No. 26-272

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA ET AL.,

Petitioners,

v.

NICOLAS TALBOTT ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Transgender Americans have served honorably in our Nation's armed forces since 2016, under policies adopted by three Secretaries of Defense: Ashton Carter, James Mattis, and Lloyd Austin. Last year, Secretary Pete Hegseth abruptly reversed course and directed the expulsion of transgender servicemembers pursuant to an Executive Order declaring 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." The question presented is:

Whether the court of appeals correctly affirmed a preliminary injunction barring the discharge of 28 named respondents, where the Government: conceded that all of them are serving honorably and satisfy the military's rigorous standards; forfeited any argument that allowing them to continue to serve while this litigation proceeds would harm national security; and admitted it has no evidence to support the assertion that transgender servicemembers are dishonorable, dishonest, or undisciplined.

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INTRODUCTION

The Government asks this Court to decide whether the Hegseth Policy banning transgender Americans from the military is constitutional. But the D.C. Circuit neither resolved that question nor blocked the Government from implementing the Policy across the armed forces. The court held only that the equities and a preliminary assessment of the merits justified party-specific interim relief preventing the Government from discharging 28 named servicemembers before their claims can be heard. There is no reason for this Court to review that narrow decision about how to "balance the equities as the litigation moves forward." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (per curiam).

Collectively, respondents have been serving their country for more than 130 years, earning dozens of commendations. The Government conceded that they have "'served honorably,'" met the military's "'rigorous standards,'" and "made America safer." Pet. App. 204a (citations omitted). And the Government "forfeited any argument" that allowing them to continue to serve while this litigation proceeds will "harm national security" or any other military interest. *Id.* 48a.

What is more, this case would be a singularly poor vehicle for deciding the constitutionality of the Hegseth Policy. It involves a preliminary injunction that will soon be mooted by a final judgment, with a trial scheduled for January 2027. It would allow this Court to review only half the Policy—the D.C. Circuit *vacated* the injunction against the portion of the Policy governing accessions. And the Court would be forced to decide the constitutionality of the Hegseth Policy on a record the Government chose not to develop during

the preliminary proceedings below: It offered no evidence, cross-examined no witnesses, and provided no explanation for key features of the Policy.

On the merits, the D.C. Circuit correctly held that the Hegseth Policy likely fails even rational-basis review because it is "inexplicable by anything but animus." *Trump v. Hawaii*, 585 U.S. 667, 706 (2018) (citation omitted). Indeed, this is an exceptional case where the challenged action is *expressly* grounded in animus. The stated basis for the Policy is that "expressing a false 'gender identity' divergent from an individual's sex"—a pejorative description of transgender people—"conflicts with a soldier's commitment to an honorable, truthful, and disciplined lifestyle" and reflects a lack of "humility and selflessness." Exec. Order No. 14183 § 1, 90 Fed. Reg. 8757 (Jan. 27, 2025). Those are not military judgments; they are attacks on transgender servicemembers' character. And the Government has conceded that there is no evidence to support them.

Instead, the Government tries to frame the Hegseth Policy as a regulation of gender dysphoria "similar to" a 2018 policy adopted by then-Secretary James Mattis. Pet. 2. But the Mattis Policy did not denigrate transgender Americans. And it *retained* transgender servicemembers who were already serving. If Secretary Hegseth had reinstated the Mattis Policy, there would have been no need for the 28 respondents covered by the injunction to sue: They could have simply continued serving—just as several of them *actually did* while the Mattis Policy was in effect.

This is not a case about different Administrations making different judgments on a hard policy problem. It is about an abrupt reversal of a decade-long policy

spanning the three previous Administrations, each of which allowed transgender servicemembers who satisfied the military's rigorous standards to continue serving their country. The Government has offered no explanation for that reversal other than the impermissible one declared in the Executive Order and repeated in the Policy's implementing documents: a bare desire to expel transgender servicemembers because they are transgender. The deference courts afford to professional military judgments cannot save a policy grounded in such animus.

Indeed, Secretary Hegseth himself has repeatedly confirmed that the purpose and effect of the Policy is to demean and expel transgender servicemembers merely because they are transgender. A few weeks after the Government filed its petition in this Court, for example, Secretary Hegseth told hundreds of servicemembers that his Policy means "[n]o trannies" in the military—and then equated transgender people with "weirdos" and "wimps."[1]

STATEMENT OF THE CASE

A. A decade of transgender military service

1. Across three presidential Administrations beginning in 2016, the military has recognized that transgender Americans can meet the high standards for military service and serve their country honorably.

The Carter Policy. In 2015, then-Secretary of Defense Carter created a working group to study

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[1] *Secretary of War Pete Hegseth's State of the Force Address (As Delivered)* (Sep. 30, 2026), https://www.war.gov/News/Speeches/Speech/Article/4616486/secretary-of-war-pete-hegseths-state-of-the-force-address-as-delivered.

issues related to military service by transgender people. Pet. App. 12a. "After a year of research," the group concluded that military service by transgender Americans was consistent with the military's interests in readiness, cohesion, and cost management. *Id.* Acting on that recommendation, Secretary Carter changed the military's policies governing both the retention of current servicemembers and accession of new servicemembers. *Id.* As relevant here, the Carter Policy "allow[ed] transgender individuals already enlisted in the military to serve" beginning "in summer 2016." *Id.* Specifically, servicemembers who were diagnosed with gender dysphoria could "begin a treatment plan that could result in the member transitioning genders." *Id.* The Carter Policy reflected a judgment that "the United States military should be open to all who can meet the rigorous standards for military service and readiness." C.A. J.A. 412.

