

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

**DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

Defendants, through their undersigned counsel, hereby answer Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief as follows:

NATURE OF THE ACTION

1. The first sentence of this paragraph contains Plaintiffs' characterization of this action, to which no answer is required. To the extent an answer may be deemed required, denied. The second sentence of this paragraph contains Plaintiffs' characterization and opinion about the nature of transgender service members' military service, and about the nature of transgender individuals' desire to serve in the military, both of which do not require a response. To the extent a response may be deemed required, Defendants admit that some openly transgender persons are serving in the military, and admit that some openly transgender persons may desire to join the military. The third sentence of this paragraph contains Plaintiffs' characterization and opinion about the nature of transgender service members' military service, to which no response is required. The final sentence

1 of this paragraph consists of a legal conclusion, to which no response is required. To the
2 extent a response may be deemed required, denied.

- 3 2. The first three sentences of this paragraph appear to characterize Directive-Type
4 Memorandum (“DTM”) 16-005, “Military Service of Transgender Service Members” (June
5 30, 2016). Defendants respectfully refer the Court to DTM 16-005 for a complete and
6 accurate statement of its content. To the extent Plaintiffs’ characterizations constitute legal
7 conclusions or are inconsistent with DTM 16-005, Defendants deny the allegations. The
8 fourth sentence of this paragraph contains Plaintiffs’ characterization and opinion about
9 the nature of transgender service members’ military service, to which no response is
10 required. The final sentence of this paragraph is denied.
- 11 3. This paragraph purports to characterize tweets posted by President Trump on July 26,
12 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete and
13 accurate statement of their contents. To the extent Plaintiffs’ allegations are inconsistent
14 with the July 26 tweets, or call for legal conclusions, this paragraph is denied.
- 15 4. Denied.
- 16 5. This paragraph appears to characterize the Executive Memorandum entitled “Military
17 Service by Transgender Individuals,” which was issued on August 25, 2017 (the “2017
18 Presidential Memorandum”). Defendants respectfully refer the Court to the 2017
19 Presidential Memorandum itself for a complete and accurate statement of its contents. To
20 the extent Plaintiffs’ characterizations constitute legal conclusions or are inconsistent with
21 the 2017 Presidential Memorandum, Defendants deny the allegations.
- 22 6. This paragraph appears to characterize the Memorandum for the President by Secretary
23 James N. Mattis entitled “Military Service by Transgender Individuals,” which was issued
24 on February 22, 2018 (the “Mattis Memorandum”), as well as the document entitled
25 Department of Defense Report and Recommendations on Military Service by Transgender
26 Persons, issued February 2018 (the “DoD Report”). Defendants respectfully refer the
27 Court to the Mattis Memorandum and the DoD Report themselves for a complete and
28 accurate statement of their contents. To the extent Plaintiffs’ characterizations constitute

1 legal conclusions or are inconsistent with the Mattis Memorandum or DoD Report,
2 Defendants deny the allegations. Defendants further deny that these documents were an
3 “implementation plan,” insofar as this means that they were not the product of
4 independent military judgment.

5 7. Denied.

6 8. This paragraph appears to characterize the Executive Memorandum entitled “Presidential
7 Memorandum for the Secretary of Defense and Secretary of Homeland Security Regarding
8 Military Service by Transgender Individuals,” which was issued on March 23, 2018 (the
9 “2018 Presidential Memorandum”). Defendants respectfully refer the Court to the 2018
10 Presidential Memorandum itself for a complete and accurate statement of its contents. To
11 the extent Plaintiffs’ characterizations constitute legal conclusions or are inconsistent with
12 the 2018 Presidential Memorandum, Defendants deny the allegations. Defendants further
13 deny that the Mattis Memorandum and DoD Report were an “implementation plan,”
14 insofar as this means that they were not the product of independent military judgment.

15 9. This paragraph consists of legal conclusions, to which no response is required. To the
16 extent a response may be deemed required, denied.

17 **PARTIES**

18 **A. Plaintiffs**

19 10. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
20 allegations in this paragraph.

21 11. Admitted, except that Defendants lack knowledge or information sufficient to form a
22 belief as to the truth of the allegations concerning Staff Sergeant Schmid’s residency.

23 12. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
24 allegations in this paragraph.

25 13. Admitted, except that Defendants lack knowledge or information sufficient to form a
26 belief as to the truth of the allegations concerning Chief Warrant Officer Three Muller’s
27 residency.

- 1 14. Admitted, except that Defendants lack knowledge or information sufficient to form a
2 belief as to the truth of the allegations concerning Petty Officer Lewis's residency.
3 15. Admitted, except that Defendants lack knowledge or information sufficient to form a
4 belief as to the truth of the allegations concerning Petty Officer Stephens's residency.
5 16. Admitted, except that Defendants lack knowledge or information sufficient to form a
6 belief as to the truth of the allegations concerning Petty Officer Winters's residency.
7 17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
8 allegations in the first, second, and third sentences of this paragraph. Defendants admit
9 that Plaintiff Doe has sought leave to proceed as a Doe plaintiff.
10 18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
11 allegations in this paragraph.
12 19. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
13 allegations in this paragraph.
14 20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
15 allegations in this paragraph.

16 **B. Defendants**

- 17 21. The first sentence is admitted. The second sentence appears to characterize the 2017 and
18 2018 Presidential Memoranda. Defendants respectfully refer the Court to these documents
19 themselves for a complete and accurate statement of their contents. To the extent
20 Plaintiffs' characterizations constitute legal conclusions or are inconsistent with these
21 Presidential Memoranda, Defendants deny the allegations. Defendants also deny that these
22 Presidential Memoranda, or that current policy relating to transgender military service,
23 constitute a "ban" on transgender military service, or that current policy is an
24 "implementation plan," insofar as this means that it is not the product of independent
25 military judgment.
26 22. Admitted that the United States Government includes federal government departments
27 and agencies, among them the Departments of Defense and Homeland Security, which are
28 tasked with implementing the government's policies relating to military service of

1 transgender individuals. Denied that those policies constitute a “ban” on transgender
2 military service or that they are an “implementation plan,” insofar as this means that they
3 are not the product of independent military judgment.

4 23. Defendants admit that Mark Esper is the United States Secretary of Defense. The duties
5 and responsibilities of the Secretary of Defense are specified at 10 U.S.C. § 113. Denied
6 that current policy relating to transgender military service constitutes a “ban” on such
7 service or that it is an “implementation plan,” insofar as this means that it is not the
8 product of independent military judgment.

9 24. Regarding the first and second sentences of this paragraph, the components of the
10 Department of Defense are set out at 10 U.S.C. § 111, and the duties and responsibilities of
11 the Secretary of Defense are specified at 10 U.S.C. § 113. Denied that current policy
12 relating to transgender military service constitutes a “ban” on such service or that it is an
13 “implementation plan,” insofar as this means that it is not the product of independent
14 military judgment.

15 JURISDICTION AND VENUE

16 25. This paragraph consists of legal conclusions, to which no response is required. To the
17 extent a response may be deemed required, denied.

18 26. Denied that current policy related to transgender military service constitutes a “ban” on
19 such service or that it is an “implementation plan,” insofar as this means that it is not the
20 product of independent military judgment. This paragraph otherwise consists of legal
21 conclusions, to which no response is required. To the extent a response may be deemed
22 required, denied.

23 27. This paragraph consists of legal conclusions, to which no response is required. To the
24 extent a response may be deemed required, denied.

25 28. Denied that current policy related to transgender military service constitutes a “ban” on
26 such service or that it is an “implementation plan,” insofar as this means that it is not the
27 product of independent military judgment. This paragraph otherwise consists of legal
28

1 conclusions, to which no response is required. To the extent a response may be deemed
2 required, denied.

