

# PALM CENTER

## BLUEPRINTS FOR SOUND PUBLIC POLICY

### **BREAKING DOWN THE MARCH 23, 2018 TRANSGENDER MILITARY BAN**

#### **Bottom Line**

The stated rationale for the ban depends on scientific distortions that the American Psychological Association and American Psychiatric Association condemned immediately. Echoing the prior “don’t ask, don’t tell” policy, transgender troops will be forced to leave the military or to serve in silence, fearing that expressing any form of distress could mark them as unfit.

#### **The Documents**

On March 23, 2018, the Trump administration released three documents related to implementation of its transgender military ban:

- a 44-page *Department of Defense Report and Recommendations on Military Service by Transgender Persons* (the Report);
- a 3-page memorandum from Secretary of Defense James Mattis, *Military Service by Transgender Individuals*, adopting the recommendations of the Report; and
- a 2-page memorandum from President Trump, *Military Service by Transgender Individuals*, revoking his prior memorandum of August 25, 2017 on the subject and passing authority to the Secretaries of Defense and Homeland Security (Coast Guard) to implement policy according to the Report and the Secretary of Defense memo.

#### **Number of Transgender Service Members**

The DOD Report says that there are 8,980 serving transgender troops in the Active Component (Report at 7). The Palm Center soon will release a report estimating that an additional 5,727 transgender troops serve in the Selected Reserve, and that the total number of currently serving troops is therefore  $8,980 + 5,727 = \sim 14,700$ . This estimate of 14,700 is the first-ever estimate based on official DOD data.

#### **The Implementation Plan**

##### Accession

- Applicants with a history of gender dysphoria (the distress of incongruity between birth gender and gender identity) are eligible for service only if they can demonstrate 36 consecutive months of stability *in birth gender* immediately prior to enlistment.
- Must serve in birth gender for the duration of their service.
- Prior gender transition is disqualifying.

##### Retention

- Disqualified and subject to separation: transgender service members diagnosed with gender dysphoria who require any gender-transition-related medical care to alleviate symptoms.

- Eligible to remain in service: transgender service members who agree to serve in birth gender indefinitely and who are able to maintain fitness under general standards *without medical support* for gender dysphoria.

Limited Exception for currently serving personnel:

- If diagnosed with gender dysphoria prior to the effective date of new policy
- May continue to receive all medically necessary care, change gender marker, and serve in gender consistent with gender identity.
- This means there will be personnel who have transitioned gender serving side-by-side with personnel who are prohibited from transitioning gender.
- DOD recognizes this inconsistency and issued a threat against serving transgender personnel if courts rely on the inconsistency as a basis for invalidating the ban:

“While the Department believes that its solemn promise to these Service members, and the investment it has made in them, outweigh the risks identified in this report, should its decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption is and should be deemed severable from the rest of the policy.” (Report at 6, 43)

### **The Justification**

The DOD Report relies on several different justifications for imposing a ban on transgender service:

- an assertion that transgender persons are less mentally fit (Report at 19-22);
- a disagreement with medical and psychological consensus that treatment for gender dysphoria is reliable, safe, and effective (Report at 24-27);
- an assertion that treatment for gender dysphoria renders transgender service members physically unfit (Report at 27-28); and
- an assertion, based on an archaic understanding of gender roles, that accommodating gender transition could undermine the military’s preservation of differences between the sexes (Report at 28).

### **Reactions to the Ban**

- [American Psychological Association](#): “...alarmed by the administration’s misuse of psychological science to stigmatize transgender Americans and justify limiting their ability to serve in uniform and access medically necessary health care.”
- [American Psychiatric Association](#): “reiterated its strong opposition to a ban of transgender Americans from the U.S. military.”
- [26 retired General and Flag Officers](#): “There is simply no reason to single out brave transgender Americans who can meet military standards and deny them the ability to serve.”

### **The Litigation**

The March 23 ban cannot go into effect at this time because courts in four different federal cases have issued preliminary injunctions against enforcement of a ban. The Department of Justice has filed the March 23 implementation plan with those courts in support of motions to dissolve the preliminary injunctions. The schedule by which those motions will be heard and decided has yet to be determined.