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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 AIDEN STOCKMAN, NICOLAS
13 TALBOTT; TAMASYN REEVES;
14 JAQUICE TATE; JOHN DOES 1-2;
15 JANE DOE; and EQUALITY
16 CALIFORNIA,

15 Plaintiffs,

16 v.

17 MARK T. ESPER, in his official
18 capacity as Secretary of Defense;
19 MARK A. MILLEY, in his official
20 capacity as Chairman of the Joint Chiefs
of Staff; RICHARD V. SPENCER, in
21 his official capacity as Secretary of the
Navy; RYAN D. MCCARTHY, in his
22 official capacity as Secretary of the
Army; MATTHEW P. DONOVAN, in
23 his official capacity as Acting Secretary
of the Air Force; and KEVIN
24 MCALEENAN, in his official capacity
as Acting Secretary of Homeland
Security,

25 Defendants.

26 STATE OF CALIFORNIA,
27 Plaintiff-Intervenor,

28 v.

MARK T. ESPER, in his official

CASE NO. 5:17-CV-01799-JGB-KK

**PLAINTIFFS' AMENDED
COMPLAINT**

1 capacity as Secretary of Defense;
2 MARK A. MILLEY, in his official
3 capacity as Chairman of the Joint Chiefs
4 of Staff; RICHARD V. SPENCER, in
5 his official capacity as Secretary of the
6 Navy; RYAN D. MCCARTHY, in his
7 official capacity as Secretary of the
8 Army; MATTHEW P. DONOVAN, in
9 his official capacity as Acting Secretary
10 of the Air Force; and KEVIN
11 MCALEENAN, in his official capacity
12 as Acting Secretary of Homeland
13 Security,
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15 Defendants.
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1 **I. NATURE OF THE ACTION**

2 1. This action, brought on behalf of transgender individuals, seeks to
3 ensure that all qualified Americans have an equal opportunity to serve in the United
4 States military, that transgender individuals who seek to enlist or who serve in the
5 military are free from arbitrary and invidious discrimination, and that the
6 constitutional rights of transgender service members and recruits to autonomy,
7 privacy, and freedom of expression are respected and protected.

8 2. In June 2016, following an exhaustive review supported by reams of
9 data, interviews, and analysis, the Department of Defense (“DOD”) announced that
10 it would reverse its prior unconstitutional policy barring openly transgender people
11 from serving in the military, and would implement a policy allowing transgender
12 people to serve openly in the United States armed forces (“June 2016 Policy”).
13 Since that announcement, and in reliance thereon, numerous American service
14 members followed protocol and informed their chain of command that they are
15 transgender. In addition, as a consequence of the DOD’s announced policy, after
16 years of unlawful exclusion, transgender persons relied on the new policy and
17 sought to enlist and serve their country in the Armed Forces.

18 3. On July 26, 2017, President Donald J. Trump abruptly announced via
19 a series of Twitter statements that the United States military would return to
20 discriminating unlawfully against transgender people solely because of their
21 transgender status. By proclaiming that “the United States Government will not
22 accept or allow Transgender individuals to serve in any capacity in the U.S.
23 Military,” President Trump announced that transgender troops would be barred
24 from serving in our Armed Forces.

25 4. On August 25, 2017, President Trump formalized the government’s
26 policy, directing leaders of the DOD and Department of Homeland Security
27 (“DHS,” and together with the DOD, the “Departments”) to reinstate the ban “on
28 military service by transgender individuals that was in place prior to June 2016.”

1 *See Memorandum Regarding Military Service by Transgender Individuals*, 82 Fed.
 2 Reg. 41319 (entered Aug. 30, 2017) (the “August 25 Directive”). Specifically,
 3 President Trump directed the Departments (i) to ban the “accession of transgender
 4 individuals into military service,” (ii) to “halt all use of DOD or DHS resources to
 5 fund sex reassignment surgical procedures for military personnel” except in limited
 6 instances, and (iii) to implement a plan to return to the prohibition on military
 7 service for transgender people. President Trump ordered then Secretary James N.
 8 Mattis to develop a “plan for implementing” his directives by February 21, 2018
 9 and further ordered that they “take effect on March 23, 2018.” President Trump’s
 10 August 25 Directive did not reference any evidence, facts, or analysis to support
 11 the imposition of this categorical ban.

12 5. On February 22, 2018, Secretary Mattis submitted a plan to implement
 13 a ban on transgender people serving in the military, as ordered by President Trump
 14 in the August 25 Directive. *See Mattis Memorandum to the President*, February
 15 22, 2018 (together with an accompanying report described below, the “Transgender
 16 Military Ban”). The plan set forth a series of restrictions exclusively targeting
 17 “Transgender persons.” In particular, the plan instructed:

18 a. “*Transgender persons*¹ with a history or diagnosis of gender
 19 dysphoria are disqualified from military service, except under . . .
 20 limited circumstances,” including “(1) if they have been stable for 36
 21 consecutive months in their biological sex prior to accession”; “(2)
 22 Service members diagnosed with gender dysphoria after entering into
 23 service may be retained *if they do not require a change of gender . . .*
 24 ”; and (3) if they are “currently service” and “have been diagnosed
 25 with gender dysphoria since the previous administration’s policy took
 26 effect and prior to the effective date of this new policy.”

