

Exhibit B

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.

Case No. 2:17-cv-01297-MJP

**DEFENDANTS' OBJECTIONS, RESPONSES, AND SUPPLEMENTAL
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO
SECRETARY ESPER AND THE UNITED STATES DEPARTMENT OF
DEFENSE**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants, through their undersigned counsel, hereby submit objections, responses, and supplemental responses to Plaintiffs' First Set of Interrogatories to Mark T. Esper, in his official capacity as Secretary of Defense, and the United States Department of Defense (collectively, "Department of Defense"), served December 29, 2017.¹ In presenting these objections and responses,

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

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.

Objections to Definitions and Instructions

1. The Department of Defense objects to Definition 1 of “You,” “your,” and “yours” as substantially overbroad and problematic because the Department of Defense has more than three million current personnel, and millions more former personnel.

2. The Department of Defense objects to Plaintiffs’ Definition 2 of “The Policy” as substantially overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to “all changes . . . undertaken or contemplated” as an “indirect result of the Tweets and/or the Presidential Memorandum” is objectionable to the extent that it could be construed to apply to documents and communications with mere peripheral connections to the claims and defenses in this case, and identifying all such documents and communications would be excessively burdensome and disproportionate to the needs of the case.

3. The Department of Defense objects to Plaintiffs’ Definition 5 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.

4. The Department of Defense objects to Plaintiffs' Definition 6 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.

5. The Department of Defense objects to Plaintiffs' Definition 7 of "Identify" as encompassing individuals' "full name[s], job title[s], and employer[s] during the period referred to, and current or last-known address[es] and telephone number[s] and business address[es] and telephone number[s]" as being overbroad and disproportionate to the needs of the case. The Department of Defense further objects on the grounds that this definition is an unwarranted invasion of the privacy of non-parties and seeks information protected by the Privacy Act, 5 U.S.C. § 552a, et seq.

General Objection to All Interrogatories

The Department of Defense objects to Plaintiffs' interrogatories that purport to seek information outside of the administrative record because the Administrative Procedure Act does not authorize discovery in this case. The Department of Defense's administrative processes resulted in final agency action supported by the administrative record. In making its determination whether those policies are "contrary to constitutional right," 5 U.S.C. § 706(2)(B), the Court "shall review the whole record," *id.* § 706. The Court's review is therefore limited to "the full administrative record that was before the Secretary at the time he made his decision." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971).

Further, as recently emphasized by the Ninth Circuit, "the district court must apply

appropriate military deference to its evaluation of the 2018 Policy.” *Karnoski v. Trump*, 926 F.3d 1180, 1202 (9th Cir. 2019). Applying appropriate military deference means the only question the district court must answer is whether Defendants “reasonably determined the policy ‘significantly furthers’ the government’s important interests....” *Id.* (quoting *Witt v. Department of the Air Force*, 527 F. 3d 806, 821 (9th Cir. 2008)). Moreover, “the reasonableness of the 2018 Policy must be evaluated on the record supporting that decision and with the appropriate deference due a proffered military decision.” *Id.* at 1207; *see also id.* at 1206 n.22 (“We note that in *Trump v. Hawaii*, 138 S. Ct. 2392, 2409, 201 L. Ed. 2d 775 (2018), the Court held that ‘[t]he 12-page Proclamation—which thoroughly describes the process, agency evaluations, and recommendations underlying the President’s chosen restrictions’—was sufficient to allow for judicial review.”). Accordingly, the Court’s review of the Department of Defense policy must focus on the stated justifications for the policy—which are set forth in the Secretary of Defense’s Memorandum dated February 22, 2018 and its accompanying report. No discovery is necessary or appropriate for that analysis.

Moreover, under no circumstances may Plaintiffs, Plaintiffs’ witnesses, or the Court “substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military” as Plaintiffs’ purport to do through these interrogatory requests. *Id.* at 1202 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981); *see also Rostker* 453 U.S. at 81 (“In relying on this testimony . . . the District Court palpably exceeded its authority when it ignored Congress’ considered response to this line of reasoning.”); *id.* at 82–83 (“The District Court was quite wrong in undertaking an independent evaluation of this evidence.”); *Goldman v. Weinberger*, 475 U.S. 501, 508 (1986) (“[W]hether or not expert witnesses may feel that religious exceptions to [the

challenged military regulation] are desirable is quite beside the point.”); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 25 (2008) (“We accept these officers’ assertions [that a certain practice] is of the utmost importance to the Navy and the Nation.”). Accordingly, the discovery sought cannot be considered by the Court and therefore Plaintiffs’ requests are overbroad, unduly burdensome, and disproportionate to the needs of the case. *See Doe 2 v. Shanaban*, 917 F.3d 694, 737 (D.C. Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy is so circumscribed that extra-record evidence and discovery is “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453 U.S. at 81)).

Specific Objections to Interrogatories

Interrogatory No 1:

Identify and describe each of the governmental purposes or interests that you contend will be advanced by the Policy (including, but not limited to, any purported interest in military readiness, lethality, unit cohesion, and military resources).

Specific Objections:

For the reasons presented in Defendants’ Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications.

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to

Plaintiffs in an upcoming document production. The Department of Defense will supplement this interrogatory response, as needed, following the document production.

Supplemental Response:

While studying the issue of military service by transgender individuals, the Department of Defense considered and developed policy proposals that would enhance the readiness, lethality, and effectiveness of the military.

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:

- The Secretary's February 22, 2018 Memorandum for the President (ECF No. 216-1);
and
- The report accompanying the Secretary's February 22, 2018 Memorandum for the President (ECF No. 216-2).

Interrogatory No. 2:

For each governmental purpose or interest identified in Your answers to Interrogatory 1 above, describe in detail all facts that You contend establish the need or justification to further each purpose or interest, including all Documents that You contend might establish the existence of such facts.

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. To the extent the response relies upon documents pursuant to Federal Rule of Civil Procedure 33(d) privileges are specifically identified on a document by document basis on privilege logs previously provided to Plaintiffs.

Further, and for the reasons presented in Defendants' Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory call for the disclosure of presidential communications.

The Department of Defense also objects to this interrogatory to the extent that it creates interrogatories with multiple discrete subparts, thus leading to Plaintiffs exceeding the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 2 includes at least two discrete subparts: (1) a detailed description of the facts that establish a government interest, and (2) all documents that establish the existence of those facts. See *Paananen v. Cellco P'ship*, No. C08-1042 RSM, 2009 WL 3327227, at *3 (W.D. Wash. Oct. 8, 2009) (concluding that an interrogatory had two discrete subparts where it asked both for "a defendant to summarize and state all the facts that support an affirmative defense," and for "a defendant to identify the evidence (documents and witnesses) that support that affirmative defense"); *Smith v. Cafe Asia*, 256 F.R.D. 247, 254 (D.D.C. 2009) (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories").

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in an upcoming document production. The Department of Defense will supplement this interrogatory response, as needed, following the document production.

Supplemental Response:

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 information responsive to this interrogatory:

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
|--|--|
| 000001-000011 | Under Secretary of Defense for Personnel and Readiness, "Fiscal Year 2016 Report to Congress on the Review of Enlistment of Individuals with Disabilities in the Armed Forces" (Apr. 2016) |
| 000032-000033 | Under Secretary of Defense for Personnel and Readiness, "DoD Retention Policy for Non-Deployable Service Members" (Feb. 14, 2018) |
| 000034-000092 | The Lewin Group, Inc., "Qualified Military Available (QMA) and Interested Youth: Final Technical Report" (Sept. 2016) |
| 000093-000192 | RAND National Defense Research Institute, <i>Assessing the Implications of Allowing Transgender Personnel To Serve Openly</i> (RAND Corporation 2016), available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR1500/RR1530/RAND_RR1530.pdf ("RAND Study") |
| 000193-000198 | Human Rights Campaign, "Understanding the Transgender Community," https://www.hrc.org/resources/understanding-the-transgender-community (last visited Feb. 14, 2018) |
| 000199-000209 | <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM-5), p. 453 (5 th ed. 2013) |
| 000210-000261 | Department of Defense Instruction (DoDI) 6130.03, <i>Medical Standards for Appointment, Enlistment, or Induction in the Military Services</i> (Apr. 28, 2010), incorporating Change 1, (Sept. 13, 2011) |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
|--|---|
| 000262-000269 | Department of Defense Instruction (DoDI) 6485.01, <i>Human Immunodeficiency Virus (HIV) in Military Service Members</i> (Jun. 7, 2013) |
| 000270-000284 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-III)</i> , pp. 261-264 (3rd ed. 1980) |
| 000285-000298 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)</i> , pp. 76-77 (3rd ed. Revised 1987) |
| 000299-000309 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)</i> , pp. 532-538 (4th ed. 1994) |
| 000310-000313 | Hayes Directory, "Sex Reassignment Surgery for the Treatment of Gender Dysphoria," p. 1 (May 15, 2014) |
| 000314-000318 | Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," <i>Military Medicine</i> , Vol. 181 (2016) |
| 000319 | Memorandum from Ashton Carter, Secretary of Defense, "Transgender Service Members" (July 28, 2015) |
| 000320-000325 | Memorandum from Ashton Carter, Secretary of Defense, "Directive-type Memorandum (DTM) 16-005, 'Military Service of Transgender Service Members'" (June 30, 2016) |
| 000326 | Memorandum from James N. Mattis, Secretary of Defense, "Accession of Transgender Individuals into the Military Services" (June 30, 2017) |
| 000327-000329 | Memorandum from Donald J. Trump, President of the United States, "Military Service by Transgender Individuals" (Aug. 25, 2017) |
| 000330-000331 | Memorandum from James N. Mattis, Secretary of Defense, "Terms of Reference -- Implementation of Presidential Memorandum on Military Service by Transgender Individuals" (Sept. 14, 2017) |
| 000332-000351 | Deployment Health Clinical Center, "Mental Health Disorder Prevalence Among Active Duty Service Members in the Military Health System, Fiscal Years 2005-2016" (Jan. 2017) |
| 000352-000356 | American Psychiatric Association, "Expert Q&A: Gender Dysphoria," available at https://www.psychiatry.org/patients-families/gender-dysphoria/expert-qa (last visited Feb. 14, 2018) |
| 000357-000378 | M. Jocelyn Elders, George R. Brown, Eli Coleman, Thomas Kolditz & Alan Steinman, "Medical Aspects of Transgender Military Service, Armed Forces & Society (Mar. 2014) |
| 000379-000393 | Cecilia Dhejne, Roy Van Vlerken, Gunter Heylens & Jon Arcelus, "Mental health and gender dysphoria: A review of the literature," <i>International Review of Psychiatry</i> , Vol. 28 (2016) |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
|--|--|
| 000394-000405 | George R. Brown & Kenneth T. Jones, “Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study,” <i>LGBT Health</i> , Vol. 3 (Apr. 2016) |
| 000406-000423 | Ann P. Haas, Philip L. Rodgers & Jody L. Herman, <i>Suicide Attempts Among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey</i> (American Foundation for Suicide Prevention and the Williams Institute, University of California, Los Angeles, School of Law 2014), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf |
| 000424-000429 | H.G. Virupaksha, Daliboyina Muralidhar, & Jayashree Ramakrishna, “Suicide and Suicidal Behavior Among Transgender Persons,” <i>Indian Journal of Psychological Medicine</i> , Vol. 38 (2016) |
| 000430-000437 | Claire M. Peterson, Abigail Matthews, Emily Copps-Smith & Lee Ann Conard, “Suicidality, Self-Harm, and Body Dissatisfaction in Transgender Adolescents and Emerging Adults with Gender Dysphoria,” <i>Suicide and Life Threatening Behavior</i> , Vol. 47, (Aug. 2017) |
| 000438-000449 | Raymond P. Tucker, Rylan J. Testa, Mark A. Reger, Tracy L. Simpson, Jillian C. Shipherd, & Keren Lehavot, “Current and Military-Specific Gender Minority Stress Factors and Their Relationship with Suicide Ideation in Transgender Veterans,” <i>Suicide and Life Threatening Behavior</i> DOI: 10.1111/sltb.12432 (epub ahead of print) (2018) |
| 000450-000457 | Craig J. Bryan, AnnaBelle O. Bryan, Bobbie N. Ray-Sannerud, Neysa Etienne & Chad E. Morrow, “Suicide attempts before joining the military increase risk for suicide attempts and severity of suicidal ideation among military personnel and veterans,” <i>Comprehensive Psychiatry</i> , Vol. 55 (2014) |
| 000458-000462 | Hayes Directory, “Hormone Therapy for the Treatment of Gender Dysphoria,” (May 19, 2014). |
| 000463-000497 | Wylie C. Hembree, Peggy Cohen-Kettenis, Louis Gooren, Sabine Hannema, Walter Meyer, M. Hassan Murad, Stephen Rosenthal, Joshua Safer, Vin Tangpricha, & Guy T’Sjoen, “Endocrine Treatment of Gender- Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline,” <i>The Journal of Clinical Endocrinology & Metabolism</i> , Vol. 102 (Nov 2017) |
| 000498-000505 | Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, “Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden,” <i>PLoS One</i> , Vol. 6 (Feb. 2011) |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
|--|---|
| 000506-000520 | Hayes Annual Review, “Sex Reassignment Surgery for the Treatment of Gender Dysphoria” (Apr. 18, 2017; Apr. 12, 2016; May 11, 2015) |
| 000521-000526 | Memorandum from Defense Health Agency, “Information Memorandum: Interim Defense Health Agency Procedures for Reviewing Requests for Waivers to Allow Supplemental Health Care Program Coverage of Sex Reassignment Surgical Procedures” (Nov. 13, 2017) |
| 000527-000725 | University of California, San Francisco, Center of Excellence for Transgender Health, “Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People,” available at http://transhealth.ucsf.edu/trans?page=guidelines-home (last visited Feb. 16, 2018) |
| 000726-001027 | Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet & Ma’ayan Anafi, <i>The Report of the 2015 U.S. Transgender Survey</i> (National Center for Transgender Equality 2016), available at https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF |
| 001028-001177 | Tamara Jensen, Joseph Chin, James Rollins, Elizabeth Koller, Linda Gousis & Katherine Szarama, “Final Decision Memorandum on Gender Reassignment Surgery for Medicare Beneficiaries with Gender Dysphoria,” Centers for Medicare & Medicaid Services (Aug. 30, 2016) (“CMS Report”) |
| 001178-001195 | Mohammad Hassan Murad, Mohamed B. Elamin, Magaly Zumaeta Garcia, Rebecca J. Mullan, Ayman Murad, Patricia J. Erwin & Victor M. Montori, “Hormonal therapy and sex reassignment: a systematic review and meta- analysis of quality of life and psychosocial outcomes,” <i>Clinical Endocrinology</i> , Vol. 72 (2010) |
