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16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**

18 AIDEN STOCKMAN, et al.

19 Plaintiffs,

20 v.

21 DONALD J. TRUMP, et al.

22 Defendants.

23 STATE OF CALIFORNIA,

24 Plaintiff-Intervenor,

25 v.

26 DONALD J. TRUMP, et al.

27 Defendants.

CASE NO. 5:17-CV-01799-JGB-KK

JOINT STATUS REPORT

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1 Pursuant to the Court’s August 29, 2019 Scheduling Notice and Order
 2 (Docket No. 166) and in anticipation of the October 7, 2019 status conference (the
 3 “Status Conference”), Plaintiffs Aiden Stockman, Nicolas Talbott, Tamasyn
 4 Reeves, Jaquice Tate, John Does 1-2, Jane Doe, and Equality California
 5 (collectively, the “Individual Plaintiffs”), Plaintiff-Intervenor the State of
 6 California (“Intervenor-Plaintiff,” and collectively with the Individual Plaintiffs,
 7 “Plaintiffs”), and Defendants Mark T. Esper, Mark A. Milley, Richard V. Spencer,
 8 Ryan D. McCarthy, Matthew Donovan, and Kevin K. McAleenan (collectively,
 9 “Defendants,” and, along with Plaintiffs, the “Parties”) hereby submit their Joint
 10 Status Report.

11 A. Individual Plaintiffs’ Statement

12 1. Procedural Background

13 By way of background, on November 16, 2018, Defendants filed an appeal
 14 from this Court’s September 18, 2018 order denying Defendants’ motion to
 15 dissolve the preliminary injunction (Docket Nos. 124, 125). *See* Case No. 18-
 16 56539 (9th Cir.) (the “*Stockman Appeal*”). The Ninth Circuit determined that
 17 proceedings in the *Stockman Appeal* (Docket No. 28) be held in abeyance pending
 18 issuance of the mandate in the appeal from an order¹ issued in one of the related
 19 cases challenging the government’s ban on military service by transgender
 20 individuals, *Karnoski et al. v. Trump et al.*, Case No. 18-35347 (“*Karnoski*”). The
 21 Ninth Circuit issued its opinion in *Karnoski* on June 14, 2019 (Docket No. 153)
 22 (the “*Karnoski Opinion*”), and the mandate issued on August 7, 2019 (Docket No.
 23 156).

24
 25 ¹ On April 30, 2018, Defendants in *Karnoski* filed an appeal with the Ninth
 26 Circuit from the Western District of Washington’s Order of April 13, 2018,
 27 *Karnoski et al. v. Trump et al.*, Case No. 17-cv-1297 (Docket No. 233), granting in
 28 part and denying in part plaintiffs’ and Washington’s motion for summary
 judgment, granting in part and denying in part defendants’ motion for partial
 summary judgment, and striking defendants’ motion to dissolve the preliminary
 injunction.

1 The *Karnoski* Opinion vacated the Western District of Washington’s Order
2 on Defendants’ motion to dissolve the preliminary injunction, stayed the
3 preliminary injunction pending the Western District of Washington’s
4 reconsideration of Defendants’ motion to dissolve and pending any appeal
5 therefrom, and permitted plaintiffs an opportunity to advise the Western District of
6 Washington whether they continued to wish to pursue preliminary injunctive relief
7 on remand.

8 The Parties here met and conferred and agreed that the *Karnoski* Opinion
9 resolves the issues in the *Stockman* Appeal. The Parties then submitted a joint
10 stipulation to the Ninth Circuit on August 16, 2019, and on August 26, 2019, the
11 Ninth Circuit entered an order (i) vacating this Court’s September 18, 2018 order
12 denying Defendants’ motion to dissolve the preliminary injunction pending this
13 Court’s reconsideration of Defendants’ motion to dissolve the injunction, and (ii)
14 granting the Parties’ request to remand to this Court for further proceedings
15 consistent with the Ninth Circuit’s decision in *Karnoski* (*Stockman* Appeal, Docket
16 Nos. 40, 41).

17 **2. Plaintiffs’ Proposed Amended Complaint**

18 In response to the *Karnoski* Opinion and the Ninth Circuit’s holding, the
19 Individual Plaintiffs propose to file an amended complaint in this action, among
20 other things, clarifying that Plaintiffs’ claims extend to the formal instructions
21 issued by the Office of the Deputy Secretary of Defense on March 12, 2019
22 effectuating (i) the February 22, 2018 plan submitted by Secretary of Defense
23 James Mattis to President Donald J. Trump pursuant to the President’s August 25,
24 2017 directive (the “Implementation Plan”), and (ii) President Trump’s March 23,
25 2018 memorandum authorizing the Secretary of Defense to carry out the
26 Implementation Plan, which he confirmed was developed “[p]ursuant to [the
27 President’s] memorandum of August 25, 2017” (the “Transgender Military Ban”).
28

1 The Individual Plaintiffs’ proposed amended complaint does not add any new
2 claims for relief.²

3 Because Defendants filed a motion to dismiss on October 23, 2017 (Docket
4 No. 36), the Individual Plaintiffs can amend their Complaint only if Defendants so
5 stipulate or if this Court grants leave to amend pursuant to Federal Rule of Civil
6 Procedure 15(a)(2). The Individual Plaintiffs are prepared to file a motion to
7 amend the Complaint, however, the Parties have met and conferred, and
8 Defendants have agreed to stipulate to the Individual Plaintiffs filing an amended
9 complaint, as proposed. A copy of the Individual Plaintiffs’ proposed amended
10 complaint, which has been shared with the other Parties to this action, is attached
11 hereto as **Exhibit A** (the “Amended Complaint”), and a redline against the
12 originally filed complaint is attached as **Exhibit B**.

13 Plaintiffs are prepared to discuss their proposed amendment at the Status
14 Conference, and request that the Court authorize the filing of the Amended
15 Complaint.

16 3. Status of Fact Discovery

17 As contemplated by the Protective Order and Cross-Use Agreement (Docket
18 No. 94), the Parties have worked in an attempt to coordinate discovery with the
19 other pending related cases.³ In this action, Defendants propounded document
20 requests on Plaintiffs on February 8, 2019. The Individual Plaintiffs responded
21 and objected on March 11, 2019.

22 The Individual Plaintiffs served document requests on Defendants on April
23 15, 2019. Defendants responded and objected on May 15, 2019, and the Parties
24

25 ² Defendants also seek to amend the caption in this case in light of the
26 dismissal of President Donald J. Trump as a named defendant (Docket No. 163),
and the proposed amended complaint incorporates that change to the caption.

27 ³ The three related cases each challenging the Transgender Military Ban are:
28 (i) *Doe et al. v. Esper et al.*, No. 17-cv-1597 (D.D.C.); (ii) *Karnoski et al. v. Trump
et al.*, No. 17-cv-1297 (W.D. Wash.); and (iii) *Stone et al. v. Trump et al.*, No. 17-
cv-2459 (D. Md.).

1 have engaged in meet and confer efforts in an attempt to resolve what the
2 Individual Plaintiffs have identified to be substantial deficiencies both in
3 Defendants' written responses and objections and with their document production.
4 On July 17, 2019, the Individual Plaintiffs sent a letter to Defendants laying out the
5 various deficiencies, and the Parties had a telephone conference on July 31, 2019
6 to discuss the issues. Defendants indicated that they needed time to gather certain
7 requested information and to provide substantive responses to the issues raised;
8 they did not provide any additional detail on these issues until August 29, 2019, at
9 which time they provided a single declaration submitted to the *Karnoski* court
10 describing Defendants' document collection efforts. The Individual Plaintiffs have
11 since followed up noting that the information provided does not resolve or fully
12 address the issues the Individual Plaintiffs raised. While the Individual Plaintiffs
13 continue their efforts to address or narrow the many deficiencies in Defendants'
14 responses and production, they anticipate that motion practice likely will be
15 necessary.⁴

16 4. Status of Expert Discovery

17 To date, Defendants have designated three expert witnesses, and Plaintiffs
18 have designated five expert witnesses. On September 13, 2019, the Parties entered
19 into a stipulation for an order modifying the deadlines for the designation of expert
20 witnesses and rebuttal expert witnesses (Docket No. 167). Pursuant to the Parties'
21 agreement, all experts (affirmative and rebuttal) should be disclosed no later than
22 November 8, 2019.

23
24
25 ⁴ In one of the pending related cases, the U.S. District Court for the District of
26 Columbia recently issued a decision concerning the applicability of the deliberative
27 process privilege, and requiring Defendants to produce additional information.
28 *See, e.g., Doe et al. v. Esper et al.*, No. 17-cv-1597 (Docket No. 237). Defendants
have advised that they have not yet decided whether to seek review of that
decision. Depending on whether that decision is challenged and when, as well as
the timing of the production of this additional responsive information, the
Individual Plaintiffs may need further to amend the case schedule here.

1 **5. Preliminary Injunction**

2 As noted above, the Parties have stipulated to vacate this Court’s September
3 18, 2018 order denying Defendants’ motion to dissolve the original preliminary
4 injunction (Docket No. 165), and thus agree that the prior entered preliminary
5 injunction can be dissolved without further proceedings. Upon filing of the
6 Amended Complaint, the Individual Plaintiffs are considering whether to pursue
7 further preliminary injunctive relief with respect to the Transgender Military Ban
8 on an individualized basis, and the scope of that relief.

9 **B. Intervenor-Plaintiff’s Statement**

10 The State of California intervened as a plaintiff in this case in November of
11 2017. In light of recent developments in this case and related cases, including the
12 Ninth Circuit’s decision in *Karnoski*, the State plans to amend its complaint-in-
13 intervention to update the facts to include events that have occurred since its
14 previous complaint was filed. The State does not plan to add any new causes of
15 action that were not included in the original complaint. The proposed amended
16 complaint in intervention is attached hereto as **Exhibit C**.

17 The State has disclosed one expert witness in this case and will also rely on
18 the experts designated by Individual Plaintiffs. The State is currently participating
19 in the meet and confer process relating to Defendants’ responses to its requests for
20 production and those of the individual and organizational plaintiffs in this case.

21 The State believes that in light of the Ninth Circuit’s decision in *Karnoski*, it
22 is unnecessary for the Court to reconsider Defendant’s motion to dissolve the
23 preliminary injunction issued in this case, which is currently stayed by the Ninth
24 Circuit’s order. The State agrees to the dissolution of that preliminary injunction.
25 If the State decides to seek a preliminary injunction of the policy, it will do so by a
26 separate motion that addresses the policy as set forth in the Transgender Military
27 Ban and the President’s March 23, 2018 memorandum, and as implemented in
28 April of 2019.

1 **C. Defendants' Statement**

2 **1.** On August 26, 2019, the Ninth Circuit ordered that (1) “[t]he district
3 court’s September 18, 2018 order denying defendants’ motion to dissolve the
4 December 22, 2017 preliminary injunction is vacated”; (2) “[t]he preliminary
5 injunction is stayed pending the district court’s reconsideration of defendants
6 motion to dissolve the injunction and pending any appeal therefrom”; and (3)
7 “[t]his case is remanded to the district court for further proceedings consistent with
8 [the Ninth Circuit’s] decision in *Karnoski v. Trump*, 926 F.3d 1180 (9th Cir.
9 2019).” Dkt. 165. Thus, the December 22, 2017 preliminary injunction is still in
10 place but has been stayed, and Defendants’ motion to dissolve that preliminary
11 injunction, *see* Dkt. 82, is currently pending before the Court.

12 As they state above, both Plaintiffs and Plaintiff-Intervenor California agree
13 to dissolution of the preliminary injunction. Defendants thus respectfully request
14 that their motion to dissolve the preliminary injunction be granted.

15 **2.** On July 26, 2019, Plaintiffs and Plaintiff-Intervenor California each filed
16 a notice of voluntary dismissal of President Donald J. Trump from this action.
17 Dkts. 163–164.

18 **3.** The parties have been conferring over potential discovery disputes. Most
19 recently, on September 24, 2019, Plaintiffs sent to Defendants a list of issues they
20 contend remain in dispute between the parties. Defendants are reviewing these
21 remaining issues and preparing a response. None of the disputes between the
22 parties have yet ripened for judicial consideration.

23 **4.** Further, Defendants have informed plaintiffs that they plan to notice the
24 deposition of Dr. Mark J. Eitelberg, whom Plaintiffs have designated as an expert
25 witness. The parties are currently discussing the date and location of the
26 deposition. Defendants expect to notice additional depositions shortly.

27 **5.** Finally, Defendants have reviewed Plaintiffs’ and California’s proposed
28 amended complaints, and Defendants consent to those amendments.

1 Dated: September 30, 2019

By: /s/ Amy C. Quartarolo
Amy C. Quartarolo

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9 Dated: September 30, 2019

By: /s/ Amie L. Medley
Amie L. Medley

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16 Dated: September 30, 2019

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ATTESTATION STATEMENT

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing.

Dated: September 30, 2019

By: /s/ Amy C. Quartarolo
Amy C. Quartarolo

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EXHIBIT A

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 AIDEN STOCKMAN, NICOLAS
13 TALBOTT; TAMASYN REEVES;
14 JAQUICE TATE; JOHN DOES 1-2;
15 JANE DOE; and EQUALITY
CALIFORNIA,

16 Plaintiffs,

17 v.

