

The Honorable Marsha J. Pechman

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

RYAN KARNOSKI; STAFF SERGEANT
CATHRINE SCHMID; DREW LAYNE,
formerly known as K.G.; CHIEF WARRANT
OFFICER LINDSEY MULLER; PETTY
OFFICER FIRST CLASS TERECE LEWIS;
PETTY OFFICER SECOND CLASS
PHILLIP STEPHENS; PETTY OFFICER
SECOND CLASS MEGAN WINTERS;
JANE DOE; HUMAN RIGHTS CAMPAIGN;
GENDER JUSTICE LEAGUE; AND
AMERICAN MILITARY PARTNER
ASSOCIATION N/K/A MODERN
MILITARY ASSOCIATION OF AMERICA,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States; the UNITED
STATES OF AMERICA; MARK ESPER, in
his official capacity as Secretary of Defense;
and the UNITED STATES DEPARTMENT
OF DEFENSE,

Defendants.

Case No. 2:17-cv-01297-MJP

**SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

NATURE OF ACTION

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2 1. This action challenges the constitutionality of an official federal policy of
3 discrimination against transgender people regarding military service. There are currently
4 thousands of transgender individuals who are bravely serving in our nation’s military across
5 myriad roles, and there are many transgender individuals who seek to follow the same noble
6 path. Like other service members, these transgender individuals are willing to place themselves
7 in harm’s way—and potentially pay the ultimate price—in service of our country. But their
8 President deprives them of an opportunity to serve on equal terms as others simply because they
9 are transgender.

10 2. The U.S. military previously excluded open service by transgender individuals but it
11 reversed that policy in 2016. Following extensive study and deliberation, the U.S. Department of
12 Defense (“DoD”) concluded that a ban on open service by transgender individuals was
13 inconsistent with the military’s goal of maintaining an all-volunteer force in which any
14 individual who is qualified to serve has the opportunity to do so. On June 30, 2016, DoD lifted
15 its previous categorical ban. For more than a year after that change, transgender individuals in
16 the military were able to serve openly and authentically alongside their fellow service members.
17 This change strengthened our nation’s military readiness.

18 3. On July 26, 2017, President Donald J. Trump unexpectedly and abruptly reversed
19 course on the military’s policy. He took to social media to announce, through three tweets, that
20 “the United States Government will not accept or allow . . . [t]ransgender individuals to serve in
21 any capacity in the U.S. Military. Our military must be focused on decisive and
22 overwhelming . . . victory and cannot be burdened with the tremendous medical costs and
23 disruption that transgender [sic] in the military would entail. Thank you[.]”

24 4. This unilateral decision to exclude transgender people from the military was made
25 without any meaningful deliberative process and was directly contrary to the considered
26 judgment of the military. For example, President Trump failed to engage in any meaningful
27 consultation with then-Secretary of Defense James N. Mattis (“Secretary Mattis”) or the other
28 range of military officials who would ordinarily be consulted about a policy change of this nature

1 and magnitude.

2 5. In the evening of Friday, August 25, 2017, President Trump followed up on his
3 tweets and implemented an official federal policy of discrimination against transgender
4 individuals in military service (“the Ban”). Among other things, President Trump mandated that
5 the U.S. military return to its earlier policy and practice of discrimination against transgender
6 people, including by discharging them. He also maintained and extended the current bar on
7 accession into the military of individuals known to be transgender. Last, he singled out for
8 adverse treatment the health care needs of transgender service members. President Trump
9 ordered that his directives “shall take effect on March 23, 2018,” and further ordered Secretary
10 Mattis to develop a “plan for implementing” them by February 21, 2018.

11 6. On February 22, 2018, Secretary Mattis submitted to President Trump the
12 Implementation Plan President Trump had ordered. The Implementation Plan states that
13 “transgender persons should not be disqualified from service solely on account of their
14 transgender status,”—but then proceeds to list a series of restrictions targeted solely at
15 “Transgender persons.” In particular, the Implementation Plan provides that:

- 16 a. “*Transgender persons* with a history or diagnosis of gender dysphoria are
17 disqualified from military service, except under . . . limited circumstances,”
18 including “(1) if they have been stable for 36 consecutive months in their
19 biological sex prior to accession”; “(2) Service members diagnosed with
20 gender dysphoria after entering into service may be retained *if they do not*
21 *require a change of gender . . .*”; and (3) if they are “currently serving” and
22 “have been diagnosed with gender dysphoria since the previous
23 administration’s policy took effect and prior to the effective date of this new
24 policy.”
- 25 b. “*Transgender persons* who require or have undergone gender transition are
26 disqualified from military service.”
- 27 c. “*Transgender persons* without a history or diagnosis of gender dysphoria,” and
28 who may thus escape one or both of the previous restrictions, may serve only

1 *“in their biological sex.”*

2 See Ex. A, Mattis Memorandum to the President, February 22, 2018 (together with
3 accompanying report described below, “the Implementation Plan”) (all emphases added).

4 7. Collectively, these bars, like the tweets and Presidential Memorandum that ordered
5 their development, implement the policy that transgender persons are not allowed to serve in
6 conformance with their gender identity. The few transgender service members who currently
7 remain by virtue of a so-called reliance exception or grandfather clause—for those “diagnosed
8 with gender dysphoria since the previous administration’s policy took effect”—are branded as
9 inherently unfit for service by the President and Department of Defense, and subject to unequal
10 terms and conditions for retention in service, simply because they are transgender.

11 8. In a March 23, 2018 memorandum, President Trump acknowledged receipt of the
12 Implementation Plan developed “[p]ursuant to [the President’s] memorandum of August 25,
13 2017.” He purported to “revoke” his earlier policies that had required the Implementation Plan,
14 and authorized the Secretary of Defense to carry out that same Implementation Plan.

15 9. Both the Ban and the Implementation Plan violate the equal protection and due
16 process guarantees of the Fifth Amendment and the free speech guarantee of the First
17 Amendment. They are unsupported by any compelling, important, or even rational justification.

18 **PARTIES**

19 **A. Plaintiffs**

20 10. Plaintiff Ryan Karnoski is a 24-year-old man who resides in Seattle, Washington. He
21 wishes to serve in the military. Mr. Karnoski is transgender.

22 11. Plaintiff Staff Sergeant Cathrine Schmid (“Staff Sergeant Schmid”) is a 35-year-old
23 woman who resides in Lakewood, Washington. She has served in the U.S. Army for
24 approximately fourteen-and-a-half years. Staff Sergeant Schmid is transgender.

25 12. Plaintiff Drew Layne, formerly known as K.G., is an 18-year-old man who resides in
26 Corpus Christi, Texas. He wishes to serve in the military. Mr. Layne is transgender.

27 13. Plaintiff Chief Warrant Officer Lindsey Muller (“Chief Warrant Officer Muller”) is a
28 37-year-old woman who resides in Poplar Bluff, Missouri. She has served in the U.S. Army for

1 more than nineteen years. Chief Warrant Officer Muller is transgender.

2 14. Plaintiff Petty Officer First Class Terece Lewis (“Petty Officer Lewis”) is a 35-year-
3 old woman who resides in Bremerton, Washington. She has served in the U.S. Navy for
4 approximately sixteen years. Petty Officer Lewis is transgender.

5 15. Plaintiff Petty Officer Second Class Phillip Stephens (“Petty Officer Stephens”) is a
6 31-year-old man who resides in Crestview, Florida. He has served in the U.S. Navy for roughly
7 seven years. Petty Officer Stephens is transgender.

8 16. Plaintiff Petty Officer Second Class Megan Winters (“Petty Officer Winters”) is a
9 31-year-old woman who resides in Alexandria, Virginia. She has served in the U.S. Navy for
10 approximately seven years. Petty Officer Winters is transgender.

11 17. Plaintiff Jane Doe is a 30-year-old woman. She currently serves in the U.S. military.
12 She is transgender. In order to protect her, she has sought leave to proceed as a Doe plaintiff and
13 does not allege her further details about where she resides or her military service.

14 18. Plaintiff Human Rights Campaign (“HRC”) is the largest national lesbian, gay,
15 bisexual, transgender, and queer (“LGBTQ”) civil rights organization in America. HRC’s
16 principal place of business is in Washington, D.C.

17 19. Plaintiff Gender Justice League (“GJL”) is a Washington state gender and sexuality
18 civil and human rights organization. GJL’s principal place of business is in Seattle, Washington.

19 20. Plaintiff American Military Partner Association n/k/a Modern Military Association
20 of America (“MMAA”) is the nation’s largest organization of LGBTQ military families and their
21 allies. MMAA’s principal place of business is in Washington, D.C. (HRC, GJL, and MMAA are
22 referred to collectively as the “organizational plaintiffs.”)

23 **B. Defendants**

24 21. President Donald J. Trump is the President of the United States of America and
25 Commander in Chief of the U.S. military. President Trump instituted the Ban and
26 Implementation Plan.

27 22. The United States of America encompasses all federal agencies and departments
28 responsible for implementing the Ban and the Implementation Plan, including the U.S.

1 Department of Defense and the Department of Homeland Security.

2 23. Secretary Mark Esper is the Secretary of the U.S. Department of Defense. He is
3 responsible for the implementation of the Ban and for the administration and enforcement of the
4 Implementation Plan.

5 24. The U.S. Department of Defense is an executive branch department of the U.S.
6 federal government composed of the office of the Secretary of Defense; the Joint Chiefs of Staff;
7 the Joint Staff; America's Defense Agencies; the Department of Defense Field Activities; the
8 Departments of the Army, Navy, and Air Force; the unified and specified combatant commands;
9 such other offices, agencies, activities, and commands as may be established or designated by
10 law or by the President; and all offices, agencies, activities, and commands under any of their
11 control or supervision. Under the direction of Secretary Esper, DoD is also responsible for
12 administration and enforcement of the Ban and Implementation Plan.

13 JURISDICTION AND VENUE

14 25. Subject matter jurisdiction exists under 28 U.S.C. §§ 1331 and 1346 because this
15 action arises under, is founded upon, and seeks to redress the deprivation of rights secured by,
16 the United States Constitution.

17 26. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391(e).
18 Mr. Karnoski, Staff Sergeant Schmid, and GJL all reside within this district. In addition, the Ban
19 and Implementation Plan are enforced, and their impact felt, in this district. A substantial part of
20 the events or omissions that gave rise to Plaintiffs' claims, including particularly those of Mr.
21 Karnoski, HRC, and GJL, occurred in King County, Washington.