27
 28

 1 Emphases throughout this Amended Complaint are added.

1 b. “*Transgender persons* who require or have undergone gender
2 transition are disqualified from military service.”

3 c. “*Transgender persons* without history or diagnosis of gender
4 dysphoria,” and who may thus evade one or both of the above
5 restrictions, may serve only “*in their biological sex.*”

6 6. Taken together, these instructions implement the President’s August
7 25 Directive to ban transgender persons from serving in conformity with their
8 gender identity—the *defining quality of what makes them transgender.*
9 Collectively, President Trump’s tweets, the August 25 Directive, and the
10 Transgender Military Ban brand transgender men and women as inherently unfit to
11 serve and place current transgender service members into a separate and unequal
12 class of persons who serve under unequal terms and conditions for retention in
13 service, simply because they are transgender.²

14 7. In a March 23, 2018 memorandum, President Trump acknowledged
15 receipt of the plan submitted to him by Secretary Mattis—which was confirmed to
16 have been developed “[p]ursuant to [the President’s] memorandum of August 25,
17 2017”—and authorized the Secretary of Defense to carry out the instructions
18 included in the plan, effectively banning all future military service by transgender
19 individuals.

20 8. On March 12, 2019, the Office of the Deputy Secretary of Defense
21 issued formal instructions for effectuating the Transgender Military Ban.

22 9. The implementation of the Transgender Military Ban was enjoined
23 until April 2019, at which point it went fully into effect. Since then, no transgender
24 individuals have been permitted to enlist in the military. In addition, any currently
25 serving transgender individuals are subject to discharge if they reveal their
26 transgender status, are diagnosed with gender dysphoria, or seek to transition.

27
28 ² The plan proposed by Secretary Mattis and adopted as military policy
 allows for those “diagnosed with gender dysphoria since the previous
 administration’s policy took effect” to continue in service.

1 Current service members who already openly identify as transgender serve only on
2 sufferance, on unequal terms with non-transgender troops, and under the pall of
3 stigma cast by the ban.

4 10. Plaintiffs here are (i) Aiden Stockman, Nicolas Talbott, and Tamasyn
5 Reeves, transgender individuals who have taken steps to enlist in the military,
6 (ii) Jaquice Tate and several other openly transgender active service members,
7 proceeding as anonymous plaintiffs, who are affected by the Transgender Military
8 Ban, and (iii) Equality California, the nation’s largest statewide lesbian, gay,
9 bisexual, transgender, and queer (“LGBTQ”) civil rights organization.

10 11. The Transgender Military Ban inflicts serious injuries upon Plaintiffs
11 and Plaintiff EQCA’s members. First, the Transgender Military Ban expressly
12 prevents transgender people from acceding into military service. Second, the
13 Transgender Military Ban causes immediate and concrete injury to the current
14 service member Plaintiffs, each of whom came out as transgender to their chain of
15 command in reliance on the June 2016 Policy lifting the prior ban. These Plaintiffs
16 serve under differential terms that are not applied to non-transgender service
17 members, in addition to being singled out and stigmatized by a policy that deems
18 them unfit. They are also harmed because they serve as an exception to policy.
19 Their peers and command predictably treat them differently in ways that impact
20 their advancement and opportunities. Third, the Transgender Military Ban harms
21 current service members who have not yet publicly identified themselves as
22 transgender by subjecting them to discharge if they do so and by denying them
23 equal access to medical care. Whereas all other service members can obtain the
24 medical care they need, transgender service members are denied that care and are
25 subject to discharge instead. Fourth, the Transgender Military Ban chills the speech
26 and expression of each of the Plaintiffs and Plaintiff EQCA’s members.

27 12. The Transgender Military Ban denies Plaintiffs and their members the
28 equal protection of the laws, their right to freedom of expression, and their right to

1 liberty and privacy, in violation of the First and Fifth Amendments to the United
2 States Constitution. Accordingly, Plaintiffs seek a declaration that the Transgender
3 Military Ban is unconstitutional, and an injunction preventing Defendants from
4 enforcing it.

5 **JURISDICTION AND VENUE**

6 13. This court has jurisdiction over the claims pursuant to 28 U.S.C.
7 Sections 1331 and 1343. This Court has further remedial authority under the
8 Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202 *et seq.*

9 14. Venue is proper in the Central District of California under 28 U.S.C.
10 Section 1391(e) because Plaintiffs reside in this judicial district and a substantial
11 part of the events giving rise to this action occurred in this District.