3 **FACTUAL ALLEGATIONS**

4 **A. Background Information Regarding Transgender Individuals**

5 29. The first sentence of this paragraph is admitted. Defendants lack knowledge or
6 information sufficient to form a belief as to the truth of the allegations in the second and
7 third sentences of this paragraph, which cover subjects that require medical expertise.

8 30. The first sentence of this paragraph is admitted. Defendants lack knowledge or
9 information sufficient to form a belief as to the truth of the allegations in the second
10 sentence of this paragraph, which covers subjects that require historical and/or medical
11 expertise.

12 31. The first sentence of this paragraph is admitted. Defendants lack knowledge or
13 information sufficient to form a belief as to the truth of the allegations in the second
14 sentence of this paragraph, which covers subjects that require medical and/or clinical
15 expertise.

16 32. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
17 allegations in this paragraph, which covers subjects that require medical and/or clinical
18 expertise.

19 33. The first sentence of this paragraph is admitted. Defendants lack knowledge or
20 information sufficient to form a belief as to the truth of the allegations in the second
21 sentence of this paragraph, which covers subjects that require medical and/or clinical
22 expertise.

23 34. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
24 allegations in the first sentence of this paragraph, which covers subjects that require
25 medical and/or clinical expertise. The second sentence of this paragraph is admitted.

26 35. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
27 allegations in this paragraph, which covers subjects that require medical and/or clinical
28 expertise.

1 36. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
2 allegations in this paragraph, which covers subjects that require medical and/or clinical
3 expertise.

4 37. Admitted.

5 38. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
6 allegations in this paragraph, which covers subjects that require medical and/or clinical
7 expertise.

8 39. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
9 allegations in this paragraph, which covers subjects that require medical and/or clinical
10 expertise.

11 **B. Plaintiff Ryan Karnoski**

12 40. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
13 allegations in this paragraph.

14 41. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
15 allegations in this paragraph.

16 42. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
17 allegations in this paragraph.

18 43. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
19 allegations in this paragraph.

20 44. Denied that current policy related to transgender military service constitutes a “ban” on
21 such service or that it is an “implementation plan,” insofar as this means it is not the
22 product of independent military judgment. Defendants otherwise lack knowledge or
23 information sufficient to form a belief as to the truth of the allegations in this paragraph.

24 45. Defendants admit that the United States Military employs service members, contractors,
25 and DoD civilians as social workers. Defendants otherwise lack knowledge or information
26 sufficient to form a belief as to the truth of the allegations in this paragraph.

27 46. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
28 allegations in this paragraph.

1 47. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
2 allegations in this paragraph.

3 48. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
4 allegations in this paragraph.

5 49. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
6 allegations in this paragraph.

7 50. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
8 allegations in this paragraph. Moreover, to the extent the allegations in this paragraph
9 constitute legal conclusions, they do not require a response. To the extent a response may
10 be deemed required, denied.

11 51. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
12 allegations in this paragraph. Moreover, to the extent the allegations in this paragraph
13 constitute legal conclusions, they do not require a response. To the extent a response may
14 be deemed required, denied.

15 **C. Plaintiff Staff Sergeant Cathrine Schmid**

16 52. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
17 allegations in this paragraph, except to admit that Staff Sergeant Schmid was born at K.I.
18 Sawyer Air Force Base in Michigan.

19 53. Admitted, except to deny that Staff Sergeant Schmid is currently performing duties as
20 Brigade Land and Ammunition Manager.

21 54. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
22 allegations in this paragraph, except to admit that Staff Sergeant Schmid is transgender.

23 55. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
24 allegations in this paragraph.

25 56. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
26 allegations in this paragraph.

27 57. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
28 allegations in this paragraph.

- 1 58. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
2 allegations in this paragraph, except to admit that Staff Sergeant Schmid changed her name
3 to Cathrine and her gender to female on her passport. Moreover, to the extent the
4 allegations in this paragraph constitute legal conclusions, they do not require a response.
5 To the extent a response may be deemed required, denied.
- 6 59. The allegations in the first sentence of this paragraph that Staff Sergeant Schmid has
7 “worked with” her chain of command and that they have “been supportive” of her are
8 vague; they therefore do not require a response. To the extent a response may be deemed
9 required, Defendants lack knowledge or information sufficient to form a belief as to the
10 truth of the allegations in the first sentence. The second sentence of this paragraph is
11 admitted.
- 12 60. Admitted, except that Defendants lack knowledge or information sufficient to form a
13 belief as to the truth of the allegations in this paragraph concerning how Staff Sergeant
14 Schmid is recognized and treated in social interactions.
- 15 61. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
16 allegations in the first sentence of this paragraph. Admitted that Staff Sergeant Schmid
17 performs valuable services for the Army. The remaining allegations of this paragraph are
18 denied.
- 19 62. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
20 allegations in this paragraph.
- 21 63. The first and second sentences of this paragraph are admitted, except that Defendants lack
22 knowledge or information sufficient to form a belief about the allegation that Staff
23 Sergeant Schmid’s “superiors encouraged her to pursue” a position as an Army warrant
24 officer. The third sentence of this paragraph is denied.
- 25 64. Regarding the first sentence of this paragraph, Defendants admit that Staff Sergeant
26 Schmid was informed in writing in July 2017 that her application to become a warrant
27 office was placed on hold in accordance with the memorandum issued by the Secretary of
28 Defense on September 14, 2017, titled *Military Service by Transgender Individuals—Interim*

1 *Guidance*, and Department of Defense Instruction (“DoDI”) 6130.03, *Medical Standards for*
2 *Appointment, Enlistment, or Induction in the Military Service*. The first sentence of this paragraph
3 also appears to characterize DoDI 6130.03. Defendants respectfully refer the Court to
4 DoDI 6130.03 itself for a complete and accurate statement of its contents. To the extent
5 Plaintiffs’ characterizations constitute legal conclusions or are inconsistent with DoDI
6 6130.03, Defendants deny the allegations. Defendants deny the second and third sentences
7 of this paragraph, except to admit that Staff Sergeant Schmid’s application was denied in
8 February 2018.

9 65. The first sentence of this paragraph appears to characterize the Mattis Memorandum and
10 the DoD Report. Defendants respectfully refer the Court to these documents themselves
11 for a complete and accurate statement of their contents. To the extent Plaintiffs’
12 characterizations constitute legal conclusions or are inconsistent with these documents,
13 Defendants deny the allegations. Defendants further deny that these documents were an
14 “implementation plan,” insofar as this means that they were not the product of
15 independent military judgment. Defendants deny the second sentence of this paragraph.

16 66. Admitted that Staff Sergeant Schmid has an approved medical treatment plan for gender
17 transition and that she has disclosed her transgender status to her chain of command and
18 other soldiers in her current unit. Defendants otherwise lack knowledge or information
19 sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to
20 the extent the allegations in this paragraph constitute legal conclusions, they do not require
21 a response. To the extent a response may be deemed required, denied.

22 **D. Plaintiff Drew Layne**

23 67. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
24 allegations in this paragraph.

25 68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
26 allegations in this paragraph, except to admit that Survival, Evasion, Resistance and Escape
27 Specialist training involves training on survival-related techniques needed for various
28 terrains and climates, and during dangerous events (e.g. aircraft crashes).

1 69. The first sentence of this paragraph is admitted. Defendants lack knowledge or
2 information sufficient to form a belief as to the truth of the allegations in the second and
3 third sentences of this paragraph.

4 70. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
5 allegations in this paragraph.

6 71. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
7 allegations in this paragraph.

8 72. Denied that current policy related to transgender military service constitutes a “ban” on
9 such service or that it is an “implementation plan,” insofar as this means that it is not the
10 product of independent military judgment. Defendants otherwise lack knowledge or
11 information sufficient to form a belief as to the truth of the allegations in this paragraph.

12 73. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
13 allegations in this paragraph.

14 74. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
15 allegations in this paragraph.

