No. 24A1030

In the Supreme Court of the United States

UNITED STATES OF AMERICA, ET AL., APPLICANTS

v.

EMILY SHILLING, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

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Six years ago, this Court stayed injunctions against the Mattis policy—a policy that generally disqualified individuals who have gender dysphoria, or have received medical interventions for gender dysphoria, from starting or continuing military service. See *Trump* v. *Karnoski*, 586 U.S. 1124 (2019); *Trump* v. *Stockman*, 586 U.S. 1124 (2019). The 2025 policy at issue is materially indistinguishable. Yet the district court enjoined the 2025 policy all the same, and the Ninth Circuit denied a stay of the injunction—without either court acknowledging this Court's prior orders.

Respondents likewise fail to explain how the 2025 policy is meaningfully different from the Mattis policy that this Court permitted to go into effect. None of the modest factual distinctions that respondents identify has any legal relevance under the correct analysis of the merits or the proper balancing of the stay equities. The 2025 policy, like the Mattis policy, represents an exercise of professional military judgment concerning the composition of the Nation's armed forces. The 2025 policy, like the Mattis policy, turns on gender dysphoria and related medical interventions—

not any suspect or quasi-suspect class. The 2025 policy, like the Mattis policy, warrants only rational-basis review, with the healthy deference due to military judgments on matters of military readiness. The 2025 policy, like the Mattis policy, addresses both accession and retention standards, and thus it affects both aspiring and current servicemembers. This Court should once again allow the military's chosen policy to go into effect.

I. THE GOVERNMENT IS LIKELY TO SUCCEED ON THE MERITS

A. The 2025 Policy Is Consistent With Equal Protection

The 2025 policy warrants only rational-basis review, which it easily satisfies. Respondents' contrary arguments lack merit.

1. The 2025 policy warrants only rational-basis review

As our application explains (at 15-19), the 2025 policy draws classifications based on a medical condition (gender dysphoria) and related medical interventions. Rational-basis review therefore applies, especially given the military context. Respondents fail to justify heightened scrutiny.

a. Respondents attempt (Opp. 24) to justify heightened scrutiny on the ground that the 2025 policy discriminates based on "transgender status." But as the district court acknowledged, the word "transgender" does not appear in the 2025 policy itself. Appl. App. 220a. Rather, the 2025 policy, like the Carter, Mattis, and Austin policies before it, "focuses on dysphoria as the clinical problem, not identity per se." American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2013) (*DSM-5*); see Appl. App. 124a-136a.

Respondents fail to identify any operative provision of the 2025 policy to the contrary. They note that the 2025 policy draws classifications based on whether someone has "attempted to transition" to another sex. Opp. 24 (citation omitted).

But that is a classification based on a medical intervention (*i.e.*, transition to another sex), not on identity per se. The Carter, Mattis, and Austin policies likewise drew classifications based on medical interventions for gender dysphoria. See Appl. 7-10. Respondents also note that those who are not disqualified under the 2025 policy—*i.e.*, those who have never been diagnosed with gender dysphoria and who have never received related interventions—must serve in accordance with their sex. Opp. 24. But those same individuals likewise had to serve in accordance with their sex under the Carter, Mattis, and Austin policies, regardless of their asserted gender identity. See Appl. 7, 9, 10. Just as it was not discrimination against trans-identifying people then, it is not discrimination against trans-identifying people now. Indeed, the district court's injunction requires the military to maintain that aspect of the Austin policy. Appl. App. 190a-191a. Ultimately, respondents cannot dispute that, even if an individual identifies with the opposite sex, the 2025 policy allows that individual to serve under the same rules as all other servicemembers—so long as that individual has never suffered from gender dysphoria and has never received related interventions.

