

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

**JOINT STIPULATION
CONCERNING THE COURT'S
ORDERS ON PLAINTIFFS'
REQUEST FOR PRODUCTION NO.
44 AND WASHINGTON'S REQUEST
FOR PRODUCTION NO. 16**

1 Plaintiffs Ryan Karnoski, Staff Sergeant Cathrine Schmid, D.L., Chief Warrant Officer
 2 Lindsey Muller, Petty Officer First Class Terece Lewis, Petty Officer Second Class Phillip
 3 Stephens, Petty Officer Second Class Megan Winters, Jane Doe, Human Rights Campaign,
 4 Gender Justice League, and American Military Partners Association n/k/a Modern Military
 5 Association of America (collectively “Plaintiffs”), Plaintiff-Intervenor State of Washington,
 6 and Defendants Donald J. Trump, Mark Esper, and the United States Department of Defense
 7 (collectively “Defendants,” and together with Plaintiffs and Plaintiff-Intervenor, “Parties”)
 8 hereby stipulate as follows:

9 WHEREAS, on April 15, 2020, the Court granted Plaintiffs’ motion to compel
 10 documents responsive to their Request for Production (“RFP”) No. 44, ordering that, by May 1,
 11 2020, Defendants must (1) “produce to the Court for *in camera* review a list of the name, rank,
 12 and service unit of each transgender service member rendered non-deployable on account of
 13 gender dysphoria or transition-related medical care, and the duration of and specific reason(s)
 14 for such non-deployability for each service branch since June 30, 2016”; and (2) “provide
 15 Plaintiffs with a version of the list, subject to the Parties’ protective order, and substituting a
 16 unique anonymized identifier in place of each member’s name.” Order 1–2, Dkt. 485.

17 WHEREAS, on April 20, 2020, the Court ordered Defendants to provide responses to,
 18 among other things, Washington’s Interrogatory No. 16 and RFP No. 16 (“WA Request Nos.
 19 16”). Order Dkt. No. 486.

20 WHEREAS, on April 27, 2020, Defendants moved for a 75-day extension of time to
 21 respond to the Court’s order on Plaintiffs’ RFP No. 44. Dkt. 488. Defendants explained that
 22 complying with the Court’s order would require a review by medical professionals of more
 23 than 1,000 service members’ medical records and would take approximately nine weeks. *Id.*
 24 Defendants further explained that the current COVID-19 pandemic resulted in the review
 25 taking longer than it would otherwise. *Id.*

26 WHEREAS, on April 29, 2020, the parties met and conferred regarding Defendants’
 27 motion for an extension of time, and Plaintiffs expressed concern that the review method
 28

1 detailed in the declarations in connection with Defendants' motion involved a *post hoc*
2 determination by one of Defendants' employees for purposes of this litigation based on an after
3 the fact and discretionary view of whether a service member would have been non-deployable
4 on account of gender dysphoria or transition-related medical care. Plaintiffs further stated that
5 only contemporaneous determinations of non-deployability reflected directly in service
6 members' records are responsive to their request. Defendants explained that, notwithstanding
7 Plaintiffs' view of what materials were responsive to their request, the only way to comply with
8 the Court's order to submit *in camera* "a list of the name, rank, and service unit of each
9 transgender service member rendered non-deployable on account of gender dysphoria or
10 transition-related medical care, and the duration of and specific reason(s) for such non-
11 deployability for each service branch since June 30, 2016," Order 1–2, Dkt. 485, would be to
12 conduct a review in the manner specified in Defendants' declarations, *see* Dkts. 489-2, 489-3,
13 489-4.

14 WHEREAS, on May 1, 2020, Defendants filed an interim response to the Court's order
15 on RFP No. 44. Dkt. 493.

16 WHEREAS, on May 4, 2020, the parties again met and conferred in an effort to reach
17 an agreement on Defendants' method for responding to RFP No. 44 and WA Request Nos. 16.

18 WHEREAS, on May 5, 2020, the parties filed a joint stipulation requesting an extension
19 of Plaintiffs' deadline to respond to Defendants' motion for extension of time to respond to the
20 Court's order on Plaintiffs' RFP No. 44. In the joint stipulation, the parties explained that they
21 had held a meet-and-confer and were working towards reaching an agreement regarding
22 Defendants' response to Plaintiffs' RFP No. 44, subject to the Court's approval. *Id.* On May 6,
23 2020, the Court granted the requested extension of Plaintiffs' response deadline. Order, Dkt.
24 499.

25 WHEREAS, on May 6, 2020, the parties met and conferred regarding Defendants'
26 deadline to respond to WA Request Nos. 16 and further conferred in an effort to reach
27 agreement on Defendants' method of responding to RFP No. 44 and WA Request Nos. 16.
28

1 WHEREAS, on May 6, 2020, the parties filed a joint stipulation requesting a 28-day
 2 extension of time for Defendants to respond to WA Request Nos. 16. Dkt. 501. In the joint
 3 stipulation, the parties explained that they had held a meet-and-confer and were currently
 4 discussing the types of documents responsive to RFP 16 and whether the parties can reach an
 5 agreement on the documents to be produced in response to RFP 16. *Id.* On May 11, 2020, the
 6 Court granted the requested extension concerning WA Request Nos. 16. Dkt. 507.

