

No.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

NICOLAS TALBOTT, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a Department of War policy that generally disqualifies from military service individuals who have gender dysphoria, a history of the condition, or a history of related interventions—issued by Secretary of War Hegseth in implementing Executive Order No. 14,183—violates the equal-protection component of the Due Process Clause of the Fifth Amendment.

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are the United States of America; Peter B. Hegseth, Secretary of Defense (hereinafter Secretary of War); Daniel P. Driscoll, Secretary of the Army; United States Department of the Army; Hung Cao, Acting Secretary of the Navy; United States Department of the Navy; Troy E. Meink, Secretary of the Air Force; United States Department of the Air Force; Darin K. Via, Director of the Defense Health Agency; and the Defense Health Agency.¹

Respondents (plaintiffs-appellees below) are Nicolas Talbott, Erica Vandal, Kate Cole, Gordon Herrero, Dany Danridge, Jamie Hash, Koda Nature, Cael Neary, Miriam Perelson, Clayton McCallister, Greyson Shishkina, Audrie Graham, Roan Pickett, Quinn Tyson, Amiah Sale, Minerva Bettis, Samuel Ahearn, Regan Morgan, Vera Wolf, Michelle Bloomrose, Hunter Marquez, Sean Kersch-Hamar, Kelsey Orth, Taylor Maiwald, Sabrina Bruce, C.J. Dulaney, Micah Jacqueline Gross, Austin Converse, Nathalie Richter, Beck Simpson, Clara Winchell, and Ashley Davis.²

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Talbott v. United States, No. 25-cv-240 (Mar. 26, 2025)

United States Court of Appeals (D.C. Cir.):

Talbott v. United States, No. 25-5087 (June 1, 2026)

¹ Acting Secretary Cao, Secretary Meink, and Director Via are automatically substituted for their predecessors. See Sup. Ct. R. 35.3.

² After the government filed its notice of appeal to the D.C. Circuit, Miriam Perelson and Greyson Shishkina were voluntarily dismissed as plaintiffs in this case. D. Ct. Doc. 107 (June 27, 2025).

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OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-109a) is reported at 176 F.4th 720. The opinion and order of the district court declining to dissolve the preliminary injunction (App., *infra*, 166a-184a) are available at 775 F. Supp. 3d 445. The opinion and order of the district court granting a preliminary injunction (App., *infra*, 185a-279a) are reported at 775 F. Supp. 3d 283.

JURISDICTION

The judgment of the court of appeals was entered on June 1, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment provides in pertinent part that no “person” shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. Amend. V.

INTRODUCTION

After President Trump returned to office, the Department of War adopted a policy similar to one it had adopted eight years ago. Under this policy, individuals with a history of gender dysphoria or related interventions are generally disqualified from military service. The Department adopted the policy because Secretary Hegseth determined, as Secretary Mattis had before, that “the medical, surgical, and mental health constraints” on such individuals “are incompatible with the high mental and physical standards necessary for military service.” C.A. App. 48; see *id.* at 69.

Two district courts preliminarily enjoined the Hegseth policy. This Court stayed one of those injunctions pending further review, *United States v. Shilling*, 145 S. Ct. 2695 (2025), as it had stayed injunctions against the Mattis policy, *e.g.*, *Trump v. Karnoski*, 586 U.S. 1124 (2019). This case involves the other injunction. The court of appeals upheld the injunction as to respondents already serving in the military. The court asserted that the policy likely denies equal protection because it reflects invidious discrimination against trans-identifying people.

That gravely erroneous holding warrants this Court’s review. The authority of the U.S. military to determine who may serve in the Nation’s armed forces is a matter of exceptional importance. Whether the Constitution prohibits the military from exercising that authority by adopting a policy like the one here is a recurring issue, which has arisen before and will likely arise again absent this Court’s review. The Court should thus take this opportunity to address the constitutionality of the Hegseth policy and reverse the decision below, whose reasoning cannot be squared with this Court’s precedents or deference to the military.

STATEMENT

A. The Military's Policies

1. To assemble a military of “qualified, effective, and able-bodied persons,” 10 U.S.C. 505(a), the Department of War has traditionally set demanding medical standards for military service, C.A. App. 73. “The purpose of the Armed Forces is to fight and win the Nation’s wars.” *Ibid.* “No human endeavor is more physically, mentally, and emotionally demanding than the life and death struggle of battle.” *Ibid.* “To give all Service members the best chance of success and survival in war, the Department must maintain the highest possible standards of physical and mental health and readiness across the force.” *Ibid.*

The Department maintains two sets of medical standards: accession standards, which govern “induction into the Armed Forces”; and retention standards, which govern “the retention and separation of those already serving” in the military. C.A. App. 78. The accession standards list hundreds of medical conditions as generally disqualifying. *Id.* at 942-983. The list includes any history of cataracts, cluster headaches, shoulder dislocation, or diabetes mellitus. *Id.* at 944, 967, 973, 977. Also disqualifying is any history of obsessive-compulsive disorders, eating disorders, bipolar disorders, or suicidality. *Id.* at 980-981. Because of the Department’s rigorous accession standards, “[t]he vast majority of Americans from ages 17 to 24—that is, 71%—are ineligible to join the military without a waiver.” *Id.* at 77.

The Department’s retention standards likewise list hundreds of conditions as generally “disqualifying.” C.A. App. 514 (capitalization omitted). Some conditions, such as epilepsy and schizophrenia, are simply “not compatible with retention.” *Id.* at 536, 537. Other conditions,

such as anxiety and depressive disorders, are disqualifying under certain circumstances—for instance, if they “[r]equire persistent duty modifications to reduce psychological stressors or enhance safety.” *Id.* at 538.

2. In general, the Department has aligned the mental disorders it has deemed disqualifying with those in the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, published by the American Psychiatric Association (APA). C.A. App. 81. The 1980 edition of the *DSM* recognized “[t]ranssexualism” as a disorder whose “essential features” were “a persistent sense of discomfort and inappropriateness about one’s anatomic sex and a persistent wish to be rid of one’s genitals and to live as a member of the other sex.” APA, *Diagnostic and Statistical Manual of Mental Disorders* 261-262 (3d ed. 1980). When the *DSM* was updated in 1994, “transsexualism” was subsumed within the term “gender identity disorder.” APA, *Diagnostic and Statistical Manual of Mental Disorders* 785 (4th ed. 1994) (capitalization omitted). Consistent with the *DSM*, the military at the time treated a history of “transsexualism” as disqualifying for accession, C.A. App. 81, and a “permissible basis” for separation, *id.* at 78. The military also treated associated interventions, such as a history of “genital surgery,” as disqualifying. *Id.* at 81.

In 2013, when the APA published the fifth edition of the *DSM* (known as the *DSM-5*), it replaced the term “gender identity disorder” with “gender dysphoria.” C.A. App. 83. The *DSM-5* defines gender dysphoria as a “marked incongruence between one’s experienced/expressed gender and assigned gender, of at least 6 months’ duration,” that is “manifested” in various specified ways and is “associated with clinically significant distress or impairment in social, occupational, or other

important areas of functioning.” APA, *Diagnostic and Statistical Manual of Mental Disorders* 452-453 (5th ed. 2013) (*DSM-5*); see C.A. App. 1292. According to the *DSM-5*, some individuals with gender dysphoria may desire cross-sex hormone interventions or sex-reassignment surgery. *DSM-5*, at 454. The *DSM-5* further observes that adults with gender dysphoria are at “increased risk for suicidal ideation, suicide attempts, and suicides,” *ibid.*, and “may have coexisting mental health problems, most commonly anxiety and depressive disorders,” *id.* at 459.

Under the *DSM-5*, “*gender dysphoria*” and “*transgender*” are distinct terms: Whereas “*transgender* refers to the broad spectrum of individuals who transiently or persistently identify with a gender different from their natal [*i.e.*, birth] gender,” “*gender dysphoria* refers to the distress that may accompany the incongruence between one’s experienced or expressed gender and one’s assigned gender.” *DSM-5*, at 451 (capitalization omitted). The *DSM-5* emphasizes that “not all individuals will experience distress as a result of such incongruence,” and that the term “*gender dysphoria*,” unlike the previous term “*gender identity disorder*,” “focuses on dysphoria as the clinical problem, not identity per se.” *Ibid.* (capitalization omitted); see C.A. App. 91 (“[N]ot all transgender people suffer from gender dysphoria and that distinction,’ * * *, ‘is important to keep in mind.’”) (quoting APA, *Expert Q & A: Gender Dysphoria* (Feb. 14, 2018)).

3. In 2016, then-Secretary of Defense Ashton Carter adopted a new policy on “military service of transgender service members.” C.A. App. 411 (capitalization omitted). Under that policy, a history of transsexualism would no longer be disqualifying. Still, Secretary Carter recognized the need for “[m]edical standards” that “ensure

that those entering service are free of medical conditions or physical defects that may require excessive time lost from duty.” *Id.* at 414. Secretary Carter therefore ordered the military to adopt, by July 2017, new accession standards treating a history of “gender dysphoria,” “medical treatment associated with gender transition,” or “sex reassignment or genital reconstruction surgery” as “disqualifying,” subject to certain exceptions. *Id.* at 414-415. For example, a “history of gender dysphoria” would be “disqualifying, unless, as certified by a licensed medical provider, the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months.” *Id.* at 414 (emphasis omitted).

Secretary Carter also adopted new retention standards for the military, effective immediately. C.A. App. 414. Although the military has historically required all servicemembers to serve in their biological sex, the Carter policy created an exception for servicemembers diagnosed with gender dysphoria. *Id.* at 415. Under the Carter policy, those servicemembers could undergo “[g]ender transition” and serve in the opposite sex—even though, as Secretary Carter acknowledged, “[g]ender transition while serving in the military presents unique challenges associated with addressing the needs of the Service member in a manner consistent with military mission and readiness needs.” *Ibid.*

All other servicemembers, including trans-identifying servicemembers who did “not meet the clinical criteria for gender dysphoria,” “remain[ed] subject to the standards and requirements applicable to their biological sex.” C.A. App. 86. Thus, trans-identifying servicemembers without gender dysphoria had to use the berthing, bathroom, and shower facilities corresponding to their sex.

Ibid.; see *id.* at 100. They also had to meet the physical-fitness, body-fat, uniform, and grooming standards applicable to their sex. See *id.* at 100-101.

4. In June 2017—before the Carter accession standards were set to take effect—then-Secretary of Defense James Mattis determined, “after consultation with the Secretaries and Chiefs of Staff of each Service,” that it was necessary to defer those standards until the military could “‘evaluate more carefully’” their potential effect “‘on readiness and lethality.’” C.A. App. 88. Secretary Mattis established a panel of experts to “conduct an independent multi-disciplinary review and study of relevant data and information pertaining to transgender Service members.” *Ibid.* The panel consisted of “senior uniformed and civilian Defense Department and U.S. Coast Guard leaders.” *Id.* at 68. After “extensive review and deliberation” over several months, the panel “exercised its professional military judgment” and presented its independent recommendations to the Secretary. *Id.* at 89.

In February 2018, Secretary Mattis sent President Trump a memorandum proposing a new policy consistent with the panel’s conclusions, along with a lengthy report explaining the policy. C.A. App. 68-115. Recognizing that the new policy reflected “the exercise of [Secretary Mattis’s] independent judgment,” the President issued a memorandum permitting the military “to implement” it. 83 Fed. Reg. 13,367, 13,367 (Mar. 23, 2018).

The Mattis policy, like the Carter policy before it, required servicemembers without a history or diagnosis of gender dysphoria to serve in their “biological sex.” C.A. App. 75. But the Mattis policy took a different approach for servicemembers diagnosed with gender dysphoria. Whereas the Carter policy accommodated their “[g]ender transition” despite the “unique challenges as-

sociated with” doing so, *id.* at 415, the Mattis policy determined that “making accommodations for gender transition” would “likely undermine” “military effectiveness and lethality,” *id.* at 112. Instead of allowing service-members diagnosed with gender dysphoria to undergo “gender transition” and serve in the opposite sex, the Mattis policy generally treated such a diagnosis as disqualifying. *Ibid.* Thus, under the Mattis policy, individuals with a history or diagnosis of gender dysphoria, or who were seeking or had undergone gender transition, were “generally disqualified” from both “accession” and “retention.” *Id.* at 69.

Although the Mattis policy recognized certain exceptions to that rule, the exceptions were “[l]imited.” C.A. App. 112. For example, a “history of gender dysphoria” disqualified applicants from joining the military unless they could “demonstrate 36 consecutive months of stability—i.e., absence of gender dysphoria—immediately preceding their application,” and could show that “they ha[d] not transitioned to the opposite gender” and “[we]re willing and able to adhere to all standards associated with their biological sex.” *Id.* at 113. Similarly, a diagnosis of gender dysphoria after joining the military was cause for separation unless the servicemember was “willing and able to adhere to all standards associated with [the servicemember’s] biological sex, the Service member d[id] not require gender transition, and the Service member [wa]s not otherwise non-deployable for more than 12 months or for a period of time in excess of that established by Service policy (which may be less than 12 months).” *Ibid.* The Mattis policy also provided an exemption for existing servicemembers who were diagnosed with gender dysphoria while the Carter policy was

in effect, allowing them to continue to serve in the opposite sex. *Id.* at 69, 76-77.

Several district courts entered universal preliminary injunctions against the Mattis policy on the view that the policy was a “ban on military service by openly transgender people.” *Karnoski v. Trump*, No. 17-cv-1297, 2018 WL 1784464, at *1 (W.D. Wash. Apr. 13, 2018), vacated, 926 F.3d 1180 (9th Cir. 2019); see *Doe v. Trump*, 315 F. Supp. 3d 474, 492 (D.D.C. 2018), rev’d, 755 Fed. Appx. 19 (D.C. Cir. 2019); *Stockman v. Trump*, 331 F. Supp. 3d 990, 1001 (C.D. Cal. 2018), vacated, No. 18-56539, 2019 WL 6125075 (9th Cir. Aug. 26, 2019). In three cases, the government sought from this Court a writ of certiorari before judgment or, in the alternative, a stay of the injunction pending further review. See *Trump v. Karnoski*, Nos. 18-676, 18A625; *Trump v. Doe*, Nos. 18-677, 18A626; *Trump v. Stockman*, Nos. 18-678, 18A627. The government emphasized that “the Mattis policy turn[ed] on a medical condition (gender dysphoria) and related treatment (gender transition)” —rather than trans-identifying status—and was consistent with equal protection. Pet. at 19, *Trump v. Karnoski*, No. 18-676 (Nov. 23, 2018); see *id.* at 19-25.

While the government’s requests were pending in this Court, the D.C. Circuit vacated the injunction in one of the cases. See *Doe v. Shanahan*, 755 Fed. Appx. 19 (2019) (per curiam); *Doe v. Shanahan*, 917 F.3d 694 (2019) (separate opinions). Soon after, this Court granted stays of the injunctions in the other two cases. See *Trump v. Karnoski*, 586 U.S. 1124 (2019); *Trump v. Stockman*, 586 U.S. 1124 (2019). After a district court stayed a fourth preliminary injunction, see *Stone v. Trump*, No. 17-cv-2459, 2019 WL 5697228, at *3 (D. Md. Mar. 7, 2019), the Mattis policy went into effect, see App., *infra*, 118a-119a.

5. In 2021, President Biden revoked President Trump’s memorandum permitting implementation of the Mattis policy. Exec. Order No. 14,004, § 2 (Jan. 25, 2021), 86 Fed. Reg. 7471, 7472 (Jan. 28, 2021). Thereafter, then-Secretary of Defense Lloyd Austin issued new accession standards, but those standards still treated a history of “gender dysphoria,” “gender affirming surgery,” or “gender-affirming hormone therapy” as disqualifying under specified circumstances. C.A. App. 957, 959, 975, 981. For example, a “[h]istory of gender dysphoria” disqualified an applicant from joining the military if the condition was “[s]ymptomatic within the previous 18 months” or was “[a]ssociated with comorbid mental health disorders.” *Id.* at 981. Secretary Austin also issued new retention standards that permitted service-members diagnosed with gender dysphoria to undergo “gender transition” and serve in the opposite sex, *id.* at 449-450, but required “all other Service members,” including “transgender Service members” without such a diagnosis, to serve in their biological sex, *id.* at 448.

6. Soon after returning to office in January 2025, President Trump declared it to be “the policy of the United States Government to establish high standards for troop readiness, lethality, cohesion, honesty, humility, uniformity, and integrity.” Exec. Order No. 14,183 (Jan. 27, 2025), 90 Fed. Reg. 8757, 8757 (Feb. 3, 2025). The President found that policy “inconsistent with the medical, surgical, and mental health constraints on individuals with gender dysphoria.” *Ibid.* The President also found that policy “inconsistent with shifting pronoun usage or use of pronouns that inaccurately reflect an individual’s sex.” *Ibid.* The President thus ordered the Department to update the military’s accession and retention standards. *Id.* at 8757-8758. He also directed it

“to end invented and identification-based pronoun usage.” *Id.* at 8758.

In February 2025, Secretary of War Pete Hegseth issued a new policy with updated accession and retention standards. C.A. App. 48-60. The Hegseth policy was based on “consideration of, among other things, the President and Secretary’s written direction, existing and prior DoD policy, and prior DoD studies and reviews of service by individuals with gender dysphoria.” *Id.* at 64. That consideration included Secretary Mattis’s 2018 memorandum, which determined, based on the work of a panel of experts, that “there are substantial risks associated with allowing accession and retention of individuals with a history or diagnosis of gender dysphoria”; a 2021 review conducted by the Department’s Psychological Health Center of Excellence and other researchers within the Department, which “found that nearly 40% of Service members with gender dysphoria in an observed cohort were non-deployable over a 24 month period”; a 2025 medical-literature review conducted by the Office of the Assistant Secretary of Defense for Health Affairs, which reported that “the suicide attempt rate is estimated to be 13 times higher among transgender individuals compared to their cisgender counterparts,” and that “the strength of evidence on transgender mental health and gender-affirming care is low to moderate”; and a review of cost data by the Office of the Assistant Secretary of Defense for Health Affairs, which found that, “between 2015 and 2024, DoD spent \$52,084,407 providing care to active duty Service members to treat gender dysphoria.” *Id.* at 64-65.

Based on its review, the Department determined that, “[w]hile Service members with gender dysphoria volunteered to serve their country, the costs associated with

their health care, coupled with the medical and readiness risks associated with their diagnosis and associated treatment that can limit their deployability, make continued service by such individuals incompatible with the Department's rigorous standards and national security imperative to deliver a ready, deployable force." C.A. App. 65. Accordingly, the Hegseth policy, like the Mattis policy before it, generally disqualifies from military service individuals who have a history or current diagnosis of gender dysphoria, who "exhibit symptoms consistent with" gender dysphoria, or who have a history of "cross-sex hormone therapy or sex reassignment or genital reconstruction surgery as treatment for gender dysphoria or in pursuit of a sex transition." *Id.* at 53, 55.

The exceptions to that rule are narrower under the Hegseth policy than under the Mattis policy. The Hegseth policy allows the Department to waive the rule "on a case-by-case basis" only "where there is a compelling Government interest" that "directly supports the Department's warfighting capabilities," such as where an otherwise disqualified individual has "special experience, special training, and advanced education in a highly technical career field designated as mission critical and hard to fill." C.A. App. 210. To be eligible for a waiver, an individual must "demonstrate[] 36 consecutive months of stability in the individual's sex," and show that he or she "has never attempted to transition to any sex other than his or her sex" and "is willing and able to adhere to all applicable standards, including the standards associated with his or her sex." *Id.* at 210-211. The Hegseth policy also does not provide an exemption allowing certain existing servicemembers to serve in the opposite sex, as the Mattis policy had.

Finally, the Hegseth policy, like the Carter, Mattis, and Austin policies before it, requires servicemembers without gender dysphoria to serve “in accordance with their sex.” C.A. App. 50. The Hegseth policy further provides that “[p]ronoun usage when referring to Service members must reflect a Service member’s sex.” *Ibid.*

B. Procedural History

1. Respondents are various trans-identifying individuals who brought suit in the United States District Court for the District of Columbia, challenging Executive Order No. 14,183 and the Hegseth policy as a violation of equal protection. Fourth Am. Compl. ¶¶ 416-438. When they filed the operative complaint, some respondents were serving in the military, while others were hoping to join it. *Id.* ¶ 16. Each respondent has a history of gender dysphoria or related interventions. *Id.* ¶¶ 27-28, 38, 48, 58, 71, 82, 88, 109, 115, 124, 136, 148, 157, 163, 167, 170, 185-186, 198, 206, 212, 221, 230, 238, 247, 256, 262, 267, 280, 289, 300, 308.

In March 2025, the district court entered a universal preliminary injunction that prohibited the government from implementing Executive Order No. 14,183 or the Hegseth policy and that required the government to maintain the Austin policy. App., *infra*, 185a-279a. The court held that respondents were likely to succeed on their equal-protection claim. *Id.* at 233a-274a. The court characterized the Hegseth policy as a ban on “all transgender troops,” *id.* at 210a (capitalization omitted), reasoning that by disqualifying even those who “‘exhibit symptoms *consistent with* gender dysphoria,’” the policy disqualified some “who have never had gender dysphoria,” *id.* at 258a (brackets omitted). The court then concluded that discrimination based on trans-identifying status triggers intermediate scrutiny. *Id.* at 241a-263a.

But the court further held that the policy would fail even rational-basis review because, in its view, the policy was “driven exclusively by animus.” *Id.* at 271a; see *id.* at 263a-274a. The court further concluded that respondents satisfied the other preliminary-injunction factors. *Id.* at 274a-278a.

After the district court’s ruling, the Department issued guidance clarifying that, for purposes of the Hegseth policy, “symptoms consistent with gender dysphoria” means “symptoms as would be sufficient to constitute a diagnosis” under the criteria set forth in the *DSM-5*. C.A. App. 1289 n.2. The government explained that the guidance confirmed that the Hegseth policy “turns on gender dysphoria—a medical condition—and does not discriminate against trans-identifying persons as a class.” D. Ct. Doc. 91, at 2 (Mar. 21, 2025). The government therefore moved to dissolve the preliminary injunction. *Id.* at 1-2.

The district court denied the motion, App., *infra*, 166a-184a, reiterating its view that the Hegseth policy “excludes all transgender troops,” *id.* at 175a, and reflects “animus directed at transgender persons,” *id.* at 172a. The court also declined to stay its injunction pending appeal. *Id.* at 183a-184a.

2. The government appealed the injunction and asked the D.C. Circuit for a stay pending appeal. App., *infra*, 8a. The court of appeals granted an administrative stay and heard oral argument on the government’s stay motion. *Ibid.* While that motion was pending, this Court granted a stay of a universal preliminary injunction against the Hegseth policy entered by the United States District Court for the Western District of Washington. See *United States v. Shilling*, 145 S. Ct. 2695 (2025).

The Court stayed that injunction in its entirety pending further review. *Ibid.*¹

The D.C. Circuit then granted a stay pending appeal of the injunction in this case. App., *infra*, 110a-165a. Judge Katsas filed a concurring statement, joined by Judge Rao, explaining that the Hegseth policy “is likely constitutional because it reflects a considered judgment of military leaders and furthers legitimate military interests.” *Id.* at 125a; see *id.* at 112a-136a. Judge Pillard dissented, *id.* at 137a-165a, characterizing the Hegseth policy as “a complete ban on military service by transgender individuals,” *id.* at 149a, that is “driven by animus,” *id.* at 146a.

3. After merits briefing and oral argument, a different panel of the D.C. Circuit vacated in part and affirmed in part the injunction. App., *infra*, 1a-109a.

A majority of the panel—Judges Wilkins and Rogers—concluded that respondents are likely to succeed on the merits of their equal-protection challenge to the Hegseth policy. App., *infra*, 3a, 55a-56a. In separate opinions, both judges took the view that the policy was “based upon animus” and failed even rational-basis review. *Id.* at 3a; see *id.* at 40a-45a, 55a-56a. Judge Walker dissented from that view of the policy’s constitutionality. *Id.* at 65a-109a. Describing the majority’s decision as an “unprecedented intervention into military affairs,” *id.* at 66a, he would have upheld the Hegseth policy because

¹ The government’s appeal of the preliminary injunction in *Shilling* remains pending before the Ninth Circuit. Although the appeal was argued in October 2025, the Ninth Circuit recently directed the parties to file supplemental briefs addressing the effect of this Court’s decision in *West Virginia v. B.P.J.*, 146 S. Ct. 2356 (2026). After the parties filed their briefs, the Ninth Circuit indicated that it would schedule reargument “in due course.” C.A. Doc. 94 (Aug. 19, 2026), *Shilling v. Trump* (9th Cir.) (No. 25-2039).

it “has a legitimate grounding in national security concerns,” *id.* at 106a, and because “courts reviewing a constitutional challenge to a military policy must give ‘great deference’ to the political branches’ professional military judgments,” *id.* at 89a.

Turning to the scope of the injunction, the panel held that the district court erred in granting a universal injunction. See App., *infra*, 50a-51a, 64a (citing *Trump v. CASA, Inc.*, 606 U.S. 831 (2025)). Judge Wilkins also concluded that the district court failed to properly weigh the equities in deciding to enjoin the application of the Hegseth policy to those respondents “seeking admission to the military.” *Id.* at 50a. He and Judge Walker therefore voted to vacate the injunction with respect to those respondents seeking admission. *Id.* at 4a, 73a n.38. Judges Wilkins and Rogers agreed, however, that the balance of equities supported enjoining the application of the Hegseth policy to those respondents “already in the military.” *Id.* at 3a-4a. Accordingly, the court of appeals affirmed the injunction with respect to current servicemembers. *Ibid.*²

REASONS FOR GRANTING THE PETITION

The court of appeals declared likely unconstitutional a policy that the military has determined is necessary to maintain its “rigorous standards” and “deliver a ready, deployable force.” C.A. App. 65. The constitutionality of that policy raises an issue of exceptional and recurring importance. And the decision below seriously erred in concluding that the policy could not satisfy

² After the court of appeals issued its decision in this case, the government moved for a stay of that court’s mandate pending any further review in this Court. See Gov’t C.A. Mot. to Stay Mandate (July 16, 2026). The court of appeals has yet to rule on that motion, and so the mandate has not issued. See Fed. R. App. P. 41(b).

rational-basis review. As there is no sound reason for this Court to defer plenary review, it should grant the petition for a writ of certiorari.

A. The Question Presented Warrants This Court’s Review

1. This Court has previously granted a stay of a preliminary injunction against the Hegseth policy. See *United States v. Shilling*, 145 S. Ct. 2695 (2025). In granting that stay in full—including as to the individual respondents—the Court necessarily determined that the constitutional question raised by that injunction likely warrants certiorari. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). The injunction here raises the same constitutional question: whether the Hegseth policy is consistent with equal protection. App., *infra*, 3a. As this Court’s decision to stay the injunction in *Shilling* indicates, that issue is one of exceptional importance, warranting plenary review.

The importance of the issue lies in what it concerns: the authority of the federal government to determine who may serve in the Nation’s armed forces. “The Constitution vests the ‘complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force’ in the political branches.” App., *infra*, 123a (Katsas, J., concurring in stay) (quoting *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973)). Given that delegation of authority, this Court has recognized that the Judiciary “must give great deference to the professional judgment of military authorities” “charged by the Executive and Legislative Branches with carrying out our Nation’s military policy.” *Goldman v. Weinberger*, 475 U.S. 503, 507-508 (1986); see p. 22, *infra*. Exercising that professional judgment here, the Department of War determined that “the medical, surgical, and mental health constraints” on individuals with

gender dysphoria “are incompatible with the high mental and physical standards necessary for military service.” C.A. App. 48. The court of appeals nevertheless declared the Hegseth policy likely unconstitutional, App., *infra*, 3a, 55a-56a, and blocked the full implementation of a policy that the Department has deemed necessary to maintain its “rigorous standards” and “deliver a ready, deployable force,” C.A. App. 65.

If allowed to stand, the court of appeals’ decision would represent an “unprecedented intervention into military affairs,” in contravention of this Court’s precedents requiring “defer[ence] to the political branches’ military judgments.” App., *infra*, 66a, 76a (Walker, J., dissenting). The decision below thus raises an issue of profound significance, warranting this Court’s review. See, e.g., *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 12 (2008) (granting certiorari to review a decision upholding “a preliminary injunction imposing restrictions on the Navy’s sonar training”); *Department of the Navy v. Egan*, 484 U.S. 518, 520 (1988) (granting certiorari to address interference with Executive Branch determinations that were of “importance * * * to national security concerns”).

Indeed, this Court frequently grants review of lower-court decisions blocking significant federal policies or programs, even outside the military context. See, e.g., *Trump v. Barbara*, 146 S. Ct. 2438 (2026); *Trump v. Slaughter*, 146 S. Ct. 2283 (2026); *Mullin v. Doe*, 146 S. Ct. 2121 (2026); *Mullin v. Al Otro Lado*, 146 S. Ct. 2079 (2026); *Trump v. V.O.S. Selections, Inc.*, 607 U.S. 229 (2026). And the Court has previously granted certiorari to address disputes over policies concerning individuals with gender dysphoria. See, e.g., *West Virginia v. B.P.J.*, 146 S. Ct. 2356 (2026); *Chiles v. Salazar*,

146 S. Ct. 1010 (2026); *United States v. Skrmetti*, 605 U.S. 495 (2025). The Court should follow the same course here—especially since the decision below repeatedly flouts this Court’s reasoning in *B.P.J.* and *Skrmetti*, see pp. 22-24, 28-30, *infra*.

2. The question presented also is recurring. Eight years ago, when President Trump allowed Secretary Mattis to implement a policy that generally disqualified individuals with a history or diagnosis of gender dysphoria from military service, plaintiffs challenged the policy in court, arguing that it was a violation of equal protection. See pp. 7-9, *supra*. The government argued that the policy was rationally grounded in legitimate concerns about a medical condition and related interventions, see, *e.g.*, Pet. at 19, *Trump v. Karnoski*, No. 18-676 (Nov. 23, 2018); lower courts instead regarded the policy as an unconstitutional “[b]an” and enjoined it, *e.g.*, *Karnoski v. Trump*, No. 17-cv-1297, 2018 WL 1784464, at *1 (W.D. Wash. Apr. 13, 2018); and this Court stayed those injunctions, thereby allowing the military to implement the Mattis policy, see pp. 9-10, *supra*.

The current Administration saw that pattern repeat itself. When Secretary Hegseth adopted his policy in response to the President’s Executive Order, plaintiffs challenged the policy as a violation of equal protection. See pp. 11-13, *supra*. The government defended the policy as turning on a medical condition and related interventions, App., *infra*, 122a-130a (Katsas, J., concurring in stay); lower courts instead regarded the policy as an unconstitutional “[b]an” and enjoined it, *id.* at 189a; and this Court stayed one of those injunctions, see *Shilling*, 145 S. Ct. at 2695. The constitutionality of a military policy like this one is thus an issue that has

arisen before—and will likely arise again absent this Court’s plenary review.

3. There is no sound reason to defer review. The relevant issues have been fully ventilated in the lower courts, including by two three-judge panels and a district judge in this case alone. See App., *infra*, 1a-279a; pp. 13-16, *supra*; *Shilling v. United States*, 773 F. Supp. 3d 1069 (W.D. Wash. 2025). This Court often grants certiorari in the same posture, to review decisions affirming the grant of preliminary relief against important government policies. See, e.g., *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 377-378 (2024); *DHS v. New York*, 141 S. Ct. 1370 (2021); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 673-674 (2020); *Trump v. Hawaii*, 585 U.S. 667, 681-682 (2018).

The fact that the court of appeals affirmed the injunction only in part—*i.e.*, only with respect to those respondents already in the military—does not weigh against granting certiorari. App., *infra*, 3a-4a. The proper scope of the injunction presents a separate issue from the merits of respondents’ equal-protection challenge. As to the merits, the court declared the Hegseth policy likely unconstitutional for both current and aspiring servicemembers alike. *Id.* at 3a, 55a-56a. That holding does not distinguish between individuals already in the military and those seeking to join it. Indeed, if the government prevails on the merits, the validity of the policy for aspiring servicemembers will follow *a fortiori* from this Court’s upholding the policy for current servicemembers, because the military has especially wide discretion in determining who may join in the first place. Cf. *id.* at 49a (Wilkins, J.) (noting that, unlike for those with existing service records, applicants for admission require

the military to make a purely “predictive judgment” about whether their presence would “harm[] national security”). In sum, because the constitutionality of the Hegseth policy presents a recurring issue of exceptional importance, this Court should grant certiorari.

B. The Decision Below Is Wrong

The Hegseth policy is not a likely violation of equal protection. It neither discriminates, nor reflects bias, against any suspect or quasi-suspect class. Instead, like the Carter, Mattis, and Austin policies before it, the Hegseth policy draws classifications based on a medical condition (gender dysphoria) and related interventions. Especially given the military context, the Hegseth policy is subject only to rational-basis review, which it easily satisfies. The contrary conclusions of the courts below are irreconcilable with this Court’s precedents governing military deference and gender-identity discrimination.

1. The Hegseth policy is subject only to rational-basis review

a. Gender dysphoria is a medical condition “associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.” *DSM-5*, at 453. The Hegseth policy generally disqualifies from military service individuals with gender dysphoria. C.A. App. 53, 55. It also generally disqualifies from military service individuals who have received related interventions—*i.e.*, “cross-sex hormone therapy or sex reassignment or genital reconstruction surgery.” *Id.* at 53; see *id.* at 55. The Hegseth policy thus turns on a medical condition (gender dysphoria) and related interventions.

There is nothing suspect about those classifications. The same classifications appear in the *DSM-5* and in the

Department’s prior Carter, Mattis, and Austin policies. See pp. 6, 8, 10, *supra*. In *Skrimetti*, moreover, this Court applied rational-basis review to a law prohibiting the use of hormones to treat gender dysphoria in minors. 605 U.S. at 510-519. Because the Hegseth policy likewise draws lines based on gender dysphoria and related interventions, the Hegseth policy is subject only to rational-basis review.

Because that would be true even in the civilian context, it follows *a fortiori* in the military context. Any greater level of scrutiny would conflict with the “healthy deference” that the political branches are owed “in the area of military affairs.” *Rostker v. Goldberg*, 453 U.S. 57, 66 (1981) (upholding Congress’s decision to exclude women from Selective Service registration). That deference reflects the recognition “[n]ot only” that “courts [are] ‘ill-equipped to determine the impact upon discipline that any particular intrusion upon military authority might have,’” but also that “military authorities have been charged by the Executive and Legislative Branches with carrying out our Nation’s military policy.” *Goldman*, 475 U.S. at 507-508 (upholding Air Force’s decision to prohibit clinical psychologist from wearing a yarmulke while in uniform). Thus, even if an analogous policy in the civilian context would call for closer scrutiny, the military’s Hegseth policy would still be subject only to the most deferential standard of review. See *id.* at 507; *Rostker*, 453 U.S. at 67.

b. Contrary to the district court’s conclusion, the Hegseth policy does not discriminate based on trans-identifying status. The court relied on social-media posts to conclude that it does. App., *infra*, 189a & n.2. But as this Court’s decision in *B.P.J.* shows, the district court’s reliance on those posts was misplaced. Although the laws

at issue in *B.P.J.* were accompanied by legislative findings about “gender identity,” W. Va. Code Ann. § 18-2-25d(a)(4), and “gender-affirming treatment in transgender individuals,” Idaho Code Ann. § 33-6202(11), the Court rejected the contention that those laws “discriminate[d] against transgender individuals.” *B.P.J.*, 146 S. Ct. at 2378. Instead, the Court examined the laws’ operative terms—which “determine[d] eligibility for women’s and girls’ sports based on biological sex,” *id.* at 2375—and concluded that they “classify on the basis of biological sex,” *id.* at 2378. Here, the operative terms of the Hegseth policy classify based on a medical condition (gender dysphoria) and related interventions. The district court erred in looking beyond those terms to determine the “basis” on which the Hegseth policy “classif[ies].” *Ibid.*

The district court also reasoned that the Hegseth policy discriminates based on trans-identifying status because “only” trans-identifying individuals “experience gender dysphoria.” App., *infra*, 167a. But this Court rejected similar reasoning in *Skrmetti*. The law in that case “divide[d] minors into two groups: those who might seek puberty blockers or hormones to treat the excluded diagnoses, and those who might seek puberty blockers or hormones to treat other conditions.” *Skrmetti*, 605 U.S. at 519. “Because only transgender individuals seek puberty blockers and hormones for the excluded diagnoses, the first group include[d] only transgender individuals; the second group, in contrast, encompassed both transgender and nontransgender individuals.” *Ibid.* Given that “‘lack of identity’ between transgender status and the excluded medical diagnoses,” the Court concluded that the law did not classify based on trans-identifying status. *Ibid.* A similar lack of identity exists

here, for not “all transgender persons have gender dysphoria.” App., *infra*, 167a. So the district court erred in concluding that the Hegseth policy discriminates based on trans-identifying status.

In any event, even if the Hegseth policy discriminated based on trans-identifying status, heightened scrutiny would still be inappropriate. Trans-identifying people are not a suspect or quasi-suspect class. See *Skrmetti*, 605 U.S. at 547-557 (Barrett, J., concurring); *id.* at 566-578 (Alito, J., concurring in part and concurring in the judgment). Moreover, discrimination based on trans-identifying status cannot be equated with discrimination based on sex in this context. See *B.P.J.*, 146 S. Ct. at 2373 (declining to extend *Bostock v. Clayton County*, 590 U.S. 644 (2020), beyond the Title VII employment-discrimination context). And even if the two could be equated, intermediate scrutiny would still be inappropriate because of the deference owed to the military. See *Hawaii*, 585 U.S. at 703-704; *Rostker*, 453 U.S. at 66; p. 22, *supra*.

2. The Hegseth policy satisfies rational-basis review

a. Under rational-basis review, the government “has no obligation to produce evidence to sustain the rationality of” a policy. *Heller v. Doe*, 509 U.S. 312, 320 (1993). Instead, the policy “is presumed constitutional,” and the burden is on the challengers “‘to negative every conceivable basis which might support it,’ whether or not the basis has a foundation in the record.” *Id.* at 320-321 (citation omitted). “Where there exist ‘plausible reasons’ for the relevant government action, ‘[the Court’s] inquiry is at an end.’” *Skrmetti*, 605 U.S. at 522.

Here, the government has undisputedly legitimate interests in maintaining military readiness, cohesion, and good order and discipline, as well as in managing the

military's costs. C.A. App. 65, 103-112. The Hegseth policy is rationally related to those interests. After all, gender dysphoria is a disorder "associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning." *DSM-5*, at 453. Those whom the Hegseth policy disqualifies from military service are individuals who have presumably experienced such distress or impairment—and who may still be experiencing, or may experience again in the future, such distress or impairment. Disqualifying such individuals helps ensure that the military consists of those who can meet "the high mental and physical standards necessary for military service." C.A. App. 48.

To be sure, two of the military's prior policies—*i.e.*, the Carter and Austin policies—permitted individuals with gender dysphoria to undergo "gender transition" and serve in the opposite sex. See pp. 6, 10, *supra*. But the Hegseth policy, like the Mattis policy before it, rests on the Department's considered military judgment that "making accommodations for gender transition" would "likely undermine" "military effectiveness and lethality." C.A. App. 112; see *id.* at 65.

First, accommodating gender transition as a way of addressing gender dysphoria would "present a significant challenge for unit readiness." C.A. App. 106. The report accompanying the Mattis policy, which the Department considered in formulating the Hegseth policy, noted the existence of "considerable scientific uncertainty" concerning whether "transition-related" interventions, such as "cross-sex hormone therapy" and "sex reassignment surgery," "fully remedy * * * the mental health problems associated with gender dysphoria." *Id.* at 103; see *id.* at 64. The Mattis report reasoned, moreover, that even if such interventions could fully remedy

the “serious problems associated with gender dysphoria,” most servicemembers undergoing such interventions could be rendered “non-deployable for a potentially significant amount of time.” *Id.* at 106. The report noted, for example, that some servicemembers would have to leave their “theater of operations” to be able to undergo “cross-sex hormone therapy or sex reassignment surgery.” *Id.* at 104. In formulating the Hegseth policy, the Department also considered more recent reviews that reinforced the same points, including a 2025 medical-literature review that reported that “the strength of evidence on transgender mental health and gender-affirming care is low to moderate,” and a 2021 review that “found that nearly 40% of Service members with gender dysphoria in an observed cohort were non-deployable over a 24 month period.” *Id.* at 64-65.

Second, accommodating gender transition as a way of addressing gender dysphoria would undermine “unit cohesion and good order and discipline.” C.A. App. 107; see *id.* at 106-112. The military maintains separate berthing, bathroom, and shower facilities for each sex. *Id.* at 106. The Mattis report expressed concern that allowing individuals who retained the anatomy of their sex to use the facilities of their preferred gender “would invade the expectations of privacy” of the other servicemembers sharing those facilities. *Id.* at 108; see *United States v. Virginia*, 518 U.S. 515, 550 n.19 (1996) (recognizing the need “to afford members of each sex privacy from the other sex in living arrangements”). The military also maintains different sets of physical-fitness, body-fat, uniform, and grooming standards for males and females, in order to hold them to equivalent standards while accounting for their physiological differences. C.A. App. 106; see *Bauer v. Lynch*, 812 F.3d 340, 351 (4th Cir. 2016).

(rejecting sex-discrimination challenge to sex-based physical-fitness standards for FBI trainees). The Mattis report expressed concern, for instance, that allowing a “biological male” to “compete against females in gender-specific physical training” would pose a serious safety risk and generate perceptions of unfairness. C.A. App. 102; see *id.* at 100; *B.P.J.*, 146 S. Ct. at 2375 (recognizing that “limiting women’s and girls’ sports to biological females” is “substantially related to” “important” state interests in “safety and competitive fairness”); *Bauer*, 812 F.3d at 351 (recognizing that “the physiological differences between men and women impact their relative abilities to demonstrate the same levels of physical fitness”).

Third, accommodating gender transition as a way of addressing gender dysphoria would be “disproportionately costly on a per capita basis.” C.A. App. 112. The Mattis report cited the Department’s own experience under the Carter policy. *Ibid.* The report explained that, since implementation of the Carter policy, medical costs for servicemembers with gender dysphoria had increased nearly 300% compared to servicemembers without gender dysphoria. *Ibid.* Several commanders had also reported that providing servicemembers in their units with transition-related interventions required the use of “operations and maintenance funds to pay for * * * extensive travel throughout the United States to obtain specialized medical care.” *Ibid.* Particularly “in light of the absence of solid scientific support for the efficacy of [transition-related] treatment,” the Mattis report found the costs of accommodating “gender transition” excessive. *Ibid.* And in formulating the Hegseth policy, the Department also considered a more recent review that found that, “between 2015 and 2024, DoD spent

\$52,084,407 providing care to active duty Service members to treat gender dysphoria.” *Id.* at 65.

In deciding not to accommodate gender transition as a way of addressing gender dysphoria, the Department specifically considered—and rejected—“prior DoD policy” that took a contrary approach. C.A. App. 64. That “studied choice of one alternative in preference to another,” *Rostker*, 453 U.S. at 72, in light of “military operations and needs,” *id.* at 68, is precisely the type of judgment deserving of deference, *ibid.* The Constitution does not authorize courts to second-guess the approach to gender dysphoria adopted by the Hegseth policy (and by the Mattis policy before it). See *B.P.J.*, 146 S. Ct. at 2379 (emphasizing that courts “must be cautious about swooping in and invalidating” policies adopted “under circumstances of ‘medical and scientific uncertainty’”) (quoting *Skirmetti*, 605 U.S. at 524).

b. The contrary reasoning below lacks merit. In declaring the Hegseth policy likely unconstitutional, Judge Wilkins divided the category of individuals with a history of gender dysphoria into various subclasses (*e.g.*, individuals with a “remote” history of gender dysphoria), and then expressed doubt that the Hegseth policy was “sufficiently related” to each subclass. App., *infra*, 31a-32a. But this Court’s decision in *B.P.J.* forecloses such a subclass-by-subclass approach even to intermediate scrutiny, much less rational-basis scrutiny.

In *B.P.J.*, the plaintiffs argued that the States’ interests did “not justify excluding *all* biological males—including those who identify as female and have taken puberty blockers or hormones—from participation in women’s and girls’ sports.” 146 S. Ct. at 2376. The Court rejected that argument, explaining that, under intermediate scrutiny, the “validity” of a policy depends on “the

relation it bears to the general problem,” not on “the extent to which it furthers the Government’s interest in an individual case.” *Ibid.* The Court thus declined the plaintiffs’ invitation to divide the category of “biological males” into various subclasses and then ask whether the States’ interests were sufficiently related to excluding each subclass from women’s and girls’ teams. *Id.* at 2375. Even under heightened scrutiny, such a subclass-by-subclass (or “individual-by-individual”) approach was inappropriate. *Id.* at 2377.

It necessarily follows that such a subclass-by-subclass approach is inappropriate here, where the applicable level of scrutiny is only rational-basis and the military is entitled to substantial deference. See, e.g., *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 487 (1955) (upholding a law prohibiting any person who was not a licensed optometrist or ophthalmologist from doing certain work without a prescription, even though “in many cases” an unlicensed optician “c[ould] easily” do the work “without” a prescription). There is no doubt that the government’s interests are rationally related to excluding individuals with a history of gender dysphoria from military service in *general*. After all, the prior Carter, Mattis, and Austin policies all regarded gender dysphoria as *generally* disqualifying. See pp. 6, 8, 10, *supra*. Because the government’s interests are rationally related to excluding such individuals in “general,” a court may not second-guess the extent to which the Hegseth policy “furthers the Government’s interests in an individual case.” *B.P.J.*, 146 S. Ct. at 2376.

Judges Wilkins and Rogers also viewed the Hegseth policy’s waiver provision as unjustifiably narrow. App., *infra*, 32a-33a, 57a-58a. But *B.P.J.* makes clear that the scope of the waiver is constitutionally irrelevant. In

B.P.J., the plaintiffs argued that the laws violated equal protection because they did not make an exception for “biological males” who “identify as female and have taken puberty blockers or hormones.” 146 S. Ct. at 2377. The Court rejected that argument, explaining that as long as the relationship between “the State’s classification and the State’s interests” is “sufficient as a general matter, the State is not *constitutionally* required to grant individualized exemptions to specific athletes or subclasses.” *Ibid.*; see *id.* at 2380 (“[W]hen a sex-based classification is justified as a constitutional matter, as it is here, States need not make case-by-case exceptions—for example, schools need not make individual exceptions to allow certain biological males to compete in women’s and girls’ sports.”). The contention that the Hegseth policy’s waiver provision is unjustifiably narrow fails for the same reason. Because the relationship between the government’s interests and excluding individuals with a history of gender dysphoria (or related interventions) is “sufficient as a general matter,” the government “is not *constitutionally* required to grant individualized exemptions to specific [servicemembers] or subclasses.” *Id.* at 2377.

3. *The Hegseth policy does not reflect animus*

Finally, the courts below erred in declaring the Hegseth policy likely unconstitutional on the view that it reflects animus toward trans-identifying individuals. App., *infra*, 2a-3a, 40a-45a, 263a-274a. Under rational-basis review, a court may infer animus only if the challenged policy “lack[s] any purpose other than a ‘bare . . . desire to harm.’” *Hawaii*, 585 U.S. at 705 (quoting *Department of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973)). That is not the case here. As explained, the Hegseth policy can “reasonably be understood” to serve the govern-

ment’s legitimate interests. *Ibid.*; see pp. 24-28, *supra*. Thus, “[i]t cannot be said that it is impossible to ‘discern a relationship to legitimate state interests’ or that the policy is ‘inexplicable by anything but animus.’” *Hawaii*, 585 U.S. at 706 (quoting *Romer v. Evans*, 517 U.S. 620, 632, 635 (1996)). As the challenged policy has “a legitimate grounding” in the interests discussed above, “quite apart from any [animus],” the Court “must accept that independent justification.” *Ibid.*

In any event, any attempt to infer animus from references to “honesty,” “humility,” “integrity,” and “false gender identity” is misplaced. App., *infra*, 42a. Those references, which appear in the Executive Order and other statements, do not reflect animus any more than similar statements by Justice Thomas—that “[m]en and boys with gender dysphoria are not women or girls, even if they believe that they are”; that “[s]ex is an immutable ‘biological’ characteristic,” which is “binary”; that “‘man’ and ‘woman,’ ‘boy’ and ‘girl,’ are the terms that correspond to adults and children of each sex”; and that “[t]o use language to obscure reality—to show ‘indifference regarding the truth’—is to lie to the public and cease to treat our fellow citizens ‘as equals.’” *B.P.J.*, 146 S. Ct. at 2382 (Thomas, J., concurring) (brackets and citations omitted).

Indeed, using the word “sex” to refer to someone’s “biological sex and not gender identity” is what Congress itself did in Title IX, as this Court has held. *B.P.J.*, 146 S. Ct. at 2371 (majority opinion). There is likewise no animus in requiring “[p]ronoun usage” to “reflect a Service member’s sex,” C.A. App. 50; see *Trump v. Orr*, 146 S. Ct. 44, 46 (2025) (finding no equal-protection problem with “merely attesting to a historical fact”), or requiring individuals who have no history of gender dysphoria or

related interventions to serve in accordance with their sex (which is what the Carter, Mattis, and Austin policies all required too, see pp. 6-7, 10, *supra*). The courts below thus failed to identify any evidence of animus—let alone establish that the Hegseth policy is “inexplicable by anything but animus,” *Hawaii*, 585 U.S. at 706. That conclusion follows *a fortiori* from this Court’s recent decision in *Mullin v. Doe*, *supra*. There, the Court held that, assuming “heightened scrutiny” applied, certain “heated” statements “broadly denigrat[ing]” Haiti and “malign[ing]” its people were “insufficient to show” that race was a “‘motivating factor’” in terminating Haiti’s Temporary Protected Status designation, because the statements had a “strong, race-neutral explanation.” 146 S. Ct. at 2138-2139.

CONCLUSION

The petition for a writ of certiorari should be granted.
Respectfully submitted.

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AUGUST 2026

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5087

NICOLAS TALBOTT, ET AL., PLAINTIFF-APPELLEES

v.

UNITED STATES OF AMERICA, ET AL.,
DEFENDANTS-APPELLANTS

Argued: Jan. 22, 2026
Decided: June 1, 2026

Appeal from the United States District Court
for the District of Columbia
(No. 1:25-cv-00240)

Before: WILKINS and WALKER, *Circuit Judges*, and
ROGERS, *Senior Circuit Judge*.

Opinion announcing the judgment of the Court filed
by *Circuit Judge* WILKINS.

Opinion concurring in part and dissenting in part
filed by *Senior Circuit Judge* ROGERS.

Dissenting opinion filed by *Circuit Judge* WALKER.

WILKINS, *Circuit Judge*:

In the beginning days of his second term in office, President Trump issued an Executive Order proclaiming that persons “expressing a false ‘gender identity’ divergent from an individual’s sex cannot satisfy the rigorous standards necessary for military service.” Exec. Order No. 14183, 90 Fed. Reg. 8757 § 1 (Jan. 27, 2025). The President, and later Secretary of Defense Pete Hegseth (now redesignated as Secretary of War), also declared that persons afflicted with gender dysphoria are unfit for military service because, among other things, the character of such persons (in the President’s and Secretary’s words) is “inconsistent” with the “high standards . . . [of] honesty, humility, . . . and integrity.” DEP’T OF DEF., ADDITIONAL GUIDANCE ON PRIORITIZING MIL. EXCELLENCE AND READINESS (2025) (hereinafter “Hegseth Policy”); *see also* J.A. 50.

In this litigation, the government has not attempted to defend or provide any factual basis for these disparaging characterizations of American citizens. Indeed, the government has not contested that the Plaintiff-Appellees who are currently serving (and who have collectively earned more than 80 commendations) have served honorably and pose no threat to national security, even though they happen to be transgender and have suffered from gender dysphoria.

Instead, the government contends that this case is solely about whether, pursuant to the Hegseth Policy, the military can disqualify persons from military service because they have gender dysphoria, a mental health condition. But the record shows that the purpose of the Hegseth Policy is to target applicants and servicemembers who express what the Administration believes is a

“false gender identity,” and the Policy goes far beyond disqualifying persons currently or recently suffering from gender dysphoria. Some of those disqualifications are completely unexplained and have no reasonable justification. The sharp contrast to the Mattis Policy, adopted in the first Trump Administration, which allowed servicemembers who were transgender or who had suffered from gender dysphoria to remain in the military, appears to be driven by the bare desire to harm a politically unpopular group: persons who identify as transgender. As such, at this preliminary stage, I conclude that the Hegseth Policy is both arbitrary and based upon animus, and for those reasons the Policy violates Plaintiff-Appellees’ constitutional right to equal protection of the law.

These Plaintiff-Appellees consist both of active-duty service members and those desiring to enlist. Under the Hegseth Policy, those Plaintiff-Appellees currently serving in the military—who have been honorably serving for many years—now face expulsion. In a similar vein, in accordance with the Hegseth Policy, those Plaintiff-Appellees desiring to enlist and who have applied for admission to the military are now excluded from accession. I conclude first that the equities are much stronger in favor of the current servicemembers, as compared to those Plaintiff-Appellees who seek admission, and second that the District Court must carefully consider the implications of compelling the Administration to admit persons to the military based upon a preliminary ruling on the merits that could be revisited and reversed after a full trial on the merits. As a result, and for separate reasons, Judge Rogers and I vote to affirm the District Court’s preliminary injunction enjoining the Hegseth Policy as it relates to those Plaintiff-

Appellees already in the military, while Judge Walker and I vote to vacate the preliminary injunction as it relates to the Plaintiff-Appellees seeking accession into the military.

I. Procedural History

After President Trump issued Executive Order 14183 (“EO 14183”) on January 27, 2025, entitled “Prioritizing Military Excellence and Readiness,” Plaintiff-Appellees filed their initial complaint and moved for a preliminary injunction.¹ Plaintiff-Appellees’ Motion for Preliminary Injunction, *Talbott v. United States*, No. 1:25-cv-00240 (D.D.C. Feb. 2, 2025), Dkt. No. 13. Once the government issued its implementing guidance—otherwise known as the Hegseth Policy²—on February 26, 2025, Plaintiff-Appellees filed their Third Amended Complaint, as well as a Renewed Application for Preliminary Injunction. Amended Complaint (Third), *Talbott*, No. 1:25-cv-00240, Dkt. No. 69; Plaintiffs’ Motion for

¹ The Plaintiff-Appellees also sought a temporary restraining order (“TRO”). *See* Plaintiffs’ Motion for Temporary Restraining Order, *Talbott*, No. 1:25-cv-00240, Dkt. No. 14. The District Court held a hearing on the motion for a TRO on February 4, 2025, and ordered the parties to submit a joint status report to determine if a TRO was still needed given the motion for a preliminary injunction. *Id.* Minute Order (Feb. 4, 2025). Ultimately, the District Court granted the motion for a preliminary injunction and never ruled on the motion for a TRO. Mem. Op. Granting Plaintiffs’ Renewed Application for Preliminary Injunction, *Talbott*, No. 1:25-cv-00240, Dkt. No. 89.