In nevertheless insisting that the 2025 policy discriminates based on "transgender status," respondents cite various public statements about the 2025 policy. Opp. 24; see Opp. 24-25. But it is irrelevant that, when discussing issues related to the 2025 policy in the court of public opinion, officials used common terms like "transgender" rather than unfamiliar terms like "gender dysphoria." In a court of law, what matters is the actual text of the 2025 policy, which is a "directive, neutral on its face, addressing a matter within the core of executive responsibility." *Trump* v. *Hawaii*, 585 U.S. 667, 702 (2018). Again, the policy's operative provisions draw classifications based on gender dysphoria and related medical interventions. Appl.

App. 124a-136a. Respondents assert (Opp. 25) that the 2025 policy and February 26 Action Memo "refer to transgender servicemembers." But so did the Carter and Austin policies that preceded the 2025 policy. See, *e.g.*, Appl. App. 1a, 125a. In fact, the 2025 policy refers to "Transgender" servicemembers only in quoting the titles of policies issued by Secretary Austin. *Id.* at 125a. Respondents' reliance (Opp. 25) on "U.S. Navy guidance" is also misplaced. That guidance was issued on January 28, 2025, see Resp. App. 155a, and was superseded by the 2025 policy, which was issued a month later, see Appl. App. 124a.

Respondents likewise err in asserting (Opp. 26) that the 2025 policy "uses gender dysphoria as a proxy to ban all transgender service members." The 2025 policy uses the same definition of gender dysphoria as the APA does in the *DSM-5*. Appl. App. 181a n.2, 185a. Under the *DSM-5*, "[*g*]*ender dysphoria*" and "[*t*]*ransgender*" are distinct terms. *DSM-5*, at 451; see Appl. 6. Thus, according to the APA, "[n]ot all transgender people suffer from gender dysphoria and that distinction * * * is important to keep in mind." Appl. App. 30a (brackets in original) (quoting APA, *Expert Q & A: Gender Dysphoria*). Respondents' attempt to equate "gender dysphoria" with "transgender status" therefore contradicts the *DSM-5*. Opp. 26 (citation omitted). It also contradicts this Court's precedents, which instruct that classifications based on a specific condition are just that, even if that condition correlates with a different classification. See *Geduldig* v. *Aiello*, 417 U.S. 484, 496 n.20 (1974) ("While it is true that only women can become pregnant it does not follow that every legislative classification concerning pregnancy is a sex-based classification."); see also *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 236 (2022) (reaffirming the same).

Nor is this a case where it would be "irrational" to regulate a condition other than as a "surrogate" for a protected trait. *Bray* v. *Alexandria Women's Health Clinic*,

506 U.S. 263, 270 (1993). To the contrary, the clinically significant distress or impairment characterizing gender dysphoria, as well as the effects of related medical interventions, are obviously rational causes for concern with respect to military service, especially given the military's similar standards for a wide range of other medical conditions. See Appl. 4-5; Appl. App. 67a-108a (accession standards); D. Ct. Doc. 73-5, at 13-38 (Mar. 13, 2025) (retention standards).

Regardless, even if the 2025 policy discriminated based on trans-identifying status, heightened scrutiny would still be inappropriate because trans-identifying people are not a suspect or quasi-suspect class. See *City of Cleburne* v. *Cleburne Living Ctr., Inc.*, 473 U.S. 432, 441-447 (1985). Respondents contend (Opp. 24) that trans-identifying people satisfy a four-factor test for recognizing a quasi-suspect class. But that four-factor test has no basis in the text of the Constitution or the original understanding of equal-protection principles, and this Court has essentially gotten out of the business of finding new quasi-suspect classes. See, *e.g.*, *Lyng* v. *Castillo*, 477 U.S. 635, 638 (1986). Even if applying the test were appropriate, trans-identifying people would not satisfy it. In *Cleburne*, this Court held that individuals with mental disabilities should not be treated as a quasi-suspect class because governments must have "flexibility and freedom from judicial oversight in shaping and limiting their remedial efforts." 473 U.S. at 445. The same reasoning applies to individuals with gender dysphoria, and respondents themselves seek to conflate such individuals with those who have trans-identifying status. Moreover, "[a]s a historical matter," trans-identifying people "do not exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group," and they are not "politically powerless." *Lyng*, 477 U.S. at 638.

