No. 26-272

In the Supreme Court of the United States

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

NICOLAS TALBOTT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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TABLE OF CONTENTS

Page

A. The decision below is wrong 2
1. The Hegseth policy satisfies rational-basis review 2
2. The Hegseth policy is not explicable only by animus 3
B. The question presented warrants this Court's review 8

TABLE OF AUTHORITIES

Cases:

Burlington N. R.R. v. *Ford*, 504 U.S. 648 (1992) 4
Chiles v. *Salazar*, 607 U.S. 627 (2026) 9
Free Speech Coal., Inc. v. *Paxton*, 606 U.S. 461 (2025) 10
Gilligan v. *Morgan*, 413 U.S. 1 (1973) 2
Goldman v. *Weinberger*, 475 U.S. 503 (1986) 2, 7
Heller v. *Doe*, 509 U.S. 312 (1993) 10
Mahmoud v. *Taylor*, 606 U.S. 522 (2025) 10
Mullin v. *Doe*, 609 U.S. 324 (2026) 7, 9, 10
Trump v. *Hawaii*, 585 U.S. 667 (2018) 2, 4, 7, 10
Trump v. *International Refugee Assistance Project*, 582 U.S. 571 (2017) 9
Trump v. *Karnoski*, 586 U.S. 1124 (2019) 8
Trump v. *Stockman*, 586 U.S. 1124 (2019) 8
United States v. *Shilling*, 145 S. Ct. 2695 (2025) 8
United States v. *Skrmetti*, 605 U.S. 495 (2025) 4
West Virginia v. *B.P.J.*, 609 U.S. 958 (2026) 4, 7, 8, 11

Regulation:

38 C.F.R. Pt. 4 5

Miscellaneous: Page

Exec. Order No. 14,183, 90 Fed. Reg. 8757 (Feb. 3, 2025) 8

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This case arises under the most deferential standard of review, in an area where deference is particularly warranted: the U.S. military's authority to determine the composition of the armed forces. Yet a divided panel of the D.C. Circuit concluded that the Hegseth policy likely fails even rational-basis review because it is explicable only by animus. Respondents try to defend that remarkable decision by insisting that the policy is overinclusive. But alleged overbreadth falls far short of animus, especially when the policy rests on judgments in line with those made by prior Secretaries.

Respondents' attempts to diminish the need for this Court's review fare no better. This case presents a recurring and important issue about the constitutionality of the military's standards for service. The Court determined that the issue was likely cert-worthy when it stayed in full—including as to the individual respondents—a uni-

versal injunction against the same policy. Moreover, respondents' concerns about the posture of this case are misplaced. Under rational-basis review, the government had no obligation to produce any evidence below. And the mere possibility of mootness from the entry of final judgment has not deterred this Court from granting review of preliminary injunctions in the past. It should not do so here either, especially given that a grant of certiorari would signal to the district court that it should stay a trial that should not be happening in the first place.

A. The Decision Below Is Wrong

1. The Hegseth policy satisfies rational-basis review

As previously explained (Pet. 21-24), the Hegseth policy does not discriminate based on sex or trans-identifying status. Rather, it turns on a medical condition (gender dysphoria) and related interventions. Respondents thus do not renew their arguments below (Br. in Opp. 19 n.4) that the policy "triggers heightened scrutiny." Nor do they dispute that *Trump* v. *Hawaii*, 585 U.S. 667 (2018), supplies the proper rational-basis standard. See Br. in Opp. 18. And setting aside their "animus" argument, they make no attempt to argue that *Hawaii*'s rational-basis standard is not satisfied.

For good reason. The Department of War has broad discretion to determine "the composition" of the armed forces, *Gilligan* v. *Morgan*, 413 U.S. 1, 10 (1973), and such professional military judgments are entitled to "great deference," *Goldman* v. *Weinberger*, 475 U.S. 503, 507 (1986). As relevant here, the Hegseth policy rests on two basic judgments—each perfectly rational and consistent with judgments that previous Secretaries have made.

First, the Hegseth policy rests on the judgment that gender dysphoria is a medical condition that undermines a servicemember's readiness and deployability. C.A. App. 48. That is why the policy disqualifies from military service individuals who have gender dysphoria or a history of the condition or related interventions. Pet. 12, 24-25. Respondents do not dispute that gender dysphoria poses a threat to military readiness and deployability. Nor could they. The Carter, Mattis, and Austin policies also treated gender dysphoria as grounds for disqualification. Pet. 5-10. In the words of the Carter policy, such standards help ensure that servicemembers "are free of medical conditions or physical defects that may require excessive time lost from duty." C.A. App. 414.

