No. 24A1030

In the

Supreme Court of the United States

UNITED STATES OF AMERICA; *et al.*,

Applicants,

v.

COMMANDER EMILY SHILLING; COMMANDER BLAKE DREMANN; LIEUTENANT COMMANDER GEIRID MORGAN; SERGEANT FIRST CLASS CATHRINE SCHMID; SERGEANT FIRST CLASS JANE DOE; SERGEANT FIRST CLASS SIERRA MORAN; STAFF SERGEANT VIDEL LEINS; MATTHEW MEDINA; GENDER JUSTICE LEAGUE,

Respondents.

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

RESPONSE IN OPPOSITION TO THE APPLICATION FOR A STAY

Matthew P. Gordon
Abdul Kallon
Anna Thompson-Lanners
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101

Sarah Warbelow
Cynthia Cheng-Wun Weaver
Ami Rakesh Patel
HUMAN RIGHTS CAMPAIGN FOUNDATION
1640 Rhode Island Ave. N.W.
Washington, DC 20036

Gabriella M. Romanos Abihabib
PERKINS COIE LLP
1155 Avenue of the Americas
22nd Floor
New York, NY 10036

Omar Gonzalez-Pagan
Counsel of Record
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
120 Wall Street, 19th Fl.
New York, NY 10005
(212) 809-8585
ogonzalez-pagan@lambdalegal.org

Sasha Buchert
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
815 16th St. NW, Suite 4140
Washington, DC 20006

Kell Olson
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3849 E Broadway Blvd, #136
Tucson, AZ 85716

[Additional counsel on inside cover.]

Danielle Sivalingam
PERKINS COIE LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105

Nicholas J. Surprise
PERKINS COIE LLP
33 East Main Street, Suite 201
Madison, WI 53703

Mary Grace Thurmon
Bo Yan J. Moran
PERKINS COIE LLP
3150 Porter Drive
Palo Alto, CA 94304

Camilla B. Taylor
Kenneth Dale Upton, Jr.
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3656 N Halsted St.
Chicago, IL 60613

Jennifer C. Pizer
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
800 S. Figueroa Street, Suite 1260
Los Angeles, CA 90017

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INTRODUCTION

The record is clear and indubitable: equal service by openly transgender servicemembers has *improved* our military's readiness, lethality, and unit cohesion, while discharging transgender servicemembers from our Armed Forces would *harm* all three, as well as the public fisc.

For nearly a decade, across multiple administrations, thousands of transgender people have openly served in our military with dedication, honor, and distinction. These servicemembers have sacrificed to serve our country—all the while meeting the same rigorous standards for accession and retention required of every soldier, airman, marine, and sailor serving in our Armed Forces. This includes Respondents Commander Emily Shilling, Commander Blake Dremann, Lieutenant Commander Geirid Morgan, Sergeant First Class Cathrine Schmid, Sergeant First Class Jane Doe, Sergeant First Class Sierra Moran, and Staff Sergeant Videl Leins, who "[t]hroughout their 115 years of collective military service," "have been awarded over 70 medals for their honorable service and distinctive performance—in many instances after coming out as transgender." App. 211a. Each wants to continue serving our country. This is the *status quo ante litem* the preliminary injunction preserves.

A stay permitting implementation and enforcement of Executive Order 14183 ("EO 14183"), 90 Fed. Reg. 8757 (Jan. 27, 2025), and its effectuating guidance—the Hegseth Policy—(hereafter, collectively, the "Military Ban" or "the Ban") would upend the *status quo* by allowing the government to immediately begin discharging *thousands* of transgender servicemembers, including Respondents, thereby ending distinguished careers and gouging holes in military units.

The Ban requires the Department of Defense ("DoD") to "root out and separate every transgender service member—within 60 days," App. 193a, based on the groundless and insulting proclamation that "adoption of a gender identity inconsistent with an individual's sex conflicts

with a soldier's commitment to an honorable, truthful, and disciplined lifestyle, even in one's personal life." App. 114a. And though Applicants concede there is "'no' support in the record that transgender service members lack honesty, humility, or integrity," App. 196a, Applicants still seek the extraordinary emergency relief of a stay pending appeal.

An unprecedented degree of animus towards transgender people animates and permeates the Ban: it is based on the shocking proposition that transgender people do not exist. Along with other recent executive orders targeting transgender people for opprobrium and discrimination, the Ban claims that having a gender identity that differs from one's birth sex is a "falsehood" or "false claim." App. 114a; Resp. App. 151a. The Ban thus violates the equal protection, due process, and free speech rights of transgender servicemembers and those who wish to serve, as well as basic equitable notions of fairness. Indeed, the Ban "fail[s]" "under any level of review." App. 237a.

That this Court permitted a much narrower and different policy—the Mattis Policy—regarding transgender servicemembers to go into effect in 2019 does not change the calculus. See *Trump* v. *Karnoski*, 586 U.S. 1124 (2019). The instant Ban materially differs from the policy in that case. Under the Mattis Policy, no active duty servicemember who had already transitioned would be separated from service or have their healthcare denied. The Ban compels the expulsion of every transgender servicemember, including active-duty Respondents.

Moreover, the Mattis Policy, as the Ninth Circuit found, relied on independent military judgment and did not heedlessly implement the 2017 proclamation that several courts had pointedly enjoined. The Ban, by contrast, reflects no independent military judgment; rather, it is rushed and haphazard, anomalous from all ordinary military policymaking. In scope and breadth, the Hegseth Policy and EO 14183 are one and the same. Timing also matters. Issued in 2018, the Mattis Policy was necessarily based on *predictions* about open service by transgender people. But

the intervening years have provided *evidence*, based on transgender servicemembers' actual experience, that such service is not contrary to "military effectiveness and lethality," Gov't Br. 2, but rather enhances military readiness, lethality, and unit cohesion. For these reasons, the stay decision in *Karnoski* does not control here and indeed counsels *against* the requested stay.

This same undisputed evidence demonstrates why the government cannot show any irreparable harm from maintaining the *status quo*. Transgender servicemembers like the active-duty Respondents have served in our military for years with honor and distinction. Applicants have admitted they have no evidence that such service has negatively impacted military readiness or unit cohesion, nor can they identify any harm that would occur during the short time the preliminary injunction is in effect while their appeal is resolved. The Ban has been enjoined for weeks, and the government has delayed in requesting the alleged "emergency" relief it now seeks, which independently justifies denial of the request. Moreover, as the district court concluded, "any claimed hardship [Applicants] may face in the meantime pales in comparison to the hardships imposed on transgender service members and otherwise qualified transgender accession candidates," which "tip[s] the balance of hardships sharply toward plaintiffs." App. 256a.

Simply put, Applicants have not met their burden to obtain the extraordinary remedy of a stay pending appeal, and maintenance of the *status quo ante litem* does not harm the government. The Court should deny application for a stay pending appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Thousands of transgender people serve in our Nation's Armed Forces. They have served—and continue to serve—with honor and distinction. It is a statistical certainty that transgender servicemembers have sacrificed their lives defending our country. Yet EO 14183 and the Hegseth Policy seek to purge all of them from our military solely because they are transgender.

A. The Carter Policy (in effect from 2016 to 2019).

Prior to 2016, the DoD did not permit transgender personnel to serve openly in the military. However, between 2014 and 2016, the military extensively studied, researched, and deliberated on transgender service. In March 2014, a commission issued a report concluding there was "no compelling medical rationale" for banning transgender service members. App. 158a.[1] A working group of senior representatives from each military branch, medical experts, personnel experts, readiness experts, health insurance companies, civil employers, and commanders of units that included transgender servicemembers, then studied the military readiness implications of permitting transgender people to serve openly through a rigorous process of reviewing scholarly evidence and information from varied sources. Resp. App. 90a, 112a.

The working group concluded that barring transgender persons from military service created unexpected vacancies and led to costly recruitment efforts to replace key personnel, thereby harming military readiness by excluding otherwise qualified individuals based on a characteristic with no relevance to their fitness to serve. This conclusion was informed by a 2016 report the working group commissioned, issued by the RAND National Defense Research Institute, that concluded there is "no evidence" that allowing transgender people to serve would impact unit cohesion, operational effectiveness or military readiness; that the cost of providing transgender-related health care is exceedingly small; and that many foreign militaries have successfully integrated openly transgender troops. Resp. App. 112a, 404a–515a.

As a result of the working group's deliberative process, the DoD, under the leadership of then-Secretary of Defense Ashton Carter, issued a directive-type memorandum ("the Carter

[1] Elders, J. et al., Report of the Transgender Military Service Commission, Palm Center (Mar. 2014), https://perma.cc/4AXC-YWYS.

Policy") clarifying "that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness," and that, "[c]onsistent with the policies and procedures set forth in this memorandum, transgender individuals shall be allowed to serve in the military." App. 1a–6a; see also Resp. App. 112a. The directive also amended the accession standards, effective July 1, 2017, to ensure that no person would be disqualified from service solely because they are transgender. App. 4a. The DoD also established a plan for education and implementation of the policy. App. 6a.

Under the Carter Policy, servicemembers could undergo a gender transition after a gender dysphoria diagnosis, culminating in a change in one's sex marker in the Defense Enrollment Eligibility Reporting System (DEERS). Resp. App. 103a, 223a–226a, 328a. Thereafter, they would be recognized and subjected to standards consistent with their sex identifier in the DEERS system. Transgender recruits were able to enlist as long as they demonstrated 18 months of stability in the sex they identified with, rather than their birth sex. App. 82a, 84a, 106a; Resp. App. 103a.