22 27. This Court has the authority to enter a declaratory judgment and to provide
23 preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of
24 Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

25 28. This Court has personal jurisdiction over Defendants because their enforcement of
26 the Ban and the Implementation Plan occurs within Washington.

FACTUAL ALLEGATIONS

A. Background Information Regarding Transgender Individuals

29. Gender identity is a person’s fundamental, internal sense of belonging to a particular gender. It is a core characteristic of human identity that everyone possesses. Gender identity is innate, biologically rooted, and fixed at an early age.

30. Although most people have a gender identity that matches their sex assigned at birth, this is not the case for transgender people, who are defined as transgender because their gender identity does not match the sex they were assigned at birth. Transgender people have existed throughout human history, although understanding of transgender people has grown in modern times.

31. An individual’s sex is generally assigned at birth based on external genitalia. But other sex-related characteristics can include chromosomes, hormone levels, internal reproductive organs, and gender identity.

32. When someone’s sex-related characteristics are not in typical alignment with each other, gender identity is the critical determinant of sex. Attempts to change an individual’s gender identity to bring it into alignment with the sex that the individual was assigned at birth are ineffective and potentially harmful.

33. The discordance between one’s gender identity and the sex one was assigned at birth can be associated with clinically significant distress, which is known as gender dysphoria. Gender dysphoria can be treated in accordance with internationally recognized standards of care.

34. Living in a manner consistent with one’s gender identity is critical to the health and well-being of transgender people and is a key aspect of treatment for gender dysphoria. The process by which transgender individuals come to live in a manner consistent with their gender identity, rather than the sex they were assigned at birth, is known as transition.

35. The steps that transgender people take to transition are not identical, but they generally include social, legal, and medical transition.

36. Social transition entails the adoption of a gender role matching one’s gender identity. For example, for a man who is transgender, social transition can include wearing typical male

1 attire, using male pronouns, and otherwise living as a man in all aspects of everyday life.

2 37. Legal transition involves steps to conform one's legal identity to one's gender
3 identity, such as legally changing one's name and updating the name and gender marker on one's
4 driver's license and birth certificate.

5 38. Medical transition includes treatment that brings one's body into alignment with
6 one's gender identity, such as hormone therapy. Whether any particular treatment is medically
7 necessary or even appropriate, however, depends on the needs of the individual.

8 39. These various components associated with transition—social, legal, and medical
9 transition—do not change an individual's gender, which is already determined by gender
10 identity, but instead bring the individual's social presentation, legal identity, and physical
11 appearance into greater typical alignment with their gender.

12 **B. Plaintiff Ryan Karnoski**

13 40. Plaintiff Ryan Karnoski comes from a family with a legacy of military service. His
14 grandfather and step-grandfather served in the Army during the Korean War, and other of his
15 relatives have served in the Army and Navy.

16 41. Mr. Karnoski's desire to join the military came into sharper focus following the
17 death of his cousin, who was killed in action in Afghanistan in 2009. His cousin's death—and
18 the toll that it took on surviving family members—further impressed upon Mr. Karnoski the
19 tremendous sacrifice that service members make for their country. Mr. Karnoski also realized
20 that his own desire to serve in the military was motivated by more than simply a family legacy: it
21 was a personal calling in life for him, and it is something that he has long dreamt of being able to
22 fulfill.

23 42. Mr. Karnoski has worked as a mental health clinician in Seattle, Washington.

24 43. Mr. Karnoski holds a Masters in Social Work from the University of Washington
25 School of Social Work's Child Welfare Training Advancement Program. He also holds a
26 Bachelor of Arts degree in both Social Welfare and Gender, Women, and Sexuality Studies from
27 the University of Washington. Mr. Karnoski is currently registered with the Selective Service.
28

1 44. But for the Ban and the Implementation Plan, and Defendants' enforcement of them
2 both, Mr. Karnoski would seek to join the military, and he is ready and able to pursue a military
3 career. In fact, he contacted military recruiters in or around September 2016, but he was open
4 about his transgender status and discussed with a recruiter having to wait until the accessions bar
5 was lifted. Mr. Karnoski was referred to recruiting offices in King County, Washington, his point
6 of contact for further communications regarding his accession.

7 45. Mr. Karnoski would like to put his social work skills to use for the military. Social
8 work is an area for which there can be significant need in the military, including in the Army and
9 Navy. Given that Mr. Karnoski holds a master's degree in social work, he aspires to serve as an
10 officer in the military.

11 46. Mr. Karnoski is transgender. He was assigned the sex of female at birth but his
12 gender identity is male.

13 47. Mr. Karnoski began to come to terms with his gender identity approximately seven
14 years ago.

15 48. Mr. Karnoski began living openly as male in 2014.

16 49. In consultation with health care professionals, Mr. Karnoski has taken clinically
17 appropriate steps to transition.

18 50. Mr. Karnoski has taken legal steps to transition. He legally changed his first name to
19 Ryan. He also changed his name and gender marker to male on his driver's license, birth
20 certificate, social security card and records, and passport.

21 51. Mr. Karnoski has engaged in speech and conduct disclosing his transgender status
22 and expressing his gender identity and wants to continue to be able to do so.

23 **C. Plaintiff Staff Sergeant Cathrine Schmid**

24 52. Plaintiff Staff Sergeant Cathrine ("Katie") Schmid was born at K.I. Sawyer Air
25 Force Base, Michigan, and was raised in Portland, Oregon. She has always been a patriotic
26 American with a desire to serve others and was drawn to opportunities presented by serving in
27 the Army. She is proud to put on her uniform each day and serve her country.
28

1 53. Staff Sergeant Schmid holds the military occupational specialty of Signals
2 Intelligence Analyst within the Army, currently performing duties as Brigade Land and
3 Ammunition Manager. Before her current role, she performed duties as a Signals Intelligence
4 Analyst, All-Source Analysis System Master Analyst, Human Intelligence Collector, and
5 Counterintelligence Agent. She joined the Army in 2005.

6 54. Staff Sergeant Schmid is transgender. She was assigned the sex of male at birth but
7 has a female gender identity. She knew from a young age in life that she was female.

8 55. Staff Sergeant Schmid began to come to terms with her gender identity
9 approximately six years ago. At that time, she started to see a mental health professional who
10 diagnosed her with gender dysphoria.

11 56. Staff Sergeant Schmid began living openly as a woman around 2014.

12 57. In consultation with health care professionals, Staff Sergeant has taken clinically
13 appropriate steps to transition, and she has further transition-related health care needs.

14 58. Staff Sergeant Schmid has taken legal steps to transition. She legally changed her
15 first name to Cathrine. She also changed her name and changed her gender marker to female on
16 her driver's license, passport, and social security records.

17 59. Staff Sergeant Schmid has worked with her chain of command throughout her
18 transition, and both they and other enlisted personnel have been supportive of her throughout that
19 process. Her gender marker in the military's personnel management systems (including the
20 Defense Enrollment Eligibility Reporting System ("DEERS")) reflects that she is female.

21 60. She is recognized and treated as female in all aspects of military life, including in
22 social interactions and in her compliance with women's grooming and physical training
23 requirements.

24 61. The fact that Staff Sergeant Schmid is transgender has not prevented her from doing
25 her job in the military nor has it prevented others from doing their jobs in the military. Staff
26 Sergeant Schmid performs valuable services for the Army, and her performance of those duties
27 strengthen our nation's military readiness.
28

1 62. Being able to serve openly as a transgender woman has made Staff Sergeant Schmid
2 a stronger asset for the military. She is able to function as a productive, healthy member of the
3 military, and she is able to forge stronger relationships with others in her unit.

4 63. In June 2017, Staff Sergeant Schmid submitted an application to become an Army
5 warrant officer, a position that her superiors encouraged her to pursue. A warrant officer is a
6 highly specialized expert and trainer in a technical area such as aviation, military police, or, in
7 Staff Sergeant Schmid's case, intelligence. Her application was approved at the initial stages.

8 64. But Staff Sergeant Schmid was informed in writing in July 2017 that her application
9 was placed on hold, and thus was not being considered further at the time, because of the
10 accessions bar, which not only excluded transgender individuals from enlistment but also from
11 appointment as officers. In February 2018, her application received a form rejection, despite the
12 fact that numerous warrant officers had encouraged her to apply, her application was strong, and
13 the military has need for qualified warrant officers. The DoD's perception that people who have
14 transitioned are unfit for military service—as expressed in the Ban and Implementation Plan—
15 had an adverse impact on her application, even though she was otherwise qualified and a good fit
16 for the job.

17 65. Staff Sergeant Schmid is presently subject to different terms and conditions for
18 retention in service than those who are not transgender, because she is subject to discharge under
19 the circumstances specified in the so-called grandfather clause to the Implementation Plan. That
20 policy brands her job performance as inferior based solely on her transgender status.

21 66. Staff Sergeant Schmid has engaged in speech and conduct disclosing her transgender
22 status and expressing her gender identity, including by coming out to her chain of command and
23 her fellow service members, taking steps to transition, and living openly as a woman in military
24 life. She wants to continue to be able to engage in speech and conduct disclosing her transgender
25 status and expressing her gender identity.

26 **D. Plaintiff Drew Layne**

27 67. Plaintiff Drew Layne was born in Alice, Texas and currently resides in Corpus
28 Christi, Texas. Mr. Layne's great grandfather and great uncle both served in the Army, and the

1 former earned a Purple Heart for his service. Mr. Layne is proud of his family's history of
2 service and has a strong desire to serve his country by joining the military as well.

3 68. After years of consideration, research, and speaking to veterans of different services,
4 Mr. Layne decided to pursue a career in the military. Specifically, Mr. Layne wants to serve as a
5 Survival, Evasion, Resistance and Escape Specialist in the Air Force. This position entails
6 training other Airmen on survival-related techniques needed, for various terrains and climates, in
7 the event that their aircraft goes down.

8 69. Existing regulations permit individuals to join the military at age 17 with parental
9 consent. Based on his age, Mr. Layne has been eligible to join the military since August 2017.
10 Mr. Layne's mother and next friend, Laura Garza, supports Mr. Layne in his desire to join the
11 military.

12 70. Mr. Layne received his high school diploma in the summer of 2017. Mr. Layne had
13 long planned and hoped to join the Air Force upon completion of high school.

14 71. In preparation for enlistment, Mr. Layne communicated with an Air Force recruiter
15 in early July 2017. When Mr. Layne disclosed to the recruiter that he is transgender, the recruiter
16 stopped communicating with Mr. Layne.

17 72. But for the Ban and the Implementation Plan, and Defendants' enforcement of them
18 both, Mr. Layne would seek to join the military, and he is ready and able to pursue a military
19 career.