b. Respondents also attempt (Opp. 21) to justify heightened scrutiny on the ground that the 2025 policy discriminates based on "sex." But the 2025 policy references "sex" in only two contexts—in describing certain medical interventions and in declining to provide a preferential exemption from valid sex-based standards for individuals who have gender dysphoria and who seek related interventions. As our application explains (at 19-20), neither of those contexts constitutes sex discrimination. Respondents have no response. Instead, citing *Bostock* v. *Clayton County*, 590 U.S. 644 (2020), respondents assert (Opp. 22) that the 2025 policy discriminates based on sex because it discriminates based on "transgender" status. That assertion is incorrect because the policy does not discriminate based on "transgender" status, for the reasons stated above. In any event, *Bostock* was a Title VII case, not an equal-protection case, and its reasoning does not extend here. See *L.W.* v. *Skrmetti*, 83 F.4th 460, 484-485 (6th Cir. 2023), cert. granted, 144 S. Ct. 2679 (2024). Nothing in *Bostock* suggests that if the government regulates a medical condition in a way that merely requires knowing an individual's sex—*e.g.*, requiring additional warning related to treatments for uterine cancer—it is engaged in sex discrimination per se.

c. Respondents argue (Opp. 18) that the 2025 policy is not entitled to deference. But this Court has repeatedly recognized that the "judgments" of the political branches are owed "a healthy deference" in "the area of military affairs." *Rostker* v. *Goldberg*, 453 U.S. 57, 66 (1981); accord *Goldman* v. *Weinberger*, 475 U.S. 503, 507-508 (1986). And respondents do not seriously suggest that the policies in cases like *Rostker* (excluding women from a registration requirement) and *Goldman* (banning a Jewish psychologist from wearing a yarmulke) would have been upheld if adopted by the government in a civilian context. Respondents attempt to distinguish this case on the ground that the military "rush[ed]" to issue the 2025 policy "with no new mil-

itary study, evaluation, or evidence." Opp. 19 (citation omitted). But deference does not rest on any of those things. Instead, deference rests on the separation of powers and the fact that "courts [are] 'ill-equipped to determine the impact upon discipline that any particular intrusion upon military authority might have.'" *Goldman*, 475 U.S. at 507-508 (citation omitted).

In any event, issuance of the 2025 policy was no more "rush[ed]" than President Biden's decision to revoke the Mattis policy, just five days after taking office, without conducting any new military study or evaluation. Opp. 19 (citation omitted); see Exec. Order No. 14,004, § 2 (Jan. 25, 2021), 86 Fed. Reg. 7471, 7472 (Jan. 28, 2021). And in issuing the 2025 policy, the Department of Defense (Department or DoD) was not starting from scratch. The Department issued the 2025 policy only after considering Secretary Mattis's determination in 2018, based on the work of a panel of experts, that "there are substantial risks associated with allowing accession and retention of individuals with a history or diagnosis of gender dysphoria." Appl. App. 121a. Contrary to respondents' assertion, the Department also considered more recent data and studies. *Id.* at 121a-122a; Appl. 11. Thus, even if "deference applies only where military policies are based upon the 'considered professional judgment' of 'appropriate military officials,'" Opp. 19 (citation omitted), deference is warranted here.

2. The 2025 policy satisfies rational-basis review

As our application explains (at 19-24), the 2025 policy easily satisfies rational-basis review. The district court itself acknowledged that the government has important interests in maintaining military readiness, cohesion, good order, and discipline, as well as in managing costs. Appl. App. 228a. The 2025 policy, like the Mattis policy before it, is rationally related to achieving those ends.

