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DoD Is Ready to Accept Transgender Applicants

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EXECUTIVE SUMMARY

- 1) On December 6, the Department of Justice submitted a written Declaration claiming that Pentagon compliance with a Court's order to allow transgender candidates to apply for enlistment as of January 1 would "impose extraordinary burdens" on a military that "would not be adequately and properly prepared to begin processing transgender applicants."
- 2) The Declaration, however, rewrites the history of transgender military policy and distorts the evidence, disregarding that the Court's order did not create new military policy, but only directed the military to return to its own policy on transgender enlistment as defined by the current Secretary of Defense.
- 3) Three former Service Secretaries and one former Acting Under Secretary of Defense for Personnel and Readiness have confirmed that the military had already completed many of the necessary preparations for the lifting of the enlistment ban by the time of the Presidential transition in January, 2017.
- 4) The Declaration's assertion that implementing the Court's order will impose "extraordinary burdens" because the military "would not be adequately and properly prepared" is incorrect.
- 5) The Declaration's assertion that transgender applicants for military service are uniquely complicated and difficult to evaluate is incorrect.
- 6) The Declaration's assertions that recruiters will not understand government identification documents that reflect changes in gender, and are not prepared to obtain supporting medical documents, are incorrect.
- 7) The Declaration's assertion that the Court's order will result in transgender applicants not receiving "the appropriate medical and administrative accession screening" is incorrect.
- 8) The Declaration's assertion that "key personnel" have "rotated" into different duties, therefore setting back the pace of implementation and requiring more time, is not a reason for delay.

On December 6, the Trump administration asked a federal court to stay its order that the military begin to accept qualified transgender applicants on January 1, 2018. This action came shortly after a Pentagon spokesperson stated that the military “is taking steps to be prepared to initiate accessions of transgender applicants for military service.” In support of its motion for stay, the Department of Justice (DOJ) submitted a written declaration from a civilian defense official asserting that compliance with the Court’s order would “impose extraordinary burdens” on a military that “would not be adequately and properly prepared to begin processing transgender applicants.”

The Declaration, however, rewrites the history of transgender military policy and distorts the evidence. It disregards the fact that the Court’s order did not create new military policy, but only directed the military to return to its own policy on transgender enlistment (“accession,” in military personnel terms), as defined by the current Secretary of Defense prior to President Trump’s tweets and directive reinstating the transgender ban.

This policy memo highlights assertions from the Declaration that run counter to the military’s deliberation, policy, and experience, and it supplies evidence to correct those misleading statements.

1. The assertion that implementing the Court’s order will impose “extraordinary burdens” because the military “would not be adequately and properly prepared” is incorrect.

The military has been preparing for accession of transgender Americans for more than two years. The Department of Defense (DOD) began a comprehensive study of transgender service in July 2015. In June 2016, DOD adopted fully inclusive policy that prohibited discrimination against transgender Americans in military service. It also published a detailed standard for evaluation of transgender applicants on the same day, to take effect a year later on July 1, 2017. But one day before the accession policy was to take effect—after two years of combined study and preparation—Defense Secretary James Mattis delayed implementation for another six months, setting January 1, 2018 as the date to begin transgender accession. This is the date the Court is enforcing, and the date that DOJ is attempting to avoid.

An order to follow the military’s own plan for accession cannot impose “extraordinary burdens,” particularly after 2.5 years of study and preparation. Former Secretary of the Army Eric Fanning stated this week that “the Department of Defense was on track to lift the accession ban” by July 2017, and he “can see no reason” why it isn’t ready now, “particularly after being afforded an extra six months” this year. Brad Carson, a former Acting Under Secretary of Defense for Personnel and Readiness, added that “the Pentagon had already done most of the preparation and training in anticipation of the lifting of the accession ban before the presidential transition.”

Former Secretary of the Air Force Deborah James spoke directly to the military’s readiness to move forward with transgender accessions: “It is time to get on with it.” Her comments in full show why:

The Services were originally given one year to prepare for the enlistment of transgender applicants, and were then provided with another six months to get the job done. It took less than a year for the Services to successfully prepare for DADT repeal, and they have now had 18 months to get ready for transgender enlistment. When I left office in January, we had already done most of the work to prepare for this policy change, which is no more complicated than the myriad of issues that the military manages successfully every day. It is time to get on with it.

Former Secretary of the Navy Ray Mabus seconded his fellow Service Secretaries:

Secretaries James and Fanning are correct. Allowing transgender candidates to apply for military service was not a complicated process to begin with, especially in light of the highly complex strategic, technical, personnel and medical issues that we address day in and day out. The Services had already completed almost all of the necessary preparation for the lifting of the enlistment ban when we left office almost a year ago. It's not the lifting of the ban that compromises readiness, good order and discipline. It's the Trump administration's whipsawing of military policy and its treatment of loyal transgender Americans as second-class citizens that are the true sources of disruption.