| 001216-001283 | Department of the Army, Training and Doctrine Command, TRADOC Regulation 350-6, “Enlisted Initial Entry Training Policies and Administration” (Mar. 20, 2017) |
| 001284-001289 | Department of the Air Force, Air Force Instruction 32-6005, “Unaccompanied Housing Management” (Jan. 29, 2016) |
| 001290-001291 | Department of the Army, Human Resources Command, AR 600-85, “Substance Abuse Program” (Dec. 28, 2012) |
| 001292-001333 | Department of the Army, Army Regulation 600-9, “The Army Body Composition Program” (June 28, 2013) |
| 001334-001392 | Department of the Navy, Office of the Chief of Navy Operations Instruction 6110.1J, “Physical Readiness Program” (July 11, 2011) |
| 001393-001539 | Department of the Air Force, Air Force Instruction 36-2905, “Fitness Program” (Aug. 27, 2015) |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
|--|---|
| 001540-001603 | Department of the Navy, Marine Corps Order 6100.13, "Marine Corps Physical Fitness Program" (Aug. 1, 2008) |
| 001604-001608 | Department of the Navy, Marine Corps Order 6110.3A, "Marine Corps Body Composition and Military Appearance Program" (Oct. 12, 2017) |
| 001609-001661 | Department of the Navy, Marine Corps Order 6110.3A CH-1, "Marine Corps Body Composition and Military Appearance Program" (Dec. 15, 2016) |
| 001662-001693 | United States Military Academy, Office of the Commandant of Cadets, "Physical Program Whitebook AY 16-17," p. 13 |
| 001694-002099 | Headquarters, Department of the Army, TC 3-25.150, "Combatives" (Feb. 2017) |
| 002100-002109 | Major Alex Bedard, Major Robert Peterson & Ray Barone, "Punching Through Barriers: Female Cadets Integrated into Mandatory Boxing at West Point," Association of the United States Army (Nov. 16, 2017), https://www.ausea.org/articles/punching-through-barriers-female-cadets-boxing-west-point |
| 002110-002112 | International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogenism (Nov. 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf |
| 002113-002150 | NCAA Office of Inclusion, NCAA Inclusion of Transgender Student-Athletes (Aug. 2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf |
| 002151-002153 | Department of the Navy, Navy Personnel Command, Navy Personnel Instruction 15665I, "Uniform Regulations," Art. 2101.1, (modified 12/21/2017) |
| 002154-002221 | Department of the Army, Army Regulation 670-1, "Wear and Appearance of Army Uniforms and Insignia" (Mar. 31, 2014) |
| 002222-002329 | Department of the Air Force, Air Force Instruction 36-2903, "Dress and Personal Appearance of Air Force Personnel" (Feb. 9, 2017) |
| 002330-002413 | Department of the Navy, Marine Corps Order P1020.34G, "Marine Corps Uniform Regulations" (Mar. 31, 2003) |
| 002414-002431 | Department of Defense Instruction 1300.28, <i>In-Service Transition for Service Members Identifying as Transgender</i> (June 30, 2016) |
| 002432-002583 | Institute for Defense Analyses, "Force Impact of Expanding the Recruitment of Individuals with Auditory Impairment" Draft Final (January 2016) |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
|--|--|
| 002584-002614 | Modification Thirteen to U.S. Central Command Individual Protection and Individual-Unit Deployment Policy, Tab A (Mar. 2017) |
| 002615-002619 | Memorandum from the Assistant Secretary of Defense for Health Affairs, "Clinical Practice Guidance for Deployment-Limiting Mental Disorders and Psychotropic Medications" (Oct. 7, 2013) |
| 002620-002624 | National Institute of Mental Health, "Bipolar Disorder" (Nov. 2017), https://www.nimh.nih.gov/health/statistics/bipolar-disorder.shtml |
| 002625-002627 | National Institute of Mental Health, "Schizophrenia" (Nov. 2017), https://www.nimh.nih.gov/health/statistics/schizophrenia.shtml |
| 002628 | Douglas MacAurthur, <i>Respectfully Quoted: A Dictionary of Quotations</i> (1989), available at http://www.bartleby.com/73/1874.html |
| 002629-002781 | Nathaniel Frank, "Gays in Foreign Militaries 2010: A Global Primer" (<i>The Palm Center</i> , Feb. 2010), https://www.palmcenter.org/wpcontent/uploads/2017/12/FOREIGNMILITARIESPRIMER2010FINAL.pdf |
| 002782-002802 | Anne Speckhard & Reuven Paz, "Transgender Service in the Israeli Defense Forces: A Polar Opposite Stance to the U.S. Military Policy of Barring Transgender Soldiers from Service" (2014), http://www.researchgate.net/publication/280093066 |
| 002803-002816 | Alan Okros & Denise Scott, "Gender Identity in the Canadian Forces," <i>Armed Forces and Society</i> , Vol. 41 (2014) |
| 002817-002820 | Leo Shane III, "Poll: Active-duty troops worry about military's transgender policies," <i>Military Times</i> (July 27, 2017), available at https://www.militarytimes.com/news/pentagon-congress/2017/07/27/poll-active-duty-troops-worry-about-militarys-transgender-policies/ |
| 002821-002824 | Minutes, POE Meeting 1 (Oct. 13, 2017) |
| 002825-002829 | Minutes, POE Meeting 2 (Oct. 19, 2017) |
| 002830-002835 | Minutes, POE Meeting 3 (Oct. 26, 2017) |
| 002836-002839 | Minutes, POE Meeting 4 (Nov. 2, 2017) |
| 002840-002847 | Minutes, POE Meeting 5 (Nov. 9, 2017) |
| 002848 | Agenda, POE Meeting 1 (Oct. 13, 2017) |
| 002849-002852 | Office of People Analytics, 2016 Workplace and Gender Relations Survey of Active Duty Members: Transgender Service Members, Study Conclusions |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
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| 002853-002856 | Slides With Office of People Analytics, 2016 Workplace and Gender Relations Survey of Active Duty Members: Transgender Service Members (Survey Results) |
| 002857 | Agenda, POE Meeting 2 (Oct. 19, 2017) |
| 002858-002866 | Transgender Policy Panel Meeting Background Information Slides (Oct. 19, 2017) |
| 002867-002880 | DoD Transgender Service in the U.S. Military, Implementation Handbook (excerpts) (Sept. 30, 2016) |
| 002881 | Agenda, POE Meeting 3 (Oct. 26, 2017) |
| 002882 | Agenda, POE Meeting 4 (Nov. 2, 2017) |
| 002883-002904 | Health Data for Service Members with Gender Dysphoria (Nov. 2, 2017) |
| 002905 | Agenda, POE Meeting 5 (Nov. 9, 2017) |
| 002906 | Agenda, POE Meeting 6 (Nov. 16, 2017) |
| 002907-002910 | Non-deployable Working Group Information Briefing (Nov. 16, 2017) |
| 002911-002940 | Medical and Surgical Treatment for Gender Dysphoria (Nov. 7, 2017) |
| 002941 | Comparison of Civilian Insurers and MHS |
| 002942 | Agenda, POE Meeting 7 (Nov. 21, 2017) |
| 002943-002963 | 2015 Transgender Survey (December 2016) and Additional Administrative Data (Nov. 21, 2017) |
| 002964 | Reasons for Separation (table) |
| 002965 | Agenda, POE Meeting 8 (Nov. 30, 2017) |
| 002966-002976 | Admin Data Presented During Panel Meetings |
| 002977 | Agenda, POE Meeting 9 (Dec. 7, 2017) |
| 002978-002981 | The Federal Aviation Administration (FAA) and Gender Dysphoria (Dec. 4, 2017) |
| 002982-002985 | Time To Return to Full Duty After Transition Surgery in MTFs (slide deck) |
| 002986-002997 | Admin Data Presented During Panel Meetings (version 2) |
| 002998 | Agenda, POE Meeting 10 (Dec. 13, 2017) |
| 002999-003010 | Data Extracts: Key information used by the Panel to make recommendations |
| 003011-003042 | Health Data on Active Duty Service Members with Gender Dysphoria (Dec. 13, 2017) |
| 003043-003055 | Admin Data Presented During Panel Meeting (version 3) |
| 003056 | Agenda, POE Meeting 11 (Dec. 22, 2017) |
| 003057 | Agenda, POE Meeting 12 (Jan. 4, 2018) |
| 003058 | Agenda, POE Meeting 13 (Jan. 11, 2018) |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
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| 003059-003067 | Action Memo from Under Secretary of Defense (Personnel and Readiness) to the Secretary of Defense re: Recommendations by the Transgender Review Panel of Experts (Jan. 11, 2018) |
| 003068-003075 | Hormone Therapy White Paper |

