NO. 24A1030

IN THE

Supreme Court of the United States

UNITED STATES, ET AL.,
Applicants,

v.

EMILY SHILLING, ET AL.
Respondents.

On Application for a Stay of the Injunction Issued by the United States District Court for the Western District of Washington

BRIEF OF *AMICI CURIAE TALBOTT V. UNITED STATES* PLAINTIFFS IN OPPOSITION TO APPLICATION FOR A STAY OF INJUNCTION

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae Nicolas Talbott, Erica Vandal, Kate Cole, Gordon Herrero, Dany Danridge, Jamie Hash, Miriam Perelson, Minerva Bettis, Audrie Graham, Roan Pickett, Amiah Sale, Quinn Tyson, Clayton McCallister, Greyson Shishkina, Koda Nature, Cael Neary, Michelle Bloomrose, Samuel Ahearn, Vera Wolf, Regan Morgan, Sabrina Bruce, Austin Converse, Ashley Davis, C.J. Dulaney, Micah Jacqueline Gross, Sean Kersch-Hamar, Taylor Maiwald, Hunter Marquez, Kelsey Orth, Nathalie Richter, Beck Simpson, and Clara Winchell are the plaintiffs in *Talbott v. United States,* No. 25-cv-240 (D.D.C.). *Amici* include distinguished transgender service members with decades of experience in critical roles who have deployed globally and earned numerous commendations. The government defendants in *Talbott* have conceded that each active-duty *amicus* is honorable, disciplined, and fit to serve.

The district court in *Talbott* issued a preliminary injunction enjoining enforcement of Executive Order 14183 ("EO 14183") and its implementing guidance ("the Hegseth Policy") and subsequently denied a motion to stay that injunction. 2025 WL 842332, at *3 (Mar. 18, 2025); 2025 WL 914716, at *2 (Mar. 26, 2025). The defendants in *Talbott* (who substantially overlap with the Applicants in this Court) have appealed to the D.C. Circuit and filed an application for a stay pending appeal in that court, which was argued on April 22 and remains pending. The D.C. Circuit

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* certify that counsel for a party have not authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than the amici curiae or their counsel, has made a monetary contribution to the preparation or submission of this brief.

has entered a temporary administrative stay of the *Talbott* injunction while it considers the stay application. *Amici* have a direct interest in the resolution of this application because if this Court grants a stay in this case and a similar stay is entered in *Talbott,* they, like other transgender service members around the world, will face immediate administrative separation from military service, ending decades-long careers and irreparably terminating any future prospect for them to continue serving their nation as they have done honorably for years.

SUMMARY OF ARGUMENT

If this Court grants Applicants' request for extraordinary relief, thousands of transgender service members will face immediate discharge through administrative separation, a harsh process normally reserved for serious misconduct and failure to meet performance standards. *See* Mem. from Jules W. Hurst III, Performing the Duties of the Under Sec. of Def. for Personnel and Readiness to Senior Pentagon Leadership, Commanders of the Combatant Commands, and Def. Agency and DOD Field Activity Dirs. (Mar. 21, 2025), ECF No. 93-1.[2] That outcome—the abrupt termination of service members who are meeting all military standards and serving honorably—would be unprecedented and un-American.

The Hegseth Policy reverses years of demonstrated successful service by transgender personnel across multiple administrations. *See* ECF No. 72-74, ¶ 22. Since 2021, thousands of transgender individuals have served pursuant to the policy

[2] Unless otherwise noted, all references to "ECF No." refer to the docket entries for documents filed in the district court in *Talbott,* No. 25-cv-240 (D.D.C.).

