintain their health and fitness, meet individual medical readiness requirements, and report to their chains of command any medical (including mental health) and health issue that may affect their readiness to deploy or fitness to continue serving in an active status.

(2) Each Service member in the AC or in the Selected Reserve will, as a condition of continued participation in military service, report significant health information to their chain of command. Service members who have or have had a medical condition that may limit their performance of official duties, must consult with a military medical provider concerning their diagnosis and proposed treatment, and must notify their commanders.

(3) As in the case of other health issues, when a Service member receives a diagnosis from a military medical provider indicating that gender transition is medically necessary, the member's notification to the commander must identify all medically necessary care and treatment that is part of the Service member's medical treatment plan and a projected schedule for such treatment, including an estimated date for a change in the member's gender marker in DEERS.

b. Gender Transition in the Military. Gender transition begins when a Service member receives a diagnosis from a military medical provider indicating that gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in the preferred gender. At that point, the Service member will be responsible for meeting all applicable military standards in the preferred gender, and as to facilities subject to regulation by the military, will use those berthing, bathroom, and shower facilities associated with the preferred gender.

c. Continuity of Medical Care. A military medical provider may determine certain medical care and treatment to be medically necessary, even after a Service member's gender marker is

changed in DEERS (e.g., cross-sex hormone therapy). A gender marker change does not preclude such care and treatment.

d. Living in Preferred Gender. Real Life Experience (RLE) is the phase in the gender transition process during which the individual commences living socially in the gender role consistent with their preferred gender. Although in civilian life this phase is generally categorized by living and working full-time in the preferred gender, consistent application of military standards will normally require that RLE occur in an off-duty status and away from the Service member's place of duty, prior to the change of a gender marker in DEERS.

e. DEERS. The Military Departments and Services recognize a Service member's gender by the member's gender marker in DEERS. Coincident with that gender marker, the Services apply, and the member is responsible to meet, all standards for uniforms and grooming; BCA; PRT; MPDATP participation; and other military standards applied with consideration of the member's gender. As to facilities subject to regulation by the military, the Service member will use those berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

f. Military Readiness. Unique to military service, the commander is responsible and accountable for the overall readiness of his or her command. The commander is also responsible for the collective morale and welfare and good order and discipline of the unit, the command climate, and for ensuring that all members of the command are treated with dignity and respect. When a commander receives any request from a Service member that entails a period of non-availability for duty (e.g., necessary medical treatment, ordinary leave, emergency leave, temporary duty, other approved absence), the commander must consider the individual need associated with the request and the needs of the command, in making a decision on that request.

3.2. ROLES AND RESPONSIBILITIES. The individual Service member, the military medical provider, the commander, and each of the Military Departments have crucial roles and responsibilities in the process of gender transition in the military.

a. Service Member's Role.

- (1) Secure a medical diagnosis from a military medical provider.
- (2) Notify the commander of a diagnosis indicating that gender transition is medically necessary, and identify all medically necessary treatment that is part of the member's medical treatment plan and a projected schedule for such treatment, including an estimated date for a change in the member's gender marker in DEERS, as set forth in Paragraph 3.1.a.
- (3) Notify the commander of any change to the medical treatment plan, the projected schedule for **such** treatment, or the estimated date on which the member's gender marker would be changed in DEERS.

b. Military Medical Provider's Role.

(1) Establish the member's medical diagnosis, recommend medically necessary care and treatment, and, in consultation with the Service member, develop a medical treatment plan associated with the Service member's gender transition, as set forth in Paragraph 3.1.a, for submission to the commander.

(2) In accordance with established military medical practices, advise the commander on the medical diagnosis applicable to the Service member, including the provider's assessment of the medically necessary care and treatment, the urgency of the proposed care and treatment, the likely impact of the care and treatment on the individual's readiness and deployability, and the scope of the human and functional support network needed to support the individual.

(3) In consultation with the Service member, formally advise the commander when the Service member's gender transition is complete, and recommend to the commander a time at which the member's gender marker may be changed in DEERS.

(4) Provide the Service member with medically necessary care and treatment after the member's gender marker has been changed in DEERS.

c. Commander's Role.

(1) Review a Service member's request to transition gender. Ensure, as appropriate, a transition process that:

(a) Complies with DoD, Military Department, and Service regulations, policies, and guidance.

(b) Considers the individual facts and circumstances presented by the Service member.

(c) Ensures military readiness by minimizing impacts to the mission (including deployment, operational, training, and exercise schedules, and critical skills availability), as well as to the morale and welfare, and good order and discipline of the unit.

(d) Is consistent with the medical treatment plan.

(e) Incorporates consideration of other factors, as appropriate.

(2) Coordinate with the military medical provider regarding any medical care or treatment provided to the Service member, and any medical issues that arise in the course of a Service member's gender transition.

(3) Consult with the SCCC with regard to service by transgender Service members and gender transition in the military, the execution of DoD, Military Department, and Service policies and procedures, and assessment of the means and timing of any proposed medical care or treatment.

d. Role of the Military Department and the USCG.

(1) Establish policies and procedures in accordance with this issuance, outlining the actions a commander may take to minimize impacts to the mission and ensure continued unit readiness in the event that a transitioning individual is unable to meet standards or requires an ETP during a period of gender transition. Such policies and procedures may address the means and timing of transition, procedures for responding to a request for an ETP prior to the change of a Service member's gender marker in DEERS, appropriate duty statuses, and tools for addressing any inability to serve throughout the gender transition process. Any such actions available to the commander will consider and balance the needs of the individual and the needs of the command in a manner comparable to the actions available to the commander in addressing comparable Service member circumstances unrelated to gender transition. Such actions may include:

(a) Adjustments to the date on which the Service member's gender transition, or any component of the transition process, will commence.

(b) Advising the Service member of the availability of options for extended leave status or participation in other voluntary absence programs during the transition process.

(c) Arrangements for the transfer of the Service member to another organization, command, location, or duty status (e.g., Individual Ready Reserve), as appropriate, during the transition process.

(d) ETPs associated with changes in the member's physical appearance and body composition during gender transition, such as accommodations in the application of standards for uniforms and grooming, BCA, PRT, and MPDATP participation.

(e) Establishment of, or adjustment to, local policies on the use of berthing, bathroom, and shower facilities subject to regulation by the military, during the transition process.

(f) Referral for a determination of fitness in the disability evaluation system in accordance with DoDI 1332.18.

(g) Other actions, including the initiation of administrative or other proceedings, comparable to actions that could be initiated with regard to others whose ability to serve is similarly affected for reasons unrelated to gender transition.

(2) Establish policies and procedures, consistent with this issuance, whereby a Service member's gender marker will be changed in DEERS based on a determination by the military medical provider that the Service member's gender transition is complete; receipt of written approval from the commander, issued in consultation with the Service member; and production by the Service member of documentation indicating gender change. Such documentation is limited to:

(a) A certified true copy of a State birth certificate reflecting the Service member's preferred gender;

(b) A certified true copy of a court order reflecting the Service member's preferred gender; or

(c) A United States passport reflecting the member's preferred gender.

(3) When the Service member's gender marker in DEERS is changed:

(a) Apply uniform standards, grooming standards, BCA standards, PRT standards, MPDATP standards, and other standards applied with consideration of the member's gender, applicable to the Service member's gender as reflected in DEERS.

(b) As to facilities that are subject to regulation by the military, direct the use of berthing, bathroom, and shower facilities according to the Service member's gender marker as reflected in DEERS.

3.3. GENDER TRANSITION APPROVAL PROCESS.

a. A Service member on active duty, who receives a diagnosis from a military medical provider for which gender transition is medically necessary may, in consultation with the military medical provider and at the appropriate time, request that the commander approve:

(1) The timing of medical treatment associated with gender transition;

(2) An ETP associated with gender transition, consistent with Paragraph 3.2.d, and/or

(3) A change to the Service member's gender marker in DEERS.

b. The commander, informed by the recommendations of the military medical provider, the SCCC, and others, as appropriate, will respond to the request within a framework that ensures readiness by minimizing impacts to the mission (including deployment, operational, training, exercise schedules, and critical skills availability), as well as to the morale and welfare and good order and discipline of the command.

c. Consistent with applicable law, regulation, and policy, the commander will:

(1) Comply with the provisions of this issuance, and with Military Department and Service regulations, policies, and guidance, and consult with the SCCC.

(2) Promptly respond to any request for medical care, as identified by the military medical provider, and ensure that such care is provided consistent with applicable regulations.

(3) Respond to any request for medical treatment or an ETP associated with gender transition, as soon as practicable, but not later than, 90 days after receiving a request determined to be complete in accordance with the provisions of this issuance and Military Department and Service regulations, policies, and guidance. The response will be in writing; include notice of any actions taken by the commander in accordance with applicable regulations, policies, and guidance and the provisions of this issuance; and will be provided to both the Service member

and their military medical provider. A request that, upon review by the commander, is determined to be incomplete, will be returned to the Service member, with written notice of the deficiencies identified, as soon as practicable, but not later than 30 days after receipt.

(4) At any time prior to the change of the Service member's gender marker in DEERS, the commander may modify a previously approved approach to, or an ETP associated with, gender transition. A determination that modification is necessary and appropriate will be made in accordance with the procedures, and upon review and consideration of the factors set forth in Paragraph 3.2.c of this issuance. Notice of such modification will be provided to the Service member under procedures established by the Secretary of the Military Department concerned, and may include options as set forth in Paragraph 3.2.d.

(5) The commander will approve, in writing, the change of a Service member's gender marker in DEERS, subsequent to receipt of the recommendation of the military medical provider that the member's gender marker be changed and receipt of the requisite documentation from the Service member. Upon submission of the commander's written approval to the appropriate personnel servicing activity, the change in the Service member's gender marker will be entered in the database and transmitted to and updated in DEERS, under the authority, direction, and control of the Defense Manpower Data Center.

d. As authorized by Military Department and Service regulations, policies, and guidance implementing this issuance, a Service member may request review by a senior officer in the chain of command, of a subordinate commander's decision with regard to any request under this issuance and any subsequent modifications to that decision.

3.4. ADDITIONAL RC CONSIDERATIONS.

a. General. Excepting only those special considerations set forth below, RC personnel are subject to all policies and procedures applicable to AC Service members as set forth in this issuance and in Military Department and Service regulations, policies, and guidance implementing this issuance.

b. Gender transition approach. All RC Service members (except Selected Reserve full-time support personnel) identifying as transgender individuals, will submit to, and coordinate with their chain of command, evidence of a medical evaluation that includes a medical treatment plan. Selected Reserve full-time support personnel will follow the gender transition approval process set forth in Paragraph 3.3.

c. Medical treatment plans. A medical treatment plan established by a civilian medical provider will be subject to review and approval by a military medical provider.

d. Selected Reserve Drilling Member Participation. To the greatest extent possible, commanders and Service members will address periods of non-availability for any period of military duty, paid or unpaid, during the member's gender transition with a view to mitigating unsatisfactory participation. In accordance with DoDI 1215.13, such mitigation strategies may include:

- (1) Rescheduled training.
- (2) Authorized absences.
- (3) Alternate training.

e. Delayed Training Program. Delayed Training Program personnel must be advised by recruiters and commanders of limitations resulting from being non-duty qualified. As appropriate, Service members in the Delayed Training Program may be subject to the provisions of Paragraph 3.5 of this issuance.

f. Split Option Training. When authorized by the Military Department concerned, Service members who elect to complete basic and specialty training over two non-consecutive periods may be subject to the provisions of Paragraph 3.5 of this issuance.

3.5. INITIAL ENTRY TRAINING AND CONSIDERATIONS ASSOCIATED WITH THE FIRST TERM OF SERVICE.

a. A blanket prohibition on gender transition during a Service member's first term of service is not permissible. However, the Department recognizes that the All-Volunteer Force readiness model is largely based on those newly accessed into the military being ready and available for multiple training and deployment cycles during their first term of service. This readiness model may be taken into consideration by a commander in evaluating a request for medical care or treatment or an ETP associated with gender transition during a Service member's first term of service. Any other facts and circumstances related to an individual Service member that impact that model will be considered by the commander as set forth in this issuance and implementing Military Department and Service regulations, policies, and guidance.

b. The following policies and procedures apply to Service members during the first term of service and will be applied to Service members with a diagnosis indicating that gender transition is medically necessary in the same manner, and to the same extent, as to Service members with other medical conditions that have a comparable impact on the member's ability to serve:

(1) A Service member is subject to separation in an entry-level status during the period of initial training (defined as 180 days per DoDI 1332.14) based on a medical condition that impairs the Service member's ability to complete such training.