B. The 2017 Ban (which never took effect).

On July 26, 2017, President Trump announced that "the United States Government will not accept or allow … Transgender individuals to serve in any capacity in the U.S. Military." Resp. App. 535a; App. 198a. One month later, he issued a Presidential Memorandum, entitled "Military Service by Transgender Individuals," directing the DoD to maintain a freeze on accessions and prohibit access to gender-affirming health care, and ordering the Secretary to submit a plan barring transgender service. Resp. App. 305a–307a.

The absolute ban announced in the 2017 Memorandum never took effect. Shortly after its issuance, four lawsuits were filed and, in every case, the courts preliminarily enjoined its implementation. See *Karnoski* v. *Trump*, No. 17-cv-1297, 2017 WL 6311305, at *1 (W.D. Wash. Dec.

11, 2017), stayed pending appeal, 586 U.S. 1124 (2019), vacated and remanded on other grounds, 926 F.3d 1180 (9th Cir. 2019); *Stone* v. *Trump*, 280 F. Supp. 3d 747, 754 (D. Md. 2017); *Stockman* v. *Trump*, No. 17-cv-1799, 2017 WL 9732572, at *1 (C.D. Cal. Dec. 22, 2017); *Doe 1* v. *Trump*, 275 F. Supp. 3d 167, 176–177 (D.D.C. 2017), vacated on other grounds sub nom. *Doe 2* v. *Shanahan*, 755 F. App'x 19 (D.C. Cir. 2019).

C. The Mattis Policy (in effect from 2019 to 2021).

In February 2018, the DoD, under then-Secretary of Defense Mattis, issued the report called for by the 2017 Memorandum, i.e., the "Mattis Policy." App. 7a–54a. Although the report concluded that open service by transgender persons *could* impact military preparedness, the Mattis Policy did not bar *all* transgender persons from openly serving in the military. The report also recommended that the 2017 Memorandum be revoked, which occurred one month later.

Concerns about military readiness and unit cohesion in the Mattis Policy were based on speculation and hypotheticals. See App. 232a–233a (Mattis Policy was based on "*predictions* … about what issues open transgender service '*could*' pose"); *Talbott* v. *United States*, No. 25-CV-00240 (ACR), 2025 WL 842332, at *34 (D.D.C. Mar. 18, 2025), appeal filed, No. 25-5087 (D.C. Cir. Mar. 27, 2025); see also, *e.g.*, App. 44a (noting uncertainty about impact on deployment), 54a (noting its conclusions were based on "various sources of uncertainty in this area").

To be sure, the Mattis Policy was constitutionally suspect. It banned most transgender people from openly serving or enlisting. However, it provided an exemption for those actively serving transgender servicemembers who had relied on the prior policy. In addition, a non-exempt transgender servicemember (regardless of whether they openly identified as transgender) could serve if they demonstrated 36 consecutive months of stability in their birth sex, were willing to

serve in their birth sex, and had no history of receiving cross-sex hormone therapy or sex reassignment or genital reconstruction surgery. App. 15a.

Following the issuance of the Mattis Policy, the government sought to stay the preliminary injunctions, arguing that the Mattis Policy represented an independent process separate from the 2017 Memorandum and that unlike "the President's 2017 tweets and memorandum," which the courts construed, "as unilaterally proclaim[ing] a prohibition on transgender service members," "the Mattis policy holds that transgender persons should not be disqualified from service solely on account of their transgender status." See, *e.g.*, Application for a Stay at 13, 27, *Trump* v. *Karnoski*, No. 18-676 (U.S. Dec. 13, 2018). On January 22, 2019, this Court denied the government's petition for a writ of certiorari and stayed the injunctions against the 2017 Ban and the Mattis Policy (to the extent the district courts had construed the latter as implementation of the former), "pending disposition of the Government's appeal in the United States Court of Appeals for the Ninth Circuit." *Trump* v. *Karnoski*, 586 U.S. 1124 (2019). The Mattis Policy took immediate effect.

D. The Austin Policy (in effect 2021 to present).

On January 25, 2021, President Biden issued Executive Order 14004, 86 Fed. Reg. 7471 (Jan. 25, 2021), which allowed transgender people to, once again, serve openly on equal terms as other servicemembers. The order relied on, *inter alia*: a comprehensive DoD study; congressional testimony from leadership of the Army, Navy, Marine Corps, and Air Force, stating plainly that they were not aware of any issues with unit cohesion, disciplinary problems, or morale resulting from open transgender service; and Rand Institute research. Resp. App. 113a–114a. It was also supported by peer-reviewed scientific research. Resp. App. 119a. Then-Secretary of Defense Lloyd Austin reinstated the ability of transgender people to serve on equal terms as their counterparts, subjecting them to the same high standards expected of any servicemember regarding medical

fitness, physical fitness, uniform and grooming standards, and deployability (the "Austin Policy"). Resp. App. 67a, 94a, 218a–239a. As under the Carter Policy, a gender transition under the Austin policy begins with a medical diagnosis and treatment plan and ends with a change in the service-member's sex marker in the DEERS system, after which the servicemember is required to meet the applicable standards of that sex. Resp. App. 68a, 103a, 223a. Transgender people seeking to enlist must demonstrate stability in the sex they identify with for 18 months prior to enlistment. App. 82a, 84a, 106a; Resp. App. 103a.

E. The 2025 Ban: Executive Order 14183 and the Hegseth Policy.

President Trump has repeatedly expressed his desire to rid the military of transgender people. On August 8, 2023, he announced he would "restore the ban on transgender [sic] in the military." App. 163a. He then pretended to ask a General off the record, "[w]hat do you think of transgenders?" and responded, "I don't like it sir." *Ibid*. On December 22, 2024, then-President-elect Trump declared "I will sign Executive Orders to … get transgender [sic] out of the military." App. 164a. True to his word, on January 27, 2025, President Trump signed EO 14183.

Without citation to evidence or support, EO 14183 characterizes transgender people as dishonorable, dishonest, and undisciplined, even in their personal lives, and declares that a "man's assertion that he is a woman, and his requirement that others honor this falsehood, is not consistent with the humility and selflessness required of a service member." App. 114a. EO 14183 contends, again without support, that government policy favoring "high standards for troop readiness, lethality, cohesion, honesty, humility, uniformity, and integrity" "is inconsistent with the medical, surgical, and mental health constraints on individuals with gender dysphoria" and "with shifting pronoun usage or use of pronouns that inaccurately reflect an individual's sex." *Ibid.*; Resp. App. 97a–

98a. It also incorporates the definitions of another executive order[2] that defines so-called "gender ideology" as the "false claim" that a person may have a gender identity that is incongruent with their birth sex. App. 114a; Resp. App. 151a–152a.

EO 14183's abrupt reversal of policy deviated from the hallmarks of military policymaking, which typically involves a rigorous process that includes consultation with experts and military personnel. Resp. App. 56a–57a, 71a. Such a systematic, evidence-based approach is critical to ensure that military decision-making comports with national security objectives and has a factual foundation. Resp. App. 56a, 86a, 117a.

On February 26, 2025, the DoD issued the Hegseth Policy: a memorandum titled "Additional Guidance on Prioritizing Military Excellence and Readiness." App. 124a–136a. The Policy implements EO 14183 as it pertains to accession to the military and separation of active-duty transgender servicemembers, as well as the immediate terms and standards under which transgender servicemembers will serve as they are separated from the military. The administrative separation prescribed by the Hegseth Policy is generally used in instances of misconduct or failure to meet standards—not for separation of servicemembers because of a medical condition. Resp. App. 123a. For medical conditions, servicemembers would typically be evaluated on an individual basis by a medical board and then referred to a disability evaluation system to determine whether their condition impacts their service or deployability. *Ibid*.

The Hegseth Policy also incorporates EO 14183's insults about transgender people, echoing the claim that transgender servicemembers are dishonest and lack humility and integrity. App. 126a. It categorically declares that "[i]ndividuals who have a current diagnosis or history of, or

[2] Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

exhibit symptoms consistent with, gender dysphoria are no longer eligible for military service," and "[a]ll service members will only serve in accordance with their [birth] sex." *Ibid.*

The Hegseth Policy provides an illusory "exemption" for people who are willing to serve under the "standards associated with the[ir] … [birth] sex." App. 129a, 131a. However, no transgender person can serve in the military, without exception, if they have ever "attempted to transition to any sex other than their [birth] sex." App. 131a. In other words, "all transgender persons are ineligible for this purported 'waiver.'" Resp. App. 140a. That is because "acknowledgement and disclosure of one's identity, which is a definitional aspect of being transgender, is a critical step in any person's gender transition." *Ibid.*

F. The Military Ban and the Mattis Policy Significantly and Substantially Differ.

Applicants misleadingly characterize the Ban as "materially indistinguishable" from the Mattis Policy from 2018. Gov't Br. 1, 2. Nonsense. While both the Mattis Policy and the Ban discriminate against transgender people, they differ in significant ways, including:

1. The Mattis Policy did not bar all transgender people from military service. See *supra* pp. 6–7. EO 14183 and the Hegseth Policy do. As the district court found, "consistent with the Military Ban, and unlike the Mattis Policy, the Hegseth Policy imposes a *de facto* blanket prohibition on transgender service." App. 193a. The Mattis Policy exempted existing active-duty transgender servicemembers from separation because "[t]he reasonable expectation of these Service members that the Department would honor their service on the terms that then existed cannot be dismissed." App. 53a. In contrast, the Ban requires immediate separation of all actively serving transgender servicemembers, including active-duty Respondents. App. 131a. "[T]he government here does not dispute that the Hegseth Policy would exclude each plaintiff." App. 221a. Additionally, the Mattis Policy did not require the separation of any servicemember because they identified as transgender or had transitioned. The Military Ban does. See *infra* pp. 25–26. DoD guidance,

contemporaneous with the Hegseth Policy, expressly acknowledges that "*all transgender Service members [are] being targeted for separation now*." Resp. App. 174a. (emphasis added).

