

Honorable Marsha J. Pechman

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

RYAN KARNOSKI et al.,

Plaintiffs,

v.

DONALD TRUMP et al.,

Defendants.

Case No: 2:17-cv-1297-MJP

DECLARATION OF CHALIA
STALLINGS-ALA'ILIMA IN
SUPPORT OF LCR 37 EXPEDITED
JOINT DISCOVERY MOTION TO
COMPEL DEFENDANTS TO SEEK
AND PRODUCE INFORMATION
REASONABLY AVAILABLE AND
WITHIN THEIR CONTROL

STATE OF WASHINGTON,

Plaintiff-Intervenor,

v.

DONALD TRUMP et al.,

Defendants.

1 Pursuant to 28 U.S.C. § 1746(2), I, Chalia Stallings-Ala'ilima, state and declare as follows:

2 1. I am counsel of record for Plaintiff-Intervenor Washington State in this action, am over
3 18 years of age, and am competent to testify about the matters contained herein. I make this
4 declaration in support of the LCR 37 Expedited Joint Discovery Motion to Compel Defendants
5 to Seek and Produce Information Reasonably Available and Within Their Control and hereby
6 certify that prior to making this submission, the parties conferred to attempt to resolve this discovery
7 dispute in accordance with LCR 37(a).

8 2. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff-Intervenor State of
9 Washington's First Set of Interrogatories to Defendants United States Department of Defense
10 and United States Department of Homeland Security, dated July 5, 2019, and Defendants'
11 Objections and Responses to Plaintiff-Intervenor State of Washington's First Set of
12 Interrogatories, dated August 12, 2019.

13 3. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff-Intervenor State of
14 Washington's First Set of Requests for Production to Defendants United States Department of
15 Defense and United States Department of Homeland Security, dated July 5, 2019, and
16 Defendants' Objections and Responses to Plaintiff-Intervenor State of Washington's First Set of
17 Requests for Production to the United States Department of Defense and United States
18 Department of Homeland Security, dated August 12, 2019.

19 4. Attached hereto as **Exhibit C** is a true and correct copy of email excerpts between counsel,
20 including defense counsel's confirmation that documents were only produced for ten of
21 Washington's 21 RFPs. Defendants' production totaled 36 documents, seven of which Defendants
22 withheld in their entirety as privileged. **Exhibit C** further includes the emails I sent defense
23 counsel identifying Washington's RFPs that substantially overlap with the sets of prioritized
24 RFPs. Despite Washington's request that Defendants include Washington's comparable RFPs in
25 their review and identification of documents responsive to the prioritized RFPs, Washington has
26 received no supplemental discovery responses from Defendants as a result of this coordination.

1 5. In addition to the parties' conferences held prior to the November 19, 2019, Hearing in
2 this matter, Washington has attended and participated in parties' conference since the hearing
3 and cooperated with the Court's RFP prioritization process. During these conferences of parties,
4 Washington has consistently queried Defendants on the status of their responses to Washington's
5 discovery, but Defendants have declined to commit to contact custodians with Washington-specific
6 information or conduct searches of existing databases. Defendants have likewise declined to
7 provide any timeframe by which they will even decide whether to collect and review information
8 responsive to Washington's requests. Defendants' claims of some willingness to "consider" and
9 "look into" conducting searches and producing information and records responsive to Washington-
10 specific discovery, including from the custodians and databases where Washington's requested
11 information would be kept. Defendants have failed to take any meaningful steps to search for or
12 provide information responsive to Washington's discovery requests. Defendants concede that they
13 relied exclusively on searches conducted prior to July 2019 in responding to Washington's requests,
14 and have not even begun any search in response to Washington's specific requests. According to
15 Defendants' counsel during the parties' conference of March 18, 2020, Defendants are aware of
16 approximately 1,500 service members nationwide with a diagnosis of gender dysphoria,
17 although counsel has not specified how they know that or where that information is stored.

18 6. Attached hereto as **Exhibit D** is a true and correct copy of the produced document Bates
19 numbered DOE00191150- DOE00191152, "RA Enlisted TG" data from Army, dated August
20 23, 2017, provided in response to an email request for service members' locations showing at
21 least eight stationed at JBLM Lewis and Silverdale in Washington State.

22 7. Attached hereto as **Exhibit E** is a document produced by Defendants, "AF Data
23 Collection Status," dated December 2, 2016, and Bates numbered USDOE00183378. This
24 document indicates that as of December 2, 2016, the Air Force's tracking measures included
25 "Formal Medical Transition Plans" and "Formal requests for DEERS (MilPDS) gender change."
26 These measures included the Regular Air Force, Air Force Reserves, and the Air National Guard.

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8. Attached hereto as **Exhibit F** is a true and correct copy of Directive-Type Memorandum “Military Service by Transgender Persons and Persons with Gender Dysphoria,” (DTM 19-004), dated March 12, 2019, Bates numbered USDOE00286955-USDOE00286969.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed this 13th day of April 2020, in Seattle, WA.

s/Chalia Stallings-Ala'ilima
CHALIA STALLINGS-ALA'ILIMA

STALLINGS-ALA'ILIMA DECLARATION

EXHIBIT A

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, et al,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

Case No: 2:17-cv-1297-MJP

**INTERVENOR-PLAINTIFF
STATE OF WASHINGTON'S
INTERROGATORIES TO
DEFENDANTS UNITED STATES
DEPARTMENT OF DEFENSE
AND UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY**

STATE OF WASHINGTON,

Intervenor-Plaintiff,

v.

DONALD TRUMP, et al,

Defendants.

TO: DEFENDANTS United States Department of Defense and United States Department of Homeland Security

Pursuant to Federal Rule of Civil Procedure 33, You are hereby required to answer, in writing, the following Interrogatories, separately and fully under oath, within thirty (30) days of their service upon You. These Interrogatories are deemed continuing in nature and You must supplement Your answers pursuant to Federal Rule of Civil Procedure 26(e).

I. TIME AND PLACE OF PRODUCTION

1.1 The requested answers to Interrogatories are to be produced to Chalia Stallings-Ala'ilima, Assistant Attorney General, at the Attorney General's office at 800 Fifth Avenue, Suite 2000, Seattle, WA 98104, within thirty (30) days of being served with these Interrogatories, or at such other time and place as is agreed to by the parties.

1.2 All notices, questions or communications concerning these Interrogatories should be directed to Chalia Stallings-Ala'ilima, Assistant Attorney General, at (206) 326-5480 or Chalia.SA@atg.wa.gov.

II. DEFINITIONS

The following definitions apply for purpose of these Interrogatories. These definitions include both the singular and plural forms of each word:

2.1 "Any" and "all" shall be construed as "any and all."

2.2 "And, "or," "and/or," "each," and "every" shall be interpreted and construed as broadly as possible to make the Interrogatory inclusive rather than exclusive.

2.3 "Communications" shall have the broadest definition and scope and shall include any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomever made, including but not limited to correspondence, conversations, discussions, interviews, consultations, agreements, or oral discussions.

2.4 "Documents" shall have the same scope and meaning as the scope and meaning of the materials defined by Federal Rule of Civil Procedure 34(a) and Federal Rule of Evidence 1001(a). "Document" means, without limitation, any "writing," and includes, without limitation, any book, pamphlet, report, memorandum, note, statement, minute, diary, transcript, working paper, telegram, letter, paper, chart, drawing, graph, photograph, publication, tape recording, videotaped or graphic matter, accounting material, record of purchase or sale, contract, agreement, invoice, and any other existing source of stored information, whether written, printed,

1 typed, recorded, stored in a computer, or filmed. The term includes originals or duplicates of or
2 copies of the writings, and non-identical copies bearing or having any attachments, notes or
3 marks which distinguish them from the originals, and any electronic records, including, without
4 limitation, electronic mail, spreadsheets, word processing files, text messages, electronically
5 stored images, and records saved as .pdf or other electronic files. Electronic mail subject to these
6 discovery requests includes messages and/or attachments now only available on backup or
7 archive tapes or disks. Also, if a print-out of an electronic record is a non-identical copy of the
8 electronic version (for example, because the print-out has a signature, handwritten notation, or
9 other mark or attachment not included in the computer document), both the electronic version in
10 which the document was created and the original print-out must be produced.

11 2.5 “Describe” means a complete description and explanation of the facts,
12 circumstances, analysis, date(s) and other information relating to the subject matter of a specific
13 Interrogatory.

14 2.6 “Employee” includes officers, principals, agents, representatives, and anyone else
15 with whom You have or have had any employment or employment-type relationship, whether
16 full or part time.

17 2.7 “Identify” has the following meaning:

18 2.7.1 When applied to a natural person, “identify” means to state the person or
19 entity’s full name, residential address, business address, telephone numbers (home, work, and
20 mobile), e-mail address, employer, job title, and location of assigned duty station. Once a person
21 has been identified in accordance with this instruction, only the name of that person need be
22 listed in response to subsequent Interrogatories where the response identifies that person.

23 2.7.2 When applied to an organization, agency, business entity, or
24 governmental agency, means to state the entity’s legal name, structure of the business
25 (corporation, partnership, sole proprietorship, etc.), a brief description of the business, the
26 registered agent for the business, the business address, and the business telephone number.

1 2.7.3 When applied to a document, means to state the type of document (letter,
2 e-mail, word-processing document, spreadsheet, chart, note), a brief description of the nature of
3 the information in the document, its author and originator, its date or dates, all addresses and
4 recipients (including “file”), and its present location or custodian. If any such document was, but
5 is no longer, in Your possession or subject to Your control, state the approximate date it was
6 lost, discarded, or destroyed, and the identity of each person having knowledge of the contents
7 thereof.

8 2.7.4 When applied to a communication, it means to state the date, location,
9 person(s) who were present, identity of the person(s) who made the communication, the content,
10 and the frequency of the communication.

11 2.8 “Including” or “includes,” means “including but not limited to” or “including
12 without limitation.”

13 2.9 “Person” means any individual, corporation, partnership, association, joint
14 venture, commercial entity, limited liability company, governmental entity, firm, commission,
15 or agency.

16 2.10 “Relate,” “Relating to,” “Reflect,” “Refer,” or “Regarding” means any
17 information which is relevant in any way to the subject matter, including, without limitation, all
18 information which contains, records, reflects, summarizes, evaluates, comments upon, transmits
19 or discusses the subject matter of any Interrogatory, as well as drafts, work papers, or other
20 preparation material, and the text or notes of any oral or written presentation or conversation.

21 2.11 “Service member” means any person who is a member of any branch of the
22 Armed Forces including Army, Navy, Marines, Air Force and any person who is a member of
23 the Coast Guard.

24 2.12 “You” and “Your” means United States Department of Defense and United States
25 Department of Homeland Security, and their principles, present or former employees, officers,
26

1 | directors, agents, representatives, and any other persons or entities acting on behalf of or under
2 | the direction, authorization, or control of aforementioned.

3 | **III. INSTRUCTIONS**

4 | 3.1 Unless otherwise noted, the relevant time period for which information is
5 | requested is January 1, 2014, to the present.

6 | 3.2 These Interrogatories apply to all information in Your possession, custody or
7 | control, including information possessed by Your agents, officers, principals, employees,
8 | representatives, attorneys, or any other person acting on Your behalf.

9 | 3.3 Each Interrogatory shall be accorded a separate answer. For the convenience of
10 | the parties and the Court, please quote each Interrogatory in full immediately preceding the
11 | answer thereto.

12 | 3.4 Pursuant to Federal Rule of Civil Procedure 26(e), these Interrogatories impose a
13 | continuing duty to supplement Your responses in the event additional information comes into
14 | Your knowledge, possession, custody, or control after Your initial answers to these
15 | Interrogatories.

16 | 3.5 Your responses to these Interrogatories are to be inclusive rather than exclusive.
17 | If the language of an Interrogatory is phrased in the singular, the Interrogatory includes the
18 | plural, and if the language of an Interrogatory is phrased in the plural, the Interrogatory includes
19 | the singular.

20 | 3.6 If You cannot answer an Interrogatory completely, You must answer to the extent
21 | possible and identify with specificity the part(s) which You cannot answer completely. Designate
22 | incomplete information as incomplete and accompany the information with an explanation that
23 | includes the reasons for the incomplete answer; and a description of any and all of Your efforts
24 | to obtain the information.

1 3.7 If You object to an Interrogatory based on a claim of privilege, and identify the
2 privilege and the basis of the privilege. If You object to responding to part of an Interrogatory,
3 You are required to furnish the information that is outside the scope of Your partial objection.

