UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

[PETITIONER],
Petitioner,

v.

DOUGLAS COLLINS,
Secretary of Veterans Affairs,

Respondent.

PETITION FOR EXTRAORDINARY RELIEF

1. Since 2018, the U.S. Department of Veterans Affairs ("VA") has provided gender-affirming care, such as hormone therapy, to veterans when necessary to treat gender dysphoria and other conditions. VA memorialized its provision of this care in Veterans Health Administration ("VHA") Directive 1341(4), *Providing Health Care for Transgender and Intersex Veterans* (May 23, 2018). App. 005.

2. The provision of hormone therapy is consistent with VA's obligations to care for those who have faithfully served the nation. It also reflects a robust medical and scientific consensus as to medically necessary treatment of gender dysphoria.

3. Earlier this year, VA suspended hormone therapy and other gender-affirming care for veterans "who have a current diagnosis or history of, or exhibit symptoms consistent with gender dysphoria," subject to limited exceptions and effective immediately. *See* App. 031 ("Notice"). VA identified no medical evidence supporting its rescission in the one-page Notice and offered no justification other than compliance with a recent Executive Order. *See* Exec. Order. No. 14168, 90 Fed. Reg. 8615 (Jan. 30, 2025) ("EO

14168").

4. The health consequences for thousands of transgender veterans will be devastating, and in some cases life-threatening. And the number of transgender veterans in need of VA healthcare is likely to grow substantially beginning today, the first business day on which the military may separate transgender service members involuntarily.

5. The experience of Petitioner exemplifies the stakes of VA's rescission. Petitioner served honorably in the U.S. Army and then the Army National Guard for a total of eleven years. She was diagnosed with gender dysphoria in 2017, while serving in the National Guard, and received hormone treatment that enabled her to continue her service for eight more years, until she separated in January 2025.

6. Petitioner has sacrificed for the nation. VA has rated her as 100% disabled due to service-connected post-traumatic stress disorder ("PTSD"). Petitioner cannot work due to her PTSD and is dependent on VA disability compensation benefits for her support.

7. While shifting from military healthcare to VHA care this spring, Petitioner sought to renew two prescriptions for her hormone treatments. VHA refused to refill the prescriptions, citing the Notice. Petitioner appealed to the Board of Veterans Appeals ("BVA") and moved for advancement on the docket, but the Board has not yet acted.

8. Petitioner had a small private reserve of her two prescriptions for hormone treatment. She has exhausted her supply for one medication and calculates that her supply for the other will run out no later than August 30, 2025. Petitioner's treating medical providers, as well as experts who have reviewed her medical records, agree that interruption of her hormone treatment will be catastrophic for her physical and mental

health.

9. The VA's rescission of medically recommended and necessary care for eligible transgender veterans is unsupported by science, unjustified by policy, and utterly irrational. It unlawfully discriminates against transgender veterans on the basis of sex and disability. Secretary of Veterans Affairs Douglas Collins (the "Secretary") has also misapplied the rescission to deprive Petitioner—who was receiving hormone treatment while in the National Guard—of necessary medication.

10. Petitioner respectfully requests this Court's urgent intervention, on behalf of herself and other similarly situated transgender veterans, to avoid the imminent risk of severe and irreparable harm to their physical and mental health.

I. Statement of Relief Sought

11. Petitioner requests that this Court (1) hold that the Secretary misapplied the Notice when he denied authorization for hormone therapy to a veteran receiving such treatment during and upon her separation from service; (2) grant injunctive relief prohibiting the enforcement of the Notice; or (3) order the Secretary to adjudicate petitioner's BVA appeal and motion for advancement on the docket within 30 days. *See* 38 U.S.C. § 7107(b)(1); 38 C.F.R. § 20.800(c)(1).

12. As to an injunction prohibiting enforcement of the Notice, Petitioner requests this relief on behalf of herself and all others similarly situated. Petitioner's request for class certification is forthcoming. *See* Vet. App. R. 22(b)(2).

II. Statement of Facts

A. The Parties

13. Petitioner is a veteran of the U.S. Army and the Army National Guard who received an honorable discharge from the Guard on January 7, 2025.

14. Respondent Douglas A. Collins is the Secretary of Veterans Affairs.

B. The Benefit Sought

15. The Secretary misapplied the Notice by denying Petitioner treatment she had received during military service and was qualified to receive from VA upon separation.