2. The Mattis Policy entailed a process of the independent judgment by military officials based on a review of the allegedly available information and consultation with purported experts. See *Karnoski*, 926 F.3d at 1199; *Doe 2*, 755 F. App'x at 23. By contrast, the Hegseth Policy reflexively implements EO 14183, deviating from the hallmarks of military policymaking, which typically involves rigorous consultation with experts and military personnel. App. 229a; *Talbott*, 2025 WL 842332, at *10–11; Resp. App. 56a–57a, 71a. As the district court found, "[u]nlike President Trump's first-term 2018 Mattis Policy on transgender service, … the 2025 Hegseth Policy does not rely on any recent study, evaluation, or evidence." App. 193a. Instead, it ignores evidence by reflexively implementing EO 14183 "without considering the military's experience under the Austin Policy, whether positive, neutral, or negative." *Ibid.*

3. The Mattis Policy lacked the animus-laden language of EO 14183 and the Hegseth Policy, which disparage transgender people as inherently untruthful, undisciplined, dishonorable, selfish, arrogant, and incapable of meeting the rigorous standards of military service. App. 114a; Resp. App. 151a–152a, 159a. The Mattis Policy had no such rancorous, demeaning rhetoric.

G. The Present Case.

This case commenced on February 6, 2025. D. Ct. Doc. 1. Respondents are seven active-duty transgender servicemembers, one transgender person who seeks to join the military, and a nonprofit association with transgender members who are servicemembers or seeking to join the Armed Forces. Active-duty Respondents have been serving consistent with the sex they identify rather than their birth sex for years and have received awards from the military for exemplary service. Respondents filed an amended complaint on March 4, 2025. D. Ct. Doc. 59.

Respondents moved for a preliminary injunction against the Ban because it violated their rights to equal protection, freedom of speech and expression, and due process, as well as notions of fairness justifying equitable estoppel. D. Ct. Doc. 23. In support, Respondents submitted declarations from each plaintiff, a member of Gender Justice League, a medical expert, and seven former military officials responsible for overseeing the Austin Policy's implementation. Resp. App. 6a, 10a, 16a, 22a, 27a, 30a, 33a, 38a, 45a, 50a, 52a, 59a, 65a, 74a, 80a, 88a, 101a, 108a, 120a, 126a, 137a, 151a, 161a. Applicants submitted a lone barebones declaration from one military official, which responded to only one of Respondents' seven declarations from former officials. D. Ct. Doc. 76-6. All parties declined to cross-examine any witnesses. D. Ct. Docs. 65–67.

On March 25, 2025, the district court held a hearing and, two days later, issued an opinion holding that plaintiffs were likely to succeed on their claims and an order preliminarily enjoining the Ban. App. 190a–191a, 192a–256a. The court concluded that, "[a]bsent an injunction, all transgender service members are likely to suffer the irreparable harm of losing the military service career they have chosen, while otherwise qualified accession plaintiffs will lose the opportunity to serve." App. 256a. "Although the Court g[ave] deference to military decision making," App. 234a, it held that "[t]he Military Ban and Hegseth Policy on the present record fails any level of Equal Protection scrutiny." App. 236a. The court further held that Respondents "will suffer irreparable harm absent an injunction," App. 249a, and that "equity and the public interest support enjoining an unsupported, dramatic and facially unfair exclusionary policy." App. 253a.

The government moved for an immediate administrative stay and a stay pending appeal of the preliminary injunction before the Ninth Circuit. The Ninth Circuit denied the request for an administrative stay on March 31, 2025, App. 257a, and the stay pending appeal on April 18, 2025,

holding that petitioners failed to demonstrate irreparable harm absent a stay. App. 258a. On April 22, 2025, the government filed the instant application to stay the injunction pending appeal.

H. Related Litigation.

Two other cases challenge the Ban: *Talbott* v. *United States*, No. 25-cv-00240 (D.D.C. Jan. 28, 2025), and *Ireland* v. *Hegseth*, No. 25-cv-1918 (D.N.J. Mar. 17, 2025). The district court in *Talbott* similarly issued a preliminary injunction on March 18, 2025, finding the plaintiffs were likely to succeed on their equal protection claim. See *Talbott* v. *United States*, 2025 WL 842332, at *23. The D.C. Circuit administratively stayed the injunction pending resolution of the government's motion to stay pending appeal. *Talbott* v. *United States*, No. 25-5087 (D.C. Cir. Mar. 27, 2025), Docs. 2108170, 2112041. The court in *Ireland* issued a 14-day temporary restraining order on March 24, 2025, which was not renewed given that the Ban has been enjoined. See *Ireland* v. *Hegseth*, No. 25-cv-01918, 2025 WL 1084239, at *4 (D.N.J. Mar. 24, 2025).

LEGAL STANDARD

"A stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken* v. *Holder*, 556 U.S. 418, 427 (2009) (cleaned up). To prevail in an application for a stay, an applicant must carry the burden of (1) "a strong showing that [it] is likely to succeed on the merits," (2) that it "will be irreparably injured absent a stay," (3) that the balance of the equities, including whether "the stay will substantially injure the other parties," favors it, and (4) that a stay is consistent with the public interest." *Id.*, at 434.

Applicants omit this well-established standard in favor of another that ignores the irreparable harm that may occur to the non-moving party and the requisite "strong showing" of likelihood of success for the applicant. Gov't Br. 14 (citing *Hollingsworth* v. *Perry*, 558 U.S. 183, 190

(2010) (per curiam)).[3] But "[b]efore issuing a stay, it is ultimately necessary to balance the equities—to explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Trump* v. *Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) ("*IRAP*") (cleaned up). In other words, the applicable standard here is the one set forth in *Nken*, as the Court's recent cases show. See *Ohio* v. *Env. Prot. Agcy.*, 603 U.S. 279, 291 (2024); *id.*, at 304 (Barrett, J., dissenting) ("[A]pplicants must, at a minimum, show that they are likely to succeed on the merits, that they will be irreparably injured absent a stay, and that the balance of the equities favors them."); *Labrador* v. *Poe ex rel. Poe*, 144 S. Ct. 921, 922 (2024) (Gorsuch, J., concurring). The government typically agrees. See, *e.g.*, Application for a Partial Stay, *Trump* v. *CASA, Inc.*, No. 24A884 (U.S. Mar. 13, 2025).

ARGUMENT

I. Applicants Cannot Show They Are Entitled to the Extraordinary Relief of an Emergency Stay.

Applicants seek the extraordinary "emergency" relief of a stay pending appeal of a preliminary injunction. But no emergency justifies such "an intrusion into the ordinary processes of administration and judicial review." *Nken*, 556 U.S. at 427. The preliminary injunction has been in place for over a month. Yet Applicants now seek a stay despite their lack of evidence that preservation of the *status quo ante litem* has caused any harm to military readiness and lethality or unit cohesion. See *infra* Section II.B. As a result, Applicants cannot demonstrate *any* need for an emergency stay, much less "an exceptional need for immediate relief." *Louisiana* v. *Am. Rivers*, 142 S. Ct. 1347, 1348 (2022) (Kagan, J., dissenting, joined by Roberts, C.J., and Breyer and Sotomayor, JJ.); see also *Murthy* v. *Missouri*, 144 S. Ct. 7, 8 (2023) (Alito, J., dissenting, joined

[3] By its terms, the *Hollingsworth* test applies to applications for a stay pending the disposition of a petition for a writ of certiorari, 558 U.S. at 190, not to applications pending appeal.

by Thomas and Gorsuch, JJ.) ("A stay is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." (quotation and citation omitted)).

There is no reason to sidestep the ordinary appeals process here. "Ordinarily, a stay application … on a matter currently before a Court of Appeals is rarely granted." *Pasadena City Bd. of Educ.* v. *Spangler*, 423 U.S. 1335, 1336 (1975). The government has already appealed the preliminary injunction, having filed its opening brief below the day after its application to this Court, and the court of appeals is proceeding with haste. The Ninth Circuit has ordered that the case be set for the next available calendar after the answering brief is filed later this month. An emergency stay pending appeal is unwarranted.

II. Applicants Will Not Be Irreparably Injured While Their Appeal Is Pending.

As a threshold matter, leaving the preliminary injunction in place poses no irreparable harm to the government. The Ninth Circuit held that "Appellants have not demonstrated that they will suffer irreparable harm absent a stay." App. 258a. And "[i]f the moving party has not demonstrated irreparable harm, then this Court can avoid delving into the merits." *Labrador*, 144 S. Ct. at 929 (Kavanaugh, J., concurring); cf. *Rostker* v. *Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers) (a stay "is appropriate only in those extraordinary cases where … there [is] a demonstration that irreparable harm is likely to result from the denial of a stay."); *Murthy*, 144 S. Ct. at 8 (Alito, J., dissenting) ("[T]he Government in this case must make a 'clear showing' of irreparable harm."). Applicants' failure to make any showing of irreparable harm caused by the preservation of the *status quo ante litem*, let alone the short time while they appeal, dooms their request for a stay.

