IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,)
)
Plaintiff,)
v.) Civil Action No. 1:14-cv-1609 (CKK)
)
ASHTON CARTER, *et al.*,)
)
Defendants.)
)

PROTECTIVE ORDER FOR LAW ENFORCEMENT SENSITIVE INFORMATION

Upon Defendants' consent motion in the above-captioned matter,

IT IS HEREBY ORDERED that the following Protective Order for Law Enforcement Sensitive Information be entered in the above captioned matter (this "Litigation").

1. This Protective Order shall govern any document, testimony, or other material used in this litigation that contains Law Enforcement Privileged Information as defined herein.

2. Law Enforcement Sensitive Information ("LES Information") shall be defined as any information determined by the Government to be subject to the law enforcement privilege under applicable law.

3. Any documents or materials for which Defendants wish to invoke the protections of this Protective Order shall be stamped "**SUBJECT TO LES PROTECTIVE ORDER**" or "**LAW ENFORCEMENT SENSITIVE.**" For any materials whose medium makes such stamping impracticable, such as computer data, the accompanying letter shall be stamped "**SUBJECT TO LES PROTECTIVE ORDER**" or "**LAW ENFORCEMENT SENSITIVE.**" Any materials that contain information derived from LES Information, such as court filings or other pleadings, shall also be stamped "**SUBJECT TO LES PROTECTIVE ORDER**" or

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"**LAW ENFORCEMENT SENSITIVE.**" Except as provided in ¶¶ 5-6, below, Plaintiff's counsel may not use or disclose the information or records so marked.

4. The protections conferred by this Order cover not only documents or materials marked "**SUBJECT TO LES PROTECTIVE ORDER**" or "**LAW ENFORCEMENT SENSITIVE**" but also (1) all copies or excerpts of LES Information; and (2) any testimony, conversations, or presentations by the parties or their counsel that discuss LES Information. To the extent a person listed in ¶¶ 6(a), (c)-(d), *infra*, creates any such documents or materials, such person must mark that Document as "**SUBJECT TO LES PROTECTIVE ORDER**" or "**LAW ENFORCEMENT SENSITIVE.**"

5. LES Information disclosed pursuant to this Protective Order shall be used only by those persons listed in ¶ 6 of this Protective Order, and only for the purpose of this litigation and shall not be disclosed, in any manner whatsoever, to anyone for any other purpose.

6. Access to LES Information disclosed pursuant to this Protective Order shall be restricted to:

a. the parties, the attorneys for the parties, the attorneys' support staff, persons employed or contracted for by the attorneys for the purposes of this litigation;

b. the Court and its personnel, including court reporters;

c. witnesses and potential witnesses, and their attorneys, but only to the extent that the applicable party believes such materials are important for eliciting discoverable testimony and/or other evidence; and

d. consultants and expert witnesses consulted, retained, or hired by any party to this litigation, but only to the extent that the applicable party believes such materials may be relevant to the consultant's or expert's conclusions.

7. Plaintiff and all persons to whom Plaintiff's counsel makes disclosures pursuant to ¶ 6(c) and ¶ 6(d) shall be required to execute a copy of the Acknowledgment Form attached hereto as Exhibit A prior to receiving any such disclosure of LES Information. All Executed Acknowledgment Forms shall be retained by Plaintiff's counsel for the pendency of the litigation, including any appeal, and shall be provided to Defendants or their counsel upon request and good cause shown.

8. If LES Information is disclosed other than as authorized by this Protective Order, the person or entity responsible for the unauthorized disclosure, and any other person or entity who is subject to this Protective Order and learns of the unauthorized disclosure, shall immediately (a) bring such disclosure to the attention of Defendants; and (b) make every effort to obtain the return of the LES Information and to prevent any further disclosure. Any breach of this Order may also result in the termination of access to LES Information.

9. Plaintiff and each person to whom Plaintiff's counsel discloses LES Information pursuant to ¶ 6(c) and ¶ 6(d) of this Protective Order shall return to Plaintiff's counsel all such materials (including all copies thereof), and any documents including information derived therefrom, within 30 days after: (a) the termination of this litigation (including any appeal); or (b) the date upon which he/she ceases to be assigned or retained to work on this case, whichever occurs first. In the alternative, such persons may permanently destroy such materials and certify to Plaintiff's counsel that the materials were permanently destroyed.

10. Plaintiff's counsel shall destroy all LES Information within 30 days after the termination of this litigation, including any appeals. Plaintiff's counsel shall certify to the Defendants that all LES Information within their control have been destroyed not later than 45 days after the termination of this litigation, including any appeals.

11. Any Court filings that contain LES Information pursuant to this Protective Order shall be made under seal. The party responsible for such filing shall, within seven days, also file a redacted version that is publicly available.

12. Those portions of any depositions where the contents of LES Information are discussed shall be designated as under seal, and the parties shall treat those portions of deposition transcripts as LES Information subject to this Protective Order.

13. Upon the scheduling of any hearing or trial in this matter, the manner of using any LES Information at such hearing or trial shall, after consultation between counsel, be determined by the Court prior to any such hearing or trial.

14. A party's failure to designate any materials as LES Information shall not constitute a waiver of any party's timely assertion that the materials are covered by this Protective Order.

15. The parties retain the right to timely challenge the designation of a particular document as containing LES Information. If a party to this litigation who has received material designated as LES Information in accordance with this Order disagrees with the designation, in full or in part, the party shall notify the producing party in writing, and the parties will confer as to the status of the material at issue. If the recipient and the producing party are unable to agree upon the status of the material at issue, any party may raise the issue with the Court for resolution. The burden of proof with respect to the propriety or correctness of the designation

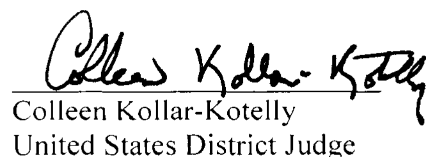
will rest on the designating party. No party, by treating designated material as LES Information in accordance with this Order, shall be deemed to have conceded that the material actually is properly designated as LES Information.

16. Nothing in this Protective Order obligates the parties to produce any information whatsoever, or waives the applicability of privileges with respect to any information. This Protective Order does not constitute a ruling on the question of whether the materials protected by this Protective Order, or derived therefrom, are properly discoverable or admissible, and this Protective Order does not constitute a ruling on any potential objection to the discoverability or admissibility of such information.

17. Nothing in this Protective Order imposes any obligations or limitations on Defendants beyond that otherwise provided by law.

18. The parties retain the right to seek a modification of any provision of this Protective Order.

IT SO ORDERED, this 9th day of November, 2015.



Colleen Kollar-Kotelly
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,)
)
Plaintiff,)
v.) Civil Action No. 1:14-cv-1609 (CKK)
)
ASHTON CARTER, *et al.*,)
)
Defendants.)
)

PROTECTIVE ORDER FOR INSPECTOR GENERAL RECORDS

Upon Defendants' consent motion in the above-captioned matter,

IT IS HEREBY ORDERED that the following Protective Order for Inspector General Records be entered in the above captioned matter (this "Litigation").

1. This Protective Order shall govern the disclosure and use of any records, documents and/or information currently maintained within the Department of the Army Inspector General's Office.

2. "IG Protected Material" for purposes of this Protective Order shall be defined as any records, documents, and/or information initially prepared by Department of the Army Inspector General personnel relating to an inspection, inquiry, investigation, or other official function of that office and currently maintained within the official custody and control of the Department of the Army Inspector General's Office.

3. Any documents or materials for which Defendants wish to invoke the protections of this Protective Order shall be stamped "**SUBJECT TO IG PROTECTIVE ORDER**" or "**IG PROTECTED.**" For any materials whose medium makes such stamping impracticable, such as computer data, the accompanying letter shall be stamped "**SUBJECT TO IG PROTECTIVE ORDER**" or "**IG PROTECTED.**" Any materials that contain information derived from IG

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Protected Materials, such as court filings or other pleadings, shall also be stamped "**SUBJECT TO IG PROTECTIVE ORDER**" or "**IG PROTECTED**." Except as provided in ¶¶ 5-6, below, Plaintiff's counsel may not use or disclose the information or records so marked.

4. The protections conferred by this Order cover not only documents or materials marked "**SUBJECT TO IG PROTECTIVE ORDER**" or "**IG PROTECTED**" but also (1) all copies or excerpts of IG Protected Materials; and (2) any testimony, conversations, or presentations by the parties or their counsel that discuss IG Protected Materials. To the extent a person listed in ¶¶ 6(a), (c)-(d), *infra*, creates any such documents or materials, such person must mark that Document as "**SUBJECT TO IG PROTECTIVE ORDER**" or "**IG PROTECTED**."

5. IG Protected Materials disclosed pursuant to this Protective Order shall be used only by those persons listed in ¶ 6 of this Protective Order, and only for the purpose of this litigation and shall not be disclosed, in any manner whatsoever, to anyone for any other purpose.

6. Access to IG Protected Materials disclosed pursuant to this Protective Order shall be restricted to:

a. the parties, the attorneys for the parties, the attorneys' support staff, persons employed or contracted for by the attorneys for the purposes of this litigation;

b. the Court and its personnel, including court reporters;

c. witnesses and potential witnesses, and their attorneys, but only to the extent that the applicable party believes such materials are important for eliciting discoverable testimony and/or other evidence; and

d. consultants and expert witnesses consulted, retained, or hired by any party to this litigation, but only to the extent that the applicable party believes such materials may be relevant to the consultant's or expert's conclusions.

7. For IG Protected Materials disclosed pursuant to this Protective Order, Plaintiff and each person to whom Plaintiff's counsel discloses such materials pursuant to ¶ 6(c) and ¶ 6(d) of this Protective Order shall return to Plaintiff's counsel all such materials (including all copies thereof), and any documents including information derived therefrom, within 30 days after: (a) the termination of this litigation (including any appeal); or (b) the date upon which he/she ceases to be assigned or retained to work on this case, whichever occurs first. In the alternative, such persons may permanently destroy such materials and certify to Plaintiff's counsel that the materials were permanently destroyed.

8. Plaintiff's counsel shall destroy all IG Protected Materials disclosed pursuant to this Protective Order within 30 days after the termination of this litigation, including any appeals. Plaintiff's counsel shall certify to the Defendants that all IG Protected Materials within their control have been destroyed not later than 45 days after the termination of this litigation, including any appeals.

9. Any Court filings that contain IG Protected Materials disclosed pursuant to this Protective Order shall be made under seal. The party responsible for such filing shall, within seven days, also file a redacted version that is publicly available.

10. Those portions of any depositions where the contents of IG Protected Materials are discussed shall be designated as under seal, and the parties shall treat those portions of deposition transcripts as IG Protected Materials subject to this Protective Order.

11. Upon the scheduling of any hearing or trial in this matter, the manner of using any IG Protected Materials at such hearing or trial shall, after consultation between counsel, be determined by the Court prior to any such hearing or trial.

12. A party's failure to designate any materials as IG Protected Materials shall not constitute a waiver of any party's timely assertion that the materials are covered by this Protective Order.

13. The parties retain the right to timely challenge the designation of a particular document as containing IG Protected Materials. If a party to this litigation who has received material designated as IG Protected Materials in accordance with this Order disagrees with the designation, in full or in part, the party shall notify the producing party in writing, and the parties will confer as to the status of the material at issue. If the recipient and the producing party are unable to agree upon the status of the material at issue, any party may raise the issue with the Court for resolution. The burden of proof with respect to the propriety or correctness of the designation will rest on the designating party. No party, by treating designated material as IG Protected Materials in accordance with this Order, shall be deemed to have conceded that the material actually is properly designated as IG Protected Materials.

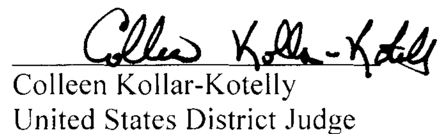
14. Nothing in this Protective Order obligates the parties to produce any information whatsoever, or waives the applicability of privileges with respect to any information. This Protective Order does not constitute a ruling on the question of whether the materials protected by this Protective Order, or derived therefrom, are properly discoverable or admissible, and this Protective Order does not constitute a ruling on any potential objection to the discoverability or admissibility of such information.

15. Nothing in this Protective Order imposes any obligations or limitations on Defendants beyond that otherwise provided by law.

16. Defendants shall be primarily responsible for designating IG Protected Material, though Plaintiff may also designate documents as subject to the Protective Order if those documents were provided to Plaintiff by the United States government.

17. The parties retain the right to seek a modification of any provision of this Protective Order.

IT SO ORDERED, this 9 day of November, 2015.



Colleen Kollar-Kotelly
United States District Judge

1:14-cv-01609-CKK MANNING v. HAGEL, et al.
Colleen Kollar-Kotelly, presiding
Date filed: 09/23/2014
Date of last filing: 11/12/2015

Full docket text for document 46:

SEALED MOTION filed by ASHTON B. CARTER, NATHAN KELLER, ERICA NELSON, DAVID E. QUANTOCK, U.S. DEPARTMENT OF DEFENSE (Attachments: # (1) Memorandum in Support of Motion to Dismiss, # (2) Text of Proposed Order, # (3) Appendix of Exhibits, # (4) Exhibit A - Army Regulation 190-47, # (5) Exhibit B - DOD Instruction 1325.07, # (6) Exhibit C - SECNAV Instruction 1640.9C, # (7) Exhibit D - Army Regulation 670-1, # (8) Exhibit E - USDB Manual for Guidance of Inmates, # (9) Exhibit F - Manning's MCC Form 510s, # (10) Exhibit G - Inspector General Action Request, # (11) Exhibit H - Manning's Letter (Aug 2014), # (12) Exhibit I - USDB Response Letter (Sept 2014), # (13) Exhibit J - Oct. 2014 Risk Assessment, # (14) Exhibit K - Feb. 2015 Risk Assessment, # (15) Exhibit L - Sept. 2015 Risk Assessments, # (16) Exhibit M - Memorandum for Receptee Inmates, # (17) Exhibit N - Army Regulation 600-20)(Schwei, Daniel)

Full docket text for document 47:

SEALED DOCUMENT filed by ASHTON B. CARTER, NATHAN KELLER, ERICA NELSON, DAVID E. QUANTOCK, U.S. DEPARTMENT OF DEFENSE re [46] SEALED MOTION filed by ASHTON B. CARTER, NATHAN KELLER, ERICA NELSON, DAVID E. QUANTOCK, U.S. DEPARTMENT OF DEFENSE (This document is SEALED and only available to authorized persons.) (Attachments: # (1) Memorandum in Support of Motion to Dismiss)(Schwei, Daniel)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING, Plaintiff, v. ASHTON CARTER, *et al.*, Defendants.	)))))))))	Civil Action No. 1:14-cv-1609 (CKK)

DEFENDANTS' MOTION TO DISMISS

Defendants—Secretary of Defense Ashton Carter; Major General David E. Quantock; Colonel Erica C. Nelson; Lieutenant Colonel Nathan A. Keller; and the United States Department of Defense—hereby move, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiff's Amended Complaint for failure to state a claim upon which relief can be granted. The reasons supporting Defendants' motion are set forth in the accompanying memorandum of law. A proposed order is attached.

Dated: November 10, 2015

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	**REDACTED – ORIGINAL FILED**
	)	**UNDER SEAL**
Defendants.	)	
	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

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Secondary Sources

Dawinder S. Sidhu, *Religious Freedom and Inmate Grooming Standards*, 66 U. Miami L. Rev. 923 (2012) 25

INTRODUCTION

Plaintiff Chelsea Manning is a transgender female currently confined at the United States Disciplinary Barracks (USDB), which is a maximum-security military prison for men, located in Fort Leavenworth, Kansas. Manning filed this lawsuit against Defendants—the Department of Defense (DOD) and several DOD/Army officials—originally alleging only a single claim for medical care under the Eighth Amendment, but now alleging a claim under the Fifth Amendment's guarantee of equal protection as well.

As described in Manning's Amended Complaint, Manning is currently receiving a significant amount of medical treatment for her gender dysphoria. *See* Am. Compl. (ECF No. 41) ¶¶ 72, 77, 93-98. Specifically, Manning is receiving weekly psychotherapy, including psychotherapy specific to gender dysphoria, the provision of female undergarments, permission to wear prescribed cosmetics in her daily life at the USDB, speech therapy, and cross-sex hormone therapy. *Id.* Notwithstanding all of these treatments, Manning claims that Defendants have violated the Eighth Amendment by not permitting her to wear a feminine hairstyle—*i.e.*, hair longer than two inches that may fall over her ears—which would be different from what is permitted for Manning's fellow inmates, but consistent with what is permitted for inmates at the military's female prison. Separately, Manning also claims that the USDB's enforcement of its hair restriction violates the Fifth Amendment's guarantee of equal protection, because inmates in the military's female prison are permitted to have longer hair.

The issue before this Court is thus quite narrow—whether the USDB, a military prison for men, is required to stop enforcing its military grooming standards and allow Manning, an incarcerated transgender female, to grow her hair longer than what is permitted for the rest of her fellow prisoners. This narrow issue is fundamentally intertwined, however, with preserving core prison-security and military values at the UDSB, such as uniform treatment and good order and

discipline. Manning asks this Court to second-guess the considered determinations of military and corrections professionals as to how best to protect those interests. Such judicial intervention is unwarranted here, and Manning's Amended Complaint should be dismissed for several independent reasons.

First, Manning's claims are procedurally improper. This Court must abstain from ruling on her Eighth Amendment claim because Manning is required to pursue that claim first before the military courts. Military courts, like state courts, are not subordinate to federal civilian courts, and the Supreme Court therefore has made clear that federal courts are largely precluded from intervening in pending military court proceedings. *See Schlesinger v. Councilman*, 420 U.S. 738 (1975). Here, Manning is currently appealing her court-martial conviction, and she may raise Eighth Amendment conditions-of-confinement claims as part of that appeal. Thus, this Court may not intervene in that proceeding by deciding the Eighth Amendment issue now, without first allowing military courts the opportunity to apply their expertise and address Manning's claim.

Furthermore, both Manning's Eighth Amendment and equal protection claims are barred by the Prison Litigation Reform Act (PLRA), which requires inmates to administratively exhaust their claims before filing a lawsuit. 42 U.S.C. § 1997e(a). Manning did not exhaust all available remedies in connection with her Eighth Amendment claim, and never before has raised her equal protection claim in any administrative channel. Both claims therefore must be dismissed as unexhausted.

Second, Manning does not state a cognizable Eighth Amendment claim. To establish such a claim, Manning must satisfy two elements, one objective and one subjective. For the objective requirement, Manning must show that the failure to provide her requested treatment

"result[s] in the denial of the minimal civilized measure of life's necessities." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Yet Manning has not shown (and cannot show) that restricting her hair length comes even close to meeting this level of extreme deprivation required to state an Eighth Amendment violation.

As for the subjective requirement, Manning must show that the officials responsible for her deprivation "have a sufficiently culpable state of mind"—here, that they exhibit "deliberate indifference to [Manning's] serious medical needs[.]" *Id.* at 834-35. But Manning has not plausibly alleged that the Defendants are *actually aware* that Manning's treatment is inadequate, and yet are *deliberately indifferent* to that need. To the contrary, the significant amount of treatment provided to Manning for her gender dysphoria is the very opposite of deliberate indifference. Furthermore, Defendants' decision-making regarding Manning's treatment is motivated by significant and legitimate security, military, and penal concerns—which likewise preclude a finding of deliberate indifference.

Third, Manning's equal protection claim must also be dismissed. As a threshold matter, Manning is not similarly situated to the female military inmates to which Manning compares herself. *See* Am Compl. ¶ 130. Those female inmates are confined in different facilities with different grooming standards, whereas Manning is confined at the USDB, a military prison for men that has a uniform rule of no hair longer than two inches. Making an exception to the USDB's generally applicable hair restriction would pose a significant security risk, and would undermine the USDB's important military mission. Furthermore, even assuming this claim is analyzed under intermediate scrutiny as Manning proposes, *see* Am. Compl. ¶ 134, any alleged discrimination is justified as substantially related to important governmental interests. Specifically, permitting Manning to follow different grooming standards within the USDB would

PA/HIPAA; LES thereby undermining the USDB's important interests in prison security and military discipline. For all of these reasons, Manning's Amended Complaint should be dismissed.

BACKGROUND

I. THE MILITARY AS DISTINCT FROM CIVILIAN SOCIETY

Courts have "long recognized that the military is, by necessity, a specialized society separate from civilian society." *Parker v. Levy*, 417 U.S. 733, 743 (1974). Manning's lawsuit involves two of the ways in which the military is distinct from civilian society: (1) the military's unique justice system; and (2) the military's grooming standards related to hair.

A. The Military Justice System

The Constitution grants Congress the authority "to make Rules for the Government and Regulation of the land and naval Forces." U.S. Const. art. I, § 8, cl. 14. Congress therefore has "plenary control over rights, duties, and responsibilities in the framework of the military establishment, including regulations, procedures and remedies related to military discipline[.]" *Chappell v. Wallace*, 462 U.S. 296, 301 (1983). Consistent with that authority, Congress has established a separate criminal justice and corrections system for military members. *See generally id.* at 300-04; *United States v. Joshua*, 607 F.3d 379, 382-84 (4th Cir. 2010).

1. Military Courts

Congress has established "a comprehensive internal system of justice to regulate military life," *United States v. Stanley*, 483 U.S. 669, 679 (1987), that is "markedly different" from its civilian counterpart, *Joshua*, 607 F.3d at 383, but that "tak[es] into account the special patterns that define the military structure." *Stanley*, 483 U.S. at 679; *see also Chappell*, 462 U.S. at 300. Specifically, Congress has established a separate military legal code, the Uniform Code of

Military Justice (UCMJ), along with special military courts to handle cases arising thereunder. *See generally Parker*, 417 U.S. at 749.

Violations of the UCMJ are prosecuted in courts-martial, which, unlike standing civilian courts, are not "independent instruments of justice." *Williams v. Sec'y of Navy*, 787 F.2d 552, 561 (Fed. Cir. 1986). The "trial of soldiers to maintain discipline is merely incidental to an army's primary fighting function." *Middendorf v. Henry*, 425 U.S. 25, 46 (1976).

After a court-martial conviction with a sufficiently serious sentence (such as Manning's), servicemembers are provided an automatic appeal to one of the military's several courts of criminal appeals (*e.g.*, the Army Court of Criminal Appeals), which are comprised of military servicemembers. *See* 10 U.S.C. § 866. Further appeal may then be made to the Court of Appeals for the Armed Forces, *id.* § 867, which "consists of civilian judges free from military influence," *Lawrence v. McCarthy*, 344 F.3d 467, 473 (5th Cir. 2003), who "gain over time a fully developed understanding of the distinctive problems and legal traditions of the Armed Forces." *Noyd v. Bond*, 395 U.S. 683, 694 (1969). Following review by the Court of Appeals for the Armed Forces, parties may also petition for certiorari to the United States Supreme Court. *See* 10 U.S.C. § 867a(a); 28 U.S.C. § 1259.

Like state courts, these military tribunals "are not subordinate to the federal courts[.]" *Williams*, 787 F.2d at 561. "Military law, like state law, is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment." *Burns v. Wilson*, 346 U.S. 137, 140 (1953); *Chappell*, 462 U.S. at 303-04. Nonetheless, "[t]he military courts, like the state courts, have the same responsibilities as do the federal courts to protect a person from a violation of his constitutional rights." *Burns*, 346 U.S. at 142; *see also United States v. Denedo*, 556 U.S. 904, 917 (2009); *Hennis v. Hemlick*, 666 F.3d 270, 278 (4th Cir. 2012).

One unique feature of the military judicial system is that a military court, when hearing the direct appeal of a criminal conviction, is also permitted to address any conditions-of-confinement claims—arising under the Eighth Amendment, or the military's equivalent codified in Article 55 of the UCMJ. *See, e.g.*, *United States v. White*, 54 M.J. 469, 472 (C.A.A.F. 2001) ("We now expressly hold that we have jurisdiction under Article 67(c) to determine on direct appeal if the adjudged and approved sentence is being executed in a manner that offends the Eighth Amendment or Article 55."); *see also* 10 U.S.C. § 855 (Article 55). Prospective relief is available through military courts' authority under the All Writs Act. *See United States v. Miller*, 46 M.J. 248, 251 (C.A.A.F. 1997); *see also Clinton v. Goldsmith*, 526 U.S. 529, 536 (1999). And a successful Eighth Amendment claim on direct review can even lead to the reduction of a servicemember's term of confinement. *See, e.g.*, *United States v. Kinsch*, 54 M.J. 641, 649 (A. Ct. Crim. App. 2000) (granting servicemember "one month of confinement relief" based on post-conviction Eighth Amendment violation), abrogated on other grounds, *United States v. Bright*, 63 M.J. 683 (A. Ct. Crim. App. 2006).

2. Military Prisons

In addition to creating a separate judiciary, Congress has also authorized the Department of Defense to establish military correctional facilities to confine those who violate the UCMJ. *See* 10 U.S.C. § 951(a). Again, the purpose of the military corrections system is different from that of the civilian system: military corrections facilities must not only "provide for the education, training, rehabilitation, and welfare of offenders," *id.* § 951(b)(2), but must also be operated "with a view to [offenders'] restoration to duty, enlistment for future service, or return to civilian life as useful citizens." *Id.* § 951(c); *see also id.* § 953.

Accordingly, military prisons are organized on military principles. *See generally* Army Regulation 190-47, *The Army Corrections System*, ch. 01-5 (June 15, 2006) ("The [Army

Corrections System] is an integral part of the military justice system and assists commanders in the maintenance of discipline and law and order by providing a uniform system of incarceration and correctional services for those who have failed to adhere to legally established rules of discipline.") (excerpt attached hereto as Exh. A, *available at* http://www.apd.army.mil/pdffiles/r190_47.pdf). Many inmates within military prisons are still classified as active-duty servicemembers; even if an inmate is convicted and sentenced to be discharged, that discharge generally does not occur until after direct appeals are exhausted and the conviction becomes final. *See generally* 10 U.S.C. §§ 871(c), 876.

Within DOD's corrections system, its facilities are categorized based on security level, with Level III being maximum security. *See* Department of Defense Instruction 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority*, encl. 2, § 4 ("Classification and Use of Facilities") (excerpt attached hereto as Exh. B, *available at* http://www.dtic.mil/whs/directives/corres/pdf/132507p.pdf). For convicted offenders who warrant Level III facilities, male inmates are confined at the United States Disciplinary Barracks (USDB) in Fort Leavenworth, Kansas, which is an Army facility. *See* SECNAV Instruction 1640.9C, *Department of the Navy Corrections Manual*, art. 7407, ¶ 1(a) ("Consolidation of Corrections Within DOD") (excerpt attached hereto as Exh. C, *available at* http://www.marines.mil/Portals/59/Publications/SECNAVINST%201640.9C.pdf). Convicted female inmates of varying security levels are confined at the military's female prison—the Naval Consolidated Brig Miramar in San Diego, California, which is a Navy facility. *Id.*

B. Military Grooming Standards

Members of the military are subject to far greater restrictions on their conduct and appearance than exist in civilian settings. *See Chappell*, 462 U.S. at 300 ("[N]o military organization can function without strict discipline and regulation that would be unacceptable in a

civilian setting."). One of those restrictions relates to personal grooming and uniform standards. *See generally Goldman v. Weinberger*, 475 U.S. 503, 507-10 (1986) (discussing the Air Force's need for standardized uniforms).

Because most USDB inmates, including Manning, are still soldiers and military prisons are part of the military structure, military grooming restrictions continue to apply within those military correctional facilities. As relevant here, the USDB's grooming restrictions are based on Army Regulation 670-1, *Wear and Appearance of Army Uniforms and Insignia*, ch. 3-2 ("Hair and fingernail standards and grooming policies") (excerpt attached hereto as Exh. D, *available at* http://www.apd.army.mil/pdffiles/r670_1.pdf). Specifically, USDB Regulation 600-1, the Manual for the Guidance of Inmates (MGI), requires that "[i]nmate hair will be [in accordance with] AR 670-1," and that "[a]ll inmates are required to receive haircuts every two weeks." USDB MGI (excerpts attached hereto as Exh. E), ch. 4-4. The USDB MGI also provides that inmates' hair cannot "fall over the ears, eyebrows or touch the collar" when combed down, and that inmates' hair "cannot exceed two inches in height or length." *Id.*; *see also* Am. Compl. ¶ 20. These grooming restrictions are enforced uniformly against all inmates at the USDB, but different grooming standards are enforced for female inmates at the Naval Consolidated Brig Miramar. *See* Am. Compl. ¶¶ 18-19.

II. FACTUAL AND PROCEDURAL HISTORY

Plaintiff Chelsea Elizabeth Manning, formerly known as Bradley Edward Manning, is currently a Private in the United States Army and is incarcerated at the USDB. *See* Am. Compl. ¶ 7. Manning was assigned the sex of male at birth, *id.* ¶ 16, but in 2009 Manning "came to terms with the fact that she is a transgender woman and could no longer suppress her female identity." *Id.* ¶ 41.

In May 2010, while Manning was stationed in Iraq, Manning was arrested "for unlawful disclosure of classified information." Am. Compl. ¶ 43. Manning was tried and convicted by court-martial on several offenses, including unlawfully causing United States intelligence to be published on the internet. On August 21, 2013, Manning was sentenced to serve thirty-five years in prison, and she was transferred to the USDB the next day. *Id.* ¶ 46. Manning, who has not been discharged, remains an active-duty military member, *see id.* ¶ 7, and she is currently appealing her court-martial conviction to the Army Court of Criminal Appeals. *Cf. id.* ¶ 46.

A. Manning's Requests for a Treatment Plan

At the USDB, inmates are permitted to submit requests using a Military Correctional Complex (MCC) Form 510. *See* USDB MGI (Exh. E), ch. 2-4 ("Inmates communicate with staff by using an MCC Form 510, Inmate Request Slip. The MCC Form 510 is the only written format authorized for inmate communication with staff."). On August 28, 2013—shortly after Manning's arrival at the USDB—she submitted a Form 510 PA/HIPAA PA/HIPAA PA/HIPAA PA/HIPAA *See* Am. Compl. ¶ 51; Exh. F (attached hereto) at 1.[1] PA/HIPAA PA/HIPAA *See* Am. Compl. ¶ 48; Exh. F at 2-3.

USDB officials conducted a mental health assessment in September 2013, and on September 30, 2013 diagnosed Manning with gender dysphoria. *See* Am. Compl. ¶¶ 52-53. The USDB then began developing a treatment plan for Manning. *See id.* ¶¶ 53-56. On January 5, 2014, Manning submitted another Form 510 PA/HIPAA

[1] Exhibit F contains only the relevant Form 510s submitted by Manning; it does not contain all submitted Form 510s.

