IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BROCK STONE, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	Case No. 1:17-cv-02459

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR CLARIFICATION AND, IF NECESSARY, A PARTIAL STAY OF PRELIMINARY INJUNCTION PENDING APPEAL

Three weeks ago, this Court enjoined all three directives comprising President Trump's ban on military service by men and women who are transgender. The injunction states that Defendants "shall not enforce or implement," *inter alia*, President Trump's directive that "the Secretary of Defense . . . shall . . . maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense . . . provides a recommendation to the contrary that [President Trump] find[s] convincing." *See* Dkt. 84. Defendants now seek expedited "clarification" about whether the Court's ruling permits Secretary Mattis to exercise his alleged "independent discretion" to indefinitely suspend new accessions beyond January 1, 2018, *see* Dkt. 91, while the Department of Defense ("DoD") "carr[ies] out the study directed by the President," *see* Dkt. 91-1 ¶ 4. In the alternative, Defendants request a stay of the accessions ruling pending appeal. *See* Dkt. 91.[1]

[1] Defendants seek this expedited relief despite having filed substantively identical motions in a different court several weeks ago. *See* Exs. 1, 2. All exhibits are attached to the declaration of Marianne F. Kies, filed herewith.

No clarification is necessary. The Court's injunction does not prevent Secretary Mattis from taking some hypothetical action that is independent of, and unrelated to, the President's unconstitutional directives, but the injunction also unambiguously prohibits Secretary Mattis from taking the specific action described in Defendants' motion. While Defendants argue that a deferral would constitute an exercise of "independent authority," Dkt. 91, the declaration they submit in support of their motion shows that the deferral they contemplate would be directly tied to the enjoined directive and, thus, directly contrary to the terms of the preliminary injunction, *see* Dkt. 91-1. There is no factual dispute on this point. The declaration makes clear that the deferral Defendants seek would not be for the purpose of further preparing for accessions, but "to carry out the study directed by the President." *Id.* ¶ 4. If the Court chooses to "clarify" that the injunction does not prohibit Secretary Mattis from exercising "independent discretion," the Court should also clarify that the injunction *does* prohibit the Secretary from delaying accession based on the reasons provided in Defendants' motion.

The Court should also deny Defendants' motion to partially stay the preliminary injunction. In *Doe v. Trump*, Civ. A. No. 17-1597 (CKK) (D.D.C.), the U.S. District Court for the District of Columbia rejected a similar stay request, finding that the government had failed to establish irreparable injury, or any of the other factors required to support issuance of a stay pending appeal. *See* Ex. 3. Among other things, the *Doe* court carefully reviewed the declaration the government submitted there and found it vague and conclusory, disregarding significant steps the military has already taken to prepare for transgender accessions and failing to specify what steps allegedly remain to be completed to begin accessions. Notably, Defendants submit a virtually identical declaration in this case, without addressing any of the deficiencies identified by the *Doe* court, or adding any of the specifics that court found wanting. Defendants'

resubmission of the near-identical declaration here amounts to an admission that they have no answer and nothing more to say.

As the *Doe* court explained, the military has had almost a year and a half to prepare for accessions of men and women who are transgender, and the Services in fact did considerable work to prepare prior to President Trump's abrupt declaration that transgender persons would not be allowed to serve. Defendants provide no specific evidence that the Services will be unable to handle the accessions process for what is likely to be a very small number of transgender persons seeking to accede in early 2018. They also fail to demonstrate that this Court erred in its earlier ruling on Plaintiffs' standing or their likelihood of success on their equal protection and substantive due process claims. The balance of equities and the public interest likewise weigh against issuance of a stay.

ARGUMENT

I. Defendants' Motion to "Clarify" the Scope of the Preliminary Injunction Should Be Rejected.

Defendants' motion for clarification seeks permission to effectuate a directive that the Court has enjoined. They ask the Court to "clarify" that it did not enjoin the Secretary of Defense from exercising his discretion to defer the January 1, 2018 effective date for the accessions provisions of the Open Service Directive for "a limited period of time," but with no end date. Dkt. 91, at 2.

