

EXHIBIT 1






-  **Donald J. Trump**  @realDonaldTrump · 4h 
....victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you
 39K  25K  73K 
-  **Donald J. Trump**  @realDonaldTrump · 4h 
....Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming.....
 24K  27K  71K 
-  **Donald J. Trump**  @realDonaldTrump · 4h 
After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow.....
 14K  26K  66K 

EXHIBIT 2

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J TRUMP, et al.,

Defendants.

CASE NO. C17-1297 MJP

ORDER RE *IN CAMERA* REVIEW
OF DOCUMENTS SUBMITTED
PURSUANT TO THE COURT’S
ORDER ON DOCUMENTS
WITHHELD BY THE
GOVERNMENT AS
NON-RESPONSIVE (DKT. NOS.
455, 464)

This matter comes before the Court on Defendants’ submission of documents for *in camera* review pursuant to the Court’s Order on Plaintiffs’ Motion to Compel Documents Withheld by the Government as Non-Responsive. (Dkt. Nos. 449, 455, 465.) Having conferred with the Special Master concerning the approximately 1,700 pages of documents the

1 Government filed for *in camera* review, the Court has made the following privilege
 2 determinations on a document-by-document basis, as listed in the attachment to this Order¹:

- 3 (1) The Government must produce all documents listed in the attached exhibit in which “N”
 4 has been marked in the column labelled “Privileged” not later than **June 5, 2020**;
- 5 (2) Where the negative privilege decision is followed by an indication in the “Reasons”
 6 column that only a portion of the document needs to be produced, the balance of the
 7 document may be redacted;
- 8 (3) Documents that are privileged have been labelled by “Y” in the “Privileged” column;
 9 where the column is blank, the Court has determined that the document is not relevant
 10 and need not be produced.

11 **Background**

12 On March 4, 2020, the Court granted Plaintiffs’ motion to compel documents which are
 13 part of an otherwise responsive “family group” of produced material but were withheld on the
 14 grounds of “non-responsiveness”; as an example, the Government withheld attachments to
 15 emails as “non-responsive” where the email itself was produced. (Dkt. No. 455.) While the
 16 Government had not asserted any privilege over these documents or listed them on a privilege
 17 log, shortly after the Court issued its Order, the Government submitted an agreed motion for
 18 clarification or reconsideration, informing the Court that “during the course of preparing these
 19 non-responsive family documents for production, Defendants [] discovered that a small subset of
 20 the documents are subject to privilege.” (Dkt. No. 463 at 2.) Defendants believed these

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 22 _____
 23 ¹ The Special Master has adjusted the privilege log provided to the Court as an Excel spreadsheet so that the
 24 documents would be listed in PrivWithhold order, while still identifying the Defendants’ document numbering
 scheme.

1 documents were protected from disclosure by the attorney-client privilege, the attorney work
2 product privilege, the deliberative process privilege, and the executive privilege. (*Id.*) The Court
3 granted Defendants’ Motion for Clarification, ordering Defendants to submit the subset of
4 documents that Defendants believed to be privileged to the Court for *in camera* review along
5 with a privilege log. (Dkt. No. 464.)

6 Discussion

7 Each of the documents submitted for *in camera* review, covering PrivWithholding page
8 numbers 1415 through 3180, have now been reviewed. For a sizeable number of these
9 documents, Defendants’ privilege assertions were not justified. This blanket assertion of
10 privilege without close analysis or articulated rationale must stop.

11 Defendants are reminded of the Ninth Circuit’s guidance concerning the deliberative
12 process privilege:

13 The deliberative process privilege ... still commands judicial consideration. We
14 have held that “[a] litigant may obtain deliberative materials if his or her need for
15 the materials and the need for accurate fact-finding override the government’s
16 interest in non-disclosure.” As the district court here correctly recognized, we
17 balance four factors in determining whether this exception to the deliberative
18 process privilege is met “1) the relevance of the evidence; 2) the availability of
19 other evidence; 3) the government’s role in the litigation; and 4) the extent to
20 which disclosure would hinder frank and independent discussion regarding
21 contemplated policies and decisions. In balancing these factors, we note that the
22 second and third favor plaintiffs.

23 Karnoski v. Trump, 926 F.3d 1180, 1206 (9th Cir 2019) (internal citation omitted). Here,
24 because the Court has determined that the documents at issue are relevant (see Dkt. No.
455), the Government was required to establish that the “chilling effect” of disclosure
outweighs the three other factors. This means, as a non-exhaustive list, that the following

1 types of documents meant for public disclosure or describing public reports are not
 2 protected by the deliberative process privilege²:

- 3 1. Press Accounts. Many of the documents claimed privileged are summaries of
 4 press inquiries about transgender service policies and the responses to those
 5 inquiries. Obviously, these constitute reporting on who was asking questions,
 6 the answers provided to the press, and similar public issues. Similarly, “Close
 7 of Business” memos reporting on news reports summaries as a historical
 8 accounting of the week’s news events should not have been withheld pursuant
 9 to the deliberative process privilege.
- 10 2. Cards for prepared responses. These documents reported the use of certain
 11 “cards” by categories, including “Transgender.” Prepared responses to
 12 common or expected public questions are not deliberative.
- 13 3. Confirmation preparation. Questions and prepared responses to actual or
 14 potential confirmation, budget, or Congressional questions are not
 15 deliberative. Instead, they are designed for public consumption, the very
 16 antithesis of deliberate privilege.

17 As to claims involving the attorney-client privilege, not all documents that include
 18 the name of an attorney are subject to withholding pursuant to the privilege. Instead, the
 19 communication must seek or elicit legal advice or send information relevant to that end.

20 See In re Grand Jury Investigation, 974 F.2d 1068, 1071 n.2 (9th Cir. 1992) (internal
 21 citation omitted) (“The attorney-client privilege may be divided into eight essential
 22 elements: (1) Where legal advice of any kind is sought (2) from a professional legal
 23 adviser in his capacity as such, (3) the communications relating to that purpose, (4) made
 24 in confidence (5) by the client, (6) are at his instance permanently protected (7) from
 disclosure by himself or by the legal adviser, (8) unless the protection be waived”).

Transmittal emails that do not otherwise contain privileged information are not

² In the attachment to this Order, the Court lists these documents as “not deliberative,” a shorthand for rejection of Defendants’ deliberative process privilege claims.

1 privileged, even if they are sent to attorneys, and even if the attachment would otherwise
 2 be privileged.

3 The Court makes its privilege determinations in a document-by document basis in
 4 the attachment to this Order, using the following demarcations. The “Privilege” column
 5 indicates whether each document is privileged by “Y” (yes) or “N” (no) designations.
 6 Where the privilege column is blank this indicates, per the “Reasons” column, that the
 7 document is not relevant and need not be produced. Where the negative privilege
 8 decision is followed by an indication in the “Reasons” column that only a portion of the
 9 document need to be produced, meaning the balance of the document can be redacted if
 10 the Government chooses to do so.

11 **Conclusion**

12 After close consultation with the Special Master following the review of each document
 13 submitted by the Defendants, the Court finds that the Government has been overbroad in its
 14 privilege assertions, straying far outside the bounds of the deliberative process privilege and
 15 asserting the attorney-client privilege without care. The Government can and should do better.
 16 The Court therefore ORDERS the Government to produce all documents listed in the attached
 17 exhibit in which “N” has been marked in the column labelled “Privileged” (as modified by
 18 permissible redactions set forth in the “Reasons” column) not later than **June 5, 2020**. The
 19 Government need not produce documents that have been labelled by a “Y” or have no
 20 designation in the “Privileged” column.

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The clerk is ordered to provide copies of this order to all counsel.

Dated May 29, 2020.



Marsha J. Pechman
United States District Judge

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
AF_CTRL_00000187	AF_CTRL_00000185	PrivWith hold1415	PrivWith hold1448	5/10/2018	PDF with file name "20180514 - SecAF w Sen Udall SAC-D Pre-Hearing v5.pdf"	DP - Deliberative Process	Briefing notes produced in preparation for meeting between Secretary of the Air Force and U.S. Senator. Does not relate to the transgender military policy.		Not relevant
AF_CTRL_00000188	AF_CTRL_00000185	PrivWith hold1449	PrivWith hold1468	5/10/2018	PDF with file name "20180514 Sen Tester w SecAF SAC-D Pre-Hearing v5.pdf"	DP - Deliberative Process	Briefing notes produced in preparation for meeting between Secretary of the Air Force and U.S. Senator. Does not relate to the transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10003250		PrivWith hold1469	PrivWith hold1469	12/11/2017	Email with subject line "Accession Implementation"	AC - Attorney Client	Email from MAJ Dustin Murphy, an Army Judge Advocate assigned to the Office of the Judge Advocate General (Military Personnel Law) Branch requesting information concerning the intended use of attached documents in order to provide legal advice.	y	Attorney client
Army_10004634.0002	Army_10004634	PrivWith hold1470	PrivWith hold1471	10/18/2017	Attachment to an email. Word document titled "Declaration of Raymond Horoho" with file name "Horoho Declaration (John Doe 2).docx"	AC - Attorney Client; WP - Work Product	Draft (unsigned) declaration of Raymond Hororo for use in <i>Stockman v. Trump</i> , sent from MAJ Casey Biggerstaff (Army Litigation Attorney) to other Army attorneys.	y	AC and WP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10 005406.0 001	Army_10 005406	PrivWith hold1472	PrivWith hold1473	10/18/2017	Attachment to an email. Word document titled "Declaration of Raymond Horoho" with file name "Horoho Declaration (John Doe 2).docx"	AC - Attorney Client; WP - Work Product	Draft (unsigned) declaration of Raymond Hororo for use to <i>Stockman v. Trump</i> , sent from an Army attorney (MAJ Dustin Murphy, Office of The Judge Advocate General) to an Army attorney (Ms. Maanvi Patoir).	Y	AC and WP
Army_10 005414.0 002	Army_10 005414	PrivWith hold1474	PrivWith hold1475	10/18/2017	Attachment to an email. Word document titled "Declaration of Raymond Horoho" with file name "Horoho Declaration (John Doe 2).docx"	AC - Attorney Client; WP - Work Product	Draft (unsigned) declaration of Raymond Hororo for use in <i>Stockman v. Trump</i> , sent from MAJ Casey Biggerstaff (Army Litigation Attorney) to other Army attorneys	Y	AC and WP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10006880		PrivWith hold1476	PrivWith hold1476	1/16/2018	Email with subject line "SSG King SOTU Invite"	AC - Attorney Client	Email from an Army attorney (MAJ Dustin Murphy, Office of The Judge Advocate General, Administrative Law Division) to a Department of Defense attorney that provides information and legal advice regarding a meeting between a service member and an elected official	N	No legal advice sought or provided

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10 006883		PrivWith hold1477	PrivWith hold1477	1/16/2018	Email with subject line "SSG King SOTU Invite"	AC - Attorney Client	Email from an Army attorney (MAJ Dustin Murphy, Office of The Judge Advocate General, Administrative Law Division) to other Army attorneys concerning a meeting between a service member and an elected official, referencing an attached legal review	N	No legal advice sought or provided

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10006887		PrivWith hold1478	PrivWith hold1478	1/16/2018	Email with subject line "SSG King SOTU Invite"	AC - Attorney Client	Email from an Army attorney (MAJ Dustin Murphy, Office of The Judge Advocate General, Administrative Law Division) that provides information and legal advice regarding a meeting between a service member and an elected official	N	No legal advice sought or provided

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10006888		PrivWith hold1479	PrivWith hold1479	1/16/2018	Email with subject line "SSG King SOTU Invite"	AC - Attorney Client	Email from an Army attorney (MAJ Dustin Murphy, Office of The Judge Advocate General, Administrative Law Division) that provides information and legal advice regarding a meeting between a service member and an elected official	N	No legal advice sought or provided

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10007046		PrivWith hold1480	PrivWith hold1480	1/26/2018	Email with subject line "Passport - Accession Processing"	AC - Attorney Client	Email from an Army attorney (MAJ Dustin Murphy, Office of The Judge Advocate General, Administrative Law Division) requesting information regarding the Army's application of transgender applicant processing guidance	N	No legal advice sought or provided
Army_10009171.002	Army_10009171	PrivWith hold1481	PrivWith hold1484	10/24/2017	Email with subject line "RE: Tasking from A/SA & CSA MAVNI (UNCLASSIFIED)"	DP - Deliberative	Email chain reflecting deliberations concerning the development of the MAVNI program.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10009932		PrivWith hold1485	PrivWith hold1486	1/19/2017	Email with subject line "RE: RFI Response (UNCLASSIFIED)"	AC - Attorney Client	Email from Army attorney (MAJ Laura Grace, Office of The Judge Advocate General) providing legal advice on documents sent for her review.	Y	AC
Army_10009943.0002	Army_10009943	PrivWith hold1487	PrivWith hold1542	1/18/2017	Attachment to email. PDF titled "Advance Policy Questions for James N. Mattis Nominee to be Secretary of Defense" with file name "Mattis Advance Policy Q and A-SASC-12 Jan 17.pdf"	DP - Deliberative	Document drafted to assist nominee for Secretary of Defense in confirmation hearing, which discusses various topics. Highlighted for review and comment in relation to preparations for Secretary of the Army nomination.	N	Not deliberative. Produce top lines of PrivWithhold 1487 and bottom of page reflecting PrivWithhold Number 1487. Produce PrivWithhold 1494-through second paragraph in PrivWithhold 1502. Balance of document not relevant.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10010107		PrivWith hold1543	PrivWith hold1545	4/6/2017	Email with subject line "FW: Question about Transgenders and Bathrooms (UNCLASSIFIED)"	AC - Attorney Client	Email to Army attorney (MAJ Laura Grace, Office of the Judge Advocate General) requesting legal advice concerning transgender civilian personnel policy.	N	Legal advice neither sought nor provided
Army_10011373		PrivWith hold1546	PrivWith hold1547	1/24/2018	Email with subject line "RE: CIMT Azimuth Check WRT TG Integration into IET"	AC - Attorney Client	Redacted portion conveys legal advice received from Army attorneys.	Y	AC
Army_10030187	Army_10030186	PrivWith hold1548	PrivWith hold1549	2/21/2018	Email with subject line "RE: TG ROTC Issue"	AC - Attorney Client	Redacted portion conveys legal advice and analysis received from attorneys regarding Title IX issues.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10 030301		PrivWith hold1550	PrivWith hold1551	2/12/2018	Email with subject line "RE: Draft Transgender Integration Products for review (UNCLASSIFIED)"	AC - Attorney Client	Email chain requesting and providing legal advice concerning transgender personnel policy, specifically requesting attorneys' feedback on a product title "TG Policy Vignettes"	Y	AC
Army_10 036334		PrivWith hold1552	PrivWith hold1553	2/26/2018	Email with subject line "RE: TG ROTC Issue"	AC - Attorney Client	Redacted portion conveys legal advice and analysis received from attorneys regarding Title IX issues.	Y	AC
Army_10 038153	Army_10 038152	PrivWith hold1554	PrivWith hold1555	2/21/2018	Email with subject line "RE: TG ROTC Issue"	AC - Attorney Client	Redacted portion conveys legal advice and analysis received from attorneys regarding Title IX issues.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10 040256	Army_10 040255	PrivWith hold1556	PrivWith hold1566	3/13/2018	Attachment to email. Word document titled "Use of Supplemental Health Care Program Funds for Non-covered TRICARE Health Care Services and the Waiver Process for Active Duty Service Members " with file name "Draft DHA-PI_SHCP_Waivers_Feb 12_CLEAN.doc"	DP - Deliberative	Draft Defense Health Agency Procedural Instruction on "Use of Supplemental Health Care Program Funds for Non-covered TRICARE Health Care Services and the Waiver Process for Active Duty Service Members." Document contains reviewer tracked changes.	N	Not deliberative. Draft policy is not DP. Editorial change of two words does not convert to DP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0000 0813		PrivWith hold1567	PrivWith hold1570	12/20/2017	Email with subject line, "RE: [Non-DoD Source] RE: Stone (4th Cir.) -- Opp to Stay Motion"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Discussions between DOJ attorneys and DoD Office of General Counsel (OGC) attorneys concerning filings and draft filings in Stone v. Trump matter. Email discussion reflects attorney mental impressions regarding matter in litigation and draft litigation filings; communications seeking and providing legal advice regarding litigation filings; as well as predecisional deliberations about litigation filings.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00000951		PrivWith hold1571	PrivWith hold1572	12/14/2017	Email with subject line, "RE: Army Tier 3 Training"	AC - Attorney Client Privilege; DP - Deliberative Process	DoD policy official seeking legal advice from DoD Office of General Counsel (OGC) attorney regarding a training presentation, and OGC attorney providing legal advice concerning that presentation. Discussion reflects OGC attorney's predecisional advice and recommendations regarding the presentation.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00000985	DoD00000984	PrivWith hold1573	PrivWith hold1573	12/13/2017	Word document titled "Hard Questions for MAVNI and Foreign National Recruiting" with file name, "SD FY19 Budget Hearing QAs (MAVNI-Foreign National Recruiting).docx"	DP - Deliberative Process	Draft briefing paper regarding Military Accessions Vital to the National Interest (MAVNI) and Foreign National Recruiting. Drafted for Secretary of Defense in preparation for congressional hearing. Contains reviewer comments. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001091	DoD00001090	PrivWith hold1574	PrivWith hold1574	12/11/2017	Word document titled "Hard Questions for Military Accessions Vital to the National Interest (MAVNI)" with file name, "MAVNI LPR FY19 Hard Qs and As.docx"	DP - Deliberative Process	Briefing paper regarding Military Accessions Vital to the National Interest (MAVNI) and Foreign National Recruiting. Drafted for Secretary of Defense in preparation for congressional hearing. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001093	DoD00001090	PrivWith hold1575	PrivWith hold1575	12/11/2017	Word document titled, "Foreign National Recruiting" with file name "SD Foriegn National Recruiting.docx"	DP - Deliberative Process	Briefing paper regarding Military Accessions Vital to the National Interest (MAVNI) and Foreign National Recruiting. Drafted for Secretary of Defense in preparation for congressional hearing. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001105	DoD00001104	PrivWith hold1576	PrivWith hold1577	12/11/2017	Word document titled, "Foreign National Recruiting" with file name "SD Foriegn National Recruiting.docx"	DP - Deliberative Process	Draft briefing paper regarding Military Accessions Vital to the National Interest (MAVNI) and Foreign National Recruiting. Drafted for Secretary of Defense in preparation for congressional hearing. Contains reviewer comments. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001125	DoD00001124	PrivWith hold1578	PrivWith hold1579	12/11/2017	Word document titled, "Foreign National Recruiting" with file name "SD Foriegn National Recruiting1.docx"	DP - Deliberative Process	Draft briefing paper regarding Military Accessions Vital to the National Interest (MAVNI) and Foreign National Recruiting. Drafted for Secretary of Defense in preparation for congressional hearing. Unrelated to transgender military policy.		Not relevant
DoD00001223	DoD00001222	PrivWith hold1580	PrivWith hold1584	9/15/2017	Word document titled "DoD Military Accessions Vital to the National Interest (MAVNI) Litigation (as of 13 OCT 2017)" with file name, "MAVNI Litigation Matrix.docx"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Chart describing the status of lawsuits challenging policy related to the Military Accessions Vital to the National Interest (MAVNI) program.	Y	WP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001469	DoD00001468	PrivWith hold1585	PrivWith hold1590	11/27/2017	Attachment to email. Draft Word document that is a memorandum for commanders and officers titled "Policy Memorandum 2-5, Transgender Applicant Processing" with the file name, "Transgender Applicant Processing Policy v10_Nov 27 2017 - DJG.DOC"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Draft DoD memorandum containing edits and comments from DoD Office of General Counsel (OGC) Attorneys John Casciotti and David Gruber. Document reflects provision of attorney recommendations and advice and attorney mental impressions regarding matter in litigation.	Y	DP and AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001735	DoD00001730	PrivWith hold1591	PrivWith hold1591	11/8/2017	Attachment to email. Word document titled "MILITARY ACCESSIONS VITAL TO THE NATIONAL INTEREST (MAVNI)" with file name, "14 - DACA and MAVNI.docx"	DP - Deliberative Process	Draft briefing paper for DoD leadership regarding Military Accessions Vital to the National Interest (MAVNI) and related litigation. Unrelated to transgender military policy.		Not relevant
DoD00002247	DoD00002246	PrivWith hold1592	PrivWith hold1593	9/22/2017	PDF of info memo with subject line "Military Accessions Vital to the National Interest (MAVNI) Pilot Program Update" with file name, "MAVNI.PDF"	DP - Deliberative Process	Memorandum for the Secretary of Defense from two Under Secretaries of Defense regarding Military Accessions Vital to the National Interest (MAVNI). Contains advice and recommendations for the Secretary. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0000 2891	DoD0000 2887	PrivWith hold1594	PrivWith hold1594	7/7/2017	Attachment to email. Word document titled, "Military Accessions Vital to the National Interest (MAVNI)" with file name "DSD Readbook - MAVNI.docx"	DP - Deliberative Process	Briefing paper prepared for the Deputy Secretary of Defense regarding Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant
DoD0000 2905	DoD0000 2898	PrivWith hold1595	PrivWith hold1596	4/4/2017	Attachment to email. Word document titled, "Military Accessions Vital to the National Interest (MAVNI)" with file name "3J DSD Confirmation - MAVNI-DACA 20170404.docx"	DP - Deliberative Process	Briefing paper prepared for the Deputy Secretary of Defense regarding Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00003017	DoD00003016	PrivWith hold1597	PrivWith hold1599	6/19/2017	Attachment to email. Word document of a "Memorandum for the White House Staff Secretary and Cabinet Secretary" with subject "Department of Defense Weekly Update for the Week of June 19th, 2017" with file name, "19 June 2017 - PR Lookahead.docx"	DP - Deliberative Process; EP - Executive Privilege	Memorandum for the White House Staff Secretary and Cabinet Secretary on the subject of "Department of Defense Weekly Update for the Week of June 19, 2017." Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0000 3104	DoD0000 3103	PrivWith hold1600	PrivWith hold1601	5/17/2017	Word document titled "MAVNI" with file name, "17 MAY - TOP LINES - MAVNI - Transgender (SAB).doc"	DP - Deliberative Process	Draft internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI) as well as Transgender Policy.	N	Not deliberative
DoD0000 3106	DoD0000 3105	PrivWith hold1602	PrivWith hold1603	5/17/2017	Word document titled "MAVNI" with file name, "17 MAY - TOP LINES - MAVNI - Transgender (SAB).doc"	DP - Deliberative Process	Draft internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI) as well as Transgender Policy.	N	Not deliberative.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0000 3108	DoD0000 3107	PrivWith hold1604	PrivWith hold1605	5/17/2017	Word document titled "MAVNI" with file name, "17 MAY - TOP LINES - MAVNI - Transgender.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI) as well as Transgender Policy.	N	Not deliberative.
DoD0000 3114	DoD0000 3113	PrivWith hold1606	PrivWith hold1607	5/16/2017	Word document titled "MAVNI" with file name, "17 MAY - TOP LINES - MAVNI - Transgender.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI) as well as Transgender Policy.	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00003210	DoD00003207	PrivWith hold1608	PrivWith hold1608	2/23/2017	Word document titled "MAVNI" with file name, "MAVNI_DACA QAs.docx"	DP - Deliberative Process;	Draft internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00003796	DoD00003794	PrivWith hold1609	PrivWith hold1628	5/10/2016	Draft Word document titled "DOD INSTRUCTION ####.##" with file name, "DoDI 10 May Track Changes.docx"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Draft DoD memorandum containing edits by DoD attorney Hershel Eisenberger. Document reflects provision of attorney recommendations and advice and attorney mental impressions regarding matter in litigation.	Y	AC and DP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00004658	DoD00004657	PrivWith hold1629	PrivWith hold1630	8/1/2017	Word document titled "BACKGROUND ON MILITARY ACCESSIONS VITAL TO THE NATIONAL INTEREST (MAVNI) & DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)" with file name "MAVNI_DACA backgrounder (AP Smooth).docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00005474	DoD00005472	PrivWith hold1631	PrivWith hold1633	2/10/2009	PDF the header "DoDI 1300.17, February 10, 2009" with file name "130017 draft Pre Post Religious Accommodation (Proposed Changes).pdf"	DP - Deliberative Process	Internal draft DoD memorandum regarding policy for religious accommodations in the military. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00008025		PrivWith hold1634	PrivWith hold1635	12/8/2017	Email with file name "RE: Feedback from the Lethality WG Back brief to DSD"	DP - Deliberative Process	Email communication among DoD policy officials concerning recommendations presented to a senior official about lethality and readiness of the armed forces.	y	DP
DoD00009259	DoD00009258	PrivWith hold1636	PrivWith hold1636	12/11/2017	Attachment to email. Word document titled "Hard Questions for Military Accessions Vital to the National Interest (MAVNI)" with file name "SD Budget Hearing Q&As (MAVNI-Foreign National Recruiting).docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0000 9260	DoD0000 9258	PrivWith hold1637	PrivWith hold1637	12/11/2017	Attachment to email. Word document titled "Foreign National Recruiting" with file name "SAMPLE Issue Paper with Instructions" with file name "SD Budget Hearing Issue Paper (MAVNI-Foreign National Recruiting).docx"	DP - Deliberative Process	Internal briefing and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant
DoD0000 9266	DoD0000 9265	PrivWith hold1638	PrivWith hold1638	12/11/2017	Attachment to email. Word document titled "Hard Questions for Military Accessions Vital to the National Interest (MAVNI)" with file name "MAVNI LPR FY19 Hard Qs and As.docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0000 9273	DoD0000 9271	PrivWith hold1639	PrivWith hold1639	12/11/2017	Attachment to email. Word document titled "Foreign National Recruiting" with file name "SAMPLE Issue Paper with Instructions" with file name "SD Budget Hearing Issue Paper (MAVNI-Foreign National Recruiting).docx"	DP - Deliberative Process	Internal briefing and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant
DoD0000 9289		PrivWith hold1640	PrivWith hold1641	12/8/2017	Email with subject line "FW: MEDICAL STANDARDS FOR APPOINTMENTS ENLISTMENT OR INDUCTION OF TRANSGENDER APPLICANTS INTO THE MILITAROSD01526 5-17 RES FINAL (UNCLASSIFIED)"	AC - Attorney Client Privilege; DP - Deliberative Process;	Email communication from DoD policy official to DoD Office of General Counsel (OGC) attorneys seeking legal advice and recommendations on whether to forward a DoD memorandum to other components within DoD.	N	Transmittal email; no legal advice sought or provided

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00009838	DoD00009837	PrivWith hold1642	PrivWith hold1643	8/1/2017	Attachment to email. Word document titled "BACKGROUND ON MILITARY ACCESSIONS VITAL TO THE NATIONAL INTEREST (MAVNI) & DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)" with file name "MAVNI_DACA backgrounder (AP Smooth).docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains background and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0000 9861	DoD0000 9860	PrivWith hold1644	PrivWith hold1644	7/10/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "DSD - MAVNI- DACA.DOCX"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains background and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00009930		PrivWith hold1645	PrivWith hold1647	7/25/2017	Email with the subject line "FW: DSD priorities meeting today (suspense: 1200) (UNCLASSIFIED)"	DP - Deliberative Process	Internal email communication among DoD officials related to Military Accessions Vital to the National Interest (MAVNI). Reflects DoD analysis and recommendations. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00010002	DoD00010001	PrivWith hold1648	PrivWith hold1648	7/10/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "3J- DSD Confirmation - MAVNI- DACA.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains background and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00010008	DoD00010006	PrivWith hold1649	PrivWith hold1649	7/10/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "3J- DSD Confirmation - MAVNI- DACA.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00010262	DoD00010261	PrivWith hold1650	PrivWith hold1650	2/23/2017	Attachment to email. Word document titled "MAVNI" with file name "MAVNI_DACA QAs.docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI).		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0001 1514	DoD0001 1513	PrivWith hold1651	PrivWith hold1651	7/10/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "3J- DSD Confirmation - MAVNI- DACA.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0001 1518	DoD0001 1517	PrivWith hold1652	PrivWith hold1652	7/10/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "3J- DSD Confirmation - MAVNI- DACA.docx"	DP - Deliberative Process	Draft internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 1464	DoD0002 1463	PrivWith hold1653	PrivWith hold1653	3/29/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest (MAVNI)" with file name "3J Confirmation Issue Paper MAVNI-DACA v2.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00021669		PrivWith hold1654	PrivWith hold1656	8/1/2017	Email with subject line "FW: TG (UNCLASSIFIED)"	AC - Attorney Client Privilege; DP - Deliberative Process;	Internal DoD email communication in which DoD officials discuss deliberations regarding implementation of policy for transgender service members and impacts on readiness, and then seek legal advice from DoD Office of General Counsel (OGC) attorneys regarding the same. DoD OGC attorneys respond, providing advice.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 1851		PrivWith hold1657	PrivWith hold1661	4/4/2017	Email with subject line "RE: DSD Nomination Prep Materials -- SUSPENSE: April 4th (UNCLASSIFIED) Part 1"	AC - Attorney Client Privilege; DP - Deliberative Process;	Internal DoD email communication in which DoD officials discuss draft briefing papers for confirmation hearing for Deputy Secretary of Defense, and then seek legal advice from DoD Office of General Counsel (OGC) attorneys regarding those draft briefing papers. Email discussion reveals DoD official's and OGC attorney's comments on the draft briefing papers.	N	No DP because not deliberative. No AC because legal advice neither sought or provided.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2234	DoD0002 2232	PrivWith hold1662	PrivWith hold1663	3/28/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest (MAVNI)" with file name "3J DSD Confirmation - MAVNI-DACA 20170404.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2285	DoD0002 2284	PrivWith hold1664	PrivWith hold1664	7/10/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "DSD - MAVNI- DACA.DOCX"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2473	DoD0002 2472	PrivWith hold1665	PrivWith hold1665	3/28/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest (MAVNI)" with file name "3J Confirmation Issue Paper MAVNI-DACA v2.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains background and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2542	DoD0002 2540	PrivWith hold1666	PrivWith hold1666	3/28/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest (MAVNI)" with file name "3J Confirmation Issue Paper MAVNI-DACA v2.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains background and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2579	DoD0002 2575	PrivWith hold1667	PrivWith hold1667	7/7/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "M&RA U -- DACA and Military Personnel Policy (MAVNI) (1)(SAB).docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2604	DoD0002 2603	PrivWith hold1668	PrivWith hold1670	8/14/2017	Word document titled "MILITARY ACCESSIONS VITAL TO THE NATIONAL INTEREST" with file name "MAVNI Issue Papers.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2617	DoD0002 2610	PrivWith hold1671	PrivWith hold1672	3/28/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest (MAVNI)" with file name "3J DSD Confirmation - MAVNI-DACA 20170404.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2635	DoD0002 2631	PrivWith hold1673	PrivWith hold1673	7/7/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "M&RA U -- DACA and Military Personnel Policy (MAVNI) (1)(SAB).docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2678	DoD0002 2677	PrivWith hold1674	PrivWith hold1674	7/7/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "DSD - MAVNI- DACA.DOCX"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2695	DoD0002 2691	PrivWith hold1675	PrivWith hold1675	7/7/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "M&RA U -- DACA and Military Personnel Policy (MAVNI) (1)(SAB).docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2711	DoD0002 2707	PrivWith hold1676	PrivWith hold1676	7/7/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest (MAVNI)" with file name "DSD Readbook - MAVNI.docx"	DP - Deliberative Process	Internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Accessions Vital to the National Interest (MAVNI). Concerns policies and events unrelated to transgender military policy.		Not relevant

DoD0002 2795	PrivWith hold1677	PrivWith hold1679	3/28/2017	Email with subject line "Draft APQs for GC"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Internal email communication by DoD official requesting legal advice from DoD Office of General Counsel (OGC) attorneys concerning potential questions from Congress regarding forthcoming nomination of the DoD General Counsel. DoD OGC attorneys then discuss how to divide up and respond to the request. Potential questions in the request cover topics (e.g. Detention and Military Commissions), which were the subject of ongoing litigation.	Not relevant
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Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 6962	DoD0002 6961	PrivWith hold1680	PrivWith hold1681	8/2/2017	Attachment to email. Word document titled "TRANSITION ASSISTANCE PROGRAM (TAP)" with file name "MRA N TAP(SAB).docx"	DP - Deliberative Process	Draft internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Transition Assistance Program for veterans. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00026963	DoD00026961	PrivWith hold1682	PrivWith hold1683	8/2/2017	Attachment to email. Word document titled "Military Technician Management" with file name "MRA N RC-Guard Issues MilTech(SAB).docx "	DP - Deliberative Process	Draft internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Military Technician program. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00026969	DoD00026968	PrivWith hold1684	PrivWith hold1685	8/1/2017	Attachment to email. Word document titled "BACKGROUND ON MILITARY ACCESSIONS VITAL TO THE NATIONAL INTEREST (MAVNI) & DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)" with file name "MAVNI_DACA backgrounder (AP Smooth).docx"	DP - Deliberative Process	Internal briefing and press guidance document prepared to assist senior DoD leadership. Concerns Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 6979	DoD0002 6978	PrivWith hold1686	PrivWith hold1687	7/31/2017	Attachment to email. Word document titled "Reserve Component Duty Status Reform" with file name "MRA N-- RC Duty Status Reform(SAB).docx"	DP - Deliberative Process	Draft internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning Reserve Component Duty Status Reform. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00026981	DoD00026978	PrivWith hold1688	PrivWith hold1688	7/31/2017	Attachment to email. Word document titled "Religious Accommodation" with file name "MRA N -- Religious Accommodations(S AB).docx"	DP - Deliberative Process	Draft internal briefing document prepared to assist senior DoD leadership. Contains briefing and recommendations concerning religious accommodations in the military. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00026982	DoD00026978	PrivWith hold1689	PrivWith hold1689	7/7/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "MRA U -- DACA and Military Personnel Policy (MAVNI) (1)(SAB).DOCX"	DP - Deliberative Process	Draft briefing paper regarding Military Accessions Vital to the National Interest (MAVNI). Drafted pursuant to preparations for confirmation hearing of nominee to be Undersecretary of Defense for Personnel and Readiness. Contains reviewer comments and tracked changes. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00026983	DoD00026978	PrivWith hold1690	PrivWith hold1691	7/31/2017	Word document titled "Military Personnel Authorities Reform" with file name "MRA N -- Military Personnel Authorities Reform(SAB).docx"	DP - Deliberative Process	Draft briefing paper regarding Military Personnel Reform Authorities. Drafted pursuant to preparations for confirmation hearing of nominee to be Undersecretary of Defense for Personnel and Readiness. Contains reviewer comments and tracked changes. Unrelated to transgender military policy.		Not relevant
DoD00027041	DoD00027040	PrivWith hold1692	PrivWith hold1693	5/17/2017	Attachment to email. Word document titled "MAVNI" with file name "17 MAY - TOP LINES - MAVNI - Transgender (SAB).doc"	DP - Deliberative Process	Draft internal talking points and press guidance document prepared to assist senior DoD leadership. Contains reviewer tracked changes.	N	Internal talking points for press briefing are not DP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00027128	DoD00027127	PrivWith hold1694	PrivWith hold1694	2/23/2017	Attachment to email. Word document titled "MAVNI/DACA" with file name "SecDef QAs MAVNI_DACA mjk.docx"	DP - Deliberative Process	Draft briefing paper regarding Military Accessions Vital to the National Interest (MAVNI) and Deferred Action for Childhood Arrivals. Drafted for Secretary of Defense in preparation for congressional meeting. Contains tracked changes. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 7140	DoD0002 7139	PrivWith hold1695	PrivWith hold1696	2/23/2017	Attachment to email. Word document titled "Questions and Answers – Blended Retirement System (Policy)" with file name "SecDef QAs BRS policy mjk(SAB).docx"	DP - Deliberative Process	Draft briefing paper regarding Blended Retirement System policy. Drafted for Secretary of Defense in preparation for congressional meeting. Contains tracked changes and reviewer comments. Unrelated to transgender military policy.		Not relevant
DoD0002 7142	DoD0002 7141	PrivWith hold1697	PrivWith hold1699	2/23/2017	Attachment to email. Word document titled "Force of the Future" with file name "SecDef QAs FotF mjk (SAB).docx"	DP - Deliberative Process	Draft briefing paper regarding Force of the Future Program. Drafted for Secretary of Defense in preparation for congressional meeting. Contains tracked changes. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00027146	DoD00027145	PrivWith hold1700	PrivWith hold1701	2/23/2017	Attachment to email. Word document titled "Civilian Hiring Freeze" with file name "SecDef QAs Hiring Freeze mjk (SAB).docx"	DP - Deliberative Process	Draft briefing paper regarding civilian hiring freeze. Drafted for Secretary of Defense in preparation for congressional meeting. Contains tracked changes and reviewer comments. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00027150	DoD00027149	PrivWith hold1702	PrivWith hold1703	2/23/2017	Attachment to email. Word document titled "Commissaries" with file name "SecDef HASC QA.gccbto mjk.docx"	DP - Deliberative Process	Draft briefing paper regarding military commissaries. Drafted for Secretary of Defense in preparation for congressional meeting. Contains tracked changes and reviewer comments. Unrelated to transgender military policy.		Not relevant
DoD00028458	DoD00028457	PrivWith hold1704	PrivWith hold1706	7/19/2017	Attachment to email. Word document titled "Military Health System Risk Management Working Group (RMWG) Charter" with file name "RMWG charter2017draft (4) AF Clean.docx"	DP - Deliberative Process	Draft Military Health System Risk Management Working Group (RMWG) Charter. Circulated for review. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0003 1674	DoD0003 1673	PrivWith hold1707	PrivWith hold1711	3/24/2017	Attachment to email. Word document titled "Terms of Reference (TOR) for the Security, Suitability/Fitness, and Credentialing (SSC) Enterprise Project Plan" with file name "SSC Project Plan TOR 20170324.doc"	DP - Deliberative Process	Draft document related to proposed policy changes related to DoD background investigations, circulated to members of DoD senior steering group in advance of meeting. Unrelated to transgender military policy.		Not relevant
DoD0003 1899		PrivWith hold1712	PrivWith hold1712	8/28/2017	Email with the subject line "SOCO Weekly Report, 8/28/17 (UNCLASSIFIED)"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Email contains attorney mental impressions regarding documents prepared by OGC Standards of Conduct Office. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0003 2419		PrivWith hold1713	PrivWith hold1714	8/16/2017	Email with the subject line "GC Nominee Information Binder (UNCLASSIFIED)"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Email from and to OGC attorneys concerning preparations for DoD General Counsel nominee confirmation hearing.		Not relevant
DoD0003 2421	DoD0003 2419	PrivWith hold1715	PrivWith hold1717	8/10/2017	Attachment to email. PDF titled "Sequestration under the Budget Control Act" with file name "Sample Memoranda for GC Nominee.pdf"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	DoD OGC prepared memorandum reflecting legal analysis related to sequestration under the Budget Control Act of 2011.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0003 8083	DoD0003 8081	PrivWith hold1718	PrivWith hold1718	5/16/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest (MAVNI) program" with file name "16 MAY TOP LINES - MAVNI.doc"	DP - Deliberative Process	Draft internal talking points and press guidance document prepared to assist senior DoD leadership, circulated for review. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0003 8879		PrivWith hold1719	PrivWith hold1720	4/25/2017	Email with subject line "Documents from the EEOC concerning Harassment"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Email from and to DoD OGC attorneys contains attorney mental impressions and advice regarding attached EEOC documents concerning harassment.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00040141		PrivWith hold1721	PrivWith hold1724	5/19/2017	Email with subject line "RE: FY18 Posture Hearing Q&A -- Suspense: COB 22 May (UNCLASSIFIED//FOUO)"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Email thread reflecting deliberations about preparing the Secretary of Defense for a congressional hearing. Contains attorney mental impressions regarding the same.	N	No DP because not deliberative. No AC because no legal advice sought or provided – transmittal email
DoD00051844	DoD00051842	PrivWith hold1725	PrivWith hold1725	7/7/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "3J- DSD Confirmation - MAVNI- DACA.docx"	DP - Deliberative Process	Draft briefing paper prepared for the Deputy Secretary of Defense regarding Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0005 1851	DoD0005 1850	PrivWith hold1726	PrivWith hold1726	7/10/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "3J- DSD Confirmation - MAVNI- DACA.docx"	DP - Deliberative Process	Draft briefing paper prepared for the Deputy Secretary of Defense regarding Military Accessions Vital to the National Interest (MAVNI). Unrelated to transgender military policy.		Not relevant
DoD0005 2198	DoD0005 2197	PrivWith hold1727	PrivWith hold1727	7/10/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "3J- DSD Confirmation - MAVNI- DACA.docx"	DP - Deliberative Process	Draft briefing paper prepared for the Deputy Secretary of Defense regarding Military Accessions Vital to the National Interest (MAVNI). Contains reviewer comments. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00068051	DoD00068047	PrivWith hold1728	PrivWith hold1728	7/7/2017	Attachment to email. Word document titled "Military Accessions Vital to the National Interest" with file name "MRA U -- DACA and Military Personnel Policy (MAVNI) (1)(SAB).DOCX"	DP - Deliberative Process	Draft briefing paper regarding Military Accessions Vital to the National Interest (MAVNI). Drafted pursuant to preparations for confirmation hearing of nominee to be Undersecretary of Defense for Personnel and Readiness. Contains reviewer comments and tracked changes. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00074450		PrivWith hold1729	PrivWith hold1730	2/13/2017	Email with subject line "FW: Weekly Report"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Email thread discussing preparation of internal DoD OGC weekly report.		Not relevant
DoD00082882	DoD00082880	PrivWith hold1731	PrivWith hold1733	12/5/2017	Attachment to email. Word document titled "U.S. Military/Coalition Presence in Syria Talking Points" with file name "Syria Messages and TPs FINAL 5 DEC 17.docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Syria policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00082888	DoD00082886	PrivWith hold1734	PrivWith hold1736	12/5/2017	Attachment to email. Word document titled "U.S. Military/Coalition Presence in Syria Talking Points" with file name "Syria Messages and TPs FINAL 5 DEC 17.docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns Syria policy.		Not relevant
DoD00082981	DoD00082979	PrivWith hold1737	PrivWith hold1739	10/17/2017	Attachment to email. Word document titled "Kurdistan Contingency Statement" with file name "17 OCT TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00083091	DoD00083089	PrivWith hold1740	PrivWith hold1748	9/13/2017	Attachment to email. Word document titled "Hurricane Irma" with file name "13 SEPT TOPLINES PRESS GUIDANCE.docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00083095	DoD00083093	PrivWith hold1749	PrivWith hold1757	9/13/2017	Attachment to email. Word document titled "Hurricane Irma" with file name "13 SEPT TOPLINES PRESS GUIDANCE.docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3107	DoD0008 3105	PrivWith hold1758	PrivWith hold1762	9/12/2017	Attachment to email. Word document titled "Hurricane Irma" with file name "12 SEPT TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 3110	DoD0008 3108	PrivWith hold1763	PrivWith hold1767	9/12/2017	Attachment to email. Word document titled "Hurricane Irma" with file name "12 SEPT TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3113	DoD0008 3111	PrivWith hold1768	PrivWith hold1772	9/12/2017	Attachment to email. Word document titled "Hurricane Irma" with file name "12 SEPT TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 3124	DoD0008 3121	PrivWith hold1773	PrivWith hold1773	8/31/2017	Attachment to email. Word document titled "Afghanistan Deployment Orders" with file name "TOPLINES - SECDEF signs deployment orders.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3125	DoD0008 3121	PrivWith hold1774	PrivWith hold1774	8/31/2017	Attachment to email. Word document titled "South Asia Strategy Roll Out" with file name "TOPLINES - South Asia Strategy 31 AUG.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 3130	DoD0008 3127	PrivWith hold1775	PrivWith hold1775	8/31/2017	Attachment to email. Word document titled "Afghanistan Deployment Orders" with file name "TOPLINES - SECDEF signs deployment orders.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3131	DoD0008 3127	PrivWith hold1776	PrivWith hold1776	8/31/2017	Attachment to email. Word document titled "South Asia Strategy Roll Out" with file name "TOPLINES - South Asia Strategy 31 AUG.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 3149	DoD0008 3145	PrivWith hold1777	PrivWith hold1781	8/30/2017	Attachment to email. Word document titled "Force Management Level Accounting Change - Afghanistan" with file name "30 AUGUST TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 1781 Balance not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3154	DoD0008 3150	PrivWith hold1782	PrivWith hold1786	8/30/2017	Attachment to email. Word document titled "Force Management Level Accounting Change - Afghanistan" with file name "30 AUGUST TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 1786. Balance not relevant.
DoD0008 3234	DoD0008 3232	PrivWith hold1787	PrivWith hold1790	8/17/2017	Attachment to email. Word document titled "US Presence in Syria" with file name "17 AUG TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3250	DoD0008 3247	PrivWith hold1791	PrivWith hold1801	8/14/2017	Attachment to email. Word document titled "F/A-18 crash in Bahrain" with file name "14 AUG TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 3558	DoD0008 3555	PrivWith hold1802	PrivWith hold1807	5/31/2017	Attachment to email. Word document titled "Afghanistan bombing" with file name "31 MAY TOP LINES GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00083586	DoD00083583	PrivWith hold1808	PrivWith hold1813	5/25/2017	Attachment to email. Word document titled "Mosul Civilian Casualty Investigation" with file name "25 MAY TOP LINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00083774	DoD00083772	PrivWith hold1814	PrivWith hold1818	11/20/2017	Attachment to email. Word document titled "Somalia / U.S. Airstrikes" with file name "20 NOV TOPLINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00083778	DoD00083776	PrivWith hold1819	PrivWith hold1823	11/20/2017	Attachment to email. Word document titled "Somalia / U.S. Airstrikes" with file name "20 NOV TOPLINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00083782	DoD00083780	PrivWith hold1824	PrivWith hold1828	11/20/2017	Attachment to email. Word document titled "Somalia / U.S. Airstrikes" with file name "20 NOV TOPLINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00083854	DoD00083851	PrivWith hold1829	PrivWith hold1839	8/14/2017	Attachment to email. Word document titled "F/A-18 crash in Bahrain" with file name "14 AUG TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00083858	DoD00083855	PrivWith hold1840	PrivWith hold1850	8/14/2017	Attachment to email. Word document titled "F/A-18 crash in Bahrain" with file name "14 AUG TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00083880	DoD00083878	PrivWith hold1851	PrivWith hold1855	8/8/2017	Attachment to email. Word document titled "Afghanistan forces" with file name "8 AUG TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00083883	DoD00083881	PrivWith hold1856	PrivWith hold1860	8/8/2017	Attachment to email. Word document titled "Afghanistan forces" with file name "8 AUG TOP LINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00083887	DoD00083884	PrivWith hold1861	PrivWith hold1865	8/7/2017	Attachment to email. Word document titled "MV-22 Mishap" with file name "7 AUG TOPLINES PRESS GUIDANCE (FINAL).docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00083891	DoD00083888	PrivWith hold1866	PrivWith hold1870	8/7/2017	Attachment to email. Word document titled "MV-22 Mishap" with file name "7 AUG TOPLINES PRESS GUIDANCE (FINAL).docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00083903	DoD00083900	PrivWith hold1871	PrivWith hold1878	8/4/2017	Attachment to email. Word document titled "Yemen / Shabwah Offensive" with file name "4 AUG -TOP LINES PRESS GUIDANCE.docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00083907	DoD00083904	PrivWith hold1879	PrivWith hold1886	8/4/2017	Attachment to email. Word document titled "Yemen / Shabwah Offensive" with file name "4 AUG -TOP LINES PRESS GUIDANCE.docx"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00084033	DoD00084031	PrivWith hold1887	PrivWith hold1891	7/13/2017	Attachment to email. Word document titled "France - Bastille Day" with file name "13 July - TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00084036	DoD00084034	PrivWith hold1892	PrivWith hold1896	7/13/2017	Attachment to email. Word document titled "France - Bastille Day" with file name "13 July - TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00084041	DoD00084039	PrivWith hold1897	PrivWith hold1897	7/7/2017	Attachment to email. Word document titled "READ AHEAD FOR PHONE CALL W/REP MIKE TURNER (R-OH)" with file name "Mike Turner Phone Call.docx"	DP - Deliberative Process	Briefing document to assist Secretary of Defense for phone call with U.S. House member. Concerns topics unrelated to transgender military policy.		Not relevant
DoD00084042	DoD00084039	PrivWith hold1898	PrivWith hold1898	7/7/2017	Attachment to email. Word document titled "READ AHEAD FOR PHONE CALL W/REP ADAM SMITH (D-WA)" with file name "Adam Smith Phone Call.docx"	DP - Deliberative Process	Briefing document to assist Secretary of Defense for phone call with U.S. House member. Concerns topics unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 4047	DoD0008 4045	PrivWith hold1899	PrivWith hold1899	7/7/2017	Attachment to email. Word document titled "READ AHEAD FOR PHONE CALL W/REP MIKE TURNER (R-OH)" with file name "Mike Turner Phone Call.docx"	DP - Deliberative Process	Briefing document to assist Secretary of Defense for phone call with U.S. House member. Concerns topics unrelated to transgender military policy.		Not relevant
DoD0008 4048	DoD0008 4045	PrivWith hold1900	PrivWith hold1900	7/7/2017	Attachment to email. Word document titled "READ AHEAD FOR PHONE CALL W/REP ADAM SMITH (D-WA)" with file name "Adam Smith Phone Call.docx"	DP - Deliberative Process	Briefing document to assist Secretary of Defense for phone call with U.S. House member. Concerns topics unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 4150	DoD0008 4147	PrivWith hold1901	PrivWith hold1906	5/25/2017	Attachment to email. Word document titled "Mosul Civilian Casualty Investigation" with file name "25 MAY TOP LINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 4297	DoD0008 4295	PrivWith hold1907	PrivWith hold1910	11/8/2017	Attachment to email. Word document titled "Former Airman Involved in Texas Mass Shooting" with file name "8 NOV TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00084301	DoD00084299	PrivWith hold1911	PrivWith hold1914	11/8/2017	Attachment to email. Word document titled "Former Airman Involved in Texas Mass Shooting" with file name "8 NOV TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00084305	DoD00084303	PrivWith hold1915	PrivWith hold1921	10/30/2017	Attachment to email. Word document titled "Staff Sgt. Melgar Death Investigation" with file name "TOPLINES 30 OCT 2017.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00084309	DoD00084307	PrivWith hold1922	PrivWith hold1928	10/30/2017	Attachment to email. Word document titled "Staff Sgt. Melgar Death Investigation" with file name "TOPLINES 30 OCT 2017.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00085382	DoD00085381	PrivWith hold1929	PrivWith hold1929	8/4/2017	Email with subject line "Draft PM -- Transgender in Military 2 Aug 2017"	EP - Executive Privilege	Email from White House staff to DoD, describing communications among them.	N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00085871	DoD00085869	PrivWith hold1930	PrivWith hold1950	8/28/2017	Attachment to email. PDF of memorandum from DoD Office of General Counsel with subject "Litigation hold for Doe et al. v. Trump, et al., No. 1;17-cv-1597 (D.D.C.)" with file name "DoD Litigation Hold with Attachments 8-28-17.pdf"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Litigation hold memorandum pursuant to <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.).	Y	AC and WP
DoD00085954	DoD00085953	PrivWith hold1951	PrivWith hold1954	12/21/2017	Email with subject line "FW: Doe Interrogatories and RFP's (Doe, et al. v. Trump, et al., No. 17-1597 (D.D.C.)"	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Email thread discussing process for responding and providing advice related to discovery requests in <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.).	Y	AC and WP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00086008	DoD00086007	PrivWith hold1955	PrivWith hold1956	12/5/2017	Email with subject line "RE: Request for Info on 2018 Scheduled Events"	EP - Executive Privilege	Email from DoD to White House Office of Cabinet Affairs, responding to WH request for information.		Not relevant
DoD00087182	DoD00087176	PrivWith hold1957	PrivWith hold1961	2/13/2018	Attachment to email. Word document titled "Korean Diplomacy" with file name "180213 TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00087190	DoD00087184	PrivWithhold1962	PrivWithhold1966	2/13/2018	Attachment to email. Word document titled "Korean Diplomacy" with file name "180213 TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00087449	DoD00087447	PrivWithhold1967	PrivWithhold1975	2/8/2018	Attachment to email. Word document titled "Sexual Harassment and Violence at the MSAs" with file name "180208 TOPLINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not deliberative. Produce PrivWithhold 1969. Balance not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00087455	DoD00087453	PrivWith hold1976	PrivWith hold1984	2/8/2018	Attachment to email. Word document titled "Sexual Harassment and Violence at the MSAs" with file name "180208 TOPLINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 1976 and 1978. Balance not relevant
DoD00087753	DoD00087751	PrivWith hold1985	PrivWith hold2004	1/30/2018	Attachment to email. Word document titled "FY2018 Defense Budget" with file name "180130 TOPLINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 1997. Balance not relevant.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00087772	DoD00087770	PrivWith hold2005	PrivWith hold2015	1/29/2018	Attachment to email. Word document titled "Meeting with ROK MOD" with file name "180129 TOPLINES PRESS GUIDANCE reviewed.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00087778	DoD00087776	PrivWith hold2016	PrivWith hold2026	1/29/2018	Attachment to email. Word document titled "Meeting with ROK MOD" with file name "180129 TOPLINES PRESS GUIDANCE reviewed.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 8316	DoD0008 8314	PrivWith hold2027	PrivWith hold2038	1/16/2018	Attachment to email. Word document titled "B-52s Arrive in Guam" with file name "180116 TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 8320	DoD0008 8318	PrivWith hold2039	PrivWith hold2050	1/16/2018	Attachment to email. Word document titled "B-52s Arrive in Guam" with file name "180116 TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 8484	DoD0008 8482	PrivWith hold2051	PrivWith hold2054	1/11/2018	Attachment to email. Word document titled "Afghanistan Video" with file name "180111 TOPLINES PRESS GUIDANCE reviewed.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 8803	DoD0008 8801	PrivWith hold2055	PrivWith hold2059	1/4/2018	Attachment to email. Word document titled "Pakistan Military Aid" with file name "180104 TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 2059. Otherwise not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00088809	DoD00088807	PrivWith hold2060	PrivWith hold2064	1/4/2018	Attachment to email. Word document titled "Pakistan Military Aid" with file name "180104 TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 2064. Otherwise not relevant
DoD00088873	DoD00088871	PrivWith hold2065	PrivWith hold2072	1/3/2018	Attachment to email. Word document titled "Army Casualty in Afghanistan" with file name "180103 TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 2072. Otherwise not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00088877	DoD00088875	PrivWith hold2073	PrivWith hold2080	1/3/2018	Attachment to email. Word document titled "Army Casualty in Afghanistan" with file name "180103 TOPLINES PRESS GUIDANCE.doc"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 2080. Otherwise not relevant.
DoD00088949	DoD00088947	PrivWith hold2081	PrivWith hold2087	1/2/2018	Attachment to email. Word document titled "Pakistan Military Aid" with file name "180102 TOPLINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 2085. Otherwise not relevant.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 8952	DoD0008 8950	PrivWith hold2088	PrivWith hold2094	1/2/2018	Attachment to email. Word document titled "Pakistan Military Aid" with file name "180102 TOPLINES PRESS GUIDANCE.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Redacted portion concerns policies and events unrelated to transgender military policy.		Not relevant
DoD0008 9014	DoD0008 9012	PrivWith hold2095	PrivWith hold2101	12/29/2017	Attachment to email. Word document titled "Civilian Casualties" with file name "171229 TOPLINES PRESS GUIDANCE reviewed.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.	N	Not deliberative. Produce PrivWithhold 2092. Otherwise not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00089020	DoD00089018	PrivWith hold2102	PrivWith hold2108	12/29/2017	Attachment to email. Word document titled "Civilian Casualties" with file name "171229 TOPLINES PRESS GUIDANCE reviewed.DOC"	DP - Deliberative Process	Internal talking points and press guidance document prepared to assist senior DoD leadership. Concerns policies and events unrelated to transgender military policy.		Not relevant
DoD00091189	DoD00091185	PrivWith hold2109	PrivWith hold2117	9/14/2017	PowerPoint Presentation titled "Implication of OSD Reorganization" with file name "100617_SLC_ATL_OSD-REorg_Lord_FINAL.PPTX"	DP - Deliberative Process	Presentation from Office of the Undersecretary of Defense (Acquisition, Technology, and Logistics) to senior DoD leadership re. implications of Office of Secretary of Defense Reorganization.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 1191	DoD0009 1185	PrivWith hold2118	PrivWith hold2118	10/16/2017	Excel spreadsheet titled, "MDAP MDA Delegation Status Sheet" with file name "MDAP_Horse Blanket_ratings_v3 c.xlsx"	DP - Deliberative Process	Spreadsheet summarizing progress of numerous defense weapon acquisition projects under the Major Defense Acquisition Program		Not relevant
DoD0009 4640	DoD0009 4628	PrivWith hold2119	PrivWith hold2121	8/1/2017	Word document titled, "Background on Military Accessions Vital to the National Interest (MAVNI) & Deferred Action for Childhood Arrivals (DACA)" with file name "MAVNI_DACA backgrounder (AP Smooth) (002) (002).docx"	DP - Deliberative Process	Background summary regarding concerns of U.S. Senator about the interaction of the "Military Accessions Vital to the National Interest" program and the Deferred Action for Childhood Arrivals program.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 4642	DoD0009 4628	PrivWith hold2122	PrivWith hold2122	5/30/2017	Word document titled, "Background Security Investigation Process: Talking Points" with file name "OPM Director TPs on NBIB.docx"	DPP - Deliberative Process Privilege	Talking points on Background Security Investigation Process mission that DoD assumed from the Office of Personnel Management.		Not relevant
DoD0009 4648	DoD0009 4628	PrivWith hold2123	PrivWith hold2125	1/12/2017	Word document titled, "DSD White Paper on Religious Accommodation" with file name "Religious Accommodation Talking Points.docx"	DPP - Deliberative Process Privilege	Deputy Secretary of Defense White Paper on religious accommodation issues across the military.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 4650	DoD0009 4628	PrivWith hold2126	PrivWith hold2127	7/13/2017	Word document with meeting notes with file name "SD REadiness Review Summary (002).docx"	DPP - Deliberative Process Privilege; EP - Executive Privilege	Draft of minutes of meeting with Deputy Secretary of Defense and senior White House budget and national security personnel about history of operating under continuing resolutions.		Not relevant
DoD0009 4882	DoD0009 4880	PrivWith hold2128	PrivWith hold2131	8/11/2017	Word document titled, "MAVNI Program" with file name "11 AUG TOP LINES PRESS GUIDANCE.docx"	DPP - Deliberative Process Privilege	Draft of points provided to news agencies in response to request for information about the "Military Accessions Vital to the National Interest" program, Somalia, freedom of navigation operations, and Russia.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 4885	DoD0009 4883	PrivWith hold2132	PrivWith hold2135	8/11/2017	Word document titled, "MAVNI Program" with file name "11 AUG TOP LINES PRESS GUIDANCE.docx"	DPP - Deliberative Process Privilege	Draft of points provided to news agencies in response to request for information about the "Military Accessions Vital to the National Interest" program, Somalia, freedom of navigation operations, and Russia.		Not relevant
DoD0009 5473	DoD0009 5471	PrivWith hold2136	PrivWith hold2136	7/31/2017	Word document titled, "Office Call w/Sen Majority Leader McConnell (R-KY)" with file name "SD TPs for Office Call Sen McConnell_8.2.17v 3.docx"	DPP - Deliberative Process Privilege	Notes in preparation for call w/ Senate Majority Leader regarding nominations to Senate confirmed DoD posts, continuing resolutions, DoD budget.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8490	DoD0009 8487	PrivWith hold2137	PrivWith hold2137	5/13/2017	Attachment to email. Word document titled "Core Themes if Confirmed as Deputy Secretary" with file name "Core Themes as DSD_v1.docx"	DPP - Deliberative Process Privilege	Summarizing talking points of confirmation hearing testimony for Deputy Secretary of Defense position.		Not relevant
DoD0009 8491	DoD0009 8487	PrivWith hold2138	PrivWith hold2138	5/11/2017	Attachment to email. Word document titled "FY 2017 National Defense Authorization Act Reorganization of AT&L and DCMO" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?3_Hot Topics Paper_ATL and CMO Reorganizations.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding FY 2017 National Defense Authorization Act Reorganization of processes of current Undersecretary of Defense for Acquisition, Technology, and Logistics, and the Deputy Chief Management Officer		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00098492	DoD00098487	PrivWith hold2139	PrivWith hold2139	5/11/2017	Attachment to email. Word document titled "Overmatch and Third Offset Strategy" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?4_Hot Topics Paper: Overmatch Third Offset.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding development of military technological capabilities.		Not relevant
DoD00098493	DoD00098487	PrivWith hold2140	PrivWith hold2140	5/11/2017	Attachment to email. Word document titled "Making DoD Auditable" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?5_Hot Topics Paper_Auditability.docx"	DPP - Deliberative Process Privilege	Overview, background and key points regarding financial audit of DoD.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8494	DoD0009 8487	PrivWith hold2141	PrivWith hold2141	5/11/2017	Attachment to email. Word document titled "The Campaign to Defeat the Islamic State of Iraq and Syria (ISIS)" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?6_Hot Topics Paper_DISIS.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Islamic State of Iraq and Syria.		Not relevant
DoD0009 8495	DoD0009 8487	PrivWith hold2142	PrivWith hold2142	5/11/2017	Attachment to email. Word document titled "Russia, Ukraine, and NATO Overview" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?7_Hot Topics Paper_Russia Ukraine NATO Overview.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Russia, Ukraine, and NATO.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8496	DoD0009 8487	PrivWith hold2143	PrivWith hold2143	5/11/2017	Attachment to email. Word document titled "Iran Overview" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?8_Hot Topics Paper_Iran.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Iran.		Not relevant
DoD0009 8497	DoD0009 8487	PrivWith hold2144	PrivWith hold2144	5/11/2017	Attachment to email. Word document titled "China Military Modernization, South China Sea, and Freedom of Navigation Issues" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?9_China Military Modernization and SCS FONOPs.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding China Military Modernization, South China Sea, and Freedom of Navigation Issues.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8498	DoD0009 8487	PrivWith hold2145	PrivWith hold2145	5/11/2017	Attachment to email. Word document titled "North Korea" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?10_Hot Topics Paper_North Korea.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding North Korea.		Not relevant
DoD0009 8499	DoD0009 8487	PrivWith hold2146	PrivWith hold2146	5/11/2017	Attachment to email. Word document titled "The Rebalance to the Asia-Pacific" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?11_Hot Topics Paper_Asia Rebalance.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding policy in the Asia-Pacific region.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8500	DoD0009 8487	PrivWith hold2147	PrivWith hold2147	5/11/2017	Attachment to email. Word document titled "Nuclear Modernization" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?12_Hot Topics Paper_Nuclear Modernization.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding modernization of nuclear technology.		Not relevant
DoD0009 8502	DoD0009 8487	PrivWith hold2148	PrivWith hold2148	5/11/2017	Attachment to email. Word document titled "F-35 LIGHTNING II JOINT STRIKE FIGHTER" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?14_ F-35 - Hot Topic.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding F-35 Lightning II Joint Strike Fighter Program.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8503	DoD0009 8487	PrivWith hold2149	PrivWith hold2149	5/11/2017	Attachment to email. Word document titled "Key Issues in U.S. Ballistic Missile Defense Policy and Posture" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?15_Hot Topics Paper_Missile Defense.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding U.S. Ballistic Missile Defense Policy and Posture		Not relevant
DoD0009 8504	DoD0009 8487	PrivWith hold2150	PrivWith hold2150	4/5/2017	Attachment to email. Word document titled "CVN-78 / Ford Class Carrier" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?16_CVN Delivery-Cost Overruns - Hot Topic.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding CVN-78 / Ford Class Carrier program		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8505	DoD0009 8487	PrivWith hold2151	PrivWith hold2151	5/11/2017	Attachment to email. Word document titled "COLUMBIA Ballistic Missile Submarine" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?17_Columbia SSBN - Hot Topic.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding COLUMBIA Ballistic Missile Submarine program.		Not relevant
DoD0009 8506	DoD0009 8487	PrivWith hold2152	PrivWith hold2152	3/31/2017	Attachment to email. Word document titled "Littoral Combat Ship (LCS) / Frigate Program" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?18_LittoralCombat Ship (LCS) -Hot Topic.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Littoral Combat Ship (LCS) and Frigate programs		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8507	DoD0009 8487	PrivWith hold2153	PrivWith hold2153	5/11/2017	Attachment to email. Word document titled "DoD Detention Operations and Policy Issues" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?19_Hot Topics Paper_GTMO and Detainee Issues.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding DoD detention operations and policy issues.		Not relevant
DoD0009 8509	DoD0009 8487	PrivWith hold2154	PrivWith hold2154	4/4/2017	Attachment to email. Word document titled "Sexual Assault Prevention and Response / Social Media" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?21_Sexual Assault Prevention and Social Media - Hot Topic.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding sexual assault prevention and response and social media tools to combat this issue in DoD.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8511	DoD0009 8487	PrivWith hold2155	PrivWith hold2155	5/11/2017	Attachment to email. Word document titled "Base Realignemnt and Closure (BRAC) Issues" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?23_Hot Topics Paper_BRAC.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Base Realignment and Closure (BRAC) issues.		Not relevant
DoD0009 8514	DoD0009 8487	PrivWith hold2156	PrivWith hold2156	5/11/2017	Attachment to email. Word document titled "Overview: Goldwater-Nichols Reforms" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?26_Hot Topics Paper_Goldwater Nichols Reform.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Goldwater-Nichols reforms, related to organization of DoD.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8516	DoD0009 8487	PrivWith hold2157	PrivWith hold2157	5/11/2017	Attachment to email. Word document titled "Afghanistan Key Issues" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?28_Hot Topics Paper_Afghanistan.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Afghanistan policy		Not relevant
DoD0009 8517	DoD0009 8487	PrivWith hold2158	PrivWith hold2158	5/11/2017	Attachment to email. Word document titled "Overall Counterterrorism Policy" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?29_Hot Topics Paper_CT Policy.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points DoD's Overall Counterterrorism Policy		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8518	DoD0009 8487	PrivWith hold2159	PrivWith hold2159	5/11/2017	Attachment to email. Word document titled "Israel Key Issues" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?30_Hot Topics Paper_Israel.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Israel		Not relevant
DoD0009 8519	DoD0009 8487	PrivWith hold2160	PrivWith hold2160	5/11/2017	Attachment to email. Word document titled "Yemen Key Issues" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?31_Hot Topics Paper_Yemen.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Yemen		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00098520	DoD00098487	PrivWith hold2161	PrivWith hold2161	4/4/2017	Attachment to email. Word document titled "Military Compensation Reform" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?32_Military Compensation Reform - Hot Topic.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding military compensation reform.		Not relevant
DoD00098523	DoD00098487	PrivWith hold2162	PrivWith hold2162	12/20/2016	Attachment to email. Word document titled "KC-46 Pegasus" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?35_KC-46 Tanker.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding KC-46 aircraft recapitalization process and the air-refueling efforts of the AF, Navy, and USMC.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 8524	DoD0009 8487	PrivWith hold2163	PrivWith hold2163	12/19/2016	Attachment to email. Word document titled "PRESIDENTIAL AIRCRAFT RECAPITALIZATION PROGRAM" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?36_Presidential Aircraft Recapitalization - Hot Topic.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding Presidential aircraft recapitalization program.		Not relevant
DoD0009 8525	DoD0009 8487	PrivWith hold2164	PrivWith hold2164	3/31/2017	Attachment to email. Word document titled "A-10" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?37_A-10 - Hot Topic.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding A-10 airplane maintenance and operations in response to Congressional interest.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00098526	DoD00098487	PrivWith hold2165	PrivWith hold2165	5/11/2017	Attachment to email. Word document titled "Efficiencies Overview" with file name "3_Hot Topics Paper_ATL and CMO Reorganizations.zip ?1_Hot Topics Paper_Efficiencies.docx"	DPP - Deliberative Process Privilege	Overview, background, and key points regarding efforts by DoD to more efficiently use its budget, achieve savings, and redirect financial resources.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101922		PrivWith hold2166	PrivWith hold2167	1/4/2017	Email with subject line "Fwd: URGENT: DOD Cab Exit Memo"	DPP - Deliberative Process Privilege; EP - Executive Privilege	Email between senior DoD officials containing deliberations regarding the public dissemination of an exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration chose to highlight in the last month of the administration and attaching that exit memo. Email chain contains comments and deliberation from senior WH/EOP officials regarding the public dissemination of the memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101925		PrivWith hold2168	PrivWith hold2170	1/3/2017	Email with subject line "RE: DOD Exit Memo - Remaining NSC Feedback"	DPP - Deliberative Process Privilege; EP - Executive Privilege	Email between senior DoD officials attaching draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration. Email chain contains comments and edits on the draft exit memo from senior WH/EOP officials.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101927		PrivWith hold2171	PrivWith hold2173	12/15/2016	Email with subject line "RE: DOD Exit Memo - Remaining NSC Feedback"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration and attaching draft memo containing edits in track changes.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101930		PrivWith hold2174	PrivWith hold2175	12/15/2016	Email with subject line "RE: DOD Exit Memo - Remaining NSC Feedback"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration and providing edits from WH/EOP officials from the NSC on the draft memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101933		PrivWith hold2176	PrivWith hold2177	12/12/2016	Email with subject line "RE: NSC EDITS: DOD Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Discussion of edits and the actual edits to the counter terrorism section of a draft memo highlighting the accomplishments of DoD under the Obama Administration from 2009-2006 provided by WH/EOP officials in NSC.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101936		PrivWith hold2178	PrivWith hold2179	12/9/2016	Email with subject line "RE: NSC EDITS: DOD Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration and providing edits from WH/EOP on the draft memo in track changes.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101942		PrivWith hold2180	PrivWith hold2180	12/9/2016	Email with subject line "Transparency Report"	Attorney-Client Privilege; DPP - Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials discussing edits to a draft exit memo regarding DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration. Also, seeking attorney review of a section of the draft memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101946		PrivWith hold2181	PrivWith hold2181	12/8/2016	Email with subject line "Exit Memo"	Deliberative Process Privilege	Email between senior DoD officials attaching draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and seeking input from senior DoD officials.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00101948		PrivWith hold2182	PrivWith hold2182	12/8/2016	Email with subject line "Latest Exit Memo"	Deliberative Process Privilege	Email between senior DoD officials attaching draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and discussing WH/EOP edits of the draft memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 2019		PrivWith hold2183	PrivWith hold2183	12/8/2016	Email with subject line "FW: NSC EDITS: DOD Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email between senior DoD officials attaching draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and containing deliberations on further review of the draft memo. Email chain includes discussion of edits from WH/EOP officials at NSC.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 2365	DoD0010 2364	PrivWith hold2184	PrivWith hold2190	12/6/2016	Email with subject line "RE: Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration and attaching a draft of the exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00102410	DoD00102409	PrivWith hold2191	PrivWith hold2192	12/5/2016	Email with subject line "RE: End of Administration Memo"	Deliberative Process Privilege	Email from a senior DoD officials to other senior DoD officials discussing the creation of a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration, asking for input on the draft memo, and attaching an draft of that exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 2414	DoD0010 2413	PrivWith hold2193	PrivWith hold2194	12/5/2016	Email with subject line "RE: End of Administration Memo"	Deliberative Process Privilege	Email between senior DoD officials attaching draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration with edits from senior WH/EOP officials.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 2422	DoD0010 2421	PrivWith hold2195	PrivWith hold2201	12/5/2016	Email with subject line "RE: Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00102702	DoD00102701	PrivWith hold2202	PrivWith hold2204	11/29/2016	Email with subject line "RE: Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations and input from various EOP officials regarding DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlight in a draft exit memo in the last month of the administration.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 2751	DoD0010 2750	PrivWith hold2205	PrivWith hold2206	11/29/2016	Email with subject line "Fwd: DRAFT FOR REVIEW: DoD End of Administration Memo for Submission to the White House"	Deliberative Process Privilege	Email between senior DoD officials attaching draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration.		Not relevant
DoD0010 2783	DoD0010 2782	PrivWith hold2207	PrivWith hold2207	11/28/2016	Email with subject line "RE: DRAFT FOR REVIEW: DoD End of Administration Memo for Submission to the White House"	Deliberative Process Privilege	Email between senior DoD officials proposing edits to a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00102796	DoD00102795	PrivWith hold2208	PrivWith hold2209	11/28/2016	Email with subject line "Look ahead..."	Deliberative Process Privilege	Email between senior DoD officials containing deliberations on several topics unrelated to the litigation (transition, a forthcoming speech, paid contractor sick leave, and updating a DoD Instruction regarding the arming of servicemembers). Email also contains a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00102874	DoD00102873	PrivWith hold2210	PrivWith hold2210	11/23/2016	Email with subject line "DRAFT FOR REVIEW: DoD End of Administration Memo for Submission to the White House"	Deliberative Process Privilege	Email between senior DoD officials discussing the creation of a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and attaching an initial draft of that exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00102903	DoD00102902	PrivWith hold2211	PrivWith hold2212	11/22/2016	Email with subject line "RE: Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email between senior DoD officials and senior WH/EOP officials discussing the creation of a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and attaching an initial draft of that exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00102976	DoD00102975	PrivWith hold2213	PrivWith hold2214	11/21/2016	Email with subject line "FW: End of Administration Memo - Hedger"	Deliberative Process Privilege	Senior DoD officials forwarding to his own personal email address a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration along with the underlying email chain containing deliberations on the creation of the draft exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00102991	DoD00102990	PrivWith hold2215	PrivWith hold2216	11/21/2016	Email with subject line "RE: Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration and attaching the draft memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00102999	DoD00102998	PrivWith hold2217	PrivWith hold2217	11/21/2016	Email with subject line "RE: Exit Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration and attaching the draft memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00103007	DoD00103006	PrivWith hold2218	PrivWith hold2219	11/21/2016	Email with subject line "RE: End of Administration Memo"	Deliberative Process Privilege; EP - Executive Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration and attaching the draft memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00103029	DoD00103028	PrivWith hold2220	PrivWith hold2221	11/20/2016	Email with subject line "Re: End of Administration Memo"	Deliberative Process Privilege	Email from a senior DoD officials to other senior DoD officials discussing the creation of a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration, asking for input on the draft memo, and attaching an draft of that exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00103038	DoD00103037	PrivWith hold2222	PrivWith hold2224	11/19/2016	Email with subject line "RE: End of Administration Memo"	Deliberative Process Privilege	Email from a senior DoD officials to other senior DoD officials discussing the creation of a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration, attaching the draft of that exit memo, and discussing inputs to that draft exit memo from the Military Services.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00103041	DoD00103040	PrivWith hold2225	PrivWith hold2228	11/19/2016	Email with subject line "RE: End of Administration Memo (UNCLASSIFIED)"	Deliberative Process Privilege	Email from a senior DoD official to other senior DoD officials discussing the creation of a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration, attaching the draft of that exit memo, and discussing inputs to that draft exit memo from the Military Services.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00103044	DoD00103043	PrivWith hold2229	PrivWith hold2229	11/19/2016	Email with subject line "RE: USAF End of Administration Input Memo"	Deliberative Process Privilege	Email from a senior DoD official seeking inputs from senior Air Force officials on a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and attaching the draft of that exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 3047	DoD0010 3046	PrivWith hold2230	PrivWith hold2230	11/19/2016	Email with subject line "RE: accomplishments"	Deliberative Process Privilege	Email from a senior DoD official seeking inputs from senior Navy officials on a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and attaching the draft of that exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00103050	DoD00103049	PrivWith hold2231	PrivWith hold2232	11/19/2016	Email with subject line "Fwd: End of Administration Memo"	Deliberative Process Privilege	Email from senior DoD official seeking inputs from other senior DoD officials on a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and attaching the draft of that exit memo.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00103062	DoD00103061	PrivWith hold2233	PrivWith hold2233	11/18/2016	Email with subject line "End of Administration Memo"	Deliberative Process Privilege	Email from senior DoD official seeking inputs from other senior DoD officials on a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration and attaching the draft of that exit memo.		Not relevant
DoD00103808	DoD00103803	PrivWith hold2234	PrivWith hold2234	11/2/2016	Word document titled, "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 2 NOV 2016.doc"	Deliberative Process Privilege	Internal DoD document containing talking points and statistics regarding mission against ISIL.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 3809	DoD0010 3803	PrivWith hold2235	PrivWith hold2236	11/2/2016	Attachment to email. Word document titled "Budget Amendment" with file name "Budget Amendment - 2 OCT 2016.docx"	Deliberative Process Privilege	Internal DoD document containing talking points regarding a budget amendment for CENTCOM operations to counter-ISIL.		Not relevant
DoD0010 3859	DoD0010 3857	PrivWith hold2237	PrivWith hold2237	11/1/2016	Attachment to email. Word document titled, "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 1 NOV 2016.doc"	Deliberative Process Privilege	Internal DoD document containing talking points and statistics regarding mission against ISIL.		Not relevant
DoD0010 3862	DoD0010 3860	PrivWith hold2238	PrivWith hold2238	11/1/2016	Attachment to email. Word document titled, "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 1 NOV 2016.doc"	Deliberative Process Privilege	Internal DoD document containing talking points and statistics regarding mission against ISIL.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 5101	DoD0010 5094	PrivWith hold2239	PrivWith hold2239	10/3/2016	Attachment to email. Word document titled, "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 03 OCT 2016.doc"	Deliberative Process Privilege	Internal DoD document containing talking points and statistics regarding mission against ISIL.		Not relevant
DoD0010 5115	DoD0010 5113	PrivWith hold2240	PrivWith hold2244	10/3/2016	Attachment to email. Word document titled "Syria – "Verge of Suspension" and One Year Since Russia Intervention" with file name "PG 20161003 Syria Updated.docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points in response to potential questions on progress in Syria one year after Russian intervention		Not relevant
DoD0010 5117	DoD0010 5113	PrivWith hold2245	PrivWith hold2245	10/3/2016	Attachment to email. Word document titled "Syria HVI strike on al-Qaeda leader" with file name "161003 Syria HVI AQ strike Abu Faraj.docx"	Deliberative Process Privilege	Internal DoD document containing talking points on a Syrian strike on a High-value al-Qaeda leader.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 5119	DoD0010 5113	PrivWith hold2246	PrivWith hold2246	10/3/2016	Attachment to email. Word document titled "Afghanistan operational updates" with file name "Afghanistan operational updates.docx"	Deliberative Process Privilege	Internal DoD document containing talking points on Afghanistan operational updates for leadership.		Not relevant
DoD0010 5120	DoD0010 5113	PrivWith hold2247	PrivWith hold2247	10/3/2016	Attachment to email. Word document titled, "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 03 OCT 2016.doc"	Deliberative Process Privilege	Internal DoD document containing talking points and statistics regarding mission against ISIL.		Not relevant
DoD0010 5122	DoD0010 5113	PrivWith hold2248	PrivWith hold2252	10/3/2016	Attachment to email. Word document titled "US Support to GNA in Libya" with file name "Libya Strikes 3 OCT 2016.docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points in response to potential questions on US support to interim government in Libya and airstrikes in that area.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 5126	DoD0010 5113	PrivWith hold2253	PrivWith hold2259	10/3/2016	Attachment to email. Word document titled "Philippines - Pres. Duterte Comments" with file name "PG 20161003 - Philippines - Pres. Duterte Comments.docx"	Deliberative Process Privilege	Internal DoD document providing background on comments by Philippines Pres. Duterte in anticipation of media enquiries.		Not relevant
DoD0010 5127	DoD0010 5113	PrivWith hold2260	PrivWith hold2260	10/3/2016	Attachment to email. Word document titled "Iraq Humanitarian Assistance" with file name "161003 Iraq HA.DOCX"	Deliberative Process Privilege	Internal DoD document with talking points on Iraqi humanitarian assistance.		Not relevant
DoD0010 5128	DoD0010 5113	PrivWith hold2261	PrivWith hold2264	10/3/2016	Attachment to email. Word document titled "Russia in Syria" with file name "161003 Russia in Syria.docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points in response to potential questions about Russian activities in Syria.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 5129	DoD0010 5113	PrivWith hold2265	PrivWith hold2270	10/3/2016	Attachment to email. Word document titled "ROK: Terminal High Altitude Area Defense" with file name "PG 20161003 -THAAD ROK Decision Update Policy.docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points in response to potential questions about Korea Terminal High Altitude Area Defense operations.		Not relevant
DoD0010 5130	DoD0010 5113	PrivWith hold2271	PrivWith hold2271	10/3/2016	Attachment to email. Word document titled "North Korea/Japan Defense" with file name "PG 20161003 - North Korea Japan Defense.docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points in response to potential questions about North Korea and Japan.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00105798	DoD00105795	PrivWith hold2272	PrivWith hold2273	9/8/2016	Attachment to email. Word document titled "BACKGROUND PAPER ON HAF CRISIS MANAGEMENT AND CONTINGENCY PLANNING AND EXECUTION" with file name "Transition_AF_SAF_AQ_TAB 11_FOUO Crisis Management and Contingency Plan.docx"	Deliberative Process Privilege	Background document regarding crisis management and contingency planning for National Capital Region.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 5809	DoD0010 5795	PrivWith hold2274	PrivWith hold2274	9/8/2016	Attachment to email. Word document titled "EFFECTS OF MEETING HIGHER END STRENGTH AND WAY AHEAD" with file name "Transition_AF_TA B 3_Initiatives and Actions_3d_Manpower_Effects of Meeting Higher End Strength and Way Ahead.docx"	Deliberative Process Privilege	Background document regarding efforts to increase numbers of active duty servicemembers in the Air Force.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00105812	DoD00105795	PrivWith hold2275	PrivWith hold2277	8/9/2016	Attachment to email. Word document titled "USAF 2016 NUCLEAR POSTURE PRIORITIES/POSITIONS" with file name "Transition_AF_TAB 3_Initiatives and Actions_5a_AF Nuclear Issues_Nuclear Posture Status.docx"	Deliberative Process Privilege	Background document regarding US Air Force's 2016 Nuclear Posture Priorities and Positions.		Not relevant
DoD00105813	DoD00105795	PrivWith hold2278	PrivWith hold2278	8/15/2016	Attachment to email. Word document titled "ICBM Modernization" with file name "Transition_AF_TAB 3_Initiatives and Actions_5b_AF Nuclear Issues_ICBM Modernization.docx"	Deliberative Process Privilege	Background document regarding Intercontinental Ballistic Missile (ICBM) modernization.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00105814	DoD00105795	PrivWith hold2279	PrivWith hold2279	9/6/2016	Attachment to email. Word document titled "LONG RANGE STANDOFF" with file name "Transition_AF_TA B 3_Initiatives and Actions_5c_AF Nuclear Issues_Long Range Stand Off (LRSO).docx"	Deliberative Process Privilege	Background document regarding the "Long Range Stand Off" weapons program.		Not relevant
DoD00105821	DoD00105795	PrivWith hold2280	PrivWith hold2280	9/7/2016	Attachment to email. Word document titled "Joint Surveillance and Target Attack Radar System (JSTARS) Recapitalization (Recap) Program" with file name "Transition_AF_TA B 3_Initiatives and Actions_7e_Moder nization_JSTARS Recapitalization Program.docx"	Deliberative Process Privilege	Background document regarding Joint Surveillance and Target Attack Radar System (JSTARS) recapitalization.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 5848	DoD0010 5845	PrivWith hold2281	PrivWith hold2282	9/8/2016	Attachment to email. Word document titled "BACKGROUND PAPER ON HAF CRISIS MANAGEMENT AND CONTINGENCY PLANNING AND EXECUTION" with file name "Transition_AF_SAF_AQ_TAB 11_FOUO Crisis Management and Contingency Plan.docx"	Deliberative Process Privilege	Background document regarding crisis management and contingency planning for National Capital Region.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 5863	DoD0010 5845	PrivWith hold2283	PrivWith hold2283	8/15/2016	Attachment to email. Word document titled "ICBM Moderinzation" with file name "Transition_AF_TA B 3_Initiatives and Actions_5b_AF Nuclear Issues_ICBM Modernization.doc x"	Deliberative Process Privilege	Background document regarding Intercontinental Ballistic Missile (ICBM) modernization.		Not relevant
DoD0010 5864	DoD0010 5845	PrivWith hold2284	PrivWith hold2284	9/6/2016	Attachment to email. Word document titled "LONG RANGE STAND OFF" with file name "Transition_AF_TA B 3_Initiatives and Actions_5c_AF Nuclear Issues_Long Range Stand Off (LRSO).docx"	Deliberative Process Privilege	Background document regarding the Long Range Stand Off (LRSO) weapon.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 5865	DoD0010 5845	PrivWith hold2285	PrivWith hold2285	8/31/2016	Attachment to email. Word document titled "THIRD OFFSET: A STRATEGY FOR INNOVATION" with file name "Transition_AF_TAB 3_Initiatives and Actions_6a_Innovation_Third Offset_A Strategy for Innovation.docx"	Deliberative Process Privilege	Background document regarding development of military technological capabilities.		Not relevant
DoD0010 6015	DoD0010 6013	PrivWith hold2286	PrivWith hold2286	9/15/2016	Attachment to email. Word document titled "Afghanistan: SIGAR report, corruption" with file name "160915 SIGAR report on Afghan corruption.docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points in response to potential questions about Afghanistan		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 6016	DoD0010 6013	PrivWith hold2287	PrivWith hold2287	9/15/2016	Attachment to email. Word document titled "Anti ISIL Facts and Stats" with file name "ANTI-ISIL FACTS 15 SEP 2016.doc"	Deliberative Process Privilege	Internal DoD document containing talking points and statistics regarding mission against ISIL.		Not relevant
DoD0010 6021	DoD0010 6013	PrivWith hold2288	PrivWith hold2293	9/15/2016	Attachment to email. Word document titled "JOINT IMPLEMENTATION CELL – HARD Q&A" with file name "091516 DoD JIC Hard QA.DOCX"	Deliberative Process Privilege	Internal DoD document providing talking points in response to possible questions regarding ongoing negotiations about Syria.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 6022	DoD0010 6013	PrivWith hold2294	PrivWith hold2295	9/15/2016	Attachment to email. Word document titled "Iran – Unprofessional Interaction with Two US Maritime Patrol Aircraft" with file name "160915 Iran - Unprofessional Interaction with Two US Maritime Patrol Air....docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points in response to potential questions about military incident in Strait of Hormuz.		Not relevant
DoD0010 6024	DoD0010 6013	PrivWith hold2296	PrivWith hold2301	9/15/2016	Attachment to email. Word document titled "North Korea, Nuclear Weapons Test" with file name "PG 20160915 - DPRK Nuclear Test.docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points to anticipated questions about recent events in North Korea.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 6025	DoD0010 6013	PrivWith hold2302	PrivWith hold2305	9/15/2016	Attachment to email. Word document titled "Philippines - Pres. Duterte Comments" with file name "PG 20160915 - Philippines - Pres. Duterte Comments.docx"	Deliberative Process Privilege	Internal DoD document providing background on comments by Philippines Pres. Duterte in anticipation of media enquiries.		Not relevant
DoD0010 6121	DoD0010 6119	PrivWith hold2306	PrivWith hold2313	9/13/2016	Attachment to email. Word document titled "Syria Arrangement" with file name "PG 20160913 Syria Post Geneva Arrangement.docx"	Deliberative Process Privilege	Internal DoD document providing background and talking points to expected questions about Syria.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 6122	DoD0010 6119	PrivWith hold2314	PrivWith hold2318	9/13/2016	Attachment to email. Word document titled "Philippines - Pres. Duterte Comments" with file name "PG 20160913 - Philippines - Pres. Duterte Comments.docx"	Deliberative Process Privilege	Internal DoD document providing background on comments by Philippines Pres. Duterte in anticipation of media enquiries.		Not relevant
DoD0010 6123	DoD0010 6119	PrivWith hold2319	PrivWith hold2319	9/14/2016	Attachment to email. Word document titled "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 14 SEP 2016.doc"	Deliberative Process Privilege	Internal DoD document containing talking points and statistics regarding mission against ISIL.		Not relevant
DoD0010 7021	DoD0010 7019	PrivWith hold2320	PrivWith hold2320	8/26/2016	Attachment to email. Word document titled "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 26 AUG 2016.doc"	Deliberative Process Privilege	Internal DoD document containing talking points and statistics regarding mission against ISIL.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00107400	DoD00107397	PrivWith hold2321	PrivWith hold2333	8/19/2016	PDF of info memo with subject "Update -- Force of the Future Tranches V/VI and General/Flag Officer Matters" with file name "Update-Force of the Future V-VI.pdf"	Deliberative Process Privilege	Memo from Acting Undersecretary of Defense (Personnel and Readiness) to SecDef regarding Force of the Future program.		Not relevant
DoD00107404	DoD00107397	PrivWith hold2334	PrivWith hold2346	8/19/2016	PDF of a memorandum for the Secretary of Defense with the subject line "Dual Hat" with file name "Dual Hat Memo.pdf"	Deliberative Process Privilege	Memo from Deputy SecDef to SecDef on leadership structure of the US Cyber Command and the National Security Agency		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00107409	DoD00107397	PrivWith hold2347	PrivWith hold2353	8/18/2016	Word document labeled "draft" titled "OUTLINE1 FOR FY17 BUDGET/NDAA SPEECH NATIONAL PRESS CLUB, WASHINGTON, DC TBD-DAY BETWEEN AUG. 29 AND SEPT. 6, 2016" with file name "National Press Club Budget Speech Outline Draft 1.0.docx"	Deliberative Process Privilege	Speechwriter's outline draft for speech about the budget to be given by Secretary of Defense at the National Press club.		Not relevant
DoD00107414	DoD00107397	PrivWith hold2354	PrivWith hold2355	8/18/2016	PDF of memo with the subject line "Reprogramming Actions Update" with file name "Untitled.pdf"	Deliberative Process Privilege	Memo to SecDef from Under Secretary of Defense (Comptroller) regarding reprogramming actions.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 7434	DoD0010 7430	PrivWith hold2356	PrivWith hold2368	8/19/2016	PDF of info memo with subject "Update -- Force of the Future Tranches V/VI and General/Flag Officer Matters" with file name "Update-Force of the Future V-VI.pdf"	Deliberative Process Privilege	Memo from Acting Undersecretary of Defense (Personnel and Readiness) to SecDef regarding Force of the Future program.		Not relevant
DoD0010 7438	DoD0010 7430	PrivWith hold2369	PrivWith hold2381	8/19/2016	PDF of a memorandum for the Secretary of Defense with the subject line "Dual Hat" with file name "Dual Hat Memo.pdf"	Deliberative Process Privilege	Memo from Deputy SecDef to SecDef on leadership structure of the US Cyber Command and the National Security Agency		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 7442	DoD0010 7430	PrivWith hold2382	PrivWith hold2388	8/18/2016	Draft Word document titled "INSPECTORS GENERAL TOWN HALL OPENING REMARKS MARK CENTER AUDITORIUM, ALEXANDRIA, VA THURSDAY, AUGUST 26, 2016" with file name "IG Town Hall Draft 1.0.docx"	Deliberative Process Privilege	Speechwriter's draft for remarks made to DoD Inspector General Town Hall.		Not relevant
DoD0010 7443	DoD0010 7430	PrivWith hold2389	PrivWith hold2395	8/18/2016	Word document labeled "draft" titled "OUTLINE1 FOR FY17 BUDGET/NDAA SPEECH NATIONAL PRESS CLUB, WASHINGTON, DC TBD-DAY BETWEEN AUG. 29 AND SEPT. 6, 2016" with file name "National Press Club Budget Speech Outline Draft 1.0.docx"	Deliberative Process Privilege	Speechwriter's outline draft for speech about the budget to be given by Secretary of Defense at the National Press club.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00107448	DoD00107430	PrivWith hold2396	PrivWith hold2397	8/18/2016	PDF of memo with the subject line "Reprogramming Actions Update" with file name "Untitled.pdf"	Deliberative Process Privilege	Confidential memorandum, dated 8/18/2016, from M. McCord, Under Secretary of Defense (Comptroller); Chief Financial Officer, to the Secretary of Defense, concerning the status of actions for the reprogramming of funds appropriated to DOD, including summaries of those actions and a recommendation regarding the Secretary's action		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00107453	DoD00107450	PrivWith hold2398	PrivWith hold2410	8/19/2016	PDF of info memo with subject "Update -- Force of the Future Tranches V/VI and General/Flag Officer Matters" with file name "Update-Force of the Future V-VI.pdf"	Deliberative Process Privilege	Confidential memorandum dated 8/19/2016, from P. Levine, Acting Under Secretary of Defense, to Secretary of Defense, providing a summary of work done on the "forces of the future" initiative. The memo describes pre-decisional deliberations of DoD in that the efforts and discussions described in the memorandum pre-date the roll-out of the "forces of the future" program.		Not relevant