The Mattis Policy. In 2017, Secretary Mattis convened a panel of senior military leaders to conduct an "independent multi-disciplinary review and study" of transgender service. C.A. J.A. 88-89. The panel heard from transgender servicemembers, their commanders, and doctors. *Id.* 89. It also studied the military's experience under the Carter Policy. *Id.* "After extensive review and deliberation," it submitted a 44-page report recommending policy changes based on its "professional military judgment." *Id.* 72, 89.

The resulting Mattis Policy reversed aspects of the Carter Policy. Pet. App. 14a-16a. But it included a reliance exception authorizing current transgender servicemembers who had been diagnosed with gender dysphoria under the Carter Policy to "continue to receive all medically necessary treatment" and to

"serve in their preferred gender." C.A. J.A. 114; *see* Pet. App. 16a-17a. In so doing, the Mattis Policy both respected transgender servicemembers' "reasonable expectation" that the military would honor its commitments and ensured that the military would continue to benefit from its "substantial investment" in them. C.A. J.A. 114. The Policy also emphasized that it should not "be viewed as reflecting poorly on transgender persons who suffer from gender dysphoria"; to the contrary, the Policy declared that they are "valued members of our Nation." *Id.* 77.

The Austin Policy. In April 2021, Secretary Austin adopted a policy based on recommendations from a working group created by the Office of the Under Secretary of Defense for Personnel and Readiness. Pet. App. 17a. The policy allowed transgender people who met the military's rigorous standards to join and serve on the same terms as other servicemembers. *Id.*

2. By 2025, therefore, transgender Americans had been serving for nearly a decade under three different Administrations. Uncontested evidence shows that authorizing transgender service allowed the military "to retain highly trained and experienced service members." C.A. J.A. 679. It also shows that transgender servicemembers had no negative effect on force-wide readiness, unit cohesion, or healthcare costs. Pet. App. 225a-28a; *see, e.g.*, C.A. J.A. 404, 554-55, 679-80.

The 28 respondents covered by the preliminary injunction illustrate both the contributions of transgender servicemembers and the military's substantial investments in their service. Respondents—some of whom served under the Mattis Policy—have dedicated more than 130 years to the military and earned more than 80 commendations. Pet. App. 35a, 190a-91a.

They include an artillery platoon commander, a Green Beret, an intelligence analyst, a satellite operator, a naval flight officer, judge advocates, a future West Point instructor, and more. *Id.* 190a; *see* C.A. J.A. 369, 377, 548. They have deployed to Afghanistan, Iraq, Kuwait, South Korea, Poland, and aboard aircraft carriers. C.A. J.A. 222-24, 227, 235, 241-42, 334, 391. The Government conceded below that each of them has "'served honorably,'" has "'satisfied the rigorous standards'" for military service, is physically and mentally fit, and is "honorable, truthful, and disciplined." Pet. App. 204a (citations omitted). Together, the Government agreed, they have "made America safer." *Id.*

B. The Hegseth Policy

1. In January 2025, President Trump issued an Executive Order declaring that "expressing a false 'gender identity' divergent from an individual's sex"—the Order's pejorative description of transgender people—"cannot satisfy the rigorous standards necessary for military service." Exec. Order No. 14183 § 1, 90 Fed. Reg. 8757 (Jan. 27, 2025). The Order added that being transgender "conflicts with a soldier's commitment to an honorable, truthful, and disciplined lifestyle, even in one's personal life," and is inconsistent with "the humility and selflessness required of a service member." *Id.*

Eleven days later, Secretary Hegseth issued a memo reiterating that individuals "expressing a false 'gender identity'" cannot "satisfy the rigorous standards necessary for military service." ECF No. 33-1, at 1 (Feb. 7, 2025) (Hegseth Memo). And 19 days after that, the Department issued a memo implementing the Hegseth Policy. C.A. J.A. 48-60. Unlike previous policies, the Hegseth Policy was not based on any new

study or policy review, or any analysis of the "Department's own data and experience" with transgender service under the Carter, Mattis, and Austin Policies. Pet. App. 216a. A memo accompanying the Policy stated that it "was informed through consideration of" prior studies and cost data, but the Government could not identify anyone who had considered them. *Id.* 192a (citation omitted); *see id.* 216a.

2. Unlike the Carter, Mattis, and Austin Policies, the Hegseth Policy categorically bars transgender people from the military. It requires "[a]ll Service Members [to] only serve in accordance with their [birth] sex," without exception. C.A. J.A. 50. It disqualifies anyone who has "a current diagnosis or history of, or exhibit[s] symptoms consistent with, gender dysphoria." *Id.* 53, 55. And it bars anyone who has ever sought to transition, again without exception. *Id.* As relevant here, the Hegseth Policy differs from the Mattis Policy in three respects.