Defendants do not say that the Secretary has in fact decided to defer the accessions date, but if the Secretary does, it presumably would be for the reasons set forth in the declaration Defendants submit in support of their motion. That declaration, by Lernes Hebert, Acting Deputy Assistant Secretary of Defense for Military Personnel Policy, makes clear that a deferral would be, not for the purpose of preparing for accessions, but for the purpose of continuing the

"study" that President Trump ordered in August. *See* Dkt. 91-1 ¶ 4 ("The review being undertaken by the Panel of Experts appointed by the Secretary on September 14, 2017, *to carry out the study directed by the President* remains ongoing. The Panel's work is expected to result in recommendations to the Secretary of Defense early next year. The Department would also establish the policy, standards, and procedures to support those Panel recommendations adopted by the Secretary." (emphasis added)). This is the *very same* "study" that the Court rightly dismissed as non-independent, *i.e.*, with a foreordained conclusion. *See* Dkt. 85, at 50 ("[T]he Court finds that the President's Memorandum is not a request for a study but an order to implement the Directives contained therein.").

On its face, deferral of the accessions date in this manner would be directly contrary to the terms of the injunction. The Court ordered that Defendants "shall not enforce or implement the [] policies and directives encompassed in President Trump's Memorandum . . . dated August 25, 2017." Dkt. 84, at 1. The directive relating to accessions was to "maintain the current[] [bar] regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense . . . provides a recommendation to the contrary that [President Trump] find[s] convincing." *Id.* at 2. Defendants' proposal to delay accessions beyond January 1, to provide time for the DoD to conduct a "study" and provide a recommendation to the President, is exactly what the injunction prohibits.

The Court need not resolve any factual dispute on this issue. Defendants' own declaration makes clear that the "study" that is the purported reason for further delay of accessions is not independent of the enjoined directive. *See* Dkt. 91-1 ¶¶ 4, 9, 10 (all referring to the "study" directed by the President). It is evident from their own papers that Defendants seek permission for the Secretary to effectuate a directive the Court has enjoined.

The only arguably "independent" reason Defendants offer for delaying accessions is their suggestion that the military needs more time to conduct the training necessary to prepare for accessions. *See* Dkt. 91, at 2. Even if that were true, *but see infra*, Defendants do not suggest that they intend to engage in any training or communication regarding accessions policy during any period of deferral.

To be sure, if Defendants could make a persuasive showing that they are currently working vigorously to complete preparations for accessions but nevertheless face some insurmountable obstacle, they are not without recourse. Defendants could return to this Court to seek *modification* of the injunction to complete specified steps required for accessions to begin, or to take additional time to process individuals who begin the accessions process in early 2018. At this point, though, there is simply no basis for such a modification. The only appropriate *clarification* at this time, if any is warranted at all, is to reiterate that Defendants may not postpone accessions beyond January 1, 2018 with no end date; that Defendants may not postpone accessions in order to continue the "study" ordered by President Trump; and to make clear that simply characterizing such a delay as based on Secretary Mattis's "independent authority" is insufficient to circumvent the terms of the injunction.

II. Defendants Have Not Met Their Burden to Show That They Are Entitled to the Partial Stay They Request.

Defendants' request for a stay of this Court's preliminary injunction is "extraordinary relief for which [they] bear[] a heavy burden." *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 558 (E.D. Va. 2016) (citation and internal quotation marks omitted). In considering whether to grant this extraordinary relief, a court considers four factors similar to those it analyzed in determining whether to grant the preliminary injunction: (1) whether the movant has made a strong showing that he is likely to succeed on the merits; (2) whether the movant will be

irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S. 770, 776, (1987).[2] Here these factors all militate against a stay.