While the Declaration relies on assertions about a “large” and “complex” Defense Department, the difficulties of “significant” and “complex” personnel policy, and the burden of a “geographically dispersed” force as reasons to delay implementation, none of this distinguishes transgender policy from other personnel policies the military routinely implements. The military has had 2.5 years to study and prepare, and it is ready to implement the policy it established.

2. The assertion that transgender applicants for military service are uniquely complicated and difficult to evaluate is incorrect.

In June 2016, the military established specific qualification standards for applicants who have a history of gender dysphoria or treatment for gender dysphoria. Much of the standard was redundant to existing enlistment policy, as all applicants must demonstrate fitness under standards that assess all aspects of medical history. Yet the Declaration argues that transgender accession is unique: “No other accession standard has been implemented that presents such a multifaceted review of an applicant’s medical history.”

This assertion is wrong. Every applicant, transgender or not, undergoes the same multifaceted review of prior mental health care, medications, and surgical treatment. Under DOD Instruction 6130.03, which is organized by various body systems and functions, every applicant for military service must meet the standards set for each system and function. Accession examiners are not being asked to evaluate anything for transgender candidates that is different from what they evaluate for all candidates. Using a history of hormone medication as an example, if female candidates who are not

transgender have taken, or are taking, hormones to control various gynecological conditions, enlistment standards only require medical examiners to assess whether the condition is responsive to hormone treatment and unlikely to interfere with routine activities. The standard for evaluating hormone use in transgender candidates requires a stricter but similar assessment of whether hormone therapy has been stable for 18 months prior to accession.

Medical evaluation of transgender candidates is not novel or complex. Gender dysphoria is not new to enlistment examiners, because they have been identifying and excluding candidates on that basis. Any potential fitness concerns arising from gender dysphoria or its treatment are also not new to enlistment examiners, because those concerns are not unique to transgender people and are routinely assessed in non-transgender people during the accession process. Examiners will be making the same medical judgments they already make. The only difference is that now examiners will be applying existing standards and evaluation tools to people who used to be disqualified automatically. DOD has already conducted training for enlistment examiners on the transgender accession standard published 18 months ago in DTM 16-005, *Military Service of Transgender Service Members*.

3. The assertions that recruiters will not understand government identification documents that reflect changes in gender, and are not prepared to obtain supporting medical documents, are incorrect.

Recruiters are responsible for confirmation of information in identity documents, including immigration status, name changes, and similar issues more complicated than gender change. Recruiters also work with all applicants to disclose and document medical history. Nothing has changed.

4. The assertion that “key personnel” have “rotated” into different duties, therefore setting back the pace of implementation and requiring more time, is not a reason for delay.

Rotation into different duties is an inescapable aspect of military service. It is not an excuse for delay in policy implementation. People may rotate into different duties, retire, or separate, but the mission goes on.

5. The assertion that the Court’s order will result in transgender applicants not receiving “the appropriate medical and administrative accession screening” is incorrect.

The only way to ensure transgender applicants are appropriately screened is to implement the June 30, 2016 accession policy that includes a screening standard. The transgender ban has never been effective in preventing transgender people from serving in the military. Under a ban, no screening at all takes place, and applicants are discouraged from making candid disclosures to enlistment examiners. In contrast, the military’s accession standard set to go into effect January 1, 2018 will directly assess fitness and screen out those individuals whose medical needs would affect duty performance. DOJ is

working against the military's best interest by preventing enlistment examiners from openly evaluating transgender applicants and separating the medically fit from the unfit. For purposes of effective screening, continuing the ban is far worse than implementing a screening standard.

A recent Government Accountability Office (GAO) Report, *Military Personnel: Improvements Needed in the Management of Enlistees' Medical Early Separation and Enlistment Information* (GAO-17-527, July 2017), found that active screening of medical history produces better fitness decisions. GAO found that lack of disclosure by applicants is a significant problem, and verification by medical records encourages disclosure. The transgender accession standard DOJ is attempting to delay is consistent with these GAO recommendations: it encourages disclosure, it requires verification, and it establishes detailed and rigorous standards of fitness that must be met to qualify for service.

Continuation of the accession ban will result in "don't ask, don't tell" for transgender applicants and service members. It will discourage transgender applicants from being forthcoming at accession. It will also discourage candor after accession by putting personnel who require transition-related care after enlistment in the uncomfortable position of having to explain why they did not identify themselves at accession, even if at that time they did not identify as transgender. This, in turn, will encourage them to hide health conditions that, while not incompatible with military service, may require treatment. Like DADT, the effect would be to suppress the truth, raising Admiral Mike Mullen's concern about the gay ban, namely that he was "troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens."

It lacks credibility to argue that we have the most professional military force in the world, yet our service members cannot handle transgender integration as well as the eighteen foreign militaries that have done so, including some of our closest allies.

*The views and findings expressed here are those of the authors and should not be assumed to reflect an official policy, position or decision of the U.S. Military Academy, U.S. Air Force Academy, U.S. Marine Corps War College, U.S. Naval Postgraduate School or the U.S. Government.