12 **PARTIES**

13 15. Plaintiff Aiden Stockman is a transgender man who wants to serve his
14 country through military service, and has taken steps to do so. Mr. Stockman was
15 raised and currently resides in California. Mr. Stockman has long been interested
16 in serving his country and intended to join the Air Force. As a young man, Mr.
17 Stockman spoke with friends and neighbors who were stationed at nearby Twenty-
18 Nine Palms Air Force Base to discuss what it is like to serve in the Air Force. Mr.
19 Stockman came out to his family as transgender in the eighth grade. At or about
20 that time, he began seeking medical advice related to gender transition. In June
21 2014, when he was in the eleventh grade, Mr. Stockman began hormone
22 replacement therapy (“HRT”). Later that year, Mr. Stockman took the Armed
23 Services Vocational Aptitude Battery (“ASVAB”) test consistent with his intention
24 of acceding into the military. He hoped to join the Air Force following his
25 graduation from high school, but wanted to complete a double-mastectomy (i.e.,
26 “top surgery”) first. After finding a doctor, Mr. Stockman ultimately made plans
27 to undergo top surgery, planning to enlist thereafter. The June 2016 Policy
28 permitting open service by transgender people gave Mr. Stockman comfort that he

1 would be able to pursue a career of military service. However, upon learning of
2 the Transgender Military Ban, Mr. Stockman felt crushed knowing that he will no
3 longer be able to pursue his dream of serving his country in the Air Force.

4 16. Plaintiff Nicolas Talbott is a transgender man currently residing in
5 Ohio. After graduating from college with a degree in sociology and criminology,
6 he planned to enlist in the military in pursuit of a career in counter-terrorism. Prior
7 to issuance of the June 2016 Policy, Mr. Talbott contacted military recruiters on
8 several occasions to express his interest in serving his country, but each time he
9 was informed that regulations prohibited his service because he is transgender.
10 After the June 2016 Policy was announced, Mr. Talbott found a recruiter for the
11 Air Force National Guard who advised that he would help him enlist. Mr. Talbott
12 met with the recruiter in December 2016 and filled out paperwork confirming his
13 interest in acceding into the military. The recruiter asked Mr. Talbott to obtain a
14 letter from his doctor confirming that being transgender did not have any adverse
15 effects on his life or his ability to perform military-related duties. The recruiter
16 advised that the next step in the process would be to meet with the regional Military
17 Entrance Processing Station (“MEPS”) for a physical exam and to take the ASVAB
18 test, but he later advised that MEPS would not begin processing for transgender
19 enlistees until mid-2017. Mr. Talbott scheduled his appointment with his doctor,
20 began studying practice ASVAB exams, and was training regularly for the physical
21 exam, all in anticipation of enlisting in 2017. After reviewing Mr. Talbott’s
22 military medical questionnaire, MEPS denied his enlistment for reasons relating to
23 his transgender status and for other reasons as well. Because he still wished to
24 pursue a military career, Mr. Talbott enrolled at Kent State University to participate
25 in a Reserve Officer Training Corps (“ROTC”) program. Mr. Talbott borrowed
26 additional educational loans for that purpose, relying on the expectation of his
27 future eligibility for the military’s loan forgiveness program. He participated in
28 ROTC until May 5, 2019. Because of the military ban, he could not continue

1 further in ROTC, is not currently eligible for the military's loan forgiveness
2 program, and cannot access the healthcare benefits that he would have ultimately
3 received after being commissioned to the United States Army. Mr. Talbott intends
4 to re-enroll in an ROTC program or pursue other enlistment options once the ban
5 is lifted.

6 17. Plaintiff Tamasyn Reeves is a transgender woman currently residing
7 in California. Ms. Reeves has wanted to join the Navy since she was 17. Her
8 family has a tradition of service in the military: her grandfather served in the Navy
9 during the Korean War, two of her uncles served in the Air Force, and two of her
10 cousins served in the Navy. Ms. Reeves first spoke to a recruiter at age 21. The
11 recruiter told Ms. Reeves that she was not eligible to enlist because of the
12 military's then-policy banning LGBTQ individuals from military service.
13 Following issuance of the June 2016 Policy, Ms. Reeves decided to enlist as soon
14 as the final procedures for accession of transgender individuals were solidified and
15 she completed her education. Because the Transgender Military Ban prevents her
16 accession into the military, despite her longstanding desire to do so, Ms. Reeves is
17 currently seeking non-military employment. She recently earned her associates
18 degree in hopes of improving her employment opportunities. However, Ms.
19 Reeves intends to enlist when the Transgender Military Ban is lifted.

20 18. Plaintiff Jaquice Tate is a transgender man currently serving in the
21 Army. He enlisted in 2008 because he wanted a career in which he could take
22 pride. He hopes to serve a twenty-year term. Mr. Tate has served domestically
23 and internationally, including a deployment to Iraq. Currently, he is a Military
24 Police Officer and he has served on drug suppression teams. Each of his command
25 leaders awarded him a Colonel Coin of Excellence and he has received numerous
26 Army Achievement Medals. The Army has approved his application to become a
27 Drill Sergeant. In reliance on the June 2016 Policy, Mr. Tate informed his chain
28 of command of his true gender. His chain of command has supported him

1 throughout his process of medical transition. However, though selected twice for
2 Drill Sergeant training, he was unable to participate in that training because he
3 would have been required to participate as a female, something that, as a
4 transgender man, he could not do.