A. Defendants Will Not Be Irreparably Harmed Absent a Stay.

Defendants' primary argument for a stay is that they will be irreparably harmed if they must honor the January 1, 2018 start date for accessions because the military is unprepared to begin accepting transgender recruits on that date. This position is implausible. As the record reflects, the military began planning for accessions of men and women who are transgender almost a year and a half ago (June 30, 2016), when then-Secretary Carter reversed the military's bar on accessions of transgender individuals and issued detailed accessions criteria "designed to ensure that transgender individuals who enlist in the military do not have any medical needs that would make them medically unfit to serve or interfere with their deployment." Dkt. 40-32 ¶ 65; *see also* Dkt. 85, at 7-8. Secretary Carter designated July 1, 2017 as the start date for accessions of transgender individuals, and directed the military in the meantime to "expeditiously develop and promulgate education and training materials to provide relevant, useful information for . . . commanders, the force, and medical professionals regarding DoD policies and procedures on transgender service." Dkt. 40-4, at 7. Training materials were to be "disseminate[d] . . . to all Military Departments and the Coast Guard not later than October 1, 2016," and "implementing

[2] Defendants' burden is heavier than they suggest. *See* Dkt. 91, at 4 n.3. Because the Court has already ruled that Plaintiffs are likely to succeed on the merits, in moving for a stay pending appeal Defendants "must make *at least as strong* a showing" that they are likely to succeed on the merits — "and certainly not a lesser showing — as compared to a party moving for a preliminary injunction." *Ohio Valley Envtl. Coal., Inc. v. Pruitt*, 2017 WL 1712527 at *3 (S.D. W. Va. May 2, 2017) (rejecting the "serious questions" standard because to adopt such a standard would "betray[] the fact that the trial court has already weighed the evidence before it and rendered a decision on the merits, which the moving party lost." (citing *Ohio Valley Envtl. Coal., Inc. v. U.S. Army Corps of Eng'rs*, 890 F. Supp. 2d 688, 692–93 (S.D. W. Va. 2012))).

guidance and a written force training and education plan" were to be issued by each Military Department "[n]ot later than November 1, 2016." *Id.*

Pursuant to these orders, DoD promptly "began training throughout the branches to meet the target date of July 1, 2017 for implementation." Decl. of G. Brown ¶ 5 (attached hereto). In September 2016 DoD issued a comprehensive, 71-page "implementation handbook" on "transgender service in the U.S. military" — which, among other things, provided guidance to the Force and its Commanders regarding open transgender service, outlined the framework for bringing medical care for transgender individuals into the Military Health System, and addressed the effect of DoD's transgender service policy on admission to accessions programs, like the Reserve Officers Training Corps ("ROTC"). Dkt. 40-9; *see also* Dkt. 73, at 7. Subsequent implementation steps included training hundreds of medical personnel working in the Military Entrance Processing Stations ("MEPS"). Brown Decl. ¶ 5. Notably, when Secretary Mattis postponed the start date on June 30, 2017, only one day before accessions of transgender individuals were to begin, he did not cite lack of readiness as the reason, but rather only that he wanted to "personally" receive "the views of the military leadership and of the senior civilian officials who are now arriving in the Department." Dkt. 40-11.

Former Secretaries of the Navy, Air Force, and Army have all explained that, *as of January 2017*, "the Services had already completed almost all of the necessary preparation for lifting the accession ban." Decl. of R. Mabus ¶ 3 (attached hereto); *see* Decl. of D. James ¶ 2 (attached hereto); Press Release, *Former Army Secretary Questions Trump Administration Claim that Military is Not Ready to Accept Transgender Applicants*, Palm Ctr. (Dec. 7, 2017) (Ex. 4)

(Fanning).[3] Indeed, just this week, the Pentagon issued a statement to the media indicating that it was preparing to comply with the January 1 accessions start date. *See* Tom Vanden Brook, *Pentagon to Begin Accepting Transgender Troops Jan. 1 After Court Order*, USA Today (Dec. 11, 2017, 5:00PM) (Ex. 6) ("'The Department of Defense will begin processing transgender applicants for military service on January 1, 2018, as mandated by a recent court order,' said Army Maj. David Eastburn, a Pentagon spokesman.").

Dr. George Brown, who participated in training numerous DoD medical personnel on the accessions criteria in May 2017, explains in his declaration that the medical accessions criteria for transgender persons are straightforward, that DoD personnel should be able to apply them as readily as they apply other medical accessions criteria, and that routine turnover in personnel should not affect this ability. Brown Decl. ¶ 8. Dr. Brown also notes that, in view of the small number of transgender persons in the overall population, it is unlikely that many transgender individuals will seek to enlist on or after January 1. *Id.* ¶ 10.