16 75. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
17 allegations in this paragraph.

18 76. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
19 allegations in this paragraph. Moreover, to the extent the allegations in this paragraph
20 constitute legal conclusions, they do not require a response. To the extent a response may
21 be deemed required, denied.

22 **E. Plaintiff Chief Warrant Officer Muller**

23 77. Admitted, except to deny that Chief Warrant Officer Three Muller enlisted in 2000, and to
24 instead aver that she enlisted in 1999.

25 78. Admitted that Chief Warrant Officer Three Muller served in Operation Iraqi Freedom, and
26 multiple assignments in the Republic of Korea. Defendants otherwise lack knowledge or
27 information sufficient to form a belief as to the truth of the allegations in this paragraph.
28

1 79. The first sentence of this paragraph is denied, except to admit that Chief Warrant Officer
2 Three Muller’s military occupation specialty is Rotary Wing Aviator with an AH64c/d
3 (Apache) rating. The second sentence of this paragraph is admitted, except Defendants
4 lack knowledge or information sufficient to form a belief as to the truth of the allegation
5 that Chief Warrant Officer Three Muller has experience flying in combat missions. The
6 third sentence of this paragraph is admitted. The fourth sentence of this paragraph is
7 vague and ambiguous because it states Chief Warrant Officer Three Muller “has served as
8 advisor to Commanders on all aviation and ground related safety matters” without
9 identifying any such matters. Therefore, Defendants lack knowledge or information
10 sufficient to form a belief as to the truth of the allegations in the fourth sentence. The fifth
11 sentence of this paragraph is admitted.

12 80. The first and second sentences of this paragraph are admitted. The third sentence of this
13 paragraph is vague and ambiguous because it alleges that Chief Warrant Officer Three
14 Muller’s “performance has been consistently recognized throughout her career” without
15 naming any specific awards or recognitions. It therefore does not require a response. To
16 the extent a response is required, Defendants lack knowledge or information sufficient to
17 form a belief as to the truth of the allegations in the last sentence of this paragraph.

18 81. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
19 allegations in this paragraph.

20 82. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
21 allegations in this paragraph.

22 83. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
23 allegations in this paragraph, except to admit the Chief Warrant Officer Three Muller is
24 transgender.

25 84. Defendants admit that Chief Warrant Officer Three Muller has taken steps to transition.
26 Defendants otherwise deny the allegations in this paragraph.

27 85. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
28 allegations in this paragraph, except to admit that Chief Warrant Officer Three Muller has

1 changed her name to Lindsey and her gender marker to female on her passport. Moreover,
2 to the extent the allegations in this paragraph constitute legal conclusions, they do not
3 require a response. To the extent a response may be deemed required, denied.

4 86. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
5 allegations in the first sentence of this paragraph. Admitted that Chief Warrant Officer
6 Three Muller performs valuable services for the Army. The remaining allegations of this
7 paragraph are denied.

8 87. Denied.

9 88. Denied.

10 89. The first sentence of this paragraph appears to characterize the Mattis Memorandum and
11 the DoD Report. Defendants respectfully refer the Court to these documents themselves
12 for a complete and accurate statement of their contents. To the extent Plaintiffs'
13 characterizations constitute legal conclusions or are inconsistent with these documents,
14 Defendants deny the allegations. Defendants further deny that these documents were an
15 "implementation plan," insofar as this means that they were not the product of
16 independent military judgment. Defendants deny the second sentence of this paragraph.

17 90. Admitted that Chief Warrant Officer Three Muller has an approved formal gender
18 transition plan and has disclosed her transgender status to her current commander and
19 members of her current unit. Defendants otherwise lack knowledge or information
20 sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to
21 the extent the allegations in this paragraph constitute legal conclusions, they do not require
22 a response. To the extent a response may be deemed required, denied.

23 **F. Plaintiff Petty Officer Lewis**

24 91. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
25 allegations in this paragraph.

26 92. Admitted.

- 1 93. Defendants admit the first and second sentences. Defendants lack knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegations in this
3 paragraph.
- 4 94. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
5 allegations in this paragraph.
- 6 95. Defendants admit the first sentence of this paragraph insofar as Lewis is undergoing
7 gender transition. Defendants deny that the President’s tweets or any subsequent policy
8 related to transgender military service constitute a “ban” on such service. Defendants
9 otherwise lack knowledge or information sufficient to form a belief as to the truth of the
10 allegations in this paragraph.
- 11 96. Defendants admit the first sentence of this paragraph and admit that Petty Officer Lewis
12 has changed her first name to Terece. Defendants otherwise lack knowledge or
13 information sufficient to form a belief as to the truth of the allegations in this paragraph.
- 14 97. Defendants admit that Petty Officer Lewis has worked with her chain of command
15 throughout her transition and admit that her chain of command has acted—and continues
16 to act—in accordance with DoD policy regarding the service of those diagnosed with
17 gender dysphoria.
- 18 98. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
19 allegations in the first sentence of this paragraph. Admitted that Petty Officer Lewis
20 performs a valuable service for the Navy. The remaining allegations in this paragraph are
21 denied.
- 22 99. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
23 allegations in this paragraph.
- 24 100. Defendants lack knowledge or information sufficient to form a belief as to the
25 truth of the allegations in this paragraph.
- 26 101. The first sentence of this paragraph appears to characterize the Mattis
27 Memorandum and the DoD Report. Defendants respectfully refer the Court to these
28 documents themselves for a complete and accurate statement of their contents. To the

1 extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with
2 these documents, Defendants deny the allegations. Defendants further deny that these
3 documents were an "implementation plan," insofar as this means that they were not the
4 product of independent military judgment. Defendants deny the second sentence of this
5 paragraph.

6 102. Admitted that Petty Officer Lewis disclosed to her chain of command a diagnosis
7 of gender dysphoria, and admitted that Petty Officer Lewis requested, and was approved
8 for, a formal gender transition plan. Defendants otherwise lack knowledge or information
9 sufficient to form a belief as to the truth of the allegations in this paragraph. Moreover, to
10 the extent the allegations in this paragraph constitute legal conclusions, they do not require
11 a response. To the extent a response may be deemed required, denied.

12 **G. Plaintiff Petty Officer Second Class Stephens**

13 103. Admitted that Plaintiff Petty Officer Stephens currently serves as an Aviation
14 Structural Mechanic in the United States Navy. Defendants otherwise lack knowledge or
15 information sufficient to form a belief as to the truth of the allegations in this paragraph.

16 104. Defendants lack knowledge or information sufficient to form a belief as to the
17 truth of the allegations in this paragraph.

18 105. Defendants admit that Petty Officer Stephens is transgender and admit that he was
19 assigned the sex of female at birth. Defendants lack knowledge or information sufficient
20 to form a belief as to the truth of the remaining allegations in this paragraph.

21 106. Defendants lack knowledge or information sufficient to form a belief as to the truth of
22 the allegations in this paragraph.

23 107. Admitted that Petty Officer Stephens deployed to the Persian Gulf. Denied that current
24 policy related to transgender military service constitutes a "ban" on such service.
25 Defendants otherwise lack knowledge or information sufficient to form a belief as to the
26 truth of the allegations in this paragraph.

1 108. Defendants lack knowledge or information sufficient to form a belief as to the truth of
2 the allegations in this paragraph, except to admit that Petty Officer Stephens underwent
3 surgery in 2018.

4 109. Defendants lack knowledge or information sufficient to form a belief as to the truth of
5 the allegations in this paragraph. Moreover, to the extent the allegations in this paragraph
6 constitute legal conclusions, they do not require a response. To the extent a response may
7 be deemed required, denied.

8 110. Defendants admit that Petty Officer Lewis has worked with her chain of command
9 throughout her transition and admit that her chain of command has acted—and continues
10 to act—in accordance with DoD policy regarding the service of those diagnosed with
11 gender dysphoria. Defendants otherwise lack knowledge or information sufficient to
12 form a belief as to the truth of the allegations in this paragraph.