18 MARK T. ESPER, in his official
capacity as Secretary of Defense;
19 MARK A. MILLEY, in his official
capacity as Chairman of the Joint Chiefs
of Staff; RICHARD V. SPENCER, in
20 his official capacity as Secretary of the
Navy; RYAN D. MCCARTHY, in his
21 official capacity as Acting Secretary of
the Army; MATTHEW DONOVAN, in
22 his official capacity as Acting Secretary
of the Air Force; and KEVIN
23 MCALEENAN, in his official capacity
as Acting Secretary of Homeland
24 Security,

25 Defendants.

26 STATE OF CALIFORNIA,
27 Plaintiff-Intervenor,

28 v.

MARK T. ESPER, in his official

CASE NO. 5:17-CV-01799-JGB-KK

**PLAINTIFFS' AMENDED
COMPLAINT**

1 capacity as Secretary of Defense;
2 MARK A. MILLEY, in his official
3 capacity as Chairman of the Joint Chiefs
4 of Staff; RICHARD V. SPENCER, in
5 his official capacity as Secretary of the
6 Navy; RYAN D. MCCARTHY, in his
7 official capacity as Acting Secretary of
8 the Army; MATTHEW DONOVAN, in
9 his official capacity as Acting Secretary
10 of the Air Force; and KEVIN
11 MCALEENAN, in his official capacity
12 as Acting Secretary of Homeland
13 Security,

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Defendants.

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1 **I. NATURE OF THE ACTION**

2 1. This action, brought on behalf of transgender individuals, seeks to
3 ensure that all qualified Americans have an equal opportunity to serve in the United
4 States military, that transgender individuals who seek to enlist or who serve in the
5 military are free from arbitrary and invidious discrimination, and that the
6 constitutional rights of transgender service members and recruits to autonomy,
7 privacy, and freedom of expression are respected and protected.

8 2. In June 2016, following an exhaustive review supported by reams of
9 data, interviews, and analysis, the Department of Defense (“DOD”) announced that
10 it would reverse its prior unconstitutional policy barring openly transgender people
11 from serving in the military, and would implement a policy allowing transgender
12 people to serve openly in the United States armed forces (“June 2016 Policy”).
13 Since that announcement, and in reliance thereon, numerous American service
14 members followed protocol and informed their chain of command that they are
15 transgender. In addition, as a consequence of the DOD’s announced policy, after
16 years of unlawful exclusion, transgender persons relied on the new policy and
17 sought to enlist and serve their country in the Armed Forces.

18 3. On July 26, 2017, President Donald J. Trump abruptly announced via
19 a series of Twitter statements that the United States military would return to
20 discriminating unlawfully against transgender people solely because of their
21 transgender status. By proclaiming that “the United States Government will not
22 accept or allow Transgender individuals to serve in any capacity in the U.S.
23 Military,” President Trump announced that transgender troops would be barred
24 from serving in our Armed Forces.

25 4. On August 25, 2017, President Trump formalized the government’s
26 policy, directing leaders of the DOD and Department of Homeland Security
27 (“DHS,” and together with the DOD, the “Departments”) to reinstate the ban “on
28 military service by transgender individuals that was in place prior to June 2016”.

1 See Memorandum Regarding Military Service by Transgender Individuals, 82 Fed.
2 Reg. 41319 (entered Aug. 30, 2017) (publication forthcoming) (the “August 25
3 Directive”). Specifically, President Trump directed the Departments (i) to ban the
4 “accession of transgender individuals into military service,” (ii) to “halt all use of
5 DOD or DHS resources to fund sex reassignment surgical procedures for military
6 personnel” except in limited instances, and (iii) to implement a plan to return to the
7 prohibition on military service for transgender people. President Trump ordered
8 Secretary Mattis to develop a “plan for implementing” his directives by February
9 21, 2018 and further ordered that they “take effect on March 23, 2018.” President
10 Trump’s August 25 Directive did not reference any evidence, facts, or analysis to
11 support the imposition of this categorical ban.

12 5. On February 22, 2018, Secretary Mattis submitted a plan to implement
13 a ban on transgender people serving in the military, as ordered by President Trump
14 in the August 25 Directive. See *Mattis Memorandum to the President*, February
15 22, 2018 (together with an accompanying report described below, the “Transgender
16 Military Ban”). The plan set forth a series of restrictions exclusively targeting
17 “Transgender persons.” In particular, the plan instructed:

18 a. “*Transgender persons*¹ with a history or diagnosis of gender
19 dysphoria are disqualified from military service, except under . . .
20 limited circumstances,” including “(1) if they have been stable for
21 36 consecutive months in their biological sex prior to accession”;
22 “(2) Service members diagnosed with gender dysphoria after
23 entering into service may be retained *if they do not require a*
24 *change of gender . . .*”; and (3) if they are “currently service” and
25 “have been diagnosed with gender dysphoria since the previous
26 administration’s policy took effect and prior to the effective date
27 of this new policy.”

28 ¹ Emphases throughout this Amended Complaint are added.

1 b. “*Transgender persons* who require or have undergone gender
2 transition are disqualified from military service.”

3 c. “*Transgender persons* without history or diagnosis of gender
4 dysphoria,” and who may thus evade one or both of the above
5 restrictions, may serve only “*in their biological sex.*”

6 6. Taken together, these instructions implement the President’s directive
7 to ban transgender persons from serving in conformity with their gender identity –
8 *the defining quality of what makes them transgender.* Collectively, President
9 Trump’s tweets, the August 25 Directive, and the Transgender Military Ban brand
10 transgender men and women as inherently unfit to serve and place current
11 transgender service members into a separate and unequal class of persons who
12 serve under unequal terms and conditions for retention in service, simply because
13 they are transgender.²

14 7. In a March 23, 2018 memorandum, President Trump acknowledged
15 receipt of the plan submitted to him by Secretary Mattis—which was confirmed to
16 have been developed “[p]ursuant to [the President’s] memorandum of August 25,
17 2017”—and authorized the Secretary of Defense to carry out the instructions
18 included in the plan, effectively banning all future military service by transgender
19 individuals.

20 8. On March 12, 2019, the Office of the Deputy Secretary of Defense
21 issued formal instructions for effectuating the Transgender Military Ban.

22 9. The implementation of the Transgender Military Ban was enjoined
23 until April 2019, at which point it went fully into effect. Since then, no transgender
24 individuals have been permitted to enlist in the military. In addition, any currently
25 serving transgender individual is subject to discharge if they reveal their
26 transgender status, are diagnosed with gender dysphoria, or seek to transition.

27 _____
28 ² The plan proposed by Secretary Mattis and adopted by military policy
allows for those “diagnosed with gender dysphoria since the previous
administration’s policy took effect” to continue in service.

1 Current service members who already openly identify as transgender serve only on
2 sufferance, on unequal terms with non-transgender troops, and under the pall of
3 stigma cast by the ban.

4 10. Plaintiffs here are (i) Aiden Stockman, Nicolas Talbott, and Tamasyn
5 Reeves, transgender individuals who have taken steps to enlist in the military,
6 (ii) Jaquice Tate and several other openly transgender active service members,
7 proceeding as anonymous plaintiffs, who are affected by the Transgender Military
8 Ban, and (iii) Equality California, the nation’s largest statewide lesbian, gay,
9 bisexual, transgender, and queer (“LGBTQ”) civil rights organization.

10 11. The Transgender Military Ban inflicts serious injuries upon Plaintiffs
11 and Plaintiff EQCA’s members. First, the Transgender Military Ban expressly
12 prevents transgender people from acceding into military service. Second, the
13 Transgender Military Ban causes immediate and concrete injury to the current
14 service member Plaintiffs, each of whom came out as transgender to their chain of
15 command in reliance on the June 2016 Policy lifting the prior ban. These Plaintiffs
16 serve under differential terms that are not applied to non-transgender service
17 members, in addition to being singled out and stigmatized by a policy that deems
18 them unfit. They are also harmed because they serve as an exception to policy.
19 Their peers and command predictably treat them differently in ways that impact
20 their advancement and opportunities. Third, the Transgender Military Ban harms
21 current service members who have not yet publicly identified themselves as
22 transgender by subjecting them to discharge if they do so and by denying them
23 equal access to medical care. Whereas all other service members can obtain the
24 medical care they need, transgender service members are denied that care and are
25 subject to discharge instead. Fourth, the Transgender Military Ban chills the speech
26 and expression of each of the Plaintiffs and Plaintiff EQCA’s members.

27 12. The Transgender Military Ban denies Plaintiffs and their members the
28 equal protection of the laws, their right to freedom of expression, and their right to

1 liberty and privacy, in violation of the First and Fifth Amendments to the United
2 States Constitution. Accordingly, Plaintiffs seek a declaration that the ban is
3 unconstitutional, and an injunction preventing Defendants from enforcing it.

4 **JURISDICTION AND VENUE**

5 13. This court has jurisdiction over the claims pursuant to 28 U.S.C.
6 Sections 1331 and 1343. This Court has further remedial authority under the
7 Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202 *et seq.*

8 14. Venue is proper in the Central District of California under 28 U.S.C.
9 Section 1391(e) because Plaintiffs reside in this judicial district and a substantial
10 part of the events giving rise to this action occurred in this District.

11 **PARTIES**

12 15. Plaintiff Aiden Stockman is a transgender man who wants to serve his
13 country through military service, and has taken steps to do so. Mr. Stockman was
14 raised and currently resides in California. Mr. Stockman has long been interested
15 in serving his country and intended to join the Air Force. As a young man, Mr.
16 Stockman spoke with friends and neighbors who were stationed at nearby Twenty-
17 Nine Palms Air Force Base to discuss what it is like to serve in the Air Force. Mr.
18 Stockman came out to his family as transgender in the eighth grade. At or about
19 that time, he began seeking medical advice related to gender transition. In June
20 2014, when he was in the eleventh grade, Mr. Stockman began hormone
21 replacement therapy (“HRT”). Later that year, Mr. Stockman took the Armed
22 Services Vocational Aptitude Battery (“ASVAB”) test consistent with his intention
23 of acceding into the military. He hoped to join the Air Force following his
24 graduation from high school, but wanted to complete a double-mastectomy (i.e.,
25 “top surgery”) first. After finding a doctor, Mr. Stockman ultimately made plans
26 to undergo top surgery, planning to enlist thereafter. The June 2016 Policy
27 permitting open service by transgender people gave Mr. Stockman comfort that he
28 would be able to pursue a career of military service. However, upon learning of

1 the Transgender Military Ban, Mr. Stockman felt crushed knowing that he will no
2 longer be able to pursue his dream of serving his country in the Air Force.

3 16. Plaintiff Nicolas Talbott is a transgender man currently residing in
4 Ohio. After graduating from college with a degree in sociology and criminology,
5 he planned to enlist in the military in pursuit of a career in counter-terrorism. Prior
6 to issuance of the June 2016 Policy, Mr. Talbott contacted military recruiters on
7 several occasions to express his interest in serving his country, but each time he
8 was informed that regulations prohibited his service because he is transgender.
9 After the June 2016 Policy was announced, Mr. Talbott found a recruiter for the
10 Air Force National Guard who advised that he would help him enlist. Mr. Talbott
11 met with the recruiter in December 2016 and filled out paperwork confirming his
12 interest in acceding into the military. The recruiter asked Mr. Talbott to obtain a
13 letter from his doctor confirming that being transgender did not have any adverse
14 effects on his life or his ability to perform military-related duties. The recruiter
15 advised that the next step in the process would be to meet with the regional Military
16 Entrance Processing Station (“MEPS”) for a physical exam and to take the ASVAB
17 test, but later advised that MEPS would not begin processing for transgender
18 enlistees until mid-2017. Mr. Talbott scheduled his appointment with his doctor,
19 began studying practice ASVAB exams, and was training regularly for the physical
20 exam, all in anticipation of enlisting in 2017. After reviewing Mr. Talbott’s
21 military medical questionnaire, MEPS denied his enlistment for reasons relating to
22 his transgender status and for other reasons as well. Because he still wished to
23 pursue a military career, Mr. Talbott enrolled at Kent State University to participate
24 in a Reserve Officer Training Corps (“ROTC”) program. Mr. Talbott borrowed
25 additional educational loans for that purpose, relying on the expectation of his
26 future eligibility for the military’s loan forgiveness program. He participated in
27 ROTC until May 5, 2019. Because of the military ban, he could not continue
28 further in ROTC, is not currently eligible for the military’s loan forgiveness

1 program, and cannot access the healthcare benefits that he would have ultimately
2 received after being commissioned to the United States Army. Mr. Talbott intends
3 to re-enroll in an ROTC program or pursue other enlistment options once the ban
4 is lifted.

5 17. Plaintiff Tamasyn Reeves is a transgender woman currently residing
6 in California. Ms. Reeves has wanted to join the Navy since she was 17. Her
7 family has a tradition of service in the military: her grandfather served in the Navy
8 during the Korean War, two of her uncles served in the Air Force, and two of her
9 cousins served in the Navy. Ms. Reeves first spoke to a recruiter at age 21. The
10 recruiter told Ms. Reeves that she was not eligible to enlist because of the
11 military's then-policy banning LGBTQ individuals from military service.
12 Following issuance of the June 2016 Policy, Ms. Reeves decided to enlist as soon
13 as the final procedures for accession of transgender individuals were solidified and
14 she completed her education. Because the Transgender Military Ban prevents her
15 accession into the military, despite her longstanding desire to do so, Ms. Reeves is
16 currently seeking non-military employment. She recently earned her associates
17 degree in hopes of improving her employment opportunities. However, Ms.
18 Reeves intends to enlist when the Transgender Military Ban is lifted.