First, the Policy discharges transgender servicemembers currently in the military. An official FAQ document acknowledged that "all transgender Service members [are] being targeted for separation." C.A. J.A. 206. The document then anticipated the obvious question why the Department did not "reinstat[e] the Mattis policy" and allow current servicemembers "to be grandfathered." *Id.* 207. The Department's only answer was to reiterate that "expressing a false 'gender identity' divergent from an individual's sex cannot satisfy the rigorous standards necessary for military service." *Id.*

Second, the Policy treats gender dysphoria differently from other medical and mental-health conditions by forcing transgender servicemembers into administrative separation, a process generally reserved for

misconduct or the failure to meet performance standards. C.A. J.A. 55; *see* Pet. App. 22a. It makes them "ineligible for referral to the Disability Evaluation System," which governs other medical and mental-health conditions and which the Mattis Policy used for gender dysphoria. C.A. J.A. 55; *see* Pet. App. 21a-22a, 39a. And the Hegseth Policy requires servicemembers who wish to appear before their separation boards to do so in their birth sex. Pet. App. 158a.

Third, although the Policy purports to allow for waivers, they are unavailable to transgender servicemembers. To qualify, a servicemember must (1) show 36 months of "stability in the individual's [birth] sex," (2) have "never attempted to transition," and (3) adhere to the standards of their birth sex. C.A. J.A. 210-11. No transgender servicemember could satisfy those criteria. By contrast, the Mattis Policy subjected gender dysphoria to "the same procedures for waiver as any other mental health standards." Pet. App. 16a (brackets and citation omitted).

C. Proceedings below

1. Respondents are 28 transgender individuals who were serving in the military when the Hegseth Policy was adopted and other transgender individuals who seek to join. They challenged the Hegseth Policy and moved for a preliminary injunction, arguing that the Policy violates the equal-protection component of the Fifth Amendment. Pet. App. 203a-05a.

In support of their motion, respondents relied on expert testimony, military studies and records, and declarations from former senior military officials attesting to transgender servicemembers' contributions to the military. Pet. App. 225a-28a; *see, e.g.*, C.A.

J.A. 924-28. The Government, in contrast, told the court that it would "neither present any affirmative witnesses nor cross-examine" respondents' declarants. Pet. App. 206a.

In March 2025, the district court granted a preliminary injunction blocking the Policy. Pet. App. 188a-279a. The court concluded that the Policy likely triggers, and fails, heightened scrutiny because it discriminates based on sex and transgender status. *Id.* 241a-63a. In the alternative, the court found that the Policy likely fails even rational-basis review because it was motivated by animus. *Id.* 263a-74a.

2. The Government appealed, and a divided motions panel of the D.C. Circuit stayed the injunction pending appeal. Pet. App. 110a-65a.

3. A different panel then vacated the preliminary injunction as to non-parties, consistent with *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), and as to respondents seeking accession into the military. Pet. App. 1a-109a. It affirmed the injunction only as to the 28 named respondents who were already serving in the military when the Hegseth Policy was adopted. *Id.* 50a-51a. There was no majority opinion; each member of the panel wrote separately.

a. Judge Wilkins voted to affirm the injunction in part and vacate it in part. Pet. App. 1a-51a. He first concluded that respondents had shown a likelihood of success on their equal-protection claim because the Policy likely fails even rational-basis review. *Id.* 24a-45a. Among other things, he explained that the district court's animus finding was "well supported" by the Executive Order and other Policy documents, which "contain numerous statements demeaning transgender people as lacking honesty, integrity, and

humility." *Id.* 40a. Those statements provided "direct evidence" supporting the district court's finding that "animus motivated the classifications in the Hegseth Policy"—a finding the Government "d[id] not meaningfully contest." *Id.* 41a-42a.

Judge Wilkins also held that the equities favored the respondents who were already serving in the military. He emphasized that the Government had not contested that respondents "have served honorably and met all military standards," and had thus "forfeited any argument" that retaining them would "harm national security." Pet. App. 48a.

By contrast, Judge Wilkins concluded that the equities did not justify an injunction blocking the accession policy. Pet. App. 48a. Among other things, he explained that although the respondents "who have been serving for years have demonstrated that their presence in the military is not harming national security, we can only make a predictive judgment" about those "seeking admission." *Id.* 49a. And he was unwilling to compel the military to accept new members based on a "preliminary determination of the merits." *Id.*

b. Judge Rogers concurred in part and dissented in part. Pet. App. 52a-64a. She agreed that "[e]ven under the highly deferential form of rational basis review espoused by the government," key features of the Hegseth Policy are likely "inexplicable by anything other than animus." *Id.* 55a-56a (citation omitted). But she departed from Judge Wilkins on the balance of the equities as to accession and would have affirmed the injunction as to all respondents. *Id.* 60a-64a.

c. Judge Walker would have vacated the entire injunction. Pet. App. 65a-109a. He argued that

respondents are unlikely to succeed on the merits because courts owe great deference to the Executive Branch's judgments about military policy. *Id.*

4. The Government asked the D.C. Circuit to stay the mandate pending the filing and disposition of a petition for a writ of certiorari. Pet. 16 n.2. The court has not ruled on that motion, and the mandate thus has not been issued. *Id.* In the meantime, litigation has been proceeding in district court, and a trial is set for January 4, 2027. Scheduling Order, ECF No. 133.[2]

REASONS FOR DENYING THE WRIT

I. There is no reason for this Court to review the D.C. Circuit's narrow decision preserving the status quo for 28 named respondents.