13 111. Defendants lack knowledge or information sufficient to form a belief as to the truth of
14 the allegations in the first sentence of this paragraph. Admitted that Petty Officer
15 Stephens performs a valuable service for the Navy. The remaining allegations in this
16 paragraph are denied.

17 112. The first sentence of this paragraph appears to characterize the Mattis Memorandum and
18 the DoD Report. Defendants respectfully refer the Court to these documents themselves
19 for a complete and accurate statement of their contents. To the extent Plaintiffs'
20 characterizations constitute legal conclusions or are inconsistent with these documents,
21 Defendants deny the allegations. Defendants further deny that these documents were an
22 “implementation plan,” insofar as this means that they were not the product of
23 independent military judgment. Defendants deny the second sentence of this paragraph.

24 113. Admitted that Petty Officer Stephens has disclosed his transgender status to his chain of
25 command and has received approval of his formal gender transition plan. Defendants
26 otherwise lack knowledge or information sufficient to form a belief as to the truth of the
27 allegations in this paragraph. Moreover, to the extent the allegations in this paragraph
28

1 constitute legal conclusions, they do not require a response. To the extent a response may
2 be deemed required, denied.

3 **H. Plaintiff Petty Officer Second Class Winters**

4 114. Admitted.

5 115. Admitted that Plaintiff Petty Officer Winters performs a valuable service for the Navy.
6 The remaining allegations in this paragraph are denied.

7 116. Defendants lack knowledge or information sufficient to form a belief as to the truth of
8 the allegations in this paragraph.

9 117. Admitted that Petty Officer Winters is transgender, and admitted that she was assigned
10 the sex of male at birth. Defendants lack knowledge or information sufficient to form a
11 belief as to the truth of the remaining allegations in this paragraph.

12 118. Defendants lack knowledge or information sufficient to form a belief as to the truth of
13 the allegations in this paragraph.

14 119. Denied that current policy related to transgender military service constitutes a “ban” on
15 such service. Defendants otherwise lack knowledge or information sufficient to form a
16 belief as to the truth of the allegations in this paragraph.

17 120. Admitted that Petty Officer Winters disclosed her transgender status openly in the
18 military. Denied that current policy related to transgender military service constitutes a
19 “ban” on such service. Defendants otherwise lack knowledge or information sufficient to
20 form a belief as to the truth of the allegations in this paragraph. Moreover, the allegation
21 that Petty Officer Winters openly expressed her gender identity “in reliance” on any
22 government policy is a legal conclusion to which no response is required. To the extent a
23 response may be deemed required, denied.

24 121. Admitted that Petty Officer Winters has an approved formal gender transition plan, and
25 admitted that her plan includes hormonal therapy. Defendants otherwise lack knowledge
26 or information sufficient to form a belief as to the truth of the allegations in this
27 paragraph.

1 122. Defendants lack knowledge or information sufficient to form a belief as to the truth of
2 the allegations in this paragraph, except that Defendants deny that current military policy
3 related to transgender military service is an “implementation plan,” insofar as this means
4 that it is not the product of independent military judgment.

5 123. Defendants admit that Petty Officer Winter has changed her name in DEERS.
6 Defendants lack knowledge or information sufficient to form a belief as to the truth of
7 the remaining allegations in this paragraph. Moreover, to the extent the allegations in this
8 paragraph constitute legal conclusions, they do not require a response. To the extent a
9 response may be deemed required, denied.

10 124. Admitted that Petty Officer Winters’ gender marker in DEERS has changed, and
11 admitted that Petty Officer Winters has worked with her chain of command on her formal
12 gender transition plan. Defendants otherwise lack knowledge or information sufficient to
13 form a belief as to the truth of the allegations in this paragraph.

14 125. Defendants lack knowledge or information sufficient to form a belief as to the truth of
15 the allegations in the first sentence of this paragraph. Admitted that Petty Officer Winters
16 performs a valuable service for the Navy. This paragraph is otherwise denied.

17 126. Defendants lack knowledge or information sufficient to form a belief as to the truth of
18 the allegations in this paragraph.

19 127. The first sentence of this paragraph appears to characterize the Mattis Memorandum and
20 the DoD Report. Defendants respectfully refer the Court to these documents themselves
21 for a complete and accurate statement of their contents. To the extent Plaintiffs’
22 characterizations constitute legal conclusions or are inconsistent with these documents,
23 Defendants deny the allegations. Defendants further deny that these documents were an
24 “implementation plan,” insofar as this means that they were not the product of
25 independent military judgment. Defendants deny the second sentence of this paragraph.

26 128. Admitted that Petty Officer Winters has disclosed her transgender status to her chain of
27 command and has received approval of her formal gender transition plan. Defendants
28 otherwise lack knowledge or information sufficient to form a belief as to the truth of the

1 allegations in this paragraph. Moreover, to the extent the allegations in this paragraph
2 constitute legal conclusions, they do not require a response. To the extent a response may
3 be deemed required, denied.

4 **I. Plaintiff Jane Doe**

5 129. Defendants lack knowledge or information sufficient to form a belief as to the truth of
6 the allegations in this paragraph.

7 130. Defendants lack knowledge or information sufficient to form a belief as to the truth of
8 the allegations in this paragraph.

9 131. Defendants lack knowledge or information sufficient to form a belief as to the truth of
10 the allegations in this paragraph.

11 132. Denied that current policy related to transgender military service constitutes a “ban” on
12 such service. Defendants otherwise lack knowledge or information sufficient to form a
13 belief as to the truth of the allegations in this paragraph.

14 133. Defendants lack knowledge or information sufficient to form a belief as to the truth of
15 the allegations in this paragraph.

16 134. The first sentence of this paragraph purports to characterize tweets posted by President
17 Trump on July 26, 2017. Defendants respectfully refer the Court to the July 26 tweets for
18 a complete statement of their contents. To the extent Plaintiffs’ allegations are
19 inconsistent with the July 26 tweets, or call for legal conclusions, the first sentence of this
20 paragraph is denied. Defendants lack knowledge or information sufficient to form a belief
21 as to the truth of the allegations in the second sentence of this paragraph.

22 135. Denied that current policy related to transgender military service constitutes a “ban” on
23 such service or that it is an “implementation plan,” insofar as this means that it is not the
24 product of independent military judgment. Defendants otherwise lack knowledge or
25 information sufficient to form a belief as to the truth of the allegations in this paragraph.

26 136. Denied that Jane Doe has “been forced to postpone the steps required for her to
27 transition.” And denied that current policy related to transgender military service
28 constitutes a “ban” on such service or that it is an “implementation plan,” insofar as this

1 means that it is not the product of independent military judgment. Defendants otherwise
2 lack knowledge or information sufficient to form a belief as to the truth of the allegations
3 in this paragraph.

4 137. Denied that current policy related to transgender military service constitutes a “ban” on
5 such service. The second sentence of this paragraph is also denied. Defendants otherwise
6 lack knowledge or information sufficient to form a belief as to the truth of the allegations
7 in this paragraph.

8 **J. Plaintiff Human Rights Campaign**

9 138. Defendants lack knowledge or information sufficient to form a belief as to the truth of
10 the allegations in this paragraph.

11 139. Denied that current policy related to transgender military service constitutes a “ban” on
12 such service or that it is an “implementation plan,” insofar as this means that it is not the
13 product of independent military judgment. Defendants otherwise lack knowledge or
14 information sufficient to form a belief as to the truth of the allegations in this paragraph.
15 Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they
16 do not require a response. To the extent a response may be deemed required, denied.

17 **K. Plaintiff Gender Justice League**

18 140. Defendants lack knowledge or information sufficient to form a belief as to the truth of
19 the allegations in this paragraph.

