

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

**DEFENDANTS' RESPONSE TO  
MOTION TO SEAL**

1 Defendants respond to Plaintiffs' Motion to Seal, ECF No. 356, as follows:

2 Plaintiffs seek to file under seal Defendants' Objections to Plaintiffs' Second Set of  
3 Interrogatories to Secretary Mattis and the United States Department of Defense, as Exhibit 10  
4 to Plaintiffs' Motion to Compel, ECF Nos. 358, 359-10. Defendants marked this document as  
5 confidential and subject to the Stipulated Uniform Protective Order entered by the Court in this  
6 case, ECF No. 183. That Protective Order permits parties to designate Discovery Material as  
7 confidential where it contains "personal, proprietary, or sensitive information not generally  
8 disclosed to the public." ECF No. 183 ¶ 2. As the party designating Exhibit 10 as confidential,  
9 Defendants bear the burden of satisfying Local Rule 5(g)(3)(B) in support of sealing.

10 The proponent of sealing a document attached to a "discovery motion unrelated to the  
11 merits of a case" need only show that there is "good cause" to do so. *Ctr. for Auto Safety v.*  
12 *Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016). That standard comes from Rule of  
13 Civil Procedure 26(c), which permits the issuance of protective orders for good cause "to protect  
14 a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.*  
15 (quoting Fed. R. Civ. P. 26(c)). "When a court grants a protective order for information produced  
16 during discovery, it already has determined that 'good cause' exists to protect this information  
17 from being disclosed to the public by balancing the needs for discovery against the need for  
18 confidentiality." *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1213  
19 (9th Cir. 2002). "Therefore, when a party attaches a sealed discovery document to a  
20 nondispositive motion, the usual presumption of the public's right of access is rebutted . . . ." *Id.*

21 There is good cause for partially sealing Exhibit 10. Exhibit 10 contains lists of service  
22 members and Department of Defense ("DoD") civilian employees and officials who attended  
23 formal meetings of the Panel of Experts and who participated in working groups concerning  
24 DoD's policy on military service by transgender individuals and individuals with gender  
25 dysphoria. These lists include numerous career and lower-level DoD employees and service  
26 members and reflect their participation in the development of this military policy. In light of the  
27 high profile and controversial nature of these issues and proceedings, there is good cause to  
28

1 prevent disclosure of this information, which may cause these persons “annoyance,  
2 embarrassment, oppression, or undue burden.” Fed. R. Civ. P. 26(c). There is also little public  
3 interest in the information that would remain under seal, particularly in light of the fact that this  
4 information is not at issue in Plaintiffs’ Motion to Compel.

5 Defendants do not believe, however, that Exhibit 10 need remain under seal in its entirety.  
6 Instead, Defendants have attached to this brief a redacted version of Exhibit 10. This “less  
7 restrictive alternative” to complete sealing, LCR 5(g)(3)(B), protects the legitimate interests of  
8 these non-party service members and DoD employees and officials, while permitting public  
9 disclosure to the fullest extent possible. Defendants have conferred with counsel for Plaintiffs,  
10 who state that they take no position on the redactions proposed to Exhibit 10.

11 Accordingly, Defendants request the Court grant Plaintiffs’ Motion to Seal, ECF No. 356.

12  
13 Dated: August 21, 2019

Respectfully submitted,

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16 JAMES M. BURNHAM  
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RYAN KARNOSKI, et al.,

Plaintiffs,

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DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-Cv-1297-MJP

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS' SECOND  
SET OF INTERROGATORIES TO SECRETARY MATTIS AND  
THE UNITED STATES DEPARTMENT OF DEFENSE**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants, through their undersigned counsel, hereby submit initial objections to Plaintiffs' Second Set of Interrogatories to Secretary Mattis, in his official capacity as Secretary of Defense, served April 26, 2018.<sup>1</sup> In presenting these objections, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

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<sup>1</sup> These objections and responses are limited to Secretary Mattis and the Department of Defense. Defendants will produce, or already have produced, separate objections for other Defendants.

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**Objections to Definitions and Instructions**

1. Defendants object to Definition 1 of “You,” “your,” and “yours” as substantially overbroad, ambiguous, and disproportionate to the needs of the case.

2. Defendants object to Definition 2 of “President Trump” and the “President” as substantially overbroad, ambiguous, and disproportionate to the needs of the case because “indirectly by” or “under the control of Donald J. Trump” is overbroad, ambiguous, and disproportionate to the needs of the case because these terms would encompass all employees of every Executive Branch Department and agency. In these objections, Defendants will construe the terms “President Trump” and the “President” to refer only to employees of the Executive Office of the White House.

3. Defendants object to Definition 3 of “Vice President Pence” and the “Vice President” as overbroad, unduly burdensome and disproportionate to the needs of the case to the extent that it includes “persons engaged . . . indirectly by” and “under the control of Michael R. Pence.” In these objections, Defendants will construe the terms “Vice President Pence” and the “Vice President” to refer only to employees of the Office of the Vice President.

4. Defendants object to Plaintiffs’ Definition 8 of “Communication” as encompassing “electronically stored information (ESI) containing, summarizing, or memorializing any communication,” insofar as electronic information collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts. Defendants object further to this definition to the extent that the term ESI differs from the specification format used in prior productions in this action.

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5. Defendants object to Plaintiffs' Definition 9 of "Document" and "documents" as encompassing "ESI," and "computer data," insofar as data collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts. Defendants object further to this definition to the extent that the term ESI differs from the specification format used in prior productions in this action.