4 3.8 Your responses to these discovery requests must include all relevant
5 electronically stored information in Your possession, custody, or control. Washington considers
6 electronically stored information to be an irreplaceable source of evidence in this matter.
7 Accordingly, the State of Washington insists that You implement appropriate safeguards against
8 the destruction of evidence until the final resolution of this issue.

9 3.9 Do not destroy any documents or information relating to any of these
10 Interrogatories.

11 **IV. INTERROGATORIES**

12 **INTERROGATORY NO. 1:** Identify the number of active duty service members stationed or
13 deployed in Washington State for each year during the relevant period.

14 **ANSWER:**
15

16 **INTERROGATORY NO. 2:** Identify the number of active duty Washington residents
17 stationed or deployed outside of Washington State for each year during the relevant period.

18 **ANSWER:**
19

20 **INTERROGATORY NO. 3:** Identify the number of reserve service members stationed in
21 Washington State for each year during the relevant period.

22 **ANSWER:**
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24 **INTERROGATORY NO. 4:** Identify the authorized strength of the Washington National
25 Guard for each year during the relevant period.

26 **ANSWER:**

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2 **INTERROGATORY NO. 5:** Identify the actual strength of the Washington National Guard
3 for each year during the relevant period.

4 **ANSWER:**
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6 **INTERROGATORY NO. 6:** Identify the Washington National Guard’s accessions goal for each
7 year during the relevant period.

8 **ANSWER:**
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10 **INTERROGATORY NO. 7:** Identify the number of accessions into the Washington National
11 Guard for each year during the relevant period.

12 **ANSWER:**
13

14 **INTERROGATORY NO. 8:** Identify and describe the chain of command for Washington
15 service members serving in the Washington National Guard when on active duty status for the
16 State of Washington.

17 **ANSWER:**
18

19 **INTERROGATORY NO. 9:** Identify the number of transgender Washington service
20 members—including Washington residents stationed or deployed outside of Washington
21 State—for each year during the relevant period.

22 **ANSWER:**
23

24 **INTERROGATORY NO. 10:** Identify the number of Washington service members—
25 including Washington residents stationed or deployed outside of Washington State—who
26

1 requested a change to their gender marker in the Defense Enrollment Eligibility Reporting
2 System (DEERS) during the relevant period.

3 **ANSWER:**

4
5 **INTERROGATORY NO. 11:** Identify the number of Washington service members—including
6 Washington residents stationed or deployed outside of Washington State—who were discharged
7 from military service due—in part or in whole—to their transgender status or a diagnosis of
8 gender dysphoria during the relevant period.

9 **ANSWER:**

10
11 **INTERROGATORY NO. 12:** For each military installation in Washington State, identify all
12 persons during the relevant period who have responded or been assigned to respond to
13 complaints, including problems with unit cohesion, arising from—in part or in whole—the
14 transgender status or a diagnosis of gender dysphoria of any Washington service member,
15 including Washington residents stationed or deployed outside of Washington State. Include in
16 your response: the factual information You believe each person possesses and the person’s title
17 or rank.

18 **ANSWER:**

19
20 **INTERROGATORY NO. 13:** Identify and describe all instances during the relevant period
21 where You deemed any Washington service member—including Washington residents stationed
22 outside of Washington State not deployable due, in part or in whole, to their transgender status
23 or a diagnosis of gender dysphoria.

24 **ANSWER:**

1 **INTERROGATORY NO. 14:** Identify the number of sex reassignment surgeries requested by
2 Washington service members during the relevant period—including Washington residents
3 stationed or deployed outside of Washington State—during the relevant period.

4 **ANSWER:**

5
6 **INTERROGATORY NO. 15:** Identify the monetary amounts You have expended to provide
7 transgender-related health care services to Washington service members during the relevant
8 period—including Washington residents stationed or deployed outside of Washington State—
9 for each year during the relevant period.

10 **ANSWER:**

11
12 **INTERROGATORY NO. 16:** Identify each instance during the relevant period where “cross-
13 sex hormone therapy or sex reassignment surgery” has rendered any Washington service
14 member—including Washington residents stationed or deployed outside of Washington State—
15 non-deployable for more than one year.

16 **ANSWER:**

17
18 **INTERROGATORY NO. 17:** Identify each individual, including rank, with authority to grant
19 a waiver as described in General Mattis’s February 22, 2018, Memorandum for the President on
20 Military Service by Transgender Individuals. Include in your response: every instance of waiver
21 granted, by whom, and the identity of the service member to whom the waiver was granted.

22 **ANSWER:**

23
24 **INTERROGATORY NO. 18:** Identify any members of the Panel of Experts convened by
25 General Mattis who expressed dissent from any of the final recommendations included in
26

1 General Mattis's February 22, 2018, Memorandum for the President on Military Service by
2 Transgender Individuals.

3 **ANSWER:**

4
5 DATED this 5th day of July, 2019.

6
7 ROBERT W. FERGUSON
8 Washington Attorney General

9 *s/ Chalia Stallings-Ala'ilima*

10 LA ROND BAKER, WSBA No. 43610
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CERTIFICATE OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Electronic Service (by agreement of counsel)

Andrew E. Carmichael
UNITED STATES DEPARTMENT OF JUSTICE
andrew.e.carmichael@usdoj.gov

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NEWMAN DU WORS LLP
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DATED this 5th day of July, 2019 at Seattle, Washington.

s/Anna Alfonso
ANNA ALFONSO
Legal Assistant

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

**DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF-
INTERVENOR STATE OF WASHINGTON'S FIRST SET OF
INTERROGATORIES TO THE UNITED STATES
DEPARTMENT OF DEFENSE AND UNITED STATES
DEPARTMENT OF HOMELAND SECURITY**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Defendants, through their undersigned counsel, hereby submit initial objections and responses to Intervenor-Plaintiff State of Washington's First Set of Interrogatories to the United States Department Of Defense and United States Department of Homeland Security, served July 5, 2019. In presenting these objections and responses, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

Objections to Definitions and Instructions

1. Defendants object to Plaintiff-Intervenor's Definition 2.4 of "Documents" as encompassing any "existing source of stored information . . . in a computer," and "any electronic records," insofar as electronic information collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts. Defendants object further to this definition to the extent that "existing source of stored information . . . in a computer," and "any electronic records," differs from the specification format used in prior productions in this action.

2. Defendants object to Plaintiff-Intervenor's Definition 2.7.1 of "Identify" as encompassing individuals' or entities' "full name, residential address, business address, telephone numbers (home, work, and mobile), e-mail address, employer, job title, and location of assigned duty station" as being overbroad and disproportionate to the needs of the case. Defendants further object on the grounds that this definition is an unwarranted invasion of the privacy of non-parties and seeks information protected by the Privacy Act, 5 U.S.C. § 552a, et seq.

3. Defendants object to Plaintiff-Intervenor's Definition 2.11 of "Service member" as substantially overbroad, ambiguous, and disproportionate to the needs of the case. Plaintiff-Intervenor has defined "Service member" to mean "any person who is a member of any branch of the Armed Forces including Army, Navy, Marines, Air Force and any person who is a member of the Coast Guard," thus covering millions of people.

4. Defendants object to Plaintiff-Intervenor's Definition 2.12 of "You" and "Your" as substantially overbroad, ambiguous, and disproportionate to the needs of the case. Plaintiffs have defined "You" and "Your" to encompass "all United States Department of Defense and United States Department of Homeland Security, and their principles, present or former employees, officers, directors, agents, representatives, and any other persons or entities acting on behalf of or under the direction, authorization, or control of aforementioned," thus covering millions of people.

5. Defendants object to Plaintiff-Intervenor's Instruction 3.8 that Defendants' responses "must include all relevant electronically stored information in Your possession, custody, or control," insofar as electronically stored information collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

General Objection to All Interrogatories

Defendants object to Plaintiff-Intervenor's requests that purport to seek information outside of the administrative record because discovery beyond the limits of the Administrative Procedure Act is inappropriate in this case. Defendants' administrative processes resulted in final agency action supported by the administrative record. In making its determination whether those policies are "contrary to constitutional right," 5 U.S.C. § 706(2)(B), the Court "shall review the whole record," *id.* § 706. The Court's review is therefore limited to "the full administrative record that was before the Secretary at the time he made his decision." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971).

In the Ninth Circuit’s recent opinion, it definitively set the standard for judicial review in this case. The District Court “must apply appropriate deference to its evaluation” of the challenged policy under “intermediate scrutiny.” Dkt. 338 at 45. This means that, to prevail, the government must “establish[] that [the military] reasonably determined the policy ‘significantly furthers’ the government’s important interests.” *Id.* Under no circumstance is the reviewing court to “substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” *Id.* (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981)). Thus, because “the reasonableness of the 2018 Policy must be evaluated on the record supporting that decision and with the appropriate deference due to a proffered military decision,” *id.* at 56, Plaintiff-Intervenor’s claims are properly adjudicated based on a review of the administrative record supporting Defendants’ decision. *See id.* at 54 n.22 (noting that that a 12-page memo was sufficient to evaluate the government policy in *Trump v. Hawaii*, 138 S. Ct. 2392, 2421–22, (2018)). Accordingly, Plaintiff-Intervenor’s discovery requests are overbroad, unduly burdensome, and disproportionate to the needs of the case.

Specific Objections and Responses to Interrogatories

Interrogatory No. 1: Identify the number of active duty service members stationed or deployed in Washington State for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these

discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to the above general and specific objections, the following number of active duty service members in the Army, Navy, Marine Corps, Air Force, and Coast Guard were permanently assigned for duty in Washington State as of the dates indicated:

December 31, 2014 – 57,061

December 31, 2015 – 45,520

December 31, 2016 – 44,397

December 31, 2017 – 48, 258

December 31, 2018 – 60,685

March 31, 2019 – 60,275.

These figures do not include service members on temporary duty or deployed in support of contingency operations, which information is not maintained in the Active Duty Master File. Beyond this information, Defendants stand on the foregoing objections.

Interrogatory No. 2: Identify the number of active duty Washington residents stationed or deployed outside of Washington State for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an

independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to the above general and specific objections, the following number of active duty personnel with a legal residence of Washington State were stationed or deployed outside of Washington State during the calendar years indicated:

Calendar Year	Washington State Legal Residents	
	Stationed outside of Washington State	Deployed outside of Washington State
2014	46,044	6,542
2015	47,084	6,206
2016	47,250	5,445
2017	47,210	6,701
2018	46,731	6,883
2019	40,994	3,357

Interrogatory No. 3: Identify the number of reserve service members stationed in Washington State for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own

evaluation of evidence for a reasonable evaluation' by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to the above general and specific objections, the following number of personnel in the Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and Coast Guard Reserve were stationed in Washington State as of the dates indicated:

December 31, 2014 – 18,981

December 31, 2015 – 18,966

December 31, 2016 – 18,872

December 31, 2017 – 18,507

December 31, 2018 – 18,233

March 31, 2019 – 18,115.

Interrogatory No. 4: Identify the authorized strength of the Washington National Guard for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own

evaluation of evidence for a reasonable evaluation' by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants further object to this interrogatory as overbroad, unduly burdensome, and disproportionate to the needs of the case because it seeks information that is already in the possession of Plaintiff-Intervenor the State of Washington, because the Washington National Guard is the federally recognized militia of the State of Washington and a subcomponent of the Washington Military Department, which is a State agency. *See Worthington v. Panetta*, 2012 WL 2952101, at *1 (W.D. Wash. July 19, 2012).

Response: Subject to the above general and specific objections, the authorized strength of the Washington Army National Guard and Washington Air National for each year from January 1, 2014 to present is identified below:

Washington Army National Guard:

FY 19 – 5974

FY 18 – 5871

FY 17 – 5907

FY 16 – 6019

FY 15 – 6182

FY 14 – 6199

Washington Air National Guard:

FY 19 – 2103

FY 18 – 2106

FY 17 – 2103

FY 16 – 2104

FY 15 – 2103

FY 14 – 2078

Interrogatory No. 5: Identify the actual strength of the Washington National Guard for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants further object to this interrogatory as overbroad, unduly burdensome, and disproportionate to the needs of the case because it seeks information that is already in the possession of Plaintiff-Intervenor the State of Washington, because the Washington National Guard is the federally recognized militia of the State of Washington and a subcomponent of the Washington Military Department, which is a State agency. *See Panetta*, 2012 WL 2952101 at *1.

