

1 I, Andrew E. Carmichael, swear under penalty of perjury under the laws of the United
2 States to the following:

3 1. I am a Trial Attorney at the United States Department of Justice and counsel of
4 record for Defendants in this action. I submit this declaration in support of Defendants' Motion
5 for an Extension of Time to Respond to the Court's Order on LCR 37 Joint Submission
6 Regarding Plaintiffs' RFP No. 44. I base this declaration on my personal knowledge, as well as
7 on information acquired by me or made available to me in the course of performing my official
8 duties.

9 2. On March 18, 2020, the parties met and conferred regarding Plaintiffs' RFP 44.
10 I personally participated in that discussion. During that discussion, I stated that the
11 Government would not be producing documents responsive to RFP No. 44 because the request
12 was overbroad, burdensome, disproportionate to the needs of the case, sought the disclosure of
13 information irrelevant to the resolution of this matter, and would involve the disclosure of
14 service members' medical information. Plaintiffs' counsel acknowledged my statements
15 regarding burden, relevance, and the disclosure of personal identifying information in an email
16 following our meet and confer. *See* Exhibit 1 (email from Vanessa Barsanti to Andrew
17 Carmichael (Mar. 19, 2020)). During the meet and confer, I also referred to a chart in the
18 Administrative Record (ADMINISTRATIVE_RECORD_3027) to provide Plaintiffs a sense of
19 the intrusive nature of their request. I noted that the chart that was compiled for the Panel of
20 Experts reflected information from the medical records of at least 100 service members. I
21 further noted that providing "documents sufficient to show" service members' non-
22 deployability, as Plaintiffs requested in their RFP No. 44, would necessarily involve the release
23 of medical information for at least these 100 service members. I did not state that complying
24 with RFP No. 44 would require only a review of records from 100 service members, nor did I
25 state that the Services already had compiled the requested information.

26 3. Attached to this declaration as Exhibit 1 is a true and correct copy of an email
27 exchange between myself and Vanessa Barsanti dated March 19 and 20, 2020.
28

1 4. Attached to this declaration as Exhibit 2 is a true and correct copy of the
2 declaration of Colonel Andreas Thum of the U.S. Army. Colonel Thum serves as the Deputy
3 Director of Military Personnel Management (Reserve Component), Office of the Deputy Chief
4 of Staff, G-1, at the Pentagon.

5 5. Attached to this declaration as Exhibit 3 is a true and correct copy of the
6 declaration of Commander Satyen M. Gada of the U.S. Navy. Commander Gada serves as the
7 Deputy Director of Medical Readiness, Bureau of Medicine and Surgery.

8 6. Attached to this declaration as Exhibit 4 is a true and correct copy of the
9 declaration of Lieutenant Colonel Jennifer L. Stangle of the U.S. Air Force. Lieutenant
10 Colonel Stangle serves as the Chief of Medical Retention Standards, Air Force Personnel
11 Center.

12 7. Attached to this declaration as Exhibit 5 is a true and correct copy of a
13 presentation that was given to the Panel of Experts titled "Health Data on Active Duty Service
14 Members with Gender Dysphoria," dated December 13, 2017. The presentation is bates
15 stamped ADMINISTRATIVE_RECORD_3011-3042. The pages bates stamped
16 ADMINISTRATIVE_RECORD_3024 and ADMINISTRATIVE_RECORD_3027 contain
17 information concerning the data request that was made to the Services and the data the Services
18 provided in response to that request.

19
20 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is
21 true and correct.

22
23 EXECUTED this 27th day of April, 2020.

24 */s/ Andrew E. Carmichael*
25 Andrew E. Carmichael
26 Trial Attorney
27 United States Department of Justice
28 Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530

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Tel: (202) 514-3346
Email: andrew.e.carmichael@usdoj.gov

Counsel for Defendants

Exhibit 1 to Carmichael Declaration

From: [Carmichael, Andrew E. \(CIV\)](#)
To: [Barsanti, Vanessa](#); [Stallings-Ala'ilima, Chalia \(ATG\)](#); [Norway, Robert M. \(CIV\)](#); [Enlow, Courtney D. \(CIV\)](#); [Powers, James R. \(CIV\)](#); [Gerardi, Michael J. \(CIV\)](#)
Cc: [Skurnik, Matthew \(CIV\)](#); *prenn@lambdalegal.org; *tborelli@lambdalegal.org; *Rachel@newmanlaw.com; Siegfried, Daniel I.; *colleen.melody@atg.wa.gov; *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 20, 2020 11:13:00 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)

Vanessa,

Thank you for putting this together. I made a few changes to some of the summaries as to the Government's positions below (in red).

Best regards,

Drew

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

From: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>
Sent: Thursday, March 19, 2020 2:54 PM
To: Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>; Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>; Norway, Robert M. (CIV) <rnorway@CIV.USDOJ.GOV>; Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>; Powers, James R. (CIV) <jpowers@CIV.USDOJ.GOV>; Gerardi, Michael J. (CIV) <mgerardi@CIV.USDOJ.GOV>
Cc: Skurnik, Matthew (CIV) <maskurni@CIV.USDOJ.GOV>; *prenn@lambdalegal.org <prenn@lambdalegal.org>; *tborelli@lambdalegal.org <tborelli@lambdalegal.org>; *Rachel@newmanlaw.com <Rachel@newmanlaw.com>; Siegfried, Daniel I. <daniel.siegfried@kirkland.com>; *colleen.melody@atg.wa.gov <colleen.melody@atg.wa.gov>; *jason@newmanlaw.com <jason@newmanlaw.com>; Rosenberg, Michael E. <michael.rosenberg@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>; Means, Miranda <miranda.means@kirkland.com>; Ikard, Sam <sam.ikard@kirkland.com>
Subject: RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

Counsel,

Thank you for the discussion yesterday. The following reflects our understanding of what was discussed during the meet and confer. Ahead of the April 2 teleconference, the parties have agreed to exchange initial drafts of the joint status report by Thursday, March 26. In addition, the parties discussed the following:

- **Status Update on RFPs 20, 43, and 54**: The Government stated that it has initiated searches and has started to collect documents responsive to each of these requests. The Government plans to try and produce documents before the teleconference on April 2. Plaintiffs have asked that productions be made when on a rolling basis as documents are reviewed and ready for production.
- **Five Prioritized RFPs**: The Government generally objected to moving forward on these RFPs because it is the Government's position that Plaintiffs have already identified five prioritized RFPs since the last court conference and these are the second set. Plaintiffs disagree with this understanding of the and believe the Government should move forward on these requests. With regard to specific requests:
 - **RFP No. 16**: It is the Government's position that this request entirely overlaps with 54 and whatever has been produced in response to 54 should encompass 16 as well. Documents are already being collected in response to 54, according to the Government.
 - **RFP No. 19**: Plaintiffs clarified that they are seeking documents regarding any service member diagnosed with gender dysphoria who has been discharged for any reason. The Government's position is that this request is too burdensome, but agreed to determine whether it could easily narrow the relevant population of individuals by searching servicemembers diagnosed with gender dysphoria and exclude those on active duty.

In addition to this request being burdensome the Government also contends that this request is well outside of the scope of the lawsuit which is a facial challenge to the Department's 2018 policy and does not challenge individual discharges of any service member. It is also irrelevant to the lawsuit as any materials that would be uncovered in this search were not considered in the formation of the Mattis policy. The Government agreed to provide additional information on the burden of collecting such records.

- **RFP No. 23**: The Government stated that there were documents being withheld on deliberative process privilege grounds, but otherwise documents have been produced.
- **RFP Nos. 27 and 28**: For both 27 and 28, the Government contends that these overlap with RFP No. 29, which is the subject of the mandamus petition. Plaintiffs disagree with this understanding of RFP Nos. 27 and 28 and assert that the Government should collect and produce documents responsive to these requests.

The Government has already collected and produced non-privileged documents responsive to these RFPs. Privileged documents responsive to these RFPs have been previously identified on privilege logs provided to the Plaintiffs and since these documents overlap entirely with the documents responsive to RFP No. 29 they have already been prepared for production without redactions or withholdings for DPP pending the outcome of the Government's mandamus petition. The Government maintains privileges over these documents. With regard to documents withheld

pursuant to DPP, the Government maintains that Plaintiffs' need for deliberative materials in these categories does not overcome the chilling effect on frank and open Government deliberations on military policy.

- **March 6 Email re Government's Responses to RFPs:**

- RFP No. 13: The Government confirmed that all non-privileged documents have been produced and it is not withholding any documents.
- RFP No. 26: The Government did not read this request to be broken out by condition, but Plaintiffs clarified that was their understanding. ~~The Government will consult with the DoD to determine how to locate this information.~~

The Government will consult with DoD to determine if there is a location or office in DoD where documents containing the costs of hormone treatment broken out by condition are likely to exist.

- RFP No. 44: The Government objects and will not produce documents on the grounds that the request is burdensome, irrelevant, and seek PII. Plaintiffs disagree and contend that these are highly relevant documents.
- RFP Nos. 65, 66, 68: The Government confirmed that it had produced documents responsive to these requests and was not withholding any responsive documents.

- **March 12 Email re Government's Responses to RFPs:** Overall, the Government clarified that it is not withholding documents on the basis of the general objection regarding the administrative record.

- RFP Nos. 73, 74: Plaintiffs contend that these requests seek documents from hybrid experts/fact witnesses. ~~The Government states that it will only produce documents relied upon by these witnesses in forming their expert opinions.~~

The Governments' hybrid fact / expert witnesses are being offered to rebut misstatements by Plaintiffs' putative experts regarding medical deployment standards (and the military's capabilities with respect to treating medical conditions in the deployed environment), medical accessions standards, and medical retention standards. These doctors did not have any input in the formation of the Mattis policy and will only be offered by Defendants if the Court allows testimony of Plaintiffs' putative experts over Defendants' objections. Accordingly, individual treatment records from these doctors are disproportionate to the needs of the case, beyond the scope of the lawsuit, and burdensome to obtain and the Government will not search for or provide them.

- RFP Nos. 75, 77, 82: The Government has confirmed that documents responsive to the requests have been produced and no documents are being withheld.
- RFP No. 80: ~~The Government stated that it has produced documents responsive to this request that were presented to the Panel of Experts. Plaintiffs have asked for all communications, regardless of whether they were presented to the Panel of~~

Experts.

The Government has produced all responsive non-privileged documents in its collection, which sought to identify documents even remotely connected to the formation of the Department's policies on military service by transgender individuals or individuals with gender dysphoria from June 30, 2016 to March 23, 2018. In total the Government collected documents from 156 different custodians. The Government objects that any further search for public comments provided to any of its roughly two million other employees (who were not among the 156 custodians the Government previously identified as having some level of input in the policymaking process) would be disproportionate, overly burdensome, irrelevant, and outside the scope of the lawsuit.