5 19. Plaintiff John Doe 1-2 and Jane Doe are active or formerly active duty
6 service members who serve openly as transgender persons. They proceed under
7 pseudonyms for fear of retribution.

8 20. Plaintiff John Doe 1 is a transgender man who has served in the United
9 States Air Force since 2012. John Doe 1 comes from a military family; his father
10 served in the military for 30 years. John Doe 1 had plans to make a career out of
11 military service as well. John Doe 1 was previously stationed in California. John
12 Doe 1 was awarded Academic Achievement and Distinguished Graduate
13 distinctions from the Airmen Leadership School, and received a “Must Promote”
14 performance report. In reliance on the June 2016 Policy permitting open service
15 by transgender service members, John Doe 1 came out to his chain of command in
16 April, 2017. After experiencing firsthand the disparate treatment of transgender
17 airmen now perceived as “second class,” John Doe 1 made the difficult decision to
18 leave the military. John Doe 1 wanted to join the National Guard or the Reserves
19 after his service. A Reserves recruiter reached out to him several times for possible
20 enrollment, and he also spoke to an on-base recruiter for the National Guard. Upon
21 learning he was transgender, however, both recruiters told John Doe 1 that he was
22 ineligible to join.

23 21. Plaintiff John Doe 2 is a transgender man currently serving in the
24 Army. John Doe 2 voluntarily enlisted with the Army to serve his country, to
25 achieve financial security, and to honor his family’s tradition of service. His
26 technical expertise pertains to the operations, diagnostics, and maintenance of the
27 multichannel communications systems necessary for the Army to make real-time
28 strategic and tactical decisions. His position requires Secret-level Security

1 Clearance. John Doe 2 earned an early promotion waiver to become an Army
2 Specialist and was awarded two Colonel Coins of Excellence. John Doe 2 is on
3 track to receive an Army Commendation Medal award. In reliance on the June
4 2016 Policy, he came out as transgender to his unit, his chain of command, and his
5 medical providers. John Doe 2 has begun medical transition; he plans to renew his
6 contract and remain in the Army.

7 22. Plaintiff Jane Doe is a transgender woman currently serving in the Air
8 Force. In the seven years since she enlisted, Jane Doe has been deployed twice.
9 She is currently stationed abroad as a Staff Sergeant. Jane Doe joined the military
10 in hopes of serving her country, achieving financial stability and garnering personal
11 skills such as discipline, self-respect and service of others. After the ban on
12 transgender service was lifted by the June 2016 Policy, Jane Doe came out to her
13 chain of command. She found her military colleagues to be supportive. Jane Doe
14 carefully reviewed the guidance and policies issued by the DOD, and after meeting
15 with her doctors, she began her medical transition in fall 2017. Jane Doe has
16 received local quarterly awards, early promotions, two achievement medals and
17 one commendation medal. In Spring 2018, she was promoted to Technical
18 Sergeant, and she is on track for consideration to be promoted to Master Sergeant.
19 Despite continuing to serve with distinction, Jane Doe is concerned that the
20 Transgender Military Ban will compromise her ability to achieve future
21 promotions, jeopardize her medical benefits, and ultimately foreclose her ability to
22 continue her career in the military.

23 23. Plaintiff Equality California (“EQCA”) is an I.R.S. 501(c)(4)
24 organization dedicated to LGBTQ civil rights. Specifically, EQCA is dedicated to
25 combatting discrimination and injustice on the basis of sexual orientation and
26 gender identity, and to protecting the fundamental rights of those within the
27 LGBTQ community and the vulnerable communities of which they are a part. Its
28 more than 500,000 members include transgender individuals in active military

1 service, transgender military veterans, and transgender individuals who have taken
2 steps to serve and ultimately intend to pursue long-term careers in the United States
3 Armed Forces. EQCA's membership also includes family members and
4 dependents of openly transgender individuals, each of whom share an interest in
5 ensuring that all qualified individuals wishing to serve their country through
6 military service are permitted to do so regardless of their gender identity.

7 24. Defendant Mark T. Esper is the United States Secretary Defense.
8 Secretary Esper directs the Department of Defense, which has been charged with
9 execution and implementation of the President's unlawful transgender military ban.

10 25. Defendant Mark A. Milley is a United States Marine Corps General
11 and serves as the current Chairman of the Joint Chiefs of Staff. In conjunction with
12 co-defendants, General Milley has been charged with execution and
13 implementation of the unlawful Transgender Military Ban.

14 26. Defendant Richard V. Spencer is the United States Secretary of the
15 Navy. Secretary Spencer directs the Department of the Navy and the United States
16 Marine Corps, which have been charged with execution and implementation of the
17 unlawful Transgender Military Ban.

18 27. Defendant Ryan D. McCarthy is the United States Secretary of the
19 Army. Secretary McCarthy directs the Department of the Army, which has
20 been charged with execution and implementation of the unlawful Transgender
21 Military Ban.

22 28. Defendant Matthew P. Donovan is the Acting United States Secretary
23 of the Air Force. He directs the Department of the Air Force, which has been
24 charged with execution and implementation of the unlawful Transgender Military
25 Ban.

