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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AIDEN STOCKMAN; NICOLAS TALBOTT; TAMASYN REEVES; JAQUICE TATE; JOHN DOES 1-2; JANE DOE; and EQUALITY CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. 5:17-cv-01799-JGB-KKx

DECLARATION OF ERIK K. FANNING IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Eric K. Fanning, declare as follows:

Background and Experience

1. I served as Secretary of the Army from May 18, 2016 to January 20, 2017.

2. I received a Bachelor's Degree in History from Dartmouth College in 1990. From 1991 until 1996, I worked in various government positions in Washington, D.C., as a research assistant with the House Armed Services Committee, a special assistant in the Office of the Secretary of Defense, and Associate Director of Political Affairs at the White House. From 1997 to 1998, I worked on the national and foreign assignment desks at CBS News in New York. Subsequently, I worked at Robinson, Lerer & Montgomery, a strategic communications firm. From 2001 to 2006, I was Senior Vice President for Strategic Development at Business Executives for National Security, a Washington, D.C.-based think tank, where I was in charge of international programs and all regional office operations in six cities across the country. I next served as managing director at CMG, another strategic communications firm. From 2008 to 2009, I was Deputy Director of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, which issued its report in December of 2008.

3. From 2009 to 2013, I served as the Deputy Under Secretary of the Navy and Deputy Chief Management Officer. In this role, I led the department's business transformation and governance processes and coordinated efforts to identify enterprise-wide efficiencies. From April 18, 2013 to February 17, 2015, I served as Under Secretary of the Air Force after being nominated by the President to that position and confirmed by the Senate. From June 21, 2013 through December 20, 2013, I served as Acting Secretary of the Air Force.

4. In March 2015, I was assigned as the Special Assistant to the Secretary and Deputy Secretary of Defense (Chief of Staff). In this role, I helped

manage Secretary of Defense Ashton Carter's transition into office, built his leadership team, and oversaw the day-to-day staff activities of the Office of the Secretary of Defense.

5. On June 30, 2015, President Barack Obama directed me to serve as Acting Under Secretary of the Army and Chief Management Officer. In that position, I served as the Secretary of the Army's senior civilian assistant and principal adviser on matters related to the management and operation of the Army, including development and integration of the Army Program and Budget. From November 3, 2015 to January 11, 2016, I served as Acting Secretary of the Army. On November 3, 2015, President Obama nominated me to serve as Secretary of the Army, and the Senate confirmed my nomination on May 17, 2016.

6. As Secretary of the Army, I was head of the Department of the Army and had statutory responsibility for all matters relating to the United States Army: manpower, personnel, reserve affairs, installations, environmental issues, weapons systems and equipment acquisition, communications, and financial management. Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Army is responsible for all affairs of the Department of the Army, including the morale and welfare of personnel. My personnel-related oversight responsibilities included the development and implementation of recruitment, training, retention, and medical policies for active duty and reserve Army personnel. For duties other than those as a member of the Joint Chiefs of Staff, the Chief of Staff of the Army, the most senior uniformed Army officer, operated under my authority, direction, and control.

The Army

7. The Army is the largest of the service branches of the United States Armed Forces and performs land-based military operations. The Department of the Army is one of the three military departments of the Department of Defense ("DoD"). The Army has an annual budget of more than $140 billion, inclusive of

funding for Overseas Contingency Operations. For fiscal year 2017, the projected end strength for the Active Army is 460,000 soldiers, with an additional 335,000 soldiers in the Army National Guard, and 195,000 in the United States Army Reserve, for a total of 990,000. As of 2016, the Army had approximately 190,000 soldiers deployed to 140 countries in support of U.S. geographic Combatant Command missions. The Army's command structure includes three Army Commands, ten Army Service Component Commands, and thirteen Direct Reporting Units, operating in the field and from bases and facilities located across the United States and around the world.

8. The Army's core mission is to fight and win our Nation's wars by providing prompt, sustained land dominance across the full range of military operations and spectrum of conflict in support of combatant commanders. It does this by executing statutory directives, including organizing, equipping, and training forces for the conduct of prompt and sustained combat operations on land, and by accomplishing missions assigned by the President, Secretary of Defense and combatant commanders.

9. The Army is the most formidable ground combat force on earth and one of the largest employers in the United States. The Army's continued excellence in executing its many missions is largely due to deliberate investments in soldier training, equipping, and leader development. Soldiers receive training at the highest level, not only in the classroom, but also through rigorous instruction under intense pressure and realistic battlefield conditions. Many Army personnel are employed in highly technical roles that require lengthy and expensive specialized training. Particularly in light of these investments in personnel, recruitment and retention of capable and qualified soldiers is crucial to Army readiness.