16. Even if the denial were consistent with the Notice, the Secretary is statutorily obligated to provide medically necessary healthcare to veterans who, like Petitioner, have a service-connected disability rated 50% or more. *See* 38 U.S.C. § 1710(a)(1)(B). However, VA refuses to provide Petitioner and other veterans with gender dysphoria their medically necessary hormone replacement therapies.

C. Allegations as to Petitioner

17. Petitioner served in the U.S. Army from 2006 to 2008 and the Army National Guard from 2016 to 2025. App. 038, 041.

18. The military recognized Petitioner's gender dysphoria as early as February 16, 2017. App. 034, 062. Petitioner has received hormone replacement therapy through her TRICARE Reserve Select insurance since 2017. App. 034. During her time in service, the Department of Defense ("DoD") also provided Petitioner with psychological care to treat her gender dysphoria. App. 055.

19. In 2021, Petitioner had gender confirmation surgery that altered her sex

organs and, consequently, her ability to produce sex hormones. App. 034, 057. Hormone therapy treatments are now necessary to replace the hormones that her body no longer makes.

20. The human endocrine system relies on hormones to coordinate various functions, including growth, development, and metabolism. Without these hormones, Petitioner's body cannot regulate essential processes, which may lead to severe or life-threatening consequences. App. 092-93, 136-37.

21. "After gonadectomy . . . [hormone treatment] is necessary to mitigate the adverse effects of hypogonadism on accelerated bone loss and the development of osteoporosis and atherosclerosis, among other physiologic and metabolic effects." App. 135. Abrupt withdrawal of these hormones for transgender persons who, like Petitioner, have undergone a gonadectomy contradicts accepted medical standards of care. App. 092.

22. Petitioner has been diagnosed with gender dysphoria and service-connected PTSD with panic disorder. App. 044, 047. In November 2024, VA assigned Petitioner a 100% permanent and total disability rating for her PTSD. App. 044. She is financially reliant on VA disability compensation benefits and VHA healthcare. App. 034.

23. On January 7, 2025, Petitioner was separated from the Guard under M-day status with an honorable discharge. App. 033. Since leaving the Guard, she has received medical care from local providers through VA's community care network.

24. On March 20, 2025, Petitioner asked VA to authorize a refill of her prescriptions for Elestrin and Prometrium. This was her first request for these medications since she transitioned from TRICARE Reserve Select to VA coverage in January 2025.

App. 034.

25. By letter received on March 27, 2025, Petitioner's local VA Pharmacy denied her request, explaining that "[c]ompelling evidence for the requested indication is lacking. Comment: Rescission of VHA Directive 1341(4), Providing Health Care for Transgender and Intersex Veterans." App. 060.

26. On May 2, 2025, Petitioner appealed the denial of coverage to the BVA, and, on May 22, moved for advancement on the docket. App. 062-67, 069-77.

27. As of the date of this filing, Petitioner has run out of progesterone and will exhaust her estradiol supply no later than August 30, 2025. App. 035. After that, Petitioner will be at imminent risk of adverse effects to her cardiovascular and musculoskeletal systems and the deterioration of her mental health and quality of life. *See* App. 092-94, 135-41.

III. Argument

A. Legal Standard

28. This Court has authority to "compel action of the Secretary unlawfully withheld or unreasonably delayed," 38 U.S.C. § 7261(a)(2), and to issue "all writs necessary or appropriate in aid of [its] . . . jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a) (All Writs Act or "AWA"); *see Martin v. O'Rourke*, 891 F.3d 1338, 1343 (Fed. Cir. 2018).

29. Mandamus is appropriate where: (1) the petitioner lacks adequate alternative means to obtain relief; (2) the petitioner's right to the writ is clear and indisputable; and (3) the court determines the writ is warranted. *Cheney v. U.S. Dist. Court for Dist. Of*

Columbia, 542 U.S. 367, 380-81 (2004); *Wolfe v. McDonald*, 28 F.4th 1348, 1354 (Fed. Cir. 2022).

30. In *Hambridge v. McDonough*, this Court clarified that a veteran seeking injunctive relief must satisfy traditional mandamus and stay factors by showing: "(1) a lack of adequate alternative means to obtain the desired relief; (2) a likelihood of success on the merits of [her] appeal (this is akin to the 'clear and indisputable right' inquiry but less demanding); (3) irreparable harm in the absence of such relief; (4) [that] the public interest would be better served by an injunction; and (5) [that] the balance of hardship on the petitioner and VA favors the petitioner." 37 Vet. App. 155, 159 (2024).

