EXHIBIT 4

AGENDA: MEDICAL PERSONNEL EXECUTIVE STEERING COMMITTEE (MEDPERS)
TUESDAY, NOVEMBER 28, 2017, 2:00PM-4:00PM
PENTAGON – DECISION SUPPORT CENTER: ROOM 2E579
1155 Defense Pentagon, Washington, DC 20301

2:00pm Welcome, Introductions, Opening Remarks (Mr. Lernes Hebert Acting DASD MPP & Dr. Terry Adirim DASD HSP&O (Representing PDASD HA) – MEDPERS Co-Chairs)

Briefing Type	Briefing Name	POC
Information	*Panel of Experts Status Update (No Presentation - Discussion Only).*	Mr. Lernes J. Hebert, DASD MPP, MEDPERS Co-Chair
Information	*Additional TG Admin Data. (Deliverable on max.gov)*	Dr. Terry A. Adirim, DASD HSP&O, MEDPERS Co-Chair
Information	*Preliminary TG Surgical Case Discussion – 34 Cases (No Presentation - Discussion Only).*	Dr. Terry A. Adirim, DASD HSP&O, MEDPERS Co-Chair
Information	*Single Policy Document/Implementation Plan and Accessions Update (No Presentation - Discussion Only).*	Ms. Stephanie P. Miller, Director, Accession Policy

3:50pm Closing Remarks, Adjournment (Mr. Hebert/Dr. Adirim)

Administrative: Point of Contact, LTC Gary W. Brown, gary.w.brown.mil@mail.mil, or 703.695.5525.

EXHIBIT 5

TRANSGENDER POLICY PANEL MEETING AGENDA

Date: November 9, 2017
Time: 1500-1700
Room: 3D1063

Overview:
Panel of Experts will receive a briefing by civilian medical professionals with significant expertise on their experiences, insights, and opinions regarding TG Service members.

Subject	Speaker	Duration
Overview	Mr. Tony Kurta	1500-1505
Review of previous minutes	Mr. Tony Kurta	1505-1515
Authorized Medical Procedures	Dr. Adirim	1515-1545
Medical panel	Various	1545-1630

Meeting Homework/Deliverables:
None

Save the following dates for upcoming meetings: Thursday, 16 November, Tuesday, November, 21 November (if required), Thursday, 30 November and 7 December. All meetings currently scheduled from 1500 – 1700.

Administrative:
Questions or issues please contact, LTC Aaron Wellman (aaron.c.wellman.mil@mail.mil or 703-697-7594).

EXHIBIT 6

TRANSGENDER POLICY PANEL MEETING AGENDA

Date: December 22, 2017
Time: 0900-1100
Room: 3D1063

Overview:
Panel of Experts will discuss a proposed policy recommendation submitted by the USMC and discuss additional research questions to complement other submitted questions.

Subject	Speaker	Duration
Opening Remarks	HON Robert Wilkie	0900-0910
Proposed policy discussion	Mr. Lernes Hebert	0910-1030
Discussion of additional Research questions	Mr. Lernes Hebert	1030-1100

Meeting Homework/Deliverables:

Save the following dates for upcoming meetings: Thursday, 4 January 2018 (T), Thursday 11 January 2018 (T). Both meetings tentatively scheduled from 1500 – 1700.

Administrative:
Questions or issues please contact, LTC Aaron Wellman ([HYPERLINK "mailto:aaron.c.wellman.mil@mail.mil"] or 703-697-7594).

EXHIBIT 7

Final Report and Recommendations of the Transgender Panel

October 13 – December 13 2017

PERSONNEL AND READINESS

Executive Summary

The Secretary of Defense directed a Panel of Experts be established to recommend changes to the Department's policies regarding the service of Transgender individuals pursuant to direction from the Commander in Chief dated August 25, 2017. The Panel consisted of the Under Secretaries of the Military Departments, the Uniformed Services Vice Chiefs, and the Senior Enlisted Advisors and was chaired by the Under Secretary of Defense for Personnel. The Panel met 10 times over 60 days.

The Panel was supported by Medical and Personnel experts from across the Department of Defense and Department of Homeland Security. The Transgender Service Policy working group with medical and personnel experts from across the Department developed policy recommendations and a proposed implementation plan. The MEDPERS Committee, a standing group of the Surgeon Generals and Chiefs of Personnel led by Personnel and Readiness provided information and analysis of accession standards, a multi-disciplinary review of relevant data, as well as medical treatment for Gender Dysphoria and transition related care. The Lethality Working Group's Military Personnel Policy sub-working group made up of Personnel subject matter experts developed a universal retention standard that would apply equally to everyone in the force to include transgender service members. These groups reported regularly to the Panel and answered numerous queries for additional information and analysis to support their deliberations.

The Panel was charged with providing their best professional judgement regarding policy recommendations:

> ""The Panel and designated support personnel shall bring a comprehensive, holistic, and objective approach to study military service by transgender individuals, focusing on military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law."

The Panel focused its efforts on three primary policy questions:

1. Should the Department of Defense access transgender individuals?
2. Should the Department allow transgender individuals to transition gender while serving and if so, what treatment should be authorized?
3. Should the Department grandfather individuals who are currently serving?

After hearing testimony from Transgender Service members, Commanders, military medical professionals, and civilian medical professionals with expertise treating transgender individuals and reviewing all available information and analysis regarding the service of transgender individuals, the Panel made the following recommendations:

1. Transgender individuals desiring to serve should be allowed to enter the military in their birth gender, subject to their ability to meet all applicable standards.
2. Transgender Service members should be permitted to serve openly, but only in their birth gender and without cross-sex hormones or surgical transition support.
3. Currently serving transgender Service members, who receive a diagnosis of gender dysphoria prior to the implementation of a revised policy in 2018 should be authorized all medically necessary treatment even if that treatment is received after the current policy is no longer in force.

After evaluating all the testimony and information provided along with their individual research on the topic, the best professional judgement of the majority of the Panel is that the above policy recommendations meet the standard established by the Secretary of Defense regarding military readiness, lethality, and unit cohesion.

Background:

Until July 1, 2016, open transgender service or gender transitions in the Department of Defense were not allowed. The publication of DoDI 1300.28 on 1 October 2016 allowed open transgender service and provided transgender Service members with procedures that allowed for them to transition their gender while serving. While the Department of Defense has never permitted the accession of transgender individuals, the Department was prepared to begin allowing accessions on 1 July 2017 until Secretary Mattis delayed implementation of that plan for six months while additional analysis was conducted.

On July 26, 2017, President Trump signaled his intention to ban transgender individuals from Serving in the military. On August 25, the Department of Defense received his Presidential Memorandum on Military Service by Transgender Individuals where he mandated that the Secretary of Defense must submit an plan to implement the policy laid out in the Presidential Memorandum no later than February 21, 2018. The Secretary of Defense is also authorized to provide the President recommended changes to the plan in the Presidential Memorandum.

Transgender Panel

Chartered on September 14, 2017, the Transgender Panel was created to provide an officially sanctioned deliberative body to receive information and make policy recommendations on Transgender Service, consistent with their instructions. The first Panel meeting met on 13 October 2017 and met on a weekly basis for the next ten weeks. In his memorandum dated September 14, 2017, the Secretary of Defense dictated that the Panel of military experts consist of the Service Undersecretaries, Service Vice Chiefs, and Service Senior Enlisted Advisors. By agreement with the Acting Secretary of Homeland Security, the U.S. Coast Guard's equivalents were include in the Panel's composition.

Objective:

In his two memorandums dated September 14, 2017, Secretary Mattis directed the Panel to make recommendations concerning the following areas (at a minimum):

1. Should the Department of Defense access transgender individuals?
2. Should the Department allow transgender individuals to transition gender while serving and if so, what treatment should be authorized?
3. Should the Department grandfather individuals who are currently serving?

Methodology:

During the period of October 13 to December 13, 2017, the Transgender Panel met on a weekly basis to receive testimony from various sources on the effects or potential effects of open transgender service. Starting with the first meeting, Panelists received information from:

1. Commanders of transgender Service members
2. Transgender Service members
3. Military medical professionals with experience providing medical support to transgender Service members
4. Civilian medical professionals with significant experience providing medical support to transgender individuals

Additionally, the Deputy Assistant Secretary of Defense – Health Affairs provided a great deal of information about the currently serving transgender population and any trends that could be identified through the first 15 months of open transgender service. Panelists were also encouraged to conduct their own research and consult with their own experts to form a knowledge base that could be used to render their personal, professional, military opinions on the matter.

Standards:

The Secretary of Defense provided the standards by which the Panel should base their personal, professional opinions.

In his September 14, 2017 memorandum, *Military Service by Transgender Individuals – Interim Guidance,* Secretary Mattis charged the panel to base their opinions on "[DoD goals for] military effectiveness and lethality, budgetary constraints, and applicable law…"

The Secretary's *Terms of Reference – Implementation of Presidential memorandum on Military Service by Transgender Individuals,* also dated September 14, 2017, added that the Panel should focus on "military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and [be] consistent with applicable law."

Recommendations:

The Transgender Panel makes three policy recommendations:

1. Transgender individuals desiring to serve should be allowed to access into the military in their birth gender, subject to their ability to meet all applicable Service standards.

2. Transgender Service members be permitted to serve openly, but only in their birth gender and without cross-sex hormones or surgical transition support.

3. Currently serving transgender Service members who receive a diagnosis of gender dysphoria prior to the implementation of a revised policy in 2018 should be authorized all medically necessary treatment even if that treatment is received after the current policy is no longer in force. DoD should develop a comprehensive way to medically treat TG Service members in a more standardized manner.

Universal Retention & Deployability Standard

Developed independently to promote the lethality of the Force, Transgender Policy Panelists were afforded the opportunity to receive a briefing on the draft Universal Retention and Deployability Standard that the Secretary of Defense mandated. The new policy, if approved, will mandate that Service members with 12 months or more of continual non-deployability due to injury, illness, or administrative reason will be automatically considered for separation from the military. The Panel unanimously agreed that applying the final Universal Retention and Deployability Standard to transgender Service members was consistent with their desire to have standards that are universally applied to all Service members.

Accessions:

The Panel's recommendation not to allow the accession of individuals in other than their birth gender was supported by several points. The individualized nature and variability of treatment requirements for Gender Dysphoria, as well as the fact that significant mental health diagnoses and the surgeries associated with transition are disqualifying for non-transgender individuals contributed to the recommendation. The Panel also found that the possibility that an individual may be considered transition complete and medically stable, thereby meeting proposed medical accession standards, yet after entry into military service require additional medical care impacting their ability to deploy was an additional concern. Privacy concerns of both transgender and non-transgender personnel was also cited as a detractor from a more expansive policy. Testimony provided by at least half of the Commanders with transitioning Service members indicated unit cohesion was impacted and they were devoting significant time to adjudicating complaints regarding communal living spaces.

A small minority of the Panel supported accession after transition and stability for an extended period, but only for those individuals who could meet all other accession standards. They would support a more restrictive policy than what was previously prescribed in the Secretary Carter memorandum to mitigate the majority of the aforementioned detractors and have the added benefit communicating to future recruits that DoD welcomed anyone that could meet the high standards for military service.

The Panel also considered whether a history of gender dysphoria was in and of itself disqualifying for military accessions. The Panel concluded that any serious mental health condition should receive additional scrutiny through the medical accession standard waiver process. Additionally, such a condition should be subject to the same 36-month stability standard that other serious mental health conditions are held to in order to ensure a consistent policy.

Future in-service policy

The Panel, citing the previously described detractors, recommends that DoD policy allow open transgender service, but disallow in-service transitions. The Panel also determined that a diagnosis of gender dysphoria should not be disqualifying for continued service as long as it can be resolved with mental health services. Several panel members cited the need for a standards based approach to service. The Panel found that allowing a gender dysphoric individual to continue to serve while receiving mental health counseling was consistent with policies established for non-transgender individuals.

Given that the use of cross-sex hormones supports a treatment plan leading to transition, which the Panel does not support, the panel nearly unanimously recommended against their use. Those in the majority opinion cited readiness and lethality concerns and based upon the Endocrine Society guidelines requiring monitoring of hormone levels for one year after initiation of treatment. Testimony by civilian and military medical practitioners on this element of treatment and impact on non-deployability was highly variable and contributed to the Panel's reluctance to accept that a policy recommendation allowing such treatment would meet the Secretary of Defense's standard as it relates to military effectiveness. Those in the majority also remarked that an individual would have difficulty receiving medically necessary care in austere environments like Syria or Africa. A single Panel member supported transition and treatment to include cross sex hormone therapy as long as it would not adversely impact an individual's ability to deploy.

The Panel similarly does not support transition-related surgeries, which were divided into two categories – the first is sex reassignment surgeries excluding genital surgeries and the second category is genital surgeries. When asked if the Panel would recommend that the DoD adopt a policy that allows transgender Service members to continue to serve if they required sex-reassignment surgery to resolve their gender

dysphoria, an overwhelming majority of the Panel did not support that recommendation. The negative impact on readiness by virtue of the periods of non-deployability is the Panel's chief concern with allowing sex-reassignment surgeries. Having not recommended sex-reassignment surgeries, the Panel did not further discuss genital surgeries.

Another aspect of gender transition is changing an individual's gender marker in the Defense Enrollment Eligibility Reporting System, which would officially recognize the Service member's new gender and allow them to function on-duty in their new gender. By nearly a two-thirds majority, the Panelists rejected recommending that gender marker changes be allowed in the future transgender policy for individuals only requiring mental health counseling. The Panelists cited the negative effects on unit cohesion as their primary concern, finding that the unit commander who received opposing equal opportunity complaints from his unit and his transgender Service member to be credible and indicative of future issues. Panelists opposing gender marker changes also believed that placing the needs of an individual over that of a military organization was ill-advised and incompatible with military service. The minority that supported allowing gender-marker changes based their opinion on equality; the military cannot unequivocally say no to an entire cohort of people, the decisions should be made based on the individual merits of the situation. Panelists in the minority also found the unit cohesion argument to not be persuasive, as several of the commanders during the Panel cited minimal leadership distractions or unit disruptions from their transgender Service member.

Policies on currently serving transgender Service Members:

Since the Panel's recommendations are different than the current policy, the Panel was then asked to make recommendations as to what policies should be applied to the currently serving transgender population. The Panel unanimously agreed that currently serving transgender Service members with an approved medical treatment plan should be 'grandfathered' into a different policy than the proposed policy. The Panel subsequently determined that grandfathering should be extended to all who have a diagnosis of gender dysphoria prior to a change in policy being implemented.

The Panel then was asked if the medical treatment plans that transgender Service members have currently approved should be honored and the Panel overwhelmingly favored that recommendation, citing a need to not break faith with the Service members and upholding the integrity of the Department of Defense. Panel members commented that the Service members showed trust and faith in the DoD by coming forward in good faith and to break that promise would erode the trust in our institution.

Those that opposed allowing currently approved medical treatment plans to be executed cited testimony indicating the routine changes to the plans based on individual desires, calling into question the earlier medical necessity determination by the medical providers. This contributed significantly to the Panel's assessment that a policy allowing

transition would put the Commander in an untenable position, unable to make a fully informed decision regarding whether or not to approve a transition plan. One of the Panelists in the minority cited deployability and readiness concerns associated with the surgeries currently in medical treatment plans.

When asked if the currently serving transgender population should be subject to the future Universal deployability and retention standard under consideration by the Department of Defense, the Panel unanimously favored that recommendation, choosing to enforce the philosophy of a single standard for all Service members.

The Panel recommends that the population eligible to transition under the current policy be limited to any transgender Service member with a diagnosis of gender dysphoria prior to implementation of a new policy.

Implementation Plan:

Should the President and Secretary of Defense accept the Panel's recommendations, the plan would be implemented as follows:

A+0 Policy is announced, which includes public and legislative affairs plans

A+90 The Department of Defense will implement the policy and publish:

- Medical Interim Procedures memorandum
- Revised Department of Defense Instructions
- Military Entrance Command Procedures
- Revise OSD Transgender Service Handbook

A+180 Military Services will publish their respective transgender policies

The Services will develop their own individual policies consistent with the DoD policy and the traditions of their respective Service. During the period A+90-180, each Service Secretary may approve new transitions on an individual basis.

Enclosed with this report is a depiction of the range of options considered and a summary of the information provided to the Panel to inform deliberations.

Summary of Information Presented To the Panel

PERSONNEL AND READINESS

Guidance

SECDEF guidance: "Consistent with [DoD goals for] military effectiveness and lethality, budgetary constraints, and applicable law, the implementation plan will establish the policy, standards and procedures for transgender individuals serving in the military."

P&R Guidance: Using the SecDef's criterion of consistency with DoD goals for military effectiveness and lethality, while mindful of budgetary constraints and applicable law, the Panel must provide recommended answers to several questions.

1. Will the Panel recommend that the DoD begin accessing transgender individuals?
2. Will the Panel allow for in-service transition in the future? If so, what will be allowed and what will not be?
3. If the Panel recommends that future transitions be disallowed, what does the Panel recommend concerning the currently serving transgender population?

The Transgender Working Group, chaired by the Director, Accession Policy will incorporate the Panel's recommendations into a revision of the current DoDI that sets forth the standards and processes that will apply to transgender Service members. This working group will also develop the implementation plan to support that DoDI revision.