(2) An individual participant is subject to separation from the Reserve Officers' Training Corps in accordance with DoDI 1215.08, or from a Service Academy in accordance with DoDI 1322.22, based on a medical condition that impairs the individual's ability to complete such training or to access into the Armed Forces, under the same terms and conditions applicable to participants in comparable circumstances not related to transgender persons or gender transition. As with all cadets or midshipmen who experience a medical condition while in the Reserve Officers' Training Corps Program or at a Service Academy, each situation is unique and will be evaluated based on its individual circumstances; however, the individual will be required

to meet medical accession standards as a prerequisite to graduation and appointment in the Armed Forces.

(3) A Service member is subject to administrative separation for a fraudulent or erroneous enlistment or induction when warranted and in accordance with DoDI 1332.14, based on any deliberate material misrepresentation, omission, or concealment of a fact, including a medical condition, that if known at the time of enlistment, induction, or entry into a period of military service, might have resulted in rejection.

(4) If a Service member requests non-urgent medical treatment or an ETP associated with gender transition during the first term of service, including during periods of initial entry training in excess of 180 days, the commander may give the factors set forth in Paragraph 3.5.a significant weight in considering and balancing the individual need associated with the request and the needs of the command, in determining when such treatment, or whether such ETP may commence in accordance with Paragraph 3.2.d.

3.6. PROTECTION OF PII AND PROTECTED HEALTH INFORMATION.

a. In accordance with DoDD 5400.11, in cases in which there is a need to collect, use, maintain, or disseminate PII in furtherance of this issuance or Military Department and Service regulations, policies, or guidance, the Military Departments and the USCG will protect against unwarranted invasions of personal privacy and the unauthorized disclosure of such PII. The Military Departments and the USCG will maintain such PII so as to protect individual's rights, consistent with federal law, regulation, and policy.

b. Disclosure of protected health information will be consistent with DoD 6025.18-R.

3.7. PERSONAL PRIVACY CONSIDERATIONS. A commander may employ reasonable accommodations to respect the privacy interests of Service members.

3.8. ASSESSMENT AND OVERSIGHT OF COMPLIANCE.

a. The Secretaries of the Military Departments and the Commandant, USCG, will implement processes for the assessment and oversight of compliance with DoD, Military Department, and Service policies and procedures applicable to service by transgender persons.

b. Beginning in 2018 and no less frequently than triennially thereafter, Secretaries of the Military Departments and the Commandant, USCG, will direct an Inspector General Special Inspection of compliance with this issuance and implementing Military Department or USCG regulations, policies, and guidance. The directing official will review the Report of Inspection for purposes of assessing and overseeing compliance; identifying compliance deficiencies, if any; timely initiating corrective action, as appropriate; and deriving best practices and lessons learned.

GLOSSARY

G.1. ACRONYMS.

AC	Active Component
BCA	body composition assessment
DEERS	Defense Enrollment Eligibility Reporting System
DoDI	DoD instruction
ETP	exception to policy
MPDATP	military personnel drug abuse testing program
PII	personally identifiable information
PRT	physical readiness testing
RLE	real life experience
RC	Reserve Component
SCCC	Service Central Coordination Cell
USCG	United States Coast Guard
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

cross-sex hormone therapy. The use of feminizing hormones in an individual assigned male at birth based on traditional biological indicators or the use of masculinizing hormones in an individual assigned female at birth. A common medical treatment associated with gender transition.

gender marker. Data element in DEERS that identifies a Service member's gender. A Service member is expected to adhere to all military standards associated with the member's gender marker in DEERS and use military berthing, bathroom, and shower facilities in accordance with the DEERS gender marker.

gender transition is complete. A Service member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the preferred gender.

gender transition process. Gender transition in the military begins when a Service member receives a diagnosis from a military medical provider indicating that the member's gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in the preferred gender.

human and functional support network. Support network for a Service member that may be informal (e.g., friends, family, co-workers, social media.) or formal (e.g., medical professionals, counselors, clergy).

medically necessary. Those health-care services or supplies necessary to prevent, diagnose, or treat an illness, injury, condition, disease, or its symptoms, and that meet accepted standards of medicine.

non-urgent medical care. The care required to diagnose and treat problems that are not life or limb threatening or that do not require immediate attention.

preferred gender. The gender in which a transgender Service member will be recognized when that member's gender transition is complete and the member's gender marker in DEERS is changed.

RLE. The phase in the gender transition process during which the individual commences living socially in the gender role consistent with their preferred gender. RLE may or may not be preceded by the commencement of cross-sex hormone therapy, depending on the medical treatment associated with the individual Service member's gender transition. The RLE phase is also a necessary precursor to certain medical procedures, including gender transition surgery. RLE generally encompasses dressing in the new gender, as well as using preferred gender berthing, bathroom, and shower facilities.

SCCC. Service-level cell of experts created to provide multi-disciplinary (e.g., medical, legal) advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military.

stable in the preferred gender. Medical care identified or approved by a military medical provider in a documented medical treatment plan is complete, no functional limitations or complications persist, and the individual is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning. Continuing medical care, including but not limited to cross-sex hormone therapy, may be required to maintain a state of stability.

transgender Service member. A Service member who has received a medical diagnosis indicating that gender transition is medically necessary, including any Service member who intends to begin transition, is undergoing transition, or has completed transition and is stable in the preferred gender.

transition. Period of time when individuals change from the gender role associated with their sex assigned at birth to a different gender role. For many people, this involves learning how to live socially in another gender role; for others this means finding a gender role and expression that are most comfortable for them. Transition may or may not include feminization or masculinization of the body through cross-sex hormone therapy or other medical procedures. The nature and duration of transition are variable and individualized.

urgent medical care. The care needed to diagnose and treat serious or acute medical conditions that pose no immediate threat to life and health, but require medical attention within 24 hours.

REFERENCES

Directive-type Memorandum 16-005, "Military Service of Transgender Service Members," July 1, 2016
DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 24, 2003
DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014
DoD Instruction 1215.08, "Senior Reserve Officers' Training Corps (ROTC) Programs," June 26, 2006
DoD Instruction 1215.13, "Ready Reserve Member Participation Policy," May 5, 2015
DoD Instruction 1322.22, "Service Academies," September 24, 2015
DoD Instruction 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended
DoD Instruction 1332.18, "Disability Evaluation System (DES)," August 5, 2014
DoD Instruction 6025.19, "Individual Medical Readiness (IMR)," June 9, 2014



United States Department of Defense

TRANSGENDER SERVICE IN THE U.S. MILITARY

An Implementation Handbook

September 30, 2016

JA508



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

SEP 30 2016

MEMORANDUM FOR ALL SERVICE MEMBERS

SUBJECT: Transgender Service in the U.S. Military: An Implementation Handbook

In July 2015, the Secretary of Defense directed the Department of Defense to identify the practical issues related to the open service of transgender Americans in the military, and to develop an implementation plan addressing those issues in manner consistent with military readiness. On June 30, 2016, the Secretary announced a new policy allowing open service by transgender Service members:

"This is the right thing to do for our people and for the force. We're talking about talented Americans who are serving with distinction or who want the opportunity to serve. We can't allow barriers unrelated to a person's qualifications to prevent us from recruiting and retaining those who can best accomplish the mission."

This handbook will assist our transgender Service members in their gender transition, help commanders with their duties and responsibilities, and help all Service members understand Department policy allowing the open service of transgender Service members. It is the product of broad collaboration among the Services, and is intended as a practical day-to-day guide. For further information, you are encouraged to contact your chain of command and/or Service Central Coordination Cell.


Peter Levine
Acting

JA509

TRANSGENDER SERVICE IN THE U.S. MILITARY

AN IMPLEMENTATION HANDBOOK

September 30, 2016

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TRANSGENDER SERVICE IN THE US MILITARY:

An Implementation Handbook

Our mission is to defend this country, and we don't want barriers unrelated to a person's qualification to serve preventing us from recruiting or retaining the Soldier, Sailor, Airman, or Marine who can best accomplish the mission. We have to have access to 100 percent of America's population for our all-volunteer force to be able to recruit from among them the most highly qualified—and to retain them...Starting today: Otherwise qualified Service members can no longer be involuntarily separated, discharged, or denied reenlistment or continuation of service just for being transgender.

—Statement by Secretary of Defense Ash Carter¹

¹ U.S. Secretary of Defense Ash Carter, "Secretary of Defense Ash Carter Remarks Announcing Transgender Policy Changes," June 30, 2016.

BACKGROUND

The handbook is designed to assist our transgender Service members in their gender transition, help commanders with their duties and responsibilities, and help all Service members understand new policies enabling the open service of transgender Service members. The handbook includes advice, questions and answers, and scenarios.

This handbook outlines some of the issues faced by commanders, transgender Service members, and the Military Services; it does not have all of the solutions – individual circumstances will vary. It is an administrative management tool, and is not a health management tool or policy document. Additional key parts of this handbook include: Annex A, which contains questions and answers to help with understanding specific terms and words; Annex B, which provides step-by-step details of the gender transition process; Annex C, which highlights situation-based scenarios that may be useful for training situations; and Annex D, which provides links to additional resources. For specific policies refer to Department of Defense Instruction (DoDI) 1300.28,² Directive-type Memorandum (DTM) 16-005,³ Service policies, and/or Service Central Coordination Cells (SCCC).⁴

2 DoD Instruction (DoDI) 1300.28, “In-Service Transition for Service Members Identifying as Transgender,” June 30, 2016.

3 Directive-type Memorandum (DTM), 16-005, “Military Service of Transgender Service Members,” June 30, 2016.

4 See Annex D for SCCC contact information.

INTRODUCTION

Sex and gender are different. Sex is whether a person is male or female through their biology. Gender is the socially defined roles and characteristics of being male and female associated with that sex. There are a number of people for whom these associations do not match. This feeling may arise in childhood, adolescence or adulthood and may result in gender dysphoria. Sometimes people's gender identity does not match their sex at birth.

Gender dysphoria is a medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex assigned at birth. The condition can manifest in a person as strong and persistent cross-gender identification and a discomfort with their biological sex, or a sense of inappropriateness in the gender role of that sex. Transgender Service members may face challenges centered on their own personal situation and/or others' unfamiliarity with gender identity issues.

POLICY

In July 2015, the Secretary of Defense directed the Department of Defense to identify the practical issues related to transgender Americans serving openly in the military and to develop an implementation plan that addresses those issues consistent with military readiness. On June 30, 2016, the Secretary announced a new policy⁵ allowing open service of transgender Service members and outlined three reasons⁶ for this policy change:

- The Army, Navy, Air Force, Marine Corps, and Coast Guard need to avail themselves of all available talent in order to remain the finest fighting force the world has ever known. The mission to defend this country requires that the Services do not have barriers unrelated to a person's qualification to serve or preventing the Department of Defense (DoD) from recruiting or retaining Service members.
- There are transgender Service members in uniform today. DoD has a responsibility to them and their commanders to provide clearer and more consistent guidance.
- Individuals who want to serve and can meet the Department's standards should be afforded the opportunity to compete to do so.

This handbook will explain the framework by which transgender Service members may transition gender while serving.

5 DoDI 1300.28 and DTM 16-005.

6 U.S. Secretary of Defense Ash Carter Remarks, June 30, 2016.

TERMS AND DEFINITIONS

The following terms are associated with open service by transgender individuals. The list is not all-inclusive. The definitions are consistent with those in the new policy.

Cross-sex hormone therapy. The use of feminizing hormones in an individual assigned male at birth based on traditional biological indicators or the use of masculinizing hormones in an individual assigned female at birth. A common medical treatment associated with gender transition.

Gender dysphoria. A medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex assigned at birth.

Gender identity. One's internal or personal sense of being male or female.

Gender marker. Data element in the Defense Enrollment Eligibility Reporting System (DEERS) that identifies a Service member's gender. A Service member must meet all military standards associated with the member's gender marker in DEERS and use military berthing, bathroom, and shower facilities in accordance with the DEERS gender marker.⁷

Gender transition is complete. A Service member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the preferred gender.

Gender transition process. Gender transition in the military begins when a Service member receives a diagnosis from a military medical provider indicating that the member's gender transition is medically necessary, and concludes when the Service member's gender marker in DEERS is changed and the member is recognized in the preferred gender.

Human and functional support network. Support network for a Service member that may be informal (e.g., friends, family, co-workers, social media.) or formal (e.g., medical professionals, counselors, clergy).

⁷ While the gender marker change is reflected in DEERS, the Services' personnel data systems are the means to input gender; as such, the remainder of this handbook refers to 'Services' personnel data systems'.

Medically necessary. Those health care services or supplies necessary to prevent, diagnose, or treat an illness, injury, condition, disease, or its symptoms and that meet accepted standards of medical care.

Non-urgent medical care. The care required to diagnose and treat problems that are not life or limb threatening or that do not require immediate attention.