31. If the Court denies injunctive relief, it may still grant mandamus based on unreasonable delay by applying the six factors articulated in *Telecommunications, Research and Action Center v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) [hereinafter "*TRAC*"]. *Martin*, 891 F.3d at 1344.

32. The Court may also exercise its inherent equitable authority. U.S. Const. art. I, § 8.

B. A writ will be in aid of this Court's jurisdiction.

33. Given the urgency of Petitioner's appeal, a writ is "necessary or appropriate in aid of [this Court's] jurisdiction." 28 U.S.C. § 1651(a).

34. Petitioner's "appeal was filed at the Board and is awaiting a decision, placing the claim in [this Court's] prospective jurisdiction." *Purpose Built Fams. Found., Inc. v. McDonough*, 36 Vet. App. 345, 355 (2023).

35. The BVA lacks jurisdiction to decide Petitioner's statutory and constitutional

claims. Requiring her to wait months or years for the Board to hold it cannot decide her claims is futile, risks irreparable injury, and frustrates this Court's timely review. The serious physical and mental harm that would result from discontinuing necessary medication will occur long before an appeal from an adverse Board decision could reach this Court.

C. Petitioner has no adequate alternative means to obtain relief.

36. Petitioner lacks adequate alternative means to enjoin enforcement of the Notice or compel prompt adjudication of her claim. Her appeal involves, *inter alia*, a claim that the denial of medically necessary healthcare based on her transgender status violates the Fifth Amendment. It is well settled, however, that "constitutional questions exceed the jurisdiction of the Board." Docket No. 06-24 856A, Citation No. 1000390 (Bd. Vet. App. Jan. 4, 2010) (citing 38 U.S.C. § 7104)).

37. Further, the Board may consider claims for benefits only "under the laws administered" by VA. 38 C.F.R. § 3.1(p). Petitioner asserts claims under federal statutes that VA does not administer: Section 1557 of the Affordable Care Act ("ACA"), 42 U.S.C. § 18116(a), and the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* ("Rehab Act").

38. VA itself has taken the position that veterans must pursue claims under Section 1557 of the ACA and the Rehab Act before this Court, not in U.S. district court. *See NOW-NYC v. U.S. Dep't of Def. & U.S. Dep't of Vet. Affs.*, 755 F. Supp. 3d 350, 359 (S.D.N.Y. 2024) (Section 1557), *appeal docketed, No. 25-71*; *Powers v. McDonough*, 713 F. Supp. 3d 695, 713 (C.D. Cal. 2023) (Rehab Act), *appeal docketed,* No. 24-429. Forcing Petitioner to await BVA dismissal wastes time and inflicts further harm.

39. Even if the Secretary correctly applied the Notice, exhausting administrative remedies would be "obviously futile." *Hayes v. Sec'y of Def.*, 515 F.2d 668, 674 (D.C. Cir. 1975); *see also Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 107 (D.C. Cir. 1986). The Notice and EO 14168 reflect VA's categorical position on providing gender-affirming care for transgender veterans.

D. Petitioner is likely to succeed on the merits.

40. Petitioner is likely to prevail on her claim that the Secretary has misapplied the Notice by denying her continuing treatment she was receiving upon separation from the Guard and because the Notice itself: (1) is arbitrary and capricious; (2) exceeds VA's statutory authority; (3) violates the Fifth Amendment; (4) violates Section 504 of the Rehab Act; and (5) violates Section 1557 of the ACA.

1. The Secretary misapplied the VHA Notice.

41. Notwithstanding the rescission of VHA Directive 1341(4), Petitioner is entitled to hormone replacement therapy under the terms of the Notice.

42. The Notice provides that veterans with a "current diagnosis or history of . . . gender dysphoria, shall receive cross-sex hormone therapy" if "[s]uch care was provided *as part of and upon separation from military service*, if otherwise qualified for VA Health Care." App. 031 (emphasis added).

43. Petitioner received hormone replacement therapy through TRICARE Reserve Select while serving, *see* App. 050, and remained eligible for such treatment through VHA upon her separation from service on January 7, 2025, with a 100% permanent and total disability rating.

44. Thus, because Petitioner received hormone replacement therapy as part of and upon her separation from military service and is qualified for VA Health Care as a veteran with a 100% disability rating, VA erroneously applied the Notice when it denied coverage for her estradiol and progesterone.