- o RFP No. 83: The Government has stated that there is no way to search for this data and they are still unsure what is being asked for. Plaintiffs said they would consider.
- **Encrypted Documents**: The Government stated that they would follow up to recent email from Vanessa and clarify this.
-
- **Government's Requests to Plaintiffs**: Plaintiffs clarified that if they will update the materials considered lists in the expert reports if there's anything new to add. If the Government has identified a specific document referenced in the report that they are not sure about, they are welcome to call it to Plaintiffs' attention.

Best,

Vanessa Barsanti

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From: Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>
Sent: Monday, March 16, 2020 10:56 AM
To: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>; Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>; Norway, Robert M. (CIV) <Robert.M.Norway@usdoj.gov>; Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; Powers, James R. (CIV) <James.R.Powers@usdoj.gov>; Gerardi, Michael J. (CIV) <Michael.J.Gerardi@usdoj.gov>
Cc: Skurnik, Matthew (CIV) <Matthew.Skurnik@usdoj.gov>; *prenn@lambdalegal.org <prenn@lambdalegal.org>; *tborelli@lambdalegal.org <tborelli@lambdalegal.org>; *Rachel@newmanlaw.com <Rachel@newmanlaw.com>; Siegfried, Daniel I. <daniel.siegfried@kirkland.com>; *colleen.melody@atg.wa.gov <colleen.melody@atg.wa.gov>; *jason@newmanlaw.com <jason@newmanlaw.com>; Rosenberg, Michael E. <michael.rosenberg@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>; Means, Miranda

<miranda.means@kirkland.com>; Ikard, Sam <sam.ikard@kirkland.com>

Subject: [EXT] RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

Can we schedule the call for 2pm ET on Wednesday? That time works a little better for us here. Also happy to have the call later in the afternoon.

Best regards,

Drew

Drew Carmichael
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From: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>

Sent: Monday, March 16, 2020 12:57 PM

To: Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>; Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>; Norway, Robert M. (CIV) <rnorway@CIV.USDOJ.GOV>; Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>; Powers, James R. (CIV) <jpowers@CIV.USDOJ.GOV>; Gerardi, Michael J. (CIV) <mgerardi@CIV.USDOJ.GOV>

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Subject: RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

Following up on this. Can you please let me know if 12:30 ET on Wed. works?

Vanessa Barsanti

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From: Barsanti, Vanessa

Sent: Friday, March 13, 2020 5:40 PM

To: 'Carmichael, Andrew E. (CIV)' <Andrew.E.Carmichael@usdoj.gov>; Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>; Norway, Robert M. (CIV) <Robert.M.Norway@usdoj.gov>; Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; Powers, James R. (CIV)

<James.R.Powers@usdoj.gov>; Gerardi, Michael J. (CIV) <Michael.J.Gerardi@usdoj.gov>
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<daniel.siegfried@kirkland.com>; *colleen.melody@atg.wa.gov <colleen.melody@atg.wa.gov>;
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<michael.rosenberg@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>; Means, Miranda
<miranda.means@kirkland.com>; Ikard, Sam <sam.ikard@kirkland.com>
Subject: RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

How about 12:30 ET? We are also flexible after that time if later works better. Just let me know so we can hold the time and send out an invite.

Thanks,

Vanessa Barsanti

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From: Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>
Sent: Friday, March 13, 2020 12:49 PM
To: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>; Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>; Norway, Robert M. (CIV) <Robert.M.Norway@usdoj.gov>; Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; Powers, James R. (CIV) <James.R.Powers@usdoj.gov>; Gerardi, Michael J. (CIV) <Michael.J.Gerardi@usdoj.gov>
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<miranda.means@kirkland.com>; Ikard, Sam <sam.ikard@kirkland.com>
Subject: [EXT] RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

Vanessa,

We are not available on Monday. Are you available on Wednesday?

Best regards,

Drew

Drew Carmichael

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From: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>
Sent: Thursday, March 12, 2020 5:12 PM
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Cc: Skurnik, Matthew (CIV) <maskurni@CIV.USDOJ.GOV>; [*prenn@lambdalegal.org](mailto:prenn@lambdalegal.org) <prenn@lambdalegal.org>; [*tborelli@lambdalegal.org](mailto:tborelli@lambdalegal.org) <tborelli@lambdalegal.org>; [*Rachel@newmanlaw.com](mailto:Rachel@newmanlaw.com) <Rachel@newmanlaw.com>; Siegfried, Daniel I. <daniel.siegfried@kirkland.com>; [*colleen.melody@atg.wa.gov](mailto:colleen.melody@atg.wa.gov) <colleen.melody@atg.wa.gov>; [*jason@newmanlaw.com](mailto:jason@newmanlaw.com) <jason@newmanlaw.com>; Rosenberg, Michael E. <michael.rosenberg@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>; Means, Miranda <miranda.means@kirkland.com>; Ikard, Sam <sam.ikard@kirkland.com>
Subject: RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

Counsel,

We have reviewed the Government's March 9, 2020 objections and responses to Plaintiffs' fourth set of requests for production. We have several concerns regarding the Government's response, some of which are similar to the issues that arose in the Government's last set of responses, which we flagged on March 6. In particular, we ask that you clarify the Government's position with regards to the following requests:

- **RFP Nos. 73 & 74** - RFP Nos. 73 and 74 ask for all documents relating to transgender military service and transgender related medical care in the possession, custody, or control of the Lt. Col. Kevin Cron, Col. Christopher D. Meyering, or Col. Steven E. Pflanz. The Government objects to both of these requests on the grounds that they seek documents not relied upon by these witnesses in forming their expert opinions. But these witnesses are not just experts—they are also fact witnesses and were disclosed as such. These requests are thus proper and seek documents that are relevant to Plaintiffs' claims. The Government does not have a sufficient basis to withhold or refuse to search for documents responsive to this request. Please confirm by Monday, March 16, that all documents responsive to the request, including documents not relied upon by these witnesses in their expert capacity, will be produced by Friday, March 20, and that these witnesses have been added as custodians. In addition, please identify the documents these expert witnesses relied on in forming their opinions.
- **RFP No. 75 & 77** - In response to RFP Nos. 75 and 77, the Government objects to the extent that the requests call for documents other than those provided to the DoD decision-makers

or considered by those decision-makers in the formation of the DoD's 2018 policy. In response to these requests, the Government states that it has produced all data "presented to the Panel of Experts, as well as the underlying data utilized by the Military Services to formulate the data presented to the Panel of Experts." The intent and basis for the Government's transgender service policy is central to this litigation. Data supporting statistics, charts, presentations, or incidents that the Government itself described or referenced in the Report, Mattis Memorandum, or December 2017 Report and Recommendations, as requested by RFP No. 75, regardless of whether they were shown to the Panel of Experts, are thus clearly relevant and need to be produced. As are documents and communications reflecting data relating to presentations produced as part of the Administrative Record, as requested by RFP No. 77. The Government has not articulated a sufficient basis for limiting its production solely to data that was presented to the Panel of Experts. Please confirm whether the Government is withholding responsive documents and data not presented to the Panel of Experts. If the Government is withholding such documents, please confirm by Monday, March 16, that all documents will be produced by March 20.

- **RFP Nos. 80 & 81** - In response to RFP Nos. 80 and 81, the Government responds that "to the extent documents responsive to Plaintiffs' request were before the Panel of Experts and military decision-makers, they were previously produced." These requests seek communications sent by members of the public to the DoD or any officers regarding the military service of transgender persons and all communications in response, as well as the data underlying those communications. It is not clear what the Government means when it says that these communications would have been produced if they were "before the Panel of Experts and military decision-makers." Again, the intent and reasoning behind the policy is a central issue in this litigation and communications with the public on transgender military service goes directly to that issue, even if such communications or data were not explicitly "before" the Panel of Experts. Please confirm whether the Government is withholding responsive communications and if so, please confirm by Monday, March 16, that all documents will be produced by March 20.
- **RFP No. 82** - In response to Request No. 82, the Government states that it has produced certain documents responsive to the request. It's not clear from the response, however, whether the Government is withholding documents or on what basis documents are being withheld. Please confirm that **all** non-privileged documents responsive to this request have been produced. If not, please produce these documents immediately.
- **RFP No. 83** - The Government makes numerous objections to this request on the basis of vagueness and ambiguity. For clarity, Plaintiffs are not seeking individual medical records, but rather documents sufficient to show average annual cost overall. The Government's reference to the annual TRICARE report is insufficient, and its refusal to produce any documents at all in response to this request is not supported. The annual TRICARE report to which the Government directs plaintiffs does not provide a breakdown by medical condition and does not provide any data on disqualifying versus non-disqualifying conditions. In light of the information provided by the Government, Plaintiffs clarify that they request documents

sufficient to show the annual average per capita cost for the Department of Defense to treat any medical condition considered by the Medical and Physical Evaluation Boards that did not result in a determination that a service member was unfit for service.

Further, as Plaintiffs have addressed with the Government previously, the Government's general objection that the Court's review is limited to the administrative record is contrary to rulings by the District Court and the Ninth Circuit. The District Court has explained that "there is no reason for discovery to be confined to the administrative record," where "Plaintiffs and Washington do not challenge the policy under the APA, but instead raise direct constitutional claims." ECF No. 235 at 2. The Ninth Circuit similarly ruled that Plaintiffs could adduce and present new evidence, and directed the District Court to consider further discovery and Plaintiffs' motions to compel documents DoD has withheld under claims of privilege. *See Karnoski v. Trump*, 926 F.3d 1180, 1203, 1206-07 (9th Cir. 2019). The Ninth Circuit's opinion thus provides no basis for limiting review of Plaintiffs' constitutional claims to an administrative record. Please confirm the Government is not withholding documents on this basis.

Lastly, Plaintiffs have received no response from the Government to their March 6 note regarding the prioritized RFPs and related request to meet and confer. Please indicate if you are available to discuss both these and the prioritized RFPs on Monday, March 16 at or after 3 ET.