Respondents have little to say in response—and nothing that squares with rational-basis review. Most importantly, respondents fault the government (Opp. 27) for "rely[ing] on speculation or hypothetical concerns to justify the [2025 policy]." But under rational-basis review, the government may rely "on rational speculation unsupported by evidence or empirical data." *FCC* v. *Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993). Here, there is much more—the 2025 policy is supported by all the evidence and considerations favoring the Mattis policy, and more recent evidence as well. Appl. App. 121a-122a; Appl. 11. Respondents likewise err in contending that the government has "provided no evidence supporting the conclusion" that the 2025 policy enhances military readiness, unit cohesion, or lethality. Opp. 28 (citation omitted). Even if that were true, under rational-basis review, the government had "no obligation to produce evidence." *Heller* v. *Doe*, 509 U.S. 312, 320 (1993). Instead, the burden lies with respondents "'to negative every conceivable basis which might support'" the policy, "whether or not the basis has a foundation in the record." *Id.* at 320-321 (citation omitted).

Respondents have failed to meet that burden. Respondents do not address the 2025 accession standards at all—let alone explain why it is rational for the military to treat other medical conditions (such as asthma, diabetes, and eating disorders) as presumptively disqualifying, but not gender dysphoria. Appl. 4-5, 20-21. Indeed, respondents do not dispute that the Department has historically aligned the mental disorders it has deemed presumptively disqualifying with those identified in *DSM*; that the *DSM-5* identifies gender dysphoria as a condition associated with clinically significant distress or impairment; or that the Carter, Mattis, and Austin policies all included gender dysphoria and related medical interventions on their lists of presumptively disqualifying conditions. Appl. 7-10. Respondents thus fail to explain

why the 2025 accession standards are not rationally related to "ensur[ing] that those entering service are free of medical conditions or physical defects that may require excessive time lost from duty." Appl. App. 4a.

Respondents likewise fail to explain why the 2025 retention standards—which generally disqualify servicemembers who are diagnosed with gender dysphoria instead of allowing them to undergo "gender transition"—are not rationally related to maintaining military readiness, unit cohesion, good order, and discipline, as well as managing costs. Appl. 21-24. For example, respondents attempt to downplay concerns about "the efficacy of treatment for gender dysphoria," Opp. 29, but they do not dispute that there is "considerable scientific uncertainty" concerning whether "transition-related" interventions, such as "cross-sex hormone therapy" and "sex reassignment surgery," "fully remedy * * * the mental health problems associated with gender dysphoria," Appl. App. 42a. Similarly, respondents question what one particular study showed about the effect of gender dysphoria on non-deployability, Opp. 29, but they do not dispute that servicemembers receiving medical interventions for gender dysphoria could be rendered "non-deployable for a potentially significant amount of time," Appl. App. 45a. And while respondents contend that medical interventions related to gender dysphoria make up only "a small fraction of DoD's overall budget," Opp. 31 (citation omitted), they do not dispute that, all else being equal, servicemembers with gender dysphoria cost DoD "disproportionately" more "on a per capita basis" than other servicemembers, such that excluding individuals with gender dysphoria will save costs in the long-term, Appl. App. 51a. And respondents do not dispute that DoD treats other medical conditions that impose similar costs as presumptively disqualifying.

Respondents resort to arguing (Opp. 20) that the 2025 policy "reflects such animus toward transgender people that it is unconstitutional." But the district court did "not make an animus determination." Appl. App. 237a. For good reason. To repeat, the 2025 policy allows trans-identifying individuals to serve, unless they suffer (or suffered) from the medical condition of gender dysphoria or have received medical interventions for that condition. And the 2025 policy is "expressly premised on legitimate purposes," *Hawaii*, 585 U.S. at 706, including maintaining "high mental and physical standards necessary for military service," Appl. App. 124a; reducing "the medical and readiness risks associated with" gender dysphoria," *id.* at 122a; addressing "the costs associated with" related medical interventions, *ibid.*; and "deliver[ing] a ready, deployable force," *ibid.* The 2025 policy thus belies any suggestion that it is motivated by animus, as opposed to those legitimate purposes.

