

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LT JANE DOE,

Plaintiff,

v.

MARK T. ESPER, in his official capacity as
Secretary of Defense, and THOMAS B.
MODLY, in his official capacity as acting
Secretary of the Navy,

Defendants.

CIVIL ACTION NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Jane Doe (“Plaintiff” or “Lieutenant Doe”) is a dedicated and highly successful member of the United States Navy. Lieutenant Doe aspired to a career of military service as early as high school. After graduating from college with an engineering degree, Lieutenant Doe enrolled in the Navy’s Officer Candidate School and was commissioned as a naval officer in 2010. In nearly ten years of exemplary service to her country, Lieutenant Doe has served two extended tours of duty as a Surface Warfare Officer, earned multiple advanced degrees, and deployed around the world. Lieutenant Doe hopes and intends to serve the United States for many more years and aspires to continued advancement and leadership as a Navy officer.

2. Lieutenant Doe is a transgender woman who has recently come to terms with her transgender identity.

3. A military medical services provider diagnosed Lieutenant Doe with gender dysphoria in June 2019, and, following military procedures, Lieutenant Doe promptly informed her commanding officer of the diagnosis and her transgender identity.

4. Under Department of Defense (“DoD”) policy, Lieutenant Doe now faces

involuntary discharge from service and the end of her Navy career solely because she is transgender.

5. Through this action, Lieutenant Doe seeks to continue to serve in the United States Navy on equal terms with non-transgender service members, including the opportunity for continued service without having to delay or forgo medically appropriate care, deny or suppress her female gender identity, or secure a discretionary waiver that must be approved, if at all, by an unusually high-level political appointee.

6. The Equal Protection and Due Process components of the Fifth Amendment to the United States Constitution guarantee Lieutenant Doe—like all qualified persons who seek to serve their country—the rights to serve free from arbitrary and invidious discrimination and to live her life consistent with her gender identity, a fundamental and immutable aspect of who she is, free from government-sponsored penalties or stigma.

7. Not only does the Constitution protect Lieutenant Doe’s right to serve openly, to obtain appropriate medical care to the extent necessary, and—like non-transgender people—to live consistently with her gender identity, but DoD has already developed and implemented an open-service policy that does just that. In June 2016, following an exhaustive review process, DoD announced that it would reverse its prior unconstitutional policy barring openly transgender people from serving in the Military and, in its place, implement a policy allowing transgender people to serve openly in the United States Armed Forces (the “2016 Policy”).

8. All of that changed on July 26, 2017, when President Donald J. Trump abruptly announced via a series of Twitter statements that the United States military would return to discriminating unconstitutionally against transgender people solely because of their transgender identity. By proclaiming that “the United States Government will not accept or allow Transgender

individuals to serve in any capacity in the U.S. Military,” President Trump announced that transgender troops would be barred from serving in our Armed Forces for no reason other than the fact that these troops are transgender.

9. President Trump’s sudden and irregular reversal of the 2016 Policy, and DoD’s post hoc rationalization and subsequent implementation of the President’s preferred policy, are textbook invidious discrimination.

10. On August 25, 2017, President Trump formalized the government’s policy by directing DoD leaders to reinstate the ban “on military service by transgender individuals that was in place prior to June 2016.” Mem. Regarding Military Service by Transgender Individuals, 82 Fed. Reg. 41,319 (entered Aug. 30, 2017) (the “August 2017 Directive”). President Trump ordered then-Secretary of Defense James N. Mattis to develop a “plan for implementing” the President’s directives by February 21, 2018, and further ordered that they “take effect on March 23, 2018.” *Id.*

11. By December 2017, four district courts had issued nationwide injunctions against implementation of the ban embodied in the President’s August 2017 Directive.

12. On February 22, 2018, Secretary Mattis submitted a plan to implement a ban on transgender people serving in the military, as ordered by President Trump in the August 2017 Directive. See James N. Mattis, Mem. for the President, *Military Service by Transgender Individuals* (Feb. 22, 2018) (the “Mattis Memo”), and *Department of Defense Report and Recommendations and Military Service by Transgender Persons* (Feb. 2018) (the “Report,” and, together with the Mattis Memo, the “Transgender Military Ban” or the “Ban”). The plan set forth a series of restrictions exclusively targeting “transgender persons” for unequal treatment. In particular, the plan instructed that:

- a. “*Transgender persons* with a history or diagnosis of gender dysphoria are disqualified from military service, except under . . . limited circumstances,” including “(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...”; or (3) if they are “currently serving” and “have been diagnosed with gender dysphoria since the previous administration’s policy took effect and prior to the effective date of this new policy.”
- b. “*Transgender persons* who require or have undergone gender transition are disqualified from military service.”
- c. “*Transgender persons* without history or diagnosis of gender dysphoria”—that is, transgender persons who may not be caught up by one or both of the above restrictions—may serve only “in their biological sex.”

Mattis Memo at 2–3 (emphasis added).

