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DOE, et al.,)	
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<i>Plaintiffs,</i>)	
)	
v.)	Civil Action No. 17-cv-1597 (CKK)
)	
DONALD TRUMP, et al.,)	
)	
<i>Defendants.</i>)	
)	

I, Deborah Lee James, declare as follows:

1. I served as the Secretary of the United States Air Force (“USAF”) from December 20, 2013 to January 20, 2017.

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3. As Secretary of the USAF, I functioned as the chief executive of the Department of the Air Force, with the authority to conduct all of its affairs, subject to the authority, direction, and control of the Secretary of Defense. As Secretary, I had comprehensive oversight responsibility for (i) the Department of the Air Force's annual budget, (ii) overseeing the organization, training, supplying, equipping and mobilization of USAF personnel, and (iii) overseeing the construction and maintenance of military equipment, buildings, and structures. In connection with my personnel-related oversight responsibilities, I administered the development and implementation of recruitment, retention, and medical policies for active duty and reserve USAF personnel. Among the people who directly reported to me was the Chief of Staff of the USAF, the most senior uniformed USAF officer.

The Air Force

4. The USAF is the aerial warfare service branch of the United States Armed Forces. It is one of the three military departments of the Department of Defense ("DoD"). The USAF, with an annual budget of more than \$139 billion, operates thousands of military and surveillance aircraft and controls hundreds of intercontinental ballistic missiles and military satellites. It employs over 600,000 Airmen and civilian employees. The USAF, including the Air Force Reserve and Air National Guard, operates over 300 flying squadrons, consisting of 8 to 24 aircraft each, worldwide. Air Force bases are located across the United States and span the globe.

5. The USAF has several core missions. First, it ensures American superiority in air and space across the globe. This superiority protects all of our other armed services from air attack during their operations. Second, the USAF is responsible for intelligence, surveillance, and reconnaissance, a function that is also essential to the integrated operation of the Armed

Forces. Third, it is also a core mission to enable rapid global mobility. The USAF projects American power rapidly across the face of the earth and enables swift deployment as well as the ability to sustain operations by delivering essential equipment, supplies, and personnel. Fourth, the USAF has its global strike capabilities as an essential mission. The ability to strike globally underlies our deterrence; the USAF's combat capabilities allow it to threaten, disable, or destroy any target around the globe. Lastly, the USAF is also charged with command and control. It provides access to reliable communications and information networks so that the military services as a whole can operate jointly in a coordinated fashion globally and at a high level of intensity.

6. The USAF is one of the most technologically sophisticated organizations on the planet, dwarfing the technological capabilities of individual companies in the private sector. Our aircraft, spacecraft, weapons, and surveillance equipment contain the most advanced new technologies devised by human ingenuity. Many USAF personnel train for years to function effectively in the USAF. Recruitment and retention of capable and qualified Airmen is of critical importance to the readiness of the USAF.

Change and Development of DoD Policy

7. By 2014, it had become clear that the United States Armed Service, including the USAF, had valued members who were transgender with specialized skills. Starting in 2014, the DoD took steps to consider military policy concerning the open service of transgender service members against the backdrop of the military's critical need for qualified personnel.

8. In August 2014, the Department of Defense issued a new regulation, DODI 1332.18, *Disability Evaluation System (DES)*. The regulation eliminated a department-wide list of conditions that would disqualify persons from retention in military service, including the

categorical ban on open service by transgender persons. This new regulation instructed each branch of the Armed Forces to reassess whether disqualification based on these conditions, including the ban on service by transgender persons, was justified. As of August 2014, there was no longer a department-wide position on whether transgender persons should be disqualified for retention.

9. On July 28, 2015, Secretary of Defense Ashton Carter ordered Brad Carson, Acting Undersecretary of Defense for Personnel and Readiness, to convene a working group to identify the practical issues related to transgender Americans serving openly in the Armed Forces, and to develop an implementation plan that addressed those issues with the goal of maximizing military readiness (the “Working Group”).