² The Department of Defense (“DoD”), later redesignated the Department of War, implemented EO 14183 in a memorandum entitled “Additional Guidance on Prioritizing Military Excellence and Readiness,” referred to in this opinion as the “Hegseth Policy.” *Talbott*, No. 1:25-cv-00240, Dkt. 63-1; J.A. 48.

Preliminary Injunction (Renewed), *Talbott*, No. 1:25-cv-00240, Dkt. No. 72. The Plaintiff-Appellees’ complaint stated that the government violated the equal protection component of the Fifth Amendment because the Hegseth Policy is not based on any legitimate governmental purpose, instead “reflect[ing] animosity toward transgender people because of their transgender status.”³ Amended Complaint (Third), *Talbott*, No. 1:25-cv-00240, Dkt. No. 69 at 6, 68-72. The District Court heard oral argument on Plaintiff-Appellees’ preliminary injunction motion over the course of three separate days, ultimately issuing the injunction on March 18, 2025. *Talbott v. United States*, 775 F. Supp. 3d 283 (D.D.C. 2025).

In its memorandum opinion, the District Court made a number of findings that are relevant to the proceedings before us. First and foremost among them—driving its ultimate conclusion enjoining the Hegseth Policy—was the District Court’s finding that the “Military Ban [referring to both EO 14183 and the Hegseth Policy together] is soaked in animus and dripping with pretext.” *Talbott*, 775 F. Supp. 3d at 326. Further, the District Court found that the Hegseth Policy, which disqualifies from service anyone with a history of gender dysphoria, constitutes a ban on all transgender troops even though it never utilizes the word “transgender.” *Id.* at 301. The District Court ruled that the Policy’s purported exemption was “one in name only,” because “[v]irtually no one”

³ Some Plaintiff-Appellees also lodged violations of procedural due process under the Fifth Amendment claims, as well as estoppel claims. *Talbott v. United States*, 775 F. Supp. 3d 283, 289 (D.D.C. 2025). The District Court did not address either of these claims as it found that Plaintiff-Appellees “established likelihood of success on their equal protection claim,” *id.* at 289 n.12, and neither party has resurrected these claims in this Court.

who was transgender could meet the criteria for exemption. *Id.* at 301-02. Underscoring this finding was the District Court’s understanding that the Hegseth Policy, which even disqualifies those who “exhibit symptoms *consistent with*[] gender dysphoria,” was an “exclusion . . . so broad as to capture persons who have never had gender dysphoria[.]” *Id.* at 324 (emphasis in original). Additional findings from the District Court included that the Administration had “rushed” the Hegseth Policy when it reversed an existing military policy without “comprehensive review,” *id.* at 302, and that the studies relied upon by the government to justify the Hegseth Policy did not support the government’s actions in disqualifying transgender personnel from serving. *Id.* at 303-308.

The District Court then turned to the preliminary injunction analysis, holding that Plaintiff-Appellees had a likelihood of success on their equal protection claim, that they would suffer irreparable harm absent injunction, and that the balance of equities and public interest favor Plaintiff-Appellees. *Talbott*, 775 F. Supp. 3d at 311-33. In analyzing Plaintiff-Appellees’ equal protection claim, the District Court applied intermediate scrutiny, as it found that the Hegseth Policy discriminated on the basis of sex. *Id.* at 315-16. The District Court’s conclusion ultimately relied on the Supreme Court’s decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), which held in the Title VII context that it was “impossible to discriminate against a person for being homosexual or transgender without discriminating against the individual based on sex.” *Id.* at 316 (citing *Bostock*, 590 U.S. at 660). Alternatively, the District Court also found that intermediate scrutiny should apply because the Hegseth Policy discriminated on the basis of transgender status, and transgender persons are a quasi-suspect class. *Id.*

at 319-22. Under the more exacting standard, the District Court held that even with the heightened deference that the judiciary provides to the military, the military's stated legitimate goals of military readiness, unit cohesion, good order, and discipline were not substantially related to the means utilized to achieve those goals in the Hegseth Policy. *Id.* at 322-26.

Even assuming that the Hegseth Policy discriminated on the basis of a medical condition, as the government contended throughout the course of the lower-court proceedings, and even assuming that the more deferential rational basis standard of review applied, the District Court found that the Hegseth Policy still violated equal protection because it was an "unadulterated expression of animus" and reflective of a "bare . . . desire to harm a politically unpopular group." *Id.* at 327 (citing *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). To arrive at this conclusion, the District Court relied upon the Hegseth Policy, as well as EO 14183, a White House Fact Sheet that accompanied that Executive Order, Secretary Hegseth's contemporaneous tweet regarding the Policy, as well as other factors demonstrating that the government "has targeted transgender persons writ large." *Talbott*, 775 F. Supp. 3d at 330 (citation modified).

Three days after the District Court issued its memorandum opinion, the government filed a motion to dissolve the preliminary injunction, highlighting DoD's newly issued March 21, 2025 guidance. Defendants' Motion to Dissolve Preliminary Injunction, *Talbott*, No. 1:25-cv-00240, Dkt. No. 91 at 2 (citation modified). The government explained that the phrase "exhibit symptoms consistent with gender dysphoria" refers only to

the “diagnostic criteria outlined in the Diagnostic and Statistical Manual of Mental Disorders and applies only to individuals who exhibit such symptoms as would be sufficient to constitute a diagnosis[.]” *Id.* (quoting March 21, 2025 guidance) (internal quotations omitted). The District Court held a hearing on the motion that same day, and denied the motion on March 26, 2025, finding that the government had “regurgitat[ed]” its arguments from before, and that nothing relevant had changed that prompted the need to dissolve the preliminary injunction. *Talbott v. United States*, 775 F. Supp. 3d 445, 447 (D.D.C. 2025). The District Court also denied the government’s request for a stay pending appeal but temporarily stayed its injunction until March 28. *Id.*

Appellants then filed an emergency appeal in this Court for a stay of the preliminary injunction pending appeal. We granted an administrative stay on March 27, 2025, heard oral argument on the stay pending appeal the following month, and then subsequently granted that stay in December. J.A. 1311; *Talbott v. United States*, No. 25-5087, 2025 WL 3533344 (D.C. Cir. Dec. 9, 2025) (Motions Panel) (Pillard J., dissenting) (per curiam).

We now have before us the appeal of the preliminary injunction on the merits. For the reasons articulated below and in the separate opinions, we affirm the preliminary injunction as it pertains to the Hegseth Policy for current servicemembers, but we vacate the preliminary injunction with respect to the provisions of the Hegseth Policy applicable to those persons seeking to enlist in the military.

II. Factual Background

The government contends that this case is solely about whether, pursuant to the Hegseth Policy, the mil-

itary can disqualify persons from military service because they have a mental health condition. As the government concedes in its opening brief, “[i]n general, the military has aligned . . . disqualifying [mental health] conditions with the ones listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association.” Appellants’ Br. at 5. However, the record shows that the purpose of the Hegseth Policy is to target applicants and service-members who express what the Administration believes is a “false gender identity,” *see* Exec. Order No. 14183, 90 Fed. Reg. 8757, and the Policy includes disqualifiers that go far beyond persons currently or recently suffering from gender dysphoria. As such, the Hegseth Policy implicates much more than just those mental health conditions appearing in the DSM.

A. Definitions

First, we should define terms. As stated in the 2018 report by then-Defense Secretary James Mattis in the first Trump Administration, when using the term “sex” or “biological sex,” we refer to “a person’s biological status as a male or female based on chromosomes, gonads, hormones, and genitals (intersex is a rare exception).” J.A. 78 n.10 (quoting AGNES GEREKEN SCHAEFER ET AL., RAND NAT’L DEF. RSCH. INST., *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, 75 (RAND Corporation 2016), https://www.rand.org/content/dam/rand/pubs/research_reports/RR1500/RR1530/RAND_RR1530.pdf (“RAND Study”). “Transgender” means an “individua[l] who ha[s] [a] sexual identity or gender expression that differs from their assigned sex at birth.” *Id.* (quoting RAND Study at 75). A subset of transgender persons often have a condition

called gender dysphoria, which was defined in the fifth edition of the DSM as a “marked incongruence between one’s experienced/expressed gender and assigned gender” that “is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.” *Id.* (quoting AM. PSYCHIATRIC ASS’N, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*, 452-53 (5th ed. 2013)).

Some transgender persons, especially those diagnosed with gender dysphoria, choose to “transition” to their preferred gender. *Id.* at 78-79. As explained in the Mattis Report, transition can occur in various ways. “Social transition” occurs when the person lives and works in their preferred gender without hormone treatment or surgery. *Id.* at 93. “Medical transition” refers to using cross-sex hormone therapy and hair removal to align secondary sex characteristics, such as breast development, facial hair or voice depth, with the person’s preferred gender. *Id.* “Surgical transition,” also called sex reassignment surgery, involves surgery on the genitalia and reproductive organs to make them resemble those of the preferred gender as closely as possible. *Id.*

Prior to 2016, the military barred persons diagnosed with “transsexualism,” as defined in the third edition of the DSM, or persons with “gender identity disorder,” as defined in the fourth edition of the DSM. *Id.* at 78, 81-82. “Transsexualism is a gender identity disorder, the sufferers of which believe that they are ‘cruelly imprisoned within a body incompatible with their real gender identity.’” *Farmer v. Moritsugu*, 163 F.3d 610, 611 (D.C. Cir. 1998) (quoting THE MERCK MANUAL OF MED. INFO. 418 (1997)); *see also Farmer v. Hawk-Sawyer*, 69 F. Supp. 2d 120, 121 n.1 (D.D.C. 1999). (“Transsexual-

ism is a condition that exists when a physiologically normal person is extremely uncomfortable and discontent with his or her particular sex and prefers to be the other sex.”). “Gender identity disorder is most simply described as an individual’s confusion or discomfort about his or her sexual status as a biological male or female.” *Hawk-Sawyer*, 69 F. Supp. 2d at 122. Prior to 2016, the military “[a]lso disqualified . . . persons who had undergone genital surgery or who had a history of major abnormalities or defects of the genitalia.” J.A. 78; *see also id.* at 81-82. These two categories of disqualifiers, based on medical diagnoses and medical treatment, had the effect of “prevent[ing] transgender persons, especially those who had undergone a medical or surgical gender transition, from accessing into the military, unless a waiver was granted.” *Id.* at 78.

As discussed in the Mattis Report, the psychiatric community significantly modified the DSM when the manual’s fifth edition was published in 2013:

[I]t changed “gender identity disorder” to “gender dysphoria” and designated it as a “condition”—a new diagnostic class applicable only to gender dysphoria—rather than a “disorder.” This change was intended to reflect the [American Psychiatric Association’s] conclusion that *gender nonconformity alone—without accompanying distress or impairment of functioning—was not a mental disorder.*

Id. at 83 (emphasis added). As one of our sister Circuits has explained, “[a]lthough the DSM once considered ‘transsexualism’ and ‘gender identity disorder’ mental conditions, the modern edition of the DSM explains that gender nonconformity is not in itself a mental disorder.” *Cath. Charities of Jackson, Lenawee, & Hillsdale Cntys.*

v. Whitmer, 162 F.4th 686, 698 (6th Cir. 2025) (Bloomekatz, J. dissenting in part, and dissenting in judgment).

B. Transgender Policy in the Obama Administration

In 2015, then-Secretary of Defense Ashton Carter initiated a working group to identify issues related to open military service by transgender persons. As later described by Secretary Mattis, “[t]his reevaluation . . . was prompted in part by amendments to the DSM that appeared to change the diagnosis for gender identity disorder from a disorder to a treatable condition called gender dysphoria.” J.A. 83.

After a year of research, Secretary Carter’s working group concluded that transgender persons should be allowed to serve openly in the military, as the working group’s findings demonstrated that doing so would have “minimal impact on unit cohesion,” a “negligible” impact on unit readiness, and any health care costs would be an “exceedingly small proportion” of military health care expenditures. *Id.* at 570-71, 649; *see also id.* at 84-85. The DoD then issued the Carter Policy, allowing transgender individuals already enlisted in the military to serve openly starting in summer 2016. *Id.* at 83, 85. The Carter Policy highlighted that for those individuals who were diagnosed with gender dysphoria while in the military, they could begin a treatment plan that could result in the member transitioning genders. *Id.* at 85-86. Such treatment culminated in the member requesting a change of gender marker on the Defense Enrollment Eligibility Reporting System (“DEERS”), with the servicemember beginning to serve in accordance with all standards associated with the member’s transitioned gender. *Id.* at 86.

The Carter Policy also allowed the accession of transgender persons into the military starting in July 2017. *Id.* at 86, 88. To the extent that any person seeking to enlist had a history of gender dysphoria, such medical condition was disqualifying, unless the applicant had been stable (i.e., “without clinically significant distress or impairment”) for 18 months. *Id.* at 86. With respect to past medical treatment related to gender transition, the Carter Policy disqualified persons from joining who had a “history of medical treatment associated with gender transition,” unless (a) the applicant had completed all medical treatment associated with gender transition, (b) the applicant was stable in the preferred gender for 18 months, and (c) if the applicant was presently receiving cross-sex hormone therapy following the gender transition, the individual had been stable on such hormones for 18 months. *Id.* Similarly, a “history of sex reassignment or genital reconstruction surgery” was disqualifying unless 18 months had passed since the date of any such surgery, “no functional limitations or complications” persisted, and no further surgery was required. *Id.* at 86-87. In other words, the Carter Policy disqualified persons with past genital surgery or medical treatments related to gender transition while they were still in the midst of medical or surgical transition and not yet “stable” in their preferred gender. Once such stability was demonstrated, the individual was free to enlist and serve.

C. Transgender Policy from First Trump Administration to the Biden Administration

Before the Carter accession policy could go into effect, however, the Administration changed, and the new Secretary of Defense, James Mattis, deferred the July

1, 2017 date to January 2018 so that the military could review their accession plans. A few months after the election, in August 2017, President Trump issued a memo banning members of the military from serving in a sex different from their sex assigned at birth (hereinafter “2017 Memo”). This ban was enjoined by several courts—including the District Court for the District of Columbia—and this Court declined to stay that injunction pending appeal. *Doe 1 v. Trump*, No. 17-5267, 2017 WL 6553389, at *1 (D.C. Cir. Dec. 22, 2017).

For the next several months following the 2017 Memo, Defense Secretary Mattis convened a panel of military and medical experts, and he issued a new transgender policy in early 2018. The Mattis Report, which formed the basis for the Mattis Policy, began with the “fundamental premise” that “any eligible individual who can meet the high standards for military service without special accommodations should be permitted to serve. This is no less true for transgender persons than for any other eligible individual.” J.A. 73. The Mattis Report recognized that “transgender status alone is not a [mental health] condition[,]” while “[g]ender dysphoria, by contrast, is a mental health condition that can require substantial medical treatment.” *Id.* at 91. Accordingly, the Mattis Policy expressed service qualifications strictly in terms of gender dysphoria and associated medical treatment, rather than on whether an applicant or servicemember expressed a certain gender identity.

Further in accordance with the Report’s identified “fundamental premise,” the Mattis Policy allowed transgender persons who had not transitioned to another gender and who had no history of gender dysphoria to join the military, so long as they were willing and able

to meet the standards of their biological sex, a requirement for accession consistent with the Carter Policy. *Id.* at 75. Transgender persons who required gender transition or who had undergone transition were disqualified from joining the military. *Id.* at 103.⁴ Transgender persons with a history of gender dysphoria were disqualified from joining the military, unless the person could “demonstrate 36 consecutive months of stability (i.e., absence of gender dysphoria) immediately preceding their application[.]” *Id.* at 76. The Mattis Policy used the 36-month stability period as the standard, rather than disqualifying persons with a history of gender dysphoria altogether, because 36 months of stability “[wa]s the same standard the Department . . . applie[d] to persons with a history of depressive disorder.” *Id.* at 113. The Mattis Policy also explained that “[g]iven the documented fluctuations in gender identity among children, a history of gender dysphoria should not alone disqualify an applicant seeking to access the Armed Forces.” *Id.*

Secretary Mattis handled a diagnosis of gender dysphoria differently for persons who were already serving in the military. As the Mattis Policy explained:

Retention standards are typically less stringent than accession standards due to training provided and on-the-job performance data. While accession standards endeavor to predict whether a given applicant will require treatment, hospitalization, or eventual separation from service for medical unfitness, and thus tend to be more cautious, *retention standards focus squarely on whether the Service member, de-*

⁴ The provision did allow for “waivers or exceptions” where “otherwise authorized,” but did not further explain how such waivers or exceptions could be obtained. J.A. 103.

spite his or her condition, can continue to do the job. This reflects the Department's desire to retain, as far as possible, the Service members in which it has made substantial investments and to avoid the cost of finding and training a replacement. To use an example outside of the mental health context, high blood pressure does not meet accession standards, even if it can be managed with medication, but it can meet retention standards so long as it can be managed with medication.

Id. (emphasis added).

Accordingly, while a current diagnosis of gender dysphoria was disqualifying for accession, a person already serving could be retained in the military without the need for a waiver, so long as they were willing and able to serve under the standards of their biological sex, did not require gender transition, and were not non-deployable for more than 12 months (or the applicable policy of their Service branch). *Id.* To the extent a person with a history of gender dysphoria sought a waiver from these standards, the Mattis Policy provided that the gender dysphoria standards “are subject to the same procedures for waiver as any other [mental health] standards.” *Id.*

Secretary Mattis also made a genuine effort to address the reliance interests of those servicemembers who had, prior to the Mattis Policy, already been diagnosed with gender dysphoria and begun medical or surgical transition to their preferred gender. For those servicemembers, the Mattis Policy recognized the “reasonable expectation of these Service members that the Department would honor their service on the terms” that existed under the Carter Policy, and it allowed

them to continue to receive all medically necessary care, change their gender marker in DEERS, and serve in their preferred gender. *Id.* at 76-77, 114. Also grounding this policy was the Department’s “commitment to these [s]ervice members, including the substantial investment it has made in them,” and the Department’s judgment that those factors “outweigh[ed] the risks identified in [its] report.” *Id.* at 114.⁵

When President Biden took office three years later, he directed the Secretaries of Defense and Homeland Security to ensure that all transgender individuals who could meet military standards should be able to serve. The Office of the Undersecretary of Defense for Personnel and Readiness created a working group, and based on the group’s conclusions, Defense Secretary Lloyd Austin released revised accession and retention transgender-related guidelines. The Austin Policy, released in April 2021, allowed transgender personnel to openly serve again, and it mirrored the Obama-era Carter Policy in all material aspects. *Talbott*, 775 F. Supp. 3d at 295-96.

⁵ After the issuance of the Mattis Policy, the government moved to dissolve the preliminary injunction that had been issued based on the 2017 Memo. In *Doe 2 v. Shanahan*, this Court held that there were substantial differences between the 2017 Memo and the Mattis Policy, such that the preliminary injunction against the 2017 Memo should be dissolved. 755 F. App’x. 19 (D.C. Cir. 2019) (*per curiam*). *Doe 2* acknowledged that the government had “substantial arguments” that the Mattis Policy passed constitutional muster, but the Court did not resolve the merits of the equal protection challenge. *Id.* at 25. The Mattis Policy thus went into effect after the dissolution of the preliminary injunction.

D. Transgender Policy Under the Second Trump Administration

When President Trump returned to office in January 2025, military accession and retention policies changed again. But instead of reverting back to the Mattis Policy from his first term, President Trump went much further. On his first day in office, President Trump issued an Executive Order denouncing transgender people and the whole concept of transgender identity as inconsistent with “biological truth.” That framing formed the basis of the new military policy that emerged just one month later.

On Inauguration Day, President Trump issued Executive Order 14168 (“EO 14168”), which emphatically rejected the legitimacy of people who identify as transgender and withdrew federal recognition of transgender people. 90 Fed. Reg. 8615 (Jan. 20, 2025). The President decried “gender ideology,” which he defined as “replac[ing] the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa” *Id.* at 8615 § 2(f). The President described transgender people as employing “gender ideology extremism,” because they are “ideologues who deny the biological reality of sex[.]” *Id.* at 8615 § 1. The central tenet of EO 14168 was that transgender people perpetrate a lie; indeed, part of the title of the Executive Order was “Restoring Biological Truth to the Federal Government.” *Id.*

Just one week later, President Trump demanded that the military implement his vision of “biological truth.” In EO 14183, issued January 27, 2025, the President adopted the definitions of EO 14168 and complained that

“the Armed Forces have been afflicted with radical gender ideology” 90 Fed. Reg. 8757 § 1. The President declared further that “*expressing a false ‘gender identity’ divergent from an individual’s sex* cannot satisfy the rigorous standards necessary for military service.”⁶ *Id.* (emphasis added). The President further proclaimed that “adoption of a gender identity inconsistent with an individual’s sex” conflicts not only “with a soldier’s commitment to an *honorable, truthful, and disciplined* lifestyle,” but also with “the *humility and selflessness* required of a service member.” *Id.* (emphasis added).

In sum, the Commander-in-Chief declared transgender people as categorically unfit for military service explicitly because of their gender identity. To add insult, the President labeled transgender persons as dishonorable, undisciplined, arrogant, selfish liars. The President directed the Secretary of Defense to issue guidance implementing EO 14183 within 30 days. *Id.* at 8758 § 4(c)(i).

Less than two weeks later, Defense Secretary Pete Hegseth reiterated the President’s view that “[e]xpressing a false ‘gender identity’ divergent from an individual’s sex cannot satisfy the rigorous standards necessary for Military Service.” PRIORITIZING MIL. EXCEL-

⁶ One could say that the Executive Order sought “to force conformity with sex” throughout the military. Compare *United States v. Skrametti*, 605 U.S. 495, 516 (2025) (rejecting the argument that the Tennessee law banning certain medical and surgical treatments on gender dysphoric minors sought to “enforce[] a government preference that people conform to expectations about their sex” because it did not employ “sex stereotyping,” such as requiring children to wear “sex-consistent clothing”).

LENCE AND READINESS (Feb. 7, 2025), *Talbott*, No. 1:25-cv-00240, Dkt. 33-1, (“Feb. 7 Memo”). Thus, once again, the purpose of the Policy was expressed in terms of expelling from the military all transgender persons (i.e., people who “express a false gender identity”). To begin implementing this purpose, Secretary Hegseth mandated that “all new accessions for individuals with a history of gender dysphoria are paused, and all unscheduled, scheduled, or planned medical procedures associated with affirming or facilitating a gender transition for Service members are paused.” *Id.*

The extirpation from the military of all persons with a “false gender identity” was Secretary Hegseth’s explicit goal. Targeting persons with a history of gender dysphoria was merely the means of achieving that end.

On February 26, 2025, Secretary Hegseth issued the Hegseth Policy, pursuant to EO 14183 and his February 7 Memo, stating that “the medical, surgical, and mental health constraints on individuals who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria are incompatible with the high mental and physical standards necessary for military service.” J.A. 48. Under the terms of the Hegseth Policy, persons with a history of medical or surgical transition are disqualified from service. *Id.* at 53-54. Applicants and servicemembers are required to self-report any past diagnosis of gender dysphoria or if they are experiencing symptoms “consistent with[] gender dysphoria,” the latter of which leads to a medical examination.⁷ *See id.* at 1290; *Id.* at 1302-03. The Hegseth Policy declared that people with past or present gender dyspho-

⁷ The Hegseth Policy was clarified by several guidance documents issued after February 26, 2025. *See, e.g.*, J.A. 1289-91.

ria do not meet the “high standards for Service member readiness, lethality, cohesion, honesty, humility, uniformity, and integrity.” *Id.* at 50.

The Hegseth Policy’s perspective of gender dysphoria was completely different from that of the Mattis Policy during the first Trump Administration. Secretary Mattis had explained that because the “vast majority” of applicants aged 17 to 24 are ineligible to join the military for one reason or another, a disqualification based on gender dysphoria should not be seen as a stigma:

[N]othing in the policy should be viewed as reflecting poorly on transgender persons who suffer from gender dysphoria, or have had a history of gender dysphoria, and are accordingly disqualified from service. . . . Transgender persons with gender dysphoria are no less valued members of our Nation than all other categories of persons who are disqualified from military service.”

Id. at 77 (emphasis added). Secretary Hegseth, consistent with President Trump, proclaimed the opposite. The Hegseth Policy continued the character attacks asserted in EO 14183, namely that persons afflicted with gender dysphoria are unfit for military service because, among other things, the character of such persons (in the President’s and Secretary’s words) is “inconsistent” with the “high standards . . . [of] honesty, humility, . . . and integrity.” *See id.* at 50.

Accordingly, the Hegseth Policy did not treat gender dysphoria the same as all other mental health conditions, as the Mattis Policy had. While the Mattis Policy evaluated the fitness of those servicemembers with gender dysphoria by placing them in the Disability Evaluation System for a case-by-case assessment (the same as

any other medical condition), *see id.* at 453, the Hegseth Policy mandated that all disqualified persons go through the administrative separation process, which is generally used for personnel accused of misconduct. *Id.* at 55-56; *Id.* at 1315; *Id.* at 1320; *Id.* at 543-44; *see also Talbott*, 775 F. Supp. 3d at 448. While the Mattis Policy disqualification for accession was based on a diagnosis of gender dysphoria within the past three years (the same as other depressive disorders), the Hegseth Policy disqualified all persons with any history of gender dysphoria, regardless of how long ago the person had been stable and symptom-free—even if they were diagnosed as a child. *See* J.A. 50; *Id.* at 203; *Id.* at 1092. And finally, while the Mattis Policy allowed waiver of its disqualifications on a case-by-case basis, the Hegseth Policy precludes anyone—regardless of whether they are currently serving in the military or not—from obtaining a waiver unless they can demonstrate that they have never “attempted to transition,” *see id.* at 210, which appears to exclude anyone who has ever tried to socially transition in their lifetime (such as a biological woman wearing slacks and a tie).⁸ Appellants have never artic-

⁸ “Attempt to transition” must include attempts to socially transition, otherwise the inclusion of the term would have no meaning in the waiver provision. The Hegseth Policy already disqualifies persons who have attempted medical or surgical transition, so including “attempt to transition” in the waiver policy has no effect unless it means some other type of transition—i.e., social transition. At a hearing below, the District Court indicated that “attempt to transition” appears to include social transition, such as a female “wearing pants and slacks . . . [w]ith a tie,” and thus invited Appellants to file a clarifying declaration or guidance document if the term was not intended to be so broad. *See* Tr. of Mar. 12, 2025 hearing, *Talbott*, No. 1:25-cv-00240, Dkt. No. 90 at 168-171. Appellants responded by notifying the District Court that they declined

ulated any basis, medical or otherwise, for such a broad waiver disqualification based on past experience with social transition.

The differences between the Mattis Policy and Hegseth Policy abound, but the divergence is most stark when considering how each Policy treated those diagnosed with gender dysphoria while serving. Unlike the Mattis Policy, the Hegseth Policy makes no real accommodation of the reliance interests of persons with gender dysphoria or persons who had transitioned while serving their country honorably and without incident. The Mattis Policy allowed persons with gender dysphoria who had not begun transitioning to remain in the military, so long as they were willing and able to serve in their biological sex. The Hegseth Policy categorically disqualifies them. The Mattis Policy allowed servicemembers who had transitioned or were in the process of transitioning to remain in the military. Again, the Hegseth Policy categorically excludes them. In response to questions about why these servicemembers were not “grandfathered” as in the Mattis Policy, the Administration’s response in FAQs accompanying the Hegseth Policy was that:

While these individuals have volunteered to serve our country and will be treated with dignity and respect, *expressing a false ‘gender identity’ divergent from an individual’s sex* cannot satisfy the rigorous standards necessary for military service.

J.A. 207 (emphasis added).

to file any further explanation. *See* Defendants’ Notice to Court (Mar. 17, 2025), *Talbott*, No. 1:25-cv-00240, Dkt. No. 86 at 1.

While the Hegseth Policy elsewhere cited costs and readiness as reasons for not retaining servicemembers with gender dysphoria, *see id.* at 65, that statement cannot explain all of the broad disqualifications, such as expelling someone because they had gender dysphoria as a child or because the person once wore clothing or used pronouns associated with a gender other than their biological sex. From all of the circumstances, including the FAQ response, it is clear that the Hegseth Policy was based, at least in part, on an intent to exclude persons from the military due to their gender identity.

III. Analysis

Under the standard set forth in *Winter v. Natural Resources Defense Council, Inc.*, a plaintiff seeking a preliminary injunction must establish: (1) that they are likely to succeed on the merits; (2) that they are likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. 555 U.S. 7, 20 (2008). This Court reviews the District Court’s factual findings for clear error, *see Serono Lab’ys, Inc. v. Shalala*, 158 F.3d 1313, 1318 (D.C. Cir. 1998), “[its] legal conclusions *de novo*,” and “its weighing of the four relevant factors for abuse of discretion.” *In re Fed. Bureau of Prisons’ Execution Protocol Cases*, 955 F.3d 106, 111-12 (D.C. Cir. 2020) (per curiam).

A. Likelihood of Success on the Merits

To determine whether the Plaintiff-Appellees have demonstrated a likelihood of success on the merits of their equal protection challenge (and assuming we will not employ any form of heightened scrutiny), we must analyze whether: (1) the government has set forth a legitimate state interest in distinguishing the military eli-

gibility of persons excluded from military service pursuant to the Hegseth Policy from the eligibility of those who do not face such exclusion, and (2) the Hegseth Policy is rationally related to a legitimate government interest. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985). “A bare . . . desire to harm a politically unpopular group” can never “constitute a legitimate governmental interest.” *Moreno*, 413 U.S. at 535; *see also Cleburne*, 473 U.S. at 447; *Trump v. Hawaii*, 585 U.S. 667, 705 (2018).

Given that this case concerns a policy decision by the military, we will provide “great deference to the professional judgment of military authorities *concerning the relative importance* of a particular military interest.” *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986) (emphasis added). But that does not mean, as the Dissent seems to suggest, *see* Dissenting Op. at 29-44, that when an Article III court is tasked with determining the constitutionality of a military policy, our role is transformed into that of a judicial rubber stamp. While “the tests and limitations to be applied may differ because of the military context[,] [w]e of course do not abdicate our ultimate responsibility to decide the constitutional question” *Rostker v. Goldberg*, 453 U.S. 57, 67 (1981).⁹

⁹ *See also Holder v. Humanitarian L. Project*, 561 U.S. 1, 34 (2010) (“Our precedents, old and new, make clear that concerns of national security and foreign relations do not warrant abdication of the judicial role. . . . the Government’s authority and expertise in these matters do not automatically trump the Court’s own obligation to secure the protection that the Constitution grants to individuals.”) (internal citations omitted); *United States v. Robel*, 389 U.S. 258, 264 (1967) (highlighting that even the invocation of “war power” “does not remove constitutional limitations safeguarding

In *Goldman*, the Court was called upon to determine whether an Air Force regulation mandating uniform dress violated the First Amendment because it precluded a Jewish officer from wearing a yarmulke while in uniform. 475 U.S. at 504. While the Court gave great deference to the military judgment about the “relative importance” of the interest in uniform dress, the Court also made clear that deference to this military interest “d[id] not, of course, render entirely nugatory in the military context the guarantees of the First Amendment.” 475 U.S. at 507. Thus, the Court carefully reviewed the specific requirements of the regulation and evaluated its constitutionality using the test of whether the classification “reasonably and evenhandedly regulated” military dress. *Id.* at 510 (“[W]e hold that those portions of the regulations challenged here reasonably and evenhandedly regulate dress in the interest of the military’s perceived need for uniformity.”).

Something akin to *Goldman*’s “reasonable and evenhanded” test from the First Amendment context has been used to evaluate equal protection challenges to military policies. In *Schlesinger v. Ballard*, 419 U.S. 498 (1975), a male naval lieutenant who twice failed to be selected for promotion challenged a statute that mandated his separation from the military after nine years of service, where the statute applicable to women who twice failed to be promoted did not mandate their separation until after thirteen years of service. The Court gave great deference to the military’s interest in the “up or out” policy, because “[i]n the absence of some mandatory attrition of naval officers, the result would be stag-

essential liberties”) (citing *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 426 (1934)).

nation of promotion of younger officers and disincentive to naval service.” *Id.* at 502.

The Court was careful to note that the sex-based classification was not based on “archaic and overbroad generalizations” about the sexes, but rather on “the demonstrable fact that male and female line officers in the Navy are not similarly situated with respect to opportunities for professional service.” *Id.* at 508. Because women officers had restrictions on participation in combat and most sea duty (which were not challenged), the Court concluded that “Congress may thus quite rationally have believed that women line officers had less opportunity for promotion than did their male counterparts, and that a longer period of tenure for women officers would, therefore, be consistent with the goal to provide women officers with ‘fair and equitable career advancement programs.’” *Id.* (quoting H.R. Rep. No. 216, 90th Cong., 1st Sess., 5). The Court thus upheld the classification as “rational,” observing that “[t]he complete rationality of this legislative classification is underscored by the fact that in corps where male and female lieutenants are similarly situated, Congress has not differentiated between them with respect to tenure.” *Id.* at 508-09. In sum, like in *Goldman*, the Court concluded that the military classification was reasonable and evenhanded.

Rostker followed a similar analytical path. There, the Court considered a due process challenge (essentially equivalent to an equal protection challenge) to a statute that authorized the President to require the registration of males for the draft, but not females. *See* 453 U.S. at 59. Once again, the Court gave great deference to Congress’s determination about the composition of the mili-

tary, *id.* at 64-67, but the Court was careful to note that “[n]one of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs.” *Id.* at 67. The Court observed that “[t]he reconciliation between the deference due Congress and our own constitutional responsibility is perhaps best instanced in *Schlesinger v. Ballard*,” *id.* at 70, and the Court evaluated the statute in a manner similar to the analysis described above. The Court pointed out that Congress had extensively studied and debated the issue before enacting the classification, thus rejecting the challengers’ assertion that Congress acted “unthinkingly” or “reflexively and not for any considered reason.” *Id.* at 72 (internal citations omitted). Because of the extensive hearings and study, the Court reasoned that the classification “was not the ‘accidental by-product of a traditional way of thinking about females.’” *Id.* at 74 (quoting *Califano v. Webster*, 430 U.S. 313, 320 (1977)) (internal citations omitted).

The Court declined to specify whether it was applying heightened scrutiny due to the sex-based nature of the classification or rational basis scrutiny due to deference owed Congressional judgments about the military, because “[a]nnounced degrees of ‘deference’ to legislative judgments, just as levels of ‘scrutiny’ which this Court announces that it applies to particular classifications made by a legislative body, may all too readily become facile abstractions used to justify a result.” *Id.* at 69-70. Instead, the Court focused on whether, when acting within its constitutional authority, Congress transgressed the guarantee of equal protection under the law. *Id.* Based on the fact that women were precluded from service in combat (a restriction that was not challenged), *id.* at 76-77, and the “purpose of registration was to pre-

pare for a draft of combat troops,” the Court held that the sex-based classification was “sufficiently . . . related” to the Congressional purpose. *Id.* at 79. In doing so, the Court observed that Congress is permitted to prioritize military need over equity, but that nonetheless, similarly situated persons must be treated similarly and invidious discrimination will not be countenanced. *Id.* at 79-80.

These precedents demonstrate that the Court has employed something akin to a “reasonable and even-handed” test to review constitutional challenges to classifications made in military statutes and regulations. In doing so, the Court considered military purposes and interests as presumptively legitimate and due great deference, but the Court nonetheless looked to whether the classification was sufficiently related to that governmental purpose or interest. While gender-based classifications were not subjected to heightened scrutiny, the Court did so only after concluding that (1) such classifications were based on detailed study rather than “archaic and overbroad generalizations,” (2) where possible, similarly situated persons were treated similarly, and (3) the classification was not based on invidious discrimination. I will employ the same analysis here.¹⁰

¹⁰ This is not, as the Dissent complains, “a new test.” Dissenting Op. at 33 n.128. It is a description of the factors cited by the Court when upholding military classifications, even though the classifications were based on sex. *See Goldman*, 475 U.S. at 510; *Schlesinger*, 419 U.S. at 508-09; *Rostker*, 453 U.S. at 74, 79-80. It stands to reason that we should examine whether those same factors are present in this case, where a foundational premise of the Hegseth Policy is a sex-based classification. *See* Feb. 7 Memo (“Expressing a false ‘gender identity’ divergent from an individual’s sex cannot satisfy the rigorous standards necessary for Military Service.”).

I note also that both sides ask us to review the likelihood of success of the equal protection challenge mindful of *United States v. Skrametti*, 605 U.S. 495 (2025), which was decided after the District Court’s ruling. *Skrametti* considered a Tennessee law that banned doctors from performing certain medical treatments and surgical procedures on minors as treatment for gender dysphoria. *Id.* at 505-06. The Court held that a state law prohibiting medical interventions to treat gender dysphoria for minors did not classify based on sex or transgender status. Instead, the Court held it was a classification based on a medical condition, as the law did not “prohibit conduct for one sex that it permits for the other.” *Id.* at 510-12. The Court explained that the law “d[id] not mask sex-based classifications,” because these medical treatments were prohibited for both male and female minors, and thus there was no sex discrimination. *Id.* at 513-17. The Court further held that the law was not a classification based on transgender status—a healthcare provider could not provide puberty blockers or hormones to any minor suffering from gender dysphoria, whether the child was transgender or not. *Id.* at 517-19.

As described below, the classifications in the Hegseth Policy have many distinctions from the classifications in *Skrametti*.¹¹ More to the point, the Hegseth Policy does

¹¹ The Supreme Court stayed a nationwide preliminary injunction entered in the Western District of Washington against the Hegseth Policy in *United States v. Shilling*, 145 S. Ct. 2695 (2025), but the Court’s reasoning was not explained and could have been based on impropriety of the universal nature of the injunction. *See Trump v. CASA, Inc.*, 606 U.S. 831, 851-52 (2025). In our Court, a panel stayed the present preliminary injunction. But because the stay panel’s analysis was based on the understanding that “[o]n its face,

not classify whether persons are eligible to serve in the military in a reasonable and evenhanded manner. I focus specifically on three provisions of the Policy: (1) the disqualification from service based on any history of gender dysphoria, however remote, (2) the disqualification from eligibility for a waiver based on any past “attempt to transition,” and (3) the requirement that all persons disqualified under the policy go through the administrative separation process, rather than the Disability Evaluation System.¹²

1. The Hegseth Policy contains classifications that are not sufficiently related to a legitimate government interest.

In *Skrmetti*, the Court observed that “if a law neither burdens a fundamental right nor targets a suspect class,

the [Hegseth] [P]olicy applies only to individuals with gender dysphoria,” *Talbott*, 2025 WL 3533344, at *7, and as described above, the policy actually disqualifies more persons than those with current or recent diagnoses of gender dysphoria, I find its reasoning unpersuasive.

¹² While the Mattis Policy included a severance clause with respect to its grandfathering provisions, *see* J.A. 114, the Hegseth Policy contains no severance clause. Furthermore, Appellants did not ask the District Court, and have not asked this Court, to excise any portion(s) of the Hegseth Policy that it finds unlawful. I therefore conclude that the government “manifests an intent for the entire package to rise or fall together,” *see Bd. of Cnty. Comm’rs of Weld Cnty., Colo. v. Env’t Prot. Agency*, 72 F.4th 284, 296 (D.C. Cir. 2023), and I do not undertake any such severance analysis. *See Nat’l Treasury Emps. Union v. Chertoff*, 452 F.3d 839 (D.C. Cir. 2006) (“[W]e are obliged to respect the fundamental principle that agency policy is to be made, in the first instance, by the agency itself Accordingly, courts generally do not attempt . . . to fashion a valid regulation from the remnants of the old rule.”) (internal citations omitted).

we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.” 605 U.S. at 510 (quoting *Romer v. Evans*, 517 U.S. 620, 631 (1996)). The Court upheld the Tennessee law because it was rationally related to the state’s proclamation of a “legitimate, substantial, and compelling interest in protecting minors from physical and emotional harm.” *Id.* at 516-17 (quoting Tenn. Code. Ann. § 68-33-101(m)).

Here, Appellants have partly justified the Hegseth Policy based on their interests in minimizing health care costs associated with the treatment of gender dysphoria, as well as lessening the risks to readiness and unit cohesion posed by persons with gender dysphoria or persons who have transitioned to another gender. These are legitimate government interests, and they help to explain certain parts of the Policy, like why surgical or hormonal gender transition while serving in the military is prohibited. Yet none of them explain why all persons with a history of gender dysphoria are disqualified, even if the person has been asymptomatic for many years and even if their only diagnosis was as a child. Persons who do not currently suffer from gender dysphoria or with such a remote history of the condition pose no costs or risks to the military. Further, the Hegseth Policy did not even attempt to explain why this broad classification was necessary or appropriate, let alone why this classification is so much broader than the Mattis Policy (which looked back three years).

Similarly, while the Hegseth Policy contains a waiver for both retention and accession where “there is a compelling Government interest in accessing the applicant that directly supports warfighting capabilities,” the waiver is inapplicable to anyone who cannot demon-

strate they have never “attempted to transition.” J.A. 53-55; *Id.* at 210. As discussed above, since persons who have undertaken medical and surgical transition are disqualified by the Hegseth Policy, “attempt to transition” must include attempts to socially transition. To construe the phrase otherwise would strip it of any operative force. The Hegseth Policy never explained why this broad “attempt to transition” language appears in the Policy. Nor does the Policy explain what legitimate government interest this classification furthers. And Appellants never explained this provision in the District Court. In their briefing to this Court, Appellants refer to “attempt to transition” as a “classification based on medical interventions (i.e., cross-sex hormone therapy and sex-reassignment surgery).” *See* Reply Br. at 8. But that formulation conflicts with the plain text of the Hegseth Policy, because it already disqualifies persons who have attempted medical or surgical transition, so including “attempt to transition” in the waiver policy has no effect unless it means some other type of transition—i.e., social transition. The government has not told us what legitimate interest it has in preventing a woman from joining (or remaining in) the military because she used he/him or they/them pronouns at some point during her lifetime, and I cannot think of one.

Further to this point, to the extent that the Hegseth Policy disqualified people who had a current diagnosis of gender dysphoria, it justified the classification on the basis that persons suffering from gender dysphoria do not meet the “high standards for Service member readiness, lethality, cohesion, honesty, humility, uniformity, and integrity.” J.A. 50. Requiring servicemembers to meet those high standards is a legitimate government interest, and the Hegseth Policy presented some evi-

dence demonstrating why gender dysphoria was incompatible with readiness, lethality, cohesion and uniformity. But, Appellants conceded below that they had presented no evidence to establish that persons with gender dysphoria are not honest, humble, and full of integrity, *see id.* at 1212-1213; *Id.* at 1240; *Id.* at 1280, and Appellants never contended, in the District Court or in this Court, that this part of the justification for excluding persons with a history of gender dysphoria has any sufficient relation to a legitimate government interest.

As discussed in Part II, the Hegseth Policy also justified its disqualifying classifications on the grounds that persons “expressing a false ‘gender identity’ divergent from an individual’s sex cannot satisfy the rigorous standards necessary for military service.” *Id.* at 207. Again, setting rigorous standards for military service is of course a legitimate government interest. Yet also again, the Policy and guidance documents offer no explanation or evidentiary support for the statement that transgender persons cannot meet those rigorous standards. The Hegseth Policy FAQs basically say that whether transgender servicemembers can meet rigorous military standards at all is beside the point:

Q. The Secretary of Defense has said that the focus needs to be on “lethality, meritocracy, accountability, standards, and readiness.” Specifically focusing on “meritocracy,” will consideration be given to high performing transgender service members?

A. While these individuals have volunteered to serve our country and will be treated with dignity and respect, expressing a false “gender identity” divergent from an individual’s sex cannot satisfy the rigorous standards necessary for military service.

* * *

Q. Did the Department consider reinstating the Mattis Policy regarding a Service member diagnosed with gender dysphoria and allow them to be grandfathered?

A. While these individuals have volunteered to serve our country and will be treated with dignity and respect, expressing a false “gender identity” divergent from an individual’s sex cannot satisfy the rigorous standards necessary for military service.

Id. at 206-07.

The government abandoned all pretext of trying to craft sex-based classifications that were “sufficiently . . . related,” *see Rostker*, 453 U.S. at 79, to the legitimate government interests in “lethality, meritocracy, accountability, standards, and readiness.” Those interests were dismissed as irrelevant—having the correct gender identity is all that matters. The contrast with the Mattis Policy alone shows that the Hegseth Policy is far from the “reasonable and evenhanded” approach upheld in *Goldman*. *See* 475 U.S. at 510.

When asked by the District Court for evidence that persons with a “false gender identity” cannot satisfy rigorous military standards, Appellants offered none. *See* Tr. of Mar. 12, 2025 hearing, *Talbott*, No. 1:25-cv-00240, Dkt. 90 at 182-83. Indeed, in the proceeding below, Appellants did not contest that all of the currently-serving Plaintiff-Appellees, who have served for a combined 130 years and collectively earned more than 80 commendations, have “served honorably” and “satisfied the rigorous standards” demanded of them. *See Talbott*, 775 F. Supp. 3d at 292, 298. In our Court, Appellants have

made no attempt to explain how the classification—expelling persons who express a “false gender identity”—connects with the government interest in rigorous standards for military service. Rather, Appellants’ strategy seems to be one of willful ignorance, treating this statement as if it was not repeatedly made in the Executive Order and policy documents, and to instead deflect by contending that this case is only about gender dysphoria and medical treatments, the same as in *Skrmetti*. But that is clearly not so.

2. The Hegseth Policy and the Executive Order it is based upon are grounded, at least in part, on archaic and overbroad generalizations about sex, rather than solely on a diagnosis of gender dysphoria or medical treatment related to that condition.

In *Skrmetti*, the Court concluded that the Tennessee law was “simply a prohibition on the prescription of puberty blockers and hormones to treat gender dysphoria,” and that “[a] law prohibiting the administration of specific drugs for particular medical uses” does not warrant heightened scrutiny. 605 U.S. at 515-16. The Court strongly implied that a law that seeks to “force conformity with sex” or “evin[ing] sex-based stereotyping” would be considered a classification based on sex. *Id.*; see also *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644 (2020).

The Mattis Report began with the “fundamental premise” that “any eligible individual who can meet the high standards for military service without special accommodations should be permitted to serve. This is no less true for transgender persons than for any other eligible individual.” J.A. 73. The Hegseth Policy was mandated by an Executive Order which declared that

“*expressing a false ‘gender identity’ divergent from an individual’s sex* cannot satisfy the rigorous standards necessary for military service.” 90 Fed. Reg. 8615, 8615 § 1 (emphasis added). Thus, while the Mattis Policy was not premised on a belief that transgender persons are unfit for the military, the Hegseth Policy is undergirded by the opposite belief. The Hegseth Policy clearly seeks to disqualify persons who do not act in conformity with their sex and who do not adhere to sex-based stereotypes. As discussed above, Secretary Hegseth reiterated those statements in his February 7 Memo, and in the FAQs accompanying the Hegseth Policy. Accordingly, unlike in *Skirmetti*, the challenged policy here is based, at least in part, on sex.

Further, as described below, Appellants have proffered no argument regarding how basing a policy on disfavoring persons with a “false gender identity” constitutes a legitimate government interest. Nor have Appellants demonstrated that there is any factual basis for the statement that persons with a “false gender identity” cannot meet the rigorous standards of military service. Thus, the Hegseth Policy justifies its classifications, at least in part, on factually unsupported (and undefended) archaic and overbroad generalizations about sex, in direct contradiction to the circumstances surrounding the sex-based classifications in *Schlesinger v. Ballard*. Indeed, the Hegseth Policy is a prototypical example of a sex-based classification created “reflexively and not for any considered reason,” in direct contrast to the Congressional action that the Court upheld in *Rostker*. See 453 U.S. at 72.

3. The Hegseth Policy does not treat, where possible, similarly situated persons in a similar fashion. To the extent that gender dysphoria truly forms the basis for some disqualification criteria, gender dysphoria is treated differently than any other medical condition in the military.

In *Skrametti*, the Court upheld Tennessee’s ban on certain treatments for gender dysphoric minors because there were “plausible reasons” for the government to take the action, given the ongoing debate among medical experts regarding the risks and benefits of medical and surgical transition treatments for minors. *See* 605 U.S. at 522-23 (quoting *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993)). In other words, the classification was consistent with ordinary uses of age-based and medical-based standards.

As explained above, the Mattis Policy treated gender dysphoria as an “analog . . . to any other mental condition listed in DoDI 6130.03.” J.A. 113. In other words, under the Mattis Policy, persons with gender dysphoria were treated as similarly situated with persons with other mental health disorders, such as depressive disorder. *Id.*

Here, the Hegseth Policy did not treat persons with gender dysphoria as similarly situated to persons with other mental health conditions. While the Mattis Policy disqualification for accession was based on a diagnosis of gender dysphoria within the past three years (the same as other depressive disorders), the Hegseth Policy disqualifies all persons with any history of gender dysphoria, regardless of how long ago the person has been stable—even if they were diagnosed only once long ago as a child. *See id.* at 50; *Id.* at 203; *Id.* at 1092.

Further, while the Mattis Policy evaluated the fitness of those servicemembers with gender dysphoria by placing them in the Disability Evaluation System for a case-by-case assessment (the same as any other medical condition), *see id.* at 85; *Id.* at 453, the Hegseth Policy mandates that all disqualified persons go through the administrative separation process, which is generally used for personnel accused of misconduct. *Id.* at 53-54; *Id.* at 1297; *Id.* at 1315; *Id.* at 1320. Indeed, former Assistant Secretary of the Air Force Alex Wagner testified without contradiction that administrative separation is generally used for misconduct such as drug abuse or repeated failure to meet standards, while the Disability Evaluation System is ordinarily used for evaluating impacts from medical conditions. *Id.* at 543-44. And former Deputy Assistant Secretary of the Air Force Martha Soper similarly stated in an uncontested declaration that the Hegseth Policy departs from the military's standard practice: "In the typical circumstance, when a service member presents with a medical condition, they go through the Medical Evaluation Board (MEB) process at the wing level. From there, they would be referred to the Disability Evaluation System (DES), which allows the military to consider how a person's medical condition impacts their service and potential deployability." *Id.* at 756.

Thus, servicemembers with every other medical condition receive an individualized review of their circumstances to determine if they can continue to serve—except if they have gender dysphoria.¹³ As the Mattis Report explained, even prior to the time when trans-

¹³ *See Talbott*, 2025 WL 3533344, at *3-4; *see also* J.A. 853-923 (outlining the procedures of the Disability Evaluation System).

gender persons could first serve openly in the military, “transgender persons were not usually processed for administrative separation on account of gender dysphoria or gender identity itself, but rather on account of medical comorbidities (e.g., depression or suicidal ideation) or misconduct due to cross dressing and related behavior.” *Id.* at 82. Plaintiff-Appellees pointed out this abnormal treatment of gender dysphoria in their brief, *see* Appellees’ Br. at 25, and Appellants made no response in reply.

Appellants have therefore conceded that persons with a history of gender dysphoria are not treated the same as similarly situated individuals.

4. The Hegseth Policy contains classifications that are based on invidious discrimination.

In *Skrmetti*, the challengers did not argue that the Tennessee law was based on animus. *See* 605 U.S. at 516. In contrast, Plaintiff-Appellees make such an argument here, and the District Court agreed with them, finding that the Hegseth Policy is “soaked in animus” and that it “stigmatizes transgender persons as inherently unfit.” *Talbott*, 775 F. Supp. 3d at 326. The District Court’s animus finding is well supported by the two Executive Orders, the February 7 Memo, the Hegseth Policy, and the FAQs, all of which contain numerous statements demeaning transgender people as lacking honesty, integrity, and humility because of their gender identity.¹⁴

¹⁴ The Supreme Court hinted in *Trump v. Hawaii* that inquiries into government action, especially in spaces where national security is implicated, might mandate only viewing whether the “policy is facially legitimate,” without reviewing any “extrinsic evidence.”

Appellants do not meaningfully contest the animus finding; they instead ignore the Administration’s repeated statements in their briefing. As deflection, Appellants repeatedly emphasize that the Hegseth Policy classifies on the basis of a medical condition, and that the Policy is premised on legitimate purposes including reducing medical and readiness risks and costs associated with that condition, to proclaim that the Hegseth Policy “belies any suggestion that it is motivated by animus.” *See* Appellants’ Br. at 51. But Appellants cannot just ignore the disparaging statements repeatedly made by the decisionmakers. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266, 268 (1977) (“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available” including “contemporary statements by members of the decisionmaking body”).

Furthermore, as described above, some aspects of the Hegseth Policy disqualify persons who have no current or recent diagnosis of gender dysphoria, so those classifications cannot be justified by concerns about costs, medical and readiness risks, and high standards. In addition, some classifications, like excluding persons from obtaining a waiver because of past experience with social transitioning, have not been explained at all. Nor did Secretary Hegseth explain the reason for processing all

Hawaii, 585 U.S. at 704-05. I need not address the propriety of reviewing extrinsic evidence here, where the two Executive Orders and the February 7 Memo are cited and incorporated into the Hegseth Policy, *see* J.A. 48-50, and the FAQs are “Approved Questions and Answers for Media and Congressional Requests” about the Hegseth Policy, *see id.* at 201.

disqualifications through the administrative separation process rather than the Disability Evaluation System.

What has been clearly and repeatedly explained are the foundational premises of the Hegseth Policy: persons with a “false gender identity” are unfit for the military, and persons with a history of gender dysphoria are also unfit because they lack “honesty, humility, . . . and integrity.” *See* Feb. 7 Memo; J.A. 50. As described above, those animus-filled reasons were expressly given to justify aspects of the Hegseth Policy. *See* J.A. 206-07. As a result, this is not a case where we are left to speculate why the government drafted such broad, undifferentiated classifications. Unless we are going to fall for the old Groucho Marx line—“who are you going to believe, me or your lying eyes?”—we have direct evidence in this case that animus motivated the classifications in the Hegseth Policy.

But even if this were the run-of-the-mill case where the classifications are merely unexplained and we were left with only circumstantial evidence of animus, the Hegseth Policy contains classifications that are “‘divorced from any factual context from which we c[an] discern a relationship to legitimate state interests[,]’ and ‘[their] sheer breadth [is] so discontinuous with the reasons offered for [them]’ that the [classifications] see[m] ‘inexplicable by anything but animus.’” *See Hawaii*, 585 U.S. at 706 (quoting *Romer v. Evans*, 517 U.S. 620, 632, 635 (1996)). These unexplained and unreasoned departures from standard protocols are the kind of “unusual deviation” that provide “strong evidence of a law having the purpose and effect of disapproval of a class” of individuals. *See United States v. Windsor*, 570 U.S. 744, 746 (2013).

All of these things, when taken together, demonstrate that the government's stated reason for issuing the Hegseth Policy as based solely upon gender dysphoria was pretextual, and that instead, the Hegseth Policy was premised, at least in part, on a non-legitimate state interest to harm the politically unpopular group of transgender persons. *See Kelo v. City of New London, Conn.*, 545 U.S. 469, 491 (2005) (Kennedy J., concurring) (“[A] court applying rational-basis review under the Equal Protection Clause must strike down a government classification that is clearly intended to injure a particular class of private parties, with only incidental or pretextual public justifications.”).