adopted by then-Secretary of Defense Austin, which allowed transgender individuals to serve openly provided they met the same standards as others. *Talbott v. United States*, No. 25-cv-240, 2025 WL 842332, at *5–*6 (D.D.C. Mar. 18, 2025). Importantly, however, some transgender service members have been serving openly since 2015, when then-Secretary of Defense Carter ordered that no transgender service member be discharged without his permission, pending the results of a comprehensive study of the issue by the Rand Institute and a military working group. ECF No. 72-59, ¶¶ 9, 13. Based on the results of that study, Secretary Carter adopted a policy in 2016 permitting open service by transgender troops. *Id.* ¶¶ 14–17. When President Trump sought to reverse that policy and ban transgender service in 2017, several federal district courts issued preliminary injunctions halting a ban from going into effect. *Doe 1 v. Trump*, 275 F. Supp. 3d 167 (D.D.C. 2017*); Stone v. Trump*, 280 F. Supp. 3d 747 (D. Md. 2017); *Karnoski v. Trump*, No. C17-1297-MJP, 2017 WL 6311305 (W.D. Wash. Dec. 11, 2017); *Stockman v. Trump*, No. EDCV 17–1799 JGB (KKx), 2017 WL 9732572 (C.D. Cal Dec. 22, 2017). Several months later, then-Secretary of Defense James Mattis implemented a modified policy that permitted transgender individuals who had been serving in reliance on the Carter Policy to continue doing so. ECF No. 73-08 at 42. As a result, some transgender service members have been serving openly for as long as a decade, and thousands more have been doing so since 2021.

In contrast to the Mattis Policy, which retained transgender service members who were already serving and meeting military standards, the Hegseth Policy

mandates the immediate discharge of *all* transgender troops, regardless of their records, training, skills, expertise, or ability to meet standards.

The Hegseth Policy is also unique in its use of administrative separation, a particularly severe form of discharge. ECF No. 72-82, ¶¶ 11-12; ECF No. 72-76, ¶¶ 3-4. The Hegseth Policy takes the unprecedented step of subjecting transgender service members to an involuntary separation procedure that is typically reserved for, and is generally understood among the military as being limited to, serious misconduct and failure to meet performance standards. ECF No. 72-82, ¶¶ 11–12; ECF No. 72-76, ¶¶ 3-4. These proceedings leave a serious stain on a service member's record, "send[ing] a message to service members that those with gender dysphoria are unable to [meet] standards,"—despite these individuals continuing to meet all military requirements and often demonstrating exemplary leadership and performance. ECF No. 72-82, ¶¶ 14, 16.

Granting a stay would immediately trigger that harsh process for thousands of transgender service members, causing reputational, professional, and constitutional harm that can never be undone. Once initiated, the shame and opprobrium of being forced into that process (even if later reversed) causes irreparable harm. ECF No. 72-82, ¶¶ 8–12; ECF No. 72-76, ¶¶ 3-4. "If the Military Ban goes into effect, it will upend lives and ruin the careers of thousands of persons." *Talbott,* 2025 WL 842332, at *15.

In contrast, preserving a status quo that has been in place for years while Applicants' appeal proceeds will cause no harm to Applicants or anyone else. During

the proceedings below in *Talbott*, Applicants offered no evidence that transgender service members are not performing well or failing to meet standards or of any concrete harms that would be caused by permitting transgender service to continue (as it has for years) while their appeal is pending. *Talbott,* 2025 WL 842332, at *37 ("Defendants have not provided, any studies or declarations that explain why maintaining the status quo pending litigation would unfairly burden the military.").

In addition, the military already has comprehensive regulations in place to address any service member—transgender or not—who fails to meet standards, engages in conduct that violates military requirements, or fails to meet readiness concerns for any reasons. *See, e.g.,* DoDI 1332.14, ECF No. 72-84, § 5 (detailing procedures for separation of enlisted members for cause); DoDI 1332.30, ECF No. 72-85, §§ 4-5 (procedures for separation of commissioned officers); ECF No. 72-82, ¶ 13; DoDI 1332.18, ECF No. 72-86 (procedures for evaluating impacts of medical conditions on readiness). These existing mechanisms provide ample authority to maintain discipline and readiness while Applicants' appeal proceeds. In contrast, allowing the ban to go into effect will wreak havoc in the lives of faithful, dedicated service members who have done nothing wrong and seek only to serve their country.

ARGUMENT

A. The Court's Stay in *Karnoski* Bears No Relevance Here Because the Mattis Policy at Issue in *Karnoski* Was Fundamentally Different from the Hegseth Policy, and the Procedural Context Was Distinct.

