

August 18, 2025

VIA CM/ECF

Clifton Cislak
Clerk, United States Court of Appeals for the D.C. Circuit
E. Barrett Prettyman United States Courthouse & William B. Bryant Annex
333 Constitution Ave., NW
Washington, DC 20001

**Re: *Talbott et al. v. United States*, No. 25-5087 (argued Apr. 22, 2025) –
Request to Lift Administrative Stay**

Dear Mr. Cislak:

Pursuant to this Court’s Administrative Stay Order of March 27, 2025, which provides that Plaintiffs-Appellees (“Plaintiffs”) may seek to lift the administrative stay if “any action occurs that negatively impacts service members under the Hegseth Policy and MDI Guidance” before the court lifts the stay, Plaintiffs respectfully requests that the Court lift the administrative stay based on the Department of the Air Force’s August 14, 2025 memorandum (the “August 14 Memo”) (attached), which is causing imminent harm to those Plaintiffs-Appellees who serve in the Air Force (the “Air Force Plaintiffs”).

If the Court requires a formal motion to lift the administrative stay, Plaintiffs request an order setting an expedited motion deadline and briefing schedule.

Department of Air Force Policy Violates Due Process

The August 14 Memo details separation board procedures that force transgender Department of Air Force (DAF) members into an impossible choice: (1) appear at their separation hearing in their birth sex, or (2) waive their right to personal appearance and proceed in absentia. The memo states that during board proceedings, transgender service members “must adhere to standards associated with their biological sex unless the member waives their personal appearance and elects for the board to proceed in absentia.”

This violates fundamental due process by conditioning the right to appear at one’s own separation hearing on not being transgender. In other words, transgender Air

Force service members do not live in their birth sex. Accordingly, they do not and cannot adhere to standards associated with their birth sex. As a result, the August 14 Memo denies transgender DAF members the right to appear at their separation hearings.

Immediate Harm

The Air Force Plaintiffs who imminently face separation proceedings will be denied any meaningful due process. They cannot receive fair hearings because they are being prohibited from showing up at their proceedings because they are transgender. These constitutional violations are occurring now as separation hearings are being scheduled and will be conducted imminently.

No Harm to Defendants

Defendants suffer no injury from maintaining constitutional procedures during this litigation, including permitting transgender DAF members to show up to defend themselves at their separation proceedings without being compelled to comply with the unconstitutional requirement that they adhere to grooming and appearance standards associated with their birth sex.

Conclusion

The August 14 Memo creates exactly the type of action “negatively impacting service members” that this Court anticipated when allowing a motion to lift the stay. Because Air Force plaintiffs face immediate due process violations that cannot be remedied after involuntary separation, Plaintiffs respectfully request that the Court lift the administrative stay to enjoin implementation of these discriminatory separation procedures.

Sincerely,

/s/ Jennifer Levi

Jennifer Levi

Attorney for Plaintiffs-Appellees



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

August 14, 2025

MEMORANDUM FOR ALL MAJCOM FOA DRU FLDCOM/CC, SAF/AM
Distribution C

FROM: SAF/MR
1660 Air Force Pentagon
Washington, DC 20330-1665

SUBJECT: Additional DAF Implementing Policy on Prioritizing Military Excellence and Readiness – General Guidelines for Involuntary Separation

- References:
- (a) EO 14183 Prioritizing Military Excellence and Readiness, 27 Jan 25
 - (b) OUSD (P&R) Memorandum, *Additional Guidance on Prioritizing Military Excellence and Readiness*, 26 Feb 2025
 - (c) OUSD (P&R) Memorandum, *Clarifying Guidance on Prioritizing Military Excellence and Readiness: Retention and Accession Waivers*, 04 March 2025
 - (d) OUSD (P&R) Memorandum, *Prioritizing Military Excellence and Readiness: Military Department Identification*, 21 Mar 2025
 - (e) OSD Memorandum, *Implementing Policy on Prioritizing Military Excellence and Readiness*, 8 May 2025
 - (f) SAF/MR Memorandum, *Additional Guidance for Executive Order 14183, "Prioritizing Military Excellence and Readiness"*, 1 March 2025.
 - (g) SAF/MR Memorandum, *DAF Implementing Policy on Prioritizing Military Excellence and Readiness*, 9 May 2025
 - (h) OUSD (P&R) Memorandum, *Prioritizing Military Excellence and Readiness: Implementation Guidance*, 15 May 2025
 - (i) SAF/MR Memorandum, *DAF Guidance on Retention and Accession Waivers*, 23 May 2025
 - (j) SAF/MR Memorandum, *Additional DAF Implementing Policy on Prioritizing Military Excellence and Readiness*, 23 May 25
 - (k) SAF/MR Memorandum, *Additional DAF Implementing Policy on Prioritizing Military Excellence and Readiness – Identification and Gender Marker Change Guidance*, 12 Jun 25