PA/HIPAA *See id.* ¶ 57; Exh. F at 4. Several weeks later, on January 21, 2014, Manning submitted a request to the Inspector General (IG), PA/HIPAA; IG PA/HIPAA; IG *See* Am. Compl. ¶ 68; Exh. G (attached hereto). The IG responded on April 4, 2014, PA/HIPAA; IG PA/HIPAA; IG PA/HIPAA; IG Am. Compl. ¶ 70; Exh. G at 2.

Two days prior to the IG's response, Manning submitted another Form 510 to USDB officials— PA/HIPAA PA/HIPAA PA/HIPAA *See* Am. Compl. ¶ 58; Exh. F at 5-9. Manning renewed that request on July 23, 2014. *See* Am. Compl. ¶ 59; Exh. F at 10. And on August 21, 2014, Manning submitted a Form 510 PA/HIPAA PA/HIPAA PA/HIPAA Am. Compl. ¶ 60; Exh. F at 11-13.

B. Manning's Receipt of Treatments for Gender Dysphoria

In August 2014, Manning, through her legal counsel, sent a letter to Defendants (and others) demanding treatment for her gender dysphoria. *See* Am. Compl. ¶ 76; attached hereto as Exh. H. Col. Nelson, the USDB Commandant, responded by letter on behalf of all addressees on September 2, 2014. Am. Compl. ¶ 78; attached hereto as Exh. I. Col. Nelson stated that "[t]he Army recognizes and fully accepts its responsibility to provide medically necessary care for each inmate at the USDB, based on an individualized assessment of each inmate's medical needs balanced against the Army's penological, security and disciplinary interests." Exh. I. At that

point, Manning was receiving weekly psychotherapy sessions and had been issued female underwear and sports bras as part of the real-life experience treatment. Am. Compl. ¶¶ 77-79.

Manning filed this lawsuit on September 23, 2014. *See* Compl. (ECF No. 1). The Complaint contained a single claim, alleging inadequate medical treatment in violation of the Eighth Amendment to the United States Constitution. *See, e.g.*, *id.* ¶¶ 2, 83. Manning also filed a motion for preliminary injunction that day. *See* ECF No. 2. Due to evolving factual circumstances related to Manning's medical care, briefing and consideration of Manning's motion for preliminary injunction were postponed multiple times. *See* ECF Nos. 21, 32, 36.

The USDB provided Manning with additional gender dysphoria treatments throughout the Fall and Winter of 2014-15. In October 2014 Manning was approved to wear subdued cosmetics as part of her real-life experience. *See* ECF No. 30-2 at 3; *see also* Am. Compl. ¶ 93; Memorandum for Record, *Identifying and Mitigating Risk for Transgender Inmates within the USDB, Fort Leavenworth, Kansas* (Oct. 20, 2014) (attached hereto as Exh. J, hereafter "Oct. 2014 Risk Assessment"). Manning was issued the approved cosmetics in December 2014. *See* Am. Compl. ¶ 93; ECF Nos. 30-2 at 3, 34-1 at 1. PA/HIPAA

PA/HIPAA

PA/HIPAA

PA/HIPAA *See* ECF No. 34. Manning's cross-sex hormone therapy began on February 11, 2015. *See* ECF No. 37 at 2; Am. Compl. ¶¶ 96-98; Memorandum for Record, *Inmate Manning Treatment Plan Approvals* (Feb. 5, 2015) (attached hereto as Exh. K, hereafter "Feb. 2015 Risk Assessment"). During this same time period, the USDB also approved adding speech therapy to Manning's treatment plan. *See* ECF No. 34 at 3.

In March 2015, the parties filed a status report clarifying that Manning "does not dispute the adequacy of the following treatments (assuming that they continue): the provision of female undergarments, cosmetics, speech therapy, and cross-sex hormone therapy." ECF No. 37 at 1. But Manning continued to dispute, *inter alia*, "Defendants' failure to permit Manning to grow longer hair[.]" *Id.* Regarding the issue of hair length, the USDB determined that it would "re-evaluate whether Manning may be permitted to grow longer hair consistent with the USDB's safety and security concerns within seven months of the commencement of cross-sex hormone therapy." *Id.* at 2; *see also* Am. Compl. ¶ 97; Feb. 2015 Risk Assessment (Exh. K) ¶ 19.

The USDB completed its re-evaluation on September 18, 2015, when Col. Nelson, Commandant of the USDB, approved the recommendation contained in a memorandum to her from Deputy Commandant Thomas Schmitt. Am. Compl. ¶ 100 (quoting Memorandum for Record, *Inmate Manning Request for Exception to Policy (Male Hair and Grooming Standards)* (Sept. 18, 2015) (attached hereto as Exh. L, hereafter "Sept. 2015 Risk Assessment")); *see also* ECF No. 39. PA/HIPAA

PA/HIPAA PA/HIPAA; LES

PA/HIPAA; LES

PA/HIPAA; LES Exh. J at ¶ 17; *see also* Sept. 2015 Risk Assessment (Exh. L) at ¶¶ 1(c), 15 PA/HIPAA In the Sept. 2015 Risk Assessment, the USDB further explained that, PA/HIPAA

PA/HIPAA

PA/HIPAA PA/HIPAA; LES

PA/HIPAA; LES Exh. L ¶¶ 12(c)-(d). Furthermore, the Sept. 2015 Risk Assessment discussed PA/HIPAA

PA/HIPAA

PA/HIPAA *See id.* ¶ 12(c).

Based on these factors, the Sept. 2015 Risk Assessment concluded that PA/HIPAA; LES

PA/HIPAA; LES

PA/HIPAA; LES

PA/HIPAA; LES

PA/HIPAA; LES *Id.* ¶¶ 14, 14(a). In addition:

> PA/HIPAA; LES

Id. ¶ 14(b). Based upon this recommendation, and after "carefully considering the recommendation that the wear of a feminine hairstyle is medically appropriate, and weighing all associated safety and security risks presented," Col. Nelson determined that "[p]ermitting Inmate Manning to wear a feminine hairstyle is not supported by the risk assessment and potential risk mitigation measures at this time." *Id*. at pg. 1; *see also* Am. Compl. ¶ 100; ECF No. 39.

C. Filing of the Amended Complaint

Based on the USDB's decision not to permit Manning to wear a feminine hairstyle, the parties agreed that, given the factual developments since the filing of the original Complaint, this case should proceed by: (1) Manning withdrawing her motion for preliminary injunction; (2) Manning filing an Amended Complaint; and then (3) Defendants responding to that Amended Complaint with an Answer or other responsive motion. *See id.* The Court granted the parties' request. *See* ECF No. 40.

On October 5, 2015, Manning filed her Amended Complaint. *See* ECF No. 41. In addition to addressing the past year's factual developments with respect to Manning's medical

care, *see id.* ¶¶ 85-100, Manning's Amended Complaint also added a new claim—alleging that "Defendants have engaged in impermissible sex discrimination in violation of the equal protection guarantees of the Fifth Amendment's Due Process Clause," *id.* ¶ 133, based on Defendants' alleged "refus[al] to permit Plaintiff to follow the hair length and grooming standards followed by other female prisoners[.]" *Id.* ¶ 132.

Defendants now move to dismiss the Amended Complaint in its entirety.

STANDARD OF REVIEW

Defendants move to dismiss Manning's Amended Complaint for failure to state a claim upon which relief may be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. "In deciding a Rule 12(b)(6) motion, a court may consider the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint, or documents upon which the plaintiff's complaint necessarily relies," *Sheikh v. Dist. of Columbia*, 77 F. Supp. 3d 73, 79 (D.D.C. 2015) (Kollar-Kotelly, J.), as well as documents "appended to [a] motion to dismiss and whose authenticity is not disputed" if they are "referred to in the complaint and are integral" to a plaintiff's claim. *Kaempe v. Myers*, 367 F.3d 958, 965 (D.C. Cir. 2004); *see also EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997).

To survive a Rule 12(b)(6) motion, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Although a court must accept all factual allegations as true, the court is "not bound to accept as true a legal conclusion couched as a

factual allegation[.]" *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 679 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

ARGUMENT

For several reasons, Manning's Amended Complaint should be dismissed. First, Manning's claims are procedurally improper. This Court must abstain from deciding the Eighth Amendment claim because Manning has not yet provided the military courts an opportunity to apply their special expertise to her claim. Furthermore, Manning failed to properly exhaust the military's administrative remedies available on both her Eighth Amendment and equal protection claims. The PLRA, therefore, requires that both claims be dismissed as unexhausted.

Second, Manning fails to state a cognizable Eighth Amendment claim. Manning has not established, and cannot establish, that the alleged wrongdoing here—enforcing the grooming standard that prevents Manning from growing her hair longer than two inches—constitutes "the denial of 'the minimal civilized measure of life's necessities[.]'" *Brennan*, 511 U.S. at 834 (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)).[2] Manning also has not plausibly alleged that the Defendants here are *actually aware* of an objectively serious inadequacy in her treatment, and yet are deliberately indifferent to that inadequacy. To the contrary, Manning's allegations establish that Defendants are acting appropriately—providing sufficient and appropriate medical treatment, while also ensuring that any treatment is provided safely and securely within the military correctional environment in which Manning lives.

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[2] Restricting hair length to two inches is not the only applicable grooming standard contained within AR 670-1 and the USDB MGI. *See* Background, Section I.B. For ease of reference, however, Defendants refer to the length restriction as shorthand for all such standards.

Third, Manning also has failed to state a cognizable equal protection claim. As a threshold matter, Manning's claim is premised on the allegation that she is similarly situated to other female military inmates. *See* Am. Compl. ¶ 130. But Manning is incarcerated at the USDB, a military prison for men, and is subject to the USDB's policy governing hair length. Thus, Manning is not similarly situated to those female inmates confined at the military's female prison, who are subject to different grooming standards. And Manning's claim must be evaluated in this context—whereby she is seeking application of a different grooming standard than the one applied to the rest of her fellow prisoners—given that the Amended Complaint does not challenge Manning's housing placement at the USDB.[3] Furthermore, even assuming intermediate scrutiny applies to Manning's claim as she proposes, *see* Am. Compl. ¶ 134, the decision not to permit Manning to follow the female grooming standards is substantially related to important governmental interests—*i.e.*, ensuring safety and security within a military prison environment. Manning's Amended Complaint should therefore be dismissed in its entirety.

I. PLAINTIFF'S CLAIMS ARE NOT PROPERLY BEFORE THIS COURT

Both of Manning's claims must be dismissed on threshold procedural grounds. Manning's claims were not properly exhausted, and alternative avenues remain available for Manning to obtain redress, including Manning's pending court-martial appeal.

Dismissal on these grounds is compelled by several different doctrines. First, civilian courts generally are not permitted to interfere with pending court-martial proceedings. *See Schlesinger*, 420 U.S. 738. Second, the PLRA prohibits any action related to prison conditions "until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). And third, it is a "well-established principle that a court should not review internal military affairs in

[3] Indeed, earlier in this litigation, Manning's counsel stated explicitly that Manning took no position on her housing situation. *See* Status Conf. Tr. (ECF No. 15) at 21.

the absence of exhaustion of available intraservice corrective measures." *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986) (modification omitted). Manning's claims here should be dismissed under all three doctrines.

A. Manning's Eighth Amendment Claim Must Be Dismissed Because This Court May Not Interfere With a Pending Military Proceeding

The Supreme Court has held unequivocally that, even if jurisdiction exists, civilian courts must abstain from interfering with a pending military proceeding. *Councilman*, 420 U.S. at 754-61. Military courts "are not subordinate to the federal courts," *Williams*, 787 F.2d at 561, and therefore the same considerations "barring intervention into pending state criminal proceedings" apply "in equal measure" with respect to intervention in pending court-martial proceedings. *Councilman*, 420 U.S. at 756.

The Court's decision in *Councilman* sets forth two rationales for why abstention is generally necessary. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 586 (2006); *New v. Cohen*, 129 F.3d 639, 643 (D.C. Cir. 1997); *Hennis*, 666 F.3d at 276-77. First, "[t]he military is a specialized society separate from civilian society with laws and traditions of its own developed during its long history." *Councilman*, 420 U.S. at 757 (quoting *Parker*, 417 U.S. at 743, modifications omitted). Thus, military courts should be given an opportunity to address "matters as to which the[ir] expertise . . . is singularly relevant, and their judgments indispensable to inform any eventual review in Art. III courts." *Councilman*, 420 U.S. at 760; *see also Hamdan*, 548 U.S. at 586. Second, "federal courts should respect the balance that Congress struck between military preparedness and fairness to individual service members when it created an integrated system of military courts and review procedures," *Hamdan*, 548 U.S. at 586, particularly because "it must be assumed that the military court system will vindicate servicemen's constitutional rights." *Councilman*, 420 U.S. at 758.

Here, abstention is required given that Manning is permitted to raise her Eighth Amendment claim in her direct appeal before the Army Court of Criminal Appeals. *See White*, 54 M.J. at 472. Even if Article III jurisdiction is eventually available, Manning must still exhaust the claim first within the military judicial system. *See Councilman*, 420 U.S. at 758 ("[I]mplicit in the congressional scheme embodied in the Code is the view that the military court system generally is adequate to and responsibly will perform its assigned task.").

Abstention is particularly appropriate here for two reasons. First, the nature of Manning's claim implicates core military interests, such as uniformity and good order and discipline among soldiers. *Cf. Goldman*, 475 U.S. at 507-10; *see also* Sections II.B.3, III.B, *infra*. Indeed, Manning's claim relates to the application of military regulations, by military personnel, to a military inmate, at a military facility, incident to a military conviction. Thus, military courts should have the first opportunity to address the claim given those courts' superior knowledge of the military's "laws and traditions" and their "thorough familiarity with military problems." *Councilman*, 420 U.S. at 757-58. Military courts are best positioned not only to address and evaluate Manning's claim, but also to ensure that an adequate record exists for any eventual Article III judicial review. *See Hennis*, 666 F.3d at 278 ("[F]ederal courts benefit from looking to the special competence of the military in which Congress has reposed the duty to perform particular tasks. The military courts can then develop the facts, apply the law in which they are peculiarly expert, and correct their own errors." (modifications omitted)).[4]

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[4] Notably, military appellate courts possess greater fact-finding power than civilian appellate courts. *See* 10 U.S.C. § 866(c). And to the extent additional factual material is necessary for an appellate court's resolution of an issue, the appellate court may order that an evidentiary hearing be conducted. *See generally United States v. DuBay*, 37 C.M.R. 411 (1967); *Cothran v. Dalton*, 83 F. Supp. 2d 58, 69 (D.D.C. 1999), *aff'd*, 6 F. App'x 9 (D.C. Cir. 2001).

Second, the resolution of Manning's Eighth Amendment claim could affect the ultimate length of her confinement. Military courts may reduce the length of an inmate's incarceration based on a post-conviction Eighth Amendment violation. *See, e.g.*, *Kinsch*, 54 M.J. at 649. Review of the length and manner of sentence is a fundamental duty of the military courts of appeals, *see* 10 U.S.C. § 866(c), and therefore a civilian court should be particularly loath to decide an issue that could affect a military tribunal's ongoing review of a term of confinement. Given the availability of review through the military courts, therefore, Manning's Eighth Amendment claim (Count I) must be dismissed as improperly before this Court.

B. Both of Manning's Claims Must Be Dismissed as Unexhausted

Independent of the abstention issue, both of Manning's claims must also be dismissed as improperly exhausted. Both parties agree that Manning's lawsuit is subject to the PLRA's exhaustion requirement. *See* ECF No. 15 at 7. And exhaustion of intra-military remedies would be required even absent the PLRA. *See Bois*, 801 F.2d at 468. Here, Manning did not complete all available remedies for an express request to wear a feminine hairstyle for medical reasons. And with respect to the equal protection claim, Manning has *never* raised that issue internally within the USDB or the Army. Thus, both claims should be dismissed.

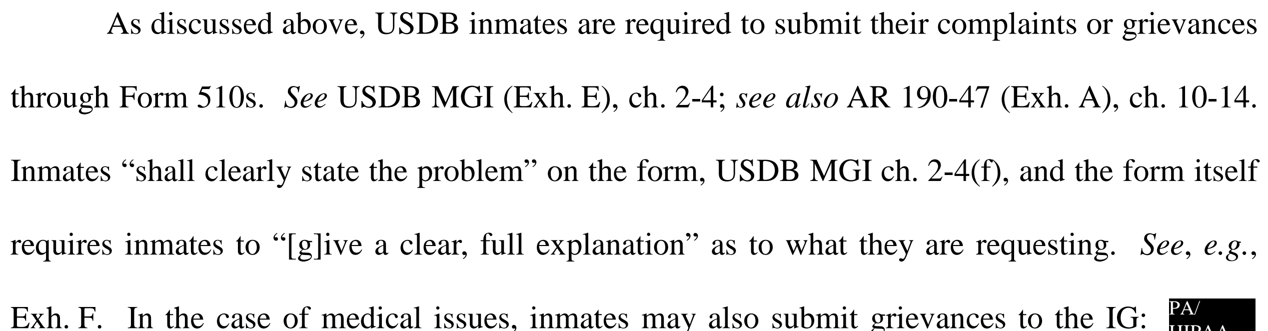
1. The PLRA Requires Exhaustion on a Claim-By-Claim Basis

The PLRA provides that "[n]o action shall be brought with respect to prison conditions . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). Exhaustion is required for all "available" remedies; "those remedies need not meet federal standards, nor must they be plain, speedy, and effective." *Porter v. Nussle*, 534 U.S. 516, 524 (2002). Prisoners are required to exhaust their remedies before filing suit, even if the prisoner later files an Amended Complaint. *See Jackson v. Dist. of Columbia*, 254 F.3d 262, 269 (D.C. Cir. 2001). If a

Complaint contains some exhausted claims and some non-exhausted claims, only the exhausted claims may proceed. *See Jones v. Bock*, 549 U.S. 199, 219-24 (2007).

The purpose of exhaustion is to "afford[] corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case." *Porter*, 534 U.S. at 525. The facility may take corrective action "thereby obviating the need for litigation," or at the very least the facility's response will create "an administrative record that clarifies the contours of the controversy." *Id.*

The adequate level of detail in a grievance "will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion." *Jones*, 549 U.S. at 218. "Even so, there is undoubtedly a threshold level of information an inmate must provide in the administrative process in order to meet the federal exhaustion requirement." *Goldsmith v. White*, 357 F. Supp. 2d 1336, 1339 (N.D. Fla. 2005). Thus, "a grievance should be considered sufficient to the extent that the grievance gives officials a fair opportunity to address the problem that will later form the basis of the lawsuit." *Johnson v. Johnson*, 385 F.3d 503, 517 (5th Cir. 2004); *see also Johnson v. Testman*, 380 F.3d 691, 697 (2d Cir. 2004); *Strong v. David*, 297 F.3d 646, 650 (7th Cir. 2002); *Smith-Bey v. CCA/CTF*, 703 F. Supp. 2d 1, 7 (D.D.C. 2010); *Goldsmith*, 357 F. Supp. 2d at 1339.



2. Manning Did Not Exhaust All Available Remedies Expressly Requesting a Feminine Hairstyle As Part of Her Medical Treatment

As discussed above, USDB inmates are required to submit their complaints or grievances through Form 510s. *See* USDB MGI (Exh. E), ch. 2-4; *see also* AR 190-47 (Exh. A), ch. 10-14. Inmates "shall clearly state the problem" on the form, USDB MGI ch. 2-4(f), and the form itself requires inmates to "[g]ive a clear, full explanation" as to what they are requesting. *See*, *e.g.*, Exh. F. In the case of medical issues, inmates may also submit grievances to the IG: PA/ HIPAA

PA/HIPAA

PA/HIPAA

PA/HIPAA Memorandum For Receptee Inmates, USDB, *Access to Medical Care/Inmate Grievance Procedure* (Feb. 1, 2013) (attached hereto as Exh. M) (signed by Manning upon her arrival); *see also* AR 190-47, ch. 10-14(a) ("Prisoners will be advised at the time of their incarceration of their rights to submit complaints and grievances to the facility commander or a designated representative and the inspector general under provisions of AR 20–1."); *cf.* Am. Compl. ¶¶ 68-69.

Here, Manning did not complete the grievance process for an explicit request to wear a feminine hairstyle as part of her medical treatment. Although Manning submitted both Form 510s and an IG request in January 2014, PA/HIPAA; IG PA/HIPAA; IG *See*, *e.g.*, Exh. F at 1 (Aug. 28, 2013 Form 510, PA/HIPAA PA/HIPAA PA/HIPAA *id.* at 4 (Jan. 5, 2014 Form 510, PA/HIPAA PA/HIPAA Manning's IG request PA/HIPAA; IG PA/HIPAA; IG. *See* Exh. G at 1. Thus, these earlier grievance submissions did not exhaust any express request for permission to wear a feminine hairstyle as part of her medical treatment.

Manning later submitted Form 510s that PA/HIPAA PA/HIPAA *See, e.g.*, Exh. F at 5-13 (Form 510s dated Apr. 2, 2014; July 23, 2014; and Aug. 21, 2014). But those Form 510s were submitted well after the January 2014 IG request, and PA/HIPAA; IG

PA/HIPAA; IG PA/HIPAA; IG Manning never completed the exhaustion process for the particular Eighth Amendment claim she seeks to bring here—*i.e.*, an express request for a feminine hairstyle as part of her medical treatment. *See Woodford v. Ngo*, 548 U.S. 81, 100 (2006) (interpreting the PLRA as saying that "if the party never pursues all available avenues of administrative review, the person will never be able to sue in federal court"). Even if Manning believed such exhaustion with the IG was pointless or futile, she was still required to pursue that available grievance process. *See Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001) (PLRA case stating that "we will not read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise").

3. Manning Did Not Exhaust Any Administrative Channels In Connection With Her Sex Discrimination Claim

Manning also failed to exhaust her Fifth Amendment equal protection claim. At no point has Manning raised this sex discrimination claim before the USDB or the Army—either through a Form 510, or through any other administrative process. *See, e.g.*, Army Regulation 600-20, *Army Command Policy* (Nov. 6, 2014), ch. 6-2 ("Equal Opportunity Policy," including prohibitions on gender discrimination) & App. C (setting forth the Equal Opportunity complaint processing system) (available at http://www.apd.army.mil/pdffiles/r600_20.pdf, excerpts attached hereto as Exh. N).[5] Manning's sex-discrimination claim is plainly unexhausted.

Manning's prior grievances PA/HIPAA are not sufficient to exhaust the sex-discrimination claim because they uniformly were framed as complaints about the lack of medical care. *See* Exhs. F, G. A complaint about inadequate medical care (*e.g.*, that a

[5] Although Manning's Amended Complaint alleges that she "is a woman and has been recognized as such by Defendants," Am. Compl. ¶ 129, aside from legally changing her name, *id.* ¶ 46, Manning has not sought to change the gender listed in any of her military records, nor has she asserted a right to be treated as a woman for all purposes. Most notably, she has not contested her placement at the USDB, a male facility. *See also* note 3, *supra*.

person's treatment does not conform to the required medical standards) is very different than a complaint about sex discrimination (*e.g.*, that a person is unfairly being treated differently than other similarly situated men/women). *Compare, e.g.*, Am. Compl. ¶ 115, *with id.* ¶ 132. Manning's prior grievances about medical care did not put Defendants on notice of any claim involving unlawful sex discrimination. *Cf. Johnson v. Johnson*, 385 F.3d at 518 (an inmate's grievances regarding "protection from sexual assaults" cannot "be read to give notice that there was a race-related problem"). Nor did the original Complaint ever put Defendants, or this Court, on notice that sex discrimination was also at issue. *See, e.g.*, ECF No. 38 at 2 (Plaintiff noting that "the single claim asserted in the Complaint" was based on "denying Plaintiff medically necessary treatment for her diagnosed gender dysphoria"). Thus, even Manning herself—along with Defendants and the Court—appears to have understood her claim as one of inadequate medical care, rather than one of discrimination. The equal protection claim should therefore be dismissed for failure to exhaust.

II. MANNING FAILS TO STATE AN EIGHTH AMENDMENT CLAIM

Under the Eighth Amendment, prison conditions may be "restrictive and even harsh," as long as they do not "deprive inmates of the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *see also Brennan*, 511 U.S. at 834; *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) ("The Constitution . . . does not mandate comfortable prisons[.]"). A prison's failure to provide adequate medical treatment amounts to cruel and unusual punishment only when prison officials are deliberately indifferent to a prisoner's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976).

To establish a claim for inadequate medical treatment, Manning must satisfy both an objective and a subjective element. For the objective requirement, Manning must show that the failure to provide her requested treatment "result[s] in the denial of the minimal civilized

measure of life's necessities." *Brennan*, 511 U.S. at 834. For the subjective requirement, Manning must show that the officials responsible for her deprivation "have a sufficiently culpable state of mind"—*i.e.*, that they exhibit "deliberate indifference to [Manning's] serious medical needs[.]" *Id.* at 834-35.

Manning cannot make either showing here. First, Manning cannot establish that her alleged deprivation—the prohibition on growing longer hair—is objectively serious, equivalent to "the denial of the minimal civilized measure of life's necessities." *Brennan*, 511 U.S. at 834. Quite simply, the Eighth Amendment does not require that prisoners be permitted to grow hair longer than two inches, especially in a military setting. In light of all the other treatments she is currently receiving, Manning cannot establish an objectively serious deprivation as a matter of law, and the Amended Complaint does not sufficiently allege otherwise.

With respect to the subjective element, Manning has not plausibly alleged that the Defendants here are *actually aware* that Manning's treatment is inadequate, and yet are *deliberately indifferent* to that need. Manning's current treatment plan demonstrates careful attention to her medical needs, the very opposite of deliberate indifference. Indeed, with respect to hair specifically, Defendants have determined that security concerns prevent provision of that treatment, which is entirely appropriate (if not required). *See Kosilek v. Spencer*, 774 F.3d 63, 83 (1st Cir. 2014) (en banc). The Amended Complaint expressly acknowledges these security concerns, as it must. Am. Compl. ¶ 123. Thus, no Eighth Amendment claim exists here.

A. Manning Cannot Establish that the Failure to Permit Longer Hair Is an Objectively Serious Deprivation Under the Eighth Amendment

Defendants do not dispute that gender dysphoria, in many circumstances, amounts to an objectively serious medical condition that requires appropriate treatment under the Eighth Amendment. But Manning is receiving significant treatment for her gender dysphoria: regular

psychotherapy, cross-sex hormone therapy, speech therapy, and the provision of female undergarments and cosmetics. *See* ECF No. 39 at 1. Thus, the question here is whether, in light of all of these treatments, the failure to permit longer hair nonetheless constitutes a denial of the "minimal civilized measures of life's necessities." *Brennan*, 511 U.S. at 834; *see*, *e.g.*, *Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (stating that the objective prong asks whether "the alleged wrongdoing was objectively harmful enough to establish a constitutional violation"); *Kosilek*, 774 F.3d at 89; *Smith v. Carpenter*, 316 F.3d 178, 185-86 (2d Cir. 2003). Denying Manning permission to grow longer hair is not an objectively serious deprivation under the Eighth Amendment, both as a matter of law and based on Manning's own allegations.

1. As a Matter of Law, Denying Permission to Grow Longer Hair Is Not an Objectively Serious Deprivation

Even outside the military context, numerous prison facilities impose grooming standards of some variety upon inmates. *See, e.g.*, 28 C.F.R. § 551.4 (BOP regulation, stating that inmates can have long hair "if the inmate keeps it neat and clean"); *see generally* Dawinder S. Sidhu, *Religious Freedom and Inmate Grooming Standards*, 66 U. Miami L. Rev. 923, 964-72 (2012) (Appendix B: Federal and State Inmate Grooming Policies). Courts routinely hold that such policies do not deny prisoners the "minimal civilized measures of life's necessities." *See, e.g.*, *LaBranch v. Terhune*, 192 F. App'x 653, 653 (9th Cir. 2006) (rejecting an Eighth Amendment claim against "new grooming standards establishing limits on hair length and requiring that inmates remain clean-shaven" because the plaintiff "has not shown that [the grooming standards] deny him the minimal civilized measures of life's necessities"); *DeBlasio v. Johnson*, 128 F. Supp. 2d 315, 326 (E.D. Va. 2000), *aff'd*, 13 F. App'x 96 (4th Cir. 2001); *Rose v. Terhune*, 10 F. App'x 466, 467 (9th Cir. 2001); *Larkin v. Reynolds*, 39 F.3d 1192 (10th Cir. 1994) (table); *Hill v. Estelle*, 537 F.2d 214, 215 (5th Cir. 1976); *Blake v. Pryse*, 444 F.2d 218, 219 (8th Cir. 1971);

Daugherty v. Reagan, 446 F.2d 75, 75 (9th Cir. 1971); *cf. Shabazz v. Barnauskas*, 790 F.2d 1536, 1538 (11th Cir. 1986). As this overwhelming caselaw reflects, as a general rule, the enforcement of grooming policies does not violate the Eighth Amendment.

That conclusion is further confirmed by courts' decisions related to medical care for gender dysphoria. Although this caselaw is developing, it is clear that an inmate is not constitutionally entitled to every single component of his or her preferred treatment plan, and courts have rejected Eighth Amendment claims brought by inmates receiving far fewer treatments than Manning. For example, the D.C. Circuit has held that prisons are not always required to provide cross-sex hormone therapy. *See Farmer v. Hawk*, 991 F. Supp. 19, 29 (D.D.C.) ("[T]he BOP's refusal to provide Farmer with female hormone therapy does not, in and of itself, constitute cruel and unusual punishment."), *aff'd in relevant part sub nom.*, *Farmer v. Moritsugu*, 163 F.3d 610 (D.C. Cir. 1998); *see also, e.g.*, *Praylor v. Tex. Dep't of Criminal Justice*, 430 F.3d 1208, 1209 (5th Cir. 2005) (plaintiff was not entitled to the specific treatment requested); *Supre v. Ricketts*, 792 F.2d 958, 963 (10th Cir. 1986); *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987) (noting that the plaintiff "does not have a right to any particular type of treatment"); *White v. Farrier*, 849 F.2d 322, 327 (8th Cir. 1988). If hormone therapy is not always required under the Eighth Amendment, neither would the provision of any particular personal grooming standard—especially for inmates who are already receiving other significant treatments such as hormone therapy. Given the extensive treatments that Manning is receiving, she cannot reasonably claim that denying her permission to grow longer hair, by itself, constitutes a denial of the "minimal civilized measures of life's necessities." Whatever the constitutional floor may be for gender dysphoria treatments, the Army currently stands well above it.