For these reasons, I reject the Dissent's conclusion that the Hegseth Policy is not at all based upon animus or that we should endeavor to imagine legitimate justifications for the problematic classifications. *See* Dissenting Op. at 39-44. The government is not allowed to fabricate a legitimate justification for a classification *post hoc*, when it has already articulated an impermissible justification *ex ante*. Nor is our dissenting colleague.

The “any conceivable reason” doctrine came about because neither Congress nor the President is required to give a reason for every classification at the time they make it. *See Heller v. Doe by Doe*, 509 U.S. 312 (1993) (“[A] classification ‘must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.’”) (quoting *Beach Comme'ns*, 508 U.S. at 313). Rational basis doctrine requires us to presume that a classification is based on any plausibly legitimate justification we can imagine when no justification was expressly stated contemporaneously; that follows from

the presumption that when the legislature (or the President) did not give a reason for the classification at the time that they made it, they are presumed to have acted for any plausible constitutional reason. *Id.*

But the doctrine has never allowed the Court to stick its head in the sand, like the proverbial ostrich, and ignore the justification that was expressly articulated at the time the decision was made. Indeed, the law, like common sense, requires the Court to evaluate the validity of the justification that was proclaimed at the time the classification was made. See *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463, n.7 (1981) (“In equal protection analysis, this Court will assume that the objectives articulated by the legislature are actual purposes of the statute, unless an examination of the circumstances forces us to conclude that they ‘could not have been a goal of the legislation.’”) (quoting *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648, n.16 (1975)). As such, “th[e] Court’s review does require that a purpose *may conceivably* or ‘*may reasonably have been the purpose and policy*’ of the relevant governmental decisionmaker.” *Nordlinger v. Hahn*, 505 U.S. 1, 15-16 (1992) (emphasis added) (quoting *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 528-29 (1959)).

It is neither conceivable nor reasonable to conclude that the President acted for reasons other than those he expressly gave in the Executive Order, nor is it conceivable or reasonable to conclude that the Secretary acted for reasons other than the ones he expressly gave when promulgating the Hegseth Policy. See *Allied Stores of Ohio*, 358 U.S. at 530 (in explaining the holding of *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949), the Court observed that “[h]aving themselves specifically declared

their purpose, the Ohio statutes left no room to conceive of any other purpose for their existence”); *see also Nordlinger*, 505 U.S. at 16, n.7 (“After the Court in *Wheeling Steel* determined that the statutory scheme’s stated purpose was not legitimate, the other purposes did not need to be considered[.]”). If we are at the point where invidious reasons that were expressly given for a classification can be completely ignored and replaced with our imagined non-invidious reasons, then equal protection jurisprudence has truly become bankrupt.

* * *

In sum, applying *Skirmetti* and the military precedents described above, Plaintiff-Appellees demonstrated a likelihood of success on the merits that the Hegseth Policy violates the Equal Protection Clause.

B. Irreparable Harm

To demonstrate irreparable harm, the movant must show that the harm is “certain and great,” “actual and not theoretical,” and that it is “beyond remediation” by compensatory or other relief at the conclusion of litigation. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). Accordingly, “loss of earnings or damage to reputation” cannot afford a basis for finding irreparable harm. *Sampson v. Murray*, 415 U.S. 61, 89-90 (1974). That being said, the “loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (citation modified).

Here, Plaintiff-Appellees contend that they have been irreparably harmed because the Hegseth Policy deprives them of “constitutional freedoms,” namely the

loss of their right to equal protection of the law under the Due Process Clause. Appellees’ Br. at 60. Since Plaintiff-Appellees have demonstrated a likelihood of success on the merits—i.e., that the Hegseth Policy violates the equal protection guaranteed to them by the Fifth Amendment—then it follows that they have been irreparably harmed. As we said in *Singh v. Berger*, where we held that the Marine Corps’ refusal to allow plaintiffs to adhere to certain grooming standards in accordance with their religion was a violation of the Religious Freedom Restoration Act, the “indignity of being unable to serve for reasons that . . . bear no relationship to their ability to perform” constitutes irreparable harm. 56 F.4th 88, 110 (D.C. Cir. 2022) (citation modified); *see also* 11A WRIGHT & MILLER, FED. PRAC. & PROC. § 2948.1 (3d ed. 2021) (“[W]hen there is an alleged deprivation of a constitutional right . . . many courts find that no further showing of irreparable injury is necessary.”).

C. Balance of Equities and the Public Interest

I now turn to the balance of equities and public interest, which merge when the government is the opposing party. *See Kareem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020). Even when a plaintiff can show irreparable harm, she is not entitled to a preliminary injunction as a matter of right. *See Winter*, 555 U.S. at 24. We “must balance the competing claims of injury and . . . consider the effect on each party of the granting or withholding of the requested relief.” *Id.* (quoting *Amoco Prod. Co. v. Vill. of Gambell, Alaska*, 480 U.S. 531, 542 (1987)). We review the District Court’s weighing of these factors for abuse of discretion. *Winter*, 555 U.S. at 32.

1. Retention Policy

I begin by reviewing the District Court’s weighing of these factors in granting the preliminary injunction of the Hegseth Policy as applied to current servicemembers.

Appellants argue that any irreparable harm demonstrated by the Plaintiff-Appellees is outweighed by the harm to the government. They state that the Austin Policy, the predecessor to the Hegseth Policy, and which allowed transgender people and persons with a recent diagnosis of gender dysphoria to serve in the military, “poses substantial risks to an effective national defense,” which they classify as “specific predictive judgments by senior military officials” that must be afforded great deference. Appellants’ Br. at 53-54 (internal citations omitted).

But, as the District Court found, there was little “specific predictive judgment[] by senior military officials” involved in the formulation and issuance of the Hegseth Policy. *See Talbott*, 775 F. Supp. 3d at 333 (finding that Appellants had provided “no testimony” from military officers as to the burden a preliminary injunction would place on the government). Indeed, the Mattis Policy—adopted in the first Trump Administration—concluded that the benefits of retaining servicemembers who were transgender or who had suffered from gender dysphoria outweighed any risks they posed to the military. *See* J.A. 114. Moreover, the government put forward no evidence that the Austin Policy posed a substantial risk to national security, and the Plaintiff-Appellees proffered affidavits and declarations all pointing to the contrary. A reversal to the status quo that has been held for four years cannot possibly be deemed a major threat to national security when no such national security threats

were raised in years prior. *Cf. Ziglar v. Abbasi*, 582 U.S. 120, 143 (2017) (“[N]ational-security concerns must not become a talisman used to ward off inconvenient claims—a label used to cover a multitude of sins.”) (internal citations omitted).

Specifically, Appellants have not shown how a preliminary injunction preventing them from removing current servicemembers will harm national security. As shown above, Appellants have not contested that all of the currently serving Plaintiff-Appellees, who dedicated a combined 130 years to military service and collectively earned more than 80 commendations, have served honorably and met all military standards during their service. Appellants have thus forfeited any argument that, for purposes of the balance of equities analysis, retaining these servicemembers will harm national security.

In sum, the balance of equities, as well as the public interest, tips in favor of the Plaintiff-Appellees who are currently serving.

2. Accession Policy

However, the calculus is different for those Plaintiff-Appellees who seek to join the military. While Plaintiff-Appellees who seek admission to the military have been deprived of constitutional freedoms, the harms and equities of their situations are not identical to those of persons already serving. Plaintiff-Appellees seeking admission to the military can still obtain full relief later, following a final adjudication on the merits. For those servicemembers facing expulsion, it is not clear how easily they can be reinstated and made whole. But even if they can be reinstated after being separated, it appears to us to be a much greater hardship to end a military career than to delay the start of one.

Moreover, those Plaintiff-Appellees who have been serving for years have demonstrated that their presence in the military is not harming national security, but we can only make a predictive judgment in that regard for the Plaintiff-Appellees seeking admission. The point about relative risk to national security is particularly relevant because the effect of the preliminary injunction is to revert to the Austin Policy, which allows accession of persons with a history of gender dysphoria so long as they have 18 months of stability. As described above, the Mattis Policy required 36 months of stability for accession because that is the same stability standard for depressive disorder. The shorter stability standard potentially poses increased risk of return of the illness, whereas, the risks are less unknown for persons already serving and being evaluated by their superiors and military doctors. This was a relevant consideration for the District Court in determining whether to stay its hand in imposing a preliminary injunction that would revert to the Austin Policy accession standards. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (“Where plaintiff and defendant present competing claims of injury, the traditional function of equity has been to arrive at a ‘nice adjustment and reconciliation’ between the competing claims[.]”) (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)).

Additionally, we must also consider that this is only a preliminary determination of the merits. It is still possible that following complete factual development and briefing, Appellants could prevail on the merits. If that were to happen, and in the meantime new servicemembers were admitted who would have been excluded under the Hegseth Policy, that would have caused Appellants to admit persons they were actually legally entitled

to exclude—a distinct harm. This is against the public interest. *See Yakus v. United States*, 321 U.S. 414, 440-41 (1944) (“[W]here an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff.”).

Given these differences, the District Court was obligated to consider separately the balance of equities and public interest for those who were already serving in the military as compared to those who are seeking to enlist. Rather, it analyzed—and balanced—both sets of injuries, equities and interests as one. *See Talbott*, 775 F. Supp. 3d at 333. In doing so, the District Court abused its discretion. *See Kickapoo Tribe of Indians of Kickapoo Rsr. v. Kansas v. Babbitt*, 43 F.3d 1491, 1497 (D.C. Cir. 1995) (District Court abuses its discretion when it “failed to consider a relevant factor”); *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1108-11 (D.C. Cir. 2024) (holding that the District Court had abused its discretion in granting a preliminary injunction when it “overlooked” relevant factors in its analysis).

Accordingly, I conclude that the District Court abused its discretion in failing to consider relevant issues when balancing the preliminary injunction factors with respect to the accession standards of the Hegseth Policy. As a result, and for our separate reasons, Judge Rogers and I vote to affirm the preliminary injunction with respect to the retention standards of the Hegseth Policy, while Judge Walker and I vote to vacate the preliminary injunction as to those Plaintiff-Appellees seeking admission to the military. Further, we hold that the District

Court's universal injunction should be narrowed to the named Plaintiff-Appellees who are currently serving in the military. *See Trump v. CASA, Inc.*, 606 U.S. 831, 851-52 (2025).

IV.

For the reasons expressed above and in the separate opinions, we affirm in part, and vacate in part, the District Court's preliminary injunction, and we remand for proceedings consistent with this opinion.

ROGERS, *Senior Circuit Judge*, concurring in part and dissenting in part: On January 27, 2025, President Trump issued Executive Order 14183 that stated:

It is the policy of the United States Government to establish high standards for troop readiness, lethality, cohesion, honesty, humility, uniformity, and integrity. This policy is inconsistent with the medical, surgical, and mental health constraints on individuals with gender dysphoria. This policy is also inconsistent with shifting pronoun usage or use of pronouns that inaccurately reflect an individual's sex.

90 Fed. Reg. 8757. The Secretary of Defense was to implement this policy. *Id.* at 8757-58. As relevant, the Hegseth Policy disqualifies from military service all current servicemembers “who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria” and “who have a history of cross-sex hormone therapy or a history of sex reassignment or genital reconstruction surgery as treatment for gender dysphoria or in pursuit of a sex transition.” Dep’t of Defense, Additional Guidance on Prioritizing Military Excellence and Readiness, at 6 (Feb. 26, 2025) (“the Hegseth Policy”). In addition to this retention policy, the same group of people are barred from accession by appointment, enlistment, or induction into the military. *Id.* at 4. Various waivers are provided under the Hegseth Policy, but they are exceedingly restrictive. *See Wilkins Op.* at 22-23, 32.

On appeal by the government, Judge Wilkins concludes that the district court properly enjoined the Hegseth Policy on retention and abused its discretion on accession upon weighing the equities under the preliminary injunction factors. *See Wilkins Op.* at 4. For the following reasons, I would affirm the order enjoining the

policy on retention and accession, as applied to the named plaintiffs. Therefore, I concur in part, and I respectfully dissent in part on accession, *see* Wilkins Op. Part III.C.2.

I.

A threshold question of law is what level of scrutiny applies in evaluating the plaintiffs-appellees' likelihood of success on the merits of their equal protection claim. In challenging the district court's order enjoining the Hegseth Policy, the government contends that the Policy is subject only to rational basis review because of the high level of deference due to military judgments by the courts. *See* Appellants Br. at 22-27 (citing *e.g.*, *Rostker v. Goldberg*, 453 U.S. 57 (1981), and *Goldman v. Weinberger*, 475 U.S. 503 (1986)). Additionally, the government contends that rational basis review applies independently of military deference because the Hegseth Policy "draws lines based on a medical condition (gender dysphoria)" rather than "identity or status." *Id.* at 26. It compares the Policy to a state law restricting certain medical interventions for minors that the Supreme Court upheld under rational basis review in *United States v. Skrimmetti*, 605 U.S. 495 (2025). Further, the government contends that under rational basis review the Hegseth Policy must be upheld even if it was based in part on animus "so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds." Appellants Br. at 52 (quoting *Trump v. Hawaii*, 585 U.S. 667, 705 (2018)).

These contentions warrant examination. It is undisputed that "courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military inter-

est.” *Goldman*, 475 U.S. at 503; see *Rostker*, 453 U.S. at 64-65. But in neither *Goldman* nor *Rostker* did the Supreme Court hold that rational basis review automatically applies where the military is involved. To the contrary, in *Rostker*, the Court rejected the government’s argument to that effect. 453 U.S. at 69-70. Although the Court deferred to Congress’ determination that only men needed to register for the draft—observing that the issue had been “extensively considered” in “hearings, floor debate, and in committee” including “extensive testimony and evidence,” *id.* at 72—the Court explained that it did “not think that the substantive guarantee of due process or certainty in the law will be advanced by any further ‘refinement’ in the applicable tests as suggested by the Government,” *id.* at 69-70. While focusing on whether Congress violated equal protection, the Court indicated that it would apply intermediate scrutiny as established in *Craig v. Boren*, 429 U.S. 190 (1976). See *id.* at 70.

Nor does the Supreme Court’s recent decision in *Skrametti* necessarily require the Hegseth Policy be assessed under rational basis review. There, the Court upheld state restrictions on the use of certain medical treatments for gender dysphoria in minors. 605 U.S. at 511. It concluded that the restrictions were classified based on age and medical conditions rather than on a person’s sex or transgender identity. *Id.* at 511-18. Notably, in so doing, the Court contrasted regulation of “a class of treatments or conditions” with regulation of “a class of *persons* identified on the basis of a specified characteristic.” *Id.* at 519 n.3. As a result, a policy targeting women would not be sex-neutral merely because it was recast as one targeting “all individuals who have ever, or may someday, menstruate.” *Id.* (citation and

internal quotation marks omitted). Arguably, the same distinction applies here: the Hegseth Policy does not just regulate a particular medical procedure but instead excludes “a class of *persons* identified on the basis of a specified characteristic,” *id.*, namely, transgender individuals, who may have a history or symptoms consistent with gender dysphoria.

And even if rational basis review is the proper standard, it is unclear whether the Supreme Court’s holding in *Trump v. Hawaii* is properly understood as establishing the generalized principle about animus that the government espouses. *See* Appellants Br. at 52. There, the Court addressed the admission and exclusion of foreign nationals, an area in which the political branches exercise a “fundamental sovereign attribute” and the judiciary’s role “is highly constrained.” 585 U.S. at 702, 704 (citations omitted). The Court held that it would review a presidential proclamation barring entry of foreign nationals from six predominantly Muslim countries, including “extrinsic evidence” of animus, and that it would “uphold the policy so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds.” *Id.* at 705. That conclusion does not require lower courts to presume that evidence of animus is immaterial under rational basis review beyond the immigration context in *Trump v. Hawaii*.

At this preliminary, pretrial stage of the proceedings, the court need not resolve complex questions involving the intersection of military deference under *Skrimetti*, and *Trump v. Hawaii*, nor delineate a universal test that would apply to all military contexts, *see* Wilkins’ Op. at 29 & n.10. Even under the highly deferential form of rational basis review espoused by the government, *see*

Appellants Br. at 52, a policy is unconstitutional if it is “inexplicable by anything other than animus.” *Trump v. Hawaii*, 585 U.S. at 706 (quoting *Romer v. Evans*, 517 U.S. 620, 632, 635 (1996)). Plaintiffs-appellees are likely to make that showing. Judge Wilkins identifies three features of the Hegseth Policy that are unexplained and irrational. *See* Wilkins Op. at 24-32, 37-39. At least two are illustrative of that problem, and our dissenting colleague does not suggest that a policy explainable only by animus is constitutional, *see* Walker Op. at 40-43.

First, consider the way in which the Hegseth Policy on retention differs from the standard procedures of the Department of Defense by calling for discharge before individualized assessments are made. *See* Wilkins Op. at 38-39 (citing declaration of former Deputy Assistant Secretary of the Air Force). Government counsel appeared to concede during oral argument that gender dysphoria is the only identifiable medical condition that automatically triggers administrative separation without an individualized assessment of whether the condition is so burdensome on the service member as to preclude continued service. Oral Arg. Tr. At 133-34 (Jan. 22, 2026). In any event, the government has provided no explanation for why this medical condition must be treated differently than all others. Nor is there a basis in the record that enables the court to conclude that gender dysphoria poses a unique danger dwarfing other medical conditions. The district court found, based on record evidence, that the enlisted plaintiffs have collectively “provided over 130 years of military service” and “earned more than 80 commendations” from the military. *Talbott v. United States*, 775 F. Supp. 3d 283, 291 (D.D.C. 2025).

The government’s concerns about the negative impacts on cohesion and privacy do not advance its position. Appellants Br. at 35-38. The government maintains that “permitting individuals to serve inconsistently with applicable sex-specific standards ‘would invade the expectations of privacy’ of other servicemembers” who share “berthing, bathroom, and shower facilities.” *Id.* at 36 (quoting Department of Defense Report and Recommendations on Military Service by Transgender Persons, at 37 (Feb. 2018) (“Mattis Policy”)). That position is disconnected from the government’s repeated refrain that the Hegseth Policy, like the Mattis Policy, is not a “blanket ban” on transgender personnel in the military and is instead an exclusion of individuals who have the medical condition of gender dysphoria, *see, e.g.*, Appellants Br. at 40, for “not all trans-identifying individuals have gender dysphoria” and the Hegseth Policy “permits individuals with a history of gender dysphoria to be considered for waivers,” *id.* at 41. So, according to the government, some transgender individuals may be able to serve capably in the military, while no reason is offered or evident why current service members are barred from the standard individualized evaluation to determine if they can continue to serve.

Second, the Hegseth Policy waiver provision, as implemented, requires that both current servicemembers and applicants show that they “never attempted to transition to any sex” other than their own sex at birth. *See* Hegseth Policy at 4-5; Dep’t of Defense, Memorandum for Senior Pentagon Leadership at 1 (March 4, 2025). The plain text can be understood to exclude anyone who has ever attempted to socially transition and the government, which declined to clarify this provision upon the district court’s request, belatedly and unpersuasively

suggests that the reference is limited to medical interventions. See Wilkins Op. at 22-23 & n.8, 32-33 (citing Reply Br. at 8). It is unclear what interest the military would have in categorically excluding such individuals who otherwise meet the criteria for a waiver under the Hegseth Policy. Like the retention policy, this aspect of the accession policy appears designed to target a group of disfavored people, not to address a particular medical condition.

The Supreme Court’s recent stay order in *United States v. Shilling*, 145 S. Ct. 2695 (2025), does not require a different conclusion, but signals the need to narrow the injunction to apply only to the named plaintiffs-appellees. There, the Court stayed, without explanation, a nationwide preliminary injunction of the Hegseth Policy in the Western District of Washington. *Shilling v. United States*, 773 F.Supp.3d 1069, 1098-99 (W.D. Wash. 2025). The stay was issued shortly before *Trump v. CASA, Inc.*, 606 U.S. 831, 837 (2025), holding that such universal relief issued by the district court “likely exceed[s] the equitable authority that Congress has granted to federal courts.” In *Shilling*, the district court determined that it was unnecessary to consider whether the Hegseth Policy had been fueled by animus. Compare *Shilling*, 773 F.Supp.3d at 1098-99, with *Talbott*, 775 F. Supp. 3d at 326-32.

The cases cited in the dissent do not require a different conclusion either. While the Supreme Court has emphasized the need for deference to military judgments, it has also repeatedly recognized that constitutional rights still apply in this realm. See, e.g., *Rostker*, 453 U.S. at 67-68 (stating that Congress is not “free to disregard the Constitution when it acts in the area of military af-

fairs,” because “[i]n that area, as any other, Congress remains subject to the limitations of the Due Process Clause”); *Goldman*, 475 U.S. at 507 (stating that unique aspects of military life “do not, of course, render entirely nugatory in the military context the guarantees of the First Amendment”); *Chappell v. Wallace*, 462 U.S. 296, 304 (1983) (“This Court has never held, nor do we now hold, that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service.”); *cf. Weiss v. United States*, 510 U.S. 163, 176 (1994) (“Congress, of course, is subject to the requirements of the Due Process Clause when legislating in the area of military affairs, and that Clause provides some measure of protection to defendants in military proceedings.”). *See also* Wilkins Op. at 25 & n.9. In looking past this principle, our dissenting colleague embraces a logic of military deference that has no clear end point. *See, e.g.,* Walker Op. at 9. Notwithstanding the postulate that “[o]nly the Executive and Congress are responsible for system-wide military judgments about the composition of the armed forces,” *id.* at 45, the courts *do* have a role in evaluating military determinations that intrude upon individual constitutional rights, as the Supreme Court has repeatedly made clear in drawing the line between exercises of military judgment and constitutional rights held by members of the military.

Therefore, because features of the Hegseth Policy are inexplicable by anything other than animus, and the “loss of constitutional freedoms” is an irreparable injury, *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009), plaintiffs-appellees have shown irreparable harm by demonstrating a likelihood of success on their equal protection claim.

II.

The remaining question is whether the district court erred by enjoining the Hegseth Policy on accession. In the district court, neither of the parties raised the issue of severability on the merits. On appeal, the government has not challenged the record evidence on which the district court relied in issuing the injunction on retention and accession. Evidence before the district court included declarations showing professional and economic harms by plaintiffs who were seeking to join the military and claimed that the Policy violated their constitutional rights. *See, e.g.*, Declarations of Koda Nature and Cael Neary.

So, the question is whether the district court abused its discretion in weighing the preliminary injunction factors. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008); *Clevinger v. Advoc. Holdings, Inc.*, 134 F.4th 1230, 1233 (D.C. Cir. 2025). Judge Wilkins concludes that it has. In his opinion, the district court “was obligated to consider separately the balance of equities and public interest for those who were already serving in the military as compared to those who are seeking to enlist” and overlooked a relevant factor by considering “both sets of injuries, equities and interests as one.” Wilkins Op. at 49. He posits that the “relative risk to national security” may be more significant for the accession policy than the retention policy because the “Plaintiff-Appellees who have been serving for years have demonstrated that their presence in the military is not harming national security, but we can only make a predictive judgment in that regard for [those] seeking admission.” *Id.* at 48.

Under the abuse of discretion standard, the question before an appellate court is not whether it “would as an original matter” reach a particular result; instead, “it is

whether the District Court abused its discretion in doing so.” *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 707 (1982) (quoting *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642 (1976) (citing C. WRIGHT & A. MILLER, *FEDERAL PRACTICE & PROCEDURE: CIVIL* § 2284, p. 765 (1970), and cases of the Eighth and Second Circuits Courts of Appeal)). The abuse of discretion standard “contemplates reasoned decision making on the basis of relevant and appropriate considerations to the task at hand.” *Kickapoo Tribe of Indians of Kickapoo Rsr. v. in Kansas v. Babbitt*, 43 F.3d 1491, 1497 (D.C. Cir. 1995). In reviewing for abuse of discretion, the appellate court considers whether the district court “failed to consider a relevant factor,” whether it “relied on an improper factor,” and whether its “reasons given reasonably support the conclusion.” *Id.* (quoting *Johnson v. United States*, 398 A.2d 354, 365 (D.C. 1979), and citing Maurice Rosenberg, *Judicial Discretion of the Trial Court, Viewed from Above*, 22 SYRACUSE L. REV. 635 (1971)). A district court does not abuse its discretion simply because an alternative conclusion may also be permissible; the appellate court’s inquiry is instead whether the determination upon review “was a permissible alternative available to the district court.” *United States v. Kanu*, 695 F.3d 74, 81 (D.C. Cir. 2012); see *United States v. Volvo Powertrain Corp.*, 758 F.3d 330, 345 (D.C. Cir. 2014) (citations omitted). This characteristic distinguishes review for abuse of discretion from review of factual findings for clear error and *de novo* review for questions of law. Rosenberg, 22 SYRACUSE L. REV. at 646 (analyzing federal and state cases).

The district court, upon concluding that the plaintiffs were likely to succeed on their equal protection claim,

balanced the equities and the public interest, and determined that the Hegseth Policy should be enjoined. *Talbott*, 775 F. Supp 3d at 332-33. The court concluded that the plaintiffs and the public interest would be harmed by the enforcement of an unconstitutional policy, while the government had failed to demonstrate that leaving the prior policy in place would impede the military. *Id.* The prior accession policy had been in effect from 2021 to 2025, yet neither the Hegseth Policy nor the government provided “any studies or declarations that explain why maintaining the status quo pending litigation would unfairly burden the military.” *Id.* at 333. Instead, the plaintiffs’ evidence indicated the opposite: summarizing “declarations from the military leaders responsible for integrating transgender persons into open military service,” the district court found that this evidence showed that “recruiting, unit cohesion, and military readiness have improved since 2021.” *Id.* at 292. That evidence, the district court concluded, indicated that accession under the Hegseth Policy would harm military interests. *See id.* at 333. An uncontested declaration of the Secretary of the Navy who served from 2021 to 2025 stated that “there is no evidence-based justification for excluding from service someone who meets all applicable standards merely because they are transgender,” and “such exclusion would harm military readiness by depriving our force of qualified personnel who have proven their ability to serve.” *Id.* at 308 (citation and alterations omitted).

Given the uncontested record evidence and the nature of this court’s review for abuse of discretion, the district court did not abuse its discretion in enjoining the Hegseth Policy on accession. This is so even if based on the evidence and argument before it, the district court

could have concluded that the retention policy imposes “a much greater hardship” on those currently in the military than those who seek to join it, as Judge Wilkins concludes, Wilkins Op. at 48, and only enjoined the Hegseth Policy on retention due to national security concerns. But the existence of a permissible alternative is not the same as showing that the district court abused its discretion by choosing another permissible alternative. *See, e.g., Volvo Powertrain Corp.*, 758 F.3d at 345; *Kanu*, 695 F.3d at 81.

The district court recognized that deference was due to the military’s judgment, not “[b]lind [d]eference.” *Talbott*, 775 F. Supp. 3d at 291, 312-13 (citing, *e.g., Rostker*, 453 U.S. at 72, 83). That court exhaustively reviewed the record evidence and the parties’ arguments. *See id.* at 300-33. That court reached conclusions based on the uncontested declarations by military officials about the very issue now of concern to Judge Wilkins: potential harm to the military if plaintiffs-appellees were permitted to join the military service. *Id.* at 333. No relevant factor was overlooked. Suggesting that the district court erred in balancing the equities by not framing its analysis of harm in terms of the “greater hardship” in “end[ing] a military career” as opposed “to delay[ing] the start of one” and by not speculating that “the shorter stability standard [of the prior policy] potentially poses increased risk of return of the illness,” Wilkins Op. at 48, “fail[s] to give the trial court the deference that is the hallmark of abuse-of-discretion review.” *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 143 (1997). That suggestion is at odds with the district court’s factual findings of harm to the military under the Hegseth Policy on accession by contrast with military improvements under the prior policy, based on uncontested dec-

larations of military officials. *See, e.g.*, Wilkins Op. at 34-36, 41-42. No record evidence confirms the medical speculation offered by Judge Wilkins. So far, then, the government has not presented a basis for this court, upon review for abuse of discretion, to vacate the injunction on accession, and, therefore, I respectfully dissent and do not join Judge Wilkins' opinion in Part III.C.2.

Accordingly, I would affirm the order of the district court enjoining the Hegseth Policy on retention and accession, as modified to apply to the named plaintiffs, *see Trump v. CASA, Inc.*, 606 U.S. at 837.

WALKER, *Circuit Judge*, dissenting:

Judge Stephen Williams, “one of the most distinguished jurists ever to serve on the D.C. Circuit Court of Appeals,”¹ wrote seven years ago that in the military “there is no constitutional right for, say, biological males who identify as female to live, sleep, shower, and train with biological females. Whether allowing such flexibility in military service is a good idea or not is of no concern to the courts; that is a question for the people acting through their elected representatives.”²

Now, as then, transgender plaintiffs object to a policy that excludes them from the military. Now, as then, the district court has enjoined the policy’s operation. And now, as then, the Government has appealed.

“Once we abstract away from the politically charged subject-matter—as we must—this is a straightforward legal case.”³ We have neither the expertise nor the authority to decide whether the military can exclude the plaintiffs from its ranks. The Constitution assigns that authority to Congress and the Commander in Chief.

Because their claim flouts that division of power, the plaintiffs cannot identify a single binding precedent holding that the Constitution dictates a composition of forces contrary to the preferences of our nation’s political branches.⁴

¹ Michael S. Greve, *A Remembrance of Stephen F. Williams*, Law & Liberty (Nov. 16, 2020), <https://perma.cc/MS4U-CC74>.

² *Doe 2 v. Shanahan*, 917 F.3d 694, 707-08 (D.C. Cir. 2019) (Williams, J., concurring in the result).

³ *Id.* at 707.

⁴ *Id.*; see also *infra* note 130.

Not one.

That black hole of futile claims has swallowed up assertions of free speech.⁵ And free exercise.⁶ And due process.⁷ And the right to counsel.⁸ And, as here, equal protection.⁹

In each of those cases, the Supreme Court said that the military can deprive its members of rights that the Constitution may well guarantee to civilians.¹⁰ Like today's majority, I cherish those rights, and so I understand the impulse behind the majority's unprecedented intervention into military affairs. But because the plaintiffs are service members not civilians, and because we are judges not generals, I respectfully dissent.

I. Factual Background

For a decade, every presidential administration has changed the U.S. military's personnel policies regarding gender dysphoria and transgender service members. Each new policy was announced as an explicit rejection of the prior approach.¹¹

⁵ *Parker v. Levy*, 417 U.S. 733, 761 (1974).

⁶ *Goldman v. Weinberger*, 475 U.S. 503, 504 (1986); *see also Austin v. U.S. Navy Seals 1-26*, 142 S. Ct. 1301 (2022).

⁷ *Schlesinger v. Councilman*, 420 U.S. 738, 742 (1975).

⁸ *Middendorf v. Henry*, 425 U.S. 25, 28 (1976).

⁹ *Rostker v. Goldberg*, 453 U.S. 57, 57 (1981).

¹⁰ *See Parker*, 417 U.S. at 759 (quoting *United States v. Priest*, 45 C.M.R. 338, 344 (1972)); *Goldman*, 475 U.S. at 506-07; *Councilman*, 420 U.S. at 738, 757; *Middendorf*, 425 U.S. at 43; *Rostker*, 453 U.S. at 57 n.6.

¹¹ *See, e.g., Doe 2 v. Shanahan*, 917 F.3d 694, 697 (D.C. Cir. 2019) (Wilkins, J., concurring) ("On June 30, 2016, Secretary Carter issued Directive-Type Memorandum 16-005 ('Carter Policy'), which

Before 2016, military regulations “effectively banned all transgender persons from either joining or remaining in the military.”¹² The military’s medical standards

announced ‘that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness,’ and set forth a policy permitting service by qualified transgender individuals.”); *id.* at 698 (“The 2017 Presidential Memorandum reversed the Carter Policy. President Trump explained that ‘[s]hortly before President Obama left office, . . . his Administration dismantled the Departments’ established framework by permitting transgender individuals to serve openly in the military, authorizing the use of the Departments’ resources to fund sex-reassignment surgical procedures, and permitting accession of such individuals after July 1, 2017 [later extended to January 1, 2018].”); *id.* (“President Trump further declared: ‘In my judgment, the previous Administration failed to identify a sufficient basis to conclude that terminating the Departments’ longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources, and there remain meaningful concerns that further study is needed to ensure that continued implementation of last year’s policy change would not have those negative effects.’”); Exec. Order No. 14004, *Enabling All Qualified Americans To Serve Their Country in Uniform*, 86 Fed. Reg. 7471, 7471 (Jan. 28, 2021) (“the previous administration relied on a review that resulted in a policy that set unnecessary barriers to military service. It is my judgment that the Secretary of Defense’s 2016 conclusions remain valid. . . .”); Exec. Order No. 14183, *Prioritizing Military Excellence and Readiness*, 90 Fed. Reg. 8757, 8757 (Feb. 3, 2025) (“Recently, however, the Armed Forces have been afflicted with radical gender ideology to appease activists unconcerned with the requirements of military service like physical and mental health, selflessness, and unit cohesion.”).

¹² *Doe 2*, 917 F.3d at 696 (Wilkins, J., concurring). Though the policy officially changed in 2016, the military’s approach “began to change in 2015” when “then-Secretary of Defense Ash Carter issued a memorandum to the secretaries of the military departments directing” them not to treat service members’ “gender identity” as a basis for choosing not to retain them. *Id.* at 697.

excluded all who “did not *identify* with the gender assigned to them at birth” regardless of whether they had been diagnosed with gender dysphoria, regardless of whether they had attempted to “transition[] to their preferred gender,” and regardless of their “willing[ness] to serve pursuant to the military standards applicable to the sex assigned to them at birth.”¹³

That changed in 2016 when the military adopted a more permissive set of policies.¹⁴ The new policy for people entering the military allowed people with a history of gender dysphoria to join and serve in their biological sex if they had demonstrated 18 months of stability in their biological sex.¹⁵ The new retention policy allowed them to continue serving if they met deployability standards.¹⁶ Those who had not completed a gender transition were required to serve in their biological sex; those who had completed a transition could serve in their preferred gender.¹⁷

Then in 2018, the military returned to a more restrictive approach.¹⁸ It adopted a policy similar to the pre-2016 policy, except that it grandfathered in service members who had relied on the more permissive 2016

¹³ *Id.*

¹⁴ *Id.* (“allowing current transgender servicemembers to serve under the same standards as cisgender (non-transgender) servicemembers and prohibiting the discharge of otherwise qualified servicemembers solely on the basis of their gender identity” (cleaned up)); *id.* at 698 (directive to DoD “to update its standards for persons entering the military . . . by July 1, 2017”).

¹⁵ *See id.* at 710, 712 tbl. 1 (Williams, J., concurring in the result).

¹⁶ *See id.* at 710-11, 712 tbl. 1.

¹⁷ *See id.*

¹⁸ *See id.* at 699-700 (Wilkins, J., concurring).

policy. So people could no longer join the military if they had begun or completed a gender transition.¹⁹ But service members who had already begun or completed a transition before the policy went into effect received a “reliance exception” and could continue serving.²⁰

Shortly after President Biden took office in 2021, he directed the military to return to a permissive policy regime “to ensure that all transgender individuals who wish to serve in the United States military and can meet the appropriate standards shall be able to do so openly and free from discrimination.”²¹ The military formally adopted policies implementing that directive shortly thereafter.²² These were materially similar to the framework adopted in 2016, which allowed transgender service members to serve openly while being “subject to the same standards” as other service members.²³

Then, days after President Trump took office in 2025, he directed the military to adopt its most restrictive set of policies since 2016.²⁴ And once again, the military began to act on that directive shortly thereafter.

¹⁹ See *id.* at 711, 712 tbl. 1 (Williams, J., concurring in the result).

²⁰ See *id.*

²¹ Exec. Order No. 14004, 86 Fed. Reg. at 7471.

²² See U.S. Dep’t of Def., DoD Instruction 1300.28, *In-Service Transition for Transgender Service Members* (Apr. 30, 2021).

²³ See JA 418 (“Transgender Soldiers will be subject to the same standards as any other Soldier of the same gender.”) (2016 policy); JA 448 (“transgender Service members will be subject to the same standards as all other Service members”) (2021 policy).

²⁴ Exec. Order No. 14183, 90 Fed. Reg. at 8757 (“It is the policy of the United States Government to establish high standards for troop readiness, lethality, cohesion, honesty, humility, uniformity, and integrity. This policy is inconsistent with the medical, surgical,

On February 26, 2025, the military adopted a new policy disqualifying from service “individuals who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria,” on the ground that “the medical, surgical, and mental health constraints” on these individuals do not meet “the high mental and physical standards necessary for military service.”²⁵ Existing service members whom the policy disqualified would “be processed for separation from military service” with an “honorable” discharge unless “the Service

and mental health constraints on individuals with gender dysphoria.”).

²⁵ JA 48.

The majority agrees that the policy at issue was announced on February 26, 2025, in the memorandum I cite here. *See* Majority Op. at 5. But the majority frequently refers to an earlier memorandum, issued on February 7, 2025, which ordered a pause on “all new accessions for individuals with a history of gender dysphoria” and all “medical procedures associated with affirming or facilitating a gender transition for Service members.” SecDef Memo, *Talbott v. United States*, No. 1:25-cv-240 (D.D.C. Mar. 4, 2025), Dkt. No. 33-1. That memo stated that the military “must ensure it is building ‘One Force’ without subgroups defined by anything other than ability or mission adherence” and expressed concern about “[e]fforts to split our troops along lines of identity” that “weaken our Force and make us vulnerable.” It then quoted a portion of Executive Order 14183: “‘Expressing a false “gender identity” divergent from an individual’s sex cannot satisfy the rigorous standards necessary for Military Service.’” *Id.*

Aside from the pause on medical procedures, the memo did not include guidance regarding current service members. Instead, it stated that “[i]ndividuals with gender dysphoria have volunteered to serve our country and will be treated with dignity and respect” and authorized the Under Secretary of Defense for Personnel and Readiness to issue guidance for Service members “to implement this direction.” *Id.*

member’s record otherwise warrant[ed].”²⁶ A disqualified member may seek a waiver “on a case-by-case basis” upon a showing of “a compelling Government interest . . . that directly supports warfighting capabilities,” along with 36 months of mental stability, no prior attempts to transition to another sex, and willingness to adhere to the military’s sex-specific standards.²⁷

An action memo issued the same day elaborated on the policy’s rationale. Military service, the memo emphasized, requires personnel who are “mentally and physically fit for duty” and able to “deploy, fight, and win, including in austere conditions and without the benefit of routine medical treatment or special provisions.”²⁸ The memo cited a 2021 Department of Defense study finding that “nearly 40% of Service members with gender dysphoria . . . were non-deployable over a 24 month period”²⁹ and a 2025 medical-literature review reporting significantly elevated rates of suicidal ideation, suicide attempts, and psychiatric diagnoses among transgender people.³⁰ Continued service by people with gender dysphoria, the memo concluded, was incompatible with the military’s “rigorous standards and national security imperative to deliver a ready, deployable force.”³¹

The plaintiffs filed this suit challenging the President’s executive order the day after it was issued and

²⁶ JA 50.

²⁷ JA 55.

²⁸ JA 62.

²⁹ JA 64.

³⁰ JA 64-65.

³¹ JA 65.

moved for injunctive relief a week later.³² Soon after the military adopted the implementing policy, the plaintiffs amended their complaint and renewed their motion for injunctive relief, asking the court to enjoin enforcement of the policy.³³

The district court decided that this latest change in the decade-long back-and-forth of military policy is likely unconstitutional.³⁴ The court preliminarily enjoined the military from enforcing its new policies.³⁵ To remove any doubt, the district court specified that its order effectively requires the military “to maintain the *status quo*” established by the previous administration.³⁶

Today’s majority now concludes that a narrow set of disqualifications in the new military policy are “unexplained and unreasoned” and that some of the reasons the military provided for the policy reveal animus.³⁷ The majority finds those problems with some parts of the policy sufficient to override the longstanding tradition of deference to military decisionmaking and to affirm a

³² JA 21.

³³ Motion for Preliminary Injunction (Renewed), *Talbott v. United States*, No. 1:25-cv-240 (D.D.C. Mar. 7, 2025), Dkt. No. 72.

³⁴ *Talbott v. United States*, 775 F. Supp. 3d 283, 316 (D.D.C. 2025) (“Plaintiffs are likely to succeed on their claim that the Military Ban is subject to intermediate scrutiny because it classifies based on sex and transgender status, two distinct quasi-suspect classes. Plaintiffs are also likely to succeed on their claim that the Military Ban fails intermediate scrutiny.”).

³⁵ JA 1207-09.

³⁶ JA 1207.

³⁷ Majority Op. at 42.

preliminary injunction of the *entire* policy as it relates to retention of the plaintiff service members.³⁸

II. Legal Background

The Constitution entrusts the political branches, not courts, with judgments about military readiness and effectiveness. Indeed, “[i]t would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches,” which are “directly responsible—as the Judicial Branch is not—to the electoral process.”³⁹

Constitutional authority aside, prudence points in the same direction: “it is difficult to conceive of an area of governmental activity in which the courts have less competence.”⁴⁰

As a result, “courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs”—that is, “unless Congress specifically has provided otherwise.”⁴¹ The judiciary’s lack of institutional competence explains why judges *should* defer to the political branches in matters bearing on military-wide force composition, training, discipline, and readiness; constitutional structure explains why we *must*.

³⁸ Because Judge Wilkins finds that the balance of equities tips in favor of the military with respect to the plaintiffs seeking to join the military, he would vacate the district court’s injunction of the policy as it relates to accession. Wilkins Op. at 47-50. I concur with that conclusion, though I would ground that decision in deference to military decisionmaking on both likelihood of success on the merits and the balance of equities.

³⁹ *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973).

⁴⁰ *Id.*

⁴¹ *Department of Navy v. Egan*, 484 U.S. 518, 530 (1988).

A. The Constitution

The Constitution allocates military authority between Congress and the President. Article I empowers Congress to “raise and support Armies,” to “provide and maintain a Navy,” and to “make Rules for the Government and Regulation of the land and naval Forces.”⁴² Article II vests the President with “[t]he executive Power” and confirms that he is “Commander in Chief” of the armed forces.⁴³

These provisions establish the core structural principle of military governance: The two political branches govern the military.

In Federalist No. 23, Alexander Hamilton defended this allocation as “essential to the common defense.”⁴⁴ Because “[t]he circumstances that endanger the safety of nations are infinite,” the military powers vested in the political branches “ought to exist without limitation.”⁴⁵ Whether to create a federal defense power at all was, he conceded, “open to discussion.”⁴⁶ But once that question was answered, “there can be no limitation of that authority . . . in any matter essential to the *formation, direction, or support* of the NATIONAL FORCES.”⁴⁷

⁴² U.S. Const. art. I, § 8, cls. 12-14.

⁴³ *Id.* art. II, § 1, cl. 1; *id.* § 2, cl. 1.

⁴⁴ The Federalist No. 23, at 153 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 154.

B. Modern Caselaw

For more than seventy years, the Supreme Court and the D.C. Circuit have looked to that constitutional structure and come to the same conclusion: Courts must not second-guess military judgments about how the armed forces are structured, trained, and operated. Instead, they “must give great deference” to the judgment of the political branches, which have been entrusted by the Constitution “with the care of the common defense.”⁴⁸

That principle does not just appear in a single test or a single line of cases. It appears everywhere. It’s the reason courts resist interlocutory intervention in military commissions and courts-martial.⁴⁹ It’s the reason courts do not issue preliminary injunctions that would interfere with military training or operations.⁵⁰ It’s the reason courts sometimes review military decisions at

⁴⁸ *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986) (first quotation); *The Federalist* No. 23, at 153 (second quotation).

⁴⁹ *See, e.g., Schlesinger v. Councilman*, 420 U.S. 738, 740 (1975) (“Although the District Court may have had subject-matter jurisdiction, we think that the balance of factors governing exercise of equitable jurisdiction by federal courts normally weighs against intervention, by injunction or otherwise, in pending court-martial proceedings.”); *Middendorf v. Henry*, 425 U.S. 25, 43 (1976) (“we must give particular deference to the determination of Congress, made under its authority to regulate the land and naval forces, U.S. Const., Art. I, § 8, that counsel should not be provided in summary courts-martial”).

⁵⁰ *See, e.g., Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 26 (2008) (“forcing the Navy to deploy an inadequately trained antisubmarine force jeopardizes the safety of the fleet”); *id.* at 27 (“The lower courts failed properly to defer to senior Navy officers’ specific, predictive judgments about how the preliminary injunction would reduce the effectiveness of the Navy’s SOCAL training exercises.”).

all.⁵¹ And on the occasions courts do reach the merits, it's the reason they apply an extraordinarily deferential standard of review for constitutional claims.⁵²

The courts' foundational cases about the military's structure and operation establish three related points, each demanding from judges one word—deference:

1. Judgments about the military's structure and operation belong to the political branches, not to the courts.
2. The military is a distinct constitutional system, separate from civilian society. Its rules are necessarily different than those of civilian society. So courts do not apply the same standards to military rules as they do to the rules of civilian society.
3. Because courts defer to the political branches' military judgments, and because the military is a distinct constitutional system, even military judgments subject to constitutional challenges receive “great deference.”

⁵¹ See, e.g., *Orloff v. Willoughby*, 345 U.S. 83, 94-95 (1953) (“the exercise of such jurisdiction as is here urged would be a disruptive force as to affairs peculiarly within the jurisdiction of the military authorities”); *Gilligan*, 413 U.S. at 7 (holding that the controversy was nonjusticiable because “[t]he relief sought . . . would . . . embrace critical areas of responsibility vested by the Constitution in the Legislative and Executive Branches of the Government”).

⁵² See, e.g., *Goldman*, 475 U.S. at 507 (“Our review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society.”).

1. *Orloff* (1953) and *Gilligan* (1973)

The doctrine of military deference begins with a simple proposition: Judgments about the military belong to the political branches, not to the courts.

In *Orloff v. Willoughby*, the Supreme Court made the point directly. A doctor inducted into the Army asked the Court to intervene because the military had allegedly discriminated against him in his duty assignment based on his refusal to say if he had been a member of the Communist Party.⁵³ The Court did not treat that allegation as a basis for judicial intervention. It acknowledged that “from top to bottom of the Army the complaint is often made, and sometimes with justification, that there is discrimination, favoritism or other objectionable handling of men.”⁵⁴ Nevertheless, the Court refused to intervene because “judges are not given the task of running the Army.”⁵⁵

To police the line between the rights of civilians and the rights of soldiers, *Orloff* said courts may “determine whether one has been lawfully inducted and is therefore within the jurisdiction of the Army and subject to its orders.” But once that inquiry is over, the Court suggested it has little further role: “Nothing appears to convince us that [Orloff] is held in the Army unlawfully, and, that being the case, we cannot go into the discriminatory character of his orders.”⁵⁶

In other words, *Orloff* stopped at the Army’s gates. Why? Because crossing that threshold to review Or-

⁵³ *Orloff*, 345 U.S. at 84, 87, 90.

⁵⁴ *Id.* at 93.

⁵⁵ *Id.*

⁵⁶ *Id.* at 94.

loff's assignment would make the judiciary "a disruptive force as to affairs peculiarly within the jurisdiction of the military authorities."⁵⁷ And that disruption would imperil ordered liberty itself: "Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."⁵⁸

Two decades later, the petitioners in *Gilligan v. Morgan* asked the Supreme Court to review the Ohio National Guard's training standards in the wake of the Kent State shootings. The Court once again declined jurisdiction. It explained:

The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject *always* to civilian control of the Legislative and Executive Branches. The ultimate responsibility for these decisions is appropriately vested in branches of the government which are periodically subject to electoral accountability.⁵⁹

Those 55 words answer nearly every question we should ask today: 1) *What* are "professional military judgments"? 2) *Who* controls them? 3) *When*? 4) *Why*?

What are "professional military judgments"? Whatever else they may include, they include system-wide "decisions as to the composition, training, equipping, and control of a military force." Such decisions are "*essentially*"

⁵⁷ *Id.* at 95.

⁵⁸ *Id.* at 94.

⁵⁹ *Gilligan*, 413 U.S. at 10.

—that is, by their very nature—“professional military judgments.”⁶⁰

Who controls those decisions? “[T]he Legislative and Executive Branches.”

When are those decisions subject to the political branches’ control? Emphatically: “*always*.”

Why those branches and not the judiciary? At least in part because the political branches “are periodically subject to electoral accountability.”

Taken together, *Orloff* and *Gilligan* establish the foundation for modern military deference. Courts do not step into the middle of military decisionmaking. They do not revise military assignments—even if the assignments are allegedly unfair or discriminatory. They do not supervise military training—even if that training has been questionable. They generally do not reweigh judgments about how the military should be organized and prepared. That is because courts are in a poor position to second-guess those decisions, even when they may look unfair or unreasoned from the bench. They lack the constitutional power to intrude into a system

⁶⁰ Elsewhere in *Gilligan*, the Court more fully elaborated on the kinds of judgments at issue: “Trained **professionals**, subject to the day-to-day control of the responsible civilian authorities, necessarily must make comparative **judgments** on the merits as to evolving methods of **training, equipping, and controlling military forces** with respect to their duties under the Constitution.” *Id.* at 8 (emphases added). A professional military judgment, as the Court used that phrase, thus appears to involve military expertise (“professional”), military subject matter (“training, equipping, and controlling military forces”), and comparative assessment of alternative approaches (“judgment”), all subject to responsible civilian control.

left to the political branches, and they lack the institutional competence to presume they should know better.

The basic rule—courts do not run the military—carries through the rest of the case law.

2. *Parker* (1974), *Councilman* (1975), and *Middendorf* (1976)

The cases that followed *Orloff* and *Gilligan* explained something deeper about the doctrine: Courts defer to military decisions because the military is a separate society altogether. It has different needs than civilian society. As a result, it has different rules than civilian society. The rights that prevail in *civilian* courts for *civilian* society do not operate in the same way for the military.⁶¹

The Supreme Court made that point plainly in *Parker v. Levy* when it rejected a First Amendment challenge to rules in the Uniform Code of Military Justice, explaining that “the military is, by necessity, a specialized society separate from civilian society” that has “developed laws and traditions of its own during its long history.”⁶² Those differences “result from” the military’s special purpose: “to fight or be ready to fight wars should the occasion arise.”⁶³ And they result in “a different application of [constitutional] protections” to military regulations—an application that “may render

⁶¹ These build on an observation originally made in *Orloff*: “The military constitutes a specialized community governed by a separate discipline from that of the civilian.” 345 U.S. at 94.

⁶² 417 U.S. 733, 743 (1974).

⁶³ *Id.* (quoting *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 17 (1955)).

permissible within the military that which would be constitutionally impermissible outside it.”⁶⁴

A year after *Parker*, the Supreme Court again invoked the military’s status as a specialized society, this time to caution lower courts against using their equitable powers to short-circuit military processes. A district court had permanently enjoined the military from proceeding with a court-martial; the Court in *Schlesinger v. Councilman* reversed.⁶⁵

Councilman concluded that the military’s status as a specialized society “counsels strongly against the exercise of equity power even where . . . intervention might be appropriate.”⁶⁶ That restraint reflects the “unique military exigencies” that gave rise to the military’s distinct body of law and that are “as powerful now as in the past.”⁶⁷ The upshot: When courts must decide whether to use equitable authority to intervene in military decisions, the scales tip strongly against intervention from the start—even where “intervention might [otherwise] be appropriate.”⁶⁸

The next year, in *Middendorf v. Henry*, Justice Powell cited the military’s status as a specialized society once more, this time to explain why the right to counsel should not apply to summary courts-martial as it would in ordinary civilian criminal proceedings. Though “one’s constitutional rights are not surrendered upon entering the Armed Services,” the rights must be applied “in

⁶⁴ *Id.* at 758.

⁶⁵ 420 U.S. 738, 739-40 (1975).

⁶⁶ *Id.* at 757.

⁶⁷ *Id.*

⁶⁸ *Id.*

light of the ‘unique military exigencies’ that necessarily govern many aspects of military service.”⁶⁹

The rule established in *Orloff* and *Gilligan*—that courts do not run the military—thus grew into a full distinction between military society and civilian society, military rules and civilian rules. When courts review challenges to rules affecting the military, they must not begin as they would if they were considering cases concerning civilian society and civilian rules. Instead, they must consider the “unique military exigencies” that may require a different approach from the start.

3. *Parker* (again) (1974), *Rostker* (1981), *Goldman* (1986), *Solorio* (1987), *Winter* (2008), *U.S. Navy Seals 1-26* (2022), *Kreis* (D.C. Cir. 1989), and *Singh* (D.C. Cir. 2022)

Though service members leave the *civilian* ranks to become part of the military, they do not leave behind their *citizenship* and its rights. So it remains for us to consider how courts should handle claims that military rules violate individuals’ constitutional rights. The cases I discussed above have already suggested an answer. The cases I discuss below will make the point plain: Even for constitutional claims, courts must give “great deference” to the political branches.

Return to *Parker* for what it teaches about constitutional challenges. Military members “are not excluded from the protection[s] granted by the” Constitution⁷⁰—they are, after all, still citizens under the Constitution’s protection. But “the different character of the military community and of the military mission requires a differ-

⁶⁹ 425 U.S. at 50 (Powell, J., concurring) (citing *Parker*, 417 U.S. at 758).

⁷⁰ *Parker*, 417 U.S. at 758.

ent application of those protections.”⁷¹ That’s because “[t]he armed forces depend on a command structure that at times must commit men to combat, not only hazarding their lives but ultimately involving the security of the Nation itself.”⁷² If anything might “undermine the effectiveness of response to command,” it is “constitutionally unprotected” within the military, even if it would be “protected in the civil population.”⁷³ As a result, courts permit “greater breadth” and “greater flexibility” to military rulemaking than they do for rulemaking in civilian society.⁷⁴ And they give less weight to challenges concerning individual rights because “within the military community there is simply not the same autonomy as there is in the larger civilian community.”⁷⁵

Rostker v. Goldberg afforded the same latitude to rules that implicate equal-protection rights, holding that Congress may authorize the registration of men, but not women, for the draft.⁷⁶ In the process, the Supreme Court clarified that military deference applies not just to final judgments but to evaluations of evidence, holding that the district court “was quite wrong in undertaking an independent evaluation of th[e] evidence, rather

⁷¹ *Id.*

⁷² *Id.* at 759 (quoting *United States v. Priest*, 45 C.M.R. 338, 344 (1972)).

⁷³ *Id.* (quoting *Priest*, 45 C.M.R. at 344).

⁷⁴ *Id.* at 756.

⁷⁵ *Id.* at 751.