The Government does not contend that the D.C. Circuit's decision creates a circuit split or otherwise satisfies this Court's traditional certiorari standards. No other court of appeals has even considered the constitutionality of the Hegseth Policy, and the D.C. Circuit did not actually resolve that question. Instead, it held only that a tentative review of the merits and a balancing of the equities justified a preliminary injunction preventing the Government from ending the military careers of 28 named respondents while this litigation continues. "The purpose of such interim equitable relief is not to conclusively determine the rights of the parties." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (per curiam). Instead, it "is merely to preserve the relative positions of the

[2] An appeal of a different preliminary injunction against the Hegseth Policy is pending in the Ninth Circuit. *See Shilling v. Trump*, No. 25-2039 (docketed Mar. 28, 2025).

parties until a trial on the merits can be held" and to "balance the equities as the litigation moves forward." *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025) (citations omitted). There is no reason for this Court to review the D.C. Circuit's narrow decision doing exactly that.

1. The D.C. Circuit did not decide the legality of the Hegseth Policy. Each of the three judges wrote only for themselves, and both judges who voted to affirm the injunction in part explicitly framed their conclusions in terms of the likelihood of success on the merits rather than a definitive determination of the Policy's constitutionality. Pet. App. 49a (Wilkins, J.); *id.* 55a-56a (Rogers, J.). Every argument made in the petition remains available to the Government as the case proceeds in the lower courts.

2. The practical effect of the judgment below is likewise limited. The D.C. Circuit vacated the district court's injunction as to non-parties and the respondents who seek to join the military. Pet. App. 50a-51a. The only part of the injunction that remains protects 28 named servicemembers. *See id.* And the only consequence of denying certiorari would be to prevent the Government from discharging servicemembers it conceded are meeting all military standards before the district court enters a final judgment.

That narrow interim relief does not harm the Government. The Government did not present any evidence below—and "thus forfeited any argument"—that "retaining these servicemembers will harm national security." Pet. App. 48a. To the contrary, the Government conceded that respondents have "'served honorably,'" "'satisfied the rigorous standards'" for military service, and "have made America safer." *Id.* 204a (quoting Tr. 10, 14, 148 (Feb. 18, 2025)). The

question whether that small group of servicemembers may continue their honorable service while this litigation proceeds is hardly a matter of "exceptional importance" for the Government. Pet. 2.

On the other side of the ledger, discharge would inflict devastating harms on respondents. Pet. App. 45a-46a, 48a. Those harms include the loss of a family's sole source of income, of healthcare on which a spouse depends, and of GI Bill benefits for children. *See, e.g.*, C.A. J.A. 225, 237, 270-71, 374. For many respondents, it would also mean "losing the only career they have ever known—for which many of them undertook years of specialized training." Pet. App. 164a.

Although the balance of the equities was central to Judge Wilkins's controlling opinion, the Government ignores it. And the Government does not even attempt to explain why the interim status of a few dozen servicemembers warrants this Court's review.

II. This petition is not an appropriate vehicle for deciding the Hegseth Policy's constitutionality.

1. Rather than attempting to justify review based on the legal or practical effects of the D.C. Circuit's narrow interim decision, the Government urges this Court to do what neither court below has yet done: definitively resolve the constitutionality of the Hegseth Policy. But for at least three reasons, this case in this posture would not be an appropriate vehicle for deciding that question.

First, as the Government recently told this Court, a preliminary-injunction posture "makes [a case] a particularly poor vehicle" to resolve a constitutional question, because "the only . . . question properly before this Court is whether [the plaintiff] has shown

a likelihood of success," not whether its claims "are in fact correct." U.S. BIO at 17, *Alpine Sec. Corp. v. FINRA*, 145 S. Ct. 2751 (2025) (No. 24-904). That point applies with full force here, where the opinions below were explicitly framed in tentative, likelihood-of-success terms. *See supra* at 12. The Court should thus follow its usual practice and "await final judgment in the lower courts." *Va. Mil. Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting denial of certiorari); *see, e.g.*, *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

Review in a preliminary-injunction posture would be especially unwarranted in this case because the litigation is proceeding rapidly towards a final judgment, with a trial set to begin in January. Once the district court enters a final judgment—which could happen within months—this "appeal from the grant of a preliminary injunction" will "become[] moot." *Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 314 (1999); *see Harper v. Poway Unified Sch. Dist.*, 549 U.S. 1262, 1262 (2007) (per curiam).

Second, the limited scope of the judgment below would make it impossible for the Court to answer the question presented in the petition. The Government urges the Court to grant certiorari "to address the constitutionality of the Hegseth policy" and frames the question presented accordingly. Pet. 2; *see* Pet. I. But the Government *prevailed* on the accession policy below, and the D.C. Circuit vacated that portion of the injunction. Pet. App. 50a-51a. As this case comes to the Court, it presents only the retention policy—not the Hegseth Policy writ large.