13. The Transgender Military Ban thus bans all openly transgender persons from military service except for the small number of transgender service members subject to the policy’s grandfather clause. *See* Report at 5 (exempting current service members “who were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter policy [i.e., June 2016], but before the effective date of [the] new policy [i.e., April 2019]”); *id.* at 41 (same). These grandfathered service members—and only these service members—“may continue to receive medically necessary care, to change their gender marker in the Defense Enrollment Eligibility Reporting System (DEERS), and to serve in their preferred gender.” *Id.* at 5–6.

14. The Transgender Military Ban bans transgender persons from living and serving in

conformity with their gender identity—a key aspect of what it means to be transgender. This policy brands transgender men and women as inherently unfit to serve and puts current transgender service members, including Lieutenant Doe, into a separate and unequal class of persons who serve under unequal terms and conditions for retention in service, simply because they are transgender.

15. In a March 23, 2018 memorandum, President Trump authorized Secretary Mattis to carry out the Transgender Military Ban.

16. On March 12, 2019, the Office of the Deputy Secretary of Defense issued additional instructions for carrying out the Transgender Military Ban. *See* Directive-Type Mem. (DTM)-19-004 - Military Service by Transgender Persons and Persons with Gender Dysphoria (the “Implementation Memo”). The Implementation Memo reiterates that a current service member who is diagnosed with gender dysphoria is subject to discharge from the military if they are unable or unwilling “to adhere to . . . the standards associated with his or her biological sex,” or if “gender transition” is “medically necessary to protect the health of the individual.” *Id.* at Attach. 3 § 2(d); *accord id.* § 2(e)(3)(b) (same). The Implementation Memo specifically prohibits transgender service members from “serv[ing] in their preferred gender.” *Id.* § 2(c).

17. The courts enjoined implementation of the Transgender Military Ban until April 2019. The nationwide injunctions entered in 2017 were lifted after courts determined that the Transgender Military Ban articulated in the Mattis Memo and the Report differed in certain respects from the version of the ban set out in the President’s August 2017 Directive. These decisions did not rule on the merits of the original injunctions, and none of the plaintiffs in those pending cases—most of whom are currently serving members who have the benefit of the grandfather clause—moved for a preliminary injunction specifically prohibiting enforcement of the current iteration of the Transgender Military Ban.

18. The Transgender Military Ban went into effect on April 12, 2019. *See* Implementation Memo at 1.

19. Lieutenant Doe was diagnosed with gender dysphoria two months later. Because Lieutenant Doe did not come to terms with her transgender identity until after implementation of the Transgender Military Ban, Lieutenant Doe does not have the benefit of the grandfather clause. Lieutenant Doe is now subject to discharge for being who she is, unrelated to her fitness to serve in the military.

20. If Lieutenant Doe was not transgender and had been diagnosed with any other medical condition—or even with the same medical condition two months earlier—she would be given medically appropriate care to treat her condition, be subject to the military’s generally applicable fitness standards, and go through the same fitness evaluation process as other service members. Under the Transgender Military Ban, however, Lieutenant Doe is subject to a retention standard that applies only to transgender people, and will subject her to discharge from the Navy for reasons that have nothing to do with her ability to perform her duties. And unlike service members with other conditions, the military is denying Lieutenant Doe the medical care she needs, including gender transition-related care that is safe, effective, and medically necessary for her.

21. In violation of the Fifth Amendment to the United States Constitution, the Transgender Military Ban denies Plaintiff equal protection of the laws and her right to liberty and privacy. Accordingly, Plaintiff seeks a preliminary injunction preventing Defendants from enforcing the Transgender Military Ban against her while this litigation is pending, a judgment declaring the Transgender Military Ban unconstitutional as applied to Plaintiff, and a permanent injunction prohibiting Defendants from enforcing the Transgender Military Ban against Plaintiff.

JURISDICTION AND VENUE

22. This court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331. This Court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, et seq.

23. Venue is proper in the District of Massachusetts under 28 U.S.C. § 1391(e)(1) because Plaintiff resides in this judicial district and a substantial part of the events giving rise to this action occurred in this District.

PARTIES

24. Plaintiff Jane Doe is a Lieutenant in the United States Navy. Lieutenant Doe is a transgender service member who received a diagnosis of gender dysphoria from a military medical service provider in June 2019, two months after the Transgender Military Ban took effect. Lieutenant Doe is stationed in Massachusetts and lives in the Commonwealth.

25. Defendant Mark T. Esper is the United States Secretary of Defense. Secretary Esper directs the Department of Defense, which has been charged with execution and implementation of the unlawful Transgender Military Ban. Defendant Esper's address is 1000 Defense Pentagon, Washington, DC 20301-1000. Defendant Esper is sued in his official capacity.

26. Defendant Thomas B. Modly is the acting United States Secretary of the Navy. Defendant Modly directs the Department of the Navy and the United States Marine Corps, which have been charged with execution and implementation of the unlawful Transgender Military Ban. Defendant Modly's address is 1000 Navy Pentagon, Washington, DC 20350-1000. Defendant Modly is sued in his official capacity.