References (a), (b), and (e) direct the Secretaries of the Military Departments to initiate the administrative separation of Service members who have a current diagnosis or history of, or who exhibit symptoms consistent with, gender dysphoria. This Memorandum provides the general framework of this policy to the field. Detailed guidance is available in DAFI36-3211_DAFGM2025-01, *Military Separations*.

Where this guidance conflicts with existing Department of the Air Force (DAF) policy, the direction herein controls. DAF commanders will maximize the use of all available command authorities within Department of Defense and DAF policy, consistent with this memorandum and references, to ensure impacted personnel are afforded dignity and respect at all times.

The Secretary of the Air Force (SecAF) is the Separation Authority for any involuntary separations pursuant to reference (h).

Within two (2) weeks of the date of this memorandum, the CSAF will designate a General Officer to serve as the Consolidated Disposition Authority (CDA). This General Officer will be in a non-operational, non-joint assignment not within the chain of command of the AF/A1, Surgeon General of the Air Force or Judge Advocate General (JAG) of the Air Force. The CDA is the officer show cause authority and enlisted separation initiating authority for all DAF Service members separated under this memorandum. The CDA will initiate involuntary separation procedures for all Service members identified as non-compliant with medical standards outlined in references (a) and (b) within 30 days of such notification. The CSAF and CSO will ensure all Service members identified for involuntary separation pursuant to these policies are referred to the CDA, who will in turn exercise jurisdiction over qualifying Air Force and Space Force personnel for purposes of involuntary separation procedures. The CDA will convene the minimum number of boards necessary to execute the involuntary separation procedures under this memorandum.

The CDA will develop the necessary processes to execute involuntary separation actions in accordance with DAFI36-3211_DAFGM2025-01, *Military Separations*. In furtherance of this tasking, the DAF will resource the CDA as necessary to ensure CDA can adequately and expeditiously effectuate these requirements. Specifically, the DAF will provide sufficient personnel and resources to the CDA to accomplish the following: (1) Sufficient number of Service members in the grade of O-6 or above to serve on administrative boards or boards of inquiry, including a General Officer to serve as the board president in all cases; (2) Legal counsel to represent Service members in these proceedings; (3) Recorders to articulate the government's case; (4) experienced Legal Advisors to the boards in the grade of O-4 or above; and (5) Legal counsel to support the CDA in furtherance of this mission.

Commanders will refer a Service member to the CDA for involuntary separation processing upon receiving written notification from the Airman Medical Readiness Optimization (AMRO) Board that a member under their command has a current diagnosis or history of, or exhibits symptoms consistent with, gender dysphoria. This is the primary method of identifying Service members subject to involuntary separation. Medical staff will follow the established processes for referral and processing Service members.

The CDA will provide a weekly report to SAF/MR that includes the number of cases referred to the CDA for processing, the status of ongoing administrative separation boards, and the number of completed boards.

Consistent with reference (h), DAF enlisted members will be processed for involuntary separation on the basis that separation is in the best interest of the Air Force or Space Force

under SecAF's Plenary Authority. All enlisted Service members who are notified of involuntary separation pursuant to this policy will, if elected by the Service member, be afforded an administrative separation board. It is DoD policy that the limitation on administrative boards contained within DoDI 1332.14, *Enlisted Administrative Separations*, para.3.14.c, does not apply to separations under this guidance. Enlisted members meeting an administrative separation board shall appear virtually unless determined otherwise by the CDA.

Consistent with reference (h), DAF officers will be processed for involuntary separation on the basis that their continued service is not clearly consistent with the interests of national security. All DAF officers who are notified of involuntary separation pursuant to this policy will be afforded a Board of Inquiry, if elected by the officer, in accordance with 10 U.S.C. § 1182. It is DoD policy that separation of officers under this guidance is distinct from separation under DoDI 1332.30, *Commissioned Officer Administrative Separations*, para. 3.3 and DAFI 36-3211, *Military Separations*, para 18.7.15, and does not require security clearance adjudication under DoDM 5200.02, *Procedures for the DOD Personnel*. Of note, in accordance with 10 U.S.C. § 1185, officers meeting a board of inquiry shall be allowed to appear in person. Furthermore, in accordance with 10 U.S.C. § 1187, each member of the board shall be an officer of the same armed force as the officer undergoing board proceedings.