Seeking to avoid that problem, the Government notes that the separate opinions below discussed the

constitutionality of the Policy as to "both current and aspiring servicemembers." Pet. 20. But this Court "review[s] judgments, not statements in opinions." *Trump v. Cook*, 609 U.S. 528, 550 n.3 (2026) (brackets and citation omitted). And the *judgment* below reaches only retention. The Hegseth Policy is an integrated whole—directed by a single executive order, announced in a single memo, and implemented through a common set of procedures. This Court should not grant certiorari to decide the validity of the Policy in a case whose posture would artificially limit the Court's review to only half of it.

Third, the Government's own litigation choices mean that granting certiorari would force the Court to review the Hegseth Policy based on a record that the Government failed to develop below.

The Government told the district court that it would "neither present any affirmative witnesses nor cross-examine" respondents' declarants. Pet. App. 206a & n.13. It twice declined the court's invitation to clarify the scope of the Policy. *Id.* 174a-75a. It offered no explanation for eliminating the Mattis Policy's reliance exception and expelling transgender servicemembers who are meeting all military standards. Nor did it explain its use of the punitive administrative-separation process or its denial of a waiver to anyone who has ever attempted to transition. *Id.* 23a-24a, 33a, 41a-42a. Accordingly, as Judge Wilkins emphasized, key features of the Hegseth Policy "have not been explained at all." *Id.* 41a.

That lack of explanation would pose a particularly serious obstacle to review because the Hegseth Policy documents themselves say so little about the Policy's development and rationale. The memo recommending

the Policy contains just six bullet points of explanation spanning less than a page. C.A. J.A. 64-65. The Government tries to compare the Policy to the Mattis Policy and the proclamation at issue in *Trump v. Hawaii*, 585 U.S. 667 (2018). But those policies included far more extensive explanations. The Mattis Policy was based on a 44-page report setting forth the results of "extensive review and deliberation" by a panel of military experts. C.A. J.A. 72, 88-89. And the proclamation in *Hawaii* "thoroughly describe[d] the process, agency evaluations, and recommendations" on which it was based. 585 U.S. at 686. The Hegseth Policy does not include any remotely comparable explanation. And because of the Government's litigation choices, neither does the preliminary-injunction record.

2. Rather than seriously grappling with the obstacles to review in *this* case, the Government invokes stays and grants of certiorari in *other* cases. Pet. 17-20. None of them supports a grant of review in the very different circumstances presented here.

The Government first points to this Court's stay of a different injunction against the Hegseth Policy in *United States v. Shilling*, 145 S. Ct. 2695 (2025), and its stay of an injunction against the Mattis Policy in *Trump v. Karnoski*, 586 U.S. 1124 (2019). Pet. 2, 17, 19. But those orders stayed universal injunctions blocking *any* application of the challenged policies. Here, in contrast, the D.C. Circuit faithfully applied *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), by limiting relief to the named respondents. Pet. App. 50a-51a.

More fundamentally, neither *Shilling* nor *Karnoski* involved a finding of animus. The *Shilling* district court expressly declined to "make an animus determination" and rested primarily on its conclusion that

the Hegseth Policy triggered and "fail[ed] intermediate scrutiny." *Shilling v. United States*, 773 F. Supp. 3d 1069, 1094, 1099 (W.D. Wash. 2025). Similarly, the *Karnoski* court held that transgender status is a quasi-suspect classification triggering "intermediate scrutiny." *Karnoski v. Trump*, 2017 WL 6311305, at *7-8 (W.D. Wash. Dec. 11, 2017). By contrast, the judgment below does not depend on any form of heightened scrutiny; instead, it is based on a conclusion that the Hegseth Policy is likely "inexplicable by anything but animus." Pet. App. 42a (citation omitted). Stays of different injunctions resting on different rationales do not suggest that review is warranted here.

Karnoski is especially inapt given the critical differences between the Mattis Policy and the Hegseth Policy. *See supra* at 7-8. Most obviously, every respondent covered by the preliminary injunction as affirmed by the D.C. Circuit could have continued serving under the Mattis Policy's reliance exception. C.A. J.A. 114. Several respondents actually did just that. *See, e.g.*, *id.* 236, 238 (Cole); *id.* 257 (Danridge); *id.* 268-69, 272 (Hash); *id.* 325 (Pickett). A stay that allowed the Mattis Policy to take effect has no bearing on an injunction that merely prevents the military from discharging the very servicemembers the Mattis Policy retained.[3]

The Government next invokes cases where the Court granted certiorari "to review decisions affirming the grant of preliminary relief against important

[3] In fact, Judge Wilkins, the author of the controlling opinion below, voted to vacate a preliminary injunction against the Mattis Policy because he concluded that there were "substantial arguments" that the Policy was valid. *Doe 2 v. Shanahan*, 755 Fed. Appx. 19, 20, 25 (D.C. Cir. 2019) (per curiam).

government policies." Pet. 20. But those cases only underscore why certiorari is inappropriate here. All involved universal or multi-state relief and presented questions that did not require further factual development. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 377-78 (2024) (nationwide; administrative record); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 663 (2020) (nationwide; administrative record); *New York v. DHS*, 969 F.3d 42, 64, 87-88 (2d Cir. 2020) (multi-state; administrative record); *Hawaii*, 585 U.S. at 681 (nationwide; question of statutory authority). None involved an injunction limited to a few named respondents or a lower-court decision resting on the Government's own concessions, forfeitures, and failure to develop the record.