Vanessa Barsanti

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From: Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>

Sent: Friday, March 6, 2020 5:36 PM

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Cc: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>; Skurnik, Matthew (CIV) <Matthew.Skurnik@usdoj.gov>; *prenn@lambdalegal.org <prenn@lambdalegal.org>; *tborelli@lambdalegal.org <tborelli@lambdalegal.org>; *Rachel@newmanlaw.com <Rachel@newmanlaw.com>; Siegfried, Daniel I. <daniel.siegfried@kirkland.com>; *colleen.melody@atg.wa.gov <colleen.melody@atg.wa.gov>; *jason@newmanlaw.com <jason@newmanlaw.com>; Rosenberg, Michael E. <michael.rosenberg@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>; Means, Miranda <miranda.means@kirkland.com>; Ikard, Sam <sam.ikard@kirkland.com>

Subject: [EXT] RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

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

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: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>

Sent: Friday, March 6, 2020 4:14 PM

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Cc: Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>; Norway, Robert M. (CIV)

<Robert.M.Norway@usdoj.gov>; Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; Powers, James R. (CIV) <James.R.Powers@usdoj.gov>; Gerardi, Michael J. (CIV) <Michael.J.Gerardi@usdoj.gov>

Subject: RE: Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

Counsel,

We have reviewed the Government's March 3, 2020 supplemental objections and responses to Plaintiffs' 15 prioritized requests for production and have several concerns regarding the Government's responses. In particular, as we've detailed below, many of the responses are narrowly circumscribed, such that it appears that the Government is withholding responsive documents and improperly narrowing the requests. Thus, we ask that you clarify the Government's position with respect to the following requests:

- **RFP No. 13** - In the Government's first response to request No. 13, it agreed to "produce any non-privileged documents responsive to this RFP in [the Government's] possession, custody or control." In the supplemental response, without objection, the Government seems to narrow its response and states only that it has produced a DoD memorandum implementing the current DoD policy, as well as the Military Service Branch's official implementation guidance for the current policy. It is not clear from this response, however, whether the Government is withholding documents or on what basis documents are withheld. Please confirm that **all** non-privileged documents responsive to this request have been produced. If not, please produce them immediately.
- **RFP No. 26** - As above, in the Government's first response to request No. 26, it agreed to "produce any non-privileged documents responsive to this RFP in [the Government's] possession, custody or control." In its supplemental response, the Government narrows its response to state that it has produced only data "presented to the Panel of Experts," as well as "underlying data utilized by the Military Services to formulate the data presented to the Panel of Experts." The Government correctly construes this request as excluding individual medical and information. That said, this request is in no way limited to data presented to the Panel of Experts. It seeks documents sufficient to show the annual cost per person of hormone therapy, not just cost data that was presented to the Panel. Moreover, the link to which the Government refers is not an adequate response to this request. This links to an annual evaluation of the TRICARE program, which does not encompass all of the data sought by this request. In particular, this report does not specifically address the cost of hormone therapies or treatments, and is therefore not sufficient. Please confirm whether the Government is withholding documents and data not presented to the Panel of Experts. If the Government is withholding responsive documents, including documents sufficient to show the data requested even if not presented to the Panel of Experts, please produce them immediately.
- **RFP No. 44** - In the Government's first response to request No. 44, it agreed to "produce any non-privileged documents responsive to this RFP in [the Government's] possession, custody or control." In its supplemental response, however, the Government again states that it has produced all data "that was presented to the Panel of Experts," as well as underlying data used by the Military Services "to formulate data

presented to the Panel of Experts.” This request is not limited to data that was presented to the Panel of Experts. Please confirm that the Government is not withholding documents responsive to this request. If the Government is withholding responsive documents, including documents sufficient to show this data requested that were not presented to the Panel of Experts, please produce them immediately.

- **RFP Nos. 65, 66, 68** - In the supplemental responses, without any objection, the Government again states it has produced all data “considered by the Panel” (#65) or “presented to the Panel of Experts, as well as the underlying data utilized by the Military Services to formulate the data presented to the Panel of Experts.” As noted with many of the other requests, these requests are in no way limited to data presented to the Panel of Experts or used to formulate data presented to the Panel of Experts. Please confirm that the Government is not withholding documents responsive to this request and that it has, in fact, produced all documents relating to this data. If the Government is withholding responsive documents, please produce them immediately.

Additionally, the Government has indicated that it will search for and produce additional documents in response to RFP Nos. 20, 43, and 54. Please indicate when the Government will be producing documents responsive to those requests.

Lastly, Plaintiffs and Plaintiff-Intervenor identify RFP Nos. 16, 19, 23, 27, and 28 as their next five prioritized RFPs, the text of which are copied below.

- **RFP No. 16** All Documents or Communications relating to any application (including any action taken on such application) by a transgender person for a waiver sought for the purpose of accessing into the U.S. military.
- **RFP No. 19** All Documents or Communications, between June 30, 2017 and the present, relating to discharge proceedings against any transgender service member serving in the U.S. military.
- **RFP No. 23** All Documents or Communications relating to the reasons, grounds, or bases for the decision set forth in a June 30, 2017, Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff from Secretary James Mattis with Subject: Accession of Transgender Individuals in the Military Services.
- **RFP No. 27** All Documents or Communications relating or referring to Secretary James Mattis’s February 22, 2018, Memorandum for the President with Subject: Military Service by Transgender Individuals (the “February 22, 2018, Memorandum”), including without limitation: (a) all documents reviewed, considered, or relied upon in preparing the February 22, 2018, Memorandum; and (b) all drafts of the February 22, 2018, Memorandum.
- **RFP No. 28** All Documents or Communications reflecting, referring, or relating to any policies that were considered as alternatives, modifications, or refinements to the policies set forth in the final draft of the February 22, 2018, Memorandum

Please let us know the Government’s availability to meet and confer the afternoon of Tuesday, March 10 to discuss these issues.

Thank you,

Vanessa Barsanti

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From: Skurnik, Matthew (CIV) <Matthew.Skurnik@usdoj.gov>

Sent: Tuesday, March 3, 2020 9:20 AM

To: *prenn@lambdalegal.org <prenn@lambdalegal.org>; *tborelli@lambdalegal.org <tborelli@lambdalegal.org>; *Rachel@newmanlaw.com <Rachel@newmanlaw.com>; Siegfried, Daniel I. <daniel.siegfried@kirkland.com>; Stallings-Ala'ilima, Chalia (ATG) <Chalia.SA@atg.wa.gov>; *colleen.melody@atg.wa.gov <colleen.melody@atg.wa.gov>; *jason@newmanlaw.com <jason@newmanlaw.com>; Rosenberg, Michael E. <michael.rosenberg@kirkland.com>; Barsanti, Vanessa <vanessa.barsanti@kirkland.com>; Heinz, Jordan M. <jheinz@kirkland.com>

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Subject: [EXT] Karnoski: Supplemental Objs. & Resps. for Prioritized RFPs

Counsel,

Please see attached supplemental objections and responses to Plaintiffs' 15 prioritized requests for production of documents. As you know, for RFP Nos. 20, 43, and 54, Defendants intend to conduct supplemental searches. Accordingly, for those three RFPs, Defendants reserve the right to further supplement their privilege objections once those searches are complete.

Best,
Matt

Matthew Skurnik

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

1100 L Street NW

Washington, DC 20005

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Exhibit 2 to Carmichael Declaration

when needed. Every Army member of the SCCC has other primary duties and daily responsibilities. Currently, almost every member of the SCCC is providing direct support to the Army for COVID-19 in their responsibilities outside the SCCC; the only medical provider on the SCCC, COL Travis Richardson, M.D., is currently serving as the Chief of Clinical Policy Services at the Office of the Surgeon General and Medical Command and the Chief Consultant to The Surgeon General. As the Chief of Clinical Policy Services at the Office of the Surgeon General and Medical Command and Chief Consultant to The Surgeon General, he is responsible for providing updates to clinical guidelines and policy as it relates to COVID-19 in addition to overseeing the Consultant Program and all 115 Consultants to The Surgeon General spanning multiple disciplines and medical specialties. In my COVID-19 responsibilities, I continue to help manage the Army's officer promotion program, specifically working with the Army Reserve and Army National Guard to adapt policies, procedures and promotion board schedules to limit disruption to reserve component officers and maintain compliance with both Army policy and Title 10. Each member of the SCCC has similar additional duties that they are performing for the Army's COVID response.

2. From my official duties, I understand the process by which the Army may retrieve information concerning the medical status and deployability of transgender Soldiers. I make this declaration based upon my personal knowledge and upon information that has been provided to me in the course of my official duties. In particular, I address below the steps the Army has taken and will take in order to comply with the Court's order on LCR Joint Submission regarding Plaintiffs' request for production (RFP) No. 44 that states:

(1) The Defendants must provide a full response to Plaintiffs' RFP No. 44. To protect service members' privacy, Defendants shall produce to the Court for *in camera* review a list of the name, rank, and service unit of each transgender service member rendered non-deployable on account of gender dysphoria or transition-related medical care, and the duration of and specific reason(s) for such non-deployability for each service branch since June 30, 2016.

(2) Defendants shall provide Plaintiffs with a version of the list, subject to the Parties' protective order, and substituting a unique anonymized identifier in place of each member's name;

(3) Defendants shall provide the above information by May 1, 2020.

3. To comply with this Order, the Army will begin by pulling the Department of Defense identification (DOD ID) number of the 280 Soldiers and former Soldiers who have requested gender marker changes or medical treatment plans (also referred to as gender transition plans) with the Army.

4. The Army must proceed in this manner because the Army does not track Soldiers by their transgender status or gender identity. Accordingly, the DOD ID numbers will be pulled from an excel spreadsheet maintained by the Army's SCCC. This spreadsheet is an administrative tool the SCCC uses to verify the current status of actions of any Soldier who has requested a gender marker change or medical treatment plan from the Army. Although the spreadsheet contains the status of actions and general contact information for Soldiers, it does not contain in-depth information related to a Soldier's medical status or care. Further, the spreadsheet is updated in only two situations and therefore any biographical information on a Soldier (location, rank, current duty status, if the Soldier is still serving or discharged/transferred to another component, etc.) may be outdated. The first situation is when a Soldier requests a new action (such as a Soldier who previously filed a medical

treatment plan and now requests a gender marker change). The second is to assist the SCCC in requests for information, such as the recent National Defense Authorization Act information request, and when required to comply with court orders.

5. Once these DOD ID numbers have been compiled, they will be provided to a senior medical provider for the Army, presently identified as COL Richardson (“Medical Reviewer”), who will search Soldier by Soldier to find the responsive information. The Army does not maintain a central database that contains the responsive information. Therefore, the Medical Reviewer must examine every Soldier’s medical records in the DoD Electronic Health Record (EHR) and access their medical files. Because there is no specific source of information within a Soldier’s medical file that will fully capture the information the Army is required to obtain, the Medical Reviewer must review all pertinent medical documentation, including medical profiles, for each Soldier.