FACTUAL BACKGROUND

A. Following an Exhaustive Review in 2015–2016, DoD Concluded that Open Service by Transgender People Best Served the Interests of U.S. Armed Forces.

27. In May 2014, then-Secretary of Defense Chuck Hagel directed DoD to review whether transgender people should be permitted to serve openly in the U.S. Armed Forces.

28. In August 2014, DoD amended its physical disability policy to remove references to mandatory exclusion based on “sexual gender and identity disorders,” and issued a new regulation instructing each branch of the Armed Forces to assess whether there existed any justification to maintain a ban on service by openly transgender persons.

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

30. Ashton B. Carter succeeded Secretary Hagel as Secretary of Defense. In July 2015, Secretary Carter announced that the military would comprehensively analyze whether there existed any justification to maintain the ban on service by openly transgender persons. Secretary Carter created a working group that included the Joint Chiefs of Staff, the service secretaries, and personnel, training, readiness, and medical specialists from across DoD. The lengthy and comprehensive review process that followed included an examination of all available relevant data, including but not limited to existing studies and research, and input from transgender service members, commanding officers who supervised transgender service members, military readiness and personnel experts, outside expert groups, and medical professionals. The review process also included careful analyses of the eighteen other countries that permit military service by openly transgender people. The working group consulted doctors, employers, and insurance companies regarding the provision of medical care to transgender people.

31. DoD also commissioned the RAND Corporation's National Defense Research Institute—a defense consultancy formed after World War II to connect military planning with research and development decisions, and which now operates as an independent think tank financed by the U.S. government—to study the impact of permitting transgender service members to serve openly. The resulting 91-page study, *Assessing the Implications of Allowing Transgender Personnel to Serve Openly* (the “RAND Report”), concluded that allowing transgender people to serve openly would cost little and have no significant impact on unit readiness. The RAND Report concluded that health care costs for transgender service members, including costs related to gender transition-related treatment, would “have little impact on and represents an exceedingly small proportion of [DoD’s] overall health care expenditures.”

32. Based on the results of this comprehensive review process, on June 30, 2016, DoD announced its conclusion that service by openly transgender people would best serve the military’s interests in recruiting and retaining the most highly qualified personnel. In issuing the 2016 Policy, Secretary Carter explained that DoD’s conclusion was based on a number of considerations, including the following:

1. that thousands of transgender people already serve, and that the military has already invested hundreds of millions of dollars to train them;
2. that the military benefits by retaining individuals who are already trained and who have already proven themselves capable of service;
3. the need to provide both transgender service members and their commanders with clear guidance on questions such as deployment and medical treatment; and
4. the bedrock principle that “Americans who want to serve and can meet our

standards should be afforded the opportunity to do so.”

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

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

Directive-Type Memorandum 16-005 (emphasis added). In accordance with Directive-Type Memorandum 16-005, openly transgender people were to be permitted to enlist and serve in the U.S. military subject to the same generally applicable standards as all other service members.

34. In furtherance of its conclusions and in an effort to consistently and effectively implement this change in policy, DoD took the following actions:

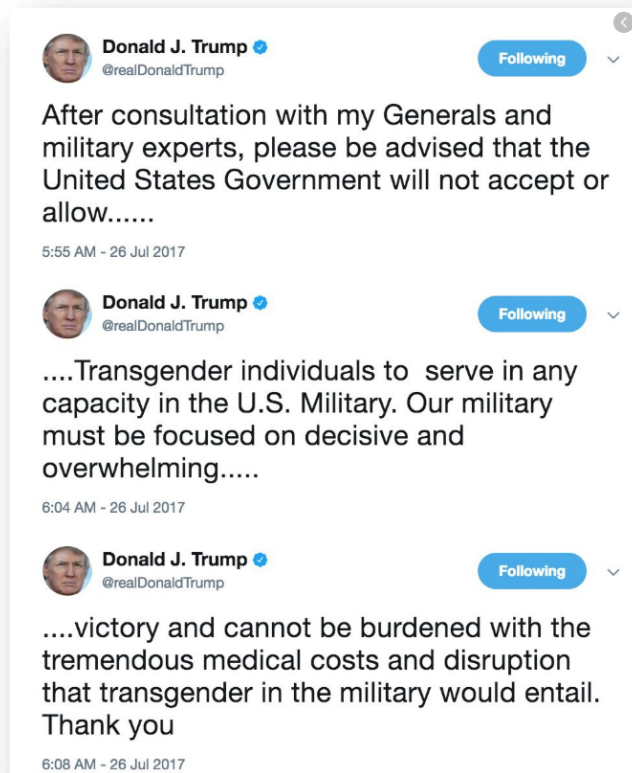
- On July 29, 2016, the acting Assistant Secretary of Defense for Health Affairs issued a memorandum titled “Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members.”