III. The D.C. Circuit correctly held that the Hegseth Policy is likely inexplicable by anything but animus.

If the Constitution's guarantee of equal protection "means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest." *USDA v. Moreno*, 413 U.S. 528, 534 (1973). Accordingly, this Court has repeatedly held that a government policy fails even rational-basis review if it is "inexplicable by anything but animus." *Hawaii*, 585 U.S. at 706 (quoting *Romer v. Evans*, 517 U.S. 620, 632 (1996)); *see, e.g.*, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446-47 (1985). Judges Wilkins and Rogers correctly concluded that the retention portion of the Hegseth Policy is likely invalid because it is inexplicable by anything except a bare desire to expel

transgender servicemembers from the military simply because they are transgender.[4]

A. The Hegseth Policy is explicitly grounded in baseless attacks on the character of transgender servicemembers.

This is the rare equal-protection case where the challenged policy itself announces its impermissible purpose: The Executive Order, the Hegseth Memo, and other official documents explain the Policy by repeatedly disparaging transgender people as a class.

Executive Order 14183 directs the expulsion of transgender servicemembers based on an explicit assertion that "expressing a false 'gender identity' divergent from an individual's sex conflicts with a soldier's commitment to an honorable, truthful, and disciplined lifestyle, even in one's personal life." Exec. Order No. 14183 § 1, 90 Fed. Reg. 8757 (Jan. 27, 2025). The Order adds that being transgender is inconsistent with "the humility and selflessness required of a service member." *Id.* Those are not judgments about medical readiness; they are explicit attacks on transgender servicemembers' character, extending to their "personal li[ves]." *Id.*

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[4] Respondents argued below that the Hegseth Policy triggers heightened scrutiny because it discriminates based on sex and transgender status. Resp. C.A. Br. 49-59. Because the D.C. Circuit did not reach those arguments, we do not address them here; instead, they remain to be litigated below if necessary. The Government's reliance on *West Virginia v. B.P.J.*, 609 U.S. 958 (2026), and *United States v. Skrmetti*, 605 U.S. 495 (2025), is thus misplaced. Neither of those decisions addressed a claim that the challenged policy was based on animus.

The Hegseth Memo adopts the Order's assertion that merely "[e]xpressing a false 'gender identity' divergent from an individual's sex" is inconsistent with "the rigorous standards necessary for Military Service." Hegseth Memo 1. The subsequent memo setting forth the Hegseth Policy frames some of its exclusions in terms of gender dysphoria rather than in terms of being transgender, but it asserts that people with gender dysphoria lack "honesty," "humility," and "integrity"—again, a judgment about character, not medical readiness. C.A. J.A. 50. And official FAQs explaining the Policy reiterate that a person who merely "express[es] a false 'gender identity' divergent from an individual's sex" shows a lack of "humility and selflessness" and "cannot satisfy the rigorous standards" for military service. *Id.* 201, 206-07.

The Hegseth Policy thus makes clear that it is expelling servicemembers who meet military standards solely because being transgender supposedly makes them dishonorable, undisciplined, arrogant, selfish liars. Yet the Government has never even tried to defend those derogatory characterizations. To the contrary, it has admitted that there is "no evidence" to support them, Pet. App. 34a—or "anything close" to them, *id.* 192a (quoting Tr. 188-89 (Mar. 12, 2025)). In other words, the Government was forced to concede below that the Hegseth Policy's stated justification reflects nothing more than "irrational prejudice." *Cleburne*, 473 U.S. at 450.

The Government asserts that the impermissible justification announced in the Hegseth Policy itself is irrelevant because rational-basis review ordinarily allows the Government to defend a policy using any "conceivable basis which might support it." Pet. 24

(quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)). But it is "neither conceivable nor reasonable" to conclude that the policymakers "acted for reasons other than those [they] expressly gave" when adopting the Policy. Pet. App. 44a. Where, as here, a policy on its face "declare[s] [its] purpose" and thus leaves "no room to conceive of any other purpose for [its] existence," courts are not required to hypothesize a permissible rationale to sustain it. *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 530 (1959); *see Nordlinger v. Hahn*, 505 U.S. 1, 15-16 & n.7 (1992) (same).

Nor do *Hawaii* and *Mullin v. Doe*, 609 U.S. 324 (2026), suggest otherwise. *See* Pet. 30-32. In *Hawaii*, the challenged proclamation was neutral on its face, "thoroughly describe[d] the process, agency evaluations, and recommendations" on which it rested, and could "reasonably be understood to result from a justification independent of unconstitutional grounds." 585 U.S. at 686, 705. So too in *Mullin*, where the challenged action was facially neutral and had a "strong, race-neutral explanation." 609 U.S. at 349. Here, by contrast, the Policy openly disparages transgender servicemembers and declares its intent to expel them from the military because they are transgender. And, as we explain next, the Government has not identified any legitimate justification for critical features of the Policy—including its reversal of the Mattis Policy's considered decision to retain current transgender servicemembers.