Moreover, in view of the stringent accessions standards for transgender individuals set out in the 2016 Open Service Directive, which the military developed after a lengthy "systematic" review and determined were "consistent with military readiness," Dkt. 85, at 2-3; Dkt. 40-4, at 2, any claim of harm from the addition or promotion of those individuals is not credible. Those stringent accessions standards provide that a history of gender dysphoria, medical treatment associated with gender transition, and a history of sex reassignment or genital reconstruction surgery are disqualifying unless, among other things, the individual has been stable for 18 months. *See* Dkt. 85, at 7-8; Dkt. 40-4, at Attach. § 2. Defendants do not attempt to

[3] *See also* Alan Bishop, et al., *DoD Is Ready to Accept Transgender Applicants*, Palm Ctr. (Dec. 2017) (Ex. 5) (military professors rejecting assertion that military is not prepared to begin transgender accessions on January 1).

argue — nor could they — that the accessions of those individuals would cause irreparable harm to the military. And they certainly could not argue that proceeding in early 2018 with commissions for existing service members who are transgender and prepared to commission (like Plaintiff George) would harm the military.

Instead, Defendants submit the declaration of an Acting Deputy Assistant Secretary of Defense for Military Personnel Policy in an effort to establish that the accessions criteria for transgender enlistees are complex and that the military needs more time to prepare for that policy change, to provide training, and to communicate. *See* Dkt. 91-1. But the statements in Mr. Hebert's declaration are highly general and conclusory. The *Doe* court characterized his statements in a nearly identical declaration as "vague," unsupported, and otherwise insufficient to meet the requisite showing of irreparable harm. Ex. 3, at 5. That court carefully reviewed the Hebert declaration and identified at least the following flaws:

- "Although Mr. Hebert's declaration contains a lengthy discussion of the administrative difficulties associated with implementing a new accession policy in general, it fails to acknowledge the considerable amount of time Defendants have already had to prepare for the implementation of this particular policy." *Id.* at 3 (emphasis added).

- "Moreover, Mr. Hebert's declaration glosses over the fact that considerable work has been done already [to prepare for transgender accessions] during this lengthy period." *Id.* at 4 (emphasis added).

- "Instead of acknowledging what has already been done, Mr. Hebert's declaration uses sweeping and conclusory statements to support his assertion that there is an unmanageable amount of work left to do. . . . Mr. Hebert fails to explain what *precisely* needs to be completed . . . in order for Defendants to be prepared to begin transgender accessions." *Id.* at 5 (first emphasis added).

- And, although "Mr. Hebert states that 'the Department will be twice burdened if it is required to implement [the start of transgender accessions] by January 1, 2018, and then potentially a different policy after the Department concludes its study and finalizes a policy,' . . . Defendants fail to provide the Court with any insight at

> all into what the [new] policy might be." *Id.* at 5-6 (alteration and emphasis added).[4]

Incredibly, despite this ruling, Defendants here re-submit Mr. Hebert's declaration essentially unchanged. Moreover, in their motion they fail to address any of the deficiencies the *Doe* court identified. Defendants' utter failure to respond to the *Doe* court's criticisms demonstrates that they have no adequate response.

Finally, Defendants' delay in bringing this motion (and their similar delay in seeking a stay of the injunction issued in the *Doe* case) undermines their contention that they will suffer irreparable harm. This Court entered its preliminary injunction on November 21, 2017 — over one month before the January 1 start date for accessions. *See* Dkt. 84. The preliminary injunction in this case followed an earlier order in the *Doe* case that preliminarily enjoined, *inter alia*, the bar on accessions. *See Doe v. Trump*, No. 17-1597 (CKK), 2017 WL 4873042 (D.D.C. October 30, 2017). The government waited three weeks before moving to clarify the *Doe* court's order and over a month before moving to stay the accessions portion of the *Doe* preliminary injunction, *see* Exs. 1, 2. Despite the fact that both the *Doe* order and the Order issued by this Court enjoined the same directive, it was only after the *Doe* court denied the partial motion to stay in that case that Defendants filed their motion for clarification and partial stay in this Court — less than three weeks before the January 1 transgender accessions start date. *See* Dkt. 91. The portions of the injunctions directed at accessions were similar enough to warrant concurrent review, so if Defendants had a genuine need for relief from the January 1 date, they would at least have sought immediate assistance from this Court shortly after the preliminary injunction