26 29. Defendant Kevin McAleenan is the Acting United States Secretary of
27 Homeland Security. He directs the DHS, which is responsible for the
28 administration and operation of the United States Coast Guard, and which has been

1 charged with execution and implementation of the unlawful Transgender Military
2 Ban.³

3 **FACTUAL BACKGROUND**

4 **A. Following an Exhaustive Review in 2015-2016, the DOD Concluded**
5 **that Open Service by Transgender People Best Served the Interests of**
6 **U.S. Armed Forces**

7 30. In May 2014, then-Secretary of Defense Chuck Hagel directed the
8 DOD to review whether transgender people should be permitted to serve openly in
9 the U.S. armed forces.

10 31. In August 2014, the DOD amended its physical disability policy to
11 remove references to mandatory exclusion based on “sexual gender and identity
12 disorders,” and issued a new regulation instructing each branch of the armed forces
13 to assess whether there was any justification to maintain a ban on service by openly
14 transgender persons.

15 32. In issuing this regulation, Secretary Hagel stated that “every qualified
16 American who wants to serve our country should have an opportunity to do so if
17 they fit the qualifications and can do it.”

18 33. Secretary Hagel was succeeded as Secretary of Defense by Secretary
19 Ashton B. Carter. In July 2015, Secretary Carter announced that the military would
20 comprehensively analyze whether there was any justification to maintain the ban
21 on service by openly transgender persons. Accordingly, Secretary Carter created a
22 working group to address this issue including the Armed Services, the Joint Chiefs
23 of Staff, the service secretaries, and personnel, training, readiness, and medical
24 specialists from across the DOD. The lengthy and comprehensive review process
25 that followed included an examination of all available data, including but not
26 limited to existing studies and research and input from transgender service

27
28 ³ Several of the officials named in the Complaint, filed September 5, 2017,
are no longer serving in the same roles. The currently serving officials are
automatically substituted under Federal Rule of Civil Procedure 25(d).

1 members, commanding officers who supervised transgender service members,
2 military readiness and personnel experts, outside expert groups, and medical
3 professionals. The review process also included a careful analysis of the eighteen
4 other countries that permit military service by openly transgender people. Doctors,
5 employers, and insurance companies were consulted regarding the provision of
6 medical care to transgender people.

7 34. The DOD also commissioned the RAND Corporation—a defense
8 consultancy formed after World War II to connect military planning with research
9 and development decisions, and which now operates as an independent think tank
10 financed by the U.S. government—to determine the impact of permitting
11 transgender service members to serve openly. The study titled *Assessing the*
12 *Implications of Allowing Transgender Personnel to Serve Openly* (the “RAND
13 Study”) ultimately concluded that allowing transgender people to serve openly
14 would cost little and have no significant impact on unit readiness. As for the
15 potential impact on healthcare costs, the RAND Study concluded that health care
16 costs for transgender service members, including costs related to gender transition-
17 related treatment, would “have little impact on and represents an exceedingly small
18 proportion of [DOD’s] overall health care expenditures.”

19 35. Based on the results of this comprehensive review process, on June
20 30, 2016, the DOD announced its conclusion that open transgender service would
21 best serve the military’s interests in recruiting and retaining the most highly
22 qualified personnel. In issuing the June 2016 Policy, Secretary Carter explained
23 that this conclusion was based on a number of considerations, including *inter alia*:
24 (a) the fact that thousands of transgender people already serve, and that the military
25 has already invested hundreds of millions of dollars to train them collectively;
26 (b) that the military benefits by retaining individuals who are already trained and
27 who have already proven themselves; (c) the need to provide both transgender
28 service members and their commanders with clear guidance on questions such as

1 deployment and medical treatment; and (d) the principle that “*Americans who want*
2 *to serve and can meet our standards should be afforded the opportunity to compete*
3 *to do so.*”

4 36. Secretary Carter announced that “[e]ffective immediately, transgender
5 Americans may serve openly. They can no longer be discharged or otherwise
6 separated from the military just for being transgender.” This unequivocal statement
7 was accompanied by the formal issuance of Directive-Type Memorandum 16-005,
8 *Military Service of Transgender Service Members*, which lifted the ban on military
9 service and accession by openly transgender people. Directive-Type Memorandum
10 16-005 sets forth the DOD’s conclusion, based on thorough review and analysis,
11 that:

12 The defense of the Nation requires a well-trained, all-
13 volunteer force comprised of Active and Reserve
14 Component Service members ready to deploy worldwide
15 on combat and operational missions. The policy of the
16 Department of Defense is that service in the United States
17 military should be open to all who can meet the rigorous
18 standards for military service and readiness. Consistent
19 with the policies and procedures set forth in this
20 memorandum, transgender individuals shall be allowed
to serve in the military. These policies and procedures
are premised on my conclusion that open service by
transgender Service members while being subject to the
same standards and procedures as other members with
regard to their medical fitness for duty, physical fitness,
uniform and grooming, deployability, and retention, is
consistent with military readiness and with strength
through diversity.