19 18. Plaintiff Jaquice Tate is a transgender man currently serving in the
20 Army. He enlisted in 2008 because he wanted a career in which he could take
21 pride. He hopes to serve a twenty-year term. Mr. Tate has served domestically
22 and internationally, including a deployment to Iraq. Currently, he is a Military
23 Police Officer and he has served on drug suppression teams. Each of his command
24 leaders awarded him a Colonel Coin of Excellence and he has received numerous
25 Army Achievement Medals. The Army has approved his application to become a
26 Drill Sergeant. In reliance on the June 2016 Policy, Mr. Tate informed his chain
27 of command of his true gender. His chain of command has supported him
28 throughout his process of medical transition. However, though selected twice for

1 Drill Sergeant training, he was unable to participate in that training because he
2 would have been required to participate as a female, something that, as a
3 transgender man, he could not do.

4 19. Plaintiff John Doe 1-2 and Jane Doe are active or formerly active duty
5 service members who serve openly as transgender persons. They proceed under
6 pseudonyms for fear of retribution.

7 20. Plaintiff John Doe 1 is a transgender man who has served in the United
8 States Air Force since 2012. John Doe 1 comes from a military family; his father
9 served in the military for 30 years. John Doe 1 had plans to make a career out of
10 military service as well. John Doe 1 was previously stationed in California. John
11 Doe 1 was awarded Academic Achievement and Distinguished Graduate
12 distinctions from the Airmen Leadership School, and received a “Must Promote”
13 performance report. In reliance on the June 2016 Policy permitting open service
14 by transgender service members, John Doe 1 came out to his chain of command in
15 April, 2017. After experiencing firsthand the disparate treatment of transgender
16 airmen now perceived as “second class,” John Doe 1 made the difficult decision to
17 leave the military. John Doe 1 wanted to join the National Guard or the Reserves
18 after his service. A Reserves recruiter reached out to him several times for possible
19 enrollment, and he also spoke to an on-base recruiter for the National Guard. Upon
20 learning he was transgender, however, both recruiters told John Doe 1 that he was
21 ineligible to join.

22 21. Plaintiff John Doe 2 is a transgender man currently serving in the
23 Army. John Doe 2 voluntarily enlisted with the Army to serve his country, to
24 achieve financial security, and to honor his family’s tradition of service. His
25 technical expertise pertains to the operations, diagnostics, and maintenance of the
26 multichannel communications systems necessary for the Army to make real-time
27 strategic and tactical decisions. His position requires Secret-level Security
28 Clearance. John Doe 2 earned an early promotion waiver to become an Army

1 Specialist and was awarded two Colonel Coins of Excellence. John Doe 2 is on
2 track to receive an Army Commendation Medal award. In reliance on the June
3 2016 Policy, he came out as transgender to his unit, his chain of command, and his
4 medical providers. John Doe 2 has begun medical transition; he plans to renew his
5 contract and remain in the Army.

6 22. Plaintiff Jane Doe is a transgender woman currently serving in the Air
7 Force. In the seven years since she enlisted, Jane Doe has been deployed twice.
8 She is currently stationed abroad as a Staff Sergeant. Jane Doe joined the military
9 in hopes of serving her country, achieving financial stability and garnering personal
10 skills such as discipline, self-respect and service of others. After the ban on
11 transgender service was lifted by the June 2016 Policy, Jane Doe came out to her
12 chain of command. She found her military colleagues to be supportive. Jane Doe
13 carefully reviewed the guidance and policies issued by the DOD, and after meeting
14 with her doctors, she began her medical transition in fall 2017. Jane Doe has
15 received local quarterly awards, early promotions, two achievement medals and
16 one commendation medal. In spring 2018, she was promoted to Technical
17 Sergeant, and she is on track for consideration to be promoted to Master Sergeant.
18 Despite continuing to serve with distinction, Jane Doe is concerned that the
19 Transgender Military Ban will compromise her ability to achieve future
20 promotions, jeopardize her medical benefits, and ultimately foreclose her ability to
21 continue her career in the military.

22 23. Plaintiff Equality California (“EQCA”) is an I.R.S. 501(c)(4)
23 organization dedicated to LGBTQ civil rights. Specifically, EQCA is dedicated to
24 combatting discrimination and injustice on the basis of sexual orientation and
25 gender identity, and to protecting the fundamental rights of those within the
26 LGBTQ community and the vulnerable communities of which they are a part. Its
27 more than 500,000 members include transgender individuals in active military
28 service, transgender military veterans, and transgender individuals who have taken

1 steps to serve and ultimately intend to pursue long-term careers in the United States
2 Armed Forces. EQCA's membership also includes family members and
3 dependents of openly transgender individuals, each of whom share an interest in
4 ensuring that all qualified individuals wishing to serve their country through
5 military service are permitted to do so regardless of their gender identity.

6 24. Defendant Mark T. Esper is the United States Secretary Defense.
7 Secretary Esper directs the Department of Defense, which has been charged with
8 execution and implementation of the President's unlawful transgender military ban.

9 25. Defendant Joseph F. Dunford, Jr. is a United States Marine Corps
10 General and serves as the current Chairman of the Joint Chiefs of Staff. In
11 conjunction with co-defendants, General Dunford, Jr. has been charged with
12 execution and implementation of the unlawful transgender military ban.

13 26. Defendant Richard V. Spencer is the United States Secretary of the
14 Navy. Secretary Spencer directs the Department of the Navy and the United States
15 Marine Corps, which have been charged with execution and implementation of the
16 unlawful transgender military ban.

17 27. Defendant Ryan D. McCarthy is the Acting United States Secretary of
18 the Army. Secretary McCarthy directs the Department of the Army, which has
19 been charged with execution and implementation of the unlawful transgender
20 military ban.

21 28. Defendant Matthew Donovan is the Acting United States Secretary of
22 the Air Force. He directs the Department of the Air Force, which has been charged
23 with execution and implementation of the unlawful transgender military ban.

24 29. Defendant Kevin McAleenan is the Acting United States Secretary of
25 Homeland Security. He directs the DHS, which is responsible for the
26 administration and operation of the United States Coast Guard, and which has been
27
28

1 charged with execution and implementation of the unlawful transgender military
2 ban.³

3 **FACTUAL BACKGROUND**

4 **A. Following an Exhaustive Review in 2015-2016, the DOD Concluded**
5 **that Open Service by Transgender People Best Served the Interests of**
6 **U.S. Armed Forces**

7 30. In May 2014, then-Secretary of Defense Chuck Hagel directed the
8 DOD to review whether transgender people should be permitted to serve openly in
9 the U.S. armed forces.

10 31. In August 2014, the DOD amended its physical disability policy to
11 remove references to mandatory exclusion based on “sexual gender and identity
12 disorders,” and issued a new regulation instructing each branch of the armed forces
13 to assess whether there was any justification to maintain a ban on service by openly
14 transgender persons.

15 32. In issuing this regulation, Secretary Hagel stated that “every qualified
16 American who wants to serve our country should have an opportunity to do so if
17 they fit the qualifications and can do it.”

18 33. Secretary Hagel was succeeded as Secretary of Defense by Secretary
19 Ashton B. Carter. In July 2015, Secretary Carter announced that the military would
20 comprehensively analyze whether there was any justification to maintain the ban
21 on service by openly transgender persons. Accordingly, Secretary Carter created a
22 working group to address this issue including the Armed Services, the Joint Chiefs
23 of Staff, the service secretaries, and personnel, training, readiness, and medical
24 specialists from across the DOD. The lengthy and comprehensive review process
25 that followed included an examination of all available data, including but not
26 limited to existing studies and research and input from transgender service

27 _____
28 ³ Several of the officials named in the Complaint, filed September 5, 2017,
are no longer serving in the same roles. The currently serving officials are
automatically substituted under Federal Rule of Civil Procedure 25(d).

1 members, commanding officers who supervised transgender service members,
2 military readiness and personnel experts, outside expert groups, and medical
3 professionals. The review process also included a careful analysis of the eighteen
4 other countries that permit military service by openly transgender people. Doctors,
5 employers, and insurance companies were consulted regarding the provision of
6 medical care to transgender people.

7 34. The DOD also commissioned the RAND Corporation—a defense
8 consultancy formed after World War II to connect military planning with research
9 and development decisions, and which now operates as an independent think tank
10 financed by the U.S. government—to determine the impact of permitting
11 transgender service members to serve openly. The study titled *Assessing the*
12 *Implications of Allowing Transgender Personnel to Serve Openly* (the “RAND
13 Study”) ultimately concluded that allowing transgender people to serve openly
14 would cost little and have no significant impact on unit readiness. As for the
15 potential impact on healthcare costs, the RAND Study concluded that health care
16 costs for transgender service members, including costs related to gender transition-
17 related treatment, would “have little impact on and represents an exceedingly small
18 proportion of [DOD’s] overall health care expenditures.”

19 35. Based on the results of this comprehensive review process, on June
20 30, 2016, the DOD announced its conclusion that open transgender service would
21 best serve the military’s interests in recruiting and retaining the most highly
22 qualified personnel. In issuing the June 2016 Policy, Secretary Carter explained
23 that this conclusion was based on a number of considerations, including *inter alia*:
24 (a) the fact that thousands of transgender people already serve, and that the military
25 has already invested hundreds of millions of dollars to train them collectively;
26 (b) that the military benefits by retaining individuals who are already trained and
27 who have already proven themselves; (c) the need to provide both transgender
28 service members and their commanders with clear guidance on questions such as

1 deployment and medical treatment; and (d) the principle that “*Americans who want*
2 *to serve and can meet our standards should be afforded the opportunity to compete*
3 *to do so.*”

4 36. Secretary Carter announced that “[e]ffective immediately, transgender
5 Americans may serve openly. They can no longer be discharged or otherwise
6 separated from the military just for being transgender.” This unequivocal statement
7 was accompanied by the formal issuance of Directive-Type Memorandum 16-005,
8 *Military Service of Transgender Service Members*, which lifted the ban on military
9 service and accession by openly transgender people. Directive-Type Memorandum
10 16-005 sets forth the DOD’s conclusion, based on thorough review and analysis,
11 that:

12 The defense of the Nation requires a well-trained, all-
13 volunteer force comprised of Active and Reserve
14 Component Service members ready to deploy worldwide
15 on combat and operational missions. The policy of the
16 Department of Defense is that service in the United States
17 military should be open to all who can meet the rigorous
18 standards for military service and readiness. Consistent
19 with the policies and procedures set forth in this
20 memorandum, transgender individuals shall be allowed
to serve in the military. These policies and procedures
are premised on my conclusion that open service by
transgender Service members while being subject to the
same standards and procedures as other members with
regard to their medical fitness for duty, physical fitness,
uniform and grooming, deployability, and retention, is
consistent with military readiness and with strength
through diversity.

21 In accordance with Directive-Type Memorandum 16-005, transgender people
22 were to be permitted to enlist in the U.S. military and openly serve beginning on
23 July 1, 2017.

24 37. In furtherance of its conclusions and in an effort to consistently and
25 effectively implement this change in policy, the DOD took the following actions:

- 26 • In September 2016, the DOD issued an implementation handbook
27 entitled *Transgender Service in the United States Military* setting forth
28 guidance and instructions to both military service members and

1 commanders regarding how to understand and implement the new
2 policies enabling open service of transgender service members.

- 3 • On October 1, 2016, the Office of the Undersecretary of Defense for
4 Personnel and Readiness issued DOD Instruction 1300.28 entitled *In-*
5 *Service Transition for Transgender Service Members*. The instruction set
6 forth further guidance to ensure open service by transgender service
7 members, including details regarding revisions to medical treatment
8 provisions.
- 9 • The Acting Assistant Secretary of Defense for Health Affairs issued a
10 memorandum entitled *Guidance for Treatment of Gender Dysphoria for*
11 *Active and Reserve Component Service Members*.
- 12 • On November 29, 2016, the DOD revised Directive 1020.02E, *Diversity*
13 *Management and Equal Opportunity in the DOD*, expressly to prohibit
14 discrimination and harassment on the basis of gender identity.

15 38. In line with the guidance issued by the DOD, the United States Coast
16 Guard adopted similar policies and procedures for service by transgender service
17 members.

18 **B. Defendants Institute an Arbitrary Ban on Transgender Service**
19 **Members**

20 39. In a series of statements released via Twitter on July 26, 2017,
21 Defendant President Donald J. Trump abruptly announced that the United States
22 military would return to banning military service by transgender people.

23 40. He tweeted: “After consultation with my Generals and military
24 experts, please be advised that the United States Government will not accept or
25 allow Transgender individuals to serve in any capacity in the U.S. Military. Our
26 military must be focused on decisive and overwhelming victory and cannot be
27 burdened with the tremendous medical costs and disruption that transgender in the
28 military would entail. Thank you.”

1 41. This July 26, 2017 announcement was rendered without any
2 significant study or analysis and lacks a rational basis.

3 42. Shortly after the Twitter announcement, members of both major
4 political parties criticized this abrupt change in policy, and fifty six former generals
5 and admirals issued a public statement denouncing the new policy.

6 43. Less than one month following his initial Twitter statement,
7 Defendant President Trump issued the August 25 Directive formalizing the
8 administration's policy. The August 25 Directive orders co-Defendants (i) to ban
9 the "accession of transgender individuals into military service," (ii) to "halt all use
10 of DOD or DHS resources to fund sex reassignment surgical procedures for
11 military personnel" except in limited instances, and (iii) to implement a plan to
12 return to the prohibition on military service for transgender people, including those
13 current service members who, in reliance on the June 2016 Policy, came out to their
14 command.