DoD0010 7457	DoD0010 7450	PrivWith hold2411	PrivWith hold2423	8/19/2016	PDF of a memorandum for the Secretary of Defense with the subject line "Dual Hat" with file name "Dual Hat Memo.pdf"	Deliberative Process Privilege	Confidential memorandum from R. Work, Deputy Secretary of Defense, to the Secretary of Defense, dated 8/19/2016, concerning proposed changes to authority delegated to Commander of CYBERCOM. It is predecisional because the memorandum was drafted before the Secretary finally decided on a memorandum, a draft of which is included in the package, from the Secretary of Defense to the President, notifying the President of the Secretary's	Not relevant
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Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
							decision regarding the delegated authority.		

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00107461	DoD00107450	PrivWith hold2424	PrivWith hold2430	8/18/2016	Draft Word document titled "INSPECTORS GENERAL TOWN HALL OPENING REMARKS MARK CENTER AUDITORIUM, ALEXANDRIA, VA THURSDAY, AUGUST 26, 2016" with file name "IG Town Hall Draft 1.0.docx"	Deliberative Process Privilege	Confidential draft of speech prepared for the Secretary of defense. The speech is scheduled for 8/26/2016. The draft is dated 8/18/2016, and marked draft 1.0. The draft is predecisional as it was prepared prior to the date of the speech.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 7462	DoD0010 7450	PrivWith hold2431	PrivWith hold2437	8/18/2016	Draft Word document titled "OUTLINE1 FOR FY17 BUDGET/NDAA SPEECH NATIONAL PRESS CLUB, WASHINGTON, DC TBD-DAY BETWEEN AUG. 29 AND SEPT. 6, 2016" with file name "National Press Club Budget Speech Outline Draft 1.0.docx"	Deliberative Process Privilege	Confidential outline of a scheduled speak at the National Press Club regarding the defense budget. The outline is pre-decisional as it was prepared prior to the speech, dated 8/18/2016, and before the preparation of initial drafts of the speech.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00107467	DoD00107450	PrivWith hold2438	PrivWith hold2439	8/18/2016	PDF of memo with the subject line "Reprogramming Actions Update" with file name "Untitled.pdf"	Deliberative Process Privilege	Confidential memorandum, dated 8/18/2016, from M. McCord, Under Secretary of Defense (Comptroller); Chief Financial Officer, to the Secretary of Defense, concerning the status of actions for the reprogramming of funds appropriated to DOD, including summaries of those actions and a recommendation regarding the Secretary's action		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 9257	DoD0010 9255	PrivWith hold2440	PrivWith hold2444	7/1/2016	Attachment to email sent by Stuart Munsch. Word document titled "Turkey: Terrorist Attack on Ataturk International Airport" with file name "PG 20160701 - Turkey - Istanbul Attacker.docx"	Deliberative Process Privilege	Confidential briefing document, dated 7/1/2016, to Secretary of Defense, prepared by DoD media office, containing proposed talking points and responses to media questions about DoD's investigation of a terrorist attack on a military base in Turkey. The document is predecisional at it was prepared before the Secretary's press briefing.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 9260	DoD0010 9255	PrivWith hold2445	PrivWith hold2466	7/1/2016	Attachment to email sent by Stuart Munsch Word document titled "Combined Talking Points" with file name "PG 20160701 -- CivCas EO and Aggregate Stats.doc"	Deliberative Process Privilege	Confidential briefing paper, dated 7/1/2016, to Secretary of Defense, containing and extended discussion of a proposed executive order regarding the use of lethal force and proposed talking points and responses to questions from the media regarding the same.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00109316	DoD00109314	PrivWith hold2467	PrivWith hold2471	7/1/2016	Attachment to email sent by Courtney Hillson. Word document titled "Turkey: Terrorist Attack on Ataturk International Airport" with file name "PG 20160701 - Turkey - Istanbul Attacker.docx"	Deliberative Process Privilege	Confidential briefing document, dated 7/1/2016, to Secretary of Defense, prepared by DoD media office, containing proposed talking points and responses to media questions about DoD's investigation of a terrorist attack on a military base in Turkey. The document is predecisional as it was prepared before the Secretary's press briefing.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00109319	DoD00109314	PrivWith hold2472	PrivWith hold2493	7/1/2016	Attachment to email sent by Courtney Hillson. Word document titled "Combined Talking Points" with file name "PG 20160701 -- CivCas EO and Aggregate Stats.doc"	Deliberative Process Privilege	Confidential briefing paper, dated 7/1/2016, to Secretary of Defense, containing and extended discussion of a proposed executive order regarding the use of lethal force and proposed talking points and responses to questions from the media regarding the same.		Not relevant
DoD00109324	DoD00109322	PrivWith hold2494	PrivWith hold2494	7/1/2016	Attachment to email. Word document titled "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 01 JUL 2016.doc"	Deliberative Process Privilege	Confidential briefing document, dated 7/1/2016, to senior DoD officials, concerning DoD's operations against ISIL.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 9445	DoD0010 9443	PrivWith hold2495	PrivWith hold2496	6/30/2016	Attachment to email. PDF titled "RCB Investigation Briefing Card with file name "06.30.2016 - RCB Investigation Briefing Card - APPROVED.PDF"	Deliberative Process Privilege	Confidential briefing document, dated 6/30/2016, to the chief of naval operations, containing a summary of an investigation into an incident involving Iranian forces, providing proposed talking points and responses to media questions regarding the incident and the subsequent investigation. The talking points are predecisional in that they were prepared prior to the press conference regarding this incident.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 9449	DoD0010 9443	PrivWith hold2497	PrivWith hold2497	6/30/2016	Attachment to email. Word document titled "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 30 JUN 2016.doc"	Deliberative Process Privilege	Confidential briefing document, dated 7/1/2016, to senior DoD officials, concerning DoD's operations against ISIL.		Not relevant
DoD0011 4213	DoD0011 4211	PrivWith hold2498	PrivWith hold2499	4/5/2016	Word document titled "SYRIA/ISIL: Abu Firas, SOF, FFSTs" with file name "PG 20160405 -- Syria, ISIL - FFSTs.docx"	Deliberative Process Privilege	Confidential briefing document, dated 7/1/2016, to senior DoD officials, concerning DoD's operations against ISIL.		Not relevant
DoD0011 4215	DoD0011 4211	PrivWith hold2500	PrivWith hold2502	4/4/2016	Word document titled "Mar31 Air Strike in Somalia - Dhoore" with file name "Air Strike in Somalia-Dhoore - 4-5-2016.docx"	Deliberative Process Privilege	Internal talking points and press guidance document prepared to assist DoD/military leadership. Concerns al-Shabaab attack.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0011 4216	DoD0011 4211	PrivWith hold2503	PrivWith hold2503	4/5/2016	Word document titled "ANTI-ISIL FACTS AND STATS" with file name "ANTI-ISIL FACTS 5 APR 16.doc"	Deliberative Process Privilege	Internal briefing document prepared to assist DoD/military leadership. Concerns military campaign against ISIL.		Not relevant
DoD0011 4219	DoD0011 4211	PrivWith hold2504	PrivWith hold2510	4/5/2016	Word document titled "EMBARGOED - Guantanamo Press Guidance" with file name "PG 20160405 GTMO xfers to Senegal.docx"	Deliberative Process Privilege	Internal talking points and press guidance document prepared to assist DoD/military leadership. Concerns transfer of Guantanamo detainees.		Not relevant
DoD0011 4221	DoD0011 4211	PrivWith hold2511	PrivWith hold2513	4/4/2016	Word document titled "Somalia al-Shabaab Self Defense Strike" with file name "Somalia Self Defense Air Strike 4-5-2016.docx"	Deliberative Process Privilege	Internal talking points and press guidance document prepared to assist DoD/military leadership. Concerns al-Shabaab attack.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00116697		PrivWith hold2514	PrivWith hold2515	12/8/2016	Email with subject line "RE: NSC EDITS: DOD Exit Memo"	Deliberative Process Privilege	Email conversation between senior DoD officials and senior WH/EOP officials containing deliberations on DoD accomplishments from 2009 to 2016 the Obama Administration considered highlighting in a draft exit memo in the last month of the administration and attaching draft memo containing edits in track changes.		Not relevant
DoD00117082	DoD00117081	PrivWith hold2516	PrivWith hold2517	12/13/2016	PDF titled "ART Meeting Schedule - Dec 12-16" with file name "ART Meeting Schedule - Week of 12 December.pdf"	Deliberative Process Privilege	Draft schedule reflecting planned meetings involving administration transition officials.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00117268		PrivWith hold2518	PrivWith hold2520	12/19/2016	Email with subject line "RE: End of Administration Memo"	Deliberative Process Privilege	Email from a senior DoD officials to other senior DoD officials discussing the creation of a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration, attaching the draft of that exit memo, and discussing inputs to that draft exit memo from the Military Services.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00117270		PrivWith hold2521	PrivWith hold2521	12/7/2016	Email with subject line "Exit Memo"	Deliberative Process Privilege	Email from a senior DoD officials to other senior DoD officials discussing the creation of a draft exit memo highlighting DoD's accomplishments from 2009 to 2016 the Obama Administration considered highlighting in the last month of the administration, attaching the draft of that exit memo, and discussing inputs to that draft exit memo from the Military Services.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0012 2124		PrivWith hold2522	PrivWith hold2528	4/9/2018	Email with subject line "FW: [Non-DoD Source] TRICARE Regulatory Reform Briefing Schedule Groupings"	AC - Attorney Client Privilege	Email conversation between DoD OGC attorney and their clients seeking a legal review of proposed changes to TRICARE regulations covering gender dysphoria.	N	Not deliberative and no legal advice sought or provided. Defendants may redact the last email on the chain to John Casciotti at DoD OGC. Balance of PrivWith 2522-2528 to be produced.
DoD0013 2934		PrivWith hold2529	PrivWith hold2531	4/3/2018	Email with subject line "RE: Karnoski supp brief due tomorrow"	AC - Attorney Client Privilege	Email conversation between DoD OGC Counsel and their clients regarding a draft version of a legal brief in the instant litigation.	Y	AC
DoD0013 2937		PrivWith hold2532	PrivWith hold2533	4/2/2018	Email with subject line "[Non-DoD Source] Karnoski supp brief due tomorrow"	AC - Attorney Client Privilege; WP - Work Product Privilege	Email conversation between DoD OGC Counsel and DOJ counsel regarding a litigation deadline tracking document.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0013 2939		PrivWith hold2534	PrivWith hold2540	4/2/2018	Email with subject line "RE: Chapter 2 in TG Litigation Begins"	AC - Attorney Client Privilege; WP - Work Product Privilege	Email conversation among DoD attorneys discussing developments in this litigation, and the related cases.	Y	AC
DoD0013 2961		PrivWith hold2541	PrivWith hold2547	3/30/2018	Email with subject line "RE: Chapter 2 in TG Litigation Begins"	AC - Attorney Client Privilege	Email conversation among DoD attorneys discussing developments in this litigation, and the related cases.	Y	AC
DoD0013 2963		PrivWith hold2548	PrivWith hold2553	3/30/2018	Email with subject line "RE: Chapter 2 in TG Litigation Begins"	AC - Attorney Client Privilege	Email conversation among DoD attorneys discussing developments in this litigation, and the related cases.	Y	AC
DoD0013 2967		PrivWith hold2554	PrivWith hold2554	3/29/2018	Email with subject line "Corrected Copies of Motion to Dissolve PI and Supporting Declaration"	AC - Attorney Client Privilege	Email conversation among DoD attorneys discussing developments in this litigation.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0013 2986		PrivWith hold2555	PrivWith hold2558	3/28/2018	Email with subject line "RE: [Non-DoD Source] New events in your CourtLink Tracked Docket: DOE et al v. TRUMP et al - US-DIS-DCD - 1:17cv1597"	AC - Attorney Client Privilege	Email conversation among DoD attorneys discussing developments in this litigation, and the related cases.	Y	AC
DoD0013 2991		PrivWith hold2559	PrivWith hold2560	3/27/2018	Email with subject line "FW: [Non-DoD Source] New events in your CourtLink Tracked Docket: DOE et al v. TRUMP et al - US-DIS-DCD - 1:17cv1597"	AC - Attorney Client Privilege	Email conversation among DoD OGC attorneys regarding legal developments in <i>Doe v. Trump</i> , No. 17-cv-1597 (D.D.C.).	Y	AC
DoD0013 3006		PrivWith hold2561	PrivWith hold2561	3/27/2018	Email with subject line "Action Requested: PR POTUS TG Decision Memo - GC Edits & Comments"	AC - Attorney Client Privilege	Email conversation among DoD OGC attorneys regarding request for OGC legal review of a draft decision memo from the Under Secretary for Personnel and Readiness.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00133021		PrivWith hold2562	PrivWith hold2562	3/26/2018	Email with subject line "FW: Search for PDFs (UNCLASSIFIED)"	AC - Attorney Client Privilege	Email conversation between DoD OGC Counsel and their clients regarding collection of documents pursuant to litigation proceedings.	Y	AC
DoD00137848	DoD00137847	PrivWith hold2563	PrivWith hold2563	12/11/2017	Attachment to email. Word document prepared by Stephanie Miller titled "Hard Questions for Military Accessions Vital to the National Interest" with file name "MAVNI LPR FY19 Hard Qs and As.docx"	Deliberative Process Privilege	Briefing paper regarding Military Accessions Vital to the National Interest (MAVNI). Drafted for Secretary of Defense in preparation for congressional hearing. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00137850	DoD00137847	PrivWith hold2564	PrivWith hold2564	12/11/2017	Attachment to email. Word document titled "Foreign National Recruiting" with file name "SD Foriegn National Recruiting.docx"	Deliberative Process Privilege	Briefing paper regarding Foreign National Recruiting. Drafted for Secretary of Defense in preparation for congressional hearing. Unrelated to transgender military policy.		Not relevant
DoD00137873	DoD00137872	PrivWith hold2565	PrivWith hold2565	12/11/2017	Attachment to email. Word document prepared by Stephanie Miller titled "Hard Questions for Military Accessions Vital to the National Interest" with file name "MAVNI LPR FY19 Hard Qs and As.docx"	Deliberative Process Privilege	Briefing paper regarding Military Accessions Vital to the National Interest (MAVNI). Drafted for Secretary of Defense in preparation for congressional hearing. Unrelated to transgender military policy.		Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00137875	DoD00137872	PrivWith hold2566	PrivWith hold2566	12/11/2017	Attachment to email. Word document titled "Foreign National Recruiting" with file name "SD Foriegn National Recruiting.docx"	Deliberative Process Privilege	Briefing paper regarding Foreign National Recruiting. Drafted for Secretary of Defense in preparation for congressional hearing. Unrelated to transgender military policy.		Not relevant
DoD00140607		PrivWith hold2567	PrivWith hold2569	1/9/2018	Email with subject line "RE: Have to Drop Off"	AC - Attorney Client Privilege	Email conversation among DoD OGC attorneys regarding responding to discovery in <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.).	Y	AC
DoD00140608	DoD00140607	PrivWith hold2570	PrivWith hold2573	12/20/2017	Email with subject line "Doe Interrogatories and RFP's (Doe, et al. v. Trump, et al., No. 17-1597 (D.D.C.))"	AC - Attorney Client Privilege	Email message from DoD OGC attorney to clients regarding responding to discovery in <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.).	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0014 2085	DoD0014 2084	PrivWith hold2574	PrivWith hold2574	1/17/2018	Attachment to email. Word document titled "Women in Combat Litigation" with file name "32-Women in Combat Litigation 12 Jan 2018.docx"	AC - Attorney Client Privilege; WP - Work Product Privilege	DoD OGC working paper for attorneys summarizing the DoD position for litigation concerning women in combat positions across the Military Services.		Not relevant
DoD0014 3348	DoD0014 3347	PrivWith hold2575	PrivWith hold2575	7/26/2017	Email with the subject line "CNN Reporting: Trump announces US military ban on transgender people"	AC - Attorney Client Privilege	Email conversation among DoD OGC attorneys regarding potential litigation.	N	Transmittal email, not soliciting or providing legal advice
DoD0014 3352	DoD0014 3351	PrivWith hold2576	PrivWith hold2576	7/26/2017	Email with the subject line "New transgender policy (UNCLASSIFIED)"	AC - Attorney Client Privilege	Email conversation between DoD OGC attorneys and their clients regarding the effect of social media posts from the Executive Branch on ongoing policy process.	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0014 3356	DoD0014 3355	PrivWith hold2577	PrivWith hold2578	7/26/2017	Email with the subject line "RE: POTUS TG TWEET (UNCLASSIFIED)"	AC - Attorney Client Privilege	Email conversation between DoD OGC attorneys and their clients regarding the effect of social media posts from the Executive Branch on ongoing policy process.	Y	AC
DoD0014 3358	DoD0014 3357	PrivWith hold2579	PrivWith hold2581	7/26/2017	Email with the subject line "RE: POTUS TG TWEET (UNCLASSIFIED)"	AC - Attorney Client Privilege	Email conversation between DoD OGC attorneys and their clients regarding the effect of social media posts from the Executive Branch on ongoing policy process.	Y	AC
Navy_00 067020		PrivWith hold2582	PrivWith hold2584	12/21/2017	Email with subject line "DISCOVERY: Doe, et al. v. Trump, et al., No. 17-1597 (D.D.C.)"	Attorney - Client Privilege; WP - Work Product Privilege	Email message from Navy attorney to clients regarding responding to discovery in <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.).	Y	AC; WP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Navy_00067021		PrivWith hold2585	PrivWith hold2586	8/28/2017	Attachment to email. PDF of memorandum from the DoD Office of General Counsel with the subject "Litigation Hold for Doe et al. v. Trump et al., No. 1:17-cv-1597 (D.D.C.)" with file name "(1) Lit Hold Ltr.pdf"	Attorney - Client Privilege; WP - Work Product Privilege	Litigation hold memorandum pursuant to <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.).	Y	AC
Navy_00067022		PrivWith hold2587	PrivWith hold2587	12/21/2017	PDF with file name "(1) Transgender Policy Related Litigation Hold (Doe v. Trump, Stone v. Trump, Karnoski v. Trump, and Stockman v. Trump).pdf"	Attorney - Client Privilege; WP - Work Product Privilege	Email message from Navy attorney to clients regarding litigation hold in <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.).	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Navy_00082081		PrivWith hold2588	PrivWith hold2589	1/23/2018	Email with subject line "UPDATE! TRANSGENDER LITIGATION (Secure transmission)"	Attorney - Client Privilege	Email conversation among Navy attorney and clients regarding litigation hold in <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.), and related cases.	Y	AC
USCG 00007597		PrivWith hold2590	PrivWith hold2591	1/19/2018	Email with the subject line "FW: Doe v. Trump Lawsuit"	AC - Attorney Client Privilege; WP - Work Product Privilege	Email conversation between USCG Counsel and their clients regarding documents to be used in <i>Doe v. Trump</i> , No. 17-1597 (D.D.C.)	Y	AC
AF_CTRL_00000185		PrivWith hold2592	PrivWith hold2593	5/14/2018	Calendar invitation titled "Prep for Hill Mtgs"	DP - Deliberative Process	Contains redaction regarding planned topics for discussion with Senators.	N	Not deliberative. Email notes PDF of points to discuss with Senator Collins re transgender policy. Does not appear to be included. Should be produced, if it hasn't already been produced.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10004634		PrivWith hold2594	PrivWith hold2596	10/23/2017	Email addressing court filing.	AC - Attorney Client; DP - Deliberative	Attorney mental impressions regarding matter in litigation or anticipated litigation; Deliberations regarding the formulation of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	AC, WP
Army_10005406		PrivWith hold2597	PrivWith hold2598	10/19/2017	Email between agency attorneys from OTJAG and OGC discussing a matter in litigation or anticipated litigation pertaining to the development of the military's transgender policy.	AC - Attorney Client; DP - Deliberative; WP - Work Product	Attorney mental impressions regarding matter in litigation or anticipated litigation; Deliberations regarding the formulation of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	AC, WP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10005414		PrivWithhold2599	PrivWithhold2599	10/18/2017	Document was produced and disseminated between agency attorneys pursuant to matters in litigation or in anticipated litigation.	AC - Attorney Client; WP - Work Product	Attorney mental impressions regarding matter in litigation or anticipated litigation; Seeking or providing legal advice regarding transgender policy; Seeking or providing legal advice regarding litigation risk	Y	AC, WP
Army_10009171		PrivWithhold2600	PrivWithhold2612	10/24/2017	Email with subject line "RE: REMINDER: CACO TASKER - Update of Personnel IP ISO Mr. McPherson - Nominee for Army GC (S: COB 25 OCT 17) (UNCLASSIFIED)"	DP - Deliberative	Email chain containing deliberations regarding preparation of briefing materials in support of nominee to be Army General Counsel.	Y	AC/WP pages PrivWithhold 2600-2604. Produce PrivWithhold 2605-through middle of PrivWithhold2607. Balance of PrivWithhold 2607-2612 not produced.
Army_10009943		PrivWithhold2613	PrivWithhold2621					N	Not privileged
Army_10030186		PrivWithhold2622	PrivWithhold2622					N	Not privileged

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
Army_10 038152		PrivWith hold2623	PrivWith hold2623						Not relevant
Army_10 040255		PrivWith hold2624	PrivWith hold2624					N	Not privileged
DoD0000 0984		PrivWith hold2625	PrivWith hold2629	12/13/2017	RE: Tasker: Due 14 December - SD Issue Papers and Hard Questions for FY19 Budget Hearings	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative
DoD0000 1090		PrivWith hold2630	PrivWith hold2635	12/11/2017	RE: Tasker: Due 14 December - SD Issue Papers and Hard Questions for FY19 Budget Hearings (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001104		PrivWith hold2636	PrivWith hold2640	12/11/2017	RE: Tasker: Due 14 December - SD Issue Papers and Hard Questions for FY19 Budget Hearings (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative
DoD00001124		PrivWith hold2641	PrivWith hold2645	12/11/2017	FW: Tasker: Due 14 December - SD Issue Papers and Hard Questions for FY19 Budget Hearings (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001222		PrivWith hold2646	PrivWith hold2649	12/8/2017	RE: TG Litigation (UNCLASSIFIED//FOUO)	AC - Attorney Client Privilege; DP - Deliberative Process; WP - Work Product	Seeking or providing legal advice regarding transgender policy; Seeking or providing legal advice regarding litigation risk	Y	AC; WP
DoD00001468		PrivWith hold2650	PrivWith hold2652	11/30/2017	RE: Draft USMEPCOM Policy Memorandum 2-5 - TG Applicant Processing (UNCLASSIFIED)	AC - Attorney Client Privilege; DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation; Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Seeking or providing legal advice regarding transgender policy	N	Transmittal emails not privileged, Redact the email message from Arendt to Casciotti on page PrivWithhold 2650, but otherwise produce,

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00001730		PrivWith hold2653	PrivWith hold2653					N	Transmittal email
DoD00002246		PrivWith hold2654	PrivWith hold2654	9/22/2017	RE: MAVNI and TG (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD00002887		PrivWith hold2655	PrivWith hold2659	7/7/2017	RE: DEPSECDEF information book - requests (SUSPENSE: 1200 July 10) (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	N	Not deliberative
DoD00002898		PrivWith hold2660	PrivWith hold2663	7/7/2017	DEPSECDEF information book - requests (SUSPENSE: 1200 July 10) (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	N	Not deliberative
DoD00003016		PrivWith hold2664	PrivWith hold2666					N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00003103		PrivWith hold2667	PrivWith hold2668	5/17/2017	FW: 17 MAY - TOP LINES - MAVNI - Transgender (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	Y	DP
DoD00003105		PrivWith hold2669	PrivWith hold2670	5/17/2017	FW: 17 MAY - TOP LINES - MAVNI - Transgender (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	Y	DP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00003107		PrivWith hold2671	PrivWith hold2671	5/17/2017	17 MAY - TOP LINES - MAVNI - Transgender (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy		Not relevant
DoD00003113		PrivWith hold2672	PrivWith hold2672	5/17/2017	FW: APPROVAL HOT HOT -- FW: Media Query - Transgender Policy - Military Times (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD00003207		PrivWith hold2673	PrivWith hold2676	3/16/2017	FW: HOT _ HOT -- FW: Hot: Prep Q&A for 28 March SASC Roundtable (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00003794		PrivWith hold2677	PrivWith hold2678	5/10/2016	Updated DoDI (Clean & Track Changes)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	Y	DP
DoD00004657		PrivWith hold2679	PrivWith hold2681	8/1/2017	Email regarding a DoD Transgender cost paper	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00005472		PrivWith hold2682	PrivWith hold2683	12/12/14	Email chain concerning Pending ALARACT re: Army retention of transgender service members (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	Y	DP
DoD00009258		PrivWith hold2684	PrivWith hold2687					N	Not deliberative
DoD00009265		PrivWith hold2688	PrivWith hold2693					N	Not deliberative
DoD00009271		PrivWith hold2694	PrivWith hold2699					N	Not deliberative
DoD00009837		PrivWith hold2700	PrivWith hold2702	8/1/17	Email chain concerning Transgender cost paper (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	N	Not deliberative
DoD00009860		PrivWith hold2703	PrivWith hold2707	7/31/17	Email concerning APPROVAL -- FW: P&R Nomination Prep Tasker (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00010001		PrivWith hold2708	PrivWith hold2712	7/10/17	Email forward concerning APPROVAL: DEPSECDEF information book - requests (SUSPENSE: 1200 July 10) (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	N	Not deliberative. Redact email from Warren to Hebert on bottom of PrivWithhold 2709. Otherwise produce.
DoD00010006		PrivWith hold2713	PrivWith hold2716	7/10/17	Email chain concerning APPROVAL: DEPSECDEF information book - requests (SUSPENSE: 1200 July 10) (UNCLASSIFIED)	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD00010261		PrivWith hold2717	PrivWith hold2718	2/23/17	Email concerning APPROVAL -- FW: SecDef HASC Roundtable - Q&A Prep Materials	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD00011513		PrivWith hold2719	PrivWith hold2723					N	Not deliberative
DoD00011517		PrivWith hold2724	PrivWith hold2728					Y	DP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 1463		PrivWith hold2729	PrivWith hold2731	4/25/2017	Email FW: SUSPENSE COB Apr 27 -- FW: Deputy Secretary of Defense Nominee Prep Assistance and Nominations Guidance	AC - Attorney Client Privilege; DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	DP
DoD0002 2232		PrivWith hold2732	PrivWith hold2735					N	Not deliberative
DoD0002 2284		PrivWith hold2736	PrivWith hold2740	7/31/2017	Email discussion on briefing plan for senior leadership nomination prep which includes transgender assignments	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD0002 2472		PrivWith hold2741	PrivWith hold2744	4/25/2017	Email discussion on assistance for nomination prep including the transgender policy	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy;	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2540		PrivWith hold2745	PrivWith hold2746	3/31/2017	Email regarding Deputy Secretary of Defense Nominee Prep Assistance and Nominations Guidance	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative
DoD0002 2575		PrivWith hold2747	PrivWith hold2751	8/10/2017	Email discussion concerning preparation of various topics including the transgender policy for P&R nominees	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2603		PrivWith hold2752	PrivWith hold2756	8/14/2017	Email discussion concerning preparation of various topics including the transgender policy for P&R nominees	AC - Attorney Client Privilege; DP - Deliberative Process; EP - Executive Privilege	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00022610		PrivWith hold2757	PrivWith hold2760	7/7/2017	Email discussion concerning preparation of various topics including the transgender policy for the deputy secretary of defense	AC - Attorney Client Privilege; DP - Deliberative Process; EP - Executive Privilege	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy; Seeking or providing legal advice regarding litigation risk	Y	AC
DoD00022631		PrivWith hold2761	PrivWith hold2765					N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2677		PrivWith hold2766	PrivWith hold2770	7/28/2017	Email discussion concerning preparation of various topics including the transgender policy for P&R nominees	AC - Attorney Client Privilege; DP - Deliberative Process; EP - Executive Privilege	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2691		PrivWith hold2771	PrivWith hold2775	8/10/2017	Email discussion concerning preparation of various topics including the transgender policy for P&R nominees	AC - Attorney Client Privilege; DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy	N	No legal advice discussed, sought or given. Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 2707		PrivWith hold2776	PrivWith hold2780	7/7/2017	Email discussion concerning preparation of various topics including the transgender policy for DSD	AC - Attorney Client Privilege; DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	DP
DoD0002 6961		PrivWith hold2781	PrivWith hold2782	8/2/2017	Email chain regarding Info papers for USD (P&R) Nominee Confirmation Prep (RI)	AC - Attorney Client Privilege; DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00026968		PrivWith hold2783	PrivWith hold2785	8/1/2017	Email chain regarding Transgender cost paper	AC - Attorney Client Privilege; DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	AC
DoD00026978		PrivWith hold2786	PrivWith hold2786	7/31/2017	Email chain regarding Info papers for USD (P&R) Nominee Confirmation Prep (MPP)	AC - Attorney Client Privilege; DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00027040		PrivWith hold2787	PrivWith hold2789	5/18/2017	Email chain regarding 17 MAY - TOP LINES - MAVNI - Transgender	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	Y	DP
DoD00027127		PrivWith hold2790	PrivWith hold2792	2/23/2017	Email chain regarding SecDef roundtable including discussion of policies for service of transgender individuals	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD00027139		PrivWith hold2793	PrivWith hold2794	2/23/2017	Email chain regarding SecDef roundtable including discussion of policies for service of transgender individuals	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00027141		PrivWith hold2795	PrivWith hold2797	2/23/2017	Email chain regarding SecDef roundtable including discussion of policies for service of transgender individuals	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD00027145		PrivWith hold2798	PrivWith hold2799	2/23/2017	Email chain regarding SecDef roundtable including discussion of policies for service of transgender individuals	AC - Attorney Client Privilege; DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0002 7149		PrivWith hold2800	PrivWith hold2801	2/23/2017	Email chain regarding SecDef roundtable including discussion of policies for service of transgender individuals	AC - Attorney Client Privilege; DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy	N	Not deliberative
DoD0002 8457		PrivWith hold2802	PrivWith hold2802					Y	

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00031673		PrivWith hold2803	PrivWith hold2805	3/27/2017	Email FW: 1200-1300: 45 Day Plan Senior Steering Group	AC - Attorney Client Privilege; DP - Deliberative Process;	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy; Seeking or providing legal advice regarding transgender policy	Y	AC, DP for PrivWithhold 2802-03. Produce PrivWithhold 2804 and 2805 – not privileged.
DoD00038081		PrivWith hold2806	PrivWith hold2806	5/16/2017	For REVIEW - Top Lines for SecDef Press Conf - MAVNI and Transgender .msg	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0005 1842		PrivWith hold2807	PrivWith hold2810	7/10/2017	Email chain concerning information book for DEPSECDEF including discussion of transgender policies	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	Y	DP
DoD0005 1850		PrivWith hold2811	PrivWith hold2815	7/10/2017	Email chain concerning information book for DEPSECDEF including discussion of transgender policies	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	Y	DP
DoD0005 2197		PrivWith hold2816	PrivWith hold2820	7/10/2017	Email regarding APPROVAL: DEPSECDEF information book - requests (SUSPENSE: 1200 July 10)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	Y	DP

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00068047		PrivWith hold2821	PrivWith hold2821	7/31/2017	Email chain regarding Info papers for USD (P&R) Nominee Confirmation Prep (MPP)	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	Y	DP
DoD00082880		PrivWith hold2822	PrivWith hold2822						Not relevant
DoD00082881	DoD00082880	PrivWith hold2823	PrivWith hold2825					N	Not deliberative. Produce header only on PrivWithhold 2823 and second to the last paragraph on PrivWithhold 2825. Balance is not relevant
DoD00082886		PrivWith hold2826	PrivWith hold2826					N	Transmittal email
DoD00082887	DoD00082886	PrivWith hold2827	PrivWith hold2829					N	Not deliberative. Produce header only on PrivWithhold 2827 and second to the last paragraph on PrivWithhold 2829. Balance is not relevant.
DoD00082979		PrivWith hold2830	PrivWith hold2830					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 2980	DoD0008 2979	PrivWith hold2831	PrivWith hold2833	10/17/2017	Email with subject line "Daily Comms Update (UNCLASSIFIED)"	DP - Deliberative Process	Email thread reflecting briefing for senior DoD leadership on press guidance and strategy.	N	Not deliberative. Produce header on PrivWithhold 2831 and last paragraph on page PrivWithhold 2832. Balance not relevant.
DoD0008 3089		PrivWith hold2834	PrivWith hold2834					N	Transmittal email
DoD0008 3090	DoD0008 3089	PrivWith hold2835	PrivWith hold2836					N	Not deliberative. Produce header PrivWithhold 2835 and second to last paragraph 2836. Balance is not relevant
DoD0008 3093		PrivWith hold2837	PrivWith hold2837					N	Transmittal email
DoD0008 3094	DoD0008 3093	PrivWith hold2838	PrivWith hold2839					N	Not deliberative. Produce header PrivWithhold 2838 and second to last paragraph 2839. Balance is not relevant.
DoD0008 3105		PrivWith hold2840	PrivWith hold2840					N	Transmittal email
DoD0008 3106	DoD0008 3105	PrivWith hold2841	PrivWith hold2843					N	Not deliberative
DoD0008 3108		PrivWith hold2844	PrivWith hold2844						Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3109	DoD0008 3108	PrivWith hold2845	PrivWith hold2847	9/12/2017	Email conversation regarding status of the transgender decision to prepare for the media questions	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy;	N	Not deliberative
DoD0008 3111		PrivWith hold2848	PrivWith hold2848						Not relevant
DoD0008 3112	DoD0008 3111	PrivWith hold2849	PrivWith hold2851	9/12/2017	Email conversation regarding status of the transgender decision to prepare for the media questions	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD0008 3121		PrivWith hold2852	PrivWith hold2852						Not relevant
DoD0008 3122	DoD0008 3121	PrivWith hold2853	PrivWith hold2855	8/31/2017	Email conversation regarding status of the transgender decision to prepare for the media questions	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header PrivWithhold 2853 and last two paragraphs on PrivWithhold2855. Balance not relevant
DoD0008 3127		PrivWith hold2856	PrivWith hold2856					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3128	DoD0008 3127	PrivWith hold2857	PrivWith hold2859	8/31/2017	Email conversation regarding status of the transgender decision to prepare for the media questions	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header PrivWithhold 2857 and last two paragraphs on PrivWithhold2859. Balance not relevant.
DoD0008 3145		PrivWith hold2860	PrivWith hold2860					N	Transmittal email
DoD0008 3146	DoD0008 3145	PrivWith hold2861	PrivWith hold2863	8/30/2017	Email conversation regarding status of the transgender decision to prepare for the media questions	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header on PrivWithhold 2861 and Paragraph on same page starting with "Transgender". Balance is not relevant
DoD0008 3150		PrivWith hold2864	PrivWith hold2864					N	Transmittal email
DoD0008 3151	DoD0008 3150	PrivWith hold2865	PrivWith hold2867	8/30/2017	Email conversation regarding status of the transgender decision to prepare for the media questions	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header on PrivWithhold 2865 and Paragraph on same page starting with "Transgender". Balance is not relevant.
DoD0008 3232		PrivWith hold2868	PrivWith hold2868					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3233	DoD0008 3232	PrivWith hold2869	PrivWith hold2870					N	Not deliberative. Produce header on PrivWithhold 2869 and paragraph on PrivWithhold 2870 that begins with "Transgender". Balance is not relevant.
DoD0008 3247		PrivWith hold2871	PrivWith hold2871					N	Transmittal email
DoD0008 3555		PrivWith hold2872	PrivWith hold2872						Not relevant
DoD0008 3556	DoD0008 3555	PrivWith hold2873	PrivWith hold2875					N	Not deliberative. Produce Header section on PrivWithhold 2873 and the paragraph on PrivWithhold 2874 starting with Transgender. Balance is not relevant.
DoD0008 3583		PrivWith hold2876	PrivWith hold2876					N	Transmittal email
DoD0008 3584	DoD0008 3583	PrivWith hold2877	PrivWith hold2879					N	Not deliberative. Produce header section on PrivWithhold 2877 and paragraph on PrivWithhold 2878 re Transgender cadets. Balance not relevant
DoD0008 3772		PrivWith hold2880	PrivWith hold2880					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3773	DoD0008 3772	PrivWith hold2881	PrivWith hold2883	11/20/2017	Talking points re TG policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header and Paragraph beginning "Transgender" on PrivWithhold 2881. Balance is not relevant
DoD0008 3776		PrivWith hold2884	PrivWith hold2884					N	Transmittal email
DoD0008 3777	DoD0008 3776	PrivWith hold2885	PrivWith hold2887	11/20/2017	Talking points re TG policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header and Paragraph beginning "Transgender" on PrivWithhold 2881. Balance is not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3780		PrivWith hold2888	PrivWith hold2888					N	Transmittal email
DoD0008 3781	DoD0008 3780	PrivWith hold2889	PrivWith hold2891	11/20/2017	Talking points re TG policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header and Paragraph beginning "Transgender" on PrivWithhold 2889. Balance is not relevant
DoD0008 3851		PrivWith hold2892	PrivWith hold2892					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3852	DoD0008 3851	PrivWith hold2893	PrivWith hold2895	8/14/2017	Email regarding updated media coverage of the transgender policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce PrivWithhold Document 2893 with header and then the portion of the page that starts with Off-Camera Briefing and subjects. Balance is not relevant.
DoD0008 3855		PrivWith hold2896	PrivWith hold2896					N	Transmittal email
DoD0008 3856	DoD0008 3855	PrivWith hold2897	PrivWith hold2899	8/14/2017	Email regarding updated media coverage of the transgender policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce PrivWithhold Document 2897 with header and then the portion of the page that starts with Off-Camera Briefing and subjects. Balance is not relevant.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3878		PrivWith hold2900	PrivWith hold2900					N	Transmittal email
DoD0008 3879	DoD0008 3878	PrivWith hold2901	PrivWith hold2903	8/8/2017	Email regarding updated media coverage of the transgender policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header on PrivWithhold 2901 and paragraph on PrivWithhold 2902 beginning with Transgender. Balance is not relevant.
DoD0008 3881		PrivWith hold2904	PrivWith hold2904					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3882	DoD0008 3881	PrivWith hold2905	PrivWith hold2907	8/8/2017	Email regarding updated media coverage of the transgender policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header on PrivWithhold 2905 and paragraph on PrivWithhold 2906 beginning with Transgender. Balance is not relevant.
DoD0008 3884		PrivWith hold2908	PrivWith hold2908					N	Transmittal email
DoD0008 3885	DoD0008 3884	PrivWith hold2909	PrivWith hold2911	8/7/2017	Email regarding updated media coverage of the transgender policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce PrivWithhold 2909 header and section entitled Briefings. Balance of document is not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 3888		PrivWith hold2912	PrivWith hold2912					N	Transmittal email
DoD0008 3889	DoD0008 3888	PrivWith hold2913	PrivWith hold2915	8/7/2017	Email regarding updated media coverage of the transgender policy	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce PrivWithhold 2913 header and section entitled Briefings. Balance of document is not relevant
DoD0008 3900		PrivWith hold2916	PrivWith hold2916					N	Transmittal email
DoD0008 3904		PrivWith hold2917	PrivWith hold2917						Not relevant
DoD0008 3905	DoD0008 3904	PrivWith hold2918	PrivWith hold2920	8/5/2017	Email discussing press items of interest including transgender.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header section on PrivWithhold 2918, and Paragraph beginning "Transgender" on PrivWithhold 2919. Balance is not relevant.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 4031		PrivWith hold2921	PrivWith hold2921					N	Transmittal email
DoD0008 4032	DoD0008 4031	PrivWith hold2922	PrivWith hold2923	7/13/2017	Email containing notes from press questions including transgender.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header and first paragraph of PrivWithhold 2922. Balance is not relevant.
DoD0008 4034		PrivWith hold2924	PrivWith hold2924					N	Transmittal email
DoD0008 4035	DoD0008 4034	PrivWith hold2925	PrivWith hold2926	7/13/2017	Email containing notes from press questions including transgender.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header and first paragraph of PrivWithhold 2925. Balance is not relevant.
DoD0008 4039		PrivWith hold2927	PrivWith hold2927					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 4040	DoD0008 4039	PrivWith hold2928	PrivWith hold2929	7/8/2017	Email discussion of read ahead materials including transgender.	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD0008 4045		PrivWith hold2930	PrivWith hold2930						Not relevant
DoD0008 4046	DoD0008 4045	PrivWith hold2931	PrivWith hold2932	7/8/2017	Email discussion of read ahead materials including transgender.	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD0008 4147		PrivWith hold2933	PrivWith hold2933						Not relevant
DoD0008 4148	DoD0008 4147	PrivWith hold2934	PrivWith hold2936					N	Not deliberative. Produce Header on PrivWithhold 2934 and first full paragraph. Produce paragraph on PrivWithhold 2935 that starts with Transgender cadets. Balance is not relevant.
DoD0008 4295		PrivWith hold2937	PrivWith hold2937					N	Transmittal email
DoD0008 4296	DoD0008 4295	PrivWith hold2938	PrivWith hold2941					N	Not deliberative. Produce header section on PrivWithhold 2938 and paragraph on PrivWithhold 2940 that begins with Accessions and OPCA request for guidance. Balance is not relevant.

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 4299		PrivWith hold2942	PrivWith hold2942					N	Transmittal email
DoD0008 4300	DoD0008 4299	PrivWith hold2943	PrivWith hold2946					N	Not deliberative. Produce header section on PrivWithhold 2943 and paragraph on PrivWithhold 2945 that begins with Accessions and OPCA request for guidance. Balance is not relevant.
DoD0008 4303		PrivWith hold2947	PrivWith hold2947					N	Transmittal email
DoD0008 4304	DoD0008 4303	PrivWith hold2948	PrivWith hold2950					N	Not deliberative. Produce header section of PrivWithhold 2948 and Accessions paragraph on PrivWithhold 2949. Balance is not relevant
DoD0008 4307		PrivWith hold2951	PrivWith hold2951					N	Transmittal email
DoD0008 4308	DoD0008 4307	PrivWith hold2952	PrivWith hold2954					N	Not deliberative. Produce header section of PrivWithhold 2952 and Accessions paragraph on PrivWithhold 2953. Balance is not relevant
DoD0008 5381		PrivWith hold2955	PrivWith hold2955					N	Transmittal email
DoD0008 5869		PrivWith hold2956	PrivWith hold2956						Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00085870	DoD00085869	PrivWith hold2957	PrivWith hold2962	12/22/2017	FW_ Doe Interrogatories and RFP's (Doe, et al. v. Trump, et al., No. 17-1597 (D.D.C.) .msg	AC - Attorney Client Privilege; WP - Work Product	Attorney mental impressions regarding matter in litigation or anticipated litigation; Contains attorney mental impressions and opinions concerning a draft litigation filing; Seeking or providing legal advice regarding litigation risk; Seeks advice from a client on a draft litigation filing	Y	AC; WP
DoD00085953		PrivWith hold2963	PrivWith hold2963						Not relevant
DoD00086007		PrivWith hold2964	PrivWith hold2964						Not relevant
DoD00087176		PrivWith hold2965	PrivWith hold2965						Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 7177	DoD0008 7176	PrivWith hold2966	PrivWith hold2969	2/13/2018	email conversation regarding an update on a transgender story appearing in a news publication.	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header in PrivWithhold 2966 and paragraph on same page regarding story on transgender Navy reservist. Balance not relevant
DoD0008 7184		PrivWith hold2970	PrivWith hold2970					N	Transmittal email
DoD0008 7185	DoD0008 7184	PrivWith hold2971	PrivWith hold2974	2/13/2018	email conversation regarding a media article that will be published about a transgender service member	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header in PrivWithhold 2971 and paragraph on same page regarding story on transgender Navy reservist. Balance not relevant
DoD0008 7447		PrivWith hold2975	PrivWith hold2975					N	Transmittal email
DoD0008 7448	DoD0008 7447	PrivWith hold2976	PrivWith hold2979	2/8/2018	Email between DoD personnel discussing media items.	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header on PrivWithhold 2976 and paragraphs on PrivWithhold 2978 starting with "Transgender" and "Non-Deployable Service Members". Balance in not relevant
DoD0008 7453		PrivWith hold2980	PrivWith hold2980					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 7454	DoD0008 7453	PrivWith hold2981	PrivWith hold2984	2/8/2018	Email between DoD personnel discussing media items.	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header on PrivWithhold 2981 and paragraphs on PrivWithhold 2983 starting with "Transgender" and "Non-Deployable Service Members". Balance in not relevant
DoD0008 7751		PrivWith hold2985	PrivWith hold2985					N	Transmittal email
DoD0008 7752	DoD0008 7751	PrivWith hold2986	PrivWith hold2989					N	Not deliberative. Produce Header on PrivWithhold 2986 and paragraph beginning "Transgender" on PrivWithhold 2987. Balance is not relevant.
DoD0008 7770		PrivWith hold2990	PrivWith hold2990					N	Transmittal email
DoD0008 7771	DoD0008 7770	PrivWith hold2991	PrivWith hold2994	1/29/2018	Email between DoD personnel discussing media items.	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header on PrivWithhold 2991 and paragraph on same page relating to Rep. Kennedy guest at SOTU speech. Balance is not relevant.
DoD0008 7776		PrivWith hold2995	PrivWith hold2995					N	Transmittal email
DoD0008 7777	DoD0008 7776	PrivWith hold2996	PrivWith hold2999	1/29/2018	Email between DoD personnel discussing media items.	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header on PrivWithhold 2996 and paragraph on same page relating to Rep. Kennedy guest at SOTU speech. Balance is not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 8314		PrivWith hold3000	PrivWith hold3000					N	Transmittal email
DoD0008 8315	DoD0008 8314	PrivWith hold3001	PrivWith hold3003	1/16/2018	Email discussing transgender news items.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce PrivWithhold 3001 – header and second full paragraph which deals with a report by Tom Vanden Brook. Balance is not relevant
DoD0008 8318		PrivWith hold3004	PrivWith hold3004					N	Transmittal email
DoD0008 8319	DoD0008 8318	PrivWith hold3005	PrivWith hold3007	1/16/2018	Email discussing transgender news items.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce PrivWithhold 3001 – header and second full paragraph which deals with a report by Tom Vanden Brook. Balance is not relevant
DoD0008 8482		PrivWith hold3008	PrivWith hold3008					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 8483	DoD0008 8482	PrivWith hold3009	PrivWith hold3012	1/11/2018	Email between DoD personnel discussing media items.	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce header to PrivWithhold 3009, and paragraph on PrivWithhold 3011 on "Transgender/Accession. Balance is not relevant.
DoD0008 8801		PrivWith hold3013	PrivWith hold3013					N	Transmittal email
DoD0008 8802	DoD0008 8801	PrivWith hold3014	PrivWith hold3016	1/4/2018	Email conversation regarding daily comms update on transgender accessions	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce PrivWithhold 3014 and the top portion of 3015 before the weather forecast. Balance is not relevant
DoD0008 8807		PrivWith hold3017	PrivWith hold3017					N	Transmittal email
DoD0008 8808	DoD0008 8807	PrivWith hold3018	PrivWith hold3020	1/4/2018	Email conversation regarding daily comms update on transgender accessions	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce all of PrivWithhold 3018 and the top portion of 3019 before the weather forecast. Balance is not relevant
DoD0008 8871		PrivWith hold3021	PrivWith hold3021					N	Transmittal email
DoD0008 8872	DoD0008 8871	PrivWith hold3022	PrivWith hold3023	1/3/2018	Email conversation regarding daily comms update on transgender accessions	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce all of PrivWithhold 3022 and 3023 through the weather forecast. Balance is not relevant.
DoD0008 8875		PrivWith hold3024	PrivWith hold3024					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0008 8876	DoD0008 8875	PrivWith hold3025	PrivWith hold3026	1/3/2018	Email conversation regarding daily comms update on transgender accessions	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce PrivWithhold 3025 and 3026 through the weather forecast. Balance is not relevant.
DoD0008 8947		PrivWith hold3027	PrivWith hold3027					N	Transmittal email
DoD0008 8948	DoD0008 8947	PrivWith hold3028	PrivWith hold3029	1/2/2018	Email conversation regarding daily comms update on transgender accessions	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce PrivWithhold 3026. Balance is not relevant
DoD0008 8950		PrivWith hold3030	PrivWith hold3030					N	Transmittal email
DoD0008 8951	DoD0008 8950	PrivWith hold3031	PrivWith hold3032	1/2/2018	Email conversation regarding daily comms update on transgender accessions	DP - Deliberative Process	Deliberations regarding the rescission of the transgender policy	N	Not deliberative. Produce PrivWithhold 3031. Balance is not relevant
DoD0008 9012		PrivWith hold3033	PrivWith hold3033					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00089013	DoD00089012	PrivWith hold3034	PrivWith hold3035	12/29/2017	Email conversation regarding daily comms update on transgender accessions	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative.
DoD00089018		PrivWith hold3036	PrivWith hold3036						Not relevant
DoD00089019	DoD00089018	PrivWith hold3037	PrivWith hold3038	12/29/2017	Email conversation regarding daily comms update on transgender accessions	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy; Deliberations regarding the rescission of the transgender policy	N	Not deliberative

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 1185		PrivWith hold3039	PrivWith hold3039					N	Transmittal email
DoD0009 1186	DoD0009 1185	PrivWith hold3040	PrivWith hold3040					N	Transmittal email
DoD0009 4628		PrivWith hold3041	PrivWith hold3041					N	Transmittal email
DoD0009 4629	DoD0009 4628	PrivWith hold3042	PrivWith hold3042					N	Transmittal email
DoD0009 4880		PrivWith hold3043	PrivWith hold3043					N	Transmittal email
DoD0009 4881	DoD0009 4880	PrivWith hold3044	PrivWith hold3045	8/11/2017	DoD Email including EOP regarding TG policy	DP - Deliberative Process; EP - Executive Privilege	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative.
DoD0009 4883		PrivWith hold3046	PrivWith hold3046					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0009 4884	DoD0009 4883	PrivWith hold3047	PrivWith hold3049	8/11/2017	DoD Email including EOP regarding TG policy	DP - Deliberative Process; EP - Executive Privilege	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD0009 5471		PrivWith hold3050	PrivWith hold3050					N	Transmittal email
DoD0009 5472	DoD0009 5471	PrivWith hold3051	PrivWith hold3053	7/31/2017	Email conversation regarding talking points	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	Y	DP
DoD0009 8487		PrivWith hold3054	PrivWith hold3054					N	Transmittal email
DoD0009 8488	DoD0009 8487	PrivWith hold3055	PrivWith hold3055						Not relevant
DoD0010 2364		PrivWith hold3056	PrivWith hold3056						Not relevant
DoD0010 2409		PrivWith hold3057	PrivWith hold3058						Not relevant
DoD0010 2413		PrivWith hold3059	PrivWith hold3060						Not relevant
DoD0010 2421		PrivWith hold3061	PrivWith hold3061						Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 2701		PrivWith hold3062	PrivWith hold3062						Not relevant
DoD0010 2750		PrivWith hold3063	PrivWith hold3063						Not relevant
DoD0010 2782		PrivWith hold3064	PrivWith hold3064						Not relevant
DoD0010 2795		PrivWith hold3065	PrivWith hold3065						Not relevant
DoD0010 2873		PrivWith hold3066	PrivWith hold3066						Not relevant
DoD0010 2902		PrivWith hold3067	PrivWith hold3067						Not relevant
DoD0010 2975		PrivWith hold3068	PrivWith hold3068						Not relevant
DoD0010 2990		PrivWith hold3069	PrivWith hold3069						Not relevant
DoD0010 2998		PrivWith hold3070	PrivWith hold3070						Not relevant
DoD0010 3006		PrivWith hold3071	PrivWith hold3072						Not relevant
DoD0010 3028		PrivWith hold3073	PrivWith hold3073						Not relevant
DoD0010 3037		PrivWith hold3074	PrivWith hold3074						Not relevant
DoD0010 3040		PrivWith hold3075	PrivWith hold3075						Not relevant

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 3043		PrivWith hold3076	PrivWith hold3076						Not relevant
DoD0010 3046		PrivWith hold3077	PrivWith hold3077						Not relevant
DoD0010 3049		PrivWith hold3078	PrivWith hold3078						Not relevant
DoD0010 3061		PrivWith hold3079	PrivWith hold3079						Not relevant
DoD0010 3803		PrivWith hold3080	PrivWith hold3080						Not relevant
DoD0010 3804	DoD0010 3803	PrivWith hold3081	PrivWith hold3084					N	Not deliberative. Produce header on PrivWithhold 3081 and Transgender paragraph on 3082 and 2 paragraphs on 3083 re transgender and women in military. Balance not relevant.
DoD0010 3857		PrivWith hold3085	PrivWith hold3085					N	Transmittal email
DoD0010 3858	DoD0010 3857	PrivWith hold3086	PrivWith hold3088					N	Not deliberative. Produce header on PrivWithhold 3086, and paragraphs on transgender students, and Transgender and Women in the military, both on PrivWithhold 3087
DoD0010 3860		PrivWith hold3089	PrivWith hold3089					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 3861	DoD0010 3860	PrivWith hold3090	PrivWith hold3092					N	Not deliberative. Produce header on PrivWithhold 3090 and the two Transgender paragraphs on PrivWithhold 3091. Balance not relevant
DoD0010 5094		PrivWith hold3093	PrivWith hold3093					N	Transmittal email
DoD0010 5095	DoD0010 5094	PrivWith hold3094	PrivWith hold3096					N	Not deliberative. Produce header on PrivWithhold 3094 and two paragraphs on transgender references on PrivWithhold 3095 and PrivWithhold page 3096
DoD0010 5113		PrivWith hold3097	PrivWith hold3097					N	Transmittal email
DoD0010 5114	DoD0010 5113	PrivWith hold3098	PrivWith hold3100					N	Not deliberative. Produce header on PrivWithhold 3098 and two paragraphs on transgender references on PrivWithhold 3099 and PrivWithhold page 3100
DoD0010 5795		PrivWith hold3101	PrivWith hold3101					N	Transmittal email
DoD0010 5796	DoD0010 5795	PrivWith hold3102	PrivWith hold3103					N	Transmittal email
DoD0010 5845		PrivWith hold3104	PrivWith hold3104					N	Transmittal email
DoD0010 5846	DoD0010 5845	PrivWith hold3105	PrivWith hold3106					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 6013		PrivWith hold3107	PrivWith hold3107					N	Transmittal email
DoD0010 6014	DoD0010 6013	PrivWith hold3108	PrivWith hold3110					N	Not deliberative. Produce header for PrivWithhold 3108 and paragraph on Transgender on PrivWithhold 3109 and PrivWithhold 3110.
DoD0010 6119		PrivWith hold3111	PrivWith hold3111					N	Transmittal email
DoD0010 6120	DoD0010 6119	PrivWith hold3112	PrivWith hold3113					N	Not deliberative. Produce first half of PrivWithhold 3112. Balance is not relevant.
DoD0010 7019		PrivWith hold3114	PrivWith hold3114					N	Transmittal email
DoD0010 7020	DoD0010 7019	PrivWith hold3115	PrivWith hold3117					N	Not deliberative. Produce header on PrivWithhold 3115 and two paragraphs on PrivWithhold 3116 re "transgender". Balance is not relevant.
DoD0010 7397		PrivWith hold3118	PrivWith hold3118					N	Transmittal email
DoD0010 7398	DoD0010 7397	PrivWith hold3119	PrivWith hold3119	8/20/2016	Email regarding transgender memo.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	N	Not deliberative
DoD0010 7399	DoD0010 7397	PrivWith hold3120	PrivWith hold3120					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 7403	DoD0010 7397	PrivWith hold3121	PrivWith hold3121						Not relevant
DoD0010 7407	DoD0010 7397	PrivWith hold3122	PrivWith hold3122						Not relevant
DoD0010 7413	DoD0010 7397	PrivWith hold3123	PrivWith hold3123					N	Transmittal email
DoD0010 7430		PrivWith hold3124	PrivWith hold3124					N	Transmittal email
DoD0010 7431	DoD0010 7430	PrivWith hold3125	PrivWith hold3125	8/19/2016	Fwd_ CLEANSING EMAIL - Documents and Emails provided to SecDef on Thursday and Friday.msg	DP - Deliberative Process	Email contains description of materials provided to Secretary of Defense, including deliberations regarding formulation of TG policy.	N	Not deliberative
DoD0010 7433	DoD0010 7430	PrivWith hold3126	PrivWith hold3126					N	Transmittal email
DoD0010 7437	DoD0010 7430	PrivWith hold3127	PrivWith hold3127					N	Transmittal email
DoD0010 7441	DoD0010 7430	PrivWith hold3128	PrivWith hold3128					N	Not deliberative
DoD0010 7447	DoD0010 7430	PrivWith hold3129	PrivWith hold3129					N	Not deliberative; transmittal email
DoD0010 7450		PrivWith hold3130	PrivWith hold3130					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 7451	DoD0010 7450	PrivWith hold3131	PrivWith hold3131	8/19/2016	Email regarding transgender memo.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	N	Transmittal email
DoD0010 7452	DoD0010 7450	PrivWith hold3132	PrivWith hold3132					N	Transmittal email
DoD0010 7456	DoD0010 7450	PrivWith hold3133	PrivWith hold3133						Not relevant
DoD0010 7460	DoD0010 7450	PrivWith hold3134	PrivWith hold3134					N	Transmittal email
DoD0010 7466	DoD0010 7450	PrivWith hold3135	PrivWith hold3135					N	Transmittal email
DoD0010 9255		PrivWith hold3136	PrivWith hold3136					N	Transmittal email
DoD0010 9256	DoD0010 9255	PrivWith hold3137	PrivWith hold3139	7/4/2016	Press guidance document.	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Transmittal email
DoD0010 9314		PrivWith hold3140	PrivWith hold3140					N	Transmittal email
DoD0010 9315	DoD0010 9314	PrivWith hold3141	PrivWith hold3142	7/1/2016	Press guidance document.	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Transmittal email
DoD0010 9322		PrivWith hold3143	PrivWith hold3143					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0010 9323	DoD0010 9322	PrivWith hold3144	PrivWith hold3146	7/1/2016	E-mail report regarding policy including transgender.	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header to PrivWithhold 3144 and four paragraphs on PrivWithhold 3145. Balance is not relevant.
DoD0010 9443		PrivWith hold3147	PrivWith hold3147					N	Transmittal email
DoD0010 9444	DoD0010 9443	PrivWith hold3148	PrivWith hold3151	6/30/2016	Email regarding transgender media coverage.	DP - Deliberative Process	Deliberations regarding the implementation of the transgender policy	N	Not deliberative. Produce header to PrivWithhold 3148, Top Issues Section on PrivWithhold 3149 and Card section on 3150. Balance is not relevant
DoD0011 4211		PrivWith hold3152	PrivWith hold3152					N	Transmittal email
DoD0011 4212	DoD0011 4211	PrivWith hold3153	PrivWith hold3155					N	Not deliberative. Produce header to Off Camera Briefing Section on PrivWithhold 3153. Balance is not relevant
DoD0011 7081		PrivWith hold3156	PrivWith hold3157					N	Transmittal email

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD00137847		PrivWith hold3158	PrivWith hold3163	2/7/2018	Email between DoD personnel gathering material for congressional briefings.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD00137872		PrivWith hold3164	PrivWith hold3169	1/25/2018	Email between DoD personnel gathering material for congressional briefings.	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy; Deliberations regarding the implementation of the transgender policy	N	Not deliberative
DoD00142084		PrivWith hold3170	PrivWith hold3171	1/18/2018	Email between DoD personnel including attorneys providing edits to transgender documents.	AC - Attorney Client Privilege; DP - Deliberative Process	Attorney mental impressions regarding matter in litigation or anticipated litigation; Seeking or providing legal advice regarding transgender policy	Y	AC

Document ID	Parent ID	In Camera Begin Bates	In Camera End Bates	Date	Title of Document/Subject Line of Email/Description	Privilege Determination	Privilege Description	Privilege Y/N	Reasons
DoD0014 3347		PrivWith hold3172	PrivWith hold3173					N	No legal advice sought or provided
DoD0014 3351		PrivWith hold3174	PrivWith hold3175	7/26/2017	Email with the subject line "New transgender policy (UNCLASSIFIED)"	AC - Attorney Client Privilege	Email conversation between DoD OGC attorneys and their clients regarding the effect of social media posts from the Executive Branch on ongoing policy process.	Y	AC
DoD0014 3355		PrivWith hold3176	PrivWith hold3177	7/26/2017	Email with the subject line "RE: POTUS TG TWEET (UNCLASSIFIED)"	DP - Deliberative Process	Deliberations regarding the formulation of the transgender policy	Y	DP and AC
DoD0014 3357		PrivWith hold3178	PrivWith hold3180	7/26/2017	Email with the subject line "RE: POTUS TG TWEET (UNCLASSIFIED)"	AC - Attorney Client Privilege	Email conversation between DoD OGC attorneys and their clients regarding the effect of social media posts from the Executive Branch on ongoing policy process.	Y	AC

EXHIBIT 3

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 its 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%8B rebut-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.