In any event, the 2025 policy should be upheld "so long as it can reasonably be understood to result from a justification independent of unconstitutional grounds." *Hawaii*, 585 U.S. at 705. And "[i]t cannot be said that it is impossible to 'discern a relationship to legitimate state interests' or that the policy is 'inexplicable by anything but animus.'" *Id.* at 706. Because the 2025 policy has "a legitimate grounding" in the purposes discussed above, "quite apart from any [animus]," this Court "must accept that independent justification." *Ibid.*

3. Respondents fail to identify any relevant difference between the 2025 policy and the Mattis policy

Respondents do not dispute that in staying the injunctions against the Mattis policy, see *Trump* v. *Karnoski*, 586 U.S. 1124 (2019); *Trump* v. *Stockman*, 586 U.S. 1124 (2019), this Court necessarily determined that the government had made "the requisite 'strong showing' of likelihood of success" that the Mattis policy was con-

sistent with equal protection, Opp. 13 (citation omitted). Respondents fail to identify anything about the 2025 policy that would justify a different conclusion here.

First, respondents contend (Opp. 10) that while the "Mattis Policy did not bar all transgender people from military service," the 2025 policy does. That is incorrect. Under the 2025 policy, as under the Mattis policy, "persons who are diagnosed with, or have a history of, gender dysphoria are generally disqualified from accession or retention in the Armed Forces." Appl. App. 52a; see *id.* at 129a, 131a. But "[n]ot all transgender people suffer from gender dysphoria." *Id.* at 30a (brackets in original) (quoting APA, *Expert Q & A: Gender Dysphoria*). Thus, under both policies (and the Carter and Austin policies), servicemembers who have never been diagnosed with gender dysphoria—and who have never received related interventions—may serve "in accordance with their sex," regardless of their asserted gender identity. *Id.* at 126a-127a. To be sure, as compared to the Mattis policy, the 2025 policy narrows the circumstances in which an otherwise disqualified person may serve. See Appl. 25 (discussing the differences). But it makes no difference that the military has chosen to narrow the standard for overcoming a disqualification and to eliminate a grandfather clause that has diminishing prospective significance. Under rational-basis review, "the fact that [a] line might have been drawn differently at some points" does not cast doubt on the policy's validity. See *Railroad Ret. Bd.* v. *Fritz*, 449 U.S. 166, 179 (1980).

Second, respondents contend (Opp. 11) that while the "Mattis Policy entailed a process of independent judgment by military officials," the 2025 policy "reflexively implemented" Executive Order No. 14,183, "deviating from the hallmarks of military policymaking." But nothing about the process that led to the 2025 policy affects the applicable standard of review. Regardless of that process, the 2025 policy does not

discriminate based on any suspect or quasi-suspect class, and it is entitled to a "healthy deference." *Rostker*, 453 U.S. at 66. Thus, the 2025 policy, like the Mattis policy, would still warrant only rational-basis review, which it easily satisfies. In any event, respondents' premise is wrong. The issuance of the 2025 policy was no more a "deviati[on] from the hallmarks of military policymaking" than President Biden's revocation of the Mattis policy just five days into the last Administration. Opp. 11; see p. 7, *supra*. And if the Mattis policy was "based on a review of the allegedly available information and consultation with purported experts," Opp. 11, then the 2025 policy was as well, because it relied on the same underlying report as the Mattis policy, among other things, see Appl. App. 121a-122a; Appl. 11. Respondents assert (Opp. 30) that the "*predictions*" of that report have since been undermined by experience under the Austin policy. But that is for the Executive, not the district court, to evaluate. The district court "cannot substitute [its] own assessment for the Executive's predictive judgments" on matters of "national security," which "'are delicate, complex, and involve large elements of prophecy.'" *Hawaii*, 585 U.S. at 707-708 (citation omitted).

