

MILITARY TRANSGENDER POLICY TIMELINE & DoD SUMMARY GRAPH

On January 4, 2019, a three-judge panel of the **Court of Appeals for the District of Columbia Circuit** reversed a preliminary injunction that **Washington, D.C. District Judge Colleen Kollar-Kotelli** issued on October 30, 2017. Her ruling and similar ones from district judges in **Seattle, WA, Baltimore, MD, and Riverside, CA**, challenged the constitutionality of **President Trump's** initial informal call for reversal of previous military transgender policies.

All four judges blocked any change, including implementation of the official **Trump/Mattis** policy regarding transgenders and persons with gender dysphoria, which Defense Secretary **James Mattis** recommended, and President Trump approved, on March 23, 2018. On January 22, 2019, the **U.S. Supreme Court**, voting 5–4, effectively overruled all of the preliminary injunctions, pending ongoing litigation.

The statement of **Acting Defense Under Secretary for Personnel & Readiness James N. Stewart**, who testified at a **House Armed Services Personnel Subcommittee** hearing on February 27, accurately reflected the 2018 Trump/Mattis policy and legal arguments in defense of it. The **Department of Defense** announced plans to begin implementation of the Trump/Mattis policy on April 12, 2019, which are summarized in the DoD-prepared graph on page 4.

On March 8, 2019, **Judge Stephen F. Williams**, a member of the Court of Appeals panel, issued a concurring opinion in the Washington, D.C., case, titled **Jane Doe 2 v. Trump**. With exceptional clarity, Judge Williams' concurring opinion demolished many common misunderstandings about the Trump/Mattis policy and reasons why the administration approved it. Excerpt:

“In this case, **the executive branch has reasonably ‘drawn the line’** for military service, ‘balancing’ the needs of ‘servicemen against the needs of the military’ itself. **Plaintiffs’ claims, by contrast, are fundamentally flawed in almost every respect.** They give short shrift to the findings of a **panel of military experts** commissioned by the secretary of defense. They never grapple with the fact that the presidential tweet, on which they place so much weight, **post-dates—rather than ante-dates—the** decision of the secretary to reevaluate the previous administration’s policies. **Their theory of the case requires recharacterizing the policy adopted by Secretary Mattis as a ‘ban’ on service by transgender persons, which it is not,** and pretending that the military could comply with its existing (partially congressionally mandated) sex-based standards by allowing persons of one biological sex to conform to the rules applicable to the opposite biological sex. In sum, **plaintiffs cannot demonstrate a likelihood of success on the merits.**” (p. 61)

*(Excerpts prepared by the **Center for Military Readiness**, an independent public policy organization that reports on and analyzes military/social issues. Citations are omitted and emphasis added throughout -- www.cmrlink.org)*

Timeline Belies Claim of “Unusual Circumstances” Led to Trump/Mattis Policy

The following Timeline quotes are excerpted from the concurring opinion of District of Columbia Appeals Court Judge Stephen F. Williams in the case Doe 2 v. Trump:

“Plaintiffs claim support in the **supposedly ‘unusual’ circumstances** surrounding the announcement of the new policy. In doing so, they resolutely focus on a presidential ‘tweet’ from July 2017, an event that, they say, forever tainted the Mattis policy. **But they pay little or no attention to Secretary Mattis’s prior order of June 30, 2017, deferring the start of accessions under the**

Carter policy . . . plaintiffs' persistent highlighting of the tweet suggests the need for a **precise timeline**: (p. 13)

“July 28, 2015: Secretary [Ashton] Carter convenes a working group to study the ‘policy options’ for allowing service by ‘transgender Service members.’ **He instructs the group to ‘start with [a] presumption’—namely, ‘that transgender persons can serve openly without adverse impact. . .’** (p. 13)

“2016: The Carter working group enlists the **RAND National Defense Research Institute** to study the impacts of allowing ‘transgender service members’ to serve openly. RAND finds that the proposed policy change would have an **adverse impact** on health care utilization costs and readiness, but concludes that the impact would be ‘negligible’ or ‘marginal’ because of the ‘small number of transgender service members relative to the size of the military as a whole. . .’ (p. 13)

