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' RESPONSE TO MOTION TO SEAL

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
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Defendants respond to Plaintiffs' Motion to Seal, ECF No. 374, as follows:

Plaintiffs seek to file under seal Defendants' Objections to Plaintiffs' Second Set of Interrogatories to Secretary Mattis and the United States Department of Defense, as Exhibit 1 to Plaintiffs' Reply in support of their Motion to Compel, ECF Nos. 376, 377-1. This document contains amended objections and substantially similar responses to the document the Court previously permitted to be filed in redacted form in its order of August 29, 2019, ECF No. 372. Defendants marked this document as confidential and subject to the Stipulated Uniform Protective Order entered by the Court in this case, ECF No. 183. That Protective Order permits parties to designate Discovery Material as confidential where it contains "personal, proprietary, or sensitive information not generally disclosed to the public." ECF No. 183 ¶ 2. As the party designating Exhibit 1 as confidential, Defendants bear the burden of satisfying Local Rule 5(g)(3)(B) in support of sealing.

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

There is good cause for partially sealing Exhibit 1. Exhibit 1 contains lists of service members and Department of Defense ("DoD") civilian employees and officials who attended formal meetings of the Panel of Experts and who participated in working groups concerning DoD's policy on military service by transgender individuals and individuals with gender

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dysphoria. These lists include numerous career and lower-level DoD employees and service members and reflect their participation in the development of this military policy. In light of the high profile and controversial nature of these issues and proceedings, there is good cause to prevent disclosure of this information, which may cause these persons "annoyance, embarrassment, oppression, or undue burden." Fed. R. Civ. P. 26(c). There is also little public interest in the information that would remain under seal, particularly in light of the fact that this information is not at issue in Plaintiffs' Motion to Compel.

As before, Defendants do not believe that Exhibit 1 need remain under seal in its entirety. Instead, Defendants have attached to this brief a redacted version of Exhibit 1. This "less restrictive alternative" to complete sealing, LCR 5(g)(3)(B), protects the legitimate interests of these non-party service members and DoD employees and officials, while permitting public disclosure to the fullest extent possible. The Court previously permitted, ECF No. 372, substantially similar redactions (the prior document omitted a supplemental response to Interrogatory No. 18 that contains similar information to that previously redacted).

Accordingly, Defendants request the Court grant in part Plaintiffs' Motion to Seal, ECF No. 374.

Dated: September 11, 2019

Respectfully submitted,

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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' OBJECTIONS TO PLAINTIFFS' SECOND 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 initial objections to Plaintiffs' Second Set of Interrogatories to Secretary Esper, in his official capacity as Secretary of Defense, served April 26, 2018.[1] In presenting these objections, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

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

Objections to Definitions and Instructions

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

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

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

4. Defendants object to Plaintiffs' Definition 8 of "Communication" as encompassing "electronically stored information (ESI) containing, summarizing, or memorializing any communication," insofar as electronic information collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

Defendants object further to this definition to the extent that the term ESI differs from the specification format used in prior productions in this action.

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

6. Defendants object to Plaintiffs' Definition 10 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. Defendants further object 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. 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)).

Specific Objections to Interrogatories

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

Specific Objections:

The Department of Defense objects 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, nor 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 also objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to "each person" purports to require the Department of Defense to identify every single person who (1) reviewed, (2) revised, or (3) commented on any drafts of Secretary James Mattis's February 22, 2018, Memorandum for the President with Subject: Military Service by Transgender Individuals.

Moreover, the Department of Defense 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 the principal author(s) and each person" 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 each person who reviewed, revised, or commented on any drafts of Secretary James Mattis's February 22, 2018, Memorandum for the President with Subject: Military Service by Transgender Individuals. The personally identifiable information of the action officers who assisted in the preparation of the Memorandum for then-Secretary Mattis or of "each person who reviewed, revised, or commented on any drafts, including but not limited to the final draft, of Secretary James Mattis's February 22, 2018, Memorandum for the President with Subject: Military Service by Transgender Individuals" is irrelevant to the adjudication of Plaintiffs' facial challenge to the 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.

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; (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.

Response:

The Secretary's February 22, 2018 Memorandum For the President is signed by Secretary Mattis himself and represents his formal policy recommendation to the President.

In Defendants' Second Amended Initial Disclosures of May 11, 2018, Defendants provided the names of Department of Defense individuals who would address the DoD policy for the Defendants. Beyond this information Defendant Department of Defense stands on the foregoing objections.

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

Specific Objections:

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

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. Specifically, due to Plaintiffs' definition of "Identify," the reference to "Identify the principal author(s) and each person" 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 each person who reviewed, revised, or commented on any drafts of the February 2018 Department of Defense Report and Recommendations on Military Service by Transgender Persons. The personally identifiable information of the action officers who assisted in the preparation of the Report for the Under Secretary of Defense or of "each person who reviewed, revised, or commented on any drafts, including but not limited to the final draft, of the February 2018 Department of Defense Report and Recommendations on Military Service by Transgender Persons" is irrelevant to the adjudication of Plaintiffs' facial challenge to the 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.

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; (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.

Response:

The report accompanying the Secretary's February 22, 2018 Memorandum For the President was provided to Secretary Mattis by the Under Secretary of Defense for Personnel and Readiness. The Secretary of Defense in turn provided the report to the President with his memorandum. In the Defendants' Second Amended Initial Disclosures of May 11, 2018, Defendants provided the names of Department of Defense individuals who would address the DoD policy for the Defendants. Beyond this information Defendant Department of Defense stands on the foregoing objections.