**Specific Objections to Interrogatories**

Interrogatory No. 16: Identify the principal author(s) and each person who reviewed, revised, or commented on any drafts, including but not limited to the final draft, of Secretary James Mattis's February 22, 2018, Memorandum for the President with Subject: Military Service by Transgender Individuals.

Specific Objections:

The Department of Defense objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The Department of Defense also objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to "each person" purports to require the Department of Defense to identify every single person who (1) reviewed, (2) revised, or (3) commented on any drafts of Secretary James Mattis's February 22, 2018, Memorandum for the President with Subject: Military Service by Transgender Individuals.

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Response:

The Secretary's February 22, 2018 Memorandum For the President is signed by Secretary Mattis himself and represents his formal policy recommendation to the President. In Defendants' Second Amended Initial Disclosures of May 11, 2018, Defendants provided the names of Department of Defense individuals who would address the DoD policy for the Defendants. Beyond this information Defendant Department of Defense stands on the foregoing objections.

Interrogatory No. 17: Identify the principal author(s) and each person who reviewed, revised, or commented on any drafts, including but not limited to the final draft, of the February 2018 Department of Defense Report and Recommendations on Military Service by Transgender Persons.

Specific Objections:

The Department of Defense objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The Department of Defense also objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to "each person" purports to require the Department of Defense to identify every single person who (1) reviewed, (2) revised, or (3) commented on any drafts of the February 2018 Department of Defense Report and Recommendations on Military Service by Transgender Persons.

Response:

The report accompanying the Secretary's February 22, 2018 Memorandum For the President was provided to Secretary Mattis by the Under Secretary of Defense for Personnel and

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Readiness. The Secretary of Defense in turn provided the report to the President with his memorandum. In the Defendants' Second Amended Initial Disclosures of May 11, 2018, Defendants provided the names of Department of Defense individuals who would address the DoD policy for the Defendants. Beyond this information Defendant Department of Defense stands on the foregoing objections.

Interrogatory No. 18: Identify each person who attended any meeting of the Panel of Experts and/or provided the Panel of Experts or its members any information, statement, advice, opinion, or other input of any nature or kind, including without limitation the Transgender Service Policy Working Group, any other group or committee within the Department of Defense that reviewed or considered transgender issues, members of agencies other than the Department of Defense, military medical professionals, civilian medical professionals, transgender service members, the commanders of transgender service members, elected officials, third parties, lobbyists, experts, and/or consultants, and describe in detail the information, statement, advice, opinion, or other input such person provided.

Specific Objections:

The Department of Defense objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The Department of Defense also objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to each person who "attended any meeting of the Panel of Experts and/or provided the Panel of Experts or its members any information, statement, advice, opinion, or other input of any nature

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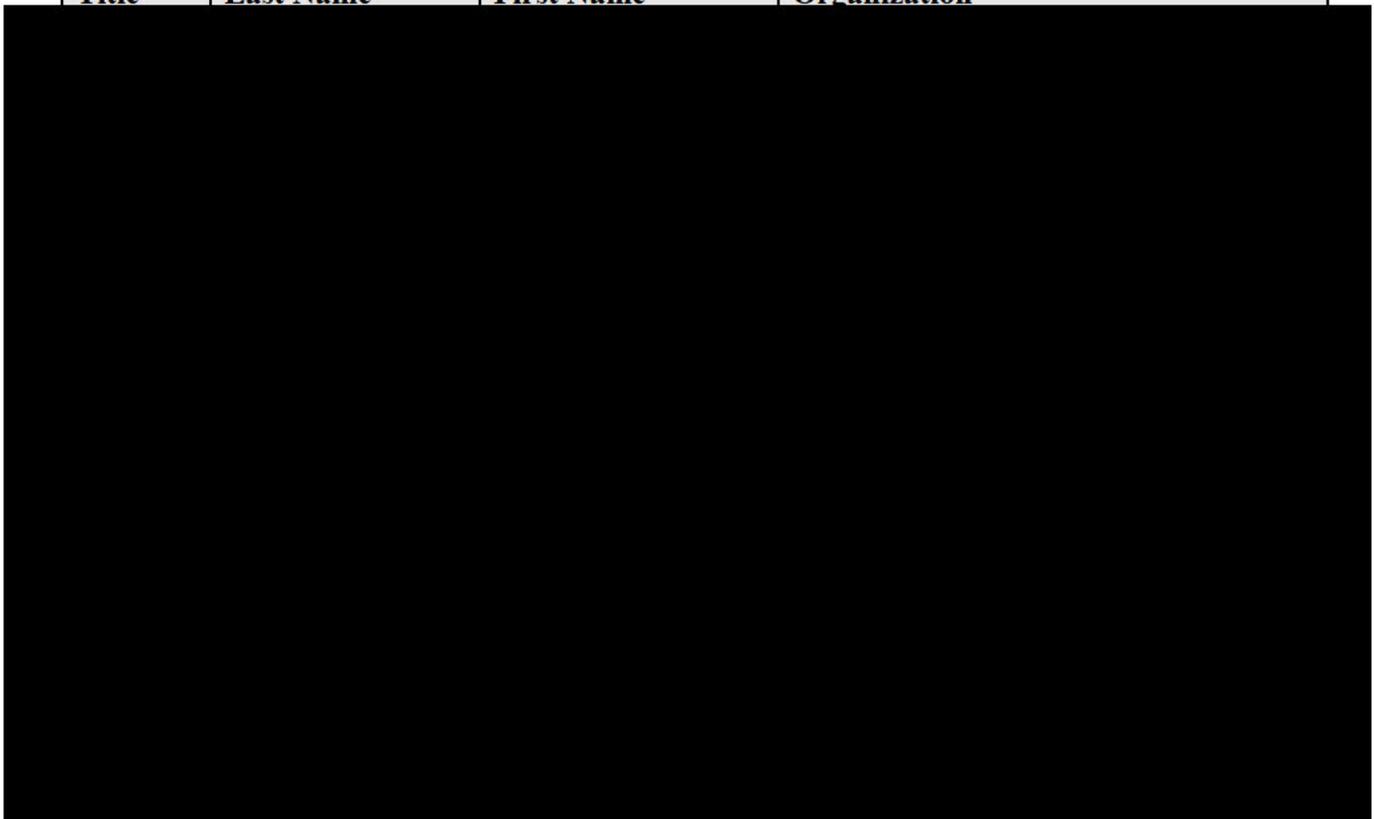
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or kind” encompasses a class of persons nearly without limit. Similarly, the reference to “any other group or committee within the Department of Defense that reviewed or considered transgender issues, members of agencies other than the Department of Defense, military medical professionals, civilian medical professionals, transgender service members, the commanders of transgender service members, elected officials, third parties, lobbyists, experts, and/or consultants” encompasses, without limit, any person who happened to communicate with a member of the Panel of Experts. Defendant will construe this interrogatory as seeking the identity of each person who attended a formal meetings of the Panel of Experts, as well as the identify of official working groups that supported the Panel of Experts.