“June 30, 2016: Following this review, Secretary Carter adopts a new policy on **‘Military Service of Transgender Service Members.’** The Carter policy ‘[e]stablishes policy . . . for the standards for retention, accession, separation, in-service transition, and medical coverage for transgender personnel serving in the Military Services.’ (p. 14)

“September 30, 2016: The military issues a **71-page handbook** to address ‘some of the issues’ related to ‘transgender Americans serving openly in the military.’ (p. 14)

“June 30, 2017: On the day before the Carter policy’s accession directives were scheduled to go into effect, **Secretary [James] Mattis** ‘defer[s] the start of accessions [under the Carter policy] for six months.’ He explains that his ‘intent is to ensure that [he] personally ha[s] the benefit of the views of the military leadership and of the senior civilian officials who are now arriving in the Department.’ . . . (p. 14)

“July 26, 2017: The President, who appears not to have addressed the issue until now, expresses agreement with Secretary Mattis. He tweets: ‘After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military. . .’ (p. 15)

“July 27, 2017: The **Chairman of the Joint Chiefs of Staff [Gen. Joseph Dunford]** announces that ‘no modifications’ to policy will be made in response to the tweet. . . (p. 15)

“August 9, 2017: Without mentioning Secretary Mattis’s June 30, 2017 deferral order or Chairman Dunford’s above announcement, **plaintiffs file suit**, claiming that the President’s **tweet** ‘reverse[d] the current policy’—referring to the Carter policy, even though Secretary Mattis had already put that on hold. . . (p. 15)

“August 25, 2017: The President issues a **formal memorandum** announcing that he, like Secretary Mattis, wants **‘further study’** before any implementation of Secretary Carter’s ‘policy change.’ . . . In the President’s ‘judgment, the previous Administration failed to identify a sufficient basis to conclude that terminating the Departments’ longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources.’ (p. 15)

“Accordingly, exercising the power entrusted to him as **‘Commander in Chief** of the Army and Navy, the President directs the Secretary of Defense ‘to return to the **longstanding policy** and practice on military service by transgender individuals that was in place prior to [former-Secretary Carter’s change]’—at least ‘until such time as a sufficient basis exists upon which to conclude that terminating that policy and practice would not have negative effects.’ But the President provides that **‘no action may be taken’** against **‘currently serving’ transgender individuals** until the

Secretary ‘determine[s] how to address’ the issue. The President also makes clear that Secretary Mattis could ‘advise [him] at any time, in writing, that a change to this [longstanding] policy is warranted’ . . . (p. 16)

“**September 14, 2017:** Secretary Mattis convenes a **panel of experts**. He orders them to implement ‘a comprehensive, holistic, and objective approach to study military service by transgender individuals, focusing on **military readiness, lethality, and unit cohesion**, with due regard for budgetary constraints and consistent with applicable law . . .’ (p. 16)

“**October 30, 2017:** At plaintiffs’ request, the district court **preliminarily enjoins** all branches of the military from enforcing two provisions of the 2017 Presidential Memorandum. . . The court characterizes the President’s directives as discriminating on the basis of ‘**transgender identity**,’ and as therefore subject to ‘**intermediate scrutiny**.’ Applying such scrutiny, the court holds that the President’s directives likely fail because of several supposedly ‘unusual’ factors associated with the President’s announcement—namely, that it was ‘contradicted’ by the conclusions of a previous administration, lacked supporting ‘studies,’ and was issued ‘via Twitter,’ without formality. . . (pp. 16 -17)

“**November 21, 2017:** The government files an interlocutory **appeal** of the preliminary injunction. (p. 17)

“**November 27, 2017:** The district court issues a ‘clarification.’ Although the October 2017 order enjoined implementation of only two specific provisions of the Presidential Memorandum, the court ‘clarif[ies]’ that ‘[a]ny action by any of the Defendants that changes [the] status quo [i.e., the Carter policy] is preliminarily enjoined. . .’ (p. 17)