10. As Secretary of the Air Force, I was responsible for supervising the Department of the Air Force’s participation in the Working Group. The Working Group met both as a whole and in smaller groups tasked with investigating and analyzing specific issues. I met regularly with members of the Working Group to discuss their progress and the Air Force’s positions on the issues discussed.

11. The Working Group engaged in a comprehensive examination of the issues presented by permitting transgender people to serve openly. The goal was to be as comprehensive as possible, considering all available scholarly literature and evidence, and to thoroughly investigate any possible issues or concerns about how permitting open service might affect any aspect of military efficiency or readiness.

12. The Working Group included military and civilian personnel, readiness and medical experts from each of the services along with medical experts from the Defense Health Agency. It solicited information from both senior military personnel who supervised transgender

service members and transgender people on active duty. It also examined the experiences of civilian employers and of foreign militaries who permit transgender people to serve openly.

13. The Working Group also considered a report from the RAND Corporation, a federally funded research center that regularly provides research and analysis to the Armed Forces. The RAND Corporation was asked by the Under Secretary of Defense for Personnel and Readiness to conduct a study “to (1) identify the health care needs of the transgender population, transgender service members’ potential health care utilization rates, and the costs associated with extending health care coverage for transition-related treatments; (2) assess the potential readiness implications of allowing transgender members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly.” A true and accurate copy of the report, entitled *Assessing the Implications of Allowing Transgender Personnel to Serve Openly* (“RAND Report”), is attached as Exhibit A.

14. The RAND Report concluded that the cost of caring for the medical needs of transgender personnel would amount to “an exceedingly small proportion of ... overall DoD health care expenditures.” It found that the Military Health Service (MHS) has the capacity to provide this care, and that doing so would improve the capacity of the MHS by helping MHS surgeons “maintain a vitally important skill required of military surgeons to effectively treat combat injuries.” (8.) Considering a variety of utilization data, including data from the Veterans Health Administration, the RAND Report concluded that only a very small number of service members will access some type of gender transition-related treatment annually. (30.) The RAND Report found that the costs of providing health care for transgender service members would likewise be very small, amounting to an insignificant percentage of the overall DoD healthcare budget: “[E]ven in the most extreme scenario we were able to identify using the

private health insurance data, we expect only a 0.13-percent (\$8.4 million out of \$6.2 billion) increase in AC health care spending.” (36.)

15. The RAND Report concluded that permitting transgender people to serve openly would have no significant impact on military readiness or efficiency. The RAND Report examined the deployability of transgender persons before transition, during transition, and post-transition. It concluded that even assuming the highest estimates of utilization rates, the impact of permitting transgender soldiers to serve openly and to obtain appropriate health care would be minimal, amounting to “0.0015 percent of available deployable labor-years across the AC and SR.” (42.)

16. The RAND Report also found no evidence that permitting transgender soldiers to serve openly would have any significant negative impact on unit cohesion. Rather, the available evidence, including the experience of permitting service by openly gay personnel, suggests the opposite. In particular, the available evidence indicates that “direct interactions with transgender individuals significantly reduce negative perceptions and increase acceptance.” (44.)

17. The RAND Report found that available research on foreign militaries showed no evidence that “allowing transgender people to serve openly has had any negative effects on operational effectiveness, cohesion, or readiness.” (45.) The Working Group also met directly with representatives from some of these foreign militaries, who confirmed that permitting open service had no significant deleterious effects.

18. The Working Group compared the potential loss of deployability associated with transition-related health care with the loss of deployability associated with other, much more common medical conditions. The Working Group considered impacts to readiness and advice from experts indicating that the circumstance should not be treated differently.

19. The Working Group also considered that both private and public employers increasingly are providing coverage for transition-related health care, including the health insurance coverage available to civilian federal employees.