Response:

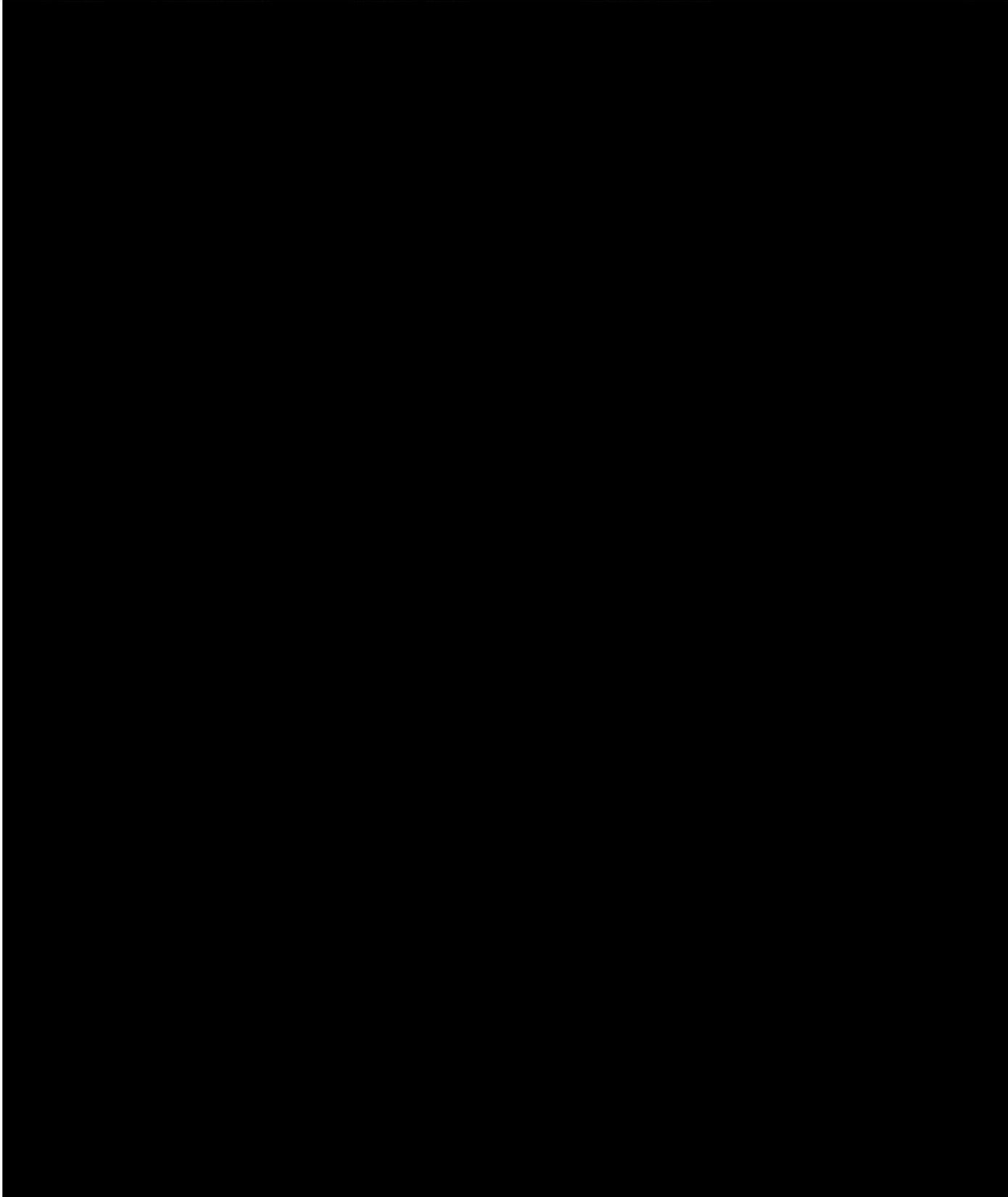
Non-privileged information concerning the attendees of the formal meetings of the Panel of Experts is set forth in the table below.

Title	Last Name	First Name	Organization
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Title	Last Name	First Name	Organization
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Three working groups provided support to the panel of experts: the Medical Personnel Executive Steering Committee; the Retention and Nondeployable Work Group; and the Transgender Personnel Policy Work Group.