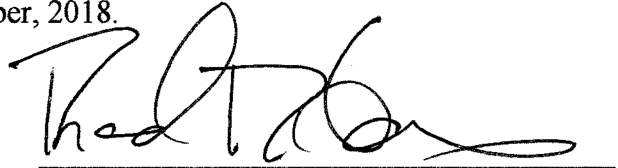
In my opinion, reversing the open service policy, not maintaining it, would likely have a negative impact on readiness, morale, and unit cohesion. Among other things, such an abrupt change in policy would undermine the consistency and predictability on which morale and good order rely, increasing uncertainty 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.

A handwritten signature in black ink, appearing to read "Brad R. Carson", written over a horizontal line.

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).
- “*The Liberal Moment: What Happened?*”, Symposium Issue of DEMOCRACY: A JOURNAL OF IDEAS (invited article, along with Michael Sandel, Michael Walzer, Danielle Allen, William Galston, Martha Nussbaum, Robert Reich, Katha Pollit, and Joe Klein) (Spring 2010).
- *The Claremore Diarist*, THE NEW REPUBLIC (November 22, 2004).
- *The Economics Of Renewable Energy*, in THE HANDBOOK OF ENERGY FINANCE (Wiley: 2012) (ed. Simkins).
- RENEWABLE ENERGY ECONOMICS (book manuscript in revision) (available at www.ssrn.com).
- *Pay To Play*, BLUEPRINT MAGAZINE (May 31, 2005).
- *The Fall Of The House Of Representatives*, DEMOCRACY: A JOURNAL OF IDEAS (September 2006) (review of THE HOUSE: A HISTORY OF THE HOUSE OF REPRESENTATIVES by Remini).
- *Smart Development Subsidies*, DEMOCRACY: A JOURNAL OF IDEAS (part of “20 Ideas for the Next President”) (Spring 2008).
- *Tate v. Browning-Ferris Industries: Oklahoma Adopts A Common Law Action For Employment Discrimination*, 46 OKLA. L. REV. 557 (1993).
- *Legal Issues Facing Small Businesses And Their Owners* (with Michael Troilo), in HUMAN RESOURCE MANAGEMENT IN SMALL BUSINESS (New Horizons In Management) (eds. Cooper and Burke) (2012)
- *Federal Appellate Practice* (with the Honorable Robert E. Bacharach (Tenth United States Circuit Court of Appeals), in APPELLATE MANUAL FOR OKLAHOMA LAWYERS (eds. Muchmore

& Ellis) (3 vols.) (1997).

- *Defense Reform In The Next Administration: What To Do* (with Morgan Plummer), www.warontherocks.com (September 12, 2016).
- *The Pentagon's Fig Tree: Reforming The Military Health System* (with Morgan Plummer), www.warontherocks.com (September 26, 2016).
- *The Chickens Are Ready To Eat: The Fatal Ambiguity Of "Readiness"* (with Morgan Plummer), www.warontherocks.com (November 7, 2016).
- *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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Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security Regarding Military Service by Transgender Individuals (March 23, 2018).

Memoranda issued by Secretary Mattis entitled “Military Service by Transgender Individuals—Interim Guidance,” and “Terms of Reference—Implementation of Presidential Memorandum on Military Service by Transgender Individuals” (Sept. 14, 2017).

Statement by Secretary of Defense Mattis on Military Service by Transgender Individuals (Aug. 29, 2017).

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Exhibit C

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Medical Andrology and Infertility
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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.



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EXHIBIT 4



Assessing the Implications of Allowing Transgender Personnel to Serve Openly

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Preface

U.S. Department of Defense (DoD) policies have rendered both the physical and psychological aspects of “transgender conditions” as disqualifying conditions for accession and allow for the administrative discharge of service members who fall into these categories. However, in July 2015, Secretary of Defense Ashton Carter announced that DoD would “create a working group to study the policy and readiness implications of welcoming transgender persons to serve openly.” In addition, he directed that “decision authority in all administrative discharges for those diagnosed with gender dysphoria¹ or who identify themselves as transgender be elevated to the Under Secretary of Defense (Personnel and Readiness), who will make determinations on all potential separations” (DoD, 2015b).

It is against this backdrop that DoD is considering allowing transgender personnel to serve openly. To assist in identifying the potential implications of such a change in policy, the Office of the Under Secretary of Defense for Personnel and Readiness asked the RAND National Defense Research Institute to conduct a study to (1) identify the health care needs of the transgender population, transgender service members’ potential health care utilization rates, and the costs associated with extending health care coverage for transition-related treatments; (2) assess the potential readiness implications of allowing transgender service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly. This report documents the findings from that study. This research should be of interest to DoD and military service leadership, members of Congress, and others who are interested in the potential implications of allowing transgender personnel to serve openly in the U.S. armed forces.

This research was sponsored by the Office of the Under Secretary of Defense for Personnel and Readiness and conducted within the Forces and Resources Policy Center of the RAND National Defense Research Institute, a federally funded research and development center sponsored by the Office of the Secretary of Defense, the Joint

¹ *Gender dysphoria* is “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth” (World Professional Association for Transgender Health, 2011, p. 2).

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Staff, the Unified Combatant Commands, the Navy, the Marine Corps, the defense agencies, and the defense Intelligence Community.

For more information on the RAND Forces and Resources Policy Center, see www.rand.org/nsrd/ndri/centers/frp or contact the director (contact information is provided on the web page).

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Summary

The U.S. Department of Defense (DoD) is reviewing its policy on transgender personnel serving openly and receiving gender transition–related treatment during military service. The prospect of transgender personnel serving openly raises a number of policy questions, including those regarding access to gender transition–related health care, the range of transition-related treatments to be provided, the potential costs associated with these treatments, and the impact of gender transition–related health care needs (i.e., surgical, pharmacologic, and psychosocial) on military readiness—specifically, in terms of the deployability of transgender service members. The Office of the Under Secretary of Defense for Personnel and Readiness asked the RAND National Defense Research Institute to conduct a study to (1) identify the health care needs of the transgender population, transgender service members’ potential health care utilization rates, and the costs associated with extending health care coverage for transition-related treatments; (2) assess the potential readiness implications of allowing transgender service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly. This report presents the study findings centered around the following research questions:

- What are the health care needs of the transgender population?
- What is the estimated transgender population in the U.S. military?
- How many transgender service members are likely to seek gender transition–related medical treatment?
- What are the costs associated with extending health care coverage for gender transition–related treatments?
- What are the potential readiness implications of allowing transgender service members to serve openly?
- What lessons can be learned from foreign militaries that permit transgender personnel to serve openly?
- Which DoD policies would need to be changed if transgender service members are allowed to serve openly?

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In the following sections, we summarize the findings associated with each research question.

What Are the Health Care Needs of the Transgender Population?

For the purposes of this analysis, we use *transgender* as an umbrella term to refer to individuals who identify with a gender different from the sex they were assigned at birth. Under the recently established criteria and terminology in the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), the American Psychiatric Association (APA) publication that provides standard language and criteria for classifying mental health conditions, transgender status alone does not constitute a medical condition (APA, 2013). Instead, under the revised diagnostic guidelines, only transgender individuals who experience significant related distress are considered to have a medical condition called *gender dysphoria* (GD). Some combination of psychosocial, pharmacologic (mainly but not exclusively hormonal), or surgical care may be medically necessary for these individuals. Psychotherapy to confirm a diagnosis of GD is a common first step in the process, often followed by hormone therapy and, perhaps, gender reassignment surgery involving secondary or primary sex characteristics. Not all individuals seek all forms of care.

A subset of transgender individuals may choose to *transition*, the term we use to refer to the act of living and working as a gender different from that assigned at birth. For some, the transition may be primarily social, with no accompanying medical treatment; we refer to this as *social transition*. For others, medical treatments, such as hormone therapy and hair removal, are important steps to align their physical body with their target gender. We refer to this as *medical transition*. A subset of those who medically transition may choose to undergo gender reassignment surgery to make their body as congruent as possible with their gender identity. This process of surgical transition is also often referred to as *sex* or *gender reassignment* or *gender confirmation*.

What Is the Estimated Transgender Population in the U.S. Military?

Estimates of the transgender population in the U.S. military and the analyses presented in this report should be interpreted with caution, as there have been no rigorous epidemiological studies of the size or health care needs of either the transgender population in the United States or the transgender population serving in the military. As a result, much existing research relies on self-reported, nonrepresentative survey samples. We applied a range of prevalence estimates from published research to fiscal year (FY) 2014 personnel numbers to estimate the number of transgender individuals serving in the U.S. military. We estimate that there are between 1,320 and

6,630 transgender personnel serving in the active component (AC) and 830–4,160 in the Selected Reserve (SR). Combining survey evidence from multiple states and adjusting for the male/female distribution in the military gave us a midrange estimate of around 2,450 transgender personnel in the AC and 1,510 in the SR.

How Many Transgender Service Members Are Likely to Seek Gender Transition–Related Medical Treatment?

We developed two estimates of demand for gender transition–related medical treatments based on private health insurance data and self-reported data from the National Transgender Discrimination Survey (NTDS). Based on our analyses of available private health insurance data on transition-related health care utilization, we expect only a small number of AC service members to access transition-related health care each year. Our estimates based on private health insurance data ranged from 0.022 to 0.0396 annual claimants per 1,000 individuals. Applied to the AC population, these estimates led to a lower-bound estimate of 29 AC service members and an upper-bound estimate of 129 AC service members annually utilizing transition-related health care, out of a total AC force of 1,326,273 in FY 2014.

We also projected health care utilization using the estimated prevalence of transgender service members and self-reported survey data from the NTDS describing the proportion of the transgender population seeking transition-related treatments by age group. Based on these calculations, we estimated, as an upper-bound, 130 total gender transition–related surgeries and 140 service members initiating transition-related hormone therapy (out of a total AC force of 1,326,273 in FY 2014). To put these numbers in perspective, an estimated 278,517 AC service members accessed mental health services in FY 2014. Hence, we expect annual gender transition–related health care to be an extremely small part of the overall health care provided to the AC population.

What Are the Costs Associated with Extending Health Care Coverage for Gender Transition–Related Treatments?

To determine the budgetary implications of gender transition–related treatment for Military Health System (MHS) health care costs, we again used data from the private health insurance system on the cost of extending coverage for this care to the transgender personnel population. We estimate that AC MHS health care costs will increase by between \$2.4 million and \$8.4 million annually—an amount that will have little impact on and represents an exceedingly small proportion of AC health care expendi-

tures (approximately \$6 billion in FY 2014)¹ and overall DoD health care expenditures (\$49.3 billion actual expenditures for the FY 2014 Unified Medical Program; Defense Health Agency, 2015, p. 22). These estimates imply small increases in annual health care costs; results that are consistent with the low prevalence of transgender personnel and the low annual utilization estimates that we identified.

What Are the Potential Readiness Implications of Allowing Transgender Service Members to Serve Openly?

Similarly, when assessing the readiness impact of a policy change, we found that less than 0.0015 percent of the total available labor-years would be affected, based on estimated gender transition–related health care utilization rates.² This is because even at upper-bound estimates, less than 0.1 percent of the total force would seek transition-related care that could disrupt their ability to deploy.³ Existing data also suggest a minimal impact on unit cohesion as a result of allowing transgender personnel to serve openly. However, we caution that these results rely on data from the general civilian population and foreign militaries, as well as previous integration experiences in the military (e.g., gays, lesbians, women), which may not hold for transgender service members.

What Lessons Can Be Learned from Foreign Militaries That Permit Transgender Personnel to Serve Openly?

There are 18 countries that allow transgender personnel to serve openly in their militaries: Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, Netherlands, New Zealand, Norway, Spain, Sweden, and the United Kingdom (Polchar et al., 2014). Our analysis focused on the policies of the four countries—Australia, Canada, Israel, and the United Kingdom—with the most well-developed and publicly available policies on transgender military personnel. Several common themes emerged from our analysis of their experiences:

- The service member’s gender is usually considered to have shifted to the target gender in areas such as housing, uniforms, identification cards, showers, and restrooms when a service member publicly discloses an intention to live as the target

¹ AC beneficiaries make up less than 15 percent of TRICARE beneficiaries (Defense Health Agency, 2015).

² We define a labor-year as the amount of work done by an individual in a year.

³ We note that the ability to deploy is not exactly equivalent to readiness. A service member’s readiness could be measured by the ability to participate in required training and exercises, which could be affected by treatments as well. Our estimates include days of inactivity due to medical treatments, which could also apply in these settings.

gender and receives a diagnosis of gender incongruence. However, physical fitness standards typically do not fully shift until the medical transition is complete. In many cases, personnel are considered exempt from physical fitness tests during transition.

- Because the gender transition process is unique for each individual, issues related to physical standards and medical readiness are typically addressed on a case-by-case basis. This flexibility has been important in addressing the needs of transgender personnel.
- The foreign militaries we analyzed permit the use of sick leave for gender transition-related medical issues and cover some, if not all, medical or surgical treatments related to a service member's gender transition.
- In no case was there any evidence of an effect on the operational effectiveness, operational readiness, or cohesion of the force.

The case studies also suggested a number of key best practices:

- Ensure strong leadership support.
- Develop an explicit written policy on all aspects of the gender transition process.
- Provide education and training to the entire force on transgender personnel policy, but integrate this training with other diversity-related training and education.
- Develop and enforce a clear anti-harassment policy that addresses harassment aimed at transgender personnel alongside other forms of harassment.
- Make subject-matter experts and gender advisers serving within military units available to commanders seeking guidance or advice on gender identity issues.
- Identify and communicate the benefits of an inclusive and diverse workforce.

Which DoD Policies Would Need to Be Changed if Transgender Service Members Are Allowed to Serve Openly?

We reviewed 20 current accession, retention, separation, and deployment regulations across the services and the Office of the Secretary of Defense to assess the impact of changes that may be required to allow transgender individuals to serve openly. We also reviewed 16 other regulations that have been replaced by more recent regulations or that did not mention transgender personnel.⁴ Based on the experiences of foreign militaries, we recommend that DoD issue clear and comprehensive policies.

⁴ These additional policies can be listed in Appendix D of this report.

Accession Policy

We recommend that DoD review and revise the language in accession instructions to match the DSM-5 for conditions related to mental fitness, ensuring the alignment of mental health–related language and facilitating appropriate screening and review processes for disorders that may affect fitness for duty. Similarly, physical fitness standards should specify physical requirements (rather than physical conditions). Finally, physical fitness policies should clarify when the service member’s target gender requirements will begin to apply.

Retention Policy

We recommend that DoD expand and enhance its guidance and directives to clarify retention standards for review during and after medical transition. For example, evidence from Canada and Australia suggests that transgender personnel may need to be held medically exempt from physical fitness testing and requirements (Canadian Armed Forces, 2012; Royal Australian Air Force, 2015). However, after completing medical transition, the service member could be required to meet the standards of the acquired gender.

Separation Policy

DoD may wish to revise the current separation process based on lessons learned from the repeal of Don’t Ask, Don’t Tell. The current process relies on administrative decisions outside the purview of the standard medical and physical review process. This limits the documentation and review of discharges, and it could prove burdensome if transgender-related discharges become subject to re-review and redetermination. When medically appropriate, DoD may wish to establish guidance on when such discharge reviews should be handled through the existing medical fitness processes. We also recommend that DoD develop and disseminate clear criteria for assessing whether and how transgender-related conditions may interfere with duty performance.

Deployment Policy

The degree of austerity will differ across deployment environments, and some locations may be able to meet the health care needs of some transgender individuals. Moreover, recent advancements can minimize the invasiveness of treatments and allow for telemedicine or other forms of remote medical care.

Given this, DoD may wish to adjust some of its processes and deployment restrictions in the context of medical and technological advancements (e.g., minimally invasive treatments, telemedicine). Such reforms could minimize the readiness impact of medical procedures that are common among the transgender population. For example, current regulations specifying that conditions requiring regular laboratory visits that cannot be accommodated in a deployed environment can leave service members ineligible for deployment and would affect all individuals receiving hormone treatments

(Office of the Assistant Secretary of Defense for Health Affairs, 2013, p. 3). These treatments require laboratory monitoring every three months for the first year as hormone levels stabilize (Hembree et al., 2009; Elders et al., 2014). To avoid this cost, DoD would need to either permit more flexible monitoring strategies⁵ or provide training to deployed medical personnel.⁶

⁵ Some experts suggest that alternatives, such as telehealth reviews, would address this issue for rural populations with limited access to medical care (see, for example, World Professional Association for Transgender Health, 2011).

⁶ “Independent duty corpsmen, physician assistants, and nurses can supervise hormone treatment initiated by a physician” (Elders et al., 2014).

Acknowledgments

The authors would like to extend thanks to our DoD sponsors who provided valuable feedback on various briefings over the course of this study. Deputy Assistant Secretary of Defense for Military Personnel Policy Anthony Kurta was also extremely helpful in providing oversight of this research effort.

We also benefited from the contributions of our RAND colleagues. Bernard Rostker, Michael Johnson, John Winkler, Lisa Harrington, Kristie Gore, and Sarah Meadows provided helpful formal peer reviews of this report. Michelle McMullen provided administrative support, and Lauren Skrabala provided editorial assistance.

We thank them all, but we retain full responsibility for the objectivity, accuracy, and analytic integrity of the work presented here.

Abbreviations

AC	active component
APA	American Psychiatric Association
DoD	U.S. Department of Defense
DoDI	U.S. Department of Defense instruction
DSM-5	<i>Diagnostic and Statistical Manual of Mental Disorders</i> , fifth ed.
FY	fiscal year
GD	gender dysphoria
IDF	Israel Defense Forces
LGBT	lesbian, gay, bisexual, and transgender
MHS	Military Health System
MTF	military treatment facility
NTDS	National Transgender Discrimination Survey
SR	Selected Reserve
VHA	Veterans Health Administration
WPATH	World Professional Association for Transgender Health

CHAPTER ONE

Introduction

U.S. Department of Defense (DoD) policies have rendered both the physical and psychological aspects of “transgender conditions” disqualifying conditions for accession and allowed for the administrative discharge of service members who fall into these categories. However, in July 2015, Secretary of Defense Ashton Carter announced that DoD would “create a working group to study the policy and readiness implications of welcoming transgender persons to serve openly.” In addition, he directed that “decision authority in all administrative discharges for those diagnosed with gender dysphoria¹ or who identify themselves as transgender be elevated to the Under Secretary of Defense (Personnel and Readiness), who will make determinations on all potential separations” (DoD, 2015b). It is against this backdrop that DoD is considering allowing transgender service members to serve openly. To assist in identifying the potential implications of such a policy change, the Office of the Under Secretary of Defense for Personnel and Readiness asked the RAND National Defense Research Institute to conduct a study to (1) identify the health care needs of the transgender population, transgender service members’ potential health care utilization rates, and the costs associated with extending health care coverage for transition-related treatments; (2) assess the potential readiness impacts of allowing transgender service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly.

Study Approach

Our study approach centered around the following research questions:

- What are the health care needs of the transgender population?
- What is the estimated transgender population in the U.S. military?

¹ *Gender dysphoria*, or GD, is “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth” (World Professional Association for Transgender Health [WPATH], 2011, p. 2).

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- How many transgender service members are likely to seek gender transition–related medical treatment?
- What are the costs associated with extending health care coverage for gender transition–related treatments?
- What are the potential readiness implications of allowing transgender service members to serve openly?
- What lessons can be learned from foreign militaries that permit transgender personnel to serve openly?
- Which DoD policies would need to be changed if transgender service members are allowed to serve openly?

We explain our methodological approaches in detail in each chapter of this report, but, here, we present overviews of the various methodologies that we employed. We began our analysis by defining the term *transgender* and then identifying the health care needs of the transgender population. This entailed an extensive literature review of these health care needs, along with treatment standards and medical options—particularly for those who have been diagnosed with gender dysphoria (GD).

We then undertook a review of existing data to estimate the prevalence and likely utilization rates of the transgender population in the U.S. military. Based on our estimates of the potential utilization of gender transition–related health care services, we estimated the Military Health System (MHS) costs for transgender active-component (AC) service members and reviewed the potential effects on force readiness from allowing these service members to serve openly.

We adopted two distinct but related approaches to estimating health care utilization and readiness impact. The first is what we label the *prevalence-based approach*, in which we estimated the prevalence of transgender personnel in the military and applied information on rates of gender transition and reported preferences for different medical treatments to measure utilization and the implied cost and readiness impact. This approach has the benefit of including those who may seek other forms of accommodation, even if they do not seek medical care. It also provides detailed information on the types of medical treatments likely to be sought, which can improve the accuracy of cost and readiness estimates. However, this approach suffers from a lack of rigorous evidence in terms of the rates at which transgender individuals seek treatment and instead relies on the nonscientific National Transgender Discrimination Survey (NTDS). This approach also relies on prevalence measures from only two states, Massachusetts and California, which may not be directly applicable to military populations.

Using our second approach, which we label the *utilization-based approach*, we estimated the rates of utilization of gender transition–related medical treatment. This approach has the benefit of providing real-world measures of utilization, which may be more accurate and more rigorously collected than survey information. However, it suffers from a lack of large-scale evidence and instead relies on several case studies

that may not be directly applicable to the U.S. military. Given the caveats described, these approaches provide the best available estimate of the potential number of transgender service members likely to seek medical treatment or require readiness-related accommodations.² In both cases, we applied measures of population prevalence and utilization to fiscal year (FY) 2014 DoD force size estimates to provide estimates of prevalence within the U.S. military.

We also reviewed the policies of foreign militaries that allow transgender service members to serve openly. Our primary method supporting the observations presented in this report was an extensive document review that included primarily publicly available policy documents, research articles, and news sources that discussed policies on transgender personnel in these countries. The information about the transgender personnel policies of foreign militaries came directly from the policies of these countries, as well as from research articles describing the policies and their implementation. Findings on the effects of open transgender service on cohesion and readiness drew largely from research articles that specifically examined this question using interviews and an analysis of studies completed by the foreign militaries themselves. Finally, insights on best practices and lessons learned emerged both directly from research articles describing the evolution of policy and experience and indirectly from commonalities in the policies and experiences of our four in-depth case studies. Recommendations provided in this report are based on these best practices and lessons learned, as well as a consideration of the unique characteristics of the U.S. military.

Finally, for our analysis of DoD policies, we reviewed 20 current accession, retention, separation, and deployment regulations across the services and the Office of the Secretary of Defense. We also reviewed 16 other regulations that have been replaced by more recent regulations or that did not mention transgender personnel.³ Our review focused on transgender-specific DoD instructions (DoDIs) that may contain unnecessarily restrictive conditions and reflect outdated terminology and assessment processes. However, in simply removing these restrictions, DoD could inadvertently affect standards overall. While we focused on reforms to specific instructions and directives, we note that DoD may wish to conduct a more expansive review of personnel policies to ensure that individuals who join and remain in service can perform at the desired level, regardless of gender identity.

Limitations and Caveats

A critical limitation of such a comprehensive assessment is the lack of rigorous epidemiological studies of the size or health care needs of either the U.S. transgender population or the transgender population serving in the military. Indeed, much of the

² We define *accommodations* as adjustments in military rules and policies to allow individuals to live and work in their target gender.

³ These additional policies are listed in Appendix D of this report.

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existing research on the transgender population relies on self-reported, nonrepresentative survey data, along with unstandardized calculations using results from available studies. Because there are no definitive data on this topic, the information presented here should be interpreted with caution and, therefore, we present the full range of estimates.

Organization of This Report

The report is organized around our seven research questions. Chapter Two defines what is meant by the term *transgender*, identifies the health care needs of the transgender population, explains the various treatment options for those diagnosed with GD, and examines the capacity of the MHS to provide treatment options to service members diagnosed with GD. Chapter Three estimates the number of transgender service members in the AC and Selected Reserve (SR). Chapter Four estimates how many transgender service members are likely to seek medical treatment. Chapter Five estimates the costs associated with extending health care coverage for gender transition–related treatments. Chapter Six assesses the potential readiness implications of allowing transgender service members to serve openly. Chapter Seven identifies lessons learned from foreign militaries that allow transgender personnel to serve openly. Chapter Eight offers recommendations regarding which DoD accession, retention, separation, and deployment policies would need to be changed if a decision is made to allow transgender service members to serve openly. Chapter Nine summarizes key findings presented in the report and suggests best practices for implementing policy changes.

Appendix A presents definitions of common terms related to gender transition and transgender identity. Appendix B provides a history of the historical nomenclature associated with transgender identity. Appendix C provides details on the psychosocial, pharmacologic, surgical, and other treatments for GD. Appendix D lists the DoD accession, retention, separation, and deployment policies that we reviewed.

CHAPTER TWO

What Are the Health Care Needs of the Transgender Population?

This report begins by describing the health care needs of the U.S. transgender population overall. To discern the potential impact of changing DoD policies to allow transgender military personnel to serve openly and to ensure appropriate health care for those who seek gender transition–related treatment, it is also important to consider whether the MHS has the capacity to provide this care.

Definitions of Key Terms and Concepts

A challenge to our efforts to understand the health care needs of the transgender population in general, as well as in the military, is the varied and shifting terminology used in the clinical literature. Consequently, here, we define a range of terms that we will use throughout this review.¹ Consistent with the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), the American Psychiatric Association (APA) publication that provides standard language and criteria for classifying mental health conditions, we use the term *transgender* to refer to “the broad spectrum of individuals who . . . identify with a gender different from their natal gender” (APA, 2013).² *Natal gender* or *birth sex*, which is the sex that an individual was assigned at birth and typically correlates with primary sex characteristics (e.g., genitalia).

We refer to the subset of the population whose gender identity does not conform with the expressions and behaviors typically associated with the sex to which they were assigned at birth as *transgender* or *gender nonconforming*. Many identities fall under these umbrella terms, including individuals who identify as androgynous, multigendered, third gender, and two-spirit people. The *gender nonconforming* category also includes individuals who *cross-dress*, which means they wear clothing that is traditionally worn by a gender different from that of their birth sex. The exact definitions of each of these identities vary under the term *gender nonconforming*, and individuals may

¹ A comprehensive list of terms and definitions is provided in Appendix A.

² A brief history of the DSM language and diagnostic criteria for related conditions is presented in Appendix B.

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fluidly change, blend, or alter their gender identity over time. For the purposes of this analysis, we use *transgender* as an umbrella term that refers to individuals who identify with a gender different from the sex they were assigned at birth.

Importantly, under the recently established criteria and terminology outlined in DSM-5, transgender status alone does not constitute a medical condition (APA, 2013). Instead, under the revised diagnostic guidelines, only transgender individuals who experience significant related distress are considered to have a medical condition called *gender dysphoria* (GD). Some combination of psychosocial, pharmacologic (mainly but not exclusively hormonal), or surgical care may be medically necessary for these individuals. Psychotherapy to confirm a diagnosis of GD is a common first step in the process, often followed by hormone therapy and, perhaps, by gender reassignment surgery involving secondary or primary sex characteristics. Not all patients seek all forms of care. However, recognized standards of care require documentation of 12 continuous months of hormone therapy and living in the target gender role consistently and in all aspects of life. Unfortunately, the diagnosis is newly established, and data from which to estimate the size of these subgroups are lacking. In the future, however, transgender individuals seeking gender transition–related treatment are likely to require a GD diagnosis as the clinical justification.

Among transgender individuals, a subset may choose to *transition*, the term used to refer to the act of living and working in a gender different from one’s sex assigned at birth. For some individuals, this may involve primarily social change but no medical treatment; this is referred to as *social transition*. For others, medical treatments, such as hormone therapy and hair removal, are important steps to align their physical body with their target gender. This is referred to as *medical transition*. A subset of those who medically transition may choose to undergo *gender reassignment surgery* to make their physical body as congruent as possible with their gender identity. This process of *surgical transition* is also often referred to as *sex* or *gender reassignment* or *gender confirmation*.

Health Care Needs of the Transgender Population

The main types of gender transition–related treatments are psychosocial, pharmacologic (primarily but not exclusively hormonal), and surgical. While one or more of these types of treatments may be necessary for some transgender individuals with GD, the course of treatments varies and must be determined on an individual basis by patients and clinicians. Since little is known about currently serving transgender service members, the following discussion draws primarily from available research on nonmilitary transgender populations.³

³ The 2015 DoD Health Related Behavior Survey of active-duty service members was being fielded concurrently to this research. It marked the first time a U.S. military survey asked questions relating to gender identity.

Diagnosis and Treatments for Gender Dysphoria

Treatments deemed necessary for transgender populations have shifted over time based on research advancements and the accumulation of clinical knowledge. The World Professional Association for Transgender Health (WPATH) regularly publishes revised versions of its *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*; the most current at the time of our research was version 7. The standards are designed to guide the treatment of patients experiencing GD while recognizing that not all expressions of gender nonconformity require treatment (WPATH, 2011, p. 2). Some transgender individuals (again, the proportion is largely unknown) experience significant dysphoria (distress) with the sex and gender they were assigned at birth, and they meet formal DSM-5 diagnostic criteria for GD, as described in Appendix B of this report. For those diagnosed with GD, treatment options include psychotherapy, hormone therapy, surgery, and changes to gender expression and role (i.e., how people present themselves to the world; WPATH, 2011, pp. 9–10). We discuss these treatment options in detail in Appendix C.

Not all patients will prefer or need all or any of these options; however, when clinically indicated, appropriate care can “alleviate gender dysphoria by bringing one’s physical characteristics into alignment with one’s internal sense of gender” (Herman, 2013b, p. 4). There have been no randomized controlled trials of the effectiveness of various forms of treatment, and most evidence comes from retrospective studies. The widely endorsed consensus-based practice guidelines outlined in the WPATH *Standards of Care* suggest that transition-related mental health care, hormone therapy, and surgery are generally effective and constitute necessary health care for many individuals with GD.⁴ The appropriate treatment plan is best determined collaboratively by patients and their health care providers. Optimally, specialized transgender health care will be provided by an interdisciplinary team (WPATH, 2011, p. 26).

Military Health System Capacity and Gender Transition–Related Treatment

To discern the potential impact of changing DoD policies to allow transgender military personnel to serve openly and to ensure appropriate health care for GD, it is also important to consider whether the MHS has the capacity to provide this care.

We anticipate that these survey results will provide additional information regarding how many transgender personnel currently serve in the U.S. military and their health behaviors.

⁴ These standards are endorsed by the American Medical Association, American Psychological Association, American Academy of Family Physicians, National Association of Social Workers, World Professional Association for Transgender Health, and American College of Obstetricians and Gynecologists (see Lambda Legal, 2012). Major insurers, including Aetna and UnitedHealthcare, have incorporated many of these standards of care into their policies (see, for example UnitedHealthcare, 2015).

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Psychotherapy, Hormone Therapies, and Gender Transition–Related Surgery

Both psychotherapy and hormone therapies are available and regularly provided through the military's direct care system, though providers would need some additional continuing education to develop clinical and cultural competence for the proper care of transgender patients. Surgical procedures quite similar to those used for gender transition are already performed within the MHS for other clinical indications.

Reconstructive Surgery

Reconstructive breast/chest and genital surgeries are currently performed on patients who have had cancer, been in vehicular and other accidents, or been wounded in combat. The skills and competencies required to perform these procedures on transgender patients are often identical or overlapping. For instance, mastectomies are the same for breast cancer patients and female-to-male transgender patients. Perhaps most importantly, the surgical skills and competencies for some gender transition surgeries also overlap with skills required for the repair of genital injuries sustained in combat, which have increased dramatically among troops deployed to Afghanistan. From 2009 to 2010, the percentage of wounded troops with genitourinary injuries transiting through Landstuhl Regional Medical Center in Germany nearly doubled from 4.8 percent to 9.1 percent—a dramatic increase that led some health providers to call this the “new ‘signature wound’” of Operation Enduring Freedom (D. Brown, 2011).⁵ There are particular similarities to the procedures recommended to treat those experiencing dismounted complex blast injuries, which typically involve multiple amputations with other injuries, often to the genitals (Wallace, 2012). Providing high-quality surgery to treat the 5 percent of combat wounds that require penile reconstruction requires extensive knowledge and practice in reconstructive techniques (Williams and Jezior, 2013). Assuming the MHS continues to directly provide health services as it has in the past, there are at least two potential implications: First, military surgeons may currently have the competencies required to surgically treat patients with GD, and, second, performing these surgeries on transgender patients may help maintain a vitally important skill required of military surgeons to effectively treat combat injuries during a period in which fewer combat injuries are sustained.

Cosmetic Surgery

Recognition of the requirement for reconstructive plastic surgery as a result of the war-time mission drives the existing DoD policy for cosmetic surgery procedures in the MHS; the services have requirements and manpower authorizations for specialists who can perform reconstructive plastic surgery (Office of the Assistant Secretary of Defense

⁵ Experimental penis transplants, expected to be performed for the first time within the next year at Johns Hopkins School of Medicine, are being developed in the United States specifically for combat-wounded veterans; however, there may be benefits for transgender patients as well (Welsh, 2015).

for Health Affairs, 2005, p. 1). Cosmetic/reconstructive surgery skills need to be maintained with practice, and surgeons must also “meet board certification, recertification, and graduate medical education program requirements” (Office of the Assistant Secretary of Defense for Health Affairs, 2005, p. 1).

Current DoD policy draws a distinction between elective cosmetic plastic surgery performed “to improve the patient’s appearance or self-esteem” and reconstructive plastic surgery performed on bodily structures that are abnormal due to health conditions to improve function or approximate a normal appearance (Office of the Assistant Secretary of Defense for Health Affairs, 2005, p. 3). While reconstructive surgeries constitute necessary treatment, access to elective cosmetic surgical procedures is subject to added constraints. For example, cosmetic procedures are performed on a space-available basis and restricted to those who will be TRICARE-eligible for at least six months. These procedures also require written permission from the commander of the service member’s active-duty unit, and the patient must pay surgical, institutional, and anesthesia fees (Office of the Assistant Secretary of Defense for Health Affairs, 2005, p. 3).⁶ DoD recognizes the need for these reconstructive surgery competencies and has crafted a policy to cover plastic surgeries to maintain providers’ surgical skills and certification requirements.

Potential Consequences of Not Providing Necessary Gender Transition–Related Care

The discussion of the health care needs of transgender military personnel is incomplete without considering the potential unintended effects of constraining or limiting gender transition–related treatment. Little question remains that there are transgender personnel currently serving in the AC. Adverse consequences of not providing transition-related health care to transgender personnel could include avoidance of other necessary health care, such as important preventive services, as well as increased rates of mental and substance use disorders, suicide, and reduced productivity.

Research indicates that, “due to discrimination and problematic interactions with health care providers, transgender individuals frequently do not access health care, resulting in short and long-term adverse health outcomes” (Roller, Sedlak, and Draucker, 2015, p. 418).⁷ Further, patients denied appropriate health care may turn to other solutions, such as injecting construction-grade silicone into their bodies to alter

⁶ Interestingly, according to Elders et al. (2014, p. 19), there is no difference in leave policies related to recovery time between the two.

⁷ For example, among NTDS respondents, 28 percent reported postponing or avoiding treatment when sick or injured, and 33 percent delayed or skipped preventive care due to discrimination or disrespect from health care providers (Grant et al., 2011, p. 76). In one study, transgender respondents had fewer self-reports of good health and were more likely to report limitations on daily activities due to health issues (Kates et al., 2015, p. 5).

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their shape (State of California, 2012, p. 12). There are also potential costs related to mental health care services for individuals who do not receive such care (Herman, 2013b, p. 20). Multiple observational studies have suggested significant and sometimes dramatic reductions in suicidality, suicide attempts, and suicides among transgender patients after receiving transition-related treatment (State of California, 2012, p. 10). A study by Padula, Heru, and Campbell (2015) found that removing exclusions on transgender care “could change the trajectory of health for all transgender persons” at a minimal cost per member per month.⁸

However, we caution that it is not known how well these findings generalize to military personnel. Moreover, while the existing data offer some indication of the needs for and costs of gender transition–related health care, it is important to note that none of these studies were randomized controlled trials (the gold standard for determining treatment efficacy). In the absence of quality randomized trial evidence, it is difficult to fully assess the outcomes of treatment for GD.

⁸ Specifically, they found that insurance provider coverage for transgender-related services resulted in “greater effectiveness, and was cost-effective relative to no health benefits at 5 and 10 years from a willingness-to-pay threshold of \$100,000/[quality-adjusted life year].”

CHAPTER THREE

What Is the Estimated Transgender Population in the U.S. Military?

This chapter provides several estimates of the number of transgender service members in the U.S. military. To date, there have been no systematic studies of the number of transgender individuals in the U.S. general population or in the U.S. military. Current studies rely on clinical samples of health care service utilizers, nonrepresentative samples assembled in ways that are difficult to replicate, and self-reported survey data from a small number of states.

General Population Estimates of Transgender Prevalence

The transgender prevalence in the U.S. general population is thought to be significantly less than 1 percent (Gates, 2011, p. 6; APA, 2013, p. 454). However, there have been no rigorous epidemiological studies in the general U.S. population that confirm this estimate. Our subsequent estimates must be qualified, therefore, as somewhat speculative; they are based on numerous sources, including health services claims data, representative state-level health surveillance survey data, a convenience (i.e., non-representative) sample recruited by an advocacy network, the experiences of foreign militaries, and selected other data sources.

The Williams Institute at the University of California, Los Angeles, School of Law, calculated that, based on estimates from Massachusetts and California, 0.3 percent of the U.S. population is transgender (Gates, 2011, p. 6). The Massachusetts data were collected between 2007 and 2009 as part of the Massachusetts Behavioral Risk Factor Surveillance System initiative. The survey suggests that 0.5 percent of the population in Massachusetts identifies as “transgender” (95-percent confidence interval: 0.3 to 0.6 percent; Conron et al., 2012). The California data combine information on the percentage of individuals who are transgender from the California Lesbian, Gay, Bisexual, and Transgender (LGBT) Tobacco Survey and the percentage of the overall population that is LGBT from the 2009 California Health Interview Survey. Gates

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multiplies these values together to estimate that 0.1 percent of the population of California is transgender.¹

To develop an estimate of transgender prevalence for the entire United States, Gates (2011) simply averages the Massachusetts and California values, yielding 0.25 percent, then rounds that up to 0.3 percent. This measure is very problematic, however. While survey-based estimates of transgender prevalence are likely to be accurate measures of true state-level transgender prevalence, it is not clear that taking an unweighted average from states with vastly different population sizes is appropriate for estimating national prevalence. For example, a weighted average calculation using the 2009 census population estimates for California and Massachusetts implies a 0.16 percent “national” prevalence estimate, as opposed to the 0.3 percent estimate calculated by Gates (2011)—a nearly 50-percent difference. We used this 0.16 percent weighted average as our combined, national estimate using the California and Massachusetts studies. This estimate was our midrange starting point, though we included both the 0.1 percent (from California) and 0.5 percent (from Massachusetts) as comparison points.

We note that there have been and continue to be other efforts to measure the prevalence of transgender identity in the general population. The two most prominent examples are the meta-analysis conducted by WPATH and a recent effort from the U.S. census. We did not use these estimates due to concerns that they systematically undercounted the prevalence of transgender identity for a variety of reasons detailed in the discussions that follow.

Separately, in 2007, the WPATH reviewed ten studies of prevalence with estimates for transgender individuals presenting for gender transition–related care, ranging from 1:11,900 to 1:45,000 for male-to-female transitions and 1:30,400 to 1:200,000 for female-to-male transitions (WPATH, 2011).² The studies cited were largely based on clinical usage. The WPATH authors note that these numbers should be considered “minimum estimates at best”:

The published figures are mostly derived from clinics where patients met criteria for severe gender dysphoria and had access to health care at those clinics. These estimates do not take into account that treatments offered in a particular clinic setting might not be perceived as affordable, useful, or acceptable by all self-identified gender dysphoric individuals in a given area. By counting only those people who

¹ Although Gates (2011) states that 3.2 percent of the LGBT population is transgender, we note that an earlier document (California Department of Health Services, 2004) reporting analyses from the same survey states that 2 percent of this population is transgender. We were not able to obtain the raw data and could not verify which of the two values is correct. We used the 3.2-percent estimate to calculate the California transgender prevalence estimate.

² The studies were Wälinder, 1968; Wälinder, 1971; Hoenig and Kenna, 1974; Eklund, Gooren, and Bezemer, 1988; Tsoi, 1988; Bakker et al., 1993; van Kesteren, Gooren, and Megens, 1996; Weitze and Osburg, 1996; De Cuyper et al., 2007; and Zucker and Lawrence, 2009.

present at clinics for a specific type of treatment, an unspecified number of gender dysphoric individuals are overlooked. (WPATH, 2011, p. 7)

Additionally, the information is based on utilization rates from the ten studies, mostly conducted in European countries, such as the United Kingdom, the Netherlands, Sweden, Germany, and Belgium. One study was conducted in Singapore. This raises concerns about the applicability of these estimates to the U.S. population due to differences in costs and social tolerance, both of which would likely make health utilization behavior in Europe significantly different from that in the United States. Moreover, the studies were conducted over a 30-year period in which utilization was dramatically increasing, suggesting that the estimates were not stable. This concern is reported in the WPATH report, with the authors noting that the trend (over time) was due to higher rates of individuals seeking care. In one example, the estimated transgender population doubled in just five years in the United Kingdom. If the numbers are increasing over time based on the use of clinics, then an estimate from ten to 15 years ago would likely be very low relative to utilization in those same places today, and again not representative of likely utilization in the United States.³

Harris (2015) used information on name and sex changes in Social Security Administration data files to estimate the number of transgender individuals in the U.S. population. Using information on male-to-female and female-to-male name changes, he estimates that there were 89,667 transgender individuals in the United States in 2010. Of this group, 21,833 (24 percent) also changed their sex, according to Social Security records; during some periods in U.S. history, this required documented proof of either initiation or completion of medical transition. Since name changes are not required, prevalence estimated in this manner is likely to be a lower-bound estimate of the true transgender prevalence rate in the United States. Using the 2010 population of adults age 18 and over as the denominator (234,564,071), 89,667 transgender cases implies a lower-bound transgender prevalence rate of 0.038 percent in the United States.

³ According to the WPATH authors,

The trend appears to be towards higher prevalence rates in the more recent studies, possibly indicating increasing numbers of people seeking clinical care. Support for this interpretation comes from research by Reed and colleagues (2009), who reported a doubling of the numbers of people accessing care at gender clinics in the United Kingdom every five or six years. Similarly, Zucker and colleagues (2008) reported a four- to five-fold increase in child and adolescent referrals to their Toronto, Canada clinic over a 30-year period. (WPATH, 2011, p. 7)

Prevalence-Based Approach to Estimating the Number of Transgender Service Members in the U.S. Military

Before discussing estimates of prevalence of transgender individuals in the U.S. military, it is important to note that, to our knowledge, no studies have directly measured the prevalence or incidence of transgender individuals currently serving in the active or reserve component.⁴ To estimate prevalence in the military, we have constructed estimates using a combination of data sources.⁵ One of those sources, the NTDS, provides detailed information on the choices and preferences of transgender individuals but it is not a randomized, representative sample of the military and thus is not generalizable.

We applied measures of population prevalence to DoD force size estimates to estimate prevalence in the U.S. military. We measured force size using information from DoD's 2014 demographics report (DoD, 2014; see Table 3.1). The demographics are separated into AC and SR. For much of the discussion of our medical care analysis, we focus on the AC. We did not include reserve-component service members, retirees, or dependents in the cost analyses because we did not have information on age and sex distribution within these beneficiary categories. Some of these beneficiary categories also have limited eligibility for health care provided through military treatment facilities (MTFs) and may receive their health care through TRICARE coverage in the purchased care setting or through other health insurance plans. For our readiness analysis, we included both the AC and SR because both components may be used for deployments. Although there are ongoing discussions regarding the feasibility of activating the Individual Ready Reserve, we excluded this population because we lacked the detailed information on gender and age needed to conduct our analysis.

Table 3.2 contains estimates of the number of transgender personnel in the AC and SR using the baseline prevalence from existing studies and shows the results of several tests that provide a range of estimates based on different assumptions in the literature. To estimate prevalence in the military, we conducted analyses using five values: (1) a lower-bound estimate of 0.1 percent based on a study in California

⁴ G. Brown (1988) found that eight out of 11 evaluated natal males with severe GD had a military background; he explains his findings by positing a "hypermasculine" phase among transgender individuals that coincides with the age of enlistment. Since the sample size in that study was extremely small, we do not consider this good evidence for this theory. Gates and Herman (2014) used estimates from the NTDS, combined with estimates of transgender prevalence (0.3 percent) from Gates (2011) and history of military service in the U.S. population from the American Community Survey, to estimate transgender prevalence in the military. Data from the National College of Health Administration showed that military experience was significantly higher among transgender individuals than among those who did not identify as transgender (9.4 percent versus 2.1 percent; Blosnich, Gordon, and Fine, 2015). However, these data were collected from only 51 institutions, and the response rate for the survey was only 20 percent, which again raises questions regarding the validity of the estimates.

⁵ Our estimates were constructed using Gates (2011), which combined estimates from the Massachusetts Behavioral Risk Factor Social Surveys with the California LGBT Tobacco Survey, and Gates and Herman (2014), which used data from the NTDS, Gates (2011), and the American Community Survey.

What Is the Estimated Transgender Population in the U.S. Military? 15

Table 3.1
DoD Military Force Demographics

Category	Number	%
Active Component		
Sex		
Female	200,692	15
Male	1,125,581	85
Age		
<25	572,293	43
26–30	293,698	22
31–35	201,137	15
36–40	137,653	11
41+	121,492	9
Total	1,326,273	—
Selected Reserve		
Sex		
Female	149,759	18
Male	682,233	82
Age		
<25	285,494	34
26–30	156,983	19
31–35	124,179	15
36–40	86,151	10
41+	179,185	22
Total	831,992	—

SOURCE: DoD, 2014.

(Conron, 2012); (2) an upper-bound estimate of 0.5 percent based on a study in Massachusetts (Gates, 2011); (3) a population-weighted average of the California and Massachusetts studies, yielding a prevalence estimate of 0.16 percent; (4) an adjustment of this population-weighted approach based on the natal male/female distribution in the military, yielding a prevalence estimate of 0.19 percent; and (5) a doubling of the population-weighted, gender-adjusted value, yielding a prevalence estimate of 0.37 percent.

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Table 3.2
Prevalence-Based Estimates of the Number of Transgender Active-Component and Selected Reserve Service Members

Component	Total Force Size (FY 2014)	0.1% ^a (CA study)	0.16% ^b (combined, population-weighted CA + MA studies)	0.19% ^c (gender-adjusted rate)	0.37% ^d (twice gender-adjusted rate)	0.5% ^e (MA study)
Active	1,326,273	1,320	2,120	2,450	4,900	6,630
Selected Reserve	831,992	830	1,330	1,510	2,930	4,160

SOURCES: Estimates for force size are based on RAND calculations using FY 2014 data from DoD, 2014.

^a Based on estimates of prevalence from a California study (Conron, 2012).

^b Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state.

^c Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state and applied specifically to the male/female distribution in the military components.

^d Based on estimates of prevalence from NTDS, Gates (2011), and the American Community Survey (Gates and Herman, 2014) and applied specifically to the male/female distribution in the military.

^e Based on estimates of prevalence from a Massachusetts study (Gates, 2011).

Based on the 0.1 percent lower bound, we estimate that there are approximately 1,320 transgender individuals in the AC and approximately 830 in the SR. Using the Massachusetts study (0.5 percent) as an upper bound, we estimate that there are approximately 6,630 transgender service members in the AC and 4,160 in the SR. Because these estimates are based on selected populations in the state and the variation in these populations is significant, we were concerned that they were not representative of broader national numbers, especially as they pertain to the gender mix of the military. Therefore, we adjusted the population-weighted combination of these estimates to account for the male/female distribution in the U.S. military populations. This gender adjustment is critical, as most research indicates that male-to-female transitions are two to three times more common than female-to-male transitions (APA, 2013; Horton, 2008; Gates, 2011; Grant et al., 2011). This assumption of a two to one difference in underlying prevalence across genders applied to the 0.16 percent aggregate estimate implies a natal male-specific prevalence of 0.2 percent and a natal female-specific prevalence of 0.1 percent. Assigning these values to the male/female AC distributions increases the military prevalence estimate from 0.16 percent to 0.19 percent, which implies that there are 2,450 transgender individuals in the AC and 1,510 in the SR.

The estimate of 0.37 percent doubles the gender-adjusted rate based on information provided by the NTDS that 20 percent of the transgender population in its sample reported a history of military service, which is twice the rate of the general population,

as reported in the American Community Survey (Grant et al., 2011). We note that this is likely to be an overestimate of the overall transgender population for two reasons. First, given the highly tolerant environment in Massachusetts and California, the prevalence estimates in those two states are likely to overstate the nationwide prevalence.⁶ Second, the evidence that transgender individuals are twice as likely to serve in the military is based on extrapolations from a nonrepresentative sample of individuals and not on direct, rigorous study of the transgender military population.

⁶ For example, both California and Massachusetts are rated as “top places for LGBT rights” (Keen, 2015).

CHAPTER FOUR

How Many Transgender Service Members Are Likely to Seek Gender Transition–Related Medical Treatment?

We adopted two distinct but related approaches to estimate the health care utilization and impact on readiness of allowing transgender personnel to serve openly in the U.S. military. The first is what we label the *prevalence-based approach*, in which we estimated the prevalence of transgender individuals in the military and applied information on rates of gender transition and reported preferences for different medical treatments to measure utilization and the implied cost and readiness impact. This approach has the benefit of including those who may seek other forms of accommodation, even if they do not seek medical care. It also provides detailed information on the types of medical treatments likely to be sought, which can improve the accuracy of cost and readiness estimates. However, this approach suffers from a lack of rigorous evidence in terms of the rates at which transgender individuals seek treatment and instead relies on the nonscientific NTDS. It also relies on prevalence measures from only two states—Massachusetts and California—that may not be directly applicable to military populations.

We refer to our second approach as the *utilization-based approach*, which we used to estimate the rates of utilization of medical treatment. This approach has the benefit of providing real-world measures of utilization based on health insurance claims, which may be more accurate and more rigorously collected than survey information. However, this approach suffers from a lack of large-scale evidence and instead relies on several case studies that may not be directly applicable to the U.S. military. Despite these caveats, these approaches provide the best available estimate of the range in the potential number of transgender service members likely to seek medical treatment or require readiness-related accommodations.¹

In both cases, we applied measures of population prevalence and utilization to DoD force size demographics to provide estimates of prevalence within the U.S. military. As indicated in the previous chapter, our calculations of population prevalence and health care utilization used FY 2014 data from DoD’s 2014 demographics report (DoD, 2014; see Table 3.1 in Chapter Three).

¹ Again, we define *accommodations* as adjustments in military rules and policies to allow individuals to live and work in their target gender.

Prevalence-Based Approach to Estimating the Number of Gender Transition–Related Treatments in the U.S. Military

To estimate the utilization of gender transition–related health care treatments, we scaled the prevalence of transgender service members identified in Chapter Three by the rates of transition and reported take-up of medical treatments. We based our transition rates on self-reported transitions in the NTDS data. According to the NTDS, 55 percent of transgender individuals reported living and working as their target gender; we refer to this as *social transition*.² For others, medical treatments, such as hormone therapy and hair removal, are important steps to align their physical body with their target gender. We refer to this as *medical or surgical transition*.³

Using the prevalence estimates from Table 3.2 in Chapter Three, we used information from the NTDS on the age of transition for individuals under 25, 26–30, 31–35, 36–40, and over 40 and calibrated our estimates with the age distribution in the military. Fifty-five percent of NTDS respondents reported that they had socially transitioned over their lifetime, and the data indicate that male-to-female transition ages differ from female-to-male transition ages. Nearly 54 percent of female-to-male transitions occurred before the age of 25, compared with only 23 percent of male-to-female transitions.

We focus on social transition because we assess this as most relevant for individuals who may need accommodations as they live and work in a different gender. This was also used as the basis in some foreign militaries, as discussed in Chapter Seven. Table 4.1 presents the estimated number of individuals who may seek to transition each year under each of our prevalence assumptions. We found that a lower bound of 40 AC and 20 SR service members and an upper bound of 190 AC and 110 SR service members will seek to transition each year and may need some sort of accommodations. The population-weighted, gender-adjusted estimate implies a middle range of 65 AC and 40 SR service members who will seek to transition each year.

Next, we combine the estimates of the number of transgender service members with information on the proportion undergoing transition and the age-specific proportion undergoing gender transition–related treatment to generate the number of annual treatments. Surgical preference rates vary by transition type (male-to-female versus female-to-male transition; see Table 4.2). Surgeries are distributed evenly across

² We note that an additional 27 percent of those who had not yet socially transitioned wished to transition at some point in the future. Because the timeline and desire for transition are difficult to translate to concrete numbers, we used the estimate of 55 percent of transgender individuals living and working full-time as their target gender as our planning parameter for readiness accommodations.

³ In the NTDS sample, 65 percent of transgender individuals had medically transitioned, and 33 percent had surgically transitioned. Note that the rate of medical transitions is higher than the rate of social transitions because some individuals receive hormone treatments but do not live full-time as their target gender.

How Many Transgender Service Members Are Likely to Seek Treatment? 21

Table 4.1
Estimated Number of Transgender Service Members Who May Seek to Transition per Year

Estimate Source	Active Component (total force: 1,326,273)	Selected Reserve (total force: 831,992)
0.1% (CA study) ^a	40	20
0.16% (combined, population-weighted CA + MA studies) ^b	60	30
0.19% (gender-adjusted rate) ^c	65	40
0.37% (twice gender-adjusted rate) ^d	130	80
0.5% (MA study) ^e	190	110

SOURCES: Estimated proportions of subgroups based on Grant et al., 2011, p. 25. Estimates for the AC and SR are based on RAND calculations using FY 2014 data from DoD, 2014.

^a Based on estimates of prevalence from a California study (Conron, 2012).

^b Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state.

^c Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state and applied specifically to the male/female distribution in the military components.

^d Based on estimates of prevalence from NTDS, Gates (2011), and the American Community Survey (Gates and Herman, 2014) and applied specifically to the male/female distribution in the military.

^e Based on estimates of prevalence from a Massachusetts study (Gates, 2011).

NOTE: The table excludes Individual and Inactive Ready Reserve members because comparable information on their demographics was not available for analysis.

four procedures for male-to-female transitions and primarily over two procedures for female-to-male transitions.

Recall, not all of the individuals seeking to transition would meet the diagnostic criteria for GD, which is a requirement for these surgeries. Moreover, even among individuals who transition in some manner, surgical treatment rates are typically only around 20 percent, with the exception of chest surgery among female-to-male transgender individuals (see Table 4.2).

Table 4.3 shows the estimated annual number of hormone therapy treatments and surgeries in the AC and SR calculated using the same prevalence assumptions described in Chapter Three (see Table 3.2). The surgeries included in the calculations are vaginoplasty, chest surgeries, orchiectomy, hysterectomy, metoidioplasty, and phalloplasty. Note that these estimates constitute the number of treatments, not necessarily the number of individuals. For hormone therapy recipients, the number of treatments and recipients is the same, and these estimates can be treated as counts of individuals. However, the number of individuals is likely smaller for surgical counts because the

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Table 4.2
Lifetime Surgery Preferences Among NTDS Survey Respondents

Procedure	Have Had (%)	Want Someday (%)	Do Not Want (%)
Male-to-female			
Augmentation mammoplasty	21	53	26
Orchiectomy	25	61	14
Vaginoplasty	23	64	14
Facial surgery	17	Not reported	Not reported
Female-to-male			
Chest surgery	43	50	7
Hysterectomy	21	58	21
Metoidioplasty	4	53	44
Phalloplasty	2	27	72

SOURCE: NTDS data (Grant et al., 2011).

NOTE: These estimates are from cross-sectional data; individuals likely received each treatment only once and varied in the age at treatment initiation.

same individual may receive more than one type of surgical treatment.⁴ Using the lower-bound estimate from the California study and the upper-bound estimate from the Massachusetts study (see Table 4.3), we estimated that there will be between 45 and 220 hormone treatments and between 40 and 200 transition-related surgeries annually in the AC and SR. The combined population-weighted and gender-adjusted estimate indicates a midrange of 80 hormone treatments and 70 transition-related surgical treatments annually. Although surgical procedures are most likely to be one-time events, hormone therapy treatment rates are likely to be used indefinitely, and the cost and manpower effects will apply until individuals leave the MHS. We did not have information on the length of service conditional on age and therefore could not calculate the total number of service members who would be receiving hormone therapy at any given point in time. We recommend that this line of analysis be explored in the future.

Utilization-Based Approach to Estimating the Number of Gender Transition–Related Treatments in the U.S. Military

While the prevalence-based approach provides a tractable means to estimate potential utilization of gender transition–related care, there are a number of concerns regard-

⁴ For example, a female-to-male transition might include both chest surgery and phalloplasty.

Table 4.3
Estimated Annual Number of Surgeries and Hormone Therapy Users

Assumption Regarding Underlying Prevalence	Active Component		Selected Reserve	
	Annual Major Surgeries	Annual Hormone Therapy	Annual Major Surgeries	Annual Hormone Therapy
0.1% (CA study) ^a	25	30	15	15
0.16% (combined, population-weighted CA + MA studies) ^b	40	45	20	25
0.19% (gender-adjusted) ^c	45	50	25	30
0.37% (twice gender-adjusted rate) ^d	90	100	50	55
0.5% (MA study) ^e	130	140	70	80

SOURCE: RAND analysis.

^a Based on estimates of prevalence from a California study (Conron, 2012).

^b Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state.

^c Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state and applied specifically to the male/female distribution in the military components.

^d Based on estimates of prevalence from NTDS, Gates (2011), and the American Community Survey (Gates and Herman, 2014) and applied specifically to the male/female distribution in the military.

^e Based on estimates of prevalence from a Massachusetts study (Gates, 2011).

NOTE: Hormone therapy is person-level; surgery statistics are counts of surgeries, and one person may have multiple surgeries.

ing the information on which these estimates rely. As stated previously, these concerns include both a reliance on prevalence estimates from just two states and a reliance on data from the NTDS, which were not collected from a random sample. Our utilization estimates were taken primarily from three sources:

- private health insurance utilization data on annual rates of enrollee transgender-related health care utilization in health insurance plans that cover transition-related health care, as reported by Herman (2013b)
- private health clinic data showing estimates of the rates of penectomies and bilateral mastectomies in the U.S. population in 2001, as reported by Horton (2008)⁵

⁵ A penectomy is the surgical removal of the penis. A bilateral mastectomy is the surgical removal of both breasts.

- Veterans Health Administration (VHA) claims data, which were used to calculate prevalence and incidence rates of gender identity disorder (now referred to as GD in DSM-5) from 2006 to 2013, as reported by Kauth et al. (2014).

Each of these data sources provides information on a different outcome, which makes understanding the results more complicated. However, collectively, the information taken from these three studies provides a broad, useful picture regarding potential gender transition–related health care utilization in the AC population. In the following sections, we review each of these studies in detail, identify key estimates from each, and apply the estimates to the AC population identified in Table 3.2 in Chapter Three.

Private Health Insurance Utilization Estimates

Herman (2013b) reports on the experiences of 34 employers that provided gender transition–related health care benefits to their employees and dependents via their health insurance plans. This study specifically reports on the annual number of enrollees who accessed “transition-related care.” This information is derived from health insurance claims data and thus is dependent on the treatments that were covered by the health insurance companies.⁶ The firms surveyed typically covered major gender transition–related surgeries and hormone therapy, but they varied in their coverage of other transition-related treatments, such as vocal cord surgery.⁷

Firms reviewed by Herman (2013b) also typically did not report information on the number of dependents covered but included dependents in their utilization estimates. Data from several sources (e.g., Sonier et al., 2013; Gould, 2012) imply an approximate average one-to-one ratio of employees to dependents in privately insured firms in the United States. Thus, not accounting for the role of dependents in these utilization estimates would overstate utilization by approximately 100 percent.⁸ For

⁶ If firms do not cover particular treatments, it is not possible to file a claim for reimbursement. If individuals in these firms utilized services that were not covered, thus paying for treatments out of pocket or through some other form of health insurance, these utilization estimates will be biased downward.

⁷ One hundred percent of firms covered major gender transition–related surgeries, including hysterectomy, oophorectomy, metoidioplasty, phalloplasty, urethroplasty, vaginectomy, orchiectomy, vaginoplasty, labiaplasty, and clitoroplasty. Ninety-two percent of firms covered bilateral mastectomy for female-to-male patients, but only 59 percent covered female-to-male chest reconstruction, and only 59 percent covered male-to-female augmentation mammoplasty (breast augmentation). All firms covered hormone therapies, specifically estrogen, progesterone, spironolactone, and testosterone.

⁸ We used two different data sources to determine the typical number of dependents covered by the main policyholder in private health insurance firms in the United States. First, we used information from the Robert Wood Johnson Foundation on the number of people who are covered by employer-sponsored health insurance and are the main policyholders and on the number of people who are covered by employer-sponsored health insurance and are dependents. Using these figures, we estimated a 1-to-0.99 policyholder-to-dependent ratio in employer-sponsored private health insurance. The Economic Policy Institute also reports information on this question using data from the U.S. census Current Population Survey. Using this information, we calculated a policyholder-to-dependent ratio of 1 to 0.94.

firms that did not provide information on dependents, we imputed a one-to-one ratio of employees to dependents to identify the total number of enrolled individuals in a given health plan.

Table 4.4 presents the information from Herman (2013b) on the utilization of gender transition–related care in private health insurance firms. The first column shows available information on the identity of the firm. The second describes the number of firms in each category for which we had utilization estimates. The third contains our estimates regarding the total number of enrollees and dependents from all firms in that category. For confidentiality reasons, some surveyed data sources report only ranges for the number of employees in a firm. Therefore, we used the midpoint of the range to impute the number of employees in a particular firm, then assigned the total number of dependents based on this employee value. For example, we had utilization data from two firms in the “private 1,000–9,999 employees” category. Since we assume the midpoint value for firm size, this implies that there are 5,000 employees in each firm, or 10,000 total employees across the two firms. Assuming a one-to-one employee-to-dependent ratio implies an additional 10,000 covered individuals, resulting in a combined total of 20,000 enrollees.

The estimates presented in Table 4.4 indicate that utilization rates range from an annual low of zero individuals per 1,000 enrollees to an annual high of 0.064 individuals per 1,000 enrollees. To obtain a combined estimate of the different values, we constructed a weighted average using the existing utilization estimates, weighting by the number of covered individuals that generated each of the estimates in Table 4.4. A weighted average of all the estimates results in an overall utilization estimate of 0.0396 individuals per 1,000 enrollees.

Table 4.4
Enrollee Utilization of Gender Transition–Related Benefits in Private Health Insurance Firms

Private and Public Firms	Number of Firms	Total Contribution (enrollees + dependents)	Individual Claimants per 1,000 Enrollees
Private, fewer than 1,000 employees	1	1,000	0.0000
Private, 1,000–9,999 employees	2	20,000	0.0540
Private, 10,000–49,000 employees	5	250,000	0.0220
City and County of San Francisco	NA	80,000	0.0640
University of California	NA	100,000	0.0620
Weighted average per 1,000 enrollees			0.0396

SOURCE: Data from Herman, 2013b.

We conducted two sets of calculations using these estimates. First, we used the lowest non-zero utilization figure (0.022 claimants per 1,000 enrollees);⁹ then, we used the weighted average calculation of 0.0396 per 1,000 enrollees. Applying the 0.022 claimants per 1,000 figure to the AC population of 1,326,273 implies that 29 AC service members would receive gender transition–related care annually. Applying the weighted average estimate of 0.0396 per 1,000 enrollees to the AC population implies that 53 service members would receive gender transition–related care annually.

Sensitivity Analyses

We also conducted two additional sensitivity analyses to determine the full potential scope of gender transition–related health care utilization in the AC. A key consideration when applying estimates from civilian populations to the military is that the underlying male/female distribution in the AC is different, with 85 percent of the AC population being male (versus approximately 50 percent in the civilian population). Studies suggest that the prevalence of transgender individuals is higher in the male population than in the female population (APA, 2013; Horton, 2008; Gates, 2011; Grant et al., 2011), so applying civilian estimates directly to the AC would underestimate the true utilization rates.

Accurately accounting for this issue required sex-specific utilization estimates that we could then multiply with the male/female AC distribution (85 percent male, 15 percent female). Unfortunately, we could not identify any sex-specific utilization estimates in the available private health insurance data; the aggregate cost and utilization estimates that we were able to identify already included underlying prevalence differences between the sexes. We posited that utilization would be twice as large for male-to-female transitions than for female-to-male transitions based on an assumption of linearity between transgender prevalence, for which we have sex-specific estimates, and total utilization (Horton, 2008).

Combining this assumption about differing utilization rates with the fact that the male/female labor force participation in the civilian population is close to 50 percent male and 50 percent female, we were able to solve for the sex-specific utilization estimates implied by the aggregate lower-bound (0.022) and weighted average (0.0396) values. Solving for the sex-specific utilization estimates in this manner, for the 0.022 aggregate estimate, we estimated a utilization rate of 0.0293 per 1,000 natal male enrollees and a utilization rate of 0.0146 per 1,000 natal female enrollees.¹⁰ Similarly, for the 0.0396 weighted average figure, solving for the natal sex–specific utiliza-

⁹ The unadjusted version of this figure (0.0044 percent) was also used in Belkin (2015) to estimate health care utilization in the military.

¹⁰ The equation we solved to calculate the natal male–specific and natal female–specific utilization rates is as follows: $0.5(x) + 0.5(2x) = 0.022$. In this equation, the variable x is the natal female–specific utilization rate, and solving for x results in a value of 0.0146. Since the natal male–specific utilization rate is assumed to be twice the natal female rate, it equals 0.0293.

tion estimates, we identified a utilization rate of 0.0528 per 1,000 natal male enrollees and a utilization rate of 0.0264 per 1,000 natal female enrollees.

Applying these solved sex-specific estimates to the AC male/female distribution (1,125,581, or 85 percent male, versus 200,692, or 15 percent female) increased our initial lower-bound estimate of claimants from 29 to 36 and increased our estimate from applying the weighted average from 53 to 65.

Finally, the sociology and psychology literature speculates that there is a higher transgender prevalence in the military compared with the civilian population (G. Brown, 1988). Gates and Herman (2014) also calculated that transgender prevalence in the military is approximately twice the civilian prevalence (Gates, 2011; Gates and Herman, 2014).¹¹ Although we believe that the current body of empirical evidence validating this theory is weak, we take it seriously and consider the possible implications for transition-related health care utilization in the military. Assuming that transgender prevalence in the military is twice the transgender prevalence in the civilian population, and, again, assuming a direct relationship between prevalence and utilization, this would inflate our male/female distribution-adjusted estimates of individuals receiving transition-related care annually from 36 to 72, and from 65 to 129 in the AC. Table 4.5, which summarizes the results from applying the private health insurance estimates to the AC population, allows for a comparison of the different estimates.

Private Health Clinic Estimates

A second source of information regarding gender transition-related health care utilization comes from a survey of surgical clinics conducted by Horton (2008). In 2001, Horton surveyed all major clinics in the United States known to provide transition-related care to determine the number of penectomies and bilateral mastectomies performed on transgender patients. Table 4.6 reports surgery incidence estimates broken out by male-to-female transitions and female-to-male transitions. The third column shows estimates using clinic-reported data only. Horton also developed lower- and upper-bound estimates via assumptions regarding treatment counts for clinics with missing data, and these numbers are reported in the second and fourth columns of Table 4.6.¹² These data were collected in 2001 and coverage of gender transition-related benefits have increased over time, so it is also reasonable to assume that surgical tran-

¹¹ As stated previously, Gates and Herman (2014) used estimates from the NTDS and Gates (2011) for a transgender prevalence of 0.3 percent. That study also used data on history of military service in the U.S. population from the American Community Survey to estimate transgender prevalence in the military. Data from the National College of Health Administration show that military experience was significantly higher among transgender individuals than among those who did not identify as transgender (9.4 percent versus 2.1 percent; Bloshnick, Gordon and Fine, 2015). However, data were collected from only 51 institutions, and the response rate for the survey was only 20 percent, which again raises questions regarding the validity of the estimates.

¹² Horton generated upper- and lower-bound estimates by assigning the largest and smallest surgical counts in the data to the clinics with missing values.

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Table 4.5
Utilization Estimates from Applying Private Health Insurance Parameters

Annual Individual Claimants	Estimate from the Literature	Estimates Using Private Employer Data		
		Baseline	Sensitivity Analysis 1 ^a	Sensitivity Analysis 2 ^b
Active component, lower-bound estimate	0.022 claimants per 1,000 individuals	29	36	72
Active component, weighted average estimate	0.0396 claimants per 1,000 individuals	53	65	129

NOTES: Each cell in the "Estimates Using Private Employer Data" columns represents a unique prediction for utilization in the AC population. In the second column of the table, we describe the estimate from the literature that is applied to the AC population. See the text for details on each of the calculations.

^a Sensitivity Analysis 1: We calculated a set of estimates that accounted for differences in the male/female distribution between the civilian and AC populations.

^b Sensitivity Analysis 2: We calculated a set of estimates that accounted for differences in the male/female distribution between the civilian and AC populations and the possibility that transgender prevalence is twice as high in the military population as in the civilian population.

Table 4.6
Incidence of Penectomies and Bilateral Mastectomies Performed on Transgender Individuals

Transition Type	Incidence Estimates (%)		
	Low	Clinic-Reported Data	High
Male-to-female	0.00048	0.00053	0.00103
Female-to-male	0.00020	0.00030	0.00084

SOURCE: 2001 data from Horton, 2008.

NOTE: The table includes data on penectomies and bilateral mastectomies only.

sitions have also increased over time. Thus, these utilization rates of penectomies and bilateral mastectomies should be considered lower-bound estimates.

Applying these estimates to the AC male/female distribution results in low, medium, and high annual estimates of 5.8, 6.6, and 13.2 AC service members receiving these two surgeries, respectively. We reiterate here that these estimates are not directly comparable to the private health insurance estimates presented in the previous section because these estimates apply to only two specific procedures, while the private health insurance estimates include any gender transition-related procedures that private health insurance firms cover. One would expect estimates for two specific surgeries from 2001 to be lower than estimates generated from the private health insurance system in the later 2000s. Indeed, they are, but it is more difficult to make other direct

comparisons between these two estimates, given the private health insurance utilization data presented in Herman (2013b).

Veterans Health Administration Estimates

In this analysis, we used VHA data to calculate the expected annual incidence of gender identity disorder (the condition now known as GD in the DSM-5) in the AC population. As described previously, those with a gender identity disorder diagnosis are a subset of transgender individuals. Kauth et al. (2014) used VHA health claims data to identify incidence rates of new diagnoses. They also calculated prevalence rates of gender identity disorder in each year using previous yearly incidence rates. Because 2006 was the first year in their data set, the prevalence rate in the first year of their data is equivalent to the incidence rate. In the years after 2006, the prevalence rate is essentially a running total of the incidence rates in the previous years added to the most recent incidence rates.