Response: Subject to the above general and specific objections, actual strength of the Washington Army National Guard and Washington Air National for each year from January 1, 2014 to present is identified below:

Washington Army National Guard:

FY 19 – 5347

FY 18 – 5571

FY 17 – 6052

FY 16 – 5978

FY 15 -- 6039

FY 14 -- 6139

Washington Air National Guard:

FY 19 – 2004

FY 18 – 2008

FY 17 – 1992

FY 16 – 1996

FY 15 -- 2018

FY 14 -- 2057

Interrogatory No. 6: Identify the Washington National Guard’s accessions goal for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants further object to this interrogatory as overbroad, unduly burdensome, and disproportionate to the needs of the case because it seeks information that is already in

the possession of Plaintiff-Intervenor the State of Washington, because the Washington National Guard is the federally recognized militia of the State of Washington and a subcomponent of the Washington Military Department, which is a State agency. *See Panetta*, 2012 WL 2952101 at *1.

Response: Subject to the above general and specific objections, the accessions goals of the Washington Army National Guard and Washington Air National for each year from January 1, 2014 to present is identified below:

Washington Army National Guard:

FY 19 – 851

FY 18 – 1066

FY 17 – 943

FY 16 – 1145

FY 15 -- 1024

FY 14 -- 1296

Washington Air National Guard:

FY 19 – 129

FY 18 – 278

FY 17 – 199

FY 16 – 216

FY 15 -- 245

FY 14 -- 198

Interrogatory No. 7: Identify the number of accessions into the Washington National Guard for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants further object to this interrogatory as overbroad, unduly burdensome, and disproportionate to the needs of the case because it seeks information that is already in the possession of Plaintiff-Intervenor the State of Washington, because the Washington National Guard is the federally recognized militia of the State of Washington and a subcomponent of the Washington Military Department, which is a State agency. *See Panetta*, 2012 WL 2952101 at *1.

Response: Subject to the above general and specific objections, the number of accessions into the Washington Army National Guard and Washington Air National for each year from January 1, 2014 to present is identified below:

Washington Army National Guard:

FY 19 – 563

FY 18 – 672

FY 17 – 872

FY 16 – 880

FY 15 – 877

FY 14 – 929

Washington Air National Guard:

FY 19 – 174

FY 18 – 236

FY 17 – 241

FY 16 – Data is not available to Federal Defendants

FY 15 – Data is not available to Federal Defendants

FY 14 – Data is not available to Federal Defendants

Interrogatory No. 8: Identify and describe the chain of command for Washington service members serving in the Washington National Guard when on active duty status for the State of Washington.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants further object to this interrogatory because National Guard members are only on “active duty” while in active military service of the United States; National Guard members do not serve on “active duty” for the State of Washington. *See* 10 U.S.C. § 101(d) (definitions of duty status). Accordingly, Defendants interpret this interrogatory as asking to identify and describe the chain of command for Washington service members serving in

the Washington National Guard under sections 316, 502, 503, 504, 505 and 709 of Title 32, United States Code, or while on state active duty under Washington State law.

Defendants also object to this interrogatory as overbroad, unduly burdensome, and disproportionate to the needs of the case because it seeks information that is already in the possession of Plaintiff-Intervenor the State of Washington, because the Washington National Guard is the federally recognized militia of the State of Washington and a subcomponent of the Washington Military Department, which is a State agency. *See Panetta*, 2012 WL 2952101 at *1.

Response: Defendants do not maintain the information required to respond to this interrogatory. To answer this interrogatory, Defendants would have to consult with officials from the Washington National Guard, which, as explained above, is the federally recognized militia of the State of Washington and a subcomponent of the Washington Military Department, which is a State agency. Accordingly, the information Washington seeks is already in its possession. Defendants stand on their objections to this interrogatory.

Interrogatory No. 9: Identify the number of transgender Washington service members—including Washington residents stationed or deployed outside of Washington State—for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an

independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Moreover, Department of Defense policy prohibits discrimination on the basis of gender identity and seeks to protect the privacy of all Service members. Thus, DoD does not track service members or applicants by gender identity and has no means of searching for the requested information as it pertains to “transgender Washington service members.” Accordingly, this request is overbroad, unduly burdensome, and disproportionate to the needs of the case.

Response: Defendants stand on the foregoing objection.

Interrogatory No. 10: Identify the number of Washington service members—including Washington residents stationed or deployed outside of Washington State—who requested a change to their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS) during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own

evaluation of evidence for a reasonable evaluation' by the military.” (quoting *Rostker*, 453 U.S. at 68)).

This interrogatory is also overbroad, unduly burdensome, and disproportionate to the needs of the case because Defendants do not track the number or identities of service members who *request* a change to their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS). Defendants track only the number of service members who *receive* a change to their gender marker in DEERS, and such a change could be made for reasons other than a request by a service member, such as the input of an incorrect gender marker into DEERS.

Response: Defendants do not track the number or identities of service members who request a change to their gender marker in DEERS. Accordingly, Defendants stand on their objections to this request.

Interrogatory No. 11: Identify the number of Washington service members—including Washington residents stationed or deployed outside of Washington State—who were discharged from military service due—in part or in whole—to their transgender status or a diagnosis of gender dysphoria during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these

discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Moreover, Department of Defense policy prohibits discrimination on the basis of gender identity and seeks to protect the privacy of all Service members. Thus, DoD does not track service members or applicants by gender identity and has no means of searching for the requested information as it pertains to “transgender status.” Accordingly, this request is overbroad, unduly burdensome, and disproportionate to the needs of the case.

Response: Subject to the above general and specific objections, since at least July 13, 2015, Defendants are not aware of any Washington service member who was discharged from military service due to transgender status or diagnosis of gender dysphoria.

Interrogatory No. 12: For each military installation in Washington State, identify all persons during the relevant period who have responded or been assigned to respond to complaints, including problems with unit cohesion, arising from—in part or in whole—the transgender status or a diagnosis of gender dysphoria of any Washington service member, including Washington residents stationed or deployed outside of Washington State. Include in your response: the factual information You believe each person possesses and the person’s title or rank.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither

Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Moreover, Defendants object to the use of the term “complaint” as it is overboard, unduly burdensome, vague, ambiguous, and undefined. Specifically, the Department of Defense is an organization consisting of over two million employees stationed throughout the world and the Department does not centrally track “complaints” or responses to “complaints,” and does not specifically assign employees to respond to “complaints” of this nature.

Response: Defendants stand on the foregoing objections.

Interrogatory No. 13: Identify and describe all instances during the relevant period where You deemed any Washington service member—including Washington residents stationed outside of Washington State not deployable due, in part or in whole, to their transgender status or a diagnosis of gender dysphoria.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these

discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

This interrogatory is also overbroad, unduly burdensome, and disproportionate to the needs of the case because the Department of Defense does not track the number of service members deemed non-deployable based on a diagnosis of gender dysphoria. To determine the number of Washington service members who have been deemed non-deployable based on a diagnosis of gender dysphoria would require an arduous manual review of thousands of personnel decisions and records dispersed at hundreds of distinct locations.

Moreover, Department of Defense policy prohibits discrimination on the basis of gender identity and seeks to protect the privacy of all Service members. Thus, DoD does not make deployability determinations based on gender identity and has no means of searching for the requested information as it pertains to “transgender status.” Accordingly, this request is overbroad, unduly burdensome, and disproportionate to the needs of the case.

Response: Subject to the above general and specific objections, since at least the implementation of the Carter policy, Defendants are not aware of any Washington service member who has been deemed non-deployable as a result of gender identity or transgender status. Beyond this information, Defendants stand on the foregoing objections.

Interrogatory No. 14: Identify the number of sex reassignment surgeries requested by Washington service members during the relevant period—including Washington residents stationed or deployed outside of Washington State—during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

This interrogatory is also overbroad, unduly burdensome, and disproportionate to the needs of the case because the Department of Defense does not track the number of sex reassignment surgeries “requested” by Washington service members, or service members generally, nor does it possess data on the number of sex reassignment surgeries prior to 2016.

Response: Subject to the above general and specific objections, five Washington State service members had sex reassignment surgery between 2016 and 2018 within the military health system. Beyond this information, Defendants stand on the foregoing objections.

Interrogatory No. 15: Identify the monetary amounts You have expended to provide transgender-related health care services to Washington service members during the relevant

period—including Washington residents stationed or deployed outside of Washington State—for each year during the relevant period.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Moreover, Defendants object to the use of the phrase “transgender-related health care services” as it is overboard, unduly burdensome, vague, ambiguous, and undefined. Department of Defense policy also prohibits discrimination on the basis of gender identity and seeks to protect the privacy of all Service members. Thus, DoD does not measure healthcare costs based on gender identity or transgender status. Defendants accordingly interpret the phrase “transgender-related health care services” to mean “psychotherapy and surgical encounters related to gender transition.”

This interrogatory is also overbroad, unduly burdensome, and disproportionate to the needs of the case because the Department of Defense does not possess data on monetary amounts expended for “psychotherapy and surgical encounters related to gender transition” prior to 2016, and does not have a reasonable way to break down costs based on whether a

service member is a “Washington service member” other than to use service members’ home zip codes.

Response: Subject to the above general and specific objections, in the following calendar years the following costs for psychotherapy and surgical encounters related to gender transition for all service members with a home zip code in Washington State and a primary diagnosis of gender dysphoria were incurred:

2016 (after July 1, 2016) -- \$53,427.49

2017 -- \$169,440.87

2018 -- \$28,181.76

2019 (thru July 23, 2019) -- \$7,191.73.

Beyond this information, Defendants stand on the foregoing objections.

Interrogatory No. 16: Identify each instance during the relevant period where “cross-sex hormone therapy or sex reassignment surgery” has rendered any Washington service member—including Washington residents stationed or deployed outside of Washington State—non-deployable for more than one year.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own

evaluation of evidence for a reasonable evaluation' by the military.” (quoting *Rostker*, 453 U.S. at 68)).

This interrogatory is also overbroad, unduly burdensome, and disproportionate to the needs of the case because the Department of Defense does not track the number of service members deemed non-deployable based on “cross-sex hormone therapy or sex reassignment surgery.” To determine the number of Washington service members who have been deemed non-deployable based on cross-sex hormone therapy or sex reassignment surgery would require an arduous manual review of thousands of personnel decisions and records dispersed at hundreds of distinct locations.

Response: Defendants stand on the foregoing objections.

Interrogatory No. 17: Identify each individual, including rank, with authority to grant a waiver as described in General Mattis’s February 22, 2018, Memorandum for the President on Military Service by Transgender Individuals. Include in your response: every instance of waiver granted, by whom, and the identity of the service member to whom the waiver was granted.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor’s witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own

evaluation of evidence for a reasonable evaluation' by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants also object on the grounds that this request is overbroad, unduly burdensome and disproportionate to the needs of the case and is an unwarranted invasion of the privacy of non-parties in that it seeks the identities of individual service members who have received waivers under the Department of Defense’s 2018 policy.

Response: Subject to the above general and specific objections, Defendants provide the following answers with respect to the individual Services:

Army: The Secretary of the Army has the authority to grant a waiver as described in Secretary Mattis’s February 22, 2018 Memorandum for the President on Military Service by Transgender Individuals. This secretarial authority has been delegated to the Assistant Secretary of the Army for Manpower and Reserve Affairs. As of July 24, 2019, the Army had not granted any such waivers as described in Secretary Mattis’s February 22, 2018 memorandum, although the Army is aware of at least two requests for waivers being processed which had not been approved or denied as of July 24, 2019.

Navy: The Secretary of the Navy has the authority to grant a waiver as described in Secretary Mattis’s February 22, 2018 Memorandum for the President on Military Service by Transgender Individuals. This secretarial authority has been delegated to the Assistant Secretary of the Navy (Manpower & Reserve Affairs). As of August 1, 2019, the Navy had not granted waivers as described in Secretary Mattis’s February 22, 2018 memorandum.

Marine Corps: The Commanding General, Marine Corps Recruiting Command, is the waiver authority for accession waivers for individuals assessing (appointment, enlistment,

induction) in their biological sex. As of August 8, 2019, there are no instances of either a grant or denial of such a waiver, and there are currently no working applicants. The Assistant Secretary of the Navy, Manpower & Reserve Affairs, is the waiver authority for individuals assessing (appointment, enlistment, induction) in their preferred gender. As of August 8, 2019, there are no instances of either a grant or denial of such a waiver, and there are currently no working applicants.

Air Force: Until the Air Force adopts an implementing service policy in which waiver authority is delegated, which as of August 8, 2019 has not yet happened, the Secretary of the Air Force is the waiver authority. As of August 8, 2019, no Air Force waivers had been granted.