Preferred gender. The gender of a transgender Service member when gender transition is complete and the gender marker in DEERS is changed.

Real life experience (RLE). The phase in the gender transition process when the individual commences living socially in the gender role consistent with their preferred gender. RLE may or may not be preceded by the commencement of cross-sex hormone therapy, depending on the individual gender transition medical treatment plan. The RLE phase is also a necessary precursor to certain medical procedures, including gender transition surgery. RLE generally encompasses dressing in the new gender, as well as using preferred gender berthing, bathroom, and shower facilities.⁸

Service Central Coordination Cell (SCCC). Service-level cell of experts created to provide multi-disciplinary (e.g., medical, legal) advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military.⁹

Stable in the preferred gender. Medical care identified or approved by a military medical provider in a documented medical treatment plan is complete, no functional limitations or complications persist, and the individual is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning. Continuing medical care, including but not limited to cross-sex hormone therapy, may be required to maintain a state of stability.

Transgender Service member. A Service member who has received a medical diagnosis indicating that gender transition is medically necessary, including any Service member who intends to begin transition, is undergoing transition, or has completed transition and is stable in the preferred gender.

8 RLE intended to occur off duty; however, exceptions to policy may be granted. Consult Service policy for specifics.

9 A complete listing with SCCC contact information can be found at Annex D.

THE BASICS

Sex and gender are different. Sex is the assignment made at birth as male or female, based on anatomy. Gender identity is an individual's internal sense of being male or female. Gender role or expression is the socially defined roles and characteristics of being male and female associated with that sex. For most people, gender identity and expression are consistent with their sex assigned at birth. However, in transgender individuals, gender identity and/or expression differs from their sex assigned at birth.

Gender dysphoria is a medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex assigned at birth.

Broadly, the term “transgender person” refers to individuals whose internal sense of being male or female (gender identity) is different from the sex they were assigned at birth. Some transgender individuals feel compelled to align their external appearance with their gender identity and undergo transition to the preferred gender. Gender transition care is individualized and can include psychotherapy, hormone therapy, RLE, and sex reassignment surgery.

Traditionally, society has had little understanding of what it means to transition gender. Many transitioning people have been subjected to hostility, ridicule, and discrimination. Every person has the right to have their gender identity recognized and respected, and all Service members who receive a diagnosis that gender transition is medically necessary will be provided with support and management to transition, within the bounds of military readiness.

Gender transition is the process a person goes through to live fully in their preferred gender. Gender transition in the military may present challenges associated with addressing the needs of the Service member while preserving military readiness. The oversight and management of the gender transition process is a team effort with the commander, the Service member, and the military medical provider (MMP). DoD values the contributions of all Service members and tries to ensure all are as medically ready as possible throughout their service. Individual readiness is a key to Total Force readiness.

Gender Transition Approval Process Overview

Gender transition is highly individualized. Figure 1 outlines the main components. Generally, the gender transition process includes:

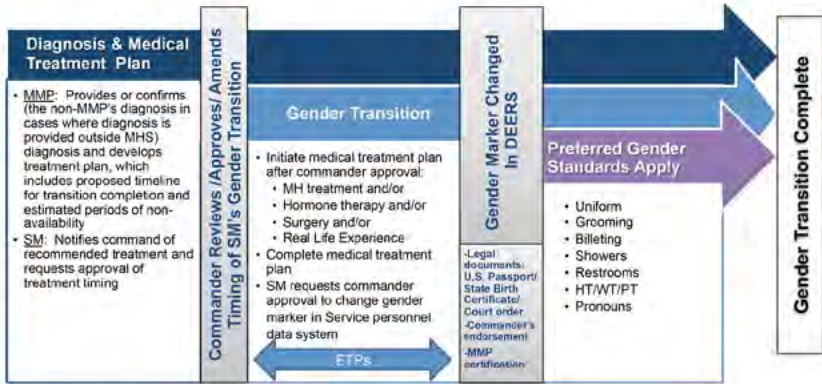
- Diagnosis and medical treatment plan received from or validated by an MMP;
- Gender transition (initiate medical treatment plan, complete medical treatment plan, Service member requesting gender marker change); and
- Compliance with gender standards post-gender marker change.

The process depicted is only a framework and Service members may progress on varying timelines. The commander, informed by the recommendations of the MMP, the SCCC, and others, as appropriate, will respond to the request to transition gender while ensuring readiness by minimizing impacts to the mission (including deployment, operations, training, exercise schedules, and critical skills availability), as well as to the morale and welfare and good order and discipline of the command.

Within this framework, the commander plays a key role in making recommendations and taking action on:

- The timing of medical treatment associated with gender transition;
- Timing of RLE (e.g., non-duty hours, duty hours with an exception to policy (ETP))
- Requested ETPs associated with gender transition; and
- A change to the Service member's gender marker in their Service's personnel data system.

Figure 1: Gender Transition Process



Key Acronyms:

DEERS – Defense Enrollment Eligibility Reporting System

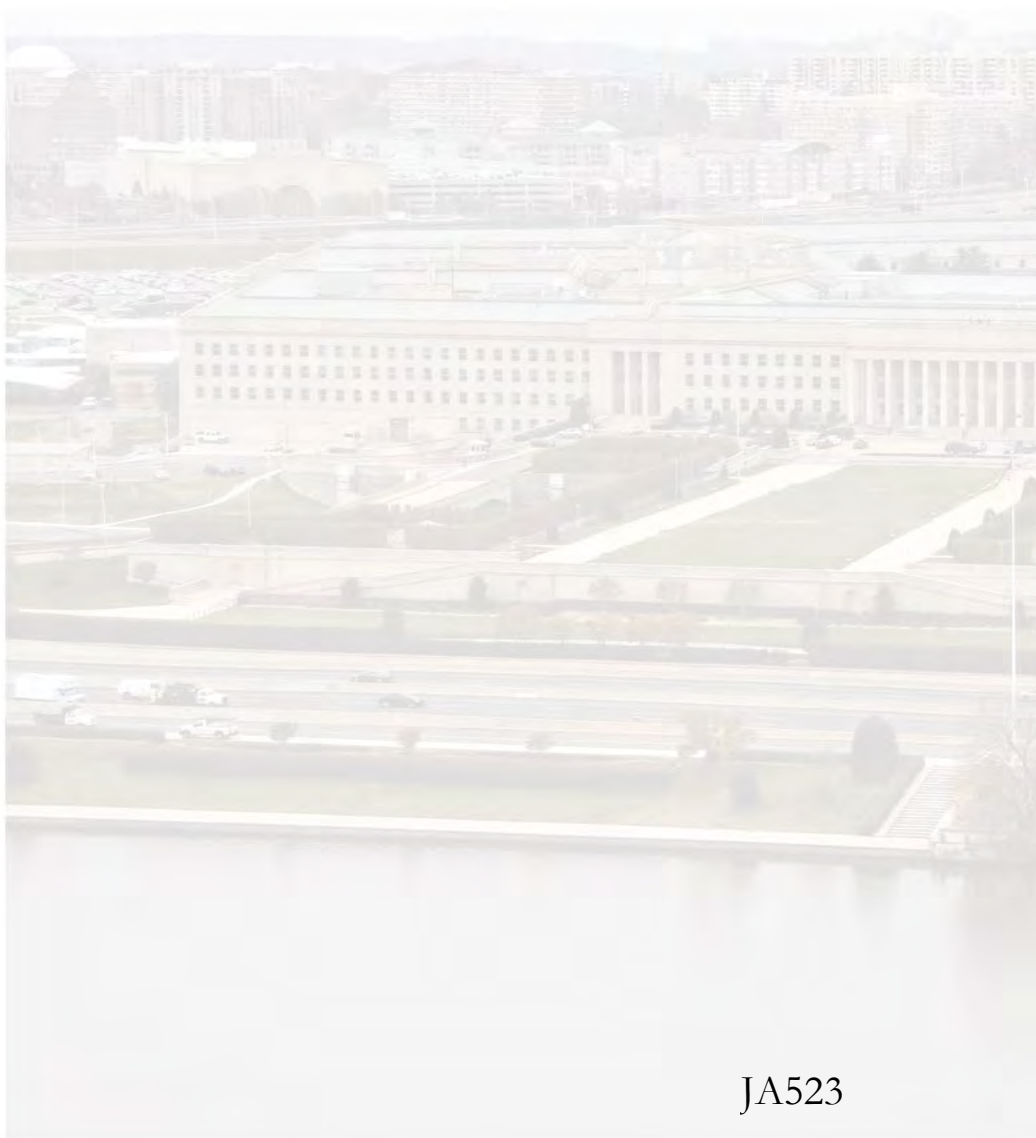
HT/WT/PT – Height/Weight/Physical Training

MH – Mental Health

MHS – Military Health System

MMP – Military Medical Provider

SM – Service Member



JA523

FOR THE TRANSGENDER SERVICE MEMBER

“...the reality is that we have transgender Service members serving in uniform today, and I have a responsibility to them and their commanders to provide them both with clearer and more consistent guidance than is provided by current policies.”

—Statement by Secretary of Defense Ash Carter¹⁰

DoD's revised transgender Service member policy ensures your medical care is brought into the military health system (MHS), protects your privacy when receiving medical care, and establishes a structured process whereby you may transition gender when medically necessary.

In-Service Transition

Gender transition in the military begins when you receive a diagnosis from an MMP indicating that gender transition is medically necessary and concludes when you change your gender marker in your Service's personnel data system. Your commander is a critical part of your transition and much of this section will highlight his/her role. The table below outlines responsibilities for both Active and Reserve Component Service members requesting in-service transition. To make a request, you must:

¹⁰ U.S. Secretary of Defense Ash Carter Remarks, June 30, 2016.

Active Component & Reserve Component Uniformed Full-Time Support Personnel	Reserve Component (All Others)
1. Secure a medical diagnosis and a medical treatment plan from your MMP. If the diagnosis and treatment plan are from a non-military medical provider (<u>non-MMP</u>), you are required to notify your MMP at the earliest practical opportunity to bring your care into the MHS. Your MMP will review, and if appropriate validate the <u>non-MMP's</u> diagnosis and treatment plan.	1. Secure a medical diagnosis and a medical treatment plan from your <u>non-MMP</u> .
2. Notify your commander of the diagnosis and medical treatment plan indicating that gender transition is medically necessary. Work with your commander and your MMP to develop a transition plan that includes a timeline for treatment and an estimated date for a change of your gender marker in your Service's personnel data system.	2. Notify your commander of the diagnosis and medical treatment plan, indicating that gender transition is medically necessary. Work with your commander to have an MMP validate the <u>non-MMP's</u> diagnosis and treatment plan and develop a transition plan that includes a timeline for treatment and an estimated date for a change of your gender marker in your Service's personnel data system.
3. Notify your commander of any changes to the medical treatment plan, the projected schedule for such treatment, any exceptions to policy (ETP) you may request, and the estimated date on which your gender marker would be changed in your Service's personnel data system.	3. Same as AC.
4. Obtain one of the following to change your gender marker in your Service's personnel data system: ■ A certified true copy of a state birth certificate reflecting your preferred gender; or ■ A certified true copy of a court order reflecting your preferred gender; or ■ A U.S. Passport reflecting your preferred gender.	4. Same as AC.

Active Component & Reserve Component Uniformed Full-Time Support Personnel	Reserve Component (All Others)
5. Obtain your MMP's confirmation that gender transition is complete. ¹¹	5. Obtain a <u>non-MMP</u> confirmation that your gender transition is complete, then validate with an MMP (in concert with commander).
6. Obtain written approval from your commander to change your gender marker in your service's personnel data system.	6. Same as AC.
7. Submit paperwork to your personnel administrative office once you have all the required documentation and your commander's written approval to obtain your gender marker change.	7. Same as AC.
8. Meet all applicable military standards in your preferred gender (to include using military berthing, bathroom, and shower facilities), when your gender marker is changed in your Service's personnel data system.	8. Same as AC.
9. Adhere to the ongoing medical treatment plan developed by your MMP to address continuing medical needs, including follow-up visits related to continuous hormone treatment and routine health screening. ¹²	9. Adhere to the ongoing medical treatment plan developed by your <u>non-MMP</u> to address continuing medical needs, including follow-up visits related to continuous hormone treatment and routine health screening.

11 In DoDI 1300.28, gender transition is complete when a Service member has completed the medical care identified or approved by a military medical provider in a documented medical treatment plan as necessary to achieve stability in the preferred gender.

12 The MMP (or non-MMP, if you are not on active duty) may determine certain aspects of your medical care and treatment to be medically necessary, even after your gender marker is changed in your Service's personnel data system (e.g., cross-sex hormone therapy). A gender marker change does not prohibit you from receiving further care and treatment.