Applicants' sole argument as to irreparable harm is that the current administration's policy preferences in this regard have been preliminarily enjoined. Applicants rely on *Maryland* v. *King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers), for the proposition that "[a]ny time a State is

enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Id.*, at 1303 (cleaned up). But the applicants in *Maryland* demonstrated "ongoing and concrete harm," *ibid.*, and "[i]t is routine for both executive and legislative policies to be challenged in court, particularly where a new policy is a significant shift from prior understanding and practice." *Washington* v. *Trump*, No. 25-807, 2025 WL 553485, at *1 (9th Cir. Feb. 19, 2025) (Forrest, J., concurring). Concluding otherwise would lead to the "inequitable" result where "some plainly unconstitutional or otherwise illegal laws would nonetheless remain in effect and be enforced against individuals and businesses for several years pending the final decision on the merits." *Labrador*, 144 S. Ct. at 931 (Kavanaugh, J., concurring). As the Ninth Circuit has noted, "no act of the executive branch asserted to be inconsistent with a legislative enactment [or the Constitution] could be the subject of a preliminary injunction" under Applicants' argument and "[t]hat cannot be so." *Doe #1* v. *Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020). At any rate, "the harm of such a perceived institutional injury is not irreparable, because the government may yet pursue and vindicate its interests in the full course of this litigation." *Ibid.* (cleaned up).

This Court routinely denies applications to stay preliminary injunctions and grants stays of policies, rules, and regulations by the executive branch, including those involving the military. See, *e.g.*, *Dept. of Educ.* v. *Louisiana*, 603 U.S. 866, 867 (2024) (denying partial stay of preliminary injunction); *Biden* v. *Nebraska*, 600 U.S. 477, 507 (2023) (upholding nationwide preliminary injunction); *Austin* v. *U. S. Navy Seals 1–26*, 142 S. Ct. 1301, 1301 (2022) (leaving in place an injunction preventing the Navy from taking any adverse personnel actions, including discharge, against Navy SEAL plaintiffs, but partially staying it "insofar as it precludes the Navy from … making deployment, assignment, and other operational decisions"); see also *Singh* v. *Berger*, 56 F.4th 88, 97–98, 110 (D.C. Cir. 2022) (enjoining grooming requirements for Sikh

servicemembers). Indeed, "servicemen routinely sue their government and bring military decision-making and decision-makers into court seeking injunctive relief." *Carter* v. *United States*, 145 S. Ct. 519, 523 (2025) (Thomas, J., dissenting) (quotation and citation omitted).

Moreover, there is no evidence that military service by transgender people poses a threat to military readiness and lethality, or unit cohesion. As the district court found, this "is not an especially close question on this record." App. 196a. "Any evidence that [transgender servicemembers'] service over the past four years harmed any of the military's inarguably critical aims would be front and center. But there is none." *Ibid.* The Ninth Circuit also noted the absence of such evidence. App. 258a. "It very well is reasonable for transgender service members to expect that they be allowed to serve openly when they have done so successfully for years and *the government lacks any evidence to justify banning them now*." App. 236a (emphasis added). This lack of evidence in no way suffices to satisfy the government's burden "of providing any concrete proof that 'harm is imminent.'" *Murthy*, 144 S. Ct. at 9 (Alito, J., dissenting, joined by Thomas and Gorsuch, JJ.) (quoting *White* v. *Florida*, 458 U.S. 1301, 1302 (1982) (Powell, J., in chambers)); see also *Louisiana*, 142 S. Ct. at 1348 (Kagan, J., dissenting, joined by Roberts, C.J., and Breyer and Sotomayor, JJ.).

The government primarily relies on the Mattis Report's seven-year-old speculative concerns. "But hypotheticals are … not concrete proof. And … speculation does not establish irreparable harm." *Murthy*, 144 S. Ct. at 9 (Alito, J., dissenting) (citation omitted); see also *Nken*, 556 U.S. at 434–435 ("[S]imply showing some possibility of irreparable injury fails to satisfy [this] factor." (cleaned up)); *Doe #1*, 957 F.3d at 1059–1060 ("The government cannot meet [its] burden by submitting conclusory factual assertions and speculative arguments that are unsupported in the record.").

Transgender servicemembers are already held to the same military standards that apply to all servicemembers, standards that guarantee readiness and deployability and preserve retention. Resp. App. 124a, 243a, 91a–92a, 400a–403a, 328a–399a; App. 58a–59a. Applicants will not be harmed by preserving the *status quo ante litem*, let alone irreparably. The Court should deny the request for a stay.

III. Applicants Are Not Likely to Succeed on Appeal.

A. Deference Does Not Shield the Ban from Scrutiny.

Interpreting the bounds of these constitutional guarantees is "emphatically the province and duty of the judicial department," not the political branches. *Marbury* v. *Madison*, 5 U.S. 137, 177 (1803); cf. *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 34 (2010).

The government argues the Ban is subject only to the most deferential standard of review because this case involves the military. They talismanically invoke "military policy" and "national security" to avoid judicial scrutiny. Gov't Br. 38. But the government is not "free to disregard the Constitution when it acts in the area of military affairs." *Rostker* v. *Goldberg*, 453 U.S. 57, 67 (1981); cf. *Ziglar* v. *Abbasi*, 582 U.S. 120, 143 (2017) ("[N]ational-security concerns must not become a talisman used to ward off inconvenient claims—a label used to cover a multitude of sins."). And "deference does not mean abdication." *Rostker*, 453 U.S. at 70. The district court, therefore, did not abuse its discretion in deciding to "not defer to unreasonable uses or *omissions in evidence*." App. 219a–220a.

As Chief Justice Warren wrote 60 years ago, "our citizens in uniform may not be stripped of basic rights simply because they have doffed their civilian clothes." E. Warren, *The Bill of Rights and the Military*, 37 N.Y.U. L. Rev. 181, 188 (1962). Accordingly, "[t]his Court has never held … that military personnel are barred from all redress in civilian courts for constitutional wrongs suffered in the course of military service." *Chappell* v. *Wallace*, 462 U.S. 296, 304 (1983).

There is no "different equal protection test" in the military context. *Karnoski* v. *Trump*, 926 F.3d 1180, 1201 (9th Cir. 2019). The Court's decisions illustrate as much. See, *e.g.*, *Frontiero* v. *Richardson*, 411 U.S. 677, 688 (1973); *United States* v. *Virginia*, 518 U.S. 515, 555 (1996) ("*VMI*"); *Rostker*, 453 U.S. at 87 (Marshall, J., dissenting) ("By now it should be clear that statutes like the [Military Selective Service Act], which discriminate on the basis of gender, must be examined under the 'heightened' scrutiny mandated by *Craig* v. *Boren*, 429 U.S. 190 (1976)."); cf. *Nat. Coal. for Men* v. *Selective Serv. Sys.*, 141 S. Ct. 1815 (2021) (statement of Sotomayor, J., joined by Breyer and Kavanaugh, JJ., respecting denial of certiorari) (suggesting that it may be appropriate to consider constitutionality of the all-male draft should Congress refuse to eliminate it). "Deference [therefore] informs the application of intermediate scrutiny, … it does not displace intermediate scrutiny and replace it with rational basis review." *Karnoski*, 926 F.3d at 1201; cf. *Goldman* v. *Weinberger*, 475 U.S. 503, 507 (1986) ("The[] aspects of military life do not, of course, render entirely nugatory in the military context the guarantees of the First Amendment … [but] courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." (citation omitted)).

Moreover, deference applies only where military policies are based upon the "considered professional judgment" of "appropriate military officials" and the policies "reasonably and evenhandedly regulate" the matter at issue. *Goldman*, 475 U.S. at 509; see also *Rostker*, 453 U.S. at 72 (no deference where discriminatory acts are undertaken "unthinkingly or reflexively and not for any considered reason" (cleaned up)). Here, "the rush to issue the Military Ban and the Hegseth Policy with no new military study, evaluation, or evidence does not warrant the same baseline level of deference as the Supreme Court gave in *Rostker* or *Goldman*." App. 227a; see

also *Talbott*, 2025 WL 842332, at *10–11 (the Hegseth Policy "was rushed by any measure"). The government offers nothing more than *ipse dixit*, which by itself is not entitled to deference.

B. Respondents Are Likely to Succeed on Their Equal Protection Claim.

The government cannot carry its burden of showing a strong likelihood of success on appeal with regards to Respondents' equal protection claim. See *Sessions* v. *Morales-Santana*, 582 U.S. 47, 59 (2017); *VMI*, 518 U.S. at 533. First, the Ban reflects such animus toward transgender people that it is unconstitutional. See *Talbott*, 2025 WL 842332, at *34 ("At this early stage, Plaintiffs are likely to prevail on their claim that the Military Ban is driven exclusively by animus."). Second, for three independent reasons, the Military Ban—both EO 14183 and the Hegseth Policy—warrants heightened scrutiny under the Fifth Amendment's equal protection component, and the government cannot justify the Ban under such standard. Indeed, as the district court correctly held, "[t]he Military Ban and Hegseth Policy on the present record fails any level of Equal Protection scrutiny." App. 236a.