20. The Working Group also considered that banning transgender service members results in the loss of otherwise qualified personnel, which may leave critical positions unexpectedly vacant, as well as the financial loss involved in having to replace trained and, in some instances, highly skilled personnel.

21. The Working Group also considered that barring service by transgender people reduces the pool of potential qualified recruits and irrationally excludes individuals based on a characteristic that has no relevance to their ability to serve.

22. Based on its comprehensive and careful review, the Working Group agreed that transgender people should be permitted both to enlist and to serve openly in the United States military.

23. With regard to accession, the Working Group agreed that transgender persons should be subject to the same medical standards applied to persons with other medical conditions. Those standards are designed to ensure that those entering service are free of medical conditions or physical defects that may require excessive time lost from duty. The Working Group therefore agreed that applicants with a history of gender dysphoria or of treatment for gender dysphoria be permitted to enlist only if they have completed all medical treatment associated with gender transition and been stable in the preferred gender for a specified period of time.

24. The Working Group agreed upon a variety of other changes to related military policy, based on the same principle of securing equal treatment of transgender persons under existing standards.

25. On June 30, 2016, Secretary of Defense Ashton Carter issued Directive-type Memorandum (DTM) 16-005, entitled “Military Service of Transgender Service Members” (“DTM 16-005”), a true and accurate copy of which is attached as Exhibit B.

26. The purpose of DTM 16-005 was to “[e]stablish[] policy, assign[] responsibilities, and prescribe [] procedures for the standards for retention, accession, separation, in-service transition, and medical coverage for transgender personnel serving in the Military Services.” DTM 16-005 was applicable to all Military Departments, including the USAF, as well as all organizational entities within the DoD, including the Joint Chiefs of Staff.

Change, Development, and Implementation of USAF Policy

27. To implement DTM 16-005 as applied to the Air Force, on October 6, 2016, I issued an Air Force Policy Memorandum entitled “*Air Force Policy Memorandum for In-Service Transition for Airmen Identifying as Transgender*” (the “AFPM”) jointly with the U.S. Air Force Chief of Staff, General David Goldfein. General Goldfein is a fighter pilot who has served in the Air Force for over 30 years (including multiple combat deployments). A true and accurate copy of the AFPM is attached hereto as Exhibit C.

28. The policy and guidance in the AFPM, which was effective immediately for all USAF personnel, “provides unit personnel, supervisors, commanders, transgender Airmen and the medical community a construct by which transgender Airmen may transition gender while serving,” and “outlines policies for accessing, separating, and retaining transgender Airmen.” Further, the policies and procedures reflected in the AFPM “are premised on the conclusion that

open service by transgender Airmen who are subject to the same standards and procedures as other members of the same gender with regard to their medical fitness for duty, physical fitness, dress and appearance standards, deployability, and retention, is consistent with military service and readiness.” The AFPM thus provides that “no otherwise qualified Airman may be involuntarily separated, discharged or denied reenlistment or continuation of service solely on the basis of their gender identity.”

29. With respect to individuals presently serving in the USAF, the AFPM states that transgender Airmen will be responsible to meet all standards for uniforms and grooming, physical fitness, and use of facilities according to the Airmen’s gender marker in the Military Personnel Data System (“MilPDS”), subject to the approval of an Exception to Policy (“ETP”) request.

30. The AFPM further provides that when a transgender Airman’s medical provider formally advises the Airman’s commander that the Airman’s transition is complete, the Airman can “provid[e] ... either a certified copy of a state birth certificate reflecting the member’s preferred gender, a certified copy of a court order reflecting the member’s preferred gender, or a United States passport reflecting the member’s preferred gender.” And, per the AFPM, the Airman’s commander may then authorize an update to the Airman’s gender marker in MilPDS, which then “will be transmitted to and updated in DEERS.” The Airman will thereafter be responsible for meeting all gender-related standards in accordance with the updated gender marker.