[4] The *Doe* court also noted that "[t]here is no evidence in the record that would suggest that the number of transgender individuals who might seek to accede on January 1, 2018 would be overwhelmingly large." Ex. 3, at 5 n.3.

issued, in parallel with their motions in *Doe*. *See Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1317 (1983) (Blackmun, J., in chambers) (denying application for stay in part because movant failed to act expeditiously, which tended to "blunt his claim of urgency and [counseled] against the grant of a stay." (citing *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977) (Marshall, J., in chambers))). Defendants' delay in seeking a stay from this Court provides strong support for the conclusion that they will not suffer irreparable harm from denial of a stay. *See Montrose Parkway Alternatives Coal. v. U.S. Army Corps of Engineers*, 405 F. Supp. 2d 587, 600 n.4 (D. Md. 2005); *cf. also Quince Orchard Valley Citizens Ass'n v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989) (delay indicates lack of irreparable harm to support preliminary injunction).

B. Plaintiffs Will Suffer Irreparable Harm if the Stay Is Granted.

In arguing that Plaintiffs will not suffer irreparable injury from a stay, Defendants repeat the same factually incorrect assertions about Plaintiff George that this Court has already rejected. Defendants falsely assert that Airman George plans to wait until 12-18 months to obtain a bachelor's degree before commissioning as an officer. Dkt. 91, at 6. In fact, as this Court explained in its opinion, Plaintiff George intends to commission as soon as his application to change his DEERS marker is processed, which should happen imminently. *See* Dkt. 85, at 19; *see also* Dkt. 66-9, at 6. And, even if Plaintiff George is not in a position to commission for several more months, the date is so close that he will suffer direct harm from anything more than a minimal delay in the accessions start date — and he will certainly be harmed if the date is delayed indefinitely.

In addition to the concrete harm to Airman George, the Court has already held that, "in the absence of an injunction, [Plaintiffs] will suffer irreparable harm" because "the Directives in the President's Memorandum set apart transgender service members to be treated differently

from all other military service members." *See* Dkt. 85, at 42-43, 45. Despite Defendants' assertions, *see* Dkt. 91, at 6-7, a stay of the preliminary injunction with respect to accessions would cause all Plaintiffs to suffer the stigmatic injury the Court described. If Defendants are permitted to extend the accessions ban indefinitely past January 1, it will send a clear message to all those serving in the armed forces that transgender service members are second class citizens. As the *Doe* court explained, "Plaintiffs [are] being injured every day the Presidential Memorandum's directive preventing accessions [is] in force." *See* Ex. 3, at 7-8. This stigmatic injury, which Defendants wholly fail to address, would affect each Plaintiff.

C. Defendants Are Not Likely to Succeed on the Merits of Their Appeal.

Defendants have failed to demonstrate that they are likely to succeed on the merits of their appeal. They merely reiterate the arguments that this Court considered and rejected in issuing the preliminary injunction.

Specifically, Defendants characterize as error the Court's standing analysis with respect to accessions, its weighing of the equities, and its purported lack of deference to the military. *See* Dkt. 91, at 8. But the Court carefully considered all of Defendants' arguments on these points and resolved them in favor of Plaintiffs. *See* Dkt. 85, at 31-33 (standing); *id.* at 45-46 (equities); *id.* at 43 (deference). For example, the Court recognized the importance of deference to the military, but decided that "this is not a case where deference is warranted, in light of the absence of any considered military policymaking process, and the sharp departure from decades of precedent on the approach of the U.S. military to major personnel policy changes." *Id.* at 43 (quoting Corrected Br. of Retired Military Officers & Former Nat'l Sec. Officials as Amici Curiae in Support of Pls.' Mot. for Prelim. Inj. & Opp'n to Defs.' Mot. to Dismiss, Dkt. 65-1).