- In September 2016, DoD issued an implementation handbook, “Transgender Service in the United States Military,” which set forth guidance and instructions to both military service members and commanders regarding how to understand and implement the new policies enabling open service of transgender service members.
- On October 1, 2016, the Office of the Undersecretary of Defense for Personnel and Readiness issued DoD Instruction 1300.28, “In-Service Transition for Transgender Service Members,” which set forth further guidance to ensure open service by transgender service members, including details regarding revisions to medical treatment provisions.
- On November 29, 2016, DoD revised Directive 1020.02E, “Diversity Management and Equal Opportunity in the DoD,” to expressly prohibit discrimination and harassment on the basis of gender identity.

B. Defendants Instituted an Arbitrary Ban on Transgender Service Members.

35. Early on the morning of July 26, 2017, President Trump abruptly announced that he was reversing the open-service policy in a series of statements released via his personal Twitter account. He declared that the United States military would instead ban military service by transgender people.

36. Specifically, the President Tweeted: “After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow . . . Transgender individuals to serve in any capacity in the U.S. Military. Our military must be focused on decisive and overwhelming . . . victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you[.]”



37. This July 26, 2017 change to military policy was rendered without prior study or analysis, and lacked a rational basis.

38. President Trump made this announcement without any previous public statements on the issue from the White House or military leadership. Although the President stated that he had consulted with the military (“my Generals”) and “military experts,” on information and belief, President Trump did not, in fact, consult with military leaders prior to making the announcement. *See, e.g.,* Julie Hirschfeld Davis & Helene Cooper, *Trump Says Transgender People Will Not Be Allowed in the Military*, N.Y. TIMES (July 26, 2017), <http://www.nytimes.com/2017/07/26/us/politics/trump-transgender-military.html> (“President Trump abruptly announced a ban on transgender people serving in the military on Wednesday, blindsiding his defense secretary.”); Barbara Starr, et al., *US Joint Chiefs blindsided by Trump’s transgender ban*, CNN (July 26, 2017),

<http://www.cnn.com/2017/07/27/politics/trump-military-transgender-ban-joint-chiefs/> (“The Joint Chiefs of Staff, including chairman General Joseph Dunford, were not aware President Donald Trump planned to tweet a ban on transgender service members, three US defense officials told CNN—the latest indication that top military leaders across all four service branches were blindsided by the President’s announcement.”).

39. On information and belief, the July 26, 2017 announcement was an effort to disparage and harm transgender people, a historically politically unpopular group. In particular, the President’s July 26, 2017 announcement was made after consultation with anti-LGBTQ groups and in an effort to make a political deal with conservative members of Congress who agreed to support the President’s high-priority border wall in return for actions that would harm transgender troops. *See, e.g.,* Rachael Bade & Josh Dawsey, *Inside Trump’s snap decision to ban transgender troops: A congressional fight over sex reassignment surgery threatened funding for his border wall*, POLITICO (July 26, 2017), <http://www.politico.com/story/2017/07/26/trump-transgender-militaryban-behind-the-scenes-240990>; Greg Price, *Trump Banned Transgender Troops for 74 Miles of Border Wall Funding: Report*, NEWSWEEK (July 26, 2017), <http://www.newsweek.com/trump-transgender-ban-wall-642456>; Jacob Pramuk, *Trump banned transgender troops after border wall funding was threatened, report says*, CNBC (July 26, 2017), <http://www.cnbc.com/2017/07/26/trump-banned-transgender-troops-after-border-wall-was-threatened-report.html>; Ben Protess, et al., *Where’s Trump’s Hands-Off Approach to Governing Does Not Apply*, N.Y. TIMES (Sept. 10, 2017), <https://www.nytimes.com/2017/09/10/business/trump-regulations-religious-conservatives.html>.

40. Shortly after the President’s announcement, members of both major political parties criticized this abrupt change in policy, and fifty-six former generals and admirals issued a public

statement denouncing the new policy. *See* Palm Center, *Fifty-Six Retired Generals and Admirals Warn That President Trump’s Anti-Transgender Tweets, If Implemented, Would Degrade Military Readiness* (Aug. 1, 2017), <https://www.palmcenter.org/fifty-six-retired-generals-admirals-warn-president-trumps-anti-transgender-tweets-implemented-degrade-military-readiness/>.

41. Less than one month after his initial Twitter statement, President Trump issued the August 2017 Directive formalizing the administration’s policy. The August 2017 Directive orders Defendants to:

1. ban the “accession of transgender individuals into military service”;
2. “halt all use of DoD . . . resources to fund sex reassignment surgical procedures for military personnel” except in limited instances; and
3. implement a plan to return to the prohibition on military service for transgender people.

42. The August 2017 Directive also instructed Secretary Mattis to submit to President Trump by February 21, 2018 a “plan for implementing both the general policy . . . and specific directives” that the August 2017 Directive contained. It further instructed the Secretary to determine “how to address transgender individuals currently serving.”

43. Similar to the earlier Twitter announcement, the August 2017 Directive was issued without any meaningful study or analysis and lacks a rational basis.