B. The Hegseth Policy's operative terms can only be explained by animus.

Unable to defend expelling transgender servicemembers based on the Hegseth Policy's attacks on their character, the Government tries to portray the

Policy as a conventional readiness standard that "turns on a medical condition (gender dysphoria)." Pet. 21. That reframing fails. The Policy's operative terms confirm that its purpose and effect is to ban transgender servicemembers from the military—as the military itself has repeatedly acknowledged. The Policy also treats gender dysphoria punitively, in contrast to the treatment of other medical and mental-health conditions. And the Policy's stark departures from the Mattis Policy cannot be explained by anything except animus.

1. The Hegseth Policy cannot be justified as a mere medical regulation because it extends far beyond any current diagnosis or symptoms of gender dysphoria. First, the Policy eliminates every exception under which a servicemember who has transitioned could continue to serve. It directs that "[a]ll Service members will only serve in accordance with their [birth] sex," without regard to whether they have any current diagnosis of gender dysphoria or medical need. C.A. J.A. 50. Second, the Policy disqualifies anyone who has ever "attempted to transition," again without regard to gender dysphoria. *Id.* 55. Third, the Policy disqualifies every servicemember who has *ever* been diagnosed with gender dysphoria, regardless of age or proximity to military service. *Id.* 53, 55.[5]

The Government itself has repeatedly recognized—and celebrated—the obvious reality that the Hegseth Policy is a ban on transgender service. An official FAQ acknowledged that "*all* transgender Service members" were "being targeted for separation now." C.A. J.A.

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[5] The Hegseth Policy purports to contain a waiver, but it is unavailable to any transgender servicemember. *See supra* at 8.

206 (emphasis added). The day after the Policy issued, the Department of Defense's official account on the social-media platform X announced that "[t]ransgender service members are disqualified from service without an exemption." Pet. App. 147a (citation omitted). Secretary Hegseth himself later declared: "TRANS is out at the DOD." *Id.* (citation omitted). And when the district court twice invited the Government to submit a declaration to "correct the public record" and substantiate the Government's litigating position that the Policy does not, in fact, ban "all transgender troops," the Government declined. *Id.* 174a-75a.

2. The Hegseth Policy also cannot be explained as a mere medical regulation because it treats gender dysphoria differently than other medical and mental-health conditions. Servicemembers with other treatable conditions go through the Disability Evaluation System, which provides an individualized assessment of how their condition affects their service and potential deployability. Pet. App. 39a-40a. As the Mattis Policy explained, the whole point of that process—and, indeed, of the military's approach to retention in general—is to determine "whether the Service member, despite his or her condition, can continue to do the job." C.A. J.A. 113. "This reflects the Department's desire to retain, as far as possible, the Service members in which it has made substantial investments and to avoid the cost of finding and training a replacement." *Id.*

In contrast, the Hegseth Policy treats gender dysphoria the way the military usually treats wrongful conduct. It categorically expels servicemembers with gender dysphoria and forces them to undergo administrative separation, a process typically

reserved for misconduct or the repeated failure to meet standards. Pet. App. 39a-40a. And as an "additional, degrading step," the Policy requires transgender servicemembers to attend their administrative separation proceedings in their birth sex. *Id.* 158a.

The Hegseth Policy's disparate treatment of gender dysphoria is especially inexplicable given the Government's own stated rationale. It purports to treat gender dysphoria as a mental-health risk because of its supposed comorbidities, such as anxiety and depression. C.A. J.A. 64-65. But the military does not categorically expel servicemembers with depressive or anxiety disorders; it evaluates them "on a case-by-case basis" under standard mental-health criteria. *Id.* 537-38. A purported concern about gender dysphoria's comorbidities—which merely trigger an individualized evaluation—cannot justify a categorical exclusion for gender dysphoria itself.[6]

3. The Government's asserted interests in readiness, cohesion, and cost (Pet. 24-28) also cannot justify the Hegseth Policy's categorical expulsion of transgender servicemembers. To the contrary, expelling thousands of highly trained servicemembers from units that rely on them would *harm* readiness, cohesion, and the military's budget—especially when the Government has invested millions in their training and would

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[6] By highlighting the discontinuity between the Hegseth Policy's treatment of gender dysphoria and other medical and mental-health conditions, we do not engage in the sort of tailoring analysis reserved for intermediate scrutiny (much less a "subclass-by-subclass approach"). Pet. 28. Where, as here, a policy's "sheer breadth" is "discontinuous with the reasons offered" to support it, that is a strong sign that the policy is "inexplicable by anything but animus." *Romer*, 517 U.S. at 632.

need to spend millions finding and training their replacements. *See* Pet. App. 222a; C.A. J.A. 1038-39.

Indeed, the Department carefully considered exactly the same interests when developing the Mattis Policy—which the Government now invokes as the basis for the Hegseth Policy—and concluded that current transgender servicemembers should be allowed to continue serving. C.A. J.A. 103-12, 114. The Government has never explained why the analysis of readiness, cohesion, and cost that led Secretary Mattis to retain those servicemembers now requires expelling them. Pet. App. 23a-24a. Instead, the answer to the official FAQ about the reversal of the Mattis Policy's reliance exception merely reiterates the Government's baseless attacks on transgender servicemembers' character, insisting that "expressing a false 'gender identity' divergent from an individual's sex cannot satisfy the rigorous standards necessary for military service." *Id.* (citation omitted).