The Hegseth Policy differs fundamentally from the Mattis Policy in both scope and effect, rendering the *Karnoski* stay irrelevant to the present application for

emergency relief. While the Mattis Policy grandfathered in transgender service members already serving, subjecting none to discharge, the Hegseth Policy targets all currently serving transgender personnel for immediate removal. Unlike the Mattis Policy, the Hegseth Policy mandates administrative separation proceedings. It also characterizes transgender people as inherently unfit to serve, labeling them dishonest, undisciplined, and lacking integrity. These differences make the policy at issue in *Talbott* and *Shilling* distinct from the one at issue in *Karnoski*. It also means there are dramatic differences between the consequences of granting a stay in *Karnoski* and the consequences here: no service members faced discharge following the *Karnoski* stay, whereas thousands of discharge proceedings will immediately commence should this Court grant the present application. The effect of the *Karnoski* stay on currently serving transgender service members was therefore the opposite of the effect of Applicants' requested stay here.

In addition, the Court's grant of a stay in *Karnoski* responded specifically to the district court's failure in that case to consider differences between the 2017 Trump Ban and the Mattis Policy that issued 6 months later. Importantly, this Court's order did not address the Mattis Policy's merits or include an assessment of its constitutionality. *See also Doe 2 v. Shanahan,* 755 F. App'x 19, 25 (D.C. Cir. 2019) (holding that the two policies were sufficiently distinct to require an independent assessment of the Mattis Policy and expressly declining to undertake that assessment prior to further consideration by the district court); *Doe 2 v. Shanahan*, 917 F.3d 694, 704 (D.C. Cir. 2019) (J. Wilkins, concurring) ("I express no views on the merits or the

outcome of that reassessment."). The *Karnoski* district court also never reconsidered the Mattis Policy's constitutionality, and that issue never reached this Court again. Accordingly, the stay granted in *Karnoski* has no bearing here, where a fundamentally different policy threatens immediate and sweeping harm to transgender service members.

B. Applicants Have Failed to Meet their Threshold Burden of Establishing Any Concrete Irreparable Harm if a Stay Is Not Granted.

To obtain the "extraordinary remedy" of a stay pending appeal, Applicants must show that some specific, concrete irreparable injury is *likely* in the absence of a stay; "simply showing some 'possibility of irreparable injury'" is not sufficient. *Nken v. Holder*, 556 U.S. 418, 434-35 (2009) (quoting *Abbassi v. INS*, 143 F.3d 513, 514 (9th Cir. 1998)). Applicants fail even to identify, much less demonstrate, any such harm. Transgender troops have served openly in our nation's military under multiple Republican and Democratic administrations. By Applicants' own admission, these troops have served ably and honorably. In the proceedings below in *Talbott*, Applicants offered no evidence to rebut the testimony of former military leaders that permitting qualified transgender individuals to serve has strengthened, not undermined, military readiness. *Talbott,* 2025 WL 842332, at *28–*31. The same unrebutted testimony from former military officials was presented to the district court in this case. App. 230a–236a. In this Court, Applicants continue to decline even to articulate a concrete harm that would "likely" result from continued service by transgender service members pending appeal.

Instead, Applicants' claim of irreparable harm consists of a single, conclusory assertion that, without a stay, they must maintain a policy "the Department has concluded is inconsistent with 'the best interests of the Military Services' and with 'the interests of national security.'" Appl. at 37 (citing App. 126a).

In effect, Applicants argue that the government's inability to immediately implement its preferred policy, standing alone, constitutes irreparable harm. But this bare statement falls far short of demonstrating the concrete, imminent, and irreparable harm required for the extraordinary relief they seek. Applicants' own primary authority, *Maryland v. King,* 567 U.S. 1301 (2012), makes that insufficiency clear. In that case, the Court granted a stay only after finding that Maryland's inability to implement its DNA collection statute would cause "an ongoing and concrete harm to Maryland's law enforcement and public safety interests" by preventing use of a tool that had led to 58 criminal prosecutions. *Id.* at 1303. Applicants have asserted no such "ongoing and concrete harm" here. For this reason alone, as the Ninth Circuit concluded, their request for emergency relief should be denied. App. 258a.

C. The Balance of Harms Also Tips Sharply in Favor of Service Members Who Face Immediate Administrative Separation if a Stay is Granted.

By contrast, if this Court grants a stay, thousands of transgender service members who have served honorably and with distinction will face immediate proceedings to end their careers, permanently damaging their professional standing and violating their constitutional rights. Such extraordinary harm cannot be justified, especially when weighed against the government's failure to identify any

concrete harm from maintaining the status quo under which the military has successfully operated for years.