Interrogatory No. 3:

For each governmental purpose or interest identified in Your answers to Interrogatory 1 above, describe in detail all facts that You contend demonstrate that the Policy furthers that purpose or interest, including all Documents that You contend might establish the existence of such facts.

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. To the extent the response relies upon documents pursuant to Federal Rule of Civil Procedure 33(d) privileges are specifically identified on a document by document basis on privilege logs previously provided to Plaintiffs.

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the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 3 includes at least two discrete subparts: (1) a detailed description of the facts that demonstrate that the policy furthers a particular government interest, and (2) all documents that establish the existence of those facts. *See Paananen*, No. C08-1042 RSM, 2009 WL 3327227, at *3 (concluding that an interrogatory had two discrete subparts where it asked both for “a defendant to summarize and state all the facts that support an affirmative defense,” and for “a defendant to identify the evidence (documents and witnesses) that support that affirmative defense”); *Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Response:

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Supplemental Response:

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 information responsive to this interrogatory:

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
|--|--|
| 000001-000011 | Under Secretary of Defense for Personnel and Readiness, "Fiscal Year 2016 Report to Congress on the Review of Enlistment of Individuals with Disabilities in the Armed Forces" (Apr. 2016) |
| 000032-000033 | Under Secretary of Defense for Personnel and Readiness, "DoD Retention Policy for Non-Deployable Service Members" (Feb. 14, 2018) |
| 000034-000092 | The Lewin Group, Inc., "Qualified Military Available (QMA) and Interested Youth: Final Technical Report" (Sept. 2016) |
| 000093-000192 | RAND National Defense Research Institute, <i>Assessing the Implications of Allowing Transgender Personnel To Serve Openly</i> (RAND Corporation 2016), available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR1500/RR1530/RAND_RR1530.pdf ("RAND Study") |
| 000193-000198 | Human Rights Campaign, "Understanding the Transgender Community," https://www.hrc.org/resources/understanding-the-transgender-community (last visited Feb. 14, 2018) |
| 000199-000209 | <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM-5), p. 453 (5 th ed. 2013) |
| 000210-000261 | Department of Defense Instruction (DoDI) 6130.03, <i>Medical Standards for Appointment, Enlistment, or Induction in the Military Services</i> (Apr. 28, 2010), incorporating Change 1, (Sept. 13, 2011) |
| 000262-000269 | Department of Defense Instruction (DoDI) 6485.01, <i>Human Immunodeficiency Virus (HIV) in Military Service Members</i> (Jun. 7, 2013) |
| 000270-000284 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-III)</i> , pp. 261-264 (3rd ed. 1980) |
| 000285-000298 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)</i> , pp. 76-77 (3rd ed. Revised 1987) |
| 000299-000309 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)</i> , pp. 532-538 (4th ed. 1994) |
| 000310-000313 | Hayes Directory, "Sex Reassignment Surgery for the Treatment of Gender Dysphoria," p. 1 (May 15, 2014) |
| 000314-000318 | Irene Folaron & Monica Lovasz, "Military Considerations in Transsexual Care of the Active Duty Member," <i>Military Medicine</i> , Vol. 181 (2016) |
| 000319 | Memorandum from Ashton Carter, Secretary of Defense, "Transgender Service Members" (July 28, 2015) |
| 000320-000325 | Memorandum from Ashton Carter, Secretary of Defense, "Directive-type Memorandum (DTM) 16-005, 'Military Service of Transgender Service Members'" (June 30, 2016) |

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| 000326 | Memorandum from James N. Mattis, Secretary of Defense, "Accession of Transgender Individuals into the Military Services" (June 30, 2017) |
| 000327-000329 | Memorandum from Donald J. Trump, President of the United States, "Military Service by Transgender Individuals" (Aug. 25, 2017) |
| 000330-000331 | Memorandum from James N. Mattis, Secretary of Defense, "Terms of Reference -- Implementation of Presidential Memorandum on Military Service by Transgender Individuals" (Sept. 14, 2017) |
| 000332-000351 | Deployment Health Clinical Center, "Mental Health Disorder Prevalence Among Active Duty Service Members in the Military Health System, Fiscal Years 2005-2016" (Jan. 2017) |
| 000352-000356 | American Psychiatric Association, "Expert Q&A: Gender Dysphoria," available at https://www.psychiatry.org/patients-families/gender-dysphoria/expert-qa (last visited Feb. 14, 2018) |
| 000357-000378 | M. Jocelyn Elders, George R. Brown, Eli Coleman, Thomas Kolditz & Alan Steinman, "Medical Aspects of Transgender Military Service, Armed Forces & Society (Mar. 2014) |
| 000379-000393 | Cecilia Dhejne, Roy Van Vlerken, Gunter Heylens & Jon Arcelus, "Mental health and gender dysphoria: A review of the literature," <i>International Review of Psychiatry</i> , Vol. 28 (2016) |
| 000394-000405 | George R. Brown & Kenneth T. Jones, "Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study," <i>LGBT Health</i> , Vol. 3 (Apr. 2016) |
| 000406-000423 | Ann P. Haas, Philip L. Rodgers & Jody L. Herman, <i>Suicide Attempts Among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey</i> (American Foundation for Suicide Prevention and the Williams Institute, University of California, Los Angeles, School of Law 2014), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf |
| 000424-000429 | H.G. Virupaksha, Daliboyina Muralidhar, & Jayashree Ramakrishna, "Suicide and Suicidal Behavior Among Transgender Persons," <i>Indian Journal of Psychological Medicine</i> , Vol. 38 (2016) |
| 000430-000437 | Claire M. Peterson, Abigail Matthews, Emily Copps-Smith & Lee Ann Conard, "Suicidality, Self-Harm, and Body Dissatisfaction in Transgender Adolescents and Emerging Adults with Gender Dysphoria," <i>Suicide and Life Threatening Behavior</i> , Vol. 47, (Aug. 2017) |

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| 000438-000449 | Raymond P. Tucker, Rylan J. Testa, Mark A. Reger, Tracy L. Simpson, Jillian C. Shipherd, & Keren Lehavot, “Current and Military-Specific Gender Minority Stress Factors and Their Relationship with Suicide Ideation in Transgender Veterans,” <i>Suicide and Life Threatening Behavior</i> DOI: 10.1111/sltb.12432 (epub ahead of print) (2018) |
| 000450-000457 | Craig J. Bryan, AnnaBelle O. Bryan, Bobbie N. Ray-Sannerud, Neysa Etienne & Chad E. Morrow, “Suicide attempts before joining the military increase risk for suicide attempts and severity of suicidal ideation among military personnel and veterans,” <i>Comprehensive Psychiatry</i> , Vol. 55 (2014) |
| 000458-000462 | Hayes Directory, “Hormone Therapy for the Treatment of Gender Dysphoria,” (May 19, 2014). |
| 000463-000497 | Wylie C. Hembree, Peggy Cohen-Kettenis, Louis Gooren, Sabine Hannema, Walter Meyer, M. Hassan Murad, Stephen Rosenthal, Joshua Safer, Vin Tangpricha, & Guy T’Sjoen, “Endocrine Treatment of Gender- Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline,” <i>The Journal of Clinical Endocrinology & Metabolism</i> , Vol. 102 (Nov 2017) |
| 000498-000505 | Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. Johansson, Niklas Långström & Mikael Landén, “Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden,” <i>PLoS One</i> , Vol. 6 (Feb. 2011) |
| 000506-000520 | Hayes Annual Review, “Sex Reassignment Surgery for the Treatment of Gender Dysphoria” (Apr. 18, 2017; Apr. 12, 2016; May 11, 2015) |
| 000521-000526 | Memorandum from Defense Health Agency, “Information Memorandum: Interim Defense Health Agency Procedures for Reviewing Requests for Waivers to Allow Supplemental Health Care Program Coverage of Sex Reassignment Surgical Procedures” (Nov. 13, 2017) |
| 000527-000725 | University of California, San Francisco, Center of Excellence for Transgender Health, “Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People,” available at http://transhealth.ucsf.edu/trans?page=guidelines-home (last visited Feb. 16, 2018) |
| 000726-001027 | Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet & Ma’ayan Anafi, <i>The Report of the 2015 U.S. Transgender Survey</i> (National Center for Transgender Equality 2016), available at https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF |

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| 001028-001177 | Tamara Jensen, Joseph Chin, James Rollins, Elizabeth Koller, Linda Gousis & Katherine Szarama, "Final Decision Memorandum on Gender Reassignment Surgery for Medicare Beneficiaries with Gender Dysphoria," Centers for Medicare & Medicaid Services (Aug. 30, 2016) ("CMS Report") |
| 001178-001195 | Mohammad Hassan Murad, Mohamed B. Elamin, Magaly Zumaeta Garcia, Rebecca J. Mullan, Ayman Murad, Patricia J. Erwin & Victor M. Montori, "Hormonal therapy and sex reassignment: a systematic review and meta- analysis of quality of life and psychosocial outcomes," <i>Clinical Endocrinology</i> , Vol. 72 (2010) |
| 001196-001215 | <i>United States v. Virginia</i> , 518 U.S. 515 (1996) |
| 001216-001283 | Department of the Army, Training and Doctrine Command, TRADOC Regulation 350-6, "Enlisted Initial Entry Training Policies and Administration" (Mar. 20, 2017) |
| 001284-001289 | Department of the Air Force, Air Force Instruction 32-6005, "Unaccompanied Housing Management" (Jan. 29, 2016) |
| 001290-001291 | Department of the Army, Human Resources Command, AR 600-85, "Substance Abuse Program" (Dec. 28, 2012) |
| 001292-001333 | Department of the Army, Army Regulation 600-9, "The Army Body Composition Program" (June 28, 2013) |
| 001334-001392 | Department of the Navy, Office of the Chief of Navy Operations Instruction 6110.1J, "Physical Readiness Program" (July 11, 2011) |
| 001393-001539 | Department of the Air Force, Air Force Instruction 36-2905, "Fitness Program" (Aug. 27, 2015) |
| 001540-001603 | Department of the Navy, Marine Corps Order 6100.13, "Marine Corps Physical Fitness Program" (Aug. 1, 2008) |
| 001604-001608 | Department of the Navy, Marine Corps Order 6110.3A, "Marine Corps Body Composition and Military Appearance Program" (Oct. 12, 2017) |
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| 001662-001693 | United States Military Academy, Office of the Commandant of Cadets, "Physical Program Whitebook AY 16-17," p. 13 |
| 001694-002099 | Headquarters, Department of the Army, TC 3-25.150, "Combatives" (Feb. 2017) |
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| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
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| 002110-002112 | International Olympic Committee Consensus Meeting on Sex Reassignment and Hyperandrogensim (Nov. 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf |
| 002113-002150 | NCAA Office of Inclusion, NCAA Inclusion of Transgender Student-Athletes (Aug. 2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf |
| 002151-002153 | Department of the Navy, Navy Personnel Command, Navy Personnel Instruction 15665I, "Uniform Regulations," Art. 2101.1, (modified 12/21/2017) |
| 002154-002221 | Department of the Army, Army Regulation 670-1, "Wear and Appearance of Army Uniforms and Insignia" (Mar. 31, 2014) |
| 002222-002329 | Department of the Air Force, Air Force Instruction 36-2903, "Dress and Personal Appearance of Air Force Personnel" (Feb. 9, 2017) |
| 002330-002413 | Department of the Navy, Marine Corps Order P1020.34G, "Marine Corps Uniform Regulations" (Mar. 31, 2003) |
| 002414-002431 | Department of Defense Instruction 1300.28, <i>In-Service Transition for Service Members Identifying as Transgender</i> (June 30, 2016) |
| 002432-002583 | Institute for Defense Analyses, "Force Impact of Expanding the Recruitment of Individuals with Auditory Impairment" Draft Final (January 2016) |
| 002584-002614 | Modification Thirteen to U.S. Central Command Individual Protection and Individual-Unit Deployment Policy, Tab A (Mar. 2017) |
| 002615-002619 | Memorandum from the Assistant Secretary of Defense for Health Affairs, "Clinical Practice Guidance for Deployment-Limiting Mental Disorders and Psychotropic Medications" (Oct. 7, 2013) |
| 002620-002624 | National Institute of Mental Health, "Bipolar Disorder" (Nov. 2017), https://www.nimh.nih.gov/health/statistics/bipolar-disorder.shtml |
| 002625-002627 | National Institute of Mental Health, "Schizophrenia" (Nov. 2017), https://www.nimh.nih.gov/health/statistics/schizophrenia.shtml |
| 002628 | Douglas MacArthur, <i>Respectfully Quoted: A Dictionary of Quotations</i> (1989), available at http://www.bartleby.com/73/1874.html |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
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| 002629-002781 | Nathaniel Frank, "Gays in Foreign Militaries 2010: A Global Primer" (<i>The Palm Center</i> , Feb. 2010), https://www.palmcenter.org/wpcontent/uploads/2017/12/FOREIGNMILITARIESPRIMER2010FINAL.pdf |
| 002782-002802 | Anne Speckhard & Reuven Paz, "Transgender Service in the Israeli Defense Forces: A Polar Opposite Stance to the U.S. Military Policy of Barring Transgender Soldiers from Service" (2014), http://www.researchgate.net/publication/280093066 |
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| 002817-002820 | Leo Shane III, "Poll: Active-duty troops worry about military's transgender policies," <i>Military Times</i> (July 27, 2017), available at https://www.militarytimes.com/news/pentagon-congress/2017/07/27/poll-active-duty-troops-worry-about-militarys-transgender-policies/ |
| 002821-002824 | Minutes, POE Meeting 1 (Oct. 13, 2017) |
| 002825-002829 | Minutes, POE Meeting 2 (Oct. 19, 2017) |
| 002830-002835 | Minutes, POE Meeting 3 (Oct. 26, 2017) |
| 002836-002839 | Minutes, POE Meeting 4 (Nov. 2, 2017) |
| 002840-002847 | Minutes, POE Meeting 5 (Nov. 9, 2017) |
| 002848 | Agenda, POE Meeting 1 (Oct. 13, 2017) |
| 002849-002852 | Office of People Analytics, 2016 Workplace and Gender Relations Survey of Active Duty Members: Transgender Service Members, Study Conclusions |
| 002853-002856 | Slides With Office of People Analytics, 2016 Workplace and Gender Relations Survey of Active Duty Members: Transgender Service Members (Survey Results) |
| 002857 | Agenda, POE Meeting 2 (Oct. 19, 2017) |
| 002858-002866 | Transgender Policy Panel Meeting Background Information Slides (Oct. 19, 2017) |
| 002867-002880 | DoD Transgender Service in the U.S. Military, Implementation Handbook (excerpts) (Sept. 30, 2016) |
| 002881 | Agenda, POE Meeting 3 (Oct. 26, 2017) |
| 002882 | Agenda, POE Meeting 4 (Nov. 2, 2017) |
| 002883-002904 | Health Data for Service Members with Gender Dysphoria (Nov. 2, 2017) |
| 002905 | Agenda, POE Meeting 5 (Nov. 9, 2017) |
| 002906 | Agenda, POE Meeting 6 (Nov. 16, 2017) |
| 002907-002910 | Non-deployable Working Group Information Briefing (Nov. 16, 2017) |

| <u>Administrative Record (AR) Bates Range</u> | <u>Document</u> |
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| 002911-002940 | Medical and Surgical Treatment for Gender Dysphoria (Nov. 7, 2017) |
| 002941 | Comparison of Civilian Insurers and MHS |
| 002942 | Agenda, POE Meeting 7 (Nov. 21, 2017) |
| 002943-002963 | 2015 Transgender Survey (December 2016) and Additional Administrative Data (Nov. 21, 2017) |
| 002964 | Reasons for Separation (table) |
| 002965 | Agenda, POE Meeting 8 (Nov. 30, 2017) |
| 002966-002976 | Admin Data Presented During Panel Meetings |
| 002977 | Agenda, POE Meeting 9 (Dec. 7, 2017) |
| 002978-002981 | The Federal Aviation Administration (FAA) and Gender Dysphoria (Dec. 4, 2017) |
| 002982-002985 | Time To Return to Full Duty After Transition Surgery in MTFs (slide deck) |
| 002986-002997 | Admin Data Presented During Panel Meetings (version 2) |
| 002998 | Agenda, POE Meeting 10 (Dec. 13, 2017) |
| 002999-003010 | Data Extracts: Key information used by the Panel to make recommendations |
| 003011-003042 | Health Data on Active Duty Service Members with Gender Dysphoria (Dec. 13, 2017) |
| 003043-003055 | Admin Data Presented During Panel Meeting (version 3) |
| 003056 | Agenda, POE Meeting 11 (Dec. 22, 2017) |
| 003057 | Agenda, POE Meeting 12 (Jan. 4, 2018) |
| 003058 | Agenda, POE Meeting 13 (Jan. 11, 2018) |
| 003059-003067 | Action Memo from Under Secretary of Defense (Personnel and Readiness) to the Secretary of Defense re: Recommendations by the Transgender Review Panel of Experts (Jan. 11, 2018) |
| 003068-003075 | Hormone Therapy White Paper |

Interrogatory No. 4:

Identify all individuals with whom President Trump has discussed or corresponded with regarding the United States' past, present, or potential future governmental policies on transgender military service or related healthcare, and the dates of each discussion, from November 9, 2016 to the present.

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.

Further, and for the reasons presented in Defendants' Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications.

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 "all individuals" purports to require the Department of Defense to identify every single person President Trump has communicated with regarding transgender policies, regardless of the (a) type, (b) location, (c) amount, or (d) context of the communication.

Interrogatory No. 5:

State the Date on which President Trump decided that "the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military."

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.

Further, and for the reasons presented in Defendants' Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications.

Interrogatory No. 6:

Identify all individuals with whom President Trump communicated or consulted in deciding that "the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military," including each of the "Generals and military experts" referenced in President Trump's July 26, 2017 tweet.

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.

Further, and for the reasons presented in Defendants' Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications.

Interrogatory No. 7:

Explain the process You used to formulate the Tweets, the Presidential Memorandum, the Interim Guidance, and the Implementation Plan, and identify all sources of fact or opinion You consulted, considered, or otherwise referred to and the dates on which You first consulted, considered, or otherwise referred to such sources of information or opinion.