C. Secretary Mattis Delivered an Implementation Plan to Carry Out the August 2017 Directive.

44. On September 14, 2017, Secretary Mattis issued two memoranda. In the first memorandum, Secretary Mattis acknowledged receipt of the President’s August 2017 Directive; stated that the “DoD will carry out the President’s policy and directives”; and provided “Interim Guidance” in order to “comply with the Presidential Memorandum.” Among other things, this

“Interim Guidance” “generally prohibit[ed] accession of transgender individuals into military service.” In the second memorandum (“Terms of Reference – Implementation of Presidential Memorandum on Military Service by Transgender Individuals”), Secretary Mattis directed DoD to “develop[] an Implementation Plan on military service by transgender individuals, to effect the policy and directives in [the August 2017 Directive].”

45. On or around February 22, 2018, Secretary Mattis delivered the requested implementation plan to President Trump. The Transgender Military Ban is embodied in two documents that are together a mere 44 pages: the Mattis Memo (which, as noted above, is a memorandum from Secretary Mattis to President Trump titled “Military Service by Transgender Individuals”) and the Report (a document titled “Department of Defense Report and Recommendations on Military Service by Transgender Persons”).

1. **The Transgender Military Ban is the result of a highly irregular process and does not reflect independent military judgment.**

46. The Transgender Military Ban does not reflect independent military judgment. The Mattis Memo, the Report, and the process by which each was developed were directly constrained and driven by President Trump’s earlier orders to bar transgender people from “serv[ing] in any capacity in the U.S. Military,” and to return to the prior discriminatory policy. The Transgender Military Ban simply implements those earlier orders and attempts to rationalize them.

47. The Transgender Military Ban was not the product of the rigorous, thorough, and evidence-based decision-making process the military typically employs. In particular, the process by which DoD developed the Report was highly irregular, and deviated from DoD’s typical processes for making significant military personnel policy changes in numerous ways.

48. In September 2018, after the President publicly ordered DoD to implement the new ban, Secretary Mattis convened a panel to study military service by transgender individuals. On

information and belief, that panel did not include any experts on gender dysphoria or any medical experts at all.

49. The Report sets out a one-sided, outcome-driven discussion that does not analyze the costs and benefits to open service by transgender men and women, but instead marshals arguments in an attempt to justify the already-announced policy of barring transgender people from military service. Among other things, the Report misstates certain evidence, relies on evidence taken out of context, and largely omits evidence and considerations that do not support the President's policy (except to advocate against them). The Report also omits any discussion of the cost or other negative effects of reversing the open service policy.

50. The stated bases for the Transgender Military Ban are pretextual, arbitrary, capricious, and unsupported by facts, evidence, or reasoned analysis.

51. The Transgender Military Ban is premised on medical and scientific claims that are not within the special expertise of the military, and which are contrary to the settled medical and scientific consensus. For example, the Report's claim that there is "considerable scientific uncertainty" about the efficacy of treatment for gender dysphoria is false. In fact, gender dysphoria is a highly treatable condition, and the appropriate treatments are well established and effective.

52. Transgender people are just as fit to serve their country as non-transgender people.

Contrary to the Report's claims:

- there is no medical justification for barring people with gender dysphoria, or who have been previously treated for gender dysphoria, from military service;
- the presence of openly transgender service members in the military does not adversely affect unit cohesion; and

- the Transgender Military Ban cannot be justified by cost considerations because the added cost of healthcare for transgender service members—which is less than one tenth of one percent (or .001%) of DoD’s health care budget—is far outweighed by the cost of separating and replacing transgender service members.

53. DoD previously concluded, after more than a year of exhaustive study and analysis, that “open service by transgender Service members. . . is consistent with military readiness,” as well as the “defense of the Nation” generally. *See* Directive Type Memorandum 16-005 at 2. Since issuance of Directive Type Memorandum 16-005, transgender people have been serving openly without incident or any negative impact upon military readiness, lethality, unit cohesion, or the national defense generally.

54. In sum, the Transgender Military Ban lacks a rational basis.

2. **The Transgender Military Ban is facially discriminatory.**

55. On its face, the Transgender Military Ban prohibits military service by transgender people and subjects them to unequal treatment. First, the Transgender Military Ban generally bans from service transgender persons with a history of gender dysphoria. Second, it bans anyone who undergoes or requires gender transition, the process by which a transgender person lives in accord with their gender identity rather than their birth sex. Third, the Transgender Military Ban denies transgender people the opportunity to serve by only authorizing service by individuals “in their biological sex.”

56. The Transgender Military Ban’s retention provisions single out currently serving transgender persons, such as Plaintiff, for unequal treatment. Service members who, like Plaintiff, are diagnosed with gender dysphoria and require gender transition are subject to involuntary

discharge. *See* Report at 5; *id.* at 41 (same). A transgender service member who requires gender transition will be involuntarily discharged from service unless he or she applies for and is granted a purely discretionary waiver. *Id.* at 5–6, 43. On information and belief, DoD has not granted any transgender service member such a waiver.

57. A transgender service member who has not (or not yet) received a formal medical diagnosis of gender dysphoria will be subject to involuntary discharge if they “require or have undergone gender transition,” and may continue to serve only “in their biological sex.” Mattis Memo at 2–3; Report at 32.