Finally, Manning's challenge to the enforcement of the hair restriction must be viewed in the appropriate context. Manning is in a posture notably distinct from that of a typical prisoner, who is subject to a grooming standard solely by virtue of his or her incarceration. Manning is subject to grooming standards not solely by virtue of her incarceration, however, but because of her enlistment in the military. *See* Background, Section I.B, *supra*. Thus, in this context, it is doubtful that the grooming standards can even be considered "punishment" subject to Eighth Amendment scrutiny, at least while Manning remains an active-duty servicemember. *See Brennan*, 511 U.S. at 837 ("The Eighth Amendment does not outlaw cruel and unusual 'conditions'; it outlaws cruel and unusual 'punishments.'"). But at the very least, the widespread enforcement of the Army's grooming restrictions—to both incarcerated and non-incarcerated servicemembers alike—highlights why such restrictions are not objectively serious deprivations within the meaning of the Eighth Amendment.

2. Manning's Complaint Does Not Plausibly Allege an Objectively Serious Deprivation

Even if the desire for longer hair could qualify for Eighth Amendment scrutiny in some circumstances, Manning's allegations here do not rise to that level. Manning's current conditions of confinement may be "restrictive and even harsh," but they do not constitute deprivations "of the minimal civilized measure of life's necessities." *Rhodes*, 452 U.S. at 347.

The Amended Complaint appears to suggest that the denial of longer hair is causing Manning psychological harm, as well as increasing her risk of potential future self-harm. *See, e.g.*, Am. Compl. ¶¶ 106, 111. Both of these harms may be cognizable under the Eighth Amendment, but the bar for each is exceedingly high. First, with respect to psychological harm, the distress must be extreme. *See Doe v. Welborn*, 110 F.3d 520, 524 (7th Cir. 1997) (holding that a claim "to have lived in fear of assault" was not "the kind of extreme and officially

sanctioned psychological harm" that would "reflect the deprivation of the minimal civilized measures of life's necessities"). With respect to potential future harm, the inmate must "show that he is incarcerated under conditions posing a substantial risk of serious harm." *Brennan*, 511 U.S. at 834. The inmate must demonstrate that he is currently facing the risk, and that "society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Helling v. McKinney*, 509 U.S. 25, 36 (1993). "In other words, the prisoner must show that the risk of which he complains is not one that today's society chooses to tolerate." *Id.*

Here, Manning's allegations are insufficient to establish either harm as objectively serious under the Eighth Amendment. First, Manning alleges generally that "[e]very day that goes by without appropriate treatment, Plaintiff experiences anxiety, distress, and depression." Am. Compl. ¶ 106. Later in the Amended Complaint, when elaborating on the psychological effect of being unable to grow longer hair, Manning alleges that it "causes her to feel hurt and sick," Am. Compl. ¶ 107, and that she "feels like a freak and a weirdo – not because having short hair makes a person a less of a woman – but because for her, it [] undermines specifically recommended treatment and sends the message to everyone that she is not a 'real' woman." *Id.* ¶ 110. These allegations are far from the type of extreme psychological distress necessary to state an objectively serious Eighth Amendment claim. *See, e.g.*, *Hudson v. McMillian*, 503 U.S. 1, 16 (1992) (Blackmun, J., concurring) (citing a case involving a "guard placing a revolver in inmate's mouth and threatening to blow prisoner's head off"); *Chandler v. D.C. Dep't of Corrs.*, 145 F.3d 1355, 1361 (D.C. Cir. 1998) (permitting Eighth Amendment claim for psychological harm to proceed based on allegations that "a guard threatened to have [the plaintiff] killed and that prison officials ignored his consequent administrative complaints"). Indeed, Manning's

acknowledgement that many women wear short hair, *see* Am. Compl. ¶ 110, further highlights why permission to grow long hair does not constitute one of the "minimal civilized measures of life's necessities."

Furthermore, nowhere does Manning allege that she is currently facing a substantial risk of serious harm. At most, Manning alleges that she might face such a risk at some point in the future, perhaps within the next several years. *See* Am. Compl. ¶ 111 ("Plaintiff fears that . . . her anguish will only escalate and she will not be able to survive the 35 years of her sentence, let alone the next few years."). This vague allusion to a potential future risk of harm is insufficient to establish that Manning is currently suffering an objectively serious deprivation under the Eighth Amendment—*i.e.*, that she is *currently* exposed to a risk "so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Helling*, 509 U.S. at 36.[6]

Similarly, Manning's other allegations regarding her medical need are not specific to her hair length and are significantly outdated. Manning does not allege that any medical provider has determined that the inability to grow longer hair, standing alone, amounts to an objectively serious medical need. The closest Manning comes to such an allegation is citing Dr. Ettner's statement that "the refusal to permit Plaintiff to consolidate her female gender through the outward expression of her femininity causes her to suffer extreme pain, depression, and anxiety." Am. Compl. ¶ 109. But Dr. Ettner evaluated Manning in August 2014, *id.* ¶ 81—which is now over fourteen months ago, and well before Manning received many of her other forms of treatment. *See generally id.* ¶¶ 87-98. This allegation is thus irrelevant to the issue of Manning's

[6] Were Manning to reach the point of potential self-harm, Defendants would, of course, take appropriate action. For purposes of the Eighth Amendment, however, Manning cannot bring a claim unless there is currently a substantial risk of self-harm, and Manning has not plausibly alleged as much.

present treatment; and on that issue, Manning's allegations are insufficient.[7] Even assuming that the hair restriction could constitute an objectively serious deprivation, therefore, Manning has not plausibly alleged as much here.

B. Manning Has Not Plausibly Alleged Deliberate Indifference

Manning's allegations also do not state a claim as to the subjective prong of the Eighth Amendment analysis. As discussed above, in addition to the objective component, the Eighth Amendment is violated only upon showing "a sufficiently culpable state of mind" by the offending official, *Wilson*, 501 U.S. at 298, which requires "obduracy and wantonness" not mere "inadvertence or error in good faith[.]" *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

In the medical context, "[i]t is well-established that mere disagreement over the proper treatment does not create a constitutional claim." *Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir. 1998); *see also Banks v. York*, 515 F. Supp. 2d 89, 103 (D.D.C. 2007). Because "[p]risoners do not have a constitutional right to any particular type of treatment," there is no Eighth Amendment violation when prison officials "in the exercise of their professional judgment . . . refuse to implement a prisoner's requested course of treatment." *Long v. Nix*, 86 F.3d 761, 765 (8th Cir. 1996). Indeed, even "[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner." *Estelle*, 429 U.S. at 106.

To the extent Manning is alleging that she is currently at risk of harm, a prison official is deliberately indifferent only if "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be

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[7] Furthermore, even if Dr. Ettner's statement were current, it is far from clear that her reference to Manning "consolidat[ing] her female gender through the outward expression of her femininity," Am. Compl. ¶ 109, refers specifically to the hair restriction, as opposed to other aspects of military prison life that prevent Manning from outwardly expressing her femininity. And even if so, it is not clear that such an allegation would be sufficient to demonstrate extreme psychological distress.

drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Brennan*, 511 U.S. at 837. The "deliberate indifference" inquiry is "an appropriate vehicle to consider arguments regarding the realities of prison administration." *Helling*, 509 U.S. at 37.

As described in further detail below, the allegations of the Amended Complaint do not state a claim that any of the named Defendants has a sufficiently culpable state of mind as to the decision on Manning's hair length. On the contrary, Defendants already have provided significant treatment, while appropriately taking into account military and prison security concerns, as they must.

1. The Army's Actions Demonstrate Their Commitment to Providing Appropriate Treatment

The Amended Complaint does not allege, nor could it, that Defendants have ignored or denied their obligation to provide Manning with appropriate medical treatment for her gender dysphoria. On the contrary, Defendants affirmatively have committed to creating and implementing a treatment plan for this diagnosis. As Col. Nelson stated over a year ago in a letter to Manning: "The Army recognizes and fully accepts its responsibility to provide medically necessary care for each inmate at the USDB, based on an individualized assessment of each inmate's medical needs balanced against the Army's penological, security and disciplinary interests." Exh. I. And as the Amended Complaint itself demonstrates, the USDB has implemented extensive treatment for Manning's gender dysphoria, including psychotherapy, real life experience in the form of permission to wear female underwear, sports bras and cosmetics, speech therapy, and cross-sex hormone therapy. *See* Am. Compl. ¶¶ 77, 79, 98, 104. Manning does not, therefore, allege facts supporting the conclusion that Defendants have acted with the "obduracy and wantonness" necessary to state a claim for deliberate indifference. *Whitley*, 475 U.S. at 319.

Consistent with Col. Nelson's letter, treatment for Manning's gender dysphoria has been phased in based on the facility's ongoing assessment of Manning's medical needs and the potential risks to prison security that any particular form of treatment poses. *See generally* Oct. 2014 Risk Assessment (Exh. J); Feb. 2015 Risk Assessment (Exh. K); Sept. 2015 Risk Assessment (Exh. L). For example, the initial treatments provided to Manning—psychotherapy and permission to wear female undergarments and sports bras—were relatively private, imposing relatively small risk within the prison. After permission to wear cosmetics, a more public form of treatment, was medically recommended, the USDB phased that into her treatment while monitoring the inmate population for potential security concerns. The USDB permitted hormone therapy to begin a few months later, shortly after being medically recommended, again following an evaluation of the security concerns. *See* Am. Compl. ¶ 97. And although the USDB recently determined that Manning could not safely be permitted to grow longer hair, *id.* ¶ 100, that occurred only after a careful review and consideration of the possible risks involved—*i.e.*,

PA/HIPAA; LES

PA/HIPAA; LES

This history of treatment confirms that Defendants are acting in good faith, and not with deliberate indifference. Defendants currently are treating Manning's gender dysphoria diagnosis with much, but not all, of her preferred course of treatment. This considered judgment is constitutionally permissible. *See Chance*, 143 F.3d at 703 (a "mere disagreement over the proper treatment" which "does not create a constitutional claim"); *Estelle*, 429 U.S. at 107. As discussed above, courts have frequently determined that a considered judgment not to provide all forms of treatment for gender dysphoria does not show deliberate indifference. *See* Section II.A.1, *supra*. Nor is there a basis in the Amended Complaint from which to conclude

that Defendants have not acted in good faith with regard to Manning's treatment, even though Manning complains about the pace of treatment. *See Scott v. Dist. of Columbia*, 139 F.3d 940, 944 (D.C. Cir. 1998) (good faith, but imperfect, effort to keep prison smoke free does not establish deliberate indifference); *Arnold v. Wilson*, No. 1:13-CV-900, 2014 WL 7345755, at *6 (E.D. Va. Dec. 23, 2014) (holding that "the two-year delay in prescribing plaintiff with hormones was not the result of deliberate indifference" because "defendants were aware of plaintiff's concerns, and were working, albeit slower than she liked, to help her").

The allegations of the Amended Complaint simply do not state a claim that Defendants are deliberately indifferent based solely on their decision not to allow Manning to grow longer hair. The history of careful consideration of Manning's treatment needs and risks within the USDB demonstrates that Manning's treatment decisions, including the decision on hair length, have been made thoughtfully and in good faith—the very opposite of the "obduracy and wantonness" characteristic of deliberate indifference. *Scott*, 139 F.3d at 944.

2. Manning Has Not Plausibly Alleged Deliberate Indifference By Any of the Defendants

The Amended Complaint should also be dismissed because it fails to adequately allege deliberate indifference as to any of the particular Defendants. As to the four individual Defendants, the Amended Complaint is devoid of specific factual allegations regarding the requisite mental state. Nor does suing the Department of Defense as an entity save the Amended Complaint from dismissal.

The Amended Complaint names four individual Defendants: Ashton Carter, the Secretary of Defense; Maj. Gen. David E. Quantock, the former Provost Marshal General of the United States Army (who was in charge of the Army Corrections Command); Col. Erica Nelson, the Commandant of the USDB; and Lt. Col. Nathan Keller, the Director of Treatment Programs at

the USDB. *See* Am. Compl. ¶¶ 8-11. Even assuming that Manning has an objectively serious need for longer hair, *see* Section II.A, *supra*, the Amended Complaint does not plausibly allege that any of the four individual Defendants has "a sufficiently culpable state of mind" regarding this need. *Wilson*, 501 U.S. at 298.

First, Manning has sued the individual Defendants apparently based on their supervisory roles over medical care within the USDB. *See* Am. Compl. ¶¶ 8-11 (alleging that each of the individual Defendants "is among those responsible for denying Plaintiff medically necessary treatment for gender dysphoria"). Absent additional factual allegations, however, this theory of pleading is impermissible in the D.C. Circuit. *See Moritsugu*, 163 F.3d at 615 (rejecting an Eighth Amendment claim against the Bureau of Prisons (BOP) medical director because he was "not the person within the BOP who determines whether psychotherapy is required in a given case" and thus the lawsuit was based "on the mistaken assumption that the boss can cure all ills"); *see also Arnold v. Moore*, 980 F. Supp. 28, 35 (D.D.C. 1997) (rejecting Eighth Amendment claims against individual defendants premised on theory of *respondeat superior*).[8]

In addition, while the Sept. 2015 Risk Assessment, incorporated by reference into the Amended Complaint, *see* Am. Compl. ¶ 100, demonstrates that Col. Nelson was the official responsible for deciding whether Manning should be permitted to grow longer hair, the Amended Complaint nowhere alleges that Col. Nelson (or any of the other individual Defendants for that

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[8] Manning's lawsuit against Maj. Gen. Quantock should be dismissed for still another reason: Maj. Gen. Quantock was not the Provost Marshal General at the time Manning filed her lawsuit on September 23, 2014. He was replaced by Maj. Gen. Inch on September 12, 2014, a fact of which the Court may take judicial notice. *See United States Army, Brig Gen. Mark S. Inch Takes Over as Provost Marshall General, CID, ACC Commander* (Sept. 15, 2014), http://www.army.mil/article/133730/Brig__Gen__Mark_S__Inch_Takes_Over_as_Provost_Marshal_General__CID__ACC_Commander/. Although the Federal Rules provide for automatic substitution of public officials, *see* Fed. R. Civ. P. 25(d), that Rule does not provide for substitution when the originally named official was not in office at the time of filing.

matter) has a "sufficiently culpable state of mind." *Brennan*, 511 U.S. at 834. In particular, the Amended Complaint does not allege that any of the Defendants actually knows that, even though Manning already has received extensive gender dysphoria treatments, she still has an objectively serious medical need to grow longer hair. Indeed, as discussed above, Manning has not alleged that any of her medical providers has in fact reached that conclusion.[9] Nor does the Amended Complaint allege that any of these Defendants actually has "draw[n] the inference" that in light of the extensive treatment that Manning is now receiving for gender dysphoria, the decision not to permit longer hair, on its own, creates "a substantial risk of serious harm." *Brennan*, 511 U.S. at 837; *see also id.* at 838 ("[A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment."). Manning therefore has failed to plausibly allege an Eighth Amendment violation by the individual Defendants. *See Mowatt v. U.S. Parole Comm'n*, 815 F. Supp. 2d 199, 208 (D.D.C. 2011) (dismissing an Eighth Amendment claim because "Plaintiff does not make any allegation concerning Warden Grayer's state of mind"); *see also Jackson v. Corr. Corp. of Am.*, 564 F. Supp. 2d 22, 28 (D.D.C. 2008) (Kollar-Kotelly, J.).

Furthermore, while Manning has also named the Department of Defense as a Defendant, *see* Am. Compl. ¶ 12, that does not save Manning's Complaint from dismissal. It is at best unclear how a federal agency could have the subjective deliberate indifference necessary for

[9] As to the three individual Defendants who are not medical officials (Col. Nelson, Maj. Gen. Quantock, and Secretary Carter), Manning's Amended Complaint requires the Court to assume that these senior DOD/Army officials, none of whom have medical training, have personal knowledge of the inadequacy of Manning's current course of treatment, and yet are deliberately indifferent to their knowledge of this inadequacy. This assumption is simply not plausible. *See Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004) (affirming dismissal of Eighth Amendment claim because "[i]f a prisoner is under the care of medical experts . . . , a non-medical prison official will generally be justified in believing that the prisoner is in capable hands"); *Miltier v. Beorn*, 896 F.2d 848, 854 (4th Cir. 1990).

Eighth Amendment liability. *Cf. Brennan*, 511 U.S. at 841 (noting that "considerable conceptual difficulty would attend any search for the subjective state of mind of a governmental entity, as distinct from that of a governmental official"). Any theory holding the agency responsible based on the collective facts and knowledge of all of its employees would threaten to eliminate the subjective "deliberate indifference" standard, contrary to the Supreme Court's consistent holdings. *See, e.g.*, *Wilson*, 501 U.S. at 300 ("If the pain inflicted is not formally meted out *as punishment* by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify."); *see also Saba v. Compagnie Nationale Air France*, 78 F.3d 664, 670 n.6 (D.C. Cir. 1996) ("Individual acts of negligence on the part of employees—without more—cannot, however, be combined to create a wrongful corporate intent."). In any event, there are no allegations in the Amended Complaint suggesting that the agency itself could be imputed to have a more culpable mental state than that of its decision-makers. Accordingly, for the same reasons that Manning has not stated a claim as to deliberate indifference by the individual Defendants, she has not stated a claim with regard to the Department of Defense.

3. Defendants Cannot Be Deliberately Indifferent Because They Have Appropriately Relied on Security and Military Concerns

In addition, Defendants have not been deliberately indifferent to the treatment recommendation for Manning to grow longer hair because they have considered how this treatment would affect the USDB and determined, appropriately, that such treatment "was not supported by the risk assessment and potential risk mitigation measures at this time." Am. Compl. ¶ 100. Denial of a medical treatment based upon legitimate security and military concerns is not deliberate indifference.

As the Supreme Court has stated, "[i]t bears repetition . . . that prison security is a compelling state interest, and that deference is due to institutional officials' expertise in this

area." *Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005). In particular, prison officials are entitled to deference about how to administer medical care in light of their legitimate security concerns. The First Circuit recently explained:

> When evaluating medical care and deliberate indifference, security considerations inherent in the functioning of a penological institution must be given significant weight. "Wide-ranging deference" is accorded to prison administrators "in the adoption and execution of policies and practices that in their judgement are needed to maintain institutional security." In consequence, even a denial of care may not amount to an Eighth Amendment violation if that decision is based in legitimate concerns regarding prisoner safety and institutional security.

Kosilek, 774 F.3d at 83 (quoting *Whitley*, 475 U.S. at 321-22) (internal modifications, citations omitted); *see also Battista v. Clarke*, 645 F.3d 449, 454 (1st Cir. 2011) ("Medical 'need' in real life is an elastic term: security considerations also matter at prisons . . . and administrators have to balance conflicting demands."); *cf. Hope v. Pelzer*, 536 U.S. 730, 737 (2002) (penological concerns may be considered in reviewing an Eighth Amendment claim); 18 U.S.C. § 3626(a)(1)(A) (PLRA provision requiring the Court to "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief").

The deference to officials' decision-making about how to run a prison is even stronger in a military setting. The USDB has a unique, military mission, *see* 10 U.S.C. § 951, which makes it fundamentally different from civilian prisons. The USDB has a distinct inmate population, governed by distinct military norms, customs, and regulations. *See* Background, Section I. The Court therefore should evaluate the USDB's restriction on hair with appropriate deference to the USDB's military judgments, *see Orloff v. Willoughby*, 345 U.S. 83 (1953), *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973), *Goldman*, 475 U.S. at 507, as well as to the USDB officials' operational judgments particular to their facility, *see Bell v. Wolfish*, 441 U.S. 520, 540 (1979).

As the Amended Complaint alleges, the USDB's decision on Manning's hair length was based on security concerns. *See* Am. Compl. ¶¶ 100, 123-25. Nowhere does Manning allege

that these concerns were illegitimate or pretextual. In light of the deference appropriate here, the Amended Complaint should be dismissed on this ground alone. *See, e.g.*, *Fields v. Smith*, 653 F.3d 550, 557-58 (7th Cir. 2011) (prison officials entitled to deference related to security concerns unless the actions are "taken in bad faith and for no legitimate purpose" (quoting *Whitley*, 475 U.S. at 322)).

Moreover, the analysis contained in the Sept. 2015 Risk Assessment, which is quoted in the Amended Complaint and thereby incorporated into the pleading, provides further detail about the USDB's decision. *See* Am. Compl. ¶ 100. Col. Nelson decided that permitting Manning to wear a feminine hairstyle presented unacceptable risk PA/HIPAA; LES PA/HIPAA; LES *See* Exh. L at pg. 1 & ¶ 14. PA/HIPAA PA/HIPAA PA/HIPAA PA/HIPAA PA/HIPAA. *Id.* at ¶ 12. PA/HIPAA; LES PA/HIPAA; LES *Id.* at ¶ 12(d). PA/HIPAA; LES PA/HIPAA; LES PA/HIPAA; LES PA/HIPAA; LES *See id.* at ¶ 14 PA/HIPAA; LES PA/HIPAA; LES PA/HIPAA; LES; *see also* Oct. 2014 Risk Assessment (Exh. J) at ¶¶ 14, 17. The Sept. 2015 Risk Assessment shows that the USDB made a careful and considered judgment that its particular security concerns prevented allowing Manning to wear longer hair, a decision to which deference to both its military and prison security expertise is due.

While Manning may disagree with the risk perceived by the USDB, the prison officials are entitled to deference in this decision-making, especially where, as here, there is no allegation of pretext. Further, even if Manning herself is unconcerned about this risk, her view does not reduce the USDB's responsibility to guard her safety, much less to guard the safety of others. *See Brennan*, 511 U.S. at 833 ("[P]rison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners." (quotation omitted)); *Battista*, 645 F.3d at 454. Because the hair length decision was made based upon legitimate security concerns, as her own Amended Complaint acknowledges, *see* Am. Compl. ¶ 123, Manning cannot state a claim that Defendants were deliberately indifferent.

III. MANNING FAILS TO STATE AN EQUAL PROTECTION CLAIM

Finally, Manning's equal protection claim must also be dismissed. As a threshold matter, Manning, who is housed in a facility for male military inmates, is not similarly situated to female inmates who are housed in facilities for female military inmates, which are governed by different grooming policies. A female inmate's permission to grow longer hair in a female facility, consistent with that facility's standards, says nothing about whether Manning ought to be granted an exception to the restrictions in force at the USDB. Furthermore, even if equal protection scrutiny were available, and even if intermediate scrutiny applied, the Army's decisions here are substantially related to important government interests—prison security and military discipline.

A. Manning, Who Is Housed in a Military Facility for Men, Is Not Similarly Situated to Inmates Housed in All-Female Facilities

Manning's equal protection claim is premised on the allegation that she is similarly situated to other female prisoners incarcerated in military correctional facilities. *See* Am. Compl. ¶ 130. But that is plainly not correct. Manning is housed at the USDB, a military prison for men, whereas those prisoners are housed in different facilities. And unlike those other facilities,

the USDB has a two-inch restriction on hair length, and any exception to that uniform restriction creates safety and security concerns. Thus, Manning cannot be similarly situated to female prisoners incarcerated in facilities without that same restriction—particularly given that Manning does not challenge her placement at the USDB. *See* ECF No. 15 at 21; note 3, *supra*.

As the D.C. Circuit has explained, the "similarly situated" inquiry is a threshold one that must be proven as part of any equal protection claim:

> The Fourteenth Amendment's Equal Protection Clause requires States to treat similarly situated persons alike. . . . The Constitution, however, does not require things which are different in fact or opinion to be treated in law as though they were the same. Thus, the dissimilar treatment of dissimilarly situated persons does not violate equal protection. The threshold inquiry in evaluating an equal protection claim is, therefore, to determine whether a person is similarly situated to those persons who allegedly received favorable treatment.

Women Prisoners of the D.C. Dep't of Corrs. v. Dist. of Columbia, 93 F.3d 910, 924 (D.C. Cir. 1996) (internal citations and quotations omitted). A distinction in treatment between or among different prison facilities does not itself create an equal protection claim. *See Koyce v. U.S. Bd. of Parole*, 306 F.2d 759, 762 (D.C. Cir. 1962) ("In determining whether [a prisoner] is being denied equal protection of the laws the class to which he belongs consists of the persons confined as he was confined, subject to the same conditions to which he was subject."). Indeed, courts often find that prisoners incarcerated in different facilities are not similarly situated for purposes of equal protection analysis. *See Noble v. United States Parole Comm'n*, 194 F.3d 152, 154-155 (D.C. Cir. 1999) (prisoners in the custody of different government agencies are not similarly situated); *see also*, *e.g.*, *Klinger v. Dep't of Corrs.*, 31 F.3d 727, 732 (8th Cir. 1994) (male and female prisoners housed at different prisons were not similarly situated for Equal Protection purposes, because the prisons were "different institutions with different inmates each operating with limited resources to fulfill different specific needs"); *Pargo v. Elliott*, 894 F. Supp. 1243,

1290 (S.D. Iowa), *aff'd*, 69 F.3d 208 (8th Cir. 1995); *Marshall v. Fed. Bureau of Prisons*, 518 F. Supp. 2d 190, 196 (D.D.C. 2007).

Here, Manning is not similarly situated because, unlike inmates housed at the military's female prison, Manning is housed in a military prison for men with grooming restrictions requiring short hair. *See* Am. Compl. ¶ 19. From the face of the Amended Complaint it is apparent that *unlike* female prisoners in a women's prison where female grooming standards are applied, if Manning were allowed to wear medium or long hair, she would stand out as unique from the rest of the USDB inmate population. Manning certainly has not pled any facts that would allow the Court to reach the opposite conclusion. Moreover, as the USDB's Risk Assessments have discussed, PA/HIPAA; LES

PA/HIPAA; LES

PA/HIPAA; LES *See* Section II.B.3, *supra*. This effect simply would not occur in an all-female prison where, as the Amended Complaint alleges, female prisoners are permitted additional grooming options. *See* Am. Compl. ¶ 19. Thus, contrary to Manning's allegations, she is not similarly situated to other female military prisoners in different facilities. *See Koyce*, 306 F.2d at 762 ("[T]he class to which [a prisoner] belongs consists of the persons confined as he was confined, subject to the same conditions to which he was subject.").[10]

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[10] Furthermore, even if Manning could overcome this obvious distinction between the USDB and a military prison for women, the Amended Complaint still does not contain sufficient factual allegations to establish that Manning is "similarly situated" to other female military inmates. The Amended Complaint does not identify a specific military correctional facility for comparison, nor does it plead facts such as the prison's security level, size, and other relevant attributes about the prison or prisoners. *See Tanner v. Fed. Bureau of Prisons*, 433 F. Supp. 2d 117, 124 (D.D.C. 2006) (discussing the characteristics necessary for determining whether prisoners are similarly situated); *see also Boulware v. Fed. Bureau of Prisons*, 518 F. Supp. 2d 186, 190 (D.D.C. 2007) (plaintiff's alleged comparison to BOP prisoners nationwide insufficient to state an equal protection claim); *BEG Invs., LLC v. Alberti*, 85 F. Supp. 3d 13, 33-35 (D.D.C. 2015).

At bottom, Manning simply has alleged a legal conclusion that she is "similarly situated" to female prisoners. *See Kelley v. FBI*, 67 F. Supp. 3d 240, 258 (D.D.C. 2014) ("[A]lthough the Court must accept plaintiffs' factual allegations as true for purposes of the motion to dismiss, it need not accept legal conclusions cast in the form of factual allegations."). Such allegations are insufficient, and the claim therefore should be dismissed.

B. The Army's Actions Substantially Serve Important Government Interests

Even assuming that intermediate scrutiny applies to Manning's equal protection claim, and that she adequately has alleged that she is similarly situated to other female prisoners, the Amended Complaint should be dismissed because the alleged unequal treatment—the USDB requiring Manning to comply with male grooming standards in a prison for men—is substantially related to the important government interests of prison security and military discipline. *See Hedgepeth v. Wash. Metro. Area Transit Auth.*, 386 F.3d 1148, 1153 (D.C. Cir. 2004) ("Intermediate scrutiny requires that classifications be substantially related to important governmental interests."); *see also Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982).

As an initial matter, it is unnecessary to decide whether Manning's claim should be subject to intermediate scrutiny as Manning suggests, *see* Am. Compl. ¶ 134, or reviewed under a lesser standard. *See, e.g.*, *Turner v. Safley*, 482 U.S. 78, 89 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.").[11] Defendants are entitled to dismissal even under the intermediate scrutiny framework that Manning proposes.

[11] Several courts have treated discrimination claims similar to Manning's (but raised outside the prison and military contexts) as warranting intermediate scrutiny. *See, e.g.*, *Glenn v. Brumby*, 663 F.3d 1312, 1317-18 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 577 (6th Cir. 2004); *but see Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1227-28 (10th Cir. 2007). Although the D.C. Circuit has held that the *Turner* standard does not apply at least to some

In reviewing Manning's claim, the Court must grant substantial deference to Defendants' military and corrections judgments. *See Goldman*, 475 U.S. at 507 ("[W]hen evaluating whether military needs justify a particular restriction on religiously motivated conduct, courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest."). This deference is no less applicable even under heightened scrutiny:

> Heightened scrutiny does not eliminate appreciation of both the difficulties confronting prison administrators and the considerable limits of judicial competency, informed by basic principles of separation of powers. . . . [T]hat inquiry must still acknowledge the importance of the state's interest in the prison context. Similarly, the scrutiny to find a direct and substantial relation between the government's means and ends must not substitute the court's presumed expertise for that of prison administrators as the court evaluates administrators' choices of one course over others.

Pitts, 866 F.2d at 1455; *see also Johnson v. California*, 543 U.S. at 515 ("Prisons are dangerous places, and the special circumstances they present may justify racial classifications in some contexts. Such circumstances can be considered in applying strict scrutiny, which is designed to take relevant differences into account."). Thus, deference to Defendants' military and corrections judgments is required even under heightened scrutiny.

Here, Defendants' decision on Manning's hair length was based on its effect on security within the USDB, as the Amended Complaint itself acknowledges. *See* Am. Compl. ¶¶ 100, 123-125. There can be no dispute that prison security is an important—indeed, compelling—

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gender-based discrimination claims under the Equal Protection Clause, it is not clear whether *Turner* would apply to a claim (like Manning's) "involving regulations that govern the day-to-day operation of prisons." *Pitts v. Thornburgh*, 866 F.2d 1450, 1453-54 (D.C. Cir. 1989); *but cf. Johnson v. California*, 543 U.S. 499 (2005) (applying strict scrutiny to race-based classifications in prison policies). Manning's claim arising in the military context would also weigh in favor of the *Turner* standard. *See Hatim v. Obama*, 760 F.3d 54, 58 (D.C. Cir. 2014) (construing a prior D.C. Circuit decision as establishing that "in the military context, the government is permitted to balance constitutional rights against institutional efficiency in a manner similar to the *Turner* test"); *cf. Goldman*, 475 U.S. at 507.

governmental interest. *See Johnson v. California*, 543 U.S. at 512 ("The necessities of prison security and discipline are a compelling government interest[.]"); *Harrington v. Scribner*, 785 F.3d 1299, 1308 (9th Cir. 2015) ("Penological interests may still factor into the analysis of an equal protection claim. The necessities of prison security and discipline are a compelling government interest."). This is especially true in maximum-security facilities such as the USDB. *See Harris v. Chapman*, 97 F.3d 499, 504 (11th Cir. 1996) (finding state's "compelling interest in security and order within their prisons" especially applies "in 'close custody' facilities . . . which contain extremely violent offenders").