20 141. Denied that current policy related to transgender military service constitutes a “ban” on
21 such service or that it is an “implementation plan,” insofar as this means that it is not the
22 product of independent military judgment. Defendants otherwise lack knowledge or
23 information sufficient to form a belief as to the truth of the allegations in this paragraph.
24 Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they
25 do not require a response. To the extent a response may be deemed required, denied.

1 **L. Plaintiff American Military Partner Association n/k/a Modern Military Association**
2 **of America**

3 142. Defendants lack knowledge or information sufficient to form a belief as to the truth of
4 the allegations in this paragraph.

5 143. Denied that current policy related to transgender military service constitutes a “ban” on
6 such service or that it is an “implementation plan,” insofar as this means that it is not the
7 product of independent military judgment. Defendants otherwise lack knowledge or
8 information sufficient to form a belief as to the truth of the allegations in this paragraph.
9 Moreover, to the extent the allegations in this paragraph constitute legal conclusions, they
10 do not require a response. To the extent a response may be deemed required, denied.

11 **M. Prior Military Ban Against Transgender Individuals**

12 144. The first sentence of this paragraph is admitted. The second sentence of this paragraph is
13 vague and ambiguous because it states that the military “previously” had a policy, but does
14 not specify what the policy was “previous” to. Accordingly, Defendants lack sufficient
15 information to respond to this sentence, except to admit that there was a time during
16 which the military excluded openly transgender people from military service.

17 145. The first sentence of this paragraph is denied. Defendants lack knowledge or information
18 sufficient to form a belief as to the truth of the allegations in the second sentence of this
19 paragraph, which covers subjects that require medical and/or clinical expertise.

20 146. This paragraph is vague and ambiguous because it contains allegations of the historical
21 service of transgender individuals in the military, but does not identify any sources for
22 the allegations. Defendants thus lack sufficient information to admit or deny the
23 allegations. This paragraph also purports to characterize a statement by former Secretary
24 of Defense Ashton Carter. Former Secretary Carter’s statements speak for themselves
25 and are the best evidence of their content. To the extent Plaintiffs’ allegations are
26 inconsistent with former Secretary Carter’s statements, this paragraph is denied.

27 147. This paragraph is vague and ambiguous because it refers to “essential, mission-critical”
28 roles without defining those roles, and because it refers to “a transgender woman” who

1 “served on Navy SEAL Team 6” without identifying the individual. Defendants
2 therefore lack knowledge or information sufficient to form a belief as to the truth of the
3 allegations in this paragraph.

4 148. This paragraph is vague and ambiguous because it refers to “a 2014 study conducted by
5 the Williams Institute at the University of California, Los Angeles,” but does not identify
6 the title of the study. Defendants therefore lack knowledge or information sufficient to
7 form a belief as to the truth of the allegations in this paragraph. Moreover, the study
8 itself, rather than Plaintiffs’ characterization of it, would be the best evidence of its
9 findings. To the degree Plaintiffs’ characterization of the study is inconsistent with the
10 study itself, Defendant’s deny the allegations in this paragraph.

11 149. Defendants lack knowledge or information sufficient to form a belief as to the truth of
12 the allegations in this paragraph, which covers subjects that require statistical and/or
13 mathematical expertise.

14 **N. Rescission of Prior Military Ban Against Transgender Individuals**

15 150. Denied.

16 151. This paragraph appears to characterize a 2014 report issued by the think tank the Palm
17 Center titled “Report of the Transgender Military Service Commission” Defendants
18 respectfully refer the Court to the report itself for a complete and accurate statement of
19 its contents. To the extent Plaintiffs’ characterizations constitute legal conclusions or are
20 inconsistent with the report, Defendants deny the allegations.

21 152. This paragraph purports to characterize statements made by Former Secretary of
22 Defense Chuck Hagel, which speak for themselves and are the best evidence of their
23 content. To the extent Plaintiffs’ allegations are inconsistent with the statements, this
24 paragraph is denied.

25 153. This paragraph purports to characterize statements made by Former Secretary of
26 Defense Ashton Carter, which speak for themselves and are the best evidence of their
27 content. To the extent Plaintiffs’ allegations are inconsistent with the statements, this
28 paragraph is denied.

- 1 154. Admitted, except that the working group was chaired by persons either “acting” or
2 “performing the duties of” the Under Secretary of Defense for Personnel and Readiness.
3 155. Admitted.
4 156. Defendants admit that, to the best of their knowledge, no cases for separation on the
5 basis of gender identify were presented for approval to the Acting Under Secretary of
6 Defense for Personnel and Readiness between July 2015 and June 2016. Defendants
7 otherwise deny the allegations in this paragraph.
8 157. Denied that the RAND Corporation’s research related to transgender military service
9 constituted a “study” of the issue. Defendants otherwise respectfully refer the Court to
10 Agnes, Gereben, Shaefer et al., *Assessing the Implications of Allowing Transgender Personnel to*
11 *Serve Openly*, RAND Corporation (2016) (hereinafter the “RAND Report”), for a
12 complete and accurate statement of its contents. To the extent Plaintiffs’
13 characterizations constitute legal conclusions or are inconsistent with the RAND Report,
14 Defendants deny the allegations.
15 158. Defendants respectfully refer the Court to the RAND Report for a complete and
16 accurate statement of its contents. To the extent Plaintiffs’ characterizations constitute
17 legal conclusions or are inconsistent with the RAND Report, Defendants deny the
18 allegations.
19 159. The first and second sentences of this paragraph are admitted. As to the third sentence
20 of this paragraph, Defendants admit that the working group examined the experiences of
21 foreign militaries that permit transgender people to serve openly, as well as experiences
22 from the private sector. The third sentence otherwise contains Plaintiffs’ subjective
23 characterization and argument about the scope of the examination, to which no response
24 is required.
25 160. This paragraph purports to characterize statements made by Former Secretary of
26 Defense Ashton Carter, which speak for themselves and are the best evidence of their
27 content. To the extent Plaintiffs’ allegations are inconsistent with the statements, this
28 paragraph is denied.

1 161. This paragraph appears to characterize DTM 16-005. Defendants respectfully refer the
2 Court to DTM 16-005 for a complete and accurate statement of its contents. To the
3 extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with
4 DTM 16-005, Defendants deny the allegations.

5 162. The first sentence of this paragraph is admitted. The second sentence of this paragraph
6 purports to characterize an archived section of the Department of Defense's website
7 titled "Department of Defense Transgender Policy." Defendants respectfully refer the
8 court to that section of the Department of Defense's website for a full and accurate
9 statement of its contents. *See* [https://dod.defense.gov/News/Special-](https://dod.defense.gov/News/Special-Reports/0616_transgender-policy-archive/)
10 [Reports/0616_transgender-policy-archive/](https://dod.defense.gov/News/Special-Reports/0616_transgender-policy-archive/). To the extent Plaintiffs' characterizations
11 constitute legal conclusions or are inconsistent with the website, Defendants deny the
12 allegations.

13 163. Admitted.

14 164. This paragraph purports to characterize the Department of Defense's implementation
15 handbook, "Transgender Service in the U.S. Military." Defendants respectfully refer the
16 court to the handbook for a full and accurate statement of its contents. To the extent
17 Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the
18 handbook, Defendants deny the allegations.

19 165. This paragraph appears to characterize the Assistant Secretary of Defense (Health
20 Affairs) Memorandum of July 29, 2016 "Guidance for Treatment of Gender Dysphoria
21 for Active and Reserve Component Service Members." Defendants respectfully refer the
22 court to the memorandum of July 29, 2016 for a full and accurate statement of its
23 contents. To the extent Plaintiffs' characterizations constitute legal conclusions or are
24 inconsistent with the memorandum of July 29, 2016, Defendants deny the allegations.

25 166. Admitted.

