



May 6, 2025

VIA CM/ECF

Clifton Cislak
Clerk, United States Court of Appeals for the D.C. Circuit
E. Barrett Prettyman United States Courthouse & William B. Bryant Annex
333 Constitution Ave., NW
Washington, DC 20001

Re: *Talbott et al. v. United States of America et al.*, No. 25-5087 (argued Apr. 22, 2025)

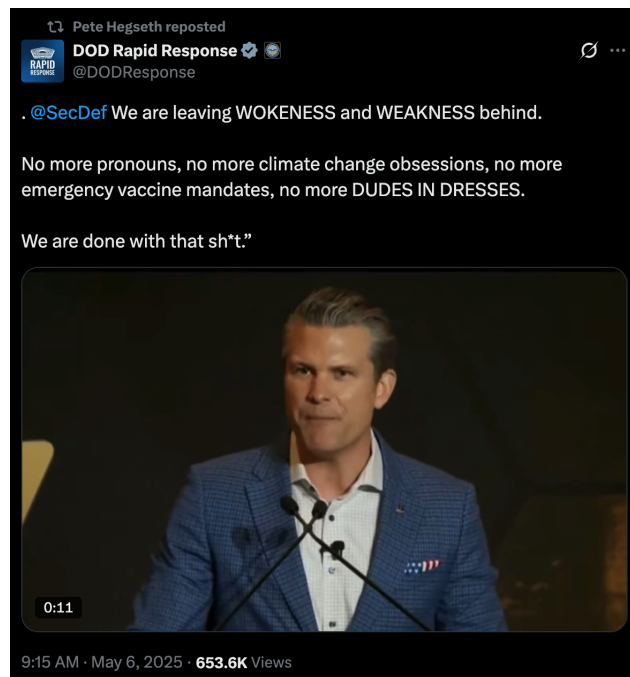
Dear Mr. Cislak:

We write in response to Defendants-Appellants' letter [Doc. #2114611], attaching the Supreme Court's May 6, 2025, order granting a stay pending appeal and disposition of any petition for writ of certiorari in *Shilling v. United States*, No. 25-2039 (9th Cir.).

The Supreme Court's summary order in *Shilling*, which did not explain the Court's reasoning, is not controlling on this Circuit's pending decision here. There are material distinctions between the two cases including, most notably, that the district court in *Shilling* did *not* reach the question of whether animus motivated the transgender ban. *See Shilling v. United States*, No. 25-cv-241, 2025 WL 926866, at *20 (W.D. Wash. Mar. 27, 2025). Rather, that court found that "[b]ecause the military ban and Hegseth policy here cannot survive the intermediate scrutiny that its discrimination triggers nor the rational basis that the government argues for, the Court need not make an animus determination to grant a preliminary injunction." *Id.* In contrast, the district court here expressly found that the policy is "soaked in animus and dripping with pretext." *Talbott v. United States*, No. 25-cv-250, 2025 WL 842332, at *31 (D.D.C. Mar. 18, 2025).

Recent statements by Secretary Hegseth underscore that the ban was motivated by anti-transgender animus, not by the medical considerations advanced by the government. After the Supreme Court's order today, the Secretary tweeted, "No more trans @ DoD," which followed videotaped public comments (shared on a Department of Defense official X post and reposted by the Secretary)

earlier in the day stating, “No more dudes in dresses. We are done with that sh*t.”¹ (see image pasted below).



The district court’s finding of animus here provides a sufficient and independent basis to decline to impose a stay of the preliminary injunction pending appeal.

Sincerely,

/s/ Jennifer Levi

Jennifer Levi

Attorney for Plaintiffs-Appellees

¹ See Lawrence Hurley & Jo Yurcaba, *Supreme Court allows Trump to implement transgender military ban*, NBC News (May 6, 2025), <https://www.nbcnews.com/politics/supreme-court/supreme-court-allows-trump-implement-transgender-military-ban-rcna204135> (referencing X posts at <https://x.com/PeteHegseth/status/1919832808165433357> and <https://x.com/DODResponse/status/1919742768831692830>).