Development of DoD Policy

10. In 2010, Congress voted to repeal the so-called Don't Ask, Don't Tell statute that previously had prevented gay, lesbian, and bisexual persons from serving openly in the military. The repeal statute required the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff to certify that allowing individuals to serve openly regardless of their sexual orientation would be consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces. That certification was provided to Congress on July 22, 2011, following a process of review, both before and after passage of the repeal statute, of the impact of the change and of the training and other policy changes that would be necessary to implement it.

11. The repeal of Don't Ask, Don't Tell raised questions about the Armed Forces' policy on service by transgender individuals. Particularly among commanders in the field, there was an increasing awareness that there were already capable, experienced transgender service members in every branch, including on active deployment on missions around the world.

12. Prior to August 2014, DODI 1332.38, *Physical Disability Evaluation*, captured the Department of Defense's policy regarding service members with physical disabilities, and included "Sexual Gender and Identity Disorders" in a broader category of "conditions and defects of a developmental nature" that would render service members subject to "appropriate administrative action." This ambiguous terminology proved confusing to both military leaders and medical professionals, given that nothing else in DoD policy defines or refers to so-called "Sexual Gender and Identity Disorders."

13. In August 2014, the Department of Defense issued a new regulation, DODI 1332.18, *Disability Evaluation System (DES)*. The regulation eliminated the DODI 1332.38's list of "disabilities" that would disqualify persons from retention in military service, including those related to Sexual Gender and Identity

Disorders. This new regulation instructed each branch of the Armed Forces to reassess whether disqualification based on these conditions was justified based on "interfere with assignment to or performance of duty." As a result, the August 2014 update both removed the archaic language that some had interpreted to *require* discharge of transgender service members while *prohibiting* the discharge of any person on such basis unless their condition interfered with their work.

14. In February 2015, just a few days after Secretary of Defense Ashton Carter took office, I accompanied him on a trip to Kandahar, Afghanistan, in my capacity as his chief of staff. At an open town hall-style meeting with service members, Secretary Carter was asked about his views on service by transgender service members in an austere environment like Afghanistan. The Secretary's response was that he had not given the issue much study, but his "fundamental starting point" was "that we want to make our conditions and experience of service as attractive as possible to our best people in our country." He stated that the "important criteria" was, "Are they going to be excellent service members?"

15. The Kandahar town hall received significant media coverage. As a result, senior officials, including the offices of the Joint Chiefs of Staff, began to inquire about the Secretary's plans concerning the policy on transgender service members.

16. It was against this background and the standing DOD policies that on July 13, 2015, Secretary Carter acknowledged that transgender service members were "being hurt by an outdated, confusing, inconsistent approach" that was "contrary to our value of service and individual merit." In short, the problem was that transgender individuals were being harmed by outdated military policies that failed to provide them equal treatment if they could do their jobs, and threatened them with the possibility of arbitrary dismissal.

17. On July 28, 2015, after consultations with the secretaries of the military departments, Secretary Carter directed Brad Carson, Acting

Undersecretary of Defense for Personnel and Readiness, to convene a working group ("the "Working Group") to study the policy and readiness implications allowing transgender persons to serve openly in the Armed Forces. The Working Group was asked to start with the presumption that transgender persons could serve openly unless objective, practical impediments were identified, and to develop an implementation plan that addressed those issues with the goal of maximizing military readiness. A true and accurate copy of this directive is attached hereto as Exhibit A.

18. By the time Secretary Carter directed the formation of the Working Group, I had moved out of my position in his office to become Acting Under Secretary of the Army. Subsequently, from November 3, 2015 to January 11, 2016, I served as Acting Secretary of the Army, and then as Secretary of the Army beginning May 18, 2016. During my time as Acting Secretary and Secretary, I oversaw the Department of the Army's participation in the Working Group. The Working Group met as a whole and also assigned various sub-groups to research and analyze discrete issues and report their findings. I met regularly with members of the Working Group to discuss their progress and the Army's input on the issues discussed.

19. The Working Group considered information from a variety of sources, including medical and other experts, drawn from both within and outside of the Department of Defense; senior military personnel who supervised transgender service members; and transgender people on active duty. The input of commanders reflected their high regard for the transgender staff serving under their command.

