

BuzzFeed News, NY, USA

The Trump Administration Plans To Announce And Defend A New Transgender Military Policy

The Justice Department "will not be defending the policy now at issue," a federal judge wrote this week, "but will be defending the policy to be disclosed on February 21, 2018."

Originally posted on February 7, 2018, at 4:52 p.m.

Updated on February 7, 2018, at 7:04 p.m.

Chris Geidner
BuzzFeed News Reporter

Reporting From Washington, DC

Justice Department lawyers have told a federal judge that they will be defending a new policy regarding transgender military service that will be "disclosed" by the Trump administration on Feb. 21, the federal judge wrote in an order this week.

No further information about what that policy will be was included in the order, and federal officials declined to provide any further information about the substance of the forthcoming policy.

There are currently several cases challenging Trump's policy that called for an end to open transgender military service. US District Judge Marvin Garbis, who is overseeing one of those cases, noted the new policy development in the course of [a brief ruling](#) on when the government must turn over certain information to those challenging the policy.

The Feb. 21 date referenced is likely referring to a date set by [President Trump's August memorandum](#) that set the policy. Under the memorandum, the defense secretary is supposed to submit an implementation plan for the three portions of the memo — recruitment rules, retention, and health care — to Trump by Feb. 21.

All three of those provisions have been put on hold by various federal courts — including by [Garbis](#) in a challenge backed by the ACLU — and the administration [stopped fighting](#) a Jan. 1 deadline for accepting new military recruits who are transgender days before the deadline went into effect.

This week, Justice Department lawyers argued in one of those challenges that the defendants could not comply with obligations to turn over the required information "because they will not be defending the policy now at issue but will be defending the policy to be disclosed on February 21, 2018," Garbis wrote in a Tuesday order, summarizing what the Justice Department's lawyers had said in a telephone conference from earlier in the day. A

lawyer for the challengers who was on the call confirmed the accuracy of the judge's account.

Asked about the statement that a new "policy" would be "disclosed on February 21, 2018," Maj. David Eastburn, a Pentagon spokesperson, said that the Pentagon only would be preparing "recommendations," but that a final decision on the "new policy" would come from the White House.

"The panel that was established by the Secretary of Defense is presenting their recommendations to him. At the end of this month, The Secretary will make his recommendations to the President, who will then make a decision and establish the new policy on transgender [service] in the military," Eastburn told BuzzFeed News.

Regarding its defense of that policy, noted by Garbis, Justice Department spokesperson Kerri Kupec told BuzzFeed News, "We will continue to defend the President's and Secretary of Defense's lawful authority in district court."

Under Garbis's order, the Justice Department is to fulfill their evidentiary obligations in the case "shortly after February 21, 2018."

The White House did not respond to a request for comment, and the Defense and Justice departments did not provide any additional clarification on the plans or timeline for making them public.

UPDATE

February 7, 2018, at 7:04 p.m.

This story has been updated with comment from the Justice Department.

<https://www.buzzfeed.com/chrisgeidner/the-trump-administration-plans-to-announce-and-defend-a-new>

Washington Blade, DC, USA

February 7, 2018 at 10:22 pm EST | by Chris Johnson

Court: DOJ to defend new trans military policy after Feb. 21

The Trump administration is set to unveil a new policy on transgender people in the U.S. armed forces on Feb. 21 that the U.S. Justice Department expects to defend in court, according to a court document.

U.S. District Judge Marvin Garbis, who's adjudicating the lawsuit against President Trump's transgender military ban filed by the American Civil Liberties Union, disclosed the Justice Department's plans in a memo dated Feb. 6 on the process for disclosure in the case. [Buzzfeed](#) was first to report the news.

According to the memo, although the ACLU is calling on the Justice Department to comply with an initial disclosure request, the Trump administration is seeking to get out of it because a new policy will soon be on the table.

"Defendants' counsel contend that they cannot now comply because they will not be defending the policy now at issue but will be defending the policy to be disclosed on Feb. 21, 2018," Garbis writes.

After Trump announced via Twitter in June he'd ban transgender people in the military "in any capacity," he followed up in August with a directive to the Pentagon on implementing the exclusion of transgender people from the military.

The Feb. 21 date identified in the court memo is consistent with the due date set in the Trump directive for a report from the Pentagon to Trump on transgender military service. The directive designates the report as an "implementation plan" and didn't say new policy would follow per se.

The Justice Department declined to comment on the nature of any new policy. The White House and the Defense Department didn't immediately respond to the Washington Blade's request to comment.

Maj. David Eastburn, a Pentagon spokesperson, is quoted in Buzzfeed as saying the Pentagon would prepare "recommendations," but any "new policy" would come from the White House.

"The panel that was established by the Secretary of Defense is presenting their recommendations to him," Eastburn is quoted as saying. "At the end of this month, The secretary will make his recommendations to the president, who will then make a decision and establish the new policy on transgender [service] in the military."

The litigation before Garbis is one of four pending lawsuits challenging Trump's transgender military ban. Each of the judges in those cases have issued preliminary injunctions blocking enforcement the ban as litigation continues. The Justice Department has given up on appealing those injunctions, focusing instead on defending Trump's ban in trial court.

Joshua Block, the attorney litigating against the ban on behalf of the American Civil Liberties Union, said any new policy barring transgender people from service will be challenged in court.

"If the 'recommendations' exclude transgender people serving, we will be ready to argue that the allegedly new policy is just a continuation Trump's old ban with window dressing," Block said.

Sarah McBride, a spokesperson for the Human Rights Campaign, said in a statement any new policy other than allowing transgender people to serve would be discriminatory.

"There are currently thousands of transgender people serving in the U.S. military with many more enlisting and their skills and service are already proving invaluable to our national security," McBride said. "In their repeated attempts to implement and justify this cruel and unconstitutional policy, the Trump-Pence Administration has been the only source of disruption on this issue."

<http://www.washingtonblade.com/2018/02/07/court-doj-to-defend-new-trans-military-policy-on-feb-21/>