20 73. Mr. Layne is transgender. He was assigned the sex of female at birth but his gender
21 identity is male.

22 74. Mr. Layne came out about his gender identity in the summer of 2015. He has lived
23 openly as male since that time.

24 75. In consultation with health care professionals, Mr. Layne has taken clinically
25 appropriate steps to transition.

26 76. Mr. Layne has engaged in speech and conduct disclosing his transgender status and
27 expressing his gender identity, including by coming out to the Air Force recruiter, taking steps to
28 transition, and living openly as male in his everyday life. He wants to be able to continue to

1 engage in speech and conduct disclosing his transgender status and expressing his gender
2 identity.

3 **E. Plaintiff Chief Warrant Officer Muller**

4 77. Plaintiff Chief Warrant Officer Muller is a Chief Warrant Officer 3 in the U.S.
5 Army. She enlisted in the Army in 2000 and has been serving for more than nineteen years.

6 78. Chief Warrant Officer Muller chose the military as a career path because of the
7 abundant job opportunities and her strong sense of patriotism. She has proudly served in combat
8 and takes great pride in wearing the uniform to serve her country. Chief Warrant Officer Muller
9 has served in Operation Iraqi Freedom, Operation Enduring Freedom, and multiple assignments
10 in the Republic of Korea.

11 79. Chief Warrant Officer Muller's military occupation specialty is Attack Helicopter
12 Pilot/Aviator within the Army. She has experience flying Apache attack helicopters in combat
13 missions, and recently served as an Aviation Safety Officer. Her duties have involved providing
14 combat support and combat service support to various echelons of commands. She has served as
15 advisor to Commanders on all aviation and ground related safety matters. She managed the
16 Battalion Commander's Safety Program, where she developed and integrated safety policies,
17 safety goals, mission objectives, and priorities into daily operations.

18 80. The military has invested significant resources in training Chief Warrant Officer
19 Muller. Her well-honed skills and leadership position make her a highly valued member of the
20 military. Chief Warrant Officer Muller's performance has been consistently recognized
21 throughout her career in military service.

22 81. Chief Warrant Officer Muller wants to continue serving in the Army until she retires.

23 82. Chief Warrant Officer Muller is transgender. She was assigned the sex of male at
24 birth. She has known for more than fourteen years that she is female, and began to come to terms
25 with her gender identity approximately seven years ago. At that time, Chief Warrant Officer
26 Muller started to see a mental health professional who diagnosed her with gender dysphoria.

27 83. Chief Warrant Officer Muller began living openly as a woman in 2014.
28

1 84. In consultation with health care professionals, Chief Warrant Officer Muller has
2 taken clinically appropriate steps to transition.

3 85. Chief Warrant Officer Muller has taken legal steps to transition. She has legally
4 changed her first name to Lindsey. She has also changed her name and changed her gender
5 marker to female on her driver's license, passport, and social security records.

6 86. The fact that Chief Warrant Officer Muller is transgender has never prevented her
7 from doing her job as Aviation Safety Officer nor has her gender identity prevented others from
8 doing their jobs in the military. Chief Warrant Officer Muller performs valuable services for the
9 Army, and her performance of those duties strengthens our nation's military readiness.

10 87. After the DoD announced the Implementation Plan, the military permanently
11 relegated Chief Warrant Officer Muller to a desk job in a non-combat ground unit. That decision
12 was influenced by the Implementation Plan's official affirmation of the President's view, first
13 expressed by tweet in 2017, that people who transition are not fit to serve.

14 88. The Ban and Implementation Plan have concretely weakened military readiness by
15 forcing Chief Warrant Officer Muller out of the highly specialized role she has performed with
16 excellence for nearly two decades. In addition, Chief Warrant Officer Muller has lost concrete
17 economic benefits and cannot compete with her peers for promotions because her specialized
18 training in attack helicopters is irrelevant in the ground unit.

19 89. Chief Warrant Officer Muller is presently subject to different terms and conditions
20 for retention in service than those who are not transgender, because she is subject to discharge
21 under the circumstances specified in the so-called grandfather clause to the Implementation Plan.
22 The Implementation Plan, like the Presidential Memorandum that demanded it, also brands her
23 job performance as inferior based solely on her transgender status.

24 90. Chief Warrant Officer Muller has engaged in speech and conduct disclosing her
25 transgender status and expressing her gender identity, including by coming out to her chain of
26 command and fellow service members, taking steps to transition, and living openly as a woman
27 in military life. She wants to continue to be able to engage in speech and conduct disclosing her
28 transgender status and expressing her gender identity.

1 **F. Plaintiff Petty Officer Lewis**

2 91. Plaintiff Petty Officer Lewis is steadfastly dedicated to the mission of the U.S.
3 Navy—to maintain, train and equip combat-ready Naval forces capable of winning wars,
4 deterring aggression and maintaining freedom of the seas. During her sixteen years of service,
5 Petty Officer Lewis has defended oil platforms in the Arabian Gulf, boarded vessels and seized
6 tons of cocaine en route to the U.S. from South America, protected the shipping lanes from
7 Somali pirates, and defended freedom of navigation in the South China Sea.

8 92. Petty Officer Lewis has served in a variety of roles within the Navy, including as an
9 Engineman and Machinists Mate, as a public affairs officer for a major shore command, and as a
10 career counselor advising Sailors of their career options.

11 93. Petty Officer Lewis is transgender. She was assigned the sex of male at birth.
12 However, she has known since approximately early 2013 that she is female and began to come to
13 terms with her gender identity shortly thereafter. Petty Officer Lewis then began seeing a mental
14 health professional who diagnosed her with gender dysphoria.

15 94. Petty Officer Lewis began living openly as a woman in late 2016.

16 95. Petty Officer Lewis is taking medical steps to bring her body into conformity with
17 her female gender identity. In consultation with her physician, Petty Officer Lewis began
18 hormone therapy on July 25, 2017, one day before President Trump released the transgender
19 military ban on Twitter.

20 96. Petty Officer Lewis has taken legal steps to transition. She legally changed her first
21 name to Terece and changed her driver's license and social security documentation.

22 97. Petty Officer Lewis worked with her chain of command throughout her transition,
23 and both they and other enlisted personnel have been supportive.

24 98. The fact that Petty Officer Lewis is transgender has not prevented her from doing her
25 job in the military. Petty Officer Lewis performs a valuable service for the Navy that strengthens
26 military readiness; excluding her from the military based on her transgender status would
27 weaken military readiness.

1 99. Being able to serve openly as a transgender woman makes Petty Officer Lewis a
2 stronger asset for the military. Because she has been able to serve openly, she has been able to
3 function as a productive, healthy member of the military, without the distress that would
4 otherwise accompany untreated gender dysphoria, and she has been able to forge stronger
5 relationships with others in her unit, without having to pretend to live as someone she is not.

6 100. If permitted to do so, Petty Officer Lewis will re-enlist in the military following the
7 expiration of her current term of service. Indeed, she intends to serve honorably in the military
8 until the age of retirement.

9 101. Petty Officer Lewis is presently subject to different terms and conditions for
10 retention in service than those who are not transgender, because she is subject to discharge under
11 the circumstances specified in the so-called grandfather clause to the Implementation Plan. The
12 Implementation Plan brands her job performance as inferior based solely on her transgender
13 status.

14 102. Petty Officer Lewis has engaged in speech and conduct disclosing her transgender
15 status and expressing her gender identity, including by coming out to her chain of command and
16 fellow service members, taking steps to transition, and living openly as a woman in military life.
17 She wants to continue to be able to engage in speech and conduct disclosing her transgender
18 status and expressing her gender identity.

19 **G. Plaintiff Petty Officer Second Class Stephens**

20 103. Over the past seven years, Plaintiff Petty Officer Stephens has primarily served as an
21 Aviation Structural Mechanic within the Navy. Petty Officer Stephens has worked on the flight
22 deck of an aircraft carrier, ensuring that Navy aircraft pilots are able to safely eject from their
23 aircraft in the event of an emergency. He has performed this duty with honor and precision both
24 during simulated and active duty scenarios, including a deployment to the Persian Gulf.

25 104. Petty Officer Stephens proudly joined the Navy to serve his country and for the
26 security and stability that a military career provides.

27 105. Petty Officer Stephens is transgender. He was assigned the sex of female at birth, but
28 has known since he was a young child that he is male.

1 106. Petty Officer Stephens began to come to terms with his gender identity
2 approximately four years ago and thereafter started to see a mental health professional who
3 diagnosed him with gender dysphoria.

4 107. On June 30, 2016, Petty Officer Stephens was deployed in the Persian Gulf. When he
5 read that the ban on military service by transgender individuals was being lifted, he was filled
6 with incredible relief and joy. Following this change in policy, Petty Officer Stephens decided to
7 remain in the Navy and transition. He began living openly as a man in August 2016, as soon as
8 he returned home from deployment.

9 108. Petty Officer Stephens began scheduling the necessary medical appointments and
10 phone interviews to acquire the required transition-related paperwork to submit to his
11 Commanding Officer. He began taking medical steps to bring his body into conformity with his
12 male gender identity. In consultation with his physician, Petty Officer Stephens began hormone
13 therapy in November 2016. This approved treatment plan included surgical treatment, which he
14 completed in April 2018. He plans on pursuing other gender-affirming care in the future.

15 109. Petty Officer Stephens is taking legal steps to transition. He will be legally changing
16 his first name to Phillip and will be changing his name and gender marker on his driver's license
17 and social security records.

18 110. Petty Officer Stephens has worked with his chain of command throughout his
19 transition, and both they and other enlisted personnel have been supportive. Since coming out to
20 his chain of command, other service members have addressed Petty Officer Stephens by male
21 pronouns, which match his gender identity. He has been known, accepted, and treated as the man
22 that he is.

23 111. The fact that Petty Officer Stephens is transgender has not prevented him from doing
24 his job in the military. He performs a valuable service for the Navy that strengthens military
25 readiness—keeping our nation's aircraft systems safe and operational. Conversely, his exclusion
26 from the military on the basis of his transgender status would weaken military readiness.

27 112. Petty Officer Stephens is presently subject to different terms and conditions for
28 retention in service than those who are not transgender, because he is subject to discharge under

1 the circumstances specified in the so-called grandfather clause to the Implementation Plan. The
2 Implementation Plan brands his job performance as inferior based solely on his transgender
3 status.

4 113. Petty Officer Stephens has engaged in speech and conduct disclosing his transgender
5 status and expressing his gender identity, including by coming out to his chain of command and
6 fellow service members, taking steps to transition, and living openly as a man in military life. He
7 wants to continue to be able to engage in speech and conduct disclosing his transgender status
8 and expressing his gender identity.