15 44. Similar to the July 26, 2017 Twitter announcement, the August 25
16 Directive was rendered without any significant study or analysis and lacks a
17 rational basis.

18 45. The stated bases offered in support of Defendants' August 25
19 Directive are pretextual, arbitrary, capricious, and unsupported by facts, evidence,
20 or analysis. Indeed, the DOD previously concluded in Directive Type
21 Memorandum 16-005, after more than a year of exhaustive analysis, that "open
22 service by transgender Service members . . . is consistent with military readiness,"
23 as well as the "defense of the Nation" generally. Since issuance of Directive Type
24 Memorandum 16-005, transgender people have been serving openly without
25 incident or any negative impact upon military readiness, lethality, unit cohesion, or
26 the national defense generally.

27 46. The government-commissioned RAND Report concluded that the
28 "costs of gender transition related healthcare treatment are relatively low," and

1 amount to possible increases of only between “\$2.4 million and \$8.4 million
2 annually, representing a 0.04% to 0.13% increase in active-component healthcare
3 expenditures.”

4 47. In contrast, separating and replacing currently serving transgender
5 service members would be costly and cause disruption, and also would undermine
6 unit cohesion, respect for military authority, and morale. Research from the Naval
7 Postgraduate School published by the Palm Center in August 2017 (the “Palm
8 Center Report”) concludes that the “financial cost of fully implementing President
9 Trump’s ban on transgender service members would be \$960 million,” assuming
10 the military acted to expel the estimated 12,800 transgender service members and
11 needed to replace them. Even assuming the military acted to expel and replace
12 only 1,320 transgender service members, which was the RAND Report’s lowest
13 estimate of the total number of active transgender service members, the Palm
14 Center Report indicates the financial cost of fully implementing President Trump’s
15 ban would still be at least \$99 million.

16 48. The August 25 Directive instructed Secretary Mattis to submit to the
17 President by February 21, 2018 a “plan for implementing both the general policy .
18 . . and specific directives” that the August 25 Directive contained. It further
19 instructed Secretary Mattis to determine “how to address transgender individuals
20 currently serving.”

21 49. Just days after the August 25 Directive was issued, Secretary Mattis
22 issued a statement on “Military Service by Transgender Individuals,” in which he
23 stated that he had “received the Presidential Memorandum” and would “carry out
24 the president’s policy direction.”

25 **C. Secretary Mattis Delivers the President’s Requested Implementation**
26 **Plan to Effectuate the August 25 Directive**

27 50. After Secretary Mattis issued his statement on “Military Service by
28 Transgender Individuals,” he then issued two additional memoranda, one providing

1 “Interim Guidance” and the other directing the development of an Implementation
2 Plan. He stated in the “Interim Guidance” that he intended to “comply with the
3 Presidential Memorandum” and “present the president with a plan to implement
4 the [August 25 Directive] on the required timeline.” In the second memorandum,
5 a “Terms of Reference,” Secretary Mattis stated that he would empanel “experts”
6 to “develop[] an Implementation Plan on military service by transgender
7 individuals, to effect the [August 25 Directive].”

8 51. On or around February 22, 2018, Secretary Mattis delivered to the
9 President the requested Implementation Plan in accordance with the President’s
10 timeline as set forth in the August 25 Directive. It consists of a memorandum from
11 Secretary Mattis to the President entitled “Military Service by Transgender
12 Individuals,” and a document entitled “Department of Defense Report and
13 Recommendations on Military Service by Transgender Persons,” totaling 44 pages
14 combined.

15 52. The Transgender Military Ban is facially discriminatory and prohibits
16 transgender military service, as required by the President’s August 25 Directive.

17 53. First, it generally bans from service anyone with a history of gender
18 dysphoria, a condition associated almost exclusively with transgender persons.
19 Second, it bans anyone who undergoes or requires gender transition. Third, to the
20 extent that there are any individuals who identify as transgender but do not fall
21 under the first two categories, the Transgender Military Ban allows them to serve
22 only in their “biological sex.” Thus, they may not serve unless they suppress the
23 precise characteristic that defines them as transgender.

24 54. The Transgender Military Ban effectuates the President’s intended
25 policy as articulated in his July 2017 tweets and the August 25 Directive—that
26 openly transgender persons are generally barred from serving in conformity with
27 their gender identity and from receiving medically necessary transition-related
28 care.

1 61. Defendants’ military policy excluding transgender persons from eligible
2 military service discriminates against Plaintiffs and Plaintiff’s members based on
3 their sex and transgender status, without lawful justification, in violation of the
4 Equal Protection component of the Due Process Clause of the Fifth Amendment.

5 62. Defendants’ exclusion of transgender persons from military service
6 lacks a rational basis, is arbitrary, and cannot be justified by any government
7 interest.

8 63. Defendants’ military policy denying equal health benefits to
9 transgender persons also discriminates against Plaintiffs and Plaintiff’s members
10 based on their sex and transgender status, without lawful justification, in violation
11 of the Equal Protection component of the Due Process Clause of the Fifth
12 Amendment.

13 64. Defendants’ action to deny transgender persons equal health benefits
14 lacks a rational basis, is arbitrary, and cannot be justified by any government
15 interest.

16 65. Defendants’ above-described discrimination against transgender
17 persons—a discrete and insular group that lacks the power to protect its rights
18 through the legislative process, and one that has suffered a history of targeted
19 discrimination and exclusion—is not narrowly tailored to advance any important
20 or compelling government interest.

21 66. As a result of Defendants’ commencement and enforcement of the
22 ban, Plaintiffs and Plaintiff’s members have suffered injuries and will suffer further
23 irreparable harm to their constitutional rights under the Fifth Amendment if the
24 directive is not declared unconstitutional and enjoined.

25 67. Plaintiffs have no adequate remedy at law.

26 **SECOND CLAIM FOR RELIEF**
27 **Fifth Amendment – Due Process**
28 **(against all Defendants)**

1 68. Plaintiffs re-allege and incorporate by reference the preceding
2 allegations in this Complaint as if fully set forth herein.

3 69. The Due Process Clause of the Fifth Amendment prohibits the federal
4 government from depriving individuals of their property or other interests without
5 due process of law.

6 70. The Due Process Clause of the Fifth Amendment requires, at a
7 minimum, that government action have some rational basis before depriving any
8 person of his or her property or liberty interests.

9 71. Defendants' June 2016 Policy permitting transgender persons to serve
10 openly in the military, together with reliance by Plaintiffs and Plaintiff's members
11 on that policy, created a protected interest in their ability to continue serving in the
12 military as openly transgender persons.

13 72. Defendants' policy deprives Plaintiffs and Plaintiff's members of their
14 protected interests in continued military service as openly transgender persons.

15 73. Defendants' deprivation of Plaintiffs' and Plaintiff's members'
16 protected interests in continued military service as openly transgender persons is
17 arbitrary and without any rational basis.

18 74. As a result of Defendants' implementation and enforcement of the
19 Transgender Military Ban, Plaintiffs and Plaintiff's members have suffered injuries
20 and will suffer further irreparable harm to their constitutional rights under the Fifth
21 Amendment if the directive is not declared unconstitutional and enjoined.

22 75. Plaintiffs have no adequate remedy at law.

23 **THIRD CLAIM FOR RELIEF**

24 **Fifth Amendment – Right to Privacy**

25 **(against all Defendants)**

26 76. Plaintiffs re-allege and incorporate by reference the preceding
27 allegations in this Complaint as if fully set forth herein.

28

1 85. By banning military service by transgender people, Defendants'
2 Transgender Military Ban violates Plaintiffs' and Plaintiff's members' rights of
3 free speech and expression under the First Amendment by impermissibly
4 restricting, punishing, and chilling speech and communicative conduct that would
5 tend to identify Plaintiffs and Plaintiff's members as transgender people. The
6 Transgender Military Ban impermissibly burdens such speech on the basis of the
7 content and viewpoint of such speech.

8 86. As a result of Defendants' implementation and enforcement of the
9 Transgender Military Ban, Plaintiffs and Plaintiff's members have suffered injuries
10 and will suffer further irreparable harm to their constitutional rights under the First
11 Amendment if they are not declared unconstitutional and enjoined.

12 87. Plaintiffs have no adequate remedy at law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE Plaintiffs pray for judgment on their Complaint as follows:

- 15 1. That this Court find and declare that Defendants' policy that excludes
16 transgender people from federal military service and bans the
17 accession of transgender people into the U.S. military is
18 unconstitutional;
- 19 2. That Defendants, and their officers, agents, servants, employees, and
20 attorneys, and those persons in active concert or participation with
21 them, preliminarily and permanently be enjoined from enforcing a
22 policy that excludes transgender people from serving or enlisting in
23 the military;
- 24 3. That Plaintiffs be awarded their costs and reasonable attorneys' fees;
25 and
- 26 4. For such other relief as the Court may deem just and proper.
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Dated: [●], 2019

Respectfully submitted,
LATHAM & WATKINS LLP

By /s/ Amy C. Quartarolo
Marvin S. Putnam
Amy C. Quartarolo
Harrison J. White
Attorneys for Plaintiffs

EXHIBIT B

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8 *Talbott, Tamasyn Reeves, Jaquice Tate, John Does*
9 *1-2, Jane Doe, and Equality California*

9 *Counsel continued on Next Page*

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 AIDEN STOCKMAN, **et al.** NICOLAS
13 TALBOTT; TAMASYN REEVES;
14 JAQUICE TATE; JOHN DOES 1-2;
JANE DOE; and EQUALITY
15 CALIFORNIA,

16 Plaintiffs,

17 v.

18 **DONALD J. TRUMP, et al.**
MARK T. ESPER, in his official
19 capacity as Secretary of Defense;
MARK A. MILLEY, in his official
20 capacity as Chairman of the Joint
Chiefs of Staff; RICHARD V.
21 SPENCER, in his official capacity as
Secretary of the Navy; RYAN D.
22 MCCARTHY, in his official capacity
as Acting Secretary of the Army;
23 MATTHEW DONOVAN, in his
official capacity as Acting Secretary
24 of the Air Force; and KEVIN
MCALEENAN, in his official
25 capacity as Acting Secretary of
Homeland Security,

26 Defendants.

27 STATE OF CALIFORNIA,
28 Plaintiff-Intervenor,

CASE NO. 5:17-CV-01799-JGB-KK

PLAINTIFFS' AMENDED
COMPLAINT

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v.
DONALD J. TRUMP, et al.
MARK T. ESPER, in his official
capacity as Secretary of Defense;
MARK A. MILLEY, in his official
capacity as Chairman of the Joint
Chiefs of Staff; RICHARD V.
SPENCER, in his official capacity as
Secretary of the Navy; RYAN D.
MCCARTHY, in his official capacity
as Acting Secretary of the Army;
MATTHEW DONOVAN, in his
official capacity as Acting Secretary
of the Air Force; and KEVIN
MCALEENAN, in his official
capacity as Acting Secretary of
Homeland Security,

Defendants.

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1 **I. NATURE OF THE ACTION**

2 1. This action, brought on behalf of transgender individuals, seeks to
3 ensure that all qualified Americans have an equal opportunity to serve in the United
4 States military, that transgender individuals who seek to enlist or who serve in
5 the military are free from arbitrary and invidious discrimination, and that the
6 constitutional rights of transgender ~~individuals~~service members and recruits to
7 autonomy, privacy, and freedom of expression are respected and protected.

8 2. In June 2016, following an exhaustive ~~multi-year~~ review supported
9 by reams of data, interviews, and analysis, the Department of Defense (“DOD”)
10 announced that it would reverse its prior unconstitutional policy barring openly
11 transgender people from serving in the military, and would implement a policy
12 ~~expressly~~ allowing transgender people to serve openly in the United States armed
13 forces (“June 2016 Policy”). Since that announcement, and in reliance thereon,
14 ~~hundreds of~~numerous American ~~servicemembers~~service members followed
15 protocol and informed their chain of command that they are transgender. ~~These~~
16 ~~transgender servicemembers have continued to serve without incident.~~ In
17 addition, as a consequence of the DOD’s announced policy, after years of unlawful
18 exclusion, ~~openly~~ transgender persons ~~have believed for the first time that it is~~
19 ~~possible for them to~~relied on the new policy and sought to enlist and serve
20 their country in the Armed Forces.

21 3. ~~However, in a burst of Twitter statements on~~On July 26, 2017,
22 ~~Defendant~~ President Donald J. Trump abruptly announced via a series of Twitter
23 statements that the United States military would return to discriminating
24 unlawfully against transgender people solely because of their transgender status.
25 By proclaiming that “the United States Government will not accept or allow
26 Transgender individuals to serve in any capacity in the U.S. Military,” President
27 Trump ~~signaled~~announced that transgender troops would be barred ~~altogether~~
28 from serving ~~openly~~ in our Armed Forces.