26 167. This paragraph is vague and ambiguous because it is written in the passive voice and does
27 not identify who "envisioned" that the military would begin accessing transgender people
28 who met all relevant standards. Defendants therefore lack sufficient information to

1 admit or deny. Moreover, to the extent a response may be deemed required, Defendants
2 deny that under DTM 16-005, transgender individuals were subject to the same accession
3 standards as non-transgender individuals.

4 168. The first sentence of this paragraph is admitted. The second sentence of this paragraph
5 is denied.

6 169. This paragraph is hypothetical and speculative. Defendants therefore lack sufficient
7 information to admit or deny. To the extent a response may be deemed required, denied
8 that current policies related to transgender military service constitute a “ban.”

9 **O. Announcement of Policy of Discrimination Against Transgender Individuals in**
10 **Military Service**

11 170. This paragraph purports to characterize tweets posted by President Trump on July 26,
12 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete
13 statement of their contents. To the extent Plaintiffs’ allegations are inconsistent with the
14 July 26 tweets, or call for legal conclusions, this paragraph is denied.

15 171. This paragraph purports to characterize tweets posted by President Trump on July 26,
16 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete
17 statement of their contents. To the extent Plaintiffs’ allegations are inconsistent with the
18 July 26 tweets, or call for legal conclusions, this paragraph is denied.

19 172. This paragraph purports to characterize tweets posted by President Trump on July 26,
20 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete
21 statement of their contents. To the extent Plaintiffs’ allegations are inconsistent with the
22 July 26 tweets, or call for legal conclusions, this paragraph is denied.

23 173. This paragraph purports to characterize tweets posted by President Trump on July 26,
24 2017. Defendants respectfully refer the Court to the July 26 tweets for a complete
25 statement of their contents. To the extent Plaintiffs’ allegations are inconsistent with the
26 July 26 tweets, or call for legal conclusions, this paragraph is denied.

27 174. Denied.
28

1 175. The first sentence of this paragraph is denied. Regarding the second sentence of this
2 paragraph, admitted that Secretary Mattis was away from the Pentagon on July 26, 2017.
3 This sentence is otherwise vague and ambiguous because it refers to facts that have
4 allegedly been “reported[,]” without identifying the source of the reporting. Defendants
5 therefore lack sufficient information to admit or deny.

6 176. Denied that current policy related to transgender military service constitutes a “ban” on
7 such service. Also, this paragraph is vague and ambiguous because it refers to “top
8 pentagon officials,” as well as unnamed individuals with “concerns,” without identifying
9 any of those officials or individuals. Defendants therefore lack sufficient information to
10 admit or deny.

11 177. Denied that the President’s tweets or any subsequent policy related to transgender
12 military service constitute a “ban” on such service. Defendants otherwise lack
13 knowledge or information sufficient to form a belief as to the truth of the allegations in
14 this paragraph, which concern the states of minds of individuals who are not parties to
15 this case.

16 178. This paragraph purports to characterize a statement made by Chairman of the Joint
17 Chiefs of Staff General Joseph Dunford, which speaks for itself and is the best evidence
18 of its content. To the extent Plaintiffs’ allegations are inconsistent with the statement,
19 this paragraph is denied.

20 179. Denied that the President’s tweets or any subsequent policy related to transgender
21 military service constitute a “ban” on such service. Also, the first sentence of this
22 paragraph is vague and ambiguous because it states that the Pentagon press office was
23 “unaware” of a decision without specifying any individual in that office that lacked
24 awareness of the decision. Defendants therefore lack knowledge or information
25 sufficient to form a belief as to the truth of the allegations in the first sentence of this
26 paragraph. The second sentence of this paragraph purports to characterize a statement
27 made by Navy Captain Jeff Davis, which speaks for itself and is the best evidence of its
28

1 content. To the extent Plaintiffs' characterizations are inconsistent with Captain Davis'
2 statement, the second sentence of this paragraph is denied.

3 180. Denied that current policy related to transgender military service constitutes a "ban" on
4 such service. This paragraph also purports to characterize statements made by former
5 White House Press Secretary Sarah Huckabee Sanders, which speak for themselves and
6 are the best evidence of their content. To the extent Plaintiffs' allegations are
7 inconsistent with former Press Secretary Sanders' statements, this paragraph is denied.

8 181. Denied that the President's tweets or any subsequent policy related to transgender
9 military service constitute a "ban" on such service. The allegations in this paragraph are
10 vague and ambiguous because they refer to "White House lawyers and aides," "one
11 White House official," and "a White House official," without identifying any of the
12 relevant individuals. Defendants therefore lack sufficient information to admit or deny.

13 182. The allegation in this paragraph is vague and ambiguous because it characterizes the
14 nature of President Trump's discussions without citing any source for that
15 characterization. Defendants therefore lack sufficient information to admit or deny the
16 allegations, except to deny that the President ever proposed or decided to institute a
17 "ban" on transgender military service.

18 183. Each sentence of this paragraph is vague and ambiguous. The first sentence of this
19 paragraph refers to "[s]everal congressional and White House sources" without
20 identifying who those sources are. The second sentence of this paragraph uses the
21 passive voice to say there "was concern," without identifying what individual(s) was/were
22 concerned. The third sentence of this paragraph refers to a proposed amendment
23 rejected by the United States House of Representatives without citing to or identifying
24 the proposed amendment. The fourth sentence of this paragraph refers to "these
25 Republican members" without identifying any of the relevant members of Congress.
26 Defendants therefore lack sufficient information to admit or deny each sentence of this
27 paragraph, except to deny that the President ever instituted a "ban" on transgender
28 military service. Moreover, the fourth sentence of this paragraph consists of Plaintiffs'

1 characterization of tweets posted by President Trump on July 26, 2017. Defendants
2 respectfully refer the Court to the July 26 tweets for a complete statement of their
3 contents. To the extent Plaintiffs' allegations are inconsistent with the July 26 tweets, or
4 call for legal conclusions, this paragraph is denied.

5 184. The allegations in this paragraph are vague and ambiguous because they refer to "A
6 Trump administration official" without identifying the official. Defendants therefore
7 lack sufficient information to admit or deny. Moreover, the official's statement itself,
8 rather than Plaintiffs' characterization of it, would be the best evidence of its content.
9 To the extent Plaintiffs' characterizations of the statement are inconsistent with the
10 statement itself, or are legal conclusions, Defendant's deny the allegations.

11 185. The allegations in this paragraph are vague and ambiguous because they refer to
12 "reports" without identifying the relevant reports. Defendants therefore lack sufficient
13 information to admit or deny.

14 186. This paragraph purports to characterize statements made by former Deputy Assistant to
15 the President Sebastian Gorka, which speak for themselves and are the best evidence of
16 their content. To the extent Plaintiffs' characterizations are inconsistent with Mr.
17 Gorka's statements, or are legal conclusions, this paragraph is denied.

18 187. The first sentence of this paragraph is vague and ambiguous because it refers to
19 "widespread opposition and condemnation" of an alleged decision without identifying all
20 individuals opposed to the alleged decision, or at least the number or percentage of
21 individuals opposed to it. Defendants therefore lack sufficient information to admit or
22 deny the first sentence. The second, third, and fourth sentences of this paragraph
23 purports to characterize statements made by several senators, which speak for themselves
24 and are the best evidence of their content. To the extent Plaintiffs' characterizations are
25 inconsistent with the senators' statements, those characterizations are denied. The fifth
26 sentence of this paragraph purports to characterize a letter joined by members of the
27 United States House of Representatives. Defendants respectfully refer the court to the
28 letter itself for a complete and accurate statement of its contents. To the extent

1 Plaintiffs' characterizations constitute legal conclusions or are inconsistent with the letter,
2 Defendants deny the allegations in the fifth sentence of this paragraph. Denied also that
3 the President ever instituted a "ban" on transgender military service.