Communication

It is vital that you are open and honest with your leadership when discussing the gender transition process. This will enable you to convey your needs as well as address any questions or concerns from your leadership.

Communication with colleagues is equally important as they may not be familiar or comfortable with gender transition. It is important to remember that while you have had many months, probably years, to understand your need to transition, this may be the first time your colleagues have encountered gender transition. They may have difficulty understanding the reasons and the process.

There are many ways to respectfully disclose your gender identity to your colleagues. How and when you wish to tell your coworkers is something you will need to discuss with your commander and/or your MMP. It is important to state what information you are open to discussing and what information you wish to remain private. Communication strategies could include:

- Ask your leadership to convene a unit meeting and make an announcement on your behalf. Have health professionals and/or chaplains available to answer questions;
- Share a letter from you with your unit;
- Distribute a letter or notification via email; and/or
- Make the announcement in person at a unit meeting.

Finding a Mentor

Similar to seeking a mentor to assist and guide in career/professional development, it may be advisable to seek a mentor to assist you in your transition. A mentor should be someone familiar with the process you are undertaking. If possible, choose someone from your peer group or military pay grade. If you cannot find your own potential mentor(s), consider seeking recommendations from your commander, a chaplain, or medical professional. Below are some areas where a mentor may be beneficial:

- Providing advice on military issues related to the correct wear of your preferred gender uniform and related grooming issues;
- Being a supportive sounding board;

- Providing frank and honest advice; and
- Being a unit point of contact, or conduit, for questions from the workplace related to gender transition.

Considerations

Below are some career considerations that you may wish to take into account.

Period of Adjustment

Early on in your transition you may need to consider that adjusting your appearance and grooming can take some time. During this period of transition, it may be appropriate to discuss periods of authorized absence with your commander and the MMP.

For most of your transition, you should not need to use convalescent leave; however, you may require some time to recover from certain medical or surgical treatments. Accordingly, when convalescent leave is recommended, ensure you have coordinated with your unit leadership, administrative personnel, and medical personnel.

Impact Transitioning May Have on Your Career

Transitioning gender may have an impact on several different aspects of your career including deployability, assignment considerations, medical classification, and aspects of individual readiness (e.g., physical fitness, body composition assessment, and professional military education attendance). Since the impact to your career could be significant, it is strongly recommended you discuss this with your commander and/or mentor.

Assignments

You may need to discuss with your MMP and commander whether you want to transition while in your current unit or upon arrival at a new unit. There are advantages and disadvantages to both. The latter has the advantage of leaving your old life at your last duty station and arriving at your next assignment ready to start your new life. However, the disadvantage is that you will have to re-establish your support network in the new location.

Completing transition within a normal Permanent Change of Station cycle of 3-4 years is possible, but may or may not be desirable depending on your circumstances. Below are some issues to consider:

- Specialized medical care may not be available at all duty locations. Assignments near installations with such care may need to be considered;
- Moving locations means potentially moving away from a stable environment, including medical specialists and social support. However, making a fresh start may be easier for some transitioning members;
- Your duty locations may impact decisions about when to commence RLE in your preferred gender; and
- Not all duty assignments will be able to support a gender transition.

Individual Medical Readiness (IMR)

Medical care for gender transition is managed in the same way as other medical conditions. You may be non-deployable for some periods during your gender transition process. It is your responsibility to inform your leadership regarding your medical condition when, as a result of any medical treatment, you will be or have become non-deployable.¹³

Physical Readiness Testing (PRT)

PRT is a fundamental requirement of your military service. You are required to meet the PRT standards based upon your gender marker in your Service's personnel data system and in accordance with Service regulations. Similar to other circumstances where Service members may not meet standards, it is important that you consult regularly with your MMP to ensure you can meet standards (i.e., fitness). If you are unable to meet the standards, it may be necessary to request an ETP.

Privacy

Maintaining dignity and respect for all is important. You will need to consider both your own privacy needs and the privacy needs of others. This includes, but is not limited to, maintaining personal privacy in locker rooms, showers, and living quarters. One strategy might include adjusting personal hygiene hours. If you have concerns, you are encouraged to discuss them with your chain of command.

Military Records

Your records prior to transition (e.g., awards, performance evaluations) are historical and will not be changed after completion of your gender transition.

¹³ DoDI 6025.19, "Individual Medical Readiness (IMR)," June 9, 2014.

Your Service has a board process that may consider changes to historical military records.¹⁴ All records generated after your Service's personnel data system gender marker is changed will reflect your preferred gender.

Expectation Management

The military developed a process to allow you to transition gender while you serve. Keep the lines of communication open and be patient with the process. Your timeline may need to be flexible due to operational requirements.

Tips for Transitioning Service Members

The following tips have been provided by Service members from an allied foreign military who have transitioned gender.¹⁵

- Honesty. "If you wish to be respected you must also give that same respect to your coworkers up and down the chain. How you treat others and inform others will be directly related to the way you are treated. It is incredibly hard to open up and trust people with a personal secret you have probably carried for your entire adult life; however from my experiences if you keep an open-door philosophy and answer honest questions with polite and clear non-emotional detail, most will accept and understand."
- Be professional. "The hormones you may [take] to change will have a varied and perhaps profound effect on not only your physical body, but more importantly your emotional stability. Try not to allow this to cloud or affect your judgement, it will be hard for some to see this happening, trust in your friends when they point out little slips and errors in your emotional well-being, they have your interests at heart!"
- Empower those around you. "Knowledge equals power which equals understanding; empowering those around you to understand will help them feel less threatened and confused, which can assist in being treated with respect and understanding rather than confusion and possibly even contempt and hostility."
- Be confident. "Know yourself, make as much effort as possible to be part of the team and not hide or be hidden away to avoid embarrassment. Stepping

14 See Annex D for a list of Service links to boards for correction of military records.

15 Australian Air Force, Air Force Diversity Handbook: Transitioning Gender in the Air Force, April 2013, 19.

out in to the work arena will be hard, but the sooner you face this challenge the sooner your well-being can return.”

- Trust. “Trusting others when you’re vulnerable is hard for most serving people. We are proud, strong, and generally rather too stubborn to allow others to take charge of us when we feel we can manage ourselves. The problem is you may not understand all that is happening around you, particularly with your coworkers. So listen and trust in your commanders based on their good sound knowledge.”
- Planning. “Map out your transition as best you can, try and forecast as much as possible and pass this on to the relevant commanders. Learn and understand not only what’s happening now in your world, but look and think about where you will be and what you may need.”

FOR THE COMMANDER

“We owe commanders better guidance on how to handle questions such as deployment, medical treatment and other matters. And this is particularly true for small unit leaders, like our senior enlisted and junior officers.”

—Statement by Secretary of Defense Ash Carter¹⁶

The Commander’s Impact

In the course of your duties, you may encounter a transgender Service member who wants to transition gender. It is important that you are aware of your obligations and responsibilities with regard to the support and management of Service members who are transitioning gender. You are responsible and accountable for the overall readiness of your command. You are also responsible for the collective morale and welfare and good order and discipline of the unit and for fostering a command climate where all members of your command are treated with dignity and respect.

Commander’s Roles and Responsibilities

In-Service Transition

When you receive a request from a Service member for medical treatment or an ETP associated with gender transition, you must consider the individual needs associated with the request and the needs of your command. The table below outlines your responsibilities for Active and Reserve Component Service members requesting in-service transition. In making a decision on the request, your responsibilities include:

16 U.S. Secretary of Defense Ash Carter Remarks, June 30, 2016.

Active Component & Reserve Component Uniformed Full-Time Support Personnel	Reserve Component (All Others)
1. Complying with the provisions of DoDI 1300.28 ¹⁷ and with Military Department and Service regulations, policies, guidance, and with your SCCC, as appropriate.	1. Same as AC.
2. Evaluating a Service member's request to transition gender. Ensure, as appropriate, a transition process that: ■ Considers the individual facts and circumstances presented by the Service member; ■ Considers military readiness and impacts to the mission (including deployment, operations, training, and exercise schedules, and critical skills availability), as well as to the morale and welfare and good order and discipline of the unit; ■ Is consistent with the medical treatment plan generated or validated by the MMP; and incorporates consideration of other factors, as appropriate.	2. A Service member will likely provide a diagnosis and medical treatment plan from a <u>non-MMP</u> . In this instance, it still must be validated by the MMP. Consult your chain of command for guidance, if required. You must still evaluate Service member's request in light of the 3 bullets in the active duty column.
3. Reviewing a Service member's request for completeness. ¹⁸ If you determine the request to be incomplete, you must return it to the Service member, with written notice of the deficiencies identified, as soon as practicable, but not later than 30 days after receipt.	3. Same as AC.

¹⁷ DoDI 1300.28.

¹⁸ Refer to Figure 1 and Service policy for completeness determination; in all cases, it will include: completed medical treatment plan and commander approval of request.

Active Component & Reserve Component Uniformed Full-Time Support Personnel	Reserve Component (All Others)
4. Responding to any requests for medical treatment or an ETP¹⁹ associated with gender transition, as soon as practicable, but not later than 90 days after receiving a request determined to be complete. Your response shall: ■ Be in writing; including notice of any actions taken by you; and ■ Be provided to both the Service member and their MMP.	4. Same as AC.
5. At any time prior to the change of the Service member's gender marker in Service's personnel data system, you may modify a previously approved approach to, or an ETP associated with, gender transition.	5. Same as AC.
6. Approving in writing²⁰ the request to change a Service member's gender marker in your Service's personnel data system upon receipt of the recommendation by the MMP and the requisite legal documentation from the Service member. The Service member is then able to take the approval and the legal documentation to the personnel administrative office to obtain the change to the gender marker.	6. Ensuring <u>non-MMP's</u> statement of completion is validated by an MMP, prior to your approval. The remaining process in active duty column should be followed.
7. When the gender marker in the Service's personnel data system is changed: ■ Apply uniform, grooming, body composition assessment (BCA), PRT, Military Personnel Drug Abuse Testing Program (MPDATP), and other standards reflecting the Service member's gender marker in the Service's personnel data system; and ■ Direct the use of berthing, bathroom, and shower facilities according to the Service member's gender marker as reflected in the Service's personnel data system in facilities that are subject to regulation by the military.	7. Same as AC.

19 Your Service will determine the approval level for ETPs. Refer to Service policy or your SCCC if there are concerns.

20 There is no prescribed format for approving a request to change gender marker. Refer to Service policy or your SCCC if there are concerns.

What You Should Expect From the Military Medical Provider (MMP)

The MMP plays a key role in the gender transition process. The MMP will:

- Provide the medical diagnosis applicable to the Service member; list the medically necessary treatments, including the timing of the proposed treatment and the likely impact of the treatment on the individual's readiness, and deployability; and
- Formally advise you when the Service member's medical treatment plan for gender transition is complete and recommend a time at which the gender marker may be changed in your Service's personnel data system.
- Validate the non-MMP's confirmation that Service member's gender transition is complete.

Policy Implications

You have broad responsibilities to maintain your unit's readiness. Select policy areas that may impact the transition process are highlighted below.

Non-Military Medical Care

If an active duty Service member's diagnosis and/or treatment plan are from a non-MMP, direct the individual to notify the MMP at the earliest practical opportunity to bring the care into the MHS. The MMP must consider, and if appropriate, validate the Service member's diagnosis before initiating any other steps in the transition process. If the request is from a non-active duty Service member, the non-MMP diagnosis and/or treatment plan must still be approved by an MMP.

Military Personnel Uniform and Grooming Standards

Exceptions for uniform and grooming standards may be considered per your Service's policy. You may consider current and preferred gender uniforms, form, fit and/or function, the Service member's professional military image, as well as impact on unit cohesion and good order and discipline. If you have questions, refer to your SCCC.

Deployment

Service members will deploy if they are medically and otherwise qualified to do so. As with any Service member, exceptions may be considered by your Service and must be coordinated with the deployed commander, if unique medical needs exist. Individuals requiring close monitoring or ongoing care may not be available for deployment.

Physical Fitness

There are no separate standards for transgender Service members. Any exceptions to PRT standards will be administered by your Service. Individuals undergoing cross-sex hormone therapy may experience changes to their body shape and physical strength, which may have a notable effect on their ability to maintain standards. If that is the case, consult with the individual and the MMP as you would for any other Service member with a medical condition affecting their ability to meet physical fitness standards.

Privacy Accommodations

If concerns are raised by Service members about their privacy in showers, bathrooms, or other shared spaces, you may employ reasonable accommodations, such as installing shower curtains and placing towel and clothing hooks inside individual shower stalls, to respect the privacy interests of Service members. In cases where accommodations are not practicable, you may authorize alternative measures to respect personal privacy, such as adjustments to timing of the use of shower or changing facilities. This should be done with the intent of avoiding any stigmatizing impact to any Service member. You are encouraged to consult with your SCCC for guidance on such measures.