A governmental pronouncement that an entire class of individuals lacks the character and discipline required for military service inflicts a distinct harm that monetary compensation cannot repair. As the D.C. Circuit recognized in *Singh v. Berger*, separation from military service inflicts a particularly severe form of irreparable harm when individuals "are subjected to the 'indignity' of being unable to serve for reasons that, on this record, 'bear[] no relationship to their ability to perform.'" 56 F.4th 88, 110 (D.C. Cir. 2022) (quoting *Roe v. Shanahan*, 359 F. Supp. 3d 382, 419-20 (E.D. Va. 2019)). That harm is magnified by the Hegseth Policy's use of administrative separation to discharge transgender service members who are meeting all standards and performing their duties, officially designating them as unfit to serve despite their demonstrated capabilities and achievements. Even if such a discharge is characterized as "honorable," administrative separation causes lasting professional and personal harm that extends well beyond an individual's military career. This indelible stain cannot be remedied later through reinstatement or back pay.

For service members facing discharge, the consequences extend far beyond loss of employment—they face immediate displacement from military housing, loss of healthcare benefits, severance from their military community, and termination of their life's calling. Major Erica Vandal's experience represents that of numerous

service members, including plaintiffs across the *Schilling*, *Talbott*, and *Ireland*[3] cases, into whose lives the fabric of military service is woven. Born the daughter of an active-duty three-star general, Major Vandal has lived on military bases throughout her life. After graduating from West Point, she has served honorably since 2011, rising through the ranks from Lieutenant to her current position as Major. As a platoon leader, battery commander, and Afghanistan veteran decorated with the Bronze Star for meritorious achievement, Major Vandal, like her colleagues, has built not merely a career but a life defined by military service. ECF No. 13-33.

None of the harms she and other transgender service members will experience can be remedied later if the preliminary injunction is affirmed on appeal. The Respondents and *amici* will already have suffered the devastating harm of separation proceedings, damage to their reputation and relationships within the military, and the injury of being separated based on a policy that stains their character and service.

In 2017, the D.C. Circuit found that "in the balancing of equities, it must be remembered that all Plaintiffs seek during this litigation is to serve their Nation with honor and dignity, volunteering to face extreme hardships, to endure lengthy deployments and separation from family and friends, and to willingly make the ultimate sacrifice of their lives if necessary to protect the Nation, the people of the United States, and the Constitution against all who would attack them." *Doe 1 v.*

[3] In *Ireland v. Hegseth*, No. 25-cv-1918 (D.N.J.), the district court issued a temporary restraining order (TRO) enjoining the government from implementing the Hegseth Policy against the plaintiffs in that case. See *Ireland* ECF No. 28, at 8 (Mar. 24, 2025).

Trump, No. 17-5267, 2017 WL 6553389 (D.C. Cir. Dec. 22, 2017) (denying emergency stay of preliminary injunction of 2017 ban). In 2018, the Mattis Report similarly recognized that the government's "commitment to [transgender] Service members, including the substantial investment it has made in them, outweigh the [potential] risks" and thus warranted permitting their continued service. App. 53a. These considerations apply equally to the Respondents and *amici* here. The public interest will be harmed, not protected, by permitting their continued service while the appeal proceeds.

D. On the Current Record, Applicants Cannot Show a Likelihood of Success on the Merits.

Applicants assert that the Hegseth Policy is simply an ordinary medical policy and, as such, easily passes muster under rational basis review. But as both the *Talbott* and *Shilling* district courts found, that assertion cannot be squared either with the plain text of the policy or with other uncontested record facts, which Applicants did not challenge below.

1. The Hegseth Policy Is a Ban on Service, Not a Medical Regulation

The Hegseth Policy has all the hallmarks of a ban, not of a medical policy. First, like the Executive Order it implements, the policy states that having gender dysphoria is incompatible with "honesty," "discipline" and "integrity." App. 126a. But these are terms that describe people, not medical conditions. For example, one does not say that a person with diabetes or a heart condition is dishonest or lacks integrity.

The use of such language about gender dysphoria is jarring and strongly suggests that the policy is based on moral, not medical, concerns.

Second, the Hegseth Policy includes multiple prohibitions that exclude transgender people, independent of any medical diagnosis. For example, the policy requires that all personnel must serve only in their birth sex, which excludes people who live or wish to live in a sex different than their birth sex—i.e., who are transgender. The policy similarly excludes those who assert a gender identity divergent from their birth sex, or who have transitioned, or even taken any steps to transition. Because of these provisions, the policy would, as it was designed to do, exclude all transgender people from service even if all references to gender dysphoria were removed from the policy.