9 **H. Plaintiff Petty Officer Second Class Winters**

10 114. Plaintiff Petty Officer Winters is an Information Systems Technician in the U.S.
11 Navy. During her seven years serving in the military, Petty Officer Winters has received
12 specialized training and provided mission-related information technology and services to the
13 Office of Naval Intelligence, its subordinate commands, the Fleet, and Joint Forces commands.
14 Petty Officer Winters has performed her job duties in support of the Global War on Terrorism.

15 115. Petty Officer Winters provides a valuable service for the Navy intelligence
16 community that strengthens military readiness—providing information technology and services
17 that, in turn, allows other service members to do their jobs.

18 116. Growing up as the child of a veteran, the military's core values and creeds have been
19 ingrained into every aspect of her life from a young age. The only career path that Petty Officer
20 Winters has ever envisioned for herself has been the military.

21 117. Petty Officer Winters is transgender. She was assigned the sex of male at birth, but
22 she has known since approximately 2001 that she is female.

23 118. After struggling for many years to receive family acceptance, Petty Officer Winters
24 began to come to terms with accepting and living openly in her gender identity approximately
25 three-and-a-half years ago. She then started to see a mental health professional who diagnosed
26 her with gender dysphoria.

27 119. When Petty Officer Winters found out, in June 2016, that the ban on open
28 transgender military service had been lifted, she was absolutely ecstatic. She had informed her

1 family that she was transgender immediately prior to the announcement because she realized that
2 she needed to finally live her true, authentic life. Petty Officer Winters hoped to do that while
3 continuing to proudly serve the country in the Navy.

4 120. Following the lift on the ban, Petty Officer Winters began living openly as a woman.
5 She disclosed her transgender status and expressed her gender identity openly in the military in
6 reliance on the open service ban having been lifted.

7 121. Petty Officer Winters has started taking medical steps to bring her body into
8 conformity with her female gender identity. In June 2016, Navy medical officers created an
9 individualized treatment plan for her gender transition. In consultation with her physician, Petty
10 Officer Winters began hormone therapy in July 2016.

11 122. Petty Officer Winters's treatment plan also includes medically necessary surgical
12 treatment, but the military has repeatedly delayed or denied her that treatment. Although Petty
13 Officer Winters has requested a consultation with an appropriate surgeon, for example, her
14 requests have been dismissed on account of purported confusion about the Implementation Plan,
15 delays caused by a purported need to research processes required under the policy, and delays
16 without any explanation. Petty Officer Winters has been told by various medical officials that the
17 delays are justified because she might not be in the military soon because of the Implementation
18 Plan, despite its so-called grandfather clause. She continues to check on the status of her
19 consultation at least every month, to no avail.

20 123. Petty Officer Winters has taken legal steps to transition. She has legally changed her
21 first and middle names to Megan Dawn. She has also changed her name on her driver's license
22 and her social security card and records.

23 124. Petty Officer Winters has also changed her gender marker in DEERS. She has
24 worked with her chain of command throughout her transition. Since coming out, others have
25 mostly addressed Petty Officer Winters by female pronouns, which match her gender identity.

26 125. The fact that Petty Officer Winters is transgender has not prevented her from doing
27 her job in the military. She performs a valuable service for the Navy that strengthens military
28 readiness. Excluding Petty Officer Winters from the military on the basis of her transgender

1 status would weaken military readiness.

2 126. Petty Officer Winters intends to serve honorably in the military until retirement.

3 127. Petty Officer Winters is presently subject to different terms and conditions for
4 retention in service than those who are not transgender, because she is subject to discharge under
5 the circumstances specified in the so-called grandfather clause to the Implementation Plan. The
6 Implementation Plan brands her job performance as inferior based solely on her transgender
7 status.

8 128. Petty Officer Winters has engaged in speech and conduct disclosing her transgender
9 status and expressing her gender identity, including by coming out to her chain of command and
10 fellow service members, taking steps to transition, and living openly as a woman in military life.
11 She wants to continue to be able to engage in speech and conduct disclosing her transgender
12 status and expressing her gender identity.

13 **I. Plaintiff Jane Doe**

14 129. Plaintiff Jane Doe currently serves in the U.S. Military.

15 130. Jane Doe joined the military to serve her country and for the security and stability
16 that a military career provides. She takes pride in her role in protecting our country and helping
17 others save innocent lives.

18 131. Jane Doe is transgender, although she has not yet transitioned to living openly as a
19 woman. She was assigned the sex of male at birth, but she has known since she was twenty years
20 old that she is female. Jane Doe has long hoped to be able to transition to living openly as a
21 woman, but the prospect of doing so felt unattainable in the past, without a supportive
22 environment in which to transition.

23 132. On or around June 30, 2016, Jane Doe became aware that the ban on open military
24 service by transgender individuals had been lifted. She was very excited and nervous about the
25 possibility of serving openly as a woman. In October 2016, she began extensively reviewing the
26 materials the military was releasing to implement the lifting of the ban. In December 2016, she
27 attended her command-level training on the new policy. Around that time, she decided to come
28 out as transgender to select colleagues whom she felt she could trust. She also researched what

1 was required to formally change her gender marker in DEERS.

2 133. Jane Doe decided to begin her legal and medical transition once she was posted at
3 her next assigned location. She planned to time and structure her transition so that it was as
4 smooth as possible for her colleagues and herself. Jane Doe wanted to give her Commanding
5 Officer plenty of time to prepare her unit and for other service members at her next assigned
6 location to get to know her as a valuable individual member of the team. She also wanted to give
7 herself some time to come out. She transferred to this assigned location in July 2017.

8 134. On July 26, 2017, President Trump posted three tweets that said that transgender
9 people would not be able to serve in the military “in any capacity.” After Jane Doe saw the
10 President’s tweets, she decided to put her plans—to transition, come out as transgender, live
11 openly as a woman, and change her gender marker—on hold, fearing negative consequences.

12 135. Because of both the Ban and the Implementation Plan, Jane Does has not come out
13 to anyone in her chain of command. She is open to a few select individuals with whom she
14 serves, as well as a group of veterans with whom she communicates about her gender identity for
15 support.

16 136. As a result of the Ban and the Implementation Plan, Jane Doe has been forced to
17 postpone the steps required for her to transition and she questions whether she will be able to
18 continue serving in the military, a career that she loves and wants to continue.

19 137. Jane Doe is terrified that her career will be brought to an early end because of the
20 President’s decision to ban transgender individuals from military service. If she transitions, she
21 will lose her career and everything that comes with it. If she does not transition, then she gives
22 up the expression of herself on the most fundamental level and, instead, must continue living as
23 someone that she is not.

24 **J. Plaintiff Human Rights Campaign**

25 138. HRC is a private, non-profit membership organization with approximately 508,000
26 members throughout the United States, including transgender members serving in the United
27 States military and transgender members who wish to serve in the United States military. The
28 mission of HRC is to end discrimination against LGBTQ people and realize a world that

1 achieves fundamental fairness and equality for all, including ending discrimination against
2 LGBTQ people who wish to serve their country.

3 139. HRC sues on behalf of its members, including Mr. Karnoski, Staff Sergeant Schmid,
4 and other prospective and current transgender service members who are currently adversely
5 affected by the Ban and the Implementation Plan.

6 **K. Plaintiff Gender Justice League**

7 140. GJL is a civil and human rights membership organization that, as relevant here,
8 advocates on behalf of transgender individuals in Washington state. It seeks to create a
9 community for transgender people and to empower them to combat the structural oppression,
10 discrimination, and violence they face in their daily lives.

11 141. GJL sues on behalf of its members, including Mr. Karnoski, Staff Sergeant Schmid,
12 and other prospective and current transgender service members who are currently adversely
13 affected by the Ban and the Implementation Plan.

14 **L. Plaintiff American Military Partner Association n/k/a Modern Military Association of**
15 **America**

16 142. With more than 50,000 members and supporters across the country and around the
17 world, MMAA's mission is to connect, support, honor, and serve the partners, spouses, families,
18 and allies of America's LGBTQ service members and veterans.

19 143. MMAA's members include transgender individuals currently serving in the military,
20 including for example, Chief Warrant Officer Muller, Staff Sergeant Schmid, Petty Officer
21 Stephens, and Petty Officer Megan Winters. MMAA's members also include transgender
22 individuals who wish to access into the military, including, for example, Mr. Karnoski. MMAA
23 sues on behalf of its individual transgender members who are directly affected by the Ban and
24 the Implementation Plan.

25 **M. Prior Military Ban Against Transgender Individuals**

26 144. There has never been a federal statute excluding transgender people from military
27 service. Instead, the military previously had a policy of excluding transgender people from
28 service based on DoD and service-specific rules and regulations.

1 145. This earlier military policy was based on an inaccurate, historical, pathological view
2 that regarded transgender people as deviants. This view was discredited long ago following
3 psychological and medical advances in the understanding of gender identity and of transgender
4 people.

5 146. Despite this earlier policy of exclusion, transgender people have always served in the
6 military but, as noted by former Secretary of Defense Ash Carter (“Secretary Carter”), “they
7 often had to serve in silence alongside their fellow comrades in arms.”

8 147. Transgender people have played essential, mission-critical roles in the military, even
9 when they have not had the ability to serve openly. For example, a transgender woman served on
10 Navy SEAL Team 6 and earned a Purple Heart and a Bronze Star, among many other honors and
11 medals.

12 148. According to a 2014 study conducted by the Williams Institute at the University of
13 California, Los Angeles, there are an estimated 134,300 transgender people who are veterans or
14 are retired from guard or reserve service.

15 149. It is a statistical certainty that there have been transgender people who have
16 sacrificed their lives in the course of military service to the United States.

17 **N. Rescission of Prior Military Ban Against Transgender Individuals**

18 150. The military’s prior ban against transgender people was the subject of extensive
19 research and study, which concluded that it lacked any valid justification.

20 151. For example, in March 2014, the Transgender Military Service Commission (the
21 “Commission”) issued a report analyzing the military’s former ban. The Commission, which was
22 co-chaired by a former U.S. Surgeon General, was convened to determine whether the ban was
23 based on medically sound reasons. The Commission found that there was “no compelling
24 medical rationale” for banning military service by transgender people.

25 152. In May 2014, then-Secretary of Defense Chuck Hagel publicly stated that he was
26 receptive to reviewing and reassessing the rules that govern service by transgender people. He
27 explained that “[e]very qualified American who wants to serve our country should have an
28 opportunity if they fit the qualifications and can do it.”

