

New Trans Military Ban Filing Would Accelerate Ruling to Permanently Stop the Trump Ban



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WASHINGTON, D.C.—Transgender military ban plaintiffs in *Doe v. Trump*, the first lawsuit to challenge the Trump-Pence ban, filed a cross-motion for summary judgment last night in U.S. District Court for the District of Columbia. Plaintiffs’ motion asserts that undisputed facts show the ban, including the March 23 Mattis implementation plan, violates their Equal Protection and Due Process rights, and that the court should provide permanent declaratory and injunctive relief to prevent the Trump-Pence ban from ever being implemented.

The plaintiffs’ motion describes the ban as the only military “policy that excludes people from military service based on their membership in a class rather than on an individual’s fitness to serve” and calls out that “no other military policy excludes a class of persons from an equal opportunity to enlist or serve in the U.S. Armed Forces.” It also characterizes the March 23 “Mattis Plan” and panel report as “most notable for what it fails to do”: it does not and could not show that transgender people are not capable of meeting existing military standards for service. Instead, the “Mattis Plan” and panel report makes sweeping generalizations, relying on false stereotypes about mental health and deployability.

Plaintiffs also filed a separate motion last night opposing the administration’s motions to dismiss the case and to dissolve the nationwide preliminary injunction issued October 30, 2017 by District Judge Colleen Kollar-Kotelly of the United States District Court for the District of Columbia.

“The government’s own documents, newly obtained by discovery, show the March 23 ‘Mattis Plan’ is the same unconstitutional, categorical ban of all transgender people from military service that President Trump announced on Twitter,” said Jennifer Levi, GLBTQ Legal Advocates & Defenders (GLAD) Transgender Rights Project Director. “There is no reason to treat transgender people so unfairly. The Plaintiffs seek nothing more than to be held to the same standards applied to all other servicemembers.”

“By the military’s own count, thousands of transgender servicemembers are currently serving—one of our Doe plaintiffs has in fact served multiple tours of duty abroad, two in Iraq,” said Shannon Minter, National Center for Lesbian Rights (NCLR) Legal Director. “The ban erodes military readiness and would be the only military policy to exclude otherwise qualified people for who they are rather than their fitness to serve.”

Arguments from the plaintiffs’ filings:

- The Trump-Pence transgender military ban harms military readiness by irrationally excluding qualified transgender servicemembers.
- The Trump administration’s March 23 “Mattis Plan” excludes transgender people from service based on their transgender status, rather than on any medical basis.
- The “Mattis Plan” is the same categorical ban on trans service tweeted by President Trump despite its alleged “exception” for transgender people who serve in their birth sex. Just as a policy requiring Muslims to serve in the military only if they renounce their faith would be a ban on military service by Muslims, a policy requiring transgender individuals to serve in their birth sex is a ban on military service by transgender people. It is also similar to the earlier failed argument, uniformly rejected by courts, that laws limiting marriage only to male-female couples did not discriminate against gay people because a gay person could marry a person of the opposite sex.
- The Trump administration’s own documents, obtained through discovery, show that that the process leading to the “Mattis Plan” was specifically undertaken to produce a policy consistent with Trump’s complete ban on transgender service. Rather than providing a valid reason to treat transgender people differently, the plan relies on gender stereotypes and sweeping generalizations about the roles and capabilities of transgender people.
- Excluding qualified, fit candidates from service based on sweeping group-based generalizations is irrational. For example, depression, anxiety, and suicide are more common among white people than black people, but the military does not bar white people from service. And women are twice as likely as men to suffer from anxiety disorders, but the military does not exclude women from service.
- Defendants’ unit cohesion arguments boil down to a claim that, “simply by existing as such, transgender people undermine sex-based standards.” If “that claim were sufficient to justify barring transgender people from military service, it would also justify their exclusion from any, and all, institutions that maintain sex-based criteria for facilities, including schools, workplaces, public accommodations, and beyond”—something courts across the country have repeatedly dismissed.
- With this filing, both the Trump administration and *Doe v. Trump* transgender military ban plaintiffs have now indicated to the court there are no factual disputes in this case that would need to be resolved by a trial. If Judge Kollar-Kotelly grants summary judgment in favor of the plaintiffs, the court would permanently block the Trump-Pence transgender military ban from taking effect.

BACKGROUND

June 30, 2016: The United States Department of Defense (DOD) adopted a policy permitting transgender people to serve in the military based on a nearly two year DOD review determining that there was no valid reason to exclude qualified personnel from military service simply because they are transgender.

July 26, 2017: President Trump tweeted that “the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.”

August 9, 2017: NCLR and GLAD filed *Doe v. Trump*, the first lawsuit filed to stop the ban, challenging its constitutionality and requesting that the court issue a nationwide preliminary injunction to stop it from taking effect while the case is being heard in court.

August 25, 2017: President Trump issued a memorandum ordering Secretary of Defense James Mattis to submit “a plan for implementing” the ban by February 21, 2018. Secretary Mattis delivered this (the “Mattis Plan” and panel report) to President Trump on February 22, 2018.

October 30, 2017: The United States District Court for the District of Columbia ruled that *Doe v. Trump* plaintiffs had established a likelihood of success on their claim that President Trump’s ban violates equal protection, that plaintiffs would be irreparably harmed without a preliminary injunction to stop the ban, and that the public interest and balance of hardships weighed in favor of granting injunctive relief and temporarily halting the ban while the case is heard by the court.

March 23, 2018: President Trump accepts the “Mattis Plan” and issues a memorandum in which he “revoked” his August 25 Memorandum.

April 20, 2018: Defendants file a motion to dissolve the October 30 nationwide preliminary injunction enjoining the transgender military ban issued by the U.S. District Court for the District of Columbia; a motion to dismiss Plaintiffs’ Second Amended Complaint; and a Motion for Summary Judgment.

May 11, 2018: Plaintiffs file their cross-motion for summary judgment, as well as motions in opposition to Defendant’s motions to dissolve the injunction and dismiss Plaintiffs’ complaint.

NCLR and GLAD have been at the center of the legal fight challenging the Trump-Pence transgender military ban since filing *Doe v. Trump*, the first of four cases filed against the ban, on August 9, 2017.

Through strategic litigation, public policy advocacy, and education, GLBTQ Legal Advocates & Defenders works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation.

The National Center for Lesbian Rights is a national legal organization committed to advancing the human and civil rights of the lesbian, gay, bisexual, and transgender community through litigation, public policy advocacy, and public education.

<http://www.therainbowtimesmass.com/new-trans-military-ban-filing-would-accelerate-ruling-to-permanently-stop-the-trump-ban/>