Coast Guard: The Assistant Commandant for Human Resources (CG-1) is the Coast Guard official with authority to grant waivers under Secretary Mattis's February 22, 2019 memorandum. As of July 24, 2019, there has been no such waiver requested.

Interrogatory No. 18: Identify any members of the Panel of Experts convened by General Mattis who expressed dissent from any of the final recommendations included in General Mattis's February 22, 2018, Memorandum for the President on Military Service by Transgender Individuals.

Specific Objections:

Defendants object on the grounds that this interrogatory is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an

independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants further object on the ground that information responsive to this interrogatory would be protected by the deliberative process privilege. The identities of any members of the Panel of Experts who expressed dissent from the final recommendations included in Secretary Mattis’s memorandum is a classic example of factual information inextricably intertwined with deliberative information. To reveal such identities in response to this interrogatory would reveal the opinions and recommendations of the panel members—that they disagreed with the final recommendation in the memorandum. Disclosure of such material would chill future agency deliberations, and is squarely protected by the deliberative process privilege.

Response: Defendants stand on the foregoing objections.

Dated: August 12, 2019

Respectfully submitted,

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Assistant Attorney General
Civil Division

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Matthew Skurnik
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on August 12, 2019, a copy of the document above was served

by email on the following:

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Dated: August 12, 2019

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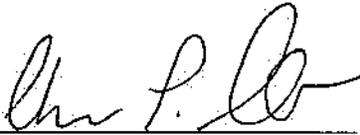
Counsel for Defendants

ATTACHMENT A

VERIFICATION

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

Date: 8/12/19

Signature: 

CHRISTOPHER P. ARENDT

STALLINGS-ALA'ILIMA DECLARATION

EXHIBIT B

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, et al,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

Case No: 2:17-cv-1297-MJP

**INTERVENOR-PLAINTIFF
STATE OF WASHINGTON'S
FIRST REQUESTS FOR
PRODUCTION TO
DEFENDANTS UNITED STATES
DEPARTMENT OF DEFENSE
AND UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY**

STATE OF WASHINGTON,

Intervenor-Plaintiff,

v.

DONALD TRUMP, et al,

Defendants.

TO: DEFENDANTS United States Department of Defense and United States Department of Homeland Security

Pursuant to Federal Rule of Civil Procedure 34, You are hereby required to answer, in writing, the following Requests for Production separately and fully under oath, within thirty (30) days of their service upon You.

I. TIME AND PLACE OF PRODUCTION

1.1 The requested written answers to Interrogatories are to be produced to Chalia

1 Stallings-Ala'ilima, Assistant Attorney General, at the Attorney General's office at 800 Fifth
2 Avenue, Suite 2000, Seattle, WA 98104, within thirty (30) days of being served with these
3 Requests for Production, or at such other time and place as is agreed to by the parties.

4 1.2 All notices, questions or communications concerning these Interrogatories should
5 be directed to Chalia Stallings-Ala'ilima, Assistant Attorney General, at (206) 326-5480 or
6 Chalia.SA@atg.wa.gov.

7 II. DEFINITIONS

8 The following definitions apply for purpose of these Interrogatories. These definitions
9 include both the singular and plural forms of each word:

10 2.1 "Any" and "all" shall be construed as "any and all."

11 2.2 "And, "or," "and/or," "each," and "every" shall be interpreted and construed as
12 broadly as possible to make the Interrogatory inclusive rather than exclusive.

13 2.3 "Communications" shall have the broadest definition and scope and shall include
14 any oral or written utterance, notation, or statement of any nature whatsoever, by and to
15 whomever made, including but not limited to correspondence, conversations, discussions,
16 interviews, consultations, agreements, or oral discussions.

17 2.4 "Documents" shall have the same scope and meaning as the scope and meaning
18 of the materials defined by Federal Rule of Civil Procedure 34(a) and Federal Rule of Evidence
19 1001(a). "Document" means, without limitation, any "writing," and includes, without limitation,
20 any book, pamphlet, report, memorandum, note, statement, minute, diary, transcript, working
21 paper, telegram, letter, paper, chart, drawing, graph, photograph, publication, tape recording,
22 videotaped or graphic matter, accounting material, record of purchase or sale, contract,
23 agreement, invoice, and any other existing source of stored information, whether written, printed,
24 typed, recorded, stored in a computer, or filmed. The term includes originals or duplicates of or
25 copies of the writings, and non-identical copies bearing or having any attachments, notes or
26

1 marks which distinguish them from the originals, and any electronic records, including, without
2 limitation, electronic mail, spreadsheets, word processing files, text messages, electronically
3 stored images, and records saved as .pdf or other electronic files. Electronic mail subject to these
4 discovery requests includes messages and/or attachments now only available on backup or
5 archive tapes or disks. Also, if a print-out of an electronic record is a non-identical copy of the
6 electronic version (for example, because the print-out has a signature, handwritten notation, or
7 other mark or attachment not included in the computer document), both the electronic version in
8 which the document was created and the original print-out must be produced.

9 2.5 “Employee” includes officers, principals, agents, representatives, and anyone else
10 with whom You have or have had any employment or employment-type relationship, whether
11 full or part time.

12 2.6 “Identify” has the following meaning:

13 2.6.1 When applied to a natural person, “identify” means to state the person or
14 entity’s full name, residential address, business address, telephone numbers (home, work, and
15 mobile), e-mail address, employer, job title, and location of assigned duty station. Once a person
16 has been identified in accordance with this instruction, only the name of that person need be
17 listed in response to subsequent Requests for Production where the response identifies that
18 person.

19 2.6.2 When applied to an organization, agency, business entity, or
20 governmental agency, means to state the entity’s legal name, structure of the business
21 (corporation, partnership, sole proprietorship, etc.), a brief description of the business, the
22 registered agent for the business, the business address, and the business telephone number.

23 2.6.3 When applied to a document, means to state the type of document (letter,
24 e-mail, word-processing document, spreadsheet, chart, note), a brief description of the nature of
25 the information in the document, its author and originator, its date or dates, all addresses and
26 recipients (including “file”), and its present location or custodian. If any such document was, but

1 is no longer, in Your possession or subject to Your control, state the approximate date it was
2 lost, discarded, or destroyed, and the identity of each person having knowledge of the contents
3 thereof.

4 2.6.4 When applied to a communication, it means to state the date, location,
5 person(s) who were present, identity of the person(s) who made the communication, the content,
6 and the frequency of the communication.

7 2.7 “Including” or “includes,” means “including but not limited to” or “including
8 without limitation.”

9 2.8 “Person” means any individual, corporation, partnership, association, joint
10 venture, commercial entity, limited liability company, governmental entity, firm, commission,
11 or agency.

12 2.9 “Relate,” “Relating to,” “Reflect,” “Refer,” or “Regarding” means any
13 information which is relevant in any way to the subject matter, including, without limitation, all
14 information which contains, records, reflects, summarizes, evaluates, comments upon, transmits
15 or discusses the subject matter of any Interrogatory, as well as drafts, work papers, or other
16 preparation material, and the text or notes of any oral or written presentation or conversation.

17 2.10 “Service member” means any person who is a member of any branch of the
18 Armed Forces including Army, Navy, Marines, Air Force and any person who is a member of
19 the Coast Guard.

20 2.11 “You” and “Your” means United States Department of Defense and United States
21 Department of Homeland Security, and their principles, present or former employees, officers,
22 directors, agents, representatives, and any other persons or entities acting on behalf of or under
23 the direction, authorization, or control of aforementioned.

24 **III. INSTRUCTIONS**

25 3.1 Unless otherwise noted, the relevant time period for which information is
26 requested is January 1, 2014, to the present.

1 3.2 These discovery requests apply to all information in Your possession, custody or
2 control, including information possessed by Your agents, officers, principals, employees,
3 representatives, attorneys, or any other person acting on Your behalf.

4 3.3 Each discovery request including the below Requests for Production shall be
5 accorded a separate answer. For the convenience of the parties and the Court, please quote each
6 Request for Production in full immediately preceding the answer thereto.

7 3.4 This request includes documents in possession of Your employees, agents,
8 representatives, and attorneys, unless privileged. If any document or information is withheld
9 under claim of privilege, identify the document and state the basis for the privilege, and provide
10 a detailed privilege log that contains at least the following information for each document or
11 information that You have withheld:

- 12 a. The name of each author, writer, sender, creator, or initiator of such document, and
13 each such person's title and his or her employer or firm;
- 14 b. The name of all recipients, addressees, or parties for whom such document was
15 intended or to whom the document was sent;
- 16 c. The date of such document, or an estimate thereof if no date appears on the document;
- 17 d. The Request for Production to which the allegedly privileged document corresponds.
- 18 e. The general subject matter of the document; and
- 19 f. The claimed grounds for withholding the document, including, but not limited to, the
20 nature of any claimed privilege and grounds in support thereof, stated in a manner
21 that does not reveal privileged information but that provides information sufficiently
22 detailed so as to enable the State to assess the applicability of the privileged claimed.

23 3.5 Pursuant to Federal Rule of Civil Procedure 26(e), these discovery requests
24 including the below Requests for Production impose a continuing duty to supplement Your
25 responses in the event additional documents and information comes into Your knowledge,
26 possession, custody or control after Your initial production of responses to the requests.

1 3.6 Your responses to these discovery requests including the below Requests for
2 Production are to be inclusive rather than exclusive. If the language of any of these discovery
3 requests including the below Requests for Production is phrased in the singular, the Request
4 includes the plural, and if the language of a Request is phrased in the plural, the Request includes
5 the singular.

6 3.7 If You cannot answer a Request completely, You must answer to the extent
7 possible and identify with specificity the part(s) which You cannot answer completely.

8 3.8 If You object to responding to part of a Request, You are required to furnish the
9 information that is outside the scope of Your partial objection.

10 3.9 In each instance in which a document is produced in response to a discovery
11 request, produce the current edition, along with all earlier editions or predecessor documents
12 serving the same function, even though the title of earlier documents may differ from current
13 versions.

14 3.10 If particular documents responsive to a discovery request no longer exist for
15 reasons other than the ordinary course of business but You have reason to believe they have been
16 in existence, describe the documents, state the circumstances under which such documents were
17 lost or destroyed, and identify persons having knowledge of the content of the information or
18 documents.

19 3.11 The following procedures shall apply to the production of documents and
20 information in response to these discovery requests including the below Requests for Production:

- 21 a. You shall label each responsive answer or document (i.e., Response to Request No.
22 1), group all information and documents responsive to a particular Request together,
23 and place a label on each group of documents which identifies the corresponding
24 Request;
- 25 b. All attachments to responsive documents shall be produced with, and attached to, the
26 responsive information or documents (or digitally in corresponding order);

1 c. Each responsive document shall be produced in its entirety and no portion of any
2 information or document shall be edited, cut, masked, redacted or otherwise altered,
3 unless for applicable privilege which shall be logged according to the procedures set
4 forth above;

5 d. You shall provide a key to all abbreviations used in the information or documents
6 and shall attach the key to the corresponding documents or information.

7 3.12 Information or documents that may be responsive to more than one numbered
8 Request in the below Requests for Production need not be submitted more than once. However,
9 for each such information or document, You shall identify all of the numbered Requests to which
10 the information or document is responsive. If any responsive information or document has been
11 previously supplied to the Washington Attorney General's Office, You shall identify the
12 document(s) or information previously provided, including the production page number and the
13 date(s) of submission.

14 3.13 You shall consecutively number each page of all information or documents
15 produced with Your response and indicate the total number of pages produced with Your
16 response. This page numbering must be separate from and must not alter any original page
17 numbering on the responsive information or documents.

18 3.14 Your responses to the below Requests for Production should include all relevant
19 electronically stored information in Your possession, custody, or control. Washington considers
20 electronically stored information to be an irreplaceable source of evidence in this matter.
21 Accordingly, Washington insists that You implement appropriate safeguards against the
22 destruction of evidence until the final resolution of this issue.

23 3.15 In order for Your response to be complete, submit with Your response the
24 certification form, attached as **Appendix A**, as executed by the official supervising Your
25 compliance with the below Requests for Production.

26 3.16 Do not destroy any information or documents relating to any of these Requests.

1 **IV. DOCUMENT REQUESTS AND REQUESTS FOR PRODUCTION**

2 **REQUEST FOR PRODUCTION NO. 1:** Please produce all documents that are referenced
3 in, support, or that form the basis of Your answer to Interrogatory 1.

