

# PALM CENTER

## BLUEPRINTS FOR SOUND PUBLIC POLICY

### SCENARIO RESPONSES TO POSSIBLE SUPREME COURT ACTION ON TRANSGENDER MILITARY BAN

**Overview:** The Trump administration has asked the Supreme Court for emergency review of the preliminary injunctions that prevent the transgender ban from taking effect. The Court is scheduled to consider the issue **Fri. Jan. 11**. This memo explains the implications of possible Court scenarios, and provides key background and facts on transgender military service, including that: (1) Inclusive policy has been successful for over 2.5 years; (2) The Trump policy is an outright transgender ban, targeting all 14,700 transgender troops; (3) Reinstating the ban would harm readiness; and (4) There is no valid medical or military rationale for the ban.

**Supreme Court Scenarios:** On Jan. 11, the Court could:

- A. Make no announcement and defer consideration to a later date, continuing the status quo (ban is blocked) for now.
- B. Deny the government's petition for review (certiorari), and also decline to stay the injunctions, continuing the status quo (ban is blocked) indefinitely.
- C. Grant certiorari and agree to hear the case, without staying the injunctions. Ban would remain blocked at least until a Court ruling on the injunctions this spring.
- D. Deny certiorari, but stay the injunctions for the duration of ongoing litigation. This would *permit* the ban to go into effect, but it *would not require* the military to reinstate it, because Trump revoked his directive for a ban and has turned the issue over to the military's discretion. The military could choose to leave inclusive policy intact until lawsuits are resolved in order to avoid possible whipsaws in policy affecting service members.

Under each scenario, the four cases challenging the transgender ban will all proceed in the lower courts to decisions on the merits. Supreme Court intervention will only affect whether injunctions continue to protect transgender service in the meantime.

**As the nation considers the issue of transgender military service, the following facts should guide the discussion:**

#### **1. Inclusive policy has been successful for over 2.5 years.**

- **14,700 transgender troops serve** in the Active Component and Reserves, according to [Palm Center analysis](#) of DOD figures.
- Transgender troops have consistently **earned praise from their commanders**, including [Air Force Staff Sergeant Ashleigh Buch](#), whose commander said, "She means the world to this unit; she makes us better," and [Marine Lance Corporal Aaron Wixson](#), whose commander said, "We are lucky to have such talent in our ranks and will benefit from his retention."
- DOD data confirm that **hundreds of transgender troops have deployed to combat zones**, and in only one case was a service member unable to complete deployment for mental-health reasons since inclusive policy began.
- **All five military Chiefs of Staff have testified that inclusive policy has caused no readiness issues**, with JCS Chairman-designate Gen. [Mark Milley reporting](#) "precisely zero" problems.
- **Eighteen foreign militaries allow transgender troops to serve**, and none has reported any compromise to readiness.

## **2. The Trump policy is an outright transgender ban, targeting all 14,700 transgender troops.**

- **The Trump ban affects 100% of transgender troops.** None of them will be [allowed to come forward to transition gender](#), and they will all serve under a policy that stigmatizes their contribution to our defense. Banning gender transition is a clear proxy for banning transgender people and effectively forces them to give up their identity as a condition of service.
- Like the failed, unconstitutional “Don’t Ask, Don’t Tell” policy, the transgender ban targets and **stigmatizes a whole class of people for unnecessary reasons**, while masquerading as an even-handed regulation of fitness.
- Transgender troops—all of them—will be the **only military personnel denied their statutory entitlement to proper medical care** as determined by military doctors.

## **3. Reinstating the ban would harm readiness.**

- **Fifty-six retired Generals and Admirals [warned](#) that a ban would “degrade readiness, ... cause significant disruptions, deprive the military of mission-critical talent, and compromise the integrity of transgender troops who would be forced to live a lie, as well as non-transgender peers who would be forced to choose between reporting their comrades or disobeying policy.”**
- A panel of retired military Surgeons General [released a 55-page report](#) finding that **banning transgender troops “harms readiness** through forced dishonesty, double standards, wasted talent, and barriers to adequate care.” They conclude that a ban’s “requirement to serve in silence effectively forces troops to lie about their identity,” which “compromises military integrity.”
- **Lifting the injunctions would send** what former U.S. Navy Judge Advocate General Admiral John D. Hutson called “**confusing signals to all troops** about who deserves to wear the uniform, undermining cohesion as a result.” Commanders “would be ill-served by having to implement yet another policy reversal,” as “**uncertainty created by policy whipsaws is inherently bad for all servicemembers.**”
- Scholars have consistently found that military **discrimination harms readiness**, including discrimination against African Americans, women, and gays and lesbians. Military historian Dr. Nathaniel Frank [concluded in a study](#) that “Don’t Ask, Don’t Tell” harmed readiness by “sacrificing badly needed personnel that is replaced with less qualified talent; undermining cohesion, integrity, and trust through forced dishonesty... and damaging the military’s reputation which makes it harder to recruit the best and brightest America has to offer.”

## **4. There is no valid medical or military rationale for the ban.**

- In addition to confirmation by Service Chiefs that inclusive service has succeeded and has not harmed cohesion, a major report by retired military Surgeons General [found](#) that **DOD’s rationale for exclusion “is contradicted by ample evidence** clearly demonstrating that transition-related care is effective, that transgender personnel... are deployable and medically fit, that inclusive policy has not compromised cohesion and instead promotes readiness, and that the financial costs of inclusion are not high.”
- The nation’s major medical and mental health organizations have **repudiated DOD’s rationale for a transgender ban**, with the [American Medical Association](#) stating that “there is no medically valid reason” to ban transgender troops, and the [American Psychological Association](#) and [American Psychiatric Association](#) rejecting any medical rationale for a ban.
- Both DOD and RAND exhaustively studied transgender military service in 2016 and concluded it does not harm readiness. RAND [summarized its findings](#) by stating that “evidence from foreign militaries and the U.S. military has indicated no significant impact on unit cohesion or operational readiness as a result of allowing transgender and gay and lesbian personnel to serve openly.”
- **The financial costs of transition-related care do not justify a ban.** DOD [reported that the total cost of transition-related care was only \\$2.2 million](#) in FY 2017, which was less than one tenth of

one percent of DOD's annual health care budget for the Active Component, and roughly one twentieth of the [\\$41.6 million the military spends](#) each year on Viagra.

- **DOD's rationale for the ban echoes discredited arguments for earlier discrimination against minorities.** In each case, warnings about damage to cohesion, privacy, and readiness turned out to be unfounded when inclusive policies failed to cause the predicted harms. As one federal judge [has written](#), the "loss of unit cohesion" claim "has been consistently weaponized against open service by a new minority group. Yet, at every turn, this assertion has been overcome by the military's steadfast ability to integrate these individuals into effective members of our armed forces. As with blacks, women, and gays, so now with transgender persons."
- **The military itself concedes it has routinely exaggerated the risks involved in modernizing personnel policies.** In 2010, DOD undertook one of the most comprehensive studies of personnel policy ever, as part of its preparation for lifting its ban on openly gay service, and [concluded](#): "The general lesson we take from these transformational experiences in history is that in matters of personnel change within the military, predictions and surveys **tend to overestimate negative consequences, and underestimate the U.S. military's ability to adapt** and incorporate within its ranks the diversity that is reflective of American society at large."