21 In accordance with Directive-Type Memorandum 16-005, transgender people
22 were to be permitted to enlist in the U.S. military and openly serve beginning on
23 July 1, 2017.

24 37. In furtherance of its conclusions and in an effort to consistently and
25 effectively implement this change in policy, the DOD took the following actions:

- 26 • In September 2016, the DOD issued an implementation handbook
27 entitled *Transgender Service in the United States Military* setting forth
28 guidance and instructions to both military service members and

1 commanders regarding how to understand and implement the new
2 policies enabling open service of transgender service members.

- 3 • On October 1, 2016, the Office of the Undersecretary of Defense for
4 Personnel and Readiness issued DOD Instruction 1300.28 entitled *In-*
5 *Service Transition for Transgender Service Members*. The instruction set
6 forth further guidance to ensure open service by transgender service
7 members, including details regarding revisions to medical treatment
8 provisions.
- 9 • The Acting Assistant Secretary of Defense for Health Affairs issued a
10 memorandum entitled *Guidance for Treatment of Gender Dysphoria for*
11 *Active and Reserve Component Service Members*.
- 12 • On November 29, 2016, the DOD revised Directive 1020.02E, *Diversity*
13 *Management and Equal Opportunity in the DOD*, expressly to prohibit
14 discrimination and harassment on the basis of gender identity.

15 38. In line with the guidance issued by the DOD, the United States Coast
16 Guard adopted similar policies and procedures for service by transgender service
17 members.

18 **B. Defendants Institute an Arbitrary Ban on Transgender Service**
19 **Members**

20 39. In a series of statements released via Twitter on July 26, 2017,
21 Defendant President Donald J. Trump abruptly announced that the United States
22 military would return to banning military service by transgender people.

23 40. He tweeted: “After consultation with my Generals and military
24 experts, please be advised that the United States Government will not accept or
25 allow Transgender individuals to serve in any capacity in the U.S. Military. Our
26 military must be focused on decisive and overwhelming victory and cannot be
27 burdened with the tremendous medical costs and disruption that transgender in the
28 military would entail. Thank you.”

1 41. This July 26, 2017 announcement was rendered without any
2 significant study or analysis and lacks a rational basis.

3 42. Shortly after the Twitter announcement, members of both major
4 political parties criticized this abrupt change in policy, and fifty six former generals
5 and admirals issued a public statement denouncing the new policy.

6 43. Less than one month following his initial Twitter statement,
7 Defendant President Trump issued the August 25 Directive formalizing the
8 administration’s policy. The August 25 Directive orders co-Defendants (i) to ban
9 the “accession of transgender individuals into military service,” (ii) to “halt all use
10 of DOD or DHS resources to fund sex reassignment surgical procedures for
11 military personnel” except in limited instances, and (iii) to implement a plan to
12 return to the prohibition on military service for transgender people, including those
13 current service members who, in reliance on the June 2016 Policy, came out to their
14 command.

15 44. Similar to the July 26, 2017 Twitter announcement, the August 25
16 Directive was rendered without any significant study or analysis and lacks a
17 rational basis.

18 45. The stated bases offered in support of Defendants’ August 25
19 Directive are pretextual, arbitrary, capricious, and unsupported by facts, evidence,
20 or analysis. Indeed, the DOD previously concluded in Directive Type
21 Memorandum 16-005, after more than a year of exhaustive analysis, that “open
22 service by transgender Service members . . . is consistent with military readiness,”
23 as well as the “defense of the Nation” generally. Since issuance of Directive Type
24 Memorandum 16-005, transgender people have been serving openly without
25 incident or any negative impact upon military readiness, lethality, unit cohesion, or
26 the national defense generally.

27 46. The government-commissioned RAND Report concluded that the
28 “costs of gender transition related healthcare treatment are relatively low,” and

1 amount to possible increases of only between “\$2.4 million and \$8.4 million
2 annually, representing a 0.04% to 0.13% increase in active-component healthcare
3 expenditures.”

4 47. In contrast, separating and replacing currently serving transgender
5 service members would be costly and cause disruption, and also would undermine
6 unit cohesion, respect for military authority, and morale. Research from the Naval
7 Postgraduate School published by the Palm Center in August 2017 (the “Palm
8 Center Report”) concludes that the “financial cost of fully implementing President
9 Trump’s ban on transgender service members would be \$960 million,” assuming
10 the military acted to expel the estimated 12,800 transgender service members and
11 needed to replace them. Even assuming the military acted to expel and replace
12 only 1,320 transgender service members, which was the RAND Report’s lowest
13 estimate of the total number of active transgender service members, the Palm
14 Center Report indicates the financial cost of fully implementing President Trump’s
15 ban would still be at least \$99 million.

16 48. The August 25 Directive instructed Secretary Mattis to submit to the
17 President by February 21, 2018 a “plan for implementing both the general policy .
18 . . and specific directives” that the August 25 Directive contained. It further
19 instructed Secretary Mattis to determine “how to address transgender individuals
20 currently serving.”