Interrogatory No. 18: Identify each person who attended any meeting of the Panel of Experts and/or provided the Panel of Experts or its members any information, statement, advice, opinion, or other input of any nature or kind, including without limitation the

Transgender Service Policy Working Group, any other group or committee within the Department of Defense that reviewed or considered transgender issues, members of agencies other than the Department of Defense, military medical professionals, civilian medical professionals, transgender service members, the commanders of transgender service members, elected officials, third parties, lobbyists, experts, and/or consultants, and describe in detail the information, statement, advice, opinion, or other input such person provided.

Specific Objections:

The Department of Defense objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to each person who "attended any meeting of the Panel of Experts and/or provided the Panel of Experts or its members any information, statement, advice, opinion, or other input of any nature or kind" encompasses a class of persons nearly without limit. Similarly, the reference to "any other group or committee within the Department of Defense that reviewed or considered transgender issues, members of agencies other than the Department of Defense, military medical professionals, civilian medical professionals, transgender service members, the commanders of transgender service members, elected officials, third parties, lobbyists, experts, and/or consultants" encompasses, without limit, any person who happened to communicate with a member of the Panel of Experts. Defendant will construe this interrogatory as seeking the identity of each person who attended a formal meetings of the Panel of Experts, as well as the identity of official working groups that supported the Panel of Experts.

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; (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.

Defendants take the position that the identities of the members of the Retention and Nondeployability Working Group are not responsive to this interrogatory, as this working group focused on universal standards for the retention and separation of non-deployable Service members and did not specifically discuss service by transgender individuals or individuals with gender dysphoria. However, Plaintiffs specifically requested this information in their June 15, 2018 discovery letter. In the interest of narrowing the dispute between the parties, Defendants have agreed to provide this information in a supplemental response, while maintaining this objection.

Response:

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

Title	Last Name	First Name	Organization
[redacted]			

CONFIDENTIAL
Subject to Uniform Protective Order (ECF 183)

Title	Last Name	First Name	Organization
[redacted]			

Title	Last Name	First Name	Organization
[redacted]			

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

Because the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for both Plaintiffs and Defendants, pursuant to Federal Rule of Civil Procedure 33(d), Defendants identify the following documents, which contain additional information responsive to this interrogatory: agendas for the meetings of the Panel of Experts produced at Bates numbers AR2848, AR2857, AR2881, AR2882, AR2905, AR2906, AR2942, AR2965, AR2977, AR2998, AR3056, AR3057, and AR3058; redacted copies of minutes for certain meetings of the Panel of Experts produced at Bates numbers AR2821 through AR2847; materials presented or discussed at meetings of the Panel of

Experts produced at Bates numbers: AR2849–2856; AR2858–2880; AR2883–2904; AR2907–2941; AR2943–2964; AR2966–2976; AR2978–2997; and AR2999–3055; and the Department of Defense Report and Recommendations on Military Service by Transgender Persons (February 2018), filed at ECF 216-2.

Supplemental Response:

The members of the Retention and Nondeployability Working Group were:

Title	Name	Organization
[redacted]		

Interrogatory No. 19: Identify each member of the Transgender Service Policy Working Group and/or any other group or committee within the Department of Defense

that reviewed or considered transgender issues, and each person who attended any meeting of such group and/or provided such group or its members any information, statement, advice, opinion, or other input of any nature or kind, including without limitation military medical professionals, civilian medical professionals, transgender service members, the commanders of transgender service members, members of agencies other than the Department of Defense, elected officials, third parties, lobbyists, experts, and/or consultants, and describe in detail the information, statement, advice, opinion, or other input such person provided.

Specific Objections:

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

seeking only information concerning official committees or working groups, established by the Department, that considered policy for military service of transgender persons.

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

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.

Response:

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

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

Name	Organization
[redacted]	

Name	Organization
[redacted]	

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

TITLE	LAST NAME	FIRST NAME	ORGANIZATION
[redacted]			

TITLE	LAST NAME	FIRST NAME	ORGANIZATION
[redacted]			

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

Attendee	Office/Agency
[redacted]	

Attendee	Office/Agency
[redacted]	

Attendee	Office/Agency
[redacted]	

Attendee	Office/Agency
[redacted]	

Attendee	Office/Agency
[redacted]	

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

Last Name	First Name	Organization
[redacted]		

Last Name	First Name	Organization
[redacted]		

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

Name	Organization
[redacted]	

Name	Organization
[redacted]	

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

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

Specific Objections:

The Department of Defense objects 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, nor 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 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 the action officers who assisted in the preparation of the Presidential Memorandum or of "each person who reviewed, revised, or commented on any drafts, including but not limited to the final draft, of President Trump's March 23, 2018, Memorandum for the Secretary of Defense and the Secretary of Homeland Security with Subject: Military Service by Transgender Individuals" is irrelevant to the adjudication of Plaintiffs' facial challenge to the 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.

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

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; (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. 21: Identify all Communications, on or after January 20, 2017 to the present, between the President, the Executive Office of the President, the Vice President, and/or the Office of the Vice President, on the one hand, and Secretary Mattis and/or the Department of the Defense, on the other hand, relating or referring to military service by transgender people, public policy regarding transgender people, medical treatment for transgender people, and/or transgender people in general, including but not limited to oral communications.

Specific Objections:

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

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 Response to Plaintiffs' Second Set of Interrogatories and its Supplemental Responses to Plaintiffs' Second Set of Interrogatories. As to the responses to the interrogatories, see attached verification signed May 30, 2018. As to the supplemental responses to the interrogatories, see attached verification signed July 9, 2018.

As to the objections:

Dated: August 30, 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

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CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2019, a copy of the document above was served by email on the following:

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Dated: August 30, 2019

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Counsel for Defendants

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: 30 May 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 response to Interrogatory 18 is true and correct to the best of my knowledge and belief.

Date: 9 July 2018

Stephanie P. Miller

STEPHANIE P. MILLER