Finally, the Hegseth Policy bypasses the military's comprehensive medical evaluation system, shunting transgender service members into a process typically used for disciplining misconduct and performance failures, not for assessing medical fitness. In this way, the Hegseth Policy treats gender dysphoria—a condition only experienced by transgender people—differently than any other medical condition. For every other medical condition, any questions regarding a service member's fitness to serve are initially evaluated by a Medical Evaluation Board (MEB) and, only if further questions arise, eventually by the Disability Evaluation System (DES), which conducts an individualized assessment to determine whether a service member can continue to meet standards with or without treatment for a potentially disabling medical condition. ECF No. 72-82, ¶ 13; DoDI 1332.18, ECF No. 72-86. This system

ensures individualized medical assessment based on capability, reflecting the military's investment in trained personnel regardless of rank or position.

The administrative separation process required by the Hegseth Policy stands in stark contrast to the DES process. Consistent with its disciplinary purpose, administrative separation has distinct processes for enlisted personnel and commissioned officers. DoDI 1332.14 provides for the separation of enlisted service members to "maintain standards of performance, conduct, and discipline through characterization of service in a system that emphasizes the importance of honorable service." DoDI 1332.14, § 1.2, ECF No. 72-84. DODi 1332.30 provides for the separation of commissioned officers who will not or cannot: "(a) Meet rigorous and necessary standards of duty, performance, and discipline; (b) Maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable military service; and (c) Exercise the responsibility, fidelity, integrity, or competence required of them." DODi 1332.30, § 1.2, ECF No. 72-85. The unified DES process, meanwhile, applies a single standard to evaluate how a medical condition affects any service member's ability to perform their duties.

Applicants' procedural choice—using administrative separation processes designed for misconduct and character deficiencies rather than the established medical evaluation framework—underscores that the Hegseth Policy treats being transgender, or even having gender dysphoria, not as a medical condition to be evaluated individually for its impact on service, as are other medical conditions, but

as a categorical character or conduct deficiency deemed inherently and incurably incompatible with military service.

Administrative separation from the military carries negative professional implications that can limit future employment opportunities and benefits. It is well-understood in the military, among veterans, and to the general public, that "[a]dministrative separation is normally reserved for misconduct," ECF No. 72-82, ¶ 16, and so use of the process is viewed by many employers as a reflection of behavioral or performance issues. In contrast, a medical discharge—which the Hegseth Policy expressly bars for transgender troops—is recognized as based on circumstances beyond the service member's control and demonstrates a person's willingness and commitment to serve until no longer physically able.

This procedural mismatch is revealing. If the Hegseth Policy were truly regulating a medical condition, it would use the military's existing medical evaluation framework, not processes designed for misconduct and performance failures. The existence of distinct administrative separation policies for different ranks, compared to the unified medical evaluation system, underscores that the Hegseth Policy, in directing administrative separation for transgender personnel, does not function as a medical regulation.

2. The Government's Own Documents Describe the Challenged Policy as a Ban on Transgender Service Members, not a Medical Policy

The government's own implementation documents confirm that the policy draws distinctions based on transgender status, not on any medical condition. A Navy memorandum states: "Future Sailors . . . who are identified as transgender will have

their ship dates postponed," and "applicants who self-identify as transgender are not eligible to process for enlistment at this time" ECF No. 14-2. A February 7, 2025 memorandum signed by Secretary of Defense Hegseth states that "expressing a false 'gender identity' divergent from an individual's sex," which the *Talbott* defendants agreed refers to transgender people, "cannot satisfy the rigorous standards necessary for Military Service." ECF No. 33-1. An unclassified memorandum filed by Defendants with the district court in *Talbott*, circulated throughout the Armed Forces, references "implementation of executive orders related to transgender military service" four separate times. ECF No. 37-1. A February 14, 2025 military memorandum likewise identifies its subject as "Implementation of Executive Orders Related to Transgender Military Service" ECF No. 49-1. A Department of Defense Public Affairs Guidance document similarly states that "all transgender Service members [are] being targeted for separation" and reiterates that expressing "a false 'gender identity' divergent from an individual's sex" renders an individual unqualified to serve. ECF No. 79-1. Collectively, these documents show that the policy draws distinctions based on transgender status rather than on medical conditions such as gender dysphoria. The record is replete with specific references to the policy's application to transgender individuals, independent of any medical condition or standard.