1. The Ban is unconstitutional because it is motivated by animus.

Respondents are likely to prevail on their equal protection claim because "[t]he Military Ban is ... unique in its unadulterated expression of animus [towards transgender people]." *Talbott*, 2025 WL 842332, at *32. The Ban and its implementing guidance demean transgender people as being incapable of "honesty, humility, … and integrity," App. 114a, 126a, and refer to any acknowledgement of the existence of transgender people as the "false claim that males can identify as and thus become women and vice versa." Resp. App. 151a–152a. The Ban further smears transgender people as incapable of "a soldier's commitment to an honorable, truthful, and disciplined lifestyle, even in one's personal life." App. 114a; see also Resp. App. 159a ("Expressing a false 'gender identity' divergent from an individual's sex cannot satisfy the rigorous standards necessary for Military Service."), 174a. This "language is unabashedly demeaning." *Talbott*, 2025

WL 842332, at *31. One "cannot fathom discrimination more direct than the plain pronouncement of a policy resting on the premise that the group to which the policy is directed does not exist." *PFLAG, Inc.* v. *Trump*, No. 25-cv-337, 2025 WL 685124, at *23 (D. Md. Mar. 4, 2025).

The Ban was issued for the openly discriminatory purpose of expressing governmental disapproval of transgender people—even in their personal lives—and rendering them unequal to others. The Ban is thus a status-based classification of persons undertaken for its own sake and reflects a "bare … desire to harm" transgender people. *Romer* v. *Evans*, 517 U.S. 620, 634 (1996). The Ban "identifies persons by a single trait and then denies them protection across the board," constituting "a denial of equal protection of the laws in the most literal sense." *Id.*, at 633. There is no basis for this animus-laden motivation. The honorable and distinguished service records of active-duty Respondents prove how meritless the offensive assertions in the Ban are. Because the Ban reflects animus on its face and seeks to "deem a class of persons a stranger to [our] laws," it is unconstitutional. *Id.*, at 635. The Constitution forbids policies stemming from such "negative attitudes" and "irrational prejudice." *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 448, 450 (1985).

2. The Ban warrants heightened scrutiny.

The Ban warrants heightened scrutiny because it relies on sex-based classifications; discriminates based on transgender status; and is based on animus towards transgender people.

a. The Ban relies on sex-based classifications.

All laws that classify based on sex are subject to heightened scrutiny. See *VMI*, 518 U.S. at 555 ("[A]ll gender-based classifications … warrant heightened scrutiny." (quotation omitted)); accord *Morales-Santana*, 582 U.S. at 57. In every respect, the Ban classifies based on sex.

The plain text of the Ban makes clear that it classifies based on sex. The Ban establishes the government's categorical policy that "expressing a [] 'gender identity' *divergent from an*

individual's [birth] sex … cannot satisfy the rigorous standards necessary for military service." App. 114a (emphasis added). The Ban similarly declares that "adoption of a gender identity *inconsistent with an individual's [birth] sex* conflicts with a soldier's commitment to an honorable, truthful, and disciplined lifestyle, even in one's personal life." *Ibid.* (emphasis added). When a law facially "provides that different treatment be accorded to [persons] on the basis of their sex," the law necessarily "establishes a classification subject to scrutiny under the Equal Protection Clause." *Reed* v. *Reed*, 404 U.S. 71, 75 (1971).

By forbidding military service by people who have "a gender identity inconsistent with an individual's [birth] sex," App. 114a, the military discriminates against individuals like active-duty Respondents because they are transgender. *That is the very definition of being transgender*. Resp. App. 131a. Applicants agree. App. 7a. And "discrimination based on … transgender status necessarily entails discrimination based on sex," as "the first cannot happen without the second." *Bostock* v. *Clayton Cnty.*, 590 U.S. 644, 669 (2020).

That the Ban classifies based on sex is not just a matter of semantics, it is central to how the Ban *operates*. It declares that "[a]ll Service members will only serve in *accordance with their [birth] sex*" and disqualifies, without any exception, any servicemember who has ever "attempted to transition to *any sex other than their [birth] sex*." App. 126a, 131a (emphasis added). "By discriminating against transgender persons, the [government] unavoidably discriminates against persons with one sex identified at birth and another today." *Bostock*, 590 U.S. at 669.

Put more simply, just as in the case of Aimee Stephens, here, the government seeks to "fire" Commander Emily Shilling—"a transgender person who was identified as a male at birth but who now identifies as a female"—from the military and to "intentionally penalize[]" her, as "a person identified as male at birth[,] for traits or actions that it tolerates in [a servicemember]

identified as female at birth." *Id.*, at 660. Her "sex plays an unmistakable and impermissible role in the discharge decision." *Ibid.* No matter how "you slice it," under the Ban, the military "intentionally refuses to hire applicants in part because of the affected individuals' sex, even if it never learns any applicant's sex." *Id.*, at 669.

The Ban also discriminates based on sex stereotypes. Blackletter law holds that discrimination based on sex encompasses discrimination based on the failure to conform to sex stereotypes. And "[b]y definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth." *Whitaker ex rel. Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017), partially abrogated on other grounds as recognized by *A.C. ex rel. M.C.* v. *Metro. Sch. Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024); see also *Glenn* v. *Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) ("A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes."); accord *Grimm* v. *Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 608 (4th Cir. 2020), as amended (Aug. 28, 2020); *Smith* v. *City of Salem*, 378 F.3d 566, 573–575, 578 (6th Cir. 2004).

That the Ban may apply equally to men and women is of no moment. There is no exception to heightened scrutiny for sex-based classifications that apply equally to men as a group and women as a group. Explicit facial classifications do not become neutral "on the assumption that all persons suffer them in equal degree." *Powers* v. *Ohio*, 499 U.S. 400, 410 (1991); see also *McLaughlin* v. *Florida*, 379 U.S. 184, 191 (1964). This Court has held as much in the context of sex discrimination. See *J.E.B.* v. *Alabama ex. rel. T.B.*, 511 U.S. 127, 141–142 (1994).

The right to equal protection is held individually, and the Ban imposes a sex-based limitation on every transgender person willing to serve our country in the military.

b. The Ban warrants heightened scrutiny because it discriminates against transgender people.

Classifications based on transgender status are also independently subject to heightened scrutiny. Heightened scrutiny is required where the government targets a class that (1) has been historically "subjected to discrimination," *Bowen* v. *Gilliard*, 483 U.S. 587, 602 (1987); (2) has a defining characteristic bearing "no relation to ability to perform or contribute to society," *City of Cleburne*, 473 U.S. at 441; (3) has "obvious, immutable, or distinguishing characteristics that define them as a discrete group," *Bowen*, 483 U.S. at 602; and (4) is "a minority or politically powerless," *ibid.* All the indicia are present here. See, *e.g.*, *Karnoski*, 926 F.3d at 1200; *Grimm*, 972 F.3d at 611–613; *Flack* v. *Wis. Dept. of Health Servs.*, 328 F. Supp. 3d 931, 952–953 (W.D. Wis. 2018); *Evancho* v. *Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); cf. *Brandt ex rel. Brandt* v. *Rutledge*, 47 F.4th 661, 670 n.4 (8th Cir. 2022). The government does not argue otherwise. Gov't Br. 18.

The government contends that the Ban solely pertains and applies to individuals with gender dysphoria. This is folly. By its terms, servicemembers can "only serve in *accordance with their [birth] sex*" and must "ha[ve] never attempted to transition *any sex other than their [birth] sex*," without any exception. App. 128a, 131a (emphasis added). Moreover, Applicants have been explicitly clear that the Ban applies to *all transgender people* not just those with gender dysphoria. Take the following:

- On the day the government filed its application, Secretary Hegseth expressed in a post referring to the district court judge in this case as a "rogue judge," that there are "Zero readiness reasons for *trans troops*."[4]

[4] Pete Hegseth (@PeteHegseth), X (Apr. 24, 2025, 9:27pm), https://perma.cc/374F-QEPN.

- On April 23, Secretary Hegseth proclaimed in a speech to the Army War College that "[a]t the Defense Department," there is "*no more gender confusion, no more pronouns*."[5]
- On April 20, in reference to the Ban, Secretary Hegseth proclaimed that "*trans*" is "no longer allowed @ DOD."[6]
- On February 26, the day Hegseth Policy's guidance memo was issued, the DoD proclaimed in reference to the policy that "*Transgender troops* are disqualified from service." Resp. App. 176a (emphasis added).

These are not the only instances showing that the Ban targets servicemembers *because they are transgender*. Resp. App. 213a–217a. U.S. Navy guidance clarifies that sailors "who identify as *transgender*" cannot deploy or enlist. Resp. App. 155a (emphasis added). U.S. Army guidance refers to the implementation of executive orders "related to *transgender* military service." Resp. App. 160a (emphasis added). The Hegseth Policy and February 26 Action Memo also repeatedly refer to transgender servicemembers. App. 119a–123a, 125a. So does the Mattis Report, upon which Applicants so heavily rely. App. 7a–54a; see also *Karnoski*, 926 F.3d at 1201 ("[T]he 2018 Policy on its face treats transgender persons differently than other persons."). And so does other DoD guidance, contemporaneous with the Hegseth Policy, which acknowledged that "*all transgender Service members [are] being targeted for separation now*" because "express[ing] a false '*gender identity' divergent from an individual's sex* cannot satisfy the rigorous standards necessary for military service." Resp. App. 174a (emphasis added). In truth, if one were to excise the words "gender dysphoria" from the Hegseth Policy, the policy would remain the same.

[5] U.S. Dept. of Defense, Remarks by Secretary of Defense Pete Hegseth at the Army War College (As Delivered) (Apr. 23, 2025), https://perma.cc/W74A-EH4R.

[6] Pete Hegseth (@PeteHegseth), X (Apr. 20, 2025, 10:45pm), https://perma.cc/X4VN-CW23.