Nowhere does the Amended Complaint allege that the hair length decision is not substantially related to security risks or that the USDB's assessment of the risk imposed by Manning's wearing longer hair is pretextual. Indeed, aside from legal conclusions relating to the equal protection claim, the Amended Complaint does not allege *any* facts supporting the conclusion that the USDB's decision on hair length was made for any reason other than meaningful security concerns. *See*, *e.g.*, Am. Compl. ¶ 100. Moreover, the Sept. 2015 Risk

PA/HIPAA

PA/HIPAA *See* Section II.B.3, *supra*; *see also* Exh. L at ¶¶ 12-15. Courts frequently defer to similar determinations by prisons that grooming restrictions are necessary to maintain security. *See*, *e.g.*, *Knight v. Thompson*, 797 F.3d 934, 947 (11th Cir. 2015) (refusing to second-guess prison's determination regarding grooming standards); *Fegans v. Norris*, 537 F.3d 897, 902 (8th Cir. 2008); *Jackson v. Dist. of Columbia*, 89 F. Supp. 2d 48, 63-69 (D.D.C. 2000), *vacated on other grounds*, 254 F.3d 262 (D.C. Cir. 2001).[12]

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[12] Many of these cases arise as challenges to the free exercise of religion and were therefore considered under the more stringent requirements of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1 *et seq.*, or its predecessor, the

Moreover, the Sept. 2015 Risk Assessment PA/HIPAA

PA/HIPAA. *See* Section II.B.3, *supra*. There can be no dispute that military discipline, like prison security, is a compelling government interest. *See*, *e.g.*, *Brown v. Glines*, 444 U.S. 348, 354 (1980); *Rigdon v. Perry*, 962 F. Supp. 150, 162 (D.D.C. 1997); *Bitterman v. Sec'y of Defense*, 553 F. Supp. 719, 724-25 (D.D.C. 1982). And as the Sept. 2015 Risk Assessment explains, PA/HIPAA

PA/HIPAA

PA/HIPAA *See* Exh. L at ¶¶ 11-14. Further, as the Supreme Court has stated, and as discussed above, deference to military judgment in military matters is appropriate. *See Gilligan*, 413 U.S. at 10; *Orloff*, 345 U.S. at 93-94 ("[J]udges are not given the task of running the Army. . . . Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."); *see also Singh v. McHugh*, --- F. Supp. 3d ----, 2015 WL 3648682, at *12-13 (D.D.C. June 12, 2015) (same). Regardless of whether intermediate scrutiny applies as Manning proposes, the USDB's decision not to permit longer hair is fully consistent with equal protection, and Manning's claim thus should be dismissed.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss Plaintiff's Amended Complaint.

Religious Freedom Restoration Act ("RFRA"). Even under those more stringent standards, courts must still "respect th[e] expertise" of prison officials, except when asked to apply "a degree of deference that is tantamount to unquestioning acceptance." *Holt v. Hobbs*, 135 S. Ct. 853, 864 (2015). Unlike the distinct factual scenario presented in *Holt v. Hobbs*, which involved an implausible assertion that a half-inch beard could be used to conceal contraband, no such unquestioning acceptance is sought or required here. *Id.*

Dated: November 10, 2015

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
______________________________	)	

[PROPOSED] ORDER

Upon consideration of Defendants' Motion to Dismiss, and any response and reply thereto, it is hereby

ORDERED that the motion is **GRANTED**; and it is

FURTHER ORDERED that the action is dismissed, with prejudice, for failure to state a claim upon which relief can be granted.

SO ORDERED.

DATE:

____
Colleen Kollar-Kotelly
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,)
)
Plaintiff,)
v.) Civil Action No. 1:14-cv-1609 (CKK)
)
ASHTON CARTER, *et al.*,)
)
Defendants.)
)

DEFENDANTS' MOTION TO DISMISS:
APPENDIX OF EXHIBITS

EXHIBIT	DOCUMENT NAME
A	Army Regulation 190-47: *The Army Corrections System* (excerpts)
B	Department of Defense Instruction 1325.07: *Administration of Military Correctional Facilities and Clemency and Parole Authority* (excerpts)
C	SECNAV Instruction 1640.9C: *Department of the Navy Corrections Manual* (excerpts)
D	Army Regulation 670-1: *Wear and Appearance of Army Uniforms and Insignia* (excerpts)
E	USDB Regulation 600-1: *Manual for the Guidance of Inmates* (MGI) (excerpts)
F	Manning's Military Correctional Complex (MCC) Form 510s **(SUBJECT TO PROTECTIVE ORDER)**
G	Inspector General Action Request **(SUBJECT TO PROTECTIVE ORDERS)**

EXHIBIT	DOCUMENT NAME
H	Manning's Letter (via counsel) to Defendants Requesting Treatment for Gender Dysphoria (August 11, 2014)
I	USDB Response Letter to Manning's August 2014 Letter (September 2, 2014)
J	Oct. 2014 Risk Assessment (**SUBJECT TO PROTECTIVE ORDERS**)
K	Feb. 2015 Risk Assessment (**SUBJECT TO PROTECTIVE ORDERS**)
L	Sept. 2015 Risk Assessment (**SUBJECT TO PROTECTIVE ORDERS**)
M	Memorandum for Receptee Inmates: *Access to Medical Care/Inmate Grievance Procedure* (**SUBJECT TO PROTECTIVE ORDER**)
N	Army Regulation 600-20: *Army Command Policy* (excerpts)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit A:

Army Regulation 190-47

The Army Corrections System

(excerpts)

Army Regulation 190–47

Military Police

The Army Corrections System

Headquarters
Department of the Army
Washington, DC
15 June 2006

UNCLASSIFIED

Headquarters
Department of the Army
Washington, DC
15 June 2006

***Army Regulation 190–47**

Effective 15 July 2006

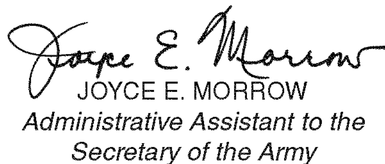
Military Police

The Army Corrections System

By Order of the Secretary of the Army:

PETER J. SCHOOMAKER
General, United States Army
Chief of Staff

Official:



JOYCE E. MORROW
Administrative Assistant to the Secretary of the Army

History. This publication is a rapid action revision. The portions affected by this rapid action revision are listed in the summary of change.

Summary. This regulation covers policies governing the Army Corrections System and implements DOD Directive 1325.4.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the United States Army Reserve unless otherwise stated.

Proponent and exception authority. The proponent of this regulation is the Provost Marshal General. The Provost Marshal General has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The Provost Marshal General may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency of the proponent agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army management control process. This regulation contains management control provisions and identifies key management controls that must be evaluated.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Office of the Provost Marshal General (DAPM), 2800 Army Pentagon, Washington, DC 20310–2800.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Office of the Provost Marshal General (DAPM), 2800 Army Pentagon, Washington, DC 20310–2800.

Distribution. This publication is available in electronic media only and is intended for command levels C, D, and E for the Active Army and D and E for the Army National Guard/Army National Guard of the United States and the United States Army Reserve.

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*This publication supersedes AR 190–47, dated 13 December 2005.

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Glossary

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Chapter 1
The Army Corrections System

1–1. Purpose
This regulation establishes policy, procedures, and responsibilities associated with the U.S. Army Corrections System (ACS).

1–2. References
Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms
Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Responsibilities
a. The Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA)(M&RA)) will exercise Army Secretariat oversight for Army corrections, parole, and clemency functions. Additionally, the ASA(M&RA) has responsibility for the functions and operation of the governing body of the Army Corrections System, the Army Corrections Council, which is composed of the following members:

(1) Deputy Assistant Secretary of the Army (Installations and Housing), Office of the Assistant Secretary of the Army (OASA) (Installations and Environment).

(2) Senior Deputy Counsel, Office of General Counsel.

(3) Deputy Assistant Secretary of the Army (Military Personnel Management & Equal Opportunity Policy), OASA (Manpower and Reserve Affairs (M&RA)).

(4) Deputy Assistant Secretary of the Army (Army Review Boards).

(5) OASA (M&RA).

(6) Provost Marshal General (DAPM).

(7) Office of the Deputy Chief of Staff, G–1 (one representative).

(8) Office of the JAG (one representative).

(9) Office of the Assistant Chief of Staff for Installation Management (one representative).

(10) Assistant Chief of Staff for Base Operations Support, U.S. Army Training and Doctrine Command.

(11) Surgeon General (invitational advisor only).

(12) Chief of Chaplains (invitational advisor only.

b. The Army General Counsel will provide legal advice regarding Army corrections activities to the Secretariat.

c. The Provost Marshal General (DAPM), will provide policy for—

(1) Annual technical staff inspections of ACS facilities under their jurisdiction.

(2) Operational oversight for the ACS.

d. The Judge Advocate General (TJAG) will provide advice on ACA legal issues; provide advice on legal issues of confinement and corrections to the DAPM; and ensure that the necessary support is provided to meet the legal needs of prisoners incarcerated within the ACS.

e. The Surgeon General will establish procedures for ensuring availability of health care to prisoners in Army custody, consistent with that provided to active duty Soldiers. Transfers of prisoners, whether temporary or permanent, outside the Department of Defense (DOD), will be coordinated with and approved by DAPM.

f. The Chief of Chaplains will ensure the necessary support to meet the religious and pastoral needs of prisoners incarcerated within the ACS.

g. Commanders of major Army commands (MACOMs) will—

(1) Implement and execute the ACS, as delineated in this regulation and announced by DAPM.

(2) Supervise the operation and administration of ACS facilities under their jurisdiction, per this and other applicable regulations.

(3) Provide logistical and budgetary support of ACS operations.

h. Commanders of installations having ACS facilities are responsible for the safe operation of local ACS facilities and will ensure compliance with the policies set forth herein. Pursuant to this responsibility, commanders will provide health, legal, religious, recreational, employment, educational, training, food service, and transportation support to ACS facilities on their installations consistent with resources available.

(1) The correctional custody facility (CCF) officer in charge (OIC) will ensure that correctional custody is properly administered.

(2) The commander of the installation medical activity will inspect health services and sanitation monthly, when the facility is occupied.

(3) The installation provost marshal will exercise staff supervision over the CCF and, when the facility is occupied, inspect it monthly.

1–5. Policy

a. The ACS is an integral part of the military justice system and assists commanders in the maintenance of discipline and law and order by providing a uniform system of incarceration and correctional services for those who have failed to adhere to legally established rules of discipline.

b. ACS facilities provide intensive custody and control of military offenders while providing access to basic education, offense related counseling, selected academic courses, and training necessary to prepare military prisoners for return to military duty or to the civilian community.

c. All ACS facilities will strive to be accredited by the American Corrections Association.

1–6. Army Corrections System objectives

The objectives of the ACS are to—

a. Provide a safe and secure environment for the incarceration of military offenders.

b. Protect the community from offenders.

c. Prepare military prisoners for their release whether return to duty or civilian status with the prospect of becoming productive Soldiers/citizens by conforming to military or civilian environments.

1–7. Reports

a. Monthly Correctional Report (Requirement Control Symbol CGSPO–450). The Correctional Facility Statistical Report will be prepared by all ACS facilities at the end of each month and forwarded to the Office of the Provost Marshal General (DAPM–MPD–CI), 2800 Army Pentagon, Washington, DC 20310–2800, by the 15th day following the closing month, with copy furnished to appropriate MACOMs. This form is prepared as directed by DAPM.

(1) Data for the report will be compiled from 0001 the first day of the month to 2400 the last day of the month.

(2) Reporting format and instructions for the preparation of the report are prescribed by DAPM.

b. Annual Correctional Report. This report will be prepared by all ACS facilities at the end of each calendar year and forwarded to Department of the Army, Provost Marshal General (DAPM), by the 15th day of January, with copy furnished to appropriate MACOMs. This report is prepared as directed by DAPM. This report is a supplement to the December monthly report and will consist of data compiled from the previous calendar year using Department of Defense (DD) Form 2720 (Annual Confinement Report).

c. Annual Historical Summary (Requirement Control Symbol CSHIS–6(R3)), per AR 870–5.

(1) Annual historical report from each ACS facility will be prepared at the close of each fiscal year (not later than 45 days following the end of the reporting period), and forwarded to DAPM.

(2) This report will include, but is not limited to—

(a) A copy of the latest organizational chart.

(b) Assigned and authorized strengths, as of the beginning and end of the fiscal year.

(c) Major structural improvements in the physical plant, grounds, and facilities during the year, and recommended future improvements, alterations, and or construction programs.

(d) A concise narrative statement concerning activities of each major organizational element describing significant accomplishments, deficiencies, and changes in operating procedures.

(e) A brief summary of correctional treatment programs (for example, employment, training, education, counseling, recreation, work abatement, work release, special temporary parole).

(f) Statistical summary information concerning the receipt and release of prisoners.

(g) Clemency actions during the year (remission and suspension of sentences, return to military service, and parole, DD Form 2720–1 (Annual Clemency/Parole Report).

(h) In-service training for assigned personnel during the year.

(i) Financial summaries will illustrate operating costs of the facility

(j) A brief statement concerning problems and significant incidents (fires, riots, disturbances, investigated incidents of assaults of inmates on cadre and cadre on inmates, attempted escapes) encountered during the fiscal year.

d. Monthly report on victim and witness notifications. ACS facility commanders will submit a report by the 15th of each month to DAPM. The report will follow the guidelines stated in paragraph 13–7.

e. Annual Report on Victim and Witness Assistance (Report Control Symbol DD–P&R(A)1952). ACS facility commanders will submit statistical data using DD Form 2706 (Annual Report on Victim and Witness Assistance), items 4 and 5, and DOD Instruction (DODI) 1030.2 to DAPM. The report will be submitted by January 10 for the preceding calendar year.

f. Serious incident reports. Serious incidents will be reported in accordance with AR 190–40. Escapes, major disturbances, prisoner and detainee deaths, and substantiated allegations of prisoner and detainee abuse will be reported as serious incidents.

instances, ACS facility commanders for the purpose of making available specific information about the facility, program, or activities may authorize media visits. Commanders' approval for media visits will be based on coordinated information from the public affairs officer and other staff members concerned regarding the impact of such visits. In authorizing these visits, it should be noted that approval given to news agencies requires equal consideration be given to all news agencies. DAPM will be contacted 72 hours prior to any programmed news media at an ACS facility.

e. Briefings. When authorized, news media representatives will be advised to make advance appointments for visits. Specific staff members of the facility will be designated as guides. Such staff members may respond to requests about facilities, programs, and activities but will refer all questions about policy and individual prisoners to the commander of the facility. The ACS commander of the facility or designated representative will brief personnel on the total operation of the facility prior to the tour, and ensure minimum disruption of facility operations.

f. Members of Congress. Visits to ACS facilities by Members of Congress and their staff are authorized per AR 1–20. Identifying credentials for members of Congress and written authorization for staff representatives of a member of Congress should be verified through the tenant installation prior to such visits.

g. Official visits by service representatives. Visit requests and requests for interviews of prisoners confined in ACS by service representatives will be forwarded to HQDA (DAPM) for approval.

h. Individual or group orientation visits.

(1) Individual and group orientation visits may be authorized by the ACS facility commander and will be coordinated with appropriate installation representatives.

(2) Regular tours are authorized as a means of informing the local community of the mission and functions of the facility. Care will be taken to ensure that the prisoner population is not put on display or subjecting them to ridicule or other forms of real or perceived public curiosity.

(3) Additional considerations prior to approval are—

(a) Requests for special tours/visits must be made in advance and include the stated purpose and intent of the visit.

(b) Approval of a special visit will cite time, date, and conditions of the visit.

(c) A senior staff member of the facility normally will be designated as guide for all tours.

(d) Individuals or groups approved for a visit to facilities will be informed that a violation of conditions of the visit will be cause for termination of the visit.

(e) The taking of still or motion pictures will be per paragraphs 10–12*a* and *b*.

(f) Tours will be planned to avoid occupied prisoner living areas.

(g) The personal histories and offenses of individual prisoners will not be discussed. Normally, individual prisoners will not be identified.

(4) Restrictions are not imposed on official visits except that they should be scheduled by appointment, where practical, to avoid any interference with work or training.

i. Visits by civilian clergy. Religious needs of certain prisoners may be such that chaplains (assigned to the facility) cannot fill them. In this event, the prisoner may consult the commander of the facility for assistance in securing visitation of civilian clergy.

(1) Clearance of civilian clergy to give religious counsel to prisoners must be obtained from the facility commander or a designated representative. Criteria for clearance by the facility commander or a representative include—

(a) An individual concerned must be the personal pastor of the prisoner or an authorized representative of the denomination of the prisoner.

(b) Civilian clergy must present proper credentials to attest to the fact they are actively engaged in religious work. The facility/installation chaplain should authenticate these credentials.

(2) Any member of the civilian clergy may request clearance per (1), above, for the purpose of visiting a prisoner of a specific parish or congregation.

10–14. Complaints and interviews

a. Prisoners will be advised at the time of their incarceration of their rights to submit complaints and grievances to the facility commander or a designated representative and the inspector general under provisions of AR 20–1.

(1) Complaints will be submitted to the facility commander or a designated representative on DD Form 510.

(2) The facility commander or a designated representative will promptly advise the prisoners on the action taken regarding their complaints.

(3) A copy of the notice prescribed by AR 20–1 will be permanently posted on the prisoner's bulletin board.

b. Facility commanders will establish procedures whereby individual prisoners can request interviews or assistance from responsible officials. Such procedures will be explained to the prisoner and will include a system, which is responsive to the prisoner's desires to be heard. Requests made by prisoners and responses taken or not taken will be recorded and made a part of the prisoner's correctional treatment file.

c. Prisoner's letters containing accusations, charges or complaints will be forwarded through proper channels to the

official who is empowered to correct the complaint or alleged wrong. Petitions or writs for release addressed to the proper authority will be forwarded through normal mail channels.

10–15. Smoking

ACS commanders will comply with the provisions of DODD 1010.1 and AR 600–63.

Section IV
Pay, Subsistence, and Gratuities

10–16. Pay and allowances

Prisoners will be paid per the provisions of their sentences. Such payments will be placed with the prisoner's personal fund account and held in safekeeping per DOD Financial Management Regulation, volume 5, chapter 27 Army Annex. Upon release, any money remaining in the prisoner's account will be returned to the prisoner.

10–17. Subsistence

a. All prisoners normally will be supplied the full complement of eating utensils (for example, a knife, fork, and spoon). They will be provided with wholesome and sufficient food. The facility commander must approve nonissue of eating utensils for security or other reasons.

b. Facility commanders will ensure that a qualified nutritionist or dietician ensures meals meet the nationally recommended allowances for basic nutrition and reviews the institution's dietary allowances at least annually. Institution food service supervisory staff verify adherence to the established basic daily servings and conducts menu evaluations at least quarterly.

c. Food service staff will plan menus in advance and substantially follow the plan, ensuring that the planning and preparation of all meals take into consideration food flavor, texture, temperature, appearance, and palatability. Additionally, special diets as prescribed by appropriate medical or dental personnel will be available for prisoners, to include religious beliefs that require the adherence to religious dietary laws.

d. At least three meals (including two hot meals) are provided at regular meal times during each 24–hour period, with no more than 14 hours between the evening meal and breakfast. Variations are authorized based on weekend and holiday food service demands, but basic nutritional goals must be met.

e. Alternative meal service may be provided to a prisoner in segregation who uses food or food service equipment in a manner that is hazardous to self, staff, or other prisoners. Alternative meal service is on an individual basis, is based on health or safety considerations only, meets basic nutritional requirements, and occurs with the written approval of the facility commander and responsible health authority. The substitution period will not exceed 7 days. At no time will food be used as a form of punishment.

f. Facility commanders will ensure meals are served under conditions that minimize regimentation, although there should be direct supervision by staff members.

g. Facility commanders will establish a health and hygiene program that implements adequate health protection for all prisoners and staff in the facility and other persons working in food service. The program will include—

(1) In accordance with Army regulations, food service personnel will receive a preassignment medical examination and periodic reexaminations to ensure freedom from diarrhea, skin infections, and other illnesses transmissible by food or utensils; all examinations are conducted in accordance with Army regulations.

(2) In the event food services are provided by an outside agency, the facility has written verification that the provider complies with Army regulations regarding food service.

(3) All food handlers are instructed to wash their hands upon reporting to duty and after using toilet facilities.

(4) Prisoners and other persons working in food service are monitored each day for health and cleanliness by the food services supervisors or designated representatives.

10–18. Release gratuities

Discharged prisoners released from the service by punitive discharge, whose sentences include confinement, may be furnished the gratuities set forth below on release:

a. Enlisted prisoners may receive a discharge gratuity as provided in DOD 7000.14–R, volume 7A, chapter 35, table 35–11.

b. Prisoners separated from the service with a punitive discharge or an other than honorable discharge may be provided civilian outer clothing, if needed, in accordance with AR 700–84, paragraph 12–8.

10–19. Transfer and disposition of prisoners

a. Except in those instances where suitable military ACS facilities are not available, all military prisoners will be incarcerated initially in military facilities. Authority to transfer prisoners to ACS or to Federal institutions is retained by DAPM. Cost of transportation and subsistence incurred in the transfer of a military prisoner from place of trial to initial

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit B:

Department of Defense Instruction 1325.07

Administration of Military Correctional Facilities and Clemency and Parole Authority

(excerpts)

Department of Defense

INSTRUCTION

NUMBER 1325.07
March 11, 2013

USD(P&R)

SUBJECT: Administration of Military Correctional Facilities and Clemency and Parole Authority

References: See Enclosure 1

1. PURPOSE. This instruction:

a. Reissues DoD Instruction (DoDI) 1325.7 (Reference (a)) to implement policy, assign responsibilities, and prescribe procedures pursuant to DoD Directive (DoDD) 1325.04 (Reference (b)) and in accordance with (IAW) the authority in DoDD 5124.02 (Reference (c)) to carry out the administration and operation of military correctional programs and facilities and the administration and operation of military clemency and parole programs.

b. Implements Section 1565 of Title 10, United States Code (Reference (d) (also known as “The Justice for All Act of 2004, as amended”), which requires collection of deoxyribonucleic acid (DNA) samples from each person who is or has been convicted of a qualifying military offense.

c. Implements Section 14135a of Title 42, United States Code (Reference (e)) (also known as “The DNA Fingerprint Act of 2005, as amended”), which expands the requirements to take DNA samples from those who would have fingerprints taken at arrest or similar appropriate stages of the military law enforcement and investigation process.

d. Revises the offenses for which sex offender notification is required, and adds notification to the United States Marshals Service Sex Offender Targeting Center (Reference (d)).

e. Revises established policy on the award of good conduct time (GCT) and abatement time for other purposes to emphasize performance and affirmative rehabilitative steps taken by prisoners.

f. Provides detailed guidance on the use of administrative disciplinary actions to achieve consistency among all military correctional facilities (MCF).

g. Supersedes and cancels Under Secretary of Defense for Personnel and Readiness (USD(P&R)) Memorandums of References (f) and (g).

h. Incorporates and cancels the Mandatory Supervised Release Memorandum of Understanding (Reference (h)).

2. APPLICABILITY. This instruction applies to OSD, the Military Departments, (including the Coast Guard at all times, including when it is a Service of the Department of Homeland Security by agreement with that Department) the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the "DoD Components").

3. POLICY

a. It is DoD policy that corrections programs operated by the Military Services should strive to achieve uniformity, effectiveness, and efficiency in the administration of corrections functions and clemency and supervision programs, IAW Reference (b). Clemency and parole programs shall be administered by the Military Departments to foster the safe and appropriate release of military offenders under terms and conditions consistent with the needs of society, the rights and interests of victims, and the rehabilitation of the prisoner.

b. Waivers to this instruction may be granted by the USD(P&R), and will remain in effect no longer than for a maximum of 18 months from the date of approval. Such waiver requests shall provide justification and, where applicable, indicate any measures considered necessary to compensate for the waived requirement(s). Requests for an exception to the provisions of this instruction shall be forwarded, via the chain of command, to the Chair, DoD Corrections Council, Office of the Under Secretary of Defense for Personnel and Readiness, Office of Legal Policy (OUSD(P&R) LP), for processing to the USD(P&R).

4. RESPONSIBILITIES

a. USD(P&R). The USD(P&R):

(1) Monitors compliance with Reference (b) and this instruction.

(2) Ensures that the DoD Corrections Council makes recommendations on policies and procedures to promote uniformity, effectiveness, and efficiency in military correctional programs, including clemency and supervised release programs, and MCF operations.

b. Secretaries of the Military Departments and Commandant of the Coast Guard. The Secretaries of the Military Departments and Commandant of the Coast Guard ensure Departmental compliance with Reference (b) and this instruction.

5. PROCEDURES. See Enclosure 2.

6. INFORMATION COLLECTIONS REQUIREMENTS

a. Annual Report on Victim and Witness Assistance, DD Form 2706, referred to in Table 7 of Appendix 5 of this instruction has been assigned report control symbol DD-P&R(A)1952 IAW the procedures in Directive-type Memorandum 12-004 (Reference (i)) and DoD 8910.1-M (Reference (j)).

b. Annual Correctional Report, DD Form 2720, referred to in Table 7 of Appendix 5 and paragraph 3 of Enclosure 3 of this instruction has been assigned report control symbol DD-P&R(A)2067 IAW the procedures in References (i) and (j).

7. RELEASABILITY. **Unlimited**. This instruction is approved for public release and is available on the Internet from the DoD Issuances Website at http://www.dtic.mil/whs/directives.

8. EFFECTIVE DATE. This instruction:

a. Is effective March 11, 2013.

b. Must be reissued, cancelled, or certified current within 5 years of its publication IAW DoDI 5025.01 (Reference (k)). If not it will expire effective March 11, 2023 and be removed from the DoD Issuances Website.

Jessica L. Wright
Acting Under Secretary of
Defense for Personnel and Readiness

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1. References
2. Procedures
3. Information Requirements

Glossary

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ENCLOSURE 2

PROCEDURES

1. GENERAL. The MCF shall be operated to maintain good order, discipline, safety, and security. Procedures for operating facilities, processing prisoners, and conducting programs shall be uniform to the maximum extent possible. A prisoner confined in an MCF shall be subject to the rules of the confining facility regardless of the Service affiliation of the prisoner. The forms referenced in this instruction or their electronic equivalent shall be used to promote uniformity, effectiveness, and efficiency in the administration of correctional facilities and of clemency and supervised release programs.

2. TRANSFER AND INTAKE PROCEDURES

a. A military prisoner's place of confinement shall be determined by the DoD designation system or respective Service corrections headquarters.

(1) To facilitate the transfer/intake, confining officials shall complete DD Form 2707, "Confinement Order." Transferring commanders will ensure that medications and required documents accompany the prisoner to assist in risk assessment and appropriate classification of prisoners, to include:

(a) All reasonably available investigative reports concerning the confining offense(s) (to include victim and witness statements and investigator's summary).

(b) Medical records and dental records (hardcopy records do not need to be transferred with the prisoner when available in electronic databases).

(c) Completed victim/witness forms, report of results of trial, statement of conduct to include all disciplinary reports received while in confinement, previous confinement records, court-martial promulgating order, if any, and no contact orders/restrictions.

(d) Permanent change of station orders, military personnel file, Common Access Card or military identification card, and microfiche/film (restricted file) if so kept and available.

(e) All pending disciplinary actions to be completed and closed, if transferred from an MCF.

(f) Any documents which indicate whether the prisoner, based on conviction, is required to register as a sex offender.

(2) If an MCF, including military/security police detention cells, is not reasonably available, prisoners may be confined in civilian facilities used by the U.S. Marshals Service. If a facility used or approved by the U.S. Marshals Service is not reasonably available, a military

c. Notwithstanding any other provision of this instruction or Reference (l), if a prisoner (accused) is confined in a non-military facility for a charge or offense for which the prisoner had been arrested after the commission of the offense for which the military sentence was imposed, the prisoner (accused) shall receive no credit for such time confined in the non-military facility when calculating his or her sentence adjudged at court-martial.

4. <u>CLASSIFICATION AND USE OF FACILITIES</u>

a. To promote effective and efficient corrections programs, the Military Services shall classify facilities based on the physical security features of the facility, assigned or available staff, and the availability of treatment, training, and work programs. Changes in the classification of a facility shall be staffed for comment with the DoD Corrections Council and the USD(P&R) prior to implementation. All MCFs shall be classified as Level I, II, or III.

(1) Level I facilities are minimum security facilities capable of providing pre-trial and post-trial confinement for prisoners classified as minimum risk. The facilities may temporarily hold prisoners classified with a higher risk; for example, pre-trial detainees, prisoners held for post-trial court appearances, or those pending transfer. The maximum period of post-trial confinement provided by any Level I facility shall not exceed 1 year.

(a) Characteristics of a standalone Level I facility include:

<u>1</u>. Single-fenced perimeter with periodic roving patrol.

<u>2</u>. Internal security hardware/walls.

<u>3</u>. Single cells.

<u>4</u>. Multiple occupant cells or dormitory.

<u>5</u>. At least 5 percent segregation cells (single cells).

(b) Level I facilities require staff supervision and movement control based on design and population, which is less than a Level II facility. Confinement facilities collocated with military/security police stations do not require a single-fenced perimeter and may be designated by their respective Service as a Level I facility.

(c) Level I facilities shall provide, at a minimum:

<u>1</u>. Access to counseling services.

<u>2</u>. Crisis intervention.

<u>3</u>. Victim impact awareness

4. Work opportunities.

5. Substance abuse/drug and alcohol education.

(2) Level II facilities are medium security facilities capable of providing pre-trial and post-trial confinement (up to 5 years) for medium risk prisoners.

(a) Facility characteristics include:

1. Double-fenced perimeter with electronic detection system and internal security hardware/walls, with periodic roving patrol or towers.