Military Personnel Drug Abuse Testing Program

The MPDATP²³ requires urinalysis specimens to be collected under the direct supervision of a designated individual of the same sex as the Service member providing the specimen. You have discretion to take additional steps to promote privacy, provided those steps do not undermine the integrity of the program. However, all collections must be directly observed. You are encouraged to use discretion and/or contact your SCCC for additional guidance.

23 DoDI 1010.16, "Technical Procedures for the Military Personnel Drug Abuse Testing Program (MPDATP)," October 10, 2012.

Tips for Commanders

The below tips are provided by an allied foreign military and may prove useful:²⁴

- Protect the service member's privacy. Information management is very important.
- Listen to the Service member's wishes with respect to disclosure to the workplace and the broader community.
- Consider consultation with the chaplain, behavioral health personnel, and medical providers.
- Seek guidance and advice from other commanders and supervisors who have experience with individuals who transitioned gender while serving.
- Encourage the Service member to articulate a plan to include a timeline and strategy for notifying coworkers and other command personnel.
- Assist the Service member with identifying a mentor with whom they are comfortable.
- Encourage open communication. Feel free to ask questions.
- Ensure bullying, bias, harassment, hazing, or any other unacceptable behavior is not tolerated.

²⁴ Australian Air Force Handbook.

FOR ALL SERVICE MEMBERS

“I am 100 percent confident in the ability of our military leaders and all our men and women in uniform to implement these changes in a manner that both protects the readiness of the force and also upholds values cherished by the military—honor, trust, and judging every individual on their merits.”

—Statement by Secretary of Defense Ash Carter²⁵

The cornerstone of DoD values is treating every Service member with dignity and respect. Anyone who wants to serve their country, upholds our values, and can meet our standards, should be given the opportunity to compete to do so. Being a transgender individual, in and of itself, does not affect a Service member’s ability to perform their job. Previous policy, however, required transgender Service members to hide their gender identity and forced them to receive their gender-related medical care outside the MHS.

The June 30, 2016, policy allows transgender Service members to openly acknowledge their gender identity, brings all of their medical care into the MHS, allows transgender Service members to transition their gender when medically necessary, and allows the commander to work with the Service member and an MMP to implement a gender transition plan that meets the individual’s medical requirements and unit readiness requirements.

Understanding Gender Transition

The gender transition process is individualized. Gender transition can include social, medical, and legal components. Social transition, in the military context, will generally encompass living in the preferred gender after duty hours. (You may encounter a situation where you know a Service member by one name during duty hours and another after duty hours; this all depends on the individual’s transition.) Medical treatment may include behavioral health care, use of hormones (which may change physical appearance), and/or surgery.

25 U.S. Secretary of Defense Ash Carter Remarks, June 30, 2016.

Other aspects of transition includes formally changing one's gender with federal, state, and military documentation.

Some individuals prefer that very few people know they are transgender Service members and hope that after transition they can quietly blend in with their new gender. Others are committed to educating the public about gender identity, are eager to answer questions, and continue to talk openly about being a transgender Service member long after transition.

Revealing gender identity at work may be one of the last steps transgender Service members take to live and work in their preferred gender. By the time they inform their chain of command they plan to change gender, they have often been dealing with this issue for many years. It is also important not to "out" a transgender Service member (i.e., do not talk about someone else's gender identity or status unless they are okay with it.) The bottom line is to treat others with the dignity, respect, and consideration you would like to be treated with by others.

Harassment and Bullying

Everyone plays a role in stopping bullying and harassment. You must be proactive and question behavior that is inappropriate at the time it occurs. You must report inappropriate behavior to your chain of command immediately. Remember, everyone is responsible for fostering the best possible command climate within your unit.

The impact harassment can have on Service members should not be underestimated; it has the potential to affect the member both personally and professionally. Inappropriate jokes, attitudes, or comments that marginalize transgender Service members are damaging to command climate. In an environment that permits inappropriate jokes and behavior, transgender Service members who have not disclosed their status may be unlikely to seek the care they need.

Respect for Personal Information

You are responsible for upholding and maintaining the high standards of the U.S. military at all times and at all places. Out of respect for all Service members, as mentioned earlier, you should not disclose someone's gender identity without their permission, unless the disclosure is made for official use.²⁶

26 Services retain the authority provided by law and Department and Service regulations to counsel, discipline, and involuntarily separate, as appropriate under the circumstances, those Service members who fail to obey established standards.

Tips for Service Members

Your social interactions and developing friendships with peers contribute to a positive work environment. Do not make assumptions about an individual's gender or sexual orientation. Let others volunteer personal information.

Try to ensure planned social activities are inclusive of Service members and their families who may not fit into your perception of what is typical.

If you notice colleagues or peers are expressing opinions that may alienate others, speak up regarding how their statements may impact others. Often people may be unaware of how their statements, questions, and activities may alienate and offend their coworkers, team members, or staff.

You should be sensitive to the use of pronouns when addressing others. This will vary by individual and unit. If there is ever any question about pronoun usage, do not hesitate to ask the Service member how they wish to be addressed.

If you have questions or concerns, you are encouraged to talk with your chain of command.

Privacy

Maintaining dignity and respect for all is important. You will need to consider both your own privacy needs and the privacy needs of others. This includes, but is not limited to, maintaining personal privacy in locker rooms, showers, and living quarters. One strategy might include adjusting personal hygiene hours. If you have concerns, you are encouraged to discuss them with your chain of command.

ACRONYMS

AOR	<i>Area of Responsibility</i>
BCA	<i>Body Composition Assessment</i>
DEERS	<i>Defense Enrollment Eligibility Reporting System</i>
DES	<i>Disability Evaluation System</i>
DoD	<i>Department of Defense</i>
DoDI	<i>Department of Defense Instruction</i>
DTM	<i>Directive-type Memorandum</i>
ETP	<i>Exception to Policy</i>
HT/WT	<i>Height/Weight</i>
IMR	<i>Individual Medical Readiness</i>
ING	<i>Inactive National Guard</i>
IR	<i>Individual Readiness</i>
IRR	<i>Individual Ready Reserve</i>
MHS	<i>Military Health System</i>
MLOA	<i>Medical Leave of Absence</i>
MMP	<i>Military Medical Provider</i>
MPDATP	<i>Military Personnel Drug Abuse Testing Program</i>
MSA	<i>Military Service Academy</i>
MTF	<i>Military Treatment Facility</i>
PRT	<i>Physical Readiness Test</i>
RLE	<i>Real Life Experience</i>
ROTC	<i>Reserve Officers' Training Corps</i>
SCCC	<i>Service Central Coordination Cell</i>
SELRES	<i>Selected Reserve</i>

BIBLIOGRAPHY

Australian Air Force. *Air Force Diversity Handbook: Transitioning Gender in the Air Force*.
Australian Air Force, 2013.

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

DoDI 1010.16, “*Technical Procedures for the Military Personnel Drug Abuse Testing Program (MPDAP)*,” October 10, 2012.

DoDI 1215.08, “*Senior Reserve Officers’ Training Corps (ROTC) Programs*,” June 26, 2006.

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

DoDI 1300.28, “*In-Service Transition for Service Members Identifying as Transgender*,” June 30, 2016.

DoDI 1332.14, “*Enlisted Administrative Separations*,” January 27, 2014, as amended.

DoDI 1332.18, “*Disability Evaluation System (DES)*,” August 5, 2014.

DoDI 1322.22, “*Service Academies*,” September 24, 2015.

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

DoDI 6130.03, “*Medical Standards for Appointment, Enlistment, or Induction in the Military Services*,”
September 13, 2011.

DoDI 6490.04, “*Mental Health Evaluations of Members of the Military Services*,” March 4, 2013.

U.S. Secretary of Defense Ash Carter, “*Secretary of Defense Ash Carter Remarks Announcing Transgender Policy Changes*,” Washington, D.C., June 30, 2016.

ANNEX A:

Questions and Answers

Listed below are responses to frequently asked questions organized by topic and applicable to multiple audiences.

The Basics

1. What does transgender mean?
 - A. Transgender is a term used to describe people whose sex at birth is different from their sense of being male or female. A transgender male is someone who was born female but identifies as male, and a transgender female is someone who was born male but identifies as female.
2. What is gender identity?
 - A. Gender identity is one's internal sense of being male or female.
3. What is gender dysphoria?
 - A. Gender dysphoria is a medical diagnosis that refers to distress that some transgender individuals experience due to a mismatch between their gender and their sex assigned at birth.
4. Is being a transgender person the same as being a transvestite or a cross-dresser?
 - A. No. "Transvestite" is an outdated term that is considered derogatory. A "cross-dresser" is a person who wears clothing of the opposite sex for reasons other than gender identity (see question #2). A transgender person who dresses according to their gender identity is not "cross-dressing."
5. What is the relationship between sexual orientation and gender identity?
 - A. There is no relationship between sexual orientation and gender identity.
6. What pronouns should I use with transgender Service members?
 - A. This will vary by individual and unit. Transgender Service members should work with their unit leadership to establish correct pronoun usage. If there is ever any question about pronoun usage, do not hesitate to ask the Service member how they wish to be addressed.

7. What happens when federal and state laws appear to conflict?

- A. When not on federal property, Service members must abide by local laws. If there are any questions or concerns about how state laws may affect Service members and/or their dependents off federal property or in areas of concurrent federal and state jurisdiction, the installation legal assistance office should be consulted.

It is also the commander's responsibility to ensure the safety of unit personnel. This includes reminding Service members of risks through use of safety bulletins, alerts, or briefings regarding off-installation activities. Additionally, judge advocate and SCCC resources are available to enhance risk management strategies.

Health Care Issues

8. What hormones do transgender people need?

- A. Not all transgender Service members need cross-sex hormone therapy. Male or female hormones may be prescribed by medical providers in order for transgender Service members to develop the physical characteristics of their preferred gender if that is part of their transition plan.

9. What if a deployed transgender Service member loses his or her medications?

- A. In the event that a Service member lost his or her supply of hormones, and for some unlikely reason was not able to obtain replacements, any side effects, like irritability, decreased energy, or hot flashes, would take a few weeks to become evident. None of these side effects would be life threatening.

In-Service Transition Policy Issues

10. Have other countries allowed transgender individuals to serve openly in their militaries?

- A. Yes. At least 18 countries: Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, the Netherlands, New Zealand, Norway, Spain, Sweden, and the United Kingdom, allow transgender personnel to serve openly.

11. What about Service members whose beliefs just cannot allow them to accept this as normal?
 - A. In today's military, people of different moral and religious values work, live, and fight together. This is possible because they treat each other with dignity and respect. This will not change. There will be no changes regarding Service members' ability to freely exercise their religious beliefs, nor are there any changes to policies concerning the Chaplain Corps of the Military Departments and their duties. Service members will continue to treat with respect and serve with others who may hold different views and beliefs.
12. What is the Service Central Coordination Cell (SCCC)?
 - A. Each Service has an SCCC of medical, legal, and policy experts, primarily to advise field commanders and medical service providers. Contact information for the SCCC's can be found in Annex D of this handbook.
13. Will Reserve Component members receive any kind of medical care or financial assistance to pay for transition-related treatment? Can they be treated in a military treatment facility (MTF) throughout their transition?
 - A. Reserve Component members typically receive health care through private civilian health insurance. Those enrolled in TRICARE Reserve Select may be able to access mental health and hormone treatment through TRICARE and are eligible for care in MTFs on a space-available basis. Service members are encouraged to contact their civilian provider/TRICARE for eligibility benefits. A civilian diagnosis and medical treatment plan must be submitted to your chain of command and validated by an MMP. This may be accomplished by telemedicine if available or submission of civilian health documentation to an MMP for review per Service policy.
14. How will the military protect the rights of Service members who are not comfortable sharing berthing, bathroom, and shower facilities with a transitioning Service member? Are they forced to just accept a transgender person living and showering with them?
 - A. To the extent feasible, a commander may employ reasonable accommodations to protect the privacy interests of Service members, while avoiding a stigmatizing impact to any Service member. Commanders are encouraged to consult with their SCCC for guidance.

15. How long will a Service member's deployment eligibility be affected? Is this a way to get out of deployment? Can a Service member in the process of transitioning, which can be a lengthy process, still deploy if called upon?
- A. A Service member's period of non-deployability will vary by individual based on the care needed. Availability for deployment and any anticipated duty limitations would be part of the conversation Service members have with their commanders and medical providers as part of a medical treatment plan. Medical recommendations concerning unanticipated calls for deployment would be made in the same way as other medical conditions and as part of the pre-deployment process.