Dignity & Respect "First and foremost, we will continue to treat every Service Member with dignity and respect." - SecDef Interim Guidance, September 14, 2017

Medically necessary care: "Service members who receive a gender dysphoria diagnosis from a military medical provider will be provided treatment for the diagnosed medical condition. As directed by the Memorandum, no new sex reassignment surgical procedures for military personnel will be permitted after March 22, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex." – SecDef Interim Guidance, 14 September 2017.

Accessions policy: "The procedures set forth in DoDI 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, dated April 28, 2010 (Change 1), which generally prohibit the accession of transgender individuals into the Military Services, remain in effect because current or history of gender dysphoria or gender transition does not meet medical standards, subject to the normal waiver process." - SecDef Interim Guidance, September 14, 2017.

Retention policy: "An otherwise qualified transgender Service member whose term of service expires while [the] Interim Guidance remains in effect, may, at the Service member's request, be re-enlisted in service under existing procedures." - SecDef Interim Guidance, September 14, 2017.

Definitions

Gender Dysphoria (Diagnostic and Statistical Manual of Mental Disorders version 5 which is the basis for the classification code used for documenting military medical diagnoses): In adolescents and adults, gender dysphoria diagnosis involves a difference between one's experienced/expressed gender and assigned gender, and significant distress or problems functioning. It lasts at least six months and is shown by at least two of the following:

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics
2. A strong desire to be rid of one's primary and/or secondary sex characteristics
3. A strong desire for the primary and/or secondary sex characteristics of the other gender
4. A strong desire to be of the other gender
5. A strong desire to be treated as the other gender
6. A strong conviction that one has the typical feelings and reactions of the other gender

Medically necessary: Those health-care services or supplies necessary to prevent, diagnose, or treat an illness, injury, condition, disease, or its symptoms, and that meet accepted standards of medicine. (Transgender Work Group)

Medical Treatment Plan: The plan, developed between the patient and health care provider, that outlines the steps anticipated for the patient's transition to the opposite sex. (Transgender Work Group)

Sex Reassignment Surgery or gender affirmation surgery: All surgical procedures related to transition from the birth sex to the preferred gender. (DHA Memorandum of November 13, 2017).

Stable in the preferred gender. No functional limitations or complications persist, and the individual is not experiencing clinically significant distress or impairment in social, occupational, or other important areas of functioning. (Transgender Work Group)

Transgender Service member: A Service member who identifies with a gender different from what is typically associated with their sex designated at birth. Not all transgender individuals seek treatment or receive a diagnosis of gender dysphoria. (Transgender Work Group)

Estimates on the size of the Transgender Population in the Military:

Number of GD diagnoses:	994, from June 1 2016 – July 26, 2017; 1,076 as of October 3, 2017
OPA survey estimate:	8,227 – 9,732 on active duty
Rand estimate:	2,150 – 10,790 across all components

Gender Dysphoria treatment regime

Diagnosis requirements: Under current policy, receiving a diagnosis of gender dysphoria requires 6 months of counseling (Panel III minutes) and according to the Diagnostic and Statistical Manual of Mental Disorders version 5, at least two of the following criterion must be met:

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics
2. A strong desire to be rid of one's primary and/or secondary sex characteristics
3. A strong desire for the primary and/or secondary sex characteristics of the other gender
4. A strong desire to be of the other gender
5. A strong desire to be treated as the other gender
6. A strong conviction that one has the typical feelings and reactions of the other gender

Behavioral Health Counseling: The initial step in identifying the severity of an individual's mental health condition(s) that may or may not exist. If a mental health condition exists, the person/Service member is treated or further referred to a psychotherapist depending on the identified condition.

Cross-sex Hormone Therapy: A common medical treatment associated with gender transition and can be started upon receipt of a diagnosis for gender dysphoria. (Draft DoDI 1300.XX, *Military Service by Transgender Service members*) "During the first year, the Clinical Guidelines from the Endocrine Society recommends laboratory work every 90 days to monitor hormone levels. (Panel VI slides) Opinions vary on the Service member's deployability during this period – a military endocrinologist stated that TG SMs should be able to deploy after 180 days of beginning the hormone regimen. (Panel II minutes) The civilian endocrinologist stated that hormone initiation can be paused or discontinued safely to accommodate deployments. (Panel V minutes), Commanders report that TG Service members are non-deployable for this entire period (Panel I minutes).

Real Life Experience (RLE): The phase in the gender transition process during which the individual commences living in the gender role consistent with their preferred gender. RLE generally encompasses dressing in the new gender, as well as using preferred gender berthing, bathroom, and shower facilities. (Transgender Working Group)

Surgeries: *Note1: The 2015 U.S. Transgender Survey cited by Dr. Adirim showed that 20% of MtF and 2% FtM TG individuals initially wanting* ***genital*** *surgery actually have the surgery.* ***This was originally reported as all surgeries, not specifically genital surgeries.*** *(Panel IV slides) Note2: the following table only depicts currently authorized procedures.*

Compiled data based on presentations from Panel IV and Panel VI

Procedure	Estimated Recovery Time (assumes no complications)	Estimate on how many may desire*	Notes
Hysterectomy (laproscopic approach, recommended)	4 weeks desk job 6-8 weeks unrestricted	128/313	(data for all indications) Major complication = 9.5% Minor complication = 28%
Hysterectomy (abdominal approach) with or w/o Oopherectomy	6-8 weeks unrestricted		(data for all indications) Major complication = 6% Minor complication = 27%
Chest masculinization (Mastectomy)	2-4 weeks (desk job) 4-6 weeks (physically demanding job)	151/313	Low complications
Phalloplasty (can be 2 stages, 2nd surgery 9-12 months later)	6 weeks desk job 8-12 weeks return to activity 3 months unrestricted	151/313	Recommends stay in area of hospital where procedure performed for up to 2 weeks
Metoidioplasty (can be done in 2 stages, 2nd stage performed >/=3 months later)	3 weeks desk job 6 weeks return to activity 8 weeks unrestricted	151/313	• Recommends stay in area of hospital where procedure performed for up to 3 weeks • <5% complication rate
Orchiectomy	3 weeks desk job 6 weeks return to activity 8 weeks unrestricted	75/313	Very low complications
Vaginoplasty	6 weeks desk jobs (some restrictions) 6-8 weeks resume physical activity 3 months for unrestricted activity	151/313	• Recommends stay in area of hospital where procedure performed for up to 2 weeks • Major complications rare • Minor complications ~25%, most soon after surgery

*** - Data provided did not differentiate between genders, so all data shown is based on all 313 treatment plans that were examined.**

Current Gender Marker Change Policy

A Service member on active duty, who receives a diagnosis from a military medical provider for which gender transition is medically necessary may, in consultation with the military medical provider and at the appropriate time, request that the commander approve:

- The timing of medical treatment associated with gender transition;
- An ETP associated with gender transition, consistent with Paragraph 3.2.d, and/or
- A change to the Service member's gender marker in DEERS.

(DoDI 1300.28 – *In-Service Transition for Transgender Service Members)*

The Commander will respond promptly to any request for medical care and ETPs associated with gender transition no later than 90 days from the date of the request. The commander approves, in writing, the gender marker change in DEERS.

Current Transgender Service member Data

Administrative Note 1: The information presented to the Panel demonstrated a great deal of variability. As was discussed in various Panel meetings, this can be attributed to two observations: the first is that transgender medical care is an immature field of medicine with the majority of progress coming in the last 20 years with much more to do. The second factor is that transgenderism/gender dysphoria are spectrum issues, so the medical treatment plans would also span the breadth of available care. Two examples are provided:

- The wide range of times estimated for nondeployability for transition. Commanders in Panel I were adamant that their experience showed them that their transitioning Service members were non-deployable for up to 2.5 years whereas transgender Service members stated that, if scheduled correctly, their nondeployable periods were minimal. Medical experts provided information that most surgeries (assuming no complications) only required up to 8 weeks of recovery until the individual was fully prepared to return to duty. Currently available in-service data showed that cumulatively, transitioning Service members in the Army and Air Force averaged 167.4 and 159 days of limited duty, respectively. (Panel IV slides)

- Reported suicidal ideation rate for transgender individuals varied from 25% higher than cisgender individuals to 50% higher, depending on the source.

Administrative Note 2: When presenting data, Dr. Terry Adirim stated that while a great deal of data would be presented, it may be insufficient to draw actionable conclusions. Instead, it is helpful to show trends. With such a small population to examine, and barely a year of open transgender service, using the data to predict long-term issues would not be advised. With only 15 months of transgender service, very few of the transgender Service members would have progressed sufficiently to surgeries - unless they started their transition prior to the enactment of the policy. (Panel II minutes)

- Estimates vary on the size of the military's transgender population. The Office of People Analytics estimates that between 8,227 and 9,732 Active Duty Service members are transgender. Rand estimates the population to be 2,150 to 10,790 across all components. (Panel I, Panel IV Slides)

- As of July 26, 2017, there were 994 Active Duty Service members with a diagnoses of Gender Dysphoria (GD). [Update: as of October 3, 2017, the number of diagnoses rose to 1,076]. (Panel IV)
- Between October 1, 2015 to July 26, 2017, there were 994 Active duty Service members with a diagnosis of GD - (Panel IV slides)
- Between October 1, 2015 and October 3, 2017, the 994 active duty Service members with diagnosis of GD accounted for 30K mental health visits. (Panel IV slides)
- Rates of Suicidal ideation:
    - The 2015 U.S Transgender Survey concluded that a transgender individual with a solid support structure (e.g. family, friends) has a 37% higher rate of suicidal ideations than a cisgender individual. Without that support structure, the rate increase to a 54% higher rate. (2015 U.S. Transgender Survey, Panel VI minutes)
    - Individuals with untreated gender dysphoria have roughly a 25% higher risk of suicide than cisgender individuals, (Maguen and Shipherd, 2010) but others report that is largely due to an inability to transition or treat gender dysphoria. With treatment, suicidal ideation can significantly decrease. (Panel III minutes). Both Military and Civilian medical experts agreed with that statistic, when asked. (Panel III, V minutes).
- Medical costs for treating GD have risen from ~ $660K in FY16 to ~ $2.2M in FY17. (Panel IV slides)
- Since policy implementation, the medical costs for SMs with GD has increased nearly 3 times compared to a non-GD Service member. (Panel IV slides)
- Between 67% and 77% of Service members have surgeries included in their treatment plans; this percentage may be high due to DoD transition policy requiring all medically necessary care to be included in a treatment plan in advance of treatment. (Panel IV slides)
- Currently available in-service data showed that cumulatively, transitioning Service members in the Army and Air Force averaged 167.4 and 159 days of limited duty, respectively. (Panel IV slides)
- According to the 2015 U.S. Transgender survey, only 2% of completed Female-to-Male (FtM) transitions included genital reassignment surgeries. In Male-to-female (MtF) completed transitions, approximately 10% had genital reassignment surgery. The most common transition-related surgeries that can be performed in military treatment facilities are mastectomy (21% of FtM), hysterectomy (8% of FtM) and breast augmentation (8% of MtF). (Panel VI slides)
- The 2015 U.S. Transgender Survey reports that the military seems to have a higher prevalence of transgenderism than the greater American public. (Panel VI slides)

- The DASD-HA study cohort of 691 transgender Service members revealed: (Panel VII slides)
    - The transgender population in the military is mostly under 40 years old (97%) and in the rank of E1-E4 (51%).
    - Higher rates of mental health and psychotherapy encounters per individual (29.6) when compared to the control group that consisted of active duty service members with a mental health diagnosis (21.1)
    - A higher rate of suicidal ideation than the control group that consisted of active duty service members with a mental health diagnosis (10.7 vs 6.2%).
    - 69 Service members deployed following a primary diagnosis of gender dysphoria after July 1, 2016.

Readiness, Lethality, and Military effectiveness

- The vast majority of commanders agreed that from time of diagnosis to the completion of a transition plan, the SM would be non-deployable for 2-2.5 years (up to a year of hormones to achieve stability, then surgeries). (Panel I minutes) Transgender Service members maintained that most complex surgery (gender reassignment surgery) required six weeks of Convalescent Leave followed by an unspecified period of light duty. (Panel II minutes)

- The three genital reconstruction surgeries (vaginoplasty, phalloplasty, metoidioplasty), have as-yet unknown impacts on individual military readiness and that the deployability of individuals who had the surgeries would be an issue. Example: one Service member recently had a vaginoplasty and her medical treatment plan forecasted 6 months of non-deployability after the surgery. (Draft Panel VI minutes) *(note: 10.5 months was originally reported but corrected to 6 months during 7 December Panel meeting)*

- One military physician stated that the surgical portion of a complete gender reassignment, would generally be scheduled as five or six surgeries over a 15-month period. (Panel III minutes)

- When asked about the percentages of transgender individuals that opted for medical procedures, the civilian medical experts provided the following information, based on their personal experience:

	Male to Female (MtF) transitions	Female-to-Male (FtM) transitions
% that desire medical intervention	50	50
% (of above) that desire surgery	33	33
Desire cross-sex hormones	Majority	Majority
Remarks	Majority of surgical procedures are chest augmentation surgery	Majority of surgical procedures are mastectomies

- One commander remarked about how it would be extremely difficult for a TG Service member to operate in a SOCOM world with austere living conditions and non-emergency medical support not readily available. He also raised the issue that some military specialties, like air traffic controllers, have their standards set by another agency – in that case the FAA. The FAA does not allow an individual to control air traffic until they have been hormonally stable for 5 years, effectively closing that specialty to TG SMs. (Panel I minutes)

- When asked what happens if an individual on cross-sex hormones was unable to take them for a period of time, a military physician stated that the answer depended on the specific situation. In short, side effects of cross-sex hormone withdrawal include increased fatigue, mood swings and decreased libido – and these symptoms are similar to those of a cisgender individual that stopped taking hormone supplements. The longer an individual was on cross-sex hormones when they had to stop, the more intense those symptoms would be. The same panelist remarked that there would likely be a decrease in combat ability for an individual who stopped taking their cross-sex hormones. (Panel III minutes) Transgender Service members who appeared before the panel had a different perspective. One of the Service members has been off of hormones for more than 2 years with little effect and another compared the side effects of skipping a week of hormones to a bad case of pre-menstrual syndrome. One of the Service members sometimes skips hormone injections and this leads to oily skin, and mood swings, both of which are manageable. (Panel III minutes) Civilian medical experts maintained that if a Service member was deployed and lost their cross-sex hormones, the most likely effect would just be an angry Service member. As a matter of routine in civilian care, the use of cross-sex hormones are halted before and after surgeries for a period of time without any issues. (Panel V minutes) However, cross sex hormones can be provided in multiple ways – topical creams, injections or pills – so it is be unlikely that an individual would be unable to take cross-sex hormones anywhere in the world. (Panel III minutes) There are risks associated with cross-sex hormones, but they are small. Birth control pills contain more hormones than cross-sex hormones do. (Panel III minutes)

- Providing adequate mental health support to a deployed transgender Service member could be problematic - there are few deployed psychotherapists that could provide the required treatment for a transgender Service member prior to surgeries – and none in the most austere environments (e.g., Syria, Somalia). Mature theaters (Korea, Afghanistan) would likely be able to support transgender Service members with mental health and medical support. (Draft Panel VI minutes)

- Receiving a diagnosis of gender dysphoria takes approximately 6 months of counseling. (Panel III minutes)

- The civilian endocrinologist stated that it is safe to pause initiation/titration of dose of hormone treatments and/or stop hormones (may need to wean off) in order to accommodate deployments. It will just freeze the progress of the individual's transition. (Panel V minutes)

Budgetary constraints

- Several commanders indicated a budgetary impact as they received no additional monies to pay for the numerous TDY trips throughout CONUS for specialized medical care and had to pay out of O&M Funds. (Panel I minutes)

- Medical costs for treating GD have risen from ~ $660K in FY16 to ~ $2.2M in FY17. (Panel IV slides)

- Since policy implementation, the medical costs for SMs with GD has increased nearly 3 times compared to a non-GD Service member. (Panel IV slides)

Unit cohesion

- One commander spoke of his 'dueling' EO issues; his TG SM (a female with male genitalia), has an approved ETP for full-time real life experience and is authorized to use female shower facilities. This led to an EO complaint by the females assigned to the unit who believed their privacy was invaded by this. That led to an EO complaint by the TG SM claiming that the command was not supporting her rights. **(Panel I minutes)**

- Under the current policy, a transgender female recruit (with male genitalia) will be assigned to a female platoon and likely violate the privacy rights of the other recruits due to their exposure to opposite sex genitalia (even if unintentional). The same considerations apply to transgender males (with female genitalia) in male recruit platoons. The current policy suggests that privacy is manageable by hanging shower curtains or requiring recruits to wear undergarments at all times, however these accommodations are not practical in application of our squadbay based training model and detract from the mission of transforming young Americans into members of a single, cohesive unit.

- A Male-to-Female transgender Sailor was serving as a Missile Technician (MT) onboard a submarine. This position requires participation in the Personnel Reliability Program. Because the Sailor was receiving hormone therapy, the Sailor was required to be disqualified as a MT and had to be removed from the position. As a result, a replacement Sailor had to be assigned to the submarine and the future career of the transgender Sailor as a MT is uncertain.

- Exception to Policy (ETP) was granted for Sailor who was diagnosed with Gender Dysphoria in July 2016 and had been undergoing Cross Sex Hormone Therapy since September 2016. Because the Sailor was honest, worked with his command and waited over a year to submit an ETP, the chain of command was able to fully support and endorse the Sailor's request to wear female uniforms once body composition and appearance began to drastically change.