United States Air Force Academy (USAFA) cadets who are disqualified for military service will be disenrolled and discharged under the provisions of DAFI 36-3501, *United States Air Force Academy Operations*. USAFA Cadets have the opportunity to elect a Board of Inquiry under the provisions of DAFI 36-3501, para. 4.2.6.8 and will be referred to the CDA for processing.

Cadets in other commissioning programs and other accessions disqualified from military service will be disenrolled and discharged under the provisions of DAFMAN 36-2032, *Military Recruiting and Accessions*.

Reserve components will follow existing discharge procedures for their respective components to the extent consistent with this guidance. Additional implementation guidance is forthcoming.

Service members subject to separation in accordance with this memorandum who have not previously requested a retention waiver will have the opportunity to request that waiver after notification but prior to board proceedings. Board proceedings will not begin until the request has been adjudicated, and Service members may not present evidence on a retention waiver or challenge the retention waiver decision during the board proceedings.

Service members are ineligible for referral to the Disability Evaluation System (DES) *solely* on the basis of a current diagnosis or history of, or symptoms consistent with, gender dysphoria. Service members may be referred to the DES if they have a co-morbidity, or other qualifying condition, that is appropriate for disability evaluation processing in accordance with DoDI 1332.18, prior to processing for administrative separation.

Service members who are processed for separation pursuant to this policy will be designated as non-deployable until their separation is complete.

Service members separated involuntarily pursuant to this policy may be provided full involuntary separation pay in accordance with 10 U.S.C. § 1174 and DoDI 1332.29.

Recoupment of any unearned portions of any bonuses, incentive pay, special pay, educational benefits or stipends, continuation pay, or similar pay will follow existing law and policy, including the DoD Financial Management Regulation. However, DAFMAN 51-507, para. 4.4.3, shall not apply, and a Board of Inquiry or administrative separation board shall not consider evidence of or make a recommendation on recoupment. The Separation Authority will make a final decision on recoupment.

In accordance with reference (b), characterization of service will be honorable except where the member's record otherwise warrants a lower characterization. Service members discharged under this policy are ineligible to serve in the Reserve Component and any remaining service obligation, including any obligation associated with a transfer of education benefits under the Post-9/11 GI Bill and any inactive reserve obligation, is waived, pursuant to reference (b).

As directed in references (b) and (f), Service members must adhere to standards associated with their biological sex. The sex marker in the Defense Enrollment Eligibility Reporting System (DEERS) and other systems of records (to include the Military Personnel Data System) must reflect the member's biological sex. To maintain good order and discipline, a Service member may be placed in an administrative absence. Service members on administrative absence must complete the necessary steps for separation and no board of inquiry or administrative separation board will be delayed because of the member's administrative absence status. During the Board of Inquiry or administrative separation board hearing, the Service member is not on administrative absence and must therefore adhere to standards associated with their biological sex unless the member waives their personal appearance and elects for the board to proceed in absentia.

Nothing in this guidance precludes appropriate administrative or disciplinary action for DAF service members who refuse orders from lawful authority to comply with applicable standards or otherwise do not meet standards for performance and conduct.

Commanders and all members of a Board of Inquiry or administrative separation board will protect the privacy of protected health information they receive under this policy in the same manner as they would any other protected health information. Such health information shall be restricted to personnel with a specific need to know for the conduct of official duties.

All Service members identified for separation will complete any pre-separation requirements, including the Transition Assistance Program, and be afforded maximum flexibility to complete such requirements remotely or in civilian attire. Participation in Skillbridge is not authorized per reference (h). Impacted members are eligible for all separation and transition benefits to which they are otherwise entitled under law or DoD policy.

Commanders will continue to support Service members throughout the separation process, including advising them of the availability of mental health support and ensuring accountability while on administrative absence.

Questions and inquiries may be directed to the SAF/MR Executive Order Tiger Team at SAF.mreo.readinessTigerTeam@us.af.mil.



BRIAN SCARLETT, SES, DAF
Performing the Duties of the Assistant Secretary of
the Air Force for Manpower and Reserve Affairs

cc:
AF/A1
USSF/S1
NGB/A1
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MAJCOM/A1
FLDCOM/S1