20. Members of the Working Group discussed the evidence relating to the costs of permitting transgender persons to serve openly in the military, and the evidence relating to the impact of service by transgender people on operational effectiveness and readiness. Members of the Working Group noted that while

transgender service members might have short periods when they were not deployable due to their medical treatment, such periods are not unusual for service members generally, who may take time off due to medical conditions or other reasons.

21. The Working Group also considered that providing medical care for transgender individuals is becoming increasingly prevalent in both public and private sectors alike. Over a third of Fortune 500 companies currently offer employee health insurance plans with transgender-inclusive coverage. Similarly, nondiscrimination policies at two-thirds of Fortune 500 companies now cover gender identity.

22. With respect to the public sector, the Working Group learned that all civilian federal employees have access today to a health insurance plan that provides comprehensive coverage for transgender-related care and medical treatment.

23. Members of the Working Group also discussed the disruptive effect of prohibiting service by transgender people, since such a policy necessitates the discharge of highly trained and experienced service members, leaving unexpected vacancies in operational units and requiring the expensive and time-consuming recruitment and training of replacement personnel.

24. Members of the Working Group also discussed the negative impact of prohibiting service by transgender people on overall military readiness because it reduces the pool of potential, qualified recruits for military service.

25. The Working Group also considered the 2016 report of a study that the DoD had commissioned from the RAND Corporation, a federally funded research center sponsored by the Defense Secretary's Office, the Joint Staff, the Unified Combatant Command, and the defense Intelligence Community, about the healthcare needs of transgender service members, the associated costs of extending healthcare coverage for transition-related treatments, and the potential readiness

implications of allowing 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 B.

26. 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." (xi-xii.) The RAND Report further noted that there was no evidence that allowing transgender people to serve openly would negatively impact unit cohesion, operational effectiveness, or readiness. Among other things, the RAND Report found that eighteen other countries that permit open service by transgender personnel—including Israel, Australia, the United Kingdom, and Canada—had not identified any negative impacts on operational effectiveness or readiness. Based on its analysis of allied militaries and the expected rate at which American transgender service members would require medical treatment that would affect their fitness for duty or deployability, RAND's analysis concluded that there would be "minimal impact on readiness from allowing transgender personnel to serve openly." (47.)

27. At the conclusion of its discussion and analysis, the members of the Working Group did not identify any basis for a blanket prohibition on open military service of transgender people. Likewise, no one suggested to me that a bar on military service by transgender persons was necessary for any reason, including readiness or unit cohesion.

28. The Working Group communicated its conclusions to the Secretary of Defense, including that permitting transgender people to serve openly in the United States military would not pose any significant costs or risks to readiness, unit cohesion, morale, or good order and discipline.

29. The Working Group also agreed that the accession policy should be changed to allow transgender people to enlist. The Working Group agreed that the

medical standards for accession into the Military Services by transgender persons should be based upon the same standards applied to persons with other medical conditions, which seek to ensure that those entering service are free of medical conditions or physical defects that may require excessive time lost from duty. Based upon that standard, the Working Group agreed that an applicant with a history of gender dysphoria or of treatment for gender dysphoria should be able to accede when the applicant has completed all medical treatment associated with the applicant's medical condition and has been stable in the preferred gender for a specified period of time.

30. The Working Group also provided comprehensive input regarding all aspects of implementing any change to related military policy. That included addressing practical concerns, like housing and uniform standards for transgender personnel, including when a transitioning service member should be authorized to conform to the standard of the gender to which they were transitioning.

31. The guiding principle behind the Working Group deliberations was that all who are qualified to serve should have the opportunity to do so. No qualified American who can meet the enlistment and retention standards should be excluded from the opportunity to serve.

32. 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 C.

33. 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 Army, as well as all organizational entities within the DoD, including the Joint Chiefs of Staff.

34. In DTM 16-005, the Secretary of Defense noted that the "defense of the Nation requires a well-trained, all-volunteer force comprised of Active and Reserve Component Service members ready to deploy worldwide on combat and operational missions." Consistent with and in service to that requirement, DTM 16-005 set forth the policy of the DoD:

> The policy of the Department of Defense is that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness. Consistent with the policies and procedures set forth in this memorandum, transgender individuals shall be allowed to serve in the military.

35. In DTM 16-005, the Secretary of Defense set forth DoD's "position, consistent with the U.S. Attorney General's opinion, that discrimination based on gender identity is a form of sex discrimination."