2. Single or double occupant cells.

3. Between 6 and 12 percent segregation cells based on requirements determined by Service corrections headquarters.

4. A wide variety of work and appropriate offense-specific programs based on the needs of the prisoners.

5. Less staff supervision and movement control than a Level III facility.

(b) At a minimum, a Level II facility should provide:

1. Crisis intervention counseling.

2. Drug and alcohol treatment.

3. Victim-impact awareness.

4. Stress and anger management.

5. Vocational training.

6. Functional skills testing.

7. Remedial education.

8. High school-level education classes or a general equivalency diploma (GED) program.

(c) Programs at each Level II facility should be based on a needs assessment of the prisoner population.

(3) Level III facilities are maximum security facilities designed for high-risk, long-term (including life), and death sentence prisoners, and are capable of providing post-trial

confinement exceeding that of Level II facilities. The United States Disciplinary Barracks (USDB) shall not provide pretrial confinement. Level II facilities with a mission to confine Level III long-term prisoners may provide pre-trial confinement.

(a) Characteristics of a Level III facility include:

1. Double-fenced perimeter with electronic detection system.

2. Internal security sensor system.

3. High security walls.

4. Detention hardware.

5. Roving patrol or towers.

6. Single occupant cells.

7. Fifteen percent segregation cells.

8. Close staff supervision and movement control (higher staff-prisoner ratio than a Level II facility).

9. A wide variety of work and appropriate offense-specific programs based on the needs of the prisoners.

(b) At a minimum, Level III facilities shall include:

1. Crisis intervention counseling.

2. Drug and alcohol treatment.

3. Victim-impact awareness.

4. Stress and anger management.

5. Vocational training.

6. Functional skills testing.

7. Remedial education.

8. High school-level education classes or a GED program.

(c) Level III facilities shall provide all the programs and services available in Level II facilities based on assessed prisoner needs.

b. All facility physical security feature characteristics described in paragraphs 4a(1)-(3) of this enclosure are required for facilities with final designs approved after the effective date of this instruction. While the characteristics discussed contain best practices, all existing facilities, to include facilities with final designs approved prior to the effective date of this instruction, are exempt from these requirements.

c. Male and female prisoners may be confined in the same MCF. The sleeping and personal hygiene areas for male and female prisoners shall be separate.

5. CUSTODY LEVEL CLASSIFICATION FOR LEVEL I AND LEVEL II PRISONERS

a. During the reception process, a prisoner (pre- or post-trial) will receive an initial custody classification. Correctional officials shall use DD Form 2710, "Prisoner Background Summary," and DD Form 2711, "Initial Custody Classification," or computer-generated equivalent, to document the classification process.

b. A prisoner's custody reclassification shall be conducted by the classification board IAW Service regulations, this instruction, and Reference (b). MCF personnel shall use DD Form 2711-1, "Custody Reclassification," and Appendix 1 of this enclosure to document reclassification actions.

c. In making the appropriate custody classification level assignment, using an objective classification system, all facts and circumstances shall be considered including, but not limited to, the prisoner's: offense(s), history of violence and prior criminal history, detainers and warrants, sentencing status, escape history, institutional disciplinary history, substance abuse, stability factors (e.g., age, employment, residence, family ties), mental health evaluation, and quality of participation in treatment and educational programs.

6. CUSTODY LEVEL CLASSIFICATION FOR LEVEL III PRISONERS. In making the appropriate custody classification level assignment, in addition to the procedures detailed in section 5, Level III MCFs shall develop and use an objective classification system based on the assessed risk applicable to the prisoner.

a. Assessed risk considered will be identified as internal risk and external risk. Significant changes in this system shall be coordinated with the DoD Corrections Council at least 90 days prior to implementation.

b. Level II facilities with a mission to confine a small population of Level III long-term prisoners may use the Level II classification system used by a majority of that facility.

c. Initial risk assessment will include, but is not limited to:

(1) Consideration of length of sentence.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit C:

SECNAV Instruction 1640.9C

Department of the Navy Corrections Manual

(excerpts)

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SECNAVINST 1640.9C
PERS-68
03 Jan 2006

SECNAV INSTRUCTION 1640.9C

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY CORRECTIONS MANUAL

Ref: (a) Uniform Code of Military Justice (UCMJ)
(b) U.S. Navy Regulations, 1990
(c) NAVSO P-6064, Manual for Courts-Martial (MCM), United States (2005 edition)
(d) 10 U.S.C., Chapter 48
(e) SECNAVINST 5815.3J
(f) Judge Advocate General Manual (JAGMAN)
(g) NSEC Hull Type Drawing 804 5959213 (NOTAL)
(h) OPNAVINST 1640.8
(i) MCO 1640.3F (NOTAL)
(j) NAVFAC P-80, Planning Criteria for Navy and Marine Corps Shore Installations of 1 Oct 82 (NOTAL)
(k) Military Handbook 1037/4, Brigs and Detention Facilities of 15 Jul 89 (NOTAL)
(l) NAVMED P-117, Manual of the Medical Department, U.S. Navy (NOTAL)
(m) NAVSO P-1000, Financial Management Policy Manual
(n) SECNAVINST 5212.5D
(o) NAVPERS 15560D, Navy Military Personnel Manual (MILPERSMAN)
(p) SECNAVINST 5800.11A
(q) Defense Joint Military Pay System Procedures Training Guide (DJMS PTG) (NOTAL)
(r) Folio for Navy Standard Integrated Personnel System (NSIPS) (NOTAL)
(s) DODI 1325.7 of 17 Jul 01
(t) DOD 1325.7-M of 27 Jul 04
(u) OPNAVINST 6110.1H

Encl: (1) Department of the Navy Corrections Manual

1. Purpose. To issue standardized policies and procedures for the operation of Navy and Marine Corps confinement facilities. This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 1640.9B and SECNAVINST 1640.7D.

3. Discussion. Provisions of enclosure (1) apply to Navy and Marine Corps confinement facilities (ashore and afloat) and detention facilities. References (a) through (u) are applicable. Supplemental instructions may be issued as necessary for operation of each confinement and detention facility.

4. Action. Each addressee is responsible for administration of Department of the Navy (DON) corrections program per this manual. Recommended changes should be forwarded via the chain of command to Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)).

5. Forms and Reports

a. Requisition and availability of forms is provided in appendix A.

b. Reporting requirement (BUPERS 1640-1) contained in article 8110 of this manual is required, unless Correctional Management Information System (CORMIS) is used.

c. All other reports are exempt from reports control by SECNAVINST 5214.2B.

William A. Navas, Jr.
Assistant Secretary of the Navy
(Manpower & Reserve Affairs)

Distribution:
Electronic only via Navy Directives Website
http://neds.daps.dla.mil

DEPARTMENT OF THE NAVY

CORRECTIONS MANUAL

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7407. TRANSFER OF LONG-TERM PRISONERS

1. Transfer to a Military Level III Confinement Facility

a. Consolidation of Corrections Within DOD. Secretary of the Army has been designated as Executive Agent for incarceration of DOD military Level III prisoners. In most cases, U.S. Disciplinary Barracks (USDB), Fort Leavenworth, KS, will be the designated place of confinement for those Level III male prisoners who will remain under military control; NAVCONBRIG Miramar is designated as DOD Level III place of confinement for female prisoners.

b. Criteria. Criteria concerning transfer of Level III prisoners will be issued by DOD Directives and policy issued by NAVPERSCOM (PERS-68) and CMC (PSL Corrections). Requests for transfer of a prisoner from a confinement facility to Level III confinement will be forwarded to NAVPERSCOM (PERS-68) and CMC (PSL Corrections), as appropriate, for coordination.

2. Transfer to the Federal Bureau of Prisons (FBOP). Transfer of prisoners to the FBOP will be on a case-by-case basis. (Note: National Security Prisoners shall be maintained in military confinement facilities unless, in a given case, SECNAV specifically approves a transfer to the FBOP). In the event special circumstances dictate a need for a special request, the following criteria apply:

a. Criteria. Secretary of the Army (DAMO-ODL), as Executive Agent for Level III corrections, will coordinate all transfers of military prisoners to the FBOP.

b. Procedures. Requests for transfer of a prisoner from a confinement facility to the FBOP will be forwarded to NAVPERSCOM (PERS-68) and CMC (PSL Corrections), as appropriate, for coordination.

c. Records. Transfer of records will be directed by NAVPERSCOM (PERS-68) or CMC (PSL Corrections).

d. Personal Property. Personal property will not accompany prisoners while they are being transferred to the FBOP. Personal property is limited to essential items only and will be mailed directly to the designated institution. These items shall fit into a cardboard box no larger than 15"x12"x10”. All other personal property is to be shipped home by the prisoner.

3. Psychiatric Transfer to FBOP

a. Criteria. Certain prisoners requiring long-term psychiatric treatment may be transferred to a Federal psychiatric treatment facility.

b. Preliminary Determination for Transfer. If the CO/OIC of a confinement facility determines a post-trial prisoner suffering from a mental disease or defect requires inpatient psychiatric care or treatment beyond what is available at the facility or from the local medical command, the CO/OIC will notify the prisoners in writing of their intention to seek transfer of the prisoners to the custody of the Attorney General for care and treatment in a suitable facility. NAVPERSCOM (PERS-68) or CMC (PSL Corrections) will be immediately notified.

c. Action on Preliminary Determination

(1) Once a prisoner is provided the notice prescribed in article 7407.3b of this manual, the CO/OIC of the confinement facility shall request the area General Court-Martial Convening Authority (GCMA) convene a hearing to determine whether the prisoner shall be transferred to the custody of the Attorney General for care and treatment in a suitable facility. Request will state the factual basis for the CO/OICs determination that the prisoner requires care or treatment beyond that available at the confinement facility or local medical command and will include all relevant documentation (e.g., sanity board results, psychiatric evaluations, medical treatment files, correctional treatment records, etc.) which provide the basis for the determination.

(2) GCMA may:

(a) Disapprove the request for good cause.

(b) Approve the request and convene a hearing to determine whether the prisoner suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available locally.

(3) Convening authority's letter will be forwarded to the local NLSO and Trial Service Office (TSO)/Base Judge Advocate/Circuit Military Judge and will state:

(a) Presiding official will be an officer designated, certified, and sworn as a military judge authorized to try general courts-martial.

(b) Prisoner will be represented by a judge advocate qualified, certified, and sworn to serve as trial or defense counsel at general courts-martial.

(c) Interests of the Government will be represented by a judge advocate designated by the TSO/Base Judge Advocate.

(4) Circuit military judge will detail a military judge for the hearing. Upon detail, the military judge will schedule a hearing date, affording reasonable notice to counsel and the prisoner.

(5) Local NLSO/Base Judge Advocate will detail counsel for the prisoner.

(6) Local TSO/Base Judge Advocate will detail:

(a) Government counsel (if required).

(b) Court reporter.

d. Hearing Procedures

(1) Prisoners will be afforded the following rights in connection with the hearing:

(a) Timely written notice of the hearing and of their procedural rights.

(b) A personal hearing before an impartial decision maker.

(c) Opportunity to present testimony and documentary evidence.

(d) Opportunity to confront and cross-examine Government witnesses.

(e) Written findings.

(2) At the hearing, the military judge will advise the prisoners or their personal representative or attorney, if the prisoners are unable to make a knowing and intelligent acknowledgment of their rights, that:

(a) Purpose of the proceeding is to determine whether the prisoners suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available at the confinement facility.

(b) If the Government establishes by the preponderance of the evidence that the prisoners suffers from such a mental disease or defect, the prisoners may be transferred to the custody of the Attorney General for care and treatment in a suitable facility.

(c) Prisoners have the procedural rights enumerated in paragraph 3d(1)(a) through (e) above.

(3) Both the Government and the prisoners will then be afforded the opportunity to present evidence regarding the present mental condition of the prisoners and the necessity, or lack thereof, for transfer to the custody of the Attorney General for care and treatment. This is an administrative proceeding to which the Military Rules of Evidence do not (other than Military Rules of Evidence 301-303 and 501-507) apply. Evidence will be admissible subject to the guidance and limitations applicable to the conduct of formal investigations per JAGINST 5830.1.

(4) Hearing officers, within their discretion, may direct further examination of the prisoners by a different psychiatrist or clinical psychologist.

(5) Hearing officer will determine whether, by a preponderance of the evidence, the prisoner suffers from a

mental disease or defect for which inpatient care and treatment is required beyond that available at the confinement facility. Hearing officer will make specific written findings, to include a brief statement of the factual basis relied upon for each finding, and will make a recommendation as to whether the prisoner shall be transferred to the custody of the Attorney General for suitable care and treatment.

(6) A verbatim transcript of the hearing will be prepared. All exhibits offered in evidence will be attached to the hearing record in the manner normally employed in trial by court-martial.

e. Action upon the Record. GCMA will review the hearing record and approve or disapprove the findings and recommendations of the military judge. If transfer is disapproved, the hearing record and action will be transmitted to the confinement facility CO/OIC for retention in the prisoner's brig file. If transfer is approved, the hearing record will be forwarded to the Attorney General as coordinated by NAVPERSCOM (PERS-68) or CMC (PSL Corrections).

f. Transport of the prisoner to the FBOP will be coordinated between the FBOP and NAVPERSCOM (PERS-68) or CMC (PSL Corrections), as appropriate.

7408. TRANSFER OF PRISONER RECORDS, FUNDS AND VALUABLES, AND PERSONAL PROPERTY

1. Records

a. Documents required for transfer are contained in article 7402.2d of this manual. In addition, the most recent progress report and a copy of the transfer order will be forwarded to the respective service clemency and parole board. Transferring confinement facility shall make a copy of the prisoner file to assist in inquiries received after transfer or in case the prisoner file is lost or destroyed in transit. Original prisoner file, to include treatment file, and health and dental records, shall accompany the escorts for delivery to the receiving confinement facility.

b. Victim Witness Assistance Program (VWAP) record, as required per reference (p), and MCO P5800.16A, shall be combined

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit D:

Army Regulation 670-1

Wear and Appearance of Army Uniforms and Insignia

(excerpts)

Army Regulation 670–1

Uniform and Insignia

Wear and Appearance of Army Uniforms and Insignia

Headquarters
Department of the Army
Washington, DC
10 April 2015

UNCLASSIFIED

Headquarters
Department of the Army
Washington, DC
10 April 2015

***Army Regulation 670–1**

Effective 10 April 2015

Uniform and Insignia

Wear and Appearance of Army Uniforms and Insignia

By Order of the Secretary of the Army:

RAYMOND T. ODIERNO
General, United States Army
Chief of Staff

Official:

GERALD B. O'KEEFE
Administrative Assistant to the
Secretary of the Army

History. This publication is a rapid action revision. The portions affected by this revision are listed in the summary of change.

Summary. This regulation prescribes Department of the Army policy for proper wear and appearance of Army uniforms and insignia, as worn by officers and enlisted personnel of the Active Army and the U.S. Army Reserve, as well as by former Soldiers.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. In addition, it applies to the Reserve Officers' Training Corps and the Corps of Cadets, United States Military Academy, only when their respective uniform regulations do not include sufficient guidance or instruction. It does not apply to the Chief of Staff of the Army, or former Chiefs of Staff of the Army, each of whom may prescribe his or her own uniform. Portions of this regulation are punitive. Violation of the specific prohibitions and requirements of specific portions by Soldiers may result in adverse administrative and/or charges under the Uniform Code of Military Justice.

Proponent and exception authority. The proponent of this regulation is the Deputy Chief of Staff, G–1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Deputy Chief of Staff, G–1 (DAPE–ZA) (Uniform Policy), 300 Army Pentagon, Washington, DC 22310-0300.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Deputy Chief of Staff, G–1 (DAPE–ZA) (Uniform Policy), 300 Army Pentagon, Washington, DC 22310-0300.

Distribution. This publication is available in electronic media only and is intended for command levels A, B, C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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*This regulation supersedes AR 670–1, dated 15 September 2014.

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Glossary

Chapter 1
Introduction

1–1. Purpose
The Army is a profession. A Soldier's appearance measures part of his or her professionalism. Proper wear of the Army uniform is a matter of personal pride for all Soldiers. It is indicative of esprit de corps and morale within a unit. Soldiers have an individual responsibility for ensuring their appearance reflects the highest level of professionalism. Leaders, at all levels, have a responsibility for implementing and applying the standards contained in this regulation to ensure the best interests of the Army, including our shared traditions and customs. This regulation prescribes the authorization for wear, composition, and classification of uniforms, and the occasions for wearing all personal (clothing bag issue), optional, and commonly worn organizational clothing and individual equipment uniforms. It prescribes the uniforms, awards, insignia, and accouterments authorized for wear. It also provides general information on the authorized material and design of uniforms and the uniform quality control system.

1–2. References
See appendix A.

1–3. Explanation of abbreviations and terms
See the glossary. The descriptive definitions for the following terms are in the glossary and provide aid in the understanding of this regulation: conservative, eccentric, exaggerated, extreme, fad(dish), neat, and unsightly.

1–4. Responsibilities
See chapter 2 for responsibilities.

1–5. Statutory Authority
a. Portions of this regulation are punitive. Violation of the specific prohibitions and requirements of specific portions by Soldiers may result in adverse administrative action and/or charges under the provisions of the UCMJ.

b. Only uniforms, accessories, and insignia prescribed in this regulation, or in the common table of allowance (CTA), or as approved by Headquarters, Department of the Army (HQDA), will be worn by personnel in the U.S. Army. Unless specified in this regulation, the commander issuing the clothing and individual equipment will establish wear policies for organizational clothing and individual equipment. No item governed by this regulation will be altered in any way that changes the basic design, or the intended concept of fit, as described in Technical Manual (TM) 10–227 and Army Regulation (AR) 700–84, including plating, smoothing, or removing detailed features of metal items, or otherwise altering the color or appearance.

c. AR 70–1 prescribes Department of the Army (DA) policies, responsibilities, and administrative procedures by which all clothing and individual equipment used by Army personnel are initiated, designed, developed, tested, approved for acquisition, fielded, and modified.

d. AR 385–10 prescribes DA policies, responsibilities, and administrative procedures and funding for protective clothing and equipment.

e. In accordance with Section 771, Chapter 45, Title 10, United States Code, no person except a member of the U.S. Army may wear the uniform, a distinctive part of the uniform, or any part of which is similar to a distinctive part of the U.S. Army uniform, unless otherwise authorized by law. Soldiers are not authorized to wear distinctive uniforms or uniform items of the U.S. Army or of other U.S. Services with or on civilian clothes, except as authorized by this regulation.

1–6. Recommending changes to Army uniforms
See DA Pam 670–1 for recommending changes to Army uniforms.

1–7. Classification of service and combat/utility/field uniforms
See DA Pam 670–1 for classification of uniforms.

Chapter 2
Responsibilities

2–1. Deputy Chief of Staff, G–1
The DCS, G–1 will—

a. Under the authority of the Assistant Secretary of the Army (Manpower and Reserve Affairs), develop policies regarding wear and appearance of Army uniforms and insignia.

b. Function as a member of the Army Uniform Board, which is established in accordance with AR 70–1.

where forms are available. Commercially purchased items that are authorized for wear in lieu of military-issued items must conform to the basic specification of the military-issued item, unless otherwise specified in this regulation.

(1) All Army uniforms, uniform items, and heraldic items procured by the Defense Logistics Agency Troop Support and sold in the MCS are produced in accordance with appropriate military specifications and are authorized for wear. However, in those MCS with multi-Service support agreements, some items are sold that are authorized for wear by members of other Services, but not by Army personnel. Soldiers are responsible for verifying with their chain of command which items are authorized for wear by Army personnel. Uniform items with defects in workmanship or material should be returned to the MCS for replacement or repair.

(2) Optional uniforms and other uniform clothing items sold in the MCS, in exchanges, or by commercial sources will contain a label, stamp, or certificate issued by the textile technology team at the Natick Soldier Center. Components of some optional uniforms (such as men's commercial white shirts, studs, and cuff links) are not included in the UQCP.

(3) All heraldic items purchased from an exchange, MCS, or commercial source will contain a hallmark or label certifying that the item was produced in accordance with the appropriate military specification by a manufacturer certified by TIOH, Department of the Army.

(4) All individuals purchasing uniform or insignia items from commercial sources must ensure that the items conform to the requirements in paragraph 2–7*a*(1) through (3).

b. All enlisted personnel will—

(1) Maintain their clothing bag items and any supplemental clothing items they are issued, as prescribed in AR 700–84 or CTA 50–900.

(2) Ensure that their uniforms and insignia conform to this regulation and DA Pam 670–1.

c. All officers will—

(1) Procure and maintain the uniforms and accessories appropriate to their assigned duties. See DA Pam 670–1.

(2) Ensure that their uniforms and insignia conform to this regulation and in DA Pam 670–1.

Chapter 3
Appearance and Grooming Policies

3–1. Personal appearance policies

a. Soldiers will present a professional image at all times and will continue to set the example in military presence, both on and off duty. Pride in appearance includes Soldiers' physical fitness and adherence to acceptable weight standards in accordance with AR 600–9.

b. A vital ingredient of the Army's strength and military effectiveness is the pride and self discipline that American Soldiers bring to their Service through a conservative military image. It is the responsibility of commanders to ensure that military personnel under their command present a neat and soldierly appearance. Therefore, in the absence of specific procedures or guidelines, commanders must determine a Soldier's compliance with standards in this regulation.

c. The Army uniform regulations for standards of personal appearance and grooming are as specific as is practicable in order to establish the parameters with which Soldiers must comply.

d. Portions of this chapter are punitive. Violation of the specific prohibitions and requirements set forth in this chapter may result in adverse administrative action and/or charges under the provision of the UCMJ.

3–2. Hair and fingernail standards and grooming policies

Note: This paragraph is punitive with regard to Soldiers. Violation by Soldiers may result in adverse administrative action and/or charges under the provisions of the UCMJ.

a. Hair.

(1) *General.* The requirement for hair grooming standards is necessary to maintain uniformity within a military population. Many hairstyles are acceptable, as long as they are neat and conservative. It is the responsibility of leaders at all levels to exercise good judgment when enforcing Army policy. All Soldiers will comply with hair, fingernail, and grooming policies while in any military uniform, or in civilian clothes on duty.

(a) Leaders will judge the appropriateness of a particular hairstyle by the guidance in this chapter and by the ability to wear all types of headgear (such as beret, patrol cap, or service cap/hat) and any protective equipment (such as protective mask or combat helmet) properly. Hairstyles (including bulk and length of hair) that do not allow Soldiers to wear any headgear properly, or that interfere with the proper wear of any protective equipment, are prohibited. Headgear will fit snugly and comfortably, without bulging or distortion from the intended shape of the headgear and without excessive gaps. Hairstyles that pose a health or safety hazard are not authorized.

(b) Extreme, eccentric, or faddish haircuts or hairstyles are not authorized. If Soldiers use dyes, tints, or bleaches, they must choose a natural hair color. Colors that detract from a professional military appearance are prohibited. Therefore, Soldiers must avoid using colors that result in an extreme appearance. Applied hair colors that are

prohibited include, but are not limited to, purple, blue, pink, green, orange, bright (fire-engine) red, and fluorescent or neon colors. It is the responsibility of leaders to use good judgment in determining if applied colors are acceptable, based upon the overall effect on a Soldier's appearance.

(c) Soldiers who have a texture of hair that does not part naturally may cut a part into the hair or style the hair with one part. The part will be one straight line, not slanted or curved, and will fall in the area where the Soldier would normally part the hair. Soldiers will not shape or cut designs into their hair or scalp.

(2) *Male haircuts.* The hair on top of the head must be neatly groomed. The length and bulk of the hair may not be excessive and must present a neat and conservative appearance. The hair must present a tapered appearance. A tapered appearance is one where the outline of the Soldier's hair conforms to the shape of the head (see scalp line in figure 3–1), curving inward to the natural termination point at the base of the neck. When the hair is combed, it will not fall over the ears or eyebrows, or touch the collar, except for the closely cut hair at the back of the neck. The block-cut fullness in the back is permitted to a moderate degree, as long as the tapered look is maintained. Males are not authorized to wear braids, cornrows, twists, dreadlocks, or locks while in uniform or in civilian clothes on duty. Haircuts with a single, untapered patch of hair on the top of the head (not consistent with natural hair loss) are considered eccentric and are not authorized. Examples include, but are not limited to, when the head is shaved around a strip of hair down the center of the head (mohawk), around a u-shaped hair area (horseshoe), or around a patch of hair on the front top of the head (tear drop). Hair that is completely shaved or trimmed closely to the scalp is authorized. (See figs 3–1 and 3–2.)

(a) Sideburns. Sideburns are hair grown in front of the ear and below the point where the top portion of the ear attaches to the head. Sideburns will not extend below the bottom of the opening of the ear (see line A of fig 3–1). Sideburns will not be styled to taper, flair, or come to a point. The length of the individual hairs of the sideburn will not exceed 1/8 inch when fully extended.

(b) Facial hair. Males will keep their face clean-shaven when in uniform, or in civilian clothes on duty. Mustaches are permitted. If worn, males will keep mustaches neatly trimmed, tapered, and tidy. Mustaches will not present a chopped off or bushy appearance, and no portion of the mustache will cover the upper lip line, extend sideways beyond a vertical line drawn upward from the corners of the mouth (see lines C and D of fig 3–1), or extend above a parallel line at the lowest portion of the nose (see line B of fig 3–1). Handlebar mustaches, goatees, and beards are not authorized. If appropriate medical authority allows beard growth, the maximum length authorized for medical treatment must be specific. For example, "The length of the beard cannot exceed 1/4 inch" (see Training Bulletin Medical (TB Med) 287). Soldiers will keep the growth trimmed to the level specified by the appropriate medical authority, but are not authorized to shape the hair growth (examples include, but are not limited to goatees, "Fu Manchu," or handlebar mustaches).

(c) Wigs and hairpieces. Males are prohibited from wearing wigs or hairpieces while in uniform, or in civilian clothes on duty, except to cover natural baldness or physical disfiguration caused by accident or medical procedure. When worn, wigs or hairpieces will conform to the standard haircut criteria, as stated within this regulation.

(3) *Female haircuts and hairstyles.* The illustrations provided in figure 3–3 are intended only to clarify language regarding authorized hair lengths and bulks. The requirements for hair regulations are to maintain uniformity within a military population for female Soldiers while in uniform, or in civilian clothes on duty, unless otherwise specified. Female hairstyles may not be eccentric or faddish and will present a conservative, professional appearance. For the purpose of these regulations, female hairstyles are organized into three basic categories: short length, medium length, and long length hair.

(a) Short length. Short hair is defined as hair length that extends no more than 1 inch from the scalp (excluding bangs). Hair may be no shorter than 1/4 inch from the scalp (unless due to medical condition or injury), but may be evenly tapered to the scalp within 2 inches of the hair line edges. Bangs, if worn, may not fall below the eyebrows, may not interfere with the wear of all headgear, must lie neatly against the head, and not be visible underneath the front of the headgear. The width of the bangs may extend to the hairline at the temple.

(b) Medium length. Medium hair is defined as hair length that does not extend beyond the lower edge of the collar (in all uniforms), and extends more than 1 inch from the scalp. Medium hair may fall naturally in uniform, and is not required to be secured. When worn loose, graduated hair styles are acceptable, but the length, as measured from the end of the total hair length to the base of the collar, may not exceed 1 inch difference in length, from the front to the back. Layered hairstyles are also authorized, so long as each hair's length, as measured from the scalp to the hair's end, is generally the same length giving a tapered appearance. The regulations for the wear of bangs detailed in paragraph 3–2*a*(a), apply. No portion of the bulk of the hair, as measured from the scalp, will exceed 2 inches.

(c) Long length. Long hair is defined as hair length that extends beyond the lower edge of the collar. Long hair will be neatly and inconspicuously fastened or pinned above the lower edge of the collar (except when worn in accordance with para 3–2*a*(j)), except that bangs may be worn. The regulations for the wear of bangs detailed in paragraph 3–2a(3)(a) apply. No portion of the bulk of the hair, as measured from the scalp as styled, will exceed 2 inches (except a bun, which is worn on the back of the head and may extend a maximum of 3 1/2 inches from the scalp and be no wider than the width of the head).

(d) Additional hairstyle guidelines. Faddish and exaggerated styles, to include shaved portions of the scalp other

than the neckline, designs cut in the hair, unsecured ponytails (except during physical training), and unbalanced or lopsided hairstyles are prohibited. Hair will be styled so as not to interfere with the proper wear of all uniform headgear. All headgear will fit snugly and comfortably around the largest part of the head without bulging or distortion from the intended shape of the headgear and without excessive gaps. When headgear is worn, hair should not protrude at distinct angles from under the edges. Hairstyles that do not allow the headgear to be worn in this manner are prohibited. Examples of hairstyles considered to be faddish or exaggerated and thus not authorized for wear while in uniform or in civilian clothes on duty include, but are not limited to hair sculpting (eccentric texture or directional flow of any hairstyle to include spiking); buns with loose hair extending at the end; hair styles with severe angles or designs; and loose unsecured hair (not to include bangs) when medium and long hair are worn up.

(e) Devices. Hair holding devices are authorized only for the purpose of securing the hair. Soldiers will not place hair holding devices in the hair for decorative purposes. All hair holding devices must be plain and of a color as close to the Soldier's hair as is possible or clear. Authorized devices include, but are not limited to, small plain scrunchies (elastic hair bands covered with material), barrettes, combs, pins, clips, rubber bands, and hair/head bands. Such devices should conform to the natural shape of the head. Devices that are conspicuous, excessive, or decorative are prohibited. Some examples of prohibited devices include, but are not limited to: large, lacy scrunchies; beads, bows, or claw or alligator clips; clips, pins, or barrettes with butterflies, flowers, sparkles, gems, or scalloped edges; and bows made from hairpieces. Foreign material (for example, beads and decorative items) will not be used in the hair. Soldiers may not wear hairnets unless they are required for health or safety reasons, or in the performance of duties (such as those in a dining facility). No other type of hair covering is authorized in lieu of the hairnet. The commander will provide the hairnet at no cost to the Soldier.

(f) Braids, cornrows, and twists. Medium and long hair may be styled with braids, cornrows, or twists (see glossary for definitions). Each braid, cornrow, or twist will be of uniform dimension, have a diameter no greater than 1/2 inch, and present a neat, professional, and well-groomed appearance. Each must have the same approximate size of spacing between the braids, cornrows, or twists. Each hairstyle may be worn against the scalp or loose (free-hanging). When worn loose, such hairstyles must be worn per medium hair length guidelines or secured to the head in the same manner as described for medium or long length hair styles. Ends must be secured inconspicuously. When multiple loose braids or twists are worn, they must encompass the whole head. When braids, twists, or cornrows are not worn loosely and instead worn close to the scalp, they may stop at one consistent location of the head and must follow the natural direction of the hair when worn back, which is either in general straight lines following the shape of the head or flowing with the natural direction of the hair when worn back with one primary part in the hair (see para 3–2a(1)(c)). Hairstyles may not be styled with designs, sharply curved lines, or zigzag lines. Only one distinctive style (braided, rolled, or twisted) may be worn at one time. Braids, cornrows, or twists that distinctly protrude (up or out) from the head are not authorized.