The data in Table 4.7 imply that the incidence of gender identity disorder increased from 3.5 of 100,000 enrollees in FY 2006 to 6.7 of 100,000 enrollees in FY 2013 among veterans who use VHA health care (Kauth et al., 2014). Before applying these estimates to the AC population, we note two important points with respect to the analyses in Kauth et al. (2014). First, because the prevalence rate is simply a running total of new cases diagnosed since the first year of the study's data (2006), adding years of data prior to 2006 would mechanically increase the prevalence estimates. Thus, Kauth et al.'s prevalence calculations are a lower-bound for the total gender

Table 4.7
Prevalence and Incidence of Gender Identity Disorder
Diagnoses in VHA Claims Data

Fiscal Year	New Diagnosis Rate (%)	Prevalence (%)
2006	0.0035	0.0035
2007	0.0034	0.0068
2008	0.0034	0.0098
2009	0.0038	0.0131
2010	0.0046	0.0172
2011	0.0051	0.0217
2012	0.0060	0.0270
2013	0.0067	0.0329

SOURCE: Kauth et al., 2014.

NOTE: The authors calculated new cases diagnosed and total existing cases in a given year based on the entirety of the data since 2006.

identity disorder prevalence rate in this population. Second, estimates based on claims data will likely be lower-bound estimates of incidence and prevalence, since individuals are identified only if they interact with the health care system for reasons related to gender identity disorder. These two caveats should be kept in mind when interpreting the extrapolations here.

Applying estimates from the 2013 data in Table 4.7 to the AC population, one would expect approximately 90 new cases of gender identity disorder each year and that approximately 440 AC service members would be diagnosed with this condition. Although the male/female distribution in the VHA system mirrors that of the AC, veterans who use VHA health care services may have lower socioeconomic and health status than veterans who do not use VHA health care, other military retirees, and AC service members. The VHA population also differs by age and, potentially, by other unmeasured characteristics related to underlying health status. For these varied reasons, these estimates may not be generalizable to the military population overall.

Summarizing the Estimates

Table 4.8 summarizes the key results after applying the estimates from the various data sets to the AC and SR populations. The largest estimate—270 treatments (surgeries and hormone therapies)—was calculated by combining the upper-bound population-level transgender prevalence estimate from Massachusetts with information from the NTDS data on the age of those receiving common transition-related treatments. When applied to the AC population, estimates from VHA and the private health insurance literature imply that only 30–90 AC service members will receive some type of gender transition-related treatment annually.

To understand the full implications of our estimates regarding the expected annual number of AC service members likely to obtain gender transition-related care, in Figure 4.1 we compare the above utilization estimates with the number of AC service members who self-reported visiting a mental health care provider in a given year (21 percent) and the number of AC service members who visited a mental health care specialist in a given year (7 percent; Hoge et al., 2006; McKibben et al., 2013). We chose this outcome because mental health care among military populations is an important, well-studied topic, and data were readily accessible for us to conduct the comparison. The mental health care utilization estimates represent unique service members accessing health care; thus, they compare most directly to the estimates using the private health insurance data and the NTDS hormone therapy estimates. For clarity's sake, we do not present all of the private health insurance and NTDS hormone therapy estimates in Figure 4.1. We do include the smallest, middle, and largest estimates using the private health insurance data and the largest hormone therapy estimate drawn from the NTDS data.

How Many Transgender Service Members Are Likely to Seek Treatment? 31

Table 4.8
Annual Gender Transition–Related Treatment Estimates from All Data Sources

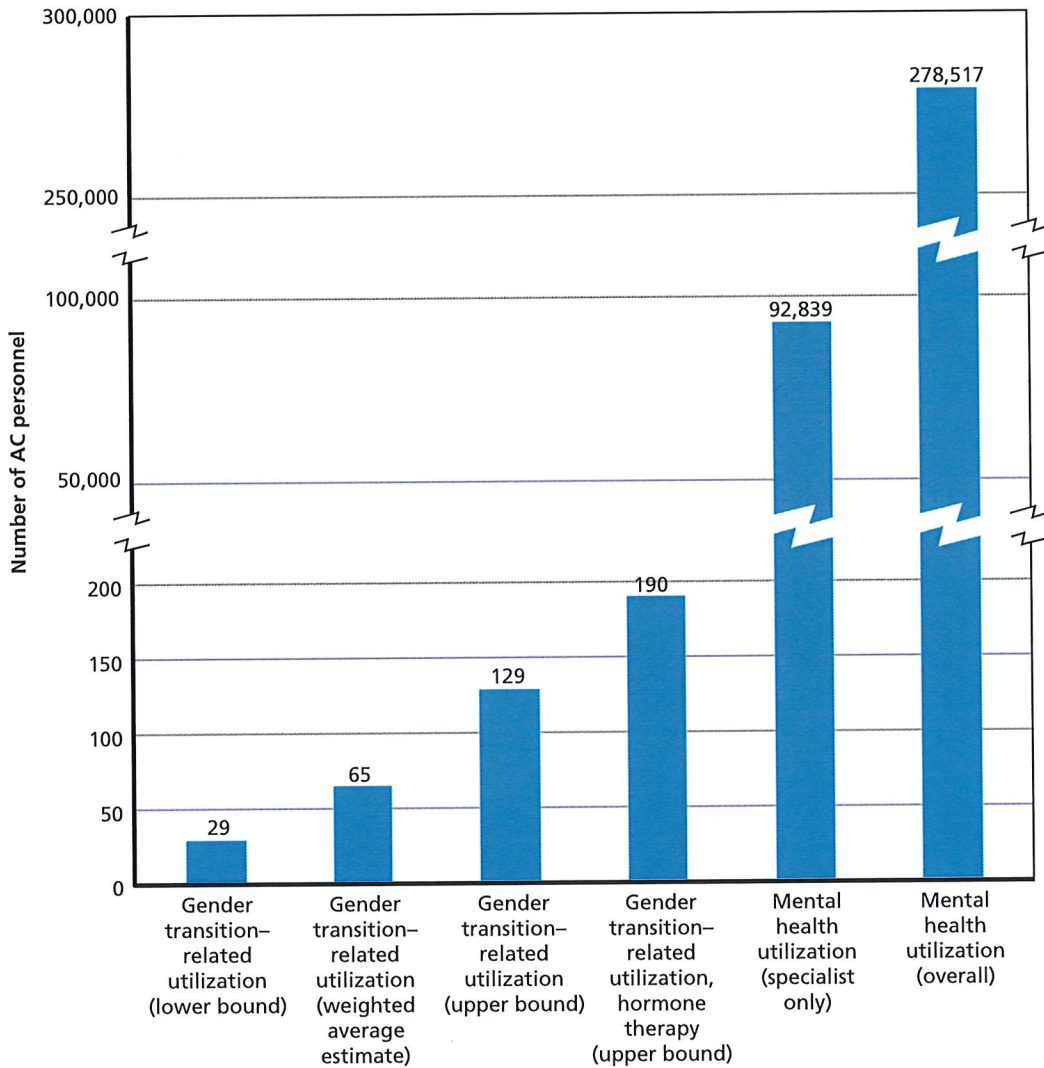
Estimate Type	Active Component			Selected Reserve		
	Hormone Treatment	Surgical Treatments	All Treatments	Hormone Treatment	Surgical Treatments	All Treatments
Prevalence-based estimates (using NTDS data)						
Annual treatments based on CA study estimate (0.1%)	30	25	55	15	15	30
Annual treatments based on combined, population-weighted, gender-adjusted rate (0.19%)	50	45	95	25	30	55
Annual treatments based on MA study estimate (0.5%)	140	130	270	70	80	150
Utilization-based estimates						
Private health insurance annual individual claimants (0.022 per 1,000)	NA	NA	29	NA	NA	20
Private health insurance annual individual claimants (0.0396 per 1,000)	NA	NA	53	NA	NA	30
VHA-based annual new diagnoses (0.0067%)	90	NA	NA	60	NA	NA
Clinical utilization of penectomies and bilateral chest surgeries (0.0005%)	NA	10	NA	NA	5	NA

SOURCE: RAND analysis.

As Figure 4.1 shows, our estimates of the number of AC personnel who will use the gender transition–related health care benefits are overwhelmingly small compared with the number of AC personnel who access mental health treatment. Overall, based on our calculations, we expect annual gender transition–related health care to be an extremely small part of overall health care provided to the AC population.

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Figure 4.1
Comparison of Annual Estimated Gender Transition–Related Health Care Utilization and
Mental Health Care Utilization, Active Component



SOURCE: RAND analysis. Utilization rates in the figure are derived from both the prevalence-based and utilization-based approaches presented in Table 4.8.

NOTES: The non-hormone therapy transgender utilization estimates are from the application of estimates from the private health insurance data. The hormone therapy upper-bound transgender utilization estimate is from calculations using the NTDS data.

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CHAPTER FIVE

What Are the Costs Associated with Extending Health Care Coverage for Gender Transition–Related Treatments?

In this chapter, we provide estimates for the costs associated with extending health care coverage for gender transition–related treatments. We focused on transgender service members in the AC because they have uniform MHS access. We did not include reserve-component service members in our analyses, but their MHS utilization and the associated cost will be negligible, given their highly limited military health care eligibility. Likewise, we did not include retirees or dependents in the cost analyses because we did not have information on age and sex distribution within these beneficiary categories. Some of these beneficiary categories also have limited eligibility for health care provided through MTFs and may receive their health care through TRICARE coverage in the purchased care setting or through other health insurance plans. Given these unknowns, it was only feasible to estimate the costs of gender transition–related care for AC service members; however, we recommend expanding these analyses in the future to include reserve-component members, as well as all individuals eligible for treatment under TRICARE. For the following analyses, we used demographic characteristics of the 2014 AC population to estimate the cost of providing such services.

Private Health Insurance Cost Estimates

To determine the potential costs of covering gender transition–related health care for transgender service members, we collected information on private health insurers' experiences with covering this care from two sources (Herman, 2013b; State of California, 2012). These actuarial estimates represent the expected increase in health care costs from covering a new set of treatments or a new group of beneficiaries. If employers decide to provide coverage for a particular treatment, these actuarial estimates are translated into premium increases for covered employees. These estimates should be thought of as the expected costs of extending coverage for gender transition–related care to transgender AC service members. Moreover, we note that the military may already be incurring the cost of some transgender treatments, as some patients and their providers use “omissions and ambiguities” to acquire needed care (Roller, Sedlak, and Draucker, 2015, p. 420). For example, a currently serving female-to-male patient

who had undergone a hysterectomy reported taking only the testosterone and not the estrogen prescribed as part of hormone therapy with his endocrinologist's knowledge and tacit support, while another was trying to get breast reduction surgery due to back pain rather than GD (Parco, Levy, and Spears, 2015, pp. 235–236).

Table 5.1 presents available data from public employers and private firms on the actuarial costs of covering gender transition–related care. It identifies the particular institution, the number of employees and dependents covered, and the identified premium increases due to expanding benefits.

Data from Table 5.1 show, generally, that the actuarial estimates of providing benefits for gender transition–related care increased total premiums (employee + employer share) by only a small fraction of a percent—and, in the most extreme cases, by only approximately 1 percent. Taking a weighted average of most of the information,¹ we estimated that extending insurance coverage to transgender individuals would increase health care spending by 0.038 percent. Applying this figure to total AC health care spending of \$6.27 billion,² we find that covering gender transition–related care will increase AC health care spending by approximately \$2.4 million (see Table 5.2).

The data in Table 5.1 suggest that the University of California, with 100,000 enrollees in its health plan, is one of the key drivers of the 0.038-percent weighted

Table 5.1
Actuarial Estimated Costs of Gender Transition–Related Health Care Coverage from the Literature

Public Employer Data	Actuarially Calculated Premium Increase	Total Contribution (employees + dependents)
City of Seattle	0.19% increase in health care budget	23,090
City of Portland	0.08% increase in health care budget	18,000
City of San Francisco	0% increase in health care budget	100,000
University of California	0% increase in health care budget	100,000
Private Employer Data	Estimate	Total Contribution (employees + dependents)
22 firms	Many employers reported no actuarial costs to adding benefit; estimates range from 0 to 0.2%	Mix of firm sizes
2 firms	Approximately 1% increase in premiums	5,800
1 firm	Much less than 1% increase in premium	77,000

SOURCE: Estimates are from Herman, 2013b, and State of California, 2012.

¹ We did not use information about the firm with 77,000 enrollees because it is not clear what “much less than 1 percent” implies with respect to the premium increase.

² Pharmaceutical and direct and purchased care inpatient and outpatient data calculated from TRICARE costs in Defense Health Agency, 2015.

average result. In addition to the actuarial increases, the University of California also reported a realized increase in health care spending of 0.05 percent, so we recalculated the weighted average figure by replacing the 0-percent estimate with the 0.05 percent estimate. This new calculation raised the overall cost estimate from 0.038 percent to 0.054 percent, or from \$2.4 million to \$3.4 million when applied to the AC. To summarize, our baseline estimates regarding expected gender transition–related health care costs in the AC are between \$2.4 million and \$3.4 million.

Sensitivity Analyses

To understand the potential full range of cost effects in the AC population, we conducted two additional sensitivity analyses similar to those described for our utilization ranges in Chapter Four. We used these sensitivity analyses to account for the skewed male/female distribution in the military population and for the possibility that transgender prevalence is higher in the military population. As in the utilization case, we were not able to identify any sex-specific effects on the premium increases. Thus, as in our utilization analysis, we assume that cost estimates are linearly related to prevalence,³ and cost estimates for male-to-female transitions are twice the cost estimates for female-to-male transitions. Using this relationship, we again calculated natal male– and natal female–specific estimates from the aggregate estimates.

Given the assumption about differing cost effects, we calculated a natal male–specific cost estimate of 0.05 percent and a natal female–specific cost estimate of 0.025 percent for the aggregate premium estimate of 0.038 percent. Applying these sex-specific estimates to the AC male/female distribution increased our initial premium estimate from 0.038 percent to 0.047 percent. A similar calculation can be performed for our realized cost estimate of 0.054 percent. Assuming that gender transition–related health care costs are twice as large for male-to-female transitions as for female-to-male transitions, we calculated a natal male–specific cost effect of 0.072 percent and a natal female–specific cost effect of 0.036 percent. Applying these sex-specific estimates to the AC male/female distribution increased our initial premium estimate from 0.054 percent to 0.067 percent. Applying these newly calculated health care costs to the 2014 AC health care expenditures (\$6.27 billion) increased our estimate of costs from the initial range of \$2.4–3.4 million to a range of \$2.9–4.2 million.

Finally, as noted previously, Gates (2011) and Gates and Herman (2014) calculated that transgender prevalence in the military is approximately twice that in civilian

³ We also note that built into this linearity assumption and how it is applied in the two sensitivity analyses is the assumption that the cost of male-to-female transitions is the same as the cost of female-to-male transitions. Since there is no sex-specific information in the private health insurance cost data, the validity of the cost per case being equivalent is unknown. Padula, Heru, and Campbell (2015) estimated that a male-to-female surgical case is 33 percent more expensive than a female-to-male surgical case, but these estimates were not based on private employer data, so we did not directly incorporate this result into our calculations.

populations. Assuming that this estimate is valid, and, again, assuming that health care costs are linearly related to underlying prevalence, this would increase the above calculated value of \$2.9 million to \$5.8 million and the calculated value of \$4.2 million to \$8.4 million. Table 5.2 summarizes the results from the calculations described in this section.

To better understand the relative importance of our estimates regarding expected AC annual gender transition–related health care spending, we compared our cost estimates to the MHS spending on mental health in 2012 and to total AC health care spending in FY 2014. As Figure 5.1 shows, gender transition–related health care spending is expected to be extremely small compared with MHS spending on mental health (Blakely and Jansen, 2013) and overall AC health care expenditures (Defense Health Agency, 2015).

Summarizing the Estimates

A direct application of estimates from the private health insurance system implies a baseline spending range between \$2.4 million and \$3.4 million for AC gender transition–related health care. Sensitivity analyses that attempt to account for the fact that the male/female distribution in the AC population skews more heavily male than the civilian population and that transgender prevalence might be higher in the military increase this initial range to \$5.8 million to \$8.4 million. The implication is that even in the most extreme scenario that we were able to identify using the private health insurance data, we expect only a 0.13-percent (\$8.4 million out of \$6.2 billion) increase in AC health care spending.⁴

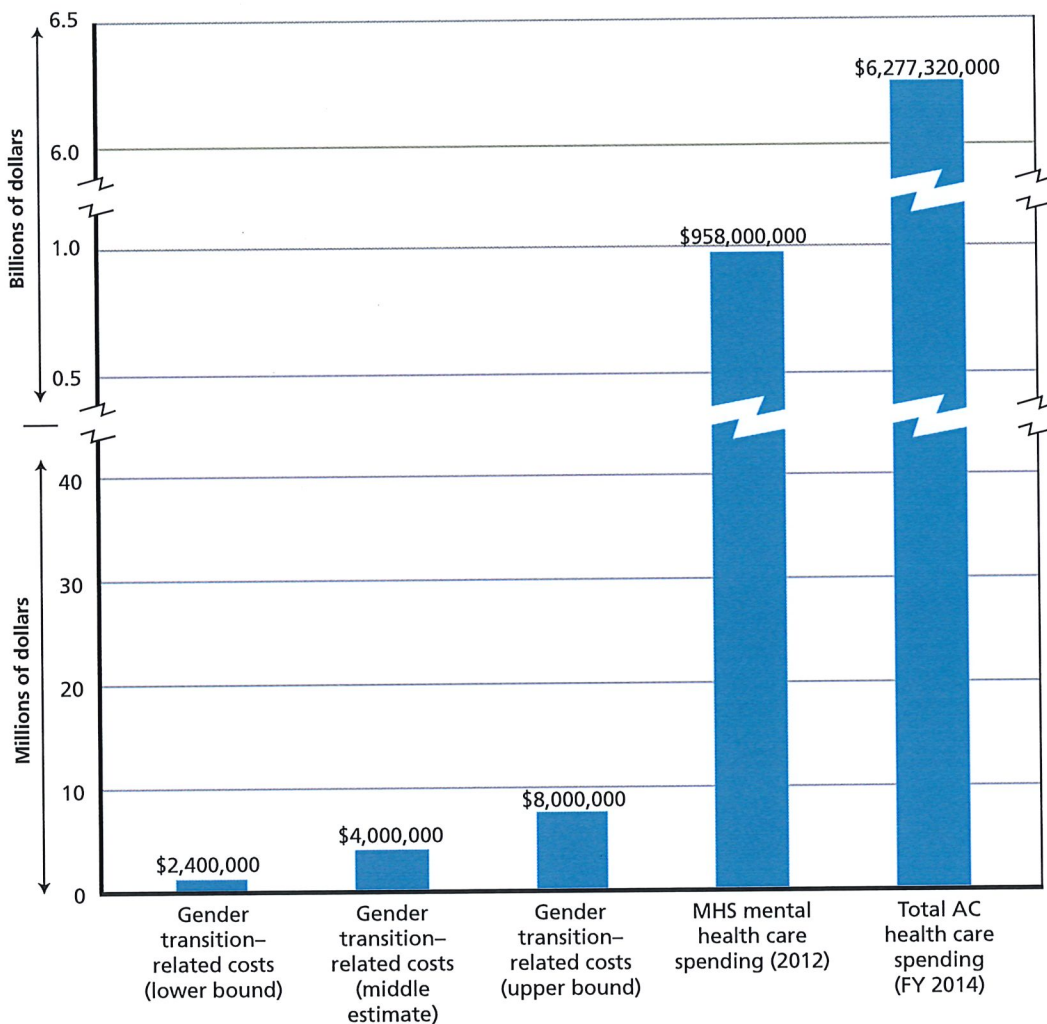
Table 5.2
Estimated Annual MHS Costs of Gender Transition–Related Health Care, Active Component

Analysis Type	Calculations Using Only Actuarial Premium Estimates 0.038% (actuarial)	Calculations Using Actuarial Premiums and Realized Values 0.054% (actuarial + realized)
Baseline	\$2.4 million	\$3.4 million
Sensitivity analysis 1: Adjusts for the male/female distribution in the AC population	\$2.9 million	\$4.2 million
Sensitivity analysis 2: Adjusts for the male/female distribution in the AC population and the assumption that transgender prevalence is twice as high in the military compared to the civilian population	\$5.8 million	\$8.4 million

SOURCE: RAND analysis.

⁴ AC beneficiaries make up less than 15 percent of total TRICARE beneficiaries (Defense Health Agency, 2015).

Figure 5.1
Gender Transition–Related Health Care Cost Estimates Compared with Total Health Spending, Active Component



SOURCES: RAND analysis; Blakely and Jansen, 2013; Defense Health Agency, 2015. Estimates of premium increased and realized costs are reported in Table 5.1.

NOTES: The lower-bound estimate refers to premium increases only. The middle estimate includes premium increases and realized costs after adjusting for male/female distribution in the military. The upper-bound estimate includes premium increases and realized costs after adjusting for male/female distribution in the military and assuming the prevalence rate of transgender individuals in the military is twice that of civilian populations.

CHAPTER SIX

What Are the Potential Readiness Implications of Allowing Transgender Service Members to Serve Openly?

As DoD considers whether to allow transgender personnel to serve openly and to receive transition-related treatment during the course of their military service, it must consider the implications of such a policy change on the service members' ability to deploy and potential reductions in unit cohesion. In prior legal challenges to the transgender military discharge policy, DoD has expressed concern that the medical needs of these service members would affect military readiness and deployability. To address these concerns, this chapter provides estimates of the potential effects on force readiness from a policy change allowing these service members to serve openly.

A critical limitation of such an assessment is that much of the current research on transgender prevalence and medical treatment rates relies on self-reported, nonrepresentative samples. Thus, the information cited here must be interpreted with caution because it may have varying degrees of reliability. In addition, to estimate effects on readiness, we focused on transgender personnel in the AC and SR only. We did not include the Individual Ready Reserve because of the lack of publicly available, detailed demographic information. We used the same approach that applied to our analysis of health care utilization, applying both the prevalence-based and utilization-based approaches to force size. We note that the prevalence-based approach was the only approach that allowed us to estimate the number of transgender service members who may seek to live and work as their target gender. Transition does not necessarily imply the use of medical treatments, and we emphasize that some of these service members may still require accommodations in terms of housing and administrative functions (e.g., military identification cards, restrooms).

Impact on Ability to Deploy

The most salient and complex issue in allowing transgender personnel to serve openly is how DoD should regulate and manage operational deployment requirements for these personnel in the context of their transition to their target gender.

Pre-Transition

If transgender personnel are allowed to serve openly prior to transition, DoD will need to establish policies on when individuals may use the uniforms, physical standards, and facilities (e.g., barracks, restrooms) of their target gender. Additionally, DoD will need to clarify policies related to qualifications for deployment. Current deployment rules suggest that to qualify for deployment, individuals with diagnosed mental health disorders must show a “pattern of stability without significant symptoms or impairment for at least three months prior to deployment.”¹ Ensuring appropriate screening will be critical to minimizing any mental health–related readiness issues. Secondary prevention measures prior to deployment, such as screening for GD, may be needed to ensure a pattern of stability and readiness for deployment.

During Transition

DoD would also need to determine when transitioning service members would be able to change uniforms and adhere to the physical standards of their target gender, as well as which facilities and identification cards they will use. Other countries have found that, in some cases, it may be necessary to restrict deployment of transitioning individuals to austere environments where their health care needs cannot be met. Deployment restrictions may also be required for individuals seeking medical treatment, including those seeking hormone therapy and surgical treatments.

We detail the constraints associated with transition-related medical treatments in Table 6.1. These constraints typically include a postoperative recovery period that would prevent any work and a period of restricted physical activity that would prevent deployment. The rightmost column of Table 6.1 presents the estimated number of non-deployable days we used to estimate the readiness impact. We note that these estimates do not account for any additional time required to determine medical fitness to deploy. Army guidelines, for example, do not permit deployment within six weeks of surgery. Nevertheless, there may be a significant difference between the estimated availability to deploy and the actual impact on deployability, as it is possible that transgender service members would time their medical treatments to minimize the effect on their eligibility to deploy.²

In addition to an expected, short-term inability to deploy during standard postoperative recovery time, some individuals experience postoperative complications that would render them unfit for duty. For instance, among those receiving vagino-

¹ Detailed guidance is provided in a memorandum from the Office of the Assistant Secretary of Defense for Health Affairs, 2013, p. 2.

² See for example, Personnel Policy Guidance Tab A (known as PPG-TAB A) that accompanies the medical guidelines document MOD TWELVE, Section 15.C, which articulates the minimal standards of fitness for deployment to the U.S. Central Command area of responsibility (U.S. Central Command, 2013).

plasty surgery, 6–20 percent have complications.³ This implies that between three and 11 service members per year would experience a long-term disability from gender reassignment surgery. Among those receiving phalloplasty surgery, as many as 25 percent experience some medical complications (Elders et al., 2014).

Table 6.1
Gender Transition–Related Readiness Constraints

Transition Type and Treatment	Recovery Time	Leave and Deployment Implications	Estimated Nondeployable Days
Male-to-Female			
Hormone therapy only	Long-term, no recovery required	None (pending accommodations)	N/A
Augmentation mammoplasty	1 week no work, 4–6 weeks restricted physical activity	Up to 14 days medical leave, up to 60 days medical disability	75
Genital surgery (orchiectomy, vaginoplasty)	4–6 weeks no work, 8+ weeks restricted physical activity	Up to 45 days medical leave, up to 90 days medical disability	135
Female-to-Male			
Hormone therapy only	Long-term, no recovery required	None (pending accommodations)	N/A
Chest surgery	1 week no work, 4–6 weeks restricted physical activity	Up to 14 days medical leave, up to 60 days medical disability	75
Hysterectomy	2 weeks no work, 4–8 weeks restricted physical activity	Up to 21 days medical leave, up to 90 days medical disability	111
Genital surgery (metoidioplasty, phalloplasty)	2–4 weeks no work, 4–6 weeks restricted physical activity	Up to 21 days medical leave, up to 60 days medical disability	81

SOURCES: Treatment times based on RAND research compiled for this study. Estimates of numbers of treatments based on rates in Gates, 2011. Estimated nondeployable days based on RAND calculations using FY 2014 data from DoD, 2014.

NOTES: The total population in the table includes AC and SR personnel. Estimates of treatments are non-unique per person. Individuals may (and likely will) seek multiple treatments simultaneously. As such, deployment days are measured per treatment, not per individual. Estimates of nondeployable days do not include estimated delays generated by Medical Evaluation Board/Physical Evaluation Board review, which may be required depending on service rules.

³ According to Elders et al. (2014, p. 15), summarizing findings from 15 studies, “2.1 percent of patients had rectal-vaginal fistula, 6.2 percent with vaginal stenosis, 5.3 percent had urethral stenosis, 1.9 percent with clitoral necrosis, and 2.7 percent with vaginal prolapse,” and approximately 2.3 percent of patients experienced complications after vaginoplasty.

Taking the estimates for treatment and recovery time, we then applied the standards for leave and restricted physical activity.⁴ We applied the recovery times and translated those into nondeployable days separated into medical leave, in which the service member is off the job, and medical disability, in which the service member can be at work but is subject to restricted physical requirements (e.g., no physical training, no heavy lifting). This provided us with the total number of nondeployable days per treatment type. We scaled this estimate by the number of days an individual can be deployed per year. For the AC, we assumed this to be 330 days per year (allowing 30 days of leave plus five days of processing time).⁵ For the SR, we assumed 270 days per year (which allows nine months of deployment time). We counted each treatment separately and applied the number of treatments by treatment type shown in Table 6.1.

Note that because individuals may seek multiple treatments, sometimes at the same time, this number is not the same as the total number of individuals who will be nondeployable. Therefore, the estimates presented in Table 6.2 should be considered an upper bound in each category. Moreover, the prevalence-based estimates are significantly larger than the utilization-based estimates as shown in Table 4.8. Using the prevalence-based approach, we found that between eight and 43 of the available 1.2 million labor-years in the AC may be unavailable for deployment.⁶ The combined, population-weighted, and gender-adjusted estimate implies that about 16 labor-years from the AC and about 11 labor-years from the SR may be nondeployable. This represents 0.0015 percent of available deployable labor-years across the AC and SR.

These estimates are based on surgical take-up rates ranging from 25 to 130 per year in the AC, with 55–270 total treatments, including hormone treatments. Similarly, the prevalence-based estimates imply 15–80 surgical treatments per year in the SR, with between 30 and 150 total treatments, including hormone therapy.

The utilization-based approach implies many fewer treatments. Although we could not estimate the impact on labor-years because we did not have information on specific treatments, based on usage rates in California, the utilization-based approach implies 30–50 total treatments, including surgeries and hormone therapy. Evidence from the VHA suggests that 90 service members in the AC and 50 in SR are diagnosed with GD in any given year. Such a diagnosis would be a prerequisite for any surgical treatments, suggesting that true utilization rates in the military may be significantly lower than suggested by the prevalence-based approach.

We caution that our labor-year estimates also likely overcount actual nondeployable time because our estimate captures “availability to deploy,” rather than the deploy-

⁴ For reference, we used the Army Regulation 40-501 (revised 2011), which governs leave and disability, and the Navy Medical Policy 07-009 (2007), which provides guidance on pre-clearance, accommodations for deployment readiness, and additional requirements in the U.S. Central Command area of operations.

⁵ We based this estimate on Army Regulation 600-8-101 (2015).

⁶ We define a labor-year as the amount of work done by an individual in a year.

Table 6.2
Estimated Number of Nondeployable Man-Years Due to Gender Transition–Related Treatments

Component	Total Labor-Years Available (FY 2014)	Estimated Number of Nondeployable Labor-Years				
		0.1% ^a (CA study)	0.16% ^b (combined, population-weighted CA + MA studies)	0.19% ^c (gender-adjusted rate)	0.37% ^d (twice gender-adjusted rate)	0.5% ^e (MA study)
Active	1,199,096	8.2	13.7	16.2	32.3	42.8
Selected Reserve	615,446	5.9	9.9	10.7	21.3	29.9

SOURCES: Estimates for nondeployable labor-years are based on RAND calculations using FY 2014 data from DoD, 2014.

^a Based on estimates of prevalence from a California study (Conron, 2012).

^b Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state.

^c Based on weighted average of studies from California and Massachusetts, weighted by relative population sizes in each state and applied specifically to the male/female distribution in the military components.

^d Based on estimates of prevalence from NTDS, Gates (2011), and the American Community Survey (Gates and Herman, 2014) and applied specifically to the male/female distribution in the military.

^e Based on estimates of prevalence from a Massachusetts study (Gates, 2011).

ment impact itself. This difference comes from three key assumptions that we make to calculate these estimates: (1) service members who are seeking treatment will also be deployed; (2) service members who are seeking treatment cannot time those treatments to avoid affecting their deployment eligibility; and (3) service members seek only one treatment at a time rather than having multiple treatments at the same time, which would allow concurrent (rather than sequential) recovery times. Thus, it is likely that a service member's care would have a substantial overall impact on readiness only if that service member worked in an especially unique military occupation, if that occupation was in demand at the time of transition, and if the service member needed to be available for frequent, unpredicted mobilizations.

Post-Transition

Having completed medical transition, a service member could resume activity in an operational unit if otherwise qualified. As in other cases in which a service member receives a significant medical treatment, DoD should review and ensure that any longer-term medical care or other accommodations relevant to the transgender service member's specific medical needs are addressed.

Impact on Unit Cohesion

A key concern in allowing transgender personnel to serve openly is how this may affect unit cohesion—a critical input for unit readiness. The underlying assumption is that if service members discover that a member of their unit is transgender, this could inhibit bonding within the unit, which, in turn, would reduce operational readiness. Similar concerns were raised in debates over whether to allow gay and lesbian personnel to serve openly (Rostker et al., 1993; RAND National Defense Research Institute, 2010), as well as whether to allow women to serve in ground combat positions (Schaefer et al., 2015; Szayna et al., 2015). Evidence from foreign militaries and surveys of the attitudes of service members have indicated that this was not the case for women or for lesbian and gay personnel (Schaefer et al., 2015; Harrell et al., 2007; RAND National Defense Research Institute, 2010). In examining the experiences of foreign militaries, the limited publicly available data we found indicated that there has been no significant effect of openly serving transgender service members on cohesion, operational effectiveness, or readiness. (For a more in-depth discussion of this topic, see Chapter Seven.) However, we do not have direct survey evidence or other data to directly assess the impact on the U.S. military.

Evidence from the General U.S. Population

According to recent research on the U.S. general population, attitudes toward transgender individuals are significantly more negative than attitudes toward other sexual minorities (Norton and Herek, 2013). However, heterosexual adults' positive attitudes toward and acceptance of transgender individuals are strongly correlated with their attitudes and acceptance of gay, lesbian, and bisexual individuals (Flores, 2015). As such, similar to changes seen in public attitudes toward homosexuality, tolerance and acceptance toward the transgender population could change over time. Additionally, evidence does indicate that direct interactions with transgender individuals significantly reduce negative perceptions and increase acceptance (Flores, 2015), which would suggest that those who have previously interacted with transgender individuals would be more likely to be tolerant and accepting of them in the future. Similar findings have arisen from surveys and focus groups with service members regarding attitudes toward the integration of women into direct combat positions (Szayna et al., 2015) and attitudes toward allowing gay and lesbian service members to serve openly in the U.S. military (RAND National Defense Research Institute, 2010).⁷

⁷ A recent article examined the attitudes of military academy, Reserve Officers' Training Corps, and civilian undergraduates in the United States toward transgender people in general, in the workplace, and in the military (see Ender, Rohall, and Matthews, 2016).

Evidence from Foreign Militaries

While there are limited data on the effects of transgender personnel serving openly in foreign militaries, the available research revealed no significant effect on cohesion, operational effectiveness, or readiness. In the case of Australia, there is no evidence and there have been no reports of any effect on cohesion, operational effectiveness, or readiness (Frank, 2010). In the case of Israel, there has also been no reported effect on cohesion or readiness (Speckhard and Paz, 2014). Transgender personnel in these militaries have reported feeling supported and accommodated throughout their gender transition, and there is no evidence of any impact on operational effectiveness (Speckhard and Paz, 2014). In fact, commanders have reported that transgender personnel perform their military duties and contribute effectively to their units (Speckhard and Paz, 2014). Interviews with commanders in the United Kingdom also found no effect on operational effectiveness or readiness (Frank, 2010). Some commanders reported that increases in diversity had led to increases in readiness and performance. Interviews with these same commanders also found no effect on cohesion, though there were some reports of resistance to the policy change within the general military population, which led to a less-than-welcoming environment for transgender personnel. However, this resistance was apparently short-lived (Frank, 2010).

The most extensive research on the potential effects of openly serving transgender personnel on readiness and cohesion has been conducted in Canada. This research involved an extensive review of internal defense reports and memos, an analysis of existing literature, and interviews with military commanders. It found no evidence of any effect on operational effectiveness or readiness. In fact, the researchers heard from commanders that the increased diversity improved readiness by giving units the tools to address a wider variety of situations and challenges (Okros and Scott, 2015). They also found no evidence of any effect on unit or overall cohesion. However, there have been reports of bullying and hostility toward transgender personnel, and some sources have described the environment as somewhat hostile for transgender personnel (Okros and Scott, 2015).

To summarize, our review of the limited available research found no evidence from Australia, Canada, Israel, or the United Kingdom that allowing transgender personnel to serve openly has had any negative effect on operational effectiveness, cohesion, or readiness. However, it is worth noting that the four militaries considered here have had fairly low numbers of openly serving transgender personnel, and this may be a factor in the limited effect on operational readiness and cohesion.

Costs of Separation Requirements Related to Transgender Service Members

We considered the costs and benefits of providing appropriate care to transgender service members, the requirements for those who would serve openly if the current policy changed, and the costs of continuing the current administrative separation process. We analyzed the costs of separation under several assumptions: (1) some transgender personnel are currently serving but are not able to reveal their transgender status, (2) some individuals who would be desirable recruits could be excluded for reasons only related to their gender identity, and (3) some individuals who are transgender are or have been separated for reasons only related to their gender identity, which imposes separation costs.

Separation and a continued ban on open service (i.e., manpower losses) are the alternatives to meeting the medical needs of transgender individuals. As detailed in Chapter Two, the continued ban on open service may result in worsening mental health status, declining productivity, and other negative outcomes due to lack of treatment for gender identity–related issues. In addition, if DoD actively pursues separation, the process can be tedious, especially now that it requires the approval of the Under Secretary of Defense for Personnel and Readiness. Under current DoD regulations, transgender personnel can be declared administratively unfit for service if their gender identity affects their ability to meet operational or duty requirements. A June 2015 revision to DoD policy requires that a discharge justification be based on inability to meet duty requirements. However, any “administratively unfit” finding prohibits the individual from being medically evaluated for continued service.⁸ Absent this process, transgender service members do not have recourse to allow mental health experts or medical professionals to review their case concurrently. This can result in unnecessary and inconsistent approaches to discharging transgender service members. As was the case in enforcing the policy on homosexual conduct, this can involve costly administrative processes and result in the discharge of personnel with valuable skills who are otherwise qualified (U.S. Government Accountability Office, 2011).

Moreover, the total cost in lost days available for deployment is negligible and significantly smaller than the lack of availability due to medical conditions. For example, in 2015 in the Army alone, there were 102,500 nondeployable soldiers, 50,000 of whom were in the AC (Tan, 2015). This accounted for about 14 percent of the AC—personnel who were ineligible to deploy for legal, medical, or administrative reasons.

⁸ These boards provide an established process and mechanism for evaluating whether a service member with an ailment or diagnosis, such as a mental health diagnosis, could continue military service. The services use the Medical Evaluation Board and Physical Evaluation Board systems to determine whether personnel “with an ailment or diagnosis, such as a mental health diagnosis, can continue . . . military service,” based on a thorough review of fitness to serve (DoDI 1332.38, 1996).

Of those, 37,000 could not deploy due to medical conditions.⁹ Excluding those who were severely injured and required longer-term care, there were 28,490 service members who had either category 1 (up to 30 days) or category 2 (more than 30 days) restrictions. Assuming those in category 1 cannot deploy for 30 days and those in category 2 cannot deploy for 90 days, we estimate there are currently 5,300 nondeployable labor-years in the Army alone. Thus, we anticipate a minimal impact on readiness from allowing transgender personnel to serve openly.

⁹ Rates of injury and nondeployability time as reported in Cox (2015).

CHAPTER SEVEN

What Lessons Can Be Learned from Foreign Militaries That Permit Transgender Personnel to Serve Openly?

As the U.S. military considers changes to its transgender personnel policy, revisions to several other policies may be necessary. Policies in need of change would cover a range of personnel, medical, and operational issues affecting individuals and units, including some policies that currently vary by gender. Examples of the latter would include housing assignments, restrooms, uniforms, and physical standards. While these are new questions for the U.S. military, there are other countries that already allow transgender personnel to serve openly in their militaries and have already addressed these policy issues.

We reviewed policies in foreign militaries that allow transgender service members to serve openly. Our primary source for the observations presented in this report was an extensive document review that included primarily publicly available policy documents, research articles, and news sources that discussed policies on transgender personnel in these countries. The information about the policies of foreign militaries came directly from the policies of these countries as well as from research articles describing the policies and their implementation. Our findings on the effects of policy changes on readiness draw largely from research articles that have specifically examined this question using interviews and analyses of studies completed by the militaries themselves. Finally, our insights on best practices and lessons learned emerged both directly from research articles describing the evolution of policy and the experiences of foreign militaries and indirectly from commonalities in the policies and experiences across our four case studies. Recommendations provided in this report are based on these best practices and lessons learned, as well as a consideration of unique characteristics of the U.S. military.

This review and analysis of the policies in foreign militaries can serve as a reference for U.S. decisionmakers as they consider possible policy revisions to support the integration of openly transgender personnel into the U.S. military. We include information on how, when, and why each country changed its policy. We also detail the policies of each country, covering such issues as the medical and administrative

requirements before gender transition can begin, housing assignments, uniform wear, and physical fitness standards.

Policies on Transgender Personnel in Foreign Militaries

According to a report by the Hague Center for Security Studies, there are 18 countries that allow transgender personnel to serve openly in their militaries: Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland, France, Germany, Israel, Netherlands, New Zealand, Norway, Spain, Sweden, and the United Kingdom (Polchar et al., 2014). This chapter describes the policies of the four countries—Australia, Canada, Israel, and the United Kingdom—with the most well-developed and publicly available policies on transgender military personnel. It focuses explicitly on policies that describe how these foreign militaries treat transgender personnel and how they address this population's gender transition needs. While the focus of the chapter is on the specific policies integrating openly transgender military personnel in these four foreign militaries, we also provide some information about what happened after the policy change, including bullying and harassment, and summarize best practices and challenges that emerged from our four case studies.¹

The formal policies on transgender personnel in the four countries address a number of aspects of the gender transition process.² Generally, these policies do not explicitly address such issues as the recruitment or retention of transgender personnel, though we provide information on the qualification of transgender personnel to serve when it is available. They do generally address such issues as the requirements for transitioning, housing assignments, restroom use, uniforms, identity cards, and physical standards. They also address whether the transitioning personnel remain with their old units or shift to new ones and how other members of a unit should be informed. Finally, the policies address access to medical care and what is or is not covered by the military health care system.

In addition to addressing these crucial issues, foreign military policies on transgender personnel typically lay out a gender transition plan, which describes the timeline or steps in the transition process. However, it is worth noting that each individual's

¹ We looked for information on the policies of the other 14 countries but were unable to find any publicly available documents in English.

² We note a few interesting points about other countries that we investigated but for which we were unable to find sufficient publicly available information to construct a complete case. The Netherlands was the first country to allow transgender personnel to serve openly in its military, opening its ranks in 1974. New Zealand opened its military to transgender personnel in 1993; although we could not find a written policy, a 2014 report by Hague Center for Strategic Studies referred to New Zealand's as the most friendly military to transgender personnel. The New Zealand Defence Force also has an advocacy group, OverWatch, that provides support to lesbian, gay, bisexual, and transgender personnel (see Polchar et al., 2014).

gender transition is unique. While some choose to undergo hormone therapy or gender reassignment surgery, this is not required for gender transition. As a result, the timelines outlined in the policies are intended to be examples only.

Australia

In 2010, the Australian Defence Force revoked the defense instruction that prohibited transgender individuals from serving openly, stating that excluding transgender personnel from service was discrimination that could no longer be tolerated (Ross, 2014). The Australian Department of Defence, with the advocacy group Defence Lesbian, Gay, Bisexual, Transgender, and Intersex Information Service, has produced guides to support commanders, transitioning service members, and the units in which transitioning members are serving (Royal Australian Air Force, 2015). The guide outlines five stages in the gender transition process: diagnosis, commencement of treatment, disclosure to commanders and colleagues, the post-transition experience, and, if applicable, gender reassignment surgery (Royal Australian Air Force, 2015). There is no public information on the number of transgender personnel in the Australian military or the costs associated with covering gender transition-related medical care.

A service member's gender transition begins after receiving a medical diagnosis of gender incongruence from a doctor approved by the Australian Defence Force. According to Australian Defence Force policy, once service members receive this diagnosis and present a medical certification form to their commanders, they can begin the "social transition," which policy defines as the time when an individual begins living publicly as the target gender. Under the current policy, after this point, the service member's administrative record is updated to indicate the target gender for the purposes of uniforms, housing, name, identification cards, showers, and restrooms (Royal Australian Air Force, 2015). This means that, after this point, the service member is assigned to housing of the target gender, may use the restrooms of the target gender, has an identification card with the target gender and new name, and can wear the uniform of the target gender.

During the social transition, the service member may undergo hormone therapy. However, neither hormone therapy nor gender reassignment surgery is required for the administrative changes to occur. Importantly, this shift in gender for military administrative purposes may not always match the legal transition (with respect to the Australian government) to the target gender (Royal Australian Air Force, 2015). Finally, when transgender service members choose to transition, they may choose whether to stay with their current unit or transfer to a different one. They may also choose how colleagues are informed of the gender transition—that is, whether they wish to tell colleagues themselves or have a senior leader do so.

Australia's policy also addresses matters related to physical standards and medical readiness. During the transition period, a service member may be downgraded in terms of physical readiness or declared unable to deploy for some time. However, this

determination is decided on a person-by-person basis and is only temporary. According to the guide provided to service members and commanders, most individuals are placed on “MEC [Medical Employment Classification] 3—Rehabilitation” status during their medical transition or if they require four consecutive weeks of sick leave. Others may be able to remain “MEC 2—Employable and Deployable with Restrictions” for the majority of the gender transition period. In most cases, this determination is made by a certification board, though commanders are also given discretion to downgrade transitioning service members or declare them unfit to deploy, contingent on a stated inability to accommodate the service member’s needs or a determination that the transitioning service member’s presence would undermine the unit’s performance. However, there is no public information available on the types of justifications a commander might give in making such a determination.

The deployment status of each individual will vary during the gender transition based on the transition path chosen (for example, whether hormone therapy or surgery is undertaken). Some of these treatments are covered by military health care. In Australia, medical treatments associated with gender transition, including both hormone therapy and gender reassignment surgery, are covered, but treatments considered “cosmetic” might not be (Royal Australian Air Force, 2015). However, it is not clear what is classified as cosmetic or what might be considered medically necessary. Importantly, gender transition–related medical procedures are provided only at certain facilities, so service members who wish to receive these treatments may need to make special requests for specific assignments where their needs can be met. In general, personnel are permitted to take sick leave to facilitate their medical transition (Royal Australian Air Force, 2015).

Transitioning service members’ deployment status will also depend on their ability to meet physical fitness standards. During the transition period, a service member may be considered medically exempt from meeting physical fitness standards, with a coinciding readiness classification of nondeployable. Once deemed medically able to complete the test by a medical professional, the service member may be asked to meet the standards of the target gender. However, which gender standards the individual is required to meet and when is determined by the medical officer overseeing the gender transition (Royal Australian Air Force, 2015). Thus, the point at which each transitioning service member is required to meet the target-gender standards varies.

Canada

In Canada, a 1992 lawsuit from a member of the armed forces resulted in the repeal of a regulation banning gay, lesbian, and transgender individuals from serving openly in the military (Okros and Scott, 2015). In 1998, the Canadian military explicitly recognized gender identity disorder and agreed to cover gender reassignment surgery. In 2010, Canadian military policy was revised to clarify transgender personnel issues, such as name changes, uniforms, fitness standards, identity cards, and records (Okros

and Scott, 2015). An updated policy, Military Personnel Instruction 01/11, "Management of Transsexual Members," was released in 2012 (Canadian Armed Forces, 2012). It stated, "The CF [Canadian Forces] shall accommodate the needs of CF transsexual members except where the accommodation would: constitute undue hardship; or cause the CF member to not meet, or to not be capable of meeting. . . . Minimum Operational Standards Relating to Universality of Service" (Canadian Armed Forces, 2012, p. 5). Other considerations that can be used to determine whether an accommodation is reasonable include cost and the safety of other service members and the public (Canadian Armed Forces, 2012, p. 5). Data suggest that there are approximately 265 transgender personnel serving openly and that the Canadian military pays for about one gender reassignment surgery per year (Okros and Scott, 2015).

Canada's policy on transgender personnel covers such issues as housing, identification cards, restrooms, physical standards, deployment, medical treatment, and uniforms. The process is similar in most ways to that in Australia, described earlier. In Canada, one of the first steps in the gender transition process is a medical assessment in which the individual is given a diagnosis of gender incongruence and assigned a temporary medical category that defines both employment limitations and accommodations that will be needed to support the service member during gender transition. After receiving this diagnosis, service members are responsible for informing their commanders and are asked to give commanders as much notice as possible before beginning their gender transition. After that, the service member, the service member's manager, and the unit's commanding officer are expected to meet to discuss the service member's gender transition plan and to address any necessary accommodations. The policy recommends frequent meetings between the service member and relevant leaders and medical professionals to ensure that the transitioning service member's needs are met. The policy also identifies subject-matter experts, such as chaplains and mental health professionals, who might be available to provide advice (Canadian Armed Forces, 2012).

The policy states that the gender transition plan should address housing, uniforms, deployments, and other administrative considerations. While the timeline will vary for each individual, in most cases, after receiving the diagnosis and informing the commander, the service member is able to begin living openly as the target gender. At this point, the service member is assigned to housing of the target gender, given ID cards with the target gender and new name, given uniforms of the target gender, and permitted to use restrooms of the target gender. However, while the individual is considered a member of the target gender for all administrative purposes within the military at this point, an official name and gender change in the military personnel system requires both medical certificates and legal documentation (Canadian Armed Forces,

2012).³ Finally, medals and awards earned by the service member prior to transitioning cannot be transferred to the new name when the service member transitions to the target gender (Okros and Scott, 2015).

While the policy expects accommodations to be made to meet the needs of transgender personnel, it also notes that commanders must strike a balance between meeting the needs and legal rights of transgender personnel and the privacy needs of other service members in restrooms, showers, and housing. It does not, however, provide guidance on how this should be accomplished (Canadian Armed Forces, 2012). The policy also makes clear that incidents of harassment must be dealt with according to the Canadian military's discrimination and harassment policy. Finally, if the transgender service member is assigned to a new unit permanently or temporarily, any required accommodations are to be communicated to the new commanding officer prior to the service member's arrival (Canadian Armed Forces, 2012).

The medical assessment and gender transition plan developed at the start of transition are also used to determine a service member's readiness status and deployability. The policy states that service members can be downgraded temporarily in terms of their readiness, ability to deploy, and eligibility for remote assignments until gender transition is complete (Canadian Armed Forces, 2012). This determination is made primarily by the medical professionals overseeing the service member's gender transition. After the gender transition is complete, the continued need for a reduced medical standard is decided on a case-by-case basis based on the service member's overall health, chronic conditions, and need for access to medical care. After beginning the gender transition, and based on the medical assessment, the service member is considered medically exempt from physical fitness testing and requirements until legally assuming the acquired or target gender (which, as noted earlier, requires provincial recognition). At that point, the fitness standards for the acquired or target gender apply. More specifically, once personnel are removed from the medical exemption list, they have 90 days to meet the new standards (Canadian Armed Forces, 2012).

A reduced medical readiness determination during gender transition is intended primarily to ensure that the service member has uninterrupted access to medical care. Once gender transition is complete, transgender service members and their commanders are responsible for identifying the service member's specific needs and how they will be addressed (Canadian Armed Forces, 2012). Gender reassignment surgery will not, however, automatically result in permanent deployment restrictions. As in Australia, gender reassignment surgery and hormone therapy are covered by military health care. The Canadian military paid for one gender reassignment surgery in 1998 and has paid for one or two surgeries per year since then (Canadian Armed Forces, 2012).

³ Also note that the requirements for the legal change vary by province but typically involve only a statement that the individual has assumed the target gender and a medical certification from a doctor of a diagnosis of gender incongruence.

Israel

The Israel Defense Forces (IDF) have allowed transgender personnel to serve openly since 1998 (Speckhard and Paz, 2014).⁴ The IDF experience with transgender personnel is somewhat unique because Israel's military is composed largely of conscripts who serve two or three years and then serve in the reserves with extended periods of active service. As a result, a very high percentage of the population spends extended periods of time mixing military and civilian life. From the perspective of this report, this blending of civilian and military life creates unique challenges for transgender personnel, as they cannot be one person in their civilian life and then a different person in their military life. Some transgender individuals receive a discharge or exemption from their military service based on their gender incongruence, but this decision is currently at the discretion of the commander. There is no official IDF policy on transgender personnel, but according to one report, senior members of the IDF are working to draft one (Speckhard and Paz, 2014). In 2014, the IDF announced that it would support transgender individuals throughout the transition process. Under this new policy, transgender teens who have not yet begun to transition to another gender will be enlisted according to their birth sex, but after enlistment, they will be given support and assistance with the gender transition process (Zitun, 2014). As a result, Speckhard and Paz (2014) noted, experiences vary for transgender personnel in the IDF. Some individuals report that once they ask to transition, they are allowed to dress and serve as their target gender. However, it is unclear how generalizable this is.

Typically, IDF administrative records use the gender at that time of enlistment. Since conscription occurs at age 18, and because hormone treatment for gender incongruence cannot legally begin until age 18, the administrative records of most personnel show their birth gender. Under a newly announced policy, personnel enlisted using their birth gender who identify as transgender can immediately receive support and treatment to begin the gender transition (Zitun, 2014). Importantly, however, as of 2014, the military identification card carries the birth gender until a service member undergoes gender reassignment surgery, even if the service member is living publicly as the target gender (Speckhard and Paz, 2014). It should be noted that, in Israel, only one hospital can perform gender reassignment surgery, and this surgery cannot be performed until age 21, though some people go abroad for it (Speckhard and Paz, 2014). This creates some complications for housing and other matters, discussed in more detail later. The new policy will also allow transgender recruits to receive support for gender transition after enlistment.

Available evidence suggests that, in the IDF, assignment of housing, restrooms, and showers is typically linked to the birth gender, which does not change in the military system until after gender reassignment surgery. Service members who are undergo-

⁴ We do not know the exact date for this change because there was never a formal policy allowing or prohibiting transgender personnel from serving. It was in 1998 that the first openly transgender individual served in the IDF.

ing gender transition are accommodated, however, through the use of ad hoc solutions, including giving transitioning personnel their own showers, housing, or restrooms (Speckhard and Paz, 2014). Once transitioning personnel have completed gender reassignment surgery, they can be assigned to the housing, restrooms, and showers of their acquired gender. It is also worth noting that the majority of noncombat personnel are able to live at home, off base. As a result, the housing issue does not affect a large number of transitioning personnel (Speckhard and Paz, 2014). The issue of uniforms is usually easier to address, and service members are able to wear the uniform of the target gender once they begin their gender transition.

In addition to addressing housing and other administrative matters for conscripts and career soldiers, the IDF must address transitioning reservists. The limited information available suggests that the approach to addressing the needs of this group also varies from person to person. Usually, if reserve members are in the process of transitioning or have transitioned when called to active duty, they are permitted to return to service as their target or acquired gender (following the same administrative policies described earlier). For example, a service member who served in an all-male combat unit and is transitioning to female may be moved to another position. Again, many reservists serve their duty while living at home, so housing is not usually an issue. Restroom and shower assignments are addressed on an ad hoc basis (Speckhard and Paz, 2014). Finally, some personnel who have transitioned or are in the process of transitioning are exempted from their reserve duty. However, this is becoming less common as the IDF strives to accommodate the needs of these personnel rather than exempting them from service (Speckhard and Paz, 2014).

The IDF does not have a formal policy on physical standards for transgender individuals serving their conscription duty, reserve duty, or as professional soldiers. Available information suggests only that transgender personnel can serve in any unit or occupation for which they meet the requirements, with the exception of a few male-only combat units and certain security-related positions (Speckhard and Paz, 2014). Personnel transitioning from female to male are able to serve in male-only combat units only if they can meet the requirements set for other men. Personnel transitioning from male to female cannot serve in male-only combat units once they begin hormone treatment (Speckhard and Paz, 2014).

There do appear to be some limitations on the assignment of transgender personnel, particularly in combat units. Because of austere living conditions in these types of units, necessary accommodations may not be available for service members in the midst of a gender transition. As a result, transitioning individuals are typically not assigned to combat units (Speckhard and Paz, 2014). Transgender personnel are also limited from assignment to certain security-related positions due to concerns about blackmail, based on the assumption that these service members might be open about their gender identity in the military but might not have told others, including family members. Keeping

these types of secrets might make an individual susceptible to blackmail or extortion (Speckhard and Paz, 2014).

In the IDF, medical issues and matters related to the readiness of transgender personnel are addressed on a case-by-case basis, though a more formal policy is being developed. For conscripts, the only treatment that can be provided by the military is hormone therapy because gender reassignment surgery is possible in Israel only after age 21, by which point the conscription duty is usually completed (Speckhard and Paz, 2014). Those who choose to stay in the military full-time after the age of 21, as well as those in the reserve called to back to active service, may receive both hormone therapy and gender reassignment surgery. Those who choose to undergo surgery are permitted to take a period of sick leave for the surgery and recovery, as they can for any other medical treatment or surgery (Speckhard and Paz, 2014). Israel has nationalized health care that typically covers all treatments associated with gender transition, ranging from psychiatric care to pre- and postoperative care, hormone treatment, breast augmentation, and facial feminization. Apart from the approaches used to address physical standards for transitioning individuals (discussed earlier), there are no specific policies governing the readiness classification of transitioning IDF personnel, though some are in development (Zitun, 2014).

United Kingdom

The United Kingdom lifted the ban on transgender personnel in 2000 following a European Court of Human Rights ruling that the country's policy violated the right to privacy under the European Convention on Human Rights (Frank, 2010). The policy change was implemented with guidance to commanders, as well as a code of social conduct that allowed commanders to address inappropriate behavior toward transgender personnel by appealing to broader principles of tolerance and diversity and to guard operational effectiveness (Yerke and Mitchell, 2013). In 2009, the British Armed Forces released the "Policy for Recruitment and Management of Transsexual Personnel in the Armed Forces" to offer clearer guidance to commanders on how gender transition-related issues should be addressed (Yerke and Mitchell, 2013). While transgender personnel are able to serve openly, under the current policy, they can be excluded from sports that organize around gender to ensure the safety of the individual or other participants. The British Army also provides its official policy on transgender personnel on its website:

The Army welcomes transgender personnel and ensures that all who apply to join are considered for service subject to meeting the same mental and physical entry standard as any other candidate. If you have completed transition you will be treated as an individual of your acquired gender. Transgender soldiers serve throughout the Army playing their part in the country's security. There is a formal network that operates in the Army to ensure that transgender soldiers can find advice and support with issues that affect their daily lives. (British Army, undated)

However, the military encourages those who have not yet started their gender transition to complete their transition before joining (UK Ministry of Defence, 2009).

The 2009 UK policy is similar to those in Canada and Australia in terms of the areas covered and approaches to addressing key issues, though the UK policy provides some additional room for individual differences. The policy also includes an extensive discussion of the legal and privacy protections afforded to transgender personnel. These protections are important because they also apply to administrative and medical records in the military system.

The UK policy defines five stages of gender transition: diagnosis, social transition (the individual begins living openly as the target gender), medical treatment/hormone therapy, surgical reassignment, and postoperative transition. However, it also recognizes that the process of gender transition may be different for each person. The policy suggests that each individual work with commanders and service authorities to develop a plan that includes a timeline for transition. The gender transition plan agreed to by the service member and commanders should specify the timing of changes, such as to housing assignments and uniforms. The specific point at which a service member transitions for the purposes of name, uniform, housing, restrooms, and ID cards may vary from person to person. Typically, when service members begin living publicly as the target gender (the social transition) they are reassigned to housing of the target gender, use the restrooms and uniforms of the target gender, and are given an ID card indicating that they are a member of the target gender. Importantly, this shift in gender for administrative purposes does not have to correspond to the point at which an individual transitions gender within the UK legal system, a process that involves a diagnosis of gender incongruence and two years of living as the acquired gender (UK Ministry of Defence, 2009). The policy also notes that it is unlawful to force transgender personnel to use separate toilet or shower facilities or occupy separate housing accommodations from the rest of the force.

The gender transition plan addresses other logistics of the transition. For example, it should specify scheduled time off required for medical procedures, including gender reassignment surgery. In general, medical treatment associated with gender transition is treated like any other medical issue experienced by a service member. However, while hormone replacement therapy is covered by military health care, gender reassignment surgery is not (UK Ministry of Defence, 2009). The policy notes that the timeline and timing of the transition must take into consideration the needs of the service. As a result, at least four weeks notice is typically needed prior to the start of a service member's gender transition. The gender transition plan should also specify whether service members wish to transition in their current post or transfer to a new position and whether they want to tell their colleagues about the gender transition themselves or would like someone else to do this. This decision may depend on the size of the unit. In a small unit, it may be easy to inform fellow service members personally. In a larger organization, it may not be necessary to tell every individual. Commanders of units

with transgender personnel are encouraged to consult members of the Service Equality and Diversity staff about how to approach education and management in matters associated with transgender service members.

The UK policy also addresses medical readiness and physical standards. Transgender personnel are evaluated for medical readiness and deployability on a case-by-case basis following a medical evaluation. During the transition period, specifically during hormone treatment and immediately before and after surgery, service members may receive a reduced Medical Employment Standard, which restricts deployability and sea service (UK Ministry of Defence, 2009). Transitioning service members who continue to meet physical standards throughout this period and are able to perform their jobs may retain normal readiness standards. Usually, those who do not undergo hormone therapy or gender reassignment surgery are able to maintain a fully deployable status throughout their gender transition (UK Ministry of Defence, 2009). Service members who are undergoing hormone therapy are able to deploy, as long as the hormone dose is steady and there are no major side effects. However, deployment to all areas may not be possible, depending on the needs associated with any medication (e.g., refrigeration). Some service members may also be required to have a psychiatric evaluation, but only if they show signs of mental health distress (UK Ministry of Defence, 2009). Individuals who have finished their gender transition and can meet the requirements of their legal gender are considered fully deployable. However, those who remain in a state of reduced readiness for an extended period may have to be discharged (UK Ministry of Defence, 2009). Importantly, the British military encourages individuals who are in the midst of their gender transition and are considering joining the military to wait until the gender transition is complete before joining, as the military may not always be able to provide the support the individual needs during gender transition.

The specific physical standards a transitioning individual must meet during and after the gender transition period are determined on a case-by-case basis. The policy allows that there may be a period of time—especially for individuals transitioning from female to male—during which a service member is not yet able to meet the standards of the target gender. In these cases, medical staff and commanders may assess the individual and determine the appropriate interim standards (UK Ministry of Defence, 2009). Once the gender transition is considered “complete,” personnel are required to meet the standards of the target gender (UK Ministry of Defence, 2009). However, the policy recognizes that the point at which the gender transition is complete may vary: It may be complete after hormone therapy or after surgery, or simply after the individual begins living as the target gender. Therefore, the policy continues to allow for some flexibility in physical standards, even for members at the end of their gender transition process (UK Ministry of Defence, 2009). Modified standards may be set by medical staff and commanders, if necessary. Continued failure to meet whatever physical stan-

dards are determined to be appropriate (modified or otherwise) can lead to administrative discharge (UK Ministry of Defence, 2009).

The policy also addresses positions that are “gender-restricted” or have unique standards. The United Kingdom still has a number of combat occupations closed to women. Personnel who are transitioning from male to female may not serve in male-only occupations as long as this policy remains in place. Those transitioning from female to male may hold these jobs, assuming that they are able to meet the physical standards (UK Ministry of Defence, 2009). Transgender personnel may hold positions that have unique standards related to the occupation, as long as they can meet the physical and other requirements for the specific position. Finally, according to the policy, service members may request that their medals be transferred to a new name by submitting the request in writing. They are allowed to continue wearing qualifications earned while serving as their birth gender. However, this may indicate their transgender status to others (UK Ministry of Defence, 2009).

Effects on Cohesion and Readiness

As indicated in Chapter Six, while there is limited research on the effects of transgender personnel serving openly in foreign militaries, the available evidence indicated no significant effect on cohesion, operational effectiveness, or readiness. In the Australian case, there is no evidence and there have been no reports of any effect on cohesion, operational effectiveness, or readiness (Frank, 2010). In the Israeli case, there has also been no reported effect on cohesion or readiness (Speckhard and Paz, 2014). Transgender personnel in these militaries report feeling supported and accommodated throughout their gender transition, and there has been no evidence of any effect on operational effectiveness (Speckhard and Paz, 2014). As noted earlier, commanders report that transgender personnel perform their military duties and contribute to their units effectively (Speckhard and Paz, 2014). Interviews with commanders in the United Kingdom also found no effect on operational effectiveness or readiness (Frank, 2010). Some commanders reported that increases in diversity had led to increases in readiness and performance. Interviews with these same commanders also found no effect on cohesion, though there were some reports of resistance to the policy change within the general military population, which led to a less-than-welcoming environment for transgender personnel. However, this resistance was apparently short-lived (Frank, 2010).

The most extensive research on the potential effects of openly serving transgender personnel on readiness and cohesion has been conducted in Canada. This research involved an extensive review of internal defense reports and memos, an analysis of existing literature, and interviews with military commanders. It found no evidence of any effect on operational effectiveness or readiness. In fact, the researchers

heard from commanders that the increased diversity improved readiness by giving units the tools to address a wider variety of situations and challenges (Okros and Scott, 2015). They also found no evidence of any effect on unit or overall cohesion. However, there have been reports of bullying and hostility toward transgender personnel, and some sources have described the environment as somewhat hostile for transgender personnel (Okros and Scott, 2015).

To summarize, our review of the limited available research found no evidence from Australia, Canada, Israel, or the United Kingdom that allowing transgender personnel to serve openly has had any negative effect on operational effectiveness, cohesion, or readiness. However, it is worth noting that the four militaries considered here have had fairly low numbers of openly serving transgender personnel, and this may be a factor in the limited effect on operational readiness and cohesion.

Best Practices from Foreign Militaries

Several best practices and lessons learned emerged both directly from research articles describing the evolution of policy and the experiences of foreign militaries and indirectly from commonalities in the policies and experiences across our four case studies. The best practices that extended across all cases include the following:

The Importance of Leadership

Sources from each of our case-study countries stressed that leadership support was important to executing the policy change. Leaders provided the impetus to draft and implement new policies and were integral to communicating a message of inclusion to the entire force. Supportive leaders were also important in holding accountable those personnel who participated in discrimination (Okros and Scott, 2015; Speckhard and Paz, 2014). Each of the cases underscores the importance of having strong leadership support to back and enforce the policy change, along with clearly written policies that are linked to national policy wherever possible (Frank, 2010). The militaries found that presenting a “business case” for diversity and emphasizing the advantages of an inclusive military, including better retention and recruiting, can help reduce resistance to a policy change (Frank, 2010).

Awareness Through Broad Diversity Training

The most effective way to educate the force on matters related to transgender personnel is to integrate training on these matters into the diversity and harassment training already given to the entire force. This training addresses all forms of harassment and bullying, including that based on religion, race, and ethnicity (Frank, 2010; Okros and Scott, 2015; Belkin and McNichol, 2000–2001).

In the four cases we reviewed in-depth, we found that targeting only commanders with training and information on what it means to be transgender is not as effective in fostering an inclusive and supportive environment as training that targets the entire force and is integrated into broader forcewide diversity training. The foreign militaries that we examined train not only units with transitioning individuals but also the entire force by including gender identity alongside sexual orientation, religion, ethnicity, and other markers of difference in diversity training and education. However, efforts must be made simultaneously to protect the privacy of transitioning service members. In some cases, telling a unit that a transgender member is arriving before that individual arrives can be counterproductive (Frank, 2010).

The Importance of an Inclusive Environment

An all-inclusive military environment—not just as it pertains to transgender personnel, sexual orientation, or gender identity, but a culture that embraces diversity—can support the integration of openly serving transgender personnel. In this context, gender identity is just one marker of diversity.⁵

Ensuring Availability of Subject-Matter Experts to Advise Commanders

Most of the four countries we examined in-depth also make subject-matter experts (e.g., chaplains, psychiatrists) and gender advisers (individuals who have special training in gender awareness and gender mainstreaming in the military context) available to commanders tasked with the integration of transgender personnel. Gender advisers were originally intended to deal primarily with issues associated with integrating women into male-dominated military environments, but they could also help with other gender-related matters, including transgender personnel policy. They serve directly within military units and are a readily available resource to commanders. Adopting a similar practice of integrating advisers with expertise in the area of transgender personnel policy and gender transition-related matters might also support the integration of transgender service members in the U.S. military.

Lessons Learned and Issues to Consider for U.S. Military Policy

Based on these best practices and the broader experiences of four foreign militaries, there are some key lessons to be learned and possible issues to consider when crafting U.S. military transgender personnel policy. First, in each of the four foreign militaries, there were some reports of resistance, bullying, and harassment of transgender personnel who made their gender transition public. This harassment ranged from exclusion to more aggressive behavior. In most cases, this behavior was relatively limited; however,

⁵ Remarks by a Canadian subject-matter expert in a phone discussion with RAND researchers, November 2015.

in some cases, it did contribute to a hostile work environment for transgender personnel and had the effect of discouraging these personnel from being open about their gender transition or gender identity (Okros and Scott, 2015; Frank, 2010). Although the foreign militaries we examined tended to adopt a policy of no tolerance for this type of harassment, some bullying behavior may have gone unreported (Okros and Scott, 2015; Frank, 2010). In the case of Canada, the issue of restrooms for transgender personnel is an ongoing topic of discussion, and restrooms have been a common site of harassment and discrimination (Okros and Scott, 2015).

A second lesson learned is related to problems caused by the lack of an explicit, clearly written policy. For instance, in the IDF, without a clear policy, some transitioning individuals are placed in difficult and uncomfortable situations. For example, in some cases, personnel who have been permitted to begin hormone therapy cannot be housed with members of their target gender or grow their hair and fingernails (in the case of individuals transitioning from male to female). Others have been isolated, assigned to separate housing, or asked to use separate restrooms (Speckhard and Paz, 2014). Recognizing these challenges, IDF leadership is working to design a clear and explicit policy. In the Israeli case, transgender individuals were allowed to serve openly before a formal policy was written. Only when it was faced with questions about the integration of transgender personnel did the IDF begin to create a formal policy.⁶ In Canada, a similar policy gap arose when transgender personnel were allowed to serve openly following a national policy revision that ended discrimination based on sexual orientation or gender. However, the focus at that point was on gay and lesbian service members, and no formal policy was created to address transgender personnel explicitly. When matters related to the medical care of transgender personnel arose, Canadian defense leaders developed a policy that just addressed this narrow, pressing issue, and did not develop policies to address the other matters (e.g., housing, restrooms, name changes). Commanders complained that the original policy was too vague and lacked sufficient details. A new, revised policy was written in 2012, and commanders have responded with positive feedback.⁷ The lack of a clear, written policy has also been an issue in Australia.

A third and final issue that has come up in at least two of the countries we surveyed is that of awards and medals. In the UK case, medals and awards received prior to gender transition can be transferred to the service member's post-transition name (UK Ministry of Defence, 2009). In the Canadian case, this is not possible, and the awards remain associated only with the original name. This is a cause for concern among transgender personnel in the Canadian military, but Canadian officials have responded that they cannot rewrite history (Okros and Scott, 2015). This is a policy area that the United States should consider alongside other administrative policies.

⁶ Remarks by a Canadian subject-matter expert in a phone discussion with RAND researchers, November 2015.

⁷ Remarks by a Canadian subject-matter expert in a phone discussion with RAND researchers, November 2015.

CHAPTER EIGHT

Which DoD Policies Would Need to Be Changed if Transgender Service Members Are Allowed to Serve Openly?

This chapter reviews DoD accession, retention, separation, and deployment policies and provides an assessment of the impact of changes required to allow transgender personnel to serve openly. For our analysis of DoD policies, we reviewed 20 current accession, retention, separation, and deployment regulations across the services and the Office of the Secretary of Defense. We also reviewed 16 other regulations that have been replaced by more recent regulations or did not mention transgender policies.¹ DoDI 6130.03 establishes medical standards for entry into military service, including a list of disqualifying physical and mental conditions, some of which are transgender-related.² Current DoD policy also authorizes, but no longer requires, the discharge of transgender personnel for reasons related to both medical conditions that generate disabilities, as well as mental health concerns.³ However, a July 2015 directive from the Office of the Secretary of Defense elevated decisions to administratively separate transgender service members to the Office of the Under Secretary of Defense for Personnel and Readiness (DoD, 2015b).

Note that our review focused on transgender-specific DoD instructions that may contain unnecessarily restrictive conditions and reflect outdated terminology and assessment processes. However, in simply removing these restrictions, DoD could inadvertently affect overall standards. While we focus on reforms to specific instruc-

¹ These additional policies are listed in Appendix D.

² The instruction specifies conditions that disqualify accessions, including “current or history of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias”; “history of major abnormalities or defects of the genitalia including but not limited to change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis”; and “history of major abnormalities or defects of the genitalia such as change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis” (DoDI 6130.03, 2011, enclosure 4).

³ “Sexual gender and identity disorders” are specified as medical conditions that may generate disabilities under DoDI 1332.38, enclosure 5 (2006). Mental health conditions are specified in DoDI 1332.14 (2014) and DoDI 1332.30 (2013) for enlisted and officers, respectively. DoDI 1332.18, issued on August 5, 2014, updated these guidelines and established general criteria for referral for disability evaluation and defers to service-specific standards for retention. However, a recent review of this revision suggests that service-specific regulations may still disqualify transgender personnel, and the new guidance may not overrule those service policies (Pollock and Minter, 2014).

tions and directives, we note that DoD may wish to conduct a more expansive review of personnel policies to ensure that individuals who join and remain in service can perform at the desired level, regardless of gender identity.

Accession Policy

The language pertaining to transgender individuals in accession instructions does not match that used in DSM-5.⁴ This results in restrictions in DoD policy that do not match current medical understanding of gender identity issues and thus may be misapplied or difficult to interpret in the context of current medical treatments and diagnoses. Under current guidelines, otherwise qualified individuals could be excluded for conditions that are unlikely to affect their military service, and individuals with true restrictions may be more difficult to screen for and identify. Modernizing the terminology to match current psychological and medical understanding of gender identity would help ensure that existing procedures do not inadvertently exclude otherwise qualified individuals who might want to join the military. We recommend that DoD review and revise the language to match the DSM-5 for conditions related to mental fitness so that mental health screening language matches current disorders and facilitates appropriate screening and review processes for disorders that may affect fitness for duty. Similarly, physical fitness standards should specify physical requirements, rather than physical conditions. Finally, the physical fitness language should clarify when in the transition process the service member's target gender requirements will begin to apply.

Retention Policy

We recommend that DoD expand and enhance its guidance and directives to clarify and adjust, where necessary, standards for retention of service members during and after gender transition. Evidence from Canada and Australia suggests that transgender personnel may need to be held medically exempt from physical fitness testing and requirements during transition (Canadian Armed Forces, 2012; Royal Australian Air Force, 2015). However, after completing transition, the service member could be required to meet the standards of the acquired gender. The determination of when the service member is "medically ready" to complete the physical fitness test occurs on a case-by-case basis and is typically made by the unit commander.

⁴ Two key changes are that the term *transsexualism* has been replaced, and *gender dysphoria* is no longer in the chapter "Sexual Desire Disorders, Sexual Dysfunctions, and Paraphilias" but, rather, has its own chapter (Mishler, 2014).

Separation Policy

DoD may wish to revise the current separation process based on lessons learned from the repeal of Don't Ask, Don't Tell. The current process relies on administrative decisions outside the purview of the standard medical and physical review process. This limits the available documentation and opportunities for review, and it could prove burdensome if transgender-related discharges become subject to re-review. When medically appropriate, DoD may wish to establish guidance on when and how such discharge reviews should be handled. We also recommend that DoD develop and disseminate clear criteria for assessing whether transgender-related conditions may interfere with duty performance.

Deployment Policy

Deployment conditions vary significantly based on the unique environment of each deployment, with some deployed environments able to accommodate transgender individuals, even those who are undergoing medical treatments. Moreover, recent medical advancements can minimize the invasiveness of treatments and allow for telemedicine or other forms of remote medical care. Given medical and technological advances, DoD may wish to adjust some of its processes and deployment restrictions to minimize the impact on readiness. For example, current regulations specify that conditions requiring regular laboratory visits make service members ineligible for deployment, including all service members who are receiving hormone treatments,⁵ since such treatments require laboratory monitoring every three months for the first year as hormone levels stabilize (Hembree et al., 2009; Elders et al., 2014). Such a change would require DoD to either permit more flexible monitoring strategies⁶ or provide training to deployed medical personnel.⁷ Similarly, the use of refrigerated medications is a disqualifying condition for deployment,⁸ even though nearly all hormone therapies are available in other formats that do not require refrigeration.