6. A medical profile (“profile”) is a document that provides information to commanders concerning their Soldiers’ duty limitations resulting from medical conditions. Profiles are used by the Army as a primary tool to determine the medical readiness of Soldiers and, specifically, whether Soldiers may deploy. Profiles are found in the EHR, however, they contain limited medical information and often will not contain all pertinent information necessary to comply with the Court’s Order. Profiles have a specific purpose in the Army—to inform commanders of their Soldiers’ duty limitations by releasing limited medical information. The release of protected health information under the Health Information Portability and Accountability Act (HIPAA) generally restricts the flow of

information to the Soldier's chain of command. The military exception to HIPAA for commanders in the Army allows the release of limited information necessary for the command to determine a Soldier's fitness for duty, fitness to perform a particular assignment, or other activities necessary for the military mission. As a result, profiles are often written to describe duty limitations without including a Soldier's specific diagnosis or treatment.

7. In reviewing each profile, the Medical Reviewer must identify responsive information such as profile length and reason for the profile. For several reasons, the Medical Reviewer may not be able to determine whether a listed medical condition is connected to a Soldier's gender dysphoria. First, profiles provide minimal information. Second, profiles are often written generically, especially with respect to behavioral health conditions, to protect Soldiers' privacy. Third, profiles may include conditions that could be comorbidities of gender dysphoria without linking that condition to gender dysphoria. In order to confirm whether such conditions relate to gender dysphoria, the Medical Reviewer will be required to review additional records. Similarly, when the required information is not available from a Soldier's profile, the Medical Reviewer must review the provider notes section of the Soldier's medical record and information documented during clinical visits. While the profile and provider notes can be used in many cases to identify the responsive information, in other cases, they may not contain explicit information responsive to the Order. This will require the Medical Reviewer to exercise discretion, relying on his or her knowledge and expertise, to determine if a Soldier was rendered non-deployable on account of gender dysphoria or transition-related medical care, and

the duration of and specific reason(s) for such non-deployability.

8. Due to the extremely sensitive nature of these medical records, for policy reasons, the Army restricts access to the above-referenced spreadsheet of Soldiers who have voluntarily disclosed their diagnosis of gender dysphoria to the Army and requested to transition to an extremely small group of individuals. The full list of names is maintained on a daily basis by one individual (currently Lieutenant Colonel Aaron Wellman) and, other than when mandated by court order, the spreadsheet is only accessible to the members of the Army's SCCC on a strict need-to-know basis. As a result, the Army intends to complete the review by COL Richardson—a single, senior medical provider assigned to the SCCC. Using a single medical provider assigned to the SCCC for this purpose has been the standard practice of the Army when responding to requests for information such as RFP 44. This is the same process that was used in preparing the information for the Panel of Experts. That review was completed by one Colonel medical provider on the SCCC.

9. Increasing the number of providers conducting the review could increase the risk of providing less accurate information; because the reviewing provider in some instances must make subjective assessments, using one provider increases consistency. The use of multiple reviewers would also increase the risk of compromising the privacy of the individual Soldiers due to an increased number of people with access to this information and need to distribute it digitally in the current COVID-19 environment. Further, expanding the number of providers would require creating a standard operating practice in

order to ensure consistency in the review, as well as identifying and training senior Army medical providers with the requisite experience who are fully available notwithstanding their regular duties and duties related to COVID-19 response.

10. The amount of time required to complete this review process is contingent on several factors: the length of time that a Soldier has responsive profiles; the number of profiles; the number of conditions on each profile; and whether other medical records must be reviewed. The Army estimates that, under optimal conditions, it will take between 10-20 minutes per Soldier per year of profiles. That is, the complete review is expected to require between 116-232 man-hours: $(10 \text{ to } 20 \text{ minutes per profile}) \times (\text{estimated } 2.5 \text{ years of profiles per Soldier}) \times (\text{population of } 280) / 60 = 116 \text{ to } 232 \text{ hours}$. As a result, the review may take up to almost six full weeks of full-time analysis during which the provider(s) would be unable to perform other tasks, including duties in connection to the Army's response to COVID-19.

11. The Army's estimated timeline for completion is also informed by the collection of similar data for the Panel of Experts. That data collection was conducted by a single senior medical provider, who—dedicating roughly half her workload (20 hours per week) to that task—completed the review in approximately three weeks. The Army approximates that there is three to four times the amount of data to analyze now because there are a greater number of Soldiers in the population and each of these Soldiers will have a greater number of records to analyze given the longer timeline.

12. The estimated timeline for compliance with the Court's order does not account for

COVID-19 restrictions, which require many staff to telework and rely on remote systems. Remote system access limitations are likely to result in a substantial delay in accessing and transmitting the information necessary to complete this process, increasing the timeline. In order to bypass current remote system access limitations, the review could be conducted at a building in the Pentagon reservation. This could potentially put a provider at risk.

13. The Army has already taken steps to comply with the Order. The Army conducted a meeting of Army SCCC members to determine how to comply with this Order and has identified a reviewer. The Army has identified the number of Soldiers and former Soldiers who have requested gender marker changes or medical treatment plans (also referred to as gender transition plans) with the Army. The Army will begin its review of these Soldiers' medical records on 27 April 2020. By May 1, 2020, the Army will have obtained, at most, less than ten percent of the required information.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of April 2020.

Handwritten signature of Andreas Thum in cursive, with "COL, 68" written at the end.

ANDREAS THUM
Colonel, U.S. Army
Pentagon

Exhibit 3 to Carmichael Declaration

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RYAN KARNOSKI, *et al.*,

Plaintiffs, and

STATE OF WASHINGTON,

Plaintiff-Intervenor,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, *et al.*,

Defendants.

No. 17-cv-01297 (MJP)

**DECLARATION OF SATYEN M.
GADA IN SUPPORT OF
DEFENDANTS' MOTION FOR
EXTENSION**

DECLARATION OF SATYEN M. GADA

I, Satyen M. Gada, do hereby declare as follows:

1. I am a Commander (CDR) in the U.S. Navy currently assigned as the Deputy Director of Medical Readiness, Bureau of Medicine and Surgery (BUMED). I have been in this position since July 2019. As a part of my duties, I am also the BUMED medical point of contact for the medical treatment of transgender service members with a diagnosis of gender dysphoria. This duty encompasses the role of medical advisor to the Navy and Marine Corps Service Care Coordination Cells (SCCCs), as well as to the Navy Regional Transgender Care Teams (TGCTs). The SCCCs are responsible for developing, planning, and implementing the Department of the Navy's personnel policies for Sailors and Marines who are transgender or are diagnosed with gender dysphoria, on behalf of the Secretary of the Navy. Regional (Naval

Medical Forces Atlantic and Naval Medical Forces Pacific) TGCTs direct the care and transition plans for exempt Navy and Marine Corps transgender Service members. The SCCCs/TGCTs serve as custodians for document collections and productions in this and related litigation due to their close relationship to the military's policy concerning transgender individuals and individuals with gender dysphoria. Membership on the SCCCs/TGCTs is not a full-time duty for the members, and the service is provided ad hoc when needed. Every member of the SCCCs/TGCTs have other daily responsibilities in performance of their assigned duties. Members include providers such as surgeons, endocrinologists, and social workers, whose full-time duties are treating the medical needs of individual service members. Currently, their primary duty is providing direct medical support to COVID-19 patients or migrating their practices to a telemedicine environment to preserve their own safety, as well as the safety of their patients and the community at large. Members also include medical policy experts, whose full-time duties are to develop and implement COVID-19 response policies that maintain military readiness in the midst of this crisis.

2. When I refer below to the "Navy," I am referring to the Department of the Navy, which includes both the Navy and the Marine Corps.

3. In the exercise of my official duties, I am aware of this lawsuit and the related litigation involving the Department of Defense (DoD) policy for service members diagnosed with gender dysphoria.

4. The information in this declaration is based on my personal knowledge and upon my personal review of information made available to me in my official capacity.

5. I outline the below steps to explain the process the Navy will undergo to comply with the Court's order on LCR Joint Submission regarding Plaintiffs' request for production (RFP) No.

44 that states:

- (1) The Defendants must provide a full response to Plaintiffs' RFP No. 44. To protect service members' privacy, Defendants shall produce to the Court for in camera review a list of the name, rank, and service unit of each transgender service member rendered non-deployable on account of gender dysphoria or transition-related medical care, and the duration of and specific reason(s) for such non-deployability for each service branch since June 30, 2016.
- (2) Defendants shall provide Plaintiffs with a version of the list, subject to the Parties' protective order, and substituting a unique anonymized identifier in place of each member's name;
- (3) Defendants shall provide the above information by May 1, 2020.

Order, ECF No. 485.

6. As part of its review of the military's policy on transgender service, the services presented the Panel of Experts with data on non-deployability. This data was based on members placed on temporary limited duty (LIMDU) for transition-related care. The Air Force, for example, reported 52 members who were non-deployable, as those members were placed on LIMDU for transition-related care. *See* Administrative_Record_003027. The Navy could not provide comparable data, because by policy, it did not place members on LIMDU for transition-related care. Therefore, the only data the Navy provided to the Panel was non-deployability for non-transition related reasons. *See* Administrative_Record_003027 ("All LIMDUs are for non-transition indications.").

7. Instead of being placed in a non-deployable status, Sailors and Marines consult with their medical provider and command to determine whether a particular deployment is feasible. Relevant factors include what platform the member would deploy on, the length of the deployment, and the specifics of the member's treatment protocol. For example, the difference in

available medical care on a carrier, as opposed to a submarine, might impact whether the member can deploy with their unit. Likewise, whether certain hormone therapy can be suspended to accommodate a deployment would be considered. These decisions are made on a case-by-case basis, and only when necessary. Therefore, a member's treatment protocol might prevent deployment, but if the member's unit was not deploying at that time, no deployability decision would have been made. In isolated instances, a provider may have placed a member on LIMDU in connection with transition-related care, but this was not the general policy and does not reflect the actual number of members with limited deployability.¹

8. In addition, the Navy does not track deployability by transgender status or gender identity, nor does the Navy have any system capable of generating such data. Therefore, to determine which members would have had limited deployability due to transition-related care, and for how long, requires a review of the medical record of every person diagnosed with gender dysphoria who developed a treatment plan over the relevant period.

9. The medical records do not specifically list whether, why, and for how long the individual was unable to deploy. Because members were not placed in an official non-deployable status, and because the medical provider would only have made specific deployability determinations if it was necessary due to a pending deployment, a medical professional has to carefully review each record to determine whether the type of care provided to that member would have limited their deployability, and if so, for how long. As this review requires an understanding of Endocrine Society guidelines for transgender care, formulation and execution of transgender care plans, and knowledge of deployability status throughout the phases of gender transition, an experienced medical provider must conduct this review—particularly since medical

¹ The Navy does plan to implement policy in the future whereby members are routinely placed on LIMDU for transition-related care.

records for early cases have progressed in complexity as service members have continued along the transition process.