Because the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for both Plaintiffs and Defendants, pursuant to Federal Rule of Civil Procedure 33(d), Defendants identify the following documents, which contain additional information responsive to this interrogatory: agendas for the meetings of the Panel of Experts produced at Bates numbers AR2848, AR2857, AR2881, AR2882, AR2905, AR2906, AR2942, AR2965, AR2977, AR2998, AR3056, AR3057, and AR3058; redacted copies of minutes for certain meetings of the Panel of Experts produced at Bates numbers AR2821 through AR2847; materials presented or discussed at meetings of the Panel of Experts produced at Bates numbers: AR2849–2856; AR2858–2880; AR2883–2904; AR2907–2941; AR2943–2964; AR2966–2976; AR2978–2997; and AR2999–3055; and the Department of Defense Report and Recommendations on Military Service by Transgender Persons (February 2018), filed at ECF 216-2.

Interrogatory No. 19: Identify each member of the Transgender Service Policy Working Group and/or any other group or committee within the Department of Defense that reviewed or considered transgender issues, and each person who attended any meeting of such group and/or provided such group or its members any information, statement, advice, opinion, or other input of any nature or kind, including without limitation military medical professionals, civilian medical professionals, transgender service members, the commanders of transgender service members, members of agencies other than the Department of Defense, elected officials, third

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parties, lobbyists, experts, and/or consultants, and describe in detail the information, statement, advice, opinion, or other input such person provided.

Specific Objections:

The Department of Defense objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) communications or information protected by the presidential communications privilege; or (e) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation.

The Department of Defense also objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, this interrogatory is not limited by any reasonable time frame. The Department of Defense therefore construes this interrogatory as seeking information for committees or groups that held meetings from June 1, 2017, through March 23, 2018. The Department of Defense further objects to the reference to “Transgender Service Policy Working Group and/or any other group or committee within the Department of Defense that reviewed or considered transgender issues,” regardless of the formality of the group or committee, or the organization within the Department that established the “group.” The Department of Defense employs millions of civilian and military personnel, and scope of this interrogatory unreasonably encompasses nearly every “group” of two or more Department of Defense employees or officers. The Department of Defense therefore construes this interrogatory as seeking only information concerning official committees or working groups, established by the Department, that considered policy for military service of transgender persons. The Department of Defense further objects to the scope of the reference to “each person who

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attended any meeting of such group and/or provided such group or its members any information, statement, advice, opinion, or other input of any nature or kind, including without limitation military medical professionals, civilian medical professionals, transgender service members, the commanders of transgender service members, members of agencies other than the Department of Defense, elected officials, third parties, lobbyists, experts, and/or consultants” encompasses, without limit, any person who happened to communicate with a member of Department of Defense-established group or committee despite how briefly or informally military service by transgender individuals was discussed. Consequently, Defendant will construe the scope of this reference to mean the identity of each person who attended formal meetings of a Department of Defense-established group or committee.

Response:

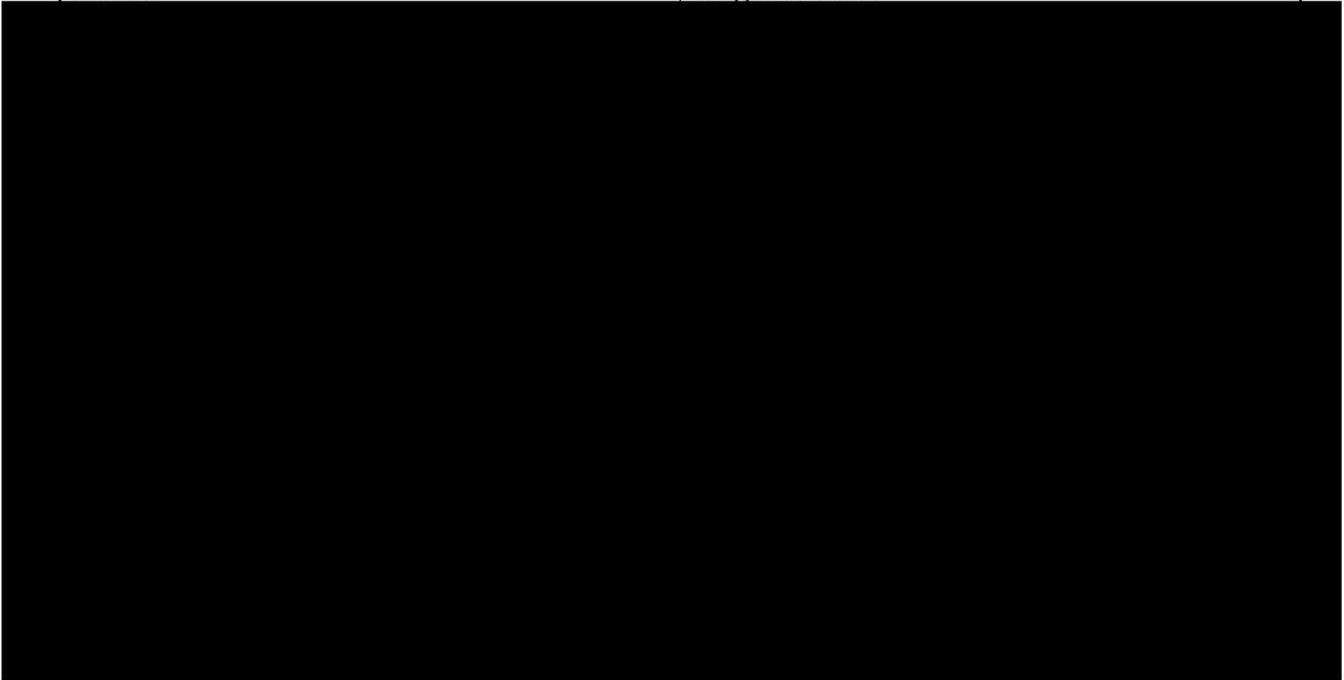
The following official committees or working groups established by the Department of Defense considered the policy for military service of transgender persons between June 1, 2017, and March 23, 2018:

- Senior Implementation Group. The Senior Implementation Group was chaired by Deputy Secretary of Defense, Mr. Robert Work, and Vice Chairman of the Joint Chiefs of Staff, Gen. Paul J. Selva. Those invited to attend the meeting were the Vice Chiefs of Staff and the Personnel Chiefs of the Services, including the Coast Guard.
- Transgender Action Officer Working Group. The members of this group, as well as the invitees and attendees at its meetings, were:

Name	Organization
[REDACTED]	

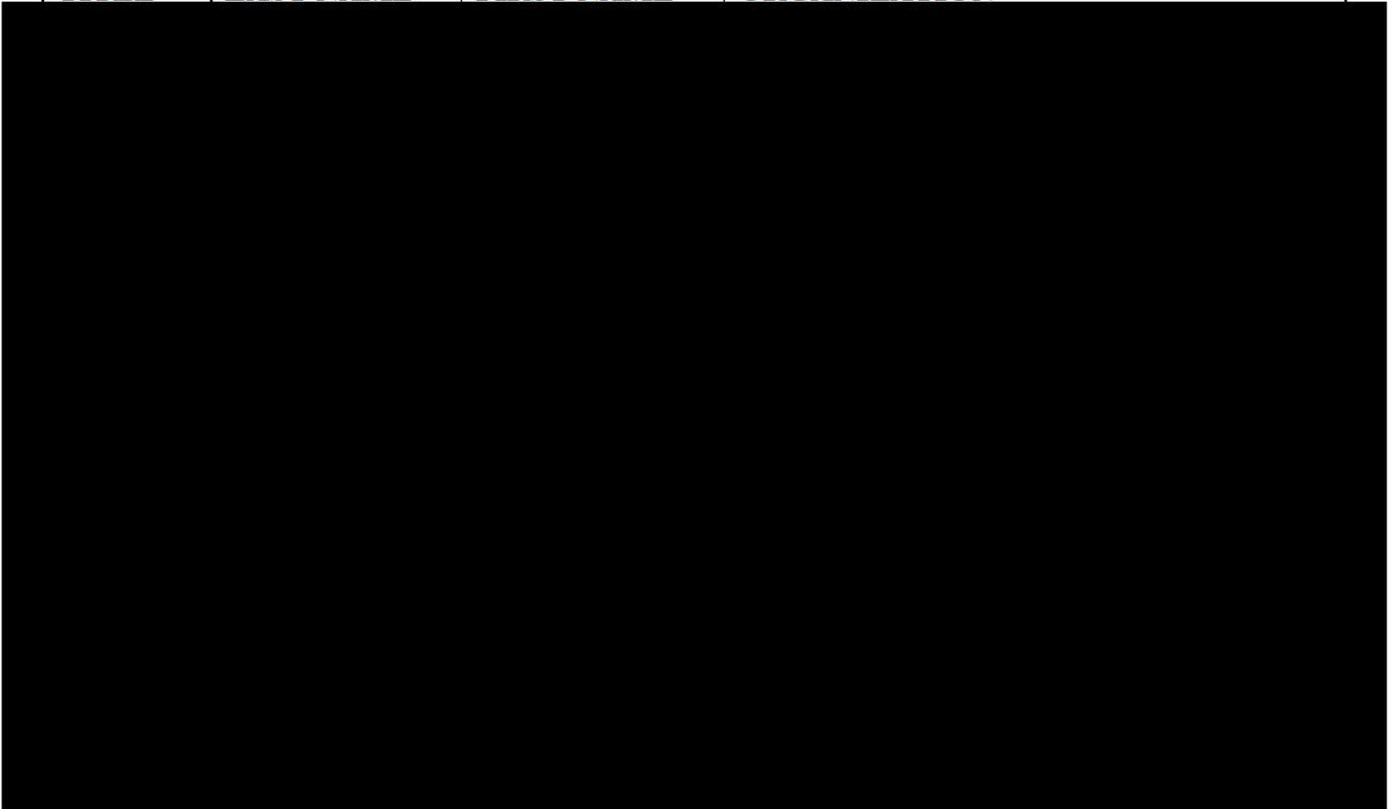
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Name	Organization
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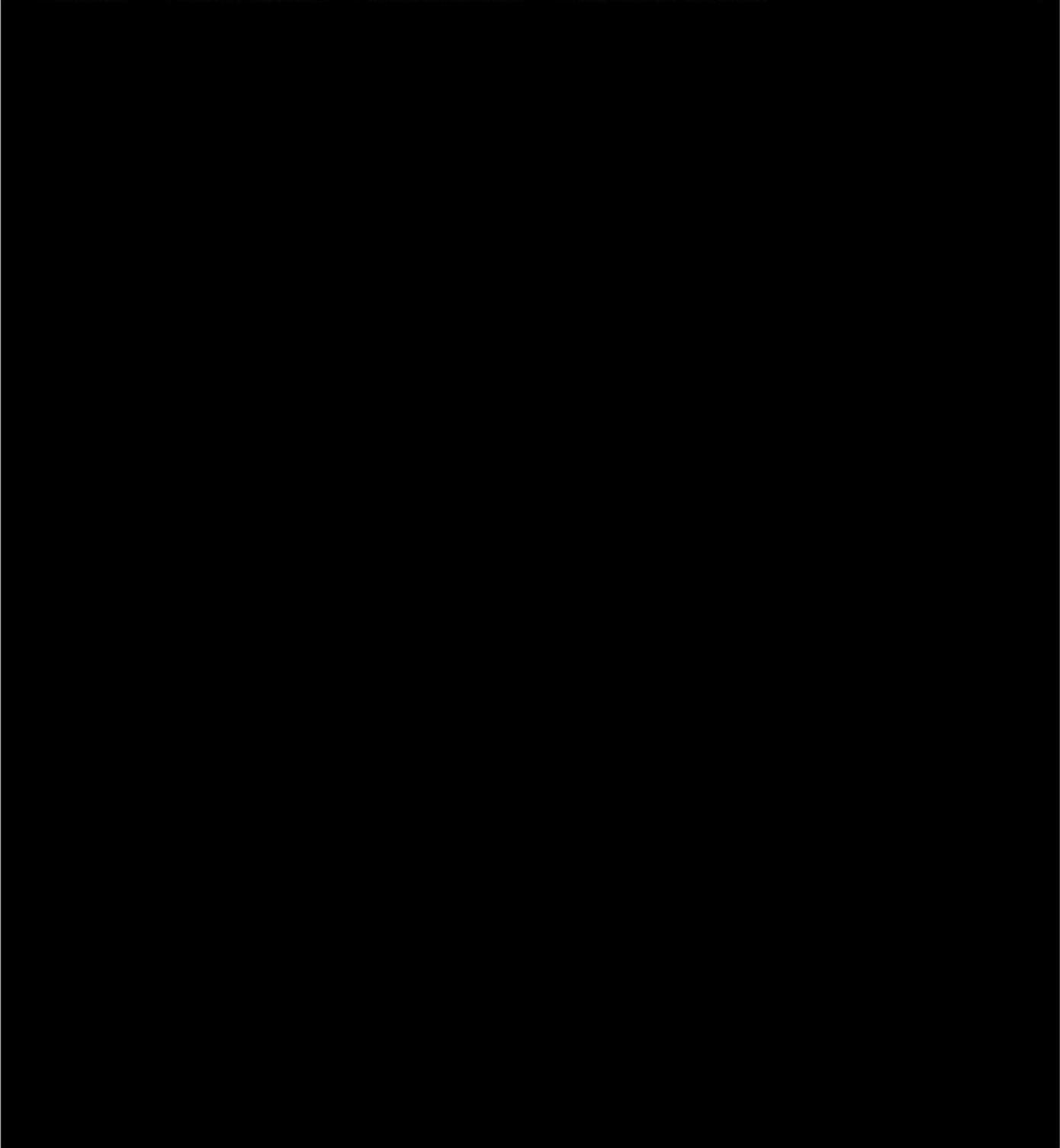
- Accession Medical Standards Working Group. The members of this group, as well as the invitees and attendees at its meetings, were:

TITLE	LAST NAME	FIRST NAME	ORGANIZATION
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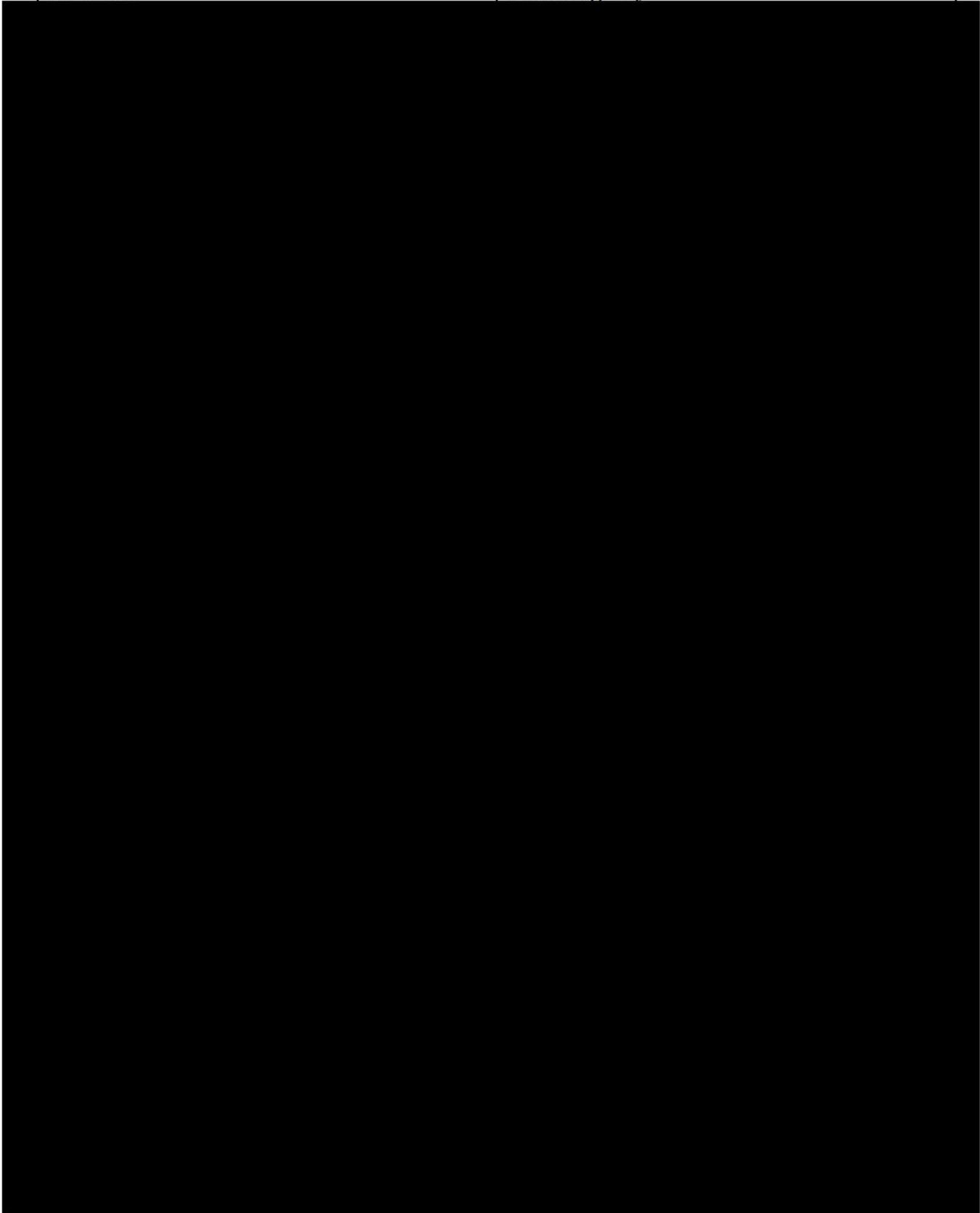
TITLE	LAST NAME	FIRST NAME	ORGANIZATION
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- Medical Personnel Executive Steering Committee. The members of this group, as well as the invitees and attendees at its meetings, were:

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<b>Attendee</b>	<b>Office/Agency</b>
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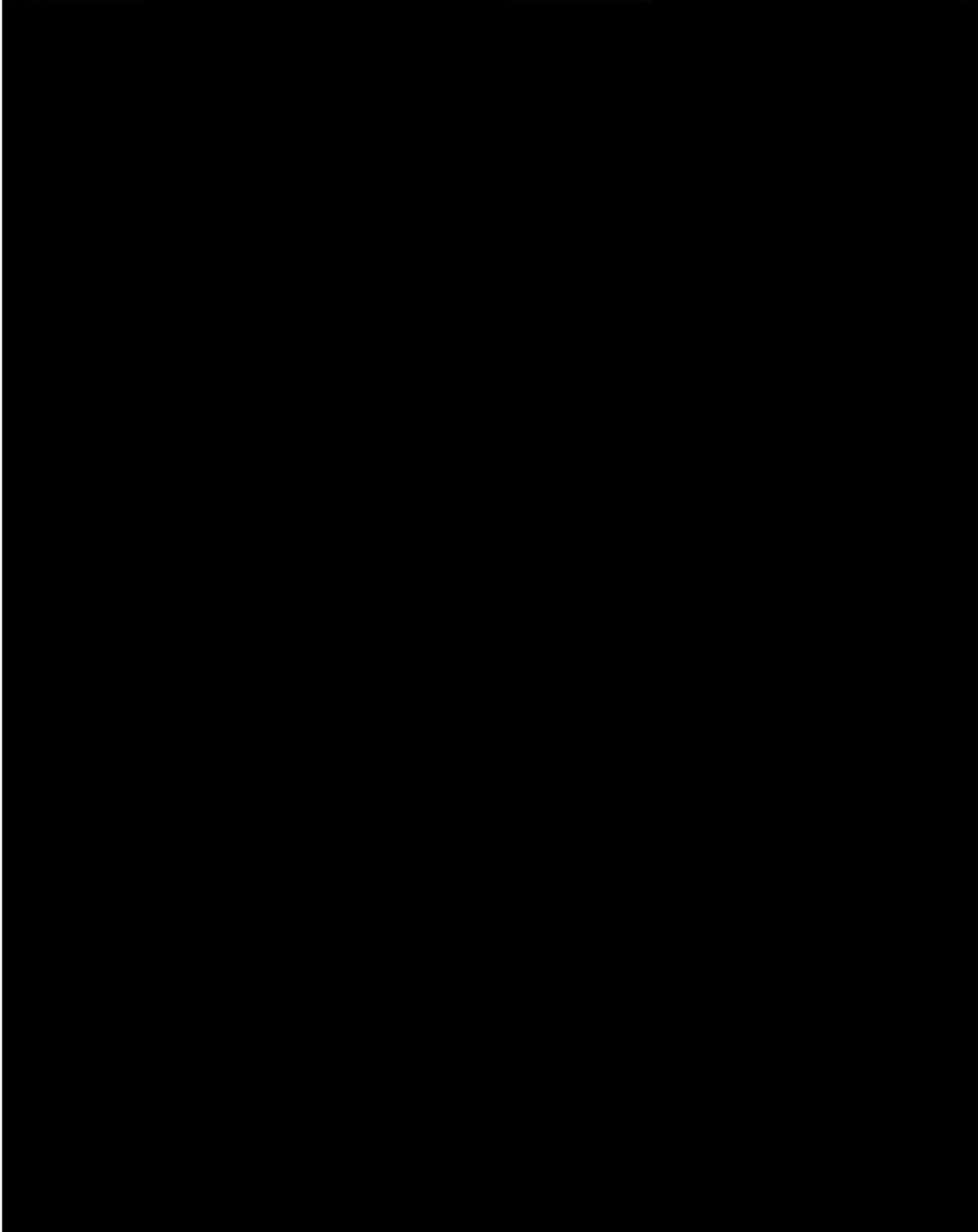


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Attendee	Office/Agency
[Redacted Content]	