⁵ Current regulations state that “medications that require laboratory monitoring or special assessment of a type or frequency that is not available or feasible in a deployed environment” disqualify an individual from deployment (Office of the Assistant Secretary of Defense for Health Affairs, 2013, p. 3).

⁶ Some experts suggest that alternatives, such as telehealth reviews, would address this issue for rural populations with limited access to medical care (see, for example, WPATH, 2011).

⁷ “Independent duty corpsmen, physician assistants, and nurses can supervise hormone treatment initiated by a physician” (Elders et al., 2014).

⁸ The memo issued by the Office of the Assistant Secretary of Defense for Health Affairs states, “Medications that disqualify an individual for deployment include . . . [m]edications that have special storage considerations, such as refrigeration (does not include those medications maintained at medical facilities for inpatient or emergency use)” (Office of the Assistant Secretary of Defense for Health Affairs 2013, p. 3).

CHAPTER NINE

Conclusion

By many measures, there are currently serving U.S. military personnel who are transgender. Overall, our study found that the number of U.S. transgender service members who are likely to seek transition-related care is so small that a change in policy will likely have a marginal impact on health care costs and the readiness of the force. We estimate, based on state-level surveys of transgender prevalence, that between 1,320 and 6,630 transgender personnel may be serving in the AC, and 830–4,160 may be serving in the SR. Estimates based on studies from multiple states, weighted for population and the gender distribution in the military, imply that there are around 2,450 transgender service members in the AC and 1,510 in the SR.¹

However, only a small proportion of these service members will seek gender transition–related treatment each year. Employing utilization and cost data from the private health insurance system, we estimated the potential impact of providing this care to openly serving transgender personnel on AC health care utilization and costs. Directly applying private health insurance utilization rates to the AC military population indicated that a very small number of service members will access gender transition–related care annually. Our estimates based on private health insurance data ranged from a lower-bound estimate of 29 AC service members to an upper-bound estimate of 129 annually using care, including those seeking both surgical and other medical treatments.

Using estimates from two states and adjusting for the male/female AC distribution, we also estimate a total of 45 gender transition–related surgeries, with 50 service members initiating transition-related hormone therapy annually in the AC.² We estimate 30 gender transition-related surgeries and 25 service members initiating hormone therapy treatments in the SR. These are likely to be upper-bound estimates, given the nonrepresentative sample selection procedures used in the NTDS. Furthermore, the best prevalence estimates that we were able to identify were from two of the more transgender-tolerant states in the country, and the empirical evidence that trans-

¹ Estimates are based on FY 2014 AC and SR personnel numbers.

² For hormone therapy recipients, the number of treatments and recipients is the same, and these estimates can be treated as counts of individuals.

gender prevalence is higher in the military than in the general population is weak. As a point of comparison, we also compared these estimated values to mental health utilization in the AC population overall. Using data from McKibben et al. (2013), we calculated that approximately 278,517 AC service members accessed mental health care treatment in 2014, the implication being that health care for the transgender population will be a very small part of the total health care provided to AC service members across the MHS.

With respect to health care costs, actuarial estimates from the private health insurance sector indicate that covering gender transition–related care for transgender employees increased premiums by less than 1 percent. Taking a weighted average of the identified firm-level data, we estimate that covering transgender-related care for service members will increase the U.S. military’s AC health care spending by only 0.038–0.054 percent. Using these baseline estimates, we estimate that MHS health care costs will increase by between \$2.4 million and \$8.4 million. These numbers represent only a small proportion of FY 2014 AC health care expenditures (\$6.27 billion) and the FY 2014 Unified Medical Program budget (\$49.3 billion). This is consistent with our estimate of relatively low AC rates of gender transition–related health care utilization in the MHS.

Similarly, when considering the impact on readiness, we found that using either the prevalence-based approach or the utilization-based approach yielded an estimate of less than 0.0015 percent of total labor-years likely to be affected by a change in policy. This is much smaller than the current lost labor-years due to medical care in the Army alone.

Even if transgender personnel serve in the military at twice the rate of their prevalence in the general population and we use the upper-bound rates of health care utilization, the total proportion of the force that is transgender and would seek treatment would be less than 0.1 percent, with fewer than 130 AC surgical cases per year even at the highest utilization rates. Given this, true usage rates from civilian case studies imply only 30 treatments in the AC, suggesting that the total number of individuals seeking treatment may be substantially smaller than 0.1 percent of the total force. Thus, we estimate the impact on readiness to be negligible.

We conclude with some general recommendations and insights based on the experiences of foreign militaries that permit transgender individuals to serve openly—specifically, Australia, Canada, Israel, and the United Kingdom. Our case studies provide some guidance that policymakers should consider as they develop policies to govern the employment of transgender personnel in the U.S. military. These cases also suggested a number of key implementation practices if a decision is made to allow transgender service members to serve openly:

- Ensure strong leadership support.
- Develop an explicit written policy on all aspects of the gender transition process.

- Provide education and training to the rest of the force on transgender personnel policy, but integrate this training with other diversity-related training and education.
- Develop and enforce a clear anti-harassment policy that addresses harassment aimed at transgender personnel alongside other forces of harassment.
- Make subject-matter experts and gender advisers serving within military units available to commanders seeking guidance or advice on gender transition-related issues.
- Identify and communicate the benefits of an inclusive and diverse workforce.

APPENDIX A

Terminology

Augmentation mammoplasty: breast augmentation involving implants or lipofilling

Buccal administration: placement of medication between the gums and cheek

Chest surgery: surgery to create a contoured, male-looking chest

Clitoroplasty: surgical creation/restoration of a clitoris

Cross-dresser: someone who dresses in the clothes of the other gender, not always on a full-time basis

Female-to-male: those assigned female sex at birth who identify as male; transgender men; transmen

Gender: an individual's gender identity, which is influenced by societal norms and expectations; public, lived role as male or female

Gender assignment: initial assignment at birth as male or female; yields "natal gender" (APA, 2013, p. 451)

Gender atypical: behaviors not typical for one's gender "in a given society and historical era" (APA, 2013, p. 451)

Gender identity: "one's inner sense of one's own gender, which may or may not match the sex assigned at birth" (Office of Personnel Management, 2015, p. 2)

Gender dysphoria: "discomfort or distress that is caused by a discrepancy between a person's gender identity and that person's sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics)" (WPATH, 2011, p. 2).

Gender nonconformity: "the extent to which a person's gender identity, role, or expression differs from the cultural norms prescribed for people of a particular sex" (WPATH, 2011, p. 5, citing Institute of Medicine definition)

Gender transition-related surgery/gender-confirming surgery/sex reassignment surgery: surgery to mitigate distress associated with gender dysphoria by aligning sex characteristics with gender identity

Genderqueer: those who “define their gender outside the construct of male or female, such as having no gender, being androgynous, or having elements of multiple genders” (Roller, Sedlak, and Draucker, 2015, p. 417)

Gluteal augmentation: buttocks augmentation involving implants or lipofilling

Hormone therapy: “the administration of exogenous endocrine agents to induce feminizing or masculinizing changes” (WPATH, 2011, p. 33)

Hysterectomy: surgery to remove the uterus

Intersex: “a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn’t seem to fit the typical definitions of female or male” (Intersex Society of North America, undated)

Labiaplasty: plastic surgery for altering or creating the labia

Lipofilling: injection of fat rather than artificial implants

Male-to-female: those assigned male sex at birth who identify as female; transgender females; transwomen

Mastectomy: surgical removal of one or both breasts

Metoidioplasty: surgically relocating a clitoris that has been enlarged by hormone therapy to a more forward position that more closely resembles that of a penis; average length is 1.5–2 inches

Oophorectomy: surgical removal of one or both ovaries

Orchiectomy: surgical removal of one or both testicles

Ovariectomy: surgical removal of one or both ovaries

Parenteral administration: intravenous injection (into a vein) or intramuscular infusion (into muscle) of medication

Penectomy: surgical removal of the penis

Phalloplasty: surgical creation/reconstruction of a penis using one of a variety of techniques including free or pedicled (attached) flap (see Rashid and Tamimy, 2013)

Primary sex characteristics: physical characteristics/sex organs directly involved in reproduction

Salpingo-oophorectomy: removal of the ovaries and fallopian tubes

Scrotoplasty: surgical creation/reconstruction of testicles; in transmen, native labia tissue is used; testicular implants can be used

Secondary sex characteristics: physical characteristics that appear at puberty and vary by sex but are not directly involved in reproduction (e.g., breasts)

Sex: a person's biological status as male or female based on chromosomes, gonads, hormones, and genitals (intersex is a rare exception)

Sexual orientation: sexual identity in relation to the gender to which someone is attracted: heterosexual, homosexual, or bisexual

Thyroid chondroplasty: removal or reduction of the Adam's apple

Transdermal administration: delivery of medication across the skin with patches

Transgender: "an umbrella term used for individuals who have sexual identity or gender expression that differs from their assigned sex at birth" (Roller, Sedlak, and Draucker, 2015, p. 417)

Transsexual: someone whose gender identity is inconsistent with their assigned sex and who desires to permanently transition their physical characteristics to match their inner sense of their own gender

Urethroplasty: surgical reconstruction or fabrication of the urethra.

Vaginectomy (colpectomy): surgical removal of all or part of the vagina

Vaginoplasty: surgical creation/reconstruction of a vagina

Vulvoplasty: surgical creation/reconstruction of the vulva

APPENDIX B

History of DSM Terminology and Diagnoses

A brief historical understanding of the evolving diagnostic nomenclature pertaining to transgender status is important to discussions of related health care. DSM-III (APA, 1980) first contained the diagnosis of transsexualism. DSM-III-R (APA, 1987) introduced gender identity disorder, non-transsexual type. In DSM-IV (APA, 1994), these two diagnoses were merged and called *gender identity disorder*. Gender identity disorder, together with the paraphilias (disorders of extreme, dangerous, or abnormal sexual desire, including transvestic fetishism, sometimes referred to as cross-dressing), constituted the DSM-IV section “Sexual and Gender Identity Disorders.”

With DSM-5 (APA, 2013) came the migration from *gender identity disorder* to *gender dysphoria*. The clinical significance of the shift in DSM-5 was great: For the first time, without accompanying symptoms of distress, transgender individuals were no longer considered to have a diagnosable mental disorder. The historical parallel with homosexuality is hard to miss: In 1980, DSM-III similarly normalized the DSM-II diagnosis of homosexuality, moving instead to ego-dystonic homosexuality, a diagnosis reserved only for gay persons who felt related distress. In the next DSM iteration, DSM-III-R, all reference to homosexuality as a diagnostic term was removed. In the aftermath of depathologizing gender nonconformity, a similar move relating to transgender status appears to be underway.

As noted in this report, there is a consensus among clinicians and their professional organizations that transition-related treatment with hormones or surgery constitutes necessary health care, though there is a divide over whether it serves as “a strategy to diminish the serious suffering” of the patient or “a method to assist people in finding self-actualization” (Gijs and Brewaeys, 2007, p. 184). The conclusion that transition-related surgery “is an effective treatment for gender identity disorder in adults” is based primarily on retrospective studies of satisfaction rather than randomized controlled trials or prospective studies (Gijs and Brewaeys, 2007, p. 199). The prevalence of post-operative regret is very low, though “little empirical research has been done” on related risk and protective factors (Gijs and Brewaeys, 2007, pp. 201, 204). Overall, surgery is considered “the most appropriate treatment to alleviate the suffering of extremely gender dysphoric individuals,” but rigorous controlled-outcome studies evaluating its

effectiveness should be conducted despite feasibility and ethical challenges (Gijs and Brewaeys, 2007, pp. 215–216; Buchholz, 2015, p. 1786).

DSM-5 Diagnostic Criteria: Gender Dysphoria in Adolescents and Adults 302.85 (F64.1)

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:
 - 1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
 - 2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated 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 (or some alternative gender different from one's assigned gender).
 - 5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
 - 6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

APPENDIX C

Treatments for Gender Dysphoria

In this appendix, we provide additional details about psychosocial, pharmacologic, surgical, and other treatments for gender dysphoria (GD).

Psychotherapy

The emphasis of psychotherapy for this population today is on “affirming a unique transgender identity,” rather than focusing on gender transition (Institute of Medicine, 2011, p. 52). Mental health professionals can also help patients presenting with GD navigate the process of coming out to family, friends, and peers; treat comorbid mental health conditions;¹ weigh options related to gender identity, gender expression, and transition-related treatment interventions; and conduct assessments, make referrals, and guide preparation for and provide support through the transition-related treatment process (WPATH, 2011, pp. 22–26). Referral from a mental health professional is necessary under the standards of care for those seeking breast/chest or genital surgeries, and the latter also requires confirmation from an independent mental health provider (WPATH, 2011, p. 27). Mental health providers may also serve an important role on behalf of their patients by providing education and advocacy within the community and supporting changes to identity documents (WPATH, 2011, p. 31).

Of note, treatment aimed at changing one’s gender identity to align with the sex assigned at birth has proven unsuccessful and is no longer considered ethical care; mental health providers who are unwilling or unable to provide appropriate care should refer patients to a provider who is (WPATH, 2011, p. 32).

Hormone Therapy

Hormone therapy is necessary for many individuals with GD (WPATH, 2011, p. 33). It has two major goals: (1) reduce naturally occurring hormones to minimize secondary sex characteristics and (2) maximize desired feminization/masculinization using the principles and medications used for hormone replacement in non-transgender patients who do not produce enough hormones, such as women who have had hyster-

¹ Co-occurring mental health conditions could range from anxiety and depression, which are common among the transgender population, to more severe and rare illnesses, such as schizophrenia or bipolar disorder.

ectomies or men with low testosterone (WPATH, 2011, p. 33; Hembree et al., 2009). As with most medications, there are risks, which may increase in the presence of some health conditions or behaviors (such as smoking); these should be evaluated and managed (Hembree et al., 2009).

For those transitioning from female to male, hormone therapy should lead to “deepened voice, clitoral enlargement (variable, 3–8 cm), growth in facial and body hair, cessation of menses, atrophy of breast tissue, increased libido, and increased percentage of body fat.” For those transitioning from male to female, hormone therapy should lead to “breast growth (variable), decreased libido and erections, decreased testicular size, and increased percentage of body fat” (WPATH, 2011, p. 36). The timeline for these and other physical changes varies by individual; expected onset is within months, and maximum expected effect (such as body fat and muscle mass changes) is generally achieved in three or more years. Feminizing hormone therapy typically involves both estrogen and antiandrogens.² Masculinizing hormone therapy consists primarily of testosterone, which is available in oral, transdermal, parenteral (intravenous/intramuscular), buccal (cheek), and implantable administrations; brief use of progestin can help stop menstrual periods early in treatment (WPATH, 2011, p. 49). Detailed clinical practice guidelines are available from the Endocrine Society (Hembree et al., 2009).

Gender Transition–Related Surgery

As noted, gender transition–related surgery (also called sex reassignment surgery or gender-confirming surgery) is necessary for some transgender patients. Under the standards of care, mental health professionals must refer patients for surgery; in addition, criteria for both breast/chest and genital surgery include persistent and well-documented GD, the capacity to make informed decisions and to consent, and for other mental or general health concerns to be reasonably well controlled if present (WPATH, 2011, p. 59). Hormone therapy is not a prerequisite for breast/chest (also called “top”) surgery, though it is recommended for 12–24 months for male-to-female patients to achieve optimal results (Hembree et al., 2009).

For genital (also called “bottom”) surgery, 12 continuous months of hormone therapy are required prior to oophorectomy or orchiectomy (surgical removal of ovaries or testicles), unless contraindicated; health record documentation of “12 continuous months of living in a gender role that is congruent with their gender identity . . . consistently, on a day-to-day basis and across all settings of life” is also required for metoidioplasty (surgical relocation of an enlarged clitoris), phalloplasty (surgical creation of a penis), or vaginoplasty (surgical creation of a vagina; WPATH, 2011,

² Transdermal rather than oral estrogen is recommended. Common antiandrogens include spironolactone (an antihypertensive agent that requires electrolyte monitoring); cyproterone acetate (not approved in the United States); GnRH agonists, such as gosrelin, buserelin, or triptorelin (available as injectables or implants); and 5-alpha reductase inhibitors, such as finasteride and dutasteride (WPATH, 2011, p. 48).

pp. 60–61). Mastectomy is often the only surgery undertaken by the female-to-male population; for those who do undergo genital surgery, phalloplasty is relatively uncommon, as it often requires multiple procedures and has frequent complications (WPATH, 2011, pp. 63–64). Surgeons should work closely with patients and other care providers, if needed, to ensure that the advantages, disadvantages, and risks of various treatments and procedures are well understood.

Other Treatments

Aside from breast/chest and genital surgery, other surgical interventions may include liposuction, lipofilling, and various aesthetic procedures. For male-to-female patients, these may include “facial feminization surgery, voice surgery, thyroid cartilage reduction, gluteal augmentation (implants/lipofilling), [and] hair reconstruction”; female-to-male patients may seek pectoral implants (WPATH, 2011, pp. 57–58). There is ongoing debate regarding whether these and other transition-related treatments are “medically necessary” (and therefore covered by insurance). For example, in some circumstances, facial hair removal for male-to-female patients may constitute necessary transition-related treatment: One study found that those who have undergone the procedure were “less likely to experience harassment in public spaces,” and harassment can “have a negative impact on the success of a person’s treatment for gender dysphoria” (Herman, 2013b, p. 19). In addition, voice and communication therapy to develop vocal characteristics and nonverbal communication patterns congruent with gender identity may prevent “vocal misuse and long-term vocal damage” (WPATH, 2011, pp. 52–54).

APPENDIX D

Review of Accession, Retention, and Separation Regulations

Directive	Date	Department
Air Force Instruction 36-2002, <i>Regular Air Force and Special Category Accessions</i>	4/7/1999, revised 6/2/2014	Air Force
Air Force Instruction Guidance Memorandum AFI48-123_AFGM2015-01, "Guidance Memorandum: AFI 48-123, <i>Medical Examinations and Standards</i> "	8/27/2015	Air Force
Air Force Instruction Guidance Memorandum 48-123_AFGM4, "Air Force Guidance Memorandum to AFI 48-123, <i>Medical Examinations and Standards</i> "	1/29/2013	Air Force
Air Force Recruiting Service Instruction 36-2001, <i>Recruiting Procedures for the Air Force</i>	8/1/2012	Air Force
Air Force Instruction 41-210, <i>TRICARE Operations and Patient Administration Functions</i>	6/6/2012	Air Force
U.S. Army Recruiting Command, <i>Pocket Recruiter Guide</i>	7/1/2013	Army
Army Regulation 635-40, <i>Physical Evaluation for Retention, Retirement, or Separation</i>	3/20/2012	Army
Army Regulation 601-280, <i>Army Retention Program</i>	9/15/2011	Army
Army Regulation 40-501, <i>Standards of Medical Fitness</i>	8/4/2011	Army
Army Regulation 40-66, <i>Medical Record Administration and Healthcare Documentation</i>	1/4/2010	Army
Army Regulation 635-200, <i>Active Duty Enlisted Administrative Separations</i>	9/6/2011	Army
Army Regulation 601-210, <i>Active and Reserve Components Enlistment Program</i>	3/12/2013	Army
DoDI 6130.03, <i>Medical Standards for Appointment, Enlistment, or Induction in the Military Services</i>	4/28/2010, revised 9/13/11	DoD
DoDI 1332.18, <i>Disability Evaluation System (DES)</i>	8/5/2014	DoD
Office of the Under Secretary of Defense for Personnel and Readiness, <i>Disability Evaluation System (DES) Pilot Operations Manual</i>	12/2008	DoD

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Directive	Date	Department
Marine Corps Order 1040.31, <i>Enlisted Retention and Career Development Program</i>	9/8/2010	Marine Corps
Marine Corps Order 6110.3, <i>Marine Corps Body Composition and Military Appearance Program</i>	8/8/2008	Marine Corps
Marine Administrative Message 064/11, "Amplification to Testing Accession Standards for the Purpose of Application to Marine Office Commissioning Programs"	1/26/2011	Marine Corps
Navy Military Personnel Manual 1306-964, "Recruiting Duty"	5/9/2014	Navy
Navy Medicine Manual P-117, <i>Manual of the Medical Department</i> , Chapter 15, Article 15-31, "Waivers of Physical Standards"	5/3/2012	Navy and Marine Corps

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<http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf>
- APA—See American Psychiatric Association.
- Army Regulation 40-501, *Standards of Medical Fitness*, December 14, 2007, revised August 4, 2011.
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Current U.S. Department of Defense (DoD) policy bans transgender personnel from serving openly in the military. DoD has begun considering changes to this policy, but the prospect raises questions regarding access to gender transition-related health care, the range of transition-related treatments that DoD will need to provide, the potential costs associated with these treatments, and the impact of these health care needs on force readiness and the deployability of transgender service members. A RAND study identified the health care needs of the transgender population and transgender service members in particular. It also examined the costs of covering transition-related treatments, assessed the potential readiness implications of a policy change, and reviewed the experiences of foreign militaries that permit transgender service members to serve openly.



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EXHIBIT 5

Presidential Documents

Memorandum of August 25, 2017

Military Service by Transgender Individuals

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

Section 1. Policy. (a) Until June 2016, the Department of Defense (DoD) and the Department of Homeland Security (DHS) (collectively, the Departments) generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals. Shortly before President Obama left office, however, his Administration dismantled the Departments' established framework by permitting transgender individuals to serve openly in the military, authorizing the use of the Departments' resources to fund sex-reassignment surgical procedures, and permitting accession of such individuals after July 1, 2017. The Secretary of Defense and the Secretary of Homeland Security have since extended the deadline to alter the currently effective accession policy to January 1, 2018, while the Departments continue to study the issue.

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

(b) Accordingly, by the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States under the Constitution and the laws of the United States of America, including Article II of the Constitution, I am directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have the negative effects discussed above. The Secretary of Defense, after consulting with the Secretary of Homeland Security, may advise me at any time, in writing, that a change to this policy is warranted.

Sec. 2. Directives. The Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, shall:

(a) maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that I find convincing; and

(b) halt all use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, 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.

Sec. 3. Effective Dates and Implementation. Section 2(a) of this memorandum shall take effect on January 1, 2018. Sections 1(b) and 2(b) of this memorandum shall take effect on March 23, 2018. By February 21, 2018, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall submit to me a plan for implementing both the general policy set forth in section 1(b) of this memorandum and the specific directives

set forth in section 2 of this memorandum. The implementation plan shall adhere to the determinations of the Secretary of Defense, made in consultation with the Secretary of Homeland Security, as to what steps are appropriate and consistent with military effectiveness and lethality, budgetary constraints, and applicable law. As part of the implementation plan, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine how to address transgender individuals currently serving in the United States military. Until the Secretary has made that determination, no action may be taken against such individuals under the policy set forth in section 1(b) of this memorandum.

Sec. 4. Severability. If any provision of this memorandum, or the application of any provision of this memorandum, is held to be invalid, the remainder of this memorandum and other dissimilar applications of the provision shall not be affected.

Sec. 5. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

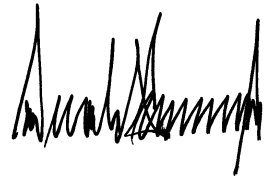
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 25, 2017

EXHIBIT 6

From: [Neller Gen Robert B](#)
To: [Dunford Gen Joseph F](#)
Subject: RE: Transgender policy message (UNCLASSIFIED)
Date: Thursday, July 27, 2017 11:07:00 AM

Can you talk today?

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

From: Dunford, Joseph F Jr Gen USMC JS (US) (b)(6)
Sent: Thursday, July 27, 2017 10:57 AM
To: Milley, Mark A GEN USARMY HQDA CSA (US); Richardson ADM John M; Neller Gen Robert B; Goldfein, David L Gen USAF AF-CC (US); Lengyel, Joseph L Gen USAF NG NGB (US)
Subject: RE: Transgender policy message (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

P.S. When asked, I will state that I was not consulted ... expect that question will come NLT than my September hearing.

VR
Joe

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

From: Dunford, Joseph F Jr Gen USMC JS (US)
Sent: Thursday, July 27, 2017 7:55 AM
To: Milley, Mark A GEN USARMY HQDA CSA (US) (b)(6) 'Richardson, John M ADM CNO' (b)(6) 'Neller Gen Robert B' (b)(6) Goldfein, David L Gen USAF AF-CC (US) (b)(6) Lengyel, Joseph L Gen USAF NG NGB (US) (b)(6)
Subject: Transgender policy message (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Chiefs,

I know yesterday's announcement was unexpected. The message below is provided in advance of an official letterhead memo from me. It's as much as we can say right now. I'd ask that you ensure widest dissemination ...

VR
Joe

From: CJCS
To: Service Chiefs, Commanders and Senior Enlisted Leaders

I know there are questions about yesterday's announcement on the transgender policy by the President. There will be no modifications to the current policy until the President's direction has been received by the Secretary of Defense and the Secretary has issued implementation guidance.

In the meantime, we will continue to treat all of our personnel with respect. As importantly, given the current fight and the challenges we face, we will all remain focused on accomplishing our assigned missions.

CLASSIFICATION: UNCLASSIFIED
CLASSIFICATION: UNCLASSIFIED

CJCS_00001087

From: [Neller Gen Robert B](#)
To: [Dunford, Joseph F Jr Gen USMC JS \(US\)](#); [Milley, Mark A GEN USARMY HQDA CSA \(US\)](#); [Richardson ADM John M](#); [Goldfein, David L Gen USAF AF-CC \(US\)](#); [Lengyel, Joseph L Gen USAF NG NGB \(US\)](#)
Cc: [Walters LtGen Glenn M](#) (b)(6); [Laster LtGen James B](#); [Brilakis LtGen Mark A](#); [Ewers MajGen John R](#); [Hoque SES Robert D](#) (b)(6); [Wissler LtGen John E](#); [Berger LtGen David H](#) (b)(6); [McMillian LtGen Rex C](#) (b)(6); [Kennedy BGen Paul J](#) (b)(6); [Renforth BGen Austin E](#); [Jurney BGen William M](#)
Subject: RE: Transgender policy message (UNCLASSIFIED)
Date: Thursday, July 27, 2017 8:59:00 AM

Roger over.
V/R Neller

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

From: [Dunford, Joseph F Jr Gen USMC JS \(US\)](#) (b)(6)
Sent: Thursday, July 27, 2017 7:55 AM
To: [Milley, Mark A GEN USARMY HQDA CSA \(US\)](#); [Richardson ADM John M](#); [Neller Gen Robert B](#); [Goldfein, David L Gen USAF AF-CC \(US\)](#); [Lengyel, Joseph L Gen USAF NG NGB \(US\)](#)
Subject: Transgender policy message (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Chiefs,

I know yesterday's announcement was unexpected. The message below is provided in advance of an official letterhead memo from me. It's as much as we can say right now. I'd ask that you ensure widest dissemination ...

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Joe

From: CJCS
To: Service Chiefs, Commanders and Senior Enlisted Leaders

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In the meantime, we will continue to treat all of our personnel with respect. As importantly, given the current fight and the challenges we face, we will all remain focused on accomplishing our assigned missions.

CLASSIFICATION: UNCLASSIFIED

CJCS_00001088

From: Herrington, Mark H CIV OSD OGC (US) mark.h.herrington2.civ@mail.mil 
Subject: Final Release Regarding "Tweet FOIA" 17-2707 (D.D.C.)
Date: September 14, 2018 at 9:52 AM
To: cerissa.cafasso@americanoversight.org
Cc: Kahn, Matthew (USADC) Matthew.Kahn@usdoj.gov



Cerissa,

Please find attached the combined final response to the tweet FOIA from OSD/JS and the service branches. Some redactions have been taken pursuant to b(5), for deliberative process and attorney / client privileges. All b(5) redactions are marked. All other redactions were taken under b(6), some of which are marked. The others are in similar areas, such as email to/from sections and signature blocks. Exemption 6, 5 U.S.C. § 552(b)(6), permits the Government to withhold information about individuals when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." DoD has a practice to withhold personally identifying information of those members of DoD who are at the military rank of Colonel or below and at the rank of GS-15 or below. See O'Keefe v. DoD, 463 F. Supp. 2d 317, (E.D.N.Y. 2006) (holding that "the probative value of this personally identifying information is nominal and does not overcome the privacy interest of the employees involved. The employees who conducted the investigation are of relatively low rank"). An exception to this rule allows the names of those personnel who routinely deal with the press to be released. The rationale for this practice is that disclosing the names of the individuals involved could subject such individuals to annoyance or harassment in their private lives. Thus, this policy protects significant personal privacy interests. Moreover, release of these low-level individuals' names would not serve the "core purpose" of the FOIA, as it would not show "what the government is up to." As these individuals were not the decision makers who are typically held accountable by the public, their identities are not typically relevant or of interest to the public. Thus, there is no public interest outweighing the significant personal privacy interests involved. DoD attempted to consistently redact any personally identifying information of those members of DoD who do not routinely deal with the press and who were not senior level employees, as well as the contact information for all employees. These redactions included email addresses, signature blocks, names within emails, phone numbers, and office locations.

Please let Matt Kahn know if you have any questions.

Sincerely,

Mark

Mark Herrington
Associate Deputy General Counsel (Litigation Counsel)
U.S. Department of Defense Office of General Counsel
1600 Defense Pentagon, Room 3B688
Washington, D.C. 20301-1600
703-571-0799
mark.h.herrington2.civ@mail.mil
mark.h.herrington2.civ@mail.smil.mil



Tweet FOIA
respon...ted.pdf

From: [Kremer, Kyle J Brig Gen USAF JS 11 \(US\)](#)
To: [Dunford, Joseph F Jr Gen USMC JS \(US\)](#); [Selva, Paul J Gen USAF JS OCJCS \(US\)](#)
Cc: [JS Pentagon DoM List JDir Directors](#); [JS Pentagon DoM List JDir Vice Directors](#); [Dumont, Michael J \(Mike\) RADM USN JS ODJS \(US\)](#); [Hicks, Gregory L CAPT USN JS OCJCS \(US\)](#)
Subject: RE: POTUS Tweet on Transgender (UNCLASSIFIED)
Date: Wednesday, July 26, 2017 9:42:00 AM

CLASSIFICATION: UNCLASSIFIED

Chairman/Vice Chairman,

We are working with OSD (P&R) on the issue. Everyone was caught flat-footed. More to follow.

V/R
Kyle

KYLE J. KREMER, Brig Gen, USAF
Director for Manpower & Personnel
The Joint Staff, J-1
Pentagon, Room (b) (6)
Comm (b) (6) DSN (b) (6)

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

From: Hicks, Gregory L CAPT USN JS OCJCS (US)
Sent: Wednesday, July 26, 2017 9:16 AM
To: Dunford, Joseph F Jr Gen USMC JS (US) <(b) (6)>; Selva, Paul J Gen USAF JS OCJCS (US) <(b) (6)>
Cc: JS Pentagon DoM List JDir Directors <(b) (6)>; JS Pentagon DoM List JDir Vice Directors <(b) (6)>; Dumont, Michael J (Mike) RADM USN JS ODJS (US) <(b) (6)>
Subject: POTUS Tweet on Transgender (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Sirs - POTUS has tweeted the below on Transgenders not being able to serve in the military in any capacity. The total message is three different tweets just before 0900. CNN is covering live and the Pentagon Press Corps is looking for comment from OSD PA. We will defer all press to OSD PA.

Donald J, Trump
@realDonaldTrump 18 minutes ago
After consultation with my Generals and military experts, 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. Our military must be focused on decisive and overwhelming.....

....victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you

VR/ CAPT Greg Hicks
Special Assistant for Public Affairs
To the Chairman of the Joint Chiefs of Staff Room (b) (6) The Pentagon Washington, DC 20318-9999
www.jcs.mil gregory.l.hicks18.mil@mail.mil
(b) (6)
Cell: (b) (6)

From: [Kurta, Anthony M SES OSD OUSD P-R \(US\)](#)
To: [REDACTED] [CIV \(US\)](#)
Cc: ["Penrod, Vee S SES OSD PR"](#); (b) (6); [MILLER, Stephanie P SES OSD OUSD P-R \(US\); Hebert, Lernes J SES OSD OUSD P-R \(US\); \[REDACTED\] CDR USN OSD OUSD P-R \(US\); Penrod, Virginia S SES OSD OUSD P-R \(US\); \[REDACTED\] CIV OSD OUSD P-R \(US\); \[REDACTED\] LCDR USN OSD OUSD P-R \(US\)](#)
Subject: RE: Trump bans transgender individuals from U.S. military service (UNCLASSIFIED)
Date: Wednesday, July 26, 2017 11:11:00 AM

CLASSIFICATION: UNCLASSIFIED

[REDACTED]
Thanks and very helpful.
Tony

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

From: Thomas, James A Jr [CIV \(US\)](#)
Sent: Wednesday, July 26, 2017 11:08 AM
To: Kurta, Anthony M SES OSD OUSD P-R (US) (b) (6) >
Cc: 'Penrod, Vee S SES OSD PR' (b) (6) >
Subject: RE: Trump bans transgender individuals from U.S. military service (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Hope you're enjoying some much deserved time away from DC. In case you haven't seen this, below is the statement we are using with the Hill regarding the President's tweet. If you have any questions please let me know.

"We refer all questions about the President's statements to the White House. We will continue to work closely with the White House to address the new guidance provided by the Commander-in-Chief on transgender individuals serving the military. We will provide revised guidance to the Department in the near future."

Jeff A. Davis
Captain, U.S. Navy
Director of Defense Press Operations

(b) (6)

[REDACTED]
Special Assistant
P&R Team Chief
Office of the Assistant Secretary of Defense
Legislative Affairs
Pentagon, Room (b) (6)
(b) (6)

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

From: Greene, Craig [<mailto:Craig.Greene@mail.house.gov>]
Sent: Wednesday, July 26, 2017 10:06 AM
To: Kurta, Anthony M SES OSD OUSD P-R (US) <[REDACTED]>
Cc: Sennott, Daniel <Daniel.Sennott@mail.house.gov>; 'Penrod, Vee S SES OSD PR' <[REDACTED]>; [REDACTED] CIV (US) <[REDACTED]>
Subject: [Non-DoD Source] RE: Trump bans transgender individuals from U.S. military service (UNCLASSIFIED)

Sorry to bother you on Leave. Enjoy and turn you BB off.

Vee anything you can share would be helpful

craig

Craig Greene
Professional Staff Member
Armed Services Committee
U.S. House of Representatives
(202) 225-5540

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

From: Kurta, Anthony M SES OSD OUSD P-R (US) [mailto:(b) (6)]
Sent: Wednesday, July 26, 2017 9:59 AM
To: Greene, Craig <Craig.Greene@mail.house.gov>
Cc: Sennott, Daniel <Daniel.Sennott@mail.house.gov>; 'Penrod, Vee S SES OSD PR' <[REDACTED]>
Subject: RE: Trump bans transgender individuals from U.S. military service (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Craig

I am on leave in MT! Thanks for the congrats.

I know you will be asked many questions, but we don't have any further info at this point. That is all I have for now.

Tony

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

From: Greene, Craig [mailto:Craig.Greene@mail.house.gov]
Sent: Wednesday, July 26, 2017 9:43 AM
To: Kurta, Anthony M SES OSD OUSD P-R (US) [REDACTED] >
Cc: Sennott, Daniel <Daniel.Sennott@mail.house.gov>; 'Penrod, Vee S SES OSD PR' [REDACTED] >
Subject: [Non-DoD Source] Trump bans transgender individuals from U.S. military service

Tony,

I'm going to get pummeled by offices today, can you shed some light on this?

Oh by the way congratulations on your nomination. I don't have time to go thru Will Cooper.

Craig

The U.S. military will no longer allow transgender individuals to serve "in any capacity," President Donald Trump announced on Twitter this morning.

"After consultation with my Generals and military experts, 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," Trump wrote online, breaking his message up into multiple posts. "Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you."

The announcement represents a reversal of an Obama-era policy established last June by former Defense Secretary Ash Carter, who shifted Pentagon policy to allow transgender troops to serve openly. Last month, Defense Secretary James Mattis announced that the Pentagon would delay his predecessor's order through the remainder of 2017 in order to review the impact of the shift.

Craig Greene

Professional Staff Member

Armed Services Committee

U.S. House of Representatives



CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

CLASSIFICATION: UNCLASSIFIED

EXHIBIT 7



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

9/14/17

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

SUBJECT: Military Service by Transgender Individuals - Interim Guidance

The Department of Defense (“DoD”) has received the Presidential Memorandum, *Military Service by Transgender Individuals*, dated August 25, 2017 (“Presidential Memorandum”). DoD will carry out the President’s policy and directives in consultation with the Department of Homeland Security (“DHS”) with respect to the U.S. Coast Guard. Not later than February 21, 2018, I will present the President with a plan to implement the policy and directives in the Presidential Memorandum. Consistent with 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. The Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff, supported by a panel of experts (“Panel”), shall propose for my consideration recommendations supported by appropriate evidence and information.

To comply with the Presidential Memorandum, ensure the continued combat readiness of the force, and maximize flexibility in the development of the implementation plan, the attached Interim Guidance takes effect immediately and will remain in effect until I promulgate DoD’s final policy in this matter. By agreement with the Acting Secretary of Homeland Security, this Interim Guidance also applies to the U.S. Coast Guard.

Attachment:
As stated

cc:
Secretary of Homeland Security



Interim Guidance

First and foremost, we will continue to treat every Service member with dignity and respect.

Accessions: The procedures set forth in Department of Defense Instruction (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.

Medical Care and Treatment: 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.

In-Service Transition for Transgender Service Members: The policies and procedures set forth in DoDI 1300.28, *In-Service Transition for Transgender Service Members*, dated July 1, 2016, remain in effect until I promulgate DoD's final guidance in this matter.

Separation and Retention of Transgender Service members:

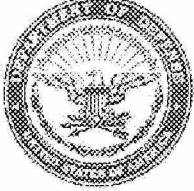
Service members who have completed their gender transition process and whose gender marker has been changed in DEERS will continue to serve in their preferred gender while this Interim Guidance remains in effect.

An otherwise qualified transgender Service member whose term of service expires while this Interim Guidance remains in effect, *may*, at the Service member's request, be re-enlisted in service under existing procedures.

As directed by the Memorandum, no action may be taken to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender status. Transgender Service members are subject to the same standards as any other Service member of the same gender; they may be separated or discharged under existing bases and processes, but not on the basis of a gender dysphoria diagnosis or transgender status.

Reestablishment of the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) Central Coordination Cell: The OUSD(P&R) will reestablish the Central Coordination Cell (CCC) to provide expert advice and assistance to the Military Departments and Services and to commanders with regard to this Interim Guidance. The CCC may be reached at <https://ra.sp.pentagon.mil/DoDCCC/SitePages/HomePage.aspx>.

EXHIBIT 8



9/14/17

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

SUBJECT: Terms of Reference - Implementation of Presidential Memorandum on Military Service by Transgender Individuals

Reference: Military Service by Transgender Individuals -- Interim Guidance

I direct the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff to lead the Department of Defense (DoD) in developing an Implementation Plan on military service by transgender individuals, to effect the policy and directives in Presidential Memorandum, *Military Service by Transgender Individuals*, dated August 25, 2017 ("Presidential Memorandum"). The implementation plan will establish the policy, standards and procedures for service by transgender individuals in the military, consistent with military readiness, lethality, deployability, budgetary constraints, and applicable law.

The Deputy Secretary and the Vice Chairman, supported by a panel of experts drawn from DoD and the Department of Homeland Security (DHS) ("Panel"), shall propose for my consideration recommendations supported by appropriate evidence and information, not later than January 15, 2018. The Deputy Secretary and the Vice Chairman will be supported by the Panel, which will be comprised of the Military Department Under Secretaries, Service Vice Chiefs, and Service Senior Enlisted Advisors. The Deputy Secretary and Vice Chairman shall



designate personnel to support the Panel's work to ensure Panel recommendations reflect senior civilian experience, combat experience, and expertise in military operational effectiveness. 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 will be chaired by the Under Secretary of Defense for Personnel and Readiness and will report to the Deputy Secretary and the Vice Chairman at least every 30 days and address, at a minimum, the following three areas:

Accessions: The Presidential Memorandum directs DoD to maintain the policy currently in effect, which generally prohibits accession of transgender individuals into military service. The Panel will recommend updated accession policy guidelines to reflect currently accepted medical terminology.

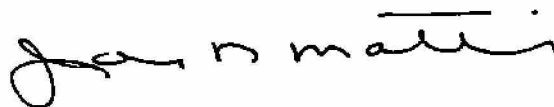
Medical Care: The Presidential Memorandum halts the use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, effective March 23, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex. The implementation plan will enumerate the specific surgical procedures associated with sex reassignment treatment that shall be prohibited from DoD or DHS resourcing unless necessary to protect the health of the Service member.

Transgender Members Serving in the Armed Forces: The Presidential Memorandum directs that the Department return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016. The Presidential Memorandum also allows the Secretary to determine how to address transgender individuals currently serving in the Armed Forces. The Panel will set forth, in a single policy document, the standards and procedures applicable to military service by transgender persons, with specific attention to addressing transgender persons currently serving. The Panel will develop a universal retention standard that promotes military readiness, lethality, deployability, and unit cohesion.

To support its efforts, the Panel will conduct an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members. The study will be planned and executed to inform the Implementation Plan. The independent multi-disciplinary review and study will address aspects of medical care and treatment, personnel management, general policies and practices, and other matters, including the effects of the service of transgender persons on military readiness, lethality, deployability, and unit cohesion.

The Panel may obtain advice from outside experts on an individual basis. The recommendations of the Deputy Secretary and the Vice Chairman will be coordinated with senior civilian officials, the Military Departments, and the Joint Staff.

All DoD Components will cooperate fully in, and will support the Deputy Secretary and the Vice Chairman in their efforts, by making personnel and resources available upon request in support of their efforts.



cc:
Secretary of Homeland Security

EXHIBIT 9

THE WHITE HOUSE

WASHINGTON

March 23, 2018

MEMORANDUM FOR THE SECRETARY OF DEFENSE
THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Military Service by Transgender Individuals

Pursuant to my memorandum of August 25, 2017, "Military Service by Transgender Individuals," the Secretary of Defense, in consultation with the Secretary of Homeland Security, submitted to me a memorandum and report concerning military service by transgender individuals.

These documents set forth the policies on this issue that the Secretary of Defense, in the exercise of his independent judgment, has concluded should be adopted by the Department of Defense. The Secretary of Homeland Security concurs with these policies with respect to the U.S. Coast Guard.

Among other things, the policies set forth by the Secretary of Defense state that transgender persons with a history or diagnosis of gender dysphoria -- individuals who the policies state may require substantial medical treatment, including medications and surgery -- are disqualified from military service except under certain limited circumstances.

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. I hereby revoke my memorandum of August 25, 2017, "Military Service by Transgender Individuals," and any other directive I may have made with respect to military service by transgender individuals.

Sec. 2. The Secretary of Defense, and the Secretary of Homeland Security, with respect to the U.S. Coast Guard, may exercise their authority to implement any appropriate policies concerning military service by transgender individuals.

Sec. 3. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

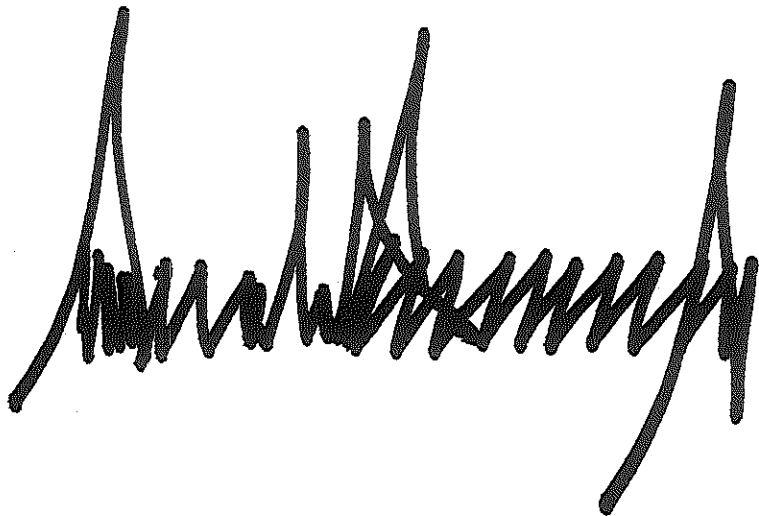
A large, stylized handwritten signature in black ink, appearing to be a cursive name, possibly "Andrew M. ...".

EXHIBIT 10

FILED UNDER SEAL

EXHIBIT 11

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

KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654
T +1 312 862 7027
F +1 312 862 2200

jordan.heinz@kirkland.com

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EXHIBIT 12

FILED UNDER SEAL

EXHIBIT 13

FILED UNDER SEAL

EXHIBIT 14

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,	)	C17-01297-MJP
)	
Plaintiffs, and	)	SEATTLE, WASHINGTON
)	
STATE OF WASHINGTON;	)	February 3, 2020
)	
Plaintiff-Intervenor,	)	9:00 a.m.
)	
v.	)	Status Hearing
)	
DONALD J. TRUMP, in his)	
official capacity as)	
President of the United)	
States, et al.,)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff	Jordan Heinz
Karnoski:	Daniel I. Siegfried
	Kirkland & Ellis
	300 North LaSalle
	Chicago, IL 60654
	Jason Sykes
	Newman & DuWors LLP
	2101 Fourth Avenue
	Suite 1500
	Seattle, WA 98121

Stenographically reported - Transcript produced with computer-aided technology

1 Your Honor. And what that is, is during the course of
2 meeting and conferring with the plaintiffs about the court's
3 most recent order, the position that they've taken is that
4 the order requires the government to produce all documents
5 referring or relating to the Department of Defense's report
6 and recommendation. That's the language they use in their
7 RFP 29.

8 As we stated in the declaration of Mr. Easton, that's
9 approximately 22,000 deliberative documents. So I just want
10 to make sure that -- clarify whether it's that entire
11 universe of documents -- essentially, every deliberative
12 document from September 2017 to February 22, 2018 -- or if
13 there's a more narrow universe that the court is ordering us
14 to produce at this time.

15 THE COURT: Okay. Well, we already went through
16 other categories that I said that the deliberative process is
17 overcome. This is the one where we're talking about the
18 working groups and the data that was collected.

19 I just told you -- or I told you in December that
20 collecting data and doing research is not a deliberative
21 process. So your privilege doesn't apply at all to the
22 collection of data.

23 So I'm not understanding these 22,000 deliberative
24 documents that you think you've got that you still haven't
25 turned over. Who produced those documents? I mean, who are

1 they from?

2 MR. SKURNIK: It varies, Your Honor. So one group of
3 them would be communications at the working-group level, say
4 someone in a working group says: Hey, what if we tried
5 Idea X, I think that would be a good idea. Someone else
6 says: Oh, maybe that's not such a good idea. And that never
7 makes it up to the panel.

8 Similarly at the services. Someone, say, in the Army
9 says: Oh, what if we tried Idea X, I think that would be a
10 good idea. Someone else in the Army says: Oh, yeah, that is
11 or maybe that isn't a good idea. But that was never passed
12 up to the panel.

13 THE COURT: That's exactly what they're looking for.

14 MR. SKURNIK: And at this time, that encompasses
15 approximately 22,000 documents. And the way we've come up
16 with that number is that plaintiffs have interpreted the
17 order to cover all documents responsive to RFP 29, which is
18 an incredibly broad RFP that encompasses essentially every
19 deliberative document from September 2017 until February 22,
20 2018.

21 Now, if that's what the court is ordering, that's fine. I
22 just want to make sure we understand exactly what the court
23 is ordering so we don't have another clarification problem.

24 THE COURT: Well, then I think in December, I told
25 you what you had to turn over. The working groups are data

1 gatherers. They are researchers. The conversations between
2 them is part of gathering that data.

3 I want you to turn over who they are and the
4 communications between them, the data that they reviewed and
5 did not pass on, in addition to the data that they did. I
6 mean, I'll say it again. So I don't know why 22,000 is some
7 magic number. What are you trying to tell me there, that
8 it's too much?

9 MR. SKURNIK: What I'm trying to do, Your Honor, is
10 clarify exactly what documents we're talking about here. And
11 the reason is is that plaintiffs, their interpretation of the
12 order encompasses not just the working groups, but a much
13 broader universe of deliberative documents, including, for
14 instance, documents at the service level from folks who
15 weren't even on working groups. And I guess as far as the
16 individuals on the working groups, we've already produced all
17 of that to plaintiffs in response to interrogatories. So
18 they know all the individuals on working groups.

19 THE COURT: Plaintiff want to respond?

20 MR. SIEGFRIED: Sure. I guess so far all we've heard
21 that this 22,000 encompasses is we've talked about three
22 categories: The working-group documents that Your Honor just
23 ordered them to produce and ordered them to produce back in
24 December; the panel documents, which apparently are not
25 included in the 22,000; and the post-panel documents. I

1 guess we don't understand what else there is, what else is
2 encompassed in this 22,000.

3 MR. SKURNIK: So plaintiffs told us during the course
4 of meeting and conferring that they believed the court's
5 order required production of all documents responsive to
6 RFP 29.

7 THE COURT: Um-hum.

8 MR. SKURNIK: Now, RFP 29 reads, "All documents or
9 communications relating or referring to the February 2018
10 Department of Defense report and recommendations on military
11 service by transgender persons." That's much broader than
12 simply just working-group documents. That's essentially all
13 documents within the Department of Defense and the military
14 services across the 156 custodians from which we collected,
15 any of those that we've withheld under the
16 deliberative-process privilege during the relevant period.

17 THE COURT: But we spent two hours in December going
18 through this. So we have the working group that I just spoke
19 to you about. It's part of the transcript. We have the
20 documents that concern those who are decisionmakers on the
21 panel, including the one non-voting decisionmaker. And then,
22 as we pointed out, we have the documents that after the
23 decision is made, we have the documents that are used to
24 draft the final report. Those are three discrete categories.
25 I've told you that the first category, the working group, I

1 don't believe falls under the deliberative privilege. I
2 already made a ruling on those who are the panel members.
3 And in my last order, I also included the panel member who
4 was non-voting.

5 In my December order I also included the post documents,
6 which I'm assuming we're going to talk about in just a
7 minute. What about that don't you understand?

8 MR. SKURNIK: So that makes sense to me, Your Honor.
9 The issue is the plaintiffs have taken -- have contended that
10 the court's order from December requires -- at least Part 1
11 of that order, which talked about non-voting members of the
12 panel of experts -- that that requires not just working-group
13 materials, but all deliberative materials during the relevant
14 time period.

15 If the court's order is just the working-group materials,
16 then we can find a way to identify those materials and that
17 can be the scope of the order. But I just want to make sure
18 we know exactly what the court is ordering so we don't have
19 to -- so that there's no further confusion between the
20 parties about what the order requires, precisely.

21 THE COURT: All right. Do we have an understanding?

22 MR. HEINZ: The problem is, Mr. Siegfried just asked,
23 what else is there besides those three categories of
24 documents within the 22,000? What else is there that you're
25 withholding that you believe is not encompassed by her order

1 but is responsive to RFP 29?

2 MR. SKURNIK: For instance, any custodians from which
3 we've collected that have deliberative documents that were
4 not members of a working group.

5 MR. HEINZ: So, for instance, someone at the services
6 flagging the issue that the data being presented to the
7 working group and the panel is incorrect. We'd want to know
8 that. That's very relevant information.

9 MR. SKURNIK: So my question here, Your Honor, is
10 what -- is whether the court's order extends to, for
11 instance, someone at the services saying -- who is not a
12 member of any of the working groups -- saying: Hey, what if
13 we tried Idea X for transgender policy? And someone else who
14 is not a member of a working group responding: No, I don't
15 think that's a great idea. And then that never makes it up
16 further, never makes it to a working group or a panel,
17 whether the court's order encompasses everything; which is
18 broader than just working groups.

19 MR. SIEGFRIED: So, Your Honor, our position first of
20 all is, yes, that is responsive and should be produced. And
21 I think the Ninth Circuit addressed this when they placed the
22 burden on the defendants to say, when you're doing the
23 analysis, when the court is doing the analysis for
24 deliberative-process privilege, if the defendants believe the
25 analysis should be more granular, they have the burden to

1 explain why. And, frankly, I don't understand what these
2 documents are or why the analysis would be meaningfully
3 different.

4 THE COURT: Okay. Well, we're running into a problem
5 that honestly the government, further down in its joint
6 status report, they make the complaint that the plaintiffs
7 have not brought a motion to compel. And, therefore, certain
8 requests are not ripe. I don't know what you think this
9 whole privilege is about. I mean, we are here to sort out
10 discovery over a motion to produce. So there is a motion to
11 compel. And each side wrote for me in a way that I didn't
12 think was helpful for me to sort this out. So I said, this
13 is the path that we're going to take.

14 And so I've methodically looked at each request. The
15 government complained that this was too much, they couldn't
16 respond. I say, fine, we're going to do five at a time. For
17 you to come back and tell me that there's no motion to compel
18 on the table and therefore it's not ripe, makes absolutely no
19 sense to me.

20 The other thing I would say is that under the civil rules,
21 a motion to compel is not necessary. It is a motion to
22 protect. If you've got documents out there that you believe
23 are responsive but you're still withholding, you have the
24 burden of bringing on the motion to protect. They don't have
25 to move to compel. So among these thousands of documents, if

1 you think that there is something out there that is
2 responsive to this RFP, you've got to put it in a log and
3 you've got to defend why it is that the deliberative
4 privilege still applies. It's not the other way around. You
5 have the documents. You can see what's there. They can't.

6 And when you throw out ideas that maybe the services are
7 offering up and saying this is the wrong data, of course
8 that's responsive. If you think it's deliberative, you have
9 to apply the privilege.

10 So, let's go back and talk again. I'm going to issue an
11 order that covers -- we've covered now the first two
12 categories, we're going to get to the third. If you think
13 there's something else out there, because the order says you
14 have to respond, it's your obligation to identify what it is,
15 it's not theirs. Okay?

16 MR. SKURNIK: Your Honor, just to be clear. We have
17 done so. Every single document that is responsive that we've
18 withheld is listed on a privilege log. So plaintiffs know
19 about every single document.

20 THE COURT: Okay. Well, we've got some problems with
21 the privilege logs, because they're telling me you've got a
22 whole lot of people on those logs that they can't tell
23 whether they give you cover or not, because they don't know
24 who they are. But let's stop and work through the next
25 portion. And that is post-decision, the write-up portion.

1 Everybody with me with that definition?

2 MR. SIEGFRIED: Yes, Your Honor.

3 MR. SKURNIK: Your Honor, could I just ask one last
4 question about the previous category that we just discussed?

5 THE COURT: Um-hum.

6 MR. SKURNIK: So the defendants, in our motion, have
7 requested a stay of the court's order while the Solicitor
8 General considers whether to seek relief in the Court of
9 Appeals. So we'd just like to request that stay.

10 THE COURT: You're not going to get a stay. But you
11 can certainly -- we have other clawback provisions that if
12 something gets turned over that has to be clawed back, we'll
13 claw it back, if the Ninth Circuit says that's what we're
14 going to do. But we're not going to wait for the Solicitor
15 General on every single ruling that I make.

16 It seems to me we ought to get through this whole thing
17 and then you decide if you want to take the package up. But
18 I consider it a real tactic of delay that every time I hold
19 one of these hearings, that's the threat. We're going to go
20 to the Ninth Circuit. It's delay, delay, delay. We've been
21 at this for years now. And I'm giving you every opportunity
22 to tell me what you don't understand.

23 If you disagree with it, there may be a time for you to
24 take it up. But in the middle of an ongoing hearing over
25 what you have to produce, I don't think is the right time.

1 Let me finish it. Okay? If you don't like it, you have a
2 perfect right to do whatever procedural maneuver you wish.
3 But this is an ongoing process. Okay?

4 So, let's go forward and talk about the post-decisional
5 documents. Plaintiff, tell me what are you not getting and
6 what do you think you deserve?

7 MR. SIEGFRIED: Well, Your Honor, we haven't gotten
8 anything. And I think we talked about this, and I think Your
9 Honor analyzed it, in the December 18th order. All of the
10 post-decisional information, the drafts, the communications,
11 post-panel, we think -- we've overcome the privilege for all
12 the reasons Your Honor analyzed. And the defendants'
13 response I think at this point is: Well, we're going to
14 respond to an interrogatory and amend and give you names of
15 people who reviewed, I think reviewed or commented on drafts;
16 is that right?

17 MR. SKURNIK: Everyone who was involved in drafting
18 the reports, who edited it, had any comments, everyone
19 involved in the drafting process.

20 MR. SIEGFRIED: Our problem with that, Your Honor, is
21 we're actually just looking for the communications. So we
22 know, for example, that there were folks at the Department of
23 Defense who were out soliciting or having communications with
24 folks who we don't have any reason to believe actually
25 reviewed or commented on a draft. But those communications

1 that then fed into whatever happened in the report are
2 equally relevant, whether or not they commented on the draft.

3 So I don't know that this interrogatory response changes
4 anything, although we're happy to have that information.

5 MR. SKURNIK: So, Your Honor, the plaintiffs' theory
6 this whole time for why they have a need for drafts of the
7 report and recommendation and communications about those
8 drafts, has been that there's some untoward involvement by
9 outside third parties.

10 Now, by providing plaintiffs with the names of everyone
11 who is involved in the drafting process, and if someone from
12 a third party was communicating with folks at the Department
13 of Defense and that's reflected in any communications, we'll
14 include those names as well, the names of everybody.

15 But we're facing another situation where the *Doe* court in
16 D.C., Judge Kollar-Kotelly, ordered that defendants in that
17 case did not have to produce these drafts.

18 THE COURT: For now. Her order -- you represented it
19 as a final order. And I read it as she said "for now" and
20 you can come back. She wasn't satisfied with the arguments
21 that were made. She hasn't issued a written opinion, as I
22 understand it.

23 MR. SKURNIK: That is correct, Your Honor, this was
24 just during a teleconference call. However, what we've
25 presented to the plaintiffs is we've asked for a stay. And

1 in the meantime, what we would do is provide plaintiffs with
2 this information of everyone involved in the drafting process
3 and that would allow them to test their theory that there was
4 untoward outside involvement. And it would do so in a way
5 that reconciles the positions of where we are in *Doe* and
6 where we are in this court, and also without sort of undue
7 intrusion into executive branch decisionmaking.

8 THE COURT: Well, Mr. Carmichael told me that this
9 was simply drafting, that that was one of the arguments he
10 made. And so if it's simply drafting and editing, that
11 wouldn't be deliberative process. And so the privilege
12 wouldn't apply, from what Mr. Carmichael told me the last
13 time.

14 Now, you only want to give them the names. That means
15 they've got to contact each of those people, find out what
16 they said, get the custodians, get their data of any e-mails
17 that they might have sent -- and interrupt me if I'm wrong
18 with what you'd have to do -- and that's needless if you're
19 sitting on top of that information.

20 So in December, I told you that you had to turn it over.
21 I asked -- we put out an order. That part of the order I
22 think is very clear. And you don't do anything. You don't
23 move on it. You let the time go by. You don't produce.
24 That's not acceptable.

25 If you have a motion for reconsideration, I'm telling you

1 you have to speak up promptly. That's what the rules
2 provide. You don't wait until something else, quote,
3 something may happen and another judge issues not an order
4 but a comment that, as I understood it, that she is not ready
5 to order it at this point. She wasn't satisfied with the
6 arguments that were made. And, quite frankly, the arguments
7 are not the same as the ones that were made here.

8 So you're late. Turn it over. Okay?

9 Plaintiff, does that satisfy you?

10 MR. HEINZ: Yes, Your Honor.

11 THE COURT: Okay. Now, I will issue an order in the
12 next couple of days. This is what is going to happen. If
13 the plaintiffs are satisfied with the order, fine, you can
14 simply file a -- you know -- we agree. If you believe that
15 there is something else that needs to be put in the record to
16 defend whatever position you believe you need to take, you've
17 already heard the threat of going to the Ninth Circuit, then
18 you build your record.

19 I will look at it to see if it changes the amended order
20 that I put out. In the meantime, I am not going to slow this
21 process down for some solicitor somewhere to make a decision,
22 I don't know when. One of the things that we did when we
23 first set the trial date is this is a very important case for
24 many, many people. So to keep slowing it down every time
25 doesn't do the public any good.

1 So that's why I say when we get done, if you want to go to
2 the solicitor and have him make a decision, fine. But you
3 haven't given me any criteria to know when that decision
4 would be made. Is it two days? Two weeks? Two years?
5 We're not going to wait for that.

6 MR. SKURNIK: So, Your Honor, it would not be two
7 years. It would probably closer to around two weeks. But as
8 I understand the court's order, I just want to make sure I
9 understand correctly that our motion for stay is being denied
10 on the drafts?

11 THE COURT: The motion for the stay is being denied.

12 Now, if it turns out that that material should not have
13 been turned over, we can claw it back and the plaintiffs will
14 be in the position that this is for the attorneys to work
15 with at this time, it's not to be passed on or published.
16 Everybody understand that?

17 MR. SIEGFRIED: Understood, Your Honor.

18 MR. HEINZ: (Nods head.)

19 THE COURT: Okay. So that's the way we'll keep
20 moving forward to get this material. I understand between
21 December 10th and today, you've been putting this material
22 together, because you were under an order to do so. So it
23 shouldn't take you very long to produce it, because you
24 haven't had a stay. So I'm telling you that this material
25 has to be turned over in a week.

1 MR. SKURNIK: Yes, Your Honor.

2 THE COURT: A week from when my amended order comes
3 out, okay? So that gives you a little more time.

4 MR. SKURNIK: Your Honor, I'd ask that that week
5 deadline apply to just the drafts and communications about
6 the drafts. As to the first part of the order that we
7 discussed earlier, working groups and documents that are
8 referring or relating to the report and recommendation,
9 that's a much larger universe of documents. And so
10 defendants would need certainly much more than a week in
11 order to produce that material.

12 THE COURT: I don't understand that, because you
13 should have already been gathering that along the way. And
14 you told me at the beginning, or Mr. Carmichael told me at
15 the beginning, that they had analyzed all this data and put
16 it in categories. It can't possibly be that difficult to
17 call up those various categories if you have organized it
18 appropriately.

19 MR. SKURNIK: Your Honor, as we stated in the
20 declaration of Mr. Easton, this is approximately 22,000
21 documents that we withheld on the basis of the
22 deliberative-process privilege that are at issue here. And
23 in order to produce those documents, the Department of
24 Defense and military services would have to re-review those
25 documents to ensure that there is not either personally

EXHIBIT 15

FILED UNDER SEAL

EXHIBIT 16

FILED UNDER SEAL

EXHIBIT 17



PERSONNEL AND
READINESS

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

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]

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- 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 accession¹ and in-service transition² 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 18

FILED UNDER SEAL

EXHIBIT 19

FILED UNDER SEAL

EXHIBIT 20

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

RYAN KARNOSKI, et al.,)
)
Plaintiffs,) No. 2:17-cv-01297-MJP
)
vs.) Seattle, WA
)
DONALD J. TRUMP, et al.,)
)
Defendants.) Motion Hearing
) July 17, 2018

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JUDGE MARSHA J. PECHMAN
UNITED STATES DISTRICT COURT

APPEARANCES:

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1 to take both of your questions, though, if I could.

2 THE COURT: Okay.

3 MR. GARDNER: There is a very big difference between
4 an African-American outright ban and restricting those that
5 have a particular medical condition from enlisting. The fact
6 is that African-Americans and non-African-Americans are
7 similarly situated in all respects. And that's why that kind
8 of ban, on its face, would violate the Constitution. But by
9 definition, those that have a medical condition are not
10 similarly situated from those that don't have that medical
11 condition. And, therefore, it is a completely different
12 constitutional analysis.

13 Now, I want to get back to the question of deference, and
14 what does deference do. Deference does a few things, Your
15 Honor.

16 One -- and I don't even think this is really challenged in
17 this case. The first thing we have are, the Department of
18 Defense has articulated four objectives that this medical
19 policy is intended to cover, so military readiness -- and I
20 know the Court knows all these things. The courts have
21 recognized, routinely, that those are legitimate government
22 objectives. And so the question now is, does this policy
23 relate to those objectives? And that's one of the ways
24 deference comes into play, is that we give the benefit of the
25 doubt to the military because the military is the one that is

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1 exercising the professional judgment. And here, we have a
2 44-page report from the Secretary of Defense, Mattis, who has
3 reached conclusions, supported by an extensive administrative
4 record.

5 You asked the question, Your Honor, what would the
6 government put on at trial? What the government would put on
7 at trial is essentially the administrative record. That may
8 seem unusual, Your Honor, but, frankly, this case is unusual.
9 Because when a DOD policy is typically challenged, it is done
10 so under the APA. And, therefore, we typically don't have
11 trials in APA cases. But accepting the hypothetical, or the
12 reality, that this would go to trial, we would present that
13 administrative record.

14 THE COURT: And only that administrative record.

15 MR. GARDNER: Yes, Your Honor. I should back up.
16 There is -- I know that plaintiffs will be disclosing expert
17 witnesses. We'll have to make a decision as to whether it's
18 appropriate to counter those with our experts, or just
19 cross-examine them. But in the main, yes, we would be relying
20 almost exclusively on the administrative record in this case.

21 THE COURT: You intend to call no witnesses.

22 MR. GARDNER: Your Honor, we've already made
23 available for deposition Tony Kurta, who is the head of the
24 panel of experts. And it is entirely likely we would call Tony
25 Kurta to present, you know, the administrative record.

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1 But we do think this case could and should go off on
2 summary judgment, because what this Court would be looking at
3 is whether or not that administrative record supports the
4 44-page decision. If the Court concludes it doesn't, it
5 doesn't. Or if it does, it does. But that's how we would see
6 this case proceeding, and that the Court would apply deference,
7 both in terms of giving credit, if you will, to the
8 Department's means-ends conclusions, but deference also goes to
9 the ultimate level of scrutiny.

10 And one thing that *Trump vs. Hawaii* also does, that I
11 think is important here, is, it notes that where you might have
12 a gender-based classification that is otherwise subject to
13 greater scrutiny in a different context, in certain contexts,
14 immigration, national security, and, yes, in the military,
15 those decisions, when you apply deference, a lesser standard of
16 scrutiny would apply. That's, in fact, what *Rostker* did, Your
17 Honor. And so our view is that deference, how it applies, is
18 in those two fashions.

19 THE COURT: All right. Well, you keep calling it a
20 medical diagnosis. And, in fact, the tweet didn't call it a
21 medical diagnosis, nor does the heading of the other report
22 call it a medical diagnosis. And you also have people who may
23 not have the medical diagnosis, but still are required to
24 present themselves in their birth gender.

25 MR. GARDNER: Your Honor, with all due respect, if

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1 someone has never had gender dysphoria, then there are no
2 restrictions upon their service. That's not right. And the
3 fact that there may be a heading that says "transgender" tells
4 you nothing about the substance of the policy. And the
5 substance of the policy is clearly directed to a medical
6 condition.

7 And with respect to the tweet, Your Honor, and the 2017
8 memorandum, remember, Secretary Mattis had to expressly request
9 that the President revoke those things to put its 44-page plan
10 into effect. And that's exactly what the President did in
11 revoking the 2017 memorandum. So, again, just like the travel
12 ban, even though there was a logical nexus between the first
13 executive order and the third executive order, the Supreme
14 Court analyzed the executive order that was in effect. The
15 2017 memo, the tweet, certainly, are not in effect now. The
16 2018 memo that the President issued expressly revoked those.
17 So not only are those prior statements not relevant, they
18 certainly don't satisfy plaintiff's need for a higher burden in
19 order to successfully challenge the privilege.

20 I do want to mention one other thing about one of the
21 questions this Court had, if I could, and that's about whether
22 we are in compliance with this Court's order.

23 This Court, in the context of a broad motion for a
24 protective order to stay all discovery, ordered the government
25 to submit a privilege log under 26(b)(5). And that privilege

EXHIBIT 21

Subject: FW: [EXT] Fwd: FW: attachments
Attachments: witches mpd.pdf; Hayes Directory.pdf; 20170619_TNA52HruzMayerMcHugh.pdf; Long-Term Follow-Up of Transsexual Persons - Sweden.pdf

From: Paul McHugh
Sent: Monday, February 5, 2018 2:51 PM
To: 'william.bushman@sd.mil' <william.bushman@sd.mil>
Subject: attachments

Mr. Bushman, I mentioned these several articles in our conversation The Hayes Directory on evidence for sex reassignment surgery and other medical treatments , The long term follow-up from Sweden for transgender surgery, My article in Nature Medicine in 1995, and our recent article in the New Atlantis. I've attached them all here . Do tell me if they get through. Paul McHugh

6/27/14
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Promised Material
Cluster

Hayes directory

May 15, 2014

Sex Reassignment Surgery for the Treatment of Gender Dysphoria

PURPOSE OF TECHNOLOGY:

Sex reassignment surgery (SRS), which involves genital reconstruction surgery and chest surgery, is part of the treatment approach for persons with gender dysphoria (GD). Individuals with GD have persistent feelings of gender discomfort and inappropriateness of their anatomical sex, strong and ongoing cross-gender identification, and a desire to live and be accepted as a member of the opposite sex. SRS includes the surgical procedures by which the physical appearance and function of a person's existing sexual characteristics are changed to those of the other sex in an effort to resolve or minimize GD and improve quality of life.

EXECUTIVE SUMMARY:

Health Problem: People with gender dysphoria (GD) feel a severe incongruity between anatomical sex and gender identity. The prevalence of GD is 1 in 11,900 to 1 in 45,000 persons for male-to-female (MtF) and 1 in 30,400 to 1 in 200,000 persons for female-to-male (FtM) transgender persons.

The earlier term, *gender identity disorder* (GID), has given way to *gender dysphoria* (GD). This change was intended to reflect a consensus that gender nonconformity is not a psychiatric disorder, as it was previously categorized. However, since the condition may cause clinically significant distress and since a diagnosis is necessary for access to medical treatment, the new term was proposed. The diagnostic criteria for GD outlined in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5), as well as the criteria for GID in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (DSM-IV), require that the individual believes there is a marked difference between the gender assigned to him or her by others and the gender he or she experiences or wishes to express. Additional criteria must also be met for a diagnosis of GD.

Determinants: The determinants of GD are poorly understood. Experts believe that gender identity develops as the result of a combination of biological factors, possibly including genetic and/or prenatal and perinatal hormonal influences, and environmental influences that have psychological effects.

Treatment: Individuals with GD seeking professional help begin with psychotherapy. An American Psychiatric Association Task Force recommends 2 goals for psychotherapy: (1) to explore issues related to the individual's commitment to living in the cross-gender role; and (2) to fully explore other options for the patient including whether to live as a homosexual person without medical and surgical treatments for gender transition.

The full therapeutic approach to GD consists of 3 elements or phases, typically in the following order: (1) hormones of the desired gender, (2) real-life experience for 12 months in the desired role; and (3) surgery to change the genitalia and other sex characteristics (e.g., breast reconstruction or mastectomy). However, not everyone with GD needs or wants all elements of this triadic approach.

Technology: Sex reassignment surgery SRS involves modification of the genitalia and/or breast/chest to resemble that of the opposite sex.

For the FtM patient, surgical procedures may include mastectomy, hysterectomy, salpingo-oophorectomy, vaginectomy, metoidioplasty, scrotoplasty, urethroplasty, placement of testicular prostheses, and phalloplasty.

This report is intended to provide research assistance and general information only. It is not intended to be used as the sole basis for determining coverage policy. Any decision regarding claims eligibility or benefits, or acquisition of a health technology is solely within the discretion of your organization. Hayes, Inc. assumes no responsibility or liability for such decisions. This report is not intended to be used as the sole basis for defining treatment protocols, or medical modalities, nor should it be construed as providing medical advice regarding treatment of an individual's specific case. Marigloria Seitz of Johns Hopkins HealthCare LLC is authorized to view this document for informational purposes only. © 2014 Winifred S. Hayes, Inc.

Sex Reassignment Surgery for GD

For the MtF patient, surgical procedures may include breast augmentation, penectomy, orchiectomy, vaginoplasty, clitoroplasty, and labiaplasty.

Rationale: The goal of SRS is to feminize or masculinize the body to facilitate an individual's desire to live in the gender role opposite from the biological sex.

Controversy: The medical necessity of SRS for the treatment of GD is under debate. The condition does not readily fit traditional concepts of medical necessity since research to date has not established anatomical or physiological anomalies associated with GD. An evidence-based assessment of the effectiveness of SRS procedures for alleviation of symptoms associated with GD and improvement of recipients' well-being can make a helpful contribution to this controversy.

Relevant Questions:

- Has SRS been shown to be effective in improving patient-important outcomes such as relief of symptoms of GD, quality of life (QOL), satisfaction with sex characteristics, psychological well being, or sexual function?
- Does SRS confer additional benefits to hormone therapy alone?
- Do outcomes vary according to which components of SRS are performed?
- Is SRS safe?
- Have definitive patient selection criteria been established for SRS as treatment for GD?

Evidence Base: Nineteen peer-reviewed studies, primarily case series, cross-sectional studies or pretest-posttest studies assessing the effectiveness of SRS were analyzed in this report. In addition, 6 case series evaluating safety outcomes in ≥ 300 MtF patients or ≥ 200 FtM patients following SRS were analyzed.

Search Dates: November 2004 to April 2014.

Sample Sizes: 35 to 376 patients for main evidence review, 202-390 patients for safety evidence.

Patients: MtF patients (6 studies), FtM patients (6 studies), both MtF and FtM patients (7 studies).

Interventions: Chest surgery only (5 studies), genital surgery only (5 studies), both chest and genital surgery (4 studies), unspecified (5 studies).

Comparisons: Transgendered patients that had undergone SRS vs. those that had not undergone SRS (5 studies) and outcomes in SRS patients that were MtF vs. FtM (1 study).

Outcome Measures: GD, QOL, sexual experience, patient satisfaction, psychological outcomes, and safety outcomes.

Follow-Up: 1 month to 7 years.

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Transforming Healthcare with Evidence

MCHUGH 00008

Sex Reassignment Surgery for GD

Findings: Following SRS, patients reported decreased GD, depression and anxiety, and increased QOL. The majority of SRS patients were sexually active, but the ability to orgasm varied across studies. The majority of patients were satisfied with their aesthetic results following SRS.

Gender Dysphoria: GD was decreased following SRS relative to baseline (2 studies).

Quality of Life: Transgendered patients who underwent SRS had improved QOL relative to patients that had not undergone SRS (1 study), improved QOL relative to before SRS (2 of 3 studies), and had QOL scores similar to those of the general population (2 studies).

Sexual Function: The majority of patients were sexually active following SRS (4 studies), and the ability to orgasm varied across studies (5 studies).

Patient Satisfaction: The majority of patients were satisfied with aesthetic results following SRS (10 studies).

Psychological Outcomes: Depression (3 studies) and anxiety (2 studies) decreased following SRS.

Other Outcomes: Following SRS, almost all FtM patients were able to micturate while standing (1 study), and rates of employment were high (3 studies).

Comparative Effectiveness of Hormone Therapy Alone and SRS: The evidence was too sparse to allow any conclusion regarding the comparative benefits of SRS and hormone therapy alone.