10. Because the Navy never created this type of data for the Panel of Experts, the estimated time it takes to perform such a review is informed by the time it took the other military services to provide similar—albeit more limited—data to the Panel. For example, it took the Army on average between 25 and 50 minutes to review relevant medical profiles. A medical profile is a document that provides information on a member's duty limitations resulting from medical conditions. Although the Navy does not use a medical profile system, a similar system known as Limited Duty Sailor and Marine Readiness Tracker (LIMDU SMART) manages our LIMDU population. As discussed above, the Navy cannot rely on LIMDU SMART to assess deployability for transgender service members with a diagnosis of gender dysphoria because members were not routinely placed on LIMDU, but rather must construct that data from the medical record itself. Nevertheless, like the Army, it is estimated to take between 25 and 50 minutes to download, thoroughly review, and produce the requested data for each member. Over the relevant period, 439 Navy or Marine Corps members have been diagnosed with gender dysphoria and developed a care plan. Therefore, in ideal network conditions, a medical provider dedicating their entire workload to this task would take approximately 182 to 365 hours, or up to nine full weeks, to complete.

11. This does not account for current network limitations. Records for current members are electronic and can be downloaded from AHLTA or MHS GENESIS, the military's two active electronic medical record systems. However, because of the telework posture for the ongoing COVID-19 crisis, our personnel are facing network delays due to the unanticipated volume of individuals remotely accessing the network. These network issues could be resolved by

retrieving the information from an on-site terminal, but this could put the provider at increased risk of transmitting or contracting the novel coronavirus.

12. Because of the ongoing global medical crisis surrounding COVID-19, the Navy has diminished ability to assign medical personnel to such a review. The Navy has provided 70% of the entire military's medical assets deployed across North America in support of the COVID-19 response, and continues to fulfill ongoing COVID-19 healthcare support requests. This includes deployments aboard the USNS Mercy and USNS Comfort to provide medical and surgical care to non-COVID-19 civilian patients on both U.S. coasts. Providers who are not deployed to direct COVID-19 response are backfilling non-COVID-19 patient care for those who are. Whether deploying or absorbing patient load and administrative responsibilities, all Navy medical personnel are actively involved in COVID-19 response.

13. Furthermore, there are a limited number of providers with the requisite understanding of the Endocrine Society guidelines and impact of specific treatments on deployability, given there are less than 15 providers on the Navy's TGCTs. This includes primary care physicians, endocrinologists, urologists, OB/GYN physicians, surgeons, mental providers, and one physician assistant. At least one of these providers has tested positive for COVID-19 and is ill with pneumonia. Another works in the Emergency Room, the primary intake source for COVID-19 patients, and is on short-notice recall for deployment. Another's primary duty is deployment assessment and disability related policy modifications due to COVID-19 restrictions of movement and social distancing recommendations. These providers are responsible for ongoing face-to-face care, as well as telehealth when possible. This means they are actively seeing patients on both an inpatient and outpatient basis. Because their colleagues are deployed to combat COVID-19 in expeditionary medical facilities and hospital ships, and because patient

empanelment has not decreased despite the number of providers decreasing, these providers are seeing more patients and have increased administrative duties for hospital operations. For example, despite restricted staffing, providers such as OB/GYNs continue to be on-call to deliver babies and provide other essential care. The loss of childcare has further reduced administrative time for matters such as hospital supervision and chart review, limiting the ability of providers to care for patients. Most importantly, these providers are part of COVID-19 response teams, which actively train and run drills aimed at crisis management to ensure hospital readiness in the event of an influx of COVID-19 patients.

14. These factors limit the pool of providers available to conduct this review, and resourcing multiple medical providers with the appropriate skill to review these records will necessarily reduce resources for providing healthcare access for Navy beneficiaries as the Navy focuses on COVID-19. Therefore, the Navy can only assign a limited number of providers to do this review, and the hours those providers can devote to this review are necessarily limited as they balance this effort with patient care in the midst of the pandemic.

15. The Navy has taken substantial steps to comply with this Order. This includes multiple discussions and internal Navy inquiries to determine how to comply with the order, as the Navy never collected this data for the Panel of Experts or for any other purpose. Additionally, it has been consulting with the other services to determine how those services collected this information for the Panel, as well as how they will comply with the Court's order, to ensure consistency across military services. It is also seeking a reviewer with the requisite experience who can be removed from their current duties without jeopardizing the Navy's current COVID-19 mission, and who does not have other practical limitations, such as being a full-time caregiver for minor children, during this pandemic. Finally, it has identified 17 Sailors or Marines who

were placed on LIMDU for transition-related care, and is analyzing that data to produce the required information. Ultimately, by May 1, 2020, we estimate it will have obtained, at most, ten percent of the required information.

Under 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 27th day of April, 2020.



CDR Satyen M. Gada
Deputy Director of Medical Readiness,
Bureau of Medicine and Surgery

Exhibit 4 to Carmichael Declaration

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

RYAN KARNOSKI, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 2:17-cv-1297-MJP

**DECLARATION OF
LIEUTENANT COLONEL
JENNIFER A. STANGLE, CHIEF,
MEDICAL RETENTION
STANDARDS, AIR FORCE
PERSONNEL CENTER**

I, Jennifer A. Stangle, declare as follows:

1. I am a Lieutenant Colonel (Lt Col) in the U.S. Air Force currently assigned as the Chief of Medical Retention Standards, Air Force Personnel Center, at Joint Base San Antonio, Texas. I have been a licensed practicing physician for 13 years and have served in the Air Force for 16 years. I have been in my current position since June 2017. My duties include implementing Department of the Air Force policies on medical retention, evaluating medical records of Airmen to determine whether the Airmen are within medical retention standards, re-assigning patients away from their work duties to the Airman Medical Transition Units, and being the subject-matter expert on medical standards. Those duties include reviewing the cases of Airmen who may be unfit for continued military service due to a medical condition; some of those cases relate to gender dysphoria. In my capacity as Chief, I manage a team of four other medical providers performing these same duties. The team consists of two physicians and two physician assistants. As a senior officer in the Air Force Medical Service, I regularly receive updates on medical

operations across the Air Force, including the response to the Coronavirus Disease 2019 (COVID-19) pandemic.

2. In the exercise of my official duties, I am aware that a lawsuit has been instituted in the above-captioned case and of the Court's "Order on LCR 37 Joint Submission Regarding Plaintiffs' RFP No. 44." I understand the order requires the Department of Defense to produce a list of members "rendered non-deployable on account of gender dysphoria or transition-related medical care, and the duration of and specific reason(s) for such non-deployability for each service branch since June 30, 2016."

3. The information in this declaration is based on my personal knowledge and upon my personal review of information made available to me in my official capacity. From my official duties, I understand the process by which the Air Force may retrieve information concerning the medical status and deployability of transgender Airmen.

4. No single record maintained by the Air Force would be fully responsive to the Court's Order, and the Air Force does not maintain any type of database containing all the information required by the Court's Order. To comply with the Order, the Air Force will conduct a review of existing records to compile the requested information into a new responsive document.

5. Compiling the response first requires that I be provided a list of all Air Force members diagnosed with gender dysphoria since June 30, 2016. Colonel (Col) Mary C. Goetter, Transgender Policy & Program Manager, Air Force Surgeon General, has produced such a list of 373 Airmen. Among her duties, Col Goetter oversees policy for the Medical Multidisciplinary Team (MMDT). The list was produced from the records of the MMDT. The MMDT is a centrally located medical team at Joint Base San Antonio, Texas, comprised of a case manager, a mental health provider, an endocrinologist and/or a surgeon knowledgeable in transgender

medical care. By Air Force policy, local providers must have the MMDT confirm every diagnosis of gender dysphoria; local providers then coordinate with the MMDT to develop a treatment plan whenever a diagnosis indicates that gender transition is medically necessary. The list identifies all 373 Airmen evaluated by the MMDT.

6. I was informed about the previous service data request that was presented to the Panel of Experts on transgender service in 2017. That service data request covered the time period from September 1, 2016 to August 31, 2017. The Air Force took about two weeks, with a team of about five providers working an estimated 150 provider-hours, to compile this information for the Panel. The Court's Order covers a wider period. The population of Airmen with treatment plans has more than doubled. Furthermore, records for those early cases progressed in complexity as they continued along the transition process. The Air Force continues to improve and expand its care and treatment as the medical providers gain more expertise. Accordingly, any review conducted now will take significantly longer than it did for the prior Panel of Experts request.

7. Compiling the response to the Court's Order now requires medical providers to review many medical records individually. Transgender Airmen are not coded as simply medically non-deployable or deployable. Airmen may present a temporary or permanent condition which is recorded in a profile.

8. A profile is an assessment of an Airman's ability to participate in military activities. A profile may set out specific restrictions on exercise or work duties and may render a member non-deployable. Profiles can range in duration from a number of days to more than a year to permanent. Profile systems are different between the military branches; the purpose, information contained, and time needed to review are not comparable between systems. Differentiating the

Air Force from the other service branches, our medical system is additionally focused on aerospace medicine, including the evaluation and treatment of aircrew.

9. For many cases, a simple database query will not accurately match all deployment-limiting profiles with diagnoses of gender dysphoria or gender transition. Air Force medical records are coded in accordance with international standards, but the coding alone does not always present a full picture of a patient's ongoing treatment, the purposes, or whether multiple co-morbid conditions are present. In some cases, a profile may not indicate whether a treatment or condition is connected to gender dysphoria and gender transition. Furthermore, transgender Airmen may have profiles rendering them non-deployable for conditions and treatment unrelated to gender dysphoria or for a related co-morbid condition such as depression. Treatment not unique to gender transition may be provided as part of a gender transition treatment plan. Treatments that are commonly associated with gender dysphoria may also be applied to unrelated conditions. Even if profiles are coded for gender dysphoria or gender transition, those codes must be verified. To associate a profile with gender dysphoria or gender transition treatment, a medical provider must review the previous notes, diagnoses, and treatment for contextual clues. Some records may be complex with multiple years of profiles.

10. Conducting the review requires remotely retrieving the medical records. Due to current self-isolation precautions in response to the COVID-19 pandemic, medical providers not performing direct patient care are performing their duties by telework. Accessing the voluminous medical records will take significant time from latency in the Virtual Private Network (VPN). The VPN is the only means of remote access to medical records on the Armed Forces Health Longitudinal Technology Application (AHLTA) and the Aeromedical Services Information Management System (ASIMS), away from a medical facility terminal. Medical providers

ordinarily do not have access to the profile data coded in ASIMS, but my office does. The Air Force-wide telework posture to mitigate the spread of infection is resulting in unforeseen demands which strain the VPN. Due to the severe network congestion, the time needed to review has increased significantly from the minimum one hour per case. Providers could avoid this network congestion by retrieving the information from an on-site terminal, but this could put the providers at increased risk of transmitting or contracting COVID-19.