4 **RESPONSE:**

5
6 **REQUEST FOR PRODUCTION NO. 2:** Please produce all documents that are referenced
7 in, support, or that form the basis of Your answer to Interrogatory 2.

8 **RESPONSE:**

9
10 **REQUEST FOR PRODUCTION NO. 3:** Please produce all documents that are referenced in,
11 support, or that form the basis of Your answer to Interrogatory 3.

12 **RESPONSE:**

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14 **REQUEST FOR PRODUCTION NO. 4:** Please produce all documents that are referenced in,
15 support, or that form the basis of Your answer to Interrogatory 4.

16 **RESPONSE:**

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18 **REQUEST FOR PRODUCTION NO. 5:** Please produce all documents that are referenced
19 in, support, or that form the basis of Your answer to Interrogatory 5.

20 **RESPONSE:**

21
22 **REQUEST FOR PRODUCTION NO. 6:** Please produce all documents that are referenced
23 in, support, or that form the basis of Your answer to Interrogatory 6.

24 **RESPONSE:**

1 **REQUEST FOR PRODUCTION NO. 7:** Please produce all documents that are referenced
2 in, support, or that form the basis of Your answer to Interrogatory 7.

3 **RESPONSE:**
4

5 **REQUEST FOR PRODUCTION NO. 8:** Please produce all documents that are referenced
6 in, support, or that form the basis of Your answer to Interrogatory 8.

7 **RESPONSE:**
8

9 **REQUEST FOR PRODUCTION NO. 9:** Please produce all documents that are referenced
10 in, support, or that form the basis of Your answer to Interrogatory 9.

11 **RESPONSE:**
12

13 **REQUEST FOR PRODUCTION NO. 10:** Please produce all documents that are referenced
14 in, support, or that form the basis of Your answer to Interrogatory 10.

15 **RESPONSE:**
16

17 **REQUESTION FOR PRODUCTION NO. 11:** Please produce all documents that are
18 referenced in, support, or that form the basis of Your answer to Interrogatory 11.

19 **RESPONSE:**
20

21 **REQUEST FOR PRODUCTION NO. 12:** Please produce all documents that are referenced
22 in, support, or that form the basis of Your answer to Interrogatory 12.

23 **RESPONSE:**
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26

1 **REQUEST FOR PRODUCTION NO. 13:** Please produce all documents that are referenced
2 in, support, or that form the basis of Your answer to Interrogatory 13.

3 **RESPONSE:**
4

5 **REQUEST FOR PRODUCTION NO. 14:** Please produce all documents that are referenced
6 in, support, or that form the basis of Your answer to Interrogatory 14.

7 **RESPONSE:**
8

9 **REQUEST FOR PRODUCTION NO. 15:** Please produce all documents that are referenced
10 in, support, or that form the basis of Your answer to Interrogatory 15.

11 **RESPONSE:**
12

13 **REQUEST FOR PRODUCTION NO. 16:** Please produce all documents that are referenced
14 in, support, or that form the basis of Your response to Interrogatory 16.

15 **RESPONSE:**
16

17 **REQUEST FOR PRODUCTION NO. 17:** Please produce all documents that are referenced
18 in, support, or that form the basis of Your answer to Interrogatory 17.

19 **RESPONSE:**
20

21 **REQUEST FOR PRODUCTION NO. 18:** Please produce all documents that are referenced
22 in, support, or that form the basis of Your answer to Interrogatory 18.

23 **RESPONSE:**
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1 **REQUEST FOR PRODUCTION NO. 19:** Please produce all policies, reports, and procedures
2 distributed at any point during the relevant time period to the Washington National Guard
3 regarding military service by transgender individuals.

4 **RESPONSE:**

6 **REQUEST FOR PRODUCTION NO. 20:** Please produce all training materials distributed at
7 any point during the relevant time period to the Washington National Guard or used to train
8 Washington service members regarding military service by transgender individuals.

9 **RESPONSE:**

11 **RESPONSE FOR PRODUCTION NO. 21:** Please produce all directives, instructions, guides,
12 or other documents provided to the Panel of Experts convened by General Mattis regarding their
13 work.

14 **RESPONSE:**

16 DATED this 5th day of July, 2019.

18 ROBERT W. FERGUSON
19 Washington Attorney General

20 *s/ Chalia Stallings-Ala'ilima*
21 LA ROND BAKER, WSBA No. 43610
22 COLEEN MELODY, WSBA No. 42275
23 CHALIA STALLINGS-ALA'ILIMA, WSBA No. 40694
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Chalia.SA@atg.wa.gov

APPENDIX A
CERTIFICATION

I, _____, having made the foregoing responses to interrogatories and requests for production of documents, certify under penalty of perjury under the laws of the State of _____, that I am authorized to sign legal documents on respondent's behalf and know the responses herein to be true, correct and complete.

Signature: _____

Title or Position: _____

Date: _____

City and State: _____

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CERTIFICATION OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Electronic Service (by agreement of counsel)

Andrew E. Carmichael
UNITED STATES DEPARTMENT OF JUSTICE
andrew.e.carmichael@usdoj.gov

Vanessa Barsanti
Jordan M. Heinz
KIRKLAND & ELLIS LLP
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Peter Renn
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
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Derek A. Newman
Jason B. Sykes
NEWMAN DU WORS LLP
dn@newmanlaw.com
jason@newmanlaw.com

DATED this 5th day of July, 2019 at Seattle, Washington.

s/Anna Alfonso
ANNA ALFONSO
Legal Assistant

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-1297-MJP

**DEFENDANTS' OBJECTIONS AND RESPONSES TO PLAINTIFF-
INTERVENOR STATE OF WASHINGTON'S FIRST SET OF REQUESTS FOR
PRODUCTION TO THE UNITED STATES DEPARTMENT OF DEFENSE
AND UNITED STATES DEPARTMENT OF HOMELAND SECURITY**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Defendants, through their undersigned counsel, hereby submit initial objections and responses to Plaintiff-Intervenor State of Washington's First Set of Requests for Production to the United States Department of Defense and United States Department of Homeland Security, served July 5, 2019. In presenting these objections and responses, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

Objections to Definitions and Instructions

1. Defendants object to Plaintiff-Intervenor's Definition 2.4 of "Documents" as encompassing any "existing source of stored information . . . in a computer," and "any electronic records," insofar as electronic information collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts. Defendants object further to this definition to the extent that "existing source of stored information . . . in a computer," and "any electronic records," differs from the specification format used in prior productions in this action.

2. Defendants object to Plaintiff-Intervenor's Definition 2.6.1 of "Identify" as encompassing individuals' or entities' "full name, residential address, business address, telephone numbers (home, work, and mobile), e-mail address, employer, job title, and location of assigned duty station" as being overbroad and disproportionate to the needs of the case. Defendants further object on the grounds that this definition is an unwarranted invasion of the privacy of non-parties and seeks information protected by the Privacy Act, 5 U.S.C. § 552a, et seq.

3. Defendants object to Plaintiff-Intervenor's Definition 2.10 of "Service member" as substantially overbroad, ambiguous, and disproportionate to the needs of the case. Plaintiff-Intervenor has defined "Service member" to mean "any person who is a member of any branch of the Armed Forces including Army, Navy, Marines, Air Force and any person who is a member of the Coast Guard," thus covering millions of people.

4. Defendants object to Plaintiff-Intervenor's Definition 2.11 of "You" and "Your" as substantially overbroad, ambiguous, and disproportionate to the needs of the case. Plaintiff-Intervenor has defined "You" and "Your" to encompass "all United States Department of Defense and United States Department of Homeland Security, and their principles, present or former employees, officers, directors, agents, representatives, and any other persons or entities acting on behalf of or under the direction, authorization, or control of aforementioned," thus covering millions of people.

5. Defendants object to Plaintiff-Intervenor's Instruction 3.4d that a privilege log must contain "The Request for Production to which the allegedly privileged document corresponds" as inconsistent with the Federal Rules of Civil Procedure and unreasonable and disproportionate to the needs of the case. Plaintiff-Intervenor's requests are overlapping and, as a result, some documents withheld on the basis of privilege may be responsive to multiple requests. Further, Defendants' searches in response to Plaintiff-Intervenor's requests may not be performed on a request-by-request basis. Rather, where feasible, Defendants' searches for responsive documents may be tailored to multiple requests at once. Defendants intend to produce privilege logs in the same form as their past productions in this case.

6. Defendants object to Plaintiff-Intervenor's Instruction 3.11a that Defendants must "label each responsive answer or document (i.e., Response to Request No. 1), group all information and documents responsive to a particular Request together, and place a label on each group of documents which identifies the corresponding Request;" and Instruction 3.12 that, for answers or documents responsive to multiple requests, Defendants must "identify

all of the numbered Requests to which the information or document is responsive.” Defendants object to these instructions as inconsistent the requirements of the Federal Rules of Civil Procedure and, to the extent they differ from the format of past productions in this action, as unreasonable and disproportionate to the needs of the case. Defendants intend to follow the form used in past productions in this action.

7. Defendants object to Plaintiff-Intervenor’s Instruction 3.13 that Defendants must “consecutively number each page of all information or documents produced with Your response and indicate the total number of pages produced with Your response.” Defendants object to this instruction as inconsistent with the requirements of the Federal Rules of Civil Procedure and, to the extent it differs from the format of past productions in this action, as unreasonable and disproportionate to the needs of the case. Defendants intend to follow the form used in past productions in this action.

8. Defendants object to Plaintiff-Intervenor’s Instruction 3.14 that Defendants’ responses “must include all relevant electronically stored information in Your possession, custody, or control,” insofar as electronically stored information collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

9. Defendants object to Plaintiff-Intervenor’s Instruction 3.15 that Defendants must submit with their response the certification form supplied by Plaintiff-Intervenor as unreasonable and disproportionate to the needs of the case. Where appropriate, Defendants shall supply certifications in their own format, consistent with past discovery responses in this action.

General Objection to All Requests for Production

Defendants object to Plaintiff-Intervenor's requests that purport to seek information outside of the administrative record because discovery beyond the limits of the Administrative Procedure Act is inappropriate in this case. Defendants' administrative processes resulted in final agency action supported by the administrative record. In making its determination whether those policies are "contrary to constitutional right," 5 U.S.C. § 706(2)(B), the Court "shall review the whole record," *id.* § 706. The Court's review is therefore limited to "the full administrative record that was before the Secretary at the time he made his decision." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971).

In the Ninth Circuit's recent opinion, it definitively set the standard for judicial review in this case. The district court "must apply appropriate deference to its evaluation" of the challenged policy under "intermediate scrutiny." Dkt. 338 at 45. This means that, to prevail, the government must "establish[] that [the military] reasonably determined the policy 'significantly furthers' the government's important interests." *Id.* Under no circumstance is the reviewing court to "substitute its 'own evaluation of evidence for a reasonable evaluation' by the military." *Id.* (quoting *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981)). Thus, because "the reasonableness of the 2018 Policy must be evaluated on the record supporting that decision and with the appropriate deference due to a proffered military decision," *id.* at 56, Plaintiff-Intervenor's claims are properly adjudicated based on a review of the administrative record supporting Defendants' decision. *See id.* at 54 n.22 (noting that that a 12-page memo was sufficient to evaluate the government policy in *Trump v. Hawaii*, 138 S. Ct. 2392, 2421–22,

(2018)). Accordingly, Plaintiff-Intervenor's discovery requests are overbroad, unduly burdensome, and disproportionate to the needs of the case.

Specific Objections and Responses to Requests for Production

RFP No. 1: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 1.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 2: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 2.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 3: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 3.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 4: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 4.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 5: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 5.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 6: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 6.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 7: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 7.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 8: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 8.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Defendants have identified no material responsive to Plaintiff-Intervenor's request.

RFP No. 9: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 9.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Defendants have identified no material responsive to Plaintiff-Intervenor's request.

RFP No. 10: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 10.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 11: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 11.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 12: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 12.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Defendants have identified no material responsive to Plaintiff-Intervenor's request.

RFP No. 13: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 13.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Defendants have identified no material responsive to Plaintiff-Intervenor's request.

RFP No. 14: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 14.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 15: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 15.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 16: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 16.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Defendants have identified no material responsive to Plaintiff-Intervenor's request.

RFP No. 17: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 17.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections and subject to applicable privileges, Defendants will produce materials responsive to Plaintiff-Intervenor's request.

RFP No. 18: Please produce all documents that are referenced in, support, or that form the basis of Your answer to Interrogatory 18.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Defendants have identified no material responsive to Plaintiff-Intervenor's request.