4 188. This paragraph purports to characterize a letter joined by the attorneys general of 19
5 states and the District of Columbia. Defendants respectfully refer the court to the letter
6 itself for a complete and accurate statement of its contents. To the extent Plaintiffs'
7 characterizations constitute legal conclusions or are inconsistent with the letter,
8 Defendants deny the allegations in this paragraph.

9 189. This paragraph purports to characterize a public statement by fifty-six retired generals
10 and admirals, which speaks for itself and is the best evidence of its content. To the
11 extent Plaintiffs' characterizations are inconsistent with the statement, this paragraph is
12 denied.

13 **P. Implementation of Discrimination Against Transgender Individuals in Military**
14 **Service**

15 190. This paragraph purports to characterize statements made by Navy Captain Jeff Davis,
16 which speak for themselves and are the best evidence of their content. To the extent
17 Plaintiffs' characterizations are inconsistent with Captain Davis' statements, this
18 paragraph is denied.

19 191. This paragraph purports to characterize statements made by former Secretary of Defense
20 James Mattis, which speak for themselves and are the best evidence of their content. To
21 the extent Plaintiffs' characterizations are inconsistent with former Secretary Mattis'
22 statements, this paragraph is denied.

23 192. This paragraph purports to characterize the 2017 Presidential Memorandum.
24 Defendants respectfully refer the Court to the 2017 Presidential Memorandum itself for a
25 complete and accurate statement of its contents. To the extent Plaintiffs'
26 characterizations constitute legal conclusions or are inconsistent with the 2017
27 Presidential Memorandum, Defendants deny the allegations. Denied also that the
28 President ever instituted a "ban" on transgender military service.

1 193. This paragraph appears to characterize the 2017 Presidential Memorandum. Defendants
2 respectfully refer the Court to the 2017 Presidential Memorandum itself for a complete
3 and accurate statement of its contents. To the extent Plaintiffs' characterizations
4 constitute legal conclusions or are inconsistent with the 2017 Presidential Memorandum,
5 Defendants deny the allegations. Denied also that the President ever instituted a "ban"
6 on transgender military service.

7 194. This paragraph appears to characterize the 2017 Presidential Memorandum. Defendants
8 respectfully refer the Court to the 2017 Presidential Memorandum itself for a complete
9 and accurate statement of its contents. To the extent Plaintiffs' characterizations
10 constitute legal conclusions or are inconsistent with the 2017 Presidential Memorandum,
11 Defendants deny the allegations.

12 195. This paragraph appears to characterize the Statement by Secretary of Defense Jim Mattis
13 on Military Service by Transgender Individuals, News Release No. NR-312-17, issued on
14 August 29, 2017. Defendants respectfully refer the Court to this document itself for a
15 complete and accurate statement of its contents. To the extent Plaintiffs'
16 characterizations constitute legal conclusions or are inconsistent with this document,
17 Defendants deny the allegations.

18 196. This paragraph appears to characterize two memoranda issued by former Secretary
19 Mattis on September 14, 2017: "Terms of Reference—Implementation of Presidential
20 Memorandum on Military Service by Transgender Individuals" and "Military Service by
21 Transgender Individuals – Interim Guidance." Defendants respectfully refer the Court
22 to these memoranda themselves for a complete and accurate statement of their contents.
23 To the extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent
24 with these memoranda, Defendants deny the allegations. Defendants further deny that
25 these documents provided or directed the creation of an "implementation plan," insofar
26 as this means that they were not the product of independent military judgment.

27 197. The first sentence of this paragraph is admitted, except to deny that military policy
28 relating to service of transgender individuals constitutes a "ban" on transgender military

1 service. The second sentence is admitted. The third sentence is denied, except to admit
2 that this Court and three other district courts previously entered preliminary injunctions
3 concerning the military's implementation of DTM 16-005. The fourth sentence is
4 denied, except to admit that the accessions policy set forth in DTM 16-005 went into
5 effect on January 1, 2018.

6 198. This paragraph appears to characterize the Mattis Memorandum and the DoD Report.
7 Defendants respectfully refer the Court to these documents themselves for a complete
8 and accurate statement of their contents. To the extent Plaintiffs' characterizations
9 constitute legal conclusions or are inconsistent with these documents, Defendants deny
10 the allegations. Defendants further deny that these documents were an "implementation
11 plan," insofar as this means that they were not the product of independent military
12 judgment.

13 199. This paragraph appears to characterize the Mattis Memorandum, the DoD Report, and
14 the 2017 Presidential Memorandum. Defendants respectfully refer the Court to these
15 documents themselves for a complete and accurate statement of their contents. To the
16 extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with
17 these documents, Defendants deny the allegations. Denied also that military policy
18 relating to service of transgender individuals constitutes a "ban" on or "prohibits
19 transgender military service" or that it is an "implementation plan," insofar as this means
20 that it is not the product of independent military judgment.

21 200. This paragraph appears to characterize the Mattis Memorandum, the DoD Report, and
22 the 2017 Presidential Memorandum. Defendants respectfully refer the Court to these
23 documents themselves for a complete and accurate statement of their contents. To the
24 extent Plaintiffs' characterizations constitute legal conclusions or are inconsistent with
25 these documents, Defendants deny the allegations. Defendants further deny that military
26 policy relating to service of transgender individuals is an "implementation plan," insofar
27 as this means that it is not the product of independent military judgment.
28

1 201. This paragraph appears to characterize the 2018 Presidential Memorandum. Defendants
2 respectfully refer the Court to the 2018 Presidential Memorandum itself for a complete
3 and accurate statement of its contents. To the extent Plaintiffs' characterizations
4 constitute legal conclusions or are inconsistent with the 2018 Presidential Memorandum,
5 Defendants deny the allegations. Defendants further deny that military policy relating to
6 service of transgender individuals is an "implementation plan," insofar as this means that
7 it is not the product of independent military judgment.

8 202. The first two sentences of this paragraph appear to characterize the 2017 and 2018
9 Presidential Memoranda. Defendants respectfully refer the Court to these documents
10 themselves for a complete and accurate statement of their contents. To the extent
11 Plaintiffs' characterizations constitute legal conclusions or are inconsistent with these
12 documents, Defendants deny the allegations. Denied also that military policy relating to
13 service of transgender individuals constitutes a "ban" on transgender military service or
14 that it is an "implementation plan," insofar as this means that it is not the product of
15 independent military judgment. The last sentence of this paragraph is denied.

16 203. The allegations in this paragraph are vague and ambiguous because they refer to
17 statements without citing the relevant sources. Defendants therefore lack sufficient
18 information to admit or deny. Moreover, even if Defendants could identify the sources,
19 such sources would speak for themselves and be the best evidence of their contents. To
20 the extent Plaintiffs' characterizations are inconsistent with these sources, Defendants
21 would deny the allegations. Defendants further deny that military policy relating to
22 service of transgender individuals is an "implementation plan," insofar as this means that
23 it is not the product of independent military judgment.

24 204. Admitted that President Trump, the United States, Secretary of Defense Esper, and the
25 Department of Defense, are responsible for implementing policy relating to the military
26 service of transgender individuals. Denied that that policy constitutes a "ban" on
27 transgender military service or that it is an "implementation plan," insofar as this means
28 that it is not the product of independent military judgment.

1 **Q. Purported Justifications for Policy of Discrimination Against transgender**
2 **Individuals**

3 205. This paragraph consists of legal conclusions, to which no response is required. To the
4 extent a response may be deemed required, denied.

5 206. This paragraph consists of legal conclusions, to which no response is required. To the
6 extent a response may be deemed required, denied.

7 207. This paragraph consists of legal conclusions, to which no response is required. To the
8 extent a response may be deemed required, denied.