31. To allow USAF commanders to address medical needs in a manner consistent with military mission and readiness, the AFPM sets forth detailed procedures concerning medical treatment for transgender Airmen with a diagnosis from a medical military provider

indicating that gender transition is medically necessary. Airmen with such a diagnosis must notify their commander and “identify all medically necessary care and treatment that is part of the Airman’s medical treatment plan and a projected schedule for such treatment, including an estimated date for a change in the member’s gender marker in MilPDS.” A military medical provider’s diagnosis must be confirmed by the Medical Multidisciplinary Team, taking into account “the severity of the transgender Airman’s medical condition and the urgency of any proposed medical treatment.” All gender transition plans must include timing, as approved by the Airman’s unit commander in consultation with the Airman and military medical personnel.

32. The AFPM also provides that “[t]ransgender Airmen selected for deployment will not be prevented from deploying if they are medically qualified.” “Any determination that a transgender Airman is non-deployable at any time will be consistent with established Air Force standards, as applied to other Airmen whose deployability is similarly affected in comparable circumstances unrelated to gender transition.”

33. In addition, the AFPM identified the following Air Force Instructions (“AFI”) to be revised to conform with the updated DoD policy concerning service of transgender individuals, consistent with the policy announced in the AFPM: (i) AFI 36-3206, Administrative Discharge Procedures for Commissioned Officers; (ii) AFI 36-2905, Fitness Program; (iii) AFI 36-2903, Dress and Personal Appearance of Air Force Personnel; (iv) AFI 36-3208, Administrative Separation of Airmen; (v) AFI 36-3209, Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members; (vi) AFI 48-123, Medical Examinations and Standards; and (vii) AFI 32-6005, Unaccompanied Housing Management.

34. On September 30, 2016, the Department of Defense issued Transgender Service in the Military, An Implementation Handbook (“DoD Handbook”). A true and accurate copy of

the DoD Handbook is attached hereto at Exhibit D. The DoD Handbook is intended as a practical day-to-day guide to assist all service members in understanding the Department of Defense's policy of allowing the open service of transgender service members. To that end, the DoD Handbook instructs all service members:

The cornerstone of DoD values is treating every Service member with dignity and respect. Anyone who wants to serve their country, upholds our values, and can meet our standards, should be given the opportunity to compete to do so. Being a transgender individual, in and of itself, does not affect a Service member's ability to perform their job.

The Harms Caused by the Recent Reversal of Policy

35. Relying on the DTM 16-005 and the Air Force Policy Memorandum, many service members disclosed their transgender status to their commanding officers and took other steps in reliance on the policy permitting service by openly transgender personnel. I am unaware of any evidence that this caused any harm to Air Force operations.

36. On July 26, 2017, President Donald Trump issued a statement that transgender individuals will not be permitted to serve "in any capacity" in the Armed Forces.

37. On August 25, 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security to reverse the policy adopted in June 2016 that permitted military service by openly transgender persons. That memorandum stated: "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."

38. I am not aware of any evidence to support President Trump's stated rationales for reversing the policy permitting open service. The Working Group spent months carefully collecting and considering the available evidence related to this issue, including examining how permitting open service by transgender persons would affect the very factors referenced in the August 25 memorandum. The Working Group did not find that permitting transgender soldiers to serve would impose any significant costs or have a negative impact on military effectiveness or readiness. The Working Group also found that barring transgender people from military service causes significant harms to the military, including arbitrarily excluding potential qualified recruits based on a characteristic with no relevance to their ability to serve.

39. In addition to being contrary to the careful study performed and conclusions drawn by the Working Group and the Secretary of Defense, it is my assessment, based on my experience as Secretary of the Air Force and in other leadership positions within the DoD and other defense-related institutions, that banning transgender people from enlisting or openly serving in the military would harm both the military and the broader public interest, for several reasons.