58. All service members, transgender and non-transgender, are subject to generally applicable fitness and deployability standards. However, the Transgender Military Ban imposes double standards on transgender troops by applying unique retention and deployability standards and exceptions for them that DoD does not apply to other service members. And, having created a set of separate standards for a single class of people, the Report justifies the ban by determining that transgender people as a class are not able to meet those unique standards. The Transgender Military Ban thus establishes new, separate standards that target transgender people alone.

59. Non-transgender service members are free to live and serve consistent with their gender identity.

60. The Transgender Military Ban contains a limited exception for service members who came out in reliance on the 2016 Policy. Mattis Memo at 5–6; Report at 43. The “grandfather” provision is expressly premised on the assertion that DoD’s “commitment to these Service members, including the substantial investment it has made in them, **outweigh the risks identified in this report[.]**” Report at 43 (emphasis added). This is a direct admission that the “risks identified in this report” *do not* justify the discharge of currently serving members such as

Plaintiff. Recognizing its own logical inconsistency, the Transgender Military Ban also includes the legalistic assertion that the grandfather clause “is and should be deemed severable from” the remainder of the policy “should [DoD’s] decision to exempt these Service members be used by a court as a basis for invalidating the entire policy.” Once this small group of transgender individuals concludes their military service, the Transgender Military Ban will be a complete bar to service by openly transgender persons.

3. **The Transgender Military Ban subjects transgender people to unequal treatment in the provision of medical services, and denies them access to medically appropriate care.**

61. There is no medical or scientific basis for the Mattis Memo’s and Report’s treatment of gender dysphoria as a bar to enlistment or continued service. Gender dysphoria is a highly treatable and curable condition. Medical treatments of gender dysphoria are well established and effective, with various scientifically accepted treatment plans available for persons with symptoms of gender dysphoria, including, for example, psychotherapy, hormone therapy, and, in some cases, surgical intervention. *See, e.g.,* Am. Med. Ass’n, *AMA statement on Pentagon’s ban on transgender in military* (Apr. 11, 2019) (“There is a global medical consensus about the efficacy of transgender health care, including treatment for gender dysphoria.”), <https://www.ama-assn.org/press-center/ama-statements/ama-statement-pentagons-ban-transgender-military>.

62. Service members who transition gender while in service are just as capable as non-transgender persons of meeting the generally applicable retention standards that apply to non-transgender service members. Service members who have been treated for gender dysphoria, including those who have undergone gender transition, are overall just as medically fit for service and deployable as other groups of service members with treatable conditions.

63. The Transgender Military Ban treats gender dysphoria very differently from other

medical conditions. In contrast to other treatable medical conditions, the Transgender Military Ban treats gender dysphoria as a categorical bar to service *even where the service member meets all generally applicable fitness and deployability standards*, rather than evaluating individual fitness on a case-by-case basis.

64. The Transgender Military Ban also denies transgender service members medically necessary and appropriate care. Gender transition is an established effective treatment for gender dysphoria. *See, e.g.*, Am. Med. Ass’n, Resolution 122 (“An established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment surgery as forms of therapeutic treatment for many people diagnosed with [gender dysphoria].”), <http://www.imatyfa.org/assets/ama122.pdf>. Under the Transgender Military Ban, however, this medically necessary treatment—or even the need for this form of treatment—is a categorical bar to service. Mattis Memo at 2; Report at 5.

65. The result is that transgender persons must suppress their transgender identity and forgo medically necessary care as a condition of their continued military service. The Transgender Military Ban thus puts the health and well-being of transgender service members at risk.

66. The military health system is already providing for the medical care needs of transgender service members who have the benefit of the grandfather clause. The military health system is also providing the large majority of medical services that transgender people need to non-transgender service members. The military health system has ample capacity to meet the health-care needs of transgender service members, and providing necessarily medical services to transgender service members who, like Plaintiff, have been or will be diagnosed with gender dysphoria after the effective date of the Transgender Military Ban will not burden the military.

67. For example, the military health system already treats service members who require

routine medications (e.g., birth control, hormone replacement therapy, hypertension treatments, and many others), including while those service members are deployed. As to hormone replacement therapy in particular, the military health system makes this treatment available to service members with a wide variety of medical needs (e.g., hormone replacement therapy for some menopausal woman, testosterone replacement therapy for some men, and treatments for service members with adrenal or pituitary deficiencies).

68. Similarly, the military health system already provides appropriate surgical treatments to service members and eligible family members, including hysterectomies, oophorectomies, mastectomies, orchiectomies, and chest surgeries. In other words, many of the surgical procedures that may be medically appropriate for individual transgender service members are already routinely provided to non-transgender service members and their families. Although a service member who undergoes gender-confirming surgery may be temporarily non-deployable, that is not a unique situation. Many service members are temporarily non-deployable, including, for example, those recovering from combat injuries and pregnant individuals, neither of whom are subject to discharge as a result.