RFP No. 19: Please produce all policies, reports, and procedures distributed at any point during the relevant time period to the Washington National Guard regarding military service by transgender individuals.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants further object to this request as overbroad, unduly burdensome, and disproportionate to the needs of the case because it seeks materials in the possession of Plaintiff-Intervenor the State of Washington, because the Washington National Guard is the federally recognized militia of the State of Washington and a subcomponent of the Washington Military Department, which is a State agency. *See Worthington v. Panetta*, 2012 WL 2952101, at *1 (W.D. Wash. July 19, 2012).

Response: Information responsive to this request is already in the possession of Plaintiff-Intervenor. Accordingly, Defendants stand on their objections to this request.

RFP No. 20: Please produce all training materials distributed at any point during the relevant time period to the Washington National Guard or used to train Washington service members regarding military service by transgender individuals.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log will be provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Defendants further object to this request as overbroad, unduly burdensome, and disproportionate to the needs of the case because it seeks materials in the possession of Plaintiff-Intervenor the State of Washington, because the Washington National Guard is the federally recognized militia of the State of Washington and a subcomponent of the Washington Military Department, which is a State agency. *See Panetta*, 2012 WL 2952101 at *1.

Response: Information responsive to this request is already in the possession of Plaintiff-Intervenor. Accordingly, Defendants stand on their objections to this request.

RFP No. 21: Please produce all directives, instructions, guides, or other documents provided to the Panel of Experts convened by General Mattis regarding their work.

Specific Objections:

Defendants object to this request to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege;

(d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the objections, a privilege log has been, or will be, provided by the government, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Defendants further object on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. As explained above, neither Plaintiff-Intervenor, Plaintiff-Intervenor's witnesses, nor the Court may undertake an independent evaluation of military data, as Plaintiff-Intervenor proposes to do through these discovery requests. *See* Dkt. 388 at 45 (“[T]he district court may not substitute its ‘own evaluation of evidence for a reasonable evaluation’ by the military.” (quoting *Rostker*, 453 U.S. at 68)).

Response: Subject to and without waiving the above general and specific objections, Defendants have already produced documents responsive to Plaintiff-Intervenor's request or withheld documents responsive to the request pursuant to a valid privilege, as part of the administrative record.

Dated: August 12, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Matthew Skurnik

MATTHEW SKURNIK (NY 5553896)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20005
Tel: (202) 616-8188
Email: Matthew.Skurnik@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on August 12, 2019, a copy of the document above was served by email on the following:

Vanessa Barsanti KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 2205
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Chalia Stallings-Ala'ilima
Assistant Attorney General Wing Luke Civil Rights Unit
Office of the Washington Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Chalia.SA@atg.wa.gov

Dated: August 12, 2019

/s/ Matthew Skurnik
MATTHEW SKURNIK (NY 5553896)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20005
Tel: (202) 616-8188
Email: Matthew.Skurnik@usdoj.gov

Counsel for Defendants

STALLINGS-ALA'ILIMA DECLARATION

EXHIBIT C

From: [Skurnik, Matthew \(CIV\)](#)
To: [Stallings-Ala'ilima, Chalia \(ATG\)](#); [Carmichael, Andrew E. \(CIV\)](#)
Cc: [Barsanti, Vanessa](#); [Heinz, Jordan M.](#); [Tara Borelli](#); [prenn@lambdalegal.org](#); [jason@newmanlaw.com](#); [Siegfried, Daniel I.](#); [rachel@newmanlaw.com](#); [Ikard, Sam](#); [Enlow, Courtney D. \(CIV\)](#); [Norway, Robert M. \(CIV\)](#); [Powers, James R. \(CIV\)](#); [Gerardi, Michael J. \(CIV\)](#); [Melody, Colleen M \(ATG\)](#)
Subject: RE: Karnoski, et al. v. Trump, et al.
Date: Tuesday, December 3, 2019 3:18:35 PM
Attachments: [NGB00000002 \(USDOE00287950\).xlsx](#)
[NGB00000004 \(USDOE00287952\).xlsx](#)

Chalia,

In regard to your questions from November 8, USDOE00287950-288012 were three documents from the National Guard Bureau and were responsive to RFPs 4-7. In addition, USDOE00285223-286221 were documents from DoD and were responsive to RFPs 1-3, 14-15, and 17. With regard to the documents from the National Guard Bureau, USDOE00287950 and USDOE00287952-288012 were native excel files. Attached are the native files. However, USDOE00287951 is a native PDF. Finally, we are working on a privilege log related to production 30 and intend to serve it soon.

Best,
Matt

Matthew Skurnik

Trial Attorney
United States Department of Justice
Civil Division - Federal Programs Branch
1100 L Street NW
Washington, DC 20005
(202) 616-8188 | Matthew.Skurnik@usdoj.gov

From: Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>
Sent: Monday, December 02, 2019 12:07 PM
To: Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>; Skurnik, Matthew (CIV) <maskurni@CIV.USDOJ.GOV>
Cc: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>; Tara Borelli <torelli@lambdalegal.org>; prenn@lambdalegal.org; jason@newmanlaw.com; Siegfried, Daniel I. <daniel.siegfried@kirkland.com>; rachel@newmanlaw.com; Ikard, Sam <sam.ikard@kirkland.com>; Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>; Norway, Robert M. (CIV) <rnorway@CIV.USDOJ.GOV>; Powers, James R. (CIV) <jpowers@CIV.USDOJ.GOV>; Gerardi, Michael J. (CIV) <mgerardi@CIV.USDOJ.GOV>; Melody, Colleen M (ATG) <colleen.melody@atg.wa.gov>
Subject: RE: Karnoski, et al. v. Trump, et al.

Hello Drew,
We are asking that DoD expand its collection to Washington custodians that would have

information responsive to our RFPs 12, 13, and 16, which relate to all Washington service members, including but not limited to the Guard. DoD is in the best position to know how these records are routed and maintained, and whether a search of individual commands is not the only way to identify responsive documents. If you can give us more information about how the responsive records are kept, we are willing to consider ways to narrow custodians or stage the collections.

Thank you,
Chalia

Chalia Stallings-Ala'ilima Assistant Attorney General
Wing Luke Civil Rights Division Office of the WA Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104
Phone: 206-326-5480 Fax: 206-464-6451

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*"The state of the Union is chaotic. ...
But there is hope out there. And there is a role for you to play."*

– Yamiche Alcindor, King County Bar Association 2019 Rev. Dr. MLK Jr. Luncheon

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From: Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>
Sent: Saturday, November 30, 2019 6:46 AM
To: Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>; Skurnik, Matthew (CIV) <Matthew.Skurnik@usdoj.gov>
Cc: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>; Tara Borelli <tborelli@lambdalegal.org>; prenn@lambdalegal.org; jason@newmanlaw.com; Siegfried, Daniel I. <daniel.siegfried@kirkland.com>; rachel@newmanlaw.com; Ikard, Sam <sam.ikard@kirkland.com>; Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; Norway, Robert M. (CIV) <Robert.M.Norway@usdoj.gov>; Powers, James R. (CIV) <James.R.Powers@usdoj.gov>; Gerardi, Michael J. (CIV) <Michael.J.Gerardi@usdoj.gov>; Melody, Colleen M (ATG) <colleen.melody@atg.wa.gov>
Subject: RE: Karnoski, et al. v. Trump, et al.

Chalia,

Quick point of clarification are you requesting that DoD expand its collection to all command units within Washington State (likely an expansion to several hundred commands) or just to the Washington State National Guard?

Best regards,

Drew

Drew Carmichael
 Trial Attorney | United States Department of Justice
 Civil Division | Federal Programs Branch
 Tel: (202) 514-3346

From: Stallings-Ala'ilima, Chalia (ATG) <Chalia_SA@atg.wa.gov>
Sent: Friday, November 29, 2019 10:23 PM
To: Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>; Skurnik, Matthew (CIV) <maskurni@CIV.USDOJ.GOV>
Cc: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>; Tara Borelli <tborelli@lambdalegal.org>; prenn@lambdalegal.org; jason@newmanlaw.com; Siegfried, Daniel I. <daniel.siegfried@kirkland.com>; rachel@newmanlaw.com; Ikard, Sam <sam.ikard@kirkland.com>; Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>; Norway, Robert M. (CIV) <rnorway@CIV.USDOJ.GOV>; Powers, James R. (CIV) <jpowers@CIV.USDOJ.GOV>; Gerardi, Michael J. (CIV) <mgerardi@CIV.USDOJ.GOV>; Melody, Colleen M (ATG) <colleen.melody@atg.wa.gov>
Subject: RE: Karnoski, et al. v. Trump, et al.

Dear Drew and Matt,

Washington concurs with the Private Plaintiffs' first five priority RFP proposals. As we discussed briefly after the hearing on November 12, Washington will comply with Judge Pechman's directive to coordinate discovery. To that end, we have identified Washington's RFPs that substantially overlap with Private Plaintiffs' first five prioritized RFPs and listed them below.

Plaintiffs' First Set of Prioritized RFPs		Additional Washington Custodians
1. Private Plaintiffs' RFP No. 29	Washington RFP No. 18	
2. Private Plaintiffs' RFP No. 36	Washington RFP No. 12	Command units of each branch operating in Washington State
3. Private Plaintiffs' RFP No. 33	Washington RFP No. 21	
4. Private Plaintiffs' RFP No. 44	Washington RFP Nos. 13 and 16	Command units of each branch operating in Washington State
5. Private Plaintiffs' RFP No. 15	Washington RFP Nos. 19 and 20	

We request that Defendants include these Washington RFPs and custodians in your review and identification of documents responsive to the comparable prioritized RFPs proposed by Private Plaintiffs. Washington has conferred with the Private Plaintiffs, and together we believe a streamlined approach makes sense for purposes of efficiency, reducing

Defendants' burden, and complying with Judge Pechman's directive to coordinate where Plaintiffs' RFPs substantially overlap.

Relatedly, I have not received answers to the questions I raised via email on November 8, regarding Defendants' apparent production of only three documents in response to Washington's First Set of Requests for Production from July. I ask that you respond to my questions no later than Friday, December 6, 2019. I am available to meet and confer at any time before then.

Thank you,
Chalia

Chalia Stallings-Ala'ilima Assistant Attorney General
Wing Luke Civil Rights Division Office of the WA Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104
Phone: 206-326-5480 Fax: 206-464-6451

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*"The state of the Union is chaotic. ...
But there is hope out there. And there is a role for you to play."*

– Yamiche Alcindor, King County Bar Association 2019 Rev. Dr. MLK Jr. Luncheon

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[Remainder Withheld for Filing]

From: [Stallings-Ala'ilima, Chalia \(ATG\)](#)
To: ["Carmichael, Andrew E. \(CIV\)"; "Skurnik, Matthew \(CIV\)"](#)
Cc: ["Barsanti, Vanessa"; "Heinz, Jordan M."; "Tara Borelli"; prenn@lambdalegal.org; "jason@newmanlaw.com"; "Siegfried, Daniel I."; "rachel@newmanlaw.com"; "Ikard, Sam"; "Enlow, Courtney D. \(CIV\)"; "Norway, Robert M. \(CIV\)"; "Powers, James R. \(CIV\)"; "Gerardi, Michael J. \(CIV\)"; Melody, Colleen M \(ATG\)](#)
Subject: Washington Discovery Requests
Date: Friday, December 13, 2019 2:45:41 PM

Dear Drew and Matt,

Below, please find Washington's discovery requests that we have identified as substantially overlapping with the second list of prioritized RFPs provided to you after the hearing this week.

Plaintiffs' Second Set of Prioritized RFPs	
Private Plaintiffs' RFP No. 13	Washington RFP No. 19
Private Plaintiffs' RFP No. 26	Washington RFP No. 15
Private Plaintiffs' RFP No. 43	Washington RFP Nos. 13 and 16
Private Plaintiffs' RFP No. 54	Washington RFP No. 17
Private Plaintiffs' RFP No. 65	

As part of the parties' coordination efforts directed by Judge Pechman, Washington requests that Defendants include these comparable Washington requests in your review and identification of documents responsive to the second set of prioritized RFPs. Again, please let us know if you disagree that these Washington RFPs fall within your production of records for the prioritized RFPs.