⁷⁶ 453 U.S. 57, 66 (1981) (quoting *Parker* for “breadth” and “flexibility”); *id.* at 78-79 (the authorized registration of only men “does not violate the Due Process Clause” of the Fifth Amendment).

than adopting an appropriately deferential examination of *Congress*' evaluation of that evidence."⁷⁷

And then in *Goldman v. Weinberger*, the Supreme Court made the governing principle even more explicit: "courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest."⁷⁸

Goldman considered whether an Air Force regulation preventing an Orthodox Jew and ordained rabbi from wearing his yarmulke while in uniform violated the First Amendment. The Court deferred to the military's judgment. When military officials make a decision based on a "perceived need for uniformity"—or presumably for any other aspect of force readiness—"they are under no constitutional mandate to abandon their considered professional judgment."⁷⁹

How far does the "great deference" afforded to military judgments extend?⁸⁰ At least this far: The Constitution "does not require the military to accommodate" a practice as seemingly innocuous as wearing a yarmulke if the military thinks it "would detract from the uniformity sought by the dress regulations."⁸¹

What evidence had the Air Force provided that such a small accommodation would imperil troop discipline, much less national security? According to Goldman: none. He said the Air Force "failed to prove that a specific exception for his practice of wearing an unobtrusive

⁷⁷ *Id.* at 83.

⁷⁸ 475 U.S. at 507.

⁷⁹ *Id.* at 509-10.

⁸⁰ *Id.* at 507.

⁸¹ *Id.* at 509-10.

yarmulke would threaten discipline”; that the Air Force’s position was “mere *ipse dixit*”; that there was “no support from actual experience or a scientific study in the record”; and that expert testimony showed religious exceptions would improve morale.⁸²

The Supreme Court found all of this “quite beside the point.”⁸³ It concluded that “the military’s perceived need for uniformity” was sufficient for the Air Force to “draw[] the line” that it drew.⁸⁴ The Air Force considered “the necessary habits of discipline and unity” to be “as vital during peacetime as during war because its personnel must be ready to provide an effective defense on a moment’s notice.”⁸⁵ And *that* was enough.

Might you question just how detrimental to “uniformity” it would be to allow a rabbi to wear a yarmulke—especially given that the military provided no evidence to the contrary? I would. And might you believe that the military should make such an accommodation for someone whose faith is so important to him? I do. But those are my views as a judge sitting far away from a military base.⁸⁶

The aftermath of *Goldman* shows the proper path for change if citizens and their representatives find a mili-

⁸² *Id.* at 509.

⁸³ *Id.*; cf. *Talbott v. United States*, 775 F. Supp. 3d 283, 292, 299, 301-04, 307-08, 325-26 (D.D.C. 2025) (relying on the three things *Goldman* said were “quite beside the point”—insufficient exemptions, an absence of evidence, and no expert testimony).

⁸⁴ *Goldman*, 475 U.S. at 510.

⁸⁵ *Id.* at 508.

⁸⁶ Cf. *A Few Good Men* (Columbia Pictures, 1992) (“We have softball games and marching bands. They work at a place where you have to wear camouflage or you might get shot.”).

tary decision objectionable. The very next year, Congress passed a law allowing service members to “wear an item of religious apparel while wearing the uniform” so long as the item met certain standards.⁸⁷ The lesson: Objectionable military rules can be changed, and quickly. Our constitutional order makes that possible. But it does not give that role to the judiciary.

The cases since *Goldman* have continued to reinforce its “great deference” standard.

In *Solorio*, the Supreme Court deferred to Congress’s choices about the “scope of court-martial jurisdiction over offenses committed by servicemen.”⁸⁸ That was because Congress, and not the courts, is entrusted with “the delicate task of balancing the rights of servicemen against the needs of the military.”⁸⁹

In *Winter*, the Supreme Court concluded that injunctive relief against the military was improper because “the balance of equities and consideration of the overall public interest . . . tip strongly in favor of the Navy” when a judicial decision protecting marine mammals could “fore[e] the Navy to deploy an inadequately trained . . . force.”⁹⁰ The Court relied specifically on *Goldman*’s “great deference” standard, and provided yet another reason for that standard: “neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious

⁸⁷ 10 U.S.C. § 774.

⁸⁸ *Solorio v. United States*, 483 U.S. 435, 440 (1987).

⁸⁹ *Id.* at 447.

⁹⁰ *Winter*, 555 U.S. at 26.

threats to our Nation and its people.”⁹¹ Courts should therefore “defer to” military officials’ “specific, predictive judgments” about how injunctive relief could impede military effectiveness.⁹²

Most recently, in *Austin v. U.S. Navy Seals 1-26*, members of the Naval Special Warfare community challenged the Navy’s denial of religious exemptions from its COVID-19 vaccination mandate under the Religious Freedom Restoration Act and the Free Exercise Clause.⁹³ The Supreme Court partially stayed a preliminary injunction that had barred the Navy from taking action against them based on their unvaccinated status, allowing the Navy to consider vaccination status in “deployment, assignment, and other operational decisions.”⁹⁴ Justice Kavanaugh—no foe of religious liberty⁹⁵—concurred, ex-

⁹¹ *Id.* at 24 (quoting *Boumediene v. Bush*, 553 U.S. 723, 797 (2008)).

⁹² *Id.* at 27.

⁹³ *Austin v. U. S. Navy Seals 1-26*, 142 S. Ct. 1301 (2022).

⁹⁴ *Id.* at 1301.

⁹⁵ See *American Legion v. American Humanist Association*, 588 U.S. 29 (2019); *South Bay United Pentecostal Church v. Newsom*, 590 U.S. 965 (2020) (South Bay I) (Kavanaugh, J., dissenting); *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020); *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732 (2020); *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657 (2020); *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603 (2020) (joining Alito, J., dissenting); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020); *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021) (South Bay II); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021); *Gateway City Church v. Newsom*, 141 S. Ct. 1460 (2021); *Tandon v. Newsom*, 593 U.S. 61 (2021); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021); *Ramirez v. Collier*, 142 S. Ct. 1264 (2022); *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022); *Car-*

plaining that the district court had “in effect inserted itself into the Navy’s chain of command, overriding military commanders’ professional military judgments,” even though courts “‘should indulge the widest latitude’ to sustain the President’s ‘function to command the instruments of national force.’”⁹⁶

The D.C. Circuit’s decisions say nothing to the contrary. *Kreis v. Secretary of Air Force* held that military personnel decisions are nonjusticiable when they would require the court “to second-guess” military decisions “about how best to allocate military personnel in order to serve the security needs of the Nation”—a question “[t]his court is not competent” to answer.⁹⁷

son v. Makin, 142 S. Ct. 1987 (2022); *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022); *Groff v. DeJoy*, 143 S. Ct. 2279 (2023); *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 145 S. Ct. 1583 (2025); *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

⁹⁶ *Austin*, 142 S. Ct. at 1302 (Kavanaugh, J., concurring) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 645 (1952) (Jackson, J., concurring)).

⁹⁷ *Kreis v. Secretary of Air Force*, 866 F.2d 1508, 1511 (D.C. Cir. 1989).

The court separately concluded that decisions of the Air Force Board for the Correction of Military Records are reviewable under the Administrative Procedure Act, “albeit by an unusually deferential application of the ‘arbitrary or capricious’ standard.” *Id.* at 1514. “At most,” the court observed, “the consequence of such review will be only to require the Secretary to explain more fully the process by which he reached his assessment.” *Id.* That part of the court’s decision is inapposite in this case, which does not consider a corrections board decision or whether any decision is reviewable under the APA and which has consequences far more than requiring the Secretary to explain his decisionmaking process.

This court’s opinion in *Singh v. Berger* likewise confirms that we must defer to professional military judgments “unless Congress specifically has provided otherwise.”⁹⁸ *Singh* (which was not a decision about constitutional rights) held that a military policy violated the Religious Freedom Restoration Act (which is Congress’s express instruction that even military burdens on religious exercise must satisfy strict scrutiny).⁹⁹ So even though *Singh* informs our understanding of Congress’ *legislative* judgment, it offers no basis for replacing professional military judgment with a court’s *judicial* judgment.

C. The Constitution + Caselaw = “Great Deference”

Constitutional structure and binding precedent yield a consistent rule: Absent a contrary statutory command, courts reviewing a constitutional challenge to a military policy must give “great deference” to the political branches’ professional military judgments. Those judgments include military-wide decisions about the composition, training, equipping, and control of the armed forces, as well as assessments of readiness, discipline, deployability, cohesion, uniformity, command effectiveness, and mission accomplishment.

If a challenged system-wide policy reflects a professional military judgment about a perceived military need, a court may not reweigh the evidence,¹⁰⁰ credit

⁹⁸ *Egan*, 484 U.S. at 530.

⁹⁹ *Singh v. Berger*, 56 F.4th 88, 97 (D.C. Cir. 2022).

¹⁰⁰ *But see Talbott*, 775 F. Supp. 3d at 292 (“Plaintiffs’ service records alone are Exhibit A for the proposition that transgender persons can have the warrior ethos, physical and mental health, selflessness, honor, integrity, and discipline to ensure military excellence.”); *id.* at 304 (“The Center also conducted a medical literature review as part of its work that the Action Memo ignores alto-

contrary expert views over military judgment,¹⁰¹ require proof that the plaintiff's proposed exception to a rule would itself impair military effectiveness,¹⁰² or substitute its own view of the policy's desirability.¹⁰³ Judges therefore have only one option when we determine that the political branches have made a system-wide "professional military judgment" based on a perceived military need: We must defer to the military's judgment.

A "professional military judgment" is not identified by how much or how little consideration military professionals devoted to making the decision. Nor is a "professional military judgment" identified by how well-sup-

gether."); *id.* at 305 ("[T]he Medical Literature Review did not survey studies on transgender persons in military service: *i.e.*, individuals already found to be physically and mentally fit. . . . So it can shed little light on how transgender persons fare in the military.").

¹⁰¹ *But see id.* at 292 ("Plaintiffs have also introduced declarations from the military leaders responsible for integrating transgender persons into open military service. Each declarant attests that our military has not fallen into an 'existential' crisis since transgender persons began serving openly in 2021. . . . To the contrary, they each testify that recruiting, unit cohesion, and military readiness have improved since 2021."); *id.* at 303 ("No panel of experts—or any other kind—informed the Hegseth Policy.").

¹⁰² *But see id.* at 324 ("Defendants do not explain why addressing a *treatable* condition requires excluding all persons who have ever had—or even exhibited symptoms of—it. Nor do they explain why the constraint already in place, 18 months of stability, is insufficient."); *id.* at 333 ("The Military Ban does not cite, and Defendants have not provided, any studies or declarations that explain why maintaining the status quo pending litigation would unfairly burden the military.").

¹⁰³ *But see id.* at 293 ("The President and Defendants could have crafted a policy that balances the Nation's need for a prepared military and Americans' right to equal protection. They still can. The Military Ban, however, is not that policy.").

ported a court believes the decision to be. The cases discussed above applied no tests of that sort. Rather, a “professional military judgment” depends on the decisionmaker and the subject matter. It is a “professional judgment of military authorities concerning the relative importance of a particular military interest.”¹⁰⁴ That is why *Gilligan* categorized “decisions as to the composition, training, equipping, and control of a military force” as “essentially professional military judgments.”¹⁰⁵ Only the political branches, which have been entrusted with such decisions, should make them.

That is a “great” deferential standard, indeed—one that is fundamental to our nation’s constitutional structure.

The Constitution demands this deference not to disparage any service members¹⁰⁶ or deprive anyone of any rights.¹⁰⁷ And when we discount that deference, we en-

¹⁰⁴ *Goldman*, 475 U.S. at 507 (emphasis added).

¹⁰⁵ 413 U.S. at 10.

¹⁰⁶ *Cf. Talbott*, 775 F. Supp. 3d at 334 (“The Court extends its appreciation to every current servicemember and veteran. Thank you.”).

¹⁰⁷ *Cf. id.* at 293 (“The Court’s opinion is long, but its premise is simple. In the self-evident truth that ‘all people are created equal,’ *all* means *all*.”) (cleaned up); The Declaration of Independence (U.S. 1776) (“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”) (not cleaned up).

In changing “all men” to “all people,” the district court rewrote the Declaration of Independence to signal the court’s belief that both men and women are equal. I share that belief, but unlike the district court, I don’t read the Declaration to say otherwise. “Within the context of the times it is clear that ‘all men’ was a euphemism for

danger “every current servicemember”¹⁰⁸ and make it more difficult for the military to defend the rights it has protected from Fordow and Fallujah to the Philippine Sea, and from Little Round Top to Little Rock.¹⁰⁹

‘humanity,’ and thus those people, such as Elizabeth Cady Stanton, Abraham Lincoln, and Martin Luther King, who used the Declaration of Independence to demand equality for African Americans and women seized the historical as well as the moral high ground.” *All Men Are Created Equal*, Library of Congress, <https://perma.cc/HN7N-M9GE>.

Admittedly, reasonable people disagree about whether those who wrote “all men” meant “all people”—in other words, whether “the architects of our Republic” were “signing a promissory note to which every American was to fall heir,” even if the promise was unfulfilled in their time. Martin Luther King, Jr., “I Have a Dream” Speech (Aug. 28, 1963). The “contested meaning” of the Declaration’s most famous line “has structured much of America’s constitutional conversation ever since.” Akhil Reed Amar, *The Words That Made Us* 123 (2021). But I’ll cast my lot with Lincoln. “As Lincoln recognized, the promise of equality extended to *all people*—including immigrants and blacks whose ancestors had taken no part in the original founding. Thus, in Lincoln’s view, “the natural rights enumerated in the Declaration of Independence” extended to blacks as his “‘equal,’” and “‘the equal of every living man.’”” *Students for Fair Admissions v. Harvard*, 143 S. Ct. 2141, 2194 (2023) (Thomas, J., concurring) (citing, after the first sentence, Speech at Chicago, Ill. (July 10, 1858), in 2 *The Collected Works of Abraham Lincoln* 488-489, 499 (R. Basler ed. 1953); citing, after the second sentence, *The Lincoln-Douglas Debates* 285 (H. Holzer ed. 1993)).

¹⁰⁸ *Talbott*, 775 F. Supp. 3d at 334.

¹⁰⁹ Cf. *United States v. Wilcox*, 66 M.J. 442, 460 (C.A.A.F. 2008) (“President Eisenhower deployed the 101st Airborne to Little Rock, Arkansas, to help integrate the public schools following *Brown v. Board of Education*.”).

III. Analysis

The military’s transgender policy is constitutional. The plaintiffs’ arguments against it lack legal support. So do the majority’s.

A. The Constitution Does Not Prohibit the Military’s Policy

Sometimes a case will present an open question informed only by confusing and contradictory precedents. This is not one of those cases. Rather, as described above, an unbroken line of unambiguous authorities directs us to uphold a military policy (1) when it does not conflict with a statutory command, (2) when it reflects a “professional military judgment[,]” and (3) when it addresses a perceived, military-wide need regarding the “composition, training, equipping, [or] control” of the armed forces.¹¹⁰

The policy challenged today meets those criteria.

First, no statute prohibits the military from implementing the policy, and the plaintiffs do not contend otherwise. The district court applied the reasoning of *Bostock v. Clayton County*, a case arising under Title VII of the Civil Rights Act of 1964.¹¹¹ But the district court did not—and could not—hold that *Bostock* directly controls here, given that “Title VII does not apply to uniformed members of the armed forces.”¹¹²

¹¹⁰ *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973).

¹¹¹ *Talbott v. United States*, 775 F. Supp. 3d 283, 316-17 (D.D.C. 2025) (applying the logic of *Bostock v. Clayton County*, 590 U.S. 644 (2020)).

¹¹² *Jackson v. Modly*, 949 F.3d 763, 775 (D.C. Cir. 2020).

Second, the policy reflects a professional military judgment. It was announced by the military authorities authorized to make such decisions.¹¹³ And its subject matter was indisputably about a particular military interest: qualifications for military service.¹¹⁴ Such “decisions as to the composition . . . of a military force” are “essentially professional military judgments.”¹¹⁵

Third, the policy involves “the professional judgment of military authorities concerning the relative importance of a particular military interest.”¹¹⁶ It explains how that judgment is shaped by “unique military exigencies.”¹¹⁷ And it even provides evidence to support that connection between the policy and those exigencies.

In the case before us, military officials and not Congress set the new qualifications for accession and retention. That is because Congress has expressly delegated to them the broad authority to do so. *See* 10 U.S.C. § 113(b) (granting the Secretary of Defense “authority, direction, and control over the Department of Defense”); §§ 7013(b), 8013(b), 9013(b) (authorizing service Secretaries to conduct “all affairs” of their departments, including recruiting, organizing, training, and mobilizing the force); *see also id.* §§ 504, 505, 532, 1169, 12102, 12201. Congress may delegate this authority to the Executive Branch. *Cf. Loving v. United States*, 517 U.S. 748, 772 (1996) (“the same limitations on delegation do not apply where the entity exercising the delegated authority itself possesses independent authority over the subject matter” (cleaned up)).

¹¹³ *See* JA 48-49 (memorandum from Darin S. Selnick, acting Under Secretary of Defense for Personnel and Readiness, as directed by the Secretary of Defense).

¹¹⁴ *See id.* (describing “the high mental and physical standards necessary for military service”).

¹¹⁵ *Gilligan*, 413 U.S. at 10.

¹¹⁶ *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986).

¹¹⁷ *Schlesinger v. Councilman*, 420 U.S. 738, 757 (1975).

The primary interest that informs the military’s policy is the need for deployable troops. The action memo accompanying the policy cites evidence that nearly 40% of service members with gender dysphoria in a studied cohort “were non-deployable over a 24 month period.”¹¹⁸ It also cites the demand for ongoing treatment, the potential for interruption of care in deployed environments, and the incompatibility of certain medical requirements with austere conditions.¹¹⁹ And it cites a finding that “the suicide attempt rate is estimated to be 13 times higher among transgender individuals compared to their cisgender counterparts.”¹²⁰

¹¹⁸ JA 64.

¹¹⁹ JA 62 (requiring “high mental and physical health standards to ensure our military can deploy, fight, and win, including in austere conditions and without the benefit of routine medical treatment or special provisions”); *see also* JA 105 (“foreign militaries that allow service by personnel with gender dysphoria have found that it is sometimes necessary to restrict the deployment of transitioning individuals, including those receiving hormone therapy and surgery, to austere environments where their healthcare needs cannot be met”).

¹²⁰ JA 64 (citing findings that “55% of transgender individuals experienced suicidal ideation and 29% attempted suicide in their lifetime, . . . [and] the suicide attempt rate is estimated to be 13 times higher among transgender individuals compared to their cisgender counterparts”); *see also* JA 92 (“The Department is concerned that the stresses of military life, including basic training, frequent moves, deployment to war zones and austere environments, and the relentless physical demands, will be additional contributors to suicide behavior in people with gender dysphoria. In fact, there is recent evidence that military service can be a contributor to suicidal thoughts.”).

Those kinds of military judgments demand deference because they are predictive.¹²¹ And because they are “complex, subtle, and professional.”¹²² And because they involve the weighing of risks in a way that has no obvious judicial benchmark.¹²³

Even if that were not enough—and it is—there’s more. The memorandum relies on prior military policies, expert-panel findings, internal reviews, and medical literature. For example, it cites a 2018 Department assessment that concluded “substantial risks” arise when people “with a history or diagnosis of gender dysphoria” join and remain in the military.¹²⁴ It also cites a 2021 Department of Defense review that found higher rates of disability evaluation and substantial non-deployability.¹²⁵ In addition, it cites a 2025 literature review that identified elevated mental-health risks and limits in the strength of available evidence.¹²⁶ And it considers cost data reflecting tens of millions of dollars in treatment expenditures.¹²⁷ The policy thus reflects a synthesis of military, medical, and operational judgments of the sort courts have consistently declined to reweigh. One might *disagree* with the military’s conclusions, but it’s hard to look at the reasons and evidence the military provided in its ac-

¹²¹ See *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 27 (2008).

¹²² *Gilligan*, 413 U.S. at 10.

¹²³ *Goldman*, 475 U.S. at 507.

¹²⁴ JA 64.

¹²⁵ *Id.*

¹²⁶ JA 64-65.

¹²⁷ JA 65.

tion memo and say that the military acted “unthinkingly” or “reflexively and not for any considered reason.”¹²⁸

To repeat, the political branches do not need to make such a thorough showing to earn judicial deference. We are now far beyond what “great deference” requires.¹²⁹ I go this far only to show that the military has met and surpassed its burden.

Note for a moment what I am *not* saying. I am not saying the evidence must be read as the military reads it. Nor am I saying the military’s conclusions are the best conclusions. I am in no way qualified to know who is sufficiently likely to be deployable on a moment’s notice, what level of risk is acceptable, or how to balance readiness against other values.

Fortunately for me, it is not our job to answer those questions. In cases like today’s, our role requires defer-

¹²⁸ See *Rostker v. Goldberg*, 453 U.S. 57, 72 (1981) (“despite appellees’ assertions, Congress did not act ‘unthinkingly’ or ‘reflexively and not for any considered reason’”); see also Majority Op. at 28.

The majority seizes on this line from *Rostker*—along with *Rostker*’s observation that “Congress had extensively studied and debated the issue” there—to craft a new test. That test requires the military to prove that any classification it makes was “based on detailed study rather than ‘archaic and overbroad generalizations.’” Majority Op. at 29. Does even intermediate scrutiny demand such proof? And if the military’s action memo citing multiple studies and relating them to multiple military needs was insufficient, what more is needed? The majority does not even acknowledge the military’s reliance on those studies, much less defer to the military’s weighing of them, so we cannot know why they fall short. So where within the majority’s test is “deference” to military decisionmaking? The majority says the word several times, but it has no discernible effect on the majority’s test or analysis.

¹²⁹ *Goldman*, 475 U.S. at 507.

ence to the judgment of the Executive and Congress. That is why, in *every* binding precedent identified by the plaintiffs regarding the constitutionality of internal military matters like military-wide preparedness, the military won.¹³⁰

¹³⁰ At oral argument, the plaintiffs were given an opportunity to identify an exception. They couldn't. Instead, when asked to identify "the best precedent from the Supreme Court or this circuit for you where the case concerned a uniquely military matter, like military preparedness," they focused on two cases. One is inapposite because it was decided on statutory grounds (*Singh*), and the other is a constitutional case that the Government *won* (*Rostker*). The plaintiffs also mentioned, almost in passing, an emergency order *granting* the Government's application for a partial stay in a statutory and constitutional case (*United States Navy Seals*) and an opinion *granting* the Government's request to reverse a preliminary injunction and announcing that *Korematsu* has been overruled (*Trump v. Hawaii*). See Oral Arg. Tr. 109:6-110:23; cf. *Singh v. Berger*, 56 F.4th 88 (D.C. Cir. 2022); *Rostker v. Goldberg*, 453 U.S. 57 (1981); *Austin v. U. S. Navy Seals 1-26*, 142 S. Ct. 1301 (2022); *Trump v. Hawaii*, 585 U.S. 667, 710 (2018) (discussing *Korematsu v. United States*, 323 U.S. 214 (1944)).

District courts have occasionally entered injunctions affecting military personnel policies, and at least one court of appeals has affirmed relief affecting such policies. See, e.g., *Roe v. Department of Defense*, 947 F.3d 207 (4th Cir. 2020) (affirming a preliminary injunction that prohibited the military from discharging service members diagnosed with HIV and from enforcing a policy that limited deployability of those service members). But those cases are not binding because they arose outside this circuit. Cf. *Doe 2 v. Shanahan*, 917 F.3d 694, 740 (D.C. Cir. 2019) (Williams, J., concurring in the result) ("Indeed, when asked at oral argument for any case 'in the history of the Republic in which the judiciary has decided military-wide rules about accession and retention,' plaintiffs' counsel offered only *Crawford v. Cushman*, 531 F.2d 1114 (2d Cir. 1976). Oral Arg. Tr. 28:21-29:14. But although *Crawford* used casual language suggesting readiness to direct an order 'declaring the

B. The Plaintiffs' Argument

In light of that uninterrupted line of adverse decisions, the plaintiffs were asked at oral argument to identify the best binding precedent for their claim. They cited *Singh v. Berger*¹³¹ and *Rostker v. Goldberg*.¹³² The first is mildly relevant but only in a way that is, for them, mildly unhelpful; the second is more relevant and in a way that is even more unhelpful.

Unlike today's constitutional case about the right to equal protection, *Singh* was a statutory case about the Religious Freedom Restoration Act. This court held that the military likely violated a congressional mandate by making a Sikh Marine shave his beard.¹³³ So to the degree that *Singh* is at all relevant here, it works against the plaintiffs, given that they can point to no congressional mandate that favors their position.

As for *Rostker*, the military *won* that case. In it, the Supreme Court rejected an equal-protection challenge to the single-sex military draft.¹³⁴ *Rostker* spared no words when criticizing courts that too closely scrutinize the political branches' judgments about the system-wide composition of the military, calling the district court

challenged regulation to be unconstitutional,' *id.* at 1126, 1127, it never issued any such order, and, in any event, the Second Circuit has broadly rejected *Crawford*'s entire want of deference to military judgments 'in light of the intervening Supreme Court opinion in *Rostker*[],' see *Mack v. Rumsfeld*, 784 F.2d 438, 439 (2d Cir. 1986) . . .").

¹³¹ 56 F.4th 88 (D.C. Cir. 2022).

¹³² 453 U.S. 57 (1981); *see also supra* note 130.

¹³³ *Singh*, 56 F.4th at 94, 109-10.

¹³⁴ *Rostker*, 453 U.S. at 78-79.

“quite wrong” for “undertaking an independent evaluation of th[e] evidence.”¹³⁵

You might think that the plaintiffs’ inability to name a helpful precedent was the low point of their oral argument. It wasn’t. That came when they refused to say whether the Constitution requires the military to let service members depart from the standards for their birth sex.

When asked if the Constitution allows the military to impose men’s physical fitness requirements on transgender women, the plaintiffs said, in effect, no answer. What about making them wear a man’s uniform? No answer. What about making them cut their hair like a man? No answer. What about making them use men’s showers? No answer. What about making them use men’s bathrooms? No answer. What about imposing on them men’s deployability standards? No answer. What about imposing on them men’s retention standards? No answer.¹³⁶

In lieu of responsive answers, the plaintiffs relied on generalities like “whatever policy exists, it has to be rational and not fueled by animus.”¹³⁷ But at least as a general matter, concern about medical conditions’ effects on deployability is neither irrational nor fueled by animus. And the plaintiffs don’t deny that gender dysphoria is a

¹³⁵ *Id.* at 83.

¹³⁶ Oral Arg. Tr. 67:2-69:3.

¹³⁷ *Id.* at 69:2-3; *see also id.* at 66:21-23; 67:9-11; 68:3-8; 68:12-18.

medical condition—one that can cause clinically significant distress.¹³⁸

That makes the plaintiffs’ non-answers a bit puzzling. They say people suffer from gender dysphoria *whenever* they are “prevented from being able to live congruently with their gender identity.”¹³⁹ And they say the military cannot force *all* transgender people out of the military.¹⁴⁰ So doesn’t that mean the military must let people “live congruently with their gender identity”?¹⁴¹ And if it does, why not say so?

Consider also the question that logically arises from the following four propositions, which the plaintiffs either endorsed or did not disclaim. First, the military might be able to make transgender people live congruently with their birth sex.¹⁴² Second, making them do so causes gender dysphoria.¹⁴³ Third, gender dysphoria is a medical condition that can cause significant distress.¹⁴⁴ Fourth, concern about the distress caused by a medical

¹³⁸ See *id.* at 86:18-20 (Plaintiffs: “stable without clinical distress means they no longer have gender dysphoria because they’ve undergone treatment”).

¹³⁹ *Id.* at 64:22-23.

¹⁴⁰ *Id.* at 90:4-6.

¹⁴¹ *Id.* at 64:22-23.

¹⁴² See *id.* at 66:6-69:3 (taking no position on specific policies requiring service members to serve congruent with their birth sex).

¹⁴³ *Id.* at 64:20-23 (“[G]ender dysphoria is the distress a transgender person will feel if they’re unable to or prevented from being able to live congruently with their gender identity.”); *id.* at 65:8-11 (“That incongruence between your identity as male or female and being seen by others and having to live in your birth sex is the source of the distress.”).

¹⁴⁴ *Id.* at 64:23-25 (“If they’re unable to live in a sex different than their birth sex, eventually that will cause distress.”).

condition can at least sometimes be a rational basis for exclusion from the military.¹⁴⁵

Why, then, is that concern not a rational basis for *the plaintiffs'* exclusion?

If you ask them, don't expect an answer more responsive than "whatever policy exists, it has to be rational and not fueled by animus."¹⁴⁶

C. The Majority's Argument

The majority discounts the need for deference, weighs the evidence, and concludes that the military's policy is arbitrary and fueled by animus.

Rather than deferring to the military's national-security assessment, the majority boldly declares that a "reversal to the status quo that has been held for four years cannot possibly be deemed a major threat to national security when no such national security threats were raised in years prior."¹⁴⁷ In my view, that blanket proposition is hardly self-evident. But here again, it's not my view (or the majority's) that should matter. Judges this side of Midian and Moab do not "begin the day with briefings that may describe new and serious threats to our Nation and its people,"¹⁴⁸ and we "have less competence" here than in almost any "area of gov-

¹⁴⁵ *Id.* at 104:14-16 (if the military disqualifies people from joining who have a medical condition, "we'd want to look at is there a good reason, a legitimate reason, to be concerned about that medical diagnosis").

¹⁴⁶ *Id.* at 69:2-3; *see also id.* at 66:21-23; 67:9-11; 68:3-8; 68:12-18.

¹⁴⁷ Majority Op. at 47.

¹⁴⁸ *Winter*, 555 U.S. at 24 (quoting *Boumediene v. Bush*, 553 U.S. 723, 797 (2008)).

ernmental activity.”¹⁴⁹ So the Supreme Court and this court, in opinion after opinion, have afforded “great deference” to the military’s judgment about what is “a major threat to national security.”¹⁵⁰

The majority says the military “put forward no evidence” to rebut the plaintiffs’ experts¹⁵¹ and has “not contested that all of the currently serving [plaintiffs] . . . have served honorably and met all military standards during their service.”¹⁵² True. But that does not mean that the military has “forfeited any argument that . . . retaining these servicemembers will harm national security.”¹⁵³ For “complex, subtle, and professional decisions” like the standards for military service and whether a group of service members who have served well in the past are sufficiently likely to deploy adequately in the future, the military is the only expert that matters. And whether the plaintiffs’ “expert witnesses”

¹⁴⁹ *Gilligan*, 413 U.S. at 10; cf. *Ramirez de Arellano v. Weinberger*, 745 F.2d 1500, 1550-51 (D.C. Cir. 1984), *cert. granted, judgment vacated*, 471 U.S. 1113 (1985) (Scalia, J., dissenting) (“In Old Testament days, when judges ruled the people of Israel and led them into battle, a court professing the belief that it could order a halt to a military operation in foreign lands might not have been a startling phenomenon. But in modern times, and in a country where such governmental functions have been committed to elected delegates of the people, such an assertion of jurisdiction is extraordinary.”).

¹⁵⁰ *Goldman*, 475 U.S. at 507 (first quote); Majority Op. at 47 (second quote).

¹⁵¹ Majority Op. at 47.

¹⁵² *Id.*

¹⁵³ *Id.*

agree with the military’s national-security assessment “is quite beside the point.”¹⁵⁴

In addition, the majority calls the policy “arbitrary”¹⁵⁵ for disqualifying anyone “with a history of gender dysphoria”¹⁵⁶ and denying waivers to anyone who has “attempted to transition” from one gender to another.¹⁵⁷ But it’s at least conceivable that a history of gender dysphoria, or a history of symptoms like an attempt to transition, makes a recurrence more likely. And according to the rational-basis standard the majority purports to apply, a “conceivable” rationale is all that’s needed.¹⁵⁸ That standard gives policymakers room to make rules without having to connect every dot in the inferential chain—for example, to explain why a person’s medical history may indicate future medical vulnerability.

Several other military policies seem to make the same short inferential leap by excluding people with a history of medical and psychiatric conditions, even

¹⁵⁴ *Goldman*, 475 U.S. at 509.

¹⁵⁵ Majority Op. at 4.

¹⁵⁶ *Id.* at 32.

¹⁵⁷ *Id.* (quoting JA 53-55, 210).

Both categories—people with a history of gender dysphoria and people with a history of attempting to transition—are related, at least according to the plaintiffs, because “identifying as a sex different than your birth sex, and wishing to live as a sex different than your birth sex, or living as a sex different than your birth sex, that is a symptom of gender dysphoria.” Oral Arg. Tr. 103:12-16.

¹⁵⁸ *Sanchez v. Office of State Superintendent of Education*, 45 F.4th 388, 396 (D.C. Cir. 2022) (rational basis review requires courts to uphold a policy “if there is any reasonably conceivable state of facts that could provide a rational basis for the . . . choice” (cleaned up)); *cf.* Majority Op. at 24-25 (“assuming we will not employ any form of heightened scrutiny”).

though the conditions may have come and gone long ago. For example, the military excludes people with a history of asthma or asthma-like symptoms “after the 13th birthday.”¹⁵⁹ Is that “inexplicable”?¹⁶⁰ It also excludes people with a history of “any eating disorder.”¹⁶¹ Is that a disqualification with “no reasonable justification”?¹⁶²

The plaintiffs’ own assertions at oral argument provide a reasonable justification for why the military might choose to disqualify anyone prone to gender dysphoria—even if that condition has been treated. According to the plaintiffs, gender dysphoria results from someone being “unable to or prevented from being able to live

¹⁵⁹ DoW Instruction 6130.03, Vol. 1, *Medical Standards for Military Service: Appointment, Enlistment, or Induction* § 6.10(e) (May 6, 2018) (Change 6, Feb. 3, 2026).

¹⁶⁰ See Majority Op. at 41-42 (characterizing as “‘inexplicable by anything but animus’” the military’s exclusion from waiver eligibility of anyone with a “past experience with social transitioning,” as well as the denial of “individualized review” (quoting *Hawaii*, 585 U.S. at 706)).

The Government represented at oral argument that it would be wrong to suggest that gender dysphoria creates a more certain chance of separation than does any other medical condition. Cf. Majority Op. at 39 (“servicemembers with every other medical condition receive an individualized review of their circumstances to determine if they can continue to serve—except if they have gender dysphoria”). According to the Government, other medical conditions are disqualifying 100 percent of the time, and “[t]he person with gender dysphoria would have a better chance” of staying in the military than would a person with those conditions “because there is a waiver process” for some people with gender dysphoria. Oral Arg. Tr. 44:12-14; see also *id.* at 42:1-2 (Government: “there are nonwaivable conditions”).

¹⁶¹ DoW Instruction 6130.03, Vol. 1, § 6.28(k).

¹⁶² See Majority Op. at 4.

congruently with their gender identity.”¹⁶³ So even people who have “undergone treatment”¹⁶⁴ may be expected to experience gender dysphoria again if required to serve in their birth sex. Indeed, the plaintiffs here say that none of them are able to comfortably “adhere to the military’s standards for their birth sex with respect to grooming, uniform, bathrooms, [and] where they sleep.”¹⁶⁵ Yet that is precisely what the new military policy requires. And (as you’ll recall from above) the plaintiffs take *no position* on whether such a requirement is constitutional.¹⁶⁶

Finally, for the same reasons that the policy does not otherwise fail the rational-basis standard the majority applies, the policy is not “based upon animus.”¹⁶⁷ It “has a legitimate grounding in national security concerns”¹⁶⁸—as do all military readiness policies. And courts must “uphold the policy so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds.”¹⁶⁹

I need not again enumerate the reasons this policy rests on a permissible justification,¹⁷⁰ and the majority’s opinion does not explain which part of the military’s jus-

¹⁶³ Oral Arg. Tr. 64:22-23.

¹⁶⁴ *Id.* at 101:12-15. *Cf. id.* at 86:23-87:5 (defining “treatment” as “transition” through “hormone treatment or surgery” or “social transition”).

¹⁶⁵ *Id.* at 88:2-16.

¹⁶⁶ *See supra* text accompanying note 136.

¹⁶⁷ Majority Op. at 4.

¹⁶⁸ *Hawaii*, 585 U.S. at 706.

¹⁶⁹ *Id.* at 705.

¹⁷⁰ *See supra* text accompanying notes 116-128, 142-145, 155-166.

tification is unreasonable. Is it because the Constitution prohibits the military from using past diagnoses as a proxy for current or future risk of gender dysphoria—a proxy the military uses for many other medical conditions?¹⁷¹ Or is it because the Constitution prohibits the military from treating prior attempts to transition as evidence that a person may have once had gender dysphoria—even though the plaintiffs describe attempts to transition as a symptom of gender dysphoria?¹⁷² Or is it because the Constitution prohibits the military from making people serve in their preferred gender—an argument that the plaintiffs refused to make?¹⁷³

The first of those arguments conflicts with the military’s common practice in areas undoubtedly free of animus. The other two arguments conflict with the plaintiffs’ own words. None of them proves animus. Nor do they warrant the majority’s unprecedented intrusion into the internal operations of the armed forces.¹⁷⁴

¹⁷¹ See *supra* text accompanying note 159, 161.

¹⁷² See *supra* note 157.

¹⁷³ See *supra* text accompanying note 136.

¹⁷⁴ Last year, the Supreme Court stayed an order preliminarily enjoining the military’s policy on transgender service members in *United States v. Shilling*, 145 S. Ct. 2695 (2025). The Court issued that stay without explanation, so we “cannot know with certainty every reason why the Supreme Court” concluded that the equities favored the Government. Cf. *Miot v. Trump*, No. 26-5050, 2026 WL 659420, at *5 (D.C. Cir. Mar. 6, 2026) (Walker, J., dissenting). “But we *can* know that it *did* reach that conclusion,” and that stay must “inform ‘how [we] should exercise [our] equitable discretion in like cases.’” *Id.* at *6 (quoting *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025)).

To be sure, this is a different case in a different procedural posture. It is an appeal asking us to vacate a preliminary injunction,

IV. Conclusion

“We know that from top to bottom of the Army the complaint is often made, and sometimes with justification, that there is discrimination, favoritism or other objectionable handling of men. But judges are not given the task of running the Army.”¹⁷⁵ Only the Executive and Congress are responsible for system-wide military judgments about the composition of the armed forces.

The Supreme Court has never assumed that role for itself.

see Winter, 555 U.S. at 12, rather than an application asking the Supreme Court to stay a preliminary injunction, *see Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). But “the parties’ legal arguments and relative harms generally” are the same. *Cf. Noem v. National TPS Alliance*, 146 S. Ct. 23, 24 (2025). So there is more than a little reason to think that “[t]he same result that [the Supreme Court] reached [last] May is appropriate here.” *Id.*

The plaintiffs suggest that this case is distinguishable because the district court here found animus. Appellees’ Br. at 48. That is unpersuasive. While the district court and the majority have made the role of animus more explicit than in *Shilling* and have treated it as independently dispositive, *Shilling* relied on the same underlying defects in the Government’s justification. In *Shilling*, the district court concluded that the challenged policy was unsupported by evidence, rested on stigmatizing and derogatory characterizations, and bore no genuine connection to the government’s asserted interests. *See Shilling v. United States*, 773 F. Supp. 3d 1069, 1094-97, 1101 (W.D. Wash. 2025). The district court there rejected the Government’s reliance on speculative “predictions” that ignored “the reality of years of open service,” and emphasized the Government’s concession that there was “no evidence” that transgender status conflicts with honesty, humility, or integrity. *Id.* at 1098. Those conclusions mirror the features that today’s majority identifies as hallmarks of constitutional animus.

¹⁷⁵ *Orloff v. Willoughby*, 345 U.S. 83, 93 (1953) (Jackson, J.).

109a

Neither has the D.C. Circuit.

Not until today.

110a

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 25-5087
September Term 2025
1:25-cv-00240-ACR

NICOLAS TALBOTT, ET AL., APPELLEES

v.

UNITED STATES OF AMERICA, ET AL.,
APPELLANTS

Filed: Dec. 9, 2025

ORDER

BEFORE: PILLARD*, KATSAS, and RAO, Circuit
Judges

Upon consideration of the emergency motion for stay pending appeal, the opposition thereto, and the reply; the Rule 28(j) letters, and the responses thereto; and the letter request to lift the administrative stay, and the response thereto, it is

ORDERED that the administrative stay entered on March 27, 2025, be dissolved. It is

* Circuit Judge Pillard would deny the motion for stay pending appeal.

111a

FURTHER ORDERED that the motion for stay pending appeal be granted. A concurring statement of Circuit Judge Katsas, joined by Circuit Judge Rao, and a dissenting statement of Circuit Judge Pillard are attached.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/
Selena R. Gancasz
Deputy Clerk

KATSAS, *Circuit Judge*, joined by RAO, *Circuit Judge*: The United States military enforces strict medical standards to ensure that only physically and mentally fit individuals join its ranks. For decades, these requirements barred service by individuals with gender dysphoria, a medical condition associated with clinically significant distress. This bar was partially relaxed in 2016, revived in 2018, partially relaxed again in 2021, and revived again in 2025. District courts preliminarily enjoined the 2018 revival as a likely violation of equal-protection principles, but this Court vacated one of those injunctions, and the Supreme Court stayed two others. This case presents equal-protection challenges to the 2025 revival.

The 2025 policy generally bars individuals with gender dysphoria from serving in the Armed Forces. The Secretary of Defense concluded that this policy would advance important military interests of combat readiness, unit cohesion, and cost control. In doing so, he consulted materials compiled to assess the 2016 and 2018 policy changes, as well as more recent studies regarding the impacts of gender dysphoria on those with the condition and on their military service. The district court nonetheless preliminarily enjoined the 2025 policy based on its own contrary assessment of the evidence.

In our view, the court afforded insufficient deference to the Secretary's considered judgment. Accordingly, we stay the preliminary injunction pending the government's appeal.

To join and remain in the United States military, service members must meet strict medical standards. Lengthy Department of Defense documents set out the requirements. Add. 130¹; *see, e.g.*, Dep’t of Def. Instruction 6130.03, Vol. 1, *Medical Standards for Military Service: Appointment, Enlistment, or Induction* (May 2024), <https://perma.cc/J67Q-982F> (“DoD Accession Standards”); Dep’t of Def. Instruction 6130.03, Vol. 2, *Medical Standards for Military Service: Retention* (June 2022), <https://perma.cc/WFQ3-F229> (“DoD Retention Standards”).

Hundreds of medical conditions are “disqualifying” for accession to military service. DoD Accession Standards at 13-54. They run the gamut from poor vision, poor hearing, asthma, and high blood pressure to various abdominal, heart, lung, neurologic, urinary, vascular, and other deficiencies. *See id.* at 13-50. Many mental-health conditions are also disqualifying. These include bipolar disorders, eating disorders, substance-related disorders, obsessive-compulsive disorder, and depression or anxiety disorders under certain conditions. *See id.* at 50-52. The military traditionally has aligned these disqualifying mental-health conditions with those listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM), a diagnostic and treatment manual published by the American Psychiatric Association. *See Doe 2 v. Shanahan*, 917 F.3d 694, 709 (D.C. Cir. 2019) (Williams, J., concurring in the result).

¹ “Add.” citations refer to the government’s addendum, while “App.” citations refer to the plaintiffs’ appendix.

These requirements advance many military objectives. Among other things, they ensure that service members can complete required training, serve in harsh or remote environments, and perform their duties as safely as possible. DoD Accession Standards at 5. The standards also reduce the risk that service members will “require excessive time lost from duty” for medical reasons. *Id.* at 4.

B

This case involves application of these principles to gender dysphoria, a medical condition experienced by certain transgender individuals. The term “transgender” describes an individual whose self-perceived gender is incongruent with his or her biological sex. Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders 511 (5th ed. Text Revision 2022) (“DSM-5”). A subset of transgender individuals experience “gender dysphoria,” a psychological condition stemming from such an incongruence. *See id.* at 512-13. Gender dysphoria “is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.” *Id.* at 513. Individuals with gender dysphoria often seek specialized treatment, including hormone therapy, surgery, or other substantial interventions. *See id.* For example, women with gender dysphoria may take testosterone to induce hair growth, a deepened voice, and increased muscle mass. They also may undergo surgery to remove their breasts or change the appearance of their genitalia. Men with gender dysphoria may seek comparable hormonal or surgical interventions.

Before 2016, the medical standards discussed above broadly barred transgender individuals from military service. Add. 125; *see Doe 2*, 917 F.3d at 696-97 (Wilkins,

J., concurring). Over the last decade, however, the governing rules have changed repeatedly. One way or another, recent standards all distinguish between transgender individuals and individuals with gender dysphoria.

1

In June 2016, Secretary of Defense Ashton Carter issued a policy permitting military service by transgender individuals not suffering from gender dysphoria. App. 17 (“Carter Policy”). For individuals seeking to join the military, a “history of gender dysphoria [was] disqualifying” unless a licensed medical provider certified that the individual had been “stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months.” *Id.* at 20. Likewise, a “history of medical treatment associated with gender transition [was] disqualifying” unless a medical provider certified that the treatment had concluded and that the individual had been clinically stable for 18 months. *Id.* For individuals already serving in the military, the policy permitted “[g]ender transition” despite noting that it “presents unique challenges” for “military mission and readiness needs.” *Id.* at 21.

In significant part, the Carter Policy rested on a report by the RAND Corporation, which recommended that transgender individuals be permitted to serve in the Armed Forces. App. 116 (“RAND Report”). Despite reaching this conclusion, the RAND Report included significant caveats. It flagged as a “critical limitation” the “lack of rigorous epidemiological studies of the size or health care needs of either the U.S. transgender population or the transgender population serving in the military.” *Id.* at 138. Likewise, it acknowledged a lack of data “from which to estimate” how many transgender

individuals have gender dysphoria. *Id.* at 141. Regardless, the report found that hormone treatments make an individual undeployable for a year. *See id.* at 202. But it discounted this concern based on an assertion that “only a small proportion” of transgender service members would seek the treatment in any given year. *Id.* at 204.

After instituting the new policy, Secretary Carter issued a 71-page “implementation handbook” addressing “some of the issues” posed for military commanders. U.S. Dep’t of Defense, *Transgender Service in the U.S. Military: An Implementation Handbook* at 1, 8 (Sept. 30, 2016), <https://perma.cc/B9NH-6YVT> (“Carter Handbook”). Among other things, the handbook asked commanders to evaluate whether any “treatment plan” would cause “impacts to the mission (including deployments, operations, training and exercises).” *Id.* at 53. It discussed deployment to any nation that “view[s] transgender people as culturally unacceptable,” requiring commanders to consider reassignment and to “[p]roceed with caution for the safety of the Service member.” *Id.* at 69. It anticipated “discomfort” from service members not wanting to share showers, bathrooms, and other living facilities with individuals of the opposite sex. *Id.* at 60, 64. And it flagged fairness concerns if a transitioning service member could not meet the physical standards established for his or her “preferred gender.” *Id.* at 48-49.

2

In August 2017, President Trump ordered reconsideration of the Carter Policy. As the President saw it, Secretary Carter had “failed to identify a sufficient basis to conclude that terminating” the prior “longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax mili-

tary resources.” Military Service by Transgender Individuals, 82 Fed. Reg. 41,319, 41,319 (Aug. 30, 2017). The President reinstated the previous accession policy pending further study, and he substantially restricted government funding for “sex-reassignment surgical procedures.” *Id.* For individuals already serving in the military, he delayed any changes until Secretary of Defense James Mattis could implement a new policy. *Id.* at 41,319-20.

In February 2018, Secretary Mattis issued a policy titled “Military Service by Transgender Individuals.” Add. 119 (“Mattis Policy”). This policy barred from military service individuals who would require or had undergone “gender transition.” *Id.* at 120. Likewise, it barred individuals with a history of “gender dysphoria” from joining the military unless they had been “stable for 36 consecutive months in their biological sex prior to accession.” *Id.* Service members diagnosed with gender dysphoria after joining could continue to serve if they “d[id] not require a change of gender and remain[ed] deployable.” *Id.* Service members diagnosed with gender dysphoria while the Carter Policy remained in effect could continue serving “in their preferred gender” and receiving “medically necessary treatment.” *Id.* Transgender individuals without a history of gender dysphoria could join and serve “in their biological sex.” *Id.* at 121.

The Mattis Policy rested on the “professional military judgment” of “senior uniformed and civilian Defense Department and U.S. Coast Guard leaders.” Add. 119. It also rested on recommendations set forth in a Defense Department report reflecting “input from transgender Service members, commanders of transgender Service members, military medical professionals, and ci-

vilian medical professionals with experience in the care and treatment of individuals with gender dysphoria.” *Id.* at 119-20; *see id.* at 122-66 (“Mattis Report”). Based on this information, Secretary Mattis concluded that the RAND Report “contained significant shortcomings.” *Id.* at 120. Specifically, it relied on “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.” *Id.*

These actions spurred litigation. Before Secretary Mattis issued his policy, four district courts enjoined portions of President Trump’s memorandum. *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 177 (D.D.C. 2017); *Stone v. Trump*, 280 F. Supp. 3d 747, 769 (D. Md. 2017); *Karnoski v. Trump*, No. 17-cv-1297, 2017 WL 6311305, at *10 (W.D. Wash. Dec. 11, 2017); *Stockman v. Trump*, No. 17-cv-1799, 2017 WL 9732572, at *16 (C.D. Cal. Dec. 22, 2017). After Secretary Mattis issued his policy, we granted the government’s motion to dissolve one of those injunctions. *Doe 2 v. Shanahan*, 755 F. App’x 19, 22 (D.C. Cir. 2019). We held that the Mattis Policy “plausibly relied upon the considered professional judgment of appropriate military officials and appeared to permit some transgender individuals to serve in the military.” *Id.* at 25 (cleaned up). Soon after our decision, the Supreme Court stayed two of the other injunctions against the presidential memorandum and interim guidance. *Trump v. Karnoski*, 586 U.S. 1124 (2019); *Trump v. Stockman*, 586 U.S. 1124 (2019). The fourth district court then followed suit. *See Stone v. Trump*, No. 17-cv-2459, 2019 WL 5697228, at *3 (D. Md. Mar. 7, 2019). With these stays in place, challenges to the presidential

memorandum and the Mattis Policy fizzled out. The Mattis Policy thus remained in force from January 2019 until President Biden assumed office in January 2021.

3

Upon taking office, President Biden issued an executive order shifting the policy once again. Enabling All Qualified Americans to Serve Their Country in Uniform, 86 Fed. Reg. 7,471 (Jan. 28, 2021). President Biden directed Defense Secretary Lloyd Austin to “immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service on the basis of gender identity.” *Id.* at 7,472. And he directed military officials to “establish[] a process by which transgender service members may transition gender while serving.” *Id.*

In April 2021, the Department of Defense issued new guidance. App. 49; *see also* Dep’t of Def. Instruction 6130.03, Vol. 1, *Medical Standards for Military Service: Appointment, Enlistment, or Induction* (Apr. 2021), <https://perma.cc/3W6K-2XHW> (“2021 DoD Accession Standards”) (collectively “Austin Policy”). The Austin Policy largely restored the Carter Policy, disqualifying gender-dysphoric individuals from acceding unless they had been “stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months.” 2021 DoD Accession Standards at 48. But the Austin Policy permitted “in-service transition,” App. 49, while recognizing that it poses “unique challenges” to “military mission and readiness,” *id.* at 55.

Upon returning to office, President Trump revoked the Biden executive order. Prioritizing Military Excellence and Readiness, 90 Fed. Reg. 8,757, 8,757 (Feb. 3, 2025). President Trump cited longstanding DoD guidance requiring service members to be “free of medical conditions” that may “require excessive time lost from duty.” *Id.* (cleaned up). He further emphasized that the Armed Forces “must adhere to high mental and physical health standards” to ensure that they can “deploy, fight, and win, including in austere conditions and without the benefit of routine medical treatment or special provisions.” *Id.* And he concluded that these high standards are “inconsistent with the medical, surgical, and mental health constraints on individuals with gender dysphoria.” *Id.* The President directed Defense Secretary Pete Hegseth to update the military’s medical standards accordingly. *See id.* at 8,757-58.

Secretary Hegseth issued various memoranda disqualifying from military service individuals with a diagnosis of, history of, or symptoms “consistent with” gender dysphoria. Add. 99-109, 113-16, 198-202 (collectively “Hegseth Policy”). For purposes of the policy, symptoms “consistent with” gender dysphoria means symptoms that “would be sufficient to constitute a diagnosis.” *Id.* at 200 n.2. In limited circumstances, the policy allows gender-dysphoric individuals to apply for a waiver to join or remain in the military. *Id.* at 198-99.

Several studies and reviews undergird the Hegseth Policy. These include the Mattis Policy and Report, a 2021 DoD study analyzing appropriate accession standards for transgender individuals, a 2025 literature review on the efficacy of hormonal or surgical treatments

for gender dysphoria, and a review of cost data for treating gender-dysphoric service members through 2024. Add. 115-16.

C

Plaintiffs are transgender individuals with gender dysphoria diagnoses. Most of them are active-duty service members. They contend that the Hegseth Policy violates equal-protection principles incorporated into the Fifth Amendment.

The district court preliminarily enjoined the Hegseth Policy. The court concluded that intermediate scrutiny was appropriate because the policy assertedly discriminates based on sex and transgender status. *Talbott v. United States*, 775 F. Supp. 3d 283, 316-22 (D.D.C. 2025). The court further held that the policy was unlikely to survive intermediate scrutiny. *See id.* at 322-26. Alternatively, the court held that the policy was motivated by animus toward transgender individuals and thus would fail even rational-basis scrutiny. *See id.* at 326-29. And it found that the equitable factors favored the plaintiffs. *See id.* at 332-34.

The government appealed the preliminary injunction and moved for a stay. While that motion was pending, the Supreme Court stayed a preliminary injunction against the Hegseth Policy entered by the Western District of Washington. *United States v. Shilling*, 145 S. Ct. 2695 (mem.) (May 6, 2025). Soon after, the Supreme Court held that a law prohibiting the use of hormones to treat gender dysphoria in minors does not discriminate based on sex or transgender status and survives rational-basis review. *United States v. Skrametti*, 605 U.S. 495, 510-25 (2025).

II

The grant of a stay pending appeal depends on whether (1) the appellant has made a strong showing that it will prevail on the merits; (2) the appellant will be irreparably harmed absent a stay; (3) issuance of the stay will substantially harm plaintiffs or others; and (4) the stay is in the public interest. *Nken v. Holder*, 556 U.S. 418, 425-26 (2009). Applying these factors, a stay is warranted.

A

The Hegseth Policy likely does not violate equal protection. We doubt that the policy triggers any form of heightened scrutiny. In *Skrmetti*, the Supreme Court held that a law prohibiting the use of hormones to treat gender dysphoria in minors “classifies on the basis of medical use” and thus does not discriminate based on either sex or transgender status. *See* 605 U.S. at 510-19. The same reasoning would seem to cover the Hegseth Policy, which classifies based on the medical condition of gender dysphoria. *Skrmetti* also casts significant doubt on the proposition that a classification based on transgender status would trigger heightened scrutiny. *See id.* at 517 (“This Court has not previously held that transgender individuals are a suspect or quasi-suspect class.”); *id.* at 557 (Barrett, J., concurring) (“The Equal Protection Clause does not demand heightened judicial scrutiny of laws that classify based on transgender status.”); *id.* at 558 (Alito, J., concurring in part and concurring in the judgment) (classification based on transgender status “does not warrant heightened scrutiny”).