New Accession Policy Issues

Recruiting

16. Does the new policy mean the Military Services will start recruiting transgender applicants immediately?
- A. No, policy is being revised to allow the Military Services to recruit new personnel no later than July 1, 2017.²⁷

When training of the Force is complete and the new DoDI 6130.03 is effective, the Military Services will begin accessing transgender applicants who meet all standards, holding them to the same physical and mental fitness standards as everyone else who wants to join the military.

Detailed accession policy can be found in in DoD DTM 16-005, "Military Service of Transgender Service Members."²⁸

17. What should a recruiter do if a transgender applicant wants to enlist, but the new policy is not in place?
- A. A recruiter should ensure the applicant meets all standards (e.g., physical fitness, medical fitness) prior to being accessed. This is also a good time to assist the applicant in understanding the accession requirements so they can prepare themselves for entry once the new policy is in place.

²⁷ DTM 16-005.

²⁸ Ibid.

Military Service Academy (MSA)/ Reserve Officers' Training Corps (ROTC)

18. Does the new accession policy mentioned above apply to the Service Academies and the Reserve Officers' Training Corps (ROTC)?
 - A. Yes, effective July 1, 2017, the gender identity of an otherwise qualified individual will not bar them from joining the military, from admission to the MSAs, or from participating in ROTC or any other accession program. However, they must adhere to accession standards prior to being commissioned.
19. If ROTC or MSA students seek to transition during college, would they need to be stable for 18 months prior to commissioning?
 - A. Yes. An individual participant who is transgender is subject to separation from ROTC in accordance with DoDI 1215.08²⁹ or from an MSA in accordance with DoDI 1322.22,³⁰ based on a medical condition that impairs the individual's ability to complete such training or to access into the Armed Forces, under the same terms and conditions applicable to participants in comparable circumstances not related to transgender persons or gender transition. ROTC and MSA cadets and midshipmen are required to meet medical accessions standards when they are appointed as commissioned officers.
20. What are the medical requirements that must be met by an MSA cadet or midshipman to be eligible for a commission?
 - A. Cadets and midshipmen are subject to medical accession standards enumerated in DoDI 6130.03³¹ prior to being commissioned.

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

30 DoDI 1322.22, "Service Academies," September 24, 2015.

31 DoDI 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services," September 13, 2011. (Currently under revision to reflect DTM 16-005 changes.)

21. What are the medical requirements that must be met by a ROTC cadet or midshipman to be eligible for a commission?
- A. In accordance with DoDI 1215.08,³² E3.2 (Senior ROTC Programs), complete medical examinations must be conducted before enrollment in the scholarship program or at the time of or immediately before enrollment in Senior ROTC programs of the Army, Navy, and Air Force. Such examinations must, in all respects, be equal to the examination conducted to determine medical qualifications for appointment as a commissioned officer. Provided the cadet or midshipman meets the requirements in DoDI 6130.03,³³ they would be qualified to receive a commission.
22. Would a cadet or midshipman be able to undergo hormone therapy while at one of the MSAs or enrolled in ROTC?
- A. It depends. Cadets and midshipmen must continue to meet medical accession standards while at the MSA or enrolled in ROTC. If the standards for appointment into the U.S. Military Services are not maintained, an ROTC cadet or midshipman may be placed on an involuntary Medical Leave of Absence (MLOA) by the Service Secretary or designee. When an MLOA is recommended, a medical record review will determine whether the health-related incapacity or condition presents clear evidence that, following medical treatment, the cadet or midshipman will be unable to meet the physical standards for appointment into the U.S. Armed Forces within a reasonable period of time. Military Service Academy cadets and midshipmen who cannot meet medical accession standards and become medically disqualified may be disenrolled.³⁴

32 DoDI 1215.08.

33 DoDI 6130.03.

34 DoDI 1322.22.

ANNEX B:

Gender Transition Roadmap for U.S. Military Personnel

Below is a summary of the gender transition process for a Service member in accordance with the recently implemented DoD Instruction, "In-Service Transition for Transgender Service Members." The roles, responsibilities, and courses of action available to transgender Service members and their commanders are described below.

Service Member Responsibilities

Before Initiating Gender Transition

Request an assessment by an MMP in order to confirm a diagnosis stating gender transition is medically necessary.

- Collaborate with and assist the MMP with developing a medical treatment plan for submission to the commander. This plan should include a projected timeline for completion of gender transition, and estimated periods of non-deployability and absence.
- Notify the commander of the recommended treatment and request approval of the timing of the treatment plan. The written request should include the following:
 - Medical treatment plan outlining all medically necessary care and a projected schedule for such treatment; and an estimated date for the completion of gender transition and a gender marker change in the appropriate Service personnel data system.

Reserve Considerations

- All transgender Reserve Component Service members (except Selected Reserve (SELRES) Full-Time Support personnel who fall under Active Component rules/requirements) will submit to, and coordinate with, their chain of command evidence of a civilian medical evaluation that includes a medical treatment plan.
- To the greatest extent possible, commanders and Service members shall address periods of non-availability for any period of military duty, paid or unpaid, during the Service member's gender transition with a view

to mitigate unsatisfactory participation through the use of rescheduled training or authorized absences.

During Gender Transition

- Initiate gender transition after obtaining the commander's approval.
- Inform the commander of any medical issues that come up in the course of gender transition.
- Notify the commander of any changes to the approved timeline of the medical treatment plan.
- Request the commander process an ETP, if necessary.

When Gender Transition is Complete

- Through your MMP, inform the commander that gender transition is complete, along with a recommended time to change gender marker in the Service personnel data system.
- Request the commander's written approval to change the gender marker in the Service personnel data system. The request must comply with Service policies and must, at a minimum, be accompanied by one of the following legal documents to support gender change:
 - A certified true copy of a State birth certificate reflecting your preferred gender;
 - A certified true copy of a court order reflecting your preferred gender; or
 - A U.S. passport reflecting your preferred gender.
- Upon receipt of the commander's approval, submit supporting documentation to personnel servicing activity to change the gender marker in the Service personnel data system.

After Gender Marker Change in the Service Personnel Data System

- Meet applicable Service standards of the preferred gender, including medical fitness, physical fitness, uniform and grooming, deployability, and retention standards.

- Use military berthing, bathroom, and shower facilities associated with the preferred gender.
- Request ETPs, as needed, from the commander.

Commander Responsibilities

Before Initiating Gender Transition

No later than 30 calendar days after receiving a Service member's request to transition gender:

- Review Service member's request to ensure that it contains the required documentation in accordance with DoD and Service policies, to include a medical treatment plan with a projected timeline for completion of gender transition, estimated periods of non-deployability/absence, and estimated date of gender marker change;
- Coordinate with an MMP. If request to transition gender is from an RC Service member they will likely provide a diagnosis and medical treatment plan from a non-MMP. In this instance, it still must be validated by an MMP;
- Consult with the SCCC; and
- If the Service member's request is incomplete, return it with a written notice of additional required documentation.

No later than 90 calendar days after receiving a Service member's request to transition gender:

- Provide a written response to Service member's request for gender transition or an ETP, with a copy to the MMP; and
- In reviewing the Service member's gender transition request, ensure the decision:
 - Complies with DoD, Service policies, and guidance;
 - Considers the individual facts and circumstances presented by the Service member;

- Considers the needs of the command (including deployment, operations, training, exercise schedules, critical skills availability, morale and welfare, and good order and discipline of the unit);
- Minimizes impacts to the mission and readiness by balancing the needs of the individual with the needs of the command;
- Is consistent with the medical treatment plan; and
- Incorporates input provided by the MMP.

During Gender Transition

In cases where a transitioning Service member is unable to meet standards or requests an ETP during the gender transition, review Service policies outlining the actions a commander may take to balance the needs of the individual Service member and unit readiness. As permitted by Service policies, the commander may:

- Adjust the date on which the Service member's gender transition, or any component of the transition process, will commence;
- Advise the Service member regarding options for extended leave status or participation in other voluntary absence programs during the transition process;
- Arrange for the transfer of the Service member to another organization, command, location, or duty status (e.g., Individual Ready Reserve (IRR)), as appropriate, during the transition process;
- Review and forward ETP requests for application of standards for uniforms and grooming, PRT, and MPDATP participation;
- Establish, or adjust, command policies on the use of berthing, bathroom, and shower facilities;
- Refer for a determination of fitness in the disability evaluation system in accordance with DoDI 1332.18;³⁵

35 DoDI 1332.18, "Disability Evaluation System (DES)," August 5, 2014.

- Initiate administrative proceedings, comparable to actions that could be initiated with regard to others whose ability to serve is limited by medical conditions unrelated to gender transition; and
- Consult the SCCC, with regard to:
 - Service by transgender Service members and gender transition in the military;
 - Implementing DoD, Military Department, and Service policies and procedures; and
 - Assessing the means and timing of any proposed medical care or treatment.
- Coordinate with the MMP regarding any medical issues that arise in the course of a Service member's gender transition;
- Ensure that requests for ETPs are processed within 90 days and provide a written response to both the Service member and their MMP; and
- Modify a previously approved timeline for gender transition or an ETP at any time prior to the change in a Service member's gender marker in the Service personnel data system.
 - A determination that modification is necessary and appropriate will be made in accordance with DoD/Service policies and procedures.
 - Notify Service member of such modification under established DoD procedures as described in the 'before initiating gender transition' section at beginning of 'commander's responsibilities'.

When Gender Transition is Complete

- Review a Service member's request to change gender marker in the Service personnel data system to ensure that it complies with Service requirements, to include at a minimum:
 - A recommendation from the MMP stating that gender transition according to the medical treatment plan is complete and that the Service member is stable in the identified gender; and

- One of the following legal documents to effect gender change:
 - A certified true copy of a State birth certificate reflecting the Service member's preferred gender;
 - A certified true copy of a court order reflecting the Service member's preferred gender; or
 - A U.S. passport reflecting the member's preferred gender.
- If the Service member's request is complete, provide written approval to Service member authorizing gender marker change in the Service personnel data system.

After Gender Marker Change in the Service Personnel Data System

- Apply uniform standards, grooming standards, BCA standards, PRT standards, MPDATP standards, and other standards according to the Service member's identified gender listed in the Service personnel data system.
- Direct the use of military berthing, bathroom, and shower facilities according to the Service member's gender listed in the Service personnel data system.
- Review ETP requests as appropriate.

ANNEX C:

Scenarios

The following fictional cases illustrate scenarios that may be encountered when addressing individual issues.³⁶ The delineation of responsibilities in each scenario is intended only to provide a general discussion of issues that may arise. The scenarios are not all inclusive, nor are they directive in nature. All personnel are reminded to consult with their Chain of Command, SCCC, Service, and DoD guidelines before determining the best course(s) of action. Commanders are reminded of their responsibility to ensure good order and discipline throughout their entire unit.

Readiness

Scenario 1: Inability to Meet Standards during Transition

A senior officer, Tony, is transitioning to become Tanya. The officer is about halfway through the gender transition timeline agreed upon with his military medical provider (MMP) and commander and is taking feminizing hormone therapy. The officer is aware that male standards (berthing, uniform, BCA, PRT, etc.) will still apply until his transition is complete. However, midway through hormone treatment, it becomes increasingly difficult for Tony to meet the male body composition and physical readiness standards. Tony's commander is supportive, but several key unit training events have been scheduled over the next several months, making immediate accommodation difficult.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to individual medical readiness (IMR) that may impact the ability to meet standards. It is essential that communication among Service member, commander, and the MMP is ongoing.

Service member responsibilities

- If necessary, work with the MMP to obtain proper waiver for male physical readiness standards during the period of gender transition and ensure the commander is informed; and

³⁶ The scenarios presented are fictitious and not intended to represent any actual person or event.

- Discuss alternatives with the commander, such as rescheduled training events or extended leave/absence until gender transition process is complete.

Commander responsibilities

The commander can exercise multiple options listed below, as permitted by DoD and Service policies:

- Advise Tony on the option of taking extended leave/absence during the gender transition process;
- Explore the possibility of transferring Tony to another organization with less rigorous operational requirements;
- Refer Tony for a determination of fitness in the disability evaluation system;³⁷ or
- Review approved ETPs consistent with Service policies for male physical readiness and male body composition standards and ensure they are followed until the change of gender marker in the Service personnel data system to a female is complete.

Scenario 2: Physical Standards

A Service member has completed their medical treatment plan and is requesting commander approval to change their gender marker in the Service personnel data system. The commander has concerns about the Service member's ability to meet height/weight (HT/WT) and physical readiness training (PRT) standards for the preferred gender.

Key takeaway(s)

This scenario illustrates the importance of ongoing communication among Service member, commander, and the MMP, and the requirement for the commander to approve in writing all gender marker change requests. This communication will assist the commander in determining the timing of the gender marker change in the Service's personnel data system.