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Attendee	Office/Agency
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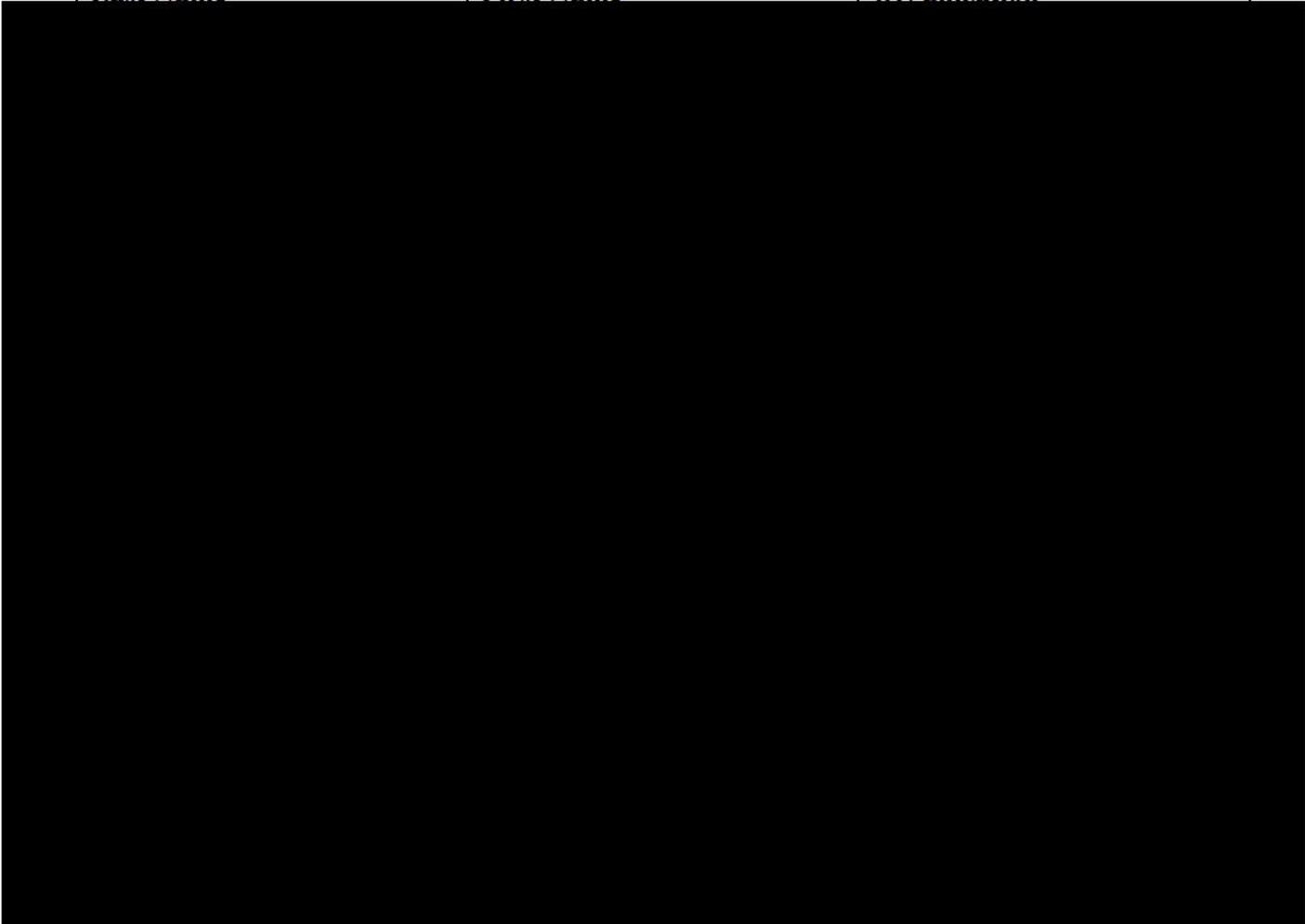
Attendee	Office/Agency
[Redacted]	

- Medical Personnel Executive Steering Committee Accession Modernization Working Group. The participants of the meeting of the Medical Personnel Executive Steering Committee Accession Modernization Working Group at which the military service of transgender individuals was considered were:

Last Name	First Name	Organization
[Redacted]		

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Last Name	First Name	Organization
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- Transgender Personnel Policy Working Group. The members of this group, as well as the invitees and attendees at its meetings, were:

Name	Organization
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Name	Organization
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- Panel of Experts. The Department of Defense refers Plaintiffs to Secretary Mattis's and the Department of Defense's response to interrogatory number 18 for information concerning members of the Panel of Experts and attendees at its meetings.

Interrogatory No. 20: Identify the principal author(s) and each person who reviewed, revised, or commented on any drafts, including but not limited to the final draft, of President Trump's March 23, 2018, Memorandum for the Secretary of Defense and the Secretary of Homeland Security with Subject: Military Service by Transgender Individuals.

Specific Objections:

The Department of Defense objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client

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privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The Department of Defense also objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to “each person” purports to require the Department of Defense to identify every single person who (1) reviewed, (2) revised, or (3) commented on any drafts of the March 23, 2018, Memorandum for the Secretary of Defense and the Secretary of Homeland Security with Subject: Military Service by Transgender Individuals.

Interrogatory No. 21: Identify all Communications, on or after January 20, 2017 to the present, between the President, the Executive Office of the President, the Vice President, and/or the Office of the Vice President, on the one hand, and Secretary Mattis and/or the Department of the Defense, on the other hand, relating or referring to military service by transgender people, public policy regarding transgender people, medical treatment for transgender people, and/or transgender people in general, including but not limited to oral communications.

Specific Objections:

The Department of Defense objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Dated: May 29, 2018

Respectfully submitted,

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*Counsel for Defendants*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 29, 2018, a copy of the document above was served by email on the following:

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Dated: May 29, 2018

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