Even if the Hegseth Policy contained a classification triggering some form of heightened scrutiny, decades of precedent establish that the judiciary must tread care-

fully when asked to second-guess considered military judgments of the political branches. And we must do so even in cases involving sex-based or other quasi-suspect classifications. Moreover, the Supreme Court already has held that the government is likely to succeed on its contention that the Hegseth Policy does not violate equal protection. *Shilling*, 145 S. Ct. at 2695. And this Court, applying settled doctrines of deference to the military, has strongly suggested that the Mattis Policy did not violate equal protection. *See Doe 2*, 755 F. App'x at 25. Given these decisions, and for reasons summarized below, the Hegseth Policy is likely constitutional.

1

The Constitution vests the “complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force” in the political branches. *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973). For example, Article II makes the President the Commander in Chief, U.S. Const. Art. II, § 2, cl. 1, while Article I gives Congress the power to declare war and make rules for the Armed Forces, *id.* Art. I, § 8, cls. 11, 14. So, the President and Congress have primary responsibility for the “delicate task of balancing the rights of servicemen against the needs of the military.” *Loving v. United States*, 517 U.S. 748, 767 (1996) (cleaned up).

Given this allocation of powers, the judicial branch must be “reluctant to intrude upon the authority of the Executive in military and national security affairs.” *Dep't of Navy v. Egan*, 484 U.S. 518, 530 (1988); *see Orloff v. Willoughby*, 345 U.S. 83, 93-94 (1953) (“judges are not given the task of running the Army”); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 645 (1952) (Jackson, J., concurring) (courts should give the Presi-

dent, as Commander-in-Chief, “the widest latitude . . . to command the instruments of national force”). Indeed, it is “difficult to conceive of an area of governmental activity in which the courts have less competence.” *Rostker v. Goldberg*, 453 U.S. 57, 65 (1981) (quoting *Gilligan*, 413 U.S. at 10).

Our review of constitutional challenges to military rules thus “is far more deferential than constitutional review of similar laws or regulations designed for civilian society.” *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986). In the military context, courts consider whether the policy at issue resulted from the professional judgment of military authorities and reasonably furthers legitimate military interests. *Id.* Moreover, we must respect the military’s judgment on “the relative importance of a particular military interest.” *Id.* Courts “must be particularly careful not to substitute our judgment of what is desirable . . . or our own evaluation of evidence for a reasonable evaluation” by the political branches. *Goldberg*, 453 U.S. at 68.

Consider two leading precedents in this area. In *Goldberg*, the Supreme Court rejected an equal-protection challenge to a statute compelling men but not women to register for the draft. 453 U.S. at 59, 83. The Court stressed that Congress had made a considered judgment that this classification minimized “burdens” and “administrative problems” involving “housing . . . and physical standards,” while promoting “the important goal of military flexibility.” *Id.* at 81-82. In the “context of military preparedness and the exigencies of a future mobilization,” the Court refused to “dismiss such problems as insignificant.” *Id.* at 81. In *Goldman*, the Court similarly rejected a free-exercise challenge to a military

regulation restricting the wearing of yarmulkes. 475 U.S. at 509-10. The Court declined to apply the heightened scrutiny normally used to assess First Amendment claims. *See id.* at 506-07. Instead, it took a “far more deferential approach” than it would have if the restriction had been “designed for civilian society.” *Id.* at 507. Citing *Goldberg*, the Court confirmed that “judicial deference is at its apogee” when the political branches make “rules and regulations for [military] governance.” *Id.* at 508 (cleaned up). The Court thus credited the “professional judgment of military authorities” that the restriction advanced legitimate goals including “obedience, unity, commitment, and esprit de corps.” *Id.* at 507.

Of course, the Constitution binds the government in the realm of military affairs. *See Goldberg*, 453 U.S. at 67; *Parker v. Levy*, 417 U.S. 733, 758 (1974). As we have noted, “the cost of military service has never entailed the complete surrender of all basic rights.” *Singh v. Berger*, 56 F.4th 88, 92 (D.C. Cir. 2022) (cleaned up). Particularly when Congress has mandated heightened scrutiny, a military policy may be found unlawful where, for example, it is riddled with unexplained exemptions for some but not others. *See id.* at 98-107 (applying the Religious Freedom Restoration Act). But even then, courts must afford deference to the executive’s considered judgment that a military policy furthers legitimate interests. *See id.* at 98-99.

2

The Hegseth Policy is likely constitutional because it reflects a considered judgment of military leaders and furthers legitimate military interests.

The Hegseth Policy reflects the considered judgment of the Secretary of Defense and military leaders in the Defense Department. The policy was informed by “existing and prior DoD policy, and prior DoD studies and reviews of service by individuals with gender dysphoria, including a review of medical literature regarding the medical risks associated with [the] presence and treatment of gender dysphoria.” Add. 115. In significant part, the Hegseth Policy relied on the Mattis Policy, which “conclude[d] that there are substantial risks associated with allowing accession and retention of individuals with a history or diagnosis of gender dysphoria.” *Id.* (Hegseth Policy) (quoting *id.* at 120 (Mattis Policy)). In turn, the Mattis Policy “was informed by an extensive inquiry conducted by a panel of experts” who considered the views of many stakeholders, including transgender service members and their commanders. *Id.* at 115 (Hegseth Policy); *see id.* at 119 (Mattis Policy). And we previously concluded that, because the Mattis Policy relied on the considered judgment of military officials, the government had “substantial arguments” that it complied with equal-protection principles. *Doe 2*, 755 F. App’x at 25.

The Hegseth Policy also relied on more recent materials, including a 2021 study addressing appropriate accession standards for transgender individuals, a 2025 literature review on the efficacy of treatments for gender dysphoria, and a review of cost data for treating gender dysphoria. Add. 115-16. The 2021 study suggested that up to 40 percent of individuals with a gender dysphoria diagnosis would be “deemed non-deployable due to mental health reasons at some time during the 24 months following initial diagnosis.” *Talbott*, No. 25-cv-240, Dkt.

No. 86-1, at 15 (D.D.C. Mar. 17, 2025) (“AMSARA Study”). The 2025 literature review indicated that transgender individuals are far more likely than others “to receive a psychiatric diagnosis” of mood disorders, anxiety disorders, or psychotic disorders, with a suicide attempt rate 13 times higher than that for non-transgender individuals. Add. 189. The literature review also found that the “strength of the evidence” supporting the efficacy of hormonal or surgical treatments for gender dysphoria is “low to moderate.” *Id.* at 189-93. And the cost data indicated that, between 2015 and 2024, DoD spent over \$52 million providing treatment for gender dysphoria to active-duty service members. *Id.* at 116.

b

The government identifies several legitimate military interests that the Hegseth Policy advances.

Chief among them is military readiness. On its face, the policy applies only to individuals with gender dysphoria, a medical condition that involves “clinically significant distress or impairment in social, occupational, or other important areas of functioning.” DSM-5 at 513. Secretary Hegseth had before him evidence that treatments for gender dysphoria would limit deployability and may not be effective. AMSARA Study at 15; Add. 189-93. His predecessors unanimously agreed that these concerns are serious ones: The Carter and Austin Policies barred accession by individuals with a history of gender dysphoria unless they had been “stable without clinically significant distress or impairment” for 18 months, App. 20; 2021 DoD Accession Standards at 48, while the Mattis Policy drew the line at 36 months, Add. 120. The Mattis Report noted that individuals “receiving hormone therapy and surgery” could not deploy to

“austere environments where their healthcare needs cannot be met,” which showed that “the inclusion of individuals with gender dysphoria in the force will have a negative impact on readiness.” *Id.* at 156. The Carter implementation handbook also anticipated “impacts to the mission (including deployment, operations, training, exercise schedules, and critical skills availability)” from both treatment requirements and international cultural constraints. *See, e.g.*, Carter Handbook at 14, 29, 48, 69. Even the RAND Report, despite recommending that individuals with gender dysphoria be allowed to serve, recognized that hormone treatments could render them unable to deploy for a year. App. 202.

The Hegseth Policy also rests on concerns about unit cohesion and good order. The military’s interest in “fostering cohesion and unity among its members” is “surely” a “compelling” one. *Singh*, 56 F.4th at 99. And even when applying strict scrutiny, we must “indulge the widest latitude in considering” interests based on an asserted need for unit cohesion. *Id.* (cleaned up).

One such interest involves the privacy of service members who, as the Mattis Report explained, must “live in extremely close proximity to one another when sleeping, undressing, showering, and using the bathroom.” Add. 159. To protect privacy, Congress has required the military to provide separate housing for male and female service recruits. *See, e.g.*, 10 U.S.C. §§ 7419 (Army), 8431 (Navy), 9419 (Air Force). Even beyond statutory requirements, the military “has long maintained separate berthing, bathroom, and shower facilities for men and women.” Add. 159. Distinctions like these—keyed to biological differences between the sexes—are unquestionably constitutional. As Justice

Ginsburg explained for the Supreme Court, it is not only permissible, but indeed “necessary to afford members of each sex privacy from the other sex in living arrangements.” *United States v. Virginia*, 518 U.S. 515, 550 n.19 (1996). And as Judge Williams later elaborated, in explaining why the Mattis Policy likely did not violate equal protection, “there is no constitutional right for, say, biological males who identify as female to live, sleep, shower, and train with biological females.” *Doe 2*, 917 F.3d at 707-08 (Williams, J., concurring in the result). The Mattis Report and Carter implementation handbook both acknowledge that allowing gender-dysphoric individuals to serve consistent with their perceived gender identity, as opposed to their biological sex, would impinge on these privacy interests in intimate, communal living spaces. Add. 159 (Mattis Report); Carter Handbook at 60 (issues with “open bay shower configuration”); *id.* at 63-65 (sleeping areas).

The Hegseth Policy also implicates the military’s sex-based standards for physical fitness. As the Mattis Report explained, “to allow biological males who identify as female to be held to female standards” would raise concerns of unfairness and discrimination. Add. 158. Among other things, such individuals would gain competitive advantages over other males held to the male strength and fitness standards. *See id.* Likewise, females required to compete against such individuals would be disadvantaged. *See id.* “Even more importantly, in physically violent training and competition, such as boxing and combatives, pitting biological females against biological males who identify as female, and vice versa, could present a serious safety risk as well.” *Id.* We cannot lightly dismiss these concerns.

Finally, the Hegseth Policy cited cost issues, noting that the military had spent more than \$52 million on treating service members with gender dysphoria between 2015 and 2024. Add. 116. The Mattis Report likewise cited cost concerns. It noted that after the Carter Policy was implemented, medical costs for service members with gender dysphoria increased nearly three times as much as did costs for service members who did not have gender dysphoria. *Id.* at 163. Moreover, it noted that units sometimes had to use “operations and maintenance funds to pay for” the “specialized medical care” needed by gender-dysphoric service members. *Id.*

c

The district court held that the Hegseth Policy does not advance these interests. In our view, it gave no sound reason for overriding the Secretary’s considered judgment.

The court dismissed the Mattis Policy and Report as “outdated.” *Talbott*, 775 F. Supp. 3d at 325. The court concluded that in 2018, when Secretary Mattis issued his report, “medical literature concerning the study and treatment of gender dysphoria” was “in a state of flux.” *Id.* at 303 (cleaned up). But, the court continued, “medical studies now overwhelmingly conclude that gender dysphoria is highly treatable.” *Id.* at 304. In support, the court cited a declaration from one doctor who simply stated, in one sentence and without citations, that “gender dysphoria is ‘highly treatable.’” *Id.* (citing Decl. of George Brown at 4, Dkt. No. 72-77).

We are wary of such a sweeping conclusion. For one thing, the Mattis Report reflects a thorough assessment of evidence available as of 2018, not much time has passed since then, and we are skeptical that the constitutionality of a military policy ebbs and flows as new

medical studies emerge every few years. For another, the Hegseth Policy did consider more recent studies, which provide further support for its restrictions. To reiterate, the policy rests in part on a 2021 DoD study suggesting that up to 40 percent of individuals being treated for gender dysphoria may become non-deployable at some point over a two-year period, AMSARA Study at 15, and a 2025 literature review finding that transgender individuals are more likely than others to suffer various mental-health issues, Add. 188, and that the “strength of the evidence” supporting hormonal or surgical treatment for gender dysphoria is “low to moderate,” *id.* at 189-93. Moreover, at least with respect to adolescents, evidence regarding treatment efficacy may be even less settled today than it was a few years ago. *See Skrmetti*, 605 U.S. at 524 (“Recent developments only underscore the need for legislative flexibility in this area.”); *id.* at 532-40 (Thomas, J., concurring); Br. of Alabama as *Amicus Curiae* at 28-32, *Skrmetti*, 605 U.S. 495 (Oct. 15, 2024). Given all this, the military was not constitutionally required to credit plaintiffs’ side of a fraught medical divide. Finally, the Hegseth Policy advances some interests that do not turn on medical questions at all. For example, the military continues to observe sex-based distinctions for sleeping areas and physical competitions. And the privacy and safety interests advanced by these standards do not turn on whether gender dysphoria is more treatable today than it was seven years ago.

The district court also conducted a searching review of the post-2018 studies relied on by DoD. *Talbott*, 775 F. Supp. 3d at 301-08, 322-25. We find many of its criticisms unpersuasive. For example, as to the 2021 study, the court concluded that a 40 percent non-deployability rate was “not informative” without knowing the compa-

rable rate for non-transgender individuals. *Id.* at 304. But with accession standards that screen out everything from asthma to high blood pressure, it strains credulity to suppose that military-wide averages for non-deployability would be anywhere near two out of five. Next, the district court downplayed the 2025 literature review because it addressed all gender-dysphoric individuals, rather than only those serving in the military. *Id.* at 305. But that broader focus surely *understates* the challenges faced by gender-dysphoric individuals in the military, where life is often more stressful and demanding than it is for civilians. The court further downplayed evidence of greater mental-health issues faced by transgender individuals as reflecting “external factors.” *Id.* Maybe so, but that says little about the cost to the military from taking on individuals who have a medical diagnosis associated with significant mental distress. To be sure, the district court fairly noted that the 2021 study and the 2025 literature review contain some evidence cutting in favor of permitting service by individuals with gender dysphoria. *Id.* at 303-06. But the RAND Report that informed the Carter Policy likewise contained cross-cutting conclusions. Again, the military is entitled to substantial deference in setting risk tolerances and evaluating conflicting evidence bearing on matters like force composition. *See, e.g., Trump v. Hawaii*, 585 U.S. 667, 707-08 (2018); *Goldman*, 475 U.S. at 507; *Goldberg*, 453 U.S. at 70-72; *Doe 2*, 917 F.3d at 728 (Williams, J., concurring in the result). Here, the evidence supporting the Hegseth Policy was more than sufficient to support the choices made.

The district court also held that the Hegseth Policy is rooted in animus against transgender individuals and therefore would fail even rational-basis scrutiny. *Talbott*, 775 F. Supp. 3d at 326-29. The court invoked a line of cases invalidating statutes that disadvantaged unpopular groups. *See, e.g., Romer v. Evans*, 517 U.S. 620 (1996); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985); *USDA v. Moreno*, 413 U.S. 528 (1973). In our view, the district court overread these precedents.

These decisions reflect ordinary rational-basis principles; they are not an independent basis for striking down statutes or rules. In *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001), the Supreme Court rejected a contention that “decision-making reflecting negative attitudes . . . necessarily runs afoul of” equal protection. *Id.* at 367 (cleaned up) (discussing *Cleburne*, 473 U.S. at 448). Instead, the Court explained, cases like *Cleburne* condemn negative attitudes “unsubstantiated” by anything that would indicate a legitimate government interest. *See id.* (emphasis omitted). So, “read in context,” the animus precedents “simply state the unremarkable and widely acknowledged tenet of the Court’s equal protection jurisprudence that state action subject to rational-basis scrutiny does not violate the Fourteenth Amendment when it rationally furthers the purpose identified by the [government].” *Id.* (cleaned up).

The Supreme Court confirmed this point in *Trump v. Hawaii*. There, it explained that the “common thread” uniting its animus decisions has been the lack of “any purpose other than a ‘bare desire to harm a politically unpopular group.’” 585 U.S. at 705 (quoting *Moreno*,

413 U.S. at 534) (cleaned up). Put differently, the key question is whether it is “impossible to ‘discern a relationship to legitimate state interests’” such that the policy is “inexplicable by anything but animus.” *Id.* at 706 (quoting *Romer*, 517 U.S. at 632, 635). If any legitimate state interest exists, “we must accept that independent justification” and thus reject an equal-protection challenge resting on asserted animus. *Id.* Because the Hegseth Policy advances legitimate military interests, the animus cases do not help the plaintiffs here.

The district court looked beyond the Hegseth Policy itself to derive animus from various statements made by the President or other officials. The Supreme Court rejected such an approach in *Trump v. Hawaii*, which upheld a presidential proclamation imposing restrictions on travel to the United States from six predominantly Muslim countries. 585 U.S. at 676; *see also id.* at 736 (Sotomayor, J., dissenting). The plaintiffs in that case highlighted several of President Trump’s social media posts which, in the dissenting justices’ view, “express[ed] animus toward Islam.” *Id.* at 731 (Sotomayor, J., dissenting); *see also id.* at 728 (Breyer, J., dissenting). But the Court discounted the “significance of those statements in reviewing a Presidential directive, neutral on its face, addressing a matter within the core of executive responsibility.” *Id.* at 702 (majority opinion). The task, as the Court viewed it, was to “consider not only the statements of a particular President, but also the authority of the Presidency itself.” *Id.* With that principle in mind, the Court looked to the proclamation’s text, which was “expressly premised on legitimate purposes.” *Id.* at 706. Given that conclusion, the statements of government officials about the proclamation were not dispositive. So too here. Our review must focus on the text

and sources informing the Hegseth Policy, not extrinsic statements made about it.

B

The remaining stay factors also favor the government. For one thing, the Supreme Court’s stay order in *Shilling* indicates that the government would suffer an irreparable injury if the Hegseth Policy were enjoined pending appellate review of preliminary injunctions. *See Shilling*, 145 S. Ct. 2695; *Nken*, 556 U.S. at 425-26. This is hardly surprising. Injunctions that “improperly intrude” on the Executive Branch often inflict irreparable injury, *Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025) (cleaned up), especially where the injunction interferes with the government’s “compelling need to provide for the Nation’s security,” *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 583 (2017) (per curiam). We can imagine few if any government interests more compelling than a strong and ready military. And while the district court concluded that allowing gender-dysphoric individuals to serve in the military would advance the cause of military strength and readiness, the Constitution assigns that assessment to the political branches, as cases like *Goldberg* and *Goldman* make clear.

On the other side of the balance, we acknowledge that the plaintiffs have significant interests at stake—particularly those who have already acceded. But “[t]he possibility that adequate compensatory or other corrective relief will be available at a later date . . . weighs heavily against a claim of irreparable harm.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297-98 (D.C. Cir. 2006) (cleaned up). In particular, loss of a valued government position “does not usually constitute irreparable injury,” especially if the termi-

nated individual or officer may obtain backpay or reinstatement if he or she ultimately prevails on the merits. *Sampson v. Murray*, 415 U.S. 61, 90-91 (1974). Courts applying these principles have held that even less-than-honorable military discharges do not constitute irreparable injuries warranting interim relief while challenges to the discharge remain ongoing. *See Hartikka v. United States*, 754 F.2d 1516, 1518 (9th Cir. 1985); *Guerra v. Scruggs*, 942 F.2d 270, 273-74 (4th Cir. 1991). And here, any service members separated under the Hegseth Policy will be honorably discharged. Add. 101.

Finally, the public interest does not warrant a stay. With the government likely to prevail on the merits, and with the balance of harm among the parties favoring the government, we can discern no other consideration here that would tip the scale in the opposite direction.

III

For these reasons, we grant the stay pending appeal.²

² The district court independently erred in universally enjoining the Hegseth Policy rather than merely providing as-applied relief to the plaintiffs. *See CASA*, 606 U.S. at 839-47. Given our conclusion that the government should be able to enforce the policy while its appeal is pending, we need not address further questions about the appropriate scope of any injunctive relief.

PILLARD, *Circuit Judge*, dissenting: Transgender members of the military have answered the call to serve this nation on the same terms as any other servicemember. For nearly a decade, they have met the same standards, risen to the same challenges, and defended our country with the same honor as their peers. They have passed intensive physical and mental health screening, completed demanding training programs, and met the rigors of their assigned duties. The achievements of the individual plaintiffs in this case include “more than 80 commendations” during a collective total of “over 130 years of military service.” *See Talbott v. United States*, 775 F. Supp. 3d 283, 291 (D.D.C. 2025). In the district court, high-ranking officials from the Army, Navy, and Air Force offered un rebutted testimony uniformly supporting the finding that transgender servicemembers “have had either no detrimental effect or have had a positive” effect on military readiness. *Id.* at 310. Defendants offered no evidence to the contrary.

This suit arises because the government has now decided to force every transgender servicemember out of the military through a policy based on nothing more than negative attitudes about transgender identity. The majority and I agree that we owe the greatest deference to the political branches’ expert judgments on military policy. Maj. 11-12. The Constitution vests control of the military in the political branches. *Id.* We must respect “the executive’s considered judgment that a military policy furthers legitimate interests.” *Id.* at 13. The district court, in accord with that deferential standard of review, *Talbott*, 775 F. Supp. 3d at 311-12, offered the government every opportunity to provide evidence of considered judgment supporting the Hegseth Policy, *id.* at 309. The government declined to do so. *Id.*

Underscoring that its actions are heedless of military need, the government cannot even say how many servicemembers its policy will exclude—but evidence suggests the number is in the thousands. *Id.* at 307; *see generally* Add. 129 n.10 (citing a 2016 survey estimating that 8,980 active-duty servicemembers, approximately 1% of the service, identified as transgender). Prior defense secretaries in Republican and Democratic administrations adopted varying policies regarding transgender people’s accession. But none categorically barred current servicemembers who are transgender from remaining in their roles so long as they continue to meet military standards.

There may well be valid reasons to reexamine and alter military service policies set by previous administrations. But on this record, one cannot tell. Defendants provide no evidence that they based their new policy on any assessment of costs, benefits, or any other factor legitimately bearing on military necessity. Indeed, there is “no evidence that [President Trump or Secretary Hegseth] consulted with uniformed military leaders” before imposing their unprecedented ban on transgender servicemembers. *Talbott*, 775 F. Supp. 3d at 292. The outcome was determined by animus from the start.

In Executive Order 14183, President Trump declared as “the policy of the United States” that “adoption of a gender identity inconsistent with an individual’s sex conflicts with a soldier’s commitment to an honorable, truthful, and disciplined lifestyle, even in one’s personal life.” Prioritizing Military Excellence and Readiness, 90 Fed. Reg. 8757, 8757 (Feb. 3, 2025). He asserted that openly identifying as transgender is “not consistent with the humility and selflessness required of a service mem-

ber.” *Id.* Having thereby tagged all transgender servicemembers as shameful, dishonest laggards too arrogant or selfish to serve, he ordered Secretary Hegseth to implement policies within sixty days to carry out the Executive Order. *Id.* at 8757-58.

Secretary Hegseth responded by adopting the policy at issue here. Under the Hegseth Policy, all servicemembers who “exhibit symptoms consistent with[] gender dysphoria” or “have a history of” receiving gender-affirming care are summarily “disqualified from military service.” Add. 106. The policy purports to allow “consider[ation] for a waiver on a case-by-case basis, provided there is a compelling Government interest in retaining the servicemember that directly supports warfighting capabilities,” *id.*, but the waiver is illusory. It is unavailable to anyone who has ever “attempted to transition to any sex other than their [birth] sex” and requires a commitment to “adhere to . . . the standards associated with the Service member’s [birth] sex.” *Id.* The so-called waiver thus excludes any transgender person who has *ever* attempted to serve or succeeded in serving—or just living—consistently with their gender identity, or who intends to do so.

The Hegseth Policy casts itself as concerned with the “medical, surgical, and mental health constraints on individuals with gender dysphoria.” *Id.* at 101. But the Policy is not a medical standard. It is a categorical exclusion of transgender people from military service—with “transgender” broadly defined. It covers not only those with diagnosed gender dysphoria, but also those with “a history of” gender dysphoria, or “symptoms consistent with” gender dysphoria. *Id.* As the district court found, it is a ban on transgender troops writ large. *Tal-*

bott, 775 F.3d at 301-02; *see infra* Part I.A. What is more, the Hegseth Policy explicitly bars the military branches from using the military's own Disability Evaluation System to determine on a case-by-case basis whether a transgender person has a disabling medical condition burdensome to the military or inconsistent with continued service. Add. 106. The government cannot identify any other medical condition that automatically triggers administrative separation instead of an individualized medical evaluation regarding continued fitness to serve. Oral Arg. 27:30-28:30. Why do health concerns stemming from present, past, or suspected gender dysphoria require a process different from what the military uses for every other medical condition affecting servicemembers? The government has no answer.

The record of the military's prior experience with individualized medical evaluations under Secretaries Carter, Mattis, and Austin undercuts the Hegseth Policy: It reveals that incumbent transgender servicemembers have earned their places in the military and that they can serve without health-related disqualification, *Talbott*, 775 F. Supp. 3d at 308-09, and often without any period of non-deployability, Wagner Decl. ¶ 14 (App. 332). Secretaries Carter, Mattis, and Austin understood that the military has strong reasons to continue to benefit from incumbent servicemembers' valuable training and experience, in which the government has made significant investments, rather than arbitrarily removing them from their posts. And they recognized that transgender servicemembers have significant reliance interests in their military positions. *See, e.g.*, Add. 128 (Mattis Policy).

In implementing the Hegseth Policy to exclude even current servicemembers, defendants double down on de-

meaning their own. The Air Force has released a memorandum requiring transgender servicemembers to either show up to their separation hearings wearing the uniform and meeting the grooming standards of their birth sex—not the uniform they have worn while serving—or else forego the right to participate in their hearings. Memorandum from Brian Scarlett, Acting Assistant Sec’y of the Air Force for Manpower, Pers., and Servs., to All Major Commands, Direct Reporting Units, Field Operating Agencies, & Commanders 4 (Aug. 14, 2024) [hereinafter Air Force Memorandum]. For transgender servicemembers who want to participate in their own separation hearings, that might mean buying a new uniform, shaving their mustaches or shearing their long hair to adhere to different sex-based standards, and dressing in clothing not meant for their medically transitioned bodies. It is hard to see any purpose of those requirements other than humiliating the departing transgender servicemembers and deterring them from exercising their hearing rights. The threat that any transgender servicemember who does not separate voluntarily could face recoupment of past bonuses is added spite. Add. 107.

Based on its review of the uncontested facts of record, the district court preliminarily enjoined the Hegseth Policy. Applying existing, binding law to the uncontested record before us, I must agree with that judgment. I cannot credit the government’s bare assertions over the district court’s findings on the factual record, none of which the government challenges for clear error. The government has not satisfied the demanding standard to stay the district court’s preliminary injunction.

I write with full respect for the signal we have already received from the Supreme Court regarding the Hegseth Policy. Acting on its emergency docket without statement or opinion, the Supreme Court has stayed a separate preliminary injunction against the Hegseth Policy issued by the U.S. District Court for the Western District of Washington. *See United States v. Shilling*, 145 S. Ct. 2695 (2025) (mem). I am mindful of the Supreme Court’s guidance that its “interim orders . . . inform how [we] should exercise [our] equitable discretion in like cases,” *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025), as well as its instruction that the Court’s “unexplicated decisions” are “not to be read as a renunciation . . . of doctrines previously announced” in its binding decisions, *Ramos v. Louisiana*, 590 U.S. 83, 104-05 (2020) (internal quotation marks and citations omitted). The Supreme Court’s order in *Shilling* may well reflect its conclusion that district judges lack authority to grant universal relief. *Trump v. CASA, Inc.*, 606 U.S. 831, 856 (2025).¹ And this case, like *Shilling*, arrives in a preliminary posture, presenting the kind of important, fast-moving issue on which the lower federal courts can contribute to “the airing of competing views” that may “aid[] [the Supreme] Court’s own decisionmaking process” at the merits stage. *Dep’t of Homeland Sec. v. New York*, 589 U.S. 1173, 1176 (2020) (Gorsuch, J., concurring in grant of stay); *see also Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting) (“[D]iverse opinions from[] state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court.”). As do my colleagues in the majority, I

¹ As this case proceeds, the district court may need to reassess the scope of its injunction in light of the Supreme Court’s intervening decision in *CASA*. *See Doe v. Trump*, 142 F.4th 109, 112 (1st Cir. 2025).

thus find it worthwhile to briefly explain my views on whether the district court’s preliminary injunction should be stayed pending resolution of the appeal on its merits.

I.

Entering a stay pending appeal is an “extraordinary” remedy. *Citizens for Resp. & Ethics in Wash. v. FEC (CREW)*, 904 F.3d 1014, 1017 (D.C. Cir. 2018) (per curiam). In most circumstances, parties must vindicate their positions through the ordinary process of litigation. To stay relief that a district court entered for an opposing party, the applicant must (1) make a “strong showing that [it] is likely to succeed on the merits;” (2) demonstrate that it will be “irreparably injured” before the appeal concludes; (3) show that issuing a stay will not “substantially injure the other parties interested in the proceeding;” and (4) establish that “the public interest” favors a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). We review the district court’s decision to grant the preliminary injunction “for abuse of discretion, its legal conclusions *de novo*, and [its] factual findings for clear error.” *Media Matters for Am. v. Paxton*, 138 F.4th 563, 573 (D.C. Cir. 2025).

Even with the benefit of the “great deference” we owe “to the professional judgment of military authorities,” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008), defendants have failed to make the necessary “strong showing” that they are likely to succeed on the merits of their claim, *Nken*, 556 U.S. at 426. Because the Hegseth Policy is openly fueled by animus towards transgender people and defendants have not shown that it is based on military considerations, it fails even the most deferential form of equal protection review.

A.

“[I]f the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973). Accordingly, even reviewed with “the highest deference” that we owe the political branches “in ordering military affairs,” *Loving v. United States*, 517 U.S. 748, 768 (1996); see *Dep’t of Navy v. Egan*, 484 U.S. 518, 530 (1988) (collecting cases), a law or other official action that is driven solely by animus towards a disfavored group cannot survive. Animus fails as a justification for differential treatment even of groups unprotected by any heightened constitutional scrutiny. The Supreme Court has applied rationality review to strike down as animus-based a statutory provision rooted in negative attitudes about “‘hippies’ and ‘hippie communes’” that disqualified unmarried cohabitants from receiving food stamps, *Moreno*, 413 U.S. at 534 (citing 116 Cong. Rec. 44439 (1970) (statement of Sen. Holland)), the amendment of Colorado’s constitution to prohibit the state from acting to protect gay people from discrimination, *Romer v. Evans*, 517 U.S. 620, 632-33 (1996), and a zoning ordinance rooted in fears of the mentally disabled, *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 448-50 (1985). Even as the Court in *Cleburne* declined to apply heightened scrutiny to official action targeting “the mentally retarded,” it invalidated the denial of a permit for a group home because the denial was “rooted in considerations that the Constitution will not tolerate”—namely, “irrational prejudice.” *Id.* at 446, 450.

Animus need not be explicit on the face of a policy, as it is here, but may be evidenced by “contemporary statements by members of the decisionmaking body.” *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977). In *Cleburne*, for example, the Court relied on the district court’s findings that the Cleburne City Council passed the discriminatory zoning ordinance primarily based on the “negative attitude of . . . property owners . . .” and “the fears of elderly residents,” 473 U.S. at 448—attitudes and fears accepted by the “five city officials most involved in the decisionmaking process,” Br. for Resp’ts at 34, *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) (No. 84-468). “[C]ircumstantial” factors may provide evidence of decisionmakers’ animus, including “sudden[]” changes in policy (especially unexplained reversals), “[d]epartures from the normal procedural sequence,” failure to address “the factors usually considered important,” *Arlington Heights*, 429 U.S. at 266-68, and creating a policy whose “sheer breadth” is “discontinuous with the reasons offered” for it, *Romer*, 517 U.S. at 632. The Defense of Marriage Act, for example, failed rationality review in part because its “unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage” provided “strong evidence of a law having the purpose and effect of disapproval” of same-sex couples. *United States v. Windsor*, 570 U.S. 744, 770 (2013).

Executive Order 14183, which triggered the Hegseth Policy, is openly hostile to transgender people. The Order denigrates anyone with “a gender identity inconsistent with [that] individual’s sex,” (*i.e.*, anyone who is transgender) as categorically unable to fulfill “a soldier’s commitment to an honorable, truthful, and disciplined lifestyle”—a commitment required “even in one’s

personal life.” Prioritizing Military Excellence and Readiness, 90 Fed. Reg. at 8757. The Order asserts that transgender identity is itself a “falsehood . . . not consistent with the humility and selflessness required of a service member.” *Id.* In other words, Executive Order 14183 vilifies transgender people as dishonorable, dishonest, and undisciplined. It treats their transgender identity as a defect that categorically cancels out their every individual strength, ability, and virtue. The military’s new official policy brands all transgender people, without regard to individual merit, as unworthy to serve in our armed forces solely because they are transgender.

Neither the government nor the majority disputes that Executive Order 14183 expresses animus towards transgender people. *See* Mot. for Stay 24-25; Maj. 20-22. They focus only on the Hegseth Policy. But that changes nothing. The Hegseth Policy springs from the Executive Order and espouses the same denigration and vitriol. Contextual factors—the statements of triumphant policymakers, the hasty and unsupported reversal of apparently successful policies backed by careful study, and the categorical sweep of the new policy—all confirm that the Hegseth Policy, like the Executive Order, is driven by animus.

Start with the substance of the Hegseth Policy. Secretary Hegseth’s memoranda repeat the disparaging claim that people “expressing a false ‘gender identity’ divergent from an individual’s [birth] sex cannot satisfy the rigorous standards necessary for military service.” App. 325 (quoting Executive Order 14183); App. 639-40. Additional implementing documents list military virtues, including “honesty, humility, uniformity, and integrity,” and then flatly declare that anyone who has

“symptoms consistent with[] gender dysphoria” categorically lacks such virtues. *See, e.g.*, Add. 101; Add. 114. As the district court concluded, the Hegseth Policy’s “language is unabashedly demeaning [and] its policy stigmatizes transgender persons as inherently unfit.” *Talbott*, 775 F. Supp. 3d at 326.

Next, consider some of the many statements from official government sources describing the Hegseth Policy as a total ban on transgender service and celebrating the wholesale exclusion of transgender individuals. For instance:

- **“Transgender service members are disqualified from service without an exemption.”** @DODResponse, X.com (Feb. 27, 2025) (emphasis added), <https://perma.cc/S4CE-EPFX>.
- **“Your agenda is illegals, trans & DEI—all of which are no longer allowed @ DoD.”** @PeteHegseth, X.com (Apr. 20, 2025) (emphasis added), <https://perma.cc/WX2M-R4K9>.
- **“No more dudes in dresses, we’re done with that shit.”** Pete Hegseth, Sec’y Defense, U.S. Dep’t of Defense, Keynote Address at Special Operations Forces Week 2025 (May 6, 2025), <https://perma.cc/T75U-93FR>.
- **“After a SCOTUS victory for @POTUS, TRANS is out at the DOD.”** @PeteHegseth, X.com (May 8, 2025) (emphasis added), <https://perma.cc/ZUV2-6QNJ>.

Add to defendants’ overt derision their unusually “rushed and haphazard manner” of issuing the Hegseth Policy. *Talbott*, 775 F. Supp. 3d at 302. Previous defense secretaries devoted months of study, with the help

of experts, to understanding the facts and circumstances relevant to transgender service. *Id.* Secretary Hegseth promulgated his policy in just one month. *Id.* That was remarkable because, by the time Secretary Hegseth took office, the military was poised to shift from the prognostication on which past administrations had to rely to draw on the military's own substantial and growing experience with transgender servicemembers.

Before our court, defendants rely almost exclusively on the 2018 Mattis Report and the Policy that Report recommended. Mot. for Stay 13, 23-24. But when Secretary Mattis acted, the military had negligible experience with openly transgender servicemembers. Of necessity he based his policy on "risks" and predictions about what "could" happen gleaned from broader studies not focused on the military. Add. 120. Even then, the Mattis Policy made no move to purge transgender people already serving; it disallowed only new accessions. Add. 120-21. Secretary Hegseth, in contrast, had a wealth of relevant evidence available to him that Secretary Mattis had lacked: the military services' own experience during the intervening years with the thousands of transgender persons among their ranks. Secretary Hegseth deliberately failed to account for that highly probative experience—or even explain why he eschewed it. Ignoring realities that might undercut his chosen course, Secretary Hegseth rested his policy on categorical disdain. That head-in-the-sand approach yielded a policy driven by animus, not military need.

The majority reverts to three pieces of evidence that defendants had featured in district court: a 2021 review conducted by the Department's Psychological Health Center of Excellence and the Accession Medical Stand-

ards Analysis and Research Activity; a 2025 medical literature review conducted by the Office of the Assistant Secretary of Defense for Health Affairs; and a review of cost data on treatment of active-duty servicemembers currently experiencing gender dysphoria. Maj. 14-15. But the district court found, as to the first two sources, that each “contradicts, rather than supports, the conclusions” the Department drew from it. *Talbott*, 775 F. Supp. 3d at 305-06. And as to the cost data, the district court explained that the Department could not substantiate its assertion of the disproportionate cost of treating servicemembers with gender dysphoria without any baseline for comparison with costs of other types of covered medical care, or any analysis of the costs associated with discharging all transgender servicemembers. *Id.* at 306. The government does not challenge the district court’s findings of fact as clearly erroneous, and we are bound to respect them.

Finally, consider the draconian scope of the Hegseth Policy. It imposes a complete ban on military service by transgender individuals. *See id.* at 301-02. And, unlike every policy since 2016, it does not just affect the standards for prospective recruits but drives out current, active-duty soldiers. It does so in vivid contrast to the Mattis Policy, which recognized that the military generally applies “less stringent standards to retention than to accession in order to preserve the Department’s substantial investment in trained personnel” and to honor the reliance interests of incumbent transgender servicemembers. Add. 127-28; *see id.* 164 (“[R]etention standards focus squarely on whether the Service member, despite his or her condition, can continue to do the job.”). Accordingly, servicemembers who had been diagnosed with gender dysphoria yet permitted under the Carter

Policy to serve openly could remain in the service under the Mattis Policy, continue to receive benefits including medical treatment, and serve consistently with their gender identity. Add. 120. That “reliance exemption” was critical to our court’s understanding that the Mattis Policy did not operate as a blanket ban on transgender servicemembers. *See Doe 2 v. Shanahan*, 755 F. App’x 19, 24 (D.C. Cir. 2019); *Doe 2 v. Shanahan*, 917 F.3d 694, 700 (D.C. Cir. 2019) (Wilkins, J., concurring); *id.* at 722 (Williams, J., concurring). In contrast, the Hegseth Policy not only prevents transgender persons from acceding to the military but also summarily ousts all those already in it. Both groups are disqualified from service without exception. Thousands of talented and patriotic individuals who met rigorous accession standards and have been serving military need are being pointlessly expelled.

The Hegseth Policy also subjects transgender servicemembers to a gratuitously harsh administrative separation process. Normally, when a current servicemember is diagnosed with a medical condition that the military considers potentially disabling, the Department of Defense refers the servicemember to its Disability Evaluation System for an individualized assessment of the servicemember’s continued ability to serve and suitability for deployment. Soper Decl. ¶ 13 (App. 446). The Department uses the results of that individualized assessment to determine whether the servicemember can continue in the military. But the Hegseth Policy specifically bars referrals to the Disability Evaluation System based on gender dysphoria. Instead, it requires transgender servicemembers to undergo administrative separation, a process typically reserved for misconduct or failure to meet standards. *Id.* at ¶¶ 14, 16 (App. 446). Administrative separation proceedings can cause imme-

diate and severe career harm: Servicemembers in those proceedings are automatically designated non-deployable and cannot be promoted. *Id.* at ¶ 14.

There is no other medical condition that automatically triggers administrative separation from the military rather than individualized medical evaluation followed by determination of an appropriate response. Oral Arg. 27:30-28:30. Defendants offer no explanation why they devised a new, categorical approach just for gender dysphoria when existing medical screening procedures serve for all other medical conditions. As the district court found, this *sui generis* treatment of gender dysphoria underscores that the Hegseth Policy's asserted grounding in "the military's rigorous physical and mental fitness requirements" is pretextual. *Talbott*, 775 F. Supp. 3d at 328. Such rigorous fitness "standards are already in place, and each active-duty Plaintiff already meets them." *Id.* If servicemembers become unfit or if their participation poses unusual risks to others, the military's preexisting procedures enable it to assess and remove them.

The district court also found that the government plans to implement the Policy by assigning servicemembers to the task of "rummag[ing] through private medical records" to identify those "who have a current diagnosis or history of, or *exhibit symptoms consistent with*, gender dysphoria." *Talbott v. United States*, 775 F. Supp. 3d 445, 449-50 (D.D.C. 2025) (emphasis added). No previous policy has devised such a costly and intrusive implementation scheme. No other medical condition involves servicemembers scrutinizing their peers' medical records to root out vaguely defined disfavored symptoms—in the name of unit cohesion, no less. The Hegseth Pol-

icy is not designed to further military objectives. It is designed to stigmatize and drive out an unwanted group.

B.

In advocating for a stay, the government does not dispute the animus pervading the Executive Order but shrugs it off as legally beside the point. Animus matters to the constitutional analysis, say defendants, only where a policy “lack[s] any purpose other than a ‘bare . . . desire to harm a politically unpopular group.’” Mot. for Stay 25 (quoting *Trump v. Hawaii*, 585 U.S. 667, 705 (2018) (quoting *Moreno*, 413 U.S. at 534)). The majority agrees, concluding that “[i]f any legitimate [governmental] interest exists” alongside the animus, “‘we must accept that independent justification.’” Maj. 21 (quoting *Trump*, 585 U.S. at 706). We need not address whether the presence of animus is fatal to a policy with a genuinely independent justification because here, the government fails to offer any plausible, distinct rationale for its policy.

Trump v. Hawaii exemplifies the requisite inquiry. There, challengers asserted that a Presidential Proclamation barring the entry to the United States of nationals from certain countries was invalid because it was fueled by anti-Muslim animus. *Trump*, 585 U.S. at 699. In crediting the government with an independent and legitimate national security justification, the Court emphasized that the revised Proclamation before it “reflect[ed] the results of a worldwide review process undertaken by multiple Cabinet officials and their agencies,” limited the ban to “countries that were previously designated by Congress or prior administrations as posing national security risks,” and provided for meaning-

ful exceptions and waivers in keeping with the limited national security rationale. *Trump*, 585 U.S. at 706-710.

But the Court has refused to so credit alternate explanations for policies driven by animus where, as here, those explanations lack indicia of truth and independence. In *Moreno*, for example, the government claimed the challenged policy was designed to prevent welfare fraud; the Court disbelieved that explanation because other statutory provisions dealt with “those very same abuses.” 413 U.S. at 535-37. In *Cleburne*, the government claimed its policy forbidding a group home for the developmentally disabled was justified by the possibility that local “students might harass” the disabled residents, that its siting in a floodplain might endanger them, that the city might face legal liability, and that the group home would create residential crowding. 473 U.S. at 449-50. There, too, the Court rejected the alternate explanations because the targeted group presented no “different or special hazard” from groups that remained unregulated. *Id.* at 449. And in *Romer*, the Court deemed several explanations pretextual because the challenged policy’s “sheer breadth” in depriving the targeted group of every potential legal protection from discrimination “across the board” was notably “discontinuous with the reasons offered for it.” 517 U.S. at 632-33.

The Supreme Court’s instruction to credit only actual justifications “independent” of animus aligns with broader principles of equal protection analysis. *Trump*, 585 U.S. at 706. Screening out animus is a chief concern of constitutional scrutiny. The Court reviews suspect classifications such as race and sex more skeptically because they “are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such con-

siderations are deemed to reflect prejudice and antipathy.” *Cleburne*, 473 U.S. at 440. In other words, the Court treats a suspect category as presumptively based in animus (and therefore unconstitutional) unless the law’s “suitabl[e] tailor[ing]” toward some legitimate and sufficiently weighty purpose shows otherwise. *Id.* Even under the most deferential rational basis review, the government must do more than supply possible alternate explanations for a policy motivated by animus. It must show that such reasons better explain the policy than the “prejudice and antipathy” already identified. *Cleburne*, 473 U.S. at 440. To hold otherwise would too readily allow official actors to mask forbidden, irrational animus with pretext.

The government variously asserts that the Hegseth Policy is justified because transgender servicemembers harm military readiness, disrupt unit cohesion, or impose excess medical costs. Mot. for Stay 14-18. But none of those alternate rationales accounts for the focus, conclusory process, or harsh scope of the Hegseth Policy. Animus does. The government has failed to show that the Hegseth Policy was designed to promote its stated interests rather than the inverse: that those interests were retrofitted to justify the animus-driven policy required by Executive Order 14183.

Consider the two potentially strongest justifications for the Policy: improving military readiness and maintaining unit cohesion. The majority notes that previous defense secretaries had “concerns” about transgender persons’ health issues, stressing the predictions of the Mattis Report and the “anticipated” impacts of the Carter Policy. Maj. 15-16 (internal quotation marks omitted). Similarly, the majority draws on the Mattis

Report's discussion of potential unit cohesion issues stemming from gender-based privacy and physical fitness standards. *Id.* at 16-17. But the predictions and hypotheticals of past defense secretaries were developed nearly a decade ago, without the benefit of experience. As the district court observed, the Mattis Report was explicit that its "findings were limited by uncertainty" because "[t]ransgender persons had not served openly previously." *Talbott*, 775 F. Supp. 3d at 303 (internal quotation marks omitted).

In adopting the Hegseth Policy, defendants failed to consider whether the "woefully stale" predictions of the Mattis Report have borne out. *Id.* at 324. The government is silent as to whether, in the intervening seven years, any of the challenges predicted by the Mattis Policy—or others it did not foresee—have arisen and, if so, how the military has addressed them. And the government fails to identify any way in which policies in place on the eve of the Hegseth Policy failed to meet legitimate military needs. Defendants provide no evidence that President Trump or Secretary Hegseth "consulted with uniformed military leaders" at all before imposing their unprecedented ban on transgender service-members. *Id.* at 292.

Contrast defendants' suppositions with the district court's findings of fact, based on undisputed record evidence that includes the observations of multiple high-ranking officials who implemented the Austin Policy. Former service secretaries and other leaders of the Department of Defense attested that they had never encountered a disciplinary case, readiness issue, or weakening of unit cohesion stemming from a servicemember's transgender status. *Id.* at 309-10. What is more,

the former Secretary of the Navy observed that “allowing transgender individuals to serve strengthens unit cohesion by fostering honesty and mutual trust” and that “excluding transgender individuals from military service is destabilizing to good order and discipline.” *Id.* at 308. The district court credited those officials’ uncontested avowals that “transgender service . . . has not negatively impacted readiness.” *Id.* at 309. As one official responsible for personnel and readiness explained, “policies that allow transgender service members to be evaluated based on skill and merit . . . do not jeopardize the military’s mission of protecting the United States, but strengthen it.” *Id.* at 309.

In accord with those attestations, the record substantiates that plaintiffs’ service has made our country safer. To name just a few, Captain Gordon Herrero kept American soldiers in the Republic of Korea supplied with necessities during multinational military exercises and was recently selected to educate future officers as an instructor at the United States Military Academy at West Point. Herrero Decl. ¶¶ 3-8, ECF No. 72-25. Major Erica Vandal earned a Bronze Star for her meritorious service as a Battery Commander in Afghanistan. Vandal Decl. ¶¶ 8-9, ECF No. 72-20. Ensign Dany Danridge repaired and maintained Navy aircraft and equipment to support the military campaign against ISIL. Danridge Decl. ¶¶ 11-12, ECF No. 72-28. Commander Michelle Bloomrose, as Commanding Officer of the Naval Justice School, trained hundreds of enlisted and civilian professionals to deliver military legal services. Bloomrose Decl. ¶ 7, ECF No. 72-54. Each has served our country for between nine and nineteen years, each continues to meet the military’s demanding standards, and each wishes to continue serving. These servicemembers’ rec-

ords, unmet by any contrary showing, support the district court's conclusion that the service of openly transgender people "has resulted in a stronger, not a weaker military." *Talbott*, 775 F. Supp. 3d at 308.

The government raises no challenge to the district court's findings of fact. Despite being afforded the opportunity to cross-examine those officials and submit its own evidence, the government repeatedly declined to do so (with one immaterial exception).² The government instead simply ignores the record and the district court's findings about the military's experience since the Mattis Policy, and the majority does the same. But in the absence of any showing of clear error we are bound to respect those findings. As the case comes before us, the facts conclusively demonstrate that the government's stated justifications for the Hegseth Policy are unsupported and pretextual.

The gratuitously demeaning nature of the administrative separation process that the military has adopted for transgender servicemembers underscores the point. No special concern for deployability, unit cohesion, training safety, or medical costs supports the use against this group of a separation process designed for cases of mis-

² The government filed one declaration by Timothy Dill, Assistant Secretary of Defense for Manpower and Reserve Affairs, in response to the declaration of Gilbert Cisneros, the former Under Secretary of Defense for Personnel and Readiness. *Id.* at 309. Mr. Dill challenged whether a person in Mr. Cisneros's role would have had firsthand knowledge of individualized servicemember complaints. *Id.* at 310. But the district court credited Mr. Cisneros's testimony over Mr. Dill's, reasoning that Mr. Cisneros's sworn account of his firsthand experiences was more authoritative than someone else's suppositions about his experiences, *id.*, and the government does not challenge that determination as clearly erroneous.

conduct or failure to meet standards. And none of the government’s justifications could support the additional, degrading step of requiring transgender servicemembers to either attend their separation hearings dressed up according to the military standards for their birth sex or else waive the right to participate. *See* Air Force Memorandum 4.

C.

Because this policy fails rational basis review, it is unnecessary to explore the deferential version of heightened scrutiny for “the military context” that the majority assumes to be the most demanding standard that might apply here. Maj. 12. The majority’s test, however, notably overreads limited lines of precedent to downplay the role of overt bias or animus. And in any event, it fails to justify upholding the Hegseth Policy.

The majority asserts that, “[i]n the military context,” courts need only “consider whether the policy . . . resulted from the professional judgment of military authorities and reasonably furthers legitimate military interests.” Maj. 12. Neither of the cases it cites supports such a conclusion. *Rostker v. Goldberg* rejected an invitation to craft a distinct version of intermediate scrutiny of sex-based classifications for military issues, 453 U.S. 57, 69-70 (1981), and in any event concerned *Congress’s* constitutional authority over military affairs, *id.* at 64-65. The *Rostker* Court nonetheless scrutinized Congress’s decision-making to determine whether the contested statute was “the ‘accidental by-product of a traditional way of thinking about females.’” *Id.* at 74 (quoting *Califano v. Webster*, 430 U.S. 313, 320 (1977)). *Goldman v. Weinberger* continued a long line of decisions denying accommodation of certain aspects of religious

free exercise in the military. *See* 475 U.S. 503, 507, 509-10 (1986). To be sure, “the complex, subtle, and professional decisions as to the composition and training of military forces are matters of expert military judgment” on which we “tread with great care,” but no special rule of deference shelters military policies from claims of unconstitutional bias or animus. *See Singh v. Berger*, 56 F.4th 88, 98 (D.C. Cir. 2022) (internal quotation marks and alterations omitted).

Even under the majority’s standard, the Hegseth Policy falls short: It did not result from the professional judgment of military authorities. We owe deference to the “considered professional judgment” of “appropriate military officials.” *Goldman*, 475 U.S. at 509. But where defendants made no attempt to collect or analyze the most relevant information available to the military or bring military expertise to bear on the issue before the court, there is no “considered professional judgment” to which we might defer. In *Rostker*, the Court upheld a policy that was the product of extensive “hearings, floor debate, and . . . committee” discussions which “adduced extensive testimony and evidence concerning the issue.” 453 U.S. at 72. And in *Goldman*, the Court evaluated “AFR 35-10, a 190-page document” developed by the Air Force which “describe[d] in minute detail” what its servicemembers could wear and the limited “individualized options” allowed. 475 U.S. at 508. Those efforts helped demonstrate that the policies in question were the result of “considered professional judgment,” *id.*, and “reasonable evaluation,” *Rostker*, 453 U.S. at 68, warranting deference from the courts. There is no record of informed and expert decision making in support of the Hegseth Policy’s abrupt upending of prior policies that were based on careful study.

The Department of Defense may forego consideration, study, or analysis of military experience or needs as it develops and implements its personnel policies. But if it makes that choice, it cannot then demand in litigation that courts evaluating the constitutionality of those policies defer to the Department's unreasoned—even arbitrary or malign—conclusions. And it certainly cannot do so when it has failed to challenge as clearly erroneous the district court's findings of fact—findings based on attestations of military officials who implemented the Austin Policy—that allowing open service by qualified transgender individuals has had a positive effect on military readiness and unit cohesion. *See Talbott*, 775 F. Supp. 3d at 309. Ignoring the overt animus fueling the Hegseth Policy by assuming the Policy is supported by valid military interests that the government did not even bother to substantiate in court would stretch “military deference” beyond any rational meaning. As the Supreme Court noted in *Rostker*, “deference does not mean abdication.” 453 U.S. at 70.

* * *

Neither the government nor the majority contests the existence of animus pervading Executive Order 14183. Mot. for Stay 24-25; Maj. 20-22. The Hegseth Policy carried that animus forward in the draconian ban it imposed, which it then sought to justify based on stale predictions that had supported a significantly more modest policy years earlier. None of the government's alternate justifications can disguise the real impetus behind the Hegseth Policy: to purge transgender service-members from the military because the President vilifies transgender people and wishes to drive them out. The government cannot make a strong showing of like-

likelihood of success on the merits when the Hegseth Policy fails even rational basis review.

II.

The government must meet a “high standard” to show that it faces irreparable injury. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). Staying a district court’s grant of preliminary relief “based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. Instead, the government must show that the impending injury is “actual and not theoretical,” and “of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” *Id.* (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)). Failure to demonstrate irreparable harm is, by itself, “fatal” to a request for a stay. *See KalshiEx LLC v. CFTC*, 119 F.4th 58, 64 (D.C. Cir. 2024).

The majority seeks to justify its stay based on the government’s compelling interest in a “strong and ready military.” Maj. 22. But the record in this case is devoid of evidence that the preliminary injunction allowing continued service by fully qualified, healthy, and ready transgender troops will irreparably harm that interest. The majority simply asserts that in matters of military readiness “the Constitution assigns that assessment to the political branches.” Maj. 23. Indeed, we give “great deference” to the military’s judgments. *Winter*, 555 U.S. at 24. But the military must provide something more than the bare assertions in its briefing to be

“weighed against the [other] interests that are legitimately before this [c]ourt.” *See Winter*, 555 U.S. at 25.