9 **1. Medical Costs**

10 208. This paragraph purports to characterize the RAND report. Defendants respectfully refer
11 the Court to the RAND Report for a complete and accurate statement of its contents.
12 To the extent Plaintiffs' allegations are inconsistent with the RAND Report, this
13 paragraph is denied.

14 209. This paragraph is vague and ambiguous because it refers to an article published in the
15 New England Journal of Medicine without identifying the title or author of the article.
16 Defendants therefore lack sufficient information to admit or deny. Moreover, even if
17 Defendants could identify the article, the article would speak for itself and be the best
18 evidence of its content. To the extent Plaintiffs' characterizations are inconsistent with
19 the article, Defendants would deny the allegations.

20 210. This paragraph purports to characterize a statement made by the surgeon general of the
21 Navy, which speaks for itself and is the best evidence of its content. To the extent
22 Plaintiffs' characterizations are inconsistent with the statement, this paragraph is denied.

23 211. The first sentence of this paragraph is vague and ambiguous because it refers to "other
24 costs" without identifying what those costs are. Defendants therefore lack sufficient
25 information to admit or deny the first sentence of this paragraph. The second sentence
26 of this paragraph purports to characterize the RAND Report. Defendants respectfully
27 refer the Court to the RAND Report for a complete and accurate statement of its
28 contents. To the extent Plaintiffs' allegations are inconsistent with the RAND Report,
the second sentence of this paragraph is denied.

1 212. The first and second sentences of this paragraph are denied. The third sentence of this
2 paragraph is vague and ambiguous because it refers to “[a] recent study” without
3 identifying the study. Defendants therefore lack sufficient information to admit or deny
4 the third sentence of this paragraph. Moreover, even if Defendants could identify the
5 study, the study would speak for itself and be the best evidence of its content. To the
6 extent Plaintiffs’ characterizations are inconsistent with the study, Defendants would
7 deny the allegations.

8 **2. Military Readiness**

9 213. This paragraph consists of legal conclusions, to which no response is required. To the
10 extent a response may be deemed required, denied.

11 214. This paragraph purports to characterize the RAND Report. Defendants respectfully
12 refer the Court to the RAND Report for a complete and accurate statement of its
13 contents. To the extent Plaintiffs’ allegations are inconsistent with the RAND Report,
14 this paragraph is denied.

15 215. Denied.

16 216. Admitted that the military adapted to the racial integration of the military, the end of the
17 “Don’t Ask, Don’t Tell” policy, and the integration of women into direct combat roles.
18 The second sentence of this paragraph is denied.

19 217. The first sentence of this paragraph is admitted. The second and third sentences of this
20 paragraph purport to characterize the RAND Report. Defendants respectfully refer the
21 Court to the RAND Report for a complete statement of its contents. To the extent
22 Plaintiffs’ allegations are inconsistent with the RAND Report, the second and third
23 sentences of this paragraph are denied.

24 **CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**
26 **EQUAL PROTECTION VIOLATION**
(By All Plaintiffs Against All Defendants)

27 218. The answers to all preceding paragraphs are incorporated herein by reference.
28

1 219. This paragraph contains Plaintiffs’ characterization of their cause of action, to which no
2 answer is required. To the extent an answer may be deemed required, Defendants deny
3 that Plaintiffs have properly stated their cause of action, and deny that the current policy
4 relating to transgender military service members constitutes a “ban” on their service or
5 that it is an “implementation plan,” insofar as this means that it is not the product of
6 independent military judgment.

7 220. This paragraph consists of legal conclusions, to which no response is required. To the
8 extent a response may be deemed required, denied.

9 221. This paragraph consists of legal conclusions, to which no response is required. To the
10 extent a response may be deemed required, denied.

11 222. This paragraph consists of legal conclusions, to which no response is required. To the
12 extent a response may be deemed required, denied.

13 223. This paragraph purports to characterize the Department of Defense’s Transgender
14 Service Member Policy Implementation Fact Sheet. Defendants respectfully refer the
15 Court to the fact sheet for a complete statement of its contents. To the extent Plaintiffs’
16 allegations are inconsistent with the fact sheet, or are legal conclusions, this paragraph is
17 denied.

18 224. This paragraph consists of legal conclusions, to which no response is required. To the
19 extent a response may be deemed required, denied.

20 225. This paragraph consists of legal conclusions, to which no response is required. To the
21 extent a response may be deemed required, denied.

22 226. This paragraph consists of legal conclusions, to which no response is required. To the
23 extent a response may be deemed required, denied.

24 227. This paragraph consists of legal conclusions, to which no response is required. To the
25 extent a response may be deemed required, denied.

26 228. This paragraph consists of legal conclusions, to which no response is required. To the
27 extent a response may be deemed required, denied.
28

**SECOND CAUSE OF ACTION
DUE PROCESS VIOLATION
(By All Plaintiffs Against All Defendants)**

1
2
3 229. The answers to all preceding paragraphs are incorporated herein by reference.

4 230. This paragraph contains Plaintiffs' characterization of their cause of action, to which no
5 answer is required. To the extent an answer may be deemed required, Defendants deny
6 that Plaintiffs have properly stated their cause of action, and deny that the current policy
7 relating to transgender military service members constitutes a "ban" on their service or
8 that it is an "implementation plan," insofar as this means that it is not the product of
9 independent military judgment.

10 231. This paragraph consists of legal conclusions, to which no response is required. To the
11 extent a response may be deemed required, denied.

12 232. This paragraph consists of legal conclusions, to which no response is required. To the
13 extent a response may be deemed required, denied.

14 233. This paragraph consists of legal conclusions, to which no response is required. To the
15 extent a response may be deemed required, denied.

16 234. This paragraph consists of legal conclusions, to which no response is required. To the
17 extent a response may be deemed required, denied.

18 **THIRD CAUSE OF ACTION
FREE SPEECH VIOLATION
19 (By All Plaintiffs Against All Defendants)**

20
21 235. The answers to all preceding paragraphs are incorporated herein by reference.

22 236. This paragraph contains Plaintiffs' characterization of their cause of action, to which no
23 answer is required. To the extent an answer may be deemed required, Defendants deny
24 that Plaintiffs have properly stated their cause of action, and deny that the current policy
25 relating to transgender military service members constitutes a "ban" on their service or
26 that it is an "implementation plan," insofar as this means that it is not the product of
27 independent military judgment.
28

1 237. This paragraph consists of legal conclusions, to which no response is required. To the
2 extent a response may be deemed required, denied.

3 238. This paragraph consists of legal conclusions, to which no response is required. To the
4 extent a response may be deemed required, denied.

5 239. This paragraph consists of legal conclusions, to which no response is required. To the
6 extent a response may be deemed required, denied.

7 240. This paragraph consists of legal conclusions, to which no response is required. To the
8 extent a response may be deemed required, denied. Moreover, this paragraph
9 characterizes the 2017 Presidential Memorandum. Defendants respectfully refer the
10 Court to the 2017 Presidential Memorandum itself for a complete and accurate statement
11 of its contents. To the extent Plaintiffs' characterizations are inconsistent with the 2017
12 Presidential Memorandum, Defendants deny the allegations.

13 241. This paragraph consists of legal conclusions, to which no response is required. To the
14 extent a response may be deemed required, denied.

15 242. This paragraph consists of legal conclusions, to which no response is required. To the
16 extent a response may be deemed required, denied.

17 **PRAYER FOR RELIEF**

18 1–4. Defendants deny that Plaintiffs are entitled to the relief requested in their Prayer for
19 Relief or to any relief whatsoever.

20 Defendants hereby specifically deny each and every allegation in the Second Amended
21 Complaint not expressly admitted or denied in this Answer, or to which it has responded that it
22 has insufficient information to admit or deny.

23
24 Dated: August 28, 2019

Respectfully submitted,

25 JOSEPH H. HUNT
26 Assistant Attorney General

27 JAMES M. BURNHAM
28 Deputy Assistant Attorney General

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