



Frequently Ask Questions on the Transgender Military Ban

1) What does the U.S. Supreme Court’s January 22 order mean for Trump’s transgender military ban?

On January 22, five justices on the U.S. Supreme Court gave the Trump administration a temporary green light to enforce its transgender military ban while the cases challenging it continue in the lower courts. They did this by temporarily staying two of four nationwide injunctions that have been blocking the ban since late in 2017.

At the same time, the Court rejected the Trump administration’s request to leapfrog the usual judicial process and ruled that the Court will *not* hear the cases challenging the ban this term. That allows all four cases to continue through the normal course in the federal district courts and courts of appeal.

The plaintiffs and advocates in each of the four legal cases – [*Doe v. Trump*](#), [*Stockman v. Trump*](#), [*Karnoski v. Trump*](#), and [*Stone v. Trump*](#), will continue to challenge the ban in the lower courts, including developing a full record to show that the ban is based on bias, not facts or military judgment.

2) Is the ban currently being enforced?

No.

While the Supreme Court’s recent orders mean that the government may eventually be able to enforce the ban while the cases proceed through the courts, two of the four originally issued injunctions remain in place for now. Several legal hurdles remain before the Department of Defense will be able to enforce the ban.

3) What legal barriers remain that prevent the administration from enforcing the ban? What are the likely next steps?

Two of the four nationwide injunctions blocking the ban remain in place in *Doe v. Trump* and *Stone v. Trump*:

In *Doe*, a three-judge panel of the D.C. Circuit Court of Appeals ruled on January 4, that the district court erred in failing to give sufficient weight to the new circumstances in the case, including the issuance of the March 2018 “Mattis Plan.” The January 4 ruling was an unsigned, preliminary decision stating that longer opinions from the panel will follow. The nationwide preliminary injunction issued by the district court will remain in place for at least 21 days from

the date those longer opinions are issued, in order to give the plaintiffs an opportunity to determine whether to seek rehearing by the full bench of the D.C. Circuit Court of Appeals.

In *Stone*, the federal district court has not yet ruled on the government's motion to dissolve the injunction in that case. The government has asked for an expedited ruling in light of the Supreme Court's action on January 22, but the nationwide preliminary injunction in that case continues to halt enforcement of the ban until the court acts on the government's motion.

4) Who will be impacted by the ban if put into effect by the government? Will currently serving transgender troops be discharged? Will transgender individuals be able to enlist?

If the "Mattis Plan," announced in March 2018, is enforced:

- Any transgender person in active service who comes out publicly and seeks to transition will face discharge.
- Transgender individuals will be barred from enlistment.
- Currently serving transgender troops who came out in reliance on the existing open service policy will not face discharge. They will, however, be stigmatized and harmed by being forced to serve under an official policy that deems them unfit despite their demonstrated ability to meet military standards.

5) Some have called this a "partial ban" on transgender troops – is that accurate?

No. The Mattis Plan bans transgender people from enlisting and serving in the military, with the sole exception of the small group of transgender service members who came out in reliance on open service policy that President Trump is seeking to reverse.

Once that small group retires or leaves military service, no transgender individuals will be allowed to serve.

6) Why is the ban harmful to transgender troops and the military at large?

Transgender men and women have been serving with honor, many on the front lines. Transgender recruits have demonstrated their fitness to serve. These courageous individuals deserve our respect and gratitude, not this cruel ban, which is based on bias, not facts.

Both the Pentagon and the [RAND Corporation](#) spent years studying service by transgender personnel and concluded there is no military reason to prohibit transgender service members from serving openly.

The military's own research concluded that the transgender ban itself harms military readiness by irrationally excluding qualified individuals from service simply for being transgender. As a group of 56 retired generals and admirals [has said](#), "The singling out of one group of service members for unequal treatment harms military readiness, while inclusion supports it."

The military currently struggles to meet personnel demands and to fill essential, needed positions. This ban artificially restricts the pool of qualified individuals and exacerbates military recruitment challenges.