1 153. In July 2015, Secretary Carter admitted that DoD's regulations regarding transgender
2 service members "[were] outdated and [were] causing uncertainty that distracted commanders
3 from our core missions." He also recognized the many transgender people who were already
4 serving in the military: "We have transgender soldiers, sailors, airmen and Marine—real,
5 patriotic Americans—who I know are being hurt by an outdated, confusing, inconsistent
6 approach that's contrary to our value of service and individual merit."

7 154. Accordingly, Secretary Carter announced the creation of a working group to study
8 for six months the policy and readiness implications of permitting transgender individuals to
9 serve openly. This working group was chaired by the Under Secretary of Defense for Personnel
10 and Readiness and comprised senior representatives from each of the military services, the Joint
11 Staff, and relevant components from the Office of the Secretary of Defense.

12 155. In addition to creating a working group, Secretary Carter also directed that, effective
13 July 13, 2015, no service member could be involuntarily separated or denied reenlistment or
14 continuation of active or reserve service on the basis of their gender identity without the approval
15 of the Under Secretary of Defense for Personnel and Readiness.

16 156. On information and belief, separations of service members on the basis of their
17 gender identity fell sharply after July 2015, and there were very few, if any, service members
18 who were separated on that basis from July 2015 to June 2016. In effect, transgender people
19 served openly in the military from July 2015 to June 2016, as well as likely before that period,
20 albeit under the threat of separation.

21 157. In or around July 2015, Secretary Carter also directed the commencement of a study
22 to evaluate the implications of allowing transgender personnel to serve openly in the military.
23 DoD commissioned the RAND Corporation, a non-profit, non-partisan research organization, to
24 conduct the study. DoD asked RAND to (1) identify the health care needs of the transgender
25 population and the costs associated with providing transition-related care to transgender service
26 members, (2) assess the readiness implications of allowing transgender service members to serve
27 openly, and (3) review the experiences of foreign militaries that permit transgender individuals to
28 serve openly. The findings from the study, which reflected the culmination of months of research

1 and spanned 91 pages, were publicly released in May 2016.

2 158. As detailed further below, the RAND study demonstrated that the cost of providing
3 transition-related care is exceedingly small relative to DoD's overall health care expenditures,
4 that there are no readiness implications that prevent transgender members from serving openly,
5 and that foreign militaries have successfully permitted open service without a negative effect on
6 effectiveness, readiness, or unit cohesion.

7 159. The leadership of the Armed Services—including the Joint Chiefs of Staff, the
8 Service Secretaries, and Secretary Carter—together with personnel, training, readiness, and
9 medical specialists from across DoD, studied the available data, including the findings and
10 analysis from RAND. They also received input from transgender service members, from outside
11 expert groups, and from medical professionals outside DoD. They looked carefully at what
12 lessons could be learned from outside the U.S. military, including from allied militaries that
13 permit transgender people to serve openly, as well as from the private sector.

14 160. As a result of this deliberative process and year-long study, on June 30, 2016,
15 Secretary Carter announced that the military was ending the ban on open service by transgender
16 people. The conclusion was supported by, among other things, the need to recruit and retain the
17 individuals most highly qualified to serve. Effective immediately, transgender service members
18 were permitted to serve openly and could no longer be discharged or otherwise separated from
19 the military solely for being transgender. DoD materials explained that “[t]his policy change was
20 crafted through a comprehensive and inclusive process that included the leadership of the Armed
21 Services, medical and personnel experts across the Department, transgender Service members,
22 outside medical experts, advocacy groups, and the RAND Corporation.”

23 161. In the accompanying directive-type memorandum regarding the policy change,
24 Secretary Carter explained that the policies and procedures permitting open service were
25 premised on the conclusion that “open service by transgender Service members . . . is consistent
26 with military readiness and with strength through diversity.”

27 162. The policy change was announced through a press conference held by Secretary
28 Carter as well as through a section of the DoD website titled “Department of Defense

1 Transgender Policy,” which was still active in the days following President Trump’s July 26,
2 2017 tweets. That website lists the highlights of the policy change, links to various DoD
3 resources related to the policy change, and includes a video that assures transgender individuals:
4 “Transgender Members Can Now Serve Openly.”

5 163. DoD planned a 12-month implementation process that would proceed in stages,
6 beginning with the needs of current service members and their commanders, followed by training
7 for the entire force, and concluding with the accession of transgender recruits.

8 164. On September 30, 2016, within 90 days after the lifting of the ban, DoD issued a
9 training handbook for commanders, transgender service members, and the force, titled
10 “Transgender Service in the U.S. Military: An Implementation Handbook.” The 71-page
11 handbook was designed to help transgender service members in their transition, help
12 commanders with their duties and responsibilities, and help all service members understand the
13 new policies allowing open service by transgender service members. The handbook illustrates
14 that open service has been workable and practicable.

15 165. Also within 90 days of the lifting of the prior ban, DoD issued medical guidance for
16 providing transition-related care to transgender service members, who were also able to begin the
17 process to officially change their gender marker in the military’s personnel management systems.

18 166. Over the next nine months following the lifting of the prior ban (i.e., from October
19 2016 to June 2017), the services conducted training of the force based on detailed guidance and
20 training materials regarding the policy change.

21 167. Finally, it was envisioned that by July 1, 2017, the military would begin accessing
22 transgender people who meet all relevant standards—holding them to the same physical and
23 mental fitness standards as everyone else who wishes to serve in the military.

24 168. On or around June 30, 2017, Secretary Mattis deferred the accession of transgender
25 individuals until January 1, 2018. There was no change in the decision about whether
26 transgender individuals would be able to join the military but instead merely a change in when
27 they could begin to do so.
28

1 169. But for President Trump’s implementation of the Ban, the military would have begun
2 the accession of transgender individuals on January 1, 2018.

3 **O. Announcement of Policy of Discrimination Against Transgender Individuals in**
4 **Military Service**

5 170. Through a series of three tweets on July 26, 2017, President Trump unilaterally
6 reversed the U.S. military’s policy of permitting open service by transgender individuals and
7 dismantled the years of work that led to the development and implementation of that policy.

8 171. At 8:55 a.m. Eastern time, President Trump tweeted: “After consultation with my
9 Generals and military experts, please be advised that the United States Government will not
10 accept or allow....”

11 172. At 9:04 a.m. Eastern time, President Trump tweeted: “....Transgender individuals to
12 serve in any capacity in the U.S. Military. Our military must be focused on decisive and
13 overwhelming....”

14 173. At 9:08 a.m. Eastern time, President Trump tweeted: “....victory and cannot be
15 burdened with the tremendous medical costs and disruption that transgender [sic] in the military
16 would entail. Thank you[.]”

17 174. The “process” that led to the Ban—to the extent there was any meaningful process at
18 all—was the antithesis of the deliberative, comprehensive, and inclusive process that led to the
19 rescission of the prior ban.

20 175. President Trump failed to engage in any meaningful study, deliberation, or
21 consultation with key military officials, including Secretary Mattis, before making the decision
22 to exclude transgender individuals from the military. Indeed, President Trump tweeted about his
23 decision when Secretary Mattis was on vacation and reportedly provided Secretary Mattis with
24 only one day’s notice of the decision.

25 176. Before the President’s Twitter announcement, other top Pentagon officials were
26 similarly unaware of his decision to ban transgender individuals from the military. In fact, in the
27 nine minutes between the President’s tweet at 8:55 a.m. Eastern Time (which stated, “After
28 consultation with my Generals and military experts, please be advised that the United States

1 Government will not accept or allow....”) and his next tweet at 9:04 a.m. Eastern Time, there
2 were concerns that President Trump was declaring war on North Korea.

3 177. The Joint Chiefs of Staff, including Chairman General Joseph Dunford, were not
4 aware that President Trump planned to tweet about a renewed ban on transgender service
5 members. Military service chiefs from the U.S. Army, Marine Corps, Navy, Air Force, and, upon
6 information and belief, the U.S. Coast Guard were all blindsided by the President’s Twitter
7 announcement.

8 178. Indeed, on June 19, 2017, Chairman General Dunford stated: “Transgender
9 personnel are serving right now, and there is no ongoing review that would affect the ability of
10 those currently serving to continue serving, provided they can meet the physical and mental
11 qualifications of service, be worldwide deployable, and [meet] the same standards that every
12 other soldier, sailor, airmen, [and] marine meets.”

13 179. Before the President’s Twitter announcement, the Pentagon press office was also
14 unaware of the President’s decision to ban transgender people from the military. Immediately
15 after the President’s tweets, a Pentagon spokesperson, Navy Captain Jeff Davis, declined to
16 answer media questions about them, instead telling media: “call the White House.”

17 180. On July 26, 2017, White House Press Secretary Sarah Huckabee Sanders also could
18 not answer a basic question about the proposed new ban: whether transgender individuals
19 currently serving in the military would be discharged. Instead, she responded that DoD and the
20 White House “[would] have to work together” to figure that out. She also could not say for
21 certain who would even take the lead on implementation but “imagine[d]” that it would be DoD.

22 181. Even White House lawyers and aides, who had advised President Trump against
23 banning transgender individuals from the military, were blindsided by the President’s tweets
24 announcing the intended ban. Indeed, one White House official admitted that President Trump
25 took to Twitter to announce the change because the President was frustrated that others wanted
26 to engage in further discussion and analysis of the issues involved. According to a White House
27 official, President Trump stated that the announcement “would stop the lawyers from arguing
28 with him anymore” and trying to dissuade him from reinstating a ban on transgender military

1 service.

2 182. On information and belief, President Trump also never spoke to a single transgender
3 person regarding the potential impact of his proposed ban before deciding to institute it.

4 183. Several congressional and White House sources reported that part of the President's
5 motivation for the policy change was to shore up support for a spending bill that would have
6 funded his desired border wall with Mexico and other campaign promises. There was concern
7 that the spending bill would not pass the House of Representatives because some Republican
8 members wanted a ban on military funding for transition-related care, which Republican
9 leadership would not permit, and thus these members might cause the defeat of the entire
10 spending bill. Indeed, on July 13, 2017—almost two weeks before the tweets—the House had
11 previously rejected a proposed amendment that would have banned coverage for transition-
12 related care for transgender service members. These Republican members turned to President
13 Trump, who quickly went much further than banning coverage for transition-related care and
14 instead announced his intention to ban transgender members from military service altogether,
15 presumably as a last-ditch attempt to save the spending bill at issue.