(g) Dreadlocks or locks. Any style of dreadlock or lock (against the scalp or free-hanging) is not authorized (see glossary for definition).

(h) Hair extensions. Hair extensions are authorized. Extensions must have the same general appearance as the individual's natural hair and otherwise conform to this regulation.

(i) Wigs. Wigs, if worn in uniform or in civilian clothes on duty, must look natural and conform to this regulation. Wigs are not authorized to cover up unauthorized hairstyles.

(j) Physical training. Long length hair, as defined in paragraph 3–2a(3)(c), may be worn in a pony tail during physical training. A single pony tail centered on the back of the head is authorized in physical fitness uniforms only when within the scope of physical training, except when considered a safety hazard. The pony tail is not required to be worn above the collar. When hair securing devices are worn, they will comply with the guidelines set in paragraph 3–2a(3)(e). Hairstyles otherwise authorized in this chapter (such as braids and twists) may also be worn in a pony tail during physical training.

(k) Physical training in utility uniforms. Pony tails are authorized using guidelines set forth in paragraph 3–2*a*(3)(j), while conducting physical training in utility uniforms. However, if the helmet is worn during physical training, hair must be secured using guidelines in paragraph 3–2a(3)(a) through (k).

b. Cosmetics.

(1) Standards regarding cosmetics are necessary to maintain uniformity and to avoid an extreme or unprofessional appearance. Males are prohibited from wearing cosmetics, except when medically prescribed. Females are authorized to wear cosmetics with all uniforms, provided they are applied modestly and conservatively, and that they complement both the Soldier's complexion and the uniform. Leaders at all levels must exercise good judgment when interpreting and enforcing this policy.

(2) Eccentric, exaggerated, or faddish cosmetic styles and colors, to include makeup designed to cover tattoos, are inappropriate with the uniform and are prohibited. Permanent makeup, such as eyebrow or eyeliner, is authorized as long as the makeup conforms to the standards outlined above. Eyelash extensions are not authorized unless medically prescribed.

(3) Females will not wear shades of lipstick that distinctly contrast with the natural color of their lips, that detract from the uniform, or that are faddish, eccentric, or exaggerated.

(4) Females will comply with the cosmetics policy while in any military uniform or while in civilian clothes on duty.

c. Fingernails. All personnel will keep fingernails clean and neatly trimmed. Males will keep nails trimmed so as not to extend beyond the fingertip unless medically required and are not authorized to wear nail polish. Females will not exceed a nail length of ¼ inch as measured from the tip of the finger. Females will trim nails shorter if the commander determines that the longer length detracts from a professional appearance, presents a safety concern, or interferes with the performance of duties. Females may only wear clear polish when in uniform or while in civilian clothes on duty. Females may wear clear acrylic nails, provided they have a natural appearance and conform to Army standards.

d. Hygiene and body grooming. Soldiers will maintain good personal hygiene and grooming on a daily basis and wear the uniform so as not to detract from their overall military appearance.

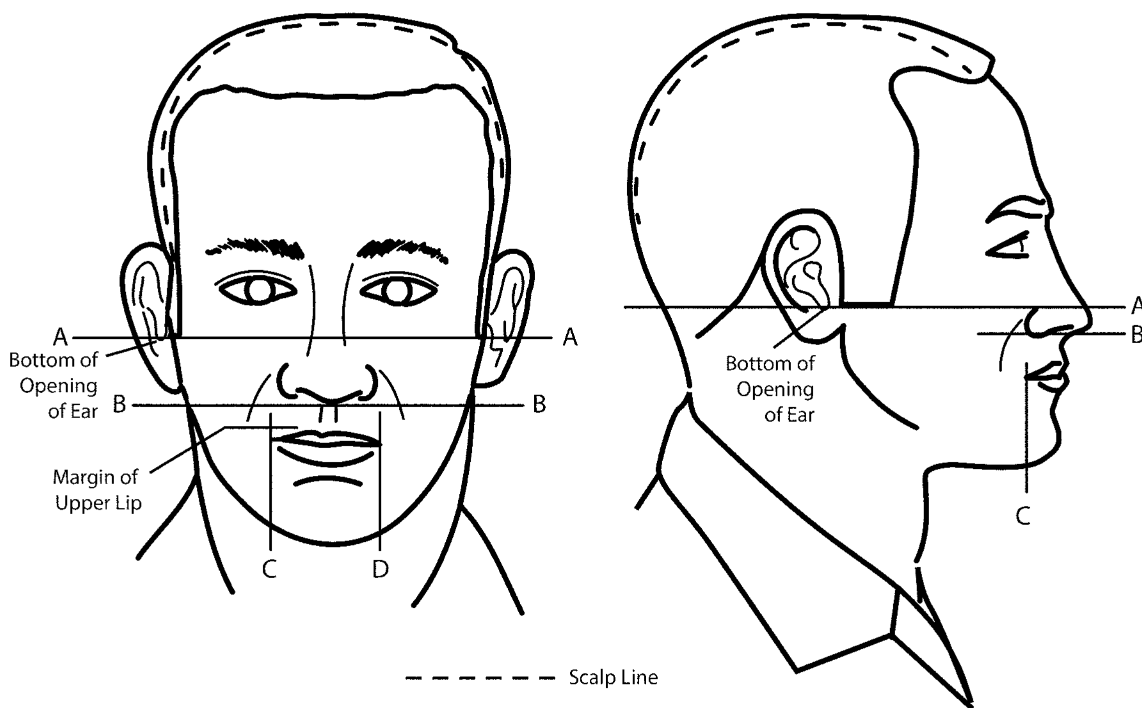

Figure 3–1. Male Grooming Standards

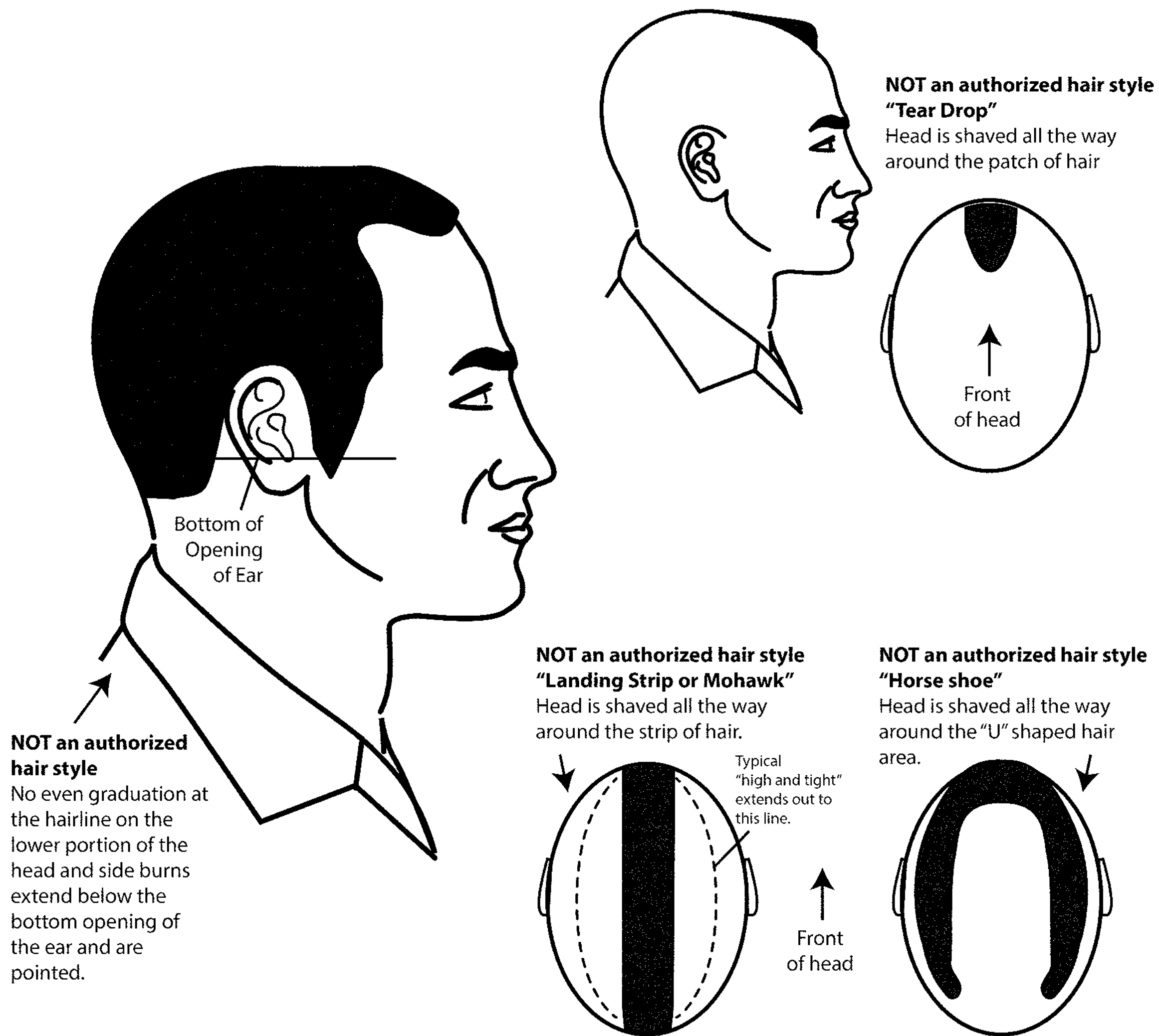

Figure 3–2. Prohibited Male Haircuts

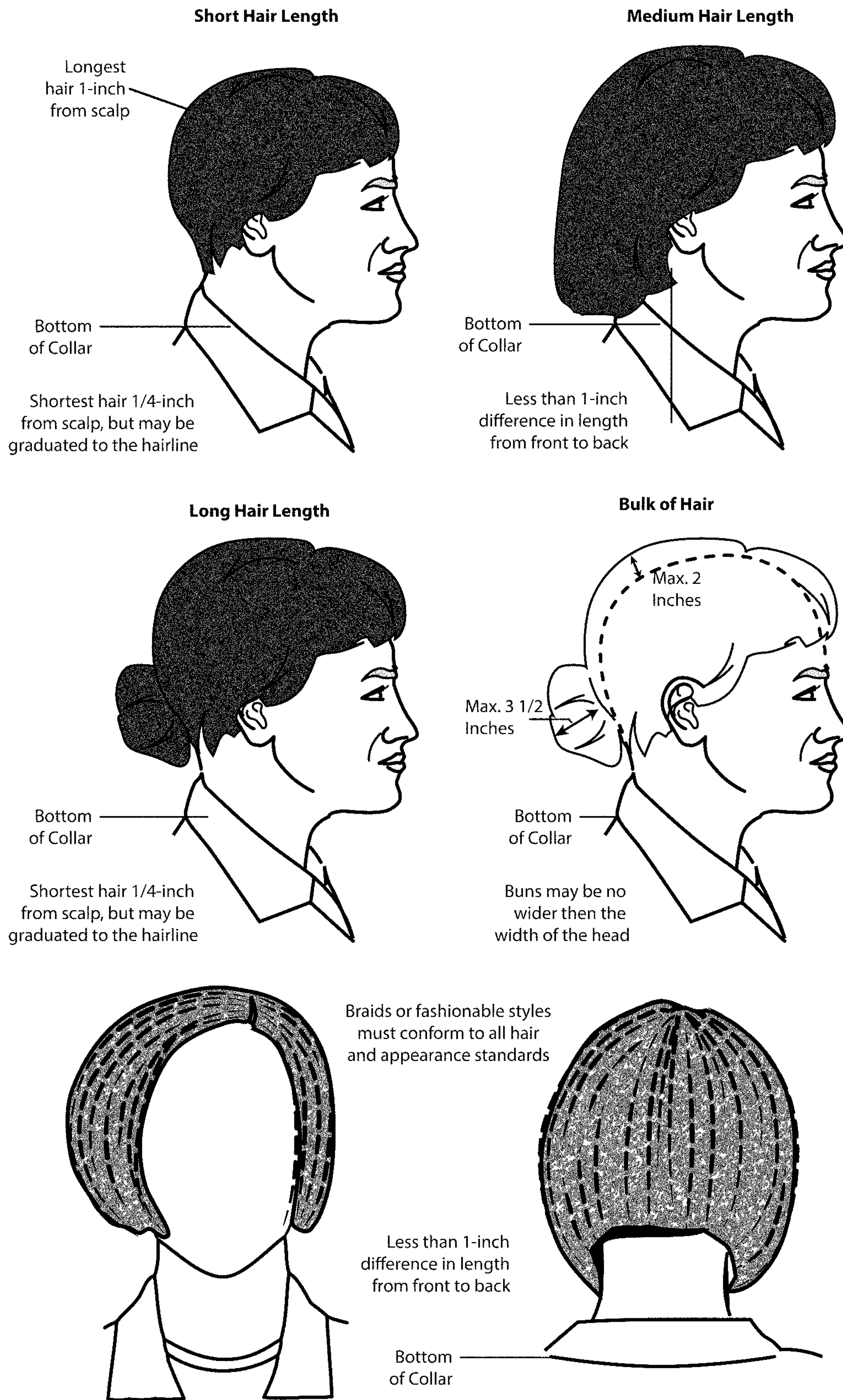

Figure 3–3. Female Hairstyle Standards

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING, Plaintiff, v. ASHTON CARTER, *et al.*, Defendants.	)))))))))	Civil Action No. 1:14-cv-1609 (CKK)

<u>Exhibit E</u>:

USDB Regulation 600-1

Manual for the Guidance of Inmates (MGI)

(excerpts)

United States Disciplinary Barracks **USDB Regulation 600-1**
Fort Leavenworth, KS **14 November 2013**

MANUAL FOR THE GUIDANCE OF INMATES

Purpose
This regulation outlines opportunities, requirements and procedures within the United States Disciplinary Barracks (USDB) and its satellite Trusty Unit (TU) to facilitate adjustment to confinement; encourage active participation in correctional treatment programs and compliance with all administrative standards. Noncompliance may result in administrative disciplinary action under the Uniform Code of Military Justice (UCMJ), administrative actions before a Discipline and Adjustment Board (D&A Board) or a combination thereof.

Policy
This regulation outlines policies and procedures governing the confinement and compliance with administrative standards set within the USDB, and is promulgated under the authority of the Commandant. Suggestions for changes to this regulation shall be sent to the Directorate of Operations (DOPS). Any exceptions to the policies in this regulation will be sent through the DOPS to the Deputy Commandant for decision.

Procedural Guidelines
This regulation establishes the procedural guidelines to conform to the requirements set forth in Department of Defense Directive (DoDD) 1325.04, Confinement of Military Prisoners and Administration of Military Correctional Programs and Facilities; Department of Defense Instruction (DoDI) 1325.07, Administration of Military Correctional Facilities and Clemency and Parole Authority; Army Regulation (AR) 190-47, The Army Corrections System; and the American Correctional Association (ACA) Standards for Adult Correctional Institutions 4th Edition with 2012 Supplement.

Applicability
This regulation applies to all persons confined at the USDB. For the purposes of this regulation, the term “prisoner” and “inmate” are used interchangeably.

Proponent
The proponent for this regulation is the DOPS.

References
See Appendix A.

Glossary
See Appendix B.

* This regulation supersedes USDB Regulation 600-1 dated 1 July 2008.

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Chapter 2
Information and Guidance for Inmates

2-1. Reception

Upon arrival, inmates are housed in the Special Housing Unit (SHU) Reception Housing Unit for in-processing and orientation. All inmates receive a mental health screening and medical and dental examination and have their photograph and fingerprints taken. Inmates are informed of the opportunities available for self-improvement and are interviewed by various staff.

2-2. Commandant's Letter to Families

Upon arrival, the Commandant sends a letter to the next of kin, advising of the inmate's safe arrival, correspondence procedures, procedures for depositing funds in the inmate's personal deposit fund, and visitation rules.

2-3. Deputy Commandant's Open Door Policy

The Deputy Commandant sees inmates who have a relevant issue or concern. It is the Deputy Commandant's intention to see everyone who needs to be seen and help everyone who needs help. Before an inmate requests an appointment to see the Deputy Commandant, the inmate must ensure:

a. The need to speak with the Deputy Commandant concerns an issue appropriate for resolution at the Deputy Commandant's level and the details in the request are sufficient to help the Deputy Commandant prepare for the meeting.

b. The Housing Unit NCO or applicable staff member has been seen first; and if the issue is not resolved, it must then be addressed with the applicable directorate to attempt to resolve the issue. If these steps have not been taken before a meeting with the Deputy Commandant is requested, the request is denied. Issues shall be resolved at the lowest level possible.

2-4. Inmate Request Form

a. Inmates communicate with staff by using an MCC Form 510, Inmate Request Slip. The MCC Form 510 is the only written format authorized for inmate communication with staff. It is submitted to ask questions, request appointments and submit information. Letters, documents and other written correspondence which inmates desire to provide to staff are attached to a properly completed MCC Form 510 for accountability and tracking purposes.

b. Before submitting the MCC Form 510, consult this regulation. If the issue is not answered within the MGI, or the content of this regulation is not understood, consult the Housing Unit NCO.

c. An MCC Form 510 is submitted to the Housing Unit NCO in the inmate's housing unit. The Housing Unit NCO researches and responds to the MCC Form 510 or forwards it to the proper authority. MCC Forms 510 are addressed to and answered at the lowest level capable of handling the matter.

d. The MCC Form 510 is submitted to the Housing Unit NCO in sufficient time to allow for staff action. Housing Unit NCOs log each MCC Form 510 and ensure the inmate concerned receives a response. Inmates sign the MCC Form 510 acknowledging the answer. Inmates may retain a copy for their records, as the original is filed in their Correctional Treatment File (CTF).

e. Only one MCC Form 510 is used per submission. If additional space is required for the narrative portion, the back of the MCC Form 510 or a continuation sheet is used. Continuation sheets should be plain, lined or unlined paper. Only one MCC Form 510 on a given subject is processed at a time. MCC Forms 510 on the same subject submitted to different addresses are returned with action taken on only one MCC Form 510.

f. Multiple submissions of MCC Forms 510 on the same subject may result in administrative disciplinary action. MCC Forms 510 containing profanity, vulgarity, demands, threats, obscenity, a collective protest or petition, or language which a reasonable person would find offensive or harassing, are not processed and may result in administrative disciplinary action. MCC Forms 510 shall clearly state the problem and shall not be used to register frivolous or repetitive complaints or inquiries. Check with the Housing Unit NCO if unsure where, or to whom to direct requests.

g. Non-Army inmates may direct MCC Forms 510 concerning service unique questions through their Housing Unit NCO to the appropriate MCC service liaison.

2-5. Inmate Advisory Council

a. The Inmate Advisory Council (IAC) is established to provide avenues of communication and redress between inmates and the Commandant and staff. The IAC provides a method through which group concerns may be raised to the staff. Issues should be raised through the Housing Unit IAC Representative in advance of the weekly meeting. Concerns need to be common to the inmate population as a whole, not individual inmate concerns; it is not a forum for individual inmate issues. Quarterly, the IAC representatives meet and discuss any concerns with the Deputy Commandant and representatives from the facility directorates.

b. The DOPS will request computer accounts for IAC inmates who require computer access to complete their duties. The ISS creates the account and sends to the DOPS the inmate's USDB Form 600-1-1, Inmate Network Assignment and Acceptable Use Policy (Appendix C). Once the inmate has signed the USDB Form 600-1-1, the DOPS will return the signed form to ISS. The inmate's computer account is enabled once the signed form is received.

(d) Detail #44, Dining Facility

(e) Detail #49, Interior Grounds

(f) Detail #86, Exterior Grounds

Note: Inmates, who wear boots which set off the metal detector during movement, are required to remove their boots when being frisk searched. The correctional staff must remove the boot insole and inspect the inside of the boot during their search. Inmates may wear boots or athletic shoes at all other times. Boots and shoes are not to be shined. All inmates are authorized to possess four pairs of shoes: one pair of issued boots and three pairs of athletic shoes (not to exceed $150 per pair in value). Shower shoes do not count as shoes and may ONLY be worn in the housing unit.

(9) Sunglasses are not to be worn inside any building or housing unit. Prescription tinted glasses may be worn inside the facility only if the inmate has a medical profile authorizing their wear issued by the USDB Health Clinic. Inmates who require prescription sunglasses/tinted glasses will submit an MCC Form 510 to DTP requesting to order the prescription sunglasses/tinted glasses through the Munson Army Health Clinic (MAHC) Optometry. Non-prescription sunglasses are ordered from the H&C ration sheet. Refer to Chapter 8, Authorized Property for more guidance.

(10) Name tags/plates authorized by details or official USDB activities will be worn as directed when at the detail/activity.

(11) The wearing of other than issued headgear is prohibited. Inmates are required to wear safety and sanitation headgear on some details; the headgear is stored at the detail (e.g. inmates assigned to the dining facility are not to take their paper hats to their housing units). Headgear required for religious observance may be worn during the services and in the Chapel area only.

4-4. Personal Hygiene and Appearance

Inmates are required to maintain good daily hygiene and a clean and well-groomed appearance at all times, and IAW AR 670-1, Wear and Appearance of Army Uniforms and Insignia. General population inmates are afforded the opportunity to shower daily. Prior to departing their housing unit, the inmate ensures their clothing is clean, neat and in good repair, to include the presence of all buttons; hair is combed; haircut, sideburns and mustache are within standards; and footgear is clean.

a. Inmate hair will be in IAW AR 670-1. The inmate's hair will be clean and neatly groomed at all times. Extreme or faddish style haircuts or hairstyles are not authorized.

(1) All inmates are required to receive haircuts every two weeks. Detail supervisors ensure the inmates receive haircuts on their appointed days. Inmates who miss their haircut

appointment will receive a haircut within three working days. Hair will be fully combed and clean when cut. Housing Unit NCOs ensure inmates without work details receive haircuts every two weeks.

(2) Inmate hair is to present a tapered appearance; and when combed down, it will not fall over the ears, eyebrows or touch the collar, except for the closely cut hair on the back of the neck. Fullness in back is permitted in a moderate degree as long as the tapered appearance is maintained. The inmate's hair cannot exceed two inches in height or length.

(3) Inmate hair will be neatly groomed and will not present a ragged or unkempt appearance. Hair must be fully combed prior to departure from the housing unit. Hair will not be plaited or braided.

(4) Sideburns will be neatly trimmed and will not extend below the lowest part of the exterior ear opening. The base will not be flared and will have a clean-shaven, horizontal line.

(5) Unusual, faddish or eccentric hairstyles are prohibited. Shags, Mohawks, cutting designs, trendy hairdos, and more than one hair part (e.g. a line cut in the hair) are some examples of prohibited hairstyles. Inmates are not allowed to color their hair.

b. Fingernails will be kept clean and neatly trimmed. Fingernails will not extend past the end of the fingertips.

c. All inmates are required to shave daily unless excused by a medical profile, or directed otherwise. All inmates are to shave prior to 0650 on duty days unless they are assigned to a nighttime detail. Inmates assigned to nighttime details are to shave prior to 1630 on duty days. All inmates are to shave prior to 0700 on weekends and holidays. The face will be clean shaven (except for mustaches), to include under the lower lip and the front of the neck, to below the "Adam's apple".

(1) Medical profiles for shaving are IAW AR 670-1. The memo verifying the profile or the actual profile will be carried on the inmate at all times. Detail supervisors ensure inmates with shaving profiles receive a weekly beard trim at the inmate Barber Shop. Housing Unit NCOs ensure inmates without work details receive weekly beard trims. Inmates are to present their profiles to the Noncommissioned Officer in Charge (NCOIC) of the Barber Shop each visit. Beards are to be trimmed ONLY by a barber (licensed or student). Inmates are not to partially shave or style facial hair unless directed to do so by their profile.

(2) Inmates with illegible profiles are to report to the Health Clinic on Sick Call for a new profile. Inmates desiring an examination for a shaving profile, renewal or extension are to sign up for regular Sick Call. Any and all profiles are carried on the inmate's person at all times.

d. If a mustache is worn, it will be kept neatly trimmed and tapered and WILL NOT present a "chopped-off" appearance. No portion of a mustache is to cover the upper lip line or extend beyond or below the corner points of the mouth where the upper and lower lips join. The

mustache is not to extend sideways beyond a vertical line drawn upward from the corner of the mouth. Handlebar mustaches, goatees and beards are not authorized.

4-5. Searches

All persons, places and property are subject to search or inspection at any time, by any staff member.

a. All property may be searched or inspected. Each inmate is responsible for all items within their assigned housing unit, work area or on their person. All suspicious items will be seized for evaluation as evidence. When a search or inspection is conducted, inmate(s) are not to observe, view, stand, or pass by the search area.

b. Frisk searches are conducted randomly during mass movements. Inmates are frisk searched prior to their departure from a work detail or appointment; attending visitation (visitation search room); exiting the facility; and entering the SHU.

c. Inmates are strip searched when returning from outside appointments; outside details; after visitation (visitation search room); and when reasonable belief exists an inmate could be carrying prohibited property.

d. When winter coats are required to be worn outside during cold weather, the inmates are normally not required to remove their winter coats outside. If a staff member does instruct an inmate to remove their winter coat, and the inmate refuses or becomes argumentative, the inmate may be subject to administrative disciplinary action.

4-6. Pass System

a. The directorate arranging an appointment must schedule a pass via Army Corrections Information System (ACIS). Inmates are to check the pass roster posted in their housing unit each evening before the day of the pass and the morning of the pass prior to Work Call. Inmates on the pass roster are responsible for obtaining the pass from the housing unit staff. If an inmate has one or more passes on any day, they receive a printout with a list of passes for the day. The inmate ensures the name and housing unit are correct.

b. Unless instructed otherwise, inmates normally report to their work detail, and then are signed out from their work detail to attend their pass. Passes are given to the inmate approximately ten minutes before the time indicated on the pass. The time listed for each pass is the time the inmate should arrive at the given appointment destination. Inmates have five minutes to reach their destination.

c. Upon completion of the appointment the inmate will return to the location where they were signed out to go on pass. Inmates have five minutes to reach their destination. ONLY THE REQUESTING DIRECTORATE MAY CANCEL THE PASS.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit F:

Manning's Military Correctional Complex (MCC) Form 510s

[exhibit filed under seal]

SUBJECT TO PROTECTIVE ORDER

Entire Exhibit is Privacy Act/HIPAA Protected Materials

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit G:

Inspector General Action Request

[exhibit filed under seal]

SUBJECT TO PROTECTIVE ORDERS

Entire Exhibit is Privacy Act/HIPAA Protected Materials

Entire Exhibit is **IG PROTECTED**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING, Plaintiff, v. ASHTON CARTER, *et al.*, Defendants.	)))))))))	Civil Action No. 1:14-cv-1609 (CKK)

Exhibit H:

Manning's Letter (via counsel) to Defendants Requesting Treatment for Gender Dysphoria

(August 11, 2014)

LEGAL DEPARTMENT
LESBIAN GAY
BISEXUAL
TRANSGENDER&
AIDS PROJECT

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
LESBIAN GAY BISEXUAL TRANSGENDER & AIDS PROJECT

PLEASE RESPOND TO NATIONAL OFFICE:
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2627
F/212.549.2650
WWW.ACLU.ORG/LGBT

SAN FRANCISCO OFFICE:
39 DRUMM STREET
SAN FRANCISCO, CA 94111

CHICAGO OFFICE:
180 NORTH MICHIGAN AVENUE
SUITE 2300
CHICAGO, IL 60601-7401

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

August 11, 2014

Colonel Erica C. Nelson
Commandant
United States Disciplinary Barracks
1301 North Warehouse Road
Fort Leavenworth, KS 66027-2364

Lieutenant Colonel Nathan A. Keller
Director Treatment Programs
Military Correctional Complex
1301 North Warehouse Road
Fort Leavenworth, KS 66027-2364

Brigadier General John M. Cho
Commanding General
Western Regional Medical Command
Building 2006 Liggett Avenue
Box 339500, Mail Stop 109
Joint Base Lewis-McChord, Washington 98433-9500

Lieutenant General Patricia D. Horoho
Army Surgeon General and Commander
Headquarters, Department of the Army
Office of the Surgeon General
5109 Leesburg Pike, Suite 672
Falls Church, VA 22041

John McHugh
Secretary of the Army
Office of the Secretary of the Army
101 Army Pentagon
Room 3E700
Washington, DC 20310-0101

Chuck Hagel
Secretary of Defense
Office of the Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Sirs and Madams:

We write on behalf of Chelsea E. Manning, Reg. No. 89289, an inmate at the United States Disciplinary Barracks at Fort Leavenworth (hereafter "USDB" or "Disciplinary Barracks"). It has come to our attention that the Disciplinary Barracks is withholding medically necessary care from Ms. Manning in violation of the Eighth Amendment to the United States Constitution.

Ms. Manning is a transgender woman whose urgent need for medical treatment for her diagnosed Gender Dysphoria (a condition formerly known as Gender Identity Disorder or GID) is well documented. The Army's continued indifference to Ms. Manning's serious medical need for treatment, despite the recommendations of the Army's own medical providers, is causing her to experience significant distress, anxiety and other physical and

psychological symptoms. Unless you initiate treatment in accordance with medical protocols **on or before September 4, 2014**, we will take formal legal action in federal court to remedy the ongoing violation of Ms. Manning's constitutional rights.

I. Factual Background

Despite receiving multiple diagnoses of Gender Dysphoria, including from the Army's own doctors, Ms. Manning has received no treatment for this condition.

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Beginning in May of 2010, Ms. Manning received successive diagnoses of Gender Dysphoria by military medical providers while confined at the Theater Field Confinement Facility, Camp Arifjan Kuwait; the Marine Corps Brig Quantico, Quantico, Virginia; and at the USDB at Fort Leavenworth, Kansas.

When she was transferred to the USDB on August 22, 2013, Ms. Manning submitted a memorandum requesting a mental health evaluation, assessment, and treatment plan for Gender Dysphoria. She then submitted a formal Military Correctional Complex Form 510 request for mental health evaluation and treatment plan for Gender Dysphoria to the Director of Treatment Programs on August 28, 2013.

In response to that request, Ms. Manning was evaluated by Dr. Ellen Galloway, an Army psychologist and Chief of the Mental Health Division at the USDB. Dr. Galloway diagnosed Ms. Manning with Gender Dysphoria sometime between September 12 and September 24, 2013. *See* Dr. Armistead-Jehle Memorandum, attached as Exhibit A. That diagnosis was reviewed by Dr. Patrick Armistead-Jehle, another Army psychologist, who concurred with Dr. Galloway's diagnosis of Gender Dysphoria in a memorandum dated October 1, 2013. *Id.*

Ms. Manning was later informed by Dr. Galloway that Colonel (COL) Ricky D. Malone, an Army psychiatrist at the Center for Forensic Behavioral Sciences, produced a proposed treatment plan for Ms. Manning in consultation with a civilian expert in Gender Dysphoria. According to Dr. Galloway, that treatment plan, which included recommendations for clothing and grooming standards consistent with Ms. Manning's female gender and hormone therapy, was subsequently approved by COL Siobahn J. Ledwith, the former Commandant at the Disciplinary Barracks.[1] At that point, Ms.