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. To the extent the response relies upon documents pursuant to Federal Rule of Civil Procedure 33(d) privileges are specifically identified on a document by document basis on privilege logs previously provided to Plaintiffs.

Further, and for the reasons presented in Defendant's Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications.

The Department of Defense also objects to this interrogatory to the extent that it creates interrogatories with multiple discrete subparts, thus leading to Plaintiffs exceeding the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 7 includes at least two discrete subparts: (1) an explanation of the process used to develop various policies, (2) all sources of

fact or opinion consulted in developing those policies, and the dates of such consultation. *See Paananen*, No. C08-1042 RSM, 2009 WL 3327227, at *3 (concluding that an interrogatory had two discrete subparts where it asked both for “a defendant to summarize and state all the facts that support an affirmative defense,” and for “a defendant to identify the evidence (documents and witnesses) that support that affirmative defense”); *Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in an upcoming document production. The Department of Defense will supplement this interrogatory response, as needed, following the document production.

Supplemental Response:

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 information responsive to this interrogatory:

- The Secretary’s February 22, 2018 Memorandum for the President (ECF No. 216-1);
- The report accompanying the Secretary’s February 22, 2018 Memorandum for the President (ECF No. 216-2); and
- The follow documents produced in the administrative record at the following Bates numbers:

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| 000001-000011 | Under Secretary of Defense for Personnel and Readiness, “Fiscal Year 2016 Report to Congress on the Review of Enlistment of Individuals with Disabilities in the Armed Forces” (Apr. 2016) |
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| 000034-000092 | The Lewin Group, Inc., “Qualified Military Available (QMA) and Interested Youth: Final Technical Report” (Sept. 2016) |
| 000093-000192 | RAND National Defense Research Institute, <i>Assessing the Implications of Allowing Transgender Personnel To Serve Openly</i> (RAND Corporation 2016), available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR1500/RR1530/RAND_RR1530.pdf (“RAND Study”) |
| 000193-000198 | Human Rights Campaign, “Understanding the Transgender Community,” https://www.hrc.org/resources/understanding-the-transgender-community (last visited Feb. 14, 2018) |
| 000199-000209 | <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM-5), p. 453 (5 th ed. 2013) |
| 000210-000261 | Department of Defense Instruction (DoDI) 6130.03, <i>Medical Standards for Appointment, Enlistment, or Induction in the Military Services</i> (Apr. 28, 2010), incorporating Change 1, (Sept. 13, 2011) |
| 000262-000269 | Department of Defense Instruction (DoDI) 6485.01, <i>Human Immunodeficiency Virus (HIV) in Military Service Members</i> (Jun. 7, 2013) |
| 000270-000284 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-III)</i> , pp. 261-264 (3rd ed. 1980) |
| 000285-000298 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-III-R)</i> , pp. 76-77 (3rd ed. Revised 1987) |
| 000299-000309 | American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)</i> , pp. 532-538 (4th ed. 1994) |
| 000310-000313 | Hayes Directory, “Sex Reassignment Surgery for the Treatment of Gender Dysphoria,” p. 1 (May 15, 2014) |
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| 000352-000356 | American Psychiatric Association, "Expert Q&A: Gender Dysphoria," available at https://www.psychiatry.org/patients-families/gender-dysphoria/expert-qa (last visited Feb. 14, 2018) |
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| 000379-000393 | Cecilia Dhejne, Roy Van Vlerken, Gunter Heylens & Jon Arcelus, "Mental health and gender dysphoria: A review of the literature," <i>International Review of Psychiatry</i> , Vol. 28 (2016) |
| 000394-000405 | George R. Brown & Kenneth T. Jones, "Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study," <i>LGBT Health</i> , Vol. 3 (Apr. 2016) |
| 000406-000423 | Ann P. Haas, Philip L. Rodgers & Jody L. Herman, <i>Suicide Attempts Among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey</i> (American Foundation for Suicide Prevention and the Williams Institute, University of California, Los Angeles, School of Law 2014), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf |
| 000424-000429 | H.G. Virupaksha, Daliboyina Muralidhar, & Jayashree Ramakrishna, "Suicide and Suicidal Behavior Among Transgender Persons," <i>Indian Journal of Psychological Medicine</i> , Vol. 38 (2016) |
| 000430-000437 | Claire M. Peterson, Abigail Matthews, Emily Copps-Smith & Lee Ann Conard, "Suicidality, Self-Harm, and Body Dissatisfaction in Transgender Adolescents and Emerging Adults with Gender Dysphoria," <i>Suicide and Life Threatening Behavior</i> , Vol. 47, (Aug. 2017) |

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| 000438-000449 | Raymond P. Tucker, Rylan J. Testa, Mark A. Reger, Tracy L. Simpson, Jillian C. Shipherd, & Keren Lehavot, “Current and Military-Specific Gender Minority Stress Factors and Their Relationship with Suicide Ideation in Transgender Veterans,” <i>Suicide and Life Threatening Behavior</i> DOI: 10.1111/sltb.12432 (epub ahead of print) (2018) |
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| 000458-000462 | Hayes Directory, “Hormone Therapy for the Treatment of Gender Dysphoria,” (May 19, 2014). |
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| 002825-002829 | Minutes, POE Meeting 2 (Oct. 19, 2017) |
| 002830-002835 | Minutes, POE Meeting 3 (Oct. 26, 2017) |
| 002836-002839 | Minutes, POE Meeting 4 (Nov. 2, 2017) |
| 002840-002847 | Minutes, POE Meeting 5 (Nov. 9, 2017) |
| 002848 | Agenda, POE Meeting 1 (Oct. 13, 2017) |
| 002849-002852 | Office of People Analytics, 2016 Workplace and Gender Relations Survey of Active Duty Members: Transgender Service Members, Study Conclusions |
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| 002857 | Agenda, POE Meeting 2 (Oct. 19, 2017) |
| 002858-002866 | Transgender Policy Panel Meeting Background Information Slides (Oct. 19, 2017) |
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| 002881 | Agenda, POE Meeting 3 (Oct. 26, 2017) |
| 002882 | Agenda, POE Meeting 4 (Nov. 2, 2017) |
| 002883-002904 | Health Data for Service Members with Gender Dysphoria (Nov. 2, 2017) |
| 002905 | Agenda, POE Meeting 5 (Nov. 9, 2017) |
| 002906 | Agenda, POE Meeting 6 (Nov. 16, 2017) |
| 002907-002910 | Non-deployable Working Group Information Briefing (Nov. 16, 2017) |

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| 002911-002940 | Medical and Surgical Treatment for Gender Dysphoria (Nov. 7, 2017) |
| 002941 | Comparison of Civilian Insurers and MHS |
| 002942 | Agenda, POE Meeting 7 (Nov. 21, 2017) |
| 002943-002963 | 2015 Transgender Survey (December 2016) and Additional Administrative Data (Nov. 21, 2017) |
| 002964 | Reasons for Separation (table) |
| 002965 | Agenda, POE Meeting 8 (Nov. 30, 2017) |
| 002966-002976 | Admin Data Presented During Panel Meetings |
| 002977 | Agenda, POE Meeting 9 (Dec. 7, 2017) |
| 002978-002981 | The Federal Aviation Administration (FAA) and Gender Dysphoria (Dec. 4, 2017) |
| 002982-002985 | Time To Return to Full Duty After Transition Surgery in MTFs (slide deck) |
| 002986-002997 | Admin Data Presented During Panel Meetings (version 2) |
| 002998 | Agenda, POE Meeting 10 (Dec. 13, 2017) |
| 002999-003010 | Data Extracts: Key information used by the Panel to make recommendations |
| 003011-003042 | Health Data on Active Duty Service Members with Gender Dysphoria (Dec. 13, 2017) |
| 003043-003055 | Admin Data Presented During Panel Meeting (version 3) |
| 003056 | Agenda, POE Meeting 11 (Dec. 22, 2017) |
| 003057 | Agenda, POE Meeting 12 (Jan. 4, 2018) |
| 003058 | Agenda, POE Meeting 13 (Jan. 11, 2018) |
| 003059-003067 | Action Memo from Under Secretary of Defense (Personnel and Readiness) to the Secretary of Defense re: Recommendations by the Transgender Review Panel of Experts (Jan. 11, 2018) |
| 003068-003075 | Hormone Therapy White Paper |

Interrogatory No. 8:

Explain President Trump's purported concerns regarding the RAND Report or any other study or review that the Department of Defense relied upon when adopting Secretary Ash Carter's policy allowing transgender people to serve openly in the military.