Third, respondents contend (Opp. 11) that the Mattis policy "lacked the animus-laden language" of Executive Order No. 14,183 and the 2025 policy. But as explained above, respondents' assertion that the 2025 policy was motivated by animus lacks merit. See p. 10, *supra*. And quite apart from any asserted animus, the 2025 policy, like the Mattis policy, is independently grounded in legitimate interests in maintaining military readiness, cohesion, good order, and discipline, as well as in managing costs.

B. Respondents' Other Challenges To The 2025 Policy Lack Merit

Respondents' First Amendment, due process, and equitable estoppel claims fare no better.

1. Contrary to respondents' assertion (Opp. 31-32), the 2025 policy does not require servicemembers "to adopt a particular ideological viewpoint" or prohibit them from being "candid about who they are," whether in their professional or in their "personal" lives. The 2025 accession and retention standards therefore do not restrict speech at all, let alone on the basis of viewpoint or content. Rather, like the *DSM-5* on which they are premised, the 2025 accession and retention standards disqualify individuals based on gender dysphoria and related medical interventions—not on "identity per se." *DSM-5*, at 451; see Appl. 26-27. And those individuals who are not disqualified under the 2025 policy must follow the grooming and other standards applicable to their sex—just as they would under the Carter, Mattis, and Austin policies. See Appl. 27. Respondents make no attempt to explain how that could be a First Amendment violation under the 2025 policy, but not under the Austin policy that the district court's injunction requires the military to maintain.

2. Respondents' procedural due process claim is also meritless. As our application explains (at 28-29), respondents cannot identify any relevant liberty or property interest protected by the Due Process Clause. They contend that they will experience stigma from being discharged for "having an identity the government has deemed 'inconsistent with being honorable.'" Opp. 33 (citation omitted). But under the 2025 policy, any discharge is "honorable except where the Service member's record otherwise warrants a lower characterization," Appl. App. 126a, and no one is discharged for asserting a particular "identity." Respondents also contend (Opp. 34) that the Mattis policy's exemption for current servicemembers already diagnosed with

gender dysphoria "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." But contrary to respondents' contention, servicemembers did not acquire a constitutionally protected property interest in the continued existence of a grandfather clause in a policy governing military service standards. Respondents therefore lack any relevant liberty or property interest on which to base their due process claim.

Even if respondents could identify such an interest, their claim would still fail. As our application explains (at 28-29), they do not object to any specific "procedure," so their claim is actually a substantive due process claim cast in procedural terms. Their opposition confirms as much, acknowledging that the "remedy" respondents seek is a substantive "exception" to the 2025 policy that the policy itself does not provide. Opp. 34; see *Connecticut Dep't of Pub. Safety* v. *Doe*, 538 U.S. 1, 7-8 (2003). That substantive challenge lacks merit because the 2025 policy is rationally related to legitimate government interests.

3. Finally, respondents' equitable estoppel claim fails. Even under the dubious assumption—lacking any basis in this Court's precedents—that a common-law equitable estoppel claim may sometimes be brought against the federal government (let alone against the military), respondents have failed to establish a key element here: affirmative misconduct. Appl. 29. Respondents point only to a change in policy, Opp. 35, which does not constitute affirmative misconduct, Appl. 29.

C. At Minimum, The District Court Erred In Granting A Universal Injunction

Respondents argue that this is the "rare case" where universal relief is appropriate. Opp. 40 (citation omitted). But that is the constant refrain of parties that

seek, and courts that grant, improper universal injunctions. See, *e.g.*, Opp. at 34, *Trump* v. *New Jersey*, No. 24A886 ("[A] nationwide preliminary remedy was necessary and appropriate in this extraordinary case."); *Chicago Women in Trades* v. *Trump*, No. 25-cv-2005, 2025 WL 1114466, at *20 (N.D. Ill. Apr. 14, 2025) (finding universal relief justified by "exceptional circumstances"); *LULAC* v. *Executive Office of the President*, No. 25-cv-946, 2025 WL 1187730, at *59 (D.D.C. Apr. 24, 2025) (finding universal relief justified by "unique circumstances"). As in those cases, respondents' supposedly case-specific justifications would invite universal relief in almost every case.