³⁷ DoDI 1332.18. (USCG reference is Physical Disability Evaluation System, COMDTINST M1850.2 (series))

Service member responsibilities

- Part of your transition process should include a provision to meet new HT/WT and PRT standards and consider whether an ETP will be required as you progress through the medical treatment plan.
- Continue communicating with your commander and your MMP on your ability to meet HT/WT and PRT standards.

Commander responsibilities

- Part of the Service member's transition process should include a provision to meet new HT/WT and PRT standards as they progress through their medical treatment plan.
- Counsel Service member on HT/WT requirements and personal fitness and the potential negative outcomes should they fail to meet those requirements.
- Consult with the MMP on Service member's ability to meet standards.
- Consider two possible courses of action for gender marker change in Service personnel data system: (1) grant gender marker change with ETPs or (2) delay gender marker change until all standards of the preferred gender are met.
- Consult DoD and Service policy as well as the SCCC.

Scenario 3: Pregnancy

Lieutenant Marty changed his gender marker in the Service personnel data system from female to male after completing an approved transition plan. Lieutenant Marty has not had sex reassignment surgery as part of the transition plan and is working with his MMP on a plan to start a family. Lieutenant Marty approached his commanding officer a few weeks ago and mentioned he was pregnant.

Key takeaway(s)

This scenario illustrates the importance of ongoing communication among Service member, commander, and the MMP with regard to Individual Medical Readiness (IMR). It also emphasizes the importance of understanding

special medical care that may be required and administrative benefits resulting from pregnancy.

Service member responsibilities

- It is your responsibility to notify the chain of command of any change to IMR.³⁸
- Though you have changed your gender marker in the Service personnel data system, there are IMR requirements that may be contrary to what is listed in the personnel data system (i.e., gender reflects male, however you have female anatomical characteristics). Health matters specific to anatomical characteristics still require appropriate medical review as they may affect your overall health and readiness, thus you will still require annual female examinations.
- You will receive any/all treatment/check-ups/physicals as it relates to female genitalia, including, in this case, prenatal care. Upon giving birth, you will be entitled to all relevant medical care, administrative entitlements, and leave prescribed under Service policies.
- Be aware that colleagues may find this situation confusing. Consider how and when you would like to discuss the pregnancy with your chain of command and colleagues.

Commander responsibilities

- Comply with Service pregnancy policies.
- Understand and be prepared to address administrative entitlements with Lieutenant Marty (i.e., maternity leave).
- Even though Lieutenant Marty has maintained female anatomy, he must be screened for pregnancy prior to deployment. If Lieutenant Marty became pregnant on deployment he will be transferred in accordance with Service policy.
- Consider workplace communications at the appropriate time with consideration of Lieutenant Marty's wishes.
- Consult with the SCCC.

³⁸ DoDI 6025.19.

Career

Scenario 4: Specialized Career Limitations

A male aviation officer with 12 years of service approaches his commanding officer and requests guidance on how to complete a transition from “Eric” to “Erica.” He has been living as a female when not on duty, and has already started hormone therapy, prescribed by a civilian provider, sought consultation for surgical transition, and is about to have a legal name change.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, and the importance of bringing all medical care into the MHS, whether a member of the Active or Reserve Component. Even though the Service member has received gender transition-related treatment with a civilian medical provider, they must have their subsequent care within the military health system. Finally, the scenario highlights how performance of duty may be limited depending on specialty/career field.

Service member responsibilities

- Immediately notify the flight surgeon of care received by a civilian medical provider.
- You are required by policy to inform your commander of medical treatment that may impact your medical readiness status.
- You have a responsibility to maintain your health and fitness, meet IMR requirements,³⁹ and report medical (including mental health) and health issues that may affect your readiness to deploy or fitness to continue serving in an active/reserve status;
- Receive a diagnosis and a treatment plan from an MMP.
- Provide all medical documentation from your civilian provider to the MMP.
- Develop a transition timeline with the MMP and the commander.

³⁹ Ibid.

Commander responsibilities

- Consider Service policies applicable to Service members regarding unauthorized medical care.
- Direct Service member to an MMP for diagnosis and review of procedures already performed.
- Consult the MMP and/or the SCCC regarding the impact of gender transition on the Service member's readiness status and ability to perform military duties, highlighting the immediate impact to the officer's ability to maintain aviation credentials.
- Consider the timing of medical requirements in the treatment plan and any impacts to the mission (including deployments, operations, training and exercises) as well as the morale and welfare, and good order and discipline of the unit.

Scenario 5: Entry-Level Training

After four months, Private Lee completes recruit and combat training. She then reports to Ft. Sill for Military Occupational Specialty training. Upon arrival, Private Lee tells her Platoon Sergeant she is currently feeling distress as she believes she should be a man. Although she pushed herself through to completion, recruit training increased her distress. Private Lee has expressed reluctance about seeing a mental health specialist and/or medical care provider.

Key takeaway(s)

This scenario illustrates the importance of receiving a proper diagnosis from the MMP prior to other actions being taken. The commander has tools available to facilitate medical care for a Service member's well-being and to ensure Service members complete initial entry training.

Service member responsibilities

- Discuss situation with the commander.
- Obtain an evaluation by an MMP.

Next, Private Lee received a diagnosis of gender dysphoria, and the commander is told her training will be interrupted as treatment is medically necessary. After one month, it is clear Private Lee's medical condition impairs her ability to train.

Commander responsibilities

- Consult with an MMP and determine need for a command-directed mental health evaluation.⁴⁰
- Consult with the SCCC.
- Inform Private Lee potential courses of action may include: withdrawal from training due to her medical condition, a training delay, or an initial entry separation if within 180 days of accession.⁴¹

Reserve Component

Scenario 6: Individual Ready Reserve

Corporal Kennedy is a member of the IRR and does not have access to an MMP. He has recently completed the transition from female to male. Corporal Kennedy wants to be considered male by his Service. He has a new birth certificate showing his preferred gender.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. Even though the Service member did all of their gender transition-related treatment with a civilian medical provider, they must still adhere to established military medical and personnel processes.

40 DoDI 6490.04, "Mental Health Evaluations of Members of the Military Services," March 4, 2013.

41 DoDI 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended.

Service member responsibilities

- All IRR Service members have a responsibility to maintain their health and fitness, meet IMR requirements,⁴² and report to their chain of command any medical (including mental health) and health issues that may affect their readiness to deploy or fitness to continue serving.
- Provide medical documentation indicating that transition is complete to their IRR command and ensure it is available to an MMP to confirm the diagnosis.
- Provide legal documentation of gender change (i.e., certified birth certificate, U.S. passport, certified court order) to IRR command.

Commander responsibilities

- Review documentation with an MMP to ensure completeness and compliance with Service instructions and DoD policy.
- If complete, provide letter authorizing gender marker change in the Service personnel database.
- Consult with SCCC.

Scenario 7: Standards and Exceptions to Policy

Sergeant Rich, a Selected Reservist, informs his commanding officer that he has been living as a female when he is not in a drilling status. He requests to be called Meena; to use the female bathroom; to be held to female physical, uniform, and grooming standards; and to have his gender changed in his official military personnel file.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. Even though the Service member has initiated their gender transition-related treatment with a civilian medical provider, they must still adhere to established military medical and personnel processes.

⁴² DoDI 1215.13, "Ready Reserve Member Participation Policy," May 5, 2015.

Service member responsibilities

- All Selected Reserve Service members have a responsibility to maintain their health and fitness, meet IMR requirements,⁴³ and report to their chain of command any medical (including mental health) and health issues that may affect their readiness to deploy or fitness to continue serving.
- Provide medical documentation to the MMP showing diagnosis and medical treatment received from civilian medical provider.
- Upon confirmed diagnosis by the MMP, work with the MMP and commander to develop a transition plan.
- Provide legal documentation of gender change (i.e., certified birth certificate, U.S. passport, certified court order).

Commander responsibilities

- Facilitate Sergeant Rich's consultation with the MMP and discuss need for any ETPs that may be required.
- Upon confirmed diagnosis by the MMP, work with Sergeant Rich and the MMP to develop a gender transition plan consistent with your unit's operational responsibilities.
- When transition is complete, as certified by the MMP, provide a letter authorizing gender marker change in the Service personnel database.
- Ensure your unit is properly trained to accept and understand Sergeant Rich's preferred gender.

Scenario 8: Satisfactory Reserve Participation

Sergeant Williams is a Selected Reserve member with an Army Reserve unit. He has been in consultation with his commander regarding his gender transition. The medical treatment portion of his gender transition will require him to miss up to 2 months of duty. Both the commander and Sergeant Williams are working through potential mitigation strategies to ensure he does not become an unsatisfactory participant.

⁴³ DoDI 6025.19.

Key policy takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. The commander also has tools available to address the Service member's absence.

Service member responsibilities

- As part of the previously agreed to transition, continued communication with the commander is key to success.
- Be aware of participation requirements to ensure a satisfactory year is achieved.
- Consult with the commander regarding alternative training opportunities.

Commander responsibilities

- You have the necessary tools to develop an initial mitigation strategy; options available to you include: (1) rescheduled training; (2) authorized absences; or (3) alternate training.
- Individual Service policies will detail processes and procedures required to use the above mitigation tools.
- Consult with your SCCC.
- Ensure your unit is properly trained to accept and understand Sergeant Williams' preferred gender.

Scenario 9: Medical Compliance

Airman Bristol, a Selected Reserve member with an Air Force Reserve unit, has an approved transition plan. She has been contemplating an unscheduled medical procedure between unit training assemblies. It is highly unlikely that the surgical procedure will require her to miss training. Airman Bristol is uncertain if she needs to report the procedure to her chain of command.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. Even though the Service member has initiated their gender transition-related treatment with a civilian medical provider, they must still adhere to established military medical and personnel processes. The commander also has tools available to facilitate the Service member's well-being.

Service member responsibilities

- You have a responsibility to maintain your health and fitness, meet IMR requirements,⁴⁴ and report to your chain of command any medical (including mental health) and health issues that may affect your readiness to deploy or fitness to continue serving in an active status.
- Discuss with your commander to address potential adjustments to your transition plan and any readiness implications.

Commander responsibilities

- You should prepare Airman Bristol for any potential periods of non-availability and work with her to mitigate absences. Options available to you include: (1) rescheduled training; (2) authorized absences; or (3) alternate training.
- Consider potential adjustments to Airman Bristol's transition plan based on individual needs as well as readiness.
- Individual Service policies will detail processes and procedures required to use any of these mitigation tools.
- You must also balance the needs of the individual and the unit in terms of readiness. While Airman Bristol may have great flexibility in her Air Force Reserve unit as to the timing of the medical procedure, this may not always be the case. Continued dialogue between you and Airman Bristol is important to individual and unit readiness. For further information, you should consult your chain of command and/or SCCC.

⁴⁴ Ibid.

Scenario 10: Unauthorized Medical Care

An Active Guard/Reserve (AGR) National Guardsman has completed nearly all aspects of gender transition with the assistance of a civilian medical provider. His gender transition and medical treatment have not been disclosed to the chain of command. He would like to be recognized in his preferred gender.

Key takeaway(s)

This scenario illustrates the importance of notifying the commander of any changes to IMR, whether a member of the Active or Reserve Component. Even though the Service member did all of their gender transition-related treatment with a civilian medical provider, they must still adhere to established military medical procedures.

Service member responsibilities

Even though you have completed nearly all aspects of gender transition by a civilian medical provider, you must:

- By policy, inform your commander of medical treatment that may impact your medical readiness status.
- Maintain your health and fitness, meet IMR requirements, and report medical (including mental health) and health issues that may affect your readiness to deploy or fitness to continue serving in an active/reserve status.
- Request and receive a diagnosis and a treatment plan from an MMP.
- Provide all medical documentation from your civilian provider to the MMP.
- Develop a transition timeline with the MMP and the commander.

Commander responsibilities

- Consider Service policies applicable to Service members regarding unauthorized medical care.
- Direct the Service member to military medical for diagnosis and review of procedures already performed.

- Consult the MMP and/or the SCCC regarding the impact of gender transition on the Service member's readiness status and ability to perform military duties.
- Consider the timing of medical requirements in the treatment plan and any impacts to the mission (including deployments, operations, training and exercises) as well as the morale and welfare, and good order and discipline of the unit.

Privacy and Cohabitation

Scenario 11: Use of Shower Facilities

A transgender Service member has expressed privacy concerns regarding the open bay shower configuration. Similarly, several other non-transgender Service members have expressed discomfort when showering in these facilities with individuals who have different genitalia.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander. It also depicts steps a commander may take to permit privacy, based on Service policy.

Service member responsibilities

- If you have any concerns about privacy in an open bay shower setting, you should discuss this with your chain of command.
- Consider altering your shower hours.