16 184. A Trump administration official also suggested that the President's policy change
17 was motivated by a desire to gain political advantage over Democrats, stating: "This forces
18 Democrats in Rust Belt states like Ohio, Michigan, and Wisconsin, to take complete ownership
19 of this issue. How will the blue collar voters in these states respond when senators up for re-
20 election in 2018 like Debbie Stabenow are forced to make their opposition to this a key plank of
21 the campaigns?"

22 185. Additional reports indicate that the President's policy change was undertaken at the
23 behest of Tony Perkins, president of the Family Research Council, a religious lobbying
24 organization that has been labeled an anti-LGBT hate group. That request reportedly was made
25 at a meeting held in the White House Oval Office on July 11, 2017, in which invited,
26 conservative religious leaders laid hands on President Trump and prayed.

27 186. Then-Deputy Assistant to President Trump Sebastian Gorka stated on July 28, 2017,
28 that the military is "not there to reflect America" but instead "to kill people and blow stuff up."

1 He derided the inclusion of transgender service members in the military as “Obama-era social
2 engineering.” He also cited reports that 40 percent of transgender people have attempted suicide
3 at some point in their lives as a justification for excluding them from military service—failing to
4 recognize or acknowledge the role that discrimination plays in that statistic—and asserted that
5 “we don’t need to try and force them into the hierarchical military environment where they are
6 under the utmost pressure to kill or be killed.” Mr. Gorka continued, “that is why the President is
7 doing this—out of warmth of his consideration for this population.” That statement is false.

8 187. President Trump’s unilateral decision to bar transgender individuals from the
9 military has been met with widespread opposition and condemnation, including by elected
10 representatives from both main political parties. For example, the late Republican Senator John
11 McCain, former Chair of the Senate Armed Services Committee, stated “We should all be guided
12 by the principle that any American who wants to serve our country and is able to meet the
13 standards should have the opportunity to do so—and should be treated as the patriots they are.”
14 Similarly, Republican Senator Richard Shelby stated, “You ought to treat everybody fairly and
15 you ought to give everybody a chance to serve.” Republican Senator Lindsey Graham added,
16 “This is something we should . . . not make a decision [about] based off a tweet.” Furthermore,
17 more than 50 House members, including those on the House Judiciary Committee and Armed
18 Services Committee, joined a letter stating that the President’s decision to ban transgender
19 individuals from the military was unconstitutional on its face.

20 188. Attorneys general from 19 states and the District of Columbia joined a letter
21 denouncing the President’s exclusion of transgender individuals from the military as “blatant
22 discrimination” that violates “fundamental constitutional and American values.” The states
23 include California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts,
24 Minnesota, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia
25 and Washington.

26 189. Fifty-six retired generals and admirals issued a public statement on August 1, 2017,
27 warning that the proposed ban on transgender service members would downgrade military
28 readiness. The statement notes that two four-star generals and former chairmen of the Joint

1 Chiefs of Staff—Army General Martin Dempsey and Navy Admiral Michael Mullen—have
2 publicly supported open service by transgender individuals.

3 **P. Implementation of Discrimination Against Transgender Individuals in Military**
4 **Service**

5 190. On or around July 31, 2017, Navy Captain Jeff Davis stated that, upon receiving any
6 “formal direction” from the President, DoD officials “would provide implementing guidance and
7 implement accordingly.” He added that the military was ready “to make [it] happen” once the
8 formal direction was received.

9 191. On or around August 14, 2017, Secretary Mattis informed reporters: “I’ve got my
10 people over there in the room to give [the White House] any military background that they might
11 need to inform them.” But he added, “[t]hey write their own policy of course, so we’re in a
12 supporting role right now.”

13 192. On August 25, 2017, President Trump issued a memorandum entitled “Military
14 Service by Transgender Individuals” (the “2017 Memorandum”) to the Secretary of Defense and
15 the Secretary of Homeland Security (“DHS”). The 2017 Memorandum institutes and implements
16 the Ban.

17 193. President Trump has admitted that, until June 2016, DoD and DHS “generally
18 prohibited openly transgender individuals from accession in the United States military and
19 authorized the discharge of such individuals.” President Trump’s avowed purpose in issuing the
20 2017 Memorandum and the Ban is to “return” the United States to that “longstanding” policy
21 and practice of discrimination.

22 194. To that end, the 2017 Memorandum commanded Secretary Mattis to submit to the
23 President, by February 21, 2018, a “plan for implementing both the general policy . . . and
24 specific directives” that the 2017 Memorandum contained. It also directed Secretary Mattis to
25 determine “how to address transgender individuals currently serving.”

26 195. Secretary Mattis acknowledged and implemented the President’s orders. Four days
27 after the 2017 Memorandum, he issued a statement on “Military Service by Transgender
28 Individuals,” in which he stated that he had “received the Presidential Memorandum” and would

1 “carry out the president’s policy direction.”

2 196. Secretary Mattis subsequently issued two more memoranda, one providing “Interim
3 Guidance,” and the other directing the development of an Implementation Plan. He stated in the
4 “Interim Guidance” that he would “comply with the Presidential Memorandum” and “present the
5 president with a plan to implement the [2017 Memorandum’s] policy and directives on the
6 required timeline.” In the second document, a “Terms of Reference,” Secretary Mattis stated that
7 he would convene “a panel of experts” to “develop[] an Implementation Plan on military service
8 by transgender individuals, to effect the policy and directives in [the] Presidential
9 Memorandum.”

10 197. On August 28, 2017, Plaintiffs filed suit challenging the Ban’s constitutionality. The
11 State of Washington then intervened on behalf of Plaintiffs. This Court and three others granted a
12 preliminary injunction maintaining the status quo of open service under the Carter Policy. The
13 Armed Forces began permitting openly transgender people to access into service beginning on
14 January 1, 2018.

15 198. On or about February 22, 2018, Secretary Mattis delivered to the President the
16 ordered Implementation Plan, on the ordered timeline. It consists of a memorandum from
17 Secretary Mattis to the President entitled “Military Service by Transgender Individuals,” and a
18 document entitled “Department of Defense Report and Recommendations on Military Service by
19 Transgender Persons” totaling 44 pages.

20 199. The Implementation Plan is longer than a tweet, but it still facially and in fact
21 prohibits transgender military service—just as was ordered in the 2017 Memorandum. First, it
22 generally bans from service anyone with a history of gender dysphoria, a condition associated
23 with transgender persons. Second, it bans anyone who undergoes or requires gender transition.
24 Third, to the extent that there are any individuals who identify as transgender but do not fall
25 under the first two categories, the Implementation Plan allows them to serve only in their
26 “biological sex.” In other words, they may not serve unless they suppress the very characteristic
27 that defines them as transgender in the first place. Collectively, these bans thus effect the policy
28 that openly transgender persons are generally not allowed to serve in conformity with their

1 gender identity or receive medically necessary transition-related care.

2 200. The Implementation Plan also contains a limited grandfather exception for those
3 service members who came out in reliance on the Carter Policy. The 2017 Memorandum
4 explicitly contemplated this exception, when it ordered Secretary Mattis to “determine how to
5 address transgender individuals currently serving in the United States military” as part of the
6 Implementation Plan. The Implementation Plan states that the grandfather clause “is and should
7 be deemed severable from” the remainder of the policy “should [DoD’s] decision to exempt
8 these Service members be used by a court as a basis for invalidating the entire policy.” Those
9 who have come out in reliance on the Carter Policy are thus forced to serve at the sufferance of
10 an exception that applies only to them, under a policy that brands them as inferior, unfit, and a
11 danger to their colleagues.

12 201. President Trump approved the Implementation Plan in a March 23, 2018
13 memorandum entitled “Military Service by Transgender Individuals,” which acknowledges
14 receipt of the Implementation Plan developed “[p]ursuant to [the President’s] memorandum of
15 August 25, 2017,” and authorizes the Secretary of Defense to carry out the Implementation Plan.

16 202. The March 23, 2018 Memorandum purports to revoke the memorandum of August
17 25, 2017. In fact, however, President Trump’s March 23 Memorandum is the next step in
18 enforcing and implementing the Ban. And, even if the Implementation Plan were new, it too
19 would be unconstitutional for facially targeting transgender persons and banning them from
20 joining the military and serving openly.

21 203. The Implementation Plan was quickly condemned by all three leading American
22 medical, psychological, and psychiatric associations. The American Medical Association
23 responded to the February 22, 2018 Memorandum and its attachment, saying that “there is no
24 medically valid reason—including a diagnosis of gender dysphoria—to exclude transgender
25 individuals from military service” and denouncing the February 22, 2018 Memorandum because
26 it “mischaracterized and rejected the wide body of peer-reviewed research on the effectiveness of
27 transgender medical care.” The American Psychological Association responded that it was
28 “alarmed by the administration’s misuse of psychological science to stigmatize transgender

1 Americans and justify limiting their ability to serve in uniform and access medically necessary
 2 health care.” And the American Psychiatric Association released a statement confirming that
 3 transgender people “suffer no impairment whatsoever in their judgment or ability to work.”

4 204. All Defendants—President Trump, the U.S., Secretary Esper, and DoD—are
 5 responsible for implementing and enforcing the Ban and the Implementation Plan.

6 **Q. Purported Justifications for Policy of Discrimination Against Transgender**
 7 **Individuals**

8 205. The Ban and the Implementation Plan are not supported by any compelling,
 9 important, or even rational government interest.

10 206. The Ban and the Implementation Plan lack any narrowly-tailored, substantially-
 11 related, or even rational relationship to any legitimate government interest, and they are not the
 12 least restrictive means of achieving any valid government interest.

13 207. Neither of the purported justifications cited by President Trump for the reinstatement
 14 of the prior ban in his tweets—medical costs and disruption—nor any of the after-the-fact
 15 justifications drafted by others in defense of his tweets and policies implementing his tweets has
 16 any basis in reality. Indeed, they are rebutted by, among other things, the fact that transgender
 17 individuals have already served openly for over three years (thirteen months before the
 18 President’s tweets announcing the Ban, and for two years since then under the preliminary
 19 injunctions and the Implementation Plan’s grandfather clause) without any of these concerns
 20 materializing.

21 **1. Medical Costs**

22 208. With respect to the issue of medical cost, DoD’s own commissioned study by RAND
 23 estimated that providing transition-related care to active-duty service members would cost
 24 between \$2.4 million and \$8.4 million annually—which is “an amount that will have little impact
 25 on and represents exceedingly small proportion of [active component] health care expenditures
 26 (approximately \$6 billion in FY 2014) and overall DoD health care expenditures (\$49.3 billion
 27 actual expenditures [in FY 2014] . . .).”
 28

1 209. The RAND study mirrored earlier research findings. A 2015 article published in the
2 New England Journal of Medicine estimated that the cost of providing transition-related care to
3 service members would be approximately \$5.6 million annually or 22 cents per member per
4 month. The article concluded that any plausible estimate of the cost involved is equivalent to a
5 “rounding error” in the military’s nearly \$50 billion annual health care budget.