Comparative Effectiveness of Different Types of SRS: The evidence was too sparse to allow any conclusion regarding the comparative benefits of different SRS procedures.

Safety: Following SRS, there were very low rates of regret of surgery (0% to 6%) (5 studies) and suicide (2 to 3%) (3 studies). Only 6 of the 19 studies reported on complications following SRS, and the most common complications were urinary tract complications (4% to 33%) (3 studies), necrosis of tissue (1% to 10%) (6 studies), vaginal stenosis or prolapse (2% to 14%) (3 studies), and need for revision surgery (4% to 29%) (3 studies). The most common complications reported in the 6 safety studies were need for revision surgery (22% to 40%) (5 studies), urinary tract complications (40% to 41%) (2 studies), and wound healing difficulties (11% to 33%) (2 studies). The majority of studies reported a length of follow-up of at least 1 year following surgery (12 studies).

Patient Selection Criteria: There is insufficient evidence to establish patient selection criteria for SRS to treat GD. Professional groups recommend that SRS be restricted to individuals who are referred for sex reassignment services by a qualified mental health professional, and that while 1 referral is sufficient for breast or chest surgery, 2 independent referrals should be required for genital SRS. Individuals who have medical contraindications to surgery should not undergo SRS.

Quality of Evidence: Very low.

Overall, the quality of the evidence was very low due to limitations of individual studies, including small sample sizes, few studies evaluating any 1 outcome, retrospective data, lack of randomization of patients to treatment groups, failure to blind outcome assessors to group assignment, lack of a control or comparator group or

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Sex Reassignment Surgery for GD

minimal adjustment for confounders, lack of baseline assessments to assess change over time, a possible procedural learning curve, and a lack of objective and validated outcome measures.

Conclusions: The evidence suggests positive benefits but because of serious limitations permit only weak conclusions regarding sex reassignment surgery (SRS) for gender dysphoria (GD). No conclusions can be made about the comparative benefits of hormone therapy alone and SRS, or about different components of SRS.

- Patients who underwent chest/breast or genital surgery were generally pleased with the aesthetic results.
- Following SRS, patients reported decreased GD, depression and anxiety, and increased quality of life.
- The majority of SRS patients were sexually active, but the ability to orgasm varied across studies.
- Complications of surgery following SRS were common and could be serious.
- Rates of regret of surgery and suicide were very low following SRS.
- Data were too sparse to draw conclusions regarding whether SRS conferred additional benefits to hormone therapy alone.
- Data were too sparse to draw conclusions regarding whether outcomes vary according to which surgeries were performed.

Hayes Rating:

- C - For sex reassignment surgery (SRS) to treat gender dysphoria (GD) in adults for whom a qualified mental health professional has made a formal diagnosis of GD, have undergone hormone therapy and psychotherapy, and have undergone a "real-life" test (i.e., in which they lived as the desired gender role). This Rating reflects the reporting of some positive evidence but serious limitations in the evidence of both effectiveness and safety.
- D2 - For SRS to treat GD in adolescents. This rating reflects the paucity of data of SRS in adolescents.

INSIGHTS:

- Since part of the reason for the psychopathology experienced by transgender persons has to do with the reactions or expected reactions of family and society, evolving social norms theoretically could diminish the perceived need to undergo physical changes in order to live in the desired gender role.
- The majority of the studies selected for this report reflect the diagnostic criteria of *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*, rather than the somewhat expanded criteria published in 2013 in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*.

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MCHUGH 00010

May 19, 2014

Hormone Therapy for the Treatment of Gender Dysphoria**PURPOSE OF TECHNOLOGY:**

Continuous feminizing or masculinizing hormone therapy is administered to some adolescents and adults who have a diagnosis of gender identity disorder (GID) or gender dysphoria (GD). The purpose of this therapy is to facilitate a transgender individual's desire to transition to a sexual identity other than his or her biological (natal) sex. Some individuals undergo hormone therapy as a prelude to sex reassignment surgery; other individuals seeking gender transition undergo hormone therapy without ever undergoing any type of surgery.

EXECUTIVE SUMMARY:

Health Problem: Individuals with gender dysphoria (GD) experience a severe incongruity between their biological sex and gender identity.

The prevalence of transsexualism is estimated to be 1 in 11,900 to 1 in 45,000 persons for male-to-female (MtF) prevalence and 1 in 30,400 to 1 in 200,000 for female-to-male (FtM) prevalence. The prevalence of gender dysphoria within the transsexual population is unknown. The earlier term, *gender identity disorder* (GID), has given way to *gender dysphoria* (GD). This change was intended to reflect a consensus that gender nonconformity is not a psychiatric disorder, as it was previously categorized. However, since the condition may cause clinically significant distress and since a diagnosis is necessary for access to medical treatment, the new term was proposed. The diagnostic criteria for GD outlined in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5), as well as the criteria for GID in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (DSM-IV), require that the individual believes there is a marked difference between the gender assigned to him or her by others and the gender he or she experiences or wishes to express. Additional criteria must also be met for a diagnosis of GD.

Determinants: The determinants of gender dysphoria are poorly understood. Experts believe that gender identity develops as the result of a combination of biological factors, possibly including genetic and/or prenatal and perinatal hormonal influences, and environmental influences that have psychological effects.

Treatment: Individuals with GD seeking professional help begin with psychotherapy. An American Psychiatric Association Task Force recommends 2 goals for psychotherapy: (1) to explore issues related to the individual's commitment to living in the cross-gender role; and (2) to fully explore other options for the patient, including whether to live as a homosexual person without medical and surgical treatments for gender transition. The full therapeutic approach to GD consists of 3 elements or phases, typically in the following order: (1) hormones of the desired gender; (2) real-life experience for 12 months in the desired role; and (3) surgery to change the genitalia and other sex characteristics (e.g., breast reconstruction or mastectomy). However, not everyone with GD needs or wants all elements of this triadic approach.

Technology: The goal of cross-sex hormone therapy for GD is to alter secondary sex characteristics, including such features as fat distribution, hair growth, voice pitch, and muscle strength.

Cross-sex hormone therapy includes estrogens and testosterone-blocking agents administered to natal (biologic) males and androgens (usually testosterone) administered to natal females. Adolescents with a

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Hormone-GD

diagnosis of GD may be eligible for puberty-delaying hormones as soon as pubertal changes begin; the effects of this treatment are fully reversible.

Rationale: Hormone therapy serves to feminize or masculinize the body to facilitate an individual's desire to live in the gender role opposite from biological sex.

Controversy: Numerous professional groups have advocated for third-party payers to cover all medically necessary treatments to alleviate GD. However, the condition does not readily fit traditional concepts of medical necessity since research to date has not established anatomical or physiological anomalies associated with GD.

An evidence-based assessment of the effectiveness of hormone therapy for alleviation of symptoms associated with GD and improvement of recipients' well being can make a helpful contribution to this controversy.

Relevant Questions:

- Has feminizing or masculinizing hormone therapy in adolescents and adults been shown to be effective in improving patient-important outcomes such as relief of symptoms of GD, psychological well-being, sex-specific function, quality of life (QOL), functional status, or employment status?
- How does hormone therapy alone as a treatment for GD compare with sex reassignment surgery (SRS)?
- Is feminizing or masculinizing hormone therapy safe?
- Have definitive patient selection criteria been established for feminizing or masculinizing hormone therapy as a treatment for GD?

Evidence Base: Ten peer-reviewed studies, primarily of a cross-sectional or pretest-posttest design, assessing the effectiveness of hormone therapy plus 11 other studies with safety data for ≥ 100 adult patients or any safety data for adolescent patients.

Search Dates: Inception of databases to April 2014.

Sample Sizes: 50 to 376 pts (effectiveness); 1 to 2307 (safety).

Patients: Adult or adolescent patients with a diagnosis of GD. Mean age in effectiveness studies of adults, 29 to 45 years. Mean age in safety studies of adults, 41 to 52 years. Typical patients had not undergone either chest or genital SRS.

Interventions: Cross-sex hormone therapy or pubertal suppression therapy.

Comparisons: No medical treatment, SRS (chest and/or genital).

Outcome Measures: QOL, functional status, or employment status; psychological well-being (e.g., depression, self-esteem, reduced incidence of suicide); sexual function and satisfaction; and complications of hormone therapy, regret, or any other adverse event attributable to treatment.

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Hormone-GD

Follow-Up: 3 months to 1 year (effectiveness studies, usually not reported); 2 to 23 years (safety studies).

Findings: Studies that evaluated hormone therapy in adults suggested the possibility of a small effect on QOL and function, specific psychological symptoms, social support, and alcoholism. The findings were inconsistent with respect to a relationship between hormone therapy and general psychological health, substance abuse, suicide attempts, and sexual function and satisfaction (9 studies).

QOL/Functional Status (Adults): 5 studies (≥ 812 participants; ≥ 796 FtM) reported positive findings on ≥ 1 scale, but usually not on all scales used in the study. Differences between treated and untreated study participants were very small or of unknown magnitude in cross-sectional analyses that adjusted for potential confounders but were substantial in 1 pretest-posttest study.

Psychological Symptoms (Adults): In 6 studies, the results for a variety of specific psychological states (e.g., depression, anxiety) were positive, but overall measures of change in psychological symptomatology were mixed. In the studies that provided information on the magnitude of scales and/or cutoff points for normal ranges, the differences, if observed, were generally very small and scores for patients representing the control condition were typically already in the normal or mild range.

Other Outcomes (Adults): Improved social support and reduced alcoholism were suggested but the results regarding substance abuse were conflicting (2 studies). The prevalence of suicide attempts was not affected by hormone therapy (2 studies). Findings regarding the association of hormone therapy with sexual function and satisfaction were mixed (3 studies).

Comparative Effectiveness of Hormone Therapy Alone Versus Surgery (Adults): The evidence was too sparse to allow any conclusion regarding the comparative benefits of SRS and hormone therapy alone.

Adolescents (Pubertal Suppression): Evidence from a single small study was insufficient to suggest conclusions regarding the value of pubertal suppression therapy.

Safety (Adults): Hormone therapy has the potential to alter patients' risk of cardiovascular disease, cerebrovascular and thromboembolic events, osteoporosis, and cancer. The risk of no benefit must also be considered. There was an increased risk of cerebrovascular and thromboembolic events in MtF patients. There was *no* elevated risk of cancer in FtM patients. Hormone therapy and subsequent SRS failed to bring overall mortality, suicide rates, or death from illicit drug use in MtF patients close to rates observed in the general male population. It is possible that mortality is nevertheless reduced by these treatments, but that cannot be determined from the available evidence. Mortality data for FtM patients is less clear than for MtF patients. For safety issues other than the specific findings described here, the evidence was insufficient to suggest conclusions. There was no evidence concerning the prevalence of regret after hormone therapy.

Safety (Adolescents): The chief risks cited for pubertal suppression therapy are related to the possibility the GD could worsen because of the delay in definitive treatment. No serious side effects during pubertal suppression were reported. Older adolescents may begin cross-sex hormone therapy, but only a single case report provided long-term data for individuals who began therapy as adolescents. The body of evidence

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Transforming Healthcare with Evidence

MCHUGH 00013

Hormone-GD

concerning the safety of pubertal suppression and cross-sex hormone therapy in adolescents was too sparse and the studies too limited to suggest conclusions.

Patient Selection Criteria: The evidence is insufficient to support patient selection criteria for hormone therapy to treat GD. Professional associations recommend that hormone therapy be restricted to patients who have been referred for such treatment by a health professional who is qualified to assess GD. In adults, medical conditions that can be exacerbated by endocrine treatment must be evaluated and addressed prior to initiation of treatment. Practice guidelines advise that pubertal suppression therapy should not be initiated until adolescents have at least reached Tanner stage 2.

Quality of Evidence: Very low.

Most studies were considered to be of very poor quality due to the nature of the study designs, failure to control for confounders, possible recall bias and selection bias, lack of blinded outcomes assessment, and/or unknown or short follow-up intervals. Not all positive results were statistically significant. For other outcomes, the findings were conflicting. For QOL and function, almost all of the available data were collected from FtM individuals for whom a diagnosis of GD could not be verified. For outcomes other than QOL and function, the quantity of evidence was very small. In safety studies, the relatively young age of study participants at the time of outcomes assessment and the lack of adjustment for risk factors in comparisons of study participants with age-matched general populations seriously diminishes the reliability of the available adverse event rates. No studies analyzed safety outcomes according to whether patients had undergone SRS, which is significant since hormone doses are lowered after SRS. The safety evidence described for adults in the **EXECUTIVE SUMMARY** is considered to be of low quality, but all other adult safety evidence was considered to be of very low quality.

Conclusions: A substantial number of studies of cross-sex hormone therapy each show some positive findings suggesting improvement in well-being after cross-sex hormone therapy. However, there are several serious limitations to the evidence.

Statistically significant improvements have not been consistently demonstrated by multiple studies for most outcomes. Five studies representing primarily female-to-male (FtM) adults reported modestly positive findings on ≥ 1 of the multiple quality of life (QOL) or functional scales for individuals who had undergone cross-sex hormone therapy, but for most of these individuals, a diagnosis of gender dysphoria (GD) was not confirmed. Evidence regarding QOL and function in male-to-female (MtF) adults was very sparse. Evidence for less comprehensive measures of well-being in adult recipients of cross-sex hormone therapy was directly applicable to GD patients but was sparse and/or conflicting. The study designs do not permit conclusions of causality and studies generally had weaknesses associated with study execution as well. There are potentially long-term safety risks associated with hormone therapy but none have been proven or conclusively ruled out. The evidence for adolescent populations was too sparse to suggest any conclusions.

Hayes Rating:

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MCHUGH 00014

Hormone-GD

- C - For hormone therapy to treat GD in adults for whom a qualified mental health professional has made a formal diagnosis of GD and a recommendation for hormone therapy and who do not have any medical contraindications to endocrine therapy.

This Rating reflects the reporting of some positive evidence but serious limitations in the evidence of both effectiveness and safety. Also of concern is the fact that the magnitude of suggested benefit was typically small, which diminishes confidence in a true treatment effect.

- D2 - For pubertal suppression therapy or cross-sex hormone therapy in adolescents.

This Rating is based on a paucity of data.

INSIGHTS:

- Since part of the reason for the psychopathology experienced by transgender persons has to do with the reactions or expected reactions of family and society, evolving social norms theoretically could diminish the perceived need to undergo physical changes in order to live in the desired gender role.
- The benefits of hormone therapy appear to be of very small magnitude in the studies published to date. The literature does not provide guidance for assessing the clinical relevance of improvements in this population. One factor that may prevent the observation of large improvements is that individuals with a better social support and a better baseline psychological profile are probably seen to be better candidates by the mental health professionals who make recommendations for treatment.
- As the population of recipients of hormone therapy ages, better data concerning long-term safety risks should become available.
- Most studies have been performed in Europe. The results may not be generalizable to the United States.
- The studies selected for this report reflect the diagnostic criteria of DSM-IV, rather than the somewhat expanded criteria published in 2013 in the DSM-5.

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MCHUGH 00015

May 9, 2014

Ancillary Procedures and Services for the Treatment of Gender Dysphoria**PURPOSE OF TECHNOLOGY:**

Some persons with gender dysphoria (GD) may seek hormone therapy and /or sex reassignment surgery (SRS) to resolve their incongruity between biological sex and gender identity. Additional ancillary surgeries or services, such as facial modifications, vocal cord surgery, or voice training, may be desired by transgender persons to further feminize or masculinize the body and/or perception of gender. In some cases, ancillary procedures are performed without SRS.

EXECUTIVE SUMMARY:

Health Problem: Individuals with gender dysphoria (GD) feel a severe incongruity between their biological sex and their gender identity. The prevalence of GD is 1 in 11,900 to 1 in 45,000 persons for male-to-female (MtF) and 1 in 30,400 to 1 in 200,000 persons for female-to-male (FtM) transgender persons.

The earlier term, *gender identity disorder* (GID), has given way to *gender dysphoria* (GD). This change was intended to reflect a consensus that gender nonconformity is not a psychiatric disorder, as it had been previously categorized. However, since the condition may cause clinically significant distress and since a diagnosis is necessary for access to medical treatment, the new term was proposed. The diagnostic criteria for GD outlined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), Fifth Edition (DSM-V), as well as the criteria for GID in the DSM, Fourth Edition (DSM-IV), require that the individual believes there is a marked difference between the gender assigned to him or her by others and the gender he or she experiences or wishes to express. Additional criteria must also be met for a diagnosis of GD.

Determinants: The determinants of GD are poorly understood. Experts believe that gender identity develops as the result of a combination of biological factors, possibly including genetic and/or prenatal and perinatal hormonal influences, and environmental influences that have psychological effects.

Treatment: The treatment of GD is multifaceted. Psychotherapy helps the individual explore roles and expression and adopt various coping mechanisms to deal with societal and internal conflicts. Some transgender persons may seek hormone therapy to change their secondary sex characteristics and/or apply for sex reassignment surgery (SRS), which may include mastectomy/chest reconstruction or genital reconstruction. Additional ancillary surgeries or services, such as facial modifications, vocal cord surgery, or voice training, may be desired by transgender persons to further feminize or masculinize the body and/or perception of gender.

Technology: Ancillary procedures and services other than cross-sex hormone therapy or SRS for GD.

Some transgender persons desire procedures to feminize or masculinize their body and/or face. Also, some MtF transgender persons may desire voice therapy or vocal cord surgery to feminize their voice. Ancillary procedures include facial modifications, voice modification, reduction of the Adam's apple, enhancement of the buttocks, and permanent hair removal.

Rationale: Additional procedures may enhance the benefits of hormone therapy or SRS for GD, and for some individuals with GD, less comprehensive treatments may be sufficient for assuming the desired gender identity.

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Transforming Healthcare with Evidence

MCHUGH 00016

Short (Abbreviated) Title

A transgender person who is readily accepted as their chosen gender may have a better quality of life and a reduction in the symptoms of GD.

Controversy: The medical necessity of treatments for GD is under debate. However, the condition does not readily fit traditional concepts of medical necessity since research to date has not established anatomical or physiological anomalies associated with GD. An evidence-based assessment of the effectiveness of ancillary procedures for alleviation of symptoms associated with GD and improvement of recipients' well-being can be a helpful contribution to this issue.

Relevant Questions:

- Have ancillary procedures and services been shown to be effective in improving patient-important outcomes such as relief of symptoms of GD or quality of life?
- Are ancillary procedures and services safe?
- Have definitive patient selection criteria been established for ancillary procedures and services as treatments for GD?

Evidence Base: Thirteen case series studies and chart reviews.

Search Dates: Inception of database to April 2014.

Sample Sizes: 10 to 76 patients; 1 study had 247 patients.

Patients: MtF (n=533) or FtM (n=3) adult transgender patients. It was not specified whether or not patients had a formal diagnosis of GD. The status of cross-sex hormone therapy or SRS among the study population was not reported by 4 of the studies. The remaining studies had variability regarding other GD treatments; however, none had inclusion criteria that specified these characteristics.

Interventions: Vocal cord surgery (5 studies), voice training (3 studies), rhinoplasty (2 studies), facial feminization surgery (2 studies), hair removal (1 study).

Comparisons: Twelve of the studies had no comparison group. One study of facial feminization surgery compared surgery recipients with patients who had not had facial surgery.

Outcome Measures: Patient satisfaction; voice characteristics; Voice Handicap Index; SF-36 Health Survey (QualityMetric Inc.) (1 study); grade, roughness, breathiness, asthenia, strain (GRBAS) Hirano scale.

Follow-Up: Mean of 6 to 30 months (5 studies did not report follow-up).

Findings: Patients were satisfied with the results of facial feminization and rhinoplasty; however, the results of vocal cord procedures and voice training were mixed.

Vocal Cord Procedures: Of the 5 reviewed studies of vocal cord surgery, 2 evaluated cricothyroid approximation, 2 evaluated laser vaporization, and 1 evaluated laryngoplasty. Cricothyroid approximation significantly raised the fundamental frequency of MtF transgender patients by a mean of 74 hertz (Hz). Laser vaporization significantly raised the fundamental frequency of MtF transgender patients by a mean of 48 Hz.

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Short (Abbreviated) Title

Feminization laryngoplasty significantly increased the fundamental frequency by 57 Hz. Patient satisfaction with the vocal cord surgery was variable, but the results suggest that patients were more satisfied following cricothyroid approximation than laser vaporization.

Voice Training: Three studies evaluated voice training as a method to increase the fundamental frequency of MtF transgender patients. The fundamental frequency increased by 14 to 28 Hz after voice training sessions and approximately half of the patients were satisfied with the outcome. One study evaluated voice training to decrease the fundamental frequency of 3 FtM patients; however, results of only 1 patient were available and his fundamental frequency decreased by 35 Hz after vocal training.

Rhinoplasty: Two studies evaluated feminization rhinoplasty on MtF transgender patients. All but 1 of the patients felt that their face had become more feminine in appearance and were satisfied with the results.

Facial Feminization Surgery: Two studies of facial feminization surgery were reviewed. In a retrospective case series study, MtF transgender patients who had various facial modification procedures felt that their faces had become more feminine in appearance. In a large retrospective cross-sectional study, quality of life was measured in MtF transgender patients who did or did not have facial feminization surgery. Patients who had facial feminization surgery were significantly more satisfied with their appearance than those who did not have facial surgery.

Permanent Hair Removal: One study of intense pulsed light epilation for permanent hair removal on MtF transgender patients was reviewed. After a mean of 9 epilation sessions, 90% of the patients achieved treatment success.

Safety: Most of the studies did not report complications; however, complications that were reported included bone nonunion following facial surgery (2% of patients); and dysphagia (34% of patients) or throat pain (29% of patients) following cricothyroid approximation.

Patient Selection Criteria: There is insufficient evidence to establish definitive patient selection criteria for ancillary procedures and services for the treatment of GD.

Quality of Evidence: Very low.

The individual study quality was generally very poor. The quality of the evidence was low because of study limitations, including small sample size and few studies evaluating each procedure category, lack of a control or comparator group, variable follow-up duration, inconsistent availability of results for all outcome measures, lack of baseline data for self-rated outcome measures, and lack of statistical analysis of results. Outcome measures were focused on technical success and patient satisfaction; only 1 study evaluated an overall measure of well-being using a validated instrument.

Conclusions: There is some evidence that transgender patients are satisfied with the results of rhinoplasty and facial feminization surgery, but patient satisfaction with vocal cord surgery and voice training was mixed. The evidence has serious limitations, and the effect of these procedures on overall individual well-being is unknown.

- Patients who had rhinoplasty or facial feminization surgery were generally pleased with the results.

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Short (Abbreviated) Title

- Vocal cord procedures and voice training had variable outcomes. Although the fundamental frequency was reduced by all treatment methods, patient satisfaction with the outcome was mixed.
- Most of the studies did not report complications; however, there was a low rate of bone nonunion following facial surgery, and moderate rates of dysphagia or throat pain following cricothyroid approximation.

Hayes Rating:

D2 - For vocal cord surgery for voice feminization in patients with GD.

This Rating reflects the positive but limited evidence of this technology for transgender patients.

D2 - For voice training for voice feminization in patients with GD.

This Rating reflects the limited evidence of this technology for transgender patients, and conflicting results.

D2 - For feminization rhinoplasty for patients with GD.

This Rating reflects the limited evidence of this technology for transgender patients, and conflicting results.

D2 - For facial feminization surgery in patients with GD.

This Rating reflects the positive but limited evidence of this technology for transgender patients.

D2 - For permanent hair removal technologies for patients with GD.

This Rating reflects the positive but limited evidence of this technology for transgender patients.

INSIGHTS:

- Since part of the reason for the psychopathology experienced by transgender persons has to do with the reactions or expected reactions of family and society, evolving social norms theoretically could diminish the perceived need to undergo physical changes in order to live in the desired gender role.
- As the population of recipients of ancillary procedures ages, better understanding concerning long-term safety risks should become available.

This report is intended to provide research assistance and general information only. It is not intended to be used as the sole basis for determining coverage policy. Any decision regarding claims eligibility or benefits, or acquisition of a health technology is solely within the discretion of your organization. Hayes, Inc. assumes no responsibility or liability for such decisions. This report is not intended to be used as the sole basis for defining treatment protocols, or medical modalities, nor should it be construed as providing medical advice regarding treatment of an individual's specific case. Marigloria Seitz of Johns Hopkins HealthCare LLC is authorized to view this document for informational purposes only. © 2014 Winifred S. Hayes, Inc.

6/11/2014

Page 4 of 4

EXHIBIT 22

Subject: FW: [EXT] Fwd: FW: attachments
Attachments: j.1365-2265.2009.03625.x.pdf

From: Paul McHugh
Sent: Tuesday, February 13, 2018 12:34 PM
To: 'Bushman, William CIV SD' <William.Bushman@sd.mil>
Subject: RE: attachments

Mr. Bushman I've attached a copy of the study you wanted. Also I realize that I sited Tom Wise in Fairfield. I of course meant Fairfax Virginia. Sorry Paul McHugh

From: Bushman, William CIV SD [<mailto:William.Bushman@sd.mil>]
Sent: Monday, February 12, 2018 6:00 PM
To: Paul McHugh <pmchugh1@jhmi.edu>
Subject: RE: attachments

Thank you, sir. This is most helpful.

One additional question: do you have access to a copy of the following study?

- Mohammad Hassan Murad et al., "Hormonal therapy and sex reassignment: a systematic review and meta-analysis of quality of life and psychosocial outcomes," *Clinical Endocrinology* 72 (2010): 214-231.

Thank you again for your help.

Best,
Will

William G. Bushman

Office of the Secretary of Defense

Office: 703.571.8935

Cell: 703.216.5782

NIPR: william.bushman@sd.mil

SIPR: william.bushman@sd.smil.mil

JWICS: william.bushman@sd.ic.gov

From: Paul McHugh [<mailto:pmchugh1@jhmi.edu>]
Sent: Monday, February 12, 2018 2:12 PM
To: Bushman, William CIV SD <William.Bushman@sd.mil>
Subject: RE: attachments

Mr. Bushman, You might contact Dr. Chester Schmidt here at Hokins and Dr. Thomas Wise at Fairfield. PM

From: Bushman, William CIV SD [<mailto:William.Bushman@sd.mil>]
Sent: Sunday, February 11, 2018 3:30 PM
To: Paul McHugh <pmchugh1@jhmi.edu>
Subject: RE: attachments

Dr. McHugh,

Thank you again for speaking to us and providing additional information. During our call, I believe you mentioned there were other individuals who could also serve as resources for our policy review. Do you know of any other persons we should consider reaching out to?

Thanks,

Will Bushman

William G. Bushman

Office of the Secretary of Defense

Office: 703.571.8935

Cell: 703.216.5782

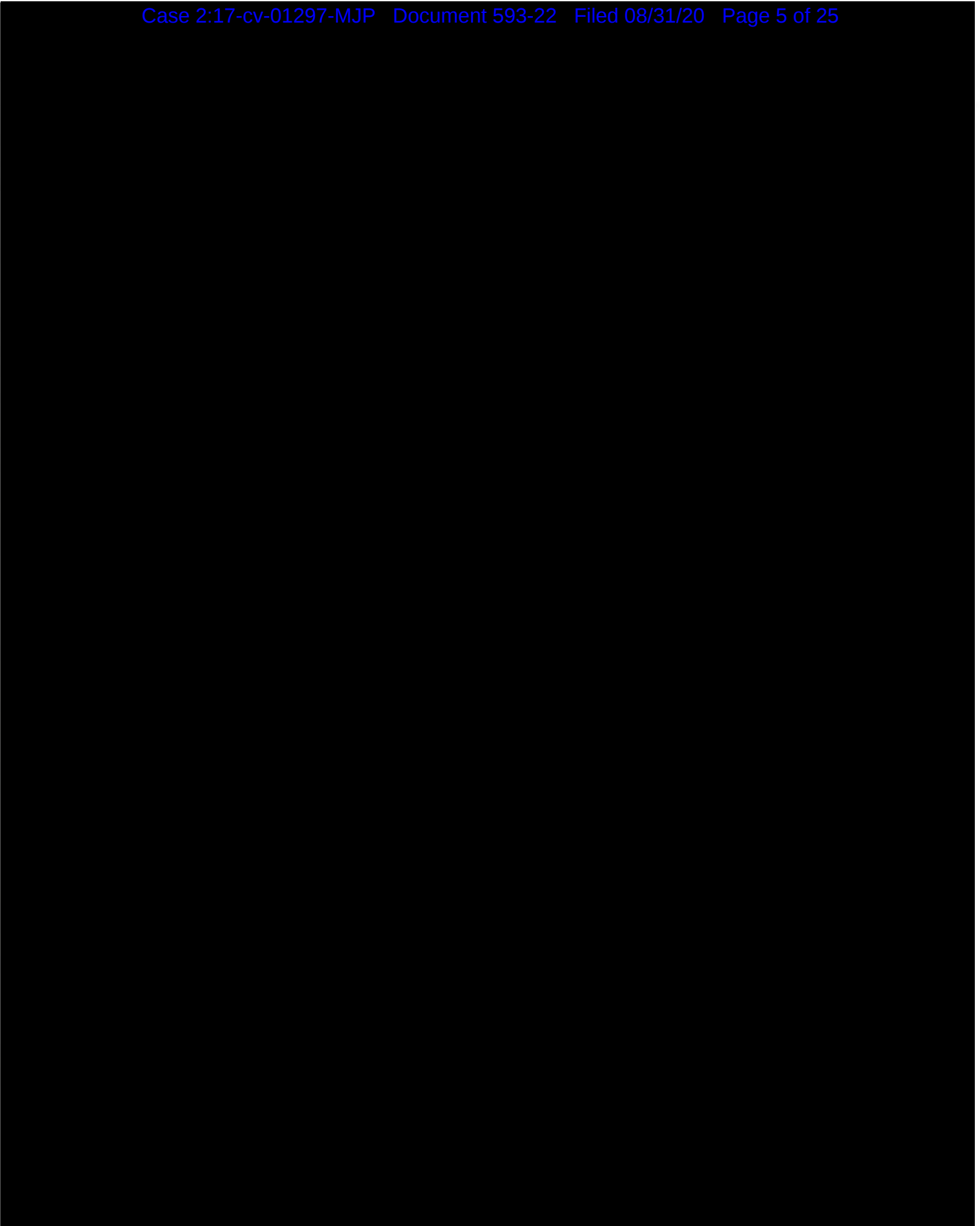
NIPR: william.bushman@sd.mil

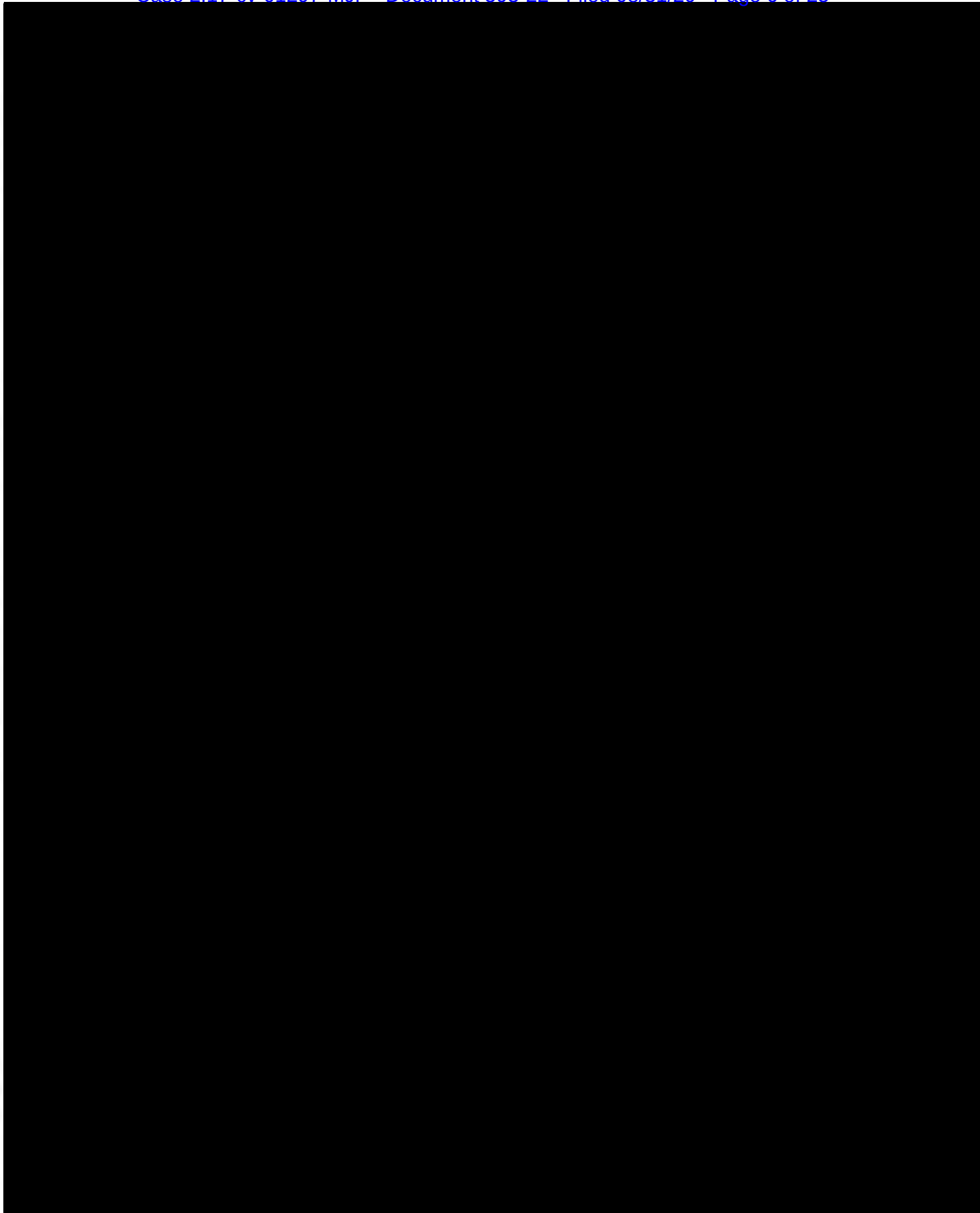
SIPR: william.bushman@sd.smil.mil

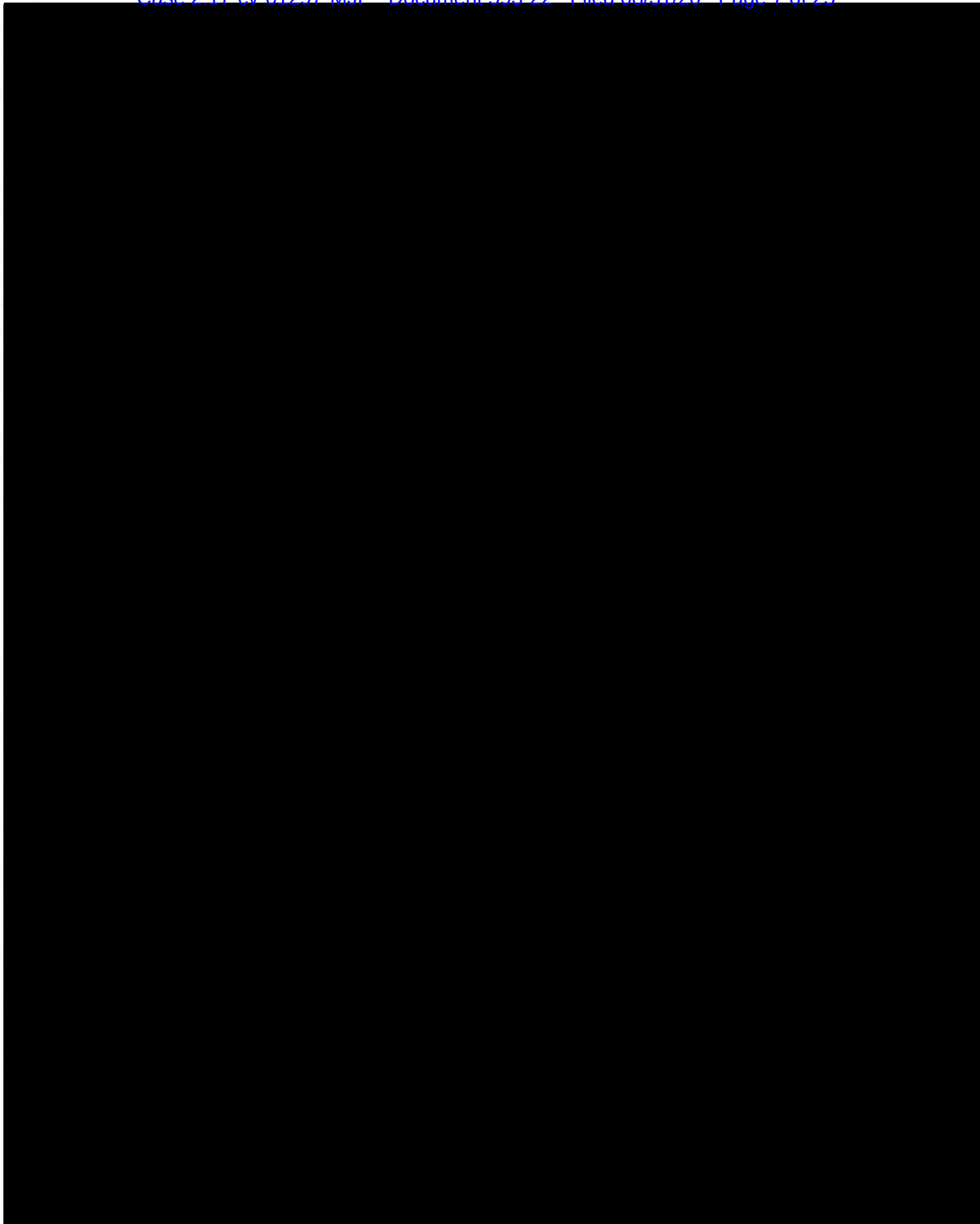
JWICS: william.bushman@sd.ic.gov

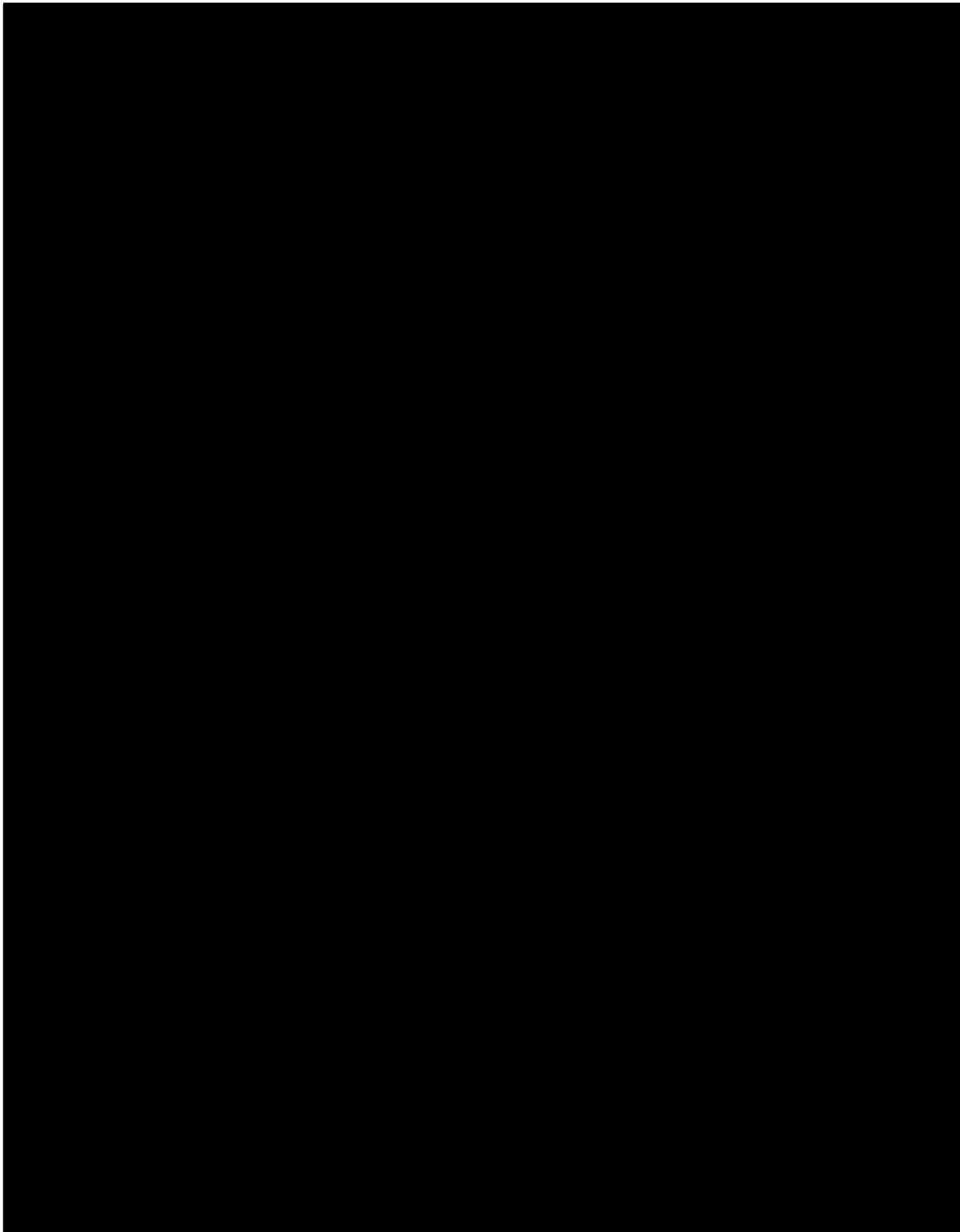
From: Paul McHugh [<mailto:pmchugh1@jhmi.edu>]
Sent: Monday, February 5, 2018 2:51 PM
To: Bushman, William CIV SD <William.Bushman@sd.mil>
Subject: attachments

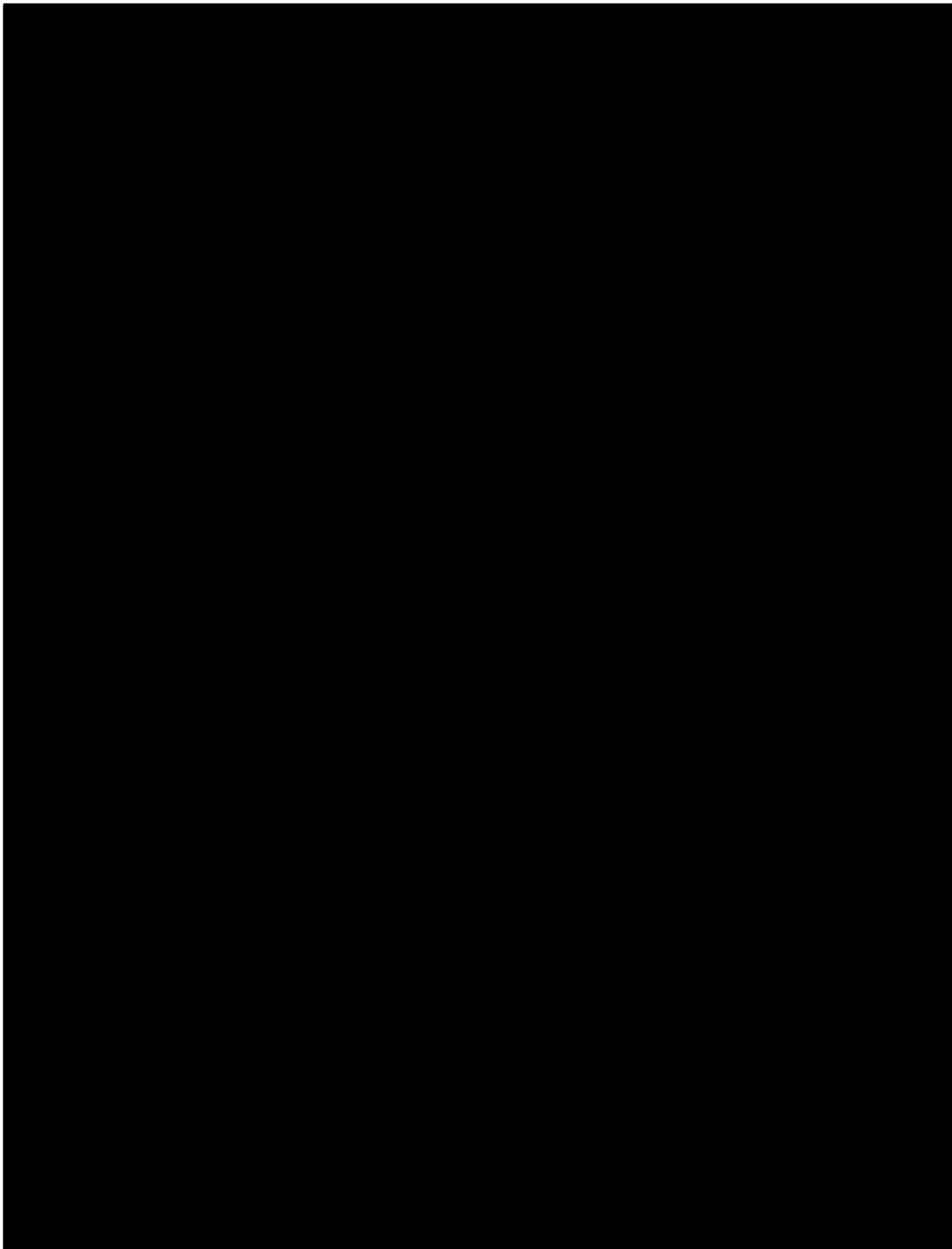
Mr. Bushman, I mentioned these several articles in our conversation The Hayes Directory on evidence for sex reassignment surgery and other medical treatments , The long term follow-up from Sweden for transgender surgery, My article in Nature Medicine in 1995, and our recent article in the New Atlantis. I've attached them all here . Do tell me if they get through. Paul McHugh

