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

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

Defendants.

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  
5 **v.**  
6 **MARK T. ESPER, in his official**  
7 **capacity as Secretary of Defense;**  
8 **MARK A. MILLEY, in his official**  
9 **capacity as Chairman of the Joints**  
10 **Chiefs of Staff; RICHARD V.**  
11 **SPENCER, in his official capacity as**  
12 **Secretary of the Navy; RYAN D.**  
13 **MCCARTHY, in his official capacity**  
14 **as Secretary of the Army;**  
15 **MATTHEW P. DONOVAN, in his**  
16 **official capacity as Acting Secretary**  
17 **of the Air Force; and KEVIN K.**  
18 **MCALEEN, in his official capacity as**  
19 **Acting Secretary of Homeland**  
20 **Security,**  
21  
22 **Defendants.**

## 23 INTRODUCTION

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

27 2. California brings this action to ensure that the health, well-being, and  
28 economic interests of the State and its residents are not unconstitutionally infringed  
by the federal government's implementation of a ban on military service by  
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.

## JURISDICTION AND VENUE

3. This court has jurisdiction over the claims under 28 U.S.C. sections  
1331 and 1343. This court has further remedial authority under the Declaratory  
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.

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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. His predecessor was then-  
10 Chairman Joseph Francis Dunford, Jr. In conjunction with co-defendants, General  
11 Milley has been charged with execution and implementation of the President’s  
12 unlawful prohibition on military service by transgender individuals.

13           18. 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 President’s unlawful prohibition on military service by transgender individuals.

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

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

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

1 Duke. The Department of Homeland Security is responsible for the administration  
2 and operation of the United States Coast Guard, and which has been charged with  
3 execution and implementation of the President's unlawful prohibition on military  
4 service by transgender individuals.

### 5 **ALLEGATIONS**

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

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

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

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

26 26. After lifting the categorical ban, the Department of Defense issued  
27 guidance regarding the implementation of a policy that would allow openly  
28 transgender individuals accession into military service. The policy was to be

1 implemented in stages over 12 months. The process included training for the entire  
2 force, and set July 1, 2017, as the date that the military would allow accession by  
3 transgender recruits.

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

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

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

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

26 31. Like the July 26 Twitter announcement, the August 25 Directive was  
27 rendered without any significant study or analysis and lacks a rational basis.  
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1           32. According to the August 25 Directive, President Trump relied on his  
2 own judgment to reverse the military’s multi-year strategic research and planning  
3 regarding implementation policies that would allow openly transgender individuals  
4 to serve in the military. August 25 Directive, § 1(a). President Trump justified the  
5 actions by stating:

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

14 *Id.*

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

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

28           35. The Implementation Plan, implementing the Transgender Military  
Service Ban, went into effect on April 12, 2019. The Transgender Military Service

1 Ban effectively prohibits all future military service by transgender individuals  
2 (including from those currently serving without a waiver) unless they are willing to  
3 serve in the gender they were assigned at birth. The policy also bans accessions by  
4 transgender individuals into any branch of the United States military.

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

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

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

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

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

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

25 41. The terms of the Transgender Military Service Ban discriminate  
26 against transgender individuals, including citizens of the State of California,  
27 members of the California National Guard, and participants in ROTC programs at  
28

1 California’s public universities, based on their sex and transgender status, in  
2 violation of the equal protection guarantee of the Fifth Amendment.

3 42. The terms of the Transgender Military Service Ban lack rational bases,  
4 are arbitrary, and cannot be justified by any government interest.

5 43. Defendants’ violations cause ongoing, irreparable harm to the State of  
6 California and its residents.

7 44. California and its residents have no adequate remedy at law.

8 **SECOND CLAIM FOR RELIEF**

9 **Fifth Amendment – Due Process**

10 **(Against all Defendants)**

11 45. California re-alleges and incorporates by reference the allegations set  
12 forth in each of the preceding paragraphs of this First Amended Complaint-in-  
13 Intervention.

14 46. The Due Process Clause of the Fifth Amendment prohibits the federal  
15 government from depriving individuals of their liberty, property, or other interests  
16 without due process of law.

17 47. The terms of the Transgender Military Service Ban impermissibly  
18 burden the fundamental interests of transgender individuals, including citizens of  
19 the State of California, members of the California National Guard, and participants  
20 in ROTC programs at California’s public universities, in violation of the due-  
21 process protections of the Fifth Amendment.

22 48. The terms of the Transgender Military Service Ban lack rational bases,  
23 are arbitrary, and cannot be justified by any government interest.

24 49. Defendants’ violations cause ongoing, irreparable harm to the State of  
25 California and its residents.

26 50. California and its residents have no adequate remedy at law.

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**THIRD CLAIM FOR RELIEF**  
Fifth Amendment – Right to Privacy  
(Against All Defendants)

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

52. The Due Process Clause of the Fifth Amendment grants individuals constitutional liberties and a fundamental right to privacy that encompasses and protects transgender individuals’ rights to self-identification and self-determination to live, form intimate relationships, work, and pursue happiness and meaning as the gender, or non-gender, with which they identify.

53. The terms of the Transgender Military Service Ban impermissibly burden the fundamental interests of transgender individuals, including citizens of the State of California, members of the California National Guard, and participants in ROTC programs at California’s public universities, to live consistently with their gender identity and unlawfully infringe on their privacy by penalizing and stigmatizing them for expressing a fundamental aspect of their personal identity.

54. The terms of the Transgender Military Service Ban lack rational bases, are arbitrary, and cannot be justified by any government interest.

55. Defendants’ violations cause ongoing, irreparable harm to the State of California and its residents.

56. California and its residents have no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF**  
**First Amendment – Free Speech and Expression**  
(Against all Defendants)

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



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3. For such other relief as the Court may deem just and proper.

Dated: October 11, 2019

Respectfully submitted,

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

/s/ Lara Haddad  
LARA HADDAD  
Deputy Attorney General  
*Attorneys for the State of California*

**CERTIFICATE OF SERVICE**

Case Name: **Stockman, Aiden, et al. v. Donald J. Trump, et al.** No. **5:17-CV-01799-JGB-KKx**

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I hereby certify that on October 11, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

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

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 11, 2019, at Los Angeles, California.

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Beth L. Gratz  
Declarant

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*/s/ Beth L. Gratz*  
Signature