“**January 4, 2018:** In anticipation of the announcement of the **Mattis policy** (see February 22), the government voluntarily dismisses its appeal. (p. 18)

“**February 2018:** The Department of Defense releases a **44-page report** based on the recommendations of the **panel of experts** convened by Secretary Mattis. ‘The Panel made recommendations based on each Panel member’s **independent military judgment**.’ (p. 18)

“**February 22, 2018:** In ‘light of the Panel’s professional military judgment’ and his own ‘**professional judgment**,’ Secretary Mattis recommends a new policy to the President. Noting that the President had ‘made clear’ that the Secretary could ‘at any time, in writing,’ advise that a change in policy was ‘warranted,’ Secretary Mattis recommends that the President ‘**revoke**’ **his 2017 Presidential Memorandum**, ‘thus allowing’ the military to adopt the new policy. . . (p. 18)

“**March 23, 2018:** The President (again) agrees with Secretary Mattis, revoking all prior directives so that Secretary Mattis could ‘implement any appropriate policies . . .’ “ (p. 18) (**Note:** After the new policy was announced the government moved, again, to dissolve the preliminary injunction.)

“**November 30, 2018:** **The district court denies** the government motion for a stay pending appeal. . .” (p. 20) (**Note:** The government appealed to the Court of Appeals for the District of Columbia. On January 4, 2019, a three-judge panel of the Circuit Court of Appeals **unanimously** found that the district court was “**clearly erroneous**” in finding that the 2018 Trump/Mattis policy was the same as the 2017 “tweet” policy. The panel reversed the district court and **dissolved the preliminary injunction**.)

“**January 4, 2019:** **We reversed**, and I join my colleagues in dissolving the injunction.” (p. 20)

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Military Service by Transgender Persons & Persons with Gender Dysphoria

This chart shows the differences between the Defense Department's 2016 transgender policy and the 2018 update to that policy.

Service Members

Transgender with No Diagnosis or History of Gender Dysphoria

Pre-2016	2016	2018
Generally disqualified	May serve in biological sex	May serve in biological sex

Service Member with Diagnosis of Gender Dysphoria

Pre-2016	2016	2018
Generally disqualified	May serve in preferred gender, upon completing transition	Unless exempt, may serve in biological sex. If unable or unwilling to serve in biological sex, separation procedures may apply

New Applicants

Transgender with No Diagnosis or History of Gender Dysphoria

Pre-2016	2016	2018
Generally disqualified	May serve in biological sex	May serve in biological sex

Applicant with Diagnosis or History of Gender Dysphoria

Pre-2016	2016	2018
Generally disqualified	Presumptively disqualified unless stable for 18 months in preferred gender or biological sex	Presumptively disqualified unless stable for 36 months and willing and able to serve in biological sex

Applicant with History of Medical Transition Treatment*

Pre-2016	2016	2018
Generally disqualified	Presumptively disqualified unless stable for 18 months in preferred gender or biological sex	Presumptively disqualified

Source: U.S. Department of Defense at: <https://www.defense.gov/explore/story/Article/1783822/5-things-to-know-about-dods-new-policy-on-military-service-by-transgender-person/>

Gender Dysphoria

 A marked incongruence between one's experienced/expressed gender and assigned gender. Associated with clinically significant distress and impairment of functioning.

Biological Sex

 A person's biological status as male or female, based on chromosomes, gonads, hormones, and genitals.

Exempt Persons

 Service members who joined the military in their preferred gender or were diagnosed with gender dysphoria before the 2018 policy took effect are exempt.

Waivers

 Military services may grant waivers on a case-by-case basis.

* Medical Transition Treatment: Cross-sex hormone therapy, or sex reassignment

THIS GRAPHIC REPRESENTATION MAY NOT REPRESENT ALL CASES OR CIRCUMSTANCES.