Second, the Hegseth policy rests on the judgment that attempting to treat gender dysphoria by allowing a servicemember to undergo "gender transition" and serve in the opposite sex would pose its own challenges to military readiness, cohesion, good order and discipline, and cost-effectiveness. C.A. App. 112; see *id.* at 65. That is why the Hegseth policy does not accommodate "gender transition" as a way of treating gender dysphoria. Pet. 25-28. Again, respondents do not dispute that "gender transition" poses a threat to military interests. Nor could they. Even Secretaries Carter and Austin recognized that "[g]ender transition while serving in the military presents unique challenges associated with addressing the needs of the Service member in a manner consistent with military mission and readiness needs." C.A. App. 415; see *id.* at 449.

2. The Hegseth policy is not explicable only by animus

Respondents insist (Br. in Opp. 18) that the Hegseth policy is "inexplicable by anything but animus." But that claim is foreclosed by the policy's rational judg-

ments about the risks posed by gender dysphoria and the challenges associated with accommodating "gender transition," which should bring the rational-basis "inquiry" to "an end." *United States* v. *Skrmetti*, 605 U.S. 495, 522 (2025); see *Hawaii*, 585 U.S. at 706. In any event, respondents' attempts to infer animus fail on their own terms.

a. Respondents contend that the Hegseth policy is overinclusive because it extends "beyond any *current* diagnosis or symptoms of gender dysphoria." Br. in Opp. 22 (emphasis added). But given that overbreadth is generally irrelevant under rational-basis review, see *Burlington N. R.R.* v. *Ford*, 504 U.S. 648, 653 (1992), the overinclusivity would need to be massive to sustain even an arguable inference of animus. Respondents do not come close.

Individuals with a *history* of the condition or related interventions may well experience clinically significant distress and impairment again in the future, even if they are not currently experiencing them. Pet. 25. Previous policies recognized as much, requiring a period of "stability" to avoid disqualification. C.A. App. 113; see *id.* at 414, 981.

Regardless, it is immaterial whether the Hegseth policy furthers the military's interests as to particular subclasses of individuals. *West Virginia* v. *B.P.J.*, 609 U.S. 958, 983-985 (2026), rejected such a subclass-by-subclass approach under intermediate scrutiny, much less rational-basis review. Respondents cannot evade that precedent simply by purporting to conduct an "'animus'" analysis rather than a "tailoring" analysis. Br. in Opp. 24 n.6. If the Hegseth policy is sufficiently tailored to survive even intermediate scrutiny, the lines that it draws cannot possibly give rise to an inference of animus.

Respondents also assert (Br. in Opp. 22) that the Hegseth policy is so broad as to amount to a "ban on transgender service." But "not all transgender people suffer from gender dysphoria," C.A. App. 91 (brackets omitted), and the Hegseth policy disqualifies only individuals who have gender dysphoria or a history of the condition or related interventions, *id.* at 53, 55. Moreover, that disqualification is subject to waiver, *id.* at 210-211—which respondents wrongly describe (Br. in Opp. 22 n.5) as "unavailable to any transgender servicemember." Although a provision of the waiver requires an individual to show that he "has never attempted to transition to" another sex, C.A. App. 210, that provision refers only to transition via "medical interventions (*i.e.*, cross-sex hormones and sex-reassignment surgery)," Gov't C.A. Reply Br. 8—which not all trans-identifying people have undergone.

b. Respondents next argue (Br. in Opp. 23) that the Hegseth policy "treats gender dysphoria differently than other medical and mental-health conditions." That is incorrect.

Conditions that are not compensable under the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD), 38 C.F.R. Pt. 4, are ineligible for referral to the Disability Evaluation System (DES). Gender dysphoria is not, and never has been, a compensable condition under the VASRD. Therefore, gender dysphoria, standing alone, has never qualified for DES processing, under any Administration. There is thus nothing unusual, let alone "punitive" (Br. in Opp. 25), about the Hegseth policy's reliance on the administrative-separation process rather than the DES. Indeed, servicemembers who are administratively separated re-

ceive an "honorable" discharge unless their record "otherwise warrants a lower characterization." C.A. App. 50.

Respondents also err in suggesting (Br. in Opp. 24) any inconsistency with the Department's treatment of "anxiety and depression." Anxiety and depression are a basis for separation if they "[r]equire persistent duty modifications to reduce psychological stressors or enhance safety." C.A. App. 538. Allowing servicemembers to undergo "gender transition" as a way of addressing their gender dysphoria would likewise require "modifications," including exemptions from the standards applicable to their sex. See Pet. 26-27.

c. Respondents further contend that the Hegseth policy "differs from" the Mattis policy "in three respects." Br. in Opp. 7; see *id.* at 24-26. But such differences are hardly indicative of animus, rather than a reasonable line-drawing disagreement about relative risk.