[1] By letter dated September 16, 2013, Dr. David L. Moulton, a former military psychiatrist who evaluated Ms. Manning (as a defense witness) during her Court Martial and diagnosed her with Gender Dysphoria, also informed Thomas J. Schmitt, Certified Correctional

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Manning had been cleared for treatment from both a medical and an institutional perspective. However, several months passed and she still had not received any treatment for her Gender Dysphoria. On January 5, 2014, Ms. Manning submitted another inmate request to the Director of Treatment Programs for an updated status with respect to the treatment plan.

On January 24, 2014, having received no response, Ms. Manning submitted a Request for Redress pursuant to Army Regulation 27-10 and Article 138, UCMJ, asking that a treatment plan consistent with the Standards of Care for Gender Dysphoria be implemented. *See* Request for Redress (Jan. 24, 2014), attached as Exhibit B.[2] After forty-two (42) calendar days without a response, Ms. Manning filed an Article 138 Complaint alleging wrongs against Captain (CPT) Byrd, her commanding officer, and COL Ledwith, former Commandant, USDB, for their failure to treat her Gender Dysphoria. *See* Complaint under Article 138, Uniform Code of Military Justice (UCMJ), 10 U.S.C. sec. 938 (Jan. 21, 2014) (hereafter "Article 138 Complaint"), attached as Exhibit C. On May 7, 2014, Ms. Manning learned that her complaint had been deemed deficient on March 19, 2014 per memorandum signed by Major General James McDonald. The reasons given were: (1) COL Ledwith is not Ms. Manning's commanding officer; and (2) CPT Byrd does not possess the authority to approve a treatment plan for gender dysphoria.[3]

On May 28, 2014, Ms. Manning requested an exception to AR 27-10's requirement that Article 138 complaints be filed against one's commanding officer so that she could file a complaint against someone other than CPT Byrd, who she was told had no authority to approve treatment. Having received no response to that request, on July 1, 2014, Ms. Manning filed a

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Executive, Deputy Commandant at USDB, of his diagnosis and the medical risks associated with denying treatment for Gender Dysphoria.

[2] At the time of her January 21, 2014 Request for Redress, Ms. Manning concurrently submitted an Inspector General Action Request to the Office of the Inspector General, U.S. Army Combined Arms Center and Fort Leavenworth. The Office of Inspector General at Fort Leavenworth acknowledged receipt of this request on January 30, 2014. On February 21, 2014, the Fort Leavenworth Office of the Inspector General informed Ms. Manning that the issue of her treatment is outside its jurisdiction and forwarded Manning's complaint to the Western Regional Medical Command (WRMC) Inspector General at Joint Base Lewis McChord. By letter dated April 4, 2012, Ms. Manning was informed by Aaron Gallegos, Detailed Inspector General, WRMC, that her request was under review by the Office of the Surgeon General and closed the matter. Over four months have passed and Ms. Manning has heard nothing from the Office of the Surgeon General.

[3] On May 20, 2014, Ms. Manning alerted the chain of command to its failure to provide her timely notice of Major General McDonald's memorandum.

new Article 138 Complaint against CPT Byrd for his failure to respond to her previous requests.

By letter dated July 3, 2014, Ms. Manning was informed by Marc D. Cipriano, Lieutenant Colonel, U.S. Army, that her request for an exception to AR 27-10 was denied. *See* Ltr from Marc D. Cipriano (July 3, 2014), attached as Exhibit D. In a separate Memorandum also dated July 3, 2014, CPT Byrd again indicated that he did not have the authority to approve Ms. Manning's treatment plan and therefore could not commit a "wrong" against her within the meaning of AR 27-10, para. 19-4e. *See* Memorandum from CPT Byrd (July 3, 2014), attached as Exhibit E.

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Ms. Manning has thus been told that her chain of command, the proper chain of command for an Article 138 complaint, does not have the authority to grant her request. And she has never received any response to her January 5, 2014 request to the Director of Treatment Programs for an updated status with respect to the treatment plan. She has done everything possible to pursue treatment over the course of nearly a year and her requests have been ignored.

While it has been reported in the news media that the Department of Defense has indicated that Ms. Manning would receive treatment for Gender Dysphoria,[4] to date no treatment has been provided.

II. The Army's Failure to Treat Ms. Manning Violates Clear Medical Protocols and Constitutional Standards

Despite having received at least four diagnoses of Gender Dysphoria, Ms. Manning has received no treatment. Specifically, Ms. Manning's requests for hormone therapy and clothing and grooming standards consistent with her female gender, have all been ignored.

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[4] The Associated Press (AP) reported on May 14, 2014, that the Pentagon was considering transferring Ms. Manning to the Bureau of Prisons to receive treatment for her diagnosed Gender Dysphoria. Associated Press, *Chelsea Manning may be transferred to civilian prison for gender treatment*, The Guardian, May 14, 2014, http://www.theguardian.com/world/2014/may/14/chelsea-manning-civilian-prison-gender-treatment. Ms. Manning did not request such transfer and no action was taken to treat her Gender Dysphoria at the time of that report. Then, on July 17, 2014, the AP reported that an unnamed defense department official said that Defense Secretary Chuck Hagel had approved the Army's recommendation "to keep Manning in military custody and start a rudimentary level of gender treatment." Associated Press, *Chelsea Manning to begin gender treatment in US military custody*, The Guardian, July 17, 2014, http://www.theguardian.com/world/2014/jul/17/chelsea-manning-gender-treatment-military-custody. No notice of this plan was provided to Ms. Manning and she has not received any treatment.

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There is a clear medical consensus that Gender Dysphoria is a serious medical condition and that necessary treatment often includes, as has been recommended for Ms. Manning, changes to a person's gender expression and role (i.e., living consistently with one's gender identity) and hormone therapy. This is recognized by the World Professional Association for Transgender Health (WPATH), the leading authority on the standards of care for people with Gender Dysphoria, the American Psychological Association, and the American Medical Association.[5]

There is also a medical consensus that if left untreated, Gender Dysphoria can lead to serious medical problems, including "clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death."[6] The WPATH Standards of Care specifically note that that denying a patient hormone therapy when medically necessary creates a risk of serious harms including autocastration and suicidality.[7]

The National Commission on Correctional Healthcare recommends that the medical management of inmates with Gender Dysphoria "should follow accepted standards developed by professionals with expertise in transgender health" and cites the WPATH Standards of Care.[8] The American

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[5] World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual,
Transgender, and Gender Nonconforming People (hereafter "WPATH Standards of Care") 170, available at
http://www.wpath.org/uploaded_files/140/files/IJT%20SOC,%20V7.pdf; American Psychological Association, Transgender, Gender Identity, & Gender Expression Non-Discrimination (August 2008), available at http://www.apa.org/about/policy/transgender.aspx ("[T]he APA recognizes the efficacy, benefit and medical necessity of gender transition treatments for appropriately evaluated individuals and calls upon public and private insurers to cover these medically necessary treatments."); American Medical Association, Resolution: Removing Financial Barriers to Care for Transgender Patients (2008) (AMA Resolution)("An established body of medical research demonstrates the effectiveness and medical necessity of mental health care, hormone therapy and sex reassignment surgery as forms of therapeutic treatment for many people diagnosed with GID.").

[6] AMA Resolution.

[7] WPATH Standards of Care at 207 (citation omitted).

[8] National Commission on Correctional Health Care, Position Statement: Transgender Health Care in
Correctional Settings, Oct. 18, 2009, available at http://www.ncchc.org/transgender-health-care-in-correctional-settings.

Psychological Association also "supports access to appropriate treatment in institutional settings ... including access to appropriate health care services including gender transition therapies."[9]

The Army's failure to comply with the treatment recommendations and protocols for Ms. Manning's diagnosed Gender Dysphoria violates her well-established constitutional right to be free from cruel and unusual punishment. Courts have made clear that the Eighth Amendment rights of prisoners apply in equal force to prisoners confined in military prisons.[10] "[C]oncepts of dignity, civilized standards, humanity, and decency" embodied in the Eighth Amendment "establish the government's obligation to provide medical care for those whom it is punishing by incarceration."[11] Under this standard, prisons violate the Eighth Amendment when their actions or failure to act evince "deliberate indifference to serious medical needs of prisoners."[12]

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A prison may not deny access to certain types of treatments based on a blanket policy that does not allow for medical judgment based on an individual patient's particular circumstances. Courts across the country have held that Gender Dysphoria is a serious medical condition and that the Eighth Amendment does not permit prisons to deny prisoners treatment for this condition (including hormone therapy and surgical procedures) without individualized treatment determinations based on the specific medical needs of the prisoner.[13] The Constitution also does not authorize prison officials to

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[9] American Psychological Association, Resolution on Transgender, Gender Identity & Gender Expression Non-Discrimination (2009), available at http://www.apa.org/about/policy/transgender.aspx.

[10] *U.S. v. White*, 54 M.J. 469, 473-74 (C.A.A.F. 2001)(applying *Estelle* to Eighth Amendment claim by military prisoner); *cf. Chappell v. Wallace*, 462 U.S. 296, 304 (1983)(military servicemembers entitled to seek injunctive relief for constitutional wrongs suffered in the course of military service); *Walden v. Bartlett*, 840 F.2d 771 (10th Cir. 1988)(holding that military prisoner may bring claims for injunctive and declaratory relief in federal district court); *Marrie v. Nickels*, 70 F.Supp.2d 1252, 1262 (D. Kan. 1999)(military prisoners are "prisoners" for purposes of the Prison Litigation Reform Act).

[11] *Estelle v. Gamble*, 429 U.S. 97 (1976), 102-3 (1976)(citations omitted).

[12] *Id.* at 104.

[13] See, e.g., *De'lonta v. Johnson ("De'lonta II")*, 708 F.3d 520, 526 (4th Cir. 2013)(allowing deliberate indifference claim based on prison's refusal to "evaluate [inmate] for surgery, consistent with the Standards of Care"); *De'lonta v. Angelone (De'lonta I)*, 330 F.3d 630, 635 (4th Cir. 2003) (allowing deliberate indifference claim to proceed to challenge denial of hormone therapy based on a policy barring such treatment for gender dysphoria); *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011)(enforcement of statute that banned prisoners from receiving hormone therapy to treat Gender Dysphoria violated Eighth Amendment), cert.

withhold medically necessary care from a prisoner because of the disapproval of governmental officials or their constituents of the individual or group needing treatment or the type of treatment needed.[14] Officials responsible for denying treatment for prisoners with Gender Dysphoria without taking into account the medical needs of the individual violate the Eighth Amendment's prohibition on cruel and unusual treatment.

Any further delay in providing this critical treatment to Ms. Manning puts her at serious risk of long-term and serious physical and psychological harms.

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* * *

The USDB should take prompt action to initiate treatment for Ms. Manning consistent with the recommendations of her doctors. Please confirm in writing by **5 PM EDT on September 4, 2014** that you will provide Ms. Manning with all medically necessary treatment for her Gender Dysphoria, including clothing and grooming standards consistent with her female gender and hormone therapy, as is your obligation under the Constitution. If Ms.

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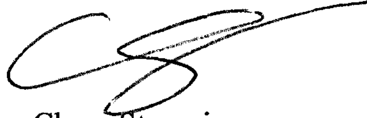
denied, 132 S.Ct. 1810 (2012); *Allard v. Gomez*, 9 Fed. Appx. 793, 795 (9th Cir. 2001)("[T]here are at least triable issues as to whether hormone therapy was denied Allard on the basis of an individualized medical evaluation or as a result of a blanket rule, the application of which constituted deliberate indifference to Allard's medical needs."); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 251 (D. Mass. 2012)(finding DOC blanket policy of denying sex reassignment surgery "facially invalid insofar as it determines, without exception, that certain accepted treatments for GID are never medically necessary for inmates" without providing an individualized medical assessment.); *Houston v. Trella*, No. 04-1393, 2006 WL 2772748, at *8 (D.N.J. Sept. 25, 2006)(claim that prison doctor's decision not to provide hormone therapy to prisoner with Gender Dysphoria based not on medical reason but policy restricting provision of hormones stated viable Eighth Amendment claim); *Barrett v. Coplan*, 292 F. Supp. 2d 281, 286 (D.N.H. 2003)("A blanket policy that prohibits a prison's medical staff from making a medical determination of an individual inmate's medical needs and prescribing and providing adequate care to treat those needs violates the Eighth Amendment."); *Brooks v. Berg*, 270 F. Supp. 2d 302, 312 (N.D.N.Y. 2003)("Prison officials cannot deny transsexual inmates all medical treatment simply by referring to a prison policy which makes a seemingly arbitrary distinction between inmates who were and were not diagnosed with GID prior to incarceration."); *Kosilek v. Maloney*, 221 F. Supp. 2d 156, 193 (D. Mass. 2002)("[D]ecisions as to whether psychotherapy, hormones, and/or sex reassignment surgery are necessary to treat Kosilek adequately must be based on an 'individualized medical evaluation'...rather than as 'a result of a blanket rule.'").

[14] *See, e.g, Monmouth County Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 336 n.16 (3d Cir. 1987)("The moral objections of third party taxpayers, however, has never alone operated to relieve prison officials of affirmative obligations to prisoners in their custody where such obligations exist"); *cf. City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985).

Manning's medical needs continue to be ignored, we are prepared to pursue litigation to vindicate her constitutional rights.

Very truly yours,



Chase Strangio
Staff Attorney
ACLU LGBT & AIDS Project

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

Doug Bonney
Chief Counsel & Legal Director
ACLU Foundation of Kansas

David E. Coombs
Civilian Defense Counsel

cc: Chelsea Manning
Reg. No. 89289
1300 North Warehouse Road
Fort Leavenworth, KS 66027-2304

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit I:

USDB Response Letter to Manning's August 2014 Letter

(September 2, 2014)

DEPARTMENT OF THE ARMY
UNITED STATES DISCIPLINARY BARRACKS
1301 NORTH WAREHOUSE ROAD
FORT LEAVENWORTH, KANSAS 66027-2304

September 2, 2014

Mr. Chase Strangio
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004-2400

Dear Mr. Strangio:

I am writing on behalf of all addressees in response to your August 11, 2014 letter concerning medical treatment for Inmate Chelsea Manning. This response includes personal and medical information protected by law, and it is provided to you based on your legal representation of Inmate Manning and Manning's signed Privacy Act release. In your letter, you allege that the United States Disciplinary Barracks (USDB) is withholding medically necessary care from Inmate Manning. This is incorrect. The Army recognizes and fully accepts its responsibility to provide medically necessary care for each inmate at the USDB, based on an individualized assessment of each inmate's medical needs balanced against the Army's penological, security and disciplinary interests.

The U.S. Army is currently providing Inmate Manning with appropriate treatment for gender dysphoria, as recommended by Inmate Manning's authorized health care provider. Specifically, Inmate Manning continues to receive weekly psychotherapy sessions, and these sessions have been expanded to include therapy for gender dysphoria. Inmate Manning has also been permitted to begin the "real-life experience" treatment by being issued female undergarments, specifically female underwear and sports bras. This treatment is consistent with the current medical diagnosis and treatment plan recommended by Inmate Manning's authorized health care provider. To date, there has been no recommendation by Inmate Manning's authorized health care provider for any other medical treatment for gender dysphoria, including hormonal therapy. Should Inmate Manning's authorized health care provider make such a recommendation, it will be addressed at that time.

Please be advised that Inmate Manning was notified on July 18, 2014 that appropriate treatment for gender dysphoria would be provided. Inmate Manning was told that this treatment would include psychotherapy specific to gender dysphoria and the issuance of female undergarments. I will also provide Inmate Manning with a copy of this correspondence.

Sincerely,

Erica C. Nelson
Colonel, U.S. Army
Commandant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit J:

Oct. 2014 Risk Assessment

[exhibit filed under seal]

SUBJECT TO PROTECTIVE ORDERS

Entire Exhibit is Privacy Act/HIPAA Protected Materials

Portions of Exhibit are **LAW ENFORCEMENT SENSITIVE**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING, Plaintiff, v. ASHTON CARTER, *et al.*, Defendants.	)))))))))	Civil Action No. 1:14-cv-1609 (CKK)

Exhibit K:

Feb. 2015 Risk Assessment

[exhibit filed under seal]

SUBJECT TO PROTECTIVE ORDERS

Entire Exhibit is Privacy Act/HIPAA Protected Materials

Portions of Exhibit are **LAW ENFORCEMENT SENSITIVE**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING, Plaintiff, v. ASHTON CARTER, *et al.*, Defendants.	)	Civil Action No. 1:14-cv-1609 (CKK)

Exhibit L:

Sept. 2015 Risk Assessment

[exhibit filed under seal]

SUBJECT TO PROTECTIVE ORDERS

Entire Exhibit is Privacy Act/HIPAA Protected Materials

Portions of Exhibit are **LAW ENFORCEMENT SENSITIVE**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit M:

Memorandum for Receptee Inmates

Access to Medical Care/Inmate Grievance Procedure

[exhibit filed under seal]

SUBJECT TO PROTECTIVE ORDER

Entire Exhibit is Privacy Act/HIPAA Protected Materials

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHELSEA ELIZABETH MANNING,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:14-cv-1609 (CKK)
	)	
ASHTON CARTER, *et al.*,	)	
	)	
Defendants.	)	
	)	

Exhibit N:

Army Regulation 600-20

Army Command Policy

(excerpts)

Army Regulation 600–20

Personnel–General

Army Command Policy

Headquarters
Department of the Army
Washington, DC
6 November 2014

UNCLASSIFIED

Headquarters
Department of the Army
Washington, DC
6 November 2014

*Army Regulation 600–20

Effective 6 November 2014

Personnel–General

Army Command Policy

By Order of the Secretary of the Army:

RAYMOND T. ODIERNO
General, United States Army
Chief of Staff

Official:

GERALD B. O'KEEFE
Administrative Assistant to the
Secretary of the Army

History. This publication is an administrative revision. The portions affected by this administrative revision are listed in the summary of change.

Summary. This regulation implements DODI 1300.17, DODI 1325.06; DODI 5240.06; DODI 5240.22, DODI 5240.26; and DODD 1350.2. Also, it prescribes the policy and responsibility of command, which includes readiness and resiliency of the force military and personal discipline and conduct, the Army Equal Opportunity Program, Prevention of Sexual Harassment, and the Army Sexual Assault Prevention and Response Program and the Sexual Harassment/Assault Response and Prevention Program (formerly the Prevention of Sexual Harassment and the Army Sexual Assault Prevention and Response Programs).

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. During mobilization, the proponent may modify chapters and policies contained in this regulation provided that the modification is coordinated with and concurred in by the Administrative Assistant to the Secretary of the Army and that the modification itself is disseminated through the Administrative Assistant to the Secretary of the Army. Chapters 6 and 7 and appendixes E and F apply to Army National Guard Soldiers when on Active Duty Title 10, for 30 days or more, and in all other cases, Army National Guard Soldiers are governed by NGR 600–21 and NGR 600–22. Portions of this regulation that proscribe specific conduct are punitive, and violations of these provisions may subject offenders to nonjudicial or judicial action under the Uniform Code of Military Justice. The equal opportunity terms found in the glossary are applicable only to uniformed personnel. AR 690–600 contains similar terms that are applicable to Department of Defense civilians.

Proponent and exception authority. The proponent of this regulation is the Deputy Chief of Staff, G–1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army internal control process. This regulation does not contain management control provisions.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Deputy Chief of Staff, G–1 (DAPE–MP), 300 Army Pentagon, Washington, DC 20310–0300.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Deputy Chief of Staff, G–1 (DAPE–MP), 300 Army Pentagon, Washington, DC 20310–0300.

Committee management. AR 15–1 requires the proponent to justify establishing/continuing committee(s), coordinate draft publications, and coordinate changes in committee status with the U.S. Army Resources and Programs Agency, Department of the Army Committee Management Office (AARP–ZA), 9301 Chapek Road, Building 1458, Fort Belvoir, VA 22060–5527. Further, if it is determined that an established "group" identified within this regulation, later takes on the characteristics of a committee, as found in the AR 15–1, then the proponent will follow all AR 15–1 requirements for establishing and continuing the group as a committee.

Distribution. Distribution of this publication is available in electronic media only and is intended for command levels A, B, C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

*This regulation supersedes AR 600–20, dated 18 March 2008.

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Glossary

Service and the contribution the Soldier made while in uniform. The unit memorial event allows surviving Soldiers a means for expressing their grief and assists in the healing process.

a. Command responsibilities. Commanders will conduct a memorial event (Memorial Ceremony or Memorial Service) for every Soldier who dies while assigned to their unit, regardless of the manner of death to include suicides. The manner of death does not negate the service and the contribution a Soldier has made while in uniform, except as prescribed in paragraph *b*. Commanders will also notify their supporting Casualty Assistance Center of the time and place of unit memorial events.

b. Command exceptions. Unit commanders may request an exception to policy not to conduct a memorial event through their command channels. The first general officer in the chain of command may approve the exception only when the deceased Soldier—

(1) Has been convicted of a capital offense under Federal or State law for which the person was sentenced to death or life imprisonment without parole; or

(2) Has been convicted of a serious offense, which is defined as a military or civilian offense, which if prosecuted under the UCMJ, could be punished by confinement of 6 months or more and/or a punitive discharge; or

(3) Is found by the first general officer in the chain of command to have committed a capital offense or serious offense, as used herein, but the deceased Soldier has not been convicted of such crime because the Soldier was not available for trial due to his/her death.

c. Elements of the memorial events. Recognizing the military Service of the Soldier provides healing and renewal for the living. The opportunity to provide closure for members of the unit is offered during a memorial event. The Commander's decision whether to conduct a Memorial Ceremony or a Memorial Service is dependent upon many factors to include the unit mission, tactical situation, and the wishes of Family members in the local area.

(1) *Memorial Ceremony*. A Memorial Ceremony is a command program with a ceremonial orientation. As a command program, attendance of Soldiers at a Memorial Ceremony may be made mandatory. Although there are religious aspects to the memorial ceremony, such as an invocation and benediction, the major focus will be on military tributes and honors. A Memorial Ceremony may include the following: Prelude, Posting of the Colors, National Anthem, Invocation, Memorial Tribute, Readings, Address, Memorial Prayers, Silent Tribute or Roll Call, Music, Benediction, Firing of Volleys, and Sounding of Taps. The Soldier's remains are not present for this ceremony.

(2) *Memorial Service*. A Memorial Service is a command program with a religious orientation. A Memorial Service should be sensitive to the deceased Soldier's faith group and to the needs of the Soldiers who voluntarily attend. Attendance of units and Soldiers may be encouraged and supported by command, but will not be made mandatory. A Memorial Service may include the following: Prelude, Invocation, Scripture Reading, Meditation, Prayer, Silent Tribute or Roll Call, and Benediction. The Soldier's remains are not present for this service.

(3) *Ramp Ceremony*. A Ramp Ceremony is a command-directed activity normally only occurring in a deployed environment that may be conducted in addition to a unit memorial event. It does not replace the requirement to conduct a memorial event. The combatant commander normally establishes policies within a theater of operations that may restrict or preclude the conduct of this ceremony in order to ensure the expeditious movement of remains. In locations where this ceremony is permitted and is normally conducted, the requirements outlined in paragraphs *a* and *b* apply.

d. Combatant theater memorial events. Commanders of units deployed to combatant theaters or other contingency operations may conduct a memorial event in the theater as the tactical situation permits and another event upon return to home station.

e. Family member attendance. As part of the Army Family Covenant, unit commanders are charged with ensuring the Families of their fallen Soldiers are made to feel a part of the Army for as long as they desire. To that end, unit commanders will inform Family members of the deceased Soldier about any unit memorial event that is conducted in a deployed environment and will invite the Soldier's Family to attend unit memorial events at the home station.

f. Nonmilitary memorial events. Commanders may also conduct nonmilitary memorial events for deceased immediate Family members of Soldiers assigned to their units to recognize the Family member's contribution to the unit and military community when appropriate. "Immediate Family members" are defined as the Soldier's spouse, children (to include stepchildren), and parents (to include stepparents).

g. Memorial event support. Commanders at all levels must ensure unit memorial events are conducted in recognition of the deceased Soldier's military Service and on behalf of a grateful Nation.

Chapter 6
The Equal Opportunity Program in the Army

6–1. Purpose

The EO Program formulates, directs, and sustains a comprehensive effort to maximize human potential and to ensure fair treatment for all persons based solely on merit, fitness, and capability in support of readiness. EO philosophy is

based on fairness, justice, and equity. Commanders are responsible for sustaining a positive EO climate within their units. Specifically, the goals of the EO program are to—

a. Provide EO for military personnel and Family members, both on and off post and within the limits of the laws of localities, states, and host nations.

b. Create and sustain effective units by eliminating discriminatory behaviors or practices that undermine teamwork, mutual respect, loyalty, and shared sacrifice of the men and women of America's Army.

6–2. Equal opportunity policy

a. The U.S. Army will provide EO and fair treatment for military personnel and Family members without regard to race, color, gender, religion, national origin, and provide an environment free of unlawful discrimination and offensive behavior. This policy—

(1) Applies both on and off post, during duty and non-duty hours.

(2) Applies to working, living, and recreational environments (including both on and off-post housing).

(3) Additionally, in some circumstances, the Equal Employment Opportunity Complaint system in AR 690–600 may provide guidance.

b. Soldiers will not be accessed, classified, trained, assigned, promoted, or otherwise managed on the basis of race, color, religion, gender, or national origin. The assignment and utilization of female Soldiers is governed by Federal law. AR 600–13 prescribes policies, procedures, responsibilities, and the position coding system for female Soldiers.

c. Definitions—

(1) *Discrimination.* Any action that unlawfully or unjustly results in unequal treatment of persons or groups based on race, color, gender, national origin, or religion.

(2) *Disparaging terms.* Terms used to degrade or connote negative statements pertaining to race, color, gender, national origin, or religion. Such terms may be expressed as verbal statements, printed material, visual material, signs, symbols, posters, or insignia. The use of these terms constitutes unlawful discrimination.

(3) *Equal opportunity.* The right of all persons to participate in, and benefit from, programs and activities (for example, career, employment, educational, social) for which they are qualified. These programs and activities will be free from social, personal, or institutional barriers that prevent people from rising to the highest level of responsibility possible. Persons will be evaluated on individual merit, fitness, and capability, regardless of race, color, sex, national origin, or religion.

(4) *Gender discrimination.* The action taken by an individual to deprive a person of a right because of their gender. Such discrimination can occur overtly, covertly, intentionally, or unintentionally.

(5) *National origin.* An individual's place of origin or that of an individual's ancestors. The term also applies to a person who has the physical, cultural, or linguistic characteristics of a national group.

(6) *Prejudice.* A negative feeling or dislike based upon a faulty or inflexible generalization (that is, prejudging a person or group without knowledge or facts).

(7) *Race.* A division of human beings identified by the possession of traits transmissible by descent and that is sufficient to characterize persons possessing these traits as a distinctive human genotype.

(8) *Race and ethnic code definitions.* The minimum categories for data on race and ethnicity for Federal statistics, program administrative reporting, and civil rights compliance reporting are defined as follows:

(a) American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(b) Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinents including, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(c) Black or African American. A person having origins in any of the black racial groups of Africa.

(d) Native Hawaiian or other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(e) White. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

(f) Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture of origin, regardless of race.

(9) *Racism.* Any attitude or action of a person or institutional structure that subordinates a person or group because of skin color or race.

(10) *Religion.* A personal set or institutionalized system of attitudes, moral or ethical beliefs and practices held with the strength of traditional views, characterized by ardor and faith, and generally evidenced through specific observances.

(11) *Sexism.* Attitudes and beliefs that one gender is superior to another.

6–3. Responsibilities

a. The DCS, G–1 will—

B–5. Local nonpartisan political activities

This policy does not preclude participation in local nonpartisan political campaigns, initiatives, or referendums. A Soldier taking part in local nonpartisan political activity, however, will not—

a. Wear a uniform or use any Government property or facilities while participating.

b. Allow participation to interfere with, or prejudice, the Soldier's performance of military duties.

c. Engage in conduct that in any way may imply that the Department of the Army has taken an official position on, or is otherwise involved in, the local political campaign or issue.

B–6. U.S. Army Reserve and Army National Guard Soldiers on active duty tours

The RC Soldiers on AD tour regardless of length engaging in permissible political activity will—

a. Give full time and attention to the performance of military duties during prescribed duty hours.

b. Avoid any outside activities that may be prejudicial to the performance of military duties or are likely to bring discredit upon the U.S. Army.

c. Refrain from participating in any political activity while in military uniform, as proscribed by AR 670–1, or using Government facilities or resources.

Appendix C
Equal opportunity/Sexual Harassment Complaint Processing System

C–1. Entering the complaints processing system

The EO complaints processing system addresses complaints that allege unlawful discrimination or unfair treatment on the basis of race, color, religion, gender, and national origin. Attempts should always be made to solve the problem at the lowest possible level within an organization. Complaints by civilian personnel alleging discrimination should be handled in accordance with the procedures contained in AR 690–600, or as described in DOD and Department of the Army policy implementing 10 USC 1561, or as provided for in any applicable collective bargaining agreement.

a. Informal complaint.

(1) An informal complaint is any complaint that a Soldier or Family member does not wish to file in writing. Informal complaints may be resolved directly by the individual, with the help of another unit member, the commander or other person in the complainant's chain of command. Typically, those issues that can be taken care of informally can be resolved through discussion, problem identification, and clarification of the issues. An informal complaint is not subject to time suspense. Accumulative numbers may be reported to ACOMs, ASCCs, and/or DRUs per their request on all informal complaints resolved through commander's inquiry and/or AR 15–6 investigating officer. It is recommended that anyone working on the resolution of informal complaints should prepare a memorandum of record. The memorandum of record should include information indicating nature of complaint and identifying pertinent information to assist in the identification of unit's command climate.

(2) Although the processing of EO complaints through the unit chain of command is strongly encouraged, it will not serve as the only channel available to Soldiers to resolve complaints. Should the complainant feel uncomfortable in filing a complaint with his/her unit chain of command, or should the complaint be against a member of that chain of command, a number of alternative agencies exist through which the issues may be identified for resolution. Each of these agencies provides expertise in very specific subject areas. Commanders will not preclude Soldiers from using these channels in accordance with the procedures inherent/established by these agencies:

(a) Someone in a higher echelon of the complainant's chain of command.