1 4. On August 25, 2017, ~~Defendant~~ President Trump formalized the
2 government’s policy, directing ~~his co-Defendants as~~ leaders of the DOD and
3 Department of Homeland Security (“DHS,” and together with the DOD, the
4 “Departments”) to reinstate the ban “on military service by transgender individuals
5 that was in place prior to June 2016”. See Memorandum Regarding Military
6 Service by Transgender Individuals, 82 Fed. Reg. 41319 (entered Aug. 30, 2017)
7 (publication forthcoming) (the “August 25 Directive”). Specifically, President
8 Trump directed the Departments (i) to ban the “accession of transgender
9 individuals into military service,” (ii) to “halt all use of DOD or DHS resources to
10 fund sex reassignment surgical procedures for military personnel” except in limited
11 instances, and (iii) to implement a plan to return to the prohibition on military
12 service for transgender people, ~~including those current servicemembers who, in~~
13 ~~reliance on the June 2016 Policy, came out to their command. See~~
14 ~~Memorandum Regarding Military Service by Transgender Individuals, Fed.~~
15 ~~Reg. (entered Aug. 25, 2017) (publication forthcoming). President,~~
16 President Trump ordered Secretary Mattis to develop a “plan for
17 implementing” his directives by February 21, 2018 and further ordered that
18 they “take effect on March 23, 2018.” President Trump’s August 25 Directive,
19 ~~which carries the force of law, does~~ did not reference any evidence, facts, or
20 analysis to support the imposition of this categorical ban.

21 5. On February 22, 2018, Secretary Mattis submitted a plan to
22 implement a ban on transgender people serving in the military, as ordered by
23 President Trump in the August 25 Directive. See Mattis Memorandum to the
24 President, February 22, 2018 (together with an accompanying report
25 described below, the “Transgender Military Ban”). The plan set forth a series
26 of restrictions exclusively targeting “Transgender persons.” In particular, the
27 plan instructed:
28

1 a. “Transgender persons¹ with a history or diagnosis of gender
2 dysphoria are disqualified from military service, except under
3 . . . limited circumstances,” including “(1) if they have been
4 stable for 36 consecutive months in their biological sex prior to
5 accession”; “(2) Service members diagnosed with gender
6 dysphoria after entering into service may be retained if they do
7 not require a change of gender”; and (3) if they are
8 “currently service” and “have been diagnosed with gender
9 dysphoria since the previous administration’s policy took
10 effect and prior to the effective date of this new policy.”

11 b. “Transgender persons who require or have undergone gender
12 transition are disqualified from military service.”

13 c. “Transgender persons without history or diagnosis of gender
14 dysphoria,” and who may thus evade one or both of the above
15 restrictions, may serve only “in their biological sex.”

16 6. Taken together, these instructions implement the President’s
17 directive to ban transgender persons from serving in conformity with their
18 gender identity – the defining quality of what makes them transgender.
19 Collectively, President Trump’s tweets, the August 25 Directive, and the
20 Transgender Military Ban brand transgender men and women as inherently
21 unfit to serve and place current transgender service members into a separate
22 and unequal class of persons who serve under unequal terms and conditions
23 for retention in service, simply because they are transgender.²

24 7. In a March 23, 2018 memorandum, President Trump
25 acknowledged receipt of the plan submitted to him by Secretary Mattis—

26
27 ¹ Emphases throughout this Amended Complaint are added.

28 ² The plan proposed by Secretary Mattis and adopted by military policy
 allows for those “diagnosed with gender dysphoria since the previous
 administration’s policy took effect” to continue in service.

1 which was confirmed to have been developed “[p]ursuant to [the President’s]
2 memorandum of August 25, 2017”—and authorized the Secretary of Defense
3 to carry out the instructions included in the plan, effectively banning all future
4 military service by transgender individuals.

5 8. On March 12, 2019, the Office of the Deputy Secretary of Defense
6 issued formal instructions for effectuating the Transgender Military Ban.

7 9. The implementation of the Transgender Military Ban was
8 enjoined until April 2019, at which point it went fully into effect. Since then,
9 no transgender individuals have been permitted to enlist in the military. In
10 addition, any currently serving transgender individual is subject to discharge
11 if they reveal their transgender status, are diagnosed with gender dysphoria,
12 or seek to transition. Current service members who already openly identify
13 as transgender serve only on sufferance, on unequal terms with non-
14 transgender troops, and under the pall of stigma cast by the ban.

15 10. 5.—Plaintiffs here are (i) Aiden Stockman, Nicolas Talbott, and
16 Tamasyn Reeves, transgender individuals who have taken steps to enlist in the
17 military,

18 (ii) Jaquice Tate and several other openly transgender active
19 ~~servicemembers~~service members, proceeding as anonymous plaintiffs, who ~~will~~
20 ~~be impacted by President Trump’s August 25 Directive~~are affected by the
21 Transgender Military Ban, and (iii) Equality California, the nation’s largest
22 statewide lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) civil rights
23 organization.

24 11. 6.—The ~~August 25 Directive~~Transgender Military Ban inflicts
25 serious injuries upon Plaintiffs and Plaintiff EQCA’s members. First, the ~~August~~
26 ~~25 Directive~~Transgender Military Ban expressly ~~forecloses~~prevents
27 transgender people from acceding into military service. Second, the ~~August 25~~
28 ~~Directive~~Transgender Military Ban causes immediate and concrete injury to the

1 current ~~servicemembers~~service member Plaintiffs, each of whom came out as
2 transgender to their chain of command in reliance on the June 2016 Policy lifting
3 the prior ban. ~~Specifically, the current servicemember Plaintiffs will be subject~~
4 ~~to involuntary separation beginning March 23, 2018, suspending their~~
5 ~~reasonable expectation of continued service. Third, the August 25 Directive~~
6 ~~denies the current servicemember Plaintiffs~~These Plaintiffs serve under
7 differential terms that are not applied to non-transgender service members, in
8 addition to being singled out and stigmatized by a policy that deems them
9 unfit. They are also harmed because they serve as an exception to policy.
10 Their peers and command predictably treat them differently in ways that
11 impact their advancement and opportunities. Third, the Transgender
12 Military Ban harms current service members who have not yet publicly
13 identified themselves as transgender by subjecting them to discharge if they
14 do so and by denying them equal access to ~~full~~ medical care. Whereas all other
15 service members can obtain the medical care they need, transgender service
16 members are denied that care and are subject to discharge instead. Fourth, the
17 ~~August 25 Directive~~Transgender Military Ban chills the speech and expression
18 of each of the Plaintiffs and Plaintiff EQCA's members.

19 ~~12. 7. Fundamentally, without any rational basis, the August 25~~
20 ~~Directive~~The Transgender Military Ban denies Plaintiffs and their members the
21 equal protection of the laws, their right to freedom of expression, and their right to
22 liberty and privacy, in violation of the First and Fifth Amendments to the United
23 States Constitution. Accordingly, Plaintiffs seek a declaration that the ~~August 25~~
24 ~~Directive~~ban is unconstitutional, and an injunction preventing Defendants from
25 ~~implementing and~~ enforcing it.

JURISDICTION AND VENUE

26
27 ~~13. 8.~~ This court has jurisdiction over the claims pursuant to 28 U.S.C.
28 Sections 1331 and 1343. This Court has further remedial authority under the

1 Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202 *et seq.*

2 14. ~~9.~~ Venue is proper in the Central District of California under 28 U.S.C.
3 Section 1391(e) because Plaintiffs reside in this judicial district and a substantial
4 part of the events giving rise to this action occurred in this District.

5 PARTIES

6 15. ~~10.~~ Plaintiff Aiden Stockman is a transgender man who wants to serve
7 his country through military service, and has taken steps to do so. Mr. Stockman;
8 ~~20,~~ was raised and currently resides in California. Mr. Stockman has long been
9 interested in serving his country and intended to join the Air Force. As a young
10 man, Mr. Stockman spoke with friends and neighbors who were stationed at nearby
11 Twenty-Nine Palms Air Force Base to discuss what it is like to serve in the Air
12 Force. Mr. Stockman came out to his family as transgender in the eighth grade. At
13 or about that time, he began seeking medical advice related to gender transition. In
14 June 2014, when he was in the eleventh grade, Mr. Stockman began hormone
15 replacement therapy (“HRT”). Later that year, Mr. Stockman took the Armed
16 Services Vocational Aptitude Battery (“ASVAB”) test consistent with his intention
17 of acceding into the military. He hoped to join the Air Force following his
18 graduation from high school, but wanted to complete a double-mastectomy (i.e.,
19 “top surgery”) first. After finding a doctor, Mr. Stockman ultimately made plans
20 to undergo top surgery, planning to enlist thereafter. The June 2016 Policy
21 permitting open service by transgender people gave Mr. Stockman comfort that he
22 would be able to pursue a career of military service. However, upon learning of
23 the ~~August 25 Directive~~ Transgender Military Ban, Mr. Stockman felt crushed,
24 ~~as~~ knowing that he will no longer be able to pursue his dream of serving his
25 country in the Air Force.

26 16. ~~11.~~ Plaintiff Nicolas Talbott, ~~23,~~ is a transgender man currently
27 residing in Ohio. After graduating from college with a degree in sociology and
28 criminology, he planned to enlist in the military in pursuit of a career in counter-

1 terrorism. Prior to issuance of the June 2016 Policy, Mr. Talbott contacted military
2 recruiters on several occasions to express his interest in serving his country, but
3 each time he was informed that regulations prohibited his service because he is
4 transgender. After the June 2016 Policy was announced, Mr. Talbott found a
5 recruiter for the Air Force National Guard who advised that he would help him
6 enlist. Mr. Talbott met with the recruiter in December 2016 and filled out
7 paperwork confirming his interest in acceding into the military. The recruiter asked
8 Mr. Talbott to obtain a letter from his doctor confirming that being transgender did
9 not have any adverse effects on his life or his ability to perform military-related
10 duties. The recruiter advised that the next step in the process would be to meet
11 with the regional Military Entrance Processing Station (“MEPS”) for a physical
12 exam and to take the ASVAB test, but later advised that MEPS would not begin
13 processing for transgender enlistees until mid-2017. Mr. Talbott scheduled his
14 appointment with his doctor, began studying practice ASVAB exams, and was
15 training regularly for the physical exam, all in anticipation of enlisting in 2017.
16 ~~However, when President Trump tweeted about the re-enactment of the ban~~
17 ~~on transgender military service and then issued the August 25~~
18 After reviewing
19 Mr. Talbott’s military medical questionnaire, MEPS denied his enlistment for
20 reasons relating to his transgender status and for other reasons as
21 well. Because he still wished to pursue a military career, Mr. Talbott enrolled
22 at Kent State University to participate in a Reserve Officer Training Corps
23 (“ROTC”) program. Mr. Talbott borrowed additional educational loans for
24 that purpose, relying on the expectation of his future eligibility for the
25 military’s loan forgiveness program. He participated in ROTC until May 5,
26 2019. Because of the military ban, he could not continue further in ROTC, is
27 not currently eligible for the military’s loan forgiveness program, and cannot
28 access the healthcare benefits that he would have ultimately received after
being commissioned to the United States Army. Mr. Talbott intends to re-

1 enroll in an ROTC program or pursue other enlistment options once the ban
2 is lifted.

3 ~~+++~~

4 ~~Directive, Mr. Talbott was devastated and knew that he would no longer be~~
5 ~~able to pursue a military career.~~

6 17. ~~12.~~ Plaintiff Tamasyn Reeves is a transgender woman currently
7 residing
8 in California. Ms. Reeves, ~~29~~, has wanted to join the Navy since she was 17. Her
9 family has a tradition of service in the military: her grandfather served in the Navy
10 during the Korean War, two of her uncles served in the Air Force, and two of her
11 cousins served in the Navy. Ms. Reeves first spoke to a recruiter at age 21. The
12 recruiter told Ms. Reeves that she was not eligible to enlist because of the
13 military's then-policy banning LGBTQ individuals from military service. ~~At age~~
14 ~~23, Ms. Reeves began HRT, but continued to be barred from enlistment.~~
15 Following issuance of the June 2016 Policy, Ms. Reeves decided to enlist as soon
16 as the final procedures for accession of transgender individuals were solidified.
17 ~~The abrupt reversal in the August 25 Directive~~ and she completed her
18 education. Because the Transgender Military Ban prevents her accession into
19 the military, despite her longstanding desire to do so, Ms. Reeves is currently
20 seeking non-military employment. She recently earned her associates degree
21 in hopes of improving her employment opportunities. However, Ms. Reeves
22 intends to enlist when the Transgender Military Ban is lifted.

23 18. ~~13.~~ Plaintiff Jaquice Tate is a transgender man currently serving in the
24 Army. He enlisted in 2008 because he wanted a career in which he could take
25 pride. He hopes to serve a ~~twenty-year~~ twenty-year term. Mr. Tate has served
26 domestically and internationally, including a deployment to Iraq. Currently, he is
27 a Military Police Officer and he has served on drug suppression teams. Each of
28 his command leaders awarded him a Colonel Coin of Excellence and he has

1 received numerous Army Achievement Medals. The Army has approved his
2 application to become a Drill Sergeant. In reliance on the June 2016 Policy, Mr.
3 Tate informed his chain of command of his true gender. His chain of command
4 has supported him throughout his process of medical transition. However, ~~since~~
5 ~~issuance of the August 25 Directive, Mr. Tate fears that he will lose his job~~
6 ~~and retirement opportunities after his nearly ten years of dedicated service.~~
7 ~~Mr. Tate and his wife had planned to begin the process of having children~~
8 ~~next year, but the financial uncertainty caused~~ though selected twice for Drill
9 Sergeant training, he was unable to participate in that training because he
10 would have been required to participate as a female, something that, as a
11 transgender man, he could not do.

12 ~~+++~~

13 ~~by the August 25 Directive is forcing them to place their future family on~~
14 ~~hold indefinitely.~~

15 19. ~~14. Plaintiffs~~ Plaintiff John Doe 1-2 and Jane Doe are active or
16 formerly active duty ~~servicemembers~~ service members who serve openly as
17 transgender persons. They proceed under pseudonyms for fear of retribution.