While not essential to the parties' legal arguments, it is also relevant that the Secretary of Defense has repeatedly publicly referred to the policy as a ban on transgender individuals. In social media posts and public statements, he has

described the policy in precisely those terms. For example, in just the last week, the Secretary stated on his X account that "trans . . . [is] no longer allowed @ DoD;"[4] referred to the district judge in the *Talbott* case as "a rogue judge," adding that there are "[z]ero readiness reasons for trans troops;"[5] and wrote from his official account that the Department of Defense's "real results" in President Trump's first 100 days included that "[w]okeness has been removed from the ranks," linking to a video of an Oval Office meeting where he told the President that "we have ripped wokeness from the military, sir—DEI, trans."[6] During an April 23 speech to the Army War College, the Secretary echoed these sentiments, stating that there is "no more gender confusion, no more pronouns, . . . no more woke bullshit" at the Defense Department.[7] These public-facing communications underscore what the implementation memoranda make explicit: that the policy targets transgender status itself, not any medical incapacity.

3. The Hegseth Policy Bears the Indicia of a Policy Based on Animus, Which Is Likely to Fail under Any Standard of Review

Under any standard of equal protection review, government action cannot withstand constitutional scrutiny if it is based on a "bare . . . desire to harm a politically unpopular group." *Department of Agriculture v. Moreno*, 413 U.S. 528, 534

[4] https://x.com/PeteHegseth/status/1914148561664561433.

[5] https://x.com/PeteHegseth/status/1915578392285765737.

[6] https://x.com/SecDef/status/1917611363221774700.

[7] https://www.defense.gov/News/Speeches/Speech/Article/4164715/remarks-by-secretary-of-defense-pete-hegseth-at-the-army-war-college-as-deliver/.

(1973). Even in cases where deference to Executive Branch policymaking is otherwise required, a policy fails this basic test when "'its sheer breadth [is] so discontinuous with the reasons offered for it' that [it] seems 'inexplicable by anything but animus.'" *Trump v. Hawaii,* 585 U.S. 667, 706 (2018) (quoting *Romer v. Evans,* 517 U.S. 620, 632, 635 (1996)).

Like the district court's analysis in this case, the district court's findings of fact in *Talbott* cogently demonstrate that the Hegseth Policy bears the indicia of a policy based on "irrational prejudice" toward a specific group of persons rather than one adopted to advance legitimate objectives. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 450 (1985)). Both the Executive Order and the military's implementing policy documents, on their face, include "demeaning [and] derogatory language" that portrays "transgender persons as weak, dishonorable, undisciplined, boastful, selfish liars." *Talbott,* 2025 WL 842332 at *32. Importantly, these expressions of animus are not based on external evidence but rather appear directly in the policy itself.

The adoption of the policy "was rushed by any measure," with the Executive Order issued within seven days of President Trump taking office and the Hegseth Policy issued less than 30 days later and involving none of the "careful consideration and review" that ordinarily precedes such a major change in policy. *Id.* at *10-*11. The limited evidence on which Applicants relied "contradicts, rather than supports" the conclusion that a ban is warranted, and Applicants "did not analyze the

'Department's own data and experience'" with service by transgender service members, who have been serving under the Austin Policy since 2021. *Id.* at *12, *13.

In addition, the ban's use of administrative separation is unlike any other military medical policy and subjects transgender service members to a uniquely harsh process, notwithstanding their adherence to military standards and rules. As the *Talbott* district court found, the breadth of the Hegseth Policy, which reaches not only individuals with a diagnosis of gender dysphoria but also those who exhibit symptoms of gender dysphoria or have ever attempted to transition regardless of any medical diagnosis, "is 'so far removed' from military health concerns, it is 'impossible to credit' [Applicant's] justifications. *Id.* at *33 (quoting *Romer*, 517 U.S. at 635). In light of that discontinuity and the policy's unusual genesis and transparent reliance on animosity toward transgender persons, as well as Applicants' failure to consider the actual service of transgender troops over the past nearly ten years, Applicants cannot show a likelihood of success on the merits at this juncture.

CONCLUSION

For the foregoing reasons, the Court should deny in its entirety Applicants' request for a stay of the preliminary injunction.

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Respectfully submitted,

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