40. **Loss of Qualified Personnel.** First, banning current transgender service members from enlisting or serving in the military will result in the loss of qualified recruits and trained personnel, reducing readiness and operational effectiveness. Some transgender service members are senior and hold important leadership positions. The military has invested significant resources in the education and training of these personnel. Those resources are squandered when they are separated for reasons unrelated to their ability or performance.

41. The loss of qualified personnel as a result of separating transgender service members could be particularly acute at USAF. The USAF is currently facing a reduced pool of

qualified potential recruits. Unlike many private-sector companies, which can fill vacancies by simply tapping an experienced and flexible labor pool, the USAF has to grow its own set of skilled specialists, and that can take years. If the USAF were to lose any pilots because of the ban on transgender service members, that would be especially expensive given the crisis level of pilots who cost millions of dollars to train.

42. Deployability. Allowing transgender service members to openly serve does not create any unique issues relating to deployability. Any time that a given service member cannot deploy, we rely on force management models, the reserve component, and in some cases, civilian support to meet mission requirements. Military processes exist to manage any exigencies as they arise. Responding to any deployability issues to the extent that they may arise for some individual transgender service members creates no greater challenges than those recently addressed by, for example, a change in maternity leave policies for pregnant service members.

43. Erosion of Trust in Command. Second, the President's abrupt reversal of policy is harmful to military readiness because it erodes service members' trust in their command structure and its professionalism. The military's effectiveness depends on a relationship of mutual trust between leaders and followers. That trust, and the prompt following of commands, is essential to the unit cohesion and rapid response required to address unexpected crises or challenges. Following the adoption of the policy permitting open service by transgender persons in 2016, military leaders instructed service members that they should not discriminate against their transgender colleagues. For that policy to be abruptly reversed will inevitably erode trust in the reliability and integrity of military decision making.

44. This sudden reversal is harmful both to transgender service members and to other formerly disfavored groups that have been recently integrated into the military and into combat

roles. In 2011, the Don't Ask, Don't Tell policy prohibiting gay, lesbian and bisexual people from openly serving in the military was repealed. More recently, DoD also removed remaining barriers for women serving in certain combat positions. The sudden reversal of the DoD's recently adopted policy of inclusion sends a dangerous message that policies promoting the inclusion and equal treatment of other groups may similarly be arbitrarily reversed.

45. **Readiness and Morale.** Third, the sudden reversal of a policy adopted after substantial deliberation will also have a deleterious effect on morale, as it undermines the confidence of service members that important military policy decisions will be based on a rational, careful, and thoughtful process. Airmen and other service members must believe that the orders and policies they are required to follow are based on reasonable decisions, not impulse or whim. This trust in the rationality and professionalism of our military leadership is also a key factor in recruiting and retaining talented personnel. The sudden reversal of the June 2016 policy undermines that trust.

46. Banning openly transgender service members will also have a negative impact on recruitment and retention, which are critical concerns in our all-volunteer services. Such a ban will arbitrarily eliminate otherwise highly qualified and valuable individuals who wish to serve, including those who are already enrolled in Reserve Officer Training Corp programs and military academies, based on a characteristic that has no bearing on fitness for military service. Preventing the accession of transgender individuals who have met the rigorous requirements for enrollment in a military academy is particularly senseless and damaging and will result in the loss of extremely talented and well-qualified future leaders. The negative impact of such irrational and prejudicial policies on the public perception of the Armed Services—including the perception of potential recruits—should not be underestimated.

47. The impact to morale engendered by the abrupt reversal of the policy permitting open service by transgender people will not only have an effect on the morale of our current service members. Any suggestion that those serving to protect and defend our country will not have the fullest support of their entire chain of command will also have a negative impact on the USAF's ability to recruit highly qualified candidates who can perform at the highest levels necessary to complete the USAF's core missions.

I declare under the penalty of perjury that the foregoing is true and correct.

DATED: August 29, 2017

Deborah Lee James