In fact, one of the purported differences is not an actual difference at all: Contrary to respondents' contention (Br. in Opp. 7-8), the Mattis policy did not treat gender dysphoria itself as a qualifying condition for DES processing. Under both the Mattis policy and the Hegseth policy, servicemembers with gender dysphoria are subject to administrative separation rather than DES processing, unless they present with an independent, VASRD-compensable condition.

The Hegseth policy does differ from the Mattis policy in two ways: It narrows the exceptions to the general disqualification based on gender dysphoria, and it eliminates an exemption allowing certain existing servicemembers to serve in the opposite sex. Pet. 12. But the Mattis policy itself recognized the risks posed by gender dysphoria and the challenges associated with accommodating service in the opposite sex. C.A. App. 69, 112.

The Hegseth policy simply reflects a different weighing of those risks and challenges—precisely the kind of professional military judgment deserving of "great deference." *Goldman*, 475 U.S. at 507. Indeed, the differences between the two policies' "exemptions" would satisfy even intermediate scrutiny, *B.P.J.*, 609 U.S. at 985, so they could not possibly justify an inference of animus.

d. Finally, respondents point to statements that they contend reflect animus toward trans-identifying people. Br. in Opp. 19-21, 26-28. But none of them forms any part of the operative terms of the Hegseth policy itself. And none undermines the obvious, legitimate explanation for the policy that those terms reflect: that it is based on concerns about the risks posed by gender dysphoria and the challenges associated with accommodating "gender transition." See p. 3, *supra*.

This Court's decisions in *Hawaii* and *Mullin* v. *Doe*, 609 U.S. 324 (2026), are instructive. In *Hawaii*, the plaintiffs cited references to a "Muslim ban" to show religious animus. 585 U.S. at 700. In *Mullin*, the plaintiffs cited statements "denigrat[ing]" certain countries and their citizens' "character" to show racial animus. 609 U.S. at 347-348. In both cases, the Court concluded that such statements were insufficient to undermine the government's legitimate justifications for its policies, which were neutral on their face. See *Hawaii*, 585 U.S. at 705-710; *Mullin*, 609 U.S. at 349-350. Here, contrary to respondents' contention (Br. in Opp. 21), the operative terms of the policy are also facially neutral—drawing lines based on gender dysphoria and related interventions—and the statements on which respondents rely are likewise insufficient to undermine the policy's obvious, legitimate justifications.

Moreover, respondents mischaracterize some of those statements on their own terms. The statement that "express[ing] a false 'gender identity' divergent from an individual's sex cannot satisfy the rigorous standards necessary for military service," C.A. App. 206, merely reflects the view that allowing servicemembers to serve in the opposite sex would undermine "readiness, good order and discipline, sound leadership, and unit cohesion," *id.* at 112. Similarly, references to "honesty," "humility," and "integrity," Exec. Order No. 14,183, 90 Fed. Reg. 8757, 8757 (Feb. 3, 2025), do not reflect animus any more than similar statements by Justice Thomas that "obscur[ing]" the "reality" that sex is "an immutable 'biological' characteristic" is "to lie," *B.P.J.*, 609 U.S. at 994 (Thomas, J., concurring).

Ultimately, in asserting animus, respondents have lost sight of the fact that the military has historically treated "transsexualism" alone as a basis for separation. Pet. 4. The Hegseth policy itself departs from that policy by focusing on "gender dysphoria." Pet. 4, 11-12. That is not the sort of change that suggests animus, merely because somewhat more accommodating policies were recently adopted over the past decade.

B. The Question Presented Warrants This Court's Review

1. As previously explained (Pet. 17-20), the authority of the U.S. military to determine the composition of the armed forces by adopting a policy like the one here is a recurring issue of exceptional importance. The Court recognized the likely cert-worthiness of the issue in previously staying preliminary injunctions against the Hegseth and Mattis policies. See *United States* v. *Shilling*, 145 S. Ct. 2695 (2025); *Trump* v. *Karnoski*, 586 U.S. 1124 (2019); *Trump* v. *Stockman*, 586 U.S. 1124 (2019).

Respondents nevertheless contend (Br. in Opp. 12-13) that this case is not cert-worthy because "[t]he only part of the injunction that remains protects 28 named servicemembers," and because the "balance of the equities" supports keeping that part in place. But the stay that this Court granted in *Shilling* suggests otherwise. Instead of staying only the universal aspect of the injunction, the Court stayed the injunction in its entirety —necessarily concluding that the stay factors (including cert-worthiness and the balance of equities) were satisfied even "as to the eight individual respondents in th[at] case." Gov't Stay Appl. at 39, *Shilling*, *supra* (No. 24A1030); cf. *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571, 579 (2017) (per curiam) (granting a partial stay of a universal injunction). Those factors are likewise satisfied as to the 28 named servicemembers here.