6 210. The surgeon general of the Navy also noted in December 2016 that most of the types
7 of medical care for transgender service members was already provided to others in relation to
8 similar medical needs.

9 211. Providing transition-related care also mitigates other costs that the military would
10 otherwise be required to bear. The RAND study noted that the adverse consequences of not
11 providing transition-related care to transgender personnel could include causing these individuals
12 to avoid other necessary health care altogether, such as important preventive services, as well as
13 increased rates of mental and substance abuse disorders, and suicide, and reduced productivity.

14 212. Implementing a ban against transgender individuals in the military will cost the
15 federal government many times more in taxpayer dollars than any cost associated with allowing
16 transgender individuals to continue serving and to join the military. Implementation costs include
17 the high expense of separating or dismissing people subject to the policy and the cost of finding
18 replacements for and training non-transgender individuals to replace them. A recent study
19 estimated that it would cost \$960 million dollars to recruit and train the replacements for all the
20 transgender individuals who are currently serving in the military—more than one hundred times
21 the upper estimate of the cost of providing transition-related care for one year.

22 **2. Military Readiness**

23 213. There is also no military readiness justification for the policy of excluding
24 transgender individuals from the military.

25 214. The RAND study found that less than 0.0015 percent of total available labor-years,
26 defined as the amount of work done by an individual in a year, would be affected by permitting
27 transgender individuals to openly serve. This is because, even on the high end of estimates, less
28 than 0.1 percent of the total force would seek transition-related care that could temporarily affect

1 their ability to deploy.

2 215. Existing data also show that there is no impact on unit cohesion that would prevent
3 transgender individuals from serving openly.

4 216. The military has previously adapted to the eradication of other forms of
5 discrimination including racial desegregation, the end of the anti-lesbian, gay, and bisexual
6 “Don’t Ask, Don’t Tell” policy, and the integration of women into direct combat positions. The
7 military was able to adapt to the inclusion of transgender troops serving openly as well,
8 particularly with the benefit of force-wide training and clear guidance implemented by the
9 military.

10 217. Eighteen countries allow transgender people to serve openly in the military:
11 Australia, Austria, Belgium, Bolivia, Canada, Czech Republic, Denmark, Estonia, Finland,
12 France, Germany, Israel, Netherlands, New Zealand, Norway, Spain, Sweden, and the United
13 Kingdom. The RAND study focused on the policies of four countries with the most well-
14 developed and publicly available policies on transgender military service members—Australia,
15 Canada, Israel, and the United Kingdom. In no case did the study find any evidence of an
16 adverse effect on operational effectiveness, operational readiness, or cohesion of the force.

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**
19 **EQUAL PROTECTION VIOLATION**
20 **(By All Plaintiffs Against All Defendants)**

21 218. Plaintiffs incorporate paragraphs 1 through 217 as though fully set forth herein.

22 219. All Plaintiffs state this cause of action against all Defendants (including President
23 Trump and Secretary Esper, in exclusively their official capacities) for purposes of seeking
24 declaratory and injunctive relief, and challenge the Ban and the Implementation Plan both
25 facially and as applied to them or, as to the organizational plaintiffs, as applied to their members.

26 220. The Fifth Amendment to the United States Constitution provides that no person shall
27 be deprived of life, liberty, or property without due process of law. The Due Process Clause
28 includes within it a prohibition against the denial of equal protection by the federal government,

1 its agencies, or its officials or employees.

2 221. Defendants' disparate treatment of transgender individuals facially and intentionally
3 discriminates against transgender individuals based on sex-related considerations.

4 222. Discrimination based on sex-related considerations includes, but is not limited to,
5 discrimination based on gender nonconformity, gender identity, transgender status, and gender
6 transition.

7 223. The Department of Defense's Transgender Service Member Policy Implementation
8 Fact Sheet, posted on the Department of Defense's official website, admits that "[a]ny
9 discrimination against a Service member based on their gender identity is sex discrimination."

10 224. Discrimination because an individual is transgender is both discrimination based on a
11 sex-related consideration, which at a minimum requires courts to apply intermediate scrutiny in
12 evaluating the constitutionality of the government's discrimination, and discrimination based on
13 transgender status, which requires courts to apply strict scrutiny to such discrimination.

14 225. Government discrimination against transgender individuals bears all the indicia of a
15 suspect classification requiring strict scrutiny by the courts.

16 a. Transgender people have suffered a long history of extreme discrimination and
17 continue to suffer such discrimination to this day.

18 b. Transgender people are a discrete and insular group and lack the political
19 power to protect their rights through the legislative process. Transgender
20 people have largely been unable to secure express federal, state, and local
21 protections specifically protecting them against discrimination, and have been
22 and continue to be regularly targeted by anti-transgender legislation,
23 regulations, bills, and other government action.

24 c. A person's gender identity or transgender status bears no relation to that
25 person's ability to contribute to society.

26 d. Transgender people constitute a small minority of the population. In addition,
27 gender identity is a core, defining trait and is so fundamental to one's identity
28 and conscience that a person cannot be required to abandon it as a condition of

1 equal treatment. Gender identity is also generally fixed at an early age and
2 highly resistant to voluntary change. Efforts to change gender identity have
3 been condemned by leading medical and psychological authorities as harmful,
4 and have been barred by numerous states, the District of Columbia, and
5 numerous local governments.

6 226. Defendants' disparate treatment of transgender individuals like the individual
7 plaintiffs and the transgender members of the organizational plaintiffs deprives them of their
8 right to equal dignity and stigmatizes them as second-class citizens in violation of equal
9 protection guarantees.

10 227. There is not even a legitimate justification for such disparate treatment, let alone the
11 important or compelling one that is constitutionally required.

12 228. The Ban and Implementation Plan are motivated by impermissible animus towards
13 transgender people and are thus invalid as a whole.

14
15 **SECOND CAUSE OF ACTION**
16 **DUE PROCESS VIOLATION**
17 **(By All Plaintiffs Against All Defendants)**

18 229. Plaintiffs incorporate paragraphs 1 through 217 as though fully set forth herein.

19 230. All Plaintiffs state this cause of action against all Defendants (including President
20 Trump and Secretary Esper, in exclusively their official capacities) for purposes of seeking
21 declaratory and injunctive relief, and challenge the Ban and Implementation Plan both facially
22 and as applied to them or, as to the organizational plaintiffs, as applied to their members.

23 231. Defendants' conduct, including their enforcement of the Ban and Implementation
24 Plan, violates the rights of the individual plaintiffs and of the transgender members of the
25 organizational plaintiffs under the Fifth Amendment's Due Process Clause. The Due Process
26 Clause protects each person's fundamental liberty to individual dignity, autonomy, and privacy.
27 That includes the right to define and express one's own identity, to define one's own concept of
28 existence, and to make intimate decisions concerning marriage, procreation, and family life, all
without undue government interference.

1 232. A person's gender identity constitutes a core aspect of individual self-definition. The
 2 Ban and Implementation Plan diminish the personhood, dignity, and autonomy of the individual
 3 plaintiffs and of the transgender members of the organizational plaintiffs, and impermissibly
 4 interfere with the most intimate choices a person may make in a lifetime, including the right to
 5 self-expression and to live openly and authentically.

6 233. Where the government impermissibly burdens a fundamental liberty interest, such
 7 government action may be sustained only upon a showing that it is, at the very least,
 8 substantially related to an important government interest, if not narrowly tailored to serve a
 9 compelling government interest. Here, the Ban and the Implementation Plan lack adequate
 10 tailoring and fail to serve even a legitimate governmental interest. Indeed, they epitomize the
 11 very kind of arbitrary and capricious government action that the Due Process Clause forbids.

12 234. Defendants have also violated the due process rights of the individual plaintiffs and
 13 of the transgender members of the organizational plaintiffs to the extent that they detrimentally
 14 relied on the military's policy, extant during the period of June 2016 to August 2017, of
 15 permitting open service by transgender individuals. In addition, Defendants' conduct violates
 16 basic principles of equity.

17
 18 **THIRD CAUSE OF ACTION**
 19 **FREE SPEECH VIOLATION**
 20 **(By All Plaintiffs Against All Defendants)**

21 235. Plaintiffs incorporate paragraphs 1 through 217 as though fully set forth herein.

22 236. All Plaintiffs state this cause of action against all Defendants (including President
 23 Trump and Secretary Esper, in exclusively their official capacities) for purposes of seeking
 24 declaratory and injunctive relief, and challenge the Ban and Implementation Plan both facially
 25 and as applied to them or, as to the organizational plaintiffs, as applied to their members.

26 237. The Ban and Implementation Plan violate the Free Speech Clause of the First
 27 Amendment because they impermissibly burden and chill the exercise of the individual
 28 plaintiffs' and of the organizational plaintiffs' transgender members' constitutionally protected
 speech, expression, expressive conduct, and expressive association, based on the content and

1 viewpoint of their speech.

2 238. All the individual plaintiffs and transgender members of the organizational plaintiffs
3 have been open about their status as transgender either in the context of seeking to join the
4 military or in the course of their military service. All individual plaintiffs and transgender
5 members of organizational plaintiffs want to continue being open about their status as
6 transgender, and to continue expressing and conducting themselves consistently with their
7 gender.

8 239. The gender expression of the individual plaintiffs and of transgender members of the
9 organizational plaintiffs, the conduct of those individuals that is consistent with their gender, and
10 those individuals' disclosure of their transgender status, all constitute protected First Amendment
11 activity. Similarly, the advocacy of those individuals for fairness for transgender service
12 members and an end to discrimination against transgender individuals in military service, and
13 those individuals' association with other transgender people and their allies for expressive
14 purposes, constitute protected First Amendment activity.

15 240. The purpose and effect of the Ban and Implementation Plan are to chill
16 constitutionally protected First Amendment activity. Indeed, the 2017 Memorandum on its face
17 demonstrates that it is directed at suppressing the gender expression and related expressive
18 conduct of transgender individuals, including that of the individual plaintiffs and transgender
19 members of the organizational plaintiffs, and those individuals' disclosure of their transgender
20 status: specifically, the 2017 Memorandum states that policy is changing by returning to one that
21 prohibits "*openly* transgender individuals" from accession, authorizes the discharge of such
22 individuals, and prevents transgender individuals from serving "*openly* in the military"
23 (emphases added).