18 20. ~~15.~~ Plaintiff John Doe 1 is a transgender man who has served in the
19 United States Air Force since 2012. John Doe 1 comes from a military family; his
20 father served in the military for 30 years. John Doe 1 ~~has~~ had plans to make a
21 career out of military service as well. John Doe 1 ~~currently is~~ was previously
22 stationed ~~and resides~~ in California. ~~In reliance on the June 2016 Policy~~
23 ~~permitting open service by transgender servicemembers, John Doe 1 felt that~~
24 ~~the military had become an “open space” to come out. In April 2017, John~~
25 ~~Doe 1 came out to his chain of command. John Doe 1 subsequently met with~~
26 ~~Air Force medical doctors and psychologists to discuss gender transition, and~~
27 ~~received a diagnosis of gender dysphoria. John Doe 1 is awaiting a meeting~~
28 ~~with his medical team and commander to discuss his transition plan. John~~

1 ~~Doe 1 recently.~~ John Doe 1 was awarded Academic Achievement and
2 Distinguished Graduate distinctions from the Airmen Leadership School, and
3 received a “Must Promote” performance report. ~~Although his colleagues and~~
4 ~~chain of command have been supportive of John Doe 1 since he came out, John~~
5 ~~Doe 1 believes that the August 25 Directive will preclude him from obtaining~~
6 ~~promotions and further advancing his career in the Air Force.~~ In reliance on
7 the June 2016 Policy permitting open service by transgender service members,
8 John Doe 1 came out to his chain of command in April, 2017. After
9 experiencing firsthand the disparate treatment of transgender airmen now
10 perceived as “second class,” John Doe 1 made the difficult decision to leave
11 the military. John Doe 1 wanted to join the National Guard or the Reserves
12 after his service. A Reserves recruiter reached out to him several times for
13 possible enrollment, and he also spoke to an on-base recruiter for the National
14 Guard. Upon learning he was transgender, however, both recruiters told John
15 Doe 1 that he was ineligible to join.

16 21. ~~16.~~ Plaintiff John Doe 2 is a transgender man currently serving in the
17 Army. John Doe 2 voluntarily enlisted with the Army to serve his country, to
18 achieve financial security, and to honor his family’s tradition of service. His
19 technical expertise pertains to the operations, diagnostics, and maintenance of the
20 multichannel communications systems necessary for the Army to make real-time
21 strategic and tactical decisions. His position requires Secret-level Security
22 Clearance. John Doe 2 earned an early promotion ~~wavier~~ waiver to become an
23 Army Specialist and was awarded two Colonel Coins of Excellence. John Doe 2
24 is on track to receive an Army Commendation Medal award. In reliance on the
25 June 2016 Policy, he came out as transgender to his unit, his chain of command,
26 and his medical providers. John Doe 2 has begun medical transition ~~to his true~~
27 ~~gender, and has received the support of his chain of command and his unit.~~
28 ~~John Doe 2’s current term of enlistment ends in 2020. He had hoped to become~~

1 ~~a twenty-year veteran, but under the shadow of the August 25 Directive, John~~
2 ~~Doe 2 fears that his future in the military, and his ability to support his family,~~
3 ~~is in jeopardy; he plans to renew his contract and remain in the Army.~~

4 22. ~~17.~~ Plaintiff Jane Doe is a transgender woman currently serving in the
5 Air Force. In the seven years since she enlisted, Jane Doe has been deployed twice.
6 She is currently ~~is~~-stationed abroad as a Staff Sergeant. Jane Doe joined the military
7 in hopes of serving her country, achieving financial stability and garnering personal
8 skills such as discipline, self-respect and service of others. After the ban on
9 transgender service was lifted by the June 2016 Policy, Jane Doe came out to her
10 chain of command. She found her military colleagues to be supportive. Jane Doe
11 carefully reviewed the guidance and policies issued by the DOD, and after meeting
12 with her doctors, ~~made the decision to pursue transition-related medical care.~~
13 ~~While she~~she began her medical transition in fall 2017. Jane Doe has received
14 local quarterly awards, early promotions, two achievement medals and one
15 commendation medal. In spring 2018, she ~~now fears that the August 25~~
16 ~~Directive compromises~~was promoted to Technical Sergeant, and she is on
17 track for consideration to be promoted to Master Sergeant. Despite continuing
18 to serve with distinction, Jane Doe is concerned that the Transgender Military
19 Ban will compromise her ability to achieve ~~promotion, jeopardizes~~future
20 promotions, jeopardize her medical benefits, and ultimately ~~forecloses~~foreclose
21 her ability to continue her career in the military.

22 23. ~~18.~~ Plaintiff Equality California (“EQCA”) is an I.R.S. 501(c)(4)
23 organization dedicated to LGBTQ civil rights. Specifically, EQCA is dedicated to
24 combatting discrimination and injustice on the basis of sexual orientation and
25 gender identity, and to protecting the fundamental rights of those within the
26 LGBTQ community and the vulnerable communities of which they are a part. Its
27 more than 500,000 members include transgender individuals in active military
28 service, transgender military veterans, and transgender individuals who have taken

1 steps to serve and ultimately intend to pursue long-term careers in the United States
2 Armed Forces. EQCA's membership also includes family members and
3 dependents of openly transgender individuals, each of whom share an interest in
4 ensuring that all qualified individuals wishing to serve their country through
5 military service are permitted to do so regardless of their gender identity.

6 ~~19. Defendant Donald J. Trump is President of the United States and~~
7 ~~Commander in Chief of the Armed Forces of the United States. On July 26,~~
8 ~~2017, President Trump announced via Twitter that transgender people would~~
9 ~~not be permitted to serve "in any capacity in the U.S. military." On August~~
10 ~~25, 2017, he delivered an official executive directive to the Departments~~
11 ~~concerning "Military Service by Transgender Individuals." The August 25~~
12 ~~Directive, which is to be formally published in the Federal Register, unlawfully~~
13 ~~bans transgender persons from enlisting or serving openly in the military and~~
14 ~~prohibits the military from paying for certain forms of healthcare related to~~
15 ~~gender transition.~~

16 24. ~~20.~~ Defendant ~~James N. Mattis~~Mark T. Esper is the United States
17 Secretary Defense. Secretary ~~Mattis~~Esper directs the Department of Defense,
18 which has been charged with execution and implementation of the President's
19 unlawful ~~August 25 Directive~~transgender military ban.

20 25. ~~21.~~ Defendant Joseph F. Dunford, Jr. is a United States Marine Corps
21 General and serves as the current Chairman of the Joint Chiefs of Staff. In
22 conjunction with co-defendants, General Dunford, Jr. has been charged with
23 execution and implementation of the ~~President's~~ unlawful ~~August 25~~
24 ~~Directive~~transgender military ban.

25 26. ~~22.~~ Defendant Richard V. Spencer is the United States Secretary of
26 the Navy. Secretary Spencer directs the Department of the Navy and the United
27 States Marine Corps, which have been charged with execution and implementation
28 of the ~~President's~~ unlawful ~~August 25 Directive~~transgender military ban.

1 27. ~~23.~~ Defendant Ryan D. McCarthy is the Acting United States
2 Secretary of the Army. Secretary McCarthy directs the Department of the Army,
3 which has

4 ~~///~~
5 been charged with execution and implementation of the **President's**
6 unlawful ~~August 25 Directive~~ transgender military ban.

7 28. ~~24.~~ Defendant ~~Heather A. Wilson~~ Matthew Donovan is the Acting
8 United States Secretary of the Air Force. ~~She~~ He directs the Department of the Air
9 Force, which has been charged with execution and implementation of the
10 **President's** unlawful ~~August 25 Directive~~ transgender military ban.

11 29. ~~25.~~ Defendant ~~Elaine C. Duke~~ Kevin McAleenan is the Acting
12 United States Secretary of Homeland Security. ~~She~~ He directs the DHS, which is
13 responsible for the administration and operation of the United States Coast Guard,
14 and which has been charged with execution and implementation of the **President's**
15 unlawful ~~August 25 Directive~~ transgender military ban.³

16 **FACTUAL BACKGROUND**

17 **A. Following an Exhaustive Review in 2015-2016, the DOD Concluded**
18 **that Open Service by Transgender People Best Served the Interests of**
19 **U.S. Armed Forces**

20 30. ~~26.~~ In May 2014, then-Secretary of Defense Chuck Hagel directed the
21 DOD to review whether transgender people should be permitted to serve openly in
22 the U.S. armed forces.

23 31. ~~27.~~ In August 2014, the DOD amended its physical disability policy
24 to remove references to mandatory exclusion based on “sexual gender and identity
25 disorders,” and issued a new regulation instructing each branch of the armed forces
26 to assess whether there was any justification to maintain a ban on service by openly

27 ³ Several of the officials named in the Complaint, filed September 5,
28 2017, are no longer serving in the same roles. The currently serving officials
are automatically substituted under Federal Rule of Civil Procedure 25(d).

1 transgender persons.

2 32. ~~28.~~ In issuing this regulation, Secretary Hagel stated that “every
3 qualified American who wants to serve our country should have an opportunity to
4 do so if they fit the qualifications and can do it.”

5 33. ~~29.~~ Secretary Hagel was succeeded as Secretary of Defense by
6 Secretary Ashton B. Carter. In July 2015, Secretary Carter announced that the
7 military would comprehensively analyze whether there was any justification to
8 maintain the ban on service by openly transgender persons. Accordingly, Secretary
9 Carter created a working group to address this issue including the Armed Services,
10 the Joint Chiefs of Staff, the service secretaries, and personnel, training, readiness,
11 and medical specialists from across the DOD. The lengthy and comprehensive
12 review process that followed included an examination of all available data,
13 including but not limited to existing studies and research and input from
14 transgender service members, commanding officers who supervised transgender
15 service members, military readiness and personnel experts, outside expert groups,
16 and medical professionals. The review process also included a careful analysis of
17 the eighteen other countries that permit military service by openly transgender
18 people. Doctors, employers, and insurance companies were consulted regarding
19 the provision of medical care to transgender people.

20 34. ~~30.~~ The DOD also commissioned the RAND Corporation—a defense
21 consultancy formed after World War II to connect military planning with research
22 and development decisions, and which now operates as an independent think tank
23 financed by the U.S. government—to determine the impact of permitting
24 transgender ~~servicemembers~~service members to serve openly. The study titled
25 *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*
26 (the “RAND Study”) ultimately concluded that allowing transgender people to
27 serve openly would cost little and have no significant impact on unit readiness. As
28 for the potential impact on healthcare costs, the RAND Study concluded that health

1 care costs for transgender ~~servicemembers~~service members, including costs
2 related to gender transition-related treatment, would “have little impact on and
3 represents an exceedingly small proportion of [DOD’s] overall health care
4 expenditures.”

5 35. ~~31.~~ Based on the results of this comprehensive review process, on June
6 30, 2016, the DOD announced its conclusion that open transgender service would
7 best serve the military’s interests in recruiting and retaining the most highly
8 qualified personnel. In issuing the June 2016 Policy, Secretary Carter explained
9 that this conclusion was based on a number of considerations, including *inter alia*:
10 (a) the fact that thousands of transgender people already serve, and that the military
11 has already invested hundreds of millions of dollars to train them collectively;
12 (b) that the military benefits by retaining individuals who are already trained and
13 who have already proven themselves; (c) the need to provide both transgender
14 ~~servicemembers~~service members and their commanders with clear guidance on
15 questions such as deployment and medical treatment; and (d) the principle that
16 “Americans who want to serve and can meet our standards should be afforded the
17 opportunity to compete to do so.”

18 36. ~~32.~~ Secretary Carter announced that “[e]ffective immediately,
19 transgender Americans may serve openly. They can no longer be discharged or
20 otherwise separated from the military just for being transgender.” This unequivocal
21 statement was accompanied by the formal issuance of Directive-Type
22 Memorandum 16-005, *Military Service of Transgender Service Members*, which
23 lifted the ban on military service and accession by openly transgender people.
24 Directive-Type Memorandum 16-005 sets forth the DOD’s conclusion, based on
25 thorough review and analysis, that:

26 The defense of the Nation requires a well-trained, all-
27 volunteer force comprised of Active and Reserve
28 Component Service members ready to deploy worldwide
on combat and operational missions. The policy of the
Department of Defense is that service in the United States
military should be open to all who can meet the rigorous

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

12 In accordance with Directive-Type Memorandum 16-005, transgender people
13 were to be permitted to enlist in the U.S. military and openly serve beginning on
14 July 1, 2017.

15 37. ~~33.~~ In furtherance of its conclusions and in an effort to consistently
16 and effectively implement this change in policy, the DOD took the following
17 actions:

- 18 • In September 2016, the DOD issued an implementation handbook
19 entitled *Transgender Service in the United States Military* setting forth
20 guidance and instructions to both military ~~servicemembers~~service
21 members and commanders regarding how to understand and implement
22 the new policies enabling open service of transgender
23 ~~servicemembers~~service members.
- 24 • On October 1, 2016, the Office of the Undersecretary of Defense for
25 Personnel and Readiness issued DOD Instruction 1300.28 entitled *In-*
26 *Service Transition for Transgender Service Members*. The instruction set
27 forth further guidance to ensure open service by transgender
28 ~~servicemembers~~service members, including details regarding revisions
to medical treatment provisions.
- The Acting Assistant Secretary of Defense for Health Affairs issued a
memorandum entitled *Guidance for Treatment of Gender Dysphoria for*
Active and Reserve Component Service Members.
- On November 29, 2016, the DOD revised Directive 1020.02E, *Diversity*

1 *Management and Equal Opportunity in the DOD*, expressly to prohibit
2 discrimination and harassment on the basis of gender identity.