36. Through DTM 16-005, the Secretary of Defense ordered the Secretaries of the Military Departments, including the Army to identify all DoD, Military Department, and Service issuances in need of revision in light of the DoD change in policy, and to submit proposed revisions to the Undersecretary of Defense for Personnel and Readiness ("USD P&R"). USD P&R was tasked with drafting revisions to all necessary issuances consistent with DTM 16-005.

37. DTM 16-005 also detailed procedures with respect to military service of transgender individuals concerning (i) separation and retention, (ii) accessions, (iii) in-service transition, (iv) medical policy, (v) equal opportunity, (vi) education and training, and (vii) implementation and timeline.

38. With respect to separation and retention, DTM 16-005 provided that, "[e]ffective immediately, no otherwise qualified Service member may be involuntarily separated, discharged or denied reenlistment or continuation of service, solely on the basis of their gender identity." In addition, transgender service members would "be subject to the same standards as any other Service member of the same gender[.]"

39. Concerning accessions, DTM 16-005 required that no later than July 1, 2017, USD P&R update DoD Instruction 6130.03, which establishes medical standards, which, if not met, are grounds for rejection for military service. Specifically, DTM 16-005 instructed USD P&R to revise DoD Instruction 6130.03 to reflect that:

> (1) individuals with a history of gender dysphoria would not be disqualified from serving on that basis if a licensed medical provider certifies "the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months";
>
> (2) individuals with a history of medical treatment associated with gender transition would not be disqualified from serving on that basis if a licensed medical provider certifies "the applicant has completed all medical treatment associated with the applicant's gender transition[,] … has been stable in the preferred gender for 18 months," and … has been stable on any "cross-sex hormone therapy post-gender transition … for 18 months"; and
>
> (3) individuals with a history of sex reassignment or genital reconstruction surgery would not be disqualified from serving on that basis if a licensed medical service provider certifies that 18 months have elapsed since the surgery, and "no functional limitations or complications persist, nor is any additional surgery required."

40. DTM 16-005 further ordered that effective October 1, 2016, "DoD will implement a construct by which transgender Service members may transition gender while serving in accordance with DoDI 1300.28 [In-Service Transition for Transgender Service Members]." DoDI 1300.28 established a construct by which transgender service members may transition gender while serving, proscribed procedures for changing a service member's gender marker in the Defense Enrollment Eligibility Reporting System (DEERS), and specified medical treatment provisions for transgender service members.

41. Through DTM 16-005, the Secretary of Defense also ordered USD P&R to "develop and promulgate education and training materials to provide relevant, useful information for transgender Service members, commander, the force, and medical professionals regarding DoD policies and procedures on transgender service" no later than October 1, 2016. Each Military Department, including the Department of the Army, was also ordered to issue implementing guidance and a written force training and education plan no later than November 1, 2016, detailing the Department's plan and program for training and educating its assigned force, including medical professionals.

42. When Secretary Carter publicly announced the issuance of DTM 16-005 on July 1, 2016, he quoted at length the Army's senior general and Chief of Staff, Mark Milley, to convey the principle that Americans who want to serve and can meet our standards should be afforded the opportunity to compete to do so: "The United States Army is open to all Americans who meet the standard, regardless of who they are. Embedded within our Constitution is that very principle, that all Americans are free and equal. And we as an Army are sworn to protect and defend that very principle. And we are sworn to even die for that principle. So if we in uniform are willing to die for that principle, then we in uniform should be willing to live by that principle."

Change, Development, and Implementation of Army Policy

43. To begin implementing DTM 16-005 as applied to the Army, on July 1, 2016, I issued Army Directive 2016-30, titled "Army Policy on Military Service of Transgender Soldiers." A true and accurate copy of Army Directive 2016-30 is attached hereto as Exhibit D.

44. Army Directive 2016-30 was effective immediately and applies to all personnel in the Active Army, U.S. Army Reserve, Army National Guard, and Army National Guard of the United States. It states that "it is Army policy to allow open Service by transgender Soldiers. The Army is open to all who can

meet the standards for military service and remains committed to treating all Soldiers with dignity and respect while ensuring good order and discipline. Transgender Soldiers will be subject to the same standards as any other Soldier of the same gender. An otherwise qualified Soldier will not be involuntarily separated, discharged, or denied reenlistment or continuation of service solely on the basis of gender identity." The Directive required the Assistant Secretary of the Army for Manpower and Reserve Affairs (the "ASA (M&RA)") to establish, no later than July 5, 2016, a Transgender Service Implementation Group to develop policies and procedures for transgender service, as well as a Service Central Coordination Cell (SCCC), comprised of medical, legal, and military personnel experts, to serve as a resource for commanders' inquiries and requests. By October 1, 2016, the ASA (M&RA) was directed to recommend a policy addressing service of transgender soldiers, including "a process by which transgender soldiers may transition gender while serving consistent with mission, training, operational, and readiness needs and a procedure where by a Soldier's gender marker will be changed in [the Defense Enrollment Eligibility Reporting System (DEERS)]." In the meantime, the Directive established a process whereby gender marker changes would be handled via Exceptions to Policy (ETPs) processed by the SCCC and ASA (MR&A), with weekly reports summarizing the ETPs to be provided to me and the Army Chief of Staff.