- Female-to-male transitioning Sailor submitted ETP to adhere to male uniform and grooming standards. Sailor had an approved transition plan and medical treatment plan, and worked with the command throughout the transition process. The Commanding Officer fully supported the ETP request, and wrote the following endorsement: "I fully support [her] request for ETP. If approved, the transition from female to male grooming, uniform, and appearance standards will be seamless having no impact on morale or good order and discipline. [She] is an extremely productive member of the command, highly regarded as a technical expert and hard worker. Other Sailors are aware of [her] transgender status and

will continue to support [her] throughout the process. Based on [her] professional conduct and the high regard in which [she] is held, I anticipate no problems with [her] remaining in female berthing, heads, and shower facilities."

Applicable laws, standards, and guidelines

- Statutorily, TRICARE is forbidden from paying for gender reassignment surgery. All transition-related surgeries must be processed through the Supplemental Health Care Program. In any case, if an individual does not meet required guidelines, the Department can refuse to perform the procedure until the individual meets all criteria contained in the guidelines. (Panel II minutes)

- The Military Health System follows the 2017 Endocrine Society guidelines for the treatment of gender dysphoria. (Panel VI slides) The recovery estimates contained within those guidelines are based on an assumption that the individual will return to their civilian life, which does not directly translate onto the military population and their unique requirements. The DoD will most likely have to develop its own military-specific recovery estimates that would likely be higher than the civilian estimates (Draft Panel VI minutes).

- The prevailing Endocrine Society guidelines are also the reason why an individual is non-deployable for the first 12 months of taking cross-sex hormones. (Panel III minutes). Both the military endocrinologist (Panel III) and the civilian endocrinologist (Panel IV) believed that an individual may be able to achieve hormonal stability after only six months of cross-sex hormones.

Deployability

Department of Defense Instruction (DoDI) 6490.07, *Deployment-Limiting Medical Conditions for Service Members and DoD Civilian Employees*, February 5, 2010 provides the following information:

Deployment: The relocation of forces and materiel to desired operational areas. Deployment encompasses all activities from origin or home station through destination, specifically including intra-continental United States, inter-theater, and intra-theater movement legs, staging, and holding areas.

Contingency Deployment: A deployment that is limited to outside the continental United States, over 30 days in duration, and in a location with medical support from only non-fixed (temporary) military medical treatment facilities. It is a deployment in which the relocation of forces and materiel is to an operational area in which a contingency is or may be occurring.

DoD Policy states that DoD personnel may deploy if:

> "Any required, ongoing health care or medications anticipated to be needed for the duration of the deployment are available in theater within the Military Health System. Medication must have no special handling, storage, or other requirements (e.g., refrigeration, cold chain, or electrical power requirements). Medication must be well tolerated within harsh environmental conditions (e.g. heat or cold stress, sunlight) and

> should not cause significant side effects in the setting of moderate dehydration." (Paragraph 4.3.b)

The DoDI also adds that

> "Deploying commanders may add additional medical requirements to the standards in this Instruction based upon the demands of a specific deployment. Commanders may apply these medical standards to other deployments based on the health risk, physical demands, and medical capabilities of the deployment..." (Paragraph 4.e)

Enclosure 3 to the DoDI is entitled "*Medical conditions usually precluding contingency deployment*" and within it, the enclosure states:

> "Any chronic medical condition that requires frequent clinical visits, fails to respond to adequate conservative treatment, or necessitates significant limitation of physical activity." (Paragraph b.1.)

> "Any unresolved acute or chronic illness or injury that would impair duty performance in a deployed environment during the duration of the deployment." (Paragraph b.5.)

The DoDI also charges the Joint Staff and COCOMs to develop their own medical standards for deployment into their area of operations. Using CENTCOM as an example, their medical deployment standards, contained in Modification 13 to *USCENTCOM Individual protection and individual – Unit deployment Policy* (March 23, 2017) states:

> "Deployed Health Service Support infrastructure is designed and prioritized to provide acute and emergency support to the Expeditionary mission. All personnel...travelling to the CENTCOM AOR must be medically, dentally and psychologically fit." (Paragraph 15.C)

Questions and Answers

1. What does "... consistent with military readiness, lethality, deployability, budgetary constraints, and applicable law" really mean? Is the standard that policy on TG service must "enhance" readiness, lethality, and deployability - or simply not detract from?

Answer: The standard is that any policy recommended by the panel should support the Department's goals as the policy relates to military readiness, lethality and deployability, as well as being prudent given budgetary constraints and not violate applicable law. The policy does not need to "enhance" these elements.

2. What does "to the extent practicable, policies regarding the accession and retention of transgender persons should align with policies applied to similarly situated persons..." mean?

Answer: The reference to "similarly situated persons" implies a requirement to analyze the policy with an eye towards parity. As an example, a policy recommendation that limits the medical care of a transgender Service member would meet this criteria if a sys-gender individual with a comparable medical condition are similarly limited.

3. Can you separate a transgender person for the medical or psychiatric conditions on which everyone else is judged. ie, for the purpose of deciding upon their worthiness to serve in the military, can we judge them as individuals or must we judge them as a class of people?

Answer: We must evaluate their ability to serve as individuals, since Service in the U.S. Military is standards based.

4. Does being transgender (having gender incongruence?) necessarily mean that you have a medical or psychiatric condition? In the Transgender Accession Medical Standards Policy Review briefing that we received in Oct, DSM-V suggested that the disorders were "gender dysphoria" and "paraphilic disorders" - not transgenderism.

Answer: No, identifying as transgender does not necessarily mean that you have a medical or psychiatric condition.

5. Can you have (or have a history of) a certain medical or psychiatric condition disorder and serve in the military?

Answer: Yes. The medical accession standards clearly state for example that an individual with a history of depression or anxiety can access if he or she has not carried the diagnosis or been treated for at least the past 36 months.

6. If you can serve as "transgender" but develop a disorder/condition while serving, does the provision of medical care differ from that provided to other persons that require medical or psychiatric care? If so, what disorders/conditions are treated differently?

Answer: No. Someone who is transgender who develops a disorder during military service should be treated like anyone else with a physical or mental health condition.

7. a) Assuming the condition that would be treated differently is gender dysphoria, to what extent does the law allow us to limit treatment?

Answer: By statute, TRICARE cannot pay for gender transition surgeries, however the law does allow for an exception, which is why we can only provide those surgeries through a waiver process.

b) If the law doesn't allow us to limit treatment, could such a diagnosis lead to a PEB/MEB and discharge with/without disability?

Answer: Gender dysphoria is not a condition listed in the Veteran Affairs Schedule for Rating Disabilities (VASRD) and therefore is not a compensable medical condition, which would typically preclude a service member from being entered into a process for evaluation for a VA disability rating for this condition. The Services vary slightly, but each has administrative separation processes in place to allow for individuals who have conditions that are not a disability to be processed for separation.

8. Does identifying as transgender necessarily lead to a need to transition to your preferred gender?

Answer: No. Some people who are transgender do not choose to transition and are fully capable to perform their duties and responsibilities.

9. If you can serve as transgender and transition, we need to address the logistics of doing so (berthing, heads, showers, etc.). Same question if you serve as transgender but don't transition.

Answer: Logistics of Service can be considered when making your recommendations. Extensive information is available in the Question and Answer package that was compiled for the Military Departments earlier this year. This information is being provided as part of your read ahead package for the Panel meeting on 11/30/2018.

Range of Options Considered

PERSONNEL AND READINESS

Panel of Experts – Policy Recommendations

Accessions

Does the Panel recommend...

...that a transgender individual (who did not desire gender transition) who desired to join the military be allowed to access? — No / Yes

...in other than their birth gender? — No / Yes

Finding: There is limited impact to military effectiveness, lethality, or budgetary concerns associated with accessing an individual that identifies as transgender.

The Panel recommends:

Majority: Transgender individuals who meet all accession standards be allowed to access in their birth gender, subject to their ability to meet all applicable Service standards

Minority: Transgender individuals who meet all accession standards be allowed to access in other than their birth gender. This assumes that the individual achieved gender stability for 36 months and meets all other accession standards in order to mitigate the majority of the detractors.

Currently Serving

Does the Panel recommend...

No / Yes — ...that currently serving transgender individuals with an approved medical treatment plan will be 'grandfathered' into a different policy than the proposed policy?

No / Yes — that all treatment options contained in currently approved medical treatment plans be honored?

No / Yes — ...the Universal deployability and retention standard that is currently being staffed should apply to the 'grandfathered' transgender population?

No / Yes — And sex reassignment surgeries? (excluding genital reassignment surgeries)

No / Yes — And genital reassignment surgeries?

Finding: The Department should honor its commitment to the currently serving transgender Service members by authorizing their continued transition related treatment and service in other than their birth gender.

The Panel recommends:

- Currently serving transgender Service members should be authorized all medically necessary gender transition related care.
- This policy applies to Service members who receive a diagnosis of gender dysphoria prior to the implementation of a change in policy limiting transition while serving.
- That DoD develop a comprehensive way to medically treat TG Service members in a more standardized manner.

(Unanimous Opinion)

Future In-service

Does the Panel recommend...

...allowing continued service for transgender Service members that do not desire to transition? — No / Yes

...allowing continued service for transgender Service members with a diagnosis of gender dysphoria that was resolved with only limited treatment? — No / Yes

...allowing transgender Service members with a history of gender dysphoria that was resolved with limited treatment to change their gender marker to other than their birth gender (Gender marker change and real life experience)? — No / Yes

And Cross Sex Hormones? (12 months monitoring; deployment impact) — No / Yes

And sex reassignment surgeries? (excluding genital surgeries) — No / Yes

And genital reassignment surgeries? — No / Yes

Finding: An individual that identifies as Transgender should be able to serve if otherwise qualified. Gender dysphoria resolved through mental health counseling and no transition can be compatible with continued military service. Cross-sex hormone and surgical medical treatments associated with gender transition are not compatible with maintaining a Service member's deployability and therefore negatively effects military effectiveness and individual readiness. Gender transitions disrupt unit cohesion and reduce military readiness.

The Panel recommends:

Majority: Transgender Service members be permitted to serve openly, but only in their birth gender and without cross-sex hormones or surgical transition support.

Minority: Transgender Service members be permitted to transition while serving to other than their birth gender if the transition does not require cross-sex hormones or surgical transition support. One Panel member supported limited surgical transition support.

Implementation Plan

Upon approval of policy by POTUS:

Announcement Day

Policy is announced, which includes public and legislative affairs plans

+90 days

Implement the policy and publish:

- Medical Interim Procedures memorandum
- Revised Department of Defense Instructions
- Military Entrance Command Procedures
- Revise OSD Transgender Service Handbook

90-180 days

- Military Department Secretaries may approve transition on an individual basis
- Military Services will publish their respective transgender policies

Indicates the opinion of majority of the Panel | **Indicates the opinion of minority of the Panel**

EXHIBIT 9

FILED UNDER SEAL

EXHIBIT 10

Malloy, Emily N.

From: Powers, James R. (CIV) <James.R.Powers@usdoj.gov>
Sent: Friday, January 31, 2020 3:19 PM
To: Heinz, Jordan M.
Cc: Barsanti, Vanessa; Ikard, Sam; *prenn@lambdalegal.org; *tborelli@lambdalegal.org; *Rachel@newmanlaw.com; Siegfried, Daniel I.; Stallings-Ala'ilima, Chalia (ATG); *colleen.melody@atg.wa.gov; *jason@newmanlaw.com; Rosenberg, Michael E.; Carmichael, Andrew E. (CIV); Enlow, Courtney D. (CIV); Skurnik, Matthew (CIV); Norway, Robert M. (CIV); Gerardi, Michael J. (CIV)
Subject: [EXT] RE: Karnoski, et al. v. Trump, et al.

Jordan,
I have provided responses to your requests in red below.

Thanks,
Jim

From: Heinz, Jordan M. <jheinz@kirkland.com>
Sent: Tuesday, January 28, 2020 2:38 PM
To: Powers, James R. (CIV) <jpowers@CIV.USDOJ.GOV>; Gerardi, Michael J. (CIV) <mgerardi@CIV.USDOJ.GOV>; Skurnik, Matthew (CIV) <maskurni@CIV.USDOJ.GOV>; Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>; Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>
Cc: Barsanti, Vanessa <vanessa.barsanti@kirkland.com>; Ikard, Sam <sam.ikard@kirkland.com>; *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>
Subject: Karnoski, et al. v. Trump, et al.

> Drew,
>
> During the December 10, 2019 conference with the Court, Defendants represented that there were nine Panel of Experts meetings. *See* Hr. Tr. 6:15-18. Plaintiffs have received the meeting minutes for these first nine meetings through December 7, 2017. However, based on a review of the produced documents, it appears that there were four additional Panel meetings: December 13, 2017; December 22, 2017; January 4, 2018; and January 11, 2018. Plaintiffs have not received meeting minutes for these final four meetings. Please promptly produce the meeting minutes for these final four meetings or confirm that no such meeting minutes exist.

I have been advised there were not meeting minutes for these 4 meetings.

> Defendants also implied during the December 10, 2019 conference that the Panel "briefed Secretary Mattis" in January 2018, "[a]nd the briefings we've given over to plaintiffs." Hr. Tr. 26:25 & 26:1-9. Plaintiffs have been unable to identify these briefings. Please identify these briefings by bates number.

The documents presented to Secretary Mattis were the Action Memo from former Under Secretary Wilkie (AR_003059-AR_003067) and its accompanying materials included in the AR.

> Additionally, Defendants claim to have now fully produced all documents responsive to RFP No. 36, which seeks all "complaints arising from or attributed to open service by transgender service members, accessions by

transgender individuals, or the Carter Policy," because the Defendants have now produced the two Equal Opportunity complaints referenced in DoD's Report and Recommendation. Within the incident description for one of these complaints, USDOE00076582, it states "Anonymous complainant alleges that the BnCO and SgtMaj have been fostering, condoning, and failing to correct, a hostile working [sic] which discriminates and segregates the transgendered Marine. ***See attachment for the detailed complaint provided to the EOA by the anonymous complainant***." (emphasis added). Plaintiffs have been unable to identify the referenced attachment. Please identify the referenced attachment or else please promptly produce this attachment; until then, Plaintiffs do not consider Defendants to have fully complied with RFP 36.

Defendants have identified and collected the attachment you appear to be referring to. We will produce it shortly.

Regards,

Jordan

Jordan M. Heinz

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T +1 312 862 7027
F +1 312 862 2200

jordan.heinz@kirkland.com

EXHIBIT 11

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND READINESS

ACTION MEMO

JAN 11 2018

TO: SECRETARY OF DEFENSE

THROUGH: DEPUTY SECRETARY OF DEFENSE
VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF

FROM: Robert Wilkie, Under Secretary of Defense for Personnel and Readiness

SUBJECT: Recommendations by the Transgender Review Panel of Experts

- On September 14, 2017, you directed the establishment of a Panel of Experts to review and recommend changes to Department of Defense policies regarding the service of transgender individuals (Tab A), in accordance with direction from the President on August 25, 2017 (Tab B).
- The Panel, which I chaired, comprised the officials performing the duties of the Under Secretaries of the Military Departments, the Uniformed Services' Vice Chiefs, and Senior Enlisted Advisors.
- You directed the Panel to conduct its review and render recommendations consistent with military readiness, lethality, deployability, budgetary constraints, and applicable law.
- The Panel was informed by testimony from commanders with transgender troops, currently-serving transgender Service members, military physicians, and other health experts.
- The Panel considered available DoD data and information on currently-serving transgender personnel and relevant external research and studies.
- Based on the individual and collective experience leading warfighters and their expertise in military operational and institutional effectiveness, the Panel makes the following recommendations:
    - Transgender individuals should be allowed to enter the military in their biological sex, subject to meeting all applicable accession standards. A diagnosis of gender dysphoria is disqualifying for accessions unless medical documentation establishes stability in his/her biological sex for no less than 36 consecutive months—as determined by a qualified Department of Defense medical provider—at the time of application. [*Gender Dysphoria*: a medical diagnosis involving significant distress or problems functioning resulting from a difference between the gender with which an individual identifies and the individual's biological sex]

- Transgender Service members should be permitted to serve openly, but only in their biological sex and without receiving cross-sex hormone therapy or surgical transition support.
- In order to keep faith with those transgender Service members who receive a diagnosis of gender dysphoria from a qualified military medical provider prior to the implementation of a revised DoD policy in 2018, they should be authorized all medically necessary and appropriate care and treatment, including cross-sex hormone therapy and medically necessary surgery. Such care and treatment should be authorized and provided at government expense even if it is determined to be necessary and appropriate only after the implementation of a revised policy in 2018.
- Transgender Service members should be subject to the same retention standards applicable to all other Service members.

- To ensure consistent application of the policies, procedures, and guidance currently in effect with regard to the accession[1] and in-service transition[2] of transgender individuals, I intend to issue a memorandum clarifying existing guidance regarding privacy concerns that may arise.

RECOMMENDATION: As discussed, based on your review of these recommendations, and other information and input you elect to consider, we will develop a writing by which you would advise the President of your conclusions and recommendations in this matter.

COORDINATION: TAB C

Attachments:
As stated

[1] As required by court order.
[2] As authorized by DoDI 1300.28, *In-Service, Transition for Transgender Service members*, dated July 1, 2016.