11. Such a review of the medical records of 373 gender dysphoria-diagnosed members would take a minimum of 373 provider-hours at ideal conditions, and significantly longer in the current environment. However, such a review would actually have to be accommodated alongside the providers' ordinary full-time duties and any emergency responses.

12. Despite best efforts, the Air Force will be unable to provide a response to the Court's order by the deadline of May 1, 2020. The Air Force has already taken steps to comply with the order, including obtaining the list of Airmen for whom gender transition was medically necessary from June 30, 2016 to present. My team is in the best position to respond to the Court's Order because of our expertise in reviewing profiles and our access to ASIMS. Other providers have only limited access to or are unfamiliar with ASIMS. My team will be able to devote some resources to conduct the Court-ordered review during the pandemic. However, my team must have sufficient time to process cases for the current patient population and respond to the Air Force's readiness needs during the COVID-19 pandemic. To balance these obligations, each member of my team can dedicate at most an estimated 10 hours per week to this review, presuming conditions do not worsen. To the extent we are able, we are increasing our efficiency by working with other providers, including the MMDT. The providers on the MMDT are currently undermanned and providing patient care. Other qualified medical providers, including

the primary care managers at local medical treatment facilities across the Air Force, are currently dedicated to providing patient care in response to the COVID-19 pandemic. Given their other duties, it would be impractical to assign the review to local providers at this time without confirming with each primary care provider whether review would detract from their COVID-19 care. The medical providers necessary to perform this review quickly may not be predictably available until the pandemic has ceased.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 27th day of April, 2020.

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Jennifer A. Stangle, Lt Col, USAF
Chief, Medical Retention Standards
Air Force Personnel Center

Exhibit 5 to Carmichael Declaration

Health Data on Active Duty Service Members with Gender Dysphoria

Comparison health care data with
statistical analysis, deployment,
treatment plan, surgical recovery times,
separation data and cost data

December 13 2017

Gender Dysphoria (GD) Medical Utilization Comparisons Methodology

- Reviewed select medical utilization (i.e., mental health visits/admissions, hormones, surgical and other procedures) for the Study Group of 994 TG service members with GD
 - Limited the group studied to those in an Active Duty or Activated Guard status for the entire period of time from FY16 to current (July 2017)
- Final GD Study Group = 691
 - Study Period: Oct 2015 to July 2017 (22 months)

Medical Utilization Comparisons Methodology

Created two control groups:

- **“MH+ Control Group”** - Matched 5:1 with non-TG service members by:
 - Major Depressive Disorder (Yes/No)
 - Anxiety (Yes/No)
 - Adjustment Disorder (Yes/No)
 - Matching included gender, age group (<25, 25-40, 40+), rank group, Service
 - MH+ Control Cohort = 3,455
- **“AG Control Group”** - Matched 5:1 with non-TG service members by:
 - Matching included age group (<25, 25-40, 40+) and gender
 - AG Control Cohort = 3,455
- Study Period Oct 2015 – July 2017

Study Group Descriptive Data

		STUDY GROUP Count	STUDY GROUP Percentage
Study Group Size	N	691	100%
Age Group	<25	281	41%
	25-40	388	56%
	40>	22	3%
Gender	Female	349	51%
	Male	342	49%
Sponsor Service	Army	226	33%
	Air Force	188	27%
	Marines	38	5%
	Navy	216	31%
	Other	23	3%
Rank Group	Jr Enlisted	354	51%
	Sn Enlisted	293	42%
	Officer	44	6%

Descriptive Data (continued)

		STUDY COHORT Count	STUDY COHORT Percentage
Study Group Size	N	691	100%
Major Depressive Disorder	No	529	77%
	Yes	162	23%
Adjustment Disorder	No	488	71%
	Yes	203	29%
Anxiety Disorder	No	543	79%
	Yes	148	21%

- The Age-Gender matched 'AG Control Group' - Major Depressive Disorder, Anxiety, and Adjustment were not very prevalent

Regression Analysis

- Multiple regression models were run for both control groups to assess if there is significant difference between the study and control groups regarding psychotherapy and any mental health utilization.
- Dependent Variables of Interest
 - Psychotherapy visits
 - Any mental health visits
- Regressions controlled for combinations of the following independent variables:
 - Age Group
 - Gender
 - Rank (officer vs. enlisted)
 - Service
 - Presence of MH Conditions
 - Major Depressive Disorder, Anxiety or Adjustment

Summary of Results: Psychotherapy Encounters

	STUDY GROUP (n=691)		MH+ CONTROL GROUP (n=3455)		AG CONTROL GROUP (n=3455)	
	Outpatient (Oct 2015-July 2017)		Outpatient (Oct 2015-July 2017)		Outpatient (Oct 2015-July 2017)	
	Avg. Encounters per service member	Total Encounters	Avg. Encounters per service member	Total Encounters	Avg. Encounters per service member	Total Encounters
Psychotherapy	20.4	14,088	7.9	27,237	1.99	6,864

- After controlling for age, sex, rank, service, and presence of any of the three mental health disorders (MDD, Anxiety, Adjustment), there is a **statistically significant** effect in psychotherapy utilization between study group and both control groups.
 - Individuals in the Study Group (GD) on average generate **13 more psychotherapy encounters** over a **22 month period**.
 - The Study Group had 2.5 x the number of psychotherapy visits than the MH control group and 10 x the number of visits than the age and gender matched control group

Summary of Results: Any Mental Health Encounters

	STUDY GROUP (n=691)		MH+ CONTROL GROUP (n=3455)		AG CONTROL GROUP (n=3455)	
	Outpatient (Oct 2015-July 2017)		Outpatient (Oct 2015-July 2017)		Outpatient (Oct 2015-July 2017)	
	Avg. Encounters per service member	Total Encounters	Avg. Encounters per service member	Total Encounters	Avg. Encounters per service member	Total Encounters
Any Mental Health	28.1	19,379	10.7	36,818	2.69	9,297

- After controlling for age, sex, rank, service, and presence of any of the three mental health disorders (MDD, Anxiety, Adjustment), there is a **statistically significant** effect in mental health utilization between study group and both control groups.
 - Individuals in the Study Group (GD) on average generate **18 more mental encounters** over a **22 month period**.
 - The Study Group had 9 x the number of MH visits than the age and gender matched group
 - The Study Group had over 2.5 x as many MH visits as the MH control group

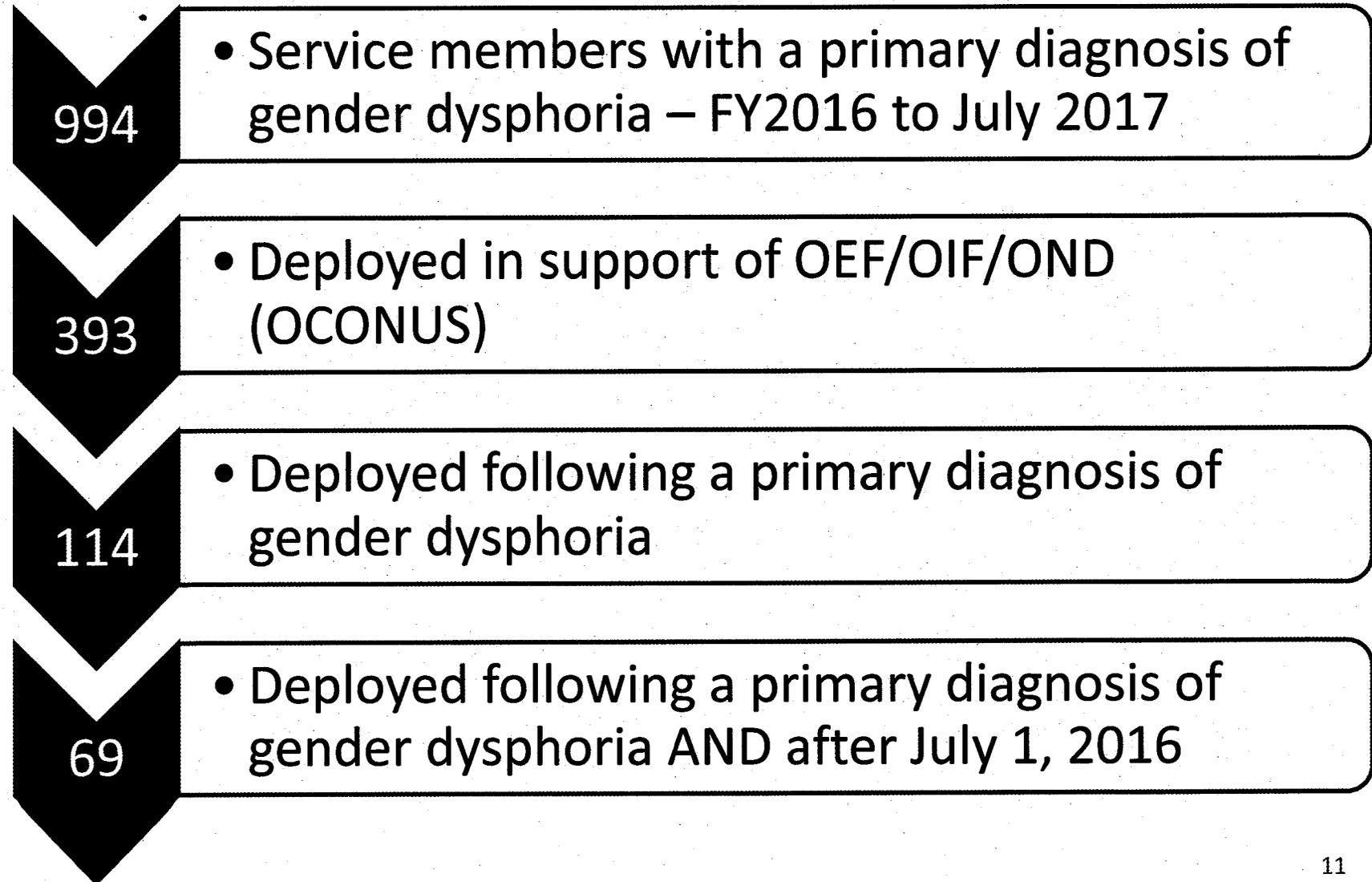
Summary of Results: Suicidal Ideation

	STUDY GROUP (n=691)		MH+ CONTROL GROUP (n=3455)		AG CONTROL GROUP (n=3455)	
	(Inpatient and Outpatient) (Oct 2015-July 2017)		(Inpatient and Outpatient) (Oct 2015-July 2017)		(Inpatient and Outpatient) (Oct 2015-July 2017)	
	Individuals Receiving Treatment	Percentage	Individuals Receiving Treatment	Percentage	Individuals Receiving Treatment	Percentage
Suicidal Ideation	81	12%	235	7%	52	1.5%

- Also ran multiple logistic regressions to calculate the odds ratio of suicidal ideation while controlling for age and gender.
 - Only 12% of our Study Group reported suicidal ideation compared to the 25% reported in one civilian sector study.
 - The Study Group had an 8 x higher rate of suicide ideation than age and gender matched AD SMs over a 22 month period.
 - **Result is statistically significant**
 - Note: The AG Control Group did not have sufficient suicidal ideation prevalence for analysis.