The government does not here assert that, pending expedited decision of the appeal, the preliminary injunction is likely to undermine military readiness and lethality. Rather, it relies on a generic claim that the Department of Defense suffers irreparably when it cannot immediately carry out a policy it thinks is valid. The majority refrained from embracing that claim. No wonder: That reasoning applies to every injunction against the executive branch, so to treat it as irreparable harm would effectively disable courts from preliminarily enjoining any unconstitutional executive action. “That cannot be so.” *Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020). Even in *Maryland v. King*, the Chief Justice’s in-chambers stay order on which the government relies, the applicants demonstrated “ongoing and concrete harm.” 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). Assertions of a generalized interest in the immediate effectiveness of an executive policy that a court deems likely unconstitutional cannot constitute irreparable harm. To hold that it does would negate the irreparable harm factor whenever the government seeks a stay.

Defendants have identified no irreparable harms that manifested under the many years of the Austin Policy. And the district court found that the Mattis Report’s predictions were disproven by the real-world experiences of commanding servicemembers under that policy. *Talbott*, 775 F. Supp. 3d at 323-25. The military has robust policies in place to remove servicemembers who pose a threat to military readiness and lethality, and transgender servicemembers are governed by those

just like everyone else. They are subject to the military's regular disciplinary procedures. And if they have medical conditions affecting their ability to serve, the military can make individualized assessments through the Disability Evaluation System and remove any transgender servicemember as to whom the assessment confirms a service impediment. The government's request for a stay therefore fails for lack of irreparable harm.

III.

The majority contends that a stay pending appeal will not cause "irreparable injuries" to plaintiffs because if they ultimately prevail they may obtain backpay or reinstatement. Maj. 23. "But in this procedural posture, it is not the plaintiffs' burden to prove irreparable injury; it is the government's." *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *12 (D.C. Cir. Mar. 26, 2025) (Henderson, J., concurring). Instead, "[w]e must consider whether a stay will 'substantially injure' the plaintiffs." *Id.* (quoting *Nken*, 556 U.S. at 434). If a stay is granted, plaintiffs who are currently in the process of joining the military will be prevented from doing so, despite having trained to qualify and given up housing, other jobs, and educational opportunities in reliance on enlistment contracts. And the incumbent active-duty plaintiffs who are being separated from the service are already suffering the loss of a "job, income, pension, health and life insurance, and all the other benefits attendant" with military service, which by itself constitutes substantial and irreparable harm. *McVeigh v. Cohen*, 983 F. Supp. 215, 221 (D.D.C. 1998); see *Elzie v. Aspin*, 841 F. Supp. 439, 443 (D.D.C. 1993); see also Cy Neff, *US To Begin Immediate Removal of Up to 1,000 Trans Military Members*, GUARDIAN (May 8, 2025),

<https://perma.cc/Q83GXNNB>. Plaintiffs are currently losing the opportunity to accept Senate-confirmed promotions, losing the ability to accrue time towards retirement, losing access to medically necessary healthcare, losing the opportunity to provide benefits for their children, and, in many cases, losing the only career they have ever known—for which many of them undertook years of specialized training. The Hegseth Policy stigmatizes plaintiffs and “subject[s]” them “to the indignity of being unable to serve for reasons that, on this record, bear no relationship to their ability to perform.” *Singh*, 56 F.4th at 110 (internal quotation marks and alterations omitted). Under our precedent, that is “irreversible and irreparable harm.” *Id.* Undoubtably, the likelihood of “substantial[] injur[y]” to the plaintiffs weighs heavily in favor of denying the stay. *Nken*, 556 U.S. at 434.

IV.

Finally, denying a stay serves the public interest. In *Doe 1*, we held that allowing a ban on the accession of transgender people to the military to take effect was contrary to the public interest because it would “directly impair and injure the ongoing educational and professional plans of transgender individuals and would deprive the military of skilled and talented service members.” 2017 WL 6553389, at *3. That reasoning has even greater force in this case. Allowing the Hegseth Policy to take effect would lead not only to the end of new accessions, but to the blanket removal of thousands of admittedly qualified and talented servicemembers fully able to continue meeting the military’s demanding standards. Removing those individuals based only on their transgender status is especially detrimental at a time when the services are “facing a reduced pool of

American[s] who meet military physical and health standards” and must “build[] and grow[] [their] own skilled specialists and leaders organically,” a process that “typically requires years or decades.” Wagner Decl. ¶ 41 (App. 12-13). The public interest suffers from the arbitrary and demoralizing depletion of our armed forces.

* * *

Every factor in this case weighs against granting a stay pending appeal. Defendants have failed to introduce evidence that the Hegseth Policy serves any purpose other than the indulgence of animus. They have not demonstrated that the military is likely to suffer any harm, let alone irreparable harm, if the preliminary injunction remains in place while this case is litigated. On the other side of the ledger, plaintiffs and the public are already suffering substantial and irreparable harm as the military has begun to carry out the Hegseth Policy. All of that is enough to deny defendants’ request for a stay. But denial is even more urgent here to prevent grave disruption to the status quo that preceded the Hegseth Policy: what the record shows to be nearly a decade of successful service in our armed forces by transgender servicemembers. The majority’s decision makes it all but inevitable that thousands of qualified servicemembers will lose careers they have built over decades, drawn up short by a policy that would repay their commitment and service to our nation with detriment and derision. The majority grants this stay in the face of all evidence to the contrary. We should not accord deference to the military when the Department itself carelessly relied on no more than blatant animus.

I respectfully dissent.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-cv-00240 (ACR)
NICOLAS TALBOTT, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, ET AL.,
DEFENDANTS

Filed: Mar. 26, 2025

MEMORANDUM OPINION AND ORDER

Defendants ask the Court to dissolve, or stay pending appeal, the preliminary injunction it entered on March 18, 2025.¹ Dkt. 91 (Motion to Dissolve (Mot.)). They claim that a newly-issued guidance document—the Military Department Identification Guidance, Dkt. 91-2 (MDI Guidance)—presents a significant change in fact. *Id.* at 3. This change, they contend, shows that the Court’s Preliminary Injunction Opinion (Op.) is incorrect. *Id.*

The MDI Guidance is new, but Defendants’ argument is not. Defendants re-emphasize their “consistent posi-

¹ The Court assumes the reader is familiar with its March 18, 2025 Opinion. For those who are not, it is available on the public court docket at 25-cv-00240, Dkt. 89. The Court recycles here the defined terms it used in the Opinion.

tion that the [Hegseth] Policy is concerned with the military readiness, deployability, and costs associated with *a medical condition*.” *Id.* (emphasis added). Regulating gender dysphoria is no different than regulating bipolar disorder, eating disorders, or suicidality. The Military Ban regulates a medical condition, they insist, not people.

And therein lies the problem. Gender dysphoria is not like other medical conditions, something Defendants well know. It affects only one group of people: all persons with gender dysphoria are transgender and only transgender persons experience gender dysphoria. Defs. Concession Tr. (Mar. 21, 2025) at 23-24. Does this mean that all transgender persons have gender dysphoria? No, of course not. But it does mean that when Defendants regulate gender dysphoria, they knowingly and necessarily regulate only transgender persons.

Defendants try to obfuscate this key point at every turn. The Department of Defense (DoD) and Secretary of Defense publicly announced that the Military Ban disqualifies all “transgender troops”? No, they were using “shorthand” for gender dysphoria. Defendants accused transgender persons of inherently lacking honor, truthfulness, and discipline? No, they accused gender dysphoria of having those mission-endangering attributes. The military plans to discharge thousands of transgender troops who have made “America safer”? No, the military plans to discharge gender dysphoria. Total coincidence that gender dysphoria only afflicts transgender people.

This litigation is not about a medical condition. A medical condition has not given its country decades of military service. Or deployed into combat zones throughout the globe. Or earned countless commendations.

People have. A medical condition has not fought terrorism. Or analyzed intelligence. Or commanded platoons. People have. A medical condition has not been accused of lacking warrior ethos. Or been branded dishonorable, dishonest, and undisciplined. Or been threatened with the loss of livelihood. People have. Transgender *people*.

Defendants' arguments did not sway the Court before; regurgitating them with the MDI Guidance is equally unpersuasive. The Court **DENIES** the Motion to Dissolve the Preliminary Injunction and Motion for a Stay Pending Appeal. The Court, on its own motion, stays its Order, Dkt. 88, until March 28, 2025, at 7:00 pm eastern to provide Defendants the opportunity to file an emergency stay with the D.C. Circuit.

BACKGROUND

On March 18, 2025, the Court granted Plaintiffs' Renewed Application for Preliminary Injunction, Dkt. 72, and enjoined Defendants from implementing Executive Order No. 14183 and the Additional Guidance on Prioritizing Military Excellence and Readiness, Dkt. 63-1, as well as any other policies issued pursuant to the Military Ban. Dkts. 88, 89. Three days later, Defendants filed a Motion to Dissolve the Preliminary Injunction. Dkt. 91. They argue that the MDI Guidance issued by DoD's Office of the Under Secretary of Defense for Personnel and Readiness on March 21, 2025 constitutes a "significant change either in factual conditions or in law." Mot. at 3 (quoting *Horne v. Flores*, 557 U.S. 433, 447 (2009)).

Defendants claim that "the [Hegseth] Policy presumptively barring individuals from serving in the military turns on gender dysphoria—a medical condition—and does not discriminate against trans-identifying per-

sons as a class.” *Id.* at 2. In support, Defendants cite to the MDI Guidance. *See id.* at 3.

In the MDI Guidance, Defendants define—for the first time—the criteria in the Hegseth Policy, “exhibit symptoms consistent with gender dysphoria.”² MDI Guidance at 1. In a footnote, the MDI Guidance states that the phrase “refers to the diagnostic criteria outlined in the Diagnostic and Statistical Manual of Mental [(DSM-V)] Disorders” for gender dysphoria and “applies only to individuals who exhibit such symptoms as would be sufficient to constitute a diagnosis (i.e., a marked incongruence and clinically significant distress or impairment for at least 6 months).” *Id.* The MDI Guidance attaches the DSM-V criteria. Dkt. 92-2.

The MDI Guidance explains that the “primary means” military leaders will use to identify servicemembers who meet the Symptoms Criteria “will be through reviewing medical records.” MDI Guidance at 1. To this effect, the MDI Guidance reminds the Secretaries of each Military Department of their “authority to direct unit commanders, in coordination with supporting medical assets, to require that all Service members comply with their obligations.” *Id.* at 2. Service members must complete a Periodic Health Assessment (PHA) and report any “medical issues . . . that may affect their readiness to deploy, ability to perform their assigned mission, or fitness for retention in military service to their chain of command.” *Id.*

² To avoid wordiness, the Court refers to this phrase as “the Symptoms Criteria.” Because Defendants’ Motion concerns the definition of this phrase, the Court only includes the additional criteria “current diagnosis or history of gender dysphoria,” as necessary.

Moreover, “[w]ithin 45 days” of March 21, 2025, each servicemember’s reporting responsibilities will include attesting “whether they have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria.” *Id.* “This attestation will be a standard part of the self-assessment done in conjunction with the annual PHA.” *Id.* If a servicemember self-reports, “the facility or location conducting the PHA will be responsible for conducting or coordinating any follow-up medical evaluation, if necessary, and for notifying the Service member’s command.” *Id.* Each identified service member “*must* be categorized as ‘Not Medically Ready’ and non-deployable.” *Id.* (emphasis added). They will be, consistent with new policies enacted by the Military Ban, “recommended for administrative separation or, where appropriate, enrolled in the Disability Evaluation system (e.g., where a co-morbidity or other qualifying condition is present).” *Id.*

Defendants contend that this new guidance “confirms that the Court has misconstrued the scope of the DoD Policy,” and they “move to dissolve the March 18, 2025, preliminary injunction.” Mot. at 2-3. In the alternative, they ask the Court to stay its Order pending appellate review. *Id.* at 3-4.

STANDARD OF REVIEW

A party seeking to dissolve a preliminary injunction must show “‘a significant change either in factual conditions or in law’” that makes continued enforcement of the injunction “‘detrimental to the public interest.’” *Doe 2 v. Shanahan*, 755 F. App’x 19, 22 (D.C. Cir. 2019) (quoting *Horne*, 557 U.S. at 447). The moving party “bears the burden of establishing that changed circum-

stances warrant relief.” *Am. Council of the Blind. v. Mnuchin*, 878 F.3d 360, 366 (D.C. Cir. 2017) (cleaned up).

ANALYSIS

I. THE MDI GUIDANCE SUPPORTS PLAINTIFFS’ CLAIM

Defendants’ Motion ignores the MDI Guidance’s objective. The MDI Guidance’s purpose is not to define the phrase “exhibit symptoms of gender dysphoria.” Indeed, the Guidance relegates that definition to a footnote. *See* MDI Guidance at 1 n.2. Its purpose, instead, is to guide military personnel on how to identify individuals to disqualify.

In civilian-speak, DoD plans to (1) assign people—they do not say who, but presumably some type of military gender police—to review medical files for signs of gender dysphoria, and (2) require each of the estimated 1.3 million active-duty servicemembers to attest—at least once a year—whether they exhibit symptoms of gender dysphoria and turn themselves in if they do. Then DoD will discharge them. *See supra* at 4.

Pause for a moment on this approach. To target “a medical condition,” Mot. at 3, Defendants plan to:

1. address (unsubstantiated) military readiness, non-deployability, privacy, and cost concerns³ by
2. diverting personnel away from performing “mission critical functions,”⁴ and

³ Op. at 57-63.

⁴ Dkt. 66 at 2-3.

3. having them instead rummage through *private* medical records,⁵ and also by
4. requiring more than 1.3 million active-duty servicemembers to self-assess *every year* whether they have had, have, or exhibit symptoms of gender dysphoria,⁶
5. with the goal of identifying the less than two-thousand people who *might* have had, have, or exhibit symptoms of gender dysphoria,⁷
6. a mental condition that current military policies already address,⁸
7. and requiring that those servicemembers “*must* be categorized as ‘Not Medically Ready’ and non-deployable,”⁹
8. which will result in the mass discharge of thousands of servicemembers.¹⁰

Really. This is not hyperbole. This is the process the MDI Guidance requires.

So does the MDI Guidance support Plaintiffs or Defendants? Well, let’s Occam’s razor this. What is the more straightforward explanation? That the new guidance reveals the Hegseth Policy for what it is: animus directed at transgender persons? Or that experienced military leaders acting in good faith have adjudged that

⁵ MDI Guidance at 2.

⁶ *Id.*

⁷ Op. at 29 n.19.

⁸ *Id.* at 61.

⁹ MDI Guidance at 2.

¹⁰ Op. at 30.

ridding the military of the less than 2,000 persons who *might* have gender dysphoria requires committing scarce, expensive resources to invading the privacy of the more than 1.3 million active-duty members who certainly do not—year after year?

If the MDI Guidance confirms anything, it confirms that the Hegseth Policy is not based on reasoned judgment.

II. THE MDI GUIDANCE DOES NOT IMPACT THE COURT'S FACTUAL FINDINGS

A. The Court Correctly Construed the Scope of the Military Ban

Defendants mainly contend that the MDI Guidance's definition of Symptoms Criteria "confirms that the Court has misconstrued the scope of the [Hegseth] Policy." Mot. at 2-3. How? They do not say. They recite the Court's factual finding that "the Hegseth Policy bans all transgender troops." *Id.* at 2 (quoting Op. at 20). And they state that the Court based this finding "on an interpretation of, among other things, the following language in the [Hegseth Policy]: 'Service members who have a current diagnosis or history of, *or exhibit symptoms consistent with*, gender dysphoria are disqualified from military service.'" *Id.* at 2 (cleaned up) (emphasis in original). That is it.

Hardly a silver bullet. Indeed, not a bullet at all. For reading the MDI Guidance in toto confirms the Court's findings that the Military Ban targets people, not a medical condition. Recall that EO14183 covered those "individuals with" gender dysphoria. 90 Fed. Reg. 8757 (Jan. 27, 2025). The Hegseth Policy extended the ban by adding the phrase "exhibit symptoms consistent with" gen-

der dysphoria. Dkt. 63-1 at 1, 3, 5, 6-9. The MDI Guidance in turn explains that this phrase covers persons whom no one has previously diagnosed with or treated for gender dysphoria. It does so based on the “prediction”—unsupported by “actual data”—that these persons might cause issues in the future. Op. at 40-41, 71-72; Tr. (Mar. 12, 2025) at 137-38.

Recall also that the Symptoms Criteria is but one of seven independent criteria the Hegseth Policy employs to disqualify people. *See* Op. at 21-22 (citing Dkt. 63-1 at 3, 6). Three criteria disqualify transgender persons with a current diagnosis or history of, or who exhibit symptoms consistent with, gender dysphoria—however defined. Those include transgender persons:

- with a history of cross-sex hormone therapy (as treatment for gender dysphoria *or in pursuit of sex transition*);
- with a history of sex reassignment or genital reconstruction surgery (as treatment for gender dysphoria *or in pursuit of sex transition*);
- who [have] transitioned or attempted to transition to a sex other than their birth sex.

Id. (emphases added). Defendants do not define the phrase “in pursuit of sex transition,” but it must include persons with no prior or current gender dysphoria diagnosis. Otherwise, it would be redundant because the phrase “as treatment for gender dysphoria” already covers all those who pursue sex transition as treatment after a gender dysphoria diagnosis.

Finally, at the March 21, 2025 hearing, Defendants continued to insist that the Court should ignore DoD’s and Secretary Hegseth’s public statements that the

Hegseth Policy disqualifies all transgender troops. Tr. (Mar. 21, 2025) at 7. The Court then *again* gave Defendants the opportunity to file a declaration from Secretary Hegseth or any other military official to correct the public record. Defendants *again* declined to do so. *Id.* at 5-6; *see also* Tr. (Mar. 12, 2025) at 22-23. That is of course their right. But the Court cannot credit a lawyer’s argument that a Department and Cabinet member publicly misconstrued the scope of their own policy and then could not be bothered to correct the evidentiary record in a high-profile litigation concerning the scope of that same policy. Occam’s razor again. DoD and Secretary Hegseth meant what they said. That noted, the Court wants to be clear. Even if it considered only the text within the four corners of the Hegseth Policy, the Court would easily find that the Military Ban excludes all transgender troops.¹¹

B. The MDI Guidance Supports the Court’s Scrutiny Analysis

The MDI Guidance undercuts every rationale Defendants have given for implementing the Military Ban. To wit:

Military Readiness: Earlier, Defendants claimed that answering certain cost questions would divert the attention of “the relevant staff’s primary responsibility to perform mission critical functions.” Dkt. 66 at 2, 3. Pulling staff away to review an untold number of medical files will presumably do the same (only on a far larger scale) and thus undermine military readiness. MDI Guidance at 1.

¹¹ To better understand how the Court comes to this conclusion, see its Opinion at 20-22.

Privacy: To address “privacy concerns” purportedly caused by the less than 2,000 servicemembers treated for gender dysphoria, Defendants will invade the medical privacy of 1.3 million plus servicemembers. *Id.*

Deployability: To address the non-deployability concerns persons experiencing gender dysphoria *might* create, Defendants will *automatically* tag as “Medically Not Ready” and nondeployable servicemembers who possess no deployability concern, *e.g.*, transgender people who have been successfully treated for gender dysphoria and no longer exhibit symptoms. *Id.* at 2.

Cost: And to save \$5.2 million per year by cutting gender-affirming care, the military will spend untold millions (if not tens of millions) to identify persons not yet diagnosed with any medical condition. *Id.*; *see also* Op. at 29.

The MDI Guidance also fails to explain why it treats gender dysphoria differently than other disqualifying medical conditions. It requires, for example, servicemembers who were previously diagnosed with gender dysphoria to self-report for discharge, even if they have successfully completed treatment. MDI Guidance at 2. By contrast, other conditions “must persist despite appropriate treatment and impair function to preclude satisfactory performance of required military duties of the Service member’s office, grade, rank, or rating” to be disqualifying. Dkt. 72-67 at 13.

The MDI Guidance offers no explanation for how the Military Ban’s derogatory language covers a medical condition. Characterizations such as lacking warrior ethos, discipline, honor, and integrity apply to people, not medical conditions. One does not say, for example, that those who suffer from bipolar disorder inherently

lack warrior ethos, discipline, honor and integrity. Moreover, as an example, DoD’s medical standards for retention list bipolar disorder as a disqualifying condition. *Id.* at 36. Still, the military treats bipolar disorder, like all other disqualifying conditions, “on a case-by-case basis” considering “[t]he affected Service member’s ability to safely complete common military tasks at a general duty level” and any “[l]imitations or requirements due to medical condition(s) or objections to recommended medical interventions that” present an obvious risk to the health and safety of the individual or their fellow servicemembers, among other factors. *Id.* at 8-9.

C. The MDI Guidance Does Not Cure the Hegseth Policy’s Many Defects

Defendants claim that the MDI Guidance supports their position that the Military Ban is only about “a medical condition—one that every prior Administration has, *to some degree*, kept out of the military.” Mot. at 3 (emphasis added). Put differently, the Hegseth Policy is different only in degree from the Mattis and Austin Policies.

It is different in kind. A simple comparison of the Mattis and Hegseth Policies using the factors the D.C. Circuit considered in *Doe 2* demonstrates this:

Mattis Policy (2018)	Hegseth Policy (2025)
Facially neutral	Facially derogatory
Impact of transgender service was uncertain and hypothetical	Defendants did not review available evidence; Plaintiffs’ evidence is that transgender service has a beneficial effect

Active servicemembers grandfathered	Active servicemembers not grandfathered.
Many servicemembers could serve in their biological sex	Virtually no servicemembers can serve in their biological sex
No evidence that serving in biological sex creates “hardship”	Record confirms serving in biological sex creates hardship, including “mental distress”
Months-long study by panel of experts	No review process

Compare Mattis Policy at 2, 3, 11 *with* Op. at 18, 21, 45, 58.¹²

Moving onto the Austin Policy, Defendants contend that it deserves no more credence than the Hegseth Policy. Tr. (Feb. 18, 2025) at 125-27. This is so, they claim, because it did not result from any deliberative process. *Id.* at 126, 128. Wrong. In issuing Executive Order 14004, President Biden relied on “substantial evidence” including “a meticulous, comprehensive study requested by [DoD],” testimony to Congress by military leaders, and statements by former United States Surgeons General from both political parties. Op. at 10 (citing 86 Fed. Reg. 7471 (Jan. 25, 2021)). Next, the Office of the Under Secretary of Defense for Personnel and Readiness convened a working group that “collect[ed] and consider[ed] evidence from a variety of sources, including a careful review of all available scholarly evidence and

¹² By making these comparisons, the Court does not opine on the constitutionality of the Mattis or Austin Policies.

consultations with [experts].” *Id.* (citing Dkt. 72-59 ¶¶ 10, 12). This deliberative process culminated with the release of the Austin Policy in March 2021. *Op.* at 10-12.

Defendants’ argument also ignores that high-level military officials responsible for integrating transgender persons into the military from 2021 to 2024 have testified based on their personal knowledge of how the Austin Policy worked in practice. Based on that experience, they “unanimously conclude” that allowing transgender persons to serve openly had “no detrimental effect” on military preparedness. *Op.* at 36. Indeed, based on their experience, open service improved military readiness and unit cohesion. *Id.* at 32, 35. Defendants wish to change course. They are entitled to do so, and courts should defer to that determination. But if the new course bans a class of people from military service, the Fifth Amendment requires that Defendants provide a plausible, evidence-based rationale for the policy shift. *See id.* at 57. Defendants offered none before the Court issued its Opinion, and the MDI Guidance adds nothing. *See id.* at 57-63.

III. THE MDI GUIDANCE DOES NOT IMPACT THE COURT’S LEGAL CONCLUSIONS

A. Intermediate Scrutiny Applies

Defendants contend that if the Court construes the Military Ban as only addressing a medical condition, intermediate scrutiny cannot apply. *Tr.* (Mar. 12, 2025) at 28. Not so. Even Defendants’ too-narrow view of the Hegseth Policy implicates intermediate scrutiny.

Just as it is impossible to know a person is transgender without knowing their sex, *Op.* at 47, it is impossible to know whether a person has gender dysphoria

without knowing their sex. The Fourth Circuit’s *en banc* decision in *Kadel v. Folwell* illustrates this common-sense proposition. See 100 F.4th 122 (4th Cir. 2024) (*en banc*). *Kadel* found that “gender dysphoria is so intimately related to transgender status as to be virtually indistinguishable from it.” *Id.* at 146. This is because “gender dysphoria is simply the medical term relied on to refer to the clinical distress that can result from transgender status.” *Id.* And so the Fourth Circuit held that exclusion of coverage for gender dysphoria care discriminates based on sex because application of the exclusion “is impossible—literally cannot be done—without inquiring into a patient’s sex assigned at birth and comparing it to their gender identity.” *Id.* at 147. That is why treatments for gender dysphoria “aim at addressing incongruity between sex assigned at birth and gender identity, the very heart of transgender status.” *Id.* at 146.

For this reason, Defendants “cannot immunize [themselves] from violating” the Fifth Amendment “by discriminating against only a subset of” transgender persons. *Id.* A ban on gender dysphoria, even if it does not reach every transgender person, can nonetheless discriminate against transgender persons as a class. Under Supreme Court precedent, “a law is not immune to an equal protection challenge if it discriminates only against some members of a protected class but not others.” *Id.* at 144 (cleaned up); see also *Rice v. Cayetano*, 528 U.S. 495, 516-17 (2000); *Nyquist v. Mauclet*, 432 U.S. 1, 7-9 (1977); *Mathews v. Lucas*, 427 U.S. 495, 504 n.11 (1976). Thus, Defendants cannot evade discriminating against transgender people simply by labeling the policy as addressing gender dysphoria.

**B. The Court Did Not Rely on the Symptoms
Criteria**

Defendants concede that the MDI Guidance does not impact the Court's analysis in any material respect. It does not impact the Court's findings: (1) that the Hegseth Policy is based on outdated data, Tr. (Mar. 21, 2025) at 15, and studies that contradict, rather than support, a transgender ban, *id.* at 15, 28; (2) that the Hegseth Policy does not contain evidence supporting the Military Ban's stated objectives, *id.* at 18-22, 30; (3) that Plaintiffs' declarants have personal knowledge concerning the impact of transgender persons serving openly, and that Defendants do not rebut those declarants, save one, *id.* at 23; (4) that administrative exhaustion is not required, *id.*; (5) that the Court has a duty to scrutinize the military's assertion of its interests, *id.* at 23; (6) that everyone with gender dysphoria is transgender, but that some transgender persons do not have gender dysphoria, *id.* at 23-24; and (7) that the Military Ban is animated by animus, *id.* at 31-32.

The Court discussed the Symptoms Criteria in only one paragraph of its analysis, noting that the phrase "was so broad as to capture persons who have never had gender dysphoria." Op. at 60. But even without that reasoning, the Court would still conclude that the Hegseth Policy targets more than just gender dysphoria. The Hegseth Policy's text is broad enough to cover people who do not have gender dysphoria without any reference to the Symptoms Criteria. *See supra* at 7-12.

**C. The MDI Guidance Makes It More Likely that
the Hegseth Policy Will Not Survive Rational
Basis Review**

The MDI Guidance underscores that the Ban is “far removed from [its stated] justifications.” *Romer v. Evans*, 517 U.S. 620, 624 (1996). To be sure, gender dysphoria is a valid health concern. But the MDI Guidance cites several DoD and military policies that already ensure medical readiness in transgender persons, whether they have had, have, or might later have gender dysphoria. For example, DoD conducts Periodic Health Assessments “at least yearly” for all servicemembers to ensure they meet the military’s high medical standards. MDI Guidance at 2. If a servicemember becomes unable to meet the military’s rigorous mental and physical standards, DoD would discover that during a Periodic Health Assessment. The redundancy of the Hegseth Policy gives the Court “considerable doubt” that it is based on anything other than animus. *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 537 (1973).

Additionally, the MDI Guidance states that DoDI 6025.19 requires servicemembers to report any medical issues “that may affect their readiness to deploy, ability to perform their assigned mission, or fitness for retention in military service.” MDI Guidance at 2. Their commanders are responsible for ensuring that they do so. *Id.* So even if the Periodic Health Assessment fails to catch the issue, or if the medical condition develops between Health Assessments, the military will still be informed on medical issues. Thus, Defendants’ argument that the Hegseth Policy—which bans anyone with a history of gender dysphoria—is necessary to ensure troop

readiness raises the same doubt that the Supreme Court had in *Moreno*.

At the March 21, 2025, hearing, the Court asked Defense counsel to explain why the military needs to exclude people who meet the Symptoms Criteria when the MDI Guidance cites policies that already address deployability and retention concerns. Tr. (Mar. 21, 2025) at 33-35. Defense counsel gave no discernable answer, finally resorting to the argument that the Court must defer to the military’s “predictive judgment,” Tr. (Mar. 21, 2025) at 42, that people must be weeded out now—*Minority Report*-style¹³—to prevent hypothetical future problems. That response begs more questions than it answers.

STAY PENDING APPEAL

For the reasons stated above and in the Court’s earlier Opinion, the Court denies Defendants’ Motion for a Stay Pending Appeal. Defendants provide no reason in support of their request. Plaintiffs still face irreparable harm. Indeed, in the few additional days that the Court extended its stay to consider this motion, Plaintiffs filed a Motion for Temporary Restraining Order, Dkt. 95, based on ongoing harms experienced by Plaintiffs.

Defendants, on the other hand, have yet to explain the burden on them of continuing the status quo. Much less do they explain how that purported burden is greater than the ongoing injury Plaintiffs experience and the additional harms that will result if the Court stays the injunction. Nor do Defendants explain how the public benefits from a stay of the injunction order, which will

¹³ If you know, you know. If you don’t, the Court commends to you *Minority Report* (20th Century Fox 2002).

require DoD to enact a policy that likely violates Plaintiffs' Fifth Amendment rights.

The Court, on its own motion, stays its Order until March 28, 2025, at 7:00 pm eastern to provide Defendants the opportunity to file an emergency stay with the D.C. Circuit.

CONCLUSION

As the Court predicted, its Opinion has generated heated public debate, and Defendants will appeal. This is all to the good. But let's recall that our servicemembers make the debate and appeals possible. Their sacrifices breathe life into the phrase, "one nation under God, indivisible, with liberty and justice for all." The Court, again, thanks them. All.

* * * * *

For the reasons stated above, the Court hereby:

DENIES Defendants' Motion to Dissolve the Preliminary Injunction and Motion for a Stay Pending Appeal, Dkt. 91; and

STAYS its Order, Dkt. 88, until March 28, 2025, at 7:00 pm eastern.



/s/

ANA C. REYES
ANA C. REYES

United States District Court Judge

Date: March 26, 2025

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-cv-00240 (ACR)
NICOLAS TALBOTT, ET AL., PLAINTIFFS

v.

UNITED STATES, ET AL., DEFENDANTS

Filed: Mar. 18, 2025

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, the Court hereby:

GRANTS Plaintiffs' [72] Renewed Application for Preliminary Injunction; it further

ORDERS that Defendants Peter B. Hegseth, in his official capacity as Secretary of Defense; the United States Department of the Army; Daniel P. Driscoll in his official capacity as Secretary of the Army; the United States Department of the Navy; Terence G. Emmert in his official capacity as Acting Secretary of the Navy; the United States Department of the Air Force; Gary A. Ashworth in his official capacity as Acting Secretary of the Air Force; the Defense Health Agency; Telita Crossland in her official capacity as Director of the Defense Health Agency, are preliminarily enjoined, pending fur-

ther order of this Court, from implementing Executive Order No. 14183; as well as “Additional Guidance on Prioritizing Military Excellence and Readiness,” Dkt. 63-1; and any other memorandums, guidance, policies, or actions issued pursuant to Executive Order 14183 or the Additional Guidance on Prioritizing Military Excellence and Readiness.

The effect of the Court’s Order is to maintain the *status quo* of military policy regarding transgender service that existed immediately before President Donald J. Trump issued Executive Order 14183, *e.g.*, the policies described in Department of Defense Instruction (DoDI) 6130.03, Volume 1, “Medical Standards for Military Service: Appointment, Enlistment, or Induction,” change 5, May 28, 2024; DoDI 6130.03, Volume 2, “Medical Standards for Military Service: Retention,” change 1, June 6, 2022; and DoDI 1300.28, “In-Service Transition for Transgender Service Members,” change 1, December 20, 2022.

The Court also **ORDERS** that, pending further order of this Court, Defendants shall maintain and continue Plaintiffs’ military statuses; it further

ORDERS Defendants to take all steps necessary to effectuate this Order; it further

ORDERS Defendants to provide written notice of this Order by 5:00 pm eastern on March 21, 2025, to all branches of the Department of Defense and to any other entity responsible for implementing military policy; it further

ORDERS Defendants to file with the Court confirmation by 6:00 pm eastern on March 21, 2025, that it has provided the written notice of the Order as the Court has directed; it further

ORDERS the parties to file a joint status report by March 31, 2025, that informs the Court of Defendants' compliance with this Order.

Finally, on its own motion, the Court **STAYS** the effect of this Order until March 21, 2025, at 10:00 am eastern. This Order will automatically go into effect, unless stayed by an appellate court, on March 21, 2025, at 10:01 am eastern.

If the parties, at any time, have questions about the scope of this injunction, they should jointly reach out to Chambers. The Court will move expeditiously to address any issues.

SO ORDERED.



/s/

ANA C. REYES

ANA C. REYES

United States District Court Judge

Date: March 18, 2025

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 25-cv-00240 (ACR)
NICOLAS TALBOTT, ET AL., PLAINTIFFS

v.

UNITED STATES, ET AL., DEFENDANTS

Filed: Mar. 18, 2025

MEMORANDUM OPINION

In Executive Order No. 14183, President Donald J. Trump focuses on “Prioritizing Military Excellence and Readiness.” 90 Fed. Reg. 8757 (Jan. 27, 2025). The military’s “clear mission” is to “protect the American people and our homeland as the world’s most lethal and effective fighting force.” *Id.* § 1. Service by transgender persons¹ is “inconsistent” with this mission because they lack the “requisite warrior ethos” to achieve “military excellence.” *Id.* §§ 1, 2. On February 26, 2025, Secretary of Defense Peter B. Hegseth issued a policy to im-

¹ EO14183 does not employ the word “transgender.” But Defendants concede the term it does use—those with a gender identity that diverges from their biological sex—refers to transgender persons. *See* Docket (Dkt.) 58, Transcript to Court Hearing (Tr.) (Feb. 18, 2025) at 44.

plement EO14183’s directives. Dkt. 63-1 (Hegseth Policy). It disqualifies “[t]ransgender troops . . . from service without an exemption.”²

The President has the power—indeed the obligation—to ensure military readiness. At times, however, leaders have used concern for military readiness to deny marginalized persons the privilege of serving. “[Fill in the blank] is not fully capable and will hinder combat effectiveness; [fill in the blank] will disrupt unit cohesion and so diminish military effectiveness; allowing [fill in the blank] to serve will undermine training, make it impossible to recruit successfully, and disrupt military order.”³ First minorities, then women in combat, then gays filled in that blank. Today, however, our military is stronger and our Nation is safer for the millions of such blanks (and all other persons) who serve.⁴

Currently before the Court is Plaintiffs’ Renewed Application for Preliminary Injunction. Dkt. 72 (App.). Plaintiffs, who are transgender, claim that EO14183 and the Hegseth Policy (together, the Military Ban) treats them as today’s “fill in the blank” group. Seeking nothing more than to serve their country, they ask the Court to enjoin the Military Ban. App. at 26. They claim that

² The Hegseth Policy also studiously does not employ the word “transgender,” but as issued it bans transgender persons. Both the Department of Defense and Secretary Hegseth announced this inescapable fact via social media. @DODResponse, X (Feb. 27, 2025, 12:08 PM); @SecDef, X (Feb. 27, 2025) (repost).

³ Beth Bailey, Introduction, *Integrating the U.S. Military* 3 (Beth Bailey ed., 2017) (brackets in original). See also Dkt. 77-1 (Amicus Br. of Const. Accountability Ctr.) at 14-23.

⁴ See Dkt. 47-1 (Amicus Br. of Former Military Dep’t Heads) at 5-12; Dkt. 82 (Amicus Br. of Const. Accountability Ctr.) at 14-23.

the Hegseth Policy was rushed and reached a preordained result, contains no analysis, and has an exemption in name only. *Id.* at 56. The Ban at bottom invokes derogatory language to target a vulnerable group in violation of the Fifth Amendment. *Id.* at 29, 35-37; *see* U.S. Const. amend. V.

Not at all, say Defendants. They assert that the Military Ban is necessary because transgender persons undermine “military readiness” and disrupt “[u]nit cohesion, good order, and discipline.” Dkt. 81 (Opp.) at 40-54. Being transgender is “inconsistent” with “high standards for Service member readiness, lethality, cohesion, honesty, humility, uniformity, and integrity.” Hegseth Policy at 3. Gender ideology activists are “unconcerned with the requirements of military service like physical and mental health, selflessness, and unit cohesion.” EO14183 § 1. Transgender persons cannot maintain “an honorable, truthful, and disciplined lifestyle.” *Id.* Their expression of sexual identity “is not consistent with [] humility and selflessness.” *Id.* They also cost too much. Opp. at 49.

Plaintiffs beg to differ. And differ they can. Together they have provided over 130 years of military service. They have served in roles ranging from Senior Military Science Instructor to Artillery Platoon Commander to Intelligence Analyst to Satellite Operator to Operations Research Analyst to Naval Flight Officer to Weapons Officer. They have deployed around the globe, from Afghanistan to Poland to Korea to Iraq to Kuwait to the USS Ronald Reagan and USS George W. Bush. One is presently deployed to an active combat zone. They have earned more than 80 commendations including: a Bronze Star; two Global War on Terrorism Ser-

vice Medals; two Global War on Terrorism Expeditionary Medals; numerous Meritorious Service Medals; numerous Commendation Medals; Air and Space Outstanding Unit Awards; and the Military Outstanding Volunteer Service Medal, among many others.

Defendants rejoin that these service records are inapposite. The Court must ignore them and instead “defer to the military’s judgment.” Tr. (Mar. 12, 2025) at 180. Yes, the Court must defer. But not blindly. The President issued EO14183 within seven days of taking office, and Secretary Hegseth issued the Policy thirty days later. There is no evidence that they consulted with uniformed military leaders before doing so. Neither document contains any analysis nor cites any data. They pronounce that transgender persons are not honorable, truthful, or disciplined—but Defense counsel concedes that these assertions are pure conjecture.

THE COURT: Is saying that transgender people or people with gender dysphoria, [that] their inherent identity is inconsistent with a commitment to an honorable, truthful, and disciplined lifestyle, is that demeaning to them?

DEFENSE COUNSEL: I don’t have a characterization for that, Your Honor.

THE COURT: Okay. And if I asked you about all the other words in [the Military Ban], with respect to the characterization of transgender people or people with gender dysphoria, you would have the same answer?

DEFENSE COUNSEL: Yes, Your Honor.

THE COURT: There’s nothing [supporting these assertions] in the studies; right?

DEFENSE COUNSEL: That says those same things, no, Your Honor, not that I know of.

THE COURT: [No study] says anything close to those things; correct?

DEFENSE COUNSEL: Not that I know of, Your Honor.

Tr. (Mar. 12, 2025) at 188-89. An “Action Memo” claims the Policy “was informed through consideration of” three studies and cost data. Dkt. 73-23 (Action Memo) at 4. *Who* considered the information, however, is anyone’s guess; Defendants do not know. Maybe no one, because one study is eight years old and the other two support Plaintiffs’ position.

Transgender persons have served openly since 2021, but Defendants have not analyzed their service. That is unfortunate. Plaintiffs’ service records alone are Exhibit A for the proposition that transgender persons can have the warrior ethos, physical and mental health, selflessness, honor, integrity, and discipline to ensure military excellence. ***Defendants agree.*** They agree that Plaintiffs are mentally and physically fit to serve, have “served honorably,” and “have satisfied the rigorous standards” demanded of them. Tr. (Feb. 18, 2025) at 9-14, 148; *see also* Tr. (Mar. 12, 2025) at 130. Plaintiffs, they acknowledge, have “made America safer.” Tr. (Feb. 18, 2025) at 10. So why discharge them and other decorated soldiers? Crickets from Defendants on this key question.

Plaintiffs have also introduced declarations from the military leaders responsible for integrating transgender persons into open military service. Each declarant attests that our military has not fallen into an “existential”

crisis since transgender persons began serving openly in 2021. Nor have our “lethal and effective” soldiers come unglued when asked to use preferred pronouns, which the Hegseth Policy also bans. To the contrary, they each testify that recruiting, unit cohesion, and military readiness have improved since 2021.

To obtain an injunction, Plaintiffs must establish a likelihood of success on the merits. They have done so. The Court’s factual findings, the vast majority conceded by Defendants and all supported by the Record, make it highly unlikely that the Military Ban will survive judicial review, whether it be rational basis or intermediate scrutiny. Plaintiffs must also show irreparable harm and that the balance of the equities and the public interest favor an injunction. On the former, Plaintiffs face a violation of their constitutional rights, which constitutes irreparable harm. Indeed, the cruel irony is that thousands of transgender servicemembers have sacrificed—some risking their lives—to ensure for others the very equal protection rights the Military Ban seeks to deny them. On the latter, Defendants have not shown they will be burdened by continuing the status quo pending this litigation, and avoiding constitutional violations is always in the public interest.

The Court therefore **GRANTS** Plaintiffs’ Renewed Application for Preliminary Injunction. Dkt. 72. The Court details the scope of the injunction in the Order that accompanies this Opinion. The Court, on its own motion, stays its Order until March 21, 2025, at 10:00 am eastern, to provide Defendants time to consider filing an emergency stay with the D.C. Circuit.

* * * * *

The Court does not issue this preliminary injunction lightly. Judicial overreach is no less pernicious than executive overreach. But the coordinate branches must, “by their mutual relations, be the means of keeping each other in their proper places.” The Federalist No. 51 (James Madison). The President and Defendants could have crafted a policy that balances the Nation’s need for a prepared military and Americans’ right to equal protection. They still can. The Military Ban, however, is not that policy. The Court therefore must act to uphold the equal protection rights that the military defends every day.

The Court’s opinion is long, but its premise is simple. In the self-evident truth that “all people are created equal,”⁵ *all* means *all*. Nothing more. And certainly nothing less.

BACKGROUND

I. OBAMA—TRANSGENDER PERSONS CAN SERVE⁶

Before 2014, the United States precluded transgender persons from military service. Dkt. 69 (Third Amend. Compl.) ¶ 225. This changed during President Barack Obama’s second term. In 2014, the Department of Defense (DoD) eliminated its categorical ban on service by transgender persons and instructed each branch of the

⁵ Women were “included in the sequel” when passage of the Nineteenth Amendment granted them the right to vote in 1920. See Lin-Manuel Miranda, *Hamilton: An American Musical* (2016); compare U.S. Declaration of Independence (1776) with U.S. Const. amend. XIX (1920). That right is one of the many that thousands of transgender persons serve to protect.

⁶ For an in-depth history, see *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 177-85 (D.D.C. 2017), *vacated sub nom. Doe 2 v. Shanahan*, 755 F. App’x 19 (D.C. Cir. 2019).

Armed Forces to reassess the ban's rationales. *See* Dkt. 72-86 (DoDI 1332.18).

In 2015, then-Secretary of Defense Ashton B. Carter established a working group to identify issues related to open military service by transgender persons. Dkt. 72-70 (RAND Report) at 4. To aid its work, the group commissioned the RAND Corporation's National Defense Research Institute to study the issue.⁷ *Id.* After a year of research, RAND concluded that allowing transgender persons to serve openly would have “minimal impact on unit cohesion” and estimated the “impact [of transgender persons serving openly] on readiness to be negligible.” *Id.* at 13, 91. It further found that extending health care coverage for gender transition-related treatments represented an “exceedingly small proportion” of health care expenditures: between \$2.4 million and \$8.4 million out of \$49.3 billion, or 0.017%—at most—of the Unified Medical Program budget. *Id.* at 12-13, 91. Relying in part on that report, the working group “unanimously concluded that transgender people should be allowed to serve openly in the military.” *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 179 (D.D.C. 2017). It found that “*prohibiting* transgender people from serving undermines military effectiveness and readiness.” *Id.* (emphasis in original). Such a policy “excludes qualified individuals on a basis that has no relevance to one’s fitness to serve[] and creates unexpected vacancies requiring

⁷ The National Defense Research Institute is not a fly-by-night operation. It is “a federally funded research and development center sponsored by the Office of the Secretary of Defense, the Joint Staff, the Unified Combatant Commands, the Navy, the Marine Corps, the defense agencies, and the defense Intelligence Community.” RAND Report at 4-5.

expensive and time-consuming recruitment and training of replacements.” *Id.*

To implement the working group’s recommendation, in 2016, Secretary Carter issued Directive-Type Memorandum 16-005, titled “Military Service of Transgender Service Members.” Dkt. 72-60 (Carter Policy). The Carter Policy stated 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.” *Id.* at 3.

Both the Army and the Air Force issued guidance allowing transgender individuals to serve openly starting in July and October 2016. *Doe 1*, 275 F. Supp. 3d at 182. The Carter Policy for acceding transgender persons to the military was set to take effect on June 30, 2017. *Id.* at 181. However, President Trump took office in January 2017, and on June 30—the date accessions were to start—then-Secretary of Defense James Mattis deferred acceding transgender individuals into the military until January 1, 2018. *Id.* at 182.

II. TRUMP I—TRANSGENDER PERSONS CANNOT SERVE

A. President Trump Orders a Ban on Transgender Service

On August 25, 2017, President Trump issued a memorandum entitled “Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security” (2017 Memorandum). *Doe 1*, 275 F. Supp. 3d at 183. The 2017 Memorandum called for a ban on mem-

bers of the military from serving in a sex different from their birth sex, stopped the accession of transgender persons, and halted funding for gender-affirming care. *Id.* at 183-84. It instructed Secretary Mattis to gather a working group to review the 2017 Memorandum and advise if the group disagreed with the Memorandum's conclusions. *Id.* at 185.

B. Courts Enjoin the 2017 Memorandum

Litigation ensued. Several transgender persons then serving or hoping to enlist challenged President Trump's 2017 Memorandum. *Id.* at 175-76. On October 30, 2017, Judge Colleen Kollar-Kotelly of this Court entered a preliminary injunction, effectively barring any change from the status quo as it related to service and accession. *See id.* at 177. She dismissed the claims relating to gender affirming care based on a lack of standing. *Id.* The D.C. Circuit declined to stay the injunction pending appeal. *Doe 1 v. Trump*, No. 17-5267, 2017 WL 6553389, at *1 (D.C. Cir. Dec. 22, 2017). Around the same time, three other federal courts also enjoined the 2017 Memorandum. *See Stone v. Trump*, 280 F. Supp. 3d 747 (D. Md. 2017); *Karnoski v. Trump*, 2017 WL 6311305 (W.D. Wash. Dec. 11, 2017); *Stockman v. Trump*, 2017 WL 9732572 (C.D. Cal Dec. 22, 2017).

C. DoD Recommends Revisions to the 2017 Memorandum

DoD subsequently issued a report that addressed transgender military service. Dkt. 73-8 (2018 Report) at 5-49. The report concluded that transgender persons undermine military preparedness. *See id.* at 37-38. It likened gender dysphoria to "bipolar disorder, personality disorder, obsessive-compulsive disorder, suicidal behavior, and even body dysmorphic disorder." *Id.* at

25. It claimed that individuals with gender dysphoria were more likely to have substance abuse issues and commit suicide and that they would inflict excessive costs on the military. *Id.* at 26, 46. It emphasized that the “uncertainty” surrounding the view of medical professionals meant that the military should “proceed with caution.” *Id.* at 11.

Based on this report, on February 22, 2018, Secretary Mattis presented a memorandum (Mattis Policy) to President Trump that proposed an alternative to the enjoined 2017 Memorandum. *See generally id.* at 2-4. The Mattis Policy would not have banned service to all transgender persons. *Id.* at 3. Instead, it recommended banning anyone who had undergone gender transition and those with a history or current diagnosis of gender dysphoria, except in some limited circumstances. *Id.* It allowed transgender persons already in the military—who did not have gender dysphoria and were otherwise qualified for service—to serve, but only in their biological sex. *Id.* at 3-4.

President Trump issued a memorandum on March 23, 2018, revoking the 2017 Memorandum and delegating authority to DoD and Department of Homeland Security to implement the Mattis Policy. Third Amend. Compl. ¶ 256.

D. The Mattis Policy Takes Effect

Following publication of the Mattis Policy, the *Doe 1* plaintiffs amended their complaint. Again, the government moved to dismiss and asked the court to dissolve the existing preliminary injunction. *Doe 2 v. Trump*, 315 F. Supp. 3d 474, 479 (D.D.C. 2018). The district court declined to do so. *Id.* at 480. The government again appealed—this time successfully. *Doe 2 v. Shanahan*,

755 F. App'x 19, 22 (D.C. Cir. 2019). In an unpublished opinion on January 4, 2019, the D.C. Circuit reversed the district court's denial of the government's motion to dissolve the preliminary injunction and vacated the preliminary injunction without prejudice.⁸ *Id.* The D.C. Circuit held that “[i]t was clear error [for the district court] to say there was no significant change” in military policy—from the genesis of the 2017 Memorandum to the issuance of the Mattis Policy—and so vacatur of the preliminary injunction was warranted. *Id.* at 23.

The Mattis Policy went into effect after the dissolution of the preliminary injunction. It remained in place until the beginning of the Biden administration in 2021. App. at 14.

III. BIDEN—TRANSGENDER PERSONS CAN SERVE

On January 25, 2021, President Joseph R. Biden issued Executive Order 14004, “Enabling All Qualified Americans [t]o Serve Their Country in Uniform.” 86 Fed. Reg. 7471 (Jan. 25, 2021) (EO14004). EO14004 directed the Secretaries of Defense and Homeland Security to take necessary steps “to ensure that all transgender individuals who wish to serve in the United States military and can meet the appropriate standards shall be able to do so openly and free from discrimination.” *Id.* § 1.

EO14004 cited its reliance on “substantial evidence that allowing transgender individuals to serve in the military does not have any meaningful negative impact on the Armed Forces.” *Id.* This included “a meticulous, comprehensive study requested by [DoD],” testimony to

⁸ As acknowledged by both parties, *Doe 2* is not binding on this Court, but it is persuasive. See Fed. R. App. P. 32.1; see also Tr. (Feb. 19, 2025) at 5-7.

Congress by the then-serving Chief of Staff of the Army, Chief of Naval Operations, Commandant of the Marine Corps, and Chief of Staff of the Air Force that “they were not aware of any issues of unit cohesion, disciplinary problems, or issues of morale resulting from open transgender service.” *Id.* (cleaned up). It also included a statement by former United States Surgeons General, who served under both Democratic and Republican Presidents, “that transgender troops are as medically fit as their non-transgender peers and that there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude them from military service or to limit their access to medically necessary care.” *Id.* (cleaned up).

The Office of the Undersecretary of Defense for Personnel and Readiness convened a working group tasked with “formulat[ing] policy options for DoD regarding transgender service members.” Dkt. 72-59 ¶ 9. After the group “collect[ed] and consider[ed] evidence from a variety of sources, including a careful review of all available scholarly evidence and consultations with medical experts, personnel experts, readiness experts, health insurance companies, civilian employers, and commanders whose units included transgender service members,” it concluded that “banning service by transgender persons would harm the military by excluding qualified individuals based on a characteristic with no relevance to a person’s fitness to serve.” *Id.* ¶¶ 10, 12.

In March 2021, the Office of the Undersecretary of Defense for Personnel and Readiness issued guidance on accession. Dkt. 73-9 (DoDI 6130.03, Vol 1). In addition to meeting standard accession requirements, transgender persons with a history of gender dysphoria could

enlist if they had been stable in their gender identity for at least 18 months prior to enlistment. *Id.* On April 30, 2021, the Office of the Undersecretary of Defense for Personnel and Readiness issued “DoD Instruction 1300.28—In-Service Transition for Transgender Service Members.” Dkt. 72-63 (DoDI 1300.28). A servicemember could serve in their preferred sex by changing their “DEERS Marker” (Defense Enrollment Eligibility Reporting System) to reflect their gender identity.⁹ *Id.* at 7.

In short, the Austin Policy allowed transgender persons to enlist and serve openly.

IV. TRUMP II—TRANSGENDER PERSONS CANNOT SERVE

A. President Trump Again Orders a Ban on Transgender Service

On the first day of his second term, President Trump issued Executive Order 14168, “Defending Women [f]rom Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025) (EO14168). That Order provides that the federal government will recognize only two sexes: male and female. *Id.* § 2. EO14168 defines a “male” as a “a person belonging, at conception, to the sex that produces the small reproductive cell,” and a “female” as “a person belonging, at conception, to the sex that produces the large reproductive cell.” *Id.*

⁹ DoDI 1300.28 explains that “[g]ender transition in the military begins when a Service member receives a diagnosis from a military medical provider indicating the Service member’s gender transition is medically necessary, and concludes when the Service member’s gender marker in DEERS is changed and the Service member is recognized in the self-identified gender.” Dkt. 72-63 at 20.

EO14168 requires federal agencies to ignore conflicting provisions of related executive orders from the previous administration, including Executive Orders: 13988, on preventing and combating discrimination based on gender identity or sexual orientation; 14004, on enabling transgender persons to serve openly in the military; 14020, which established the White House Gender Policy Council; 14021, addressing the need for a comprehensive approach to gender equity and equality; and 14075, on advancing equity for all individuals. *Id.* § 7(b). EO14183 also directed federal agencies to rescind guidance documents, such as “The White House Toolkit on Transgender Equality,” “Supporting Transgender Youth in School,” and “Back-to-School Message for Transgender Students from the U.S. Depts of Justice, Education, and HHS,” among others relating to the LGBTQ+ community. *Id.* § 7(c).

On January 27, 2025, President Trump issued EO14183, which incorporates by reference the definitions in EO14168. EO14183 § 3. The Order revokes President Biden’s Executive Order 14004, which allowed transgender persons to serve openly in the military. *Id.* § 5. It describes the U.S. military’s mission as “protect[ing] the American people and our homeland as the world’s most lethal and effective fighting force.” *Id.* § 1. But it adds that “the Armed Forces have been afflicted with radical gender ideology to appease activists unconcerned with the requirements of military service.” *Id.* It claims that “adoption of a gender identity inconsistent with an individual’s sex conflicts with a soldier’s commitment to an honorable, truthful, and disciplined lifestyle, even in one’s personal life. A man’s assertion that he is a woman, and his requirement that others

honor this falsehood, is not consistent with the humility and selflessness required of a service member.” *Id.*

EO14183 declares that it is U.S. Government policy “to establish high standards for troop readiness, lethality, cohesion, honesty, humility, uniformity, and integrity.” *Id.* § 2. “This policy is inconsistent with the medical, surgical, and mental health constraints on individuals with gender dysphoria” and “with shifting pronoun usage or use of pronouns that inaccurately reflect an individual’s sex.” *Id.* EO14183 therefore requires: DoD to revise its medical standards (DoDI 6130.03 Volume 1 and Volume 2) within 60 days to reflect the purpose and policy of the Order, *id.* § 4(a); the Defense Secretary to end identification-based pronoun usage, *id.* § 4(b); and within 30 days to identify guidance to implement the Order, *id.* § 4(c); and the Armed Forces to prohibit service-members born male to use or share facilities for those born female and vice versa, *id.* § 4(d).