7 WHEREAS, on May 13, 2020, the parties filed a joint stipulation requesting a second
 8 extension of Plaintiffs' deadline to respond to Defendants' motion for extension of time to
 9 respond to the Court's order on Plaintiffs' RFP No. 44. Dkt. 511. In the joint stipulation, the
 10 parties explained that they had been working towards reaching an agreement regarding the
 11 Government's response to Plaintiffs' Request for Production Number 44, and that additional
 12 time was required to finalize the details of the agreement. *Id.* On May 14, 2020, the Court
 13 granted the requested extension of Plaintiffs' response deadline. Order, Dkt. 512.

14 WHEREAS, the parties have continued to meet and confer and work towards an
 15 agreement on Defendants' response to the Court's orders concerning Plaintiffs' RFP No. 44
 16 and WA RFP No. 16.

17 NOW THEREFORE, the Parties, through their respective counsel of record, do hereby
 18 stipulate and agree as follows:

- 19 • By June 1, 2020, Defendants shall produce to Plaintiffs (1) all "profiles" of
 20 Army or Air Force service members related to a condition that reasonably might
 21 be associated with gender dysphoria or transition treatment since June 30, 2016;
 22 and (2) all "Limited Duty" or "LIMDU" records of Navy service members
 23 related to a condition that reasonably might be associated with gender dysphoria
 24 or transition treatment since June 30, 2016. Defendants shall be permitted to
 25 redact personally identifiable information from these records. However, where
 26 multiple "profiles" or "Limited Duty" records relate to the same service
 27

member, Defendants will so indicate.¹

- However, Defendants having advised that the profiles may not directly indicate whether a condition is related to gender dysphoria or transition related medical care, Plaintiffs and Plaintiff-Intervenor reserve their right to seek additional documents or information once the above documents have been produced and Plaintiffs and Plaintiff-Intervenor have had opportunity to review.
- Subject to the above reservation of rights, the parties agree that this satisfies Defendants' obligations to respond to Plaintiffs' RFP No. 44 and, with the exception of Coast Guard records, Washington's RFP No. 16, and that Defendants need not provide additional information or documents to satisfy the Court's orders (Dkt. 485, 486, and 507) with respect to those requests at this time.²
- Defendants' motion for a 75-day extension of time to respond to the Court's order on Plaintiffs' RFP No. 44, Dkt. 488, shall be denied as moot.

SO STIPULATED.

Respectfully submitted, May 20, 2020.

NEWMAN DU WORS LLP

**UNITED STATES
DEPARTMENT OF JUSTICE**

s/Rachel Horvitz

s/Matthew Skurnik

¹ By way of example only, Defendants will not produce profiles and Limited Duty records related to conditions such as a broken toe, which could not reasonably be associated with gender dysphoria or transition related care. However, Defendants will produce profiles and Limited Duty records related to conditions such as a mastectomy, which could reasonably relate to gender dysphoria or transition related care.

² Defendants' obligations as to the Coast Guard and for all other requests, including Washington's Interrogatory No. 16, shall remain as previously ordered. See Dkt. 507. Parties will continue attempts to reach a similar agreement regarding the Coast Guard's records as the Coast Guard completes its response to Washington's Interrogatory No. 16.

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[PROPOSED] ORDER

This matter comes before the Court on the Parties' Joint Stipulation Concerning the Court's Orders on Plaintiffs Request for Production No. 44 and Washington's Request for Production No. 16. After considering the Parties' Joint Stipulation, the Court hereby ORDERS the following:

- By June 1, 2020, Defendants shall produce to Plaintiffs (1) all "profiles" of Army or Air Force service members related to a condition that reasonably might be associated with to gender dysphoria or transition treatment since June 30, 2016; and (2) all "Limited Duty" or "LIMDU" records of Navy service members related to a condition that reasonably might be associated with gender dysphoria or transition treatment since June 30, 2016. Defendants shall be permitted to redact personally identifiable information from these records. However, where multiple "profiles" or "Limited Duty" records relate to the same service member, Defendants will so indicate.
- However, Defendants having advised that the profiles may not directly indicate whether a condition is related to gender dysphoria or transition related medical care, Plaintiffs and Plaintiff-Intervenor have reserved their right to seek additional documents or information once the above documents have been produced and Plaintiffs and Plaintiff-Intervenor have had opportunity to review.
- Subject to the above reservation of rights, Defendants' have satisfied their obligations to respond to Plaintiffs' RFP No. 44 and, with the exception of Coast Guard records, Washington's RFP No. 16, and Defendants need not provide additional information or documents to satisfy the Court's orders (Dkt. 485, 486, and 507) with respect to those requests at this time.³ Defendants' motion for a 75-day extension of time to respond to the Court's order on Plaintiffs' RFP

³ Defendants' obligations as to the Coast Guard and for all other requests, including Washington's Interrogatory No. 16, shall remain as previously ordered. See Dkt. 507. Parties are permitted to submit a future stipulation regarding the Coast Guard's records if an agreement is reached.

No. 44, Dkt. 488, shall be denied as moot.

IT IS SO ORDERED.

DATED this _____ day of _____, 2020.

Marsha J. Pechman
United States District Judge

Presented By:

NEWMAN DU WORS LLP

**UNITED STATES
DEPARTMENT OF JUSTICE**

s/ Rachel Horvitz

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