2. The VHA Notice is unlawful.

45. If the Court concludes that the Secretary properly applied the Notice to deny Petitioner care, then it must determine the lawfulness of the Notice. Petitioner is likely to prevail on her claims that the Notice exceeds VA's statutory and constitutional authority.

46. First, the Notice, and, by extension, the rescission of VHA Directive 1341(4), is arbitrary and capricious, an abuse of discretion, and not in accordance with law, in violation of 38 U.S.C. § 7261(a)(3)(A); *see also* 5 U.S.C. § 706(2)(A).

47. Agency action is arbitrary and capricious if done without an "explanation," *see Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019), or with an explanation that evinces a lack of "reasoned decision making," *Michigan v. EPA*, 576 U.S. 743, 750 (2015), i.e. a failure to "consider[ ] . . . the relevant factors." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

48. An agency action may also be "arbitrary and capricious" if it violates the "fundamental principle of administrative law that agencies must treat like cases alike," *Grayscale Invs., LLC v. SEC*, 82 F.4th 1239, 1242 (D.C. Cir. 2023), and fails to "point to a relevant distinction" between two facially similar cases that it decides to treat differently. *Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).

49. And finally, when an agency reverses prior policy, the agency must "display

awareness that it is changing position" and provide a "more detailed justification than what would suffice for a new policy created on a blank slate" if the new policy "rests upon factual findings that contradict those which underlay its prior policy" or where the "prior policy has engendered serious reliance interests . . . ." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–15 (2009).

50. The sole rationale VA offered in its one-page rescission of Directive 1341(4) was compliance with EO 14168, which alone is insufficient. *See, e.g.*, *Louisiana v. Biden*, 622 F. Supp. 3d 267, 294–95 (E.D. La. 2022) ("A decision supported by no reasoning whatsoever in the record cannot be saved merely because it involves an Executive Order.").

51. Even if VA may incorporate EO 14168's reasoning into its own Notice, the EO provides no reasoned explanation for denying gender-affirming healthcare to transgender veterans experiencing gender dysphoria. The EO itself is unconstitutional and arbitrary executive action, as federal courts held in enjoining other policies that flow from it. *See Washington v. Trump*, --- F. Supp. 3d ---, No. 2:25-cv-00244-LK, 2025 WL 659057 (W.D. Wash. Feb. 28, 2025) (federal funding of medical care for transgender youth), *appeal docketed*, No. 25-1922 (9th Cir. Mar. 24, 2025); *PFLAG, Inc. v. Trump*, --- F. Supp. 3d ---, No. 25-337-BAH, 2025 WL 685124 (D. Md. Mar. 4, 2025) (same), *appeal docketed*, No. 25-1279 (4th Cir. Mar. 24, 2025; *Orr v. Trump*, --- F. Supp. 3d ---, No. 1:25-cv-10313-JEK, 2025 WL 1145271 (D. Mass. Apr. 18, 2025) (sex designation on passports).

52. Further, VA has failed to articulate why hormones like estradiol and progesterone remain available to cisgender veterans but not to transgender veterans diagnosed with gender dysphoria.

53. Finally, VA's actions contradict established medical evidence. Gender-affirming care, including hormone replacement therapy, is the standard treatment for gender dysphoria and is endorsed by the mainstream medical community in the United States. *See* App. 088, 133-34. And nothing in the Notice or the EO suggests that either VA or the President "consciously took stock of—much less studied—the potentially debilitating effects that the new polic[y] could have on transgender [persons]." *Kingdom v. Trump*, 1:25-cv-691-RCL, 2025 WL 1568238, at *10 (D.D.C. June 3, 2025) (finding that the reasoning in the EO was "plainly deficient").

54. Only days ago, Judge Royce C. Lamberth held that incarcerated transgender individuals were likely to succeed on their claim that the denial of the very same care at issue in this case was arbitrary and capricious. Judge Lamberth preliminarily enjoined the U.S. Bureau of Prisons from denying hormone treatment and other gender-affirming care to incarcerated people. *Id.* at *17.

55. The Secretary's denial of gender-affirming care to veterans like Petitioner who faithfully served their country is no less arbitrary and capricious than the Bureau of Prisons' denial of such care to incarcerated transgender individuals. The Secretary's Notice fails all three criteria for lawful agency action.