The White House also provided an accompanying fact sheet that reiterated EO14183’s goal of “RESTORING SANITY IN OUR MILITARY: During the Biden Administration, the Department of Defense allowed gender insanity to pervade our military organizations.” Fact Sheet: President Donald J. Trump Ensures Military Excellence and Readiness, The White House (Jan. 27, 2025).

On February 7, 2025, the Secretary of Defense issued a memorandum that “paused” all activities under the Austin Policy pending his forthcoming policy implementing EO14183. Dkt. 33-1 (Feb. 7 Memo).

B. Litigation Ensues

On January 28, 2025, one day after President Trump issued EO14183, eight transgender persons filed a Com-

plaint for Declaratory and Injunctive Relief. Dkt. 1. The current operative complaint is the Third Amended Complaint. Dkt. 69. Plaintiffs Nicolas Talbott, Erica Vandal, Kate Cole, Gordon Herrero, Dany Danridge, Jamie Hash, Minerva Bettis, Audrie Graham, Roan Pickett, Amiah Sale, Quinn Tyson, Michelle Bloomrose, Vera Wolf, and Regan Morgan are transgender active-duty servicemembers. *Id.* ¶¶ 21-168. Plaintiff Miriam Perelson is enlisted in U.S. Army basic training. *Id.* ¶ 87. Plaintiffs Samuel Ahearn, Clayton McCallister, Greyson Shishkina, Koda Nature, and Cael Neary are transgender persons in the process of enlisting. *Id.* ¶¶ 169-206.

Collectively, the active-duty Plaintiffs have served in the U.S. military honorably and with distinction for over 130 years. Third Amend. Compl. ¶¶ 22, 33, 44, 53, 65, 77, 88, 106, 114, 122, 134, 146, 153, 160, 166.¹⁰ The Court cites some of their accolades above; there are many more. *Id.* ¶¶ 36, 46, 56, 69, 80, 108, 135, 147, 155, 162. The Government concedes that each active-duty Plaintiff is honorable, truthful, and disciplined, and that each is currently physically and mentally fit to serve. Tr. (Feb. 18, 2025) at 9. They have “served honorably” and “have satisfied the rigorous standards” of military service. *Id.* at 9, 14, 148. The Government also concedes that, together, Plaintiffs have made America safer. *Id.* at 10. The active-duty Plaintiffs have adhered to all military standards and serve without accommodation. *See, e.g.*, Dkt. 72-27 (Herrero Second Supp. Decl.) (“I meet all standards applicable to male service members.”);

¹⁰ All Plaintiffs submitted sworn declarations, which Defendants do not contest. Dkts. 72-18-72-58. The Court accepts and incorporates them into the factual record.

Dkt. 72-58 (Wolf Decl.) ¶ 18 (“I meet all standards applicable to female service members.”); Tr. (Mar. 12, 2025) at 130. Yet there is no dispute that the Military Ban’s directives would prohibit Plaintiffs from serving. Tr. (Mar. 12, 2025) at 167.

Defendants are the United States of America, Secretary of Defense Peter B. Hegseth, Secretary of the Army Daniel P. Driscoll, the Department of the Army, Acting Secretary of the Navy Terence G. Emmert, the Department of the Navy, Acting Secretary of the Air Force Gary A. Ashworth, the Department of the Air Force, Director of the Defense Health Agency Telita Crosland, and the Defense Health Agency.¹¹ *Id.* ¶¶ 207-16. Plaintiffs sue the individual Defendants in their official capacities. *Id.* ¶ 217.

Plaintiffs allege that the Military Ban, “[r]ather than being based on any legitimate governmental purpose, . . . reflects animosity toward transgender people because of their transgender status.” *Id.* ¶ 314. They claim that the Military Ban violates the equal protection component of the Due Process Clause of the Fifth Amendment. *Id.* ¶¶ 317-31. They also allege that the Military Ban violates the currently serving Plaintiffs’ procedural due process rights under the Fifth Amendment. *Id.* ¶¶ 332-39. And because some Plaintiffs “reasonably relied on the Austin Policy” when they transitioned, some also bring an estoppel claim.¹² *Id.* ¶¶ 340-45.

¹¹ Upon agreement of the parties, the Court dismissed President Trump as a defendant on February 13, 2025. Dkt. Notice (February 13, 2025).

¹² Since Plaintiffs have established likelihood of success on their equal protection claim, the Court does not address the procedural due process or estoppel claims.

On February 3, 2025, Plaintiffs filed an Application for Preliminary Injunction followed by an Application for Temporary Restraining Order the next day. Dkts. 13, 14. At a status conference on February 4, the Court explained that it could not grant the TRO because it addressed harm to a non-plaintiff. Tr. (Feb. 4, 2025) at 42-43. After further discussion, the parties agreed to follow the briefing and hearing schedule the Court had originally set for the preliminary injunction application. Dkt. Notice (Feb. 4, 2025).

On February 13, 2025, the Court previewed for the parties, at length, the legal issues and cases it expected to address at the formal preliminary injunction hearing. Tr. (Feb. 13, 2025). On February 15, 2025, the Government confirmed that it would neither present any affirmative witnesses nor cross-examine any of Plaintiffs' declarants at the preliminary injunction hearing.¹³ At that point, Plaintiffs notified all parties that it would not call on any of its declarants.¹⁴ The Court held oral argument on February 18 and 19, 2025. At the February 18 hearing, the Court granted the Government's request that it refrain from ruling until after DoD released its implementing policies. Tr. (Feb. 18, 2025) at 113-14. On March 4, 2025, Plaintiffs filed their Third Amended Complaint. Dkt. 69. They filed a Renewed Application for Preliminary Injunction on March 7, 2025. Dkt. 72. Defendants filed their Opposition to Plaintiffs' Application on March 11, 2025. Dkt. 81. The Court heard oral argument on the renewed Application on March 12, 2025.

¹³ Email from Defs.' Counsel to Court and Pls.' Counsel (Feb. 15, 2025).

¹⁴ Email from Pls.' Counsel to Court and Defs.' Counsel (Feb. 15, 2025).

C. The Hegseth Policy Issues

DoD implemented EO14183 on February 26, 2025, in a memorandum entitled “Additional Guidance on Prioritizing Military Excellence and Readiness.” Dkt. 63-1 (Hegseth Policy). Secretary Hegseth issued the Policy “pursuant to Executive Order 14183, ‘Prioritizing Military Excellence and Readiness.’” *Id.* at 1. The Policy states that “[m]ilitary service by Service members and applicants for military service who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria is incompatible with military service.” *Id.* at 3. Consequently, “[i]ndividuals who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria are no longer eligible for military service.” *Id.*

The Hegseth Policy directs the Secretaries of the Military Departments to “[e]stablish procedures and implement steps to identify Service members who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria within 30 days of this memorandum.” *Id.* at 5. Next, “[w]ithin 30 days of identification,” the Departments must “begin separation actions . . . for Service members who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria and are not granted a waiver.” *Id.* Regarding retention policies, “[s]ervice members who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria are disqualified from military service.” *Id.* at 8. In addition, “[s]ervice members who have a history of cross-sex hormone therapy or a history of sex reassignment or genital reconstruction surgery as treatment for gender dyspho-

ria or in pursuit of a sex transition, are disqualified from military service.” *Id.*

The Hegseth Policy purports to allow exemptions “on a case-by-case basis, provided there is a compelling Government interest in retaining the Service member that directly supports warfighting capabilities” and the servicemember meets the following three conditions: he or she (1) “demonstrates 36 consecutive months of stability in [his or her] [birth] sex without clinically significant distress or impairment,” (2) “demonstrates that he or she has never attempted to transition to any sex other than their [birth] sex,” and (3) “is willing and able to adhere to all applicable standards, including the standards associated with the Service member’s [birth] sex.” *Id.* Any transgender person who cannot satisfy these conditions is disqualified from service.

With respect to separation policies, the Hegseth Policy provides that “[s]ervice members who have a current diagnosis or history of, or exhibit symptoms consistent with, gender dysphoria may elect to separate voluntarily in the 30 days following signature of this guidance.” *Id.* at 9. Those who do so “may be eligible for voluntary separation pay in accordance with 10 U.S.C. § 1175a and DoDI 1332.43 . . . at a rate that is twice the amount the Service member would have been eligible for involuntary separation pay, in accordance with DoDI 1332.29.” *Id.* The Policy provides that those “choosing voluntary separation will not have to repay any bonuses received prior to the date of this memorandum, even if they have a remaining service obligation, pursuant to 37 U.S.C. § 373(b)(1).” *Id.* On the other hand, “[t]he Military Departments may recoup any bonuses received

prior to the date of this memorandum for Service members choosing to be involuntarily separated.” *Id.*

On the same day that DoD issued the Hegseth Policy, the Under Secretary of Defense for Personnel and Readiness also distributed “Implementing Guidance for Prioritizing Military Excellence and Readiness Executive Order,” also called the Action Memo. Dkt. 73-23 (Action Memo). The Action Memo repeats the purposes and policies President Trump outlined in EO14183 and reiterates the main points of the Hegseth Policy. *Id.* It lists four “consideration[s]” that “informed” the Hegseth Policy: (1) the Mattis Policy, (2) a 2021 review conducted by DoD’s Psychological Health Center of Excellence and the Accession Medical Standards Analysis and Research Activity, (3) a 2025 medical literature review conducted by the Office of the Assistant Secretary of Defense for Health Affairs, and (4) a review of cost data. *Id.* at 4-5.

Based on these reviews, DoD concluded that “[w]hile Service members with gender dysphoria volunteered to serve their country, the costs associated with their health care, coupled with the medical and readiness risks associated with their diagnosis and associated treatment that can limit their deployability, make continued service by such individuals incompatible with the Department’s rigorous standards and national security imperative to deliver a ready, deployable force.” *Id.* at 5.

FINDINGS OF FACT

“A preliminary injunction may be granted based on less formal procedures and on less extensive evidence than in a trial on the merits.” *Cobell v. Norton*, 391 F.3d 251, 261 (D.C. Cir. 2004). Courts, for example, permit hearsay evidence in the form of sworn affidavits in considering an application for preliminary injunction. *See*

e.g., *Karem v. Trump*, 404 F. Supp. 3d 203 (D.D.C. 2019) (citing *Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010) (collecting cases from six other circuits)).

The Court makes its factual findings based on the entire record, including the Third Amended Complaint, documents cited in the Complaint, exhibits to the preliminary injunction application and opposition, the declarations the parties submitted, and concessions¹⁵ or points of agreement made by the parties at oral argument (altogether, the Record). *See American Foreign Service Ass’n, et al. v. Trump et al.*, 2025 WL 573762, at *1 (D.D.C. Feb. 21, 2025). It is early days for this litigation, however. Things change. If new developments cause Defendants to move to dissolve this injunction, the Court will hear that motion expeditiously.

I. THE HEGSETH POLICY BANS ALL TRANS-GENDER TROOPS

Secretary Hegseth issued the Hegseth Policy on February 26, 2025. Dkt. 63-1. The next day, the Department of Defense and Secretary Hegseth publicly announced that under it: “Transgender troops are disqualified from service without an exemption.”¹⁶ Defense counsel contends that the Court must ignore Secretary Hegseth’s public description of the policy he wrote and that he is responsible for implementing. Tr. (Mar. 12, 2025) at 19-22. Secretary Hegseth used the word

¹⁵ Over three hearings on Plaintiffs’ motion, Defendants made numerous concessions concerning the scope and application of EO14183 and the Hegseth Policy. When citing a concession, the Court cites “Defs. Concession” and then the transcript cite.

¹⁶ @DODResponse, X (Feb. 27, 2025, 12:08 PM); @SecDef, X (Feb. 27, 2025). The Court has taken judicial notice of their posts. *See* Dkt. Notice (Mar. 7, 2025); Fed. R. Evid. 201(b)(2).

“transgender,” defense counsel claims, only as “shorthand” for gender dysphoria. *Id.* at 22. Seriously? These were not off-the-cuff remarks at a cocktail party. DoD and Secretary Hegseth used official government accounts to announce a new policy affecting the entire U.S. Military. The Court presumes that in doing so they did not use loose or misleading language. Indeed, if the Hegseth Policy addressed only gender dysphoria, the post would have read, “Gender dysphoria is a disqualifying medical condition for service.” Both sentences contain nine words, belying counsel’s “shorthand” excuse.

DoD and Secretary Hegseth announced that the Policy bans “transgender troops” because that is precisely what it does. To be sure, the word transgender does not appear on its pages. It is nonetheless aimed squarely at transgender persons, banning everyone:

- with a current diagnosis of gender dysphoria;
- with a history of gender dysphoria;
- who exhibits symptoms consistent with gender dysphoria;
- with a history of cross-sex hormone therapy (as treatment for gender dysphoria or in pursuit of sex transition);
- with a history of sex reassignment or genital reconstruction surgery (same);
- who has transitioned or attempted to transition to a sex other than their birth sex; and,
- who is not willing to serve in their birth sex.

Hegseth Policy at 3-6.

There is an exemption, but it is one in name only. Individuals can obtain a waiver if there “is a compelling government interest in retaining them that directly supports warfighting capabilities.” *Id.* at 6. That includes only those with “special experience, special training, and advanced education in a highly technical career field designated as mission critical and hard to fill by the Secretary of a Military Department, if such experience, training, and education is directly related to the operational needs of the Military Service concerned.” Dkt. 70-1 (Clarifying Guidance on Hegseth Policy) at 1. Even if someone stumbled into this elite cadre, she could continue to serve only if: (1) she has been stable in her *birth* sex for 36 consecutive months; (2) she has never transitioned or attempted to transition to anything other than her birth sex; and (3) she is willing (against medical advice) to serve in her birth sex.¹⁷ *Id.* at 1-2. Virtually no one can meet all these criteria. The Court finds that Plaintiffs, for their part, do not. *See* Third Amend. Compl. ¶¶ 27, 38, 48, 58, 71, 82, 88, 109, 115, 124, 136, 148, 157, 163, 167, 170, 185, 186, 198, 206.

II. THE MILITARY BAN IS BASED ON CONJECTURE

A. The Administration Rushed the Hegseth Policy

President Trump issued EO14183 seven days after taking office. No one knows what he relied on, if anything. Tr. (Feb. 18, 2015) at 117. EO14183 commanded DoD to

¹⁷ Medical experts, including the American Psychological Association, agree that “[f]orcing transgender individuals to suppress their gender identity and live according to their birth sex is not merely uncomfortable—it is psychologically harmful and can lead to significant distress, depression, and other serious mental health conditions.” Dkt. 72-78 (Brown Decl.) ¶ 10.

craft the implementing policy within 30 days of that Order. EO14183 § 4. This was rushed by any measure. By comparison, DoD spent 12 months to craft the Carter Policy, 7 months to craft the Mattis Policy, and 8 months to craft implementing guidance on the Austin Policy. *See* Third Amend. Compl. ¶¶ 229, 237, 254-56, 262-66.

Alex Wagner, the former Assistant Secretary of the Air Force for Manpower and Reserve Affairs, notes that the “rushed and haphazard manner” in which Defendants “issued and implemented” the Military Ban is “highly unusual.” Dkt. 72-68 (Wagner Second Supp. Decl.) ¶ 10. “Ordinarily, the reversal of an existing [military] policy—especially one [like the Austin Policy] adopted after careful study and review—would take place only in response to significant, documented problems with existing policy, after careful consideration and review including an explanation of what led to the problematic outcomes, and would be rolled out in a careful, orderly fashion that provided commanders and members clear guidance.” *Id.* The “abrupt reversal” of the Austin Policy, without comprehensive review, “is unprecedented” and “an extreme departure from how military policy is typically made.” Dkt. 72-74 (Cisneros Decl.) ¶ 21.

Former Deputy Undersecretary of Defense for Personnel and Readiness Shawn Skelly has “significant concerns about the immediate and long-term harms” of the Hegseth Policy and “the ways in which it conflicts with established military policy and practices.” Dkt. 72-73 ¶ 1. Based on his experience, he believes that this “categorical approach to administratively separate an entire class of people who demonstrate their ability to serve and meet military standards represents a significant departure from military practice.” *Id.* ¶ 2. “There are no

other circumstances where service members with a treatable condition that allows them to deploy and meet all readiness standards are nevertheless deemed categorically incapable of service.” *Id.* ¶¶ 2.¹⁸ In his view, this Policy—not transgender service—“will severely disrupt the chain of command and erode unit cohesion and trust,” and “[t]he rollout of this policy is unprecedented in the chaos and confusion associated with it.” *Id.* ¶¶ 5, 15.

B. Defendants’ Evidence Supports Plaintiffs’ Application

EO14183 and the Hegseth Policy provide nothing to support Defendants’ view that transgender military service is inconsistent with military readiness. So instead, Defendants turn to the Action Memo. *See* Tr. (Mar. 12, 2025) at 136. The Action Memo, an internal document accompanying the Hegseth Policy, explains that the Military Ban “was informed through consideration of, among other things,” EO14183, the Hegseth Policy, and the following: (1) the “SecDef Memorandum” from February 22, 2018 (*i.e.*, the Mattis Policy); (2) “a 2021 review conducted by . . . the Accession Medical Standards Analysis and Research Activity,” (AMSARA Report), (3) “[a] 2025 medical literature review,” (Medical Literature Review), and (4) “a review of cost data.” Action Memo at 4-5.

After listing the sources the Military Ban relies on, the Action Memo concludes that

¹⁸ Mr. Skelly claims that the Hegseth Policy is “both punitive and based on animus.” Dkt. 72-73 ¶ 3. Because the parties have not briefed whether this is a legal conclusion, the Court does not accept his assertion as a finding of fact.

[w]hile Service members with gender dysphoria volunteered to serve their country, the costs associated with their health care, coupled with the medical and readiness risks associated with their diagnosis and associated treatment that can limit their deployability, make continued service by such individuals incompatible with the Department's rigorous standards and national security imperative to deliver a ready, deployable force.

Id. at 5. This claim is belied by the evidence the Action Memo itself cites.

1. The Mattis Policy

Defendants contend that “[m]any of the rationales justifying the 2018 [Mattis] policy—which was approved by President Trump as the Commander in Chief in 2018—would apply here.” Dkt. 38 at 34. The Court, they contend on repeat, must defer to the Hegseth Policy's adoption of the Mattis Policy's findings. *See, e.g.*, Opp. at 12, 13, 14, 18, 28, 29, 30, 32-39, 40, 44, 47, 48, 50. The Mattis Policy's findings, they claim, support the Action Memo's conclusion. Action Memo at 5; *see also* Tr. (Mar. 12, 2025) at 135. It does not.

The Mattis Policy resulted from the work over many months of “a Panel of Experts comprised of senior uniformed and civilian Defense Department and U.S. Coast Guard leaders.” Dkt. 73-8 at 2. It “included combat veterans to ensure that our military purpose remained the foremost consideration.” *Id.* And it “met with and received input from transgender Service members, commanders of transgender Service members, military medical professionals, and civilian medical professionals with experience in the care and treatment of gender dysphoria.” *Id.* at 2-3. No panel of experts—or any other

kind—informed the Hegseth Policy. The Record reflects only that it “was informed through consideration.” Action Memo at 4 (cleaned up). But, again, Defendants do not even know *who* undertook the “consideration.” Tr. (Mar. 12, 2025) at 38-39.

By its own terms, moreover, the Mattis Policy’s findings were limited by “uncertainty.” Transgender persons had not served openly previously. *Id.* at 11. And the medical literature concerning “the study and treatment of gender dysphoria” was then also in a state of flux. *Id.* This mandated “caution.” *Id.* That uncertainty no longer exists. Transgender persons have served openly in the U.S. military since the Austin Policy issued in 2021, and medical studies now overwhelmingly conclude that gender dysphoria is “highly treatable.” Dkt. 72-77 ¶ 17.

General Mattis explained that “[u]nlike past reviews, the [Mattis] Panel’s analysis was informed by the Department’s own data and experience obtained since the Carter Policy took effect.” *Id.* at 23; *see also* Tr. (Mar. 12, 2025) at 11. Here, Defendants did not analyze the “Department’s own data and experience since the [Austin] Policy took effect.”

2. 2021 Psychological Health Center Review

The Action Memo references and attaches a 2021 review conducted by DoD’s Psychological Health Center of Excellence and the Access Medical Standards Analysis and Research Activity (the Center, AMSARA Report). Dkt. 73-24. The Center studied medical issues relating to accession of persons with a history or diagnosis of gender dysphoria. The Center compared the available accessions records of transgender service persons to a cohort of other servicemembers. *Id.* at 5.

The Action Memo's entire discussion of the AMSARA Report is:

A 2021 review conducted by DoD's [AMSARA team] found that "rates of disability *evaluation* were estimated to be higher [about 12%] among [transgender] service members [1%]. Additionally, this review found that nearly 40% of Service members with gender dysphoria in an observed cohort were non-deployable over a 24 month period. This level of non-deployability creates significant readiness risk and places additional burdens on Service members without gender dysphoria to meet requirements.

Action Memo at 4 (emphasis added).

No one who has read the AMSARA Report could find that it supports this conclusion. To start, the Action Memo fails to mention the Report's key finding: rates of transgender persons experiencing the conditions of the cohort group (*psychiatric, musculoskeletal, and neurological*) "were comparable to those of all service members evaluated for disability." Dkt. 73-24 at 6 (emphasis added). The other rates the Center studied were "similar" between the transgender cohort and the other servicemember cohort as to: (1) the proportion with history of any accession medical disqualification status; (2) the distribution of specific medical disqualifications; (3) the rates of adverse attrition; and (4) the rates of existing prior to service discharge. *Id.* at 4. The Action Memo quotes the *only* rate that was higher for transgender persons, and that was a rate of *evaluation*, not occurrence. Action Memo at 4.

With respect to non-deployability, the Action Memo also ignores that "data w[as] not available from non-transgender service members that could serve as a basis

for comparison to indicate if supposed non-deployability rates amongst the transgender cohorts differed from the overall non-deployability rate.” Dkt. 86-1 (AMSARA Parts I-III) at 11-12. Without comparator data, the non-deployability rate for the transgender cohort is not informative, something the Report highlights. Dkt. 73-24 at 6.

The Center also conducted a medical literature review as part of its work that the Action Memo ignores altogether. One study stands out. The AMSARA Report cited, without criticism, a 2014 study that summarized “and challenge[d] [] common notions to justify barring transgender individuals from Service which are actually not supported by research and not internally consistent with other DoD policies.” Dkt. 86-1 at 2. “The most notable challenge to these assumptions is falsely equating transgender identify with mental health disorders, which has become a debunked connection broadly in the field.” *Id.*

The Court does not question military judgment broadly as to acceptable non-deployment rates. The Court instead finds that the Action Memo’s summary of the AMSARA Report is inexplicably misleading. Further, the Report contradicts, rather than supports, the conclusions the Action Memo draws from it. These findings support Plaintiffs’ contention that Defendants did not exercise military judgment to which the Court can defer on the narrow question of whether the Hegseth Policy comports with the Fifth Amendment.

3. 2025 Medical Literature Review

The Action Memo also references the 2025 Medical Literature Review conducted by the Office of the Assistant Secretary of Defense for Health Affairs. The Ac-

tion Memo's entire discussion of the Medical Literature Review is that it:

Included findings that "55% of transgender individuals experienced suicidal ideation and 29% attempted suicide in their lifetime . . . [and] the suicide attempt rate is estimated to be 13 times higher among transgender individuals compared to their cisgender counterparts," "transgender individuals are approximately twice as likely to receive a psychiatric diagnosis compared to cisgender individuals," and that the strength of the evidence on transgender mental health and gender-affirming care is low to moderate.

Action Memo at 4-5 (quoting Dkt. 73-25 (Med. Lit. Rev.) at 2-3).

No one summarizing the Review in good faith could draw these conclusions. To start, the Medical Literature Review did not survey studies on transgender persons in military service: *i.e.*, individuals already found to be physically and mentally fit. Dkt. 73-25 at 2; *see also* Defs. Concession, Tr. (Mar. 12, 2025) at 116-17. So it can shed little light on how transgender persons fare in the military. *See also* Defs. Concession, Tr. (Mar. 12, 2025) at 117. For that analysis, the Court refers to the AM-SARA Report, which, again, found similar rates of psychotherapy for transgender and other servicemembers.

Second, the suicide conclusions of the Medical Literature Review undercut banning transgender persons from the military. To start, the military already restricts individuals with suicidal tendencies from enlisting. *See* DoDI 6130.03, Vol. 1, at 6.28(m). Moreover, the studies under review confirm that transgender persons are not inherently mentally unfit. Instead, the studies cited find that transgender suicide rates are influenced

by external factors, such as “gender identity-related disparities, discrimination, lack of family and social support, barriers to gender-affirming care, co-occurring mental health conditions, economic instability, and experiences of violence and victimization.” Dkt. 73-25 at 3. The studies also show “that suicide risk among transgender . . . individuals is mitigated by access to gender-affirming care, strong social and family support, legal and social recognition, affirming mental health services, community connectedness, and protections against discrimination.” *Id.*; *see also* Defs. Concession, Tr. (Mar. 12, 2025) at 118-19.

Third, each meta-study cited found that Gender-Affirming Hormone Treatment and Gender-Affirming Surgery treatment improves psychological well-being, mental health, and quality of life. *See id.* at 4-6. Each treatment method reduces gender dysphoria, depression, anxiety, psychological distress, and depressive symptoms. *Id.* Further, “long-term studies show that regret rates are extremely low, with most individuals reporting improved quality of life, body image satisfaction, and overall well-being.” *Id.* at 5.

The Court does not question military judgment as to what constitutes as disqualifying medical events. The Court instead finds that the Action Memo’s summary of the 2025 Medical Literature Review is inexplicably misleading. Further, the Review contradicts, rather than supports, the conclusions the Action Memo draw from it. These findings support Plaintiffs’ contention that Defendants did not exercise military judgment to which the Court can defer on the narrow question of whether the Hegseth Policy comports with the Fifth Amendment.

4. *Military Costs*

The Action Memo concludes that “the costs associated with [gender-affirming] health care,” which it estimates at \$52 million over 10 years, make service by transgender members incompatible with military readiness. Action Memo at 5; Dkt. 66 at 5. It is impossible to see how. Assuming \$5.2 million per year, estimated transgender care costs was fifty-seven hundred-thousandths of a percent (00.00057%) of total military spending for 2024.¹⁹ Perhaps understandably, then, Former Deputy Undersecretary Skelly testified, and Defendants do not rebut, that under the Austin Policy, the Assistant Secretary for Health Affairs or Defense Health Agency staff raised no concerns about the cost of treating transgender servicemembers. *See* Dkt. 72-73 ¶ 14; *see also* Dkt. 72-68 ¶¶ 8-9.

Defendants could fairly respond that whether \$5.2 million per year is a “rounding error” of the overall budget is not the right comparator. Instead, they could argue, the number must be compared to similar costs the military incurs. Had Defendants done that comparison—indeed, had they done *any* comparison—they might have a point. But the Action Memo makes no comparison. *See* Defs. Concession, Tr. (Mar. 12, 2025) at 144-45. It states that the amount to treat gender dysphoria is \$52 million over ten years and that this amount is too high. Action Memo at 5. Comparisons are important, though. For example, the Department spent approxi-

¹⁹ From January 1, 2016, to May 14, 2021, the military provided gender-affirming care to 1,892 active duty servicemembers. Dkt. 66-1 at 2. That number represents about two hundredths of one percent (0.02%) of the 9.5 million beneficiaries TRICARE covered in 2024. *See id.*

mately \$41 million for Viagra in 2023, compared to an estimated \$5.2 million for gender-affirming care. *See* Dkt. 72-68 ¶ 9.²⁰ Defendants do not explain why the former (and every other medical cost) is acceptable while the latter requires banning transgender persons from military service. Tr. (Mar. 12, 2025) at 150-54.

Nor do Defendants analyze the costs of discharging and replacing thousands of trained servicemembers, many with decades of experience and specialized skills. This is not an idle question. The military’s practice of discharging gay and lesbian servicemembers under “Don’t Ask, Don’t Tell” “cost taxpayers more than \$600 million.” Dkt. 77-1 at 19 (cleaned up). Even a sixth of that number would be twenty times the annual cost of care for gender dysphoria. Nor do Defendants analyze whether the military could save the same costs, or more, in other areas and without excluding a class of people.

The Court does not question military judgment concerning how it should apportion its funds. Nor does the Court find that the military must undertake an entire budget review before concluding some costs are unacceptably high. But there must be *some* benchmark. Citing a number—devoid of any context or analysis—and concluding that the number is too high does not support banning transgender persons from military service. If it did, courts would have to accept *any* cost amount the military cites to justify any policy.

²⁰ *See also Beyond the Budget: Addressing Financial Accountability in the Department of Defense: Joint Hearing Before the Subcomm. on Nat. Sec., the Border, & Foreign Affairs & the Subcomm. on Gov’t Operations & the Fed. Workforce*, 118th Cong. 49 (2023).

5. *Missing Evidence*

If the Military Ban goes into effect, it will upend lives and ruin the careers of thousands of persons. Given this potential impact, the evidence *not* in the record is striking. Defendants claim transgender persons impact military readiness, but they acknowledge the DoD does not track individuals “by gender identity and has no means of searching for [the number of] ‘transgender individuals.’” Dkt. 66 at 5; *see also* Defs. Concession, Tr. (Mar. 12, 2025) at 173. Not only that, but DoD’s own Public Affairs Guidance on the Military Ban acknowledges that “[w]e [DoD] do not have an exact number of active-duty Service members diagnosed with gender dysphoria.” Dkt. 79-1 at 6. And it admits that “[w]e [DoD] do not have [a breakdown of individuals in the military by service, gender, race, and occupation] readily available.” *Id.*

Without answers to these basic questions, Defendants cannot explain how transgender persons impact military readiness. *See* Defs. Concession, Tr. (Mar. 12, 2025) at 46-47. How have they done so? Is that impact positive or negative? Is it material? How many have, like Plaintiffs, served with distinction and are fit for continued service? How many are stable after a gender dysphoria diagnosis? How many have had deployment issues? How many will be eligible for an exemption? How many will be discharged? What amount of irreplaceable experience will the military then lose? *See* Defs. Concession, Tr. (Mar. 12, 2025) at 136-37. Who knows? Not Defendants.

The Hegseth Policy also does not contain: (1) evidence that transgender persons are inherently unfit to serve; (2) evidence that being transgender is incon-

sistent with “honesty,” “humility,” and “integrity,” EO14183 § 2; *see also* Defs. Concession, Tr. (Mar. 12, 2025) at 191; (3) evidence that being transgender “conflicts with a soldier’s commitment to an honorable, truthful, and disciplined lifestyle,” EO14183 § 1; *see also* Defs. Concession, Tr. (Mar. 12, 2025) at 187; (4) analysis of whether the costs of discharging and replacing transgender servicemembers outweigh the costs of retaining them; (5) analysis of the effect on military readiness of losing thousands of servicemembers; or, among numerous other holes, (6) the criteria of “exhibiting evidence of gender dysphoria,” *see generally* Hegseth Policy, much less how such behavior will be policed. Defendants also concede that they have no *post hoc* evidence (assuming the Court could even consider it) to justify the Military Ban. Defs. Concession, Tr. (Feb. 18, 2025) at 146-48.

To contextualize this absence, consider, by contrast, Executive Order 14208, “Ending Procurement and Forced Use of Paper Straws.” 90 Fed. Reg. 9585 (Feb. 10, 2025) (EO14208). EO14208 makes it “the policy of the United States to end the use of paper straws.” *Id.* § 1. EO14208 provides clear and articulable reasons to support its conclusions. Paper straws: (1) “are nonfunctional,” (2) “use chemicals that may carry risks to human health,” (3) “are more expensive to produce than plastic straws,” (4) “often force users to use multiple straws,” and (5) “sometimes come individually wrapped in plastic, undermining the environmental argument for their use.” *Id.* The White House also provided a fact sheet supporting EO14208, citing to multiple studies supporting these claims. *See* Fact Sheet: President Donald J. Trump Ends the Procurement and Forced Use of Paper Straws, The White House (Feb. 2025). No such ra-

tionale, much less supporting data, is anywhere to be found in EO14183.

Presumably, a policy that bans transgender persons from military service—individuals who have served honorably and “made American safer”—should result from study at least comparable to one that bans paper straws.

C. Defendants’ Failure to Consider the Military’s Experience with Transgender Persons Serving Openly Undercuts the Military Ban

The Austin Policy—which the Hegseth Policy supersedes—“was based on years of thoughtful policy-making supported by peer-reviewed scientific research” and “has resulted in a stronger, not a weaker military.” Dkt. 13-28 ¶ 34. High-ranking military leaders who implemented the Austin Policy have submitted sworn declarations in which they testify, from personal experience, that transgender persons serving openly has improved, not decreased, military preparedness. Of the four declarations by high-ranking military leaders, Defendants rebut only one aspect of one of them. The Court briefly reviews that testimony, including Defendants’ sole rebuttal, here.

1. Plaintiffs’ Declarants

Declarant Carlos Del Toro was the 78th Secretary of the Navy. Dkt. 72-79 ¶ 1. Former Secretary Del Toro had “oversite [sic] responsibilities over all personnel matters affecting the Navy and Marine Corps, including implementation of . . . policies regarding service by transgender personnel.” *Id.* ¶ 6. Secretary Del Toro testifies that “[b]ased on [his] direct experience and observation, transgender service members who meet the standards required for their positions serve effectively

and contribute positively to unit readiness.” *Id.* ¶ 7. Notably, during Secretary Del Toro’s “three and a half years as Secretary,” he “reviewed thousands of disciplinary cases and personnel matters,” yet he cannot “recollect a single disciplinary case or performance issue related directly to a service member’s transgender status.” *Id.* ¶ 8.

Former Secretary Del Toro testifies that “being transgender does not inherently affect a service member’s ability to meet [military] standards or to deploy worldwide,” and that “[a]ny suggestion to the contrary contradicts the actual documented performance of transgender service members in our forces.” *Id.* ¶ 10. He further testifies that “[t]here is no evidence-based justification for excluding from service someone who meets all applicable standards merely because they are transgender,” and that “[s]uch exclusion would harm military readiness by depriving our force of qualified personnel who have proven their ability to serve.” *Id.* ¶ 13. “Contrary to speculative concerns, [he] has observed that allowing transgender individuals to serve strengthens unit cohesion by fostering honesty and mutual trust,” and that “excluding transgender individuals from military service is destabilizing to good order and discipline.” *Id.* ¶¶ 15, 17.

Declarant Alex Wagner is the former Assistant Secretary of the Air Force for Manpower and Reserve Affairs. Dkt. 72-59 ¶ 1. Mr. Wagner was a member of the working group convened by the Acting Undersecretary of Defense for Personnel and Readiness “to formulate policy options for DoD regarding transgender service members.” *Id.* ¶ 9. Mr. Wagner testifies that he is “not aware of any negative impact . . . on . . . our overall

military readiness.” *Id.* ¶ 27. Rather, he testifies that the Austin Policy “foster[ed] openness and trust among team members . . . thereby engender[ing] stronger unit cohesion.” *Id.* ¶ 28. He is “not aware of any complaints regarding unit cohesion” or “readiness.” *Id.* ¶¶ 32, 33. It is “patently clear” to him that “the Austin Policy [did] not negatively impact[]” these objectives. *Id.* ¶ 32.

Declarant Yvette Bourcicot is the former Acting Assistant Secretary of the Army for Manpower and Reserve Affairs and former Principal Deputy Assistant Secretary of the Army for Manpower and Reserve Affairs. Dkt. 72-69 ¶ 1. Ms. Bourcicot also served on the working group convened to study the new policy allowing transgender persons to serve. *Id.* ¶ 12. Ms. Bourcicot testifies that she reviewed each request submitted by a transgender servicemember wishing to transition and that she “made a recommendation on whether to grant the service member’s request.” *Id.* ¶ 19. To her “best recollection,” “every request [she] received met the requirements of the policy, and every requesting service member met the necessary standards for serving.” *Id.* Ms. Bourcicot “observed no negative impact from permitting transgender service in the Army [] on our military capabilities” and is “unaware of any complaints regarding unit cohesion resulting from permitting transgender people to serve.” *Id.* ¶¶ 23, 26.

Declarant Shawn G. Skelly is the former Deputy Under Secretary of Defense for Personnel and Readiness and Assistant Secretary of Defense for Readiness. Dkt. 72-72 ¶ 1. Mr. Skelly’s responsibilities “included implementing the policy permitting service by transgender troops.” *Id.* ¶ 8. Mr. Skelly testifies that the Austin Pol-

icy “enable[d] [the] military to retain highly trained and experienced service members by applying the same standards to transgender service members that are applied to others.” *Id.* ¶ 10. He further testifies that “[t]he transgender service policy has not negatively impacted readiness,” *id.* ¶ 11, and that he is “not aware of any complaints regarding unit cohesion resulting from the Austin [P]olicy,” *id.* ¶ 13. “To the extent the Austin [P]olicy has had any appreciable impact on unit cohesion, it has improved unit cohesion by fostering increased trust among team members.” *Id.* “Personnel policies that allow transgender service members to be evaluated based on skill and merit . . . do not jeopardize the military’s mission of protecting the United States, but strengthen it.” *Id.* ¶ 14.

2. Challenge to One Declarant’s Testimony

The Court informed Defendants that, if not challenged, it would accept the testimony contained in Plaintiffs’ third-party declarations as findings of fact. Min. Order Feb. 10, 2025. It repeatedly informed Defendants that they had a right to cross-examine these witnesses, but Defendants declined to do so. Tr. (Feb. 18, 2025) at 121-22; Tr. (Mar. 12, 2025) at 128-29.

Defendants did file the sworn declaration of Timothy D. Dill, Assistant Secretary of Defense for Manpower and Reserve Affairs, Dkt. 52, to challenge the sworn declaration of Gilbert R. Cisneros, Jr., former Under Secretary of Defense for Personnel and Readiness, Dkt. 13-30, filed by Plaintiffs. Mr. Cisneros was responsible for overseeing implementation of the Austin Policy and testifies that, “[i]f there were complaints or problems about transgender service members, I would have known of them through my role as Under Secretary of

Defense for Personnel and Readiness.” Dkt. 13-30 ¶¶ 12, 17. He further testifies that “[i]n that role, I did hear complaints about some other issues, but I never received or heard about a single complaint relating to transgender service members.” *Id.* To rebut this, Mr. Dill testifies that “it would be highly unusual for individualized service member complaints regarding unit cohesion, military readiness, medical readiness, deployability, and lethality to reach the level of the Under Secretary [Mr. Cisneros].” Dkt. 52-1 ¶ 6. In response, Mr. Cisneros testifies that:

[Mr. Dill’s statement] does not accurately describe my degree of awareness of these matters as Under Secretary of Defense for Personnel and Readiness. As the Under Secretary in charge of readiness, it was my responsibility to be aware of unit cohesion, military readiness, medical readiness, deployability, and lethality. If a unit or service was dealing with readiness issues due to the service by transgender service members, that would have been brought to my attention.

Dkt. 53-1 ¶ 4. Mr. Cisneros provides an example concerning his oversight of Junior ROTC units to support this testimony. *Id.* ¶ 6. As between Mr. Cisneros, who testifies under oath as to his own experience, and Mr. Dill, who testifies under oath as to what he thinks Mr. Cisneros’s personal experience would have been, the Court naturally credits Mr. Cisneros. That said, the Court would reach the same conclusions even if it did not credit this part of Mr. Cisneros’s testimony.

Defendants argue generally that the declarants cannot have personal knowledge that “no complaint” was ever filed concerning a transgender servicemember. Tr.

(Feb. 18, 2025) at 124-26. The Court accepts that contention and will not rely on these declarations for the proposition that *no* complaint anywhere in the Armed Forces ever arose. However, as former high-ranking officials at DoD directly involved in either drafting or implementing the Austin Policy, Plaintiffs’ declarants have personal knowledge concerning the impact of transgender persons serving openly on military preparedness. And they unanimously conclude that they have had either no detrimental effect or have had a positive one. Defendants concede that they have proffered no evidence to contradict these assertions. Tr. (Feb. 18, 2025) at 120.

The Court, at this early stage of the litigation, accepts Plaintiffs’ declarants’ uncontested testimony as part of its findings of fact.

STANDARD OF REVIEW

The “traditional goal of a preliminary injunction is to preserve [the] status quo,” which is “the last *uncontested* status which preceded the pending controversy.” *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 733 (D.C. Cir. 2022). A party seeking preliminary injunctive relief must show that the following factors, taken together, weigh in favor of an injunction: (1) “that he is likely to succeed on the merits,” (2) “that he is likely to suffer irreparable harm in the absence of preliminary relief,” (3) “that the balance of equities tips in his favor,” and (4) “that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The last two factors “merge” into one “when the Government is the opposing party,” as it is here. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Circuits differ in their reading of *Winter*'s four factor test; some allow a strong showing of one factor to make up for a weaker showing on another, *see, e.g., All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011) (employing this sliding-scale approach), while others require each element to be proven independently, *see, e.g., Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Powell*, 915 F.3d 197, 215 n.7 (4th Cir. 2019).

Historically, this Circuit evaluated the factors on a sliding scale. *See, e.g., Davenport v. Int'l Bhd. of Teamsters*, 166 F.3d 356, 360-61 (D.C. Cir. 1999). But it has read *Winter* "at least to suggest if not hold" that the moving party faces "a more demanding burden" under which "a likelihood of success is an independent, free-standing requirement for a preliminary injunction." *Sherley v. Sebelius*, 644 F.3d 388, 392-93 (D.C. Cir. 2011) (cleaned up). Yet it has repeatedly "declined to take sides" on whether *Winter* so held. *Am Meat Inst. v. USDA*, 746 F.3d 1065, 1074 (D.C. Cir. 2014), *reinstated in relevant part by* 760 F.3d 18 (D.C. Cir. 2014) (en banc); *see also Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 726 (D.C. Cir. 2022).

Because each of the four factors favors granting preliminary injunctive relief, Plaintiffs would prevail under either the sliding-scale or independent-factor approach. The Court therefore remains on the sidelines of this ongoing debate.

PRELIMINARY INJUNCTION ANALYSIS

I. PLAINTIFFS' COMPLAINT IS RIPE

Defendants contend that this Court lacks jurisdiction because Plaintiffs did not exhaust their administrative

remedies. Opp. at 26-28. Because some Plaintiffs are current military personnel, they claim, those Plaintiffs must exhaust military tribunals before involving “civilian courts.” *Id.* at 27 (quoting *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986) (cleaned up)). Not so.

Plaintiffs claim the Military Ban violates the Fifth Amendment. Defendants cite no support for their contention that exhaustion is required for claims that raise a constitutional challenge to agency action. Opp. at 15-18. In *Axon Enter. Inc. v. FTC*, the Supreme Court held that petitioners could raise, without exhausting their remedies, a challenge “collateral to any decisions the [agencies] could make in individual enforcement proceedings.” 598 U.S. 175, 195 (2023). *Axon* involved a challenge to the constitutionality of the agency itself, but its reasoning is informative here. Plaintiffs claim that subjecting them to discharge proceedings, verbal degradation, and reputational damage, though they are physically and mentally fit to serve, are “here-and-now” injuries of being subjected to an unconstitutional policy. *Id.* at 192. No relief ordered by a military tribunal can remedy such harm. *Id.*

Exhaustion is also futile. Defendants push back by stating: “[t]he [obviously futile] exception applies only when ‘the agency will most certainly deny any relief . . . because it has a preconceived notion on . . . the matter.’” Opp. at 17 (quoting *Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 107 (D.C. Cir. 1986)). They claim the relief here is not preordained. It is. The Hegseth Policy lays out in detail the military’s “preconceived notion” on Plaintiffs’ service.

Defendants finally claim that “development of a factual record” by the military will assist the Court in its

analysis of the involuntary separation. Opp. at 17. What more facts does the Court need as to the individual Plaintiffs? Each active-duty Plaintiff is subject to the Hegseth Policy, no Plaintiff is eligible for a waiver, and the military will discharge each one. Defs. Concession, Tr. (March 12, 2025) at 160-63.

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. Deference to the Military

1. *Defendants Seek Too Broad an Application of Deference*

The Court agrees that “courts [are] ill-equipped to determine the impact upon discipline that any particular intrusion upon military authority might have” and that “the military authorities [not courts] have been charged by the Executive and Legislative Branches with carrying out our Nation’s military policy.” *Goldman v. Weinberger*, 475 U.S. 503, 507-08 (1986) (cleaned up). Often, courts accept “the reasoned, professional analysis of Congress and the Executive on matters strictly within the realm of military expertise.” *Doe 2 v. Shanahan*, 917 F.3d 694, 702 (D.C. Cir. 2019) (Wilkins, J., concurring).

Defendants carry deference too far, however. By “defer” they basically mean the Court must side with the military’s position, end-stop. And they contend the Court must defer even if the judgment, as here, does not make sense.

THE COURT: [F]or every 1 thousand people we can expect less than 2 will require care for gender dysphoria. Can you explain to me, please, how two out of 1 thousand people negatively impact unit cohesion?

DEFENSE COUNSEL: I don't have an answer for that beyond what's in the record.

THE COURT: Well, there's no answer in the record. If there's an answer in the record, tell me what the answer in the record is, if there is no answer, [and] you can't answer, that is fine.

DEFENSE COUNSEL: These are judgments the military has made.

Tr. (Mar. 12, 2025) at 175-76.

Must defer even if prior military judgment supported by extensive study and data will go, as here, by the way-side.

THE COURT: [Can] you point to me any case in American history that says to a [c]ourt you should defer on a military policy [that replaces] another military policy that was put in place after review by the President of the United States and careful review by military leaders[. You] should ignore [the latter] and defer instead to a policy put in place by an individual who has been the Secretary of Defense for about 30 days and who cited in his reasoning, two studies that undercut what he is doing.

...

DEFENSE COUNSEL: I don't have a case that has every specific fact that's at issue here.

THE COURT: ... [A]nything remotely close to this?

DEFENSE COUNSEL: I mean, I think every single of the Supreme Court's and Courts of Appeals military deference doctrines are deference to the current military ... I think by definition, these are Courts

that are deferring to current military judgments about an issue.

Tr. (Mar. 12, 2025) at 132-33.

Must defer even if the military judgment, as here, is not supported by “actual data.”

THE COURT: How can someone decide that a group of people are hurting unit cohesion and discipline if we have no records of them doing so and we don’t even know who they are?

DEFENSE COUNSEL: The person and the people who are entrusted to decide that question are the military and the president. And if there’s not actual data to back something up, the question is a professional military judgment. Again, as I said, a prediction.

Tr. (Mar. 12, 2025) at 137-38.

2. Courts Do Not Owe the Military Blind Deference

Defendants’ position does not urge judicial deference to military judgment. It urges judicial abdication. No. The law does not demand that the Court rubber-stamp illogical judgments based on conjecture. In fact, it requires the opposite because the executive does not enjoy a “wholesale license to discriminate in matters of military policy.” *Doe 2*, 917 F.3d at 704 (Wilkins, J., concurring).

The D.C. Circuit’s recent decision in *Singh v. Berger* is informative. 56 F.4th 88 (D.C. Cir. 2022). *Singh* reversed a district court’s denial of a preliminary injunction against a Marine Corps’ standard grooming and dress policy that plaintiffs claimed violated their rights under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb *et seq.* *Id.* at 91. The D.C. Circuit

acknowledged that “[t]o inculcate the importance to service members of sacrificing personal preferences and identifies in favor of the overall group mission, the military has long had an interest in the strict enforcement of its uniform dress requirements.” *Id.* (cleaned up). And it “indulge[d] the widest latitude in considering the Marine Corps’ interests in fostering cohesion and unity among its members, which surely qualifies as compelling.” *Id.* at 99 (cleaned up). But it also highlighted that “the cost of military service has never entailed the complete surrender of all basic rights.” *Id.* at 92 (citing cases) (cleaned up). The D.C. Circuit analyzed the military’s justifications and found that “the Marine Corps [had] come up very short.” *Id.* at 107.

Defendants relegate *Singh* to a footnote. They claim it is inapposite because it involved RFRA, which contains a strict scrutiny standard. *Opp.* at 38 n.8. It does. But even employing a lower scrutiny standard, Plaintiffs retain their constitutional rights. Notwithstanding the deference the Court owes it, the military still must show that burdening these Plaintiffs’ equal protection rights is related to furthering a government interest. And as discussed throughout this opinion, the military’s justifications “come up very short.” *Singh*, 56 F.4th at 107.

Singh also instructed the district court to enter a preliminary injunction that altered the status quo. That itself is rare because “courts are institutionally wary of granting relief that disrupts, rather than preserves, the status quo, especially when that relief cannot be undone if the non-movant ultimately wins on the merits.” *Id.* at 95. Here, the Military Ban—not an injunction—would upend the status quo. Further, if Defendants later pre-

vail on the merits, they will not be prejudiced as was the case in *Singh*.

Sidestepping *Singh*, Defendants point instead to *Rostker v. Goldberg*, 453 U.S. 57, 66 (1981), in which the Supreme Court upheld a law that required only men to register for the draft. Without question, *Rostker* is an example of the Supreme Court showing deference to military judgment, even when it implicates sex-based distinctions. Defendants, overstep, however, in claiming that in *Rostker* “the Court’s approach most closely resembles rational-basis review.” Opp. at 38. Even in *Rostker*, the Supreme Court deferred because it found that Congress had acted with “deliberate consideration,” rather than “unthinkingly” or “reflexively.” *Id.* at 72, 83. The Military Ban’s 30-day incubation period pales next to the “hearings, floor debate, and in committee” discussions that precipitated the law in *Rostker*. *Id.* at 72.

Further, the Supreme Court’s later-decided *United States v. Virginia (VMI)* decision “drastically revise[d] [the Court’s] established standards for reviewing sex-based classifications.” 518 U.S. at 566 (Scalia, J., dissenting). When reviewing sex-based classifications, “the reviewing court must determine with the proffered justification is exceedingly persuasive. The burden of justification is demanding and it rests entirely on the State.” *VMI*, 518 U.S. at 533. That is intermediate, not rational, review.

Defendants’ reliance on *Goldman v. Weinberger* is similarly unpersuasive. 475 U.S. 503 (1986). Defendants argue that judicial “review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society.” Opp. at 37-38; *see*

also 475 U.S. at 507. Sure. But this is not a First Amendment case. And the facts of *Goldman* bear no relation to those here.

Goldman asked whether an Orthodox Jewish service-member “can wear a yarmulke while in uniform.” *Id.* at 504. The question here is whether transgender persons can wear the uniform at all. The Supreme Court would likely not have signed off on the military banning all Orthodox Jews who had ever worn a yarmulke from service.

3. *Trump v. Hawaii Confirms that the Military Is Not Owed Blind Deference*

To argue the Court must defer to the military’s judgment here, Defendants rely heavily on *Trump v. Hawaii*. See Opp. at 39, 50-52; 585 U.S. 667 (2018). That reliance is misplaced.

A week after taking office in 2017, President Trump issued what he had previously called a “Muslim Ban.” By executive order, he limited entry into the United States by foreign nationals from Muslim-majority countries. *Id.* at 676. A month and a half later, after an injunction blocked the policy, President Trump replaced his first executive order with a second executive order. *Id.* The second order restricted entry of foreign nationals from six of the original seven countries, though it allowed waivers on a case-by-case basis. *Id.* After lower courts again enjoined the order, the Supreme Court stayed the injunctions. *Id.* at 677.

In September 2017, after the Secretary of Homeland Security completed a review of the policy, President Trump issued yet another iteration, Proclamation No. 9645. *Id.* The Proclamation implemented entry restrictions for foreign nationals from eight countries “whose

systems for managing and sharing information about their nationals the President deemed inadequate.” *Id.* Plaintiffs in *Trump v. Hawaii* challenged it as a violation of the Establishment Clause, alleging that it was “motivated not by concerns pertaining to national security but by animus toward Islam.” *Id.* at 681. They were unsuccessful.

The Supreme Court rejected Plaintiffs’ contention that the new policy simply continued the animus they claimed permeated the first one. *Id.* at 706. First, Proclamation No. 9645 “sa[id] nothing about religion.” *Id.* at 706. It was a “facially neutral policy denying certain foreign nationals the privilege of admission” to the United States. *Id.* at 710. It did not mention Islam or any other religion. Additionally, the first ban went into effect seven days after President Trump was inaugurated. *Id.* at 676. Proclamation No. 9645 came 8 months later and “reflect[ed] the results of a worldwide review process undertaken by multiple Cabinet officials and their agencies.” *Id.* at 707. Because of the “thoroughness” of the “multi-agency review,” the Supreme Court ultimately deferred to the Executive’s determination that the ban was important for national security. *Id.* at 707-08.

Second, Proclamation No. 9645 restricted entry for foreign nationals from some Muslim majority countries, but not all, and it applied to foreign nationals of all religions. *Id.* at 707. Because the policy did not encompass all Muslim majority countries, the Supreme Court reasoned that “the determinations were justified by the distinct conditions in each country.” *Id.* Third, it found Proclamation No. 9645 to be “expressly premised on legitimate purposes: preventing entry of nationals who cannot be adequately vetted and inducing other nations

to improve their practices.” *Id.* at 706. It found that the restrictions reflected in the Proclamation were designed to achieve those purposes. *Id.* at 708-09.

Comparing the facts of the policy upheld in *Hawaii* to the ones here is informative.

<i>Trump v. Hawaii</i>	Military Ban
Facially neutral	Not facially neutral
Months and numerous working groups removed from “Muslim ban” tweets	“Transgender ban” tweet posted the day after the Hegseth Policy issued
Multiple iterations of the ban	One iteration of the ban
No derogatory characterizations	Derogatory characterizations
Alleged animus statements were outside the proclamation’s text	Animus in the ban’s text
Legitimate waiver program	Waivers in name only
World-wide review process	No discernable review process

This Court has the same obligation here as the Supreme Court did in *Hawaii* and the D.C. Circuit in *Singh* to test the military’s assertion of its interests. It does so in the rest of this Opinion.

B. Intermediate Scrutiny

The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. While “not as explicit a guarantee of equal treatment as the Fourteenth Amendment,” the Supreme Court has held that “the Constitution imposes upon federal, state, and local government actors the *same* obligation to respect the personal right to equal protection of the laws.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 213, 231-32 (1995) (emphasis added).

The parties dispute whether the Military Ban denies Plaintiffs equal protection as a quasi-suspect class. Laws that do not classify based on a suspect or quasi-suspect class “[are] presumed to be valid and will be sustained if the classification drawn . . . is rationally related to a legitimate state interest.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Laws that discriminate based on a quasi-suspect classification must survive intermediate scrutiny. The government “must show ‘at least that the [challenged] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.’” *Sessions v. Morales-Santana*, 582 U.S. 47, 59 (2017) (quoting *VMI*, 518 U.S. at 533).

Plaintiffs are likely to succeed on their claim that the Military Ban is subject to intermediate scrutiny because it classifies based on sex and transgender status, two distinct quasi-suspect classes. Plaintiffs are also likely to succeed on their claim that the Military Ban fails intermediate scrutiny.