EXHIBIT 12

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

JUN 30 2016

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

SUBJECT: Directive-type Memorandum (DTM) 16-005, "Military Service of Transgender Service Members"

References: DoD Directive 1020.02E, "Diversity Management and Equal Opportunity in the DoD," June 8, 2015
DoD Directive 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program," August 18, 1995
DoD Instruction 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services," April 28, 2010, as amended

Purpose. This DTM:

- Establishes policy, assigns responsibilities, and prescribes procedures for the standards for retention, accession, separation, in-service transition, and medical coverage for transgender personnel serving in the Military Services.

- Except as otherwise noted, this DTM will take effect immediately. It will be converted to a new DoDI. This DTM will expire effective June 30, 2017.

Applicability. This DTM applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the

Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

Policy.

- The defense of the Nation requires a well-trained, all-volunteer force comprised of Active and Reserve Component Service members ready to deploy worldwide on combat and operational missions.

- The policy of the Department of Defense is that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness. Consistent with the policies and procedures set forth in this memorandum, transgender individuals shall be allowed to serve in the military.

- These policies and procedures are premised on my conclusion that open service by transgender Service members while being subject to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming, deployability, and retention, is consistent with military readiness and with strength through diversity.

Responsibilities

- The Secretaries of the Military Departments will:

  - Take immediate action to identify all DoD, Military Department, and Service issuances, the content of which relate to, or may be affected by, the open service of transgender Service members.

  - Draft revisions to the issuances identified, and, as necessary and appropriate, draft new issuances, consistent with the policies and procedures in this memorandum.

  - Submit to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) the text of any proposed revisions to existing Military Department and Service regulations, policies, and guidance, and of any proposed new issuance, no later than 30 days in advance of the proposed publication date of each.

- The USD(P&R) will:

  - Take immediate action to identify all DoD, Military Department, and Service issuances, the content of which relate to, or may be affected by, the open service of transgender Service members.

- Draft revisions to the issuances identified in this memorandum and, as necessary and appropriate, draft new issuances consistent with the policies and procedures in this memorandum.

Procedures. See Attachment.

Releasability. **Cleared for public release**. This DTM is available on the DoD Issuances Website at http://www.dtic.mil/whs/directives.

Attachment:
As stated

cc:
Secretary of Homeland Security
Commandant, United States Coast Guard

ATTACHMENT

PROCEDURES

1. SEPARATION AND RETENTION

a. Effective immediately, no otherwise qualified Service member may be involuntarily separated, discharged or denied reenlistment or continuation of service, solely on the basis of their gender identity.

b. Transgender Service members will be subject to the same standards as any other Service member of the same gender; they may be separated, discharged, or denied reenlistment or continuation of service under existing processes and basis, but not due solely to their gender identity or an expressed intent to transition genders.

c. A Service member whose ability to serve is adversely affected by a medical condition or medical treatment related to their gender identity should be treated, for purposes of separation and retention, in a manner consistent with a Service member whose ability to serve is similarly affected for reasons unrelated to gender identity or gender transition.

2. ACCESSIONS

a. Medical standards for accession into the Military Services help to ensure that those entering service are free of medical conditions or physical defects that may require excessive time lost from duty. Not later than July 1, 2017, the USD(P&R) will update DoD Instruction 6130.03 to reflect the following policies and procedures:

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

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

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

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

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

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

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

(b) no functional limitations or complications persist, nor is any additional surgery required.

b. The Secretaries of the Military Departments and the Commandant, United States Coast Guard, may waive or reduce the 18-month periods, in whole or in part, in individual cases for applicable reasons.

c. The standards for accession described in this memorandum will be reviewed no later than 24 months from the effective date of this memorandum and may be maintained or changed, as appropriate, to reflect applicable medical standards and clinical practice guidelines, ensure consistency with military readiness, and promote effectiveness in the recruiting and retention policies and procedures of the Armed Forces.

3. IN-SERVICE TRANSITION

a. Effective October 1, 2016, DoD will implement a construct by which transgender Service members may transition gender while serving, in accordance with DoDI 1300.28, which I signed today.

b. Gender transition while serving in the military presents unique challenges associated with addressing the needs of the Service member in a manner consistent with military mission and readiness needs.

4. MEDICAL POLICY. Not later than October 1, 2016, the USD(P&R) will issue further guidance on the provision of necessary medical care and treatment to transgender Service members. Until the issuance of such guidance, the Military Departments and Services will handle requests from transgender Service members for particular medical care or to transition on a case-by-case basis, following the spirit and intent of this memorandum and DoDI 1300.28.

5. EQUAL OPPORTUNITY

a. All Service members are entitled to equal opportunity in an environment free from sexual harassment and unlawful discrimination on the basis of race, color, national origin, religion, sex, or sexual orientation. It is the Department's position, consistent with the U.S. Attorney General's opinion, that discrimination based on gender identity is a form of sex discrimination.

b. The USD(P&R) will revise DoD Directives (DoDDs) 1020.02E," Diversity Management and Equal Opportunity in the DoD," and 1350.2,"Department of Defense Military Equal Opportunity (MEO) Program," to prohibit discrimination on the basis of gender identity and to incorporate such prohibitions in all aspects of the DoD MEO program. The USD(P&R) will prescribe the period of time within which Military Department and Service issuances implementing the MEO program must be conformed accordingly.

6. EDUCATION AND TRAINING

a. The USD(P&R) will expeditiously develop and promulgate education and training materials to provide relevant, useful information for transgender Service members, commanders, the force, and medical professionals regarding DoD policies and procedures on transgender service. The USD(P&R) will disseminate these training materials to all Military Departments and the Coast Guard not later than October 1, 2016.

b. Not later than November 1, 2016, each Military Department will issue implementing guidance and a written force training and education plan. Such plan will detail the Military Department's plan and program for training and educating its assigned force (to include medical professionals), including the standards to which such education and training will be conducted, and the period of time within which it will be completed.

7. IMPLEMENTATION AND TIMELINE

a. Not later than October 1, 2016, the USD(P&R) will issue a Commander's Training Handbook, medical guidance, and guidance establishing procedures for changing a Service member's gender marker in DEERS.

b. In the period between the date of this memorandum and October 1, 2016, the Military Departments and Services will address requests for gender transition from serving transgender Service members on a case-by-case basis, following the spirit and intent of this memorandum and DoDI 1300.28.

EXHIBIT 13

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

RYAN KARNOSKI, et al., *Plaintiffs*, STATE OF WASHINGTON, *Plaintiff-Intervenor*, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., *Defendants*.	Case No. 2:17-cv-01297-MJP

PLAINTIFFS' 26(A)(2) EXPERT REPORT OF BRAD R. CARSON

I, Brad R. Carson, have been retained by counsel for Plaintiffs as an expert in the above-captioned litigation. Pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure, this report summarizes my qualifications as an expert, the matters I have been asked to review and opine upon, the materials I have reviewed and the work I have performed in reaching my opinions, and the nature of and bases for my opinions. It is based on the information that I have had the opportunity to review to date, and I reserve the right to revise and supplement it if any new information becomes available in the future.

I. Summary of Qualifications.

I served in the Department of Defense as the Acting Under Secretary of Defense for Personnel and Readiness ("USD P&R") from April 2, 2015 to April 8, 2016. In that capacity, and at the direction of the Secretary of Defense, I led a group of senior personnel drawn from all of the

armed services to develop, over many months of information collection and analysis, a Department-wide policy regarding service by transgender people (the "Working Group"), all as more fully described below.

I attended Baylor University and obtained an undergraduate degree in history in 1989. After college, I attended Trinity College in Oxford, England on a Rhodes Scholarship and earned a Master's degree in Politics, Philosophy, and Economics. When I returned to the United States, I attended the University of Oklahoma College of Law, graduating with a law degree in 1994.

After I graduated from law school, I practiced as an attorney at the law firm Crowe & Dunlevy from 1994 to 1997, and again in 1999. From 1997 to 1998 I served as a White House Fellow, where I worked as a Special Assistant to the Secretary of Defense. From 2001 to 2005, I served in Congress as the Representative for the State of Oklahoma's 2nd District.

In addition to my civilian career, I am also a commissioned officer in the United States Navy Reserve. I currently serve in the Individual Ready Reserve. I deployed to Iraq in 2008 as Officer-in-Charge of intelligence teams embedded with the U.S. Army's 84th Explosive Ordnance Disposal Battalion. In Iraq, our teams were responsible for investigating activities relating to improvised explosive devices and the smuggling of weapons and explosives. For my service in Iraq, I was awarded the Bronze Star Medal and other awards.

I have held several leadership positions within the Department of Defense ("DoD"). In 2011, I was nominated by the President to serve as General Counsel to the United States Army and unanimously confirmed by the U.S. Senate. As General Counsel, my duties included providing legal advice to the Secretary, Under Secretary, and Assistant Secretaries of the Army regarding the regulation and operation of the U.S. Army. I also assisted in the supervision of the Office of the Judge Advocate General. I served as General Counsel until March 2014.

In late 2013, while serving in that position, I was nominated by the President to serve as Under Secretary of the Army. I was unanimously confirmed by the U.S. Senate in February 2014 and sworn in on March 27, 2014. As Under Secretary of the Army, I was the second-ranking civilian official in the Department of the Army. My responsibilities included the welfare of roughly 1.4 million active and reserve soldiers and other Army personnel, as well as a variety of matters relating to Army readiness, including oversight of installation management and weapons and equipment procurement. With the assistance of two Deputy Under Secretaries, I directly supervised the Assistant Secretaries of the Army for Manpower and Reserve Affairs; Acquisition, Logistics and Technology; Financial Management and Comptroller; Installations, Energy and Environment; and Civil Works. My responsibilities involved the management and allocation of an annual budget amounting to almost $150 billion.

I was appointed by the President to serve as acting USD P&R in April 2015. In that capacity, I functioned as the principal staff assistant and advisor to the Secretary and the Deputy Secretary of Defense for Total Force Management with respect to readiness; National Guard and Reserve component affairs; health affairs; training; and personnel requirements and management, including equal opportunity, morale, welfare, recreation, and quality of life matters. My responsibilities over these matters extended to more than 2.5 million military personnel.

Since completing my duties as acting USD P&R in 2016, I have served as a Senior Advisor to the Boston Consulting Group. My work there involves advising aerospace and defense clients, and public sector clients, in areas of legal reform, change management, human capital and talent management development, and executive leadership. Since August 2018, I have been a professor at the Frank Batten School of Public Policy at the University of Virginia, specializing in intelligence and defense issues.

During the past four years, I have not testified as an expert at trial or by deposition. A copy of my curriculum vitae, which includes my publications, is attached as Exhibit A. I am not being compensated for my work in connection with this case.

In preparing this report, I considered the materials listed in the bibliography attached as Exhibit B. I also relied on my professional experience and education, including my understanding of U.S. military personnel policies and military readiness.

II. Background.

A. The Working Group's Mandate.

On July 28, 2015, then-Secretary of Defense Ashton B. Carter ordered me, in my capacity as USD P&R, to convene the Working Group to formulate policy options for DoD regarding transgender service members. Secretary Carter ordered the Working Group to present its recommendations within 180 days. In the interim, transgender service members were not to be discharged or denied reenlistment or continuation of service on the basis of gender identity without my personal approval.

The Working Group included roughly twenty-five members. Each branch of military service was represented by a senior uniformed officer (generally a three-star admiral or general), a senior civilian official, and various staff members. The Surgeons General and senior representatives of the Chaplains for each branch of service also attended the Working Group meetings.

Secretary Carter's order directed the Working Group to "start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective practical impediments are identified." Open Service Directive. That mandate did not mean that "standards were adjusted or relaxed to accommodate

service by transgender persons." Report and Recommendations on Military Service by Transgender Persons (Feb. 2018) at 19. Rather, instead of simply assuming that the medical needs of transgender service members were inconsistent with generally applicable standards for fitness or deployability, we conducted an evidence-based assessment to determine whether those prior assumptions were actually true.

The Working Group formulated its recommendations by collecting and considering evidence from a variety of sources, including a careful review of all available scholarly evidence and consultations with medical experts, personnel experts, readiness experts, health insurance companies, civilian employers, and commanders whose units included transgender service members. We began our work based on reports from commanders that there were already transgender individuals serving in the field and performing their duties well, so the task before us was not merely an abstract exercise to establish a policy on military service by transgender persons. Rather, the question was whether there was any reason these existing service members should be deemed unfit for service and involuntarily separated due to their transgender status. We were receiving questions from the field about whether these individuals could continue serving, and we needed to develop a consistent policy rather than leaving the issue to ad hoc determinations by commanders.

B. The Findings of the RAND Report.

On behalf of the Working Group, I requested that RAND, a nonprofit research institution that provides research and analysis to the Armed Services, complete a comprehensive study of the health care needs of transgender people, including potential health care utilization and costs, and to assess whether allowing transgender service members to serve openly would affect readiness.

In 2016, RAND presented the results of its exhaustive study in a report entitled

"Assessing the Implications of Allowing Transgender Personnel to Serve Openly." The Report explained that as defined by the American Psychiatric Association, the term transgender refers to "the broad spectrum of individuals who identify with a gender different from their natal sex." The RAND Report also explained that "transgender status alone does not constitute a medical condition," and that "only transgender individuals who experience significant related distress are considered to have a medical condition called gender dysphoria (GD)." For those individuals, the recognized standard of care includes some combination of psychosocial, pharmacological, and/or surgical care. The RAND Report recognized that, "[n]ot all patients seek all forms of care"; "while one or more of these types of treatments may be medically necessary for some transgender individuals with GD, the course of treatment varies and must be determined on an individual basis by patients and clinicians."

The RAND Report evaluated the capacity of the military health system ("MHS") to provide necessary care for transgender service members. It determined that necessary psychotherapeutic and pharmacological care are available and regularly provided through the MHS, and that surgical procedures "quite similar to those used for gender transition are already performed within the MHS for other clinical indications." In particular, the MHS already performs reconstructive surgeries on patients who have been injured or wounded in combat. "The skills and competencies required to perform these procedures on transgender patients are often identical or overlapping." In addition, the Report noted that "performing these surgeries on transgender patients may help maintain a vitally important skill required of military surgeons to effectively treat combat injuries."

The RAND Report also examined all available actuarial data to determine how many transgender service members are likely to seek gender transition-related medical treatment. The Report concluded that "we expect annual gender transition-related health care to be an extremely

small part of overall health care provided to the [Active Component] population." The Report similarly concluded that the cost of extending health care coverage for gender transition-related treatments is expected to be "an exceedingly small proportion of DoD's overall health care expenditure." The Report found no evidence that allowing transgender people to serve openly would negatively impact unit cohesion, operational effectiveness, or readiness. The Report found that the estimated loss of days available for deployment due to transition-related treatments "is negligible." Based on estimates assuming the highest utilization rates for such treatment, it concluded that the number of nondeployable man-years due to gender transition-related treatments would constitute 0.0015 percent of all available deployable labor years across both the Active Component and Select Reserves. The Report also found no evidence that permitting openly transgender people to serve in the military would disrupt unit cohesion. It noted that while similar concerns were raised preceding policy changes permitting open service by gay and lesbian personnel and allowing women to serve in ground combat positions, those concerns proved to be unfounded. The Report found no evidence to expect a different outcome for open service by transgender persons.

The RAND Report examined the experience of eighteen other countries that permit open service by transgender personnel—including Israel, Australia, the United Kingdom, and Canada. The Report found that all of the available research concerning their experience with open transgender service revealed no negative effect on cohesion, operational effectiveness, or readiness. To the contrary, some commanders reported that "increases in diversity led to increases in readiness and performance."

The RAND Report also identified significant costs associated with separation and a ban on open service, including "the discharge of personnel with valuable skills who are otherwise qualified."

C. Issues Considered by the Working Group.

The Working Group sought to identify and address all relevant issues relating to service by openly transgender persons, including the following core areas:

1. Adherence to Military Standards and Readiness.

A guiding principle for the Working Group was that there would be no change in the military's existing standards for fitness and deployability, and there would be no special or reduced standards or categories created only for transgender service members. Instead, the issue was how to apply the same standards equally to both transgender and non-transgender service members. After a lengthy process of review, our conclusion was that equal application of existing standards required that transgender service members who have not yet transitioned meet the fitness standards of their birth-assigned sex until they transition as part of an approved medical treatment plan, and after they complete gender transition, they must meet the fitness standards of their gender following transition.

In evaluating those standards, the Working Group examined the implications of ensuring equitable application of individual standards during the gender transition process, while also ensuring that commanders were able to maintain the highest standards of operational readiness for their units. The resulting regulations and military documentation provide extensive guidance on the waivers and Exception to Policy ("ETP") procedures that are available for service members and commanders to manage transitions. They provide that before a service member has completed gender transition, the service member will be treated as a member of the pre-transition gender. The rules expressly address physical fitness tests, facilities, and grooming standards. They also make clear that a service member is not necessarily entitled to any particular ETP, and emphasize that the process is tailored and individualized, taking into account the service member's needs and the readiness requirements of the command.

A change in gender marker in the Defense Enrollment Eligibility Reporting System ("DEERS"), which is an electronic database that helps verify who is eligible for military benefits represents the end of the gender transition process, and requires a commander's approval, consistent with that commander's evaluation of "expected impacts on mission and readiness." DoDI 1300.28, "In-Service Transition for Transgender Service Members (June 30, 2016).