Thank you,
Chalia

<p>Chalia Stallings-Ala'ilima Assistant Attorney General</p> <p>Wing Luke Civil Rights Division Office of the WA Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104</p> <p>Phone: 206-326-5480 Fax: 206-464-6451</p>

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– Yamiche Alcindor, King County Bar Association 2019 Rev. Dr. MLK Jr. Luncheon

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From: [Stallings-Ala'ilima, Chalia \(ATG\)](#)
To: [Carmichael, Andrew E. \(CIV\)](#); [Norway, Robert M. \(CIV\)](#); [Enlow, Courtney D. \(CIV\)](#); [Powers, James R. \(CIV\)](#); [Gerardi, Michael J. \(CIV\)](#)
Cc: ["Barsanti, Vanessa"](#); [Skurnik, Matthew \(CIV\)](#); *prenn@lambdalegal.org; *tborelli@lambdalegal.org; *Rachel@newmanlaw.com; [Siegfried, Daniel I.](#); [Melody, Colleen M \(ATG\)](#); *jason@newmanlaw.com; [Rosenberg, Michael E.](#); [Heinz, Jordan M.](#); [Means, Miranda](#); [Ikard, Sam](#)
Subject: RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs
Date: Friday, March 6, 2020 5:35:40 PM

Hello,

The Washington RFPs identified as substantially overlapping with the next 5 prioritized RFPs are:

Prioritized RFPs	
Private Plaintiffs' RFP No. 16	Washington RFP No. 17
Private Plaintiffs' RFP No. 19	Washington RFP No. 11
Private Plaintiffs' RFP No. 23	
Private Plaintiffs' RFP No. 27	Washington RFP No. 18
Private Plaintiffs' RFP No. 28	Washington RFP No. 18

As part of the parties' coordination efforts, Washington requests that Defendants include these comparable Washington requests in your review and identification of documents responsive to the prioritized RFPs. Again, please notify us if you disagree that these Washington RFPs fall within your production of records for the prioritized RFPs.

Thank you,
Chalia

<p>Chalia Stallings-Ala'ilima Assistant Attorney General</p> <p>Wing Luke Civil Rights Division Office of the WA Attorney General 800 Fifth Avenue, Suite 2000 Seattle, WA 98104 Phone: 206-326-5480 Fax: 206-464-6451</p>
--

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– Yamiche Alcindor, King County Bar Association 2019 Rev. Dr. MLK Jr. Luncheon

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STALLINGS-ALA'ILIMA DECLARATION

EXHIBIT D

Message

From: Dilts, Benjamin J (Ben) CW3 USARMY HQDA DCS G-1 (US) [/O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BENJAMIN.J.DILTS6.MIL]
Sent: 8/23/2017 5:47:43 PM
To: MCTIGUE, Daniel C LTC USARMY HQDA DCS G-1 (US) [/O=EASF/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Daniel.c.mctigue.MIL]
Subject: RE: RA Enlisted (UNCLASSIFIED)
Attachments: RA Enlisted TG.xlsx

CLASSIFICATION: UNCLASSIFIED

As requested - data was pulled from WebEDAS

BEN DILTS
CW3, AG
Plans, Policy & Readiness Tech
HQDA, DCS G-1, DMPM
Room 1C449

Commercial: 703-695-7633
DSN: 312-225-7633
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SIPR: benjamin.j.dilts6.mil@mail.smil.mil

-----Original Message-----

From: MCTIGUE, Daniel C LTC USARMY HQDA DCS G-1 (US)
Sent: Wednesday, August 23, 2017 1:23 PM
To: Dilts, Benjamin J (Ben) CW3 USARMY HQDA DCS G-1 (US) <benjamin.j.dilts6.mil@mail.mil>
Subject: RA Enlisted

Just need duty locations based on these socials.

v/r,

DANIEL C. MCTIGUE
LTC, GS
Chief, Officer Career Policy
DAPE-MPO-D (Room 1C353)
300 Army Pentagon
Washington, DC 20310

daniel.c.mctigue.mil@mail.mil

703-695-5666

CLASSIFICATION: UNCLASSIFIED

	A	B	C
1	NAME	SSN	LOCNM
2			FT STEWART
3			FT GEORGE MEADE
4			EGLIN AFB DESTIN
5			EAST CAMP GRAFFEN
6			FT GEORGE MEADE
7			FT LEONARD WOOD
8			FT BLISS
9			CAMP HUMPHREYS
10			FT SAM HOUSTON
11			JB ELMENDORF-RICH
12			FT POLK
13			FT STEWART
14			FT JACKSON
15			FT BRAGG
16			JBLM LEWIS
17			FT KNOX
18			FT CARSON
19			JBLM LEWIS
20			FT HOOD
21			FT STEWART
22			FT GORDON
23			FT HOOD
24			SCHOFIELD BRKS
25			SCHOFIELD BRKS
26			FT CARSON
27			JBLM LEWIS
28			FT SAM HOUSTON
29			FT GEORGE MEADE
30			FT HOOD
31			FT CARSON
32			JBLM LEWIS
33			FT CARSON
34			FT A P HILL
35			FT HOOD
36			FT BLISS
37			FT STEWART
38			FT CARSON
39			FT POLK
40			FT STEWART
41			FT GEORGE MEADE
42			SILVERDALE
43			YONG SAN
44			FT BRAGG
45			FT JACKSON
46			FT BLISS

	A	B	C
47			CAMP HUMPHREYS
48			JBLM LEWIS
49			SCHOFIELD BRKS
50			JBLM LEWIS
51			FT CAMPBELL
52			FT CARSON
53			WHEELER AAF
54			JBLM LEWIS
55			FT STEWART
56			FT KNOX
57			FT BRAGG
58			FT BRAGG
59			FT GEORGE MEADE
60			FT STEWART

STALLINGS-ALA'ILIMA DECLARATION

EXHIBIT E



AF Data Collection Status

U.S. AIR FORCE

■ Current Tracking Measures

- ETPs for dress & appearance, facility use, fitness are now manually tracked by functional SMEs**
- Formal Medical Transition Plans**
 - Requested – 64 (39 MtF / 25 FtM)**
 - RegAF – 47**
 - AFR – 4**
 - ANG – 1**
 - Start dates vary depending on CC approval; not tracked**
- Formal requests for DEERS (MilPDS) gender change – 4 recommendations made by MMDT**

■ Future Tracking

- AF developing data element in MilPDS that would indicate gender change due to gender transition (currently there is only one data element for gender change and only indicates an input error occurred) – no changes in DEERS required**
-

Integrity - Service - Excellence

STALLINGS-ALA'ILIMA DECLARATION

EXHIBIT F



OFFICE OF THE DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

March 12, 2019

MEMORANDUM FOR CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
CHIEF OF THE NATIONAL GUARD BUREAU
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC AFFAIRS
DIRECTOR OF NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Directive-type Memorandum (DTM)-19-004 – Military Service by Transgender Persons and Persons with Gender Dysphoria

References: See Attachment 1.

Purpose. This DTM:

- Implements the policy in the February 22, 2018 Secretary of Defense Memorandum and the February 2018 DoD Report and Recommendations on Military Service by Transgender Persons, assigns responsibilities, and prescribes procedures regarding the standards for accession, retention, separation, in-service transition, and medical care for Service members and applicants with gender dysphoria, as applicable.
- Approves updates to the separation processing guidance in DoD Instructions (DoDIs) 1332.14 and 1332.30. These DoDIs will be administratively changed in accordance with Attachment 4 of this DTM; the changes will be effective 30 days after publication of this DTM.
- Is effective April 12, 2019. This DTM will be incorporated into DoDIs 1300.28, 1332.14, 1332.30, and 6130.03, and supersedes any contradictory



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guidance in those publications. This DTM will expire effective March 12, 2020.

Applicability. This DTM applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

Definitions. See Glossary.

Policy. It is DoD policy that:

- Service in the Military Services is open to all persons who can meet the high standards for military service and readiness without special accommodations.
- All Service members and applicants for accession to the Military Services must be treated with dignity and respect. No person, solely on the basis of his or her gender identity, will be:
 - Denied accession into the Military Services;
 - Involuntarily separated or discharged from the Military Services;
 - Denied reenlistment or continuation of service in the Military Services; or
 - Subjected to adverse action or mistreatment.
- Except where a provision of policy has granted an exception, transgender Service members or applicants for accession to the Military Services must be subject to the same standards as all other persons.
 - When a standard, requirement, or policy depends on whether the individual is a male or a female (e.g., medical fitness for duty; physical fitness and body fat standards; berthing, bathroom, and shower facilities; and uniform and grooming standards), all persons will be subject to the standard, requirement, or policy associated with their biological sex.
 - Transgender persons may seek waivers or exceptions to these or any other standards, requirements, or policies on the same terms as any other person.
- Service members who access in their preferred gender or received a diagnosis of gender dysphoria from, or had such diagnosis confirmed by, a military

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medical provider before the effective date of this DTM will be allowed to continue serving in the military pursuant to the policies and procedures in effect before the effective date of this DTM.

- Accession and retention standards for gender dysphoria and the treatment of gender dysphoria will be aligned with analogous conditions and treatments, including stability periods and surgical procedures.

Responsibilities. See Attachment 2.

Procedures. See Attachment 3.

Information Collections. The requests for medical reports and history referred to in Paragraph 2.b. of Attachment 3 do not require licensing with a report control symbol in accordance with Paragraph 1.b.(13) in Enclosure 3 of Volume 1 of DoD Manual 8910.01.

Releasability. Cleared for public release. Available on the DoD Issuances Website at <https://www.esd.whs.mil/DD/>.



David L. Norquist
Performing the Duties of the
Deputy Secretary of Defense

Attachments:
As stated

cc:
Secretary of Homeland Security
Commandant, U.S. Coast Guard

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ATTACHMENT 1REFERENCES

Assistant Secretary of Defense for Health Affairs Memorandum, "Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members," July 29, 2016

Commandant Instruction M1850.2 (series), "Physical Disability Evaluation System," May 19, 2006

Department of Defense, "Department of Defense Report and Recommendations on Military Service by Transgender Persons," February 2018

Department of Defense, "Transgender Service in the U.S. Military Implementation Handbook," September 30, 2016

Directive-type Memorandum 16-005, "Military Service of Transgender Service Members," June 30, 2016

DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 24, 2003

DoD Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019

DoD Instruction 1300.28, "In-Service Transition for Transgender Service Members," June 30, 2016

DoD Instruction 1332.14, "Enlisted Administrative Separations," January 27, 2014, as amended

DoD Instruction 1332.18, "Disability Evaluation System (DES)," August 5, 2014, as amended

DoD Instruction 1332.30, "Commissioned Officer Administrative Separations," May 11, 2018

DoD Instruction 1332.45, "Retention Determinations For Non-Deployable Service Members," July 30, 2018

DoD Instruction 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services," May 6, 2018

DoD Instruction 6490.10, "Continuity of Behavioral Health Care for Transferring and Transitioning Service Members," March 26, 2012, as amended

DoD Manual 8910.01, Volume 1, "DoD Information Collections Manual: Procedures for DoD Internal Information Collections," June 30, 2014, as amended

Secretary of Defense Memorandum, "Military Service by Transgender Individuals," February 22, 2018

United States Code, Title 10, Section 1074

United States Department of Defense, "Transgender Service in the U.S. Military Implementation Handbook," September 30, 2016

ATTACHMENT 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R):

a. Will revise DoDIs 1300.28, 1332.14, 1332.30, and 6130.03, consistent with this DTM. Unless otherwise specified in this DTM, if these issuances are inconsistent with this DTM, this DTM will govern.

b. Will revise the U.S. DoD Transgender Service in the U.S. Military Implementation Handbook, consistent with this DTM.

c. Will disseminate the revised handbook to all Military Departments and the United States Coast Guard (USCG).

2. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS. Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Health Affairs will issue medical guidance as appropriate.

3. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments:

a. As necessary and appropriate, will develop implementing guidance for their respective Departments and Services consistent with the policies and procedures in this DTM.

b. May grant waivers in accordance with Paragraph 3 in Attachment 3 of this DTM, in whole or in part, in individual cases. Waiver authority permitting an applicant or Service member, who is not exempt pursuant to this policy, to serve in his or her preferred gender may be delegated, in writing, no lower than the Military Service Personnel Chiefs. All other waiver authority remains with the Service-designated waiver authority.

4. COMMANDANT, USCG. The Commandant, USCG:

a. As necessary and appropriate, will develop implementing guidance for the USCG consistent with the policies and procedures in this DTM.

b. May grant waivers in accordance with Paragraph 3 in Attachment 3 of this DTM, in whole or in part, in individual cases. Waiver authority permitting an applicant or Service member, who is not exempt pursuant to this policy, to serve in his or her preferred gender may

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not be delegated lower than the Assistant Commandant for Human Resources. All other waiver authority remains with the Service-designated waiver authority.