1. *The Military Ban Classifies on the Basis of Sex*

The Supreme Court has recognized that it is “impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660 (2020). Plaintiffs claim that the logic of *Bostock* applies in the equal protection context; Defendants disagree. Plaintiffs have the better argument.

a. *The Logic of Bostock Applies to the Equal Protection Analysis*

In *Bostock*, the Supreme Court considered whether firing an employee for being transgender or homosexual constituted sex discrimination. *Bostock*, 590 U.S. at 650-52. The case arose under Title VII, which prohibits discrimination “because of . . . sex.” *Id.* at 655 (quoting 42 U.S.C. § 2000e-2(a)(1)). In holding that firing an employee for being transgender did in fact constitute sex discrimination, Justice Neil M. Gorsuch asserted that it is “impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Id.* at 660. To illustrate this point, Justice Gorsuch offered a hypothetical involving an employer and two employees. *See id.* The two hypothetical employees were identical in every way except that one was a transgender woman and the other a cisgender woman. *See id.* Justice Gorsuch explained that if the hypothetical employer fires only the transgender woman because she is transgender, it has “intentionally penalize[d]” her “for traits or actions that it tolerates in an employee identified as female at birth.” *Id.* He concluded that “if changing the employee’s sex would have yielded a different choice by the employer,” then the discrimination is based on sex. *Id.* at 659-60.

The Court agrees with Defendants that *Bostock*'s holding is cabined to Title VII. *Id.* at 660; Opp. at 34. But its reasoning is not. The Supreme Court deduced it *impossible*—end stop—to discriminate against a transgender person without discriminating against that person based on sex. *Bostock*, 590 U.S. at 660. Three circuit courts have applied that same logic in the Fifth Amendment context. The Fourth Circuit *en banc* has held that: “discriminating on the basis of [a gender dysphoria] diagnosis *is* discriminating on the basis of gender identity and sex.” *Kadel v. Folwell*, 100 F.4th 122, 141 (4th Cir. 2024) (en banc) (cleaned up). Ditto the Ninth Circuit. *See Hecox v. Little*, 104 F.4th 1061, 1079 (9th Cir. 2024). Ditto the Tenth Circuit. *See Fowler v. Stitt*, 104 F.4th 770, 793 (10th Cir. 2024).

On the other hand, the Sixth and Eleventh Circuits have declined to borrow *Bostock*'s discrimination analysis because of “[d]ifferences between the language of [Title VII] and the Constitution.” *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 484 (6th Cir. 2023); *see also Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1205, 1228-29 (11th Cir. 2023). First, “Title VII covers disparate impact claims” while “the [Fifth] Amendment does not.” *L.W.*, 83 F.4th at 485. Second, Title VII is limited to certain classifications, and it does not incorporate tiers of scrutiny. *Bostock*, 590 U.S. at 655. In contrast, the Fifth Amendment “addresses all manner of distinctions between persons” and “implies different degrees of judicial scrutiny.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 308 (2023) (Gorsuch, J., concurring). Third, Title VII also contains many defenses—such as “bona fide occupational qualifications and bona fide seniority and merit

systems”—that the Fifth Amendment does not. *L.W.*, 83 F.4th at 485.

All true. But a distinction is not necessarily one with a difference. “[N]othing about these differences [] prevent[s] *Bostock*’s commonsense reasoning—based on the inextricable relationship between transgender status and sex—from [being] appl[ied] to the initial inquiry of whether there has been discrimination on the basis of sex in the equal protection context.” *Fowler*, 104 F.4th at 790 (citing *Bostock*, 590 U.S. at 660). “Adopting *Bostock*’s commonsense explanation for how to detect a sex-based classification does not require us to import Title VII’s test for liability.” *Fowler*, 104 F.4th at 790-91 (cleaned up). That Title VII’s defenses are codified in separate provisions of Title VII, arguably “bel[ies] any notion that those defenses must apply in equal-protection cases.” *L.W.*, 83 F.4th at 503 n.7 (White, J., dissenting).

The differences between the provisions—material as they may be in some situations—have no bearing on the Supreme Court’s careful step-by-step reasoning on the “inextricable relationship” that exists between transgender status and sex. *See Fowler*, 104 F.4th at 790. The Court therefore applies *Bostock*’s reasoning to analyze the Military Ban. In doing so, it does not “import[] the Title VII test for liability,” *L.W.*, 83 F.4th at 485, into the equal protection guarantee of the Fifth Amendment. Rather, it borrows Justice Gorsuch’s reasoning to conclude that transgender discrimination is a form of sex discrimination for purposes of the equal protection inquiry.

b. Application of the Military Ban to Both Males and Females Does Not Negate Plaintiffs' Individual Rights to Equal Protection

The Military Ban's *raison d'être* is to exclude transgender persons from military service on the basis of their sex. EO14183 posits that "expressing a false 'gender identity' divergent from an individual's sex cannot satisfy the rigorous standards necessary for military service." EO14183 § 1. The Hegseth Policy declares that the DoD "only recognizes two sexes: male and female," and that "[a]n individual's sex is immutable, unchanging during a person's life." Hegseth Policy at 3. It demands that "[a]ll Service members [] serve in accordance with their [biological] sex." *Id.*

The Military Ban excludes from service transgender women because they are biologically male but identify as women. Had those very same servicemembers been born female, the military would not ban them. Is this discrimination on the basis of sex? The test is simple: would changing that transgender soldier's sex lead to a different decision by the military? Yes, a biological female who identifies as a woman is not banned. Ergo, discrimination. To adopt Justice Gorsuch's analysis to this case:

[T]ake . . . a transgender person [discharged from the military] who was identified as a male at birth but who now identifies as a female. If the [military] retains an otherwise identical [soldier] who was identified as female at birth, the [military] intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in [a soldier] identified as female at birth. Again, the individual [soldier's] sex

plays an unmistakable and impermissible role in the discharge decision.

Bostock, 590 U.S. at 660.

To this, Defendants have no answer. They argue instead that because the Military Ban “applies equally to males and female servicemembers,” it does not discriminate based on sex. Dkt. 38 at 14; *see also id.* at 33. They focus on Justice Gorsuch’s assertion in *Bostock* that “[t]he employers might be onto something if Title VII only ensured equal treatment between groups of men and women . . . Title VII’s plain terms and our precedents don’t care if an employer treats men and women comparably as groups.” *Bostock*, 590 U.S. at 671; Dkt. 38 at 33; Tr. (Feb. 19, 2025) at 35-39.

Defendants’ argument “misreads the Equal Protection Clause to protect particular groups, a construction that [the Supreme Court has] tirelessly repudiated in a long line of cases understanding equal protection as a personal right.” *Schuette v. Coalition to Def. Affirmative Action*, 572 U.S. 291, 324 (2014) (Scalia, J., concurring) (cleaned up). Instead, it is a “basic principle that the Fifth and Fourteenth Amendments to the Constitution protect *persons*, not *groups*.” *Adarand Constructors*, 515 U.S. at 227 (considering race classification) (emphasis in original). Government actions based on sex “should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed.” *Id.* Thus, in *Loving v. Virginia*, the Supreme Court rejected “the notion that the mere equal application of a statute containing racial classifications is enough to remove the classifications from the Fourteenth Amendment’s proscription of all invidious racial discrimination.” 388 U.S. 1, 8 (1967)

(cleaned up).²¹ And in *J.E.B. v. Alabama ex rel. T.B.*, the Supreme Court held that the Equal Protection Clause prohibits discrimination in jury selection on the basis of sex even though the challenged practice applied equally to both sexes. 511 U.S. 127, 131, 146 (1994).

Defendants’ final push to distinguish *Bostock* centers on the “premise” from which *Bostock* proceeds. Opp. at 23. “While in the Title VII context individuals are generally similarly situated because an individual’s homosexuality or transgender status is not relevant to employment decisions, . . . men and women are not similarly situated when it comes to certain military standards.” *Id.* at 23-24 (cleaned up). True. But again, the Court here does not apply *Bostock* or “import[] the Title VII test for liability.” *L.W.*, 83 F.4th at 485. It instead borrows Justice Gorsuch’s logic to conclude that transgender discrimination is a form of sex discrimination. And because the Military Ban targets transgender persons for disparate treatment, it creates an explicit sex-based classification that requires application of intermediate scrutiny. See *VMI*, 518 U.S. at 531.

2. Transgender Persons are a Quasi-Suspect Group

Plaintiffs argue that the Military Ban is also subject to intermediate scrutiny because transgender persons are a quasi-suspect class. Neither the Supreme Court²²

²¹ Granted, race-based claims are subject to a higher level of scrutiny than sex-based claims in an equal protection inquiry. See *Cleburne*, 473 U.S. at 440-41. But neither the Supreme Court nor the D.C. Circuit have said that the initial question—whether there is a classification—differs depending on the classification at issue.

²² A case pending before the Supreme Court might settle the question. See *United States v. Skrametti*, No. 23-477 (U.S. argued

nor the D.C. Circuit has addressed this contention. But the relevant test is well established. See *Bowen v. Gil-liard*, 483 U.S. 587, 602 (1987); *Padula v. Webster*, 822 F.2d 97, 102 (D.C. Cir. 1987). Quasi-suspect classes have historically been subject to discrimination, *Cleburne*, 473 U.S. at 440-41; they have a defining characteristic that bears no relation to ability to contribute to society, *id.*; they may be defined as a discrete group by obvious, immutable, or distinguishing characteristics, *Bowen*, 483 U.S. at 602; and they lack political power, *id.*

The Court addresses each factor in turn. But, first, it acknowledges that the bar for recognizing a new quasi-suspect class is high. As Defendants emphasize, Opp. at 35, the Supreme Court “has not recognized any new constitutionally protected classes in over four decades[] and instead has repeatedly declined to do so.” *L.W.*, 83 F.4th at 486. But the bar—no matter how high—is not insurmountable. See *Padula*, 822 F.2d at 102. Indeed, many Circuit Courts have held that the transgender community clears it. See *Hecox*, 104 F.4th at 1079; *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610 (4th Cir. 2020) *as amended* (Aug. 28, 2020)²³; *but see L.W.*, 83 F.4th at 486-87.

Dec. 4, 2024). But the Court cannot read tea leaves, so it will not speculate about the outcome there in reaching its decision.

²³ Numerous district courts, including this one, have also held that transgender persons constitute a quasi-suspect class. See *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 208-09 (D.D.C. 2017), *vacated on other grounds by Doe 2 v. Shanahan*, 755 Fed. Appx. 19 (D.C. Cir. 2019); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Loc. Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 872-74 (S.D. Ohio 2016); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 140 (S.D.N.Y. 2015); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704,

a. Transgender Persons Face Discrimination

Transgender persons, “[a]s a class[,] . . . have suffered, and continue to suffer, severe persecution and discrimination.” *Doe 1*, 275 F. Supp. 3d at 208-09. Other executive orders issued by President Trump seek to deny them necessary medical care (and threaten those who help them with potential civil and criminal liability), erase them from all government websites, and refuse them access to homeless shelters. *See infra* Analysis II.C.3. Dozens of state laws also target transgender persons. *See* Dkt. 73-15. These bills span transgender rights to education, healthcare, birth certificates, employment, bathroom access, incarceration, marriage, civil rights, adoption, child abuse, pronouns, and the military. *See id.* Taken together, these actions show government hostility—and at times outright discrimination—against transgender persons.

This discrimination is not new. *See Grimm*, 972 F.3d at 612. The transgender community has historically “suffer[ed] from high rates of employment discrimination, economic instability, and homelessness.” *Id.* at 611. According to a 2011 National Transgender Discrimination Survey (NTDS), transgender persons are twice as likely as the general population to experience unemployment. *Id.* at 611-12. When employed, 97% of NTDS respondents reported experiencing some mistreatment at work or having to conceal their transition to avoid mistreatment. *Id.* at 612. Transgender persons frequently experience harassment, and at times physical assault, in schools, medical settings, and retail

718-19 (D. Md. 2018); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015); *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018).

stores. *Id.* They are also “more likely to be [victims] of violent crimes” than the general population. *Id.*; *see also Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017). For good reason, then, in 2009, the House Judiciary Committee “recognized the extreme bias against gender nonconformity” and the “particularly violent crimes perpetrated against transgender persons.” *Grimm*, 972 F.3d at 612 (cleaned up).

This discrimination has not been without effect. The medical literature review study the Action Memo cites concludes that transgender persons have a higher rate of mental health episodes because of the pervasive discrimination they face. *See supra* Findings of Fact II.B. For these reasons, the Court finds that transgender persons, as a class, satisfy this factor.

b. Transgender Persons Contribute to Society

Being transgender bears no relation to one’s ability to perform or contribute to society. *Grimm*, 972 F.3d at 612. Plaintiffs’ service—exemplary service that Defendants recognize—proves as much. Dr. Brown,²⁴ Plaintiffs’ expert, confirms that “there is no medical or scientific basis for the assertion that being transgender conflicts with military standards of troop readiness, lethality, cohesion, honesty, humility, uniformity, or integrity.” Dkt. 72-77 at 4. Seventeen of the foremost medical, mental health, and public health organizations agree

²⁴ Dr. Brown earned his Doctor of Medicine from the University of Rochester School of Medicine in 1983. Dkt. 72-77 ¶ 4. He has three decades of experience researching, teaching, and consulting about transgender health issues, including gender dysphoria. *Id.* ¶ 2. He has authored well over a hundred publications on the subject and received dozens of awards for his work. Dkt. 32-1 at 9-10, 14-22.

that being transgender “implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.”²⁵ While some transgender persons experience gender dysphoria, and that could cause some level of impairment, not all transgender persons have gender dysphoria. Those who do can obtain effective treatment. Dkt. 32-2 at 6, 9, 15. Defendants offer no rebuttal to this evidence. For these reasons, the Court finds that transgender persons, as a class, satisfy this factor.

c. Transgender Persons Have Immutable Characteristics

The Court agrees with the holdings of other courts that transgender persons constitute a discrete group with immutable characteristics. “Gender identity is formulated for most people at a very early age.” *Grimm*, 972 F.3d at 612. It is also “not a choice.” *Id.* “Rather, it is as natural and immutable as being cisgender.” *Id.*; see also *Hernandez-Montiel v. I.N.S.*, 225 F.3d 1084, 1087 (9th Cir. 2000).

Plaintiffs cite numerous studies to support their immutability argument. First, those studies show that “transgender women and non-transgender women have similar brain structures, specifically in the volume of the bed nucleus of the stria terminalis.” Dkt. 57 at 5. Second, they show “that if one identical twin is transgender, the other is much more likely to be transgender compared to fraternal twins.” *Id.* And third, they show that scientists are now investigating differences in specific

²⁵ Am. Psychiatric Ass’n, Position Statement on Discrimination Against Transgender and Gender Non-Conforming Individuals 1 (2024), <https://www.psychiatry.org/getattachment/ad686aa4-8ca9-4a92-b007-cf05a50f8e78/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf>.

genes associated with being transgender. *Id.* at 5-6. These studies highlight that biology likely plays a role shaping a person's transgender identity.

Defendants disagree. Citing the Sixth Circuit's *L.W.* decision, they claim that transgender identity "is not necessarily immutable, as the stories of detransitioners indicate." Opp. at 36 (citing *L.W.*, 83 F.4th at 487) (cleaned up). If people can detransition, being transgender is not immutable. Case closed, Defendants say. Not so fast, Plaintiffs shoot back. A detransition is not always voluntary and does not dispel gender dysphoria. Indeed, "no available research indicates that change efforts are effective in altering gender identity." Dkt. 72-3 at 3 (cleaned up). To the contrary, individuals who detransition "have reported harm resulting from these experience[s] such as emotional distress, loss of relationships, and low self-worth." *Id.* at 4 (cleaned up). Gender identity change efforts "are associated with harmful social and emotional effects for many individuals, including but not limited to, the onset or increase of depression, anxiety, suicidality, loss of sexual feeling, impotence, deteriorated family relationships, a range of post-traumatic responses, and substance abuse." *Id.* (cleaned up). "Leading medical and mental health professional associations agree." *Id.* Defendants offer no rebuttal.

Defendants also cite *L.W.*'s statement that "[t]ransgender status [] is not characterized by a specific defining feature, but instead may be said to include 'a huge variety of gender identities and expressions.'" Opp. at 36 (citing *L.W.*, 83 F.4th at 487). But neither Defendants nor Plaintiffs assert such a broad definition of "transgender." See Third Amend. Compl. ¶¶ 218-23. The parties' definitions cover individuals that either *live or wish*

to live in (according to Plaintiffs, Third Amend. Compl. ¶ 218) or *identify as* (according to Defendants, Tr. (Feb. 18, 2025) at 45) a sex different than their birth sex. These definitions are consistent with each other and with the American Psychological Association’s definition of “transgender.” *See* Dkt. 57-3 at 2. The Court finds that, as a class, transgender persons satisfy this factor.

d. Transgender Persons Constitute a Minority Lacking Political Power

Defendants deem it “untenable” to claim that transgender persons cannot attract the attention of lawmakers, and they cite federal and state laws protecting transgender persons in the employment setting. *Opp.* at 36-37. They also claim that transgender persons “achieved at least some version of their desired military policy from the last two Democratic Administrations and can reasonably be expected to do so again from the next Democratic Administration.” *Id.* at 36. Likewise, the Sixth Circuit has stated that it is “difficult to maintain that the democratic process remains broken on this issue today” in part because “[t]he President of the United States [Biden] and the Department of Justice support the [transgender] plaintiffs.” *L.W.*, 83 F.4th at 487. But that support was new, and the Trump Administration quickly withdrew that support when it re-assumed office.²⁶

The question, however, is not whether the political process is broken on any given day on a given issue. The question is whether transgender persons—who com-

²⁶ *United States v. Skrmetti*, No. 23-477 (U.S. argued Dec. 4, 2024) (Feb. 7, 2025 Letter from Deputy Solicitor General).

prise approximately 0.6% of the adult population in the United States²⁷—have been “relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). This Memorandum Opinion’s sub-headings concerning military service alone answer it:

Part I.A. Obama—Transgender Persons Can Serve

Part I.B. Trump I—Transgender Persons Cannot Serve

Part I.C. Biden—Transgender Persons Can Serve

Part I.D. Trump II—Transgender Persons Cannot Serve.

Being kicked around like a football by whatever team has possession is the opposite of meaningful political power. The Court finds that transgender persons, as a class, satisfy this factor.

3. Application of Intermediate Scrutiny

Intermediate scrutiny is a “demanding” standard. *VMI*, 518 U.S. at 533. The burden “rests entirely on the State” to demonstrate an “exceedingly persuasive” justification for its differential treatment. *Id.* The Government must show “that the [challenged] classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Id.* (cleaned up). The justification for a law that discrimi-

²⁷ Grace Abels, *How many trans people are there in the U.S., and why do we overestimate it?*, PolitiFact (July 13, 2023), <https://www.politifact.com/article/2023/jul/13/how-many-trans-people-are-there-in-the-us-and-why/>.

nates against a quasi-suspect class “must be genuine, not hypothesized or invented *post hoc* in response to litigation.” *Id.* “And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.” *Id.*

Defendants suggest that “ample evidence supports the military’s judgment on this issue.” Opp. at 40. They divide their evidence into three categories: (1) military readiness, (2) unit cohesion, good order, and discipline, and (3) disproportionate costs. Below, the Court addresses the lack of any connection between Defendants’ evidence and the Military Ban’s directives. In a separate section below, *see infra* Analysis II.C., the Court finds that the Military Ban is littered with animus and pretext. That discussion is equally applicable in assessing why the Military Ban does not survive intermediate scrutiny.

a. Military Readiness

Defendants first argue that DoD “is concerned about subjecting those with a history of gender dysphoria to the unique stresses of military life.” Opp. at 41. They explain that “any mental-health condition characterized by clinically significant distress or impairment in functioning raises readiness concerns.” *Id.* And because there is an “absence of evidence on the impact of deployment on individuals with gender dysphoria,” DoD “concluded that this condition posed readiness risks.” *Id.* (cleaned up). Defendants also argue that “it remains the case that transition-related medical treatment . . . could render transitioning servicemembers non-deployable for a potentially significant amount of time,” which could create “harmful effects on transitioning servicemembers’ units as a whole.” *Id.* at 42-43 (cleaned up).

To support these conclusions, Defendants “expressly relied” on the 2018 Mattis Policy, the 2021 AMSARA Report, and the 2025 Medical Literature Review. Opp. at 41-44. Not one of these supports a finding that the discriminatory means employed (banning transgender persons from serving) are substantially related to the achievement of the Ban’s objectives (military readiness). First, citing the Mattis Policy, Defendants claim that there is an “‘absence [of experience] on the impact of deployment on individuals with gender dysphoria.’” *Id.* at 41 (quoting Mattis Policy at 39). Therefore, gender dysphoria “pose[s] readiness risks.” *Id.* But there is no absence. There *may* have been one *in 2018* when the Mattis Policy issued. Since then, however, persons with gender dysphoria have been deployed under the Austin Policy. *See supra* Background III. That Defendants did not review the impact of their service does not mean it does not exist.

Second, the AMSARA Report supports *retaining* transgender persons in the military. *See id.* Of the eleven categories it studied, in ten transgender persons’ statistics were similar to or better than those for other servicemembers. *Id.*; *see also* Tr. (Mar. 12, 2025) at 78. The Action Memo picked the one outlier: transgender persons are *evaluated* more. Tr. (Mar. 12, 2025) at 47. But their *occurrence* rates, including in psychotherapy and surgery, are similar. *Id.* at 68. Defendants’ argument that the Report found that transgender persons’ non-deployment rates were unacceptable is incorrect. The Report expressly found that more study was needed before anyone could reach such a conclusion because comparator data for other servicemembers had not been collected. Dkt. 73-24 at 6.

Third, the 2025 Medical Literature Review does not include studies that address military servicemembers. It therefore does not study the effect of service on active-duty transgender servicemembers, all of whom have met the military's mental fitness requirements to accede. *See* Tr. (Mar. 12, 2025) at 130. Indeed, Defendants cite no contemporaneous support for their purported concern that those with a history of gender dysphoria are more prone to the unique stresses of military life. To the contrary, the Review confirms that—contrary to the presumption that those who have ever had gender dysphoria cannot serve—gender dysphoria is highly treatable. *See id.*

Plaintiffs, for their part, have provided evidence that disproves any relation between the Military Ban's methods and goals. Five military leaders in charge of implementing the Austin Policy each conclude that the Austin Policy was “based on years of thoughtful policymaking supported by peer-reviewed scientific research” and that it “has resulted in a stronger, not a weaker military.” Dkt. 72-69 ¶ 34. Based on their first-hand knowledge, they each also testify that the Austin Policy “fosters openness and trust among team members, thereby enhancing unit cohesion.” Dkt. 72-74 ¶ 13; *see also* Dkt. 72-72 ¶ 9. They testify that the Military Ban—not the Austin Policy—“is harmful to the military” and “undermines unit readiness.” Dkt. 72-59 ¶ 38; *see also* Dkt. 72-72 ¶ 21 (“[A] prohibition on service by transgender individuals would degrade military readiness and capabilities.”). Other than a limited foundation objection as to one declarant, Defendants do not rebut this testimony.

b. Unit Cohesion, Good Order, and Discipline

Defendants further contend that “DoD reasonably determined that exempting individuals with gender dysphoria who have undergone gender transition or seek to do so from the military’s sex-based standards would undermine good order, discipline, steady leadership, unit cohesion, and ultimately military effectiveness and lethality.” Opp. at 45 (cleaned up). They speculate that “a contrary approach would risk, among other things, eroding reasonable expectations of privacy by other servicemembers.” *Id.* (cleaned up). Defendants also assert that “DoD has expressed concerns that exempting servicemembers from sex-based standards in training and athletic competitions on the basis of gender identity would generate perceptions of unfairness in the ranks.” *Id.* at 47. And per Defendants, “DoD is also concerned that exempting servicemembers from uniform and grooming standards based on gender identity would create friction in the ranks.” *Id.*

These justifications fail. To start, the Military Ban covers those who even “exhibit symptoms *consistent with*[] gender dysphoria.” Hegseth Policy at 1 (emphasis added). Because it has no guard rails—*i.e.*, what these symptoms include, how often they can be exhibited, who decides whether they are being exhibited, Def. Concession Tr. (March 12, 2025) at 14-15—this exclusion is so broad as to capture persons who have never had gender dysphoria, and therefore do not even possibly present the same “concerns.”

Defendants again rely almost exclusively on the Mattis Policy. *See id.* at 45-49. But, yet again, the Mattis Policy is woefully stale. *See supra* Findings of Fact II.B.1. Further, the Military Ban’s justifications

impermissibly rely on “overbroad generalizations about the different talents, capacities, or preferences of males and females.” *VMI*, 518 U.S. at 533. They also impermissibly rely on not only overbroad, but also derogatory generalizations about the different talents, capacities, or preferences of transgender persons. Such overbroad generalizations do not suffice to show that a sweeping discriminatory ban is substantially related to military readiness and unit cohesion.

Even if the Military Ban had focused solely on those diagnosed with gender dysphoria, Defendants do not identify any problem that needs a new solution. Appropriate treatment for gender dysphoria is both “effective” and “no more specialized or difficult than other sophisticated medical care the military system routinely provides.” Dkt. 32-2 at 6, 9, 15. The 2025 Medical Literature Review the Action Memo cites concludes that gender-affirming medical care is highly effective. *See supra* Findings of Fact II.B.3. And recall that already under DoD Instruction 6130.0 (Medical Standards for Appointment, Enlistment, or Induction into the Military Services), individuals with a history of gender dysphoria seeking to enlist must be “stable” in their gender identity for 18 months before enlistment. Third Amend. Compl. ¶ 263. Defendants do not explain why addressing a *treatable* condition requires excluding all persons who have ever had—or even exhibited symptoms of—it. Nor do they explain why the constraint already in place, 18 months of stability, is insufficient.

These overbroad generalizations are also contradicted by the Record. Plaintiff Talbott testifies: “In each military setting I have worked in so far—basic training, Officer Candidate School, and my Reserve unit—I have been

open about my transgender status and have felt welcomed by my peers and supervisors.” Dkt. 72-18 ¶ 18. Plaintiff Vandal testifies that after coming out she “received nothing but support and acceptance from my command and others who learned I was transgender. Since then, I have been promoted to my current rank of Major.” Dkt. 72-20 ¶ 14-15. Plaintiff Herrero testifies: “The support of my leaders, peers, and subordinates throughout my transition has not only made our units stronger but has also made me a more effective leader.” Dkt. 72-25 ¶ 16. Plaintiff Danridge testifies: “In my time as both a Reservist and on active duty, my transgender status has rarely come up and has never been an issue. In fact, I received overwhelming support from my unit’s Commanding Officer to apply for OCS.” Dkt. 72-28 ¶ 24.

This testimony—which Defendants do not rebut—is a credit to the military’s ability to welcome all those capable of serving. Indeed, had Defendants conferred with transgender servicemembers and those who serve with them, instead of making specious generalizations, they might have learned that the Military Ban is little more than a solution in search of a problem.

c. Disproportionate Costs

Defendants argue that “DoD reasonably concluded that its disproportionate expenditures on facilitating gender transition should be better devoted elsewhere.” Opp. at 50. They explain that “between 2015 and 2024, DoD spent \$52,084,407 providing care to active-duty Service members to treat gender dysphoria” and that “medical costs for servicemembers with gender dysphoria was nearly three times compared to servicemembers without this condition.” *Id.* at 49.

To support this “three times” conclusion, Defendants rely on the Mattis Policy’s assessment of costs from the time before the Carter Policy was instituted through to the issuance of the Mattis Report (2014 to 2018). Dkt. 73-8 at 46. But the Mattis findings show that costs spiked after the military first began covering gender-affirming costs in September 2015, no doubt because of pent up demand. Dkt. 38-4 at 32. They began returning to baseline thereafter. *Id.* That trend indicates two things. First, the Mattis Policy findings are outdated. Second, costs are likely no longer disproportionate. This is confirmed by the AMSARA Report’s findings that occurrence rates for common medical events are similar between transgender and non-transgender service members. Dkt. 73-24 at 4.

As discussed in the Findings of Fact, Defendants cannot explain how transgender care has resulted in “disproportionate” costs for the military. *See supra* Findings of Fact II.B.4. When asked to provide the overall medical, psychotherapy, and surgical costs for all servicemembers so that some comparison could be made, Defendants could not answer. *See* Tr. (Mar. 12, 2025) at 144-50. Without any source of comparison or benchmark, Defendants cannot claim that allowing transgender persons to serve results in “disproportionate” costs for the military.

d. The Hegseth Policy’s Exemption Provision

Defendants contend that the Hegseth Policy’s exemption provision addresses any potential issue. Opp. at 22-23. Hardly. Transgender servicemembers can obtain an exemption if they show that they can safely perform all military tasks, and if retaining the servicemember would support warfighting capabilities. Hegseth

Policy at 8. Even then, the transgender person can only continue to serve if: (1) they have been stable in their birth sex for 36 consecutive months, (2) they have never transitioned *or even attempted to transition* to any sex but their birth sex, and (3) they agree to serve in their birth sex. *Id.* Under this test, none of the Plaintiffs would be eligible for an exemption. Indeed, it is hard to imagine anyone who could or, given the constraints, would want to do so. Even with this non-exemption exemption, the Military Ban is not even remotely, much less rationally or substantially, related to the Government's goals. *See supra* Findings of Fact II.

The Military Ban also prohibits the use of “invented” pronouns used to “identify” persons because they too are inconsistent with military readiness. EO14183 § 4(b). This assertion makes no sense as written—all pronouns are invented and used to identify persons. That aside, Defendants could not even begin to identify how pronoun usage affects military readiness. Tr. (Mar. 12, 2025) at 198. The Court gave defense counsel the opportunity to present a witness—any witness—to state under oath that it does. *Id.* None materialized.

* * * * *

Defendants have articulated important government objectives in military readiness, unit cohesion, and saving costs. But the Fifth Amendment requires more than pointing to such “broadly formulated interests.” *Singh*, 56 F.4th at 97. Defendants must show that the discriminatory Military Ban is in some way substantially related to the achievement of those objectives. And they must do so without relying on “overbroad generalizations about the different talents, capacities, or preferences of males and females.” *VMI*, 518 U.S. at 538.

They do not come close. Plaintiffs are likely to succeed on their claim that the Military Ban fails intermediate scrutiny review.

C. Animus

In our constitutional republic, citizens are free to hold and express divergent views. But when “sincere, personal opposition [to a group of people] becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied.” *Obergefell v. Hodges*, 576 U.S. 644, 672 (2015). Such is the case here. The Military Ban is soaked in animus and dripping with pretext. Its language is unabashedly demeaning, its policy stigmatizes transgender persons as inherently unfit, and its conclusions bear no relation to fact. Thus, even if the Court analyzed the Military Ban under rational basis review, it would fail.

1. *The Military Ban Is Fueled by Animus*

Plaintiffs contend that because the Military Ban is fueled by animus, it fails any level of scrutiny. They stand on solid legal ground. *Romer v. Evans*: a law that “seems inexplicable by anything but animus toward the class it affects [] lacks a rational relationship to legitimate state interests.” 517 U.S. 620, 632 (1996). *Lawrence v. Texas*: “[m]oral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause.” 539 U.S. 558, 583 (2003) (O’Connor, J., concurring). *United States v. Windsor*: legislation intended to “injure,” “stigma[tize],” “demean,” and “degrade” does not survive scrutiny. 570 U.S. 744, 769, 770, 772, 774 (2013). *Cleburne*: a law that “rest[s] on irrational prejudice” cannot stand. 473 U.S. at 450. And *U.S. Dep’t*

of *Agric. v. Moreno*: “a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” 413 U.S. 528, 534 (1973).

Defendants respond that the Court cannot probe “government officials’ subjective intentions.” Dkt. 38 at 27. True, the Court cannot read minds. But it can read. EO14183 and the Hegseth Policy tag transgender persons as weak, dishonorable, undisciplined, boastful, selfish liars who are mentally and physically unfit to serve.²⁸ Its accompanying Fact Sheet piles on, further calling transgender persons insane, not resilient, unhealthy, and unfit. Dkt. Notice (Mar. 7, 2025). Hardly subtle. Refusing to give up the ghost, however, Defendants refused to answer whether this language evinces animus. Tr. (Feb. 18, 2025) at 155-56; *see also id.* at 154-59; Tr. (Mar. 12, 2025) at 192. But the Court has no such problem. It finds that the Military Ban’s language evinces the “bare . . . desire to harm a politically unpopular group.” *Moreno*, 413 U.S. at 534.

Faced with incontrovertible facts, Defendants do not contend that the Military Ban is an animus-free zone. They argue instead that the Military Ban must be impossible to justify based on anything but animus to be unconstitutional. Tr. (Feb. 19, 2025) at 63-64, 87. “If,” Defendants claim, “there is a facially legitimate, bona fide reason, then perceived animus is not a ground on which the courts can second-guess the political branches in the national security space.” *Id.* at 90. Defendants

²⁸ The Court reaches this conclusion by mirroring the Ban’s language. For example, in stating that transgender persons cannot maintain discipline, the Ban necessarily asserts that transgender persons are undisciplined.

have not provided a legitimate reason for banning all transgender troops.

That aside, animus alone has never been the standard. The Colorado law at issue in *Romer*, for example, prohibited the state or any municipalities from enacting laws designed to protect members of the LGBTQ community. 517 U.S. at 624. The state offered a legitimate, bona-fide reason for the law: “respect for other citizens’ freedom of association.” *Id.* at 635. Nonetheless, because the “breadth of the amendment [wa]s so far removed from these particular justifications,” the Supreme Court “[fou]nd it impossible to credit them.” *Id.* Thus, even though the state alleged a legitimate interest, the Court held that the law “classifie[d] homosexuals not to further a proper legislative end but to make them unequal to everyone else.” *Id.* The Military Ban does the same.

The Military Ban is also unique in its unadulterated expression of animus—an expression of animus that no law the Supreme Court has struck down comes close to matching. Though the law at issue in *Romer* directly addressed “homosexuals,” it did not include any demeaning or derogatory language. *Id.* at 624. In *Cleburne*, a Texas city required a special permit for “hospitals for the insane or feeble-minded,” but the zoning ordinance said nothing about the character of mentally ill persons. 473 U.S. at 436. The provision at issue in *Moreno*, which involved a challenge to a food stamp restriction aimed at hippies, required only that food stamp recipients living in the same household be related. 413 U.S. at 531. Even the Defense of Marriage Act was silent as to any negative stereotypes or generalizations about gay people. *Windsor*, 570 U.S. at 752. Yet the Supreme Court struck down each of these laws.

Defendants also argue that once the government identifies a legitimate interest, a court's inquiry stops. Tr. (Feb. 18, 2025) at 158-59; Tr. (Feb. 19, 2025) at 63-64. Not so. The city in *Cleburne* argued that the special permit requirement was related to its interest in “the safety and fears of residents in the adjoining neighborhood.” 473 U.S. at 437. These safety concerns were not entirely unfounded—the city was worried about “negative attitudes” of local property owners, the location of the mental institution near a school, fire hazards, and traffic congestion. *Id.* at 448-50. But the Supreme Court did not simply take the city at its word. Instead, it found that these rationales “fail[ed] rationally to justify” the special permit restriction. *Id.* at 450.

The *Moreno* Court scrutinized the government's stated interest even further. The government maintained that the food stamps restriction was meant to minimize fraud. *Moreno*, 413 U.S. at 535. But the Supreme Court noted that there were already provisions in place to minimize fraud, and whatever fraud did occur was subject to criminal prosecution. *Id.* at 536. Thus the Court had “considerable doubt” that the restriction was “rationally . . . intended to prevent those very same abuses.” *Id.* at 537.

Peeling back other stated rationales of the Military Ban reveals pretext for animus. To start, Defendants concede that DoD has never identified any “mental health constraint” other than gender dysphoria that is wholly inconsistent with characterizations such as “honesty, humility, and integrity” and therefore with military service. Dkt. 66 at 3. Moreover, current military policies already address gender dysphoria. *See* Dkt. 72-67 (DoDI 6130.03, Vol. 2); DoDI 6130.03, Vol. 1 at 6.28(t).

If gender dysphoria were a genuine concern, the Policy would cover a narrow set of individuals with gender dysphoria. Instead, the Policy reaches everyone who has ever “exhibit[ed] symptoms consistent with[] gender dysphoria.” Hegseth Policy at 3. Because this “breadth” is “so far removed” from military health concerns, it is “impossible to credit” Defendants’ justifications. *Romer*, 517 U.S. at 635.

Defendants claim more generally that the Ban is needed because every servicemember must meet the military’s rigorous physical and mental fitness requirements. *See* Dkt. 72-67; Dkt. 72-82 ¶ 20. But such standards are already in place, and each active-duty Plaintiff already meets them. *See, e.g.*, Dkt. 72-27 ¶ 4 (“I meet all standards applicable to male service members.”); Dkt. 72-58 ¶ 18 (“I meet all standards applicable to female service members.”); Defs. Concession, Tr. (Mar. 12, 2025) at 130. And if the concern were genuine, the Policy would permit waivers for anyone who could demonstrate an “ability to safely complete common military tasks at a general duty level.” DoDI 6130.03, Vol. 2, at 3.2(a). Or, to use the Policy’s own language, it would allow for waivers “provided there is a compelling Government interest in retaining the Service member that directly supports warfighting capabilities.” *See* Hegseth Policy at 4. So, like in *Moreno*, the Court has “considerable doubt” that this rationale is driving the Military Ban.

If the fitness concern were genuine, the Policy would also be limited to addressing health concerns. Yet the policy makes some assertions that can be explained only by pretext, *e.g.*, that pronoun usage in some (still unfathomable) way impacts military readiness. *Id.* at 3. Defendants also make a passing reference that the military

must address suicide ideation. Fair, but again, the military already bars individuals with suicidality from enlisting. *See* DoDI 6130.03, Vol. 1, at 6.28(m). Additionally, if the health concern were genuine, the Policy would apply to all people who have received any kind of hormone therapy or genital reconstruction surgery. But it does not. It applies only to those who have received such care “as treatment for gender dysphoria or in pursuit of a sex transition.” Hegseth Policy at 6; *see also* Defs. Concession, Tr. (Mar. 12, 2025) at 120.

Defendants claim the Military Ban is necessary to ensure all servicemembers’ privacy, such as in sleeping and showering arrangements. *See* Hegseth Policy at 4. If this concern were genuine, barrack assignments would be based on anatomical (phenotypic) sex, not reproductive (gonadal) sex. For intersex individuals, who can present in about forty different ways,²⁹ the two are not necessarily aligned. A person with ovotestes has both ovarian and testicular tissue and so presumably could not be assigned to either male or female barracks, regardless of their anatomical sex.³⁰ A person with male genitalia but female reproductive anatomy would be put in female barracks, undoing the very privacy concern the Military Ban purports to address.³¹ And how will the

²⁹ The Cleveland Clinic’s intersex internet page addresses some of these presentations. *Intersex*, Cleveland Clinic (last visited Mar. 16, 2025), <https://my.clevelandclinic.org/health/articles/16324-intersex>.

³⁰ *Id.*

³¹ To be sure, being intersex is rare—about 1.7% of the U.S. adult population. But then again, being transgender is more so—about 0.6% of the U.S. adult population. *See* Rebecca Boone & Jeff McMillan, *How many transgender and intersex people live in the U.S.?*, US News (July 27, 2023, 10:31 AM), <https://apnews.com/article/>

military assure persons are tucked away in barracks without causing “privacy” concerns? Presumably, by looking at them. So why not base barrack assignments on anatomical sex? Because doing so would not exclude transgender persons from serving.³²

Lastly, Defendants’ cost concerns make clear that the Ban is purposely targeting transgender individuals. As discussed, the cost of medical care for transgender troops is de minimis. *See supra* Findings of Fact II.B.4. And Defendants have not explained why *these* costs are of more concern than other costs. “Many service members receive medical care for far more common medical conditions, at a far greater cost and with a significant impact on the military budget.” Dkt. 72-76 ¶ 13. For example, Viagra cost the DoD \$41,000,000 in 2023 alone—nearly eight times what the DoD spends on transgender medical care each year. *See* Dkt. 72-68 ¶ 9. Additionally, “the same medications (hormone therapies) and surgeries (mastectomies, hysterectomies, genital reconstruction)” that Defendants claim are too costly “are provided to non-transgender service members.” Dkt. 72-78 ¶ 65. But the Hegseth Policy does not ban those treatments. So why pay for hormone therapy for some servicemembers but not others? Because the Policy

how-many-transgender-intersex-laws-0218b75a197f07d8c51620bb73495d55.

³² Courts have rejected privacy as a rationale for discrimination against transgender persons. *See A.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 772-73 (7th Cir. 2023); *Grimm*, 972 F.3d at 613-14; *Parents for Privacy v. Barr*, 949 F.3d 1210, 1225 (9th Cir. 2020); *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 531 (3d Cir. 2018).

clearly targets *transgender* medical care costs. It “rest[s] on irrational prejudice.” *Cleburne*, 473 U.S. at 450.

2. Defendants Misread *Trump v. Hawaii* Again

Defendants rely on *Trump v. Hawaii* to argue that the Court must defer to the military even if it finds the military ban is fueled by animus. They assert that because the government has offered what—on their face—appear to be legitimate reasons for the ban (i.e., troop readiness and unit cohesion), the Court must uphold the Ban. Opp. at 50-54.

As discussed above, this has never been the Supreme Court’s approach in animus cases. The *Hawaii* Court cited *Moreno*, *Cleburne*, and *Romer* as examples of laws that could *not* “reasonably be understood to result from a justification independent of unconstitutional grounds.” *Hawaii*, 585 U.S. at 705, 706. Yet the defendants in those cases did not fail to proffer independent justifications. Rather, the Supreme Court found those purported justifications to be lacking. *See supra* Analysis II.C.1. So, too, does this Court find Defendants’ justifications empty.

Defendants further argue that, to find animus, the *Hawaii* Court required that a law be “inexplicable by anything but animus.” Opp. at 51 (quoting *Hawaii*, 585 U.S. at 706). But this quote is inapposite for two reasons. First, this is not what the Supreme Court said. Rather, it concluded that the entry restriction proclamation “d[id] not fit the pattern” of previous animus cases because it was neither “impossible to discern a relationship to legitimate state interests” nor was it “inexplicable by anything but animus.” *Hawaii*, 585 U.S. at 706 (cleaned up). Thus, at the very least, the *Hawaii* Court offered two paths to a finding of animus: the lack of a relation-

ship to a legitimate state interest or the inability to explain by anything but animus. *Id.* This Court, as discussed above, cannot conclude that the Military Ban is related to the government’s interests in military readiness, unit cohesion, and cost reduction. So, applying the *Hawaii* Court’s own language, Defendants’ argument fails.

Second, even if a law *had to be* inexplicable by anything but animus, the Court here has no trouble finding that the Military Ban fits this description. To recap, the Military Ban: disqualifies all “[t]ransgender troops . . . without an exemption”; contains an exemption in name only; relies on derogatory generalizations Defendants concede are pure conjecture; reflects no study of the service of transgender persons since 2021 and instead relies on “predictions” made in 2018; egregiously misquotes studies and ignores data supporting service by transgender persons; asserts “justifications” untethered to fact except insofar as Defendants’ own evidence contradicts them; and bans certain medical treatments only when prescribed to transgender individuals. The Court could go on. Suffice it to say, at this early stage, Plaintiffs are likely to prevail on their claim that the Military Ban is driven exclusively by animus.

3. The Government Has Targeted Transgender Persons Writ Large

The Court could stop here in its analysis and comfortably conclude that Plaintiffs are likely to succeed on their claim that the Military Ban is motivated by animus and is not tailored to meet its stated goals. But, as they say, there is more, for the Military Ban does not stand alone. President Trump has signed an executive order

recognizing the existence of only two sexes;³³ blocked schools from using federal funds to promote the idea that gender can be fluid;³⁴ directed the State Department to stop issuing documents that allow a third “X” gender marker;³⁵ changed references to “LGBTQI+” on government websites to “LGB,” erasing not just transgender persons, but intersex people as well;³⁶ revoked the ability of transgender federal employees to receive gender-affirming care;³⁷ and directed that all incarcerated transgender persons be denied medical treatments and be housed by birth sex,³⁸ where they are nine times more susceptible to violence.³⁹

The Office of Personnel Management has issued a memo directing all agencies to “take down all outward facing media (websites, social media accounts, etc.) that

³³ Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

³⁴ Exec. Order No. 14190, 90 Fed. Reg. 8853 (Jan. 29, 2025).

³⁵ Shannon K. Kingston & Kiara Alfonseca, *State Department Halts ‘X’ Passport Gender Marker Applications*, ABC News (Jan. 24, 2025, 11:27 AM), <https://abcnews.go.com/US/state-department-halts-passport-gender-marker-applications/story?id=118062178>.

³⁶ Dkt. 74-8 at 8.

³⁷ See Lauren Clason, *Trump EOs Cast Doubt on Benefits for Transgender Federal Workers*, Bloomberg Law (Jan. 31, 2025, 10:38 AM), <https://news.bloomberglaw.com/daily-labor-report/trump-eos-cast-doubt-on-benefits-for-transgender-federal-workers> (discussing President Trump’s revocation of Biden-era executive orders that expanded federal employee health coverage for gender-affirming care).

³⁸ Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

³⁹ Nora Neus, *Trans women are still incarcerated with men and it’s putting their lives at risk*, CNN (June 23, 2021, 2:54 PM), <https://www.cnn.com/2021/06/23/us/trans-women-incarceration/index.html>.

inculcate or promote gender ideology,”⁴⁰ resulting in vital Centers for Disease Control pages on contraception guidelines, vaccine information, and HIV data, among some 8,000, being taken down.⁴¹ The Office of Management and Budget—following the President’s directives—issued a memo promising to stop the use of federal funds to promote “transgenderism.”⁴²

The federal government removed all references to LGBTQ+ youth from the website for the National Center for Missing and Exploited Children, including a page on the suicide rates of missing children and one on male victims of sex trafficking.⁴³ It also removed references to LGBTQ+ youth from stopbullying.gov, including a 2016 study that showed the disproportionate rates at which LGBTQ+ students are bullied and a tipsheet on how to prevent such discrimination in schools.⁴⁴ Apparently, bullying and exploiting children is okay if they are gay, transgender, or intersex. And the National Park Service removed references to “transgender” from its webpage about the Stonewall National Monument.⁴⁵

⁴⁰ U.S. Off. of Pers. Mgmt., Initial Guidance Regarding President Trump’s Executive Order *Defending Women* (Jan. 29, 2025).

⁴¹ Dkts. 74-2, 74-7, 74-8.

⁴² Matthew J. Vaeth, Off. of Mgmt. & Budget, Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs (Jan. 27, 2025).

⁴³ Dkt. 74-3 at 4.

⁴⁴ Dkt. 74-8 at 8.

⁴⁵ *Id.* at 4. Stonewall is an inn in New York City where LGBTQ+ rioters, including trans activists, sparked the gay rights movement. Juliana Kim, *Park Service erases ‘transgender’ on Stonewall website, uses the term ‘LGB’ movement*, NPR (Feb. 14, 2025, 12:52 PM), <https://www.npr.org/2025/02/14/g-s1-48923/stonewall-monument-transgender-park-service>. The Stonewall Uprising “is regarded as

This Court does not opine on the constitutionality of these actions. That said, the flurry of government actions directed at transgender persons—denying them everything from necessary medical care to access to homeless shelters—must give pause to any court asked to consider whether one such order under review furthers a legitimate government interest free of animus.

III. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION

Irreparable harm is “a high standard.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). The harm “must be both certain and great,” “actual and not theoretical,” and “of such imminence that there is a ‘clear and present’ need for equitable relief.” *Id.* (cleaned up). But it must also be “beyond remediation,” meaning “the possibility [of] adequate compensatory or other corrective relief . . . at a later date . . . weighs heavily against a claim of irreparable harm.” *Id.* at 297-98 (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)).

Plaintiffs readily meet these criteria. “It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (cleaned up). Suits involving “the threatened invasion of a constitutional right do not ordinarily require proof of any

a turning point in sparking a nationwide movement for the equal treatment of gay, lesbian, bisexual and transgender Americans.” *Id.* To stress how ahistorical this change is, the Wikipedia page for Stonewall uses the word “transgender” (or its variations) fifty-three times. *Stonewall riots*, Wikipedia, https://en.wikipedia.org/wiki/Stonewall_riots (last visited Mar. 13, 2025).

injury other than the threatened constitutional deprivation itself.” *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998). Separately, all transgender servicemembers suffer from the irreparable reputational stigma the Military Ban espouses and forced separation from their positions. *See Jones v. District of Columbia*, 177 F. Supp. 3d 542, 547 (D.D.C. 2016) (reputational harm is irreparable); *McVeigh v. Cohen*, 983 F. Supp. 215, 221 (D.D.C. 1998) (irreparable harm in military context); *Elzie v. Aspin*, 841 F. Supp. 439, 443 (D.D.C. 1993) (same).

Plaintiffs also allege that their removal from military service would deprive them of steady income and medical care and that the order brands them as less capable solely because of their transgender status. Dkt. 72-1 at 75. Courts in this District have held such losses to be irreparable harms. *See McVeigh*, 983 F. Supp. at 221 (finding that the loss of “benefits attendant with being a Naval officer” constituted irreparable harm); *Elzie*, 841 F. Supp. at 443 (finding that a Marine suffered irreparable harm when he was “labeled as unfit for service solely on the basis of his sexual orientation”).

IV. THE BALANCE OF THE EQUITIES AND PUBLIC INTEREST FAVOR PLAINTIFFS

The final two factors—the balance of equities and the public interest—favor Plaintiffs. The balance of equities weighs the harm to plaintiffs absent a preliminary injunction against the harm to defendants if the court grants the motion. *Pursuing Am.’s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016). When the government is a party to the case, as it is here, this balancing test and the public interest merge into one factor. *Id.* (“the government’s interest is the public interest”).

Defendants will not suffer any harm if this Court grants the preliminary injunction. In *Winter v. Natural Resources Defense Council, Inc.*, the Supreme Court emphasized the deference afforded to the judgment of military officials “concerning the relative importance of a particular military interest.” *Winter*, 555 U.S. 7, 24 (2008) (cleaned up). In finding that the balance of equities and consideration of the public interest “tip[ped] strongly in favor of the Navy,” the Court gave significant weight to officers’ statements regarding the burden a preliminary injunction would place on the Navy’s ability to conduct training exercises and the resulting adverse impact on national security. *Id.* at 24-26.

Defendants have provided no testimony. That is so most likely because no such burden exists here. Granting the preliminary injunction would maintain the status quo of policies that have governed the military for years. *See* Dkt. 72-1 at 12-15, 28. The accession policy has been in place since 2021, *id.* at 14-15, and the retention policy has been in place for nearly a decade (though it was interrupted by the first Trump Administration’s Mattis Plan), *id.* at 2-6, 28. The Military Ban does not cite, and Defendants have not provided, any studies or declarations that explain why maintaining the status quo pending litigation would unfairly burden the military.

In contrast, Plaintiffs will be subject to the irreparable harm discussed above absent a preliminary injunction. And absent one, Plaintiffs will also face significant hardship because the Military Ban puts to them a Hobson’s choice⁴⁶: either immediately conform with the

⁴⁶ A “Hobson’s choice” is a free choice in which there is only one real option. The term traces its origin to Thomas Hobson, a sixteenth-century English stable owner who notoriously offered

grooming and appearance standards for their birth sex or choose separation, either voluntarily or by removal proceedings. Dkt. 72-1 at 74. Since Plaintiffs cannot physically conform to those standards and would have to do so against medical advice even if they could, they have no choice but to separate. *See, e.g.*, Dkts. 72-19 ¶ 8; 72-22 ¶ 6; 72-24 ¶ 6. This then puts to Plaintiffs a Sophie’s choice.⁴⁷ If they separate voluntarily, they will leave a career that they have no desire to end. If they opt for removal proceedings, they may be discharged dishonorably and, per the Hegseth Policy, will be required to repay the military their bonuses and other amounts. Hegseth Policy at 7; Dkt. 79-1 at 7. Permitting the Hegseth Policy to remain in place during litigation, therefore, will work an obvious hardship to the Plaintiffs.

Public interest considerations also support granting the preliminary injunction. For one thing, “[e]nforcement of an unconstitutional law is always contrary to the public interest.” *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). As discussed above, Plaintiffs have shown they are likely to succeed on their Fifth Amend-

his customers a “choice” of taking the horse closest to the door (so all would get equally used) or leaving without a horse—essentially, no choice for those who needed a horse. *See* H.W. Fowler, *Hobson’s Choice*, in *The King’s English* 203 (2d ed. 1908).

⁴⁷ A “Sophie’s choice” is a dilemma between two equally devastating options. In the novel *Sophie’s Choice*, a camp doctor at Auschwitz makes Sophie choose which of her two children would be gassed and which would live. Sophie chooses to save her son, Jan, so that the family name can continue through him. She releases her daughter, Eva, and watches as she is taken away to be killed in a gas chamber. Sophie, unable to live with the guilt, later commits suicide. *See* William Styron, *Sophie’s Choice* (Random House 1979). So, not a pick-me-up.

ment claim. And Plaintiffs point to potential harm to military cohesion and capability should the ban go into effect. Dkt. 72-1 at 75.

Plaintiffs have carried their burden under all four preliminary injunction factors by showing their likely success on the merits, the threat of irreparable harm, and that the public interest and equities support an injunction.

SCOPE OF THE INJUNCTION

Considering the full Record and for the reasons stated above, the Court hereby **GRANTS** Plaintiffs' Renewed Application for Preliminary Injunction. The Court details the scope of the injunction in the Order that accompanies this Opinion. On its own motion, the Court stays this injunction until March 21, 2025, at 10:00 am eastern, to provide Defendants time to consider filing a motion for an emergency stay in the D.C. Circuit.

Defendants claim that any injunction must be limited to the Plaintiffs. Opp. at 61. It cannot be, rationally or logistically. Other transgender servicemembers face the same irreparable harms as Plaintiffs. Any transgender person affected by the Ban would need only to file a "me too" complaint in this Court to obtain the same relief. The Court and Defendants then would have to deal with a never-ending conveyor belt of claims. A limited injunction would also cause havoc for the Armed Forces. Some transgender persons would be permitted to serve and accede, others would not. Depending on what happened at the permanent injunction phase, one group or the other would be affected. Superiors and colleagues would need to keep track of ongoing litigation docket updates to understand who was covered. Notably, the government has reiterated that "uniformity" is one of the key goals of the Military Ban multiple times

throughout this litigation. *See* EO14183 § 2; Hegseth Policy at 3; Action Memo at 2.

CONCLUSION

The Court knows that this opinion will lead to heated public debate and appeals. In a healthy democracy, both are positive outcomes. We should all agree, however, that every person who has answered the call to serve deserves our gratitude and respect. For, as Elmer Davis observed, “[t]his nation will remain the land of the free only so long as it is the home of the brave.”

The Court extends its appreciation to every current servicemember and veteran. Thank you.



/s/

ANA C. REYES
ANA C. REYES

United States District Court Judge

Date: March 18, 2025