2. Fitness and Deployability.

We also determined that service by transgender individuals would have no greater impact on deployability than service by individuals with many other medical conditions that are not disqualifying. Fitness and deployability are not measured in a vacuum. In our systematic review, we sought to ensure that any concerns about transgender service members' fitness or deployability were being treated consistently with the way service members with other comparable conditions were being treated. The Working Group discussed that, while some transgender service members might not be deployable for limited periods of time due to their treatment, this is not unusual, as it is common for service members to be non-deployable for periods of time due to medical conditions such as pregnancy, orthopedic injuries, obstructive sleep apnea, appendicitis, gall bladder disease, infectious disease, and myriad other conditions. For example, the RAND Report estimated that at the time of the report, 14 percent of the active Army personnel—or 50,000 active duty soldiers—were ineligible to deploy for legal, medical, or administrative reasons.

With respect to deployment, the Working Group concluded that transgender service members could deploy while continuing to receive cross-sex hormone therapy without relaxing generally applicable standards. The Working Group determined that military policy and practice allows service members to use a range of medications, including hormones, while in such settings.

The MHS has an effective system for distributing prescribed medications to deployed service members across the globe, including those in combat settings.

We also considered contingencies such as whether a transgender individual could safely experience periods of disruption in prescribed medications and found no significant issues that would impact deployability. We further considered whether transgender service members would need close medical monitoring during or after completing a treatment plan for gender transition, and after consulting with medical experts and considering all the available evidence, found that the recommended monitoring is for only a short period of time at the beginning of transition and could be safely adjusted or delayed to avoid any impact on readiness.

Avoiding an increase in the number of non-deployable service members was a priority for the Working Group. This led to the development of a policy on gender transition by existing service members that minimized any impact on deployability. Under the policy we developed, a service member could not begin a treatment plan for gender transition without prior consultation with his or her commander. The service member was required to work with his or her commander and military medical provider to develop a transition plan that would not impact deployability. Depending on the individual's medical needs and the timing of any planned deployment, this might mean delaying the commencement of hormone replacement therapy or postponing planned surgeries. Military and non-military medical experts confirmed that this approach was consistent with medical standards and satisfied military readiness concerns.

The Working Group also addressed the psychological health and stability of transgender people. In addition to taking into account the conclusions of the RAND Report, the Working Group concluded, based on discussions with medical experts and others, that being transgender is not a psychological disorder. While some transgender people experience gender

dysphoria, that condition can be resolved with appropriate medical care. In addition, the Working Group noted the positive track record of transgender people in civilian employment, as well as the positive experiences of commanders with transgender service members in their units.

3. Costs.

The Working Group's analysis concluded that total costs for providing medically necessary care to transgender service members would be a small fraction of DoD's overall expenditures on health care. Among other things, this was due to the fact that the population is small, and within that population, the need for and cost of care varies by individual. The Working Group also concluded that any costs from open service would be significantly offset by the benefits realized from allowing open service by transgender service members, including increased retention and reduced training costs. Maintaining the ban, on the other hand, would be costly. For example, banning service by openly transgender persons would result in the loss, either through discharge or reduced retention, of highly trained and experienced service members, leaving unexpected vacancies in operational units and requiring the expensive and time-consuming recruitment and training of replacement personnel. Such a ban also would harm the military by excluding qualified individuals based on a characteristic with no relevance to a person's fitness to serve.

4. Privacy and Unit Cohesion.

The Working Group considered questions about unit cohesion extensively. This included a review of the experience of a number of other countries, including Israel, Great Britain, and others, which allow open military service by transgender service members and have not encountered any reduction in, or problems with, unit cohesion. It also included a review of the U.S. military's experience in repealing "Don't Ask, Don't Tell" and allowing women to serve in combat roles. In both cases, loss of unit cohesion was cited as a reason for the prior bans on open and /or

equal service, and in both cases, eliminating the bans did not result in any problems with, or loss of, unit cohesion. The Working Group also considered privacy-related questions with respect to showers and other sex-separated facilities. This evidence included discussions with commanders and transgender service members who had been on deployment under spartan and austere conditions, which indicated that transgender service members' use of shared facilities had not led to any significant issues or impact on morale or unit cohesion. These and other discussions further indicated that shower and toilet facilities are, at best, a secondary consideration compared to the other challenges and demands of military deployment, and that even in relatively harsh conditions, some privacy is usually available in showers and other facilities. Nevertheless, the policy developed by the Working Group addressed these considerations by giving commanders discretion to deal with any privacy-related issues and make appropriate accommodations concerning facilities where necessary, such as scheduling the use of showers or offering alternate facilities. As described further below, this flexibility is neither unusual nor confined to transgender service members.

I concluded my service as USD P&R on April 8, 2016. By that time, the Working Group had concluded that transgender personnel should be permitted to serve openly in the military.

D. President Trump's Ban.

On July 26, 2017, President Donald Trump abruptly announced, via *Twitter*, that transgender individuals would no longer be permitted to serve in any capacity in the U.S. Military. On August 25, 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security that formalized his ban on open military service by transgender individuals and ordered them to reverse the policy adopted in June 2016 that permitted military service by openly transgender persons. The Memorandum "directed" the military to (1) ban openly transgender service members (subject to a potential exception for existing service members), (2) ban

accessions by transgender applicants, and (3) ban transition-related surgical treatment.

The Memorandum ordered DoD to submit by February 21, 2018, "a plan for implementing both the general policy" and "specific directives" set forth in his memorandum.

On August 29, 2017, Secretary Mattis issued a statement that, "as directed," DoD would "develop a study and implementation plan" that would "carry out the president's policy direction." On September 14, 2017, Secretary Mattis issued two memoranda concerning implementation of the ban. The first affirmed that DoD would "carry out the President's policy," and by February 21, 2018 "present the President with a plan to implement [his] policy and directives." The second convened a "Panel of Experts" to study and develop the implementation plan.

On March 23, 2018, DoD publicly released three documents in connection with the ban previously announced by the President. The first was a memorandum dated February 22, 2018 from Secretary Mattis, which effected the ban on open service and each of the three specific "directives" (as to retention, accession, and surgical care) ordered by the President's August 25, 2017 Memorandum. The second was a 44-page "Report and Recommendations on Military Service by Transgender Persons" ("Report"), dated February 2018, that purported to justify the ban. The third was a further Memorandum from the President, dated March 23, 2018, which first confirmed that, "[p]ursuant to" his 2017 Memorandum, DoD had submitted the memorandum and report he had previously ordered, and then purported to "revoke" his 2017 Memorandum and authorize DoD "to implement any appropriate policies concerning military service by transgender individuals."

III. Expert Opinions.

In my six years at the Pentagon, and particularly in my role as General Counsel to the Army, I became familiar with the legal authorities concerning judicial deference to military

decisions. In cases where deference was granted, the decision in question was made by, and represented the views of, the military. Those decisions concerned a matter that was within the military's special expertise. And, they were the result of a careful and considered review and analysis. I also became familiar with the military's decision-making process and its practices and processes for studying and preparing and issuing reports with respect to significant policy issues, including personnel-related issues. In my experience, those practices and processes are typically rigorous, thorough, and evidence-based.

In my opinion, neither the ban on accession and open service by transgender individuals first announced and directed by President Trump and subsequently implemented by Secretary Mattis' February 22, 2018 Memorandum (collectively, "the Ban"), nor the February 2018 Report the government relies on as support for the Ban, reflect such a military decision or were the result of such a process. They concern a decision that was made by the White House, not the military. They do not represent the professional judgment of military authorities, and were not decided by the appropriate military officials in their considered professional judgment. They are also premised on a medical and scientific conclusion that is contrary to settled medical and scientific consensus, and not within the special expertise of the military. And, they do not appear to be the product of the military's usual decision-making and report-generating process. In particular, the Report, as well as the process by which it was prepared, vary in significant ways from the other reports I received and reviewed while I was at DoD, and the processes by which those reports were prepared. These differences, at a minimum, raise serious questions as to whether the Report: was drafted by the DoD staff that would typically draft a report like this; reflects conclusions and recommendations that were actually made by, and that represent, the considered, consensus views of, the military; and was the product of the rigorous, thorough, and evidence-based decision-making process the military typically

employs. This is particularly the case with respect to a major personnel decision like this, which reversed a decision the military had made less than two years earlier and which prior decision indisputably was the product of such a rigorous, thorough, and evidence-based process.

A. The Decision To Ban Transgender Individuals from the Military Was Made by the President, and Not the Military.

As a threshold matter, the decision to ban transgender individuals from the military was made by the President and not the military. The Ban was first announced by the President (via Twitter) on July 26, 2017. The President's tweets made clear that he was ordering the Ban and that it was not conditional on military study, review or input: "Please be advised that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military." Although the tweet referred to consultation with unnamed "generals and military experts," no such generals or experts have been identified, and the announcement appears to have caught the military by surprise. The Chairman of the Joint Chiefs of Staff advised the Service Chiefs that the announcement was "unexpected" and he "was not consulted." There is also no evidence that the President's announcement was preceded by any military analysis, consultation or decision-making process. In fact, it is my understanding that the record is entirely devoid of evidence of any involvement by the military before the Ban was announced. Nor was the announcement conditioned on any subsequent review or analysis or decision-making process by the military or, for that matter, anyone else.

The President subsequently formalized the Ban in a "Presidential Memorandum" dated August 25, 2017. It directed the Secretary of Defense to reverse the policy previously adopted by Secretary Carter in June 2016 that permitted transgender individuals to join and openly serve in the military and (1) to return to the policy of banning openly transgender service members, subject to a possible exception for those currently serving, (2) to ban accessions by transgender applicants,

and (3) to ban transition-related surgical care. That Memorandum, too, made clear that it reflected the President's decision and "directives" and specifically ordered the military to submit a "plan for implementing" his "general policy" and "specific directives" by February 21, 2018. Once again, the Memorandum does not refer to any prior involvement by the military with respect to any of these directives. And, as in the case of the President's initial announcement of the policy a month earlier by tweet, there is no evidence that the Memorandum was preceded by any military analysis, consultation, or decision-making process, and it is my understanding that the record is devoid of evidence of any involvement by the military before the Memorandum was issued. Nor was the policy conditioned on any subsequent review or analysis or decision-making by the military. To the contrary, the Memorandum specifically ordered the military to implement the policy the President had adopted. The only exception was the Memorandum's request that the military make a recommendation as to what to do with those current transgender service members who had "come out" in reliance on the Carter policy and were now openly serving.

The military clearly understood that the Ban had already been decided upon and that its role was to implement that policy and the President's specific directives. This was made clear in its response to the President's Memorandum. On August 29, 2017, Secretary Mattis confirmed that "as directed," DoD would "develop a study and implementation plan" that would "carry out the President's policy direction." He also confirmed that he would establish a "panel of experts . . . to provide advice and recommendations on the implementation of the President's direction" and that he would thereafter "provide advice to the President concerning implementation of his policy decision."

On September 14, 2017, Secretary Mattis issued two memoranda that again recognized that the role of DoD and the "Panel of Experts" was to "carry out the President's policy"

and, by February 21, 2018, "present the President with a plan to implement [his] policy and directives."

In my professional opinion, these facts belie any suggestion that the policy subsequently announced by Secretary Mattis on February 22, 2018, as directed by the President's August 25, 2017, Memorandum, was independent of the President's Memorandum and directives, or represented a policy decision by the military, as opposed to the military's implementation of a policy decided by the President and specifically directed by its Commander-In-Chief.

Any suggestion that the policy reflected in Secretary Mattis' February 22, 2018 Memorandum was independent of the President's directive or represented a policy decision by the military is further belied by the substance of the policy set forth in Secretary Mattis' February 22, 2018 memorandum. It implements each of the three directives set forth in the President's August 25, 2017 Memorandum. Even the Mattis Memorandum's "grandfather" exception for currently serving transgender service members who had "come out" and been diagnosed with gender dysphoria after the effective date of the Carter policy was in response to the President's directive in the August 25, 2017 Memorandum "to address transgender individuals currently serving."

Finally, any suggestion that the policy set forth in Secretary Mattis' February 22, 2017 Memorandum was independent of the President's Memorandum and directives is belied by how the military operates. Military officials do not have discretion to disobey their Commander-In-Chief or to refuse to implement his policy decisions and directives. A central tenet of the military is obeying superiors higher up in the chain of command and following orders, even where one may disagree with them. And, there is no one higher in the chain of command than the President. Based on my experience in the military, including as a senior official in DoD, the military could not have "unrung the bell" of the President's prior directive and reached a truly independent decision, let alone one

that disobeyed or was contrary to his directives, even if it had wanted or attempted to do so. That is particularly true where, as here, the President had publicly announced his decision and publicly directed the military to implement it, such that any rejection or failure to implement the President's policy would publicly undermine the military's Commander-In-Chief.

In sum, in my professional opinion, and based on my experience in the military, the policy banning accession and open service by transgender individuals set forth in Secretary Mattis' February 22, 2018 Memorandum does not reflect a military decision or judgment; it reflects the President's decision and policy. DoD would not have adopted that policy on its own or without President Trump's prior announcement of that policy and August 25, 2017 Memorandum specifically directing the military to implement it. This is particularly so in view of the military's prior, extensive review and analysis of this exact same issue only two years prior and adoption of a policy of open accession and service by transgender individuals that was directly contrary to the policy ordered by the President.

B. The February 2018 Report is Predicated on the Drafter(s)' Views as to a Medical and Scientific Issue on Which the Military Does Not Have Special Expertise.

An essential predicate for the Report and its conclusion that all transgender people, as a group, should be excluded from joining or serving in the military, as opposed to only those who cannot satisfy the rigorous requirements for physical and mental health fitness that apply to everyone else, is that transgender individuals can experience gender dysphoria, and while there are medically-accepted treatments for this medical condition, the effectiveness of those treatments is "uncertain." Accordingly, the Report asserts that it is simply too risky to allow any transgender people to serve in the military; such individuals could experience gender dysphoria, and the treatment for that condition might not be fully successful, and if that were to occur, such individuals could pose a risk to military effectiveness and the like. As the Report's Executive Summary concludes "although

[t]here are serious differences of opinion on this issue, even among military professionals, … in the final analysis, given the uncertainty associated with the study and treatment of gender dysphoria . . . the Department must proceed with caution" (i.e., ban transgender individuals who are not willing to serve in their birth-assigned gender). Report at 6, 24, 35, 41.

The Report thus includes a lengthy discussion of some of the scientific literature concerning gender dysphoria and its treatment, in which it criticizes and dismisses studies that have found that gender dysphoria can be successfully treated and relies on a handful of studies which it argues demonstrate that whether gender dysphoria can be successfully treated is medically and scientifically uncertain. Report at 24-27. As discussed in greater detail below, this type of critique and advocacy for one side of a medical and scientific debate is highly unusual in a DoD report like this. The DoD staff who typically prepare such reports do not view weighing in on purported medical or scientific disputes as within their expertise or part of their role.

And, while I am not an expert on this question, I learned enough about it during my work leading the Carter Working Group to know that the Report relies on cherry-picking a handful of articles from the hundreds on the subject and adopts a view that, as the American Medical Association, the American Psychiatric Association, and the American Psychological Association all confirmed at the time the Report was released, is contrary to settled medical and scientific consensus. See, April 3, 2018 Letter from American Medical Association Executive Vice President, CEO James L. Madara to Secretary Mattis (Report "mischaracterized and rejected the wide body of peer-reviewed research on the effectiveness of transgender medical care"; "there is no medically valid reason -- including a diagnosis of gender dysphoria -- to exclude transgender individuals from military service"); Mar. 26, 2018 Statement of American Psychological Association (the "APA") (the APA "is alarmed by the administration's misuse of psychological science to stigmatize

transgender Americans and justify limiting their ability to serve in uniform and access medically necessary health care"; "Substantial psychological research shows that gender dysphoria is a treatable condition, and does not, by itself, limit the ability of individuals to function and excel in their work, including in military service."); Mar. 24, 2018 Statement of American Psychiatric Association ("Transgender people do not have a mental disorder, thus, they suffer no impairment whatsoever in their judgment or ability to work.").

In sum, the Report is admittedly premised on a medical and scientific conclusion that is contrary to settled medical and scientific consensus, and on which the military does not have any special expertise.

C. The Report Was Not the Product of DoD's Usual Decision-Making or Report-Preparation Processes.

The Report also differs in a number of significant respects from the DoD reports concerning personnel and other policy issues that I reviewed during the years I was with DoD. Based on these differences, it is my opinion that the Report is not the product of the military's usual process for making significant personnel and other policy decisions.

As a threshold matter, it is my understanding that the government has never disclosed who drafted the Report or when or how it was prepared. What we do know is that the cover page is dated "February 2018," but the Report was not publicly released until March 23, 2018, at the same time the government first disclosed Secretary Mattis' February 22, 2018 Memorandum and President Trump's March 23, 2018 "Presidential Memorandum" confirming that he had received and reviewed the Report and the Mattis Memorandum and purporting to revoke his prior, August 25, 2017 Memorandum. We also know that the Report was not prepared by the Panel of Experts convened by Secretary Mattis on September 14, 2017. The Panel of Experts issued a separate report in January 2018, approximately a month earlier. While we do not know the substance or content of that

report or how it compares with the February 2018 Report (the government has produced the Panel's report only in a redacted form in which the entire text is blacked out), apparently someone concluded there was a need to prepare a separate report which would be publicly released and relied on to support the Ban in lieu of the Panel of Experts' report.