3 38. ~~34.~~ In line with the guidance issued by the DOD, the United States
4 Coast Guard adopted similar policies and procedures for service by transgender
5 ~~servicemembers~~service members.

6 **B. Defendants Institute an Arbitrary Ban on Transgender**
7 ~~Service~~Members

8 39. ~~35.~~ In a series of statements released via Twitter on July 26, 2017,
9 Defendant President Donald J. Trump abruptly announced that the United States
10 military would return to banning military service by transgender people.

11 40. ~~36.~~ He tweeted: “After consultation with my Generals and military
12 experts, please be advised that the United States Government will not accept or
13 allow Transgender individuals to serve in any capacity in the U.S. Military. Our
14 military must be focused on decisive and overwhelming victory and cannot be
15 burdened with the tremendous medical costs and disruption that transgender in the
16 military would entail. Thank you.”

17 41. ~~37.~~ This July 26, 2017 announcement was rendered without any
18 significant study or analysis and lacks a rational basis.

19 42. ~~38.~~ Shortly after the Twitter announcement, members of both major
20 political parties criticized this abrupt change in policy, and fifty six former generals
21 and admirals issued a public statement denouncing the new policy.

22 43. ~~39.~~ Less than one month following his initial Twitter statement,
23 Defendant President Trump issued the August 25 Directive formalizing the
24 administration’s policy. The August 25 Directive orders co-Defendants (i) to ban
25 the “accession of transgender individuals into military service,” (ii) to “halt all use
26 of DOD or DHS resources to fund sex reassignment surgical procedures for
27 military personnel” except in limited instances, and (iii) to implement a plan to
28 return to the prohibition on military service for transgender people, including those

1 current ~~servicemembers~~service members who, in reliance on the June 2016
2 Policy, came out to their command.

3 44. ~~40.~~ Similar to the July 26, 2017 Twitter announcement, the August 25
4 Directive was rendered without any significant study or analysis and lacks a
5 rational basis.

6 45. ~~41.~~ The stated bases offered in support of Defendants’ August 25
7 Directive are pretextual, arbitrary, capricious, and unsupported by facts, evidence,
8 or analysis. Indeed, the DOD previously concluded in Directive Type
9 Memorandum 16-005, after more than a year of exhaustive analysis, that “open
10 service by transgender Service members . . . is consistent with military readiness,”
11 as well as the “defense of the Nation” generally. Since issuance of Directive Type
12 Memorandum 16-005, transgender people have been serving openly without
13 incident or any negative impact upon military readiness, lethality, unit cohesion, or
14 the national defense generally.

15 46. ~~42.~~ The government-commissioned RAND Report concluded that the
16 “costs of gender transition related healthcare treatment are relatively low,” and
17 amount to possible increases of only between “\$2.4 million and \$8.4 million
18 annually, representing a 0.04% to 0.13% increase in active-component healthcare
19 expenditures.”

20 47. ~~43.~~ In contrast, separating and replacing currently serving transgender
21 service members would be costly and cause disruption, and also would undermine
22 unit cohesion, respect for military authority, and morale. Research from the Naval
23 Postgraduate School published by the Palm Center in August 2017 (the “Palm
24 Center Report”) concludes that the “financial cost of fully implementing President
25 Trump’s ban on transgender ~~servicemembers~~service members would be \$960
26 million,” assuming the military acted to expel the estimated 12,800 transgender
27 ~~servicemembers~~service members and needed to replace them. Even assuming
28 the military acted to expel and replace only 1,320 transgender

1 ~~servicemembers~~service members, which was the RAND Report’s lowest
2 estimate of the total number of active transgender ~~servicemembers~~service
3 members, the Palm Center Report indicates the financial cost of fully
4 implementing President Trump’s ban would still be at least \$99 million.

5 ~~44. The August 25 Directive applies to currently serving open~~
6 ~~transgender servicemembers, including Plaintiffs, who have not yet~~
7 ~~undergone gender reassignment surgery, but have openly expressed their~~
8 ~~gender identity, as well as to currently serving transgender servicemembers~~
9 ~~who have not yet come out to their chain of command, but wish to do so.~~

10 48. The August 25 Directive instructed Secretary Mattis to submit to
11 the President by February 21, 2018 a “plan for implementing both the general
12 policy . . . and specific directives” that the August 25 Directive contained. It
13 further instructed Secretary Mattis to determine “how to address transgender
14 individuals currently serving.”

15 49. Just days after the August 25 Directive was issued, Secretary
16 Mattis issued a statement on “Military Service by Transgender Individuals,”
17 in which he stated that he had “received the Presidential Memorandum” and
18 would “carry out the president’s policy direction.”

19 C. Secretary Mattis Delivers the President’s Requested Implementation
20 Plan to Effectuate the August 25 Directive

21 50. After Secretary Mattis issued his statement on “Military Service
22 by Transgender Individuals,” he then issued two additional memoranda, one
23 providing “Interim Guidance” and the other directing the development of an
24 Implementation Plan. He stated in the “Interim Guidance” that he intended
25 to “comply with the Presidential Memorandum” and “present the president
26 with a plan to implement the [August 25 Directive] on the required timeline.”
27 In the second memorandum, a “Terms of Reference,” Secretary Mattis stated
28 that he would empanel “experts” to “develop[] an Implementation Plan on

1 military service by transgender individuals, to effect the [August 25
2 Directive].”

3 51. On or around February 22, 2018, Secretary Mattis delivered to
4 the President the requested Implementation Plan in accordance with the
5 President’s timeline as set forth in the August 25 Directive. It consists of a
6 memorandum from Secretary Mattis to the President entitled “Military
7 Service by Transgender Individuals,” and a document entitled “Department
8 of Defense Report and Recommendations on Military Service by Transgender
9 Persons,” totaling 44 pages combined.

10 52. ~~45.~~The Transgender Military Ban is facially discriminatory and
11 prohibits transgender military service, as required by the President’s August
12 25 Directive ~~bars currently serving transgender servicemembers, including~~
13 Plaintiffs, from re-enlisting.

14 ~~46. The August 25 Directive bars currently serving transgender~~
15 ~~servicemembers, including Plaintiffs, from earning and obtaining promotions~~
16 ~~in rank, or from attaining the service record required to qualify for military~~
17 ~~retirement benefits.~~

18 ~~47. The August 25 Directive bars currently serving transgender~~
19 ~~servicemembers, including Plaintiffs, from receiving equal access to full~~
20 ~~medical care.~~

21 ~~48. The August 25 Directive bars transgender people who wish to pursue~~
22 ~~careers in the Armed Forces and are able to meet the standards for military~~
23 ~~service, including Plaintiffs, from acceding into the military.~~

24 53. First, it generally bans from service anyone with a history of
25 gender dysphoria, a condition associated almost exclusively with transgender
26 persons. Second, it bans anyone who undergoes or requires gender transition.
27 Third, to the extent that there are any individuals who identify as transgender
28 but do not fall under the first two categories, the Transgender Military Ban

1 allows them to serve only in their “biological sex.” Thus, they may not serve
2 unless they suppress the precise characteristic that defines them as
3 transgender.

4 54. The Transgender Military Ban effectuates the President’s
5 intended policy as articulated in his July 2017 tweets and the August 25
6 Directive—that openly transgender persons are generally barred from serving
7 in conformity with their gender identity and from receiving medically
8 necessary transition-related care.

9 55. The Transgender Military Ban contains a limited exception for
10 service members who came out in reliance on the June 2016 Policy. The
11 August 25 Directive explicitly contemplated this exception when it ordered
12 that Secretary Mattis “determine how to address transgender individuals
13 currently serving in the United States military.” This limited exemption,
14 which grandfathers in the small group of transgender service members who
15 came out in reliance on the open service policy, “is and should be deemed
16 severable from” the remainder of the policy “should [DOD’s] decision to
17 exempt these Service members be used by a court as a basis for invalidating
18 the entire policy.” Those who came out as transgender in reliance on the June
19 2016 Policy are thus forced to serve under an exception that requires them to
20 serve only on sufferance, under a general policy that stigmatizes them by
21 branding them as inferior, unfit, and a danger to their colleagues, and under
22 differential terms of service than their non-transgender peers.

23 56. In a March 23, 2018 memorandum entitled “Military Service by
24 Transgender Individuals,” President Trump acknowledged receipt of and
25 approved the Transgender Military Ban, which had been developed
26 “[p]ursuant to [the President’s] memorandum of August 25, 2017,” and
27 authorized the Secretary of Defense to carry out the Implementation Plan.
28

1 through the legislative process, and one that has suffered a history of targeted
2 discrimination and exclusion—is not narrowly tailored to advance any important
3 or compelling government interest.

4 66. ~~56.~~ As a result of Defendants’ ~~implementation~~commencement and
5 enforcement of the ~~August 25 Directive~~ban, Plaintiffs and Plaintiff’s members
6 have suffered injuries and will suffer further irreparable harm to their constitutional
7 rights under the Fifth Amendment if the directive is not declared unconstitutional
8 and enjoined.

9 67. ~~57.~~ Plaintiffs have no adequate remedy at law.

10 **SECOND CLAIM FOR RELIEF**

11 **Fifth Amendment – Due Process**

12 **(against all Defendants)**

13 68. ~~58.~~ Plaintiffs re-allege and incorporate by reference the preceding
14 allegations in this Complaint as if fully set forth herein.

15 69. ~~59.~~ The Due Process Clause of the Fifth Amendment prohibits the
16 federal government from depriving individuals of their property or other interests
17 without due process of law.

18 70. ~~60.~~ The Due Process Clause of the Fifth Amendment requires, at a
19 minimum, that government action have some rational basis before depriving any
20 person of his or her property or liberty interests.

21 71. ~~61.~~ Defendants’ June 2016 Policy permitting transgender persons to
22 serve openly in the military, together with reliance by Plaintiffs and Plaintiff’s
23 members on that policy, created a protected interest in their ability to continue
24 serving in the military as openly transgender persons.

25 72. ~~62.~~ Defendants’ ~~August 25 Directive will deprive~~policy deprives
26 Plaintiffs and Plaintiff’s members of their protected interests in continued military
27 service as openly transgender persons.

28 73. ~~63.~~ Defendants’ deprivation of Plaintiffs’ and Plaintiff’s members’

1 protected interests in continued military service as openly transgender persons is
2 arbitrary and without any rational basis.

3 74. ~~64.~~ As a result of Defendants' implementation and enforcement of the
4 ~~August 25 Directive~~ Transgender Military Ban, Plaintiffs and Plaintiff's
5 members have suffered injuries and will suffer further irreparable harm to their
6 constitutional rights under the Fifth Amendment if the directive is not declared
7 unconstitutional and enjoined.

8 75. ~~65.~~ Plaintiffs have no adequate remedy at law.

9 **THIRD CLAIM FOR RELIEF**

10 **Fifth Amendment – Right to Privacy**

11 **(against all Defendants)**

12 76. ~~66.~~ Plaintiffs re-allege and incorporate by reference the preceding
13 allegations in this Complaint as if fully set forth herein.

14 77. ~~67.~~ The Due Process Clause of the Fifth Amendment grants Plaintiffs
15 and Plaintiff's members constitutional liberties and a fundamental right to privacy
16 that encompasses and protects Plaintiffs' and Plaintiff's members' right to self-
17 identification and self-determination as transgender individuals who live, form
18 intimate relationships, work, and pursue happiness and meaning as the gender, ~~or~~
19 ~~non-gender~~, with which they identify.

20 78. ~~68.~~ The Due Process Clause of the Fifth Amendment requires, at a
21 minimum, that government action have some rational basis before depriving any
22 person of their liberty interests.

23 79. ~~69.~~ Defendants' ~~August 25 Directive~~ Transgender Military Ban
24 impermissibly burdens Plaintiffs' and Plaintiff's members' fundamental liberty to
25 live consistently with their gender

26 ~~+++~~

1 identity, and unlawfully ~~impinges~~impinge upon Plaintiffs' privacy by penalizing
2 and stigmatizing them for expressing a fundamental aspect of their personal
3 identity.

4 80. ~~70.~~ Defendants' ~~August 25 Directive to exclude~~policy that excludes
5 transgender persons from service in and accession into the military is arbitrary and
6 lacks any rational basis.

7 81. ~~71.~~ As a result of Defendants' ~~implementation and enforcement of~~
8 ~~the August 25 Directive~~policy, Plaintiffs and Plaintiff EQCA's members have
9 suffered injuries and will suffer further irreparable harm to their constitutional
10 rights under the Fifth Amendment if the directive is not declared unconstitutional
11 and enjoined.

12 82. ~~72.~~ Plaintiffs have no adequate remedy at law.

13 **FOURTH CLAIM FOR RELIEF**

14 **First Amendment – Retaliation for Free Speech & Expression** 15 **(against all Defendants)**

16 83. ~~73.~~ Plaintiffs re-allege and incorporate by reference the preceding
17 allegations in this Complaint as if fully set forth herein.

18 84. ~~74.~~ The First Amendment grants Plaintiffs the constitutional right to
19 freedom of speech and expression.

