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June 9, 2016

The Honorable Ashton B. Carter  
Secretary of Defense  
10000 Defense Pentagon  
Washington D.C. 20301-10000

Dear Secretary Carter:

I write today to encourage you to bring an immediate end to any and all regulations that the U.S. Department of Defense (DOD) has in place that result in transgender service members not being able to serve openly in our country's armed forces.

In your statement on July 13, 2015, you rightly highlighted the needless discrimination faced by this country's transgender service members. With compassion and sincerity, you noted that transgender service members have served bravely alongside their comrades-in-arms, but have had to do so silently. Such silence yields wounds the likes of which we may never fully understand, but we can be certain that these brave men and women continue to suffer, in their silence, the pain and humiliation that come with being treated as outcasts by a military, which they have joined in full knowledge that one day they may be called upon, like all of their fellow service members, to give the last true measure of devotion. This reality is all the more painful considering that the military continues to discriminate against them even though its leaders know full well that the armed forces are best served when it judges its service members based on individual merit and not arbitrary distinctions like race, sex, sexual orientation or, as it does today, gender identity.

The statement you made last July was also noteworthy because you announced the creation of a working group that would investigate whether there would be any notable policy or readiness implications if transgender service members were allowed to serve openly. At that time, you stated that the working group would take six months to render a determination – that six-month period ended in January of this year. Indeed, we are quickly approaching a year since you made your statement, and I respectfully ask that you bring the working group's efforts to a close and move forward with implementing policies that will let our brave transgender service members serve openly and with the same respect given to their fellow comrades-in-arms.

I cannot think of any reason, and have not seen any reliable evidence, that would lead one to the conclusion that transgender service members must continue to serve in the face of a discriminatory policy for the military's greater good. Indeed, the current policy leads to a loss of talent and productivity. Additionally, the RAND Corporation correctly noted in its extensive and well researched Project Report that an inclusive policy did not harm unit cohesion or readiness when applied to African Americans, gay or lesbian personnel or women serving in a ground combat position. There is absolutely no reason to believe that this result would be different when applying an inclusive policy to transgender service members. Furthermore, at this point in time, 18 countries allow transgender service members to serve openly. Some of these countries are our closest allies, notably Great Britain, Canada, Australia and Israel, and none have found any significant effect on their respective militaries' cohesion, operational effectiveness, or readiness because they allow transgender service members to serve openly. Finally, I believe it likely that the continued implementation of the current policy will eventually be challenged in court, where it would stand a very good chance of being struck down on statutory, regulatory, and potentially constitutional grounds.<sup>1</sup> This would be unfortunate as I strongly believe that the needed change in policy will be more meaningful, and better implemented, if the DOD leads the way forward on this important issue.

Again, I appreciate the thoughtfulness with which you have led the DOD on this issue and I share the sentiments you put forth in July of last year. The military is better served, and serves this country more fully, when all of its brave service members are able to fulfill their duties based on their individual merit, and therefore it is time to put an immediate end to any and all discriminatory regulations that negatively affect transgender service members.

I thank you for your attention to this matter and would appreciate an update, at your earliest convenience, as to where the working group stands at this point.

Sincerely,

A handwritten signature in blue ink that reads "Alcee L. Hastings". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alcee L. Hastings  
Member of Congress

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<sup>1</sup> I briefly note here that Section 1557 of the Patient Protection and Affordable Care Act (ACA) states in relevant part that “an individual shall not, on the ground prohibited under . . . Title IX of the Education Amendments of 1972 [meaning on the basis of sex] . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving financial assistance.” The Department of Defense (DOD) has found that this provision applies to the military health care system, and therefore, the military must comply with the ACA’s nondiscrimination provision. Furthermore, on May 18, 2016, the Department of Health and Human Services (HHS) issued a final rule clarifying that discrimination in health care on the basis of sex under Section 1557 of the ACA includes discrimination based on gender identity. Finally, I would note the existence of federal case law that has struck down military policies that discriminated on the basis of sex. – e.g., Crawford v. Cushman, 531 F.2d 1114 (2nd Cir. 1976) and Frontiero v. Richardson, 411 U.S. 677, 686 (1973), and the fact that federal courts increasingly hold that discrimination against transgender individuals because of their gender non-conformity is sex discrimination, and therefore an unconstitutional denial of equal protection. See e.g., Glenn v. Brumby, 663 F.3d 1312, 1317 (11th Cir. 2011).