These facts alone demonstrate that the Report was not the product of DoD's usual decision-making process. Based on my experience, in prior cases where DoD convened a working group to study a particular personnel or other issue and its work resulted in a written report, the working group was actively involved in preparing, reviewing, and finalizing and approving the report. Recent examples that come to mind are DoD's November 30, 2010 report concerning the repeal of "Don't Ask, Don't Tell", DoD's February 2012 report recommending repeal of its prior policy barring "co-location" of women with ground combat operations, and DoD's December 2010 report recommending repeal of the exclusion of women from serving in ground combat roles. I am not aware of any prior situation where DoD appointed a working group to study an issue and DoD issued a report purporting to reflect its work, but that working group was not involved in drafting and preparing, reviewing and revising, and finalizing and approving the report.

That the Report was not the product of DoD's usual processes is further supported by the Report's unusual tone and format, the process by which it was prepared, and its substantive content. In each of these respects, the Report is unlike any other report on personnel-related or other policy issues that I saw during the six years I was a senior official in DoD.

1. The Report's Tone and Manner of Presentation.

The Report bears few of the indicia—either in form or substance—of reports generated through the typical process for DoD work product. Typically, a report recommending a major personnel or other policy change would be accompanied by a cover memorandum from an

official with institutional responsibility and expertise in that area, such as a Deputy Assistant Secretary of Defense with oversight of that area or subject matter. Instead, the Report was accompanied only by a transmittal memorandum from Secretary of Defense Mattis forwarding the Report directly to President Trump, as Secretary Mattis had been instructed to do. Such a report also is typically produced on Department of Defense letterhead, or with other indications that it is an official DoD document, such as identification of the DoD office or working group that prepared it. The Report is unusual in that, except for a DoD seal on its cover page, which anyone could copy and paste, it bears no markings or other indications that it is an official DoD document. Nor does the Report indicate its author or identify any group or individual within DoD that was responsible for its preparation.

Additionally, the extensive footnotes in the Report are unusual compared to DoD drafting conventions. I reviewed scores of similar documents during the six years I served in DoD and became very familiar with both the finalized form of such reports, and the working process of the staff who drafted them. In my years of reviewing such reports, I do not ever recall seeing one footnoted in this manner. Put simply, the Report resembles a law review article more than an official document of the DoD. Nor would DoD staff ordinarily cite the kinds of medical and social science articles and other materials cited and discussed in the Report's footnotes. This is both because staff is usually unfamiliar with such materials, and because they view such materials as outside their expertise and therefore are reluctant to interpret and comment upon them.

For similar reasons, it is even more unusual for such reports to take issue with and critique such medical and scientific sources, as the Report does. See, e.g., Report at 24-27. Again, the DoD staff that draft such reports do not view that as within their expertise or role.

It is also highly unusual for staff to cherry pick among available sources, as the Report does. I know from my experiences in leading the Carter Working Group that there are literally scores of medical and scientific articles that address gender dysphoria and its treatment. Yet, the Report focuses on only a handful of those articles in arguing, contrary to settled medical consensus, that whether standard treatments are effective in resolving gender dysphoria is "uncertain." See, e.g., Report at 6, 24, 35, 41. Once again, making such selections among the relevant literature, and making such scientific and medical pronouncements, is not something DoD staff view as within their expertise or role.

However, what is most striking and unusual about the Report's tone and manner of presentation is how argumentative and one-sided it is. I do not recall seeing that type of writing style and advocacy in any other DoD report. DoD is a large bureaucracy, and the preparation of a report like this usually involves scores of different individuals and stakeholders with varying views and priorities. This typically results in a careful, deliberative and thoughtful process as questions are raised, competing views are aired, and concerns are addressed. This process typically involves extensive editing and results in a neutral and measured tone, in which broad, categorical assertions or pronouncements are rare, the prose is vanilla and devoid of rhetorical flourishes, and statements and conclusions are carefully conditioned to ensure their accuracy and avoid over-statements or over-generalizations. In contrast, the Report reads as if it was written by one or a few individuals with a single point of view, and advocating for a particular position.

This is illustrated by the Report's treatment of the RAND Corporation's 2016 report studying open service by transgender individuals. Rather than treating that report as a source of relevant information concerning the issue at hand, as a typical DoD report would do, the Report treats the RAND report as an obstacle to be overcome and attacked. This is particularly surprising and

unusual in view of RAND's unique and respected role as a trusted, independent analyst and advisor to DoD. RAND is one of, if not the, leading military policy research institutions in the country, is heavily funded by the military, has been routinely consulted on almost every significant policy issue it has confronted, and has been the researcher and author of more than 2,500 reports for the military. RAND is a federally funded research and development center with elements doing research for the Air Force (Project AIR FORCE) and the Army (RAND's Arroyo Center), and RAND's National Defense Research Institute is sponsored by the Office of the Secretary of Defense, the Joint Staff, the United Combatant Commands, the defense agencies, and the Department of the Navy. Nevertheless, the Report does not simply disagree with RAND's conclusions, which would be unusual in and of itself; it attacks its competency and challenges its independence. See, e.g., Report 14 (accusing RAND of taking a "macro" instead of a "micro-level" focus on the effects of open service and failing "to meaningfully address the significant mental health problems that accompany gender dysphoria"); 38 ("the RAND Study does not meaningfully address" and "largely dismisses concerns about the impact on unit cohesion"); 39 ("the RAND Study mischaracterizes or overstates the reports upon which it rests it conclusion"). I am not aware of any prior instance in which a DoD report has done this.

The Report's argumentative and one-sided approach is further demonstrated by its treatment of a peer-reviewed study of open transgender service in the Canadian Forces ("CF"), which "found no evidence of any effect on unit or overall cohesion." See A. Okros and D. Scott, "Gender Identity in the Canadian Forces: A Review of Possible Impacts on Operational Effectiveness" ("Okros, et al."); Report 40. The Report omits this overall—and directly relevant—conclusion. Instead, it miscites the report's reference to complaints by some CF commanders that they received insufficient guidance and training concerning CF's open service policy, and the report's observation

that the CF chain of command "has not fully earned the trust of the transgender personnel," as evidence of "serious problems with unit cohesion." Report at 40. But this misstates the report and its conclusion, which are directly to the contrary. Complaints about CF's failure to provide sufficient implementation guidance did not mean open service led to "serious problems with unit cohesion." The same thing is true of the report's observation that commanders had not earned the trust of transgender troops. In fact, the report concluded that this lack of trust had not reduced unit cohesion. Okros, et al. at 8.

2. The Process By Which The Report Was Generated.

The process by which the Report was generated was likewise unusual and varies significantly from the process typically followed by DoD.

As discussed above, President Trump first announced the Ban publicly, by tweet, without any apparent input from the military, and certainly no study or deliberation or military-led decision-making process. He then formalized the Ban in a "Presidential Memorandum," which again was announced publicly and specifically and unambiguously directed the military to implement the Ban by specific dates. The Secretary of Defense then publicly answered that, as directed by the President, DoD would implement the ban. Only then was a Panel of Experts appointed, and with the express and limited purpose and direction of implementing the President's directives. The Panel then generated a report in January 2018, which was never released, and the Report, which the government relies on to support the ban, is a separate document that was written thereafter. The government has not disclosed who wrote the Report or the process by which it was generated, or the extent to which it relied on or includes the report and conclusions of the Panel of Experts.

One month later on March 23, 2018, a day after the deadline the President had ordered in his August 25, 2017 Memorandum for DoD to implement his directives, the government released

Secretary Mattis' February 22, 2018 Memorandum. That Memorandum effected each of the directives and bans on transgender accession, open service, and surgical care ordered by the President's August 25, 2017 Memorandum, with only a limited "grandfather" exception for certain currently serving transgender service members.

On the same date, the government released the Report, which attempts to justify those bans, without disclosing who drafted it or the process by which it was prepared, as well as a new "Presidential Memorandum" in which the President acknowledged receipt of the implementation plan and report ordered by his August 25, 2017 Memorandum, but purported to "revoke" that Memorandum so that DoD could "implement any appropriate policies concerning military service by transgender individuals."

Every aspect of this process is unusual and contrary to the military's typical process for making decisions and preparing and issuing reports, and in my experience and to my knowledge, unprecedented. Among other things:

- it was a process initiated and directed by the President, not the military; in which the policy in question was adopted and publicly announced by the President, not the military, before there was study and input by the military;
- the military was not asked to study the issue and recommend a policy, but rather was told what the policy would be and directed to implement it;
- the Panel of Experts the government claims was appointed to study the issue and make a policy recommendation was appointed after the policy had already been ordered by the President and publicly announced; and
- the Panel of Experts then wrote a report that was not publicly released and the group's conclusions and recommendations have not been publicly disclosed.

Instead, the government attempts to justify the Ban by a separate, subsequent report, but has refused to disclose who wrote that report or the process by which it was generated. The government now claims that the policy banning accession and open service by transgender individuals that DoD announced on March 23, 2018 is "new" and was generated independent of the President's August 25, 2017 directives, even though it effects each of those directives and is the result of an "implementation" process the President directed and whose admitted purpose, according to DoD, was to implement the President's directives.

There is no evidence of any military involvement at all in this process up to and through President Trump's August 25, 2017 Memorandum announcing the Ban and directing the military to implement it. And, while the military was involved after that point, the process that it followed was unusual and unprecedented in almost every respect. That process might be one lawyers would create to improve their defense of litigation challenging the President's Ban. But it is not a process that the military would follow if left to its own devices, particularly if its objective was to study, and recommend a policy on, a significant personnel or other matter, as opposed to implementing a policy that had already been decided upon and directed by the President.

Finally, the process by which the Report was generated was unusual in that it does not appear to reflect input from a number of organizations within the military that would typically be consulted on a significant personnel-related policy like this. These entities include each military service's personnel office, Vice Chief, Surgeon General, recruiting command, and legal department, as well as DoD's health affairs and legal departments. Once again, this is consistent with a process where the objective was not to study and then reach consensus on and recommend a policy, but rather to implement and justify, after the fact, a policy that had already been adopted and directed by the President.

3. The Report's Content.

The content of the Report also is unusual in a number of respects, which further suggests that it was not the product of the military's usual process for making decisions and preparing reports on personnel and other policy issues.

First, in studying an issue like this, DoD's typical approach is to identify and consider both the pros and the cons and the costs and benefits of a proposed policy, before arriving at a recommendation. Often, that includes forthrightly acknowledging risks and concerns with a proposed change or new policy. For example, the military's 2010 report on the repeal of "Don't Ask, Don't Tell" noted that the working group that had been appointed to study that issue was directed, and had attempted, to "thoroughly, objectively, and methodically examine all aspects of this question" in a "professional, thorough and dispassionate" way that left "our personal views at the door" and that "studiously avoided restricting Working Group members' personal views about the issue." "Report on Comprehensive Review of the Issues Associated with a Repeal of 'Don't Ask, Don't Tell,'" Nov. 30, 2010 at 1-2, 30. The working group's report reflected this balanced approach. It concluded that, while the risk of repeal to overall military effectiveness was low, in the short term there would be some limited and isolated disruptions to unit cohesion and retention, but those effects would not be widespread or long-lasting, and that longer term, the military would adjust and accommodate open service by gay and lesbian service members. Id. at 3. This balanced approach of looking at both the pros and cons and the costs and benefits of repeal was also reflected in the Report's fiscal assessment of repeal. The Working Group looked at "net costs," which included both the estimated costs of repeal and the estimated costs avoided by repeal, including costs avoided by increased retention and reduced discharges (and resulting need to recruit and train replacement troops). Id. at 46, 150-51.

The Report, on the other hand, starts with a firm conclusion and point of view—that transgender individuals should not be allowed to access or openly serve in the military—and marshals arguments to support and justify that pre-ordained conclusion. It largely omits contrary evidence and considerations, and to the extent it does note contrary evidence or considerations, it is usually to attempt to rebut or refute them, as in the case of the RAND Corporation's conclusions discussed above. This type of one-sided approach, and open advocacy, is not something I recall seeing in other DoD reports. And, it is not the way the DoD staff that usually drafts such reports writes, and it is not the kind of work product that typically results from DoD's decision-making process.

The Report's one-sided, advocacy-type approach is further illustrated by its treatment of the expected costs of providing transition—related medical care. The Report completely omits the actual costs of such care presented to the Panel of Experts—a total of $2.2 million in 2017 (DoD, Health Data on Active Duty Service Members with Gender Dysphoria (Dec. 13, 2017) at USDOE00002663), which is below RAND's estimate of $2.4 million to $8.4 million per year (RAND Report at xi). Instead, the Report focuses on the purported 300% percentage increase in the average annual costs of medical care for transgender individuals as compared to all services members. See Report at 41. In doing so, it omits not only what such care costs in actual dollars, but also the facts that (1) any time new forms of care are first made available to a group with a particular medical condition, as they were with respect to transgender individuals with gender dysphoria during this period, there will be a percentage increase in the average cost of care for that group that is higher than for the population as a whole (2) any comparison of the average medical costs for individuals with a particular medical condition, no matter what the condition is, are likely to be greater than the average costs for all service members. Transgender service members with untreated gender

dysphoria are no different in that respect from any other group of service members with a particular medical condition.

The Report's one-sided discussion of medical costs also omits any consideration or discussion of the costs of reversing the existing, open service policy or reinstating the ban on open service. This includes the loss of the substantial contributions that are currently being made by transgender service members, and that will be made in the future if transgender individuals continue to be allowed to access the military. It also includes the cost of recruiting and training new, non-transgender individuals to fill the positions of transgender service members who elect not to reenlist or are discharged due to the Ban. In short, the Report addresses only the purported savings of reinstating the ban, but not its costs and foregone benefits, and even then, in a one-sided and misleading way. It engages in the kind of advocacy one might expect to see in a legal brief, as opposed to the kind of balanced, non-polemical approach one would expect in a DoD report.

Another example of the one-sided nature of the Report concerns the supposed impact of transition-related treatment on deployability. In arguing that such treatment "could render service members with gender dysphoria non-deployable for a significant period of time—perhaps even a year," the Report relies on "Endocrine Society guidelines for cross-sex hormone therapy [which] recommend quarterly bloodwork and laboratory monitoring of hormone levels during the first year of treatment." Report at 33. However, the Report omits that this same issue (required monitoring of hormone treatment and its effect on deployability) came up during the Carter Working Group's review and, as part of its review, the Working Group received specific guidance from the lead author of the Endocrine Society guidelines, Dr. Wylie Hembree. In a letter dated October 25, 2015 (Exhibit C, attached), Dr. Hembree explained that the recommendation for one year of quarterly monitoring "was intended to cover a diverse, civilian population, including older, unreliable and/or unhealthy

individuals who are not representatives of the population of service members." Id. For that younger, healthier population, Dr. Hembree explained that only 2-3 months of monitoring was required. Id. Dr. Hembree's letter concluded that:

> There is no reason to designate individuals as non-deployable after the commencement of hormone replacement therapy. While individuals might be placed on limited duty (office work) until the initial monitoring work at the 2-3 month mark, they can perform their jobs overseas in a wide range of deployed settings both before and after the initial monitoring.

Id. The letter further undermined the Report's suggestion that such monitoring would require special expertise that might not be available in the field:

> [T]he monitoring and, if necessary, re-adjustment of prescribed doses do not need to be performed by endocrinologists or specialists. Any physicians or nurses who have received a modest amount of training can perform those tasks.

Id.

Similarly, the Report omits any mention of the widely-publicized 2014 report of a commission, co-directed by former U.S. Surgeon General Joycelyn Elders, which also addressed the effect of hormone replacement therapy on deployment and fitness. It, too, reached conclusions that contradict the Report's assertions that hormone replacement therapy could render transgender troops unfit and non-deployable. See M. Joycelyn Elders, George R. Brown, Eli Coleman, Thomas A. Kolditz and Alan M. Steinman (2014), "Medical Aspects of Transgender Military Service," Armed Forces and Society, 41(2). Among other things, it concluded that:

> [T]he military consistently retains non-transgender men and women who have conditions that may require hormone replacement. For example, the military lists several gynecological conditions (dysmenorrhea, endometriosis, menopausal syndrome, chronic pelvic pain, hysterectomy, or oophorectomy) as requiring referral for evaluation only when they affect duty performance. And the only male genitourinary conditions that require referral for evaluation involve renal or voiding dysfunctions. The need for cross-sex hormone treatment is not listed as a reason for referral for either men or women.

The 2014 commission report likewise undermines the Report's suggestion that the military might not be able to provide hormones while transgender troops are deployed in combat settings:

> Military policy allows service members to take a range of medications, including hormones, while deployed in combat settings. * * * According to Defense Department deployment policy, 'There are few medications that are inherently disqualifying for deployment.' And, Army deployment policy requires that 'A minimum of a 180-day supply of medications for chronic conditions will be dispersed to all deploying Soldier.' * * * The Military Health Service maintains a sophisticated and effective system for distributing prescription medications to deployed service members worldwide.

Id. at 206-207.

In short, the Report exhibits a one-sided, outcome driven approach which, among other things, omits discussion of contrary evidence that is directly on point. This is not the approach DoD reports typically take, and during my years as a senior official at DoD I cannot recall another report that was so one-sided and result-driven and that simply ignored contrary evidence that was widely known and directly relevant.