ATTACHMENT 3PROCEDURES1. SECTION I: EXEMPT INDIVIDUALS.

a. Applicability. Individuals are exempt from Paragraph 2 of this attachment if they, before the effective date of this DTM:

(1) Entered into a contract for enlistment into the Military Services using DD Form 4, "Enlistment/Reenlistment Document Armed Forces of the United States," available on the DoD Forms Management Program website at <https://www.esd.whs.mil/Directives/forms/>, or an equivalent, or were selected for entrance into an officer commissioning program through a selection board or similar process; and

(2) Either:

(a) Were medically qualified for Military Service or selected for entrance into an officer commissioning program in their preferred gender in accordance with DTM-16-005; or

(b) As a Service member, received a diagnosis of gender dysphoria from, or had such diagnosis confirmed, by a military medical provider.

b. Appointment, Enlistment, or Induction into the Military Services. Individuals who are exempt will be accessed or commissioned based on the following medical standards, provided they are medically qualified in all other respects in accordance with DoDI 6130.03:

(1) A history of gender dysphoria is disqualifying, unless, as certified by a licensed mental health provider, the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months.

(2) A history of medical treatment associated with gender transition is disqualifying, unless, as certified by a licensed medical provider:

(a) The applicant has completed all medical treatment associated with the applicant's gender transition; and

(b) The applicant has been stable in the preferred gender for 18 months; and

(c) If the applicant is presently receiving cross-sex hormone therapy post-gender transition, the individual has been stable on such hormones for 18 months.

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(3) A history of sex reassignment or genital reconstruction surgery is disqualifying, unless, as certified by a licensed medical provider:

(a) A period of 18 months has elapsed since the date of the most recent of any such surgery; and

(b) No functional limitations or complications persist and any additional surgery is not required.

c. In-Service Transition. Service members who are exempt may continue to receive all medically necessary treatment, as defined in DoDI 1300.28, to protect the health of the individual, obtain a gender marker change in the Defense Enrollment Eligibility Reporting System (DEERS) in accordance with DoDI 1300.28; and serve in their preferred gender.

d. Separation And Retention. Service members who are exempt:

(1) May not be separated, discharged, or denied reenlistment or continuation of service solely on the basis of gender identity.

(2) May be retained without a waiver pursuant to this DTM. A Service member whose ability to serve is adversely affected by a medical condition or medical treatment related to his or her gender identity or gender transition should be treated, for purposes of separation and retention, in a manner consistent with a Service member whose ability to serve is similarly affected for reasons unrelated to gender identity or gender transition.

2. SECTION II: NONEXEMPT INDIVIDUALS.

a. Applicability. Individuals are not exempt if they do not meet the criteria in Paragraph 1.a. of this attachment.

b. Appointment, Enlistment, or Induction into the Military Services. Individuals who are not exempt will be accessed or commissioned based on the following medical standards, provided they are medically qualified in all other respects in accordance with DoDI 6130.03:

(1) A history or diagnosis of gender dysphoria is disqualifying unless:

(a) As certified by a licensed mental health provider, the applicant demonstrates 36 consecutive months of stability in the applicant's biological sex immediately preceding submission of the application without clinically significant distress or impairment in social, occupational, or other important areas of functioning; and

(b) The applicant demonstrates that the applicant has not transitioned to his or her preferred gender and a licensed medical provider has determined that gender transition is not medically necessary to protect the health of the individual; and

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(c) The applicant is willing and able to adhere to all applicable standards, including the standards associated with the applicant's biological sex.

(2) A history of cross-sex hormone therapy or a history of sex reassignment or genital reconstruction surgery is disqualifying.

(3) The accession standards will be reviewed no later than 24 months from the effective date of this DTM, and every 24 months thereafter, and may be maintained or changed, as appropriate, to ensure:

(a) Consistency with applicable medical standards and clinical practices; and

(b) The readiness and combat effectiveness of the Military Services.

c. In-Service Transition. Individuals who are not exempt must adhere, like all other Service members, to the standards associated with their biological sex. These nonexempt Service members may consult with a military medical provider, receive a diagnosis of gender dysphoria, and receive mental health counseling, but may not obtain a gender marker change in DEERS or serve in their preferred gender.

d. Retention. Service members who are not exempt may be retained without a waiver if they receive a diagnosis of gender dysphoria on or after the effective date of this DTM, provided that:

(1) A military medical provider has determined that gender transition is not medically necessary to protect the health of the individual; and

(2) The Service member is willing and able to adhere to all applicable standards, including the standards associated with his or her biological sex.

e. Separation. Service members who are not exempt:

(1) May not be separated, discharged, or denied reenlistment or continuation of service solely based on gender identity.

(2) May not be separated solely based on a diagnosis of gender dysphoria without first being medically evaluated for possible referral to the Disability Evaluation System (DES) pursuant to DoDI 1332.18 or the USCG Physical Disability Evaluation System (PDES), pursuant to Commandant Instruction (COMDTINST) M1850.2 (series).

(3) If referral to the DES is not appropriate in accordance with DoDI 1332.18 or the USCG PDES, in accordance with COMDTINST M1850.2 (series), may be subject to processing for administration separation in accordance with Attachment 4 and the following guidance:

(a) The Secretary of the Military Department concerned or the Commandant, USCG, may authorize separation based on conditions and circumstances not constituting a physical disability that interfere with assignment to or performance of duty.

1. Service members are ineligible for referral to the DES or USCG PDES when they have a condition not constituting a physical disability as described in DoDI 1332.18 or COMDTINST M1850.2 (series).

2. Service members may be referred to the DES or USCG PDES if they have a diagnosis of gender dysphoria and of co-morbidities that are appropriate for disability evaluation processing in accordance with DoDI 1332.18 or COMDTINST M1850.2 (series), before processing for administrative separation.

(b) Service members with a diagnosis of gender dysphoria may be subject to the initiation of administrative separation processing in accordance with Paragraph 2.e. of this attachment if they are unable or unwilling to adhere to all applicable standards, including the standards associated with their biological sex.

(c) Nothing in this guidance precludes appropriate disciplinary action for Service members who refuse orders from lawful authority to comply with applicable standards.

3. SECTION III. ADDITIONAL POLICY GUIDANCE.

a. Waivers.

(1) The Military Departments and the USCG may grant waivers, in whole or in part, to the requirements in this attachment in individual cases.

(2) If a waiver is granted permitting an applicant or Service member, who is not exempt under Paragraph 1 of this attachment, to serve in his or her preferred gender, such an individual will be considered from that point forward to be exempt in accordance with Paragraph 1.

(3) The provisions concerning who may qualify as exempt under Paragraph 1.a. of this attachment may not be waived; a person who is exempt under Paragraph 1.a. may not have his or her exempt status revoked.

b. Medical Policy.

(1) For Service members who have been diagnosed with gender dysphoria and are exempt, the Military Departments and Services will handle requests for medical care and treatment in accordance with DoDI 1300.28 and the July 29, 2016 Assistant Secretary of Defense for Health Affairs Memorandum.

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(2) For Service members who have been diagnosed with gender dysphoria and are not exempt, the Military Departments and the USCG:

(a) Will provide necessary care consistent with Section 1074 of Title 10, United States Code and the July 29, 2016 Assistant Secretary of Defense for Health Affairs Memorandum for as long as the individual remains a Service member as set forth in a medical treatment plan developed with the military medical provider and provided to the commander.

(b) Will take appropriate action to facilitate the continuity of health care consistent with DoDI 6490.10 if the Service member is to be separated from military service.

c. Equal Opportunity. The DoD and the USCG provide equal opportunity to all Service members, in an environment free from harassment and discrimination on the basis of race, color, national origin, religion, sex, gender identity, or sexual orientation.

d. Protection of Personally Identifiable Information (PII) and Protected Health Information.

(1) The Military Departments and the USCG will:

(a) In accordance with DoDI 5400.11, in cases where there is a need to collect, use, maintain, or disseminate PII in accordance with this issuance or Military Department and Service regulations, policies, or guidance, protect against unwarranted invasions of personal privacy and the unauthorized disclosure of such PII.

(b) Maintain such PII so as to protect the individual's rights, consistent with federal law and policy.

(2) Disclosure of protected health information will be consistent with DoD 6025.18-R.

e. Education And Training. Revised training will occur at the Military Department's and USCG's discretion.

f. Other. The Military Departments and Military Services recognize a Service member's status as male or female by the member's gender marker in the DEERS.

(1) The Military Services apply all standards that involve consideration of the Service member's status as male or female on the basis of the member's gender marker in DEERS such as:

(a) Uniforms and grooming.

(b) Body composition assessment.

(c) Physical readiness testing.

(d) Military Personnel Drug Abuse Testing Program participation.

(2) As to facilities subject to regulation by the Military Departments and the USCG, the Service member will use those berthing, bathroom, and shower facilities associated with the member's gender marker in DEERS.

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ATTACHMENT 4

PROCESSING CHANGES TO DoDIs 1332.14 AND 1332.30

1. The following will be added to DoD Instruction 1332.14, Enclosure 3, Paragraph 3.a.(8):

“(h) The Secretary concerned may authorize separation on the basis of conditions and circumstances not constituting a physical disability that interfere with assignment to or performance of duty based on a diagnosis of gender dysphoria where the Service member is unable or unwilling to adhere to all applicable standards, including the standards associated with his or her biological sex, or seeks transition to another gender.

1. Separation processing will not be initiated until the enlisted Service member has been formally counseled on his or her failure to adhere to such standards and has been given an opportunity to correct those deficiencies, or has been formally counseled that his or her indication that he or she is unable or unwilling to adhere to such standards may lead to processing for administrative separation and has been given an opportunity to correct those deficiencies.

2. Separation processing will not be initiated until the enlisted Service member has been counseled in writing that the condition does not qualify as a disability.”

2. The following will be added to DoD Instruction 1332.30, Paragraph 9.2.d.:

“d. The Secretary concerned may authorize separation of a commissioned officer on the basis of conditions and circumstances not constituting a physical disability that interfere with assignment to or performance of duty based on a diagnosis of gender dysphoria where the commissioned officer is unable or unwilling to adhere to all applicable standards, including the standards associated with his or her biological sex, or seeks transition to another gender.

- (1) Separation processing will not be initiated until the commissioned officer has been formally counseled on his or her failure to adhere to such standards and has been given an opportunity to correct those deficiencies, or has been formally counseled that his or her indication that he or she is unable or unwilling to adhere to such standards may lead to processing for administrative separation and has been given an opportunity to correct those deficiencies.

- (2) Separation processing will not be initiated until the commissioned officer has been counseled in writing that the condition does not qualify as a disability.”

GLOSSARYPART I. ABBREVIATIONS AND ACRONYMS

DEERS	Defense Enrollment Eligibility Reporting System
DES	Disability Evaluation System
DoDI	DoD instruction
DTM	directive-type memorandum
PDES	Physical Disability Evaluation System
PII	personally identifiable information
USCG	United States Coast Guard
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

These terms and their definitions are for the purpose of this issuance.

biological sex. A person's biological status as male or female based on chromosomes, gonads, hormones, and genitals.

cross-sex hormone therapy. The use of feminizing hormones in an individual with a biological sex of male or the use of masculinizing hormones in an individual with a biological sex of female.

gender identity. An individual's internal or personal sense of gender, which may or may not match the individual's biological sex.

gender marker. Data element in DEERS that identifies a Service member's status as male or female.

gender transition. A form of treatment for the medical condition of gender dysphoria may involve:

Social transition, also known as "real life experience," to allow the patient to live and work in his or her preferred gender without any cross-sex hormone treatment or surgery and may also include a legal change of gender, including changing gender on a passport, birth certificate, or through a court order; or

Medical transition to align secondary sex characteristics with the patient's preferred gender using any combination of cross sex hormone therapy or surgical and cosmetic procedures; or

Surgical transition, also known as sex reassignment surgery, to make the physical body, both primary and secondary sex characteristics, resemble as closely as possible the patient's preferred gender.

PII. Information used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, biometric records, home phone numbers, other demographic, personnel, medical, and financial information. PII includes any information that is linked or linkable to a specified individual, alone, or when combined with other personal or identifying information.

preferred gender. The gender with which an individual identifies.

stable or stability. The absence of clinically significant distress or impairment in social, occupational, or other important areas of functioning associated with a marked incongruence between an individual's experienced or expressed gender and the individual's biological sex.

transgender. Individuals who identify with a gender that differs from their biological sex.