Excluding qualified service members solely because they are transgender is discrimination, it disrupts military readiness, and it is contrary to military values. The ban is destabilizing for non-transgender troops, as well as transgender troops, because it sends a message that military service and opportunities do not turn on merit but, rather, may be subject to the political whims of the current administration.

The military's own core values affirm that diversity is a strength that promotes readiness. For instance, an [Army website](#) lists among the many benefits of the Army's diversity efforts: "The opportunity to better understand our Nation's increasingly diverse population and attract the best available talent to fill our Soldier and Civilian ranks"; "Personnel who feel valued are inspired to serve at a higher level"; and "Bringing everyone's different attributes and experiences together will enhance our ability to operate globally with a culturally astute Force." An inclusive, diverse military improves readiness by increasing the pool of people available to serve, reinforcing equal standards, and bolstering recruitment by maintaining the military's image as an open and welcoming place.

Top U.S. military and political leaders, from across the political spectrum, have consistently said that transgender individuals should be allowed to serve, and that their service is valuable and promotes readiness. These have included the following:

- [Gen. Joseph Dunford, Chairman, Joint Chiefs of Staff](#): "I believe any individual who meets the physical and mental standards, and is worldwide deployable and is currently serving, should be afforded the opportunity to continue to serve."
- [Gen. Mark Milley, Army Chief of Staff](#): "I have received precisely zero reports of issues of cohesion, discipline, morale and all those sorts of things [as a result of service by transgender personnel]."
- [Sgt. Maj. Daniel Dailey, Army's top enlisted soldier](#): "I agree with the chief. We haven't heard any issues or concerns, and I personally have not had any issues or concerns."
- [Vice Adm. Karl Schultz, U.S. Coast Guard Commandant](#): "I am not aware of any disciplinary or unit cohesion issues resulting from the opening of the Coast Guard to transgender individuals."
- The late [Sen. John McCain, former Chairman of the Senate Armed Services Committee](#): "We should welcome all those who are willing and able to serve our country. Any member of the military who meets the medical and readiness standards should be allowed to serve—including those who are transgender."

7) What is the role of Congress in fighting the ban?

Congress has the power to enact legislation prohibiting discrimination against transgender people in military service and to ensure that anyone who meets military standards is eligible to serve.

While the ban violates constitutional equality guarantees and should ultimately be struck by the courts, it can also be undone by federal legislation.

[Bipartisan legislation](#) introduced February 7, 2019 by Senator Kirsten Gillibrand in the Senate and Representative Jackie Speier in the House would do just that.

- Sen. Kirsten Gillibrand: “President Trump’s ban on transgender service members is discrimination, it undermines our military readiness, and it is an insult to the brave and patriotic transgender Americans who choose to serve in our military.”
- Sen. Susan Collins: “Anyone who is qualified, able to be deployed into war zones and wants to serve should continue to be allowed to do so, including our transgender troops. If individuals are willing to put on the uniform of our country and risk their lives for our freedoms, then we should be expressing our gratitude to them, not trying to kick them out of the military.”
- Rep. Jackie Speier: “Our transgender service members put their lives on the line every day despite an ill-advised edict from the President. This bill makes it clear to our brave transgender troops that we see them and that we honor the risks they take and sacrifices that they and their families make for the safety of our country. It’s also solid common sense. The President’s ban is not only hateful and un-American, it harms military readiness and morale and ultimately makes our country less strong.”

Additionally, following the Supreme Court’s January 22 ruling, [160 members of Congress](#) sent a letter to Acting Secretary of Defense Shanahan urging him not to implement the ban, and on February 11, Representative Joseph Kennedy introduced a House [resolution](#) joined by 111 other member of Congress rejecting President Trump’s ban and urging the Department of Defense not to reinstate the discriminatory policy.

As litigation against the ban continues, this parallel legislative effort in Congress to reverse the ban is a welcome second front in the effort to ensure that Trump’s cruel and baseless transgender military ban is blocked permanently.

For more information, please visit notransmilitaryban.org.

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