Second, the Report's repeated suggestion that transgender service members are somehow receiving special treatment by being "exempted" from the standards that apply to all other service members not only further illustrates the Report's one-sided approach, but is not something that would be endorsed by the DoD staff that usually drafts reports like this or that would survive DoD's process for preparing and approving reports like this. The reason is that it is inaccurate and the DoD staff who draft and review reports like this would know that. In making this suggestion, the Report ignores the fact that the regulations and the service-specific guidance implementing open service all emphasize that all service members are subject to the same fitness, deployability and other standards, regardless of whether they are transgender. In fact, during the first meeting of the Carter Working Group, we affirmed our commitment to the principle that our process of study,

fact-gathering, and analysis would be guided by the principle that all service members must meet the same universal standards.

We maintained that core commitment as questions arose throughout our work. There was no suggestion that any standards should be weakened or lowered for transgender service members. In particular, the military maintains a long list of conditions for which enlistees are screened, and under the open service policy, anyone who cannot meet the relevant standards for a particular condition cannot serve, regardless of transgender status. For example, if an individual has a urological condition, there are universal rules that determine when that is disqualifying. If a person cannot meet those standards, they cannot serve, regardless of whether they are transgender. The same is true for rules concerning anxiety and depression. There is no need for a separate set of rules for transgender people because they are subject to the same rules that apply to everyone else.

Conversely, when some members of the Carter Working Group suggested that the military should not cover various transition-related surgeries, we examined that question by asking whether any other class of soldier is denied medically necessary care. The answer was "no" and we therefore recommended that such care be covered. In other words, there was no reduction of standards—just one set of rules that is blind to transgender status.

In my professional opinion, it is the Report that singles out transgender people for different treatment by creating a separate "standard" and restriction that applies only to them, in addition to the rules and standards that apply to everyone else. They can only serve if they do so in their birth-assigned gender—that is, as non-transgender individuals. This "standard" is not universal; it applies only to transgender individuals, since they are the only ones affected by a rule requiring service in one's birth-assigned gender. The "standard" embraced by the Report thus targets

transgender individuals by definition and is not really a "standard" at all, but rather a ban on their service based on their transgender status.

In sum, DoD's current regulations require that transgender individuals satisfy the same medical, fitness, deployability and other standards as everyone else. The Report's suggestion that former Secretary Carter "relaxed" the standards for transgender individuals is simply wrong, and the DoD staff that typically prepare and review such reports would know that and would not have drafted and approved a report that was premised on that false assumption.

Third, the same thing is true with respect to the Report's related assumption—and premise—that transgender people are unfit to serve by definition. DoD evaluates all potential service members rigorously, but begins with the presumption that one is eligible to serve until screening indicates otherwise, not a presumption of exclusion. The Report does the opposite by defining the entire class of transgender people as per se unqualified. I cannot think of another example during the six years I was at DoD of a military policy that categorically excludes a class of people. For example, certain conditions that limit deployability are found disproportionately in certain groups, such as pregnancy in women, or other conditions in certain ethnic or racial groups. But DoD did not presumptively or categorically exclude members of any of those groups on that basis. Rather, it relies on standards to separate out and exclude individual members of these groups who cannot satisfy the military's requirements for fitness and deployability from those that can.

Thus, DoD's regulation on disability evaluation provides that service members will be referred for medical evaluation and may be separated if they have a medical condition that prevents them "from reasonably performing the duties of their office, grade, rank, or rating . . . for more than 1 year after diagnosis," or that "represents an obvious medical risk to the health of the member or . . . of other members," or that "imposes unreasonable requirements on the military to

maintain or protect the service member." DoD Instruction 1332.18, Disability Evaluation System (Aug. 5, 2014). More recently, DoD announced a stricter enforcement of this policy with respect to deployability. Any service member who has "been non-deployable for more than 12 consecutive months for any reason" will be separated. The Report does not even purport to explain why these standards, which apply to all service members, would not address its concerns that some forms of treatment for transgender members suffering from gender dysphoria might, in some cases, prevent the member from being deployable for extended periods. See Report at 22-24, 32-34. Rather, it relies on the risk that this will occur to some transgender service members as a justification for excluding all transgender individuals as a group.

The Report also fails to address DoD's prior professional judgment that gender transition can be planned so that it does not interfere with deployment or unit readiness. Indeed, the Carter open service policy requires commander approval of major steps in an individual's transition and authorizes commanders to schedule gender transition so that it does not interfere with deployment. DoD, "Transgender Service in the U.S. Military, An Implementation Handbook" (Sept. 30, 2016) at 25-27, 44-46.

Finally, there is also another, more fundamental reason why the Report's assumption that transgender people are unfit to serve does not represent a judgment by the military, or a view that would survive its normal decision-making process: It is directly at odds with a core military value that in my experience is widely shared and deeply held at all ranks in the military, viz., that all who satisfy the military's fitness and other requirements, and are ready, willing, and able to serve, should be permitted to do so.

Fourth, while the report asserts that it is focused on a medical condition, gender dysphoria, there is no indication that its drafter(s) consulted senior medical professionals within the

military, such as current and former Surgeons General, or leading medical organizations, such as the American Medical Association, the American Psychiatric Association, or the American Psychological Association, or any of the leading experts on gender dysphoria. Indeed, each of these individuals and groups have subsequently criticized the Report as being contrary to medical science and consensus. This includes six former U.S. Surgeons General who issued a statement that "transgender troops are as medically fit as their non-transgender peers and there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude them from military service or to limit their access to medically necessary care." See https://www.palmcenter.org/six-former-surgeons-general-%E2%80%8Brebut-pentagon-assertions-about-medical-fitness-of-transgender-troops (April 25, 2018). As discussed previously, it also includes the American Medical Association, the American Psychiatric Association, or the American Psychological Association, all of which criticized the Report as being contrary to settled medical science and consensus. The issuance of a DoD report, asserting conclusions concerning medical issues that are publicly refuted by multiple former Surgeons General and leading medical organizations, is unprecedented to my knowledge. The Report's focus on a medical condition, and broad assumptions that transgender individuals are medically unfit to serve and bald assertions that the effectiveness of medically-recognized treatments for gender dysphoria are "uncertain"—without any evidence that the drafter(s) consulted with the experts and organizations with expertise in this area—is a further indication that the Report was not drafted by the DoD personnel who typically draft such reports or subject to the DoD's typical process for preparing and approving such reports.

Fifth, the Report is also unprecedented in that the military's service chiefs have publicly contradicted (in sworn congressional testimony no less) one of the Report's key conclusions—that open service by transgender individuals undermines unit cohesion. Thus, shortly

after the Report was released, the service chiefs of the Army, Navy and Air Force and the commandants of the Marine Corps and of the Coast Guard each stated in testimony before Congress that they were not aware of, and have not received reports of, any issues or problems with respect to unit cohesion, discipline or morale resulting from the Carter policy of open service by transgender individuals. For example, Army Chief of Staff General Mark Milley testified that he has "monitored" open service "very closely" and has "received precisely zero reports . . . of issues of cohesion, discipline, morale, and all those sorts of things." His experience was echoed by the Chief of Naval Operations Admiral John Richardson, who testified he was "not aware of any issues" with respect to unit cohesion, disciplinary problems, or morale resulting from open transgender service: "I respect their desire to serve [a]nd all of them, to the best of my knowledge, were ready and prepared to deploy." "[M]aintaining the level playing field of a standards-based approach seems to be the key to—a key to success—and that's the approach we're taking."

This public rebuke of the Report by the military's service chiefs and other senior leadership underscores the irregularity of the Report's process and content. It demonstrates that the Report does not represent the judgment of the military and is not the result of the usual military decision-making process.

D. The Unusual and Unprecedented Nature of the Ban is Further Demonstrated by Its Reversal of a Policy That Was Adopted by the Military, After Extensive Review and Analysis, Less Than Two Years Ago.

What makes the Ban even more unusual and unprecedented is that it represents an abrupt, 180-degree reversal of a policy of open service that was adopted, after extensive review and analysis, less than two years prior. I am not aware of any prior situation where a policy of this importance, and that has received this amount of study and attention, was reversed, particularly so soon after it was adopted. Compounding this abrupt and unprecedented reversal is the absence of

any evidence demonstrating problems with the Carter policy. If an organization is reversing a policy, particularly one that was only recently adopted after extensive study, based on claims that it had an adverse effect and/or caused problems, you would expect it to provide evidence demonstrating and documenting those adverse effects and problems. The Report recognizes this. See Report, 18. But while it asserts that its "analysis was informed by the Department's own data and experience obtained since the Carter policy took effect" (id.), in point of fact, it relies almost exclusively on speculation as to problems that "can" or "could" occur from open service in the future. See, e.g., Report at 23, 32-33, 34, 35, 38 (discussing various "risks" that "could" occur, with respect to deployability privacy, and unit cohesion, while citing virtually no concrete examples from the military's experience with open service, and none indicating that open service is a detriment to the military).

This is true for each of the justifications the Report provides for the Trump ban. For example, with respect to deployability, the Report speculates as to what "could" happen that might "render Service members with gender dysphoria non-deployable for a significant period of time - perhaps even a year" or longer. (Report, 33). The Report omits the data provided to the Panel of Experts concerning the deployment of transgender troops, which appear to contradict the Report's speculation. They show that out of 994 service members diagnosed with gender dysphoria in FY 2016 and the first half of 2017, 393 (or 40%) deployed in support of combat operations (Operation New Dawn, Operation Iraqi Freedom, and Operation Enduring Freedom). During the 18 months since the Carter policy first took effect, only three of those soldiers were unable to complete their deployment for medical reasons. DoD, Health Data on Active Duty Service Members with Gender Dysphoria, Dec. 13, 2017 at 12.

As to unit cohesion, the Report cites no data. The only evidentiary support it relies on is a single anecdote of "dueling equal opportunity complaints" in which a female service member

claimed that the presence of a transgender female service member in shower facilities invaded her privacy, the transgender service member claimed that her commander had not been supportive of her rights, and both filed EEO claims. Report at 37. The report does not provide further information concerning the incident, including how it was resolved. Nor does it note that DoD guidance provides commanders specific tools to resolve such disputes. Indeed, this situation closely matches scenarios 11 and 15 in the Commander's Handbook, which discusses the kinds of reasonable accommodations commanders can make to address privacy concerns:

> "If concerns are raised by Service members about their privacy in showers, bathrooms, or other shared spaces, you may employ reasonable accommodations, such as installing shower curtains and placing towel and clothing hooks inside individual shower stalls, to respect the privacy interests of Service members. In cases where accommodations one not practicable, you may authorize alternative measures to respect personal privacy, such as adjustments to timing of the use of showers or changing facilities."

Commander's Handbook at 37.

Despite almost two years of open service by transgender troops, the Report also does not cite any evidence that allowing transgender individuals to serve openly has reduced any aspect of military readiness, including, in addition to unit cohesion, medical fitness and good order and discipline. Once again, it relies principally on speculation as to adverse effects that "could" occur. See, e.g., Report at 32-35.

Finally, the Report does not report the cost of providing transition-related care to transgender service members, even though that data is readily available and was collected by the Panel of Experts. In fact, DoD's total expenditures for transition-related care in FY 17 were only $2.2 million. Not only is this below RAND's estimate of $3.3 to $7.4 million per year, it is less than one-tenth of one percent (0.1 percent or 0.001) of DoD's annual health care budget for active service members.

In my professional opinion, such an abrupt and unsupported reversal of policy, particularly where it is not based on evidence of problems with the Carter policy, threatens real and lasting institutional harm to the military. Such a reversal undermines confidence in leadership and its decision-making. If policies are reversed abruptly or without prior review and analysis and absent evidence-based reasons, that undermines confidence in the chain of command and its decision-making. This is particularly true where such changes appear to be due to politics or outside interference.

These institutional concerns are at or near their zenith when it comes to decisions as to who may serve in the military. Such decisions determine who is available for purposes of staffing our all-volunteer military force and create important reliance interests, both in the military and in the service members and potential service members they affect. Once a particular group is deemed eligible to serve, the military develops a reliance on the ability to fill its ranks and benefit from the skills and talent of people in that group. Additionally, once the military has invested in accessing and including a particular group, there are significant institutional costs in changing that policy, and unwinding the institutional reliance on and inclusion of that group of service members.

Similar reliance interests exist with respect to the members of the excluded group. They have invested their lives and careers in the military and its commitment to include them and encourage their enlistment and service. They have forgone other career choices and opportunities, which in many, if not most, cases are no longer available to them. The same thing is true, albeit to a lesser extent, of individuals who hope to access into the military and are preparing to do so and making educational and other decisions based on that career objective.

E. The Concerns Cited in the Report Support Maintaining, Rather Than Banning, Open Service By Transgender People.

Each of the Report's justifications for the ban on military service by openly

transgender service members is unfounded and refuted by the comprehensive investigation and review performed by the Carter Working Group, and the Report does not produce any evidence or new information to contradict the Working Group's findings. Moreover, not only are the Report's purported justifications for the Ban unsupported, in each case those considerations support continuing, rather than reversing, the Carter open service policy.

1. Adherence to Military Standards and Readiness.

As the Report recognizes, the vast majority of military standards do not distinguish based on sex. Where they do, the implementing guidance for the open service policy makes clear that commanders are afforded extensive flexibility to ensure that a service member's transition does not impede readiness, good order, or discipline in the ranks. Relatedly, the Carter policy includes a tightly controlled process that requires a service member to obtain approval at each stage of transition, helping to ensure that the transition does not impede a unit's capabilities or functioning. The Report's concerns about adherence to sex-based standards rest largely on speculation that gender transition is difficult to manage, ignoring the extensive authority vested in commanders to approve each stage of transition while ensuring the highest standards of operational readiness for their units. Despite almost two years of experience with open service, the Report offers no evidence that it has reduced military readiness.

In my opinion, the exact opposite is true. The Carter open service policy has improved, and going forward will continue to improve, military readiness. It ensures that transgender service members receive the medical care that they need and, therefore, can serve to their full potential. Similarly, it ensures that transgender service members can serve openly and without fear and distraction that they will be "outed" and discharged. And it ensures that the military will have access to the skills and talents of, and receive the benefits of service by, transgender people who meet

its rigorous fitness and other requirements. As I learned during my work with the Carter Working Group, many military units include transgender service members who are highly trained and skilled and who perform outstanding work. Separating these service members will deprive our military and our country of their skills and talents, and barring accessions of such transgender recruits eliminates the pipeline for such talent in the future.

2. Fitness and Deployability.

As discussed above, the Working Group extensively considered the potential impact of open service on fitness and deployability and concluded that neither would be reduced or otherwise adversely affected by open service. The Report does not provide any evidence suggesting that the Working Group's conclusions were incorrect. Transgender people—like other service members who receive prescription medication on deployment—have been deploying across the globe for decades, and have been able to do so openly while receiving medical treatment for the past two years. The Report does not identify any instances in which the Military Health System was unable to provide transgender service members with access to cross-sex hormones the same way it provides medication to other service members.

In addition, the Working Group determined that while some transgender service members might not be deployable for limited periods of time due to surgical and other transition related treatment, temporary periods of non-deployability are not unusual. It is common for service members to be non-deployable for limited periods due to all kinds of medical conditions. The Report does not provide any indication that the temporary non-deployability of some transgender service members raises any different or unique issues with respect to deployability.

Once again, in my opinion, continuing the Carter open service policy will improve fitness and deployability. Among other things, it will ensure that transgender service members

receive the medical care they need and that, to the extent they suffer from gender dysphoria, it is treated. At the same time, the Carter policy, and in particular, the extensive guidance that accompanied it, ensure that transition-related care is provided in a way that does not interfere with deployability.

3. Costs.

The Report does not provide any new information to contradict the Working Group's predictions regarding the minimal costs of providing for the health care needs of transgender service members. And, it omits information provided to the Panel of Experts that the total cost of all medical treatment of the entire DoD transgender population was only $2.2 million in 2017. As discussed above, this is consistent with RAND's estimate of costs of $2.4-8.4 million per year, and tiny fraction of the military's total annual medical costs. Nothing in the Report calls into question the Working Group's conclusions about the actual amount and magnitude of the costs of providing transition-related care to transgender troops, and how negligible they are in comparison to the military's overall expenditures on health care.

At the same time, the Report does not take into account the substantial costs that would be incurred by reversing the open service policy and reinstating the ban. In my opinion, these costs substantially outweigh any savings from not providing transition-related care to transgender service members. Among other things, and as discussed previously, the Report ignores the significant contributions of transgender service members, and the service level impacts and costs that will result from the departure of transgender service members who fail to reenlist or are discharged because of the Ban. Relatedly, the Report does not consider the benefits of retaining qualified service members and avoiding the need to recruit and retrain replacements. A study authored in August 2017 by the Palm Center and professors associated with the Naval Postgraduate School estimated

that separating all transgender service members currently serving in the military would cost $960 million, based on the costs of recruiting and training replacements. While the Report creates a limited "grandfather" exception that permits transgender service members currently serving to continue serving, the Report also makes clear that even this limited exception is severable and subject to change. Additionally, the Report's treatment of transgender people as presumptively unfit for military service imposes harm even on those service members allowed to continue serving by marking them as inferior to their colleagues. This is likely to discourage them from re-enlisting or making military service a life-long career, when they otherwise would have done so. Nor does the Report account for the impact a reversal of policy would have on non-transgender service members who may question whether other historically disadvantaged groups could be targeted for similar discriminatory treatment.