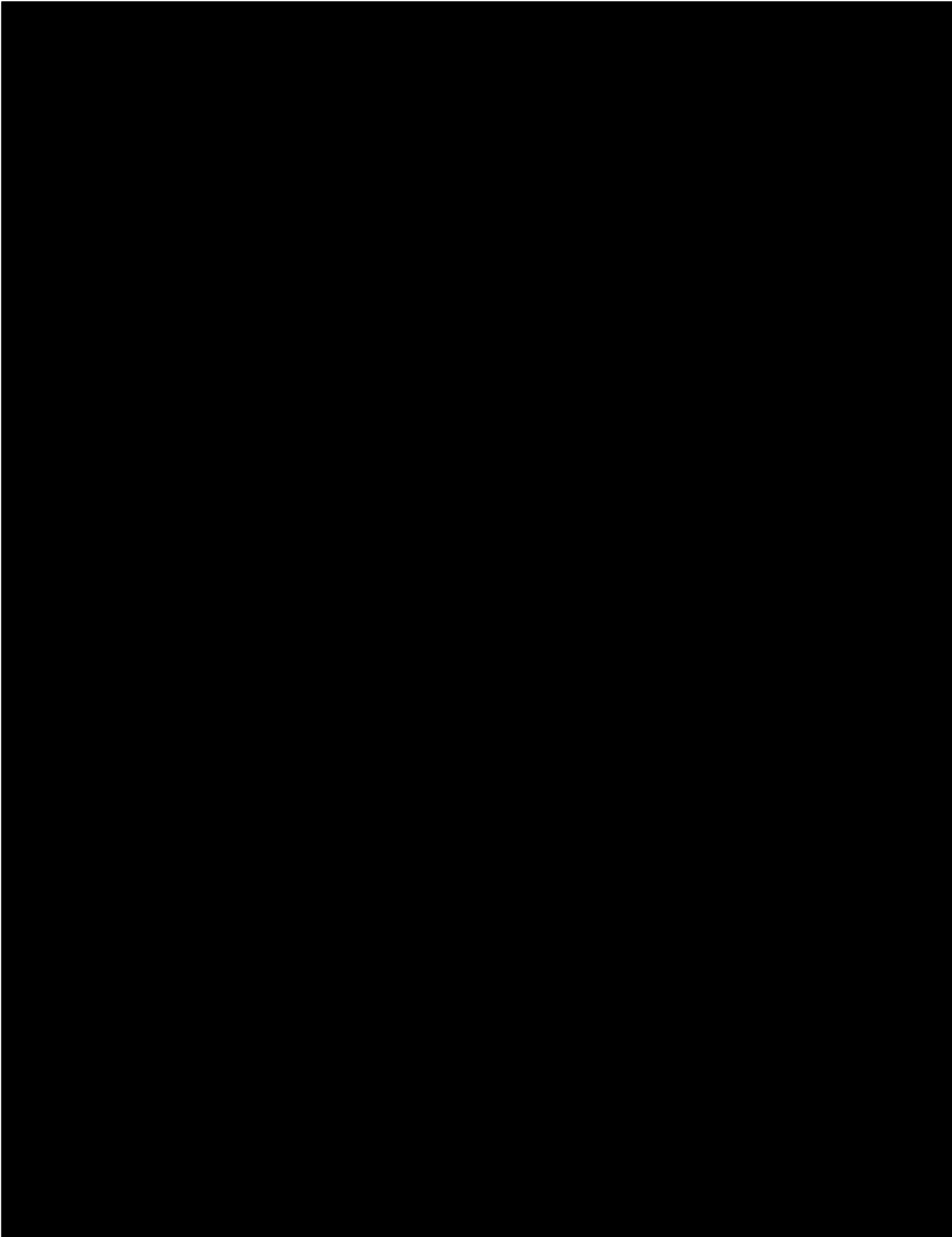


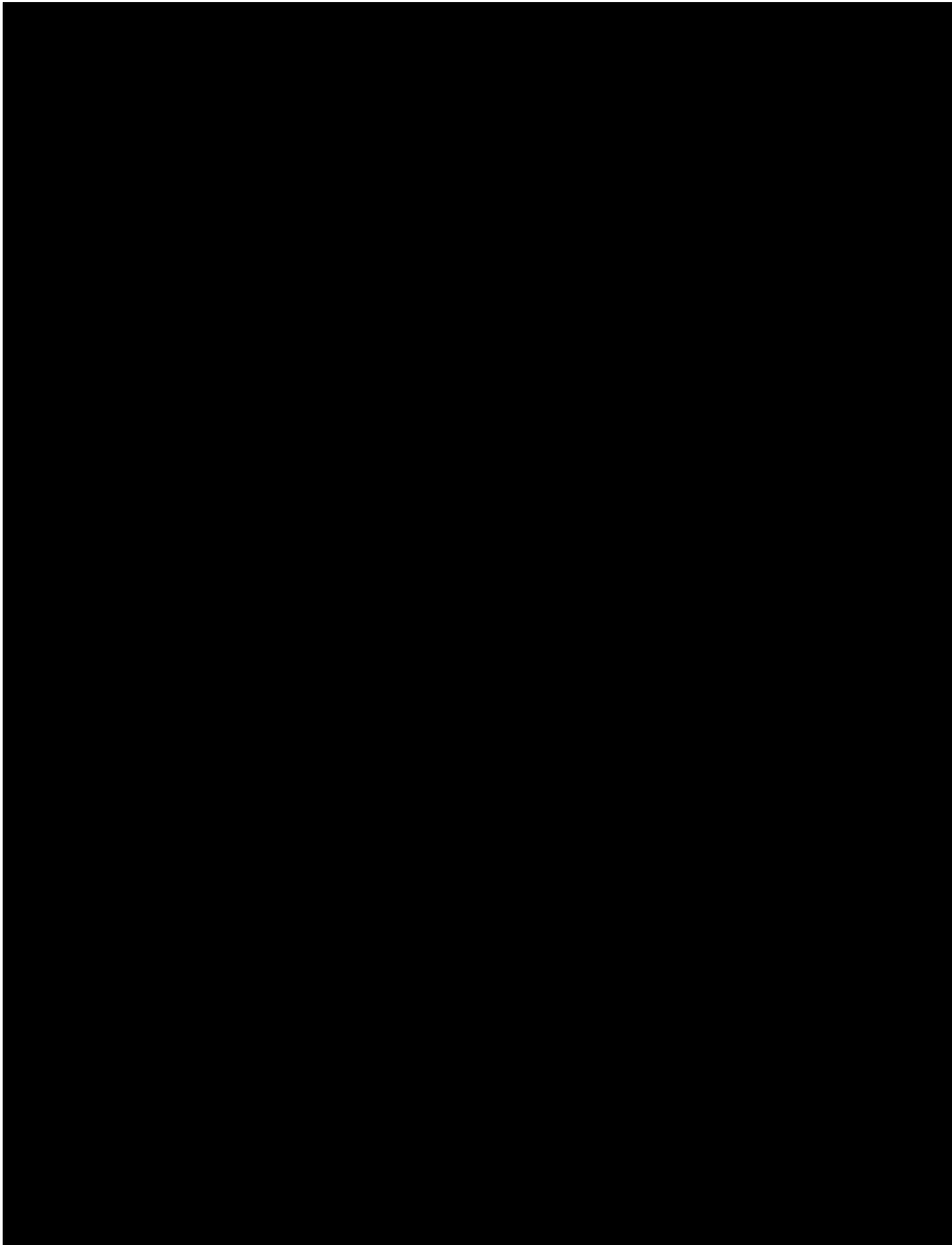


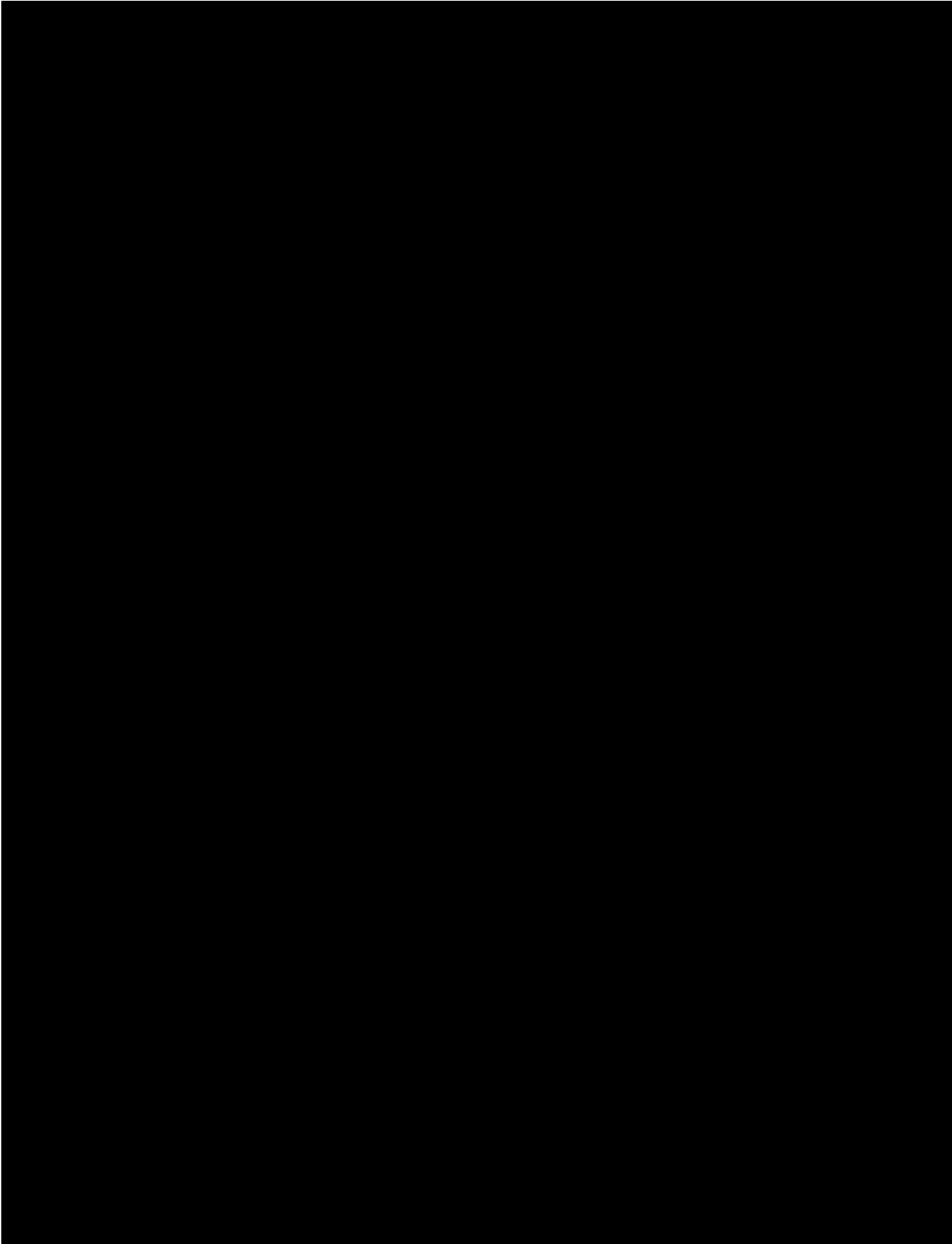


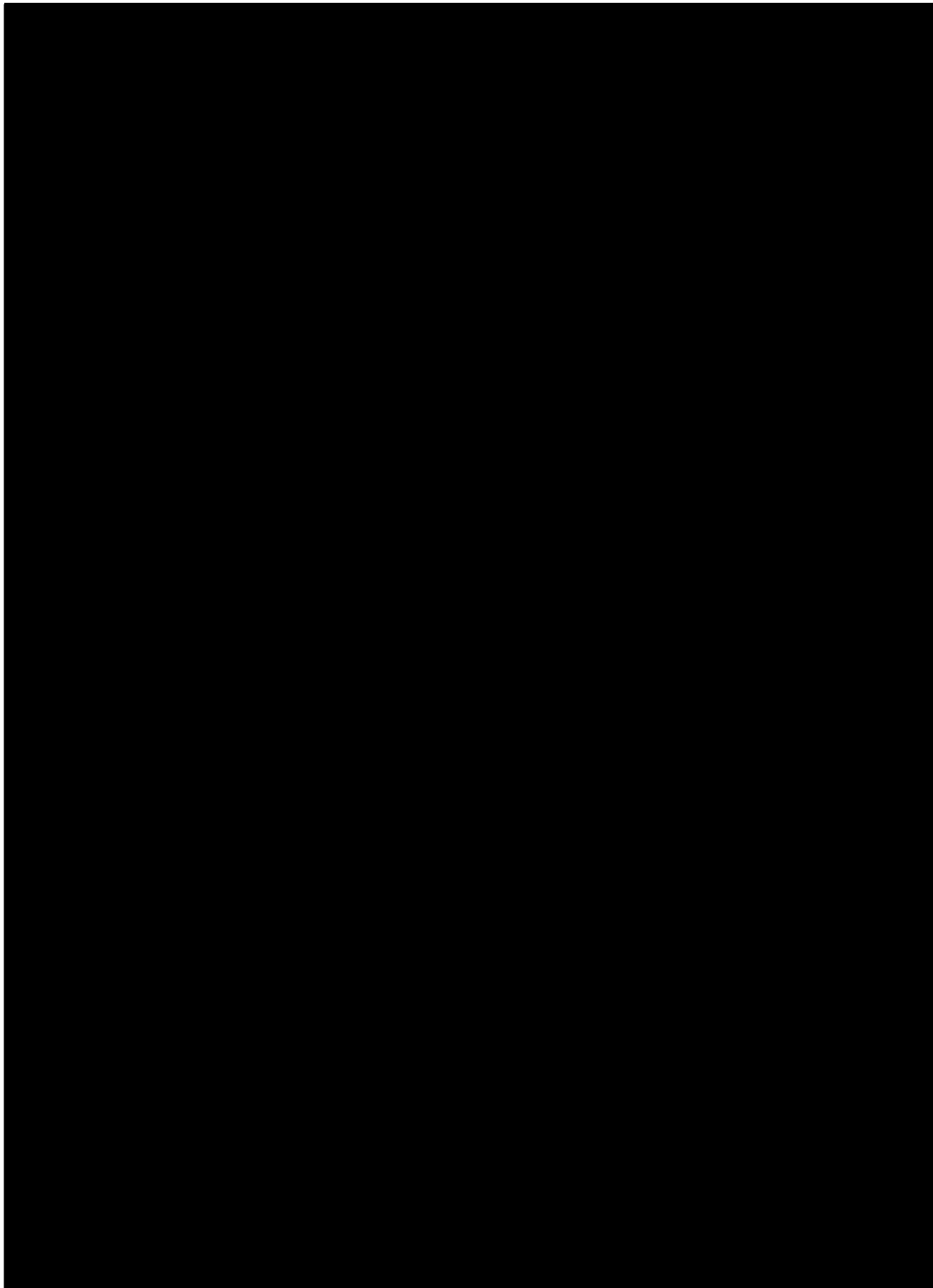


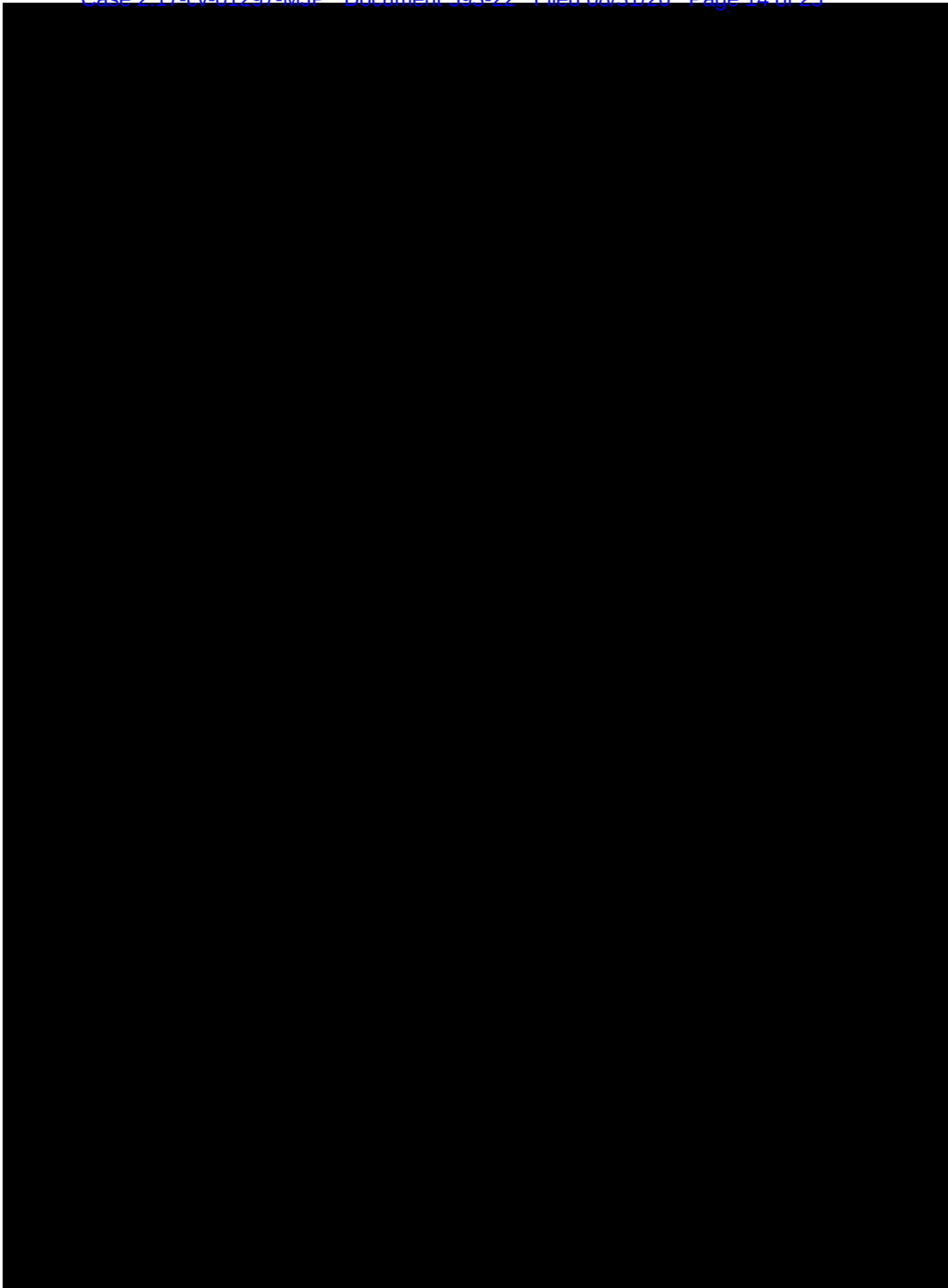


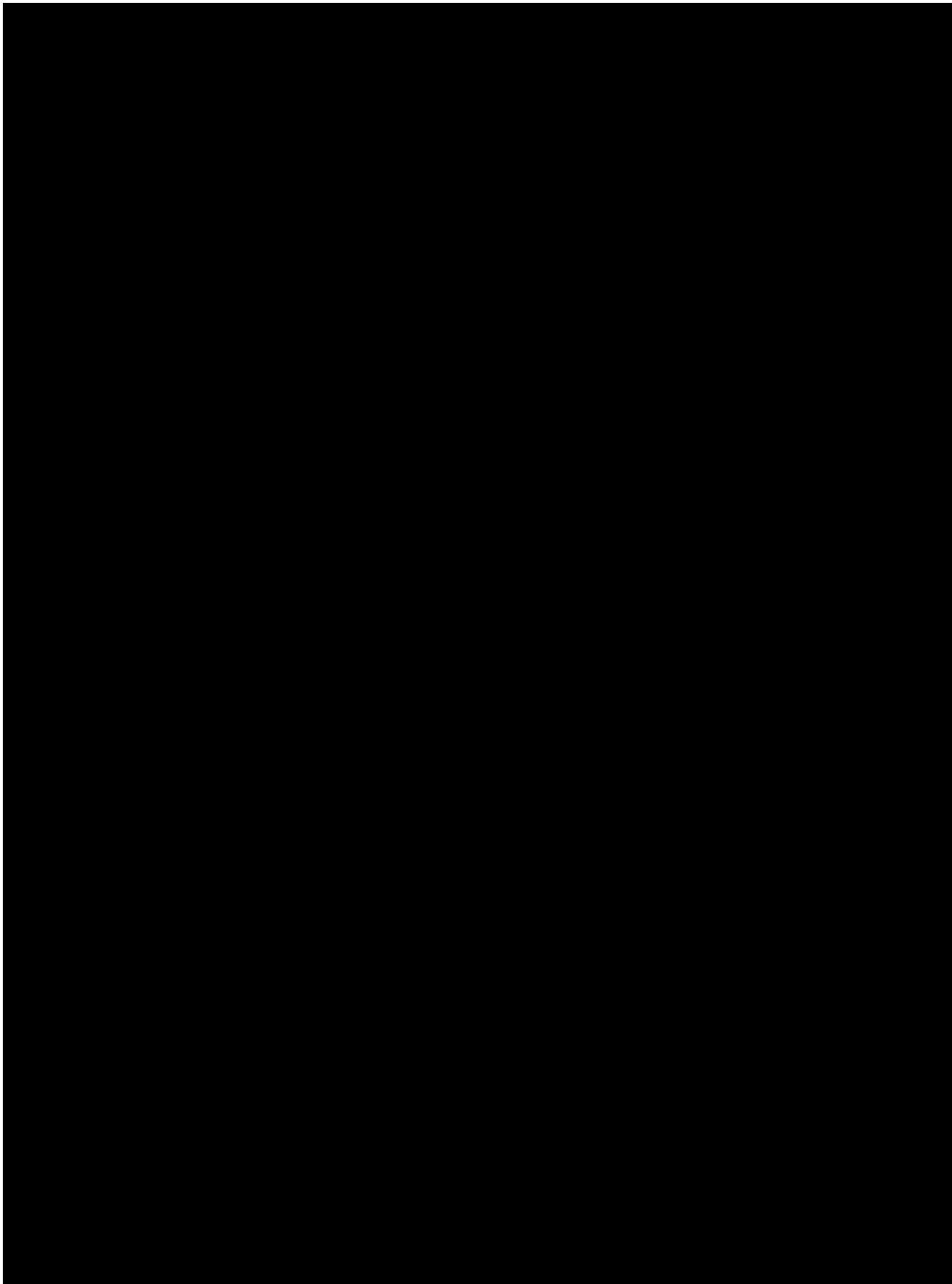


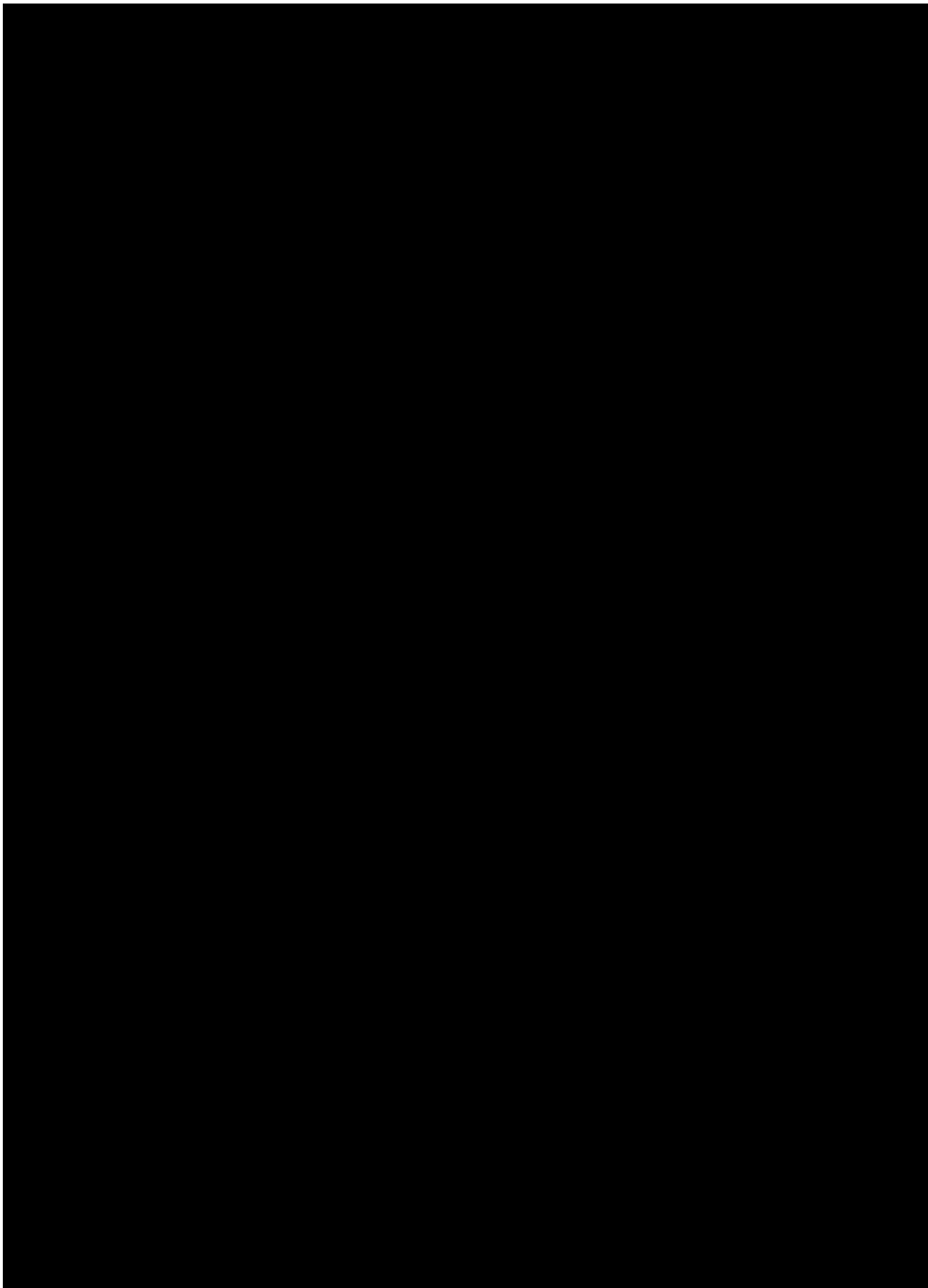


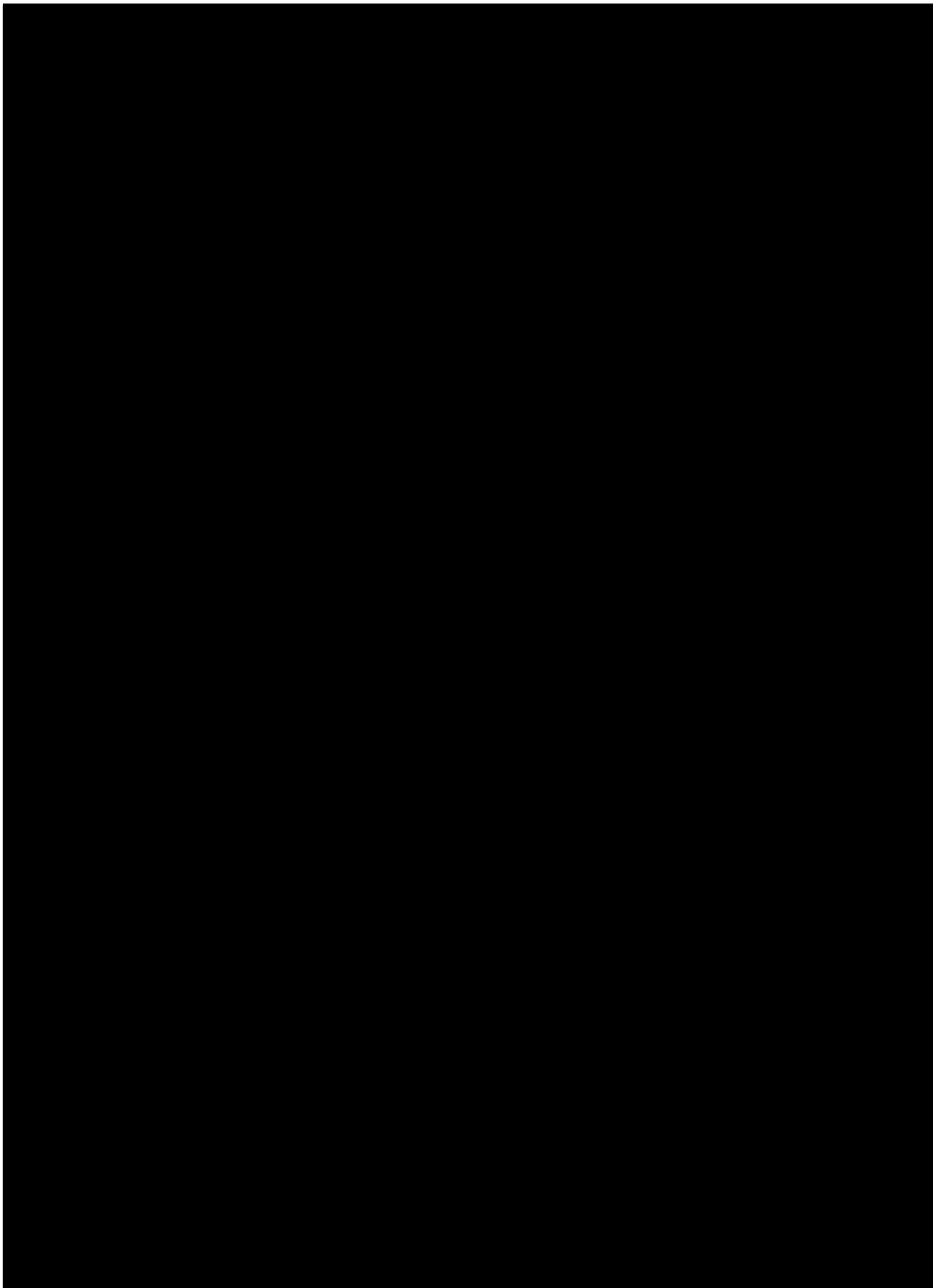


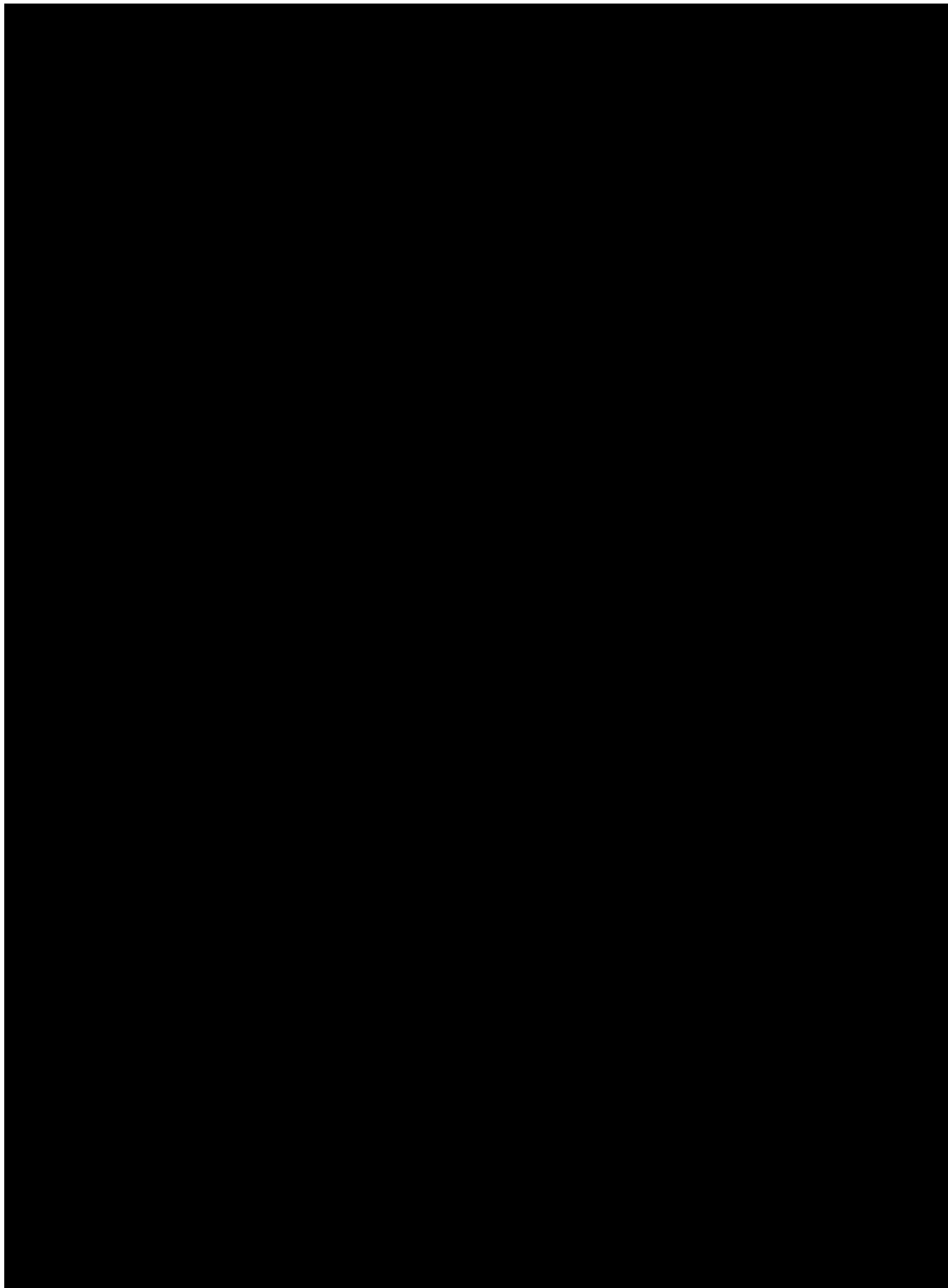


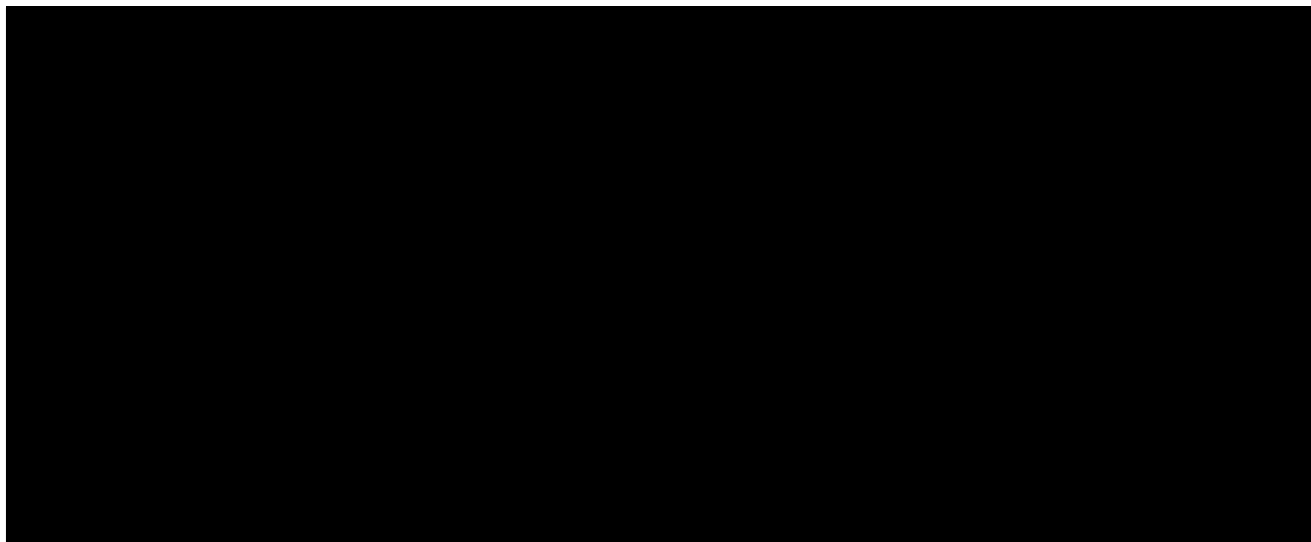


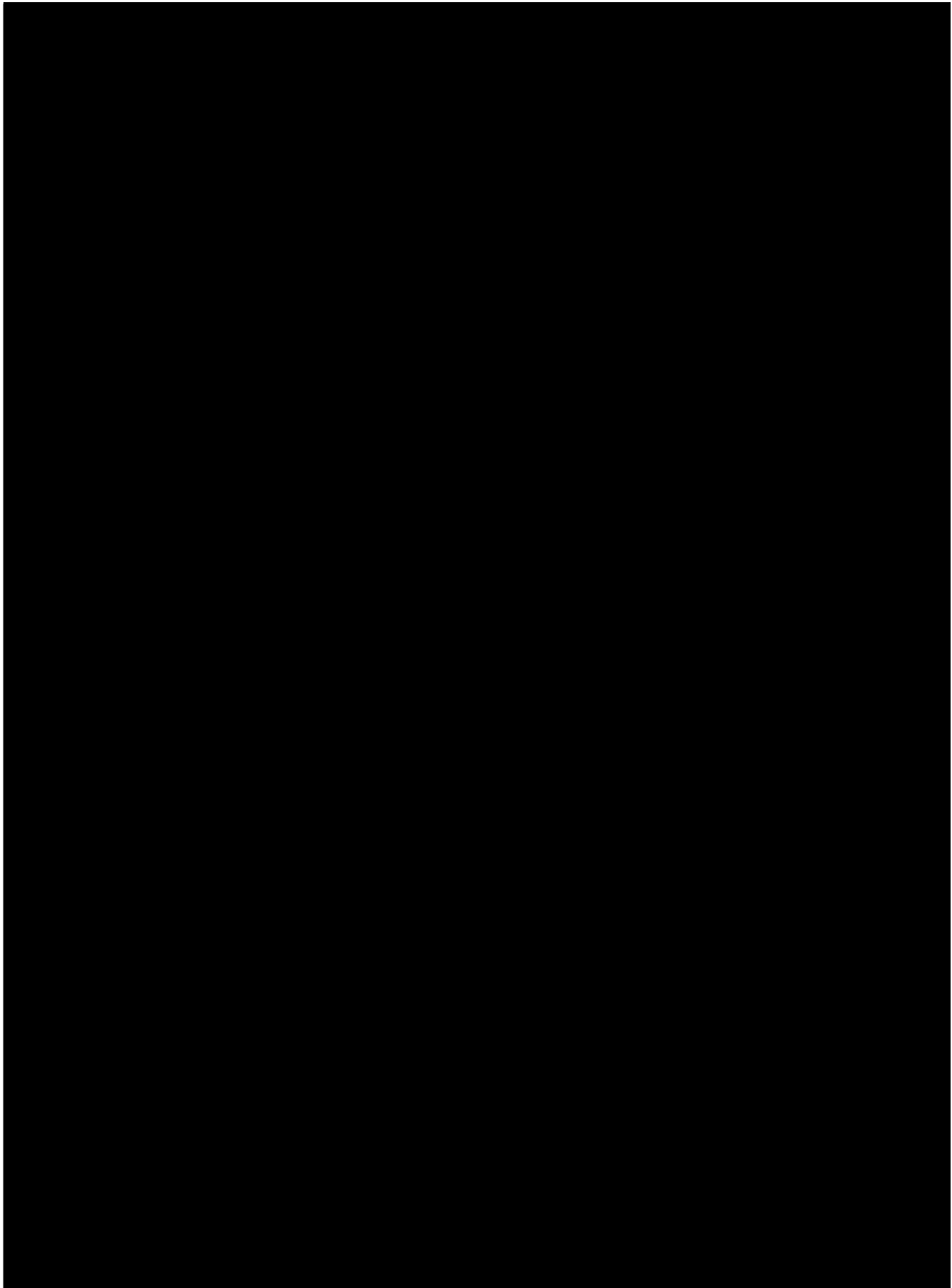


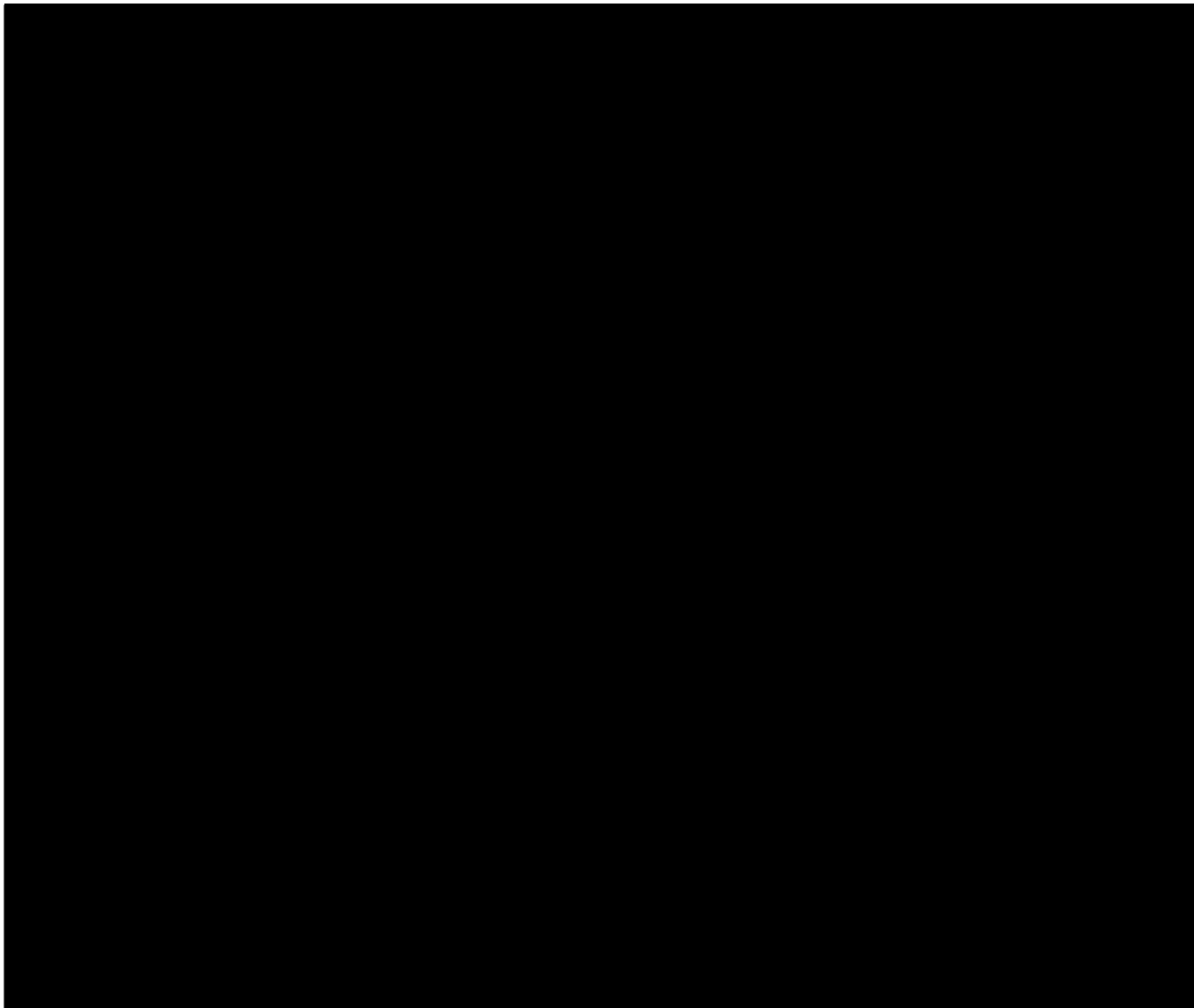


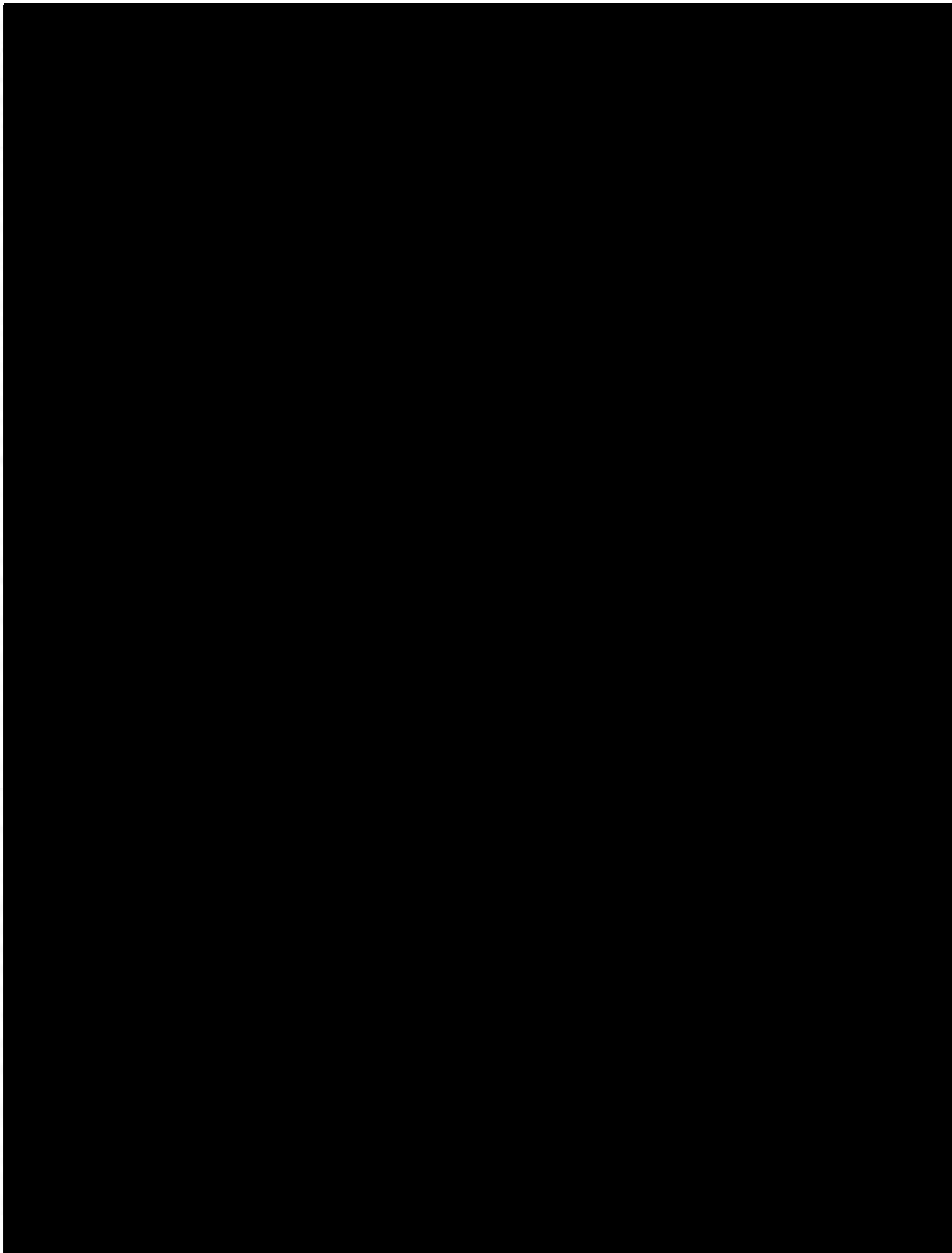


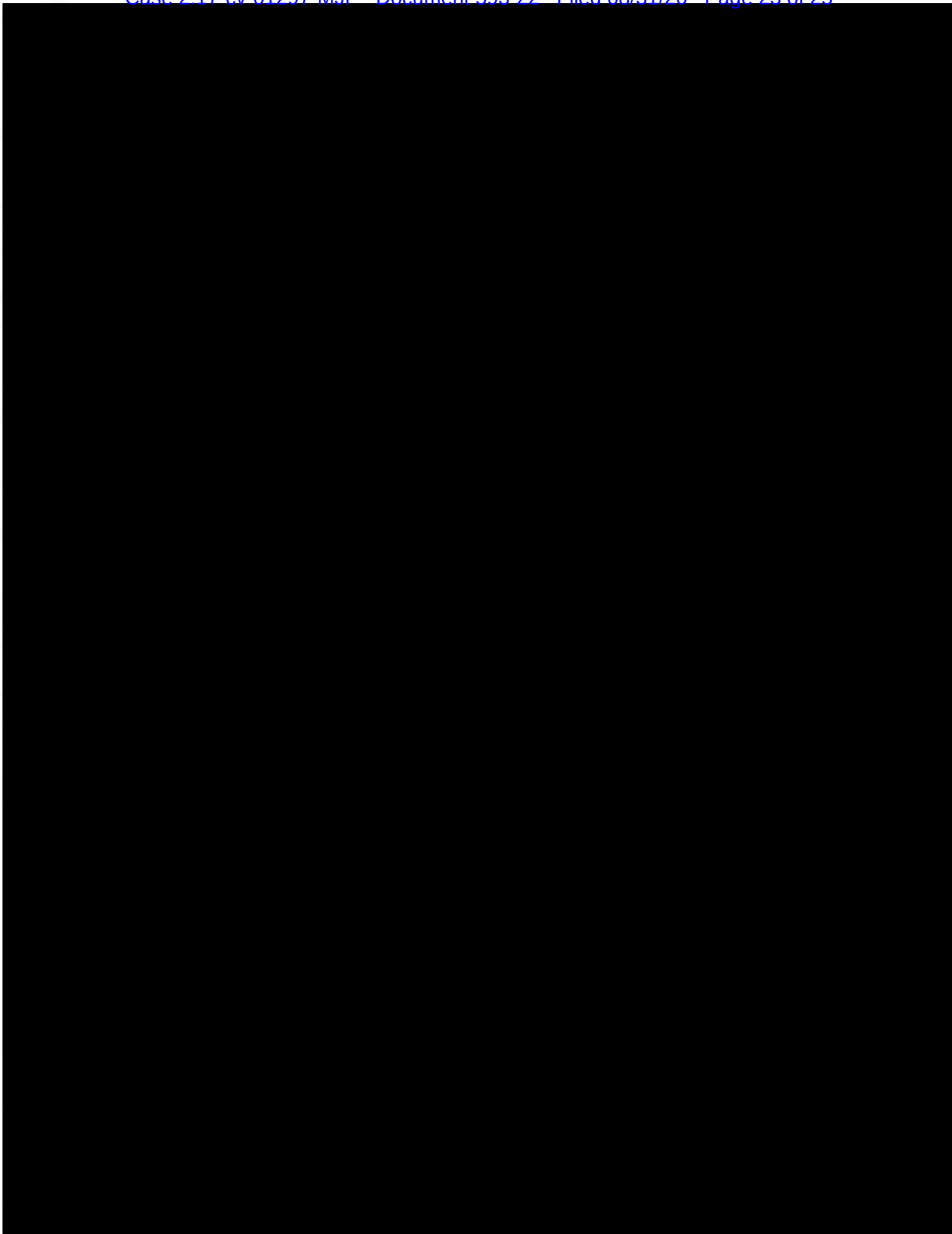


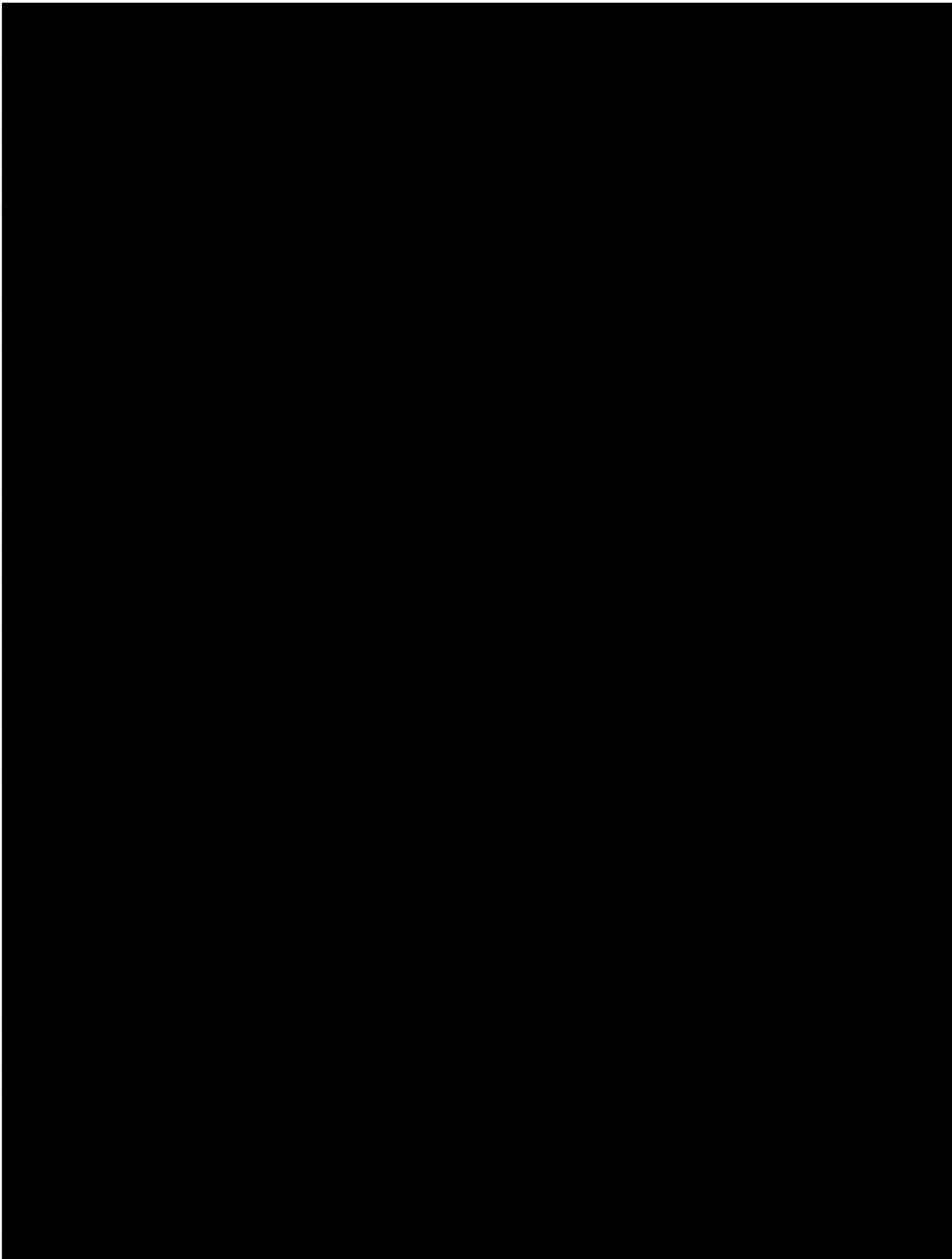












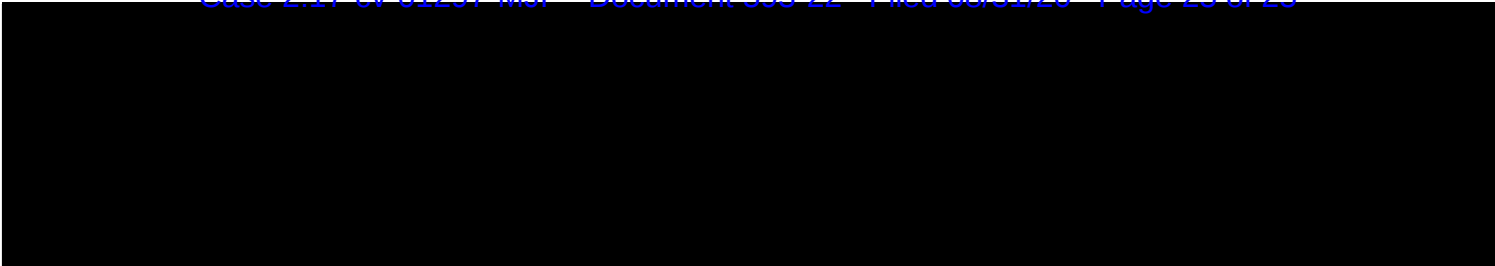


EXHIBIT 23

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

CASE NO. C17-1297-MJP

ORDER GRANTING MOTION TO
COMPEL; DENYING MOTION
FOR PROTECTIVE ORDER

THIS MATTER comes before the Court on Plaintiffs’ Motion to Compel Defendants’ Discovery Withheld Under the Deliberative Process Privilege (Dkt. No. 245) and Defendants’ Motion for Protective Order (Dkt. No. 268). Having reviewed the Motions, the Responses (Dkt. Nos. 266, 278), the Replies (Dkt. Nos. 273, 281), the Supplemental Briefs (Dkt. Nos. 289, 292, 293) and the related record, and having considered the submissions of the parties at oral argument, the Court GRANTS Plaintiffs’ Motion to Compel and DENIES Defendants’ Motion for Protective Order.

Background

I. Procedural History

On July 26, 2017, President Donald J. Trump announced a ban on military service by openly transgender people (the “Ban”). On March 23, 2018, following the Court’s entry of a preliminary injunction, the President issued a Presidential Memorandum (the “2018 Memorandum”) directing the Department of Defense (“DoD”) to implement the Ban. (Dkt. No. 224, Ex. 3.) That same day, Defendants moved to dissolve the preliminary injunction. (Dkt. No. 215.) On March 29, 2018, Defendants requested to preclude discovery pending resolution of their motion to dissolve the preliminary injunction. (Dkt. No. 225.) The Court denied that request and ordered discovery in the case to proceed. (Dkt. No. 235.) The Court explained:

To the extent that Defendants intend to claim executive privilege, they must “expressly make the claim” and provide a privilege log “describ[ing] the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”

(Id. at 3 (quoting Fed. R. Civ. P. 26(b)(5)(i)-(ii).))

On April 13, 2018, the Court ordered the preliminary injunction to remain in effect and granted partial summary judgment against the Ban. (See Dkt. No. 233.) The Court held that the Ban would be subject to strict scrutiny, but declined to rule on its constitutional adequacy. (Id.) The Court observed that “[w]hether Defendants have satisfied their burden of showing that the Ban is constitutionally adequate (i.e., that it was sincerely motivated by compelling state interests, rather than by prejudice or stereotype) necessarily turns on facts related to Defendants’ deliberative process.” (Id. at 28.) Because those facts were not yet before it, the Court directed the parties “to proceed with discovery and prepare for trial on the issues of whether, and to what

1 extent, deference is owed to the Ban and whether the Ban violates equal protection, substantive
2 due process, and the First Amendment.” (*Id.* at 31.) Defendants filed a notice of appeal and
3 requested that the Ninth Circuit stay the preliminary injunction pending its review. (Dkt. No.
4 236); see also *Karnoski v. Trump*, No. 18-35347, Dkt. No. 3 (9th Cir. May 4, 2018). On July 18,
5 2018, the Ninth Circuit denied the request, holding that “a stay of the preliminary injunction
6 would upend, rather than preserve, the status quo.” (Dkt. No. 295.) The appeal is set to be heard
7 in October 2018. (Dkt. No. 296.)

8 **II. The Requested Discovery**

9 Throughout this litigation, Plaintiffs have sought discovery regarding:

- 10 • The identity of the individuals with whom President Trump discussed or
11 corresponded regarding policies on military service by transgender people;
- 12 • The date on which President Trump decided that transgender people should be
13 banned from military service;
- 14 • The process by which President Trump formulated the Ban, including identification
15 of “all sources of fact or opinion” he “consulted, considered, or otherwise referred to”
16 in formulating the Ban;
- 17 • Documents and communications related to President Trump’s consultation with
18 employees, agents, contractors, or consultants of the United States Armed Forces
19 regarding military service by transgender people;
- 20 • Documents and communications relating to, and including all drafts of, the 2017
21 Memorandum;
- 22 • Communications between President Trump and Congress concerning military service
23 by transgender people prior to August 26, 2017; and
- 24 • Documents relating to visits and communications between President Trump and his
Evangelical Advisory Board.

(Dkt. No. 278 at 3-4; Dkt. No. 268 at 4-5.)

21 To date, Defendants have objected to each of these requests and have withheld or
22 redacted tens of thousands of documents based on the deliberative process privilege. President
23

1 Trump has refused to substantively respond at all based on the presidential communications
2 privilege. (Dkt. No. 245 at 8-9; Dkt. No. 246, Ex. 28; Dkt. No. 278 at 4-5.)

3 On May 10, 2018, Plaintiffs moved to compel responses withheld under the deliberative
4 process privilege. (Dkt. No. 245.) On May 21, 2018, Defendants moved to preclude discovery
5 directed at President Trump. (Dkt. No. 268.) These motions are now before the Court.

6 Discussion

7 I. Trump v. Hawaii

8 Before turning to the merits of the pending discovery motions, the Court addresses the
9 impact of the Supreme Court’s recent ruling in Trump v. Hawaii, 138 S.Ct. 2392 (2018). In
10 Hawaii, the Supreme Court held that President Trump’s policy restricting the entry of certain
11 foreign nationals did not violate the Immigration and Nationality Act or the Establishment
12 Clause. The majority found the policy to be “facially neutral toward religion” and plausibly
13 related to the government’s stated national security objectives. Id. at 2418-24. While
14 Defendants claim that the same reasoning precludes discovery directed to President Trump in
15 this case, the Court disagrees for the following reasons:

16 First, Hawaii involved an entirely different standard of scrutiny. The Court already ruled
17 that the Ban is subject to strict scrutiny (Dkt. No. 233 at 20-24) and rejects Defendants’
18 suggestion that it “turns on a medical condition—gender dysphoria—and its treatment, not on
19 any protected status.” (Dkt. No. 289 at 5.) Unlike the policy in Hawaii, the Court need not “look
20 behind the face” of the Ban, as the Ban is facially discriminatory. 138 S.Ct. at 2420. President
21 Trump’s announcement explains that “the United States Government will not accept or allow . . .
22 Transgender individuals to serve in any capacity in the U.S. Military” (Dkt. No. 149, Ex. 1); the
23 2017 Memorandum, 2018 Memorandum, and Implementation Plan are titled “Military Service
24

1 by Transgender Individuals.” (Dkt. No. 149, Ex. 2; Dkt. No. 224, Exs. 1, 3.) That the Ban turns
2 on transgender identity—and not on any medical condition—could not be clearer.¹

3 Second, the majority in Hawaii repeatedly emphasized that the exclusion policy was
4 formulated following a “worldwide, multi-agency review.” See, e.g., 138 S.Ct. at 2404-06,
5 2408, 2421. This review considered risks “identified by Congress or prior administrations” and
6 involved the Department of Homeland Security (DHS), the State Department, “several
7 intelligence agencies,” and “multiple Cabinet members and other officials.” Id. at 2403-05. The
8 majority considered this process “persuasive evidence” that the policy had “a legitimate
9 grounding in national security concerns, quite apart from any religious hostility.” Id. at 2421. In
10 contrast, Defendants in this case have provided no information whatsoever concerning the
11 process by which the Ban was formulated.

12 Finally, Hawaii does not purport to address the scope of discovery or the application of
13 any privilege. For these reasons, the Court finds that Hawaii does not impact its consideration of
14 either of the pending motions.

15 **II. Plaintiffs’ Motion to Compel**

16 Plaintiffs move to compel documents withheld under the deliberative process privilege.
17 (Dkt. No. 245.)

18 The deliberative process privilege protects documents and materials which would reveal
19 “advisory opinions, recommendations and deliberations comprising part of a process by which
20

21 ¹ The Implementation Plan prohibits transgender people who have *never* been diagnosed
22 with gender dysphoria from serving unless they are “willing and able to adhere to all standards
23 associated with their biological sex.” (Dkt. No. 224, Ex. 1 at 4, Ex. 2 at 7.) As the Court
24 previously noted, “[r]equiring transgender people to serve in their ‘biological sex’ . . . would
force [them] to suppress the very characteristic that defines them as transgender in the first
place.” (Dkt. No. 233 at 13.)

1 governmental decisions and policies are formulated.” N.L.R.B. v. Sears, Roebuck & Co., 421
2 U.S. 132, 150 (1975). For the privilege to apply, a document must be (1) “predecisional,”
3 meaning that it was “generated before the adoption of an agency’s policy or decision,” and (2)
4 “deliberative,” meaning that it contains “opinions, recommendations, or advice about agency
5 policies.”² FTC v. Warner Commc’ns Inc., 742 F.2d 1156, 1161 (9th Cir. 1984). “Purely factual
6 material that does not reflect deliberative processes is not protected.” Id.

7 The deliberative process privilege is not absolute. Several courts have recognized that
8 the privilege does not apply in cases involving claims of governmental misconduct or where the
9 government’s intent is at issue. See, e.g., In re Sealed Case, 121 F.3d 729, 738, 746 (D.C. Cir.
10 1997); In re Subpoena Duces Tecum, 145 F.3d 1422, 1424-25 (D.C. Cir. 1998). However,
11 “[t]his appears to be an open question in the Ninth Circuit,” Vietnam Veterans of Am. v. CIA,
12 2011 WL 4635139, at *10 (N.D. Cal. Oct. 5, 2011), and even where there are claims of
13 governmental misconduct, courts in this district and circuit have applied a balancing test. See,
14 e.g., Wagafe v. Trump, No. 17-094RAJ, Dkt. No. 189 (W.D. Wash. May 21, 2018); All. for the
15 Wild Rockies v. Pena, No. 16-294RMP, 2017 WL 8778579, at *6-8 (E.D. Wash. Dec. 12, 2017);
16 Thomas v. Cate, 715 F. Supp. 2d 1012, 1021 (E.D. Cal. 2010). For purposes of this motion, the
17 Court assumes, without deciding, that applying the balancing test set forth in Warner, 742 F.2d at
18 1161, is appropriate.

19 In Warner, the Ninth Circuit instructed courts to consider whether “[Plaintiffs’] need for
20 the materials and the need for accurate fact-finding override the government’s interest in

21 _____
22 ² Plaintiffs contend that Defendants have improperly asserted the deliberative process
23 privilege over categories of documents that are facially outside its scope (i.e., post-decisional
24 documents generated after President Trump’s July 26, 2017 announcement and non-deliberative
documents containing purely factual information). (Dkt. No. 245 at 15-17.) Because the Court
finds that the deliberative process privilege does not apply at all, it need not address its scope.

1 nondisclosure.” Id. In making this determination, relevant factors include: “(1) the relevance of
2 the evidence; (2) the availability of other evidence; (3) the government’s role in the litigation;
3 and (4) the extent to which disclosure would hinder frank and independent discussion regarding
4 contemplated policies and decisions.” Id.

5 As with all evidentiary privileges, “the deliberative process privilege is narrowly
6 construed” and Defendants bear the burden of establishing its applicability. Greenpeace v. Nat’l
7 Marine Fisheries Serv., 198 F.R.D. 540, 543 (W.D. Wash. 2000) (citations omitted). In addition
8 to showing that withheld documents are privileged, Defendants must comply with formal
9 procedures necessary to invoke the privilege. Id. “Blanket assertions of the privilege are
10 insufficient. Rather [Defendants] must provide ‘precise and certain’ reasons for preserving the
11 confidentiality of designated material.” Id.

12 **A. Relevance of the Evidence**

13 The evidence Plaintiffs seek is undoubtedly relevant. The Court has already found that
14 the Ban’s constitutionality “necessarily turns on facts related to Defendants’ deliberative
15 process.” (Dkt. No. 233 at 28.) Defendants may not simultaneously claim that deference is
16 owed to the Ban because it is the product of “considered reason [and] deliberation,” “exhaustive
17 study,” and “comprehensive review” by the military (Dkt. No. 194 at 17; Dkt. No. 226 at 9)
18 while also withholding access to information concerning these deliberations, including whether
19 the military was even involved.³ This information is central to the litigation and should not be
20 withheld from the searching judicial inquiry that strict scrutiny requires. See In re Subpoena,
21 145 F.3d at 1424; see also Johnson v. California, 543 U.S. 499, 506 (2005) (observing that strict
22 scrutiny is intended to assure that the government “is pursuing a goal important enough to

23 ³ The Court notes that Defendants have steadfastly refused to identify even one general or
24 military official President Trump consulted before announcing the Ban.

1 warrant use of a highly suspect tool.”); Arizona Dream Act Coalition v. Brewer, 2014 WL
2 171923, at *3 (D. Ariz. Jan. 15, 2014) (holding that withheld communications were “highly
3 relevant” because the “Court must consider the actual intent behind Arizona’s driver’s license
4 policy when it considers the merits of this case.”). This factor weighs in favor of disclosure.

5 **B. Availability of Other Evidence**

6 Defendants possess all of the evidence concerning their deliberations over the Ban, and
7 there is no suggestion that this evidence can be obtained from other sources. Defendants’
8 production of non-privileged documents and an administrative record do not obviate Plaintiffs’
9 need for responsive documents concerning the deliberative process. (See Dkt. No. 235 at 2.)
10 This factor weighs in favor of disclosure.

11 **C. Government’s Role in the Litigation**

12 There is no dispute that the government is a party to this litigation. This factor weighs in
13 favor of disclosure.

14 **D. Extent to Which Disclosure Would Hinder Independent Discussion**

15 While Defendants claim that disclosure “risks chilling future policy discussions on
16 sensitive personnel and security matters” and could “potentially lead[] to a direct negative impact
17 to national security” (Dkt. No. 266 at 12-13), they cannot avoid disclosure based on mere
18 speculation. Instead, Defendants must identify specific, credible risks which cannot be mitigated
19 by the existing protective order in this case (Dkt. No. 183), and must explain why these risks
20 outweigh the Court’s need to perform the “searching judicial inquiry” that strict scrutiny
21 requires. Johnson, 543 U.S. at 506. Because they have failed to do so, this factor weighs in
22 favor of disclosure.

1 Having found that the deliberative process privilege does not apply in this case, the Court
2 GRANTS Plaintiffs' Motion to Compel.

3 **III. Defendants' Motion for Protective Order**

4 Defendants move for a protective order precluding discovery directed at President
5 Trump. (Dkt. No. 268.) Defendants concede that the President has not provided substantive
6 responses or produced a privilege log, but contend that because the requested discovery raises
7 "separation-of-powers concerns," Plaintiffs must exhaust discovery "from sources other than the
8 President and his immediate White House advisors and staff" before he is required to do
9 formally invoke the privilege. (*Id.* at 8, 10-11.)

10 The Supreme Court has recognized that discovery directed at the President involves
11 "special considerations," and that his "constitutional responsibilities and status are factors
12 counseling judicial deference and restraint in the conduct of litigation" against him. *Cheney v.*
13 *U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 385, 387 (2004) (citation omitted).
14 Nevertheless, the President is not immune from civil discovery. Courts have permitted discovery
15 directed at the President where, as in this case, he is a party or has information relevant to the
16 issues in dispute. *See, e.g., United States v. Nixon*, 418 U.S. 683, 706 (1974) (rejecting "an
17 absolute, unqualified Presidential privilege of immunity from judicial process under all
18 circumstances"); *Clinton v. Jones*, 520 U.S. 681, 704 (1997) (noting that "[s]itting Presidents
19 have responded to court orders to provide testimony and other information with sufficient
20 frequency that such interactions between the Judicial and Executive Branches can scarcely be
21 thought a novelty.").

22 The President may invoke the privilege "when asked to produce documents or other
23 materials that reflect presidential decisionmaking and deliberations that [he] believes should
24

1 remain confidential.” In re Sealed Case, 121 F.3d at 744. Once he does so, those documents and
2 materials are presumed to be privileged. Id. However, “the privilege is qualified, not absolute,
3 and can be overcome by an adequate showing of need.” Id. at 745. If the Court finds that an
4 adequate showing has been demonstrated (i.e., that the materials contain evidence “directly
5 relevant to issues that are expected to be central to the trial” and “not available with due
6 diligence elsewhere”), it may then proceed to review the documents in camera to excise
7 non-relevant material. Id. at 754, 759.

8 To date, President Trump and his advisors have failed to invoke the presidential
9 communications privilege, to respond to a single discovery request, or to produce a privilege log
10 identifying the documents, communications, and other materials they have withheld. While
11 Defendants claim they need not do so until Plaintiffs “exhaust other sources of non-privileged
12 discovery, meet a heavy, initial burden of establishing a heightened, particularized need for the
13 specific information or documents sought, and at a minimum substantially narrow any requests
14 directed at presidential deliberations” (Dkt. No. 268 at 3), the Court finds no support for this
15 claim. To the extent the President intends to invoke the privilege, the Court already ordered that
16 he “‘expressly make the claim’ and provide a privilege log ‘describ[ing] the nature of the
17 documents, communications, or tangible things not produced or disclosed—and do so in a
18 manner that, without revealing information itself privileged or protected, will enable other parties
19 to assess the claim.’” (Dkt. No. 235 at 3 (quoting Fed. R. Civ. P. 25(b)(5)(i)-(ii).) Only then can
20 the Court evaluate whether the privilege applies and if so, whether Plaintiffs have established a
21 showing of need sufficient to overcome it.

1 Having found that President Trump has failed to demonstrate that he need not invoke the
2 presidential communications privilege, the Court DENIES Defendants' Motion for a Protective
3 Order.

4 **Conclusion**

5 The Court ORDERS as follows:

- 6 1. The Court GRANTS Plaintiffs' Motion to Compel and ORDERS Defendants to turn over
7 those documents that have been withheld solely under the deliberative process privilege
8 within 10 days of the date of this Order;
- 9 2. The Court DENIES Defendants' Motion for a Protective Order and ORDERS Defendants
10 to produce a privilege log identifying the documents, communications, and other
11 materials they have withheld under the presidential communications privilege within 10
12 days of the date of this Order;
- 13 3. The Court notes that the government privilege logs it has reviewed to date are deficient
14 and do not comply with Federal Rule of Civil Procedure 26(b)(5)(A)(i)-(ii). (See Dkt.
15 No. 246, Exs. 11-27.) Privilege logs must provide sufficient information to assess the
16 claimed privilege and to this end must (a) identify individual author(s) and recipient(s);
17 and (b) include *specific, non-boilerplate* privilege descriptions *on a document-by-*
18 *document basis*. To the extent they have not already done so, the Court ORDERS
19 Defendants to produce revised privilege logs within 10 days of the date of this Order;
- 20 4. Should any discovery disputes remain following Defendants' compliance with the above
21 directives, the parties shall bring them before the Court jointly using the procedure set
22 forth in LCR 37.

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The clerk is ordered to provide copies of this order to all counsel.

Dated July 27, 2018.



Marsha J. Pechman
United States District Judge

EXHIBIT 24

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,	)	C17-01297-JMP
)	
Plaintiffs, and	)	SEATTLE, WASHINGTON
)	
STATE OF WASHINGTON,	)	November 12, 2019
)	
Plaintiff-Intervenor,)	
)	
v.	)	Motion Hearing
)	
DONALD J. TRUMP, in his)	
official capacity as)	
President of the United)	
States, et al.,)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff	Jordan Heinz
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1 process where you go -- I mean, I'm somewhat sympathetic to
2 the government. He says four cases is just too much to
3 handle. I'll give him that. So why don't you basically
4 collaborate and say: This is what we want. This is the
5 order we want it in.

6 MR. HEINZ: As I said earlier, we're happy to
7 prioritize Requests for Production. And we'd be happy to
8 coordinate that across the other four cases. Because across
9 the four cases, although there are 200-some requests, they
10 all overlap, right?

11 THE COURT: I would assume, unless you really are
12 creative.

13 MR. HEINZ: We're not that coordinated, Your Honor.
14 So the requests all ask for the same stuff. And we would be
15 happy to prioritize those.

16 But going back to the requests themselves, so many of the
17 requests the privilege just doesn't apply. And it can't
18 apply. And the few where the privilege could plausibly
19 apply, that's where the analysis and the *Warner* factors come
20 into play. But for all of those, regardless of what's in the
21 document, the government's intent is always at issue.

22 That granular analysis, RFP-by-RFP, is certainly much more
23 detailed and grasps the issues in a much more detailed way
24 than the prior order.

25 THE COURT: Okay. So is there any other judge that

1 suggested that you coordinate across all four in terms of
2 your discovery?

3 MR. HEINZ: I'm not aware of a judge doing that. We
4 do speak to the other teams so that we kind of know what's
5 going on, but we do not coordinate in terms of how we are
6 approaching the government. And we don't get on joint
7 conference calls with the government. It's a separate
8 process. Because we're all asking -- we're all -- three of
9 the four courts are all dealing with this same issue. And
10 all of the plaintiffs do not believe that this privilege is
11 being properly asserted here.

12 THE COURT: Okay. Thank you.

13 MR. HEINZ: Thank you, Your Honor.

14 THE COURT: I'm going to write an opinion for you and
15 you should see it in a week. But before that I'm going to
16 give you some homework. Okay?

17 This is the homework. First of all, you've got to take a
18 look at what you are being given under the *Doe* case. Second,
19 you have to take your Requests for Production, group the
20 Requests for Production and put them in order of priority.
21 The government has to turn over all of its custodians. Why
22 you haven't done it, I don't know. But you've got to get it
23 done and I suggest you get it done in a week.

24 Plaintiffs need to look at that list of custodians to see
25 if there's anybody else they want. If they are doing as

1 broad a sweep, in other words, if the government is doing as
2 broad a sweep as they say they are, probably everybody you
3 want is already on the list and we can set that one aside.

4 For the government. I'm sorry you didn't pay attention to
5 looking at Requests for Production, because you're going to
6 have to now. You did an analysis of this. You had a team
7 that went through it. You had a team that coded it. You
8 used software. And I don't know why you didn't, at the time,
9 pick out the Request for Production and decide which
10 documents or which logs would go to which Request for
11 Production. But that's what you're going to have to do.

12 So they're going to give you their list of priorities and
13 then you're going to start working through them to respond to
14 the Requests for Production.

15 It's not good enough to throw a stack of documents over or
16 even a group of logs and say: There's your answers, go find
17 them. I interpret the Rules For Civil Procedure is that you
18 have to respond to each Request for Production with such
19 particularity that they can go find exactly what you're
20 talking about. And I don't mean saying, oh, it's in the
21 public record. I mean, if you think it's in the public
22 record, you either produce it for them or you say: It's in
23 the Record of Congress on such and such a day, this was the
24 speaker, and you can find it at page 92. It's usually easier
25 just to give it to them.

1 So we're going to work our way through those Requests for
2 Production. If you believe that the Mattis ruling that you
3 got from the court in DC applies to what it is you want on
4 the *Carter* cases, we need to go through that analysis. And
5 so if those are the Requests for Production that you want to
6 tee up first, then that's it.

7 But you're going to see an order coming out from me where
8 I want your plan put together so that both sides know what
9 the order of priorities are. You get to pick the order of
10 when they turn it over. They have to respond to the Requests
11 for Production. I'm not going to go into what I call the
12 smoke-and-fire analysis until I decide whether or not, in
13 each response to the Request for Production, the deliberative
14 process applies. Okay? But we're going to go through it.

15 We're also going to sit down and do it. You're going to
16 come back and see me in December, and we're going to sit down
17 and go through, line-by-line, your Requests for Production,
18 what you've got, what the deficiencies are, and you're going
19 to have to explain to me what's being withheld and why you
20 think you're due it or what's being withheld and why it's
21 appropriate to withhold it.

22 Obviously you're having some problems in organizing
23 yourselves. So for plaintiffs, if you've got -- make it
24 easier for counsel to give you what it is that he's got.
25 Don't make him respond to 200. If you can get it down to 50

1 requests and you all agree on the same ones, cut his work by
2 75 percent. Because I also don't believe you're not also
3 duplicating everything. You are. You've got to be. There's
4 only so many questions you can ask. And, you know, we've got
5 dozens and dozens of lawyers here. You can figure out what's
6 most important and the priority that it's in. Okay?

7 So I'm trying to make it easier for both of you in saying,
8 you know, they need to be more specific, you need to be more
9 specific. And I don't buy: We didn't give it to them
10 because they didn't specifically ask. If there's something
11 you know is going to be necessary for them to find the
12 documents that they're looking for, by all means tell them
13 where to go find it. Because this is part of the discovery
14 process is the defense saying: Look, we did a good job here.
15 Show them that you did a good job, or at least show them
16 where they can look to see where you did a good job.

17 All right? Everybody understand? You're going to get a
18 written order out of me in about a week. But you might as
19 well start. And I don't see any reason why some of this
20 can't be done while you're all sitting in the room. I don't
21 know where you're going or when you're going, but, you know,
22 I've got little rooms back here that you might take advantage
23 of everybody being in the same place, because it certainly
24 appears to me you're spending too much time writing and not
25 enough time actually talking face-to-face. By the way it's

1 face-to-face or voice-to-voice. It's not e-mail-to-e-mail,
2 it's not letter-to-letter. That's what the rule is here in
3 this jurisdiction. All right. Any questions about what I've
4 just said?

5 MR. CARMICHAEL: Your Honor, just for the Requests
6 for Production, so you're aware, to organize those by Request
7 for Production is going to take months. There's no way we
8 could possibly have that by December.

9 THE COURT: You're not going to have to order all
10 200. I'm going to tell them they get five or six, okay? You
11 don't -- I'm trying to make it easier for you to go through
12 this batch-by-batch. Because just as you say, you're hoping
13 they're going to stop when they get what they need. They're
14 going to put it in order of priority, you're going to work
15 your way through it. I'm sorry you didn't do that before,
16 but you decided on your own method and I don't find it
17 acceptable.

18 You're not going to have to do 50. You're not going to
19 have to do 100. You're not going to have to do 200. You're
20 probably going to have to do three, four or five. Okay?

21 MR. CARMICHAEL: All right.

22 THE COURT: Okay, you'll be back. Ms. Miller is
23 going to work out another date when you're going to sit down
24 and talk to me and we'll see how much progress we've made.

25 MR. HEINZ: Just one follow-up question.

1 THE COURT: Yeah.

2 MR. HEINZ: Your Honor's request that we sit down and
3 prioritize, that was across the cases, correct?

4 THE COURT: I'm going to be looking to you to say
5 what are you doing in this case? If you want to bring the
6 other folks along, I'm going to be asking you -- I'm trying
7 to make it easier for them to comply.

8 MR. HEINZ: Okay.

9 THE COURT: Okay?

10 The easier you can make it for them to comply, the faster
11 you're going to get this material.

12 MR. HEINZ: Next week we actually have our first
13 deposition of an expert, one of our experts, so all of the
14 cases will be there for that. And we, I'm sure, can chat
15 early next week in person.

16 THE COURT: Okay. We're not talking about chatting.
17 We're talking true negotiation here, okay? Everybody puts on
18 their cooperation hat and you see how narrow you can make
19 these. And you're going to see just how cooperative the
20 government can be. Because I've just told them the faster
21 they show you that this was a good process, the faster we're
22 going to work through these materials. Okay?

23 MR. HEINZ: Understood.

24 THE COURT: All right. Okay. Look for the written
25 order. But otherwise please start on the process. Okay?

1 We'll be at recess.

2 (Recess.)

3

4 C E R T I F I C A T E

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7 I certify that the foregoing is a correct transcript from
8 the record of proceedings in the above-entitled matter.

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12 /s/ *Debbie Zurn*

13 DEBBIE ZURN
14 COURT REPORTER

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EXHIBIT 25

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RYAN KARNOSKI et al.,

Plaintiffs, and

STATE OF WASHINGTON,

Plaintiff-Intervenor,

v.

DONALD J TRUMP et al.,

Defendants.

CASE NO. C17-1297 MJP

ORDER ON PLAINTIFF'S
MOTION TO COMPEL
DOCUMENTS WITHHELD
UNDER THE DELIBERATIVE
PROCESS PRIVILEGE

THIS MATTER comes before the Court on Plaintiffs' Renewed Motion to Compel Documents Withheld Under the Deliberative Process Privilege. (Dkt. No. 364.) Having reviewed the Motion, the Response (Dkt. No. 380), the Reply (Dkt. No. 385), and all related papers, the Court GRANTS in part and DENIES in part Plaintiffs' Motion.

Background

I. Requested Discovery

Plaintiffs allege that the creation and implementation of Defendants’ ban on transgender military service (the “Ban”) is unconstitutional. (See Dkt. No. 347, Second Amended Complaint (“SAC”).) The Ban began with the July 26, 2017 Twitter announcement by President Donald J. Trump of a prohibition against military service by openly transgender people, which reversed the (former) Secretary of Defense Ashton Carter’s Directive-type Memorandum 16-005 (the “Carter Policy”) providing that transgender people would be allowed to accede into the military not later than July 1, 2017. (Dkt. No. 144, Ex. C at 5; Dkt. No. 145 at ¶ 12; Dkt. No. 146 at ¶ 8.) The announcement of the Ban was followed by the “Mattis Plan”—then-Secretary of Defense James Mattis’s strategy for implementing the President’s new policy—and the President’s March 23, 2018 Presidential Memorandum directing the Department of Defense (“DoD”) to implement the Ban. (Dkt. No. 224, Ex. 3.)

Plaintiffs seek discovery to substantiate their allegations that the Ban was not animated by independent military judgment but was instead the product of impermissible discriminatory intent. (Dkt. No. 364 at 6.) To this end, Plaintiffs have served 68 Requests for Production, which seek, among other things, documents related to the Government’s justifications for the Ban; communications and materials considered by the “Panel of Experts” (the “Panel”), and statistics and data regarding transgender military service. (Dkt. No. 364.) Defendants have produced documents without responding to individual Requests for Production, producing documents as stored in the ordinary course of business by creating and searching lists of terms and custodians—without input from Plaintiffs—and then reviewing the collections for privilege. (Dkt. No. 381, Ex. 1, Declaration of Robert E. Easton (“Easton Decl.”), ¶ 5.)

II. Procedural History

On July 27, 2019, this Court granted Plaintiffs' previous Motion to Compel Discovery Withheld Under the Deliberative Process Privilege. (Dkt. No. 245; Dkt. No. 299). In reaching its conclusion, the Court found that Plaintiffs' interest in the documents prevailed under the balancing test set forth in FTC v. Warner Commc'ns Inc., 742 F.2d 1156, 1161 (9th Cir. 1984), which weighs: "(1) the relevance of the evidence; (2) the availability of other evidence; (3) the government's role in the litigation; and (4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions." Id.

Defendants appealed, and on June 14, 2019 the Ninth Circuit issued a writ of mandamus, vacating this Court's Order. Karnoski v. Trump, 926 F.3d 1180 (9th Cir. 2019). The Ninth Circuit approved of the Court's reliance on Warner, 742 F.2d at 1161, and found that the second and third Warner factors—the availability of other evidence and the government's role in the litigation—favor Plaintiffs. Karnoski, 926 F.3d at 1206. Regarding the first and fourth Warner factors, however, the Ninth Circuit concluded that "the current record is insufficient to establish relevance" and the fourth factor in particular "deserves careful consideration, because the military's interest in full and frank communication about policymaking raises serious—although not insurmountable—national defense interests." Id. The Ninth Circuit suggested that on remand this Court should "consider classes of documents separately when appropriate" and, "[i]f Defendants persuasively argue that a more granular analysis would be proper, [the Court] should undertake it." Id.

To date, Defendants have asserted the deliberative process privilege as a basis for withholding or redacting more than 50,000 responsive documents, and as the sole basis for withholding or redacting approximately 35,000 responsive documents. (Dkt. No. 364 at 6.) In

1 the instant motion, Plaintiffs again seek to compel documents withheld under the deliberative
2 process privilege, suggesting nine broad categories, meant to encompass the 68 Requests for
3 Production, through which the Court can evaluate the withheld documents. (Dkt. No. 364 at
4 10-12; Dkt. No. 365, Exs. 1-3.)

5 **III. Doe Opinion**

6 On September 13, 2019, in a related case, Doe 2 v. Esper, No. CV 17-1597 (CKK), 2019
7 WL 4394842, at *8 (D.D.C. Sept. 13, 2019), the United States District Court for the District of
8 Columbia concluded that the deliberative process privilege does not apply to documents that
9 were used or considered in the development of the Mattis Plan. The Doe court found that “the
10 deliberative process privilege should not be used to shield discovery into Defendants’
11 decision-making process and intent when the extent and scope of that decision-making process is
12 a central issue in this lawsuit.” Id. at *7. The court further found that the plaintiffs’ need for the
13 requested documents outweighed the deliberative process privilege, using a balancing test not
14 unlike the one described in Warner, 742 F.2d at 1161. Id. at *8 (citing In re Sealed Case, 121
15 F.3d 729, 737 (D.C. Cir. 1997)). Pursuant to the Doe court’s ruling, Defendants will produce
16 documents from three of the categories Plaintiffs seek to compel in this case: Panel
17 Communications; Testimony, Documents, and Data the Panel Received; and Panel Deliberations
18 and Decisions. (Dkt. No. 389 at 2 (citing Dkt. No. 364 at 7).)

19 **Discussion**

20 **I. Legal Standards**

21 The Federal Rules of Civil Procedure authorize parties to conduct discovery into “any
22 nonprivileged matter that is relevant to any party’s claim or defense.” FRCP 26(b)(1). The
23 Rules authorize parties to discover material which is likely to be inadmissible at trial, so long as
24

1 the requested information “appears reasonably calculated to lead to the discovery of admissible
2 evidence.” Id. “[V]irtually any document not privileged may be discovered by the appropriate
3 litigant, if it is relevant to his litigation” N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132,
4 149 (1975). The party resisting discovery has a heavy burden of showing why discovery should
5 be denied. Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir.1975).

6 The deliberative process privilege protects documents and materials which would reveal
7 “advisory opinions, recommendations and deliberations comprising part of a process by which
8 governmental decisions and policies are formulated.” N.L.R.B., 421 U.S. at 150. For the
9 privilege to apply, a document must be (1) “predecisional,” meaning that it was “generated
10 before the adoption of an agency’s policy or decision,” and (2) “deliberative,” meaning that it
11 contains “opinions, recommendations, or advice about agency policies.” Warner, 742 F.2d at
12 1161. “Purely factual material that does not reflect deliberative processes is not protected.” Id.

13 **II. Privilege Assessment**

14 On the current record, the Court finds no avenue for evaluating Defendants’ privilege
15 assertions within the framework of the Ninth Circuit’s guidance. Defendants have asserted the
16 deliberative process privilege over 35,000 responsive documents, a volume that prevents the
17 Court from evaluating documents on an individual basis. (Dkt. No. 364 at 6.) Further, the Court
18 cannot evaluate Defendants’ privilege assertions by individual Requests for Production because
19 Defendants produced documents as kept in the ordinary course of business, without responding
20 to individual Requests. (Easton Decl., ¶ 5.) Finally, Plaintiffs suggest the Court should evaluate
21 privilege assertions based on nine overarching categories of documents meant to encompass all
22 68 Requests for Production, but, as Defendants note, these proposed categories are too broad to
23 be meaningful. (Dkt. No. 364 at 10-12; Dkt. No. 380 at 6-7.)

1 Defendants' current production is therefore insufficient, as it does not allow Plaintiffs or
2 the Court to assess Defendants' privilege claims, FRCP 26(b)(5)(ii), or conduct the type of
3 "granular analysis" suggested by the Ninth Circuit, Karnoski, 926 F.3d at 1206. Thus, the
4 Parties must take several actions before the Court can review Defendants' privilege assertions:

- 5 1) Defendants must produce their complete list of custodians and search terms within
6 seven (7) days of the date of this Order;
- 7 2) Plaintiffs shall provide Defendants with a list of Requests for Production, sorted by
8 order of priority, within ten (10) days of the date of this Order. Plaintiffs may also
9 provide Defendants with a list of additional custodians and search terms. Plaintiffs
10 are encouraged to coordinate with counsel in the other active cases concerning the
11 Ban, in order to consolidate and prioritize the Requests for Production;
- 12 3) Once the Plaintiffs have provided their list of Requests for Production by order of
13 priority, the Government must begin responding to each Request, consulting with
14 Plaintiff to apply additional search terms or search additional custodians.

15 This Court will adopt the reasoning and conclusions of the Doe court concerning
16 documents related to the Mattis plan. Doe, 2019 WL 4394842, at *5-10. Whether Defendants
17 may assert the privilege over documents related to the Carter Policy remains an open question
18 that the Court will address upon a motion by the Plaintiffs. In December, the Parties and the
19 Court will begin reviewing Defendants' privilege assertions by individual Requests for
20 Production, beginning with the first five prioritized Requests.

21 **Conclusion**

22 Because the Defendants' current production does not permit Plaintiffs or the Court to
23 assess Defendants' privilege claims, after Plaintiffs have provided Defendants with a list of
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1 Requests for Production ordered by priority, Defendants are ORDERED to begin responding to
2 each Request. On December 10, 2019 at 4 p.m., the Parties will meet with the Court to begin
3 assessing Defendants' privilege claims by individual Requests for Production.

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The clerk is ordered to provide copies of this order to all counsel.

Dated November 19, 2019.



Marsha J. Pechman
United States District Judge

EXHIBIT 26

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,	)	C17-01297-MJP
)	
Plaintiffs, and	)	SEATTLE, WASHINGTON
)	
STATE OF WASHINGTON,	)	December 10, 2019
)	
Plaintiff-Intervenor,)	
)	
v.	)	Status Hearing
)	
DONALD J. TRUMP, in his)	
official capacity as)	
President of the United)	
States, et al.,)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff	Jordan Heinz
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1 THE CLERK: This is in the matter of Ryan Karnoski
2 versus Donald Trump, C17-1297. Counsel, please make your
3 appearance for the record.

4 MR. HEINZ: Jordan Heinz for the plaintiffs.

5 MR. SIEGFRIED: Dan Siegfried for the plaintiffs.

6 MR. IKARD: Sam Ikard for the plaintiffs.

7 THE COURT: Can you speak up, please?

8 MR. IKARD: Sam Ikard for the plaintiffs.

9 MR. SYKES: This is my colleague, Rachel Horvitz, for
10 the plaintiffs. She is battling a cold and has lost her
11 voice.

12 THE COURT: So she's way at the other end.

13 MR. SYKES: And I'm Jason Sykes for the plaintiffs.

14 MS. ALA'ILIMA: I'm Chalia Stallings Ala'ilima for
15 plaintiff intervenors, Washington State.

16 MR. SKURNIK: Matthew Skurnik for the defendants.

17 MR. CARMICHAEL: Drew Carmichael, Department of
18 Justice, for the defendants.

19 THE COURT: Counsel, thank you very much for the
20 materials you sent me on your joint status report. And I've
21 taken a look at them and gone back through what you told me
22 and tried to review, in my mind, where we were the last time
23 we were here. So what I would like to do is go through each
24 of the items that were identified by the plaintiff as their
25 priority. And I intend this to be an informational session

1 to help me understand what the problems might be that hold up
2 or where it is you have sticking points.

3 And so I'd like to start out, please, if we could, I want
4 to start with the Request for Production No. 29. And I think
5 what I need here -- I think what I need is some understanding
6 about how these meetings work. Because there were issues
7 concerning those people who had a vote. That now has been
8 resolved with the materials being turned over. Now, as I
9 understand it, plaintiff wants those people who were at the
10 table but who did not vote.

11 And so can anybody explain to me how these things work?
12 If the people are at the table but do not vote, do they
13 engage in dialogue? Do they offer their opinion? Do they
14 write documents for others to absorb? Or are they simply
15 there to absorb and report back to their various agencies?
16 Does anybody know?

17 MR. CARMICHAEL: I do, Your Honor.

18 THE COURT: Okay.

19 MR. CARMICHAEL: From the defendants.

20 And I guess the answer is various, depending on who they
21 are. So there is a few people that presented and we
22 identified them specifically who presented to the panel. A
23 few that -- I think there was one or two that sat in the
24 final deliberations. And that's why we presented the meeting
25 minutes ahead of time, so they could see who was there during

1 the most important meetings.

2 So you can see who was there. And if plaintiffs want to
3 know who these individuals are, I'm happy to explain who they
4 are and what their role was. But they have varying roles.
5 That's why we did voting panel members and non-voting panel
6 members, because voting members all have the same role, the
7 same exact one. And it varies depending on whether you
8 showed up or didn't show up.

9 THE COURT: Well, I'm assuming you can tell from the
10 transcript who spoke or who presented.

11 MR. CARMICHAEL: Yes. You can tell who presented.

12 THE COURT: Okay. And presumably, since you've been
13 through all of this data, you know who was communicating by
14 writing back and forth.

15 MR. CARMICHAEL: We would know the primary people
16 that did, yes.

17 THE COURT: So if the primary people were writing
18 back and forth offering opinions, why wouldn't this fall into
19 the same category and under the same analysis as the analysis
20 done in *Doe*? In other words, why make this distinction if
21 they were speaking or if they were writing and if they were
22 offering up their counsel, why isn't this the same as those
23 who were voting?

24 MR. CARMICHAEL: So I think the problem is that it's
25 such a large swath of individuals. Like if they wanted -- I

1 identified three specific people that I thought could be on
2 that level. And if plaintiffs wanted to narrow it to those
3 three individuals, I think I can probably go back to the
4 client and get them to agree to waive it for those three
5 individuals.

6 THE COURT: How many people are we talking about?

7 MR. CARMICHAEL: There's 156 custodians.

8 THE COURT: I'm not talking about custodians, I'm
9 talking about how many people were at the table?

10 MR. CARMICHAEL: For the final deliberations? So the
11 final deliberations, there's only one extra person that was
12 there.

13 THE COURT: Okay. And how about for the non-final
14 negotiations?

15 MR. CARMICHAEL: It depends on which particular
16 meeting. There's nine meetings. So that's why we need the
17 meeting minutes. So it depends. That's why we gave the
18 meeting minutes so you can see --

19 THE COURT: If there's nine meetings and there's a
20 finite number of people in the room for each meeting, what
21 are we talking about? Fifty people? Forty people? Thirty
22 people?

23 MR. CARMICHAEL: This is actually the negotiations
24 we're having in the *Doe* case. I believe it was 41. And then
25 they agreed to narrow down to 13 extra. And then we

1 presented that to the *Doe* court to say: What did you mean by
2 that? Did you mean that you -- we took it because we only
3 made these Vaughan indexes for voting panel members, if
4 that's all you wanted. However, we're not in the best
5 position to explain to you what your order meant. So, you
6 know, could we have a call in and discuss that? And the
7 court asked us for additional information on November 22nd
8 but hasn't responded yet.

9 THE COURT: So in the *Doe* court, you've turned over
10 these documents?

11 MR. CARMICHAEL: No. We've turned over information
12 from the -- all the voting panel members. But we identified
13 it. We narrowed the dispute down to 13 additional
14 custodians.

15 THE COURT: Okay. We're not communicating here.
16 You're talking custodians, I'm talking people in the room.

17 MR. CARMICHAEL: But 13 individual people -- 13 new
18 people that they wanted information from.

19 THE COURT: Okay. So when you say "custodian,"
20 you're talking about an individual who may have information
21 who either spoke, wrote about something, or had some form of
22 input into the committee?

23 MR. CARMICHAEL: Yes. Yes, Your Honor.

24 THE COURT: So you have not turned that over to the
25 *Doe* court --

1 MR. CARMICHAEL: No, we haven't.

2 THE COURT: -- litigants?

3 MR. CARMICHAEL: No.

4 THE COURT: Why not?

5 MR. CARMICHAEL: Because they all have varying
6 different levels of involvement.

7 THE COURT: And what makes a difference as to what
8 level of involvement you think you should have to turn over?

9 MR. CARMICHAEL: I think it's a different analysis
10 for each one.

11 THE COURT: Explain that to me. In other words,
12 explain to me the types of people that were there and why it
13 would make a difference as to whether you turned it over.

14 MR. CARMICHAEL: I think one they had was -- you
15 know, just an example of two separate ones. One was the sort
16 of the number two person behind the -- so Mr. Curtin
17 (phonetic), who I think we've discussed before, was sort of
18 the lead for the DoD portion of the panel. His documents are
19 in there. His deputy was in there for most of the meetings
20 as well. So he's maybe the very next tier down.

21 And then the other end of those 13 individuals, I think
22 there was a doctor that presented on endocrinology. And his
23 presentation is on there. But his documents wouldn't have
24 any importance. His deliberative documents on his own
25 wouldn't have the same level of involvement as maybe the

1 Deputy Undersecretary.

2 THE COURT: How do you know? I'm assuming he used
3 his documents to make his presentation.

4 MR. CARMICHAEL: So, we've already turned over all
5 the documents. This would just be communications of things
6 that weren't protected.

7 THE COURT: All right. So apparently there was some
8 presenters and there was somebody who was a point person for
9 one of the agencies. What distinguishes the other people as
10 to why it is you couldn't turn the material over?

11 MR. CARMICHAEL: They're just people in the room, you
12 know, other people that they -- so -- and if you're just in
13 the room for one particular meeting, it doesn't have the same
14 level of involvement.

15 THE COURT: Well, then, why not? If they're just in
16 the room, why don't you satisfy their inquiry and give it to
17 them?

18 MR. CARMICHAEL: One, I would say that they haven't
19 ever -- they haven't come back and said -- they haven't done
20 what the *Doe* plaintiffs have done and said: Okay, now we're
21 only interested in these people. So that's never come back
22 to us.

23 THE COURT: Well, guess what? I'm asking you now.
24 Whether or not they ask you, I'm asking you, why don't you
25 just give it to them? Because you're telling me these are

1 people who are merely observers. Why don't -- if it doesn't
2 hurt you, why don't you turn it over?

3 MR. CARMICHAEL: You have to tell us who you want,
4 that's the thing.

5 THE COURT: They can't tell you who they want until
6 they know who's there.

7 MR. CARMICHAEL: We gave that on November 1st. We
8 gave them, on November 1st, who was there at what meeting.
9 So first, you have to tell us who you want from --

10 THE COURT: What if they say, "We want it all"?

11 MR. CARMICHAEL: Then I think it's not a granular
12 analysis. It's very broad. If you want it all, it's about
13 15,000 documents.

14 THE COURT: Okay.

15 MR. CARMICHAEL: Which is different than the 800 or
16 so.

17 THE COURT: But the people still fall into the same
18 category, don't they? That they were in the room, some of
19 them had roles to play in presenting material. Presumably
20 some of them had roles to play in communicating with people
21 who were voting or amongst each other. And some were there
22 simply as perhaps scribes or people carrying back the
23 information, correct?

24 MR. CARMICHAEL: Of --

25 THE COURT: Is there any other category?

1 MR. CARMICHAEL: There are some people that didn't
2 attend any meetings at all.

3 THE COURT: Okay. Well, I'm not worried about the
4 ones who didn't attend any meetings, unless they wrote
5 documents that were used at the meetings. But if you look at
6 what the analysis is, is that the only way you're going to
7 get this information is through you. And the other point to
8 analyze is, if that information is turned over, how does it
9 chill the deliberative dialogue? And if you're telling me
10 they're nobodies, it doesn't chill the dialogue. So why not
11 turn it over?

12 MR. CARMICHAEL: I think it does -- it would chill
13 the dialogue if they are -- I also think it's less relevant
14 if they're nobodies.

15 THE COURT: Relevance is not something that we're
16 debating now.

17 MR. CARMICHAEL: Well, when you're looking at the
18 four factors, relevance was one of those.

19 THE COURT: Right. And the Ninth Circuit has already
20 told me that the relevance is not one of the issues.

21 MR. CARMICHAEL: Well, they specifically had the line
22 that the relevance would be different depending on the person
23 that was involved.

24 THE COURT: Okay.

25 MR. CARMICHAEL: And that it would be more relevant

1 if it's a senior person, less relevant if it was a non-senior
2 person. But the chilling effect may be higher.

3 THE COURT: So maybe we ought to start this way. Why
4 don't you tell them if there are 41 people that are in and
5 out of this room, why don't you tell them who they are, what
6 their role is, so that they can then say: We want one,
7 three, five, seven.

8 MR. CARMICHAEL: I'd be happy to explain the roles of
9 the individuals.

10 THE COURT: Okay. My question is, why haven't you
11 done that already?

12 MR. CARMICHAEL: We've been trying. I've been -- I
13 suggested individual people at the last one. I think at the
14 end of the day, they just want everything.

15 THE COURT: Yeah.

16 MR. CARMICHAEL: And we're willing to narrow to
17 individual people.

18 THE COURT: How can they narrow unless they know what
19 the scope of what you've got is? In other words, how can
20 they ask: I want Admiral so-and-so if they don't know that
21 Admiral so-and-so is there. They don't know what role
22 Admiral so-and-so played.

23 MR. CARMICHAEL: Well, they do, because of the
24 meeting minutes. That's why we made sure we got the meeting
25 minutes.

1 THE COURT: But they don't know about the
2 non-speakers.

3 MR. CARMICHAEL: At the end of the meeting minutes,
4 it says who attended each meeting.

5 THE COURT: Okay. And do they know who attended, by
6 the list of who attended each meeting, what their respective
7 roles are?

8 MR. CARMICHAEL: It has their title at the end.

9 THE COURT: I'm assuming that these people have all
10 sorts of alphabet titles. How are they supposed to know what
11 role they played, unless somebody identifies for them: This
12 was an aide to so-and-so who provided documentation and did
13 the research on X, Y and Z?