21 49. Just days after the August 25 Directive was issued, Secretary Mattis
22 issued a statement on “Military Service by Transgender Individuals,” in which he
23 stated that he had “received the Presidential Memorandum” and would “carry out
24 the president’s policy direction.”

25 **C. Secretary Mattis Delivers the President’s Requested Implementation**
26 **Plan to Effectuate the August 25 Directive**

27 50. After Secretary Mattis issued his statement on “Military Service by
28 Transgender Individuals,” he then issued two additional memoranda, one providing

1 “Interim Guidance” and the other directing the development of an Implementation
2 Plan. He stated in the “Interim Guidance” that he intended to “comply with the
3 Presidential Memorandum” and “present the president with a plan to implement
4 the [August 25 Directive] on the required timeline.” In the second memorandum,
5 a “Terms of Reference,” Secretary Mattis stated that he would empanel “experts”
6 to “develop[] an Implementation Plan on military service by transgender
7 individuals, to effect the [August 25 Directive].”

8 51. On or around February 22, 2018, Secretary Mattis delivered to the
9 President the requested Implementation Plan in accordance with the President’s
10 timeline as set forth in the August 25 Directive. It consists of a memorandum from
11 Secretary Mattis to the President entitled “Military Service by Transgender
12 Individuals,” and a document entitled “Department of Defense Report and
13 Recommendations on Military Service by Transgender Persons,” totaling 44 pages
14 combined.

15 52. The Transgender Military Ban is facially discriminatory and prohibits
16 transgender military service, as required by the President’s August 25 Directive.

17 53. First, it generally bans from service anyone with a history of gender
18 dysphoria, a condition associated almost exclusively with transgender persons.
19 Second, it bans anyone who undergoes or requires gender transition. Third, to the
20 extent that there are any individuals who identify as transgender but do not fall
21 under the first two categories, the Transgender Military Ban allows them to serve
22 only in their “biological sex.” Thus, they may not serve unless they suppress the
23 precise characteristic that defines them as transgender.

24 54. The Transgender Military Ban effectuates the President’s intended
25 policy as articulated in his July 2017 tweets and the August 25 Directive—that
26 openly transgender persons are generally barred from serving in conformity with
27 their gender identity and from receiving medically necessary transition-related
28 care.

1 55. The Transgender Military Ban contains a limited exception for service
 2 members who came out in reliance on the June 2016 Policy. The August 25
 3 Directive explicitly contemplated this exception when it ordered that Secretary
 4 Mattis “determine how to address transgender individuals currently serving in the
 5 United States military.” This limited exemption, which grandfathers in the small
 6 group of transgender service members who came out in reliance on the open service
 7 policy, “is and should be deemed severable from” the remainder of the policy
 8 “should [DOD’s] decision to exempt these Service members be used by a court as
 9 a basis for invalidating the entire policy.” Those who came out as transgender in
 10 reliance on the June 2016 Policy are thus forced to serve under an exception that
 11 requires them to serve only on sufferance, under a general policy that stigmatizes
 12 them by branding them as inferior, unfit, and a danger to their colleagues, and under
 13 differential terms of service than their non-transgender peers.

14 56. In a March 23, 2018 memorandum entitled “Military Service by
 15 Transgender Individuals,” President Trump acknowledged receipt of and approved
 16 the Transgender Military Ban, which had been developed “[p]ursuant to [the
 17 President’s] memorandum of August 25, 2017,” and authorized the Secretary of
 18 Defense to carry out the Implementation Plan.

19 57. On March 12, 2019, the military issued instructions as to how each
 20 branch of service is to carry out the Transgender Military Ban.

21 58. The Transgender Military Ban went into effect on April 12, 2019.

22 **FIRST CLAIM FOR RELIEF**

23 **Fifth Amendment – Equal Protection**

24 **(against all Defendants)**

25 59. Plaintiffs re-allege and incorporate by reference the preceding
 26 allegations in this Complaint as if fully set forth herein.

27 60. The Due Process Clause of the Fifth Amendment prohibits the federal
 28 government from denying persons the equal protection of the laws.

1 61. Defendants’ military policy excluding transgender persons from
2 eligible military service discriminates against Plaintiffs and Plaintiff’s members
3 based on their sex and transgender status, without lawful justification, in violation
4 of the Equal Protection component of the Due Process Clause of the Fifth
5 Amendment.

6 62. Defendants’ exclusion of transgender persons from military service
7 lacks a rational basis, is arbitrary, and cannot be justified by any government
8 interest.

9 63. Defendants’ military policy denying equal health benefits to
10 transgender persons also discriminates against Plaintiffs and Plaintiff’s members
11 based on their sex and transgender status, without lawful justification, in violation
12 of the Equal Protection component of the Due Process Clause of the Fifth
13 Amendment.

14 64. Defendants’ action to deny transgender persons equal health benefits
15 lacks a rational basis, is arbitrary, and cannot be justified by any government
16 interest.

17 65. Defendants’ above-described discrimination against transgender
18 persons—a discrete and insular group that lacks the power to protect its rights
19 through the legislative process, and one that has suffered a history of targeted
20 discrimination and exclusion—is not narrowly tailored to advance any important
21 or compelling government interest.