DEPLOYMENT DATA

Study Group Deployment History



Cohort Deployment History

114

- Deployed following a primary diagnosis of gender dysphoria

6

- Were medically evacuated from CENTCON following a primary diagnosis of gender dysphoria
- 4 had a mental health diagnosis identified as the reason for evacuation

69

- Deployed following a primary diagnosis of gender dysphoria AND after July 1, 2016

3

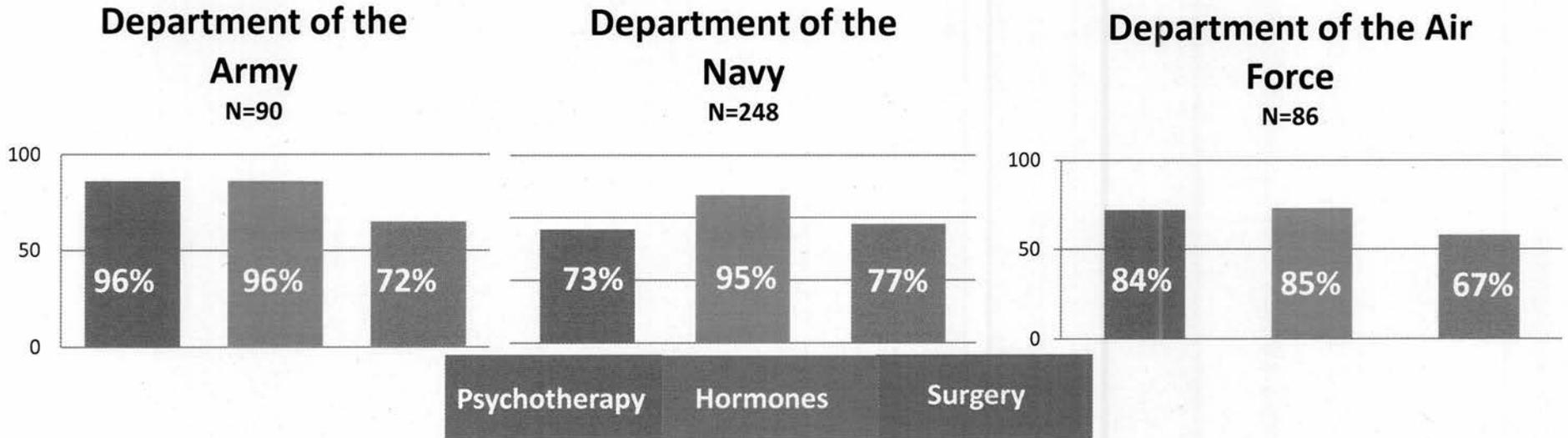
- Were medically evacuated from CENTCOM following a primary diagnosis of gender dysphoria AND after July 1, 2016
- 1 had a mental health diagnosis identified as the reason for evacuation

TREATMENT PLAN DATA

Service Data Request

- Data collection will cover the time period from **September 1, 2016, to August 31, 2017**
- Data request included:
 - Number of SMs with approved treatment plans
 - Number of SMs receiving psychotherapy and cross-sex hormones as part of the treatment plan
 - Number of SMs with sex reassignment surgery as part of the treatment plan
 - Total number of profiles/LIMDUs and days on restricted duty for each transitioning SM
 - Total number of days on profile/LIMDU/restricted duty
- Army, Navy and Air Force coordinated definitions and methodologies of collection for data elements

Service Data – Approved Treatment Plans*



	ARMY	NAVY	AIR FORCE
Number of Service Members with surgeries as part of treatment plan[^]	65	190	58
Percent of Treatment Plans with surgery included	72%	77%	67%

*Services only had access to treatment plans submitted to their TG care teams (TGCT/MMDT)

[^]A Civilian study shows that 23% of MtF and 2% FtM TG individuals initially wanting surgery actually have surgery.

SERVICE DATA – Types of Surgeries Included in Treatment Plans

	ARMY	NAVY	AIR FORCE
Hysterectomy/Oophorectomy	**	97	14
Orchiectomy	**	61	12
Mastectomy/Augmentation	**	113	38
Genital Reassignment	**	118	19
Other	-	-	27

* An individual service member may have more than one surgical procedure in their treatment plan

** Army responded this level of detail is not consistently provided or individualized in proposed medical treatment plans on file.

SERVICE DATA – Profiles/LIMDUs/Restricted Duty

	ARMY*	NAVY**	AIR FORCE***
Number of Service Members with a diagnosis of Gender Dysphoria on Profile/LIMDU/Restricted Duty	87 (90)	22 (248)	52 (86)
Average Number of Profiles/LIMDUs/Restricted Duty per transitioning SM	3.4	0.1	1.9
Average number of days a transitioning Service Member is in a Profile/LIMDU/Restricted Duty status	167.4	1-90	3
		90-180	12
		180-270	3
		270-360	2
		>360	2
Range of Days on Profile	0 - 537	1 - 360+	1 - 365

* **Army** – profiles for SMs with GD; indication for profile not known; could be for transition or for other indications.

** **Navy** - policy dictates no LIMDU for gender transition. All LIMDUs are for non-transition indications. SMs undergoing transition are non-deployable for the first 3 to 6 months of hormone therapy but not put on LIMDU. Navy provided Avg. Number of days on LIMDU in block times.

*** **Air Force** - profiles are for transition.

SURGICAL RECOVERY TIME DATA

Estimated Recovery Times, by Surgery*

Selected Surgical Procedure	Average Recovery Time (assumes no complications)	Notes
<u>Hysterectomy</u> */** (laparoscopic approach, recommended)	4 weeks desk job 6-8 weeks unrestricted activity	(data for all indications) Major complication = 9.5% Minor complication = 28%
<u>Hysterectomy</u> * (abdominal approach) with or w/o Oophorectomy	6-8 weeks	(data for all indications) Major complication = 6% Minor complication = 27%
<u>Chest masculinization</u> * (Mastectomy)	2-4 weeks (desk job) 4-6 weeks (physically demanding job)	Low complications
<u>Orchiectomy</u> *	3-4 weeks desk job 6 weeks unrestricted activity	Very low complications
<u>Vaginoplasty</u> **	6 weeks desk jobs (some restrictions) 6-8 weeks resume physical activity 3 months for unrestricted activity	<ul style="list-style-type: none"> • Recommend stay in area of hospital where procedure performed for up to 2 weeks • Major complications 1.5%-10% • Minor complications ~25%, self limiting
<u>Phalloplasty</u> ** (2 stages, 2 nd surg 9-12 mos later)	6 weeks desk job 8-12 weeks return to activity 3 months unrestricted	<ul style="list-style-type: none"> • Recommends stay in area of hospital where procedure performed for up to 3 weeks/complications 10-80%
<u>Metoidioplasty</u> ** (2 stages, 2 nd stage performed >/=3 mos later)	3 weeks desk job 6 weeks return to activity 8 weeks unrestricted	<ul style="list-style-type: none"> • Recommends stay in area of hospital where procedure performed for up to 3 weeks • <5% complication rate

*From Mayo Clinic, UCSF Center of Excellence for Transgender Health websites and **Dr. Loren Schechter

Estimated Recovery Time for Vaginoplasty from Two SHCP Waiver Requests*,**

PROCEDURE	CENTER	RECOVERY TIMES				
		Inpatient	Post-op Bedrest	Con leave	Light duty	Non-deployable
Vaginoplasty	Papillon Center New Hope, PA	6 days	3 days	6 weeks	2-3 months	6 months
Vaginoplasty	Papillon Center	6 days	3 days	6 weeks	2-3 months	6 months

****Times are not cumulative; total non-deployable = 6 months***

*****Information from the Defense Health Agency***

Surgeries in Study Group, FY2016 to Present Includes Direct Care and Purchased Care

SERVICE		Resection of Uterus/ Hysterectomy	Mastectomy	Excision Procedures on the Testes	Totals
Air Force	Active Duty	3			3
Army	Active Duty	6	5	2	13
	Guard/Reserve		1		1
Marine Corps	Active Duty	1	6		7
Navy	Active Duty	4	3	2	9
	Guard/Reserve	1			1
Totals		15	15	4	34

33 procedures were performed in MTFs, 1 in Purchased Care.
Of the 34 procedures performed, 25 were for an indication of GD

Time to Return to Full Duty After Transition Surgery in MTFs

- The Services and NCR were requested to provide actual recovery times (times to return to full duty) for gender transition surgeries performed in the MTFs
- Surgeries performed included mastectomies, hysterectomies, orchiectomies and facial feminization
- Recovery times were available for 36 procedures performed in 13 different MTFs
 - 6 Army
 - 4 Navy
 - 1 Air Force
 - 2 NCR

MASTECTOMY

CPT Code 19303-19304

	Primary Procedure Code	# Days to Full Duty	Comments
Army	19303	30	Average # Days = 39 Range 14 - 75
Army	19303	14	
Army	19304	75	
Army	19394	42	
Army	19304	28	
Army	19304	27	
Navy	19303	42	
Navy	19304	42	
Navy	19303	42	
Navy	19303	42	
Navy	19303	42	
Navy	19304	42	
NCR	19304	30	

HYSTERECTOMY

CPT Code OUT9FZZ

	Primary Procedure Code	# Days to Full Duty	Comments
Army	OUT9FZZ	68	Average # Days = 67 Range 30 – 237 (Avg # days w/o AF = 55)
Army	OUT9FZZ	42	
Army	OUT9FZZ	42	
Army	OUT9FZZ	87	
Army	OUT9FZZ	96	
Navy	OUT9FZZ	56	
Navy	OUT9FZZ	60	
Navy	OUT9FZZ	45	
Navy	OUT9FZZ	45	
Air Force	OUT9FZZ	237	
NCR	OUT9FZZ	31	
NCR	58262	30	

ORCHIECTOMY

CPT Code 54520

	Primary Procedure Code	# Days to Full Duty	Comments
Army	54520	45	Average # days = 38.3 Range 35-45
Navy	54520	35	
Navy	54520	35	