4. Unit Cohesion and Privacy.

Although the Report states that its "analysis makes no assumptions" regarding transgender service members' ability to serve, a substantial portion of the Report consists of assumptions regarding transgender service members' adverse impact on good order, discipline, and privacy. Notably, these assumptions do not derive from any evidence cited in the Report, and instead rest largely on speculation—a characteristic that is all the more striking given the military's experience with open service by transgender people. Were there significant issues with unit cohesion, one would expect the Report to cite concrete evidence. As discussed above, the only non-hypothetical support the Report offers for its conclusions about unit cohesion is a couple of Equal Opportunity complaints relating to a transgender woman's use of shower facilities. In contrast to the Report's reliance almost exclusively on speculation, the Carter Working Group reviewed the real-world experience of 18 foreign militaries which have allowed open service, in some cases for

decades. That review confirmed what the U.S. service chiefs recently testified to Congress: allowing transgender people to serve under the same standards applicable to others does not adversely affect unit cohesion.

Privacy issues also were discussed and considered extensively by the Working Group. As discussed above, the Working Group afforded commanders discretion in dealing with such issues and making accommodations where needed with respect to showers and other shared facilities. The need for such flexibility is not unusual on military deployments, nor is it limited to transgender service members. For example, during my military service in Iraq, it was necessary to provide for the privacy needs of Iraqi women, and commanders were able to accommodate these needs without disruption.

Similar concerns about unit cohesion and privacy were raised in connection with policy changes permitting open service by gay and lesbian personnel and allowing women to serve in ground combat positions. In both cases, those concerns proved to be unfounded. The Report offers no evidence that such concerns are any more justified in the case of military service by transgender individuals.

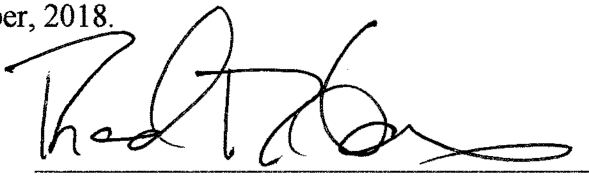
In my opinion, reversing the open service policy, not maintaining it, would likely have a negative impact on readiness, morale, and unit cohesion. Among other things, such an abrupt change in policy would undermine the consistency and predictability on which morale and good order rely, increasing uncertainty and anxiety among current service members. Such a sudden and arbitrary reversal will also cause significant disruption and thereby undermine military readiness and lethality. Such a bait-and-switch, after many service members disclosed their transgender status in reliance on statements from the highest levels of the chain of command, conveys to service members that the military cannot be relied upon to follow its own rules or maintain consistent standards. In

addition to the breach of transgender service members' trust, the Ban will likely cause other historically disadvantaged groups in the military, including women and gay men and lesbians, to question whether their careers and ability to serve as equal members of the military may also be lost. Finally, those serving in our Armed Forces are expected to perform difficult and dangerous work under extremely stressful conditions. The Ban's policy reversal would increase that existing stress by putting puts tremendous additional and unnecessary stress on transgender service members, their command leaders, and those with whom they serve.

In sum, in my opinion, it is the President's reversal of the policy permitting military service by openly transgender individuals that will have a deleterious effect on military readiness, force morale, and unit cohesion.

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

Executed this 10th day of September, 2018.



Brad R. Carson

Exhibit A

BRAD R. CARSON

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Having built a distinguished career in public service, law, and education, Brad Carson is a professor at the University of Virginia and a Senior Advisor at Boston Consulting Group. He was appointed by President Barack Obama in 2015 as the acting Under Secretary of Defense for Personnel & Readiness at the Department of Defense. Mr. Carson oversaw the human resources, military readiness, education and training, and health care of the nearly 5 million servicemembers, civilian employees, and their dependents within the Department of Defense and managed an internal organization of 30,000 employees. For his work, the military historian Richard Kohn hailed Carson as the most consequential person to ever hold the job. Mr. Carson earlier served as the Under Secretary of the U.S. Army, where he managed the daily operations of the largest military service, and as General Counsel of the U.S. Army, where he managed the world-wide legal operations of the largest military service. A Rhodes Scholar, he is widely published and a noted authority on national security, energy policy, and American politics. From 2001-2005, he served two terms as the U.S. Congressman. Later, he was appointed to the faculty of the business and law schools at the University of Tulsa, where he directed the National Energy Policy Institute and taught academic courses on energy policy, property law, negotiation and game theory, globalization, and law and literature. Mr. Carson deployed as an intelligence officer during Operation Iraqi Freedom and was awarded the Bronze Star for his service.

PROFESSIONAL EXPERIENCE

- PROFESSOR, UNIVERSITY OF VIRGINIA, AUGUST 2018 – PRESENT. Professor at the Batten School of Public Policy, specializing in defense and intelligence issues.

- SENIOR ADVISOR, BOSTON CONSULTING GROUP, JULY 2016-PRESENT. Advises aerospace and defense commercial clients and public sector clients, including various ministries of defense, of international consulting firm. Areas of expertise include legal reform, change management, human capital and talent management development, and executive leadership. Works in aerospace and defense practice area, as well as people operations and public sector. Involved extensively with Industry 4.0, a change in business driven by robotics, distributed manufacturing, and artificial intelligence.

- UNDER SECRETARY OF DEFENSE (PERSONNEL & READINESS) (ACTING), 2015–APRIL 2016. Spearheaded the Department of Defense's "Force of the Future" reforms, the largest personnel changes to the military and civilian workforce in nearly 50 years. Oversaw the introduction of women into all combat positions in the military and personally initiated the effort to allow the open military service of transgender persons. Managed all areas of military readiness, total force

management, military and civilian personnel requirements and training, and military and civilian family matters. Led modernization of one of the largest retail systems in the United States - the Defense Exchanges and Commissaries - and revamped the world's largest health care system, comprising 50 hospitals and 200 clinics, with an annual budget of more than $40 billion.

- UNDER SECRETARY, UNITED STATES ARMY, 2014–2016. As Chief Operating Officer of the Department of the Army, led day-to-day-business operations of the global U.S. Army business enterprise, with over 490,000 active duty soldiers, 335,000 National Guard soldiers, 200,000 Army Reserve soldiers, and over 330,000 civilians. Supervised the development and submission of the Army's $168 billion budget. Responsibilities included, but were not limited to, budget, diversity, business transformation, and energy efficiency initiatives. Directed reorganization of the Army's strategic planning process and reengineered Army headquarters, reducing the staff of nearly 13,000 persons by 20 percent. Appointed by President Barack Obama and unanimously confirmed by the United States Senate.

- GENERAL COUNSEL, UNITED STATES ARMY, 2012-2014. Steered the Army legal enterprise with, including military officers, 5,000 personnel in 600 offices across 20 countries. Responsible for all legal issues facing the U.S. Army, including acquisition, ethics, fiscal, personnel, and operational matters. Launched Army-wide ethics training, pioneered the use of innovative contracting mechanisms, and spearheaded military-wide responses to various crises, such as that involving mental health misdiagnoses. Expertise gained in cyberlaw, military justice law, and sexual assault prevention and response. Appointed by President Barack Obama and unanimously confirmed by the United States Senate.

- ASSOCIATE PROFESSOR OF LAW & ASSOCIATE PROFESSOR OF BUSINESS, UNIVERSITY OF TULSA, 2010-2012. Joint appointment in University of Tulsa College of Law and the Collins College of Business at the University of Tulsa. Courses taught include: Property Law, Energy Law, Energy Policy, Negotiations and Game Theory, Seminar on Globalization, and Law & Literature.

- DIRECTOR, NATIONAL ENERGY POLICY INSTITUTE, UNIVERSITY OF TULSA, 2010–2012. Directed research institute devoted to better understanding American energy policy options. Working with Board of Directors, oversaw $8 million program budget. Completed multi-million dollar study, buttressed by more than twenty technical papers, entitled "Toward a New National Energy Policy: Assessing the Options." Organized semiannual conferences and numerous symposia on energy issues.

- PRESIDENT & CHIEF EXECUTIVE OFFICER, CHEROKEE NATION BUSINESSES (CNB), L.L.C., Catoosa, OK. 2005–2008. Turned around corporation with annual revenues of more than $400 million. Oversaw 4,000 employees, a capital budget of more than $100 million per year, and an active acquisition program. During tenure, increased net income from $67.1 million in 2005 to $109.4 million in 2008, with growth in revenues from $275.3 million to $459.1 million over the same period. Sharpened corporate strategy and corporate governance, instilled new capital budget and operating budget processes, personally negotiated $200 million credit facility with bank syndicate, turned around acquisition efforts, upgraded internal audit and compliance, and led legal affairs department.

- OFFICER-IN-CHARGE, WEAPONS INTELLIGENCE TEAMS, 84TH EXPLOSIVE ORDNANCE DISPOSAL

BATTALION, MULTI-NATIONAL DIVISION SOUTH, IRAQ. 2008-2009. Awarded Bronze Star and Army Achievement Medal. Led detachment covering seven forwarding operating bases during Operation Iraqi Freedom

- FELLOW, INSTITUTE OF POLITICS, HARVARD UNIVERSITY, Cambridge, MA. 2005. Conducted seminar at Harvard University on contemporary American politics.

- UNITED STATES HOUSE OF REPRESENTATIVES, Washington, D.C. Member of Congress, 2nd District of Oklahoma. 2001-2005 (107th and 108th Congresses). Focused on environmental, transportation, and education issues. Campaigns cited as among most successful and well-run in nation.

- DEPARTMENT OF DEFENSE, Pentagon, Arlington, VA. Special Assistant to the Secretary of Defense for Special Projects & White House Fellow. 1997-1998.

- CROWE & DUNLEVY, P.C., Tulsa, OK. Antitrust Attorney. 1994-1997, 1999.

DEGREES COMPLETED

- UNIVERSITY OF OKLAHOMA COLLEGE OF LAW, Norman, Oklahoma. J.D., with Highest Honors. Attended 1991-1994.

- TRINITY COLLEGE, OXFORD UNIVERSITY, Oxford, United Kingdom. M.A., Politics, Philosophy, and Economics. Attended 1989-1991.

- BAYLOR UNIVERSITY, Waco, Texas. B.A., *magna cum laude* with highest honors. Attended 1985-1989.

SELECTED ACTIVITIES AND HONORS

- ADJUNCT SCHOLAR, RAND CORPORATION. 2017 -.

- BRONZE STAR. 2010.

- DISTINGUISHED CIVILIAN SERVICE AWARD, UNITED STATES DEPARTMENT OF DEFENSE. 2014, 2015, 2016 (3 times).

- BOARD OF DIRECTORS, NATIONAL JOB CORPS ASSOCIATION. 2005-2009.

- U.S. JUNIOR CHAMBER OF COMMERCE TEN OUTSTANDING YOUNG AMERICANS. 2002.

- RHODES SCHOLAR. 1989 - 1991.

- WHITE HOUSE FELLOW. 1997 - 1998.

- EXCEPTIONAL CONTRIBUTION TO LEGAL SERVICES FOR OKLAHOMA. 1996.

- BLEDSOE AWARD FOR OUTSTANDING LAW SCHOOL GRADUATE FROM THE UNIVERSITY OF OKLAHOMA. 1994.

- LEGAL SERVICES OF EASTERN OKLAHOMA BOARD OF DIRECTORS. 1997.

SELECTED PUBLICATIONS

- *The Historical Roots And Future Directions For Military Law And Policies On Rape And Sexual Assault* (forthcoming), MILITARY PSYCHOLOGY (2018).

- *Zeroing Out Preventable Disability: Daring To Dream The Impossible Dream For Dementia Care: Recommendations For A National Plan To Advance Dementia Care And Maximize Functioning*, ALZHEIMER'S & DEMENTIA, 13 (2017) (co-written with 5 others).

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- *A Modest Proposal On Military Suicide And Military Sexual Assault* (with Morgan Plummer), www.warontherocks.com (December 14, 2016).

MISCELLANEOUS & PERSONAL

- Married to Julie Kruse Carson (Department of Defense attorney specializing in military sexual assault prevention and response).

- One child, Jack David, twelve years old.

Exhibit B

Bibliography

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While serving in the government, I reviewed materials considered by the Working Group in formulating its recommendations, including a careful review of all available scholarly evidence and

consultations with medical experts, personnel experts, readiness experts, health insurance companies, civilian employers, and commanders whose units included transgender service members.

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Exhibit C

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Internal Medicine
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October 25, 2015

To Whom It May Concern:

I am the lead author of the 2009 Clinical Practice Guideline, "Endocrine Treatment of Transsexual Persons" that recommended "regular clinical and laboratory monitoring every 3 months during the first year" after commencing hormone replacement therapy. I would like to clarify several points of context about this recommendation that should be taken into account when developing military policy for transgender troops.

(1) This recommendation for clinical monitoring was intended to cover a diverse, civilian population, including older, unreliable and/or unhealthy individuals who are not characteristic of the population of service members;

(2) An initial monitoring at the 2-3 month mark is important to determine whether the initial prescribed hormone dose is appropriate for bringing an individual's hormone levels into the desired range. The initial dose will be accurate for approximately 80% of young, healthy individuals. Of the remaining 20% whose hormone levels will be discovered to be slightly too high or too low at the initial monitoring, adjusting the dose to bring levels into the desired clinical range is a simple matter;

(3) Of the approximately 20% whose hormone levels will be discovered to be slightly too high or too low at the initial monitoring, the health consequences of being slightly out of range are not significant;

(4) The monitoring and, if necessary, re-adjustment of prescribed doses do not need to be performed by endocrinologists or specialists. Any physicians or nurses who have received a modest amount of training can perform these tasks;

(5) Research is quite clear that hormone replacement therapy, especially for young, healthy individuals, is safe, with complications rates of less than 5%.

(6) There is no reason to designate individuals as non-deployable after the commencement of hormone replacement therapy. While individuals might be placed on limited duty (office work) until the initial monitoring at the 2-3 month mark, they can perform their jobs overseas in a wide range of deployed settings both before and after the initial monitoring.

Thank you for your consideration.

Wylie Hembree, M.D., FACP
Special Lecturer, Columbia University

c:\WpdocFMT/dpo/store/Trans Military

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2018, copies of the foregoing were served on the following counsel via electronic mail.

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Jordan M. Heinz
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EXHIBIT 14

IMMEDIATE RELEASE

Statement by Secretary of Defense Ash Carter on DOD Transgender Policy

Press Operations

Release No: NR-272-15
July 13, 2015

Over the last fourteen years of conflict, the Department of Defense has proven itself to be a learning organization. This is true in war, where we have adapted to counterinsurgency, unmanned systems, and new battlefield requirements such as MRAPs. It is also true with respect to institutional activities, where we have learned from how we repealed "Don't Ask, Don't Tell," from our efforts to eliminate sexual assault in the military, and from our work to open up ground combat positions to women. Throughout this time, transgender men and women in uniform have been there with us, even as they often had to serve in silence alongside their fellow comrades in arms.

The Defense Department's current regulations regarding transgender service members are outdated and are causing uncertainty that distracts commanders from our core missions. At a time when our troops have learned from experience that the most important qualification for service members should be whether they're able and willing to do their job, our officers and enlisted personnel are faced with certain rules that tell them the opposite. Moreover, we have transgender soldiers, sailors, airmen, and Marines - real, patriotic Americans - who I know are being hurt by an outdated, confusing, inconsistent approach that's contrary to our value of service and individual merit.

Today, I am issuing two directives to deal with this matter. First, DoD will create a working group to study over the next six months the policy and readiness implications of welcoming transgender persons to serve openly. Led by (Acting) Under Secretary of Defense for Personnel and Readiness Brad Carson, and composed of military and civilian personnel representing all the military services and the Joint Staff, this working group will report to Deputy Secretary of Defense Bob Work. At my direction, the working group will start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective, practical impediments are identified. Second, I am directing

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that decision authority for administrative discharges for those diagnosed with gender dysphoria or who identify themselves as transgender be elevated to Under Secretary Carson, who will make determinations on all potential separations.

As I've said before, we must ensure that everyone who's able and willing to serve has the full and equal opportunity to do so, and we must treat all our people with the dignity and respect they deserve. Going forward, the Department of Defense must and will continue to improve how we do both. Our military's future strength depends on it.

EXHIBIT 15

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Transgender Service Members JUL 28 2015

Effective as of July 13, 2015, no Service member shall be involuntarily separated or denied reenlistment or continuation of active or reserve service on the basis of their gender identity, without the personal approval of the Under Secretary of Defense for Personnel and Readiness. This approval authority may not be further delegated.

The Under Secretary of Defense for Personnel and Readiness will chair a working group composed of senior representatives from each of the Military Departments, Joint Staff, and relevant components from the Office of the Secretary of Defense to formulate policy options for the DoD regarding the military service of transgender Service members. The working group will start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective, practical impediments are identified, and shall present its recommendations to me within 180 days. Pending the issuance of DoD-wide policy following the submission of the working group's report, any interim guidance issued by the Military Departments will be coordinated with, and subject to the prior personal approval of, the Under Secretary of Defense for Personnel and Readiness. If questions relating to the service of transgender members arise, the Military Departments should address them to the Under Secretary of Defense for Personnel and Readiness.

Ash Carter

cc:
DepSecDef
CJCS
USDs
DoD, GC
ASD(LA)
ATSD(PA)

EXHIBIT 16

FILED UNDER SEAL

EXHIBIT 17

FILED UNDER SEAL

EXHIBIT 18

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EXHIBIT 19

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EXHIBIT 20

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EXHIBIT 21

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