20 85. ~~75.~~ By banning military service by transgender people, Defendants'
21 ~~August 25 Directive~~Transgender Military Ban violates Plaintiffs' and Plaintiff's
22 members' rights of free speech and expression under the First Amendment by
23 impermissibly restricting, punishing, and chilling ~~all public and private~~
24 and communicative conduct that would tend to identify Plaintiffs and Plaintiff's
25 members as transgender people. The ~~August 25 Directive~~Transgender Military
26 Ban impermissibly burdens such speech on the basis of the content and viewpoint
27 of such speech.
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Dated: [●], 2019

Respectfully submitted,
LATHAM & WATKINS LLP

By /s/ Amy C. Quartarolo
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Amy C. Quartarolo
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Summary report:	
Litéra® Change-Pro TDC 10.1.0.200 Document comparison done on 9/30/2019 4:31:47 PM	
Style name: L&W without Moves	
Intelligent Table Comparison: Active	
Original filename: Stockman Complaint_110171682_2_0 (002).DOCX	
Modified filename: 01_Stockman Complaint_110171682_17.docx	
Changes:	
Add	213
Delete	195
<i>Move From</i>	0
<i>Move To</i>	0
Table Insert	0
Table Delete	2
<i>Table moves to</i>	0
<i>Table moves from</i>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	410

EXHIBIT C

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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11
12

13 **AIDEN STOCKMAN; NICOLAS
14 TALBOTT; TAMASYN REEVES;
15 JAQUICE TATE; JOHN DOES 1-2;
16 JANE DOE; and EQUALITY
CALIFORNIA,**

17 Plaintiffs,

18 v.

19 **MARK T. ESPER, in his official
capacity as Secretary of Defense;
20 MARK A. MILLEY, in his official
capacity as Chairman of the Joints
21 Chiefs of Staff; RICHARD V.
SPENCER, in his official capacity as
22 Secretary of the Navy; RYAN D.
MCCARTHY, in his official capacity
23 as Acting Secretary of the Army;
24 MATTHEW DONOVAN, in his
official capacity as Acting Secretary
25 of the Air Force; and KEVIN K.
MCALEEN, in his official capacity as
26 Acting Secretary of Homeland
Security,**

27 Defendants.
28

Case No. 5:17-CV-01799-JGB-KK

**PLAINTIFF-INTERVENOR
STATE OF CALIFORNIA'S FIRST
AMENDED COMPLAINT**

Judge: The Honorable Jesus G.
Bernal
Trial Date: 11/17/2020
Action Filed: 9/5/2017

1 **STATE OF CALIFORNIA,**
2
3 Plaintiff-Intervenor,

4 v.

5 **MARK T. ESPER, in his official**
6 **capacity as Secretary of Defense;**
7 **MARK A. MILLEY, in his official**
8 **capacity as Chairman of the Joints**
9 **Chiefs of Staff; RICHARD V.**
10 **SPENCER, in his official capacity as**
11 **Secretary of the Navy; RYAN D.**
12 **MCCARTHY, in his official capacity**
13 **as Acting Secretary of the Army;**
14 **MATTHEW DONOVAN, in his**
15 **official capacity as Acting Secretary**
16 **of the Air Force; and KEVIN K.**
17 **MCALEEN, in his official capacity as**
18 **Acting Secretary of Homeland**
19 **Security,**

20 Defendants.

21 **INTRODUCTION**

22 1. The State of California brings this First Amended Complaint-in-
23 Intervention to protect itself and its residents from a facially discriminatory policy
24 that targets transgender individuals who wish to serve their country and their state.

25 2. California brings this action to ensure that the health, well-being, and
26 economic interests of the State and its residents are not unconstitutionally infringed
27 by the federal government’s implementation of a ban on military service by
28 transgender individuals and a policy that denies federal funding for transgender
service members to access certain medical procedures on the basis of their sex,
gender identity, or gender expression.

29 **JURISDICTION AND VENUE**

30 3. This court has jurisdiction over the claims under 28 U.S.C. sections
31 1331 and 1343. This court has further remedial authority under the Declaratory
32 Judgment Act, 28 U.S.C sections 2201 and 2202, *et seq.*

1 and sales-tax revenues that are contributed by transgender service members and
2 their families.

3 10. California also has a proprietary interest in the funds received by its
4 public universities in the form of tuition from students who participate in Reserve
5 Officer Training Corps (ROTC) programs on state campuses, including by means
6 of ROTC scholarships from the United States Armed Services, which are
7 diminished by the exclusion of transgender students who are denied participation in
8 ROTC programs on state campuses.

9 11. California has a sovereign interest in protecting its territory and lands,
10 including from harm caused by natural disasters such as wildfires, landslides,
11 flooding, and earthquakes. Excluding transgender Californians from the California
12 National Guard results in diminished numbers of service members who can provide
13 emergency response and disaster mitigation.

14 12. California also has a sovereign interest in enforcing its anti-
15 discrimination laws, including the Unruh Civil Rights Act, which prohibits
16 discrimination on the basis of sex, gender identity, or gender expression. Cal. Civ.
17 Code § 51.

18 13. The members of the California National Guard are dedicated to
19 safeguarding the lives, property, and economy of the State of California. The
20 California National Guard currently includes approximately 18,000 service
21 members. California is home to 31 major military installations, including four used
22 by its National Guard.

23 14. The National Guard provides vital emergency services to California
24 and its citizens. In 2017 and 2018, this included responding to the massive
25 wildfires throughout Northern and Southern California, and preparing to respond to
26 the possible collapse of the Oroville Dam.

1 15. Service members and recruits in the California National Guard are
2 subject to the Department of Defense's personnel and accession policies for
3 military service, including the transgender military service ban challenged here.

4 **II. DEFENDANTS**

5 16. Defendant Mark T. Esper is the Secretary of the Department of
6 Defense, and he directs the Department of Defense. His predecessor was then-
7 Secretary James N. Mattis.

8 17. Defendant Mark A. Milley is a United States Army General and serves
9 as the current Chairman of the Joint Chiefs of Staff. In conjunction with co-
10 defendants, General Milley has been charged with execution and implementation of
11 the President's unlawful prohibition on military service by transgender individuals

12 18. Defendant Richard V. Spencer is the United States Secretary of the
13 Navy. Secretary Spencer directs the Department of the Navy and the United States
14 Marine Corps, which have been charged with execution and implementation of the
15 President's unlawful prohibition on military service by transgender individuals.

16 19. Defendant Ryan D. McCarthy is the Acting United States Secretary of
17 the Army. Secretary McCarthy directs the Department of the Army, which has
18 been charged with execution and implementation of the President's unlawful
19 prohibition on military service by transgender individuals.

20 20. Defendant Matthew Donovan is the Acting United States Secretary of
21 the Air Force, and he directs the Department of the Air Force. His predecessor was
22 then-Secretary Heather A. Wilson. The Department of the Air Force has been
23 charged with execution and implementation of the President's unlawful prohibition
24 on military service by transgender individuals.

25 21. Defendant Kevin K. McAleenan is the Acting United States Secretary
26 of Homeland Security, and he directs the Department of Homeland Security. He
27 was preceded by then Secretary Kirstjen M. Nielsen and Acting Secretary Elaine C.
28 Duke. The Department of Homeland Security is responsible for the administration

1 and operation of the United States Coast Guard, and which has been charged with
2 execution and implementation of the President's unlawful prohibition on military
3 service by transgender individuals.

4 **ALLEGATIONS**

5 22. The United States military has a history of excluding transgender
6 individuals from serving in the military.

7 23. In 2014, the military issued its first report analyzing the military's ban
8 on service by openly transgender individuals. The report found that there was no
9 compelling reason for banning transgender individuals from military service.

10 24. In July 2015, then-Secretary of Defense Ashton Carter created a work
11 group composed of senior representatives from each of the military departments,
12 Joint Staff, and relevant members of the Office of the Secretary of Defense to
13 formulate policy options regarding military service by transgender individuals.
14 On or about July 13, 2015, Secretary Carter also terminated the practice of
15 involuntarily separating or denying enlistment or continuation of active or reserve
16 service on the basis of gender identity, unless it went through an approval process
17 chaired by the Under Secretary of Defense for Personnel and Readiness.

18 25. On June 30, 2016, after a year-long, research-based assessment, which
19 included the leadership of the armed services, military medical and personnel
20 experts, transgender service members, outside medical experts, advocacy groups,
21 and the RAND Corporation, the Department of Defense lifted its categorical ban on
22 military service by transgender individuals. This was announced in Secretary
23 Carter's memorandum to military officials, Directive-type Memorandum 16-005,
24 "Military Service of Transgender Service Members."

25 26. After lifting the categorical ban, the Department of Defense issued
26 guidance regarding the implementation of a policy that would allow openly
27 transgender individuals accession into military service. The policy was to be
28 implemented in stages over 12 months. The process included training for the entire

1 force, and set July 1, 2017, as the date that the military would allow accession by
2 transgender recruits.

3 27. After the ban was lifted, scores of transgender individuals currently
4 serving in the armed forces identified themselves as transgender to their command
5 in reliance upon the new policy.

6 28. On or around June 30, 2017, then-Secretary Mattis delayed the date
7 that the military would allow accession by openly transgender individuals to
8 January 1, 2018.

9 29. On July 26, 2017, President Donald J. Trump, announced via Twitter
10 that transgender people would no longer be permitted to serve “in any capacity in
11 the U.S. military.” The announcement was rendered without any significant
12 analysis and lacks a rational basis.

13 30. On August 25, 2017, President Trump delivered an official executive
14 directive to the Departments of Defense and Homeland Security concerning
15 “Military Service by Transgender Individuals” (August 25 Directive). The August
16 25 Directive formalized the new policy by directing the Secretaries of Defense and
17 Homeland Security to: (1) implement a plan to return to the military’s pre-2016
18 policy of prohibiting military service for transgender individuals; (2) ban the
19 “accession of transgender individuals into military service”; and (3) “halt all use of
20 DOD or DHS resources to fund sex reassignment surgical procedures for military
21 personnel” except in limited circumstances. The August 25 Directive unlawfully
22 bans transgender persons from enlisting or serving openly in the military and
23 prohibits the military from paying for certain forms of healthcare related to gender
24 transition.

25 31. Like the July 26 Twitter announcement, the August 25 Directive was
26 rendered without any significant study or analysis and lacks a rational basis.

27 32. According to the August 25 Directive, President Trump relied on his
28 own judgment to reverse the military’s multi-year strategic research and planning

1 regarding implementation policies that would allow openly transgender individuals
2 to serve in the military. August 25 Directive, § 1(a). President Trump justified the
3 actions by stating:

4 In my judgment, the previous Administration failed to
5 identify a sufficient basis to conclude that terminating the
6 Departments' longstanding policy and practice would not
7 hinder military effectiveness and lethality, disrupt unit
8 cohesion, or tax military resources, and there remain
9 meaningful concerns that further study is needed to ensure
that continued implementation of last year's policy change
would not have those negative effects.

10 *Id.*

11 33. On February 22, 2018, then-Secretary of Defense Mattis submitted to
12 President Trump a plan for implementing the August 25 Directive, as ordered by
13 President Trump (the Implementation Plan) (together with the August 25 Directive,
14 the Transgender Military Service Ban). The Implementation Plan consisted of two
15 documents: 1) one document entitled "Military Service by Transgender
16 Individuals;" and 2) one document entitled "Department of Defense Report and
17 Recommendations on Military Service by Transgender Persons."

18 34. On March 23, 2018, President Trump issued a Memorandum entitled,
19 "Military Service by Transgender Individuals," in which he formally accepted the
20 Implementation Plan submitted to him by then-Secretary Mattis on February 22,
21 2018. The Memorandum specifically states that the Implementation Plan was
22 developed pursuant to the President's August 25 Directive, and authorized the
23 Secretary of Defense to carry out the Implementation Plan.

24 35. The Implementation Plan, implementing the Transgender Military
25 Service Ban, went into effect on April 12, 2019. The Transgender Military Service
26 Ban effectively prohibits all future military service by transgender individuals
27 (including from those currently serving without a waiver) unless they are willing to
28

1 serve in the gender they were assigned at birth. The policy also bans accessions by
2 transgender individuals into any branch of the United States military.

3 36. The bases offered in support of the Transgender Military Service Ban
4 are pretextual, arbitrary, capricious, and unsupported by facts, evidence, or analysis.
5 They are, furthermore, contrary to the previous conclusions of the Department of
6 Defense following exhaustive research and fact-based analysis.

7 37. In fact, separating and replacing currently serving transgender service
8 members would be costly, cause disruption, and undermine unit cohesion, respect
9 for military authority, and morale.

10 38. Furthermore, the Transgender Military Service Ban denies transgender
11 individuals and service members equal protection of the laws in violation of the
12 Fifth Amendment and violates their rights to free speech and association in
13 violation of the First Amendment, because it is based on their gender identity or
14 gender expression, and restricts their speech.

15 **FIRST CLAIM FOR RELIEF**
16 **Fifth Amendment – Equal Protection**
17 **(Against all Defendants)**

18 39. California re-alleges and incorporates by reference the allegations set
19 forth in each of the preceding paragraphs of this First Amended Complaint-in-
20 Intervention.

21 40. The Due Process Clause of the Fifth Amendment prohibits the federal
22 government from denying persons the equal protection of the laws.

23 41. The terms of the Transgender Military Service Ban discriminate
24 against transgender individuals, including citizens of the State of California,
25 members of the California National Guard, and participants in ROTC programs at
26 California's public universities, based on their sex and transgender status, in
27 violation of the equal protection guarantee of the Fifth Amendment.
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Dated: September [redacted], 2019

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General
AMIE L. MEDLEY
Deputy Attorney General

LARA HADDAD
Deputy Attorney General
Attorneys for the State of California