Commander responsibilities

- You may employ reasonable accommodations when/if you have a Service member who voices concerns about privacy. This should be done with the intent of avoiding any stigmatizing impact to any Service member. If permitted by Service policies, some of these steps may include:
 - Facility modifications, such as installing shower curtains and placing towel and clothing hooks inside individual shower stalls.

- In cases where accommodations are not practicable, you may authorize alternative measures to respect personal privacy, such as adjustments to timing of the use of shower or changing facilities.
- Take proactive steps through the chain of command to ensure that expressions of discomfort don't escalate into harassment or hazing.
- Consult the SCCC for guidance on how to institute such measures.

Scenario 12: Urinalysis

A transgender Service member is randomly selected to undergo a urinalysis test at their new command.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander. The commander must adhere to procedures outlined in the Military Personnel Drug Abuse Testing Program (MPDATP)⁴⁵ and Service policy.

Service member responsibilities

- Discuss your circumstances with command leadership during sign-in period to determine your options and allow the commander the ability to adjust as required/desired for your comfort and the comfort level of the observer, particularly if you have not undergone full surgical change.

Commander responsibilities

- Depending on Service regulations, you may consider alternate observation options if a request from a transgender Service member or an observer is made. Options could include observation by a different observer or medical personnel.
- You have discretion to take additional steps to promote privacy, provided those steps do not undermine the integrity of the program. However, all collections must be directly observed.

⁴⁵ DoDI 1010.16.

- Consult with the SCCC; if unable to make special accommodation, spend time discussing with both the observer and the Service member.
- Ensure your observers are properly trained.

Good Order and Discipline

Scenario 13: Living Quarters

You are the leading Chief Petty Officer aboard ship. A high performing Petty Officer, who is transgender and completely transitioned, approaches you and states she can no longer tolerate her roommate. Through positive reinforcement, counseling, and mentorship, you attempt to resolve the issue at the lowest level in the chain of command. However, you notice her performance starting to diminish, and she and her roommate are making derogatory comments to co-workers about each other. The behavior has become disruptive to the entire unit and others are starting to complain. She puts in a request to be re-assigned to another berthing area onboard ship.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as standards of conduct. It also highlights existing tools available to resolve the situation.

Service member responsibilities

- Respecting each other's rights within a closed space is critical to maintaining good order and discipline.
- Standards of conduct apply equally to all Service members.

Commander responsibilities

- Take an active and positive leadership approach with a focus on conflict resolution and professional obligations to maintain high standards of conduct.
- Counsel the individuals and encourage them to resolve their personal differences. Make clear to both that respecting each other's rights within a closed space is critical to maintaining good order and discipline.

- If the issue cannot be resolved and alternative berthing arrangements can be made within command policy and without degrading good order and discipline of the unit, you may consider alternative arrangements.

Scenario 14: Proper Attire during a Swim Test

It is the semi-annual swim test and a female to male transgender Service member who has fully transitioned, but did not undergo surgical change, would like to wear a male swimsuit for the test with no shirt or other top coverage.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander. It also depicts steps a commander may take to permit privacy, based on Service policy.

Service member responsibilities

- You may be comfortable with your outward appearance; however, there may be a period of adjustment for others. It is courteous and respectful to consider social norms and mandatory to adhere to military standards of conduct.
- Discuss with your chain of command.

Commander responsibilities

- It is within your discretion to take measures ensuring good order and discipline.
- When administering the swim test, counsel the individual and address the unit, if additional options (e.g., requiring all personnel to wear shirts) are being considered.
- Consult with your SCCC.

Scenario 15: Living Quarters

Following her transition (which did not include any sex reassignment surgery) and gender marker change in the Service personnel data system from male to female, Petty Officer Kelleher was assigned to a Coast Guard cutter and

provided quarters in female berthing. Shortly after her arrival aboard the cutter, several females in Petty Officer Kelleher's berthing area complained to the Command Senior Chief about being uncomfortable around Petty Officer Kelleher as she still has male genitalia. The Command Senior Chief approached the commanding officer with these complaints hoping to achieve some sort of resolution.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as standards of conduct. It also highlights existing tools available to resolve the situation.

Service member responsibilities

- You are not required to modify or adjust your behavior based on the fact you do not “match” the physical appearance of those in your berthing area. You must, however, follow all relevant shipboard and/or Service regulations commensurate with your gender.
- If you suspect others feel uncomfortable, or begin to feel uncomfortable, you should immediately reach out to an appropriate member of your command and note your concern. Should you feel uncomfortable approaching your command, every effort should be made to use resources available through the command senior enlisted leader network (e.g., Command Master Chief, Command Sergeant Major).
- The preservation of personal privacy, dignity, and respect is a responsibility shared by all crew members.

Commander's responsibilities

- Prior to Petty Officer Kelleher's arrival, ensure crew has received baseline training on policy regarding service by transgender personnel.
- Immediately upon the gender marker change in the Service personnel data system, Petty Officer Kelleher will be responsible for meeting all applicable military standards in her preferred gender, and subject to regulation by the military, will use those berthing, bathroom, and shower facilities associated with the preferred gender.

- You are responsible for the collective morale and welfare and good order and discipline of the unit and for fostering a command climate where all members of your command are treated with dignity and respect.
- An initial approach to the complaints may entail meeting with the Command Senior Chief as well as the complaining members of the berthing area to determine the exact nature of their complaints. You should inform them that Petty Officer Kelleher's assignment to female berthing is required regardless of her physical appearance and that their lack of comfort is not reason to prevent Petty Officer Kelleher from residing in female berthing or make her subject to treatment different from others.
- Similarly, as with any other issue taking place in a berthing area that affects the morale and welfare and good order and discipline, you (or Command Senior Chief) may also want to speak with Petty Officer Kelleher to inform her of the perceived problem regarding her physical appearance and its effect on the other members in the berthing area. Such a conversation should be handled very carefully; coordination with the SCCC is advisable to gain assistance on strategies to successfully engage in such communication.
- In every case, you may employ reasonable accommodations to respect the privacy interests of Service members. Avoid stigmatizing actions that may single out any Service members in an attempt to resolve the complaints.

Real Life Experience (RLE)

Scenario 16: Attending a Unit Social Event

A Service member has been undergoing transition for the last three months, from male to female, and his gender marker has not been changed in the Service's personnel data system. Only the immediate chain of command is aware of this transition. The Service member desires to attend an off-post unit event dressed as a female.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as standards of conduct. It also

highlights existing tools available to resolve the situation, as well as emphasizing the RLE agreement that was discussed when developing the transition plan.

Service member responsibilities

- Your RLE should be conducted in accordance with your approved transition plan. If this specific situation is not addressed, discuss this with your commander and the MMP to potentially modify the transition plan.
- Devise a communication plan with the commander to inform unit members of the transition to your preferred gender prior to attending unit events.

Commander responsibilities

- Maintain good order and discipline.
- During transition planning, discuss and document expected conduct to include RLE and whether ETPs may be necessary.
- If approving the ETP, ensure the unit members are properly trained prior to the event. If granting an ETP is not practicable, discuss with the Service member and advise him not to attend such activities as a female until unit members are properly trained.

Scenario 17: Off Duty

A Service member has been undergoing transition for the last three months, from male to female, and has not yet changed his gender marker in the Service's personnel database system. The unit is aware of his transition. He is preparing to begin his RLE after duty hours (i.e., wearing make-up, wigs, and female clothing) and would like to do so in his barracks room, unit day room, and on the military installation. He is still using the male facilities.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as standards of conduct. It also highlights existing tools available to resolve the situation, as well as emphasizing the RLE agreement that was discussed when developing transition plan.

Service member responsibilities

- Your RLE should be conducted in accordance with your approved transition plan. If this specific situation is not addressed, discuss this with your commander and the MMP to potentially modify the transition plan (i.e., request an ETP if necessary).

Commander responsibilities

- During transition plan development, discuss and document expected conduct to include RLE.
- Consider ETPs if requested by Service member; ensure your unit is aware and properly trained prior to granting an ETP.
- Only at the Service member's request, consider authorizing extended leave, transfer to IRR, ING, or Career Intermission Program/Temporary Separation in accordance with Service policy to allow the Service member to live in their preferred gender and conduct RLE. Care should be taken to not apply any undue pressure on the Service member to avail himself of these voluntary options.
- Consider notifying the installation commander that you have a transitioning Service member to mitigate any potential confusion at base access control points.

Overseas

Scenario 18: Liberty Call and Personal Safety

The USS SHIP is about to pull into port for 3 days of liberty. The diverse crew, which includes a transgender Service member, has been working hard in the Arabian Gulf and is excited about a few days off. There is concern for Service member safety ashore due to wide spread anti-LGBT sentiment. Additionally, there are criminal penalties for violations of social norms.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander. Additionally, emphasis is placed on using available tools to evaluate assignments that may be potentially risky for the Service member.

Service member responsibilities

- You must always remember that the laws and what is considered socially normal in the host country may be vastly different than in the U.S.
- Pay attention to any travel warnings given at your command as a pre-arrival brief. You should also consult the Foreign Clearance Guide,⁴⁶ Travel Precautions, and Information section for LGBT travel information for that country.
- You should ensure that when you visit the country that you are always accompanied by some of your shipmates and avoid areas that are listed as dangerous. Be cautious of potential risky situations and don't do anything you would not do at home.
- You should avoid all physical displays of affection in public.

Commander responsibilities

- While having a transgender Service member might be unique to your crew, the specific issues and concerns are analyzed similarly to any other safety issues that may be encountered by any member of your crew.
- Conduct a thorough analysis of the country you are visiting prior to arrival. At a minimum, you should review the U.S. State Department's country specific website and DoD Foreign Clearance Guide.
- Tailor your pre-briefs to the crew on the accepted country norms and places to avoid. Ensure a robust buddy system for liberty is prescribed. Educate your non-commissioned officers about any concerns regarding the port.

Scenario 19: Assignment Considerations

A newly reported transgender female Service member arrives in the CENTCOM Area of Responsibility (AOR) to serve as an advise-and-assist mentor to women police officers. The country of assignment specifically requires female trainers for their female police officers.

⁴⁶ See Annex D.

Key takeaway(s)

This scenario illustrates the importance of open lines of communication between the Service member and the commander, as well as the personnel assignment officer. Additionally, emphasis is placed on using available tools to evaluate assignments that may be potentially risky for the Service member.

Service member responsibilities

- You must be mindful of challenges presented by beliefs and norms in the AOR and how they are different than the accepted norms in the U.S.
- You may need to adjust your expectations in the event that you are asked to shift to a different billet in support of the mission. It is important to maintain a flexible mentality when working with foreign nations to better meet the needs of the overall mission.

Commander responsibilities

- This situation is unique in that close proximity with women and men in foreign countries may be more complicated than in the U.S.
- Some nations view transgender people as culturally unacceptable and will not recognize the individual's preferred gender.
- Conduct a thorough analysis of the country prior to arrival. At a minimum, you should review the U.S. State Department's country specific website and DoD Foreign Clearance Guide.
- You are encouraged to discuss this situation with your chain of command and the SCCC.

Proceed with caution for the safety of the Service member and the possible attention local media interest would generate in assigning this individual to the billet. The individual may need to be reassigned.

ANNEX D:

Additional Resources and Links

DoD Public and CAC-Enabled Websites

Public DoD website, "Department of Defense Transgender Policy":
<http://www.defense.gov/transgender>

DoD CAC-enabled website:
<https://ra.sp.pentagon.mil/DoDCCC/SitePages/HomePage.aspx>

Foreign Clearance Guide:

<https://www.fcg.pentagon.mil/>

Passport

The Department of State has established procedures allowing a person to change the gender on their U.S. Passport. Significantly, an amended birth certificate is not required. Details on this process are contained in the attached information page, found at this link:

<http://travel.state.gov/content/passports/english/passports/information/gender.html>

Service Boards for Correction of Military Records

Air Force:

<http://www.afpc.af.mil/board-for-correction-of-military-records>

Army:

<http://arba.army.pentagon.mil/abcmr-overview.cfm>

Coast Guard:

<http://www.uscg.mil/legal/BCMR.asp>

Navy and Marine Corps:

<http://www.secnav.navy.mil/mra/bcncr/Pages/home.aspx>

Service Central Coordination Cells (SCCCs)

Air Force:

usaf.pentagon.saf-mr.mbx.af-central-coordination-cell@mail.mil

Army:

usarmy.pentagon.hqda-dcs-g-1.mbx.sccc@mail.mil

Coast Guard:

SCCC@uscg.mil

Marine Corps:

USMC.SCCC@usmc.mil

Navy:

usn_navy_sccc@navy.mil



JA579

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2018, I filed the foregoing Joint Appendix (Public Appendix, Volumes I-II) with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Tara S. Morrissey
Tara S. Morrissey