45. Army Directive 2016-30 also instructed the ASA (M&RA) to create a force-wide training and implementation plan no later than November 1, 2016, to be completed across the Army by July 1, 2017. By the end of 2016, the Army had completed the necessary training and education to ensure that all members of the force understood and could implement the core provisions of the Army's policy on the military service for transgender soldiers.

46. Army Directive 2016-30 also instructed that the Army would continue to provide medically necessary care to all soldiers, and that the Army would issue

further guidance to its medical providers no later than 45 days following the publication of guidance from the DoD on medical care for transgender service members.

47. On October 7, 2016, I issued a further directive, Army Directive 2016-35, which "establishes policies and procedures for gender transition in the Army." A true and accurate copy of Army Directive 2016-35 is attached hereto as Exhibit E.

48. Army Directive 2016-35 provides that "a Soldier eligible for military medical care with a diagnosis from a military medical provider indicating that gender transition is medically necessary will be provided medical care and treatment for the diagnosed medical condition." The Directive provides that gender transition in the Army begins with a diagnosis that gender transition is medically necessary and ends when the Soldier's gender marker in DEERS is changed to show the Soldier's preferred gender. The Directive further states that for policies and standards that differ according to gender, the Army will recognize a Soldier's gender based on the gender marker that appears in DEERS. It states that "the Army applies, and Soldiers are expected to meet, all standards for uniforms and grooming, body composition assessment, physical readiness testing, participation in the Military Personnel Drug Abuse Testing Program, and other military standards" according the gender marker in DEERS.

49. Army Directive 2016-35 includes detailed procedures to be followed by soldiers with a medical diagnosis indicating that gender transition is medically necessary. These procedures require consultation with the soldier's chain of command and differ depending on the soldier's duty status and eligibility for military medical care. When a soldier has completed gender transition and is stable in his or her preferred gender as confirmed by a military medical provider, the soldier may request approval of a change to their gender marker in DEERS, which must be supported by "legal documentation supporting a gender change,

consisting of a certified copy of a State birth certificate, a certified copy of a court order, or a U.S. passport showing the Soldier's preferred gender."

50. Army Directive 2016-35 also provides guidance for commanders, directing that they "should approach a Soldier undergoing a gender transition in the same way they would approach a Soldier undergoing any medically necessary treatment. . . . Commanders will balance the needs of the individual transitioning Soldier and the needs of the command in a manner that is comparable to the actions available to the commander in addressing comparable medical circumstances unrelated to gender transition." The Directive instructs commanders to consider actions, such as adjusting the dates of gender transition or discussing extended leave options, in the same manner as such actions would be considered for other medical circumstances unrelated to gender transition.

51. Army Directive 2016-35 also requires soldiers to use the billeting, bathroom, and shower facilities associated with their gender marker in DEERS. However, commanders are given discretion to employ reasonable accommodations to respect the modesty and privacy interests of soldiers, provided that no soldier is required on the basis of gender identity to use a facility not required of other soldiers with the same gender marker.

52. 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 F. 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.

Harms of Recent Announcements

53. In reliance on the policy changes described above, many military personnel have disclosed their transgender status to their chain of command since 2016. During my time as Secretary of the Army, I did not receive any reports that such disclosures, or the presence of transgender soldiers generally, harmed the readiness, operational effectiveness, or morale of any Army units. To the contrary, I am aware of commanders who believed that transgender service members under their command were capable and well-qualified to serve.

54. On July 7, 2016, less than a week after Secretary Carter issued DTM 16-005, I visited Fort Jackson, South Carolina, where the Army's newest recruits received Basic Combat Training (BCT)—the introduction soldiers receive as they enter the Army. BCT takes 10 weeks to complete, and recruits undergo intensive training for 12-14 hours a day, Monday through Saturday. Fort Jackson is U.S. Army's main production center for Basic Combat Training, and it trains 50 percent of the Army's Basic Combat Training load and 60 percent of the women entering the Army each year. It also is home to the Army's Drill Sergeant School, which trains all active and Reserve component drill instructors.