56. Second, this Court must set aside agency action that exceeds statutory authority. 38 U.S.C. § 7261(a)(3)(C); *see also* 5 U.S.C. § 706(C). VA's rescission of Directive 1341(4) violates Section 1557 of the ACA and Section 504 of the Rehab Act, as explained below, as well as VA's own statutory mandate to provide medically necessary services for veterans with a service-connected disability rating of 50 percent or more. 38

U.S.C. § 1710(a)(1)(B).

57. VHA enrollees like Petitioner are entitled to a "medical benefits package," 38 C.F.R. § 17.36, that will "promote, preserve, or restore" health in accordance "with generally accepted standards of medical practice." *Id.* § 17.38(b). Care "promote[s] health" if it "will enhance the quality of life or daily functional level of the veterans." *Id.* § 17.38(b)(1).

58. VA's categorical ban on transgender-related healthcare, regardless of medical need, directly contradicts this mandate and prevailing medical standards. *See* App. 093, 141.

59. The exclusion is all the more irrational because the Notice exempts veterans who are "already receiving such care by VA." App 031. VA thus acknowledges the medical necessity of these treatments but denies them solely to first-time coverage seekers.

60. Third, VA's denial of transgender-related healthcare, effected via the Notice, unlawfully discriminates based on sex and transgender status, violating the equal protection guarantee of the Fifth Amendment's Due Process Clause. U.S. Const. amend. V.

61. The Notice facially discriminates on the basis of sex. Under the policy, only "cross-sex hormone therapy" is prohibited. *Id*. Had Petitioner been assigned female at birth, VA would continue to provide coverage for her estradiol or progesterone.

62. By classifying veterans based on their sex-assigned-at-birth, the Notice facially discriminates based on sex. The Notice targets transgender people for disparate treatment, thus creating a sex-based classification, because "it is impossible to discriminate against a person for being . . . transgender without discriminating against the individual

based on sex." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660 (2020).[1] Five circuit courts concur that classifications based on transgender status are inherently sex-based under equal protection principles. *See Fowler v. Stitt*, 104 F.4th 770, 793 (10th Cir. 2024); *Kadel v. Folwell*, 100 F.4th 122, 153 (4th Cir. 2024) (en banc); *Hecox v. Little*, 79 F.4th 1009, 1026 (9th Cir. 2023); *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1051 (7th Cir. 2017); *Brandt ex rel. Brandt v. Rutledge*, 47 F.4th 661, 669–70 (8th Cir. 2022). *But see, e.g.*, *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023), *cert. granted,* 144 S. Ct. 2679 (Mem.) (June 24, 2024).

63. Similarly, the Notice facially discriminates based on transgender status because "gender dysphoria is so intimately related to transgender status as to be virtually indistinguishable from it." *Kadel*, 100 F.4th at 146. Classifications based on transgender status warrant heightened scrutiny because transgender persons are a quasi-suspect class. *See, e.g.*, *Hecox*, 104 F.4th at 1079; *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610 (4th Cir. 2020); *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 208 (D.D.C. 2017).

64. Because VA offered no sufficient justification for its prohibition on transgender-related healthcare, the Secretary has failed to carry his burden to show that the Notice "serves important governmental objectives and that the discriminatory means

[1] The Supreme Court recently allowed the ban on the accession and retention of transgender service members to go into effect. *See United States v. Shilling*, --- S.Ct. ----, No. 24A1030, 2025 WL 1300282 (Mem.) (May 6, 2025). This does not help the Secretary in this case, as the political branches are owed "healthy deference" from judicial scrutiny "in the area of military affairs." *Rostker v. Goldberg*, 453 U.S. 57, 66 (1981). No such deference applies here; in fact, the pro-veteran canon directs that statutory ambiguities be resolved in favor of the veteran. *See Brown v. Gardner*, 513 U.S. 115, 118 (1994).

employed are substantially related to the achievement of those objectives." *United States v. Virginia*, 518 U.S. 515, 524 (1996).

65. Finally, the Supreme Court has long held that government action violates the requirement of equal protection when it is based on "a bare . . . desire to harm a politically unpopular group," *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973), or "mere negative attitudes," *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985). Here, VA's sole rationale was compliance with EO 14168, which itself is "built on a foundation of irrational prejudice toward fellow citizens whose gender identity does not match their sex assigned at birth." *Orr*, 2025 WL 1145271, at *14. The Notice is "inexplicable by anything but animus toward the class it affects," *Romer v. Evans*, 517 U.S. 620, 632 (1996), and fails even rational basis review.