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.

Further, and for the reasons presented in Defendants' Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory call for the disclosure of presidential communications.

Interrogatory No. 9:

Identify all members of the "panel of experts serving within the Departments of Defense and Homeland Security to provide advice and recommendations on the implementation of the president's direction." Statement of Secretary Jim Mattis, Release No: NR-312-17.

Response:

The panel of experts is composed of the following individuals who held or hold the following positions:

Chair

- Anthony M. Kurta – Performing the Duties of Under Secretary of Defense (Personnel & Readiness)
- Robert Wilkie – Under Secretary of Defense for Personnel and Readiness

Members

- Thomas Kelly III – Performing the Duties of the Under Secretary of the Army
- Thomas Dee – Performing the Duties of the Under Secretary of the Navy
- Matthew Donovan – Under Secretary of the Air Force
- Charles D. Michel – Vice Commandant of the Coast Guard
- James McConville – Vice Chief of Staff of the Army
- William Moran – Vice Chief of Naval Operations
- Stephen Wilson – Vice Chief of Staff of the Air Force
- Glenn Walters – Assistant Commandant of the Marine Corps
- Daniel Hokanson – Vice Chief of Staff National Guard Bureau
- John Wayne Troxell – Senior Enlisted Advisor to the Vice Chairman of the Joint Chiefs of Staff
- Daniel Daily – Sergeant Major of the Army
- Steven S. Giordano – Master Chief Petty Officer of the Navy
- Kaleth O. Wright – Chief Master Sergeant of the Air Force
- Ronald L. Green – Sergeant Major of the Marine Corps
- Steven W. Cantrell – Master Chief Petty Officer of the Coast Guard
- Christopher Kepner – Senior Enlisted Advisor National Guard Bureau

Interrogatory No. 10:

Identify all Department of Defense and Department of Homeland Security employees who worked with, provided information to, or communicated with employees of the RAND National Defense Research Institute concerning the studies and/or fact gathering that resulted in the RAND Report.

Specific Objections:

The Department of Defense objects on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As further explained above, applying “the reasonableness of the 2018 Policy must be evaluated on the record supporting that decision and with the appropriate deference due a proffered military decision.” *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019). Under no circumstances may Plaintiffs, Plaintiffs’ witnesses, or the Court “substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military” as Plaintiffs propose to do through these discovery requests. *Id.* at 1202 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981); *see also Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C. Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy is so circumscribed that extra-record evidence and discovery is “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453 U.S. at 81)).

Moreover, the Department of Defense also objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case and is an unwarranted invasion of the privacy of non-parties in that it seeks information from current

and former service members protected by the Privacy Act, 5 U.S.C. § 552a, et seq. The personally identifiable information of “employees who worked with, provided information to, or communicated with employees of the RAND National Defense Research Institute concerning the studies and/or fact gathering that resulted in the RAND Report” is irrelevant to the adjudication of Plaintiffs’ facial challenge 2018 Policy which “must be evaluated on the record supporting that decision and with the appropriate deference due a proffered military decision.” *Karnoski*, 926 F.3d at 1207.

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in an upcoming document production. The Department of Defense will supplement this interrogatory response, as needed, following the document production.

Supplemental Response:

The Acting Under Secretary of Defense for Personnel and Readiness, Brad Carson, directed “the RAND National Defense Research Institute to conduct a study to (1) identify the health care needs of the transgender population, transgender service members’ potential health care utilization rates, and the costs associated with extending health care coverage for transition-related treatments; (2) assess the potential readiness implications of allowing transgender service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly.” AR95; Decl. of Brad R. Carson in Support of Plaintiffs’ Motion For Preliminary Injunction (ECF No. 252) ¶ 11.

Mr. Carson and Department of Defense employees acting under Mr. Carson's direction communicated with RAND.

Interrogatory No. 11:

Identify all persons with authority to approve medical waivers requested by transgender service members or transgender individuals seeking to join the U.S. military during the period from January 1, 2010 to the present.

Specific Objections:

The Department of Defense objects on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As further explained above, applying “the reasonableness of the 2018 Policy must be evaluated on the record supporting that decision and with the appropriate deference due a proffered military decision.” *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019). Under no circumstances may Plaintiffs, Plaintiffs’ witnesses, or the Court “substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military” as Plaintiffs propose to do through these discovery requests. *Id.* at 1202 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981); *see also Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C. Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy is so circumscribed that extra-record evidence and discovery is “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453 U.S. at 81)).

The Department of Defense further objects on the grounds that this request is

overbroad, unduly burdensome, and disproportionate to the needs of the case and is an unwarranted invasion of the privacy of non-parties in that it seeks information from current and former service members protected by the Privacy Act, 5 U.S.C. § 552a, et seq. Specifically, due to Plaintiffs' definition of "Identify," the reference to "Identify all persons" purports to require the Department of Defense to provide the full name, job title, employer from January 1, 2010 to present, current or last known address and telephone number, and business address and telephone number, of likely hundreds of individuals who had medical waiver authority during the designated time period. The personally identifiable information of "all persons with authority to approve medical waivers requested by transgender service members or transgender individuals seeking to join the U.S. military during the period from January 1, 2010 to the present" is irrelevant to the adjudication of Plaintiffs' facial challenge 2018 Policy which "must be evaluated on the record supporting that decision and with the appropriate deference due a proffered military decision." *Karnoski*, 926 F.3d at 1207.

Response:

Department of Defense Instruction 6130.03, which is publicly available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/613003p.pdf>, directs the Secretaries of the Military Departments and the Commandant of the Coast Guard to "[a]uthorize the waiver of the [medical] standards [for appointment, enlistment, or induction in the military services] in individual cases for applicable reasons and ensure uniform waiver determinations." DoDI 6130.03, Enclosure 2, paragraph 3b. The Services have implemented this direction and authority in different ways.

Army. In the Army, for example, the Army's medical waiver authorities are identified in Army Regulation 40-501, paragraph 1-6. The current version of this regulation is available at: https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN3801_AR40-501_Web_FINAL.pdf. The appropriate waiver authority varies depending on the applicable accession program. For example, the Commanding General, United States Army Recruiting Command (USAREC) is the waiver authority for original enlistments, *see* AR 40-501, paragraph 1-6d, while the waiver authority for commissioning United States Military Academy (USMA) cadets is the Superintendent, USMA, following consultation with the USMA Surgeon. *Id.* at paragraph 1-6c(2). By previously produced memorandum, *see* Bates ARMY_00000582, the Secretary of the Army on April 20, 2017, withdrew and re-delegated medical waiver authority for transgender applicants to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA)(M&RA).

Navy. In the Navy, assignment of authority to grant a medical waiver is by position/title and outlined in the Manual of the Medical Department (MANMED), specifically section 15-31, which provides:

15-31 Waivers of the Physical Standards

- (1) For some applicants, their current level of functioning and/or state of health in spite of the presence of a disqualifying medical condition warrants a waiver of the standards.
- (2) Waivers of the standards do not make an applicant "physically qualified" but rather provide the applicant the opportunity to enlist or commission despite the fact that a disqualifying condition exists.

(3) The authority to grant a waiver lies with the commander charged with enlisting or commissioning the applicant and the specific program desired (e.g., Commander, Marine Corps Recruiting Command is the authority for applicants desiring enlistment in the Marine Corps). The medical authority to recommend a waiver of the standards to these various commands resides with the Chief, Bureau of Medicine and Surgery. By direction authority to carry out this function has been granted to:

(a) The Director, BUMED Qualifications and Standards. Provides waiver recommendations to: Commander, Marine Corps Recruiting Command; Commander, Naval Services Training Command (NROTC entry, commission of NROTC enrollees, commission of MMR, USNR enrollees); Commander, Naval Medical Education and Training Command; Commander, Officer Candidate School; Superintendent, U.S. Naval Academy; Superintendent, United States Merchant Marine Academy (USMMA entry); Commander, Navy Recruiting Command (Health Professions Scholarship Program, Nurse Commissioning Program). Additionally, the Director, Bureau of Medicine and Surgery, Qualifications and Standards provides guidance to the Navy and Marine Corps Reserve commands regarding physical qualification for retention of service members in the reserves and to the recruit training commands regarding retention of recruits found to have disqualifying medical conditions.