In any event, the Ban "uses gender dysphoria as a proxy to ban all transgender service members." App. 220a; see also *Kadel* v. *Folwell*, 100 F.4th 122, 149 (4th Cir. 2024) (en banc), petition for cert. pending, No. 24-99 (U.S. July 26, 2024). That is because "gender dysphoria is so intimately related to transgender status as to be virtually indistinguishable from it." *Id.*, at 146; *C.P. ex rel. Pritchard* v. *Blue Cross Blue Shield of Ill.*, No. 3:20-CV-06145, 2022 WL 17788148, at *6 (W.D. Wash. Dec. 19, 2022), appeal argued, No. 23-4331 (9th Cir. Jan. 15, 2025). Here, the "proxy's fit is sufficiently close to make a discriminatory inference plausible." *Schmitt* v. *Kaiser Found. Health Plan of Wash.*, 965 F.3d 945, 959 (9th Cir. 2020) (quotation omitted).

The centrality of gender transition to transgender identity further distinguishes this case from *Geduldig* v. *Aiello*, 417 U.S. 484, 496 n.20 (1974), and *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215, 236–237 (2022). Living in accord with one's gender identity, rather than birth sex, is the defining characteristic of a transgender person. Resp. App. 132a, 139a–140a. *Geduldig* and *Dobbs* both recognized that where, as here, distinctions are "mere pretexts designed to effect an invidious discrimination against the members of one [protected class] or the other," such distinctions are unconstitutional. *Geduldig*, 417 U.S. at 496 n.20; *Dobbs*, 597 U.S. at 236.[7]

c. The Ban warrants heightened scrutiny because it is based on animus towards transgender people.

Lastly, that the Ban is motivated by animus is a sufficient basis to warrant heightened scrutiny. There are myriad examples when this Court has "struck down" laws when "the protesting group was historically disadvantaged or unpopular, and the statutory justification seemed thin,

[7] Even assuming *arguendo* the Ban targeted most, but not all, transgender servicemembers, that would not save it. "A law is not immune to an equal protection challenge if it discriminates only against some members of a protected class but not others." *Hecox* v. *Little*, 104 F.4th 1061, 1079 (9th Cir. 2024); see also *Rice* v. *Cayetano*, 528 U.S. 495, 516–517 (2000); *Nyquist* v. *Mauclet*, 432 U.S. 1, 7–9 (1977).

unsupported or impermissible." *Massachusetts* v. *U.S. Dept. of Health & Hum. Servs.*, 682 F.3d 1, 10 (1st Cir. 2012) (citing *U.S. Dept. of Agric.* v. *Moreno*, 413 U.S. 528 (1973); *City of Cleburne*, 473 U.S. 432; and *Romer*, 517 U.S. 620). Such "equal protection decisions have both intensified scrutiny of purported justifications where minorities are subject to discrepant treatment and have limited the permissible justifications." *Massachusetts*, 682 F.3d at 10. That is because "review should be more demanding when there are historic patterns of disadvantage suffered by the group adversely affected by the statute." *Windsor* v. *United States*, 699 F.3d 169, 180 (2d Cir. 2012) (cleaned up), *aff'd*, 570 U.S. 744 (2013). "[I]t is of no moment what label is affixed to the distinctive equal-protection mode of analysis that is performed in the animus cases," what is important is that "the hallmark of animus jurisprudence is its focus on actual legislative *motive*." *Bishop* v. *Smith*, 760 F.3d 1070, 1099 (10th Cir. 2014) (Holmes, J., concurring). Here, *the government has never disputed that the Ban is motivated based on animus* and transgender people constitute a small, historically disadvantaged minority. This serves as an additional independent basis for a heightened level of scrutiny to be applied to the Ban.

3. The Ban cannot be justified based on concerns about military readiness, unit cohesion, or costs.

In defending the Ban, the government employs a back-to-the-future strategy, relying on the predictions and hypothesis of the Mattis Report from seven years ago. App. 229a (noting "the government relies on the Mattis Policy's concerns about problems transgender service 'could' cause"). But time does not stand still, and the government cannot rely on speculation or hypothetical concerns to justify the Ban or as the basis for its application. See *Nken*, 556 U.S. at 434–435. Not even *post-hoc* justifications suffice. See *VMI*, 518 U.S. at 533, 535–536. No matter how much it may want to, the government simply cannot bury its head in the sand and ignore that transgender

servicemembers like active-duty Respondents have been serving in our military for years—without any of their purported concerns materializing.

The military experience of active-duty Respondents, who have collectively served over 115 years, App. 211a, is neither speculative nor hypothetical; it is a record of distinguished and honorable service. Resp. App. 1a–2a, 4a, 6a–8a, 10a–11a, 14a, 16a–17a, 22a–24a, 28a, 30a–31a. And, as the district court observed, "[t]he government fails to contend with the reality that transgender service members have served openly for at least four years under the Austin Policy (some since the Carter Policy in 2016) without any discernable harm to military readiness, cohesion, order, or discipline." App. 228a–229a. "The government has ... provided no evidence supporting the conclusion that military readiness, unit cohesion, lethality, or any of the other touchstone phrases long used to exclude various groups from service have in fact been adversely impacted by open transgender service under the Austin Policy." App. 193a. "The Court can only find that there is none." *Ibid*.

Ultimately, "the Military Ban … cannot survive the intermediate scrutiny that its discrimination triggers nor the rational basis review that the government argues for." App. 237a.

a. Military Readiness

In addressing military readiness, the government relies primarily on the Mattis Report's speculative concerns and cites in passing a 2025 literature review and 2021 AMSARA report. "But … the Mattis Policy is woefully stale," *Talbott*, 2025 WL 842332, at *30, and the government's citations to the review and the report are misleading. See App. 207a–209a; *Talbott*, 2025 WL 842332, at *28–29. The government "has provided no data supporting the conclusion that transgender service members posed more mental health … issues than the general military population since the Austin Policy." App. 230a.

Although Applicants express "concerns" about the efficacy of treatment for gender dysphoria, citing the 2025 review (Gov't Br. 22–23), that review "did not survey studies on transgender persons in military service," *Talbott*, 2025 WL 842332, at *13. Instead, the review demonstrated that treatment for gender dysphoria is effective and leads to improvements in mental health and gender dysphoria. *Id.*, at *14; see also Resp. App. 144a–145a. And the review stated that any health disparities are not inherent but are rather "largely driven by minority stress, discrimination, social rejection, *lack of access to gender-affirming care*," among other external factors. Resp. App. 142a–143a (emphasis added). Indeed, the supporting evidence base for this care is "as robust as many other common medical interventions." Resp. App. 145a.

Regarding deployability, "the government relies on Mattis Policy data and the AMSARA report, both of which could only make educated predictions about deployability of transgender service members, because they lacked the benefit of four years of transgender service members being deployable." App. 230a. But this "fails to acknowledge AMSARA's 'key finding' that compared to cisgender service members with depression (from the studied depression cohort), transgender servicemembers 'are more likely to remain on active duty longer following cohort eligibility' and 'spend less time in a non-deployable status due to mental health reasons.'" *Ibid.*

Applicants argue that "nearly 40%" of transgender servicemembers were non-deployable over a 24-month period. Gov't Br. 23. Wrong. See *Talbott*, 2025 WL 842332, at *12. The report Applicants cite merely "estimate[d] that fewer than 40% of the transgender service members … would have been deemed non-deployable … at some time during the 24 months." Resp. App. 147a–148a. Applicants do not show how this compares to non-transgender servicemembers with other conditions or generally among servicemembers, nor how long a servicemember was non-deployable, limitations the report noted. Resp. App. 148a.

Ultimately, Applicants ignore the *actual experience* of transgender servicemembers, including Respondents, deployed worldwide into combat zones and austere environments. App. 230a (citing Resp. App. 99a, 116a). "It would be an 'abdication' of the Court's role to review to defer to the government's out of date and out of context data on this point." App. 231a.

b. Unit Cohesion

The government also fails to show that the Ban is justified by any concerns about unit cohesion. The government instead "relies exclusively on the *predictions* of the Mattis Policy about what issues open transgender service '*could*' pose to privacy concerns" and "'*could*' pose" regarding "training and athletic competitions." App. 232a–233a; see Gov't Br. 23.

Open transgender service is not a hypothetical situation. It has been the reality. Yet "[t]he government does not provide any evidence in support of its claim that open transgender service hurt cohesion." App. 233a. By contrast, Respondents present uncontroverted sworn testimony from active-duty Respondents and former military officials, all noting there have been zero issues with unit cohesion. Resp. App. 4a, 7a–8a, 12a–13a, 18a–19a, 24a, 28a, 31a, 55a–56a, 70a, 77a, 83a–84a, 96a–97a, 116a. The record also documents similar observations by former military officials during President Trump's first term. Resp. App. 523a–524a, 530a–533a.

The government raises *speculative* concerns from the Mattis Report about sex-designated facilities to support its position (Gov't Br. 23) but "fails to provide any argument or evidence that those predictions came to pass in the years that transgender service members served openly." App. 232a. The government raises that the military maintains different standards for males and females, noting the Mattis Report's *speculative* concerns about training and competitions, but "does not provide any evidence that any of these concerns materialized during the past years of open transgender service." App. 233a. Indeed, the government omits from its application that Secretary

Hegseth has ordered that "[a]ll entry-level and sustained physical fitness requirements within combat arms positions *must be sex-neutral*, based solely on the operational demands of the occupation and the readiness needed to confront any adversary."[8]

c. Costs

The government argues that "medical interventions related to gender dysphoria were 'disproportionately costly on a per capita basis.'" Gov't Br. 23. But Applicants have conceded this "is but a small fraction of DoD's overall budget" and "is likewise a small fraction of DoD's total medical budget." Resp. App. 517a. "The government provide[s] no updated data comparisons to support its assertion that costs expended on transgender service members are disproportionate." App. 234a. To the contrary, these costs "plainly are exceedingly minimal." App. 235a (cleaned up). Additionally, Applicants ignore the "costs of discharging and replacing thousands of trained service members, many with decades of experience and specialized skills," which is estimated to be "*more than 100 times greater* than the cost to provide transition-related healthcare." App. 234a–235a (cleaned up). In any event, cost-cutting is not a sufficient reason for denying equal protection of the law. *Latta* v. *Otter*, 19 F. Supp. 3d 1054, 1083 (D. Idaho), *aff'd*, 771 F.3d 456 (9th Cir. 2014); see also, *e.g.*, *Graham* v. *Richardson*, 403 U.S. 365, 375 (1971).