14 MR. CARMICHAEL: It does sort of have that. I don't
15 have the meeting minutes with me, but one of them has at the
16 end, looking at the last one, I just remember it, so it would
17 have -- you know, one of them is Special Assistant to the
18 Secretary, Deputy Undersecretary of Personnel and Readiness,
19 documentarian, historian. So I think there was a couple
20 additional people. And that's the last meeting minute. So
21 it does tell you a little bit of what their role was.

22 THE COURT: Tell me why the obligation on them is to
23 identify. As opposed to the obligation on you to identify?
24 Because if you're at an impasse as to what categories of
25 material here, the only option I have is to order it all.

1 But if they don't know what you've got, it's your
2 obligation to lay out what it is. So I can see, yes, those
3 people are important and those people aren't. You need to
4 lay that out for me, if not for them.

5 And I'm wondering why that hasn't been done.

6 MR. CARMICHAEL: Well, we don't want to lose sight of
7 what actually -- what the Ninth Circuit -- what actually
8 we're looking at is, is the -- was the -- was DoD's
9 determination of the policy reasonable, that it significantly
10 furthers the military goals? So that -- we think we've
11 already identified that with the voting members of the panel.
12 There may be some other voting members.

13 But they have a theory that there was -- that this whole
14 thing is a sham and that there was really, I think, that
15 there is -- it was written up by some Evangelical counsel.
16 This theory. I can't help them identify those documents
17 because they don't exist.

18 THE COURT: No, you don't have to identify the
19 documents. But they ask questions and you have to answer
20 questions. And if one of the ways that you answer their
21 question is to give them the information -- you keep saying,
22 "Cut it down," but I don't know how they're supposed to do
23 that unless you lay it out. You told me the same thing the
24 last time when you said, "Oh, we can't give them who all the
25 custodians are." And I found that pretty incredible that you

1 couldn't do that, because I think you can do that with the
2 press of a button, if you've got the right program.

3 So let me turn to the other side. And am I understanding
4 what it is you're looking for? Or am I off track here?

5 MR. HEINZ: I think we're on the right track for
6 sure, Your Honor. I think what we struggle with is, as I
7 look at RFP 29, it asks for documents related to the
8 development of the Mattis plan, of the current policy. All
9 of that falls within Your Honor's order, which adopted the
10 *Doe* holding, that the deliberative-process privilege does not
11 apply to documents that were used or considered in the
12 development of the Mattis plan. That's co-extensive with 29.

13 So what I'm hesitant to get into with counsel is a debate
14 over which custodians we're kind of picking and choosing,
15 because we don't know who has the most relevant documents
16 here. And I have an example for Your Honor.

17 A recently produced document was this PowerPoint
18 presentation titled, "Transgender personnel policy working
19 group." So this is a working group. It's not the panel of
20 experts. This is one of the working groups that fed into the
21 panel of experts, I think, based on the limited information
22 that we have. And so this wouldn't be encompassed within the
23 panel documents.

24 But on here, buried within this document, is an incredibly
25 important piece of information which says that, "Proposed

1 courses of action, or options to pursue, address POTUS's
2 expressed end-state." Well, we know what the President's
3 expressed end-state was here. And this shows that the
4 assumption here of the panel was to address his expressed
5 end-state. This is a really important document, but it's not
6 a panel of experts' document, it's from one of these working
7 groups.

8 But this is just an example of what -- we don't know what
9 we don't have. And that's why we believe that we're entitled
10 to all of the documents responsive to 29, because asking us
11 to pick and choose from what we don't have is an unfair game.

12 THE COURT: Okay. Well, as I understand my role,
13 you're supposed to sort through this concept of granular.
14 We're going to have to pick out a discrete grouping of
15 documents that I can say: These are just like the voting
16 members and that's why you get them. So if I tell them that
17 -- it's a very long Request for Production. Honestly, it's
18 got many, many moving parts. So let's concentrate on what
19 the most important is. Do you want the people in the room
20 for these meetings? Do you want to have whatever
21 presentations they made? Do you want to know what documents
22 they passed out or distributed to the voting members?

23 MR. HEINZ: Yes.

24 THE COURT: Okay.

25 MR. HEINZ: We do want that. But what I'm hesitant

1 to agree to is limiting this request to, for example, just
2 the panel of experts' material, when we know that after the
3 panel of experts completed their work, that the Department of
4 Defense did additional work in creating the report.

5 THE COURT: Okay. Let's take this a slice at a time.
6 Okay? Because I have to be able to do that analysis on each
7 grouping, as I understand that the court wants me to do.

8 Now, have I identified a group that you want and you think
9 the documents would be important to you?

10 MR. HEINZ: You have.

11 THE COURT: Okay. So if I'm looking at this and
12 saying: The folks, the non-voting members in the room, their
13 material is very much the same as the voting members who were
14 there, and I order them to give it to you, am I within what
15 you believe is the proper analysis that the *Doe* court did?

16 MR. HEINZ: Yes. We believe that there is no
17 difference between those two.

18 THE COURT: Okay.

19 This is what you have to do. For each person that you
20 identified that you just told me, I think it was 41, of
21 people who attended meetings, you have to identify them, you
22 have to give them what -- any presentations that they made.
23 You have to give them any documents that they generated that
24 were put forward to the voting members of the group.

25 MR. CARMICHAEL: We've already done that. That's in

1 the November 22nd production. So anything that was actually
2 presented to the panel should be there. I would assume that
3 that was something that was presented to the panel at some
4 point, and that's why you have it. So we've already given
5 everything that was presented to the panel.

6 What we haven't given is things that would be
7 communications between non-panel members that a panel member
8 never saw, except for the fact that right now in response to
9 44, and with negotiations with the *Doe* plaintiffs, we're
10 going back and getting the presentations on the medical data,
11 the employability, limited duty, work-related, so we're going
12 back and getting that.

13 THE COURT: So did you get everything that I just
14 outlined?

15 MR. HEINZ: Well, we don't have communications
16 between the non-voting members.

17 MR. CARMICHAEL: Yes, between non-voting members. If
18 a voting member is not on the communication, they don't have
19 that. It would be voting-member communications.

20 THE COURT: Okay. But you're looking for non-voting
21 to non-voting communication.

22 MR. HEINZ: Correct. Because a significant amount of
23 work was done in these working groups that were comprised of
24 non-voting members. Maybe there was a voting member also on
25 the working group, I don't know. But there was a lot of work

1 done in these working groups.

2 THE COURT: Are these non-voting people the people
3 who are doing the work group, or you don't know?

4 MR. HEINZ: We're going off of very limited
5 information here. But from what we can tell, there was a lot
6 of work done in these working groups. And then these working
7 groups, like just in this presentation, reported up to the
8 panel.

9 THE COURT: So you don't know who was on the working
10 groups?

11 MR. HEINZ: I think we actually do know who was on
12 the working groups. That's in an interrogatory response.

13 THE COURT: Okay. But you haven't received what the
14 working groups produced?

15 MR. HEINZ: Correct. Only their presentations made
16 to the final panel.

17 THE COURT: Okay. But not the data and not the
18 information that they synthesized in order to make their
19 final recommendation.

20 MR. HEINZ: Correct. We don't have the work.

21 THE COURT: Okay. So what's the problem with that
22 grouping of materials?

23 MR. CARMICHAEL: So, I think that they'd have to --
24 so, for medical deployability and limited duty, we're
25 actually producing the work. We're working on it right now.

1 THE COURT: Now, you just laid out multiple
2 categories. You have to explain to me, are those the working
3 groups?

4 MR. CARMICHAEL: This is when the panel -- they sent
5 out certain data calls. They asked questions for analyzing
6 gender dysphoria, they asked a particular office.

7 THE COURT: Who is "they" when you say "they" sent
8 out?

9 MR. CARMICHAEL: The panel members in general. It
10 would be the panel members, in general, requested
11 information.

12 THE COURT: Okay.

13 MR. CARMICHAEL: So they requested information from a
14 particular health office regarding costs of -- costs and
15 usage rate of medical services. And that was one particular
16 request. That was presented to the panel on, I think, two of
17 the meetings. So we're actually going back and verifying
18 that we have all of the work done. And we found a few extra
19 things, and we're going to produce that on the 20th.

20 THE COURT: Have you produced the information when
21 somebody who is on the panel calls for information, have you
22 produced that call that they made?

23 MR. CARMICHAEL: We have produced what they presented
24 on November 22nd. We're going back and producing the work
25 that they did not present right now. So I've seen that in

1 the dataset, it's already in there. We're coding it right
2 now for production on December 20th.

3 THE COURT: So you're intending to turn that over?

4 MR. CARMICHAEL: Yes.

5 That's for one category. The other category is
6 deployability and limited duty. And that was a data call
7 they sent out to the military services. And the same thing,
8 like how they came up with that and the work on that.

9 MR. HEINZ: So I think, Your Honor, you're talking
10 about the data, correct? You're not talking about, you're
11 actually producing the communications within those working
12 groups?

13 MR. CARMICHAEL: It's the data and how they came up
14 with the data. And there's e-mails that explain the data and
15 presentations that explain the data.

16 MR. HEINZ: What we'd be interested in are the
17 communications and the work that was actually done. Like,
18 for instance, what if the deployability working group were
19 communicating and saying, you know, well, deployability sure
20 isn't a reason to keep transgender people out of the
21 military. Well, that would be very relevant evidence. And
22 so those communications could be highly relevant and we want
23 to see them.

24 THE COURT: All right. So here's another category of
25 documents: What the working group did. Who is on the

1 working group? And the data that they produced. And the
2 communications between those people on each working group.
3 What's the problem with that?

4 MR. CARMICHAEL: We'd have to look at each specific
5 one. So -- and I don't -- these ones, particularly, because
6 the *Doe* plaintiffs brought them up and they overlapped them a
7 little bit with 44, we're going ahead and doing it. But if
8 there was another specific one, again, we'd have to figure
9 out a way to identify just those specific documents. Like if
10 there was the head of a particular working group and we have
11 that person as a custodian, we may be able to isolate
12 documents in the system.

13 THE COURT: So just for the record, how many working
14 groups were there?

15 MR. CARMICHAEL: I don't know that off the top of my
16 head. I think it's in the report, the ones that worked with
17 -- the primary one is the panel of experts.

18 THE COURT: But I'm assuming that if you looked, you
19 would be able to tell me what these various working groups
20 are.

21 MR. CARMICHAEL: Yes. And their involvement on the
22 panel.

23 THE COURT: And they're a discrete number, four or
24 five?

25 MR. CARMICHAEL: Yes.

1 THE COURT: So those are people in the working groups
2 who gathered data, put it together, communicated amongst
3 themselves, and passed their reports on to those who were
4 voting, correct?

5 MR. CARMICHAEL: In some instances; I mean, I think
6 the deployability one didn't do it as much. I think they
7 didn't overlap exactly. But that's information that we can
8 provide as well, like when they started.

9 THE COURT: Okay. So if you go through the analysis,
10 all of this material is pre-decisional. All right?

11 MR. CARMICHAEL: Yes.

12 THE COURT: And it's also something that you have
13 complete control over. They can't get it without you,
14 correct?

15 MR. CARMICHAEL: Yes.

16 THE COURT: And these folks are so far down the line
17 that they're not deliberating at all. They are simply
18 providing data, offering material up to those who are
19 actually deliberating and making the decision.

20 MR. CARMICHAEL: Yeah, they wouldn't be involved in
21 the actual deliberations. I guess they deliberate amongst
22 themselves as to how they're going to provide the data.

23 THE COURT: So how does the deliberative privilege
24 apply at all?

25 MR. CARMICHAEL: Our intent is to provide everything

1 that is -- all the data that they presented and how they got
2 that. So that's our intent as we're going back and making
3 sure that we provided all of that.

4 THE COURT: Okay. Well, intent is one thing,
5 production is another. And as you reminded me, you have very
6 little time left to do this. All right. So this is the next
7 grouping that we're going to look at. You're going to supply
8 them with the working group names, who's on the working
9 group, the dialogue in e-mail or any other communication
10 within those working groups, and the data that they produced.

11 I don't think the privilege applies at all there, because
12 these folks aren't deliberating, they are researchers
13 providing information and having discussions amongst
14 themselves, as I understand the way you just described it to
15 me.

16 MR. CARMICHAEL: They addressed other questions as
17 well. And they're all not exactly the same. So I think
18 for -- I mean, certainly it's something we'd be willing to
19 consider, but communications, everything besides
20 communications we're already presenting. But if there was
21 some deliberations --

22 THE COURT: Well, we're past "willing to consider,"
23 I'm telling you you're going to produce it.

24 MR. CARMICHAEL: We'd have to identify -- from
25 specific working groups?

1 THE COURT: Yes. I mean, if you really did organize
2 all this data, you should be able to call it up. And
3 apparently at some point you labeled it having a deliberative
4 privilege. And I'm now identifying a group of things that I
5 don't think fall into that. So you have to turn it over.
6 It's not a matter of, we're considering, it's not a matter
7 of, we'll go back and look. You have to turn it over.

8 MR. CARMICHAEL: Okay.

9 THE COURT: Now, what other category can we
10 discretely find within this interrogatory?

11 MR. HEINZ: I think another category would be the
12 post-panel-of-expert work that went into the report. So the
13 panel of experts did their work and handed that off to, I
14 believe, the Office of the Secretary of Defense. And then
15 his office, from what we can tell, did additional work. They
16 reached out to other researchers, other doctors.

17 THE COURT: Was this after the vote was taken or
18 before?

19 MR. HEINZ: This is after the panel of experts had
20 voted and deliberated, or perhaps it was around the same
21 time. And there were two independent work streams. But it's
22 not as if the panel of experts drafted this report that was
23 sent over to the President. It was done by the Department of
24 Defense and I believe the Secretary of Defense's office. So
25 we would want that additional material that went into the

1 development of the report.

2 THE COURT: So let me understand the steps of this,
3 so that I get it clear.

4 Explain to me these two lines that you just referenced.

5 MR. HEINZ: Drew or Matt could do this better than
6 me. So the panel of experts did their work from October
7 through January. October 2017 through January 2018. And the
8 deliberations of the panel began in December 2017 and went
9 through January of 2018. And then around that time, then
10 they sent over their recommendation to the Office of the
11 Secretary of Defense. And then there was work done there,
12 then, to create and draft the report, the 44-page report that
13 the government points to, as its justification for the
14 policy.

15 So what we would want, then, are the documents and the
16 communications that went into the drafting of that report.

17 THE COURT: Okay. And this is post-decision making,
18 or no?

19 MR. HEINZ: Well, it's post-panel-of-expert decision,
20 but the decision -- it's pre-decision by the Secretary of
21 Defense, I suppose.

22 THE COURT: Okay.

23 MR. HEINZ: And, Drew, correct me if I'm misstating
24 how that operated.

25 MR. CARMICHAEL: Yeah, that's pretty accurate. There

1 was a meeting -- there were, I think, two meetings of
2 January -- around January 11th, around January 17th, in which
3 they briefed Secretary Mattis. And the briefings we've given
4 over to plaintiffs.

5 And then he accepted the decision and asked for a report
6 to be made by the Undersecretary of Defense's office. And
7 they wrote the report and presented that to him. And there's
8 drafts and communications from the report, you know, from the
9 making of that report.

10 THE COURT: Okay. So what's the problem with turning
11 that over?

12 MR. CARMICHAEL: It's drafts -- generally drafts of
13 reports, particularly something that was made for using to
14 send to the President, and for something that was, you know,
15 -- I think there is a little -- there's an issue there with
16 the report is also used for litigation, too. But I think
17 there's ones that were just deliberative process.

18 THE COURT: You told me that somehow you don't turn
19 over drafts. Where's the rule that says you don't turn over
20 drafts?

21 MR. CARMICHAEL: Drafts aren't deliberative process.
22 It's not necessarily even the actual decision. But like, you
23 know, little subparts of the decision, tweaking how you're
24 going to do a particular sentence or how you're going to
25 write a particular paragraph.

1 THE COURT: Okay.

2 MR. CARMICHAEL: There's deliberations that go into
3 that. It's just as you're writing something, you want it to
4 read well.

5 THE COURT: Who are the people who are doing this?

6 MR. CARMICHAEL: This is the Undersecretary's office
7 for the Secretary of Defense.

8 THE COURT: Yeah, well, that tells me who the office
9 is. But do you know who the people are?

10 MR. CARMICHAEL: We know the people that were the
11 staff members, yes. We know the staff members.

12 THE COURT: So you know who was working on drafting
13 this report?

14 MR. CARMICHAEL: Yes.

15 THE COURT: And you're saying that it's a
16 deliberative process. Is it really? Or has a decision been
17 made and all this is doing is memorializing it?

18 MR. CARMICHAEL: When you're writing versions of a
19 report and you're doing -- the final decision was made. But
20 when you're talking about how you're going to phrase a
21 certain paragraph, one way or another, there's still
22 deliberations there involved.

23 THE COURT: Okay. And you're the only ones who have
24 that information?

25 MR. CARMICHAEL: We are the only ones that have that.

1 THE COURT: They can't get it. And once the decision
2 is made, the people who are exchanging information to write
3 this report wouldn't have a chilling effect because they're
4 not the decision maker or not the debater.

5 MR. CARMICHAEL: I think it still has a chilling
6 effect. If you, you know, if you write a sentence a certain
7 way or write a paragraph a certain way, then your boss says:
8 I don't like the way that reads, rewrite it. I think that
9 has a chilling effect to have that go out in the public.

10 MR. SKURNIK: Your Honor, if I could sort of jump off
11 on that a little bit. I think the idea is, and this is the
12 concern that our clients have in this process is, this is
13 clearly, you know, a controversial issue. And what the
14 Department of Defense is concerned about, the next time
15 there's a controversial issue on which they need to develop a
16 policy, whether it's a personnel issue or some other issue,
17 something relating to North Korea or Afghanistan or something
18 else, if internal communications and drafts and comments on
19 drafts, if they're disclosed, people within the Department of
20 Defense and the military services are going to be much less
21 willing to lend their candid views, in light of the fact that
22 the things they say may be turned over in litigation in the
23 future.

24 And I think that is the core of the chilling effect.

25 THE COURT: Well, I get that. If we're talking about

1 world peace, you know, blowing up Korea. But this is a
2 discrete policy concerning one issue. Now, if people are
3 afraid that somebody is going to come after them because they
4 hold certain views about transgender individuals, we can
5 handle that with a protective order. I don't necessarily
6 think, at the level you're talking about, people need to be
7 identified to the public by name.

8 But what they're after is looking for the process that you
9 went through, and if the document that was produced is
10 consistent with the data that was debated. So when you say
11 that there's a chilling effect, just as the judge in *Doe*
12 says, there are ways to handle that. You can have a
13 protective order.

14 But at this point, you're talking about four or five
15 people who are pretty far down the line, as I would assume
16 that they are, and they're taking direction of how to write
17 the report. Am I correct?

18 MR. CARMICHAEL: Yes. Yes. It also shows there's
19 not a lot of relevance to that, too, if they're drafts.

20 THE COURT: But relevance -- it may lead to -- it
21 doesn't have to have extraordinary relevance. It only has to
22 have some relevance, particularly in discovery, if it leads
23 to another inquiry that may have relevance.

24 MR. CARMICHAEL: That's for production. But for
25 actually for overcoming the privilege, it has to have enough

1 relevance to overcome -- you know, the need needs to overcome
2 the chilling effect. And we don't think there's a need for
3 early drafts that weren't accepted.

4 THE COURT: Well, that's just your opinion. Tell
5 me -- I don't understand --

6 MR. CARMICHAEL: Of course it is. I'm advocating for
7 my client.

8 THE COURT: I understand that you have that
9 responsibility. But I'm trying to decide whether -- the
10 Ninth Circuit says that relevance at this point, you know,
11 you hold the documents, and we're looking to try and find how
12 this was produced. So I'm trying to take each stage and say
13 -- did the report, which is key, you told me that that's the
14 only thing you're going to be introducing at trial, if that
15 is the only thing that you've got on the table, then probing
16 whether or not it is consistent with the other data and with
17 the other opinions might seem pretty important.

18 MR. CARMICHAEL: Well, that's the final, obviously,
19 the final version of it. But these are drafts that we're
20 talking about.

21 THE COURT: Where do you get that drafts aren't
22 important? People ask, all the time, for the metadata
23 underneath their electronics. That's a given. So isn't this
24 the metadata on what it is that you produced?

25 MR. CARMICHAEL: But how does the need for drafts

1 that staffers -- first drafts that staffers wrote to the
2 Secretary that the Secretary ultimately did not accept those
3 drafts, how does that overcome the chilling effect? I think
4 that's the --

5 THE COURT: Because you don't identify the people who
6 are doing it. They can't be chilled if people don't know who
7 they are, if they only see their work.

8 MR. CARMICHAEL: I think that would essentially mean
9 that in any case, you could just do a protective order and it
10 would be overcome.

11 THE COURT: I do them all the time. I might sign
12 five or six a day. It's not unusual.

13 MR. CARMICHAEL: I understand. I just think that
14 there's still more of a chilling effect in this litigation.

15 THE COURT: Well, with a protective order, I don't
16 see that there's a chilling effect. So you're going to have
17 to turn over the drafts for attorneys' eyes only, the names
18 of the people who are involved, and identify how many people
19 there are.

20 MR. HEINZ: And I think we'd be interested in those
21 communications within the Undersecretary's office as to how
22 those reports were created. You know, based on what they
23 have disclosed to us, there was additional fact finding going
24 on by that office, separate and apart from what the panel
25 did. This office, these individuals were reaching out to

1 scientists, which we will submit have questionable
2 backgrounds, to get articles and data from them. And so --

3 THE COURT: So these are the folks that are drafting
4 the materials?

5 MR. HEINZ: Drafting the report.

6 THE COURT: Well, you'll get the dialogue and what it
7 is that they asked for and any data that they received during
8 the course of their drafting of the materials.

9 All right. We are -- it's taking longer than I
10 anticipated, but let's -- can we leave this particular
11 category yet, or not?

12 MR. HEINZ: I was going to say I think that's the
13 hardest one. So the steepest hill is behind us. Anything
14 else on 29 that you wanted to discuss?

15 The other one should be fairly quick, I think.

16 THE COURT: Okay. Tell me about 15.

17 MR. HEINZ: So 15 is another request that the
18 defendants believe is too broad. And for 15, we're just
19 wanting to understand how, under the Carter Defense
20 Department, how they came to the opposite conclusion two
21 years before. So we're not necessarily, at least initially,
22 interested in the back and the forth and the detail that we
23 just went through with the panel of experts and the current
24 policy, but what did the Carter working group consider and
25 how they came to their final conclusion, which was that

1 transgender individuals could serve.

2 THE COURT: So would you be satisfied with the same
3 categories of documents that they already turned over to you
4 pursuant to the *Doe* order for the Mattis decision? In other
5 words, assuming that it was a similar process, you know,
6 they've turned over to you the transcripts, they've turned
7 over to you the custodians. So if they did exactly the same
8 thing in exactly the same scope, presumably it would be
9 exactly the same decision concerning the deliberative
10 privilege, because these are the same types of documents.
11 Would that satisfy your inquiry?

12 MR. SIEGFRIED: Your Honor, I think, yes, without
13 prejudice to, if there's something in there that we think we
14 need to probe further.

15 THE COURT: Okay. All right. Can you do that?

16 MR. CARMICHAEL: We can. I don't think there is as
17 much as a need for the actual deliberations. So what we're
18 producing -- right now what we're producing there, after our
19 conversation, we went back and we isolated a few documents
20 that we think would answer the questions for them. And
21 they're going to come in the December 20th production.

22 So the equivalent of the report, like the final report
23 that actually wasn't public, that the transgender working
24 group did, the meeting minutes which describe what they
25 heard, and the briefing slides from Rand when they briefed

1 the transgender working group, we're putting all that in the
2 December 20th production.

3 The only thing that we wouldn't that is the same
4 equivalent is e-mail communications from members on the
5 transgender working group. Because that's in the panel of
6 expert's production. But that's not in the production that
7 we're doing December 20th. We could isolate it. We don't
8 think, again, the need is that high for that level of detail
9 into that one.

10 THE COURT: Let's do this: They're going to give you
11 this on the 20th. You take a look at it. You don't like it,
12 you want more, you come back and we have another talk about
13 it.

14 MR. SIEGFRIED: Thank you.

15 THE COURT: Okay? So you're promising that on the
16 20th, 15 will be responded to?

17 MR. CARMICHAEL: As far as -- yes, we're going to --
18 a lot more information on 15.

19 MR. SIEGFRIED: Your Honor, can I ask a question?

20 THE COURT: Sure.

21 MR. SIEGFRIED: Drew, you mentioned the Rand briefing
22 slides. Is that the only presentation to the working group
23 that you're intending to produce?

24 MR. CARMICHAEL: There's a full summary of all of the
25 presentations they got in the transgender, it's like a

1 50-page report with meeting minutes that go after it. I
2 didn't find any other briefing slides in the collection.
3 I'll look again and make sure that we do. But if there are
4 any other briefing slides, we'll put them in.

5 THE COURT: Okay. What's next?

6 MR. HEINZ: How about Request for Production 36,
7 which asks for complaints related to the *Carter* policy of
8 open service. And here, I believe that the defendants have
9 agreed to produce the one or two complaints that they're
10 aware of, and that they would look through their production
11 to see if there were any others. And then, wasn't sure if
12 you found any others or what your position was after our
13 meet-and-confer.

14 MR. CARMICHAEL: Still doing it.

15 And we did an isolation of the searches, and we -- I think
16 they found one other mention of a complaint, which we can do
17 as well. But it was really just those two.

18 So there were two complaints that were mentioned in the
19 Mattis report that we're releasing in response to that. If
20 there are any other in the production, we'll look at those.

21 THE COURT: So two in all of the military -- all
22 those serving, there were only two complaints?

23 MR. CARMICHAEL: There were two complaints that the
24 panel of experts considered. We didn't go back and look
25 through any other complaints.

1 THE COURT: Well, that's a different thing, because
2 I'm assuming that if they plucked out two complaints, you
3 probably want to know the full range, don't you; or no?
4 Because if they plucked out two complaints, it seems to me
5 that that might prove your point.

6 MR. HEINZ: Your Honor, that's why we issued the
7 request, to see how many complaints there really were.
8 Whether people had an issue with transgender people serving.

9 And so we want the defendants, the government, to agree to
10 produce all complaints. And there may only be the two. And
11 that would sure be helpful to our case. But certainly the
12 deliberative-process privilege doesn't apply to complaints.
13 That's factual information.

14 MR. CARMICHAEL: In the production, we'll go back and
15 make sure we don't have any.

16 THE COURT: So if there's two, you give them the two.
17 That's all there is. You won't be arguing that there are
18 5,000.

19 MR. CARMICHAEL: Well, I think the Uniformed Service
20 Chiefs testified before Congress that they weren't aware of
21 any other complaints. So I think that probably is enough for
22 them to --

23 MR. SIEGFRIED: We're just trying to avoid ambush at
24 trial with all of these other complaints that we don't know
25 about.

1 THE COURT: Well, as far as I'm concerned with this
2 is if they don't give it, they don't use it. That's the rule
3 in federal court. If you don't turn it over, you don't give
4 people notice, and this seems to me fairly significant data,
5 if there are only two, we're not going to find out that
6 there's others because they will have done a complete search
7 and see what they can find. And when will you do that by?

8 MR. CARMICHAEL: So, we'll search in our database.
9 We're not agreeing to go to, like, the actual ID complaint
10 database, which is really not searchable that way, to go
11 through and see if there's any other complaints filed.

12 THE COURT: Well, if you're intending to justify what
13 is done, based upon complaints about transgender individuals,
14 we're trying to find out just exactly what you're going to
15 put up.

16 MR. CARMICHAEL: There really hasn't been a lot of,
17 as the service chiefs have testified, like bullying and
18 harassment. That hasn't been -- that was not one of the
19 major problems. That was not one of the problems with the
20 policy.

21 THE COURT: Well, then, if you have two, you only
22 have two. But I think the point is, you have to answer that
23 specific interrogatory. Because if they, at trial, they want
24 to read your interrogatory, you say there's only two.

25 MR. CARMICHAEL: We may be able to agree with the

1 plaintiffs that we're not aware of any other complaints and
2 leave it at that.

3 THE COURT: Okay. Moving right along.

4 MR. HEINZ: Request for Production 33, which asks for
5 documents related to alternatives to the Mattis policy. So
6 other options or courses of action that the Department of
7 Defense was considering an alternative to what they ended up
8 adopting. And here, I believe that the defendants have
9 agreed to go back and look for any other courses of action.

10 THE COURT: Well, if you get all the other things
11 that I told them to give you, isn't that going to be in
12 there?

13 MR. HEINZ: I would think so, yeah.

14 THE COURT: So let's see what that produces. And if
15 you feel that it's not adequate, then you can come back.

16 But it should be there.

17 MR. HEINZ: I agree. It should be within the panel
18 of experts. And then also the Undersecretary documents, I
19 would think.

20 THE COURT: Or if they didn't entertain anything
21 else, then that should be obvious by what they produce as
22 well. If there was only one course of action, if that's all
23 that there is, then nobody is going to argue that they
24 entertained other options.

25 MR. HEINZ: Okay. Then I think there's one last one,

1 Your Honor. Request for Production 44, which requests data
2 sufficient to show the number of service members
3 non-deployable due to gender dysphoria or transition-related
4 medical care.

5 And here, the defendants did agree to look for that data
6 and documents. And I'm not quite sure where they ended up
7 with that search.

8 MR. CARMICHAEL: Yes. We're producing this in the --
9 anything that was withheld for deliberative process, we're
10 going to produce that in the December 20th. And what this
11 was is, we went back -- this is what I was explaining earlier
12 -- that there was, the services specifically came up with
13 these, searched their records for information about
14 deployability, and presented this to the panel. So we're
15 taking a step back and saying, all the stuff the services did
16 on that. And that's what we're producing.

17 THE COURT: Okay. So you're agreeing that you're
18 doing the search and that the material will be in the
19 December 20th?

20 MR. CARMICHAEL: Yes, Your Honor.

21 THE COURT: Okay. All right. Anything else?

22 MR. HEINZ: No, Your Honor.

23 THE COURT: Okay. You're going to come back and see
24 me again. And I believe the only day I probably have is
25 January the 25th, Friday.

1 THE CLERK: January 24th is a Friday.

2 THE COURT: January 24th. And you're going to come
3 back and here's the next issue. Are you satisfied with what
4 it is that I've outlined that they have to give you, or do
5 you -- are you intending to ask for your next grouping of
6 interrogatories?

7 MR. HEINZ: I think that based on what we've
8 discussed today, it would be helpful for us to sit down and
9 chat again with the defendants and look at some other
10 Requests for Production -- we've kind of identified our next
11 five that we would propose -- and see if we can come to an
12 agreement on those. And perhaps with Your Honor's
13 permission, we could submit another joint status report a
14 week before the next hearing.

15 THE COURT: Okay. Well, this is what you need to do:
16 Five more, okay? Five more interrogatories that you put
17 together in order of priority. Then you examine what you're
18 going to get. And it would seem to me that you can do that
19 relatively quickly, if you've already got that. Give it to
20 them as soon as you can. I'm going to probably issue an
21 order that -- what is today? Today is Tuesday. Give it to
22 them by the end of the week.

23 Then you're going to look at what you get back. Then
24 you're going to confer to make sure that you've got
25 everything that they promised you, and whether that data

1 answers some of your next five, and to see if you can get an
2 understanding of which of those five you can dispense with.

3 Now, one of the things that I did not see that you did,
4 maybe you did -- because I know the State of Washington is at
5 the table -- but I think I asked you, because counsel stood
6 up and said, I've got 200 interrogatories. And I said: No,
7 you don't, you've probably got about 50. Are you
8 coordinating with the other cases around the country?

9 MR. HEINZ: We are, Your Honor. So three other
10 cases. And we conferred with them about the five RFPs that
11 we prioritized that we just went over, and asked for
12 feedback, received some feedback, to ensure that we were
13 representing kind of what the priorities were across all of
14 the cases. And before we send over the new five Requests for
15 Production, we'll do the same.

16 THE COURT: Okay. Is there any problem with them,
17 that you just send this out to the other four?

18 MR. CARMICHAEL: That's what we're doing. If we send
19 it out to one, we send it out to all.

20 THE COURT: Now, I talked about a protective order.
21 If you decide you're going to do a protective order, you need
22 to decide, if it's going to be attorneys' eyes only, how many
23 of those attorneys are there. I can only control the
24 attorneys that are right here.

25 MR. HEINZ: And I think we have protective orders

1 across the cases, yeah, that have an attorneys' eyes only
2 provision.

3 THE COURT: Okay. All right. So we've got our plan.
4 You have to, by Friday, get your next five. You have to take
5 a look at what they give you on the 20th. After you've had
6 an opportunity to review those materials, you meet and confer
7 to see if those materials that you got you believe are
8 complete, or whether you need to put them back into a joint
9 status report for when you come back to see me again. Then
10 you start working on the next five.

11 MR. HEINZ: Understood.

12 MR. SYKES: Your Honor, one housekeeping note. The
13 motions cutoff regarding discovery dispute, the motions due
14 on 1/20, and I just want to make sure that with us coming
15 back on the 24th --

16 THE COURT: Remind me what your trial date is.

17 MR. SYKES: What is our trial date?

18 MS. ALA'ILIMA: June 22nd, Your Honor.

19 THE COURT: We'll push the deadline back 30 days and
20 see how we do on the 24th, and how many more rounds we have
21 to go through this. Okay? Any questions?

22 MR. CARMICHAEL: No, Your Honor. I'll wait and see
23 those. I think we've already sort of hit the core on what
24 the Ninth Circuit is asking us to review, so I do think at
25 some point there's a bit of a diminishing returns. And once

1 you get the core things, then get the side core things,
2 there's sort of a diminishing returns in continuing.

3 THE COURT: Well, I will meet as many times as
4 necessary to get as minute as necessary. Okay? I think
5 that's what I've been told I have to do. So we'll continue
6 to meet until we reach the point where everybody understands
7 what the background of this is, that we have the evidence
8 that's going to be appropriate, so that both sides can
9 present their case.

10 Now, yours is easy because you told me you only had one
11 document, or somebody did, I don't know if it was you. So
12 your case will be simple.

13 MR. HEINZ: Your Honor, I do want to flag just one
14 thing. We haven't taken any depositions in this case yet.
15 So we still have that phase, once we get the documents. I'm
16 just flagging that for scheduling purposes, that this -- that
17 defendants withholding so many documents is delaying the
18 depositions in the case. So just flagging that.

19 THE COURT: Well, I get that. But if you're not
20 going to note depositions until after you get the documents,
21 then we're kind of stuck. I suggest that you basically set
22 up some dates so that when you get these documents on
23 December 20th, you can start deciding who it is you're going
24 to depose.

25 I'm assuming you're not going to depose 41 people in the

1 room. But you're going to be discrete about who it is you're
2 going to depose. But you might as well get your dates set
3 now. And if there are people you know that you want, then
4 set them up. If you don't have the documents you want, you
5 can always cancel it. But be a little proactive on this.

6 MR. HEINZ: And after today's discussion, I think
7 that we can -- now we have a little bit more certainty to
8 move forward.

9 THE COURT: Okay. Do you have agreements with the
10 other cases to -- if you're going to coordinate lawyers from
11 four different cases, with four different judges, that's
12 going to take some skill, not necessarily in your wheelhouse,
13 but some judicial assistant -- not judicial assistant, but
14 paralegal or secretary has a lot of work ahead of them.
15 Although I think, you know, Doodle has made things a little
16 easier.

17 MR. HEINZ: It sure does.

18 MR. SKURNIK: Your Honor, just to clarify. The
19 government has started taking depositions of plaintiffs'
20 experts and other witnesses. And we've been scheduling
21 those. And the parties from the plaintiffs in all four cases
22 so far have been present at those depositions.

23 THE COURT: Okay. Well, that's great. Anything else
24 I can help you with?

25 MR. SIEGFRIED: No, Your Honor.

1 THE COURT: Are you coming from DC?

2 MR. HEINZ: Chicago.

3 MR. SIEGFRIED: Chicago.

4 MR. CARMICHAEL: We're DC.

5 MR. SKURNIK: We're DC.

6 THE COURT: Well, I hope you get out tonight on a
7 good flight. And I'll see you on January the 24th. And you
8 are going to need to file a report for me.

9 Now, so that you know, I am flying in from South America
10 on the 23rd. So it needs to be here on time. And it needs
11 to be here in a format that I can read it to get ready to
12 talk with you. Okay?

13 MR. HEINZ: Understood.

14 THE COURT: Okay. Have a nice holiday.

15 (Recess.)

16 C E R T I F I C A T E

17

18 I certify that the foregoing is a correct transcript from
19 the record of proceedings in the above-entitled matter.

20

21

22

23 */s/ Debbie Zurn*

24 DEBBIE ZURN
25 COURT REPORTER

EXHIBIT 27

Background

I. Requested Discovery

The Parties are engaged in a protracted discovery battle regarding the Defendants’ assertion of the deliberative process privilege over 35,000 responsive documents. (Dkt. No. 364 at 6.) Plaintiffs seek discovery to substantiate their allegations that Defendants’ ban on transgender military service (the “Ban”) was not animated by independent military judgment but was instead the product of impermissible discriminatory intent. (See Dkt. No. 347, Second Amended Complaint (“SAC”); Dkt. No. 364 at 6.)

Defendants argue the Ban is consistent with the recommendations of a “Panel of Experts” convened by then-Secretary of Defense James Mattis and tasked with “conduct[ing] an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members.” (See Dkt. No. 226 at 9-10; Dkt. No. 224, Ex. 2 at 19.) Defendants contend that in reaching its conclusions, the Panel considered “input from transgender Service members, commanders of transgender Service members, military medical professionals, and civilian medical professionals with experience in the care and treatment of individuals with gender dysphoria” and its analysis was “informed by the [DoD]’s own data obtained since the new policy began to take effect last year.” (Dkt. No. 224, Ex. 1 at 3, Ex. 2 at 20.) The Panel’s findings are set forth in a 44-page “Report and Recommendations on Military Service by Transgender Persons,” which concludes that service by transgender individuals “would impede readiness, limit deployability, and burden the military with additional costs.” (Dkt. No. 224, Ex. 2 at 46.)

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II. Procedural History

The Court previously granted in part and denied in part Plaintiffs' Motion to Compel Discovery Withheld Under the Deliberative Process Privilege. (Dkt. No. 364; Dkt. No. 394) Finding that the Defendants failed to respond to Plaintiffs' Requests for Production in a manner that would allow the Court to assess Defendants' privilege claims as required under Federal Rule of Civil Procedure 26(b)(5)(ii) or conduct the type of "granular analysis" mandated by the Ninth Circuit in Karnoski v. Trump, 926 F.3d 1180, 1206 (9th Cir. 2019), the Court ordered the Defendants to respond to Plaintiffs' first five Requests for Production, as provided by Plaintiffs in order of priority. (Dkt. No. 394.) The Court also adopted the reasoning and conclusions of the court in Doe 2 v. Esper, No. CV 17-1597 (CKK), 2019 WL 4394842, at *7 (D.D.C. Sept. 13, 2019), which found that the deliberative process privilege could "not be used to shield discovery into Defendants' decision-making process and intent when the extent and scope of that decision-making process is a central issue in this lawsuit." Id. at *7. The Doe court also found that the plaintiffs' need for the requested documents outweighed the deliberative process privilege. Id. at *8 (citing In re Sealed Case, 121 F.3d 729, 737 (D.C. Cir. 1997)).

The Parties have now filed a Joint Status Report, which includes Plaintiffs' first five Requests for Production ordered by priority: Request Nos. 15, 29, 33, 36, and 44. (Dkt. No. 398.) On December 10, 2019, the Court met with the Parties to discuss the remaining disputes regarding these five Requests; Defendants informed the Court that they will produce responsive documents on December 20, 2019. (Dkt. No. 399.)

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1 **Discussion**

2 **I. Legal Standard**

3 The deliberative process privilege protects documents and materials which would reveal
4 “advisory opinions, recommendations and deliberations comprising part of a process by which
5 governmental decisions and policies are formulated.” N.L.R.B., 421 U.S. at 150. For the
6 privilege to apply, a document must be (1) “predecisional,” meaning that it was “generated
7 before the adoption of an agency’s policy or decision,” and (2) “deliberative,” meaning that it
8 contains “opinions, recommendations, or advice about agency policies.” FTC v. Warner
9 Commc’ns Inc., 742 F.2d 1156, 1161 (9th Cir. 1984).

10 The deliberative process privilege is not absolute and can be overcome where Plaintiffs’
11 “need for the materials and the need for accurate fact-finding override the government’s interest
12 in nondisclosure.” Id. In making this determination, the Court weighs: “(1) the relevance of the
13 evidence; (2) the availability of other evidence; (3) the government’s role in the litigation; and
14 (4) the extent to which disclosure would hinder frank and independent discussion regarding
15 contemplated policies and decisions.” Id. The Ninth Circuit found that the second and third
16 factors—the availability of other evidence and the government’s role in the litigation—favor
17 Plaintiffs here. Karnoski, 926 F.3d at 1206.

18 As with all evidentiary privileges, “the deliberative process privilege is narrowly
19 construed” and Defendants bear the burden of establishing its applicability. Greenpeace v. Nat’l
20 Marine Fisheries Serv., 198 F.R.D. 540, 543 (W.D. Wash. 2000) (citations omitted). In addition
21 to showing that withheld documents are privileged, Defendants must comply with formal
22 procedures necessary to invoke the privilege. Id. “Blanket assertions of the privilege are
23
24

1 insufficient. Rather [Defendants] must provide ‘precise and certain’ reasons for preserving the
2 confidentiality of designated material.” Id.

3 **II. Requests for Production**

4 **A. Request No. 29**

5 The Parties primarily dispute two categories of documents responsive to Request for
6 Production No. 29: (1) the work and communications of non-voting members of the Panel and
7 (2) drafts created by officials in the Office of the Under Secretary of Defense, who were tasked
8 with writing the Report and Recommendations after the Panel concluded its work. (Dkt. No.
9 399.) Request for Production No. 29 seeks:

10 All Documents or Communications relating or referring to the February 2018 Department
11 of Defense Report and Recommendations on Military Service by Transgender Persons
12 (the “Report and Recommendations”), including without limitation: (a) all documents
13 received, reviewed, or considered by the Department of Defense, Panel of Experts,
14 Transgender Service Policy Working Group, and/or any other group or committee within
15 the Department of Defense that reviewed or considered transgender issues; (b) all
16 Communications to, from, or copying the Department of Defense, Panel of Experts,
17 Transgender Service Policy Working Group, and/or any other group or committee within
18 the Department of Defense that reviewed or considered transgender issues; (c) all
19 Documents reflecting, containing, or setting forth any information or data received,
20 reviewed, or considered by the Department of Defense, Panel of Experts, Transgender
21 Service Policy Working Group, and/or any other group or committee within the
22 Department of Defense that reviewed or considered transgender issues; (d) all Documents
23 relating, reflecting, or referring to matters discussed at any meeting of the Panel of
24 Experts, Transgender Service Policy Working Group, and/or any other group or
committee within the Department of Defense that reviewed or considered transgender
issues; (e) all drafts of the Report and Recommendations.

(Dkt. No. 398 at 2-3.)

20 In response to this Request, Defendants have resisted producing responsive documents
21 created by non-voting members of the Panel, arguing that these documents are not relevant
22 because they involve people with a limited role in the Panel’s work. (Dkt. No. 398 at 5.) The
23 Court disagrees. In arguing that the Ban is the product of the reasoned, independent judgment of

1 the Panel, Defendants have described a broad range of sources and input the Panel relied on in its
2 analysis, including new data that previous reviews of military service by transgender individuals
3 did not consider. (Dkt. No. 224, Ex. 1 at 3, Ex. 2 at 20.) The nature and scope of the input from
4 non-voting members of the Panel is relevant to assessing Defendants’ claims.

5 Further, the Court also finds that any chilling effect of disclosure can be “somewhat
6 assuaged” by the actions discussed in Doe:

7 For example, the Court can issue a protective order, Defendants can redact certain
8 information, documents can be restricted to attorneys’ eyes only, and the Court can
conduct *in camera* review over any particularly sensitive documents.

9 2019 WL 4394842, at *9.

10 Plaintiffs also seek drafts, communications, and documents relied upon by officials in the
11 Undersecretary of Defense’s Office, who were tasked with drafting the Report and
12 Recommendations after the Panel concluded its work. (Dkt. No. 399.) Defendants argue that
13 these documents are not relevant because the officials were solely engaged in editing the Report
14 for grammatical clarity and exposing this process would hinder future frank discussions between
15 such low-level officials and their superiors. (Id.) But drafts solely focused on grammatical
16 changes do not reflect “opinions, recommendations, or advice about agency policies,” Warner,
17 742 F.2d at 1161, and therefore would not be protected by the deliberative process privilege.
18 Alternatively, if officials in the Undersecretary of Defense’s Office made substantive changes to
19 the Report or engaged in additional fact-finding as Plaintiffs contend (Dkt. No. 399), documents
20 created by or relied upon by these officials are relevant to assessing whether the Ban was
21 implemented in reliance on the independent recommendations of the Panel. (See Dkt. No. 226 at
22 9-10; Dkt. No. 224, Ex. 2 at 19.) And while the Court is sensitive to the Defendants’ argument
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1 that producing these documents may inhibit future deliberations, these risks can be mitigated
2 with a protective order, as discussed above.

3 **B. Requests for Production No. 15, 33, 36, and 44**

4 There are few disputes regarding the remaining Requests. The Parties agree that
5 Defendants' response to Request for Production No. 29, discussed above, encompasses Request
6 for Production No. 33, which seeks documents reflecting "any policies that were considered as
7 alternatives, modifications, or refinements to the policies set forth in the March 23, 2018,
8 Memorandum." (Dkt. No. 398 at 3.) Defendants have also agreed to respond to Request No. 36,
9 which seeks all "complaints arising from or attributed to open service by transgender service
10 members, accessions by transgender individuals, or the Carter Policy." (Id.) Defendants will
11 either produce the complaints or inform the Plaintiffs that there are no remaining complaints to
12 produce. (Dkt. No. 399.) And finally, Defendants informed the Court that responses to Request
13 Nos. 15 and 44 will be included in their upcoming production on December 20, 2019. (Dkt. No.
14 399.)

15 **Conclusion**

16 Finding that Defendants' assertion of the deliberative process privilege is overcome by
17 Plaintiffs' need for the materials and the need for accurate fact-finding, the Court ORDERS the
18 Defendants to produce:

- 19 1) All documents responsive to Request for Production No. 29, including the names,
20 communications, and deliberative documents of non-voting members of the Panel;
21 and
22 2) Drafts, communications, and documents created or relied upon by officials in the
23 Undersecretary of Defense's Office in drafting the Report and Recommendations.
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To mitigate any potential chilling effect upon the future deliberations of government actors, these documents shall be produced for attorneys' eyes only. On February 3, 2020 the Parties will meet with the Court to assess Defendants' privilege claims regarding Plaintiffs' next five prioritized Requests for production.

The clerk is ordered to provide copies of this order to all counsel.

Dated December 18, 2019.



Marsha J. Pechman
United States District Judge

EXHIBIT 28

No. 20-70365

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re DONALD J. TRUMP, *et al.*,
Petitioners,

DONALD J. TRUMP, in his official capacity as President of the United States; UNITED STATES OF AMERICA; MARK T. ESPER, in his official capacity as Secretary of Defense; U.S. DEPARTMENT OF DEFENSE; U.S. DEPARTMENT OF HOMELAND SECURITY; CHAD F. WOLF, in his official capacity as Acting Secretary of Homeland Security,

Petitioners–Defendants,

v.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON,

Respondent,

RYAN KARNOSKI; CATHRINE SCHMID; D.L.; LAURA GARZA; HUMAN RIGHTS CAMPAIGN; GENDER JUSTICE LEAGUE; LINDSEY MULLER; TERECE LEWIS; PHILLIP STEPHENS; MEGAN WINTERS; JANE DOE; CONNER CALLAHAN; AMERICAN MILITARY PARTNER ASSOCIATION;

Real-Parties-in-Interest–Plaintiffs,

STATE OF WASHINGTON,

Real-Party-in-Interest–Intervenor-Plaintiff.

**THE DISTRICT COURT’S REQUESTED RESPONSE TO THE PETITION FOR A
WRIT OF MANDAMUS**

1 **INTRODUCTION**

2 At the invitation of the Court of Appeals, the Court takes this opportunity to respond to
3 the Defendants’ Petition for a Writ of Mandamus. Having reviewed the Petition, the Motion for
4 a Stay, Plaintiffs’ Answer to the Petition, and Plaintiffs’ Response to the Motion for a Stay, the
5 Court finds it can best add to the record by describing the discovery review process the Court has
6 conducted since this matter was remanded in June 2019. The Court will therefore address the
7 discovery dispute on remand, the various processes considered by the Parties and the Court for
8 reviewing Defendants’ privilege assertions, the review process undertaken thus far, ongoing
9 issues with the Parties’ positions, and will conclude with a request for guidance from the Circuit.
10 The Court will not address the substance of the Parties’ arguments except as necessary to
11 describe the status of the Parties’ dispute.

12 **BACKGROUND**

13 **A. Relevant Facts**

14 On July 27, 2018, this Court granted Plaintiffs’ previous Motion to Compel Discovery
15 Withheld Under the Deliberative Process Privilege. (Dkt. Nos. 245, 299.) In reaching its
16 conclusion, the Court found that Plaintiffs’ interest in the documents prevailed under the
17 balancing test set forth in FTC v. Warner Commc’ns Inc., 742 F.2d 1156, 1161 (9th Cir. 1984),
18 which weighs: “(1) the relevance of the evidence; (2) the availability of other evidence; (3) the
19 government’s role in the litigation; and (4) the extent to which disclosure would hinder frank and
20 independent discussion regarding contemplated policies and decisions.” (Dkt. No. 299 at 6.)

21 On June 14, 2019 the Ninth Circuit issued a writ of mandamus, vacating this Court’s
22 discovery Order. Karnoski v. Trump, 926 F.3d 1180 (9th Cir. 2019). The Circuit approved of
23 the Court’s reliance on Warner and found that the second and third Warner factors—the
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1 availability of other evidence and the government’s role in the litigation—favor Plaintiffs. Id. at
2 1206. Regarding the first and fourth Warner factors, however, the Circuit concluded that “the
3 current record is insufficient to establish relevance” and the fourth factor in particular “deserves
4 careful consideration, because the military’s interest in full and frank communication about
5 policymaking raises serious—although not insurmountable—national defense interests.” Id.
6 The Circuit suggested that on remand this Court should “consider classes of documents
7 separately when appropriate” and, “[i]f Defendants persuasively argue that a more granular
8 analysis would be proper, [the Court] should undertake it.” Id.

9 Following the Circuit’s decision, on July 17, 2019 the Parties held a telephonic
10 conference regarding the documents withheld under the deliberative process privilege. (Dkt. No.
11 365, ¶ 9.) During the conference, Plaintiffs noted that Defendants had asserted the privilege in
12 response to all 68 of Plaintiffs’ Requests, including Requests seeking purely factual, statistical,
13 or other non-deliberative material. (Id., ¶¶ 10-11.) Plaintiffs therefore asked Defendants to
14 withdraw unnecessary assertions of the privilege so the Parties could begin to assess the scope of
15 Defendants’ genuine privilege claims and the contours of the Parties’ dispute. (Id.)

16 In response, Defendants explained that they had completed their search and review before
17 receiving the final 33 of Plaintiffs’ 68 Requests; Defendants had searched lists of terms and
18 custodians, assembled a set of documents from those lists, and then reviewed their collection for
19 privilege without regard to Plaintiffs’ Requests. (Dkt. No. 365, ¶¶ 2-4, 15; Ex. 56 at 3; Dkt. No.
20 381, Ex. 1, ¶ 5.) Defendants then organized their documents “as they would appear in the
21 ordinary course of business—by DoD or Military Service component and custodian.” (Dkt. No.
22 371, Ex. 1, ¶ 10.) The Court would later rule that this method was insufficient to meet the
23 requirements of the Federal Rules of Civil Procedure. Fed.R.Civ.P. 26(b)(5)(A)(ii) (requiring a
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1 party to make its privilege assertions in a manner that will enable other parties to assess the
2 claim); see also Fed.R.Civ.P. 34(b)(2)(C).

3 In response to Plaintiffs' request that Defendants withdraw unnecessary assertions of the
4 privilege, Defendants explained that they analyzed the privilege on a document-by-document
5 basis, and not in response to any Request from Plaintiffs. (Dkt. No. 365, Ex. 56 at 2.)
6 Defendants therefore would not withdraw their privilege assertions as to any of the 68 Requests.
7 (Id.) Defendants also would not run additional search terms proposed by Plaintiffs or search
8 additional custodians. (Dkt. No. 397 at 17:20-19:4.)

9 It was also clear that the Parties have a fundamental disagreement regarding who bears
10 the burden of establishing whether the privilege applies. Defendants take the position that
11 Plaintiffs have the burden of establishing that they are entitled to specific withheld documents in
12 Defendants' collection (Dkt. No. 402 at 9:18-22; Dkt. No. 397 at 44:21-22, 48:22-49:20), and if
13 Defendants' original collection is inadequate, Plaintiffs must move to compel production of
14 documents outside of Defendants' collection. (Dkt. No. 412 at 47:17-21.) Plaintiffs disagree:
15 "That's not how discovery works. You don't let the defendant pick a few documents . . . and
16 shift the burden to the plaintiffs to try to use those to get more documents." (Dkt. No. 397 at
17 52:10-13.)

18 Unable to resolve these disputes, on August 22, 2019, Plaintiffs filed a renewed Motion
19 to Compel Documents Withheld Under the Deliberative Process Privilege. (Dkt. No. 364.)

20 **B. Review Process**

21 In their renewed Motion, Plaintiffs proposed that the Court evaluate Defendants'
22 privilege claims through the lens of nine broad categories of documents and devoted their
23 Motion to arguments supporting the relevance of each category. (Dkt. No. 364 at 9-12.) In
24

1 opposition, Defendants argued that the categories were “far too broadly defined for the Court to
2 properly apply the Warner balancing test” (Dkt. No. 380 at 7) and instead suggested that the
3 Plaintiffs choose specific custodians from the list Defendants created and determine “why [the
4 Plaintiffs] think there’s a deficiency in what we already gave them.” (Dkt. No. 397 at
5 34:24-35:2.) Faced with the task of evaluating the 35,000 to 50,000 documents over which the
6 Defendants asserted the deliberative process privilege (Dkt. No. 364 at 6), the Court held oral
7 argument with the goal of crafting a process for evaluating Defendants’ privilege claims in
8 keeping with the Circuit Court’s instruction to engage in a “granular” process where appropriate.
9 Karnoski, 926 F.3d at 1206; (Dkt. No. 393.)

10 1. Processes Considered

11 During oral argument on Plaintiffs’ Motion, the Parties and the Court considered various
12 options for reviewing Defendants’ privilege assertions. The Court began by asking whether it
13 was possible to review Defendants’ assertions on a document-by-document basis as the court did
14 with the two memoranda in Warner, 742 F.2d at 1161. The Parties acknowledged the
15 impossibility of reviewing 35,000 documents for privilege in addition to privilege logs so
16 voluminous they could not be filed on the docket. (Dkt. No. 397 at 19:7-12; 41:4-5; Dkt. No.
17 366.)

18 Plaintiffs argued in support of evaluating the documents pursuant to the nine broad
19 categories proposed in their Motion. (Dkt. No. 397 at 5:18-6:13; Dkt. No. 364 at 9-12.) When
20 the Court expressed skepticism that the categories allowed for precise review, Plaintiffs proposed
21 an alternative process where the Plaintiffs would group Requests by narrower topics and then
22 begin by explaining (1) why the privilege does not apply to these topics and (2) if the privilege
23 does apply, why the privilege is overcome. (Dkt. No. 397 at 26:24-27:6.) Plaintiffs also agreed
24

1 to limit the inquiry to those documents withheld by the DoD, leaving aside documents withheld
2 by the President. (Id. at 28:4-12.) Defendants argued that Plaintiffs’ proposal was not
3 reasonable because it would not require Plaintiffs to identify documents by custodian, timeframe,
4 and category. (Id. at 40:11-13.)

5 In turn, Defendants argued in favor of their proposal that the Plaintiffs review the Panel
6 deliberations that were already produced to determine “what else they reveal.” (Id. at 37:9-12.)
7 If the documents show that someone at a Panel meeting made a comment demonstrating animus,
8 Defendants proposed that Plaintiffs could then request the deliberative documents from that
9 person and if the Government declined to produce the documents, then and only then could the
10 Plaintiffs bring the documents to the Court for an *in camera* review. (Id. at 37:20-38:2;
11 39:23-40:5.) Plaintiffs argued that the Defendants’ proposal impermissibly shifted the burden to
12 the Plaintiffs to argue for more documents based on the few hand-picked documents Defendants
13 decided to produce. (Id. at 52:2-55:10.) Plaintiffs also noted that animus is unlikely to be
14 apparent “in the sanitized documents that the [G]overnment will choose to give us that then we
15 have to use as a basis to ask for more documents.” (Id. at 53:19-21.)

16 The Court then proposed another alternative, called “smoke-and-fire,” where each side
17 chooses a selection of documents from the privilege logs for the Court to evaluate, and if the
18 Court determines the privilege was asserted correctly, Plaintiffs’ Motion to Compel documents
19 from that Request would be denied. (Id. at 23:18-24:11.) Plaintiffs argued this method would
20 give Defendants an advantage because it is premised on the assumption that the privilege applies
21 at all. (Id. at 26:13-17.)

22 //

23 //

1 2. The Selected Process

2 After weighing each of these approaches and the Parties’ briefing, the Court concluded
3 that Defendants’ privilege assertions would be evaluated through individual Requests for
4 Production, setting a schedule for review where every six to eight weeks the Parties would have
5 two hours to present arguments on five Requests, as prioritized by Plaintiffs. (Dkt. No. 394 at
6 6-7.)

7 This process was based on the Court’s findings that the volume of withheld documents
8 prevented document-by-document review and the nine categories Plaintiffs proposed for
9 organizing the Court’s review were, as Defendants suggested, “far too broadly defined for the
10 Court to properly apply the Warner balancing test.” (Dkt. No. 380 at 7; Dkt. No. 394 at 5.) The
11 Court also found that Defendants’ method of production—assembling a set of documents as
12 though kept in the ordinary course of business—was insufficient, as it did not allow Plaintiffs or
13 the Court to assess Defendants’ privilege claims as required by Federal Rule of Civil Procedure
14 26(b)(5)(A)(ii) or to conduct the type of “granular analysis” suggested by the Ninth Circuit.
15 (Dkt. No. 394 at 6.) In this case, Defendants’ method of collecting and producing documents
16 meant the Court could neither review Defendants’ privilege assertions through individual
17 documents nor through individual Requests for Production.

18 The Court therefore ordered the Defendants to begin responding to individual Requests,
19 consulting with the Plaintiffs to apply additional search terms or search additional custodians.
20 (Dkt. No. 394 at 6; Dkt. No. 397 at 60:4-11.) Plaintiffs were ordered to provide the Defendants
21 with a list of Requests, sorted by order of priority. (Dkt. No. 394 at 6.) The Parties were ordered
22 to return three weeks later to begin reviewing the first five prioritized Requests. (Dkt. No. 394 at
23 6-7.)

1 3. December Hearing

2 The next hearing was held on December 10, 2019. (Dkt. No. 399.) The Parties
3 submitted a Status Report ahead of the hearing in which they stated their positions and
4 arguments in regard to each Request. (Dkt. No. 398.) During the hearing, the Court reviewed
5 Plaintiffs' first five prioritized Requests, (Nos. 15, 29, 33, 36, and 44), and it quickly became
6 apparent that three of these Requests were no longer contested. (Dkt. No. 402 at 36:6-25,
7 39:4-19, 39:25-40:10.) Defendants also asserted that their upcoming production would include
8 their response to a fourth Request, Request No. 15, which seeks "[a]ll documents or
9 communications relating to Secretary of Defense Ash Carter's Directive Type Memo 16-005."
10 (Dkt. No. 398 at 3; Dkt. No. 402 at 34:19-20.) In reliance on the Defendants' statements, the
11 Court advised the Plaintiffs to review the Defendants' upcoming production and to raise any
12 remaining issues concerning Request No. 15 at the next status conference. (Dkt. No. 402 at
13 35:10-13.) Defendants would eventually produce only 12 documents responsive to Request No.
14 15, while continuing to withhold 15,000. (Dkt. No. 412 at 32:3-4, 38:4-6.)

15 The remainder of the December hearing involved arguments concerning Request for
16 Production No. 29, which seeks "Documents or Communications relating or referring to the
17 February 2018 Department of Defense Report and Recommendations on Military Service by
18 Transgender Persons." (Dkt. No. 398 at 2-3.) For more than an hour the Parties contested two
19 categories of documents responsive to Request for Production No. 29: (1) the data and
20 communications of any group within the DoD that reviewed or considered transgender issues;
21 and (2) drafts created by officials in the Office of the Undersecretary of Defense, who were
22 tasked with writing the Report and Recommendations after the Panel concluded its work. (Dkt.
23 No. 402 at 4:3-33:15.) Throughout the hearing, the Court urged Defendants to support their
24

1 | privilege assertions with greater detail when they failed to make category or custodian-specific
2 | arguments against producing the documents:

3 | [I]f [Plaintiffs] don't know what you've got, it's your obligation to lay out what it
4 | is. So I can see, yes, those people are important and those people aren't. You
5 | need to lay that out for me, if not for them. And I'm wondering why that hasn't
6 | been done.

7 | (Dkt. No. 402 at 14:1-14:4; see also id. at 8:11-13.)

8 | After hearing from the Parties, the Court ordered Defendants to produce “[a]ll documents
9 | responsive to Request for Production No. 29,” which would necessarily include “non-voting
10 | members of the Panel” and documents explicitly described by the Court during the hearing: “the
11 | working group names, who’s on the working group, the dialogue in e-mail, or any other
12 | communication within those working groups, and the data that they produced.” (Dkt. No. 401 at
13 | 7; Dkt. No. 402 at 24:8-10.) The Court also ordered Defendants to produce “[d]rafts,
14 | communications, and documents created or relied upon by officials in the Undersecretary of
15 | Defense’s Office in drafting the Report and Recommendations.” (Dkt. No. 401 at 7; Dkt. No.
16 | 402 at 32:16-19.) The Court further ordered that these documents be produced for attorneys’
17 | eyes only. (Dkt. No. 401 at 8.)

18 | 4. Motion for Clarification

19 | Five weeks later, the Defendants filed a Motion for Clarification of the Court’s December
20 | Order regarding Request for Production No. 29, asking the Court to explain whether its Order
21 | compels disclosure only of documents pertaining to “non-voting members of the Panel” or all
22 | documents “relating or referring” to the Department of Defense’s (DoD’s) Report and
23 | Recommendation. (Dkt. No. 405 at 3.) Defendants did not move to clarify the Court’s ruling
24 | requiring Defendants to produce drafts created by officials in the Undersecretary of Defense’s
Office, but nevertheless argued for the first time that Plaintiffs could obtain the same information

1 through Defendants' amended Interrogatory responses so Defendants should not be required to
2 produce those documents. (Id. at 9.) Defendants also moved for a stay of compliance as to both
3 parts of the Court's ruling with respect to Request No. 29. (Id. at 8-11.)

4 The Court granted Defendants' Motion for Clarification, explaining that its Order
5 required Defendants to produce all documents responsive to Request No. 29, including the
6 dialogue in e-mail or any other communication within those working groups, the data that they
7 produced, and responsive communications among members of the services. (Dkt. No. 413 at 4.)
8 The Court denied Defendants' Motion for a Stay, noting that this dispute has been pending for
9 nearly two years and to the extent Defendants simply disagreed with the second part of the
10 Court's Order, they had missed their deadline for reconsideration under the Local Rules. (Dkt.
11 No. 413 at 5 (citing LCR 7(h).))

12 5. February Hearing

13 The Court held its next hearing on February 3, 2020. (Dkt. Nos. 410, 412.) The Court
14 learned through the Parties' Status Report submitted ahead of the hearing and during the hearing
15 itself that Defendants had not complied with several of the Court's orders. (Dkt. No. 408, 412.)
16 In addition to Defendants' ongoing refusal to produce documents responsive to Request No. 29,
17 as ordered by the Court in December, it also became clear that Defendants had produced only 12
18 documents responsive to Request No. 15—while withholding 15,000—although Defendants had
19 asserted in December that their upcoming production would answer this Request. (Dkt. No. 402
20 at 34:2-11, 34:15-16, 34:19-21.) Plaintiffs also asserted that the Defendants' response to several
21 of the Requests elides their obligations under the Court's previous orders:

22 Defendants are not aware of any other complaints or documents reflecting,
23 referring, or relating to such complaints within Defendants' collection that
24 Defendants are withholding on the basis of the deliberative process privilege.

1 (See, e.g., Dkt. No. 408 at 18, 20, 21.) Plaintiffs contend that although Defendants were ordered
2 to respond to individual Requests, search additional custodians, and use additional search terms
3 suggested by Plaintiffs, the “collection” Defendants refer to is Defendants’ original set of
4 documents, collected before Plaintiffs served 33 of their 68 Requests. (Dkt. No. 394 at 6; Dkt.
5 No. 397 at 17:20-19:4; Dkt. No. 412 at 60:17-20 (as explained by the Court: “In order to be
6 responsive to the requests, [Defendants are] going to have to look at not just what they gathered,
7 but where they might find documents that might be responsive.”).) A week after the February
8 hearing, Defendants filed their Petition for a Writ of Mandamus. The Court had not yet issued
9 its order on the Requests discussed during the hearing, including Request No. 15, which is at
10 issue in the Petition.

11 6. Ongoing Problems

12 An orderly and productive discovery process depends on the Parties’ adherence to the
13 Court’s orders, maintaining clear and consistent positions, and the Court’s ability to count on the
14 the Parties’ representations. Throughout this process, Defendants have failed to comply with
15 Court orders, changed their arguments, retracted previous statements, and have often been unable
16 to respond to questions about their own documents.

17 As an example, at the first hearing on Plaintiffs’ Motion to Compel in November, the
18 Court found that Defendants’ production of documents as kept in the ordinary course of business
19 was inadequate and ordered Defendants to respond to individual Requests for Production. (Dkt.
20 No. 397 at 60:4-11; see also Dkt. No. 394 at 5-7.) Three months later, Defendants informed the
21 Court that they were not required to respond to individual Requests because they “reviewed and
22 produced documents as they were kept in the ordinary course of business.” (Dkt. No. 408 at 23.)
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1 As an example of Defendants’ changing arguments, when arguing against producing
2 drafts of the Report and Recommendations in December, Defendants explained:

3 [The] [d]rafts aren’t deliberative process. [These documents are] little subparts of
4 the decision, tweaking how you’re going to do a particular sentence or how you’re
going to write a particular paragraph . . . [and] there’s not a lot of relevance to
that, too, if they’re drafts.

5 (Dkt. No. 402 at 27:24-25, 30:18-19.) But in their Motion for Clarification the following month,
6 Defendants disputed their own representation, informing the Court that “Defendants did not
7 ‘argue that these documents are not relevant because the officials were solely engaged in editing
8 the Report for grammatical clarity.’ Indeed, many edits were focused on the substance of the
9 Report, and such edits clearly reflect opinions, recommendations, and advice.” (Dkt. No. 405 at
10 11 n.4 (citation omitted).) Defendants then offered an entirely new argument—raised for the
11 first time more than a month after the Court’s ruling—that Plaintiffs should obtain the
12 information contained in the drafts through other, more limited avenues of discovery, namely
13 Defendants’ amended Interrogatory responses. (Dkt. No. 405 at 9-11.)

14 Perhaps most representative of Defendants’ inconsistent positions is the assertion in their
15 Petition that the Court concluded “the privilege has been overcome as to documents from the
16 highest levels of the Department” including “Secretary Mattis’s handwritten comments on a draft
17 Report [and] also his personal notes on a draft letter to the President.” Pet. 4, 25. In nearly six
18 hours of oral argument and in dozens of pages of briefing, Defendants never raised this issue or
19 described these documents to the Court. (See Dkt. Nos. 370, 397, 398, 402, 408, 412.) Instead,
20 their prior position was that these documents were created by “four or five people who are pretty
21 far down the line . . . taking direction of how to write the report.” (Dkt. No. 402 at 30:14-19.)

22 A final factor in the efficient administration of this discovery process requires the Parties
23 to have a thorough understanding of the evidence. Defendants have been unable at times to
24

1 respond to the Court’s basic inquiries about the facts of their case. For example, during oral
2 argument, Defendants could not answer simple questions about the logistics of the Panel’s
3 decision-making process, such as how many working groups were convened in support of the
4 Panel’s deliberations or the number of meetings held by the Panel. (Dkt. No. 402 at 22:13-17,
5 6:15-18; Dkt. No. 435, Ex. 17 at 2.)

6 These problems have created delays that have derailed the Court’s case schedule in this
7 matter.

8 **C. Request for Guidance**

9 The Court conducts this lengthy and detailed ongoing review in furtherance of the
10 Circuit’s guidance in Karnoski v. Trump, 926 F.3d 1180. The Court has allowed the parties
11 dozens of pages of briefing and nearly six hours of oral argument with the goal of carefully
12 evaluating Defendants’ privilege assertions in response to Plaintiffs’ first ten Requests for
13 Production. (See Dkt. Nos. 397, 398, 402, 408, 412.) Nevertheless, the discovery review
14 process has been undermined by the issues described above. The Court therefore concludes with
15 a request for guidance from the Circuit about the nature of the review process the Court should
16 undertake in light of the Court’s obligation to conduct a fair evaluation of the weighty
17 constitutional issues at stake. In particular, the Court requests more direction as to how a
18 “granular” review should be conducted in this matter.

19
20 The clerk is ordered to provide copies of this order to all counsel.

21 Dated March 5, 2020.

22
23 

24 Marsha J. Pechman
United States District Judge

EXHIBIT 29

FILED UNDER SEAL

EXHIBIT 30

From: Beyler, Juliet SES ASN (M&RA), MMP
To: Benedict, Scott F Col M&RA, M&RA, MP Division; Strobl, Michael R MRA, MPDV
CC: Mayer, Douglas S Col M&RA, M&RA/MP; Ingram, Elena P CAPT ASN (M&RA), MMP
Sent: 12/19/2017 2:45:22 PM
Subject: RE: Additional Questions

Eggs, Mike,

Thanks. I had similar thoughts. Mr. Dee told me he recommended the group/PoE not spend any more time collecting data, but rather focus on developing standards. So, not sure how DSD is going to tackle this.

Re- the suggested additional questions, do you know if the ACMC is generating his own additional list given he expressed concern that there had not been enough time to adequately review the matter? Are you developing those questions for him? Happy to push your two questions forward or do they need to be vetted w/ACMC? This is all hazy right now, we're pushing OSD for update on way ahead but nothing helpful heard yet.

SF/J

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

From: Benedict BGen Scott F [mailto:scott.f.benedict@usmc.mil]
Sent: Tuesday, December 19, 2017 8:59 AM
To: Strobl, Michael R MRA, MPDV; Beyler, Juliet SES ASN (M&RA), MMP
Cc: Mayer, Douglas S Col M&RA, M&RA/MP
Subject: RE: Additional Questions

Thanks, have not seen or heard of these questions.

In addition to Mike's suggestion below, I would also paraphrase the VCNO question: Are TG members providing service that is exceptional, valued above their cisgender peers?, leading us to treat their accession and retention in a category different or above other SMS?

SF
eggs

Brigadier General S.F. Benedict, USMC
Director Manpower Plans and Policy Division

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

From: Strobl SES Michael R
Sent: Tuesday, December 19, 2017 7:55 AM
To: Beyler SES Juliet M <juliet.beyler@navy.mil>
Cc: Benedict BGen Scott F <scott.f.benedict@usmc.mil>; Mayer Col Douglas S <douglas.mayer@usmc.mil>
Subject: RE: Additional Questions

Thanks Juliet.

My first thought on these questions is that it would take a good deal of time to collect the answers/data; especially with the holidays looming. We might not have that much time.

I'd suggest adding something along the lines of, "Could your service meet its recruiting and retention missions without TG members?"

Regards,
Mike

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

From: Beyler, Juliet SES ASN (M&RA), MMP [mailto:juliet.beyler@navy.mil]
Sent: Tuesday, December 19, 2017 7:45 AM
To: NOWELL RADM JOHN B JR; Benedict BGen Scott F; Strobl SES Michael R
Cc: Ingram CAPT Elena P; Pizanti CDR Kimberly A
Subject: FW: Additional Questions
Importance: High

Gentlemen,

Sharing in case it's not trickled down yet. I've not heard anything yet on next steps given last week's developments. Will share

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

From: Moran, William F ADM, OPNAV, VCNO

Sent: Monday, December 18, 2017 5:22 PM

To: Wilkie, Robert L Jr HON (US) (robert.l.wilkie4.civ@mail.mil); Kurta, Anthony M SES OSD OUSD P-R (US); Beyler, Juliet SES ASN (M&RA), MMP; Walters, Glenn M LtGen, ACMC; Giordano, Steven S MCPON OPNAV, N00D; Green, Ronald L SgtMaj SMMC, SMMC; Koffsky, Paul S SES OSD OGC (US); Gruber, David J CIV OSD OGC (US); Hebert, Lernes J SES OSD OUSD P-R (US); Gleichman, Rachel CIV SD (Rachel.Gleichman@sd.mil); Donovan, Matthew P HON (US); McConville, James C GEN USARMY HQDA VCSA (US); Wilson, Stephen W Gen USAF AF-CV (US); Walters, Glenn M LtGen, ACMC; Troxell, John W CSM USARMY JS DOM (US); Dailey, Daniel A SMA USARMY HQDA SMA (US); Wright, Kaleth O CMSAF USAF AF-CCC (US); Kepner, Christopher S CSM USARMY NG NGB (US)

Cc: Burke, Robert P VADM CNP, N1; Renshaw, Curt CAPT OPNAV, VCNO

Subject: Additional Questions

Importance: High

Teammates,

Not sure if there's formal tasking out there on providing "questions we would ask if given the opportunity to get additional data on the ~980 Service members self-identified as TG to inform our recommendation to SD", but here are a few to get the conversation going:

- Of the TG Service members who have deployed, how many had to return to CONUS or the nearest Medical Treatment Facility due to medical/hormone treatment issues?
- Of the TG Service members who have transitioned, or are in the process of transitioning, how many have worked with their commands to minimize impact on operations or deployment?
- How many TG Service members have postponed their transition in order to meet career milestones?
- How many TG Service members delayed their transition until their Shore Tour in order to reduce operational impacts?
- How many TG Service members have FITREP/EVALs above average compared to their peers? In the fight to retain talent, how talented are these individuals?
- How much deployed time do TG Service members have as compared to their peers? What is the PERSTEMPO of TG Service members?
- Of the TG veterans who have been treated by the VA, how many have completed their transition? What was the average time it took to complete?

VR, Bill