Respondents assert (Opp. 40) that they would suffer "irreparable harm" if the injunction were stayed as to everyone except them. But they provide no basis for that assertion, other than a preference that the injunction apply to everyone else. Respondents further assert (*ibid.*) that compliance with a more limited injunction would be "impracticable." But that is not true, and even if it were, it would not matter. It is up to the government to decide whether practicalities require going beyond the requirements of the injunction; courts may not require more relief than necessary to remedy the plaintiff's injury simply because it thinks that would be more efficient for the defendant. See *Arizona* v. *Biden*, 40 F.4th 375, 398 (6th Cir. 2022) (Sutton, C.J., concurring) ("[T]he district court worried that the Guidance could not 'be applied on a state-by-state basis.' But that is initially the National Government's problem, not ours."). Finally, respondents contend (Opp. 40) that respondent Gender Justice League is entitled to injunction that extends to all its members nationwide, "not merely those who filed declarations." But Article III confines courts to adjudicating the rights of "the litigants brought before the Court." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 611 (1973). Courts may not grant relief to members who were not identified

in the complaint and who did not agree to be bound by the judgment. See *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 399 (2024) (Thomas, J., concurring); Appl. at 35-36, *McHenry* v. *Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025) (No. 24A653).

II. THE OTHER FACTORS SUPPORT STAYING THE DISTRICT COURT'S INJUNCTION

A. The Questions Presented By The District Court's Injunction Warrant This Court's Review

Respondents do not dispute that if the Ninth Circuit were to uphold the district court's injunction, certiorari would be warranted. Nor could they. The injunction nullifies the military's sensitive judgments on who may serve in the Nation's armed forces, and this Court already indicated that such an injunction would warrant further review in staying the injunctions against the Mattis policy. See Appl. 35-36.

B. The District Court's Injunction Causes Irreparable Harm To The Government And To The Public

As our application explains (at 36-38), the district court's injunction irreparably harms the Executive Branch by forcing the Department to maintain a policy that it has determined conflicts with "the best interests of the Military Services" and with "the interests of national security." Appl. App. 126a. Respondents contend that such harm is not irreparable "because the government may yet pursue and vindicate its interests in the full course of this litigation." Opp. 16 (citation omitted). But that contention ignores the ongoing harms to the military and the public during the pendency of the injunction, which could endure for months or years of litigation in the lower courts. And that position cannot be reconciled with this Court's decision to stay the injunctions against the Mattis policy, which harmed the Executive Branch in the same way. See Appl. 37-38.

Respondents also contend that if the government suffers irreparable injury any time it is enjoined by a court from effectuating an Executive Branch policy, it would

lead to the "inequitable" result of "unconstitutional or otherwise illegal laws" remaining in effect during the pendency of litigation. Opp. 16 (citation omitted). But a likelihood of irreparable harm is not the only thing that the government must show to obtain a stay of an injunction. The government must also show a likelihood of success on the merits. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). It has done so here.

Respondents further assert (Opp. 17) that "there is no evidence" that forcing the military to maintain the Austin policy will harm "military readiness and lethality" or "unit cohesion." But "an extensive inquiry conducted by a panel of experts" led the Department to conclude, as it did in 2018, that "'there are substantial risks associated with allowing the accession and retention of individuals with a history or diagnosis of gender dysphoria.'" Appl. App. 8a. Such professional military judgments about the composition of the armed forces should be given "great deference," rather than second-guessed. *Winter* v. *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted).