In short, "the government falls well short of its burden to show that banning transgender service is substantially related to achieving unit cohesion, good order, or discipline." App. 234a.

C. Respondents Are Likely to Succeed on Their First Amendment Claim.

The Ban commands all those who serve our country in the military to adopt a particular ideological viewpoint that having "a gender identity inconsistent with an individual's sex" is a

[8] Sec'y of Defense, Memorandum for the Secretaries of the Military Department re: Combat Arms Standards (Mar. 30, 2025), https://perma.cc/L9PW-7G89 (emphasis added).

"falsehood" and "conflicts with a soldier's commitment to an honorable, truthful, and disciplined lifestyle, even in one's personal life." App. 114a. Executive Order 14168's proclamation that "gender ideology" is the "false claim that males can identify as and thus become women and vice versa" and that "gender identity" "does not provide a meaningful basis for identification and cannot be recognized as a replacement for sex," Resp. App. 151a–152a, all represent a system of ideas—and adherence to that viewpoint is strictly enforced by the Ban and its guidance.

"By prohibiting transgender service members from presenting in—effectively, identifying with—a gender different than their birth sex," even in their personal lives, the Ban imposes "a viewpoint-based restriction on transgender service members' speech and expression." App. 239a; see also *Rosenberger* v. *Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (concluding viewpoint discrimination is "an egregious form of content discrimination," which is presumptively unconstitutional); *Cornelius* v. *NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985) (even in nonpublic forum such as a military installation, government may not discriminate against speech based on viewpoint). The Ban, which disqualifies anyone who has ever "attempted to transition," App. 131a, chills transgender servicemembers' speech, who cannot risk their career and reputation to be candid about who they are. App. 118a; Resp. App. 140a.

Applicants trivialize Respondents' First Amendment claim by suggesting that Respondents seek individual autonomy "exceptions" that were not available under the Austin Policy. Not so. Respondents simply seek the ability to express their gender as any other servicemember, under the *status quo* policy that requires them to adhere to all grooming and other standards based on their sex designated in the military's personnel system. This is not akin to an individual seeking some anomalous expression prohibited by generally applicable regulations that further order or discipline. See *Brown* v. *Glines*, 444 U.S. 348, 355 (1980) (military speech restrictions cannot

restrict more than reasonably necessary to protect substantial government interest). Rather, the Ban prohibits transgender servicemembers—and only them—from expressing their gender identity and expressing themselves consistent with it, even in private. See App. 114a, 126a. Thus, in addition to discriminating against protected speech based on viewpoint, the government also creates speaker-based discrimination for the sole purpose of exercising a content preference. *Turner Broad. Sys., Inc.* v. *FCC*, 512 U.S. 622, 658 (1994) (strict scrutiny applies to regulations reflecting "aversion" to what "disfavored speakers" have to say).

D. Respondents Are Likely to Succeed on Their Procedural Due Process Claim.

Due process is "essential" where a person's "reputation, honor, or integrity is at stake because of what the government is doing to him." *Bd. of Regents of State Colls.* v. *Roth*, 408 U.S. 564, 573 (1972) (nonrenewal would have implicated due process if based on a charge of "dishonesty[] or immorality"). Active-duty Respondents have been publicly stigmatized in connection with the government's plan to bar them from the military based on its position that they are dishonest or immoral by virtue of being transgender. App. 114a, 126a (impugning "humility" and "integrity"). The stigma imposed by the Ban forecloses employment in an entire public sector, deeming transgender people categorically unqualified to serve in any military position regardless of fitness. See *Roth*, 408 U.S. at 573 (this "would be a different case" if state had "bar[red] the respondent from all other public employment in state universities"). The district court properly found that Applicants cannot purge the public stigmatization of transgender servicemembers by promising to *label* their separations as "honorable" after discharging them for having an identity the government has deemed "inconsistent with [being] honorable." App. 114a, 243a–245a. The act of separation speaks louder than a hollow word denying what has occurred.

Applicants ignore active-duty Respondents' claim that the Ban violates basic notions of procedural fairness by retroactively punishing them for military pre-approved actions. See *Perry* v. *Sindermann*, 408 U.S. 593, 601 (1972) ("property" interest for due process purposes may be based upon "mutually explicit understandings" that support claim of entitlement to a benefit); *Roth*, 408 U.S. at 577. The Mattis Report created a reasonable expectation that active-duty Respondents would not be punished for disclosing their status and transitioning under the military's approved process for doing so, having stated that the "reasonable expectation of these Service members [who had transitioned] that the Department would honor their service on the terms that then existed cannot be dismissed." App. 53a.

Applicants suggest discharging servicemembers on an improper basis cannot implicate procedural due process. Gov't Br. 28–29. They conflate clarification of the violation (and why their offered process is futile or insufficient) with description of a remedy. Respondents are likely to establish that the Ban violates procedural due process by not providing any meaningful way for individuals to disprove the character aspersions the Ban assigns to them by virtue of their identities or a means to acquire an exception for conduct that was pre-approved by their command.

E. Respondents Are Likely to Succeed on Their Estoppel Claim.

"Equity does not permit this sort of 'bait and switch' any more than Due Process does." App. 249a. This Court has declined the government's invitation to "embrace a rule that no estoppel will lie against the government." *Office of Pers. Mgmt.* v. *Richmond*, 496 U.S. 414, 424 (1990). Courts have continued to apply the doctrine in exceptional cases where government conduct, in addition to satisfying traditional elements of estoppel, amounts to affirmative misconduct and causes serious injustice. See, *e.g.*, *Watkins* v. *U.S. Army*, 875 F.2d 699, 706–707 (9th Cir. 1989) (applying estoppel in military context to retain gay servicemember); *Portmann* v. *United States*,

674 F.2d 1155, 1158–1167 (7th Cir. 1982); *Walsonavich* v. *United States*, 335 F.2d 96, 101 (3d Cir. 1964). They do so to prevent manifest injustice where the public interest in the enforcement of a policy is outweighed by "the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government." *Heckler* v. *Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 61 (1984).

Here, the district court "ha[d] little trouble concluding that all elements of equitable estoppel against the government are present." App. 249a. The Ban attempts to retroactively punish active duty servicemembers like Respondents for conforming to individual, written transition plans that were approved by military officials acting within their authority. Resp. App. 2a–3a, 7a, 12a–13a, 18a, 23a, 28a, 31a; App. 118a. But in deciding whether and when to take irreversible steps to transition, the active-duty Respondents relied not just on policy, but also on the military's instructions to them personally. See, *e.g.*, Resp. App. 2a–3a (Shilling postponed coming out until procedures allowed her to do so without fear of reprisal or losing career). Their reliance was particularly reasonable where such approvals had previously insulated them and their similarly situated peers from discharge under the Mattis Policy. See App. 247a–248a; see also Resp. App. 7a (Dremann transitioned 2015), 18a (Schmid transitioned 2016).

IV. Without an Injunction, Respondents Will Be Irreparably Harmed.

Respondents will suffer immediate and irreparable harm should the Court grant the stay application. For one, Respondents' constitutional freedoms are under attack. See *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (plurality); *Baird* v. *Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023); *Bonnell* v. *Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001). Respondents include distinguished active-duty servicemembers with over 100 years of boots-on-the-ground military service. Resp. App. 1a, 6a, 10a–11a, 16a–17a, 22a, 27a, 30a. They have disclosed their transgender status and expressed their

gender identity within the military and have a right to continue doing so without fear of retaliation or discharge. Resp. App. 4a–5a, 7a–8a, 13a, 18a–19a, 24a–25a, 28a, 31a–32a.

Respondents also face intangible irreparable harms. The Ban requires all transgender servicemembers to be discharged, irreparably harming them based on their status, not their ability to serve. See *Nelson* v. *Miller*, 373 F.2d 474, 479–480 (3d Cir. 1967); *Roe* v. *Dept. of Def.*, 947 F.3d 207, 229–230 (4th Cir. 2020). They will also be denied medical care. See, *e.g.*, *Brandt*, 47 F.4th at 671; *Planned Parenthood S. Atl.* v. *Baker*, 941 F.3d 687, 707 (4th Cir. 2019); *Beltran* v. *Myers*, 677 F.2d 1317, 1322 (9th Cir. 1982); cf. *Adams* v. *Freedom Forge Corp.*, 204 F.3d 475, 485 (3d Cir. 2000); *Whelan* v. *Colgan*, 602 F.2d 1060, 1062 (2d Cir. 1979). They will be prevented from pursuing their profession. See *Chalk* v. *U.S. Dist. Ct.*, 840 F.2d 701, 710 (9th Cir. 1988); cf. *Carson* v. *Am. Brands, Inc.*, 450 U.S. 79, 89 n.16 (1981). And they will be subjected to a policy that stigmatizes them and disrupts the trust, camaraderie, and cohesion they have developed with their fellow servicemembers. See *Karnoski*, 2017 WL 6311305, at *9; see also Resp. App. 115a–118a. These harms are a far cry from simple loss of employment; they are irreparable injuries. See *Sampson* v. *Murray*, 415 U.S. 61, 92 n.68 (1974). Simply put, "[b]eing summarily and involuntarily dismissed from military service after years of unblemished and decorated service under the cloud of being suddenly deemed unfit and disqualified for military service for no reason other than one's gender identity is irreparable harm." *Ireland*, 2025 WL 1084239, at *3.