69. There are no legitimate medical justifications for excluding people with gender dysphoria, or who have been treated for gender dysphoria, from military service. The purported medical objections to such service set forth in the Mattis Memo and the Report are unsubstantiated, inconsistent with medical science, and at odds with the ways other medical conditions are successfully addressed within the military.

D. President Trump Approves the Transgender Military Ban.

70. In a March 23, 2018 memorandum titled “Military Service by Transgender Individuals,” President Trump acknowledged receipt of and approved the Transgender Military Ban.

71. On March 12, 2019, the military issued instructions on how each branch of service is to carry out the Transgender Military Ban. These instructions reiterate that transgender service members must “adhere . . . to the standards associated with their biological sex” and may not “serve in their preferred gender.” *See* Implementation Memo at 9. Unless they have the benefit of the grandfather clause or a discretionary waiver, a service member who is diagnosed with gender dysphoria may be retained only if “[a] military medical provide has determined that gender transition is not medically necessary to protect the health of the individual.” *Id.* In other words, if transition is medically necessary—or in the absence of an affirmative determination that it is *not* necessary—the service member is subject to involuntary discharge. *Id.*

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

E. The Transgender Military Ban Unlawfully Subjects Lieutenant Doe to Involuntary Discharge.

73. As noted above, in more than nine years of service Lieutenant Doe has served two extended tours of duty as a Surface Warfare Officer, earned multiple advanced degrees, and deployed around the world. Lieutenant Doe is an exemplary and dedicated career naval officer who intends to serve in the United States Navy for, at minimum, a full twenty years, and hopes to serve longer.

74. Lieutenant Doe’s orders require her to report to her current duty station through approximately mid-2020. Consistent with the Navy’s substantial investment in Lieutenant Doe’s training and education, her orders also include an additional six-year service obligation beyond her current duty station. This service obligation represents a reciprocal agreement under which Lieutenant Doe has committed to serve and—absent a lawful restriction on her service—the Navy has committed to employ Lieutenant Doe through approximately 2026.

75. Lieutenant Doe is the primary support for her family, which includes Lieutenant

Doe's spouse and two young children.

76. In mid-April, 2019, Lieutenant Doe reported to a military medical provider for her annual physical, during which she requested information about treatment for symptoms of depression and anxiety. Lieutenant Doe began voluntary mental health treatment that month, during the course of which she came to fully realize her own transgender identity. Lieutenant Doe, who grew up in a highly conservative small Southern town, was for a long time extremely reluctant to face her transgender identity. Although concerned about the potential personal and professional costs of coming out as transgender—and keenly aware of the prospect of being discharged from the Navy under the Transgender Military Ban—Lieutenant Doe eventually could not deny who she is.

77. On June 24, 2019, a military medical provider diagnosed Lieutenant Doe with gender dysphoria. Following military rules, Lieutenant Doe disclosed her transgender identity to her commanding officer shortly thereafter.

78. Lieutenant Doe is fully qualified to serve in the U.S. Navy, and meets all of the generally applicable retention standards that apply to non-transgender service members.

79. Under the Transgender Military Ban, however, Lieutenant Doe is now subject to involuntarily discharge from the Navy.

80. In October 2019, in an effort to avoid involuntary discharge, Lieutenant Doe requested a discretionary waiver that would, if granted in full, allow Lieutenant Doe to transition and to serve as a female—that is, to serve in the gender consistent with who Lieutenant Doe is—and in conformity with the standards applicable to transgender service members who are grandfathered into the standards set by the 2016 Policy.

81. The waiver process is itself a form of unequal treatment because it targets a specific

group—transgender people, and requires them to seek a waiver that no other service member who meets the military’s standards for fitness and deployability is required to seek. Lieutenant Doe prepared and submitted the waiver request without the benefit of reliable guidance as to its proper form or content because DoD has not issued such guidance. Nor has DoD issued guidance on the criteria by which a waiver request will be evaluated, or a timeframe in which it is to be adjudicated.

82. Although the extremely limited guidance available does not provide basic information about the waiver requirements or process, it does indicate that any request for a waiver under the Transgender Military Ban is subject to a unique level of scrutiny by civilian political appointees. *See* ALNAV 022/19 § 4.b (any waiver request must be submitted to the chain of command starting with the service member’s commanding officer, then to the first flag officer, then to the Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (N1), and ultimately to the Assistant Secretary of the Navy (Manpower and Reserve Affairs)), <https://www.public.navy.mil/bupers-npc/reference/messages/Documents/ALNAVS/ALN2019/ALN19022.txt>; *see also* Implementation Memo at Attach. 2 § 3.b (“Waiver authority permitting an applicant or Service member, who is not exempt pursuant to this policy, to serve in his or her preferred gender may be delegated, in writing, no lower than the Military Service Personnel Chiefs. All other waiver authority remains with the Service-designated waiver authority.”).

83. Since coming to understand her own transgender identity, Lieutenant Doe has worked diligently to adhere to the Transgender Military Ban policy as much as possible, and fears making a misstep, even inadvertently, that would be used to immediately end her Navy career. But the Transgender Military Ban is not something Lieutenant Doe can avoid.