More broadly, the fundamental premise of the Government's petition is that the Hegseth Policy is "similar to" the Mattis Policy. Pet. 2; *see* Pet. 8, 19, 21-22, 25, 28. But as should be clear by now, that is wrong—demonstrably so. The Mattis Policy did not categorically exclude transgender servicemembers meeting military standards; it retained them. Pet. App. 23a. The Mattis Policy did not disparage transgender servicemembers; it emphasized that transgender Americans are "valued members of our Nation" and that "nothing in this policy should be viewed as reflecting poorly on transgender persons." C.A. J.A. 77. And the Mattis Policy's retention provisions did not single out gender dysphoria for punitive treat-

ment; they addressed gender dysphoria like other medical and mental-health conditions. *Id.* 113-14.

In short, the Hegseth Policy is unprecedented. And its stark departures from the military's previous treatment of gender dysphoria—including in the Mattis Policy—cannot be explained by anything but animus against transgender persons.

C. Secretary Hegseth's repeated statements about the Policy confirm that it is based on animus.

A review limited to the four corners of the Hegseth Policy's official documents is more than sufficient to show that it reflects a bare desire to expel transgender servicemembers simply for being transgender. But Secretary Hegseth's repeated statements to the public and the military powerfully confirm that the Policy means what it says—and decisively refute the Government's attempt to defend the Policy in this litigation.

On September 30—while the Government's petition was pending before this Court—Secretary Hegseth delivered a "State of the Force" address to hundreds of officers and enlisted servicemembers. He explained that his Policy means "[n]o trannies" and went on to equate transgender servicemembers with "weirdos" and "wimps."[7] That address is one of many statements from Secretary Hegseth touting the Policy by using similar slurs and disparaging statements

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[7] *Secretary of War Pete Hegseth's State of the Force Address (As Delivered)* (Sep. 30, 2026), https://www.war.gov/News/Speeches/Speech/Article/4616486/secretary-of-war-pete-hegseths-state-of-the-force-address-as-delivered.

about transgender servicemembers. To take just a few examples:

- In May 2025, Secretary Hegseth delivered the keynote address at Special Operations Forces Week and described the Policy as "[n]o more dudes in dresses, we're done with that shit."[8]
- A few months later, Secretary Hegseth delivered the same message and reiterated that the Policy means "no more . . . dudes in dresses" to thousands of generals and flag officers.[9]
- In August 2026, Secretary Hegseth repeatedly and publicly declared that the Policy means "no more trannies, just training."[10]

All of those statements remain available on the Department's official website.

Those statements repeat, in cruder terms, the same derogatory characterization of transgender servicemembers that is core to the Executive Order and the policy documents implementing it. And contrary to the Government's assertion (Pet. 30-32),

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[8] *Secretary of Defense Pete Hegseth Delivers Keynote Address at Special Operations Forces Week 2025* (May 6, 2025), https://www.war.gov/News/Transcripts/Transcript/article/4176603/secretary-of-defense-pete-hegseth-delivers-keynote-address-at-special-operation.

[9] *Secretary of War Pete Hegseth Addresses General and Flag Officers at Quantico, Va.* (Sep. 30, 2025), https://www.war.gov/News/Transcripts/Transcript/article/4318689/secretary-of-war-pete-hegseth-addresses-general-and-flag-officers-at-quantico-v.

[10] *E.g.*, *Secretary of War Pete Hegseth Speech on the Arsenal of Freedom in Oshkosh, WI* (Aug. 24, 2026), https://www.war.gov/News/Speeches/Speech/Article/4583572/secretary-of-war-pete-hegseth-speech-on-the-arsenal-of-freedom-in-oshkosh-wi/.

nothing requires a court reviewing the Hegseth Policy to ignore Secretary Hegseth's statements confirming—in his own words, to the military and the public—the premise his Policy declares. Courts "are not required to exhibit a naiveté from which ordinary citizens are free." *Cook*, 609 U.S. at 547 (citation omitted).

D. The Government's reliance on military deference cannot save the Policy.

The Government emphasizes that military policies are "subject only to the most deferential standard of review." Pet. 22. In fact, its defense of the Hegseth Policy has thus far been based almost *entirely* on deference. Pressed on its failure to offer evidence below, for example, the Government insisted that "if there's not actual data to back something up," the question "is a professional military judgment." Pet. App. 235a (quoting Tr. 137-38 (Mar. 12, 2025)).

It is undoubtedly true that "courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986). But "deference does not mean abdication." *Rostker v. Goldberg*, 453 U.S. 57, 70 (1981). Even "in the area of military affairs," the political branches "remain[] subject to the limitations of the Due Process Clause." *Id.* at 67.

More fundamentally, the Government cites no precedent or principle that would require deference to a military policy motivated by animus. In *Goldberg*, for example, the Court deferred only after concluding that the challenged policy was "not invidious." 453 U.S. at 79 (citation omitted). Here, in contrast, the Hegseth Policy—on its face, in its unique treatment of

gender dysphoria, and as confirmed by Secretary Hegseth's own official statements—is inexplicable by anything but animus. Especially because the Government did not even attempt to explain the Policy's key features and its departures from the military's prior practice below, the Hegseth Policy could survive only if deference were transformed into "abdication."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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