Nevertheless, the government claims its purported harm (but see *supra* Section II) "substantially outweigh[s]" the harm faced by Respondents. Not so. As the district court found, "[b]ecause the military has operated smoothly for four years under the Austin Policy, any claimed hardship it may face in the meantime pales in comparison to the hardships imposed on transgender

service members and otherwise qualified transgender accession candidates, tipping the balance of hardships sharply toward plaintiffs." App. 256a.

Applicants seek to upset the *status quo* by reversing a years-long policy permitting transgender individuals like active-duty Respondents to serve their country. "[T]he balance of hardships tips sharply towards plaintiffs, who suffer not only loss of employment, income, and reputation, but also a career dedicated to military service." App. 253a. A preliminary injunction is warranted to preserve the *status quo ante litem*.

V. The Public Interest Favors Denying a Stay.

The public interest falls decisively in favor of Respondents, making a stay unwarranted. "There can be few matters of greater public interest in this country than protecting the constitutional rights of its citizens." App. 256a; see also, *e.g.*, *Fellowship of Christian Athletes* v. *San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 695 (9th Cir. 2023); *Awad* v. *Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012); *Miller* v. *City of Cincinnati*, 622 F.3d 524, 540 (6th Cir. 2010). Conversely, "enforcement of an unconstitutional law is always contrary to the public interest." *Gordon* v. *Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013). Here, Respondents' constitutional rights will be violated if the preliminary injunction is stayed. See *supra* Sections III.B, III.C, III.D. Protecting their constitutional rights is decidedly in the public interest *as a matter of law*.

The public interest also favors "national defense." *Winter* v. *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "[D]efending those values and ideals which set this Nation apart" is "[i]mplicit in the term 'national defense.'" *United States* v. *Robel*, 389 U.S. 258, 264 (1967) ("It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties … which makes the defense of the Nation worthwhile."). To that end, "the public benefits from the security provided by military departments populated with individuals dedicated to the notion of service," especially when those individuals have "collectively earn[ed]

accolades, promotions, the trust of their commanding officers, and the respect of their fellow servicemembers." *Roe* v. *Dept. of Def.*, 947 F.3d 207, 231 (4th Cir. 2020) (citation omitted). Directly "impair[ing] and injur[ing] the ongoing educational and professional plans of transgender individuals" and "depriv[ing] the military of skilled and talented troops" is "counter to the public interest." *Doe 1*, 2017 WL 6553389, at *3.

Respondents *are* the national defense. They are soldiers and sailors, Commanders and Staff Sergeants, Navy pilots and counterintelligence officers, veterans of deployments to Iraq and Afghanistan, and recipients of medals, awards, and honors. Resp. App. 1a–2a, 6a, 8a, 10a, 16a–17a, 22a, 24a, 27a–28a, 30a–31a. The military has invested millions of dollars into their careers: The Navy has invested over $20 million into Respondent Commander Shilling's career alone. Resp. App. 2a. Allowing Respondents to be discharged because they are transgender would waste the military's and taxpayers' investment in Respondents and, consequently, the national defense.

The loss of well-qualified servicemembers like Respondents will necessarily negatively impact military readiness, lethality, and unit cohesion—essential components of a strong and effective national defense. Transgender servicemembers hold key positions throughout units, and the military's success depends on mutual trust between leaders and members. Resp. App. 99a. Disrupting chains of command and severing distinguished servicemembers erodes unit cohesion, Resp. App. 60a, and *all* servicemembers' trust in their command structure. Resp. App. 98a–99a.

"[E]quity and the public interest support enjoining an unsupported, dramatic and facially unfair exclusionary policy." App. 253a. Allowing the Ban to take effect would infringe Respondents' constitutional rights, throw away the significant time, resources, and money already spent on training and supporting Respondents, and compromise our national defense by threatening military readiness, lethality, and unit cohesion. Cf. App. 53a (Mattis Policy noting that "the

substantial investment [the military] has made in" actively serving servicemembers "outweigh[s] the risks identified in th[e] report"). The public interest counsels against a stay.

VI. The Injunction's Scope Is Necessary to Provide Complete Relief.

Applicants take issue with the preliminary injunction's scope. But "[o]nce a constitutional violation is found, a federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation." *Hills* v. *Gautreaux*, 425 U.S. 284, 293–294 (1976). "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *IRAP*, 582 U.S. at 579. "A district court may issue a nationwide injunction so long as the court molds its decree to meet the exigencies of the particular case." *HIAS, Inc.* v. *Trump*, 985 F.3d 309, 326 (4th Cir. 2021) (cleaned up).

Exercising its discretion, the district court found that "[t]his is the rare case that warrants a nationwide injunction." App. 254a. The Ban applies to "all branches of the military nationwide," *ibid.*, threatening irreparable harm to all transgender servicemembers. See *IRAP*, 582 U.S. at 579 ("We leave the injunctions entered by the lower courts in place with respect to respondents and those similarly situated."). Thus, "where, as here, there is a 'sufficiently developed [record] on the nationwide impact' of the challenged actions, courts can craft an injunction to provide nationwide relief." App. 254a (citing *City & Cnty. of San Francisco* v. *Trump*, 897 F.3d 1225, 1231, 1244–1245 (9th Cir. 2018)); see also *IRAP*, 582 U.S. at 579, 582; *Doe #1*, 957 F.3d at 1069.

Furthermore, equitable relief, as granted here by the district court, is acceptable when necessary to give prevailing parties the relief to which they are entitled. Indeed, "the scope of the injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class." *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979). When necessary to provide complete relief to the plaintiffs, appellate courts have "consistently recognize[d] the

authority of district courts to enjoin unlawful policies on a universal basis." *E. Bay Sanctuary Covenant* v. *Biden*, 993 F.3d 640, 681 (9th Cir. 2021); see also, *e.g.*, *Missouri* v. *Trump*, 128 F.4th 979, 997 (8th Cir. 2025); *Florida* v. *Dept. of Health & Hum. Servs.*, 19 F.4th 1271, 1282 (11th Cir. 2021); *City of Chicago* v. *Barr*, 961 F.3d 882, 916–917 (7th Cir. 2020).

The practicalities of this case make a nationwide injunction particularly appropriate. Enjoining the Ban solely as to Respondents while permitting it to otherwise remain in place would continue to inflict irreparable harm on Respondents, who would simply be allowed to serve as an exception to a policy that deems them unfit and that inherently erodes their ability to do their job. Limiting relief to the named Respondents would make compliance with the injunction impracticable. Additionally, Plaintiff Gender Justice League has members nationwide. See, *e.g.*, Resp. App. 16a (Maryland), 27a (Washington), 33a (New Jersey), 30a (Nevada). "[I]t follows that an injunction of nationwide scope is necessary to provide complete relief." *PFLAG*, 2025 WL 685124, at *30; see also *E. Bay Sanctuary Covenant*, 993 F.3d at 680.

At minimum, Respondents are entitled to an injunction extending to all members of Gender Justice League, not merely those who filed declarations. See *Labrador*, 144 S. Ct. at 932 (Kavanaugh, J., concurring) (explaining an injunction "as to the particular plaintiffs … could still have widespread effect" as "the plaintiff [is] an association that has many members"). Under longstanding precedent, injunctive relief extends to all an organization's members. See *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.* v. *Brock*, 477 U.S. 274, 290 (1986); *Warth* v. *Seldin*, 422 U.S. 490, 515 (1975).

CONCLUSION

The Court should deny the stay application.

Respectfully submitted,

Omar Gonzalez-Pagan
Counsel of Record
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
120 Wall Street, 19th Fl.
New York, NY10005
(212) 809-8585
ogonzalez-pagan@lambdalegal.org

Sasha Buchert
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
815 16th St. NW, Suite 4140
Washington, DC 20006

Kell Olson
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
3849 E Broadway Boulevard #136
Tucson, AZ 85716

Camilla B. Taylor
Kenneth Dale Upton, Jr.
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
3656 N Halsted St.
Chicago, IL 60613

Jennifer C. Pizer
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
800 S. Figueroa Street, Suite 1260
Los Angeles, CA 90017

Matthew P. Gordon
Abdul Kallon
Anna Thompson-Lanners
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101

Sarah Warbelow
Cynthia Cheng-Wun Weaver
Ami Rakesh Patel
HUMAN RIGHTS CAMPAIGN FOUNDATION
1640 Rhode Island Ave. N.W.
Washington, DC 20036
(202) 527-3669

Gabriella M. Romanos Abihabib
PERKINS COIE LLP
1155 Avenue of the Americas
22nd Floor
New York, NY 10036

Danielle Sivalingam
PERKINS COIE LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105

Nicholas J. Surprise
PERKINS COIE LLP
33 East Main Street, Suite 201
Madison, WI 53703

Mary Grace Thurmon
Bo Yan J. Moran
PERKINS COIE LLP
3150 Porter Drive
Palo Alto, CA 94304

Counsel for Respondents

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