55. During my visit, the Commanding General asked me if I'd like to meet a transgender drill instructor, Sergeant Ken Ochoa. Sergeant Ochoa and I met privately for nearly 30 minutes, and I inquired about his experience in the Army generally, and at Fort Jackson in particular. He told me that his experience at Fort Jackson was impressive, and although he was relieved at Secretary Carter's announcement that transgender soldiers could now serve openly, his command had already taken steps to ensure he was able to bring all of his abilities to his job and present himself authentically. His principal concern, however, was that his next post would not be as accommodating, and without formal policies to change his

gender marker in DEERS, he might be forced to wear a uniform inconsistent with his gender identity.

56. 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. On August 25, 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security directing that they take steps 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."

57. As I stated in ¶¶ 12-13, President Trump's memorandum is factually incorrect in stating that the Department of Defense had any "longstanding policy and practice" with respect to transgender individuals.

58. Moreover, I am not aware of any evidence to support President Trump's stated rationale for a total ban on transgender individuals serving in the military. Despite months of research, the members of the Working Group did not find that permitting transgender soldiers to serve would hinder any of these interests. Nor did any senior Army leaders raise these concerns with me. Because I was responsible for all Army training and readiness, such concerns would have been of great interest to me, if they existed. But they did not.

59. Based on my experience as Secretary of the Army and in other senior leadership positions within the DoD and the military departments, I believe a reversal of current DoD policy permitting open service by transgender service members would be profoundly harmful to the public interest and to our military.

60. **Loss of Qualified Personnel**. Discharging current transgender service members or prohibiting their reenlistment or continuation in service would result in the loss of highly qualified and trained personnel. Many transgender service members have specialized training or hold leadership positions. Their training and professional development has required a significant investment of taxpayer dollars, an investment whose return depends on their continued service. In addition to losing the benefit of that investment in training and leadership development, taxpayers would bear the cost of recruiting and training replacement personnel. With an all-volunteer military, recruiting is a particular challenge, especially with a strong economy in which the military is competing for talent with the private sector, and the impact on the Army is especially acute, as the military's largest branch.

61. **Effects of Uncertainty on Military Readiness**. The policy announced by the President unnecessarily creates uncertainty and instability for current transgender service members and their commanders. After serving openly and without incident for many months if not much longer, commanders must now deal with the prospect that key personnel may not be able to continue their service, thus impeding military readiness. This uncertainty also impacts decisions about education, training, and promotion, as commanders will be required to consider the possibility that a service member will be discharged based on a factor such as gender identity which is irrelevant to competence or fitness to serve. At the level of military policymaking, the President's action disrupts years of careful research, planning, and implementation work, reopening an issue that senior officials had already addressed comprehensively, and creating a new distraction for senior leadership at a time when our country faces unprecedented military challenges around the world.

62. **Loss of Morale and Unit Cohesion**. The President's reversal of policy is deeply harmful to morale because it impairs service members' trust in their command structure and their ability to rely on established policy.

63. Commanders have told the enlisted soldiers they command that they must treat transgender service members the same as all others. Now they are being directed by the Commander in Chief that those same soldiers are unfit to serve. The new policy institutes discrimination with no factual basis to do so. Imposing new discriminatory standards without any justification is enormously disruptive to unit cohesion and undermines the principle of mutual respect which is essential to the military's effectiveness.

64. In addition, forcing transgender soldiers to lie and hide their transgender status to avoid separation undermines unit cohesion by eroding the bonds of trust among soldiers. It puts non-transgender soldiers in the position of having to choose between reporting fellow soldiers or violating policy. When urging Congress to repeal the ban against service by openly lesbian, gay, and bisexual service members, Admiral Mullen, the former Chairman of the Joint Chiefs, said: "No matter how I look at this issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens. For me personally, it comes down to integrity—theirs as individuals and ours as an institution." The same is true of a policy that forces service members to lie about being transgender.

65. In the Army Directives described above, and in many other documents, the Armed Forces have told transgender service members that they may disclose their transgender status and serve openly, without fear of discharge based on their transgender status. Dramatically reversing course and now using that information as a basis for separating these soldiers from their service is an unprecedented betrayal of the trust that is so essential to achieving the mission of all of the armed forces.

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

DATED: September 30, 2017

Eric K. Fanning