Defendants also again argue that the Court erred in entering an injunction that blocks the Transgender Military Service Ban in its entirety rather than blocking the application of that Ban

to the named Plaintiffs. However, they concede that injunctions should be broad enough in scope "to provide complete relief to plaintiffs." Dkt. 91, at 8. As this Court recognized, all Plaintiffs are harmed by, among other things, "the stigma associated with being singled out as unfit for service" — a harm for which the appropriate remedy is to enjoin the ban completely. Dkt. 85, at 31. Moreover, Plaintiffs brought a facial challenge on constitutional grounds, for which the appropriate remedy is an injunction directed to enforcement of the provision. *See* Dkt. 66, at 33-34 (collecting cases); Ex. 3, at 7 (same).

Finally, Defendants contend that "the Court will have erred if it enjoins the Secretary of Defense from exercising his independent authority to extend the effective date of the new accessions policy." Dkt. 91, at 7. But, for the reasons discussed above, *see supra* Part I, in denying Defendants' motion for clarification, the Court would be doing no such thing. Defendants' own filing supports the conclusion that any delay of the accessions start date would be based, not on Secretary Mattis' independent authority, but on the August 25 directive issued by President Trump and enjoined by this Court, *see id.*

D. The Public Interest Does Not Favor a Stay.

Finally, it is not in the public interest to issue a stay that would merely prolong the ongoing injury to Plaintiffs' constitutional rights, s*ee Elrod v. Burns*, 427 U.S. 347, 373 (1976), and deprive the armed forces of capable transgender individuals ready to serve their country. In fact, the accessions directive would *harm* military readiness. *See* Dkt. 40-17, at 2 (fifty-six retired generals and admirals stating that the "ban, if implemented, would . . . deprive the military of mission-critical talent, [which] would degrade readiness").

Defendants barely argue the public interest point. Their argument that the public interest weighs in favor of a stay because the military has not had the opportunity to issue appropriate medical standards and conduct training disregards the fact that medical standards for accessions

of transgender men and women were issued in 2016, and that DoD has already conducted extensive training. *See supra* Part II.A. Moreover, as explained above, Defendants have had almost a year and a half to prepare for the start of accessions, and any injury due to unpreparedness is the result of Defendants' own actions. *See id.* Courts have made clear that self-inflicted injuries should garner far less weight in a balancing of harms. *See Par Pharm., Inc. v. TWI Pharm., Inc.*, No. CIV. CCB-11-2466, 2014 WL 3956024, at *5 (D. Md. Aug. 12, 2014) ("In sum, TWi would not face the same kind of structural harm if the status quo is maintained that Par would suffer if it is not. Instead, it will suffer delayed revenue that it can recover through damages. Further, some of its harms are self-inflicted. Accordingly, the balance of the harms weighs in favor of granting a stay."); *cf. also Ledo Pizza Sys., Inc. v. Singh*, 983 F. Supp. 2d 632, 640 (D. Md. 2013) ("Here, any hardship caused to Singh by a preliminary injunction is self-inflicted. [. . .] Accordingly, the balance of equities tips in Ledo's favor, despite any economic hardship Singh may suffer.").

Like other individuals entering the military, transgender recruits are subject to rigorous medical fitness standards. Dkt. 40-4, at 2 ("[T]ransgender Service members [will be] 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"). The record in this case lacks any support for the proposition that military readiness or lethality will be negatively affected by permitting transgender individuals to enlist beginning on January 1. *See* Dkt. 40-35, at xi-xii, 31, 70; Dkt. 40-38 ¶ 23. Indeed, Defendants do not attempt to argue that those who satisfy the stringent accessions standards scheduled to become effective on January 1 — *i.e.*, who have demonstrated stability for 18 months despite a history of gender dysphoria or who have completed all medical treatment and surgeries at least 18 months prior to accession, *see*

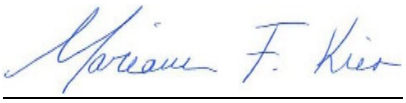
Dkt. 85, at 7-8 — pose any such risk. Rather, the public interest weighs strongly in favor of welcoming such individuals to military service and denying a stay of the injunction.

CONCLUSION

For the foregoing reasons, the Court should decline to allow Defendants to circumvent the preliminary injunction issued in this action by extending the start date for accessions of men and women who are transgender. It should accordingly deny Defendants' motion to clarify or partially stay the preliminary injunction pending appeal.

Dated: December 15, 2017

Respectfully submitted,



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