22 66. As a result of Defendants’ commencement and enforcement of the
23 Transgender Military Ban, Plaintiffs and Plaintiff’s members have suffered injuries
24 and will suffer further irreparable harm to their constitutional rights under the Fifth
25 Amendment if the directive is not declared unconstitutional and enjoined.

26 67. Plaintiffs have no adequate remedy at law.
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SECOND CLAIM FOR RELIEF

Fifth Amendment – Due Process

(against all Defendants)

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4 68. Plaintiffs re-allege and incorporate by reference the preceding
5 allegations in this Complaint as if fully set forth herein.

6 69. The Due Process Clause of the Fifth Amendment prohibits the federal
7 government from depriving individuals of their property or other interests without
8 due process of law.

9 70. The Due Process Clause of the Fifth Amendment requires, at a
10 minimum, that government action have some rational basis before depriving any
11 person of his or her property or liberty interests.

12 71. The June 2016 Policy permitting transgender persons to serve openly
13 in the military, together with reliance by Plaintiffs and Plaintiff’s members on that
14 policy, created a protected interest in their ability to continue serving in the military
15 as openly transgender persons.

16 72. Defendants’ current policy deprives Plaintiffs and Plaintiff’s members
17 of their protected interests in continued military service as openly transgender
18 persons.

19 73. Defendants’ deprivation of Plaintiffs’ and Plaintiff’s members’
20 protected interests in continued military service as openly transgender persons is
21 arbitrary and without any rational basis.

22 74. As a result of Defendants’ implementation and enforcement of the
23 Transgender Military Ban, Plaintiffs and Plaintiff’s members have suffered injuries
24 and will suffer further irreparable harm to their constitutional rights under the Fifth
25 Amendment if it is not declared unconstitutional and enjoined.

26 75. Plaintiffs have no adequate remedy at law.
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THIRD CLAIM FOR RELIEF

Fifth Amendment – Right to Privacy

(against all Defendants)

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4 76. Plaintiffs re-allege and incorporate by reference the preceding
5 allegations in this Complaint as if fully set forth herein.

6 77. The Due Process Clause of the Fifth Amendment grants Plaintiffs and
7 Plaintiff’s members constitutional liberties and a fundamental right to privacy that
8 encompasses and protects Plaintiffs’ and Plaintiff’s members’ right to self-
9 identification and self-determination as transgender individuals who live, form
10 intimate relationships, work, and pursue happiness and meaning as the gender, with
11 which they identify.

12 78. The Due Process Clause of the Fifth Amendment requires, at a
13 minimum, that government action have some rational basis before depriving any
14 person of their liberty interests.

15 79. Defendants’ Transgender Military Ban impermissibly burdens
16 Plaintiffs’ and Plaintiff’s members’ fundamental liberty to live consistently with
17 their gender identity, and unlawfully impinge upon Plaintiffs’ privacy by
18 penalizing and stigmatizing them for expressing a fundamental aspect of their
19 personal identity.

20 80. Defendants’ policy that excludes transgender persons from service in
21 and accession into the military is arbitrary and lacks any rational basis.

22 81. As a result of Defendants’ policy, Plaintiffs and Plaintiff EQCA’s
23 members have suffered injuries and will suffer further irreparable harm to their
24 constitutional rights under the Fifth Amendment if the directive is not declared
25 unconstitutional and enjoined.

26 82. Plaintiffs have no adequate remedy at law.
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FOURTH CLAIM FOR RELIEF

**First Amendment – Retaliation for Free Speech & Expression
(against all Defendants)**

83. Plaintiffs re-allege and incorporate by reference the preceding allegations in this Complaint as if fully set forth herein.

84. The First Amendment grants Plaintiffs the constitutional right to freedom of speech and expression.

85. By banning military service by transgender people, Defendants’ Transgender Military Ban violates Plaintiffs’ and Plaintiff’s members’ rights of free speech and expression under the First Amendment by impermissibly restricting, punishing, and chilling speech and communicative conduct that would tend to identify Plaintiffs and Plaintiff’s members as transgender people. The Transgender Military Ban impermissibly burdens such speech on the basis of the content and viewpoint of such speech.

86. As a result of Defendants’ implementation and enforcement of the Transgender Military Ban, Plaintiffs and Plaintiff’s members have suffered injuries and will suffer further irreparable harm to their constitutional rights under the First Amendment if they are not declared unconstitutional and enjoined.

87. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for judgment on their Complaint as follows:

1. That this Court find and declare that Defendants’ policy that excludes transgender people from federal military service and bans the accession of transgender people into the U.S. military is unconstitutional;
2. That Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, preliminarily and permanently be enjoined from enforcing a

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policy that excludes transgender people from serving or enlisting in the military;

3. That Plaintiffs be awarded their costs and reasonable attorneys' fees; and
4. For such other relief as the Court may deem just and proper.

Dated: October 11, 2019

Respectfully submitted,
LATHAM & WATKINS LLP

By /s/ Amy C. Quartarolo
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