OTHER PROCEDURES

	Procedure (s)	# Days to Full Duty	Comments
Army	Facial Feminization	42	1 case
Army	Hysterectomy & Mastectomy	89	Procedures performed two months apart

SEPARATION DATA

Separation Data

Cohort members	993*
Cohort members that are continuously AD 10/1/2015-7/1/2017	691
Cohort members who may have separated	302
Cohort members who may have separated in separation file	194
Unknown	108

*1 of the original 994 was not found in DEERS

Reason for Separation

High to Low Comparison

Study Cohort

	Frequency	Percent
Expiration of term of service	74	38.14
Temporary disability retirement	19	9.79
Permanent disability retirement	12	6.19
Unqualified for active duty, other	9	4.64
Disability, severance pay	8	4.12
Retirement, 20 to 30 years of service	8	4.12
Drugs	8	4.12
Early release, in the national interest	7	3.61
Character or behavior disorder	7	3.61
Officer commissioning program	6	3.09
Failure to meet weight or body fat standards	5	2.58
Military service academy	4	2.06
Pattern of minor disciplinary infractions	3	1.55
Commission of a serious offense	3	1.55
Failure to meet minimum qualifications for retention	3	1.55
Other	3	1.55
Alcoholism	2	1.03
Court-martial	2	1.03
Juvenile offender	2	1.03
Erroneous enlistment or induction	2	1.03
Condition existing prior to service	1	0.52
Discreditable incidents, civilian or military	1	0.52
Unfitness, reason unknown	1	0.52
Unsatisfactory performance (former Expeditious Discharge program)	1	0.52
Entry level performance and conduct (former Trainee Discharge program)	1	0.52
Secretarial authority	1	0.52
Breach of contract	1	0.52
Total	194	

Percentages of all Separations for the Same reasons from 10/1/2015 - 7/1/2017 (not matched, taken from entire set of 408,409 SMs separated)

	Frequency	Percent
Expiration of term of service	197,959	48.47
Retirement, 20 to 30 years of service	39,925	9.78
Unqualified for active duty, other	18,979	4.65
Disability, severance pay	11,480	2.81
Permanent disability retirement	10,801	2.64
Temporary disability retirement	10,408	2.55
Officer commissioning program	9,691	2.37
Entry level performance and conduct (former Trainee Discharge program)	9,176	2.25
Unsatisfactory performance (former Expeditious Discharge program)	9,061	2.22
Drugs	8,836	2.16
Early release, in the national interest	8,603	2.11
Commission of a serious offense	6,979	1.71
Failure to meet weight or body fat standards	6,064	1.48
Other	5,147	1.26
Erroneous enlistment or induction	4,105	1.01
Discreditable incidents, civilian or military	3,538	0.87
Juvenile offender	2,618	0.64
Character or behavior disorder	2,480	0.61
Failure to meet minimum qualifications for retention	2,386	0.58
Pattern of minor disciplinary infractions	1,508	0.37
Court-martial	1,216	0.3
Military service academy	1,213	0.3
Alcoholism	1,081	0.26
Unfitness, reason unknown	692	0.17
Secretarial authority	624	0.15
Condition existing prior to service	475	0.12
Breach of contract	135	0.03

28

Reason for Separation

Alphabetical Comparison

Study Cohort

	Frequency	Percent
Alcoholism	2	1.03
Breach of contract	1	0.52
Character or behavior disorder	7	3.61
Commission of a serious offense	3	1.55
Condition existing prior to service	1	0.52
Court-martial	2	1.03
Disability, severance pay	8	4.12
Discreditable incidents, civilian or military	1	0.52
Drugs	8	4.12
Early release, in the national interest	7	3.61
Entry level performance and conduct (former Trainee Discharge program)	1	0.52
Erroneous enlistment or induction	2	1.03
Expiration of term of service	74	38.14
Failure to meet minimum qualifications for retention	3	1.55
Failure to meet weight or body fat standards	5	2.58
Juvenile offender	2	1.03
Military service academy	4	2.06
Officer commissioning program	6	3.09
Other	3	1.55
Pattern of minor disciplinary infractions	3	1.55
Permanent disability retirement	12	6.19
Retirement, 20 to 30 years of service	8	4.12
Secretarial authority	1	0.52
Temporary disability retirement	19	9.79
Unfitness, reason unknown	1	0.52
Unqualified for active duty, other	9	4.64
Unsatisfactory performance (former Expeditious Discharge program)	1	0.52
Total	194	

Percentages of All Separations for the Same Reasons from 10/1/2015 - 7/1/2017 (not matched, taken from entire set of 408,409 SMs separated)

	Frequency	Percent
Alcoholism	1,081	0.26
AWOL or desertion	284	0.07
Breach of contract	135	0.03
Character or behavior disorder	2,480	0.61
Civil court conviction	267	0.07
Commission of a serious offense	6,979	1.71
Condition existing prior to service	475	0.12
Court-martial	1,216	0.3
Disability, severance pay	11,480	2.81
Discreditable incidents, civilian or military	3,538	0.87
Drugs	8,836	2.16
Early release, in the national interest	8,603	2.11
Entry level performance and conduct (former Trainee Discharge program)	9,176	2.25
Erroneous enlistment or induction	4,105	1.01
Expiration of term of service	197,959	48.47
Failure to meet minimum qualifications for retention	2,386	0.58
Failure to meet weight or body fat standards	6,064	1.48
Juvenile offender	2,618	0.64
Military service academy	1,213	0.3
Officer commissioning program	9,691	2.37
Other	5,147	1.26
Pattern of minor disciplinary infractions	1,508	0.37
Permanent disability retirement	10,801	2.64
Retirement, 20 to 30 years of service	39,925	9.78
Secretarial authority	624	0.15
Temporary disability retirement	10,408	2.55
Unfitness, reason unknown	692	0.17
Unqualified for active duty, other	18,979	4.65
Unsatisfactory performance (former Expeditious Discharge program)	29	0.007
Total	9,061	2.22

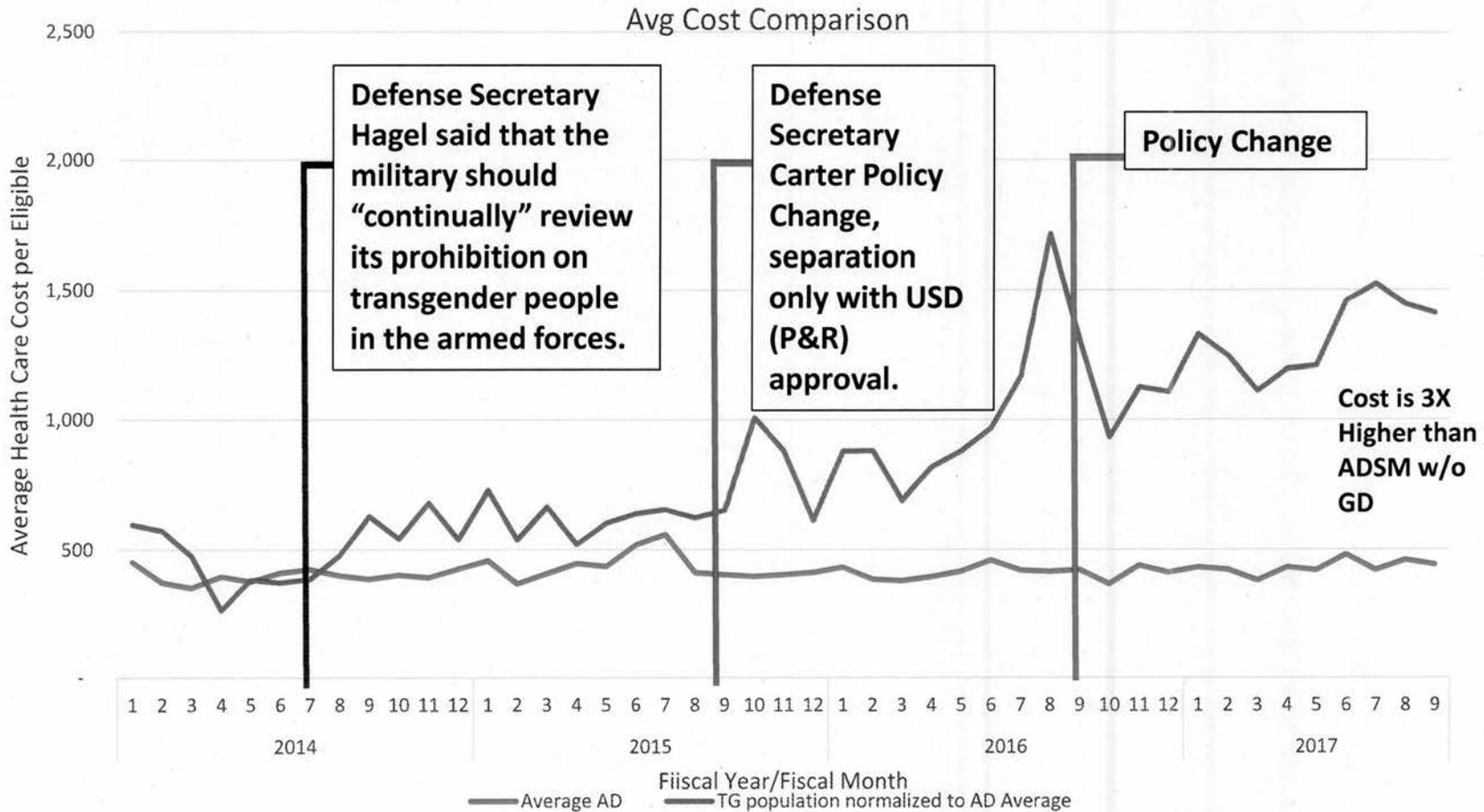
COST DATA

Cost of Services for Gender Dysphoria

(Purchased Care Paid Costs; Direct Care Estimated Costs)

	FY14	FY15	FY16	FY17	TOTAL
Direct Care	\$ 82,558	\$ 83,563	\$ 650,492	\$ 2,172,849	\$ 2,989,462
Purchased Care	\$ 5,421	\$ 3,884	\$ 10,094	\$ 16,509	\$ 35,908
Pharmacy	\$ 1,264	\$ 2,693	\$ 3,406	\$ 6,130	\$ 13,493
TOTAL	\$ 89,243	\$ 90,140	\$ 663,992	\$ 2,195,488	\$ 3,038,863

Average Health Care Expenditures: Transgender Active Duty (TRICARE Prime) vs Average Active Duty



Source: M2 (Purchased Care: Inpatient (TED-I); Professional (TED-NI)); (Direct Care: Inpatient (SIDR); Professional (CAPER)); Pharmacy (PDTS); Population (DEERS)