(b) Inspector General.

(c) Chaplain.

(d) Provost Marshal.

(e) Medical agency personnel.

(f) Staff judge advocate.

(g) Chief, Community Housing Referral and Relocation Services Office.

(3) In some informal complaints, the person or agency receiving the complaint may be able to resolve the issue while maintaining the confidentiality of the complainant, as in the case of the chaplain or a lawyer. While maintenance of confidentiality should be attempted, it will neither be guaranteed nor promised to the complainant by agencies other than the chaplain or a lawyer.

(4) Initial actions by these alternative agencies are the same for informal and formal complaints. Any alternative agency that receives an informal complaint of unlawful discrimination or sexual harassment has the obligation to talk with the complainant. The agency should advise the complainant of his/her rights and responsibilities; listen to the complainant and find out as much information as possible concerning the complaint (including what the reasons are behind the complaint and why the individual is using the alternative agency opposed to his or her chain of command); tell the complainant what role that agency has (for example, direct action on behalf of the complainant, information

gathering, or referral to another agency or the commander for their action); what support services are available from other organizations that may help resolve the issues; explain the complaint system (principally, the differences between informal and formal complaints); and, then attempt to assure resolution of the issue (through mediation, intervention, counseling, and training).

(5) The commander must eliminate underlying causes of all complaints. More members of the unit, other than complainant and subject, are affected by complaints, especially those that go unresolved.

b. Formal complaint.

(1) A formal complaint is one that a complainant files in writing and swears to the accuracy of the information. Formal complaints require specific actions, are subject to timelines, and require documentation of the actions taken.

(2) An individual files a formal complaint using a DA Form 7279 (Equal Opportunity Complaint Form).

(3) In Part I of DA Form 7279, the complainant will specify the alleged concern, provide the names of the parties involved and witnesses, describe the incident(s)/behavior(s), and indicate the date(s) of the occurrence(s). For EO complaints, the complainant will also state the EO basis of the complaint (for example, unlawful discrimination based upon race, color, religion, gender, or national origin. Complainant will be advised of the importance of describing the incident(s) in as much detail as possible to assist in the investigative process).

(4) The block entitled, "Requested Remedy" serves a variety of purposes for both the complainant and the command. The information in this block can vary in terms of the complainant's expectations of the investigative process and his or her reasonableness and credibility. If expectations that are not likely to be met come to the surface, they should be dispelled by the receiving agency (during acceptance of the complaint) through an explanation of the process and the possible outcomes. If the complainant's response is vindictive, vengeful, or malicious, and seems extreme in light of the events or circumstances, this may be helpful to the commander or investigating officer in terms of motive and believability.

(5) Soldiers have 60 calendar days from the date of the alleged incident in which to file a formal complaint. This time limit is established to set reasonable parameters for the inquiry or investigation and resolution of complaints, to include ensuring the availability of witnesses, accurate recollection of events, and timely remedial action. If a complaint is received after 60 calendar days, the commander may conduct an investigation into the allegations or appoint an investigating officer according to paragraph 5. In deciding whether to conduct an investigation, the commander should consider the reason for the delay, the availability of witnesses, and whether a full and fair inquiry or investigation can be conducted.

(6) The complainant should file his or her complaint with the commander at the lowest echelon of command at which the complainant may be assured of receiving a thorough, expeditious, and unbiased investigation of the allegations. Depending on the various aspects of the complaint and individuals involved, that lowest level commander may not be the immediate company or even battalion level commander of the complainant.

C–2. Actions of alternative agencies

The agencies listed in this appendix also serve as alternative avenues available to Soldiers for registering formal EO complaints. Initial actions by these alternative agencies are the same for informal and formal complaints. Upon receipt of a formal EO complaint of unlawful discrimination or sexual harassment, the alternative agency has the obligation to talk with the complainant, advise him/her of his/her rights and responsibilities, find out as much information as possible concerning the complaint (including what the reasons were for using the alternative agency and what the complainant's expectations might be for resolution of the complaint). The agency should also tell the complainant what role that agency has (action, information gathering, or referral to another agency or the commander for their action), what support services are available from other organizations, what the complaint processing procedures are (principally, the differences between informal and formal complaints) and what will be done with the individual's complaint. Receipt of formal complaints by any alternative agency (except Inspector General) will be annotated in writing on the DA Form 7279, Part I, item 9. If the alternative agency decides not to do an inquiry or conduct its own investigation and decides to refer the complaint to another agency or to the appropriate commander for their investigation, that referral must be made within 3 calendar days (at the next multiple unit training assembly (MUTA) 4 or other regularly scheduled training for Army Reserve TPU Soldiers). For the purposes of receiving EO complaints, any commissioned officer is authorized to administer oaths and should do so in block 9a, DA Form 7279, prior to referring the complaint to the appropriate commander. The commander or agency receiving the referral will acknowledge receipt of the complaint in writing (DA Form 7279, Part I, item 11). In cases where the complaint is best resolved by the chain of command, the alternative agency refers the complaint to the commander at the lowest echelon of command at which the complainant may be assured of receiving a thorough, expeditious, and unbiased investigation of the allegations.

a. If during the course of an inquiry or investigation the receiving agency or commander identifies criminal activity, the complaint will be immediately referred to the proper agency (Provost Marshal or CID) for investigation. Refer to chapter 8 of this regulation for incidents of sexual assault.

b. Allegations of unlawful discrimination in housing, both on and off post, will be referred to the housing division for processing under the provisions of AR 420–1.

c. If a complaint is filed against a promotable colonel, an active or retired general officer, inspectors general of any

component, members of the Senior Executive Service, or Executive Schedule personnel, the allegation will be transferred directly to the Investigations Division, U.S. Army Inspector General Agency (SAIG–IN), Pentagon, Washington, DC 20310–1700 by rapid but confidential means within 5 calendar days of receipt.

C–3. Complaints filed with the Inspector General

a. Complaints filed with the Inspector General will be processed as inspector general action requests, according to AR 20–1, rather than under the procedures outlined in this regulation. As such, no timelines will be imposed on the conduct of the investigation and/or on feedback to the complainant, and DA Form 7279 will not be maintained.

b. Inspector General investigations are confidential and protected from unauthorized disclosure. They will include consultations with persons or activities as deemed appropriate by the Inspector General.

c. Receipt of the complaint will be acknowledged to the complainant and an estimated completion date provided. If the action is not completed by that date, the complainant will be notified and given a new estimated completion date.

C–4. Actions of the commander upon receipt of complaint

a. Upon receipt of a complaint, the commander is required to identify and rectify sexual harassment and the five factors of unlawful discrimination, to include race, color, gender, religion and national origin. The commander will ensure that the complainant has been sworn to the complaint (DA Form 7279, block 9). If not, the commander will administer the oath and annotate it on the complaint form. The commander will fill out block 11 acknowledging receipt of the complaint form. All formal complaints will be reported within 3 calendar days to the first General Courts-Martial Convening Authority (GCMCA) in the chain of command. Additionally, the commander will provide a progress report to the GCMCA authority 21 days after the date on which the investigation commenced and 14 days thereafter until completion.

b. The commander will either conduct an investigation personally or immediately appoint an investigating officer according to the provisions of AR 15–6. Depending on the magnitude of the complaint, the commander may deem it necessary to ask the next SC in the chain of command to appoint the investigating officer.

c. The commander will establish and implement a plan to protect the complainant, any named witnesses, and the subject from acts of reprisal. The plan will include, as a minimum, specified meetings and discussions with the complainant, subject, named witnesses, and selected members of the chain of command and coworkers.

(1) Content of the discussions with the above named individuals will include the definition of reprisal with examples of such behavior; the Army's policy prohibiting reprisal; the complainant's rights and extent of whistleblower protection afforded complainants, witnesses, and the subject under DODD 7050.6; encouragement to all the aforementioned individuals to report incidents and/or threats of reprisal; the procedures to report acts and/or threats of reprisal; the consequences of reprisal; possible sanctions against violators; a reminder of the roles and responsibilities of the leadership in the prevention of reprisal and protection of all parties involved; the command's support of a thorough, expeditious and unbiased investigation and good faith in attempting to resolve the complaint; and the need to treat all parties in a professional manner both during and following the conduct of the investigation.

(2) Discretion will be used to determine the extent of information provided and the numbers of personnel addressed in the discussions with the chain of command and coworkers. Investigating officers will treat all those they interview professionally and courteously and will limit their discussion to only those issues relating to the specific complaint.

(3) To prevent the plan from becoming an administrative burden, the plan need only consist of a one-page list (in bullet format) of actions to be accomplished. The commander will annotate the names of the personnel addressed and initial and date the actions as they are completed. The commander will provide a copy of the completed plan to the investigating officer and the EOA. The investigating officer will include the commander's plan to prevent reprisal as an exhibit in the investigative findings. The EOA will retain a copy of the commander's plan to prevent reprisal with the completed case file and use the plan to conduct follow-up assessment of the complaint.

C–5. Timeliness of action

Rapid resolution of EO complaints is in the best interest of both the complainant and the command. Commanders receiving a complaint involving Army Reserve or ARNG Soldiers on AD will make every attempt to resolve the complaint prior to the completion of the Soldiers' AD tour. If necessary, the ARNG Soldiers will remain on AD until the final resolution of the complaint. After receipt of the complaint, the commander to whom the complaint was given has 14 calendar days (or three MUTA 4 drill periods for Army Reserve TPU Soldiers) in which to conduct an investigation, either personally or through appointment of an investigating officer. If the complaint was referred to the commander from an alternate agency, or if the commander refers the complaint to an alternate agency, the 14 calendar days begins from the date the complaint was referred. If, due to extenuating circumstances, it becomes impossible to conduct a complete investigation within the 14 calendar days allowed (or three MUTA 4 drill periods for Army Reserve TPU Soldiers, that commander may obtain an extension from the next higher commander for usually not more than 30 calendar days (or two MUTA 4 drill periods for Army Reserve TPU Soldiers. After the initial 14-day suspense, all requests for extension must be requested in writing from the next higher echelon commander. Upon receipt of an extension, the commander must inform the complainant of the extension, its duration, and the reasons for which it was requested. Any additional extensions must be approved in writing by the first general officer in the chain of command.

Failure to adhere to prescribed timelines will result in automatic referral of the complaint to the next higher echelon commander for investigation and resolution.

C–6. Conduct of the investigation

a. Investigation. The purpose of any investigation of unlawful discrimination or sexual harassment is to determine to the maximum extent possible what actually occurred, to assess the validity of allegations made by the complainant, to advise the commander of any leadership or management concerns that might contribute to perceptions of unlawful discrimination and poor unit command climate, and to recommend appropriate corrective actions. The commanding officer is responsible for ensuring the investigation is complete, thorough, and unbiased.

b. Initial actions. The commander who acts as the appointing authority will provide the investigating officer a copy of orders assigning him or her as the investigating officer and the initiated DA Form 7279, which identifies the complainant and lists the allegations to be investigated. The investigating officer will review AR 15–6 and AR 600–20 to review procedures applicable to the conduct of the investigation. Should the commander elect to investigate the allegations themselves, the procedures for investigating officer apply to the commander.

c. Legal advice. The investigating officer will meet with the servicing SJA or legal advisor to review how the conduct of the investigation should be conducted under AR 15–6 and AR 600–20. The discussion should include the specific requirements of both regulations, advice on how investigations are conducted, and advice on how to question an interviewee who is suspected of committing a violation of the UCMJ. After the investigating officer completes the investigation, the packet must be submitted for legal review.

d. Equal opportunity advisor assistance. The investigating officer (the commander or appointed investigating officer) will meet with the unit's EOA prior to conducting the investigation. The EOA will assist the investigating officer in the development of questions to be addressed to the complainant, the subject and any witnesses or third parties. The EOA's skills in complaint handling, conflict resolution, and training in the subtleties of discrimination and sexual harassment enable him or her to advise investigative officers in these complex areas. The EOA will ensure the focus of the investigation is placed squarely on assessing the validity of the allegations and avoids shifting the focus of the investigation against the complainant. The EOA will remain available to the investigating officer for consultation and assistance throughout the conduct of the investigation.

e. Conduct of interviews. The investigating officer must interview every individual who may have firsthand knowledge of the facts surrounding the validity of the allegations. The investigating officer must also interview everyone who can substantiate the relationship or corroborate the relationship between the complainant and the subject. The investigating officer must interview the person who initially received the formal complaint, the complainant(s), any named witnesses, and the subject. The investigating officer should normally interview the subject after interviewing other witnesses, so that he or she will have a complete understanding of the alleged incident. If needed prior to the conclusion of the investigation, the investigating officer should conduct a second interview of the complainant and the subject. The investigating officer may choose to re-interview certain witnesses for clarification of conflicting statements. Should unit policies or procedures be called into question as contributing factors to perceptions of unlawful discrimination or hostile environment, the investigating officer will interview responsible members of the chain of command. It may be advisable to interview coworkers of the complainant and the subject for knowledge they may have about the alleged incidents or the relationship that exists between the complainant and subject.

f. Identification of criminal act. If, when interviewing any Soldier, including the subject, the investigating officer reasonably suspects that the individual has committed an offense in violation of the UCMJ, the investigating officer must advise the Soldier of his/her rights under UCMJ, Art. 31. Investigating officers should consult with their servicing judge advocate or legal advisor before giving UCMJ, Art. 31 rights warnings, and should record the suspect's election on DA Form 3881 (Rights Warning Procedure/Waiver Certificate). If the Soldier being questioned asks for a lawyer (that is, asserts his or her right to counsel), questioning must stop immediately and the interview must be terminated. Questioning may resume only in the presence of a lawyer, if the Soldier initiates further discussion or if the Soldier has consulted with a lawyer and thereafter waives his/her rights pursuant to a proper rights advisement. Similarly, questioning of a Soldier must stop immediately if a Soldier indicates the desire to remain silent. Once this right is asserted, questioning may resume only if the Soldier initiates further questioning or if after an appropriate interval, the Soldier waives his or her rights pursuant to a proper rights advisement. (See UCMJ, Art. 31, MRE 304 and 305, MCM).

g. Supporting documents. The investigating officer should secure copies of any documents that might substantiate or refute the testimony of the complainant, subject, or named witnesses. These documents may include copies of unit and personnel records and the complainant's personal documents. The investigating officer will also procure a copy of the commander's plan to prevent reprisal for inclusion in the final report of investigation.

h. Unit climate, policies and procedures. During the course of the investigation, the investigative officer should note concerns or observations of unit policy, procedures, and individual leadership or management techniques that may have a dysfunctional effect upon unit climate and foster discriminatory behavior and/or a hostile environment.

i. Investigative findings and recommendations. When the investigation is completed, the investigating officer should review the evidence, determine if the investigation adequately addresses allegations, make factual findings about what occurred, and provide recommendations consistent with the findings.

j. EOA review. Prior to submission of the report to the appointing authority, the investigating officer and EOA will meet and review the report. The EOA will attach a memorandum documenting his/her review.

k. Investigative report. The following items are required enclosures to the report presented to the appointing authority:

(1) Orders of appointment as investigating officer.

(2) Copy of the DA Form 7279 with attached continuation sheets.

(3) Copy of the completed/initialed commander's plan to prevent reprisal.

(4) List of questions developed with EOA.

(5) Statements/synopses of interviews with complainant(s), named witnesses, and subject(s) and relevant members of the chain(s) of command.

(6) Copies of supporting documents.

(7) Description/assessment of unit policies, procedures that may have contributed to perceptions of unlawful discrimination or sexual harassment within the unit.

(8) Written approval of next higher echelon commander for any approved extensions.

(9) Written explanation of extenuating circumstances that prevented the investigating officer from interviewing any named witnesses, complainants, or subjects.

(10) Written review by the EOA.

C–7. Actions by the appointing authority (commander) upon receipt of the report of the investigation

The appointing authority will submit the report of investigation to the servicing staff or command judge advocate for a determination of legal sufficiency. After the legal review is completed, the appointing authority will decide whether further investigation is necessary or whether to approve all or part of the findings and recommendations. If the appointing authority is senior to the subject's commander, the appointing authority may refer the matter to that unit commander for appropriate action(s), unless the appointing authority or a more SC has reserved authority to take action on EO matters.

a. Actions to resolve complaints. A complaint is resolved by action to restore benefits and privileges lost because of unlawful discrimination or sexual harassment. Punitive or administrative actions against an offender do not necessarily change offending behaviors or rectify the situation for the individual complainant or unit. Commanders will take corrective action to preclude recurrence of discriminatory or sexually harassing conduct and address any management deficiencies or other contributing factors that caused the allegations to be raised. Commanders will also look at the causes of why complainants raised unsubstantiated complaints. Actions taken (or to be taken) by the commander and the chain of command will be annotated on DA Form 7279, Part III. Specific actions taken against the perpetrator will not be annotated on the form. This information will be discussed with the complainant. The commander and/or EOA will also inform the complainant and the subject(s) of the complaint of his/her right to appeal and make them aware of timelines and procedures to file that appeal. The complainant and subject(s) will sign and date the DA Form 7279 to acknowledge receiving this information. This acknowledgment does not necessarily signify the complainant's agreement with the findings or actions taken to resolve the complaint.

(1) Actions upon substantiated complaint(s). A substantiated EO discrimination or sexual harassment complaint is a complaint that, after the completion of an inquiry or investigation, provides evidence to indicate that the complainant was more likely than not treated differently because of his or her race, color, national origin, gender, or religious affiliation. The standard of proof is a "preponderance of the evidence" standard. This means that the findings of the investigation must be supported by a greater weight of evidence than supports a contrary conclusion, or-in other words-evidence that, after considering everything that is presented, points to one particular conclusion as being more credible and probable than any other conclusion. The "weight of the evidence" is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity. When an allegation of discrimination is substantiated, that finding is annotated on the DA Form 7279, Part II. The commander must decide what corrective action to take. Corrective action may be administrative or punitive.

(a) Administrative action. Offenders will, as a minimum, undergo counseling by a member of the chain of command, presumably their company-level commander. Commanders have the full range of administrative actions available to them to deal with offenders of Army policy on EO (including the prevention/eradication of sexual harassment), to include discharge from the Service, bar to reenlistment, adverse performance evaluations and/or specific comments concerning nonsupport of EO/EEO programs on evaluation reports, relief for cause, administrative reduction, admonition, reprimand, administrative withholding of privileges, and rehabilitative transfer to another unit. Commanders should determine whether the victim desires to be transferred to another unit, but they should not subject the complainant to "double victimization" by requiring that he or she be transferred to another unit while leaving the offender in the unit.

(b) Uniform Code of Military Justice. Violators of Army policies on EO and the prevention/eradication of sexual harassment, whose conduct violates a punitive article of the UCMJ, may be charged and prosecuted. Nonjudicial punishments (for example, UCMJ, ART. 15) will be posted in the unit area in accordance with AR 27–10. Courts-

Martial convictions may be published in installation newspapers and/or posted in the unit area where deemed appropriate.

(2) Actions upon an unsubstantiated complaint. An unsubstantiated complaint is one for which the preponderance of evidence (that is, the greater weight of evidence) does not support and verify that the alleged unlawful discrimination or sexual harassment occurred. In this situation, the commander should determine whether the allegations, though unsubstantiated, might be indicative of problems in the unit that require resolution through EO initiatives or other leadership actions. Should the complaint be found unsubstantiated, the commander will notify the complainant in writing (DA Form 7279s, Part II) and, consistent with the limitations of the Privacy Act and the Freedom of Information Act (FOIA), provide the complainant with a copy of the results of the investigation. The complainant will sign and date the DA Form 7279 to acknowledge receiving this information. This acknowledgment does not necessarily signify the complainant's agreement with the actions taken.

(3) Actions to resolve complaints should focus on changing inappropriate behavior of offending personnel and avoid targeting the complainant. The complainant's job and status should not be affected unless he or she requests such a remedy, and the chain of command will do so only after weighing the impact on readiness.

b. Feedback. The commander will provide periodic feedback, throughout the process, to the complainant and the subject on the status of the investigation.

(1) The commander will provide written feedback to the complainant not later than the 14th calendar day (by the end of the third MUTA 4 period for RCs) after receiving the complaint and then provide updates every 14 calendar days (three MUTA 4 drill periods) until final resolution. Written feedback should incorporate any verbal updates provided to the complainant. Written feedback will be as complete as possible consistent with limitations of the Privacy Act and the FOIA. Whenever possible, the commander should meet with the complainant to discuss the status of the investigation, to include findings and actions to resolve the issue. Oral feedback should be consistent with the limitations of the Privacy Act and the FOIA.

(2) Commanders will also provide written feedback to the subject on the outcome of the investigation and subsequent actions to be taken by the chain of command. The chain of command is advised to use discretion in limiting feedback to personnel involved. This feedback should also be consistent with the limitations of the Privacy Act and the FOIA.

C–8. Appeals process

If the complainant perceives the investigation failed to reveal all relevant facts to substantiate the allegations, or that the actions taken by the command on his or her behalf were insufficient to resolve the complaint, the complainant has the right to appeal to the next higher commander in his or her chain of command. The complainant may not appeal the action taken against the perpetrator, if any is taken. If subject(s) of the complaint perceive the investigation has failed to reveal all relevant facts to prove his or her innocence, he or she has the right to appeal to the next higher commander in their chain of command. Geographically remote units, field operating agencies, and various other organizations (including tenant units on the installation) will promulgate MOU or installation standing support agreements between the installation (supporting) commander and their units. These documents will serve to provide the necessary guidance to unit personnel for the courses of action to be taken with appeals. EO appeals that may potentially leave the Army chain of command must be forwarded to DCS, G–1 (DAPE–HR–L) for resolution.

a. The appeal must be presented within 7 calendar days (at the next MUTA 4 drill period for RCs) following notification of the results of investigation and acknowledgment of the actions of the command to resolve the complaint. The complainant must provide a brief statement that identifies the basis of the appeal. This will be done in writing on the DA Form 7279, Part IV, and the complaint form will be returned to the commander in the chain of command who either conducted the investigation or appointed the investigating officer.

b. Once the appeal is initiated by the complainant, the commander has three calendar days (or one MUTA 4 drill period for RCs) to refer the appeal to the next higher unit commander (or senior commander for those tenant units with MOU that designate an appellate authority).

c. The commander to which the appeal is made has 14 calendar days (or three MUTA 4 periods for RCs) to review the case and act on the appeal (that is, approve it, deny it, or conduct an additional investigation). Not later than the 14th calendar day following receipt of the appeal (or appropriate RC timelines), this commander will provide written feedback, consistent with Privacy Act and FOIA limitations, to the complainant on the results of the appeal. This process applies equally to subsequent appeals submitted through the chain of command.

C–9. Final resolution upon appeal

Complaints that are not resolved at brigade level may be appealed to the General Courts-Martial Convening Authority. The only exception to this is where organizations have MOUs or support that delegate UCMJ authority to a local commander. Decisions at this level are final.

C–10. Follow-up assessment

The EOA will conduct a follow-up assessment of all formal EO and sexual harassment complaints, both for substantiated and unsubstantiated complaints, 30 to 45 calendar days (four to six MUTA 4 drill periods for RCs) following the

final decision rendered on the complaint. The purpose of the assessment is to measure the effectiveness of the actions taken and to detect and deter any acts or threats of reprisal. The EOA will also assess the complainant's satisfaction with the procedures followed in the complaint process to include timeliness, staff responsiveness and helpfulness, and resolution of the complaint. The findings of this assessment will be annotated on DA Form 7279–1 (Equal Opportunity Complaint Resolution Assessment) and maintained by the EOA. The EOA will present findings and recommendations to the commander for further consideration/action within 15 calendar days (second MUTA 4 drill period for RCs). After the commander reviews the EOA findings and recommendation, the assessment is attached to the original complaint and maintained with the rest of the file. DA Form 7279–1 is available on the APD Web site.

C–11. Documentation and/or reporting of formal complaints

a. After the complainant's case is closed, the entire complaint packet will be filed by the EOA who is the first in the complainant's chain of command.

b. The EOA retains the complaint file. Complaints will be retained on file for 2 years from the date of the final decision on the case, using the Army Record Information Management System.

c. In addition to the completed DA Forms 7279 and DA Form 7279–1, the EOA will retain the following information (using the memorandum for record format) for each case:

(1) The name, rank, and organization of the individual who conducted the inquiry/investigation;

(2) Complete report of investigation to include written review by EOA and servicing SJA; and,

(3) The status or results of any judicial action, nonjudicial punishment, or other action taken to resolve the case.

d. The commander processing the complaint involving ARNG Soldiers will send an information copy of the information in paragraph *c* to NGB–EO within 30 days.

C–12. Actions against Soldiers submitting false complaints

Soldiers who knowingly submit a false EO complaint (a complaint containing information or allegations that the complainant knew to be false) may be punished under the UCMJ.

C–13. Complaint procedures for Army Reserve Soldiers serving in the individual ready reserve or those Soldiers not assigned to a unit

a. Complaint filed during active duty tour. Complaint procedures will remain the same as for AD personnel. Active and reserve Army commanders, upon receiving a complaint from members of the IRR or Individual Mobilization Augmentee, from Soldiers performing AD for special work or temporary tour of AD, or from any reservist who is not a member of a TPU, will make every attempt to resolve the complaint prior to the completion of the Soldier's AD tour.

(1) *Timelines.* Should the complaint be filed but not resolved prior to the Soldier's release from active duty, the timelines will be modified. The AA or RC commander will have 30 calendar days from the filing of the complaint to notify the complainant of the results of the investigation/actions taken to resolve the complaint.

(2) *Appeals.* The complainant and subject(s) of the complaint will have 30 calendar days from notification of the results of the investigation to file an appeal. Appeals filed more than 30 calendar days after notification must be accompanied by a written explanation of the reasons for delay. The commander has the discretion to consider an appeal based on its merits.

(3) *Final decision.* Notification of the commander's final decision will be provided to the complainant and subject(s) of the complaint with information copies to the next higher headquarters and HRC within 30 calendar days of the receipt of the appeal.

b. Complaint filed subsequent to release from active duty. In the event the complaint is filed after the AD tour has ended, the complainant will file a sworn complaint on DA Form 7279 (Part I through item 9) to the HRC EOA. (Soldiers may contact the HRC EO office for this form at Commander, HRC (ARPC–ZEQ), 9700 Page Boulevard, St. Louis, MO 63132–5200.) Upon the receipt of DA Form 7279, HRC will forward the complaint to the appropriate commander of the subject(s) of the complaint AD unit for investigation.

(1) *Timelines.* That commander will have 30 calendar days from date of receipt of the complaint to conduct an investigation and to provide feedback to the complainant. (Extensions, not to exceed an additional 45 calendar days, may be granted by higher echelon commander.)

(2) *Appeals.* Complainants and subject(s) of the complaint will have 30 calendar days from notification of the results of investigation/to appeal/decline appeal. Appeals filed more than 30 calendar days after notification must be accompanied by a written explanation of the reasons for delay. The commander has the discretion to consider an appeal based on its merits.

(3) *Final notification.* Within 30 calendar days of receipt of appeal, the commander will provide notification of final decision to the complainant and subject(s) of the complaint, next higher headquarters, and HRC.

C–14. Complaint procedures for Army National Guard Soldiers

While on AD for 30 days or more, ARNG Soldiers will follow the complaint procedure outlined in this regulation. In

all other cases, ARNG Soldiers will follow the complaints procedures outlined in National Guard Regulation (NGR) 600–22.

a. Jurisdiction. The responsibility for processing the complaint belongs to the commander at the lowest echelon of the subject's chain of command that can assure a thorough, expeditious, and unbiased investigation of the allegations.

b. Complaints involving ARNG Soldiers filed, but not resolved, during an AD tour. If the duty status changes for the subject of an unresolved complaint, the commander with UCMJ or equivalent authority over the subject will receive the complaint and complete the processing of the complaint.

c. Complaints filed after release from AD. An ARNG Soldier may file a complaint with the State Equal Employment Manager based upon unlawful discrimination that occurred while the Soldier was on AD. The complaint must be filed within 180 calendar days of the date of the alleged unlawful discrimination or of the time that the Soldier knew or reasonably should have known of the unlawful discrimination.

(1) If both the complainant and the subject are ARNG, follow NGR 600–22 to coordinate with the appropriate National Guard agency representative for processing.

(2) If the subject is from a different component or branch of the Service than the complainant, contact the senior EO office of the subject's component or branch of the Service to determine the appropriate jurisdiction with the purview to remedy.

d. Commanders processing a complaint involving an ARNG Soldier will send an information copy of the completed complaint to NGB–EO–CR within 30 days as per paragraph C–11*d*.

Appendix D
Command Climate Survey

D–1. Requirement

a. Company level commanders (or equivalents) will administer the command climate survey within 30 days of assuming command (120 days for the ARNG and USAR), again at 6 months, and annually thereafter. At their discretion, company level commanders (or equivalents) may administer the command climate survey more often and may supplement the survey with data from other surveys, focus groups, and interviews to assess the unit climate.

b. The survey is voluntary for commanders (or equivalents) above the company level. Because the initial survey is administered shortly after a change of command, the results should not be seen as a reflection on the new commander (or equivalent), but simply as a starting point for assessing and improving the unit's command climate.

D–2. Confidentiality

Survey responses will be treated as confidential. Exceptions to confidentiality will be consistent with the Privacy Act Statement (that is, respondent statements about being a threat to themselves or others, comments involving criminal behavior, and/or operationally sensitive information). When paper and pencil format is used, the unit will ensure that respondents can submit their survey in an inconspicuous location. Survey results will never be reported so that an individual's responses can be identified. Only subgroups containing at least five individuals will be reported. Results are intended for the company commander's use and are not reported up the chain of command. Commanders must provide timely feedback to the unit.

D–3. Compliance

After the company commander has administered and analyzed the command climate survey and has developed action plans, the brigade EOA, will note completion in the brigade QNSR. Completion of the command climate survey is an item that is checked under the CIP.

D–4. Role of the equal opportunity advisor

The EOA role is to discuss assessment results with the commander to aid in developing action plans. Results are best when the commander takes a proactive role in analyzing data and planning for unit improvements.

D–5. Commander's training module

Command Policy (AR 600–20) requires commanders of company-size units to conduct the "Command Climate Survey" as a tool for reviewing the climate factors (for example, leadership, cohesion, morale) that affect their unit's effectiveness. This Training Module is designed to help commanders prepare to conduct a survey, read and interpret survey results, develop action plans based on survey findings, and conduct feedback sessions. Additionally, Training Circular (TC) 26–6 provides useful information on conducting a climate assessment and using the command climate survey.

D–6. Anonymity

Survey results are anonymous and the privacy of individuals submitting a survey will always be protected. Personnel