24 241. The Ban and Implementation Plan penalize the individual plaintiffs, transgender
25 members of the organizational plaintiffs, other transgender service members, and other
26 transgender individuals who would like to join the military or be appointed as officers, for their
27 gender expression. The Ban and Implementation Plan chill the protected First Amendment
28 activity of a person of ordinary firmness who is transgender by requiring such persons either to

1 attempt to deny who they are and suppress expression of their gender or be denied military
2 service on the same terms as others. The Ban and Implementation Plan also chill these
3 individuals' right to advocate for fair treatment for transgender service members for fear that this
4 advocacy will identify them as transgender. For the same reason, the exclusion chills exercise of
5 their right to associate with other transgender service members and their allies and form or
6 participate in expressive associations for the purpose of advocating for an end to the exclusion.

7 242. The individual plaintiffs and transgender members of the organizational plaintiffs are
8 harmed by being denied the opportunity to serve in the military on the same terms as other
9 service members. All of the individual plaintiffs and transgender members of the organizational
10 plaintiffs face a realistic danger of sustaining a direct injury as a result of implementation,
11 operation, or enforcement of the terms of the Ban as well as the Implementation Plan. For
12 example, Mr. Karnoski and Mr. Layne are harmed by being denied the opportunity to serve in
13 the military. Staff Sergeant Schmid was refused appointment as a warrant officer, and she also
14 faces a realistic danger that she will sustain a direct injury from implementation of the Ban,
15 which requires a return to the exclusion of transgender service members from the military. Chief
16 Warrant Officer Muller, Petty Officer Lewis, Petty Officer Stephens, Petty Officer Winters, and
17 Jane Doe also face the realistic danger that they will sustain direct injuries from implementation
18 of the Ban and Implementation Plan.

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiffs respectfully request that this Court:

21 1. Issue a judgment, pursuant to 28 U.S.C. §§ 2201-02, declaring the Ban and the
22 Implementation Plan unconstitutional on their face and as applied to the individual plaintiffs and
23 transgender members of the organizational plaintiffs for the reasons set forth above;

24 2. Preliminarily and permanently enjoin Defendants, their agents, employees,
25 representatives, successors, and any other person or entity subject to their control or acting
26 directly or indirectly in concert with them from enforcing the Ban and the Implementation Plan,
27 including by enjoining any separation, discharge, adverse action, or denial of promotion,
28 reenlistment, continuation of service, accession, or appointment because an individual is

1 transgender.

2 3. Award Plaintiffs costs, expenses, and reasonable attorneys' fees pursuant to 28
3 U.S.C. § 2412 and any other applicable laws; and

4 4. Grant any injunctive or other relief that this Court deems just, equitable, and proper.

5
6 Respectfully submitted July 31, 2019.

7
8 **NEWMAN DU WORS LLP**

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11 _____
Derek A. Newman, WSBA No. 26967
dn@newmanlaw.com

12 Jason B. Sykes, WSBA No. 44369
jason@newmanlaw.com

13 Rachel Horvitz, WSBA No. 52987
rachel@newmanlaw.com

14 2101 Fourth Ave., Ste. 1500
15 Seattle, WA 98121
16 (206) 274-2800

17 **LAMDBA LEGAL DEFENSE AND
18 EDUCATION FUND, INC.**

Tara Borelli, WSBA No. 36759
tborelli@lambdalegal.org

19 Camilla B. Taylor (admitted pro hac vice)

Peter C. Renn (admitted pro hac vice)

20 Sasha J. Buchert (admitted pro hac vice)

Kara N. Ingelhart (admitted pro hac vice)

21 Carl Charles (admitted pro hac vice)

22 Paul D. Castillo (admitted pro hac vice)

730 Peachtree Street NE, Ste. 640

23 Atlanta, GA 30308

(404) 897-1880

24 **OUTSERVE-SLDN, INC. N/K/A MODERN
25 MILITARY ASSOCIATION OF AMERICA**

26 Peter E. Perkowski (admitted pro hac vice)

KIRKLAND & ELLIS LLP

James F. Hurst, P.C. (admitted pro hac vice)

Stephen R. Patton (admitted pro hac vice)

Jordan M. Heinz (admitted pro hac vice)

Vanessa Barsanti (admitted pro hac vice)

Daniel I. Siegfried (admitted pro hac vice)

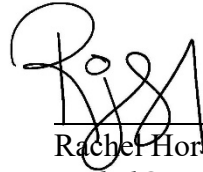
Joseph B. Tyson (admitted pro hac vice)

Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that all participants in the case are registered CM/ECF users and that service of the foregoing documents will be accomplished by the CM/ECF system on July 31, 2019.



Rachel Horwitz, WSBA No. 52987
rachel@newmanlaw.com
2101 Fourth Ave., Ste. 1500
Seattle, WA 98121
(206) 274-2800

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Exhibit A

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

FEB 22 2018

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Military Service by Transgender Individuals

“Transgender” is a term describing those persons whose gender identity differs from their biological sex. A subset of transgender persons diagnosed with gender dysphoria experience discomfort with their biological sex, resulting in significant distress or difficulty functioning. Persons diagnosed with gender dysphoria often seek to transition their gender through prescribed medical treatments intended to relieve the distress and impaired functioning associated with their diagnosis.

Prior to your election, the previous administration adopted a policy that allowed for the accession and retention in the Armed Forces of transgender persons who had a history or diagnosis of gender dysphoria. The policy also created a procedure by which such Service members could change their gender. This policy was a departure from decades-long military personnel policy. On June 30, 2017, before the new accession standards were set to take effect, I approved the recommendation of the Services to delay for an additional six months the implementation of these standards to evaluate more carefully their impact on readiness and lethality. To that end, I established a study group that included the representatives of the Service Secretaries and senior military officers, many with combat experience, to conduct the review.

While this review was ongoing, on August 25, 2017, you sent me and the Secretary of Homeland Security a memorandum expressing your concern that the previous administration’s new policy “failed to identify a sufficient basis” for changing longstanding policy and that “further study is needed to ensure that continued implementation of last year’s policy change would not have ... negative effects.” You then directed the Department of Defense and the Department of Homeland Security to reinstate the preexisting policy concerning accession of transgender individuals “until such time as a sufficient basis exists upon which to conclude that terminating that policy” would not “hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources.” You made clear that we could advise you “at any time, in writing, that a change to this policy is warranted.”

I created a Panel of Experts comprised of senior uniformed and civilian Defense Department and U.S. Coast Guard leaders and directed them to consider this issue and develop policy proposals based on data, as well as their professional military judgment, that would enhance the readiness, lethality, and effectiveness of our military. This Panel included combat veterans to ensure that our military purpose remained the foremost consideration. I charged the Panel to provide its best military advice, based on increasing the lethality and readiness of America’s armed forces, without regard to any external factors.

The Panel met with and received input from transgender Service members, commanders of transgender Service members, military medical professionals, and civilian medical

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professionals with experience in the care and treatment of individuals with gender dysphoria. The Panel also reviewed available information on gender dysphoria, the treatment of gender dysphoria, and the effects of currently serving individuals with gender dysphoria on military effectiveness, unit cohesion, and resources. Unlike previous reviews on military service by transgender individuals, the Panel's analysis was informed by the Department's own data obtained since the new policy began to take effect last year.

Based on the work of the Panel and the Department's best military judgment, the Department of Defense concludes that there are substantial risks associated with allowing the accession and retention of individuals with a history or diagnosis of gender dysphoria and require, or have already undertaken, a course of treatment to change their gender. Furthermore, the Department also finds that exempting such persons from well-established mental health, physical health, and sex-based standards, which apply to all Service members, including transgender Service members without gender dysphoria, could undermine readiness, disrupt unit cohesion, and impose an unreasonable burden on the military that is not conducive to military effectiveness and lethality.

The prior administration largely based its policy on a study prepared by the RAND National Defense Research Institute; however, that study contained significant shortcomings. It referred to limited and heavily caveated data to support its conclusions, glossed over the impacts of healthcare costs, readiness, and unit cohesion, and erroneously relied on the selective experiences of foreign militaries with different operational requirements than our own. In short, this policy issue has proven more complex than the prior administration or RAND assumed.

I firmly believe that compelling behavioral health reasons require the Department to proceed with caution before compounding the significant challenges inherent in treating gender dysphoria with the unique, highly stressful circumstances of military training and combat operations. Preservation of unit cohesion, absolutely essential to military effectiveness and lethality, also reaffirms this conclusion.

Therefore, in light of the Panel's professional military judgment and my own professional judgment, the Department should adopt the following policies:

- Transgender persons with a history or diagnosis of gender dysphoria are disqualified from military service, except under the following limited circumstances: (1) if they have been stable for 36 consecutive months in their biological sex prior to accession; (2) Service members diagnosed with gender dysphoria after entering into service may be retained if they do not require a change of gender and remain deployable within applicable retention standards; and (3) currently serving Service members who have been diagnosed with gender dysphoria since the previous administration's policy took effect and prior to the effective date of this new policy, may continue to serve in their preferred gender and receive medically necessary treatment for gender dysphoria.
- Transgender persons who require or have undergone gender transition are disqualified from military service.

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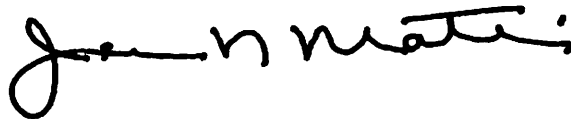
- Transgender persons without a history or diagnosis of gender dysphoria, who are otherwise qualified for service, may serve, like all other Service members, in their biological sex.

I have consulted with the Secretary of Homeland Security, and she agrees with these proposed policies.

By its very nature, military service requires sacrifice. The men and women who serve voluntarily accept limitations on their personal liberties – freedom of speech, political activity, freedom of movement - in order to provide the military lethality and readiness necessary to ensure American citizens enjoy their personal freedoms to the fullest extent. Further, personal characteristics, including age, mental acuity, and physical fitness – among others – matter to field a lethal and ready force.

In my professional judgment, these policies will place the Department of Defense in the strongest position to protect the American people, to fight and win America's wars, and to ensure the survival and success of our Service members around the world. The attached report provided by the Under Secretary of Defense for Personnel and Readiness includes a detailed analysis of the factors and considerations forming the basis of the Department's policy proposals.

I therefore respectfully recommend you revoke your memorandum of August 25, 2017, regarding Military Service by Transgender Individuals, thus allowing me and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to implement appropriate policies concerning military service by transgender persons.



Attachment:
As stated

cc:
Secretary of Homeland Security