Respondents' suggestion (Opp. 3) that the government "delayed" in seeking relief in this Court is also incorrect. The district court entered its injunction on March 27, see Appl. App. 190a-191a, and the following day, the government appealed and asked the Ninth Circuit for an administrative stay and a stay pending appeal, see D. Ct. Doc. 105 (Mar. 28, 2025). Although the Ninth Circuit denied an administrative stay three days later, see Appl. App. 257a, it did not deny a stay pending appeal until April 18, see *id.* at 258a. Thus, although the injunction had been in place "for weeks" when the government sought relief in this Court on April 24, Opp. 3, that is only because the government waited for the Ninth Circuit to rule on its request for a stay pending appeal, consistent with this Court's ordinary expectation under Rule 23.3.

Indeed, the government likewise waited for the Ninth Circuit to rule on its stay request in *Karnoski*—ultimately filing its stay application in this Court eight months after the district court's issuance of the injunction in that case. Gov't Stay Appl. at 15-17, *Karnoski*, *supra* (No. 18A625).

Respondents likewise err in suggesting (Opp. 15) that "[t]here is no reason to sidestep the ordinary appeals process here." The point of the government's request is not to sidestep the ordinary appeals process, but to be able to implement the 2025 policy while that appeals process plays out, given the strong likelihood of ultimate success and the serious harms incurred in the interim. Absent a stay, the district court's universal injunction will remain in effect during pendency of further review in the Ninth Circuit and in this Court—a period far too long for the military to be forced to maintain a policy that it has lawfully determined, in its professional judgment, to be inconsistent with "the best interests of the Military Services" and with "the interests of national security." Appl. App. 126a.

C. The Balance Of Equities Favors Staying The District Court's Injunction

On the other side of the balance, respondents fail to distinguish their alleged harms from those raised by the plaintiffs who unsuccessfully challenged the Mattis policy. While the Mattis policy may have affected somewhat fewer individuals who sought to join or remain in military service, it imposed precisely the same alleged harms as are alleged by respondents here. In particular, the Mattis policy required the discharge of current servicemembers who, for example, were diagnosed with gender dysphoria after the effective date of that policy and sought to undergo "gender transition." Appl. App. 15a.

Moreover, respondents' attempts to establish irreparable harm fail even on their own terms. Respondents contend, for example, that their "constitutional freedoms are under attack." Opp. 35; see Opp. 37 (asserting that their "constitutional rights will be violated if the preliminary injunction is stayed"). But as explained above, they are unlikely to succeed on their constitutional challenges to the 2025 policy. Respondents also contend that the 2025 policy will irreparably harm them by "disqualif[ying]" them from military service "for no reason other than one's gender identity." Opp. 36 (citation omitted). But the 2025 policy turns on a medical condition and related medical interventions, "not identity per se." *DSM-5*, at 451.

In any event, even if respondents could show irreparable harm from a stay, any such harm would be "outweighed by the public interest" and the "national security imperative" of "deliver[ing] a ready, deployable force." Appl. App. 122a; see *Winter*, 555 U.S. at 23. Respondents contend (Opp. 38) that the loss of servicemembers like them "will necessarily negatively impact military readiness, lethality, and unit cohesion." But after considering "existing and prior DoD policy" and "prior DoD studies and reviews of service by individuals with gender dysphoria," the Department has reached a different conclusion, Appl. App. 121a, and this Court "give[s] great deference to the professional judgment of military authorities concerning" such matters, *Winter*, 555 U.S. at 24 (citation omitted). Moreover, since the Department is likely to succeed on the merits, the only real question is *when*, not *whether*, respondents' service must end, and prolonged uncertainty on that point would benefit no one.

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For the foregoing reasons and those stated in the government's application, this Court should vacate the district court's injunction in its entirety. At minimum, this Court should stay the injunction except as to the eight individual respondents in this case.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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