(b) The Senior Medical Officer, Naval Recruiting Command. Provides waiver recommendations to: Commander, Naval Recruiting Command (including Reserve Recruiting Command, excepting the programs listed in article 15-31 (3)(a) above).

(c) The Navy Brigade Surgeon, Uniformed Services University of Health Sciences.

Provides waiver recommendations to: Assistant Secretary of Defense for Health Affairs (enrollment and graduation commissions).

(4) The processes for requesting a waiver vary based on the program the applicant is seeking. Review the pertinent guidance issued by the enlisting or commissioning authority above. However, regardless of the specific procedures involved, most delays in waiver recommendations result from inadequate information provided with the waiver request.

When assembling a waiver request package ensure, at a minimum, the following information is included: most recent complete physical examination, all pertinent past medical records, documentation regarding past and current limitations of activity associated with the condition, and the results of any laboratory testing or specialty evaluation initiated by the examiner.

(5) Results of waiver requests (approved or denied) should be recorded in block 76 or 77 of the DD 2808.

(6) Waiver processes for special duty examinations and assignments are contained in Section IV within the description of the standards for each specific program.

(7) The Navy Medicine Operational Training Center Detachment, Naval Aerospace Medical Institute, (NAMI Code 342) is designated as the Program Manager for assessment and determination of the qualification of applicants, both enlisted and commissioned, for duties involving aviation. In this capacity, NAMI is authorized to issue correspondence recommending waivers of physical standards to the commander charged with enlisting or

commissioning and the specific program desired. Such correspondence shall include letters recommending commissioning by the appropriate authority.

Air Force. The Air Force medical waiver authority is discussed in Air Force Instruction 48-123, Section 6 B, but particularly paragraph 6.4 and Attachment 2. This instruction is publicly available at http://static.e-publishing.af.mil/production/1/af_sg/publication/afi48-123/afi48-123.pdf.

Interrogatory No. 12:

Identify all persons with authority, during the period from January 1, 2010 to the present, to involuntarily discharge or separate service members on account of transgender status (including those individuals with authority to initiate any necessary proceedings for involuntary discharge or separation, even if final adjudicatory authority resides elsewhere).

Specific Objections:

The Department of Defense objects on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As further explained above, applying “the reasonableness of the 2018 Policy must be evaluated on the record supporting that decision and with the appropriate deference due a proffered military decision.” *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019). Under no circumstances may Plaintiffs, Plaintiffs’ witnesses, or the Court “substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military” as Plaintiffs propose to do through these discovery requests. *Id.* at 1202 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981); see also *Doe 2 v.*

Shanahan, 917 F.3d 694, 737 (D.C. Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy is so circumscribed that extra-record evidence and discovery is “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453 U.S. at 81)).

Moreover, the Department of Defense also objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case and is an unwarranted invasion of the privacy of non-parties in that it seeks information from current and former service members protected by the Privacy Act, 5 U.S.C. § 552a, et seq. The personally identifiable information of “all persons with authority, during the period from January 1, 2010 to the present, to involuntarily discharge or separate service members on account of transgender status” is irrelevant to the adjudication of Plaintiffs’ facial challenge 2018 Policy which “must be evaluated on the record supporting that decision and with the appropriate deference due a proffered military decision.” *Karnoski*, 926 F.3d at 1207.

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in an upcoming document production. The Department of Defense will supplement this interrogatory response, as needed, following the document production.

Supplemental Response:

In a memorandum for the Secretaries of the Military Departments, dated, July 28, 2015, Secretary of Defense Ash Carter directed that no Service member shall be involuntarily

separated or denied reenlistment or continuation of active or reserve status on the basis of their gender identity without the approval of the Under Secretary of Defense for Personnel and Readiness. The memorandum was produced at Bates number AR319.

Interrogatory No. 13:

Describe in detail the circumstances leading to Secretary James Mattis's June 30, 2017, Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff with Subject: Accession of Transgender Individuals in the Military Services, including all reasons for the decision set forth in the memo (whether or not such reasons were publicly stated or acknowledged).

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.

Further, and for the reasons presented in Defendants' Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications.

The Department of Defense also objects on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As further explained above, applying "the reasonableness of the 2018 Policy must be evaluated on the

record supporting that decision and with the appropriate deference due a proffered military decision.” *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019). Under no circumstances may Plaintiffs, Plaintiffs’ witnesses, or the Court “substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military” as Plaintiffs propose to do through these discovery requests. *Id.* at 1202 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981); *see also Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C. Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy is so circumscribed that extra-record evidence and discovery is “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453 U.S. at 81)).

Response:

Considering the responses from the Secretaries of the Military Departments and Chiefs of the Military Services to the Deputy Secretary of Defense’s May 8, 2017 directive to assess their readiness to begin accessing transgender applicants into military service on July 1, 2017, and after consulting with the Service Chiefs and Secretaries, Secretary Mattis concluded it was necessary to defer the July 1, 2017 accessions date for six months in order to evaluate more carefully the impact of transgender accessions on readiness and lethality and to ensure that he personally had the benefit of the views of the military leadership and senior civilian officials who were then arriving in the Department of Defense.

Interrogatory No. 14:

Identify all persons with knowledge or information concerning the facts set forth in your response to Interrogatory No. 13, including all persons who requested, advised, or consulted on the result set forth in the June 30, 2017 memorandum.

Specific Objections:

The Department of Defense objects on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As further explained above, applying “the reasonableness of the 2018 Policy must be evaluated on the record supporting that decision and with the appropriate deference due a proffered military decision.” *Karnoski v. Trump*, 926 F.3d 1180, 1207 (9th Cir. 2019). Under no circumstances may Plaintiffs, Plaintiffs’ witnesses, or the Court “substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military” as Plaintiffs propose to do through these discovery requests. *Id.* at 1202 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981); *see also Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C. Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy is so circumscribed that extra-record evidence and discovery is “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453 U.S. at 81)).

Moreover, the Department of Defense objects to this interrogatory to the extent it seeks to have the Department identify “all persons with knowledge or information” and “all persons who requested, advised, or consulted on the result set forth in the June 30, 2017 memorandum” as all persons with “knowledge” of events publicly announced and widely

reported is unascertainable. Further, identifying all persons who “advised” or “consulted” on the decision beyond the principal advisors listed below is overbroad, unduly burdensome, and disproportionate to the needs of the case.

Further, and for the reasons presented in Defendants’ Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications. The Department of Defense also objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; and (c) communications or information protected by the deliberative process privilege.

Response:

Individuals with relevant knowledge and information include:

- Former Acting Secretary of the Navy, Sean J. Stackley
- Chief of Naval Operations, Admiral John M. Richardson
- Former Director of the Navy Staff, Admiral James G. Foggo
- Commandant of the Marine Corps, General Robert B. Neller
- Secretary of the Air Force, Heather Wilson
- Air Force Chief of Staff, General David L. Goldfein
- Former Acting Secretary of the Army, Robert M. Speer
- Chief of Staff of the Army, General Mark A. Milley.

Interrogatory No. 15:

Identify all communications between a member of Congress, on the one hand, and President Trump or any officer or employee of the Executive Office of the President, on the other, from January 20, 2017 to July 26, 2017, concerning military service by transgender people.

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.

Further, and for the reasons presented in Defendants' Motion for a Protective Order, ECF No. 268, the Department of Defense will not provide substantive responses to the extent that this interrogatory calls for the disclosure of presidential communications.

The Department of Defense has updated its objections to reflect intervening appellate case law and maintains the substantive responses to its Supplemental Responses to Plaintiffs' First Set of Interrogatories. As to the responses to the interrogatories, see Attachment A. As to the supplemental responses to the interrogatories, see Attachment B.

As to the objections:

Dated: August 29, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Andrew E. Carmichael
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on August 29, 2019, a copy of the document above was served

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Dated: August 29, 2019

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Counsel for Defendants

ATTACHMENT A

VERIFICATION

Based on information that I obtained in the course of my official duties, I declare under penalty of perjury that the substance of the responses to these interrogatories are true and correct to the best of my knowledge and belief.

Date: Feb. 9, 2018

Signature: Stephanie P. Miller
STEPHANIE P. MILLER

ATTACHMENT B

VERIFICATION

Based on information that I obtained in the course of my official duties, I declare under penalty of perjury that the substance of the supplemental responses to these interrogatories are true and correct to the best of my knowledge and belief.

Date: 01 June 2018

Signature: Stephanie P. Miller
STEPHANIE P. MILLER