66. Because the Notice cannot survive any level of scrutiny—much less heightened scrutiny—Petitioner is likely to succeed on her equal protection claim.

67. Fourth, the Notice violates Section 504 of the Rehab Act, which prohibits discrimination by federal agencies against individuals with disabilities. 29 U.S.C. § 794(a). A qualifying disability is "a physical or mental impairment that substantially limits one or more major life activities." *Accord* 42 U.S.C. § 12102 (Americans with Disabilities Act ("ADA") definition of disability); 29 U.S.C. §§ 705(9)(B), (20)(B) (incorporating the ADA's definition into Section 504).

68. Gender dysphoria is a qualifying disability under the Rehab Act. *See, e.g.*, *Williams v. Kincaid*, 45 F.4th 759, 765-74 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2414 (2023).

69. Gender dysphoria is a physiological condition that affects bodily systems including the neurological and endocrine systems, because it is caused, in part, by an atypical interaction of sex hormones and the brain. *See* 28 C.F.R. § 35.108(b)(1) ("Physical or mental impairment means . . . [a]ny physiological disorder or condition . . . affecting one or more body systems, such as: neurological . . . and endocrine"); *see also* App. 133 ("To meet criteria for the diagnosis of gender dysphoria, the individual must . . . experience clinically significant distress or impairment in social, occupational, or other important areas of functioning.").

70. Petitioner's gender dysphoria, if left untreated, will substantially limit one or more of her major life activities. *See* 28 C.F.R. § 35.108(c)(1) (defining "major life activities" to include functioning of the neurological and endocrine systems). Further, Petitioner's "need for hormone therapy . . . indicate[s] that her gender dysphoria has some physical basis," *Williams*, 45 F.4th at 771, and shows that her disability is not subject to the Rehab Act's exclusion of "gender identity disorders not resulting from physical impairments," 29 U.S.C. § 705(20)(F)(i). VA's refusal to cover care for Petitioner's condition constitutes unlawful discrimination based solely on her disability.

71. Fifth, and finally, the Notice violates Section 1557 of the ACA, which bars discrimination under any health program administered by an executive agency. 42 U.S.C. § 18116(a). The statute incorporates the protections and enforcement mechanisms of statutes including Title IX, 20 U.S.C. § 1681 *et seq.* (sex), and the Rehab Act, 29 U.S.C. § 794(a) (disability). VA's rescission of Directive 1341(4) violates Section 1557 of the ACA by discriminating on the basis of sex and disability, for the reasons set forth above.

E. Petitioner will suffer irreparable harm in the absence of such relief.

72. Without the injunctive relief sought, the Notice will cause Petitioner to suffer serious and irreparable harm.

73. The Notice deprives Petitioner of medically necessary treatment for gender dysphoria, a serious condition she has long managed with hormone therapy. Its enforcement risks irreversible physical changes and mental harm. *See* App. 096-97, 136-41. Without these hormones, Petitioner's body cannot regulate essential processes, potentially leading to life-threatening consequences. App. 092-93, 136-37.

74. Courts agree that denial of necessary medical benefits constitutes irreparable harm, *see, e.g.*, *Bowen v. City of New York*, 476 U.S. 467, 483-84 (1986), which is heightened when paired with financial strain. *See Risteen v. Youth for Understanding, Inc.*, 245 F. Supp. 2d 1, 16 (D.D.C. 2002) ("The loss of health insurance benefits—particularly for those who are unemployed—constitutes irreparable harm for purposes of a preliminary injunction."); *id.* at 16 n.4 (collecting cases). Petitioner is at imminent risk of irreparable mental and physical harm absent relief from this Court.

F. The public interest would be better served by an injunction.

75. The public interest always favors enforcing constitutional protections. *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) (en banc), *aff'd*, 134 S. Ct. 2751 (2014). Because Petitioner is likely to succeed on the merits of her equal protection claim, the public interest weighs in her favor.

76. Further, the public interest weighs in favor of an injunction due to a national

commitment to providing care for veterans. *See Ribaudo v. Nicholson*, 21 Vet. App. 137, 162 (2007) (en banc) (Schoelen, J., dissenting) (quoting President Abraham Lincoln and stating that the VA motto reflects a core value of our Nation, which is "'[t]o care for [those] who shall have borne the battle for [their] widow, and [their] orphan'").