Respondents assert (Br. in Opp. 16) that the injunction in *Shilling* did not rest on an "animus determination." But in opposing a stay, the respondents emphasized that the policy "is motivated by animus," thereby putting the issue before this Court. Opp. to Stay Appl. at 20, *Shilling*, *supra* (No. 24A1030). And the D.C. Circuit's unwarranted maligning of the motives of the Secretary of War makes the case more cert-worthy, not less.

2. Respondents also contend (Br. in Opp. 12-16) that the posture of this case renders it unworthy of review. But the Court has decided many cases in a preliminary-injunction posture—including three recent cases involving policies concerning individuals with gender dysphoria. See *B.P.J.*, *supra*; *Chiles* v. *Salazar*, 607 U.S. 627 (2026); *Skrmetti*, *supra*. The likelihood-of-success standard is no impediment to this Court's issuing a decision with meaningful precedential effect. See, *e.g.*, *Mullin*,

609 U.S. at 328; *Mahmoud* v. *Taylor*, 606 U.S. 522, 528 (2025); *Free Speech Coal., Inc.* v. *Paxton*, 606 U.S. 461, 465 (2025); *Hawaii*, 585 U.S. at 711. And the Court has had no difficulty rejecting the likelihood that a policy was based on animus. See *Mullin*, 609 U.S. at 350; *Hawaii*, 585 U.S. at 705-711.

The Court similarly would have no problem assessing respondents' unlikelihood of success here. Respondents contend (Br. in Opp. 14-15) that because the court of appeals affirmed the injunction only as to current servicemembers, the validity of the policy as to aspiring servicemembers would not be before this Court. But as previously explained (Pet. 20), the judgment below rests on the view that animus motivated the policy as a whole —*i.e.*, as to current and aspiring servicemembers alike. Pet. App. 3a, 55a-56a. Regardless, respondents do not dispute that the validity of the policy as to aspiring servicemembers "follow[s] *a fortiori*" from the validity of the policy as to current servicemembers, "because the military has especially wide discretion in determining who may join in the first place." Pet. 20. So if the Court upholds the policy as to the current servicemembers, it would effectively be upholding the entire policy.

Respondents also contend (Br. in Opp. i, 15) that "the Government failed to develop [the record] below" and offered "no evidence to support the assertion that transgender servicemembers are dishonorable, dishonest, or undisciplined." That contention is doubly flawed. It misunderstands both the policy's operative terms, which do not turn on such considerations; and rational-basis review, which places "no obligation" on the government "to produce evidence," *Heller* v. *Doe*, 509 U.S. 312, 320 (1993).

Respondents' assertion (Br. in Opp. i) that the government "conceded that [respondents] are serving hon-

orably" and "forfeited any argument that allowing them to continue to serve * * * would harm national security" is similarly off-base. Under rational-basis review, the government had no obligation to produce such evidence. And even under intermediate scrutiny, the "validity" of a policy depends on "the relation it bears to the general problem," not on "the extent to which it furthers the Government's interest in an individual case." *B.P.J.*, 609 U.S. at 983. Respondents thus err in suggesting that the government must justify the exclusion of the specific, named servicemembers in this case.

3. Finally, respondents express concern (Br. in Opp. 14) that the district court could enter final judgment before this Court issues a decision, thereby mooting this Court's review of the preliminary injunction. But the mere possibility of mootness from the entry of final judgment has not deterred this Court from granting review in a preliminary-injunction posture in the past. See Pet. 20; pp. 9-10, *supra*.

Nor should it here. When a case is before this Court in a preliminary-injunction posture, lower courts typically hold further proceedings in abeyance pending the Court's decision. See, *e.g.*, Order, *Barbara* v. *Trump*, No. 25-cv-244 (D.N.H. Oct. 24, 2025); D. Ct. Doc. 232, *Pennsylvania* v. *Little Sisters of the Poor Saints Peter & Paul Home*, No. 17-cv-4540 (E.D. Pa. July 31, 2019). For example, after this Court granted certiorari before judgment in *Mullin* to review a preliminary injunction issued by the same district judge in this case, that judge stayed further proceedings pending this Court's decision. See Minute Orders, *Miot* v. *Trump*, No. 25-cv-2471 (D.D.C. Apr. 6 & June 24, 2026) (staying deadline to respond to second amended complaint and consideration of class-certification motion).

A grant of certiorari would signal to the district court that it should similarly stay further proceedings here. That the court has scheduled a trial to begin on January 4, 2027, only makes sending such a signal more important. D. Ct. Doc. 133, at 2 (July 27, 2026). After all, the trial rests on the erroneous premise that adjudicating respondents' equal-protection claim requires discovery and the development of an evidentiary record. A grant of certiorari could cause the district court to change gears and halt those improper proceedings, and could preempt the need for future emergency applications that might otherwise become necessary. See 10/14/26 D. Ct. Minute Order (ordering briefing on the application of the deliberative-process privilege).

* * * * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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