84. Living and serving under the Transgender Military Ban is harmful to Lieutenant Doe. In addition to the sting of overt discrimination and being labeled a detriment to the Navy,

Lieutenant Doe fears the loss of the career she loves and has spent her professional life training for, and which is the sole income her family relies upon. Lieutenant Doe is prohibited from seeking or receiving medically necessary treatment for her gender dysphoria, including being able to transition.

85. In July 2019, Lieutenant Doe’s primary military medical provider declined to make a determination about whether gender transition is medically necessary to protect for a year from the date of Lieutenant Doe’s initial diagnosis, thus creating another barrier to accessing medically necessary care. However, in February 2020 the Navy’s Transgender Care Team reviewed Lieutenant Doe’s medical records, endorsed her gender dysphoria diagnosis, and stated that “[t]he decision by the treating provider to delay a determination of medical necessity for 1 year is not congruent with LT [Doe’s] clinical course or with current guidelines for the management of gender dysphoria.” The Transgender Care Team stated that “gender transition is medically necessary” for Lieutenant Doe, and “[w]e do not recommend any further delay in gender transition.” However, the Transgender Military Ban puts Lieutenant Doe in the lose-lose position of being subject to immediate discharge from the Navy, and at the same time being unable to obtain treatment for gender dysphoria (e.g., gender transition) that the Transgender Military Ban categorically prohibits.

FIRST CLAIM FOR RELIEF

Fifth Amendment – Equal Protection

86. Plaintiff re-alleges and incorporates by reference the preceding allegations in this Complaint as if fully set forth herein.

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

88. Defendants' policy of excluding transgender persons from military service subjects Plaintiff to unequal treatment based on her sex and transgender status, without lawful justification, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment.

89. Defendants' exclusion of transgender persons from military service lacks a rational basis, is arbitrary, and cannot be justified by any governmental interest.

90. Defendants' policy and actions denying equal health benefits to transgender persons also service subjects Plaintiff to unequal treatment based on her sex and transgender status, without lawful justification, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment.

91. Defendants' policy and actions denying Plaintiff equal health benefits based on her sex and transgender status lacks a rational basis, is arbitrary, and cannot be justified by any governmental interest.

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

93. As a result of Defendants' commencement and enforcement of the Transgender Military Ban, Plaintiff has suffered injuries and will suffer further irreparable harm if the Transgender Military Ban is not declared unconstitutional and enjoined.

94. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

Fifth Amendment – Due Process

95. Plaintiff realleges and incorporates by reference the preceding allegations in this

Complaint as if fully set forth herein.

96. The Due Process Clause of the Fifth Amendment grants Plaintiff constitutional liberties and a fundamental right to privacy that encompasses and protects Plaintiff's right to self-identification and self-determination as a transgender person.

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

98. Defendants' Transgender Military Ban impermissibly burdens Plaintiff's fundamental liberty to live consistently with her gender identity, and unlawfully impinges upon Plaintiff's privacy by penalizing and stigmatizing her for expressing a fundamental aspect of her personal identity.

99. Defendants' policy excluding transgender persons from military service is arbitrary and lacks any rational basis.

100. As a result of Defendants' policy, Plaintiff has suffered injuries and will suffer further irreparable harm if the Transgender Military Ban is not declared unconstitutional and enjoined.

101. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. That this Court find and declare unconstitutional, as applied to Plaintiff, Defendants' policy subjecting transgender service members to discharge from the U.S. military;

B. That Defendants, and their subordinates, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, be preliminarily and permanently enjoined from:

- enforcing any policy that subjects Plaintiff to discharge, limits Plaintiff’s career opportunities, or otherwise penalizes Plaintiff on account of her transgender identity and/or gender dysphoria diagnosis;
 - enforcing any policy that limits Plaintiff’s access to medically appropriate care as determined on an individualized basis;
 - enforcing any policy that requires Plaintiff to “serve in their biological sex”;
 - enforcing any policy that requires Plaintiff to obtain a waiver to continue in service on account of her transgender identity and/or gender dysphoria diagnosis; or
 - enforcing against Plaintiff the policies set forth in the memorandum titled “Military Service by Transgender Individuals” (Feb. 22, 2018) and the “Department of Defense Report and Recommendations on Military Service by Transgender Persons” (Feb. 2018), or any other policy that excludes transgender people from openly serving in the U.S. military.
- C. That Plaintiff be awarded her costs and reasonable attorneys’ fees; and
- D. For such other relief as the Court may deem just and proper.

Dated: March 17, 2020

Respectfully submitted,

Jennifer Levi, BBO No. 562298
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**Pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

I, Daniel J. Ball, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants identified on the Notice of Electronic Filing and that, pursuant to Federal Rule of Civil Procedure 5(b), copies of this document will be hand-delivered to the United States Attorney for the District of Massachusetts, and be served upon the Office of the Secretary of Defense, the Office of the Secretary of the Navy, and the United States Attorney General on March 17, 2020 or as soon thereafter as feasible.

Dated: March 17, 2020

/s/ Daniel J. Ball

Daniel J. Ball