G. The balance of hardships favors Petitioner.

77. Finally, the balance of hardships tips decisively in favor of an injunction. This factor directs the Court to "balance the competing claims of injury and . . . consider the effect on each party of the granting or withholding of the requested relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (internal quotation omitted).

78. VA will not suffer any harm if this Court issues an injunction, for it would simply maintain the status quo—continuing the hormone treatment Petitioner received in the military and VA's own seven-year practice of providing gender-affirming care for transgender veterans. *See Aamer v. Obama*, 742 F.3d 1023, 1043 (D.C. Cir. 2014) ("The primary purpose of a preliminary injunction is to preserve the object of the controversy in its then existing condition—to preserve the status quo." (internal citation omitted)).

79. By contrast, enforcement of the Notice will inflict severe harm on Petitioner and other gender dysphoric veterans. *See also* App. 098 ("Barring effective treatment for gender dysphoria in the VHA will not eliminate transgender veterans, but will, unfortunately, lead to an increase in mental and physical health problems and suicidality in an already vulnerable population.").

H. A writ is warranted because the delay in this case is unreasonable.

80. If this Court determines that an injunction is not appropriate in the present

case, the Court should still issue a writ of mandamus and order the BVA to adjudicate Petitioner's motion and appeal within 30 days. *TRAC*, 750 F.2d at 80.

81. The first *TRAC* factor, the "rule of reason" analysis, favors Petitioner. *See Wright v. McDonough*, No. 23-5505, 2024 WL 1299123, at *8 (Vet. App. Mar. 27, 2024). No rule of reason can justify delaying medical care for weeks or months—especially for a recently separated veteran who had received that same treatment through military healthcare. *See Doe v. Risch*, 398 F. Supp. 3d 647, 655-56 (N.D. Cal. 2019) ("What constitutes an unreasonable delay . . . depends to a great extent on the facts of the particular case." (internal quotation marks omitted)).

82. The second factor considers whether Congress has indicated a time frame for when an agency is expected to act. *Martin*, 891 F.3d at 1345. Congress has recognized that certain claims merit expedited treatment by the BVA. *See* 38 U.S.C. § 7107(b). Here, Petitioner has already moved for Advancement on the Docket because delay risks serious illness and financial hardship—both statutory criteria for expedited adjudication. *Id.*

83. The third *TRAC* factor is satisfied here because delays affecting health and welfare are less tolerable than those in the realm of economic regulation. 750 F.2d at 80. VA's delay jeopardizes Petitioner's physical and financial wellbeing. Further, if Petitioner is forced to pay for her essential medication out of pocket, the money will come from her VA disability payments—her only source of income—at the expense of other basic needs.

84. Analysis of the third and fifth factors "often overlap[s]." *Martinez v. McDonough*, No. 23-7322, 2024 WL 862153, at *2 (Vet. App. Feb. 29, 2024), The fifth factor assesses the nature and extent of the interests prejudiced by delay, and "incorporates

an analysis of the effect of a delay on a particular veteran." *Martin*, 891 F.3d at 1347. As explained above, a favorable decision on Petitioner's appeal would restore needed care and preserve her limited income.

85. As for the fourth factor, expediting Petitioner's case would not unduly burden VA or affect activities of a competing priority. To the contrary, Petitioner is likely one of the first of thousands of veterans affected by the rescission of VHA Directive 1341(4). As such, this petition differs from others that this Court has denied in order to avoid a petitioner "effectively jumping the line in VA's first-come-first-served queue system." *Latham v. McDonough*, No. 23-7711, 2024 WL 322356, at *6 (Vet. App. Jan. 29, 2024). Prompt adjudication would clarify the agency's obligations and avoid forcing each affected veteran to undergo futile administrative exhaustion. *See Martin*, 891 F.3d at 1347.

86. For the sixth factor, VA's delay need not stem from misconduct to be found unreasonable. This factor favors the claimant or is neutral.

87. In sum, the *TRAC* factors weigh in Petitioner's favor, and this Court should find that VA's delay is unreasonable and that a writ of mandamus is warranted.

IV. Conclusion

88. For the foregoing reasons, and to prevent the imminent wrongful interruption of necessary medical care for Petitioner, this Court should grant this petition and either (1) hold that the Secretary misapplied the Notice to deny Petitioner hormone treatment or (2) hold the Notice unlawful and enjoin its enforcement. In the alternative, the Court should order the BVA to adjudicate Petitioner's appeal and motion to advance within thirty days.

Dated: June 9, 2025

Respectfully Submitted,

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