

2014

## No One Is Disposable: Going Beyond the Trans Military Inclusion Debate

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### Recommended Citation

Arkles, Gabriel (2014) "No One Is Disposable: Going Beyond the Trans Military Inclusion Debate," *Seattle Journal for Social Justice*: Vol. 13: Iss. 2, Article 11.

Available at: <http://digitalcommons.law.seattleu.edu/sjsj/vol13/iss2/11>

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## No One Is Disposable: Going Beyond the Trans Military Inclusion Debate

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Gabriel Arkles\*

### I. A LOOK BACK

#### A. *The Record*

William Cathey, a.k.a. Cathay Williams, was a Black person assigned female at birth. He<sup>1</sup> was born in Independence, Missouri, in 1842.<sup>2</sup> Cathey labored as a house slave for William Johnson, a wealthy white farmer in Jefferson City, until Johnson died.<sup>3</sup> The Union Army reached Cathey's home town in the fall of 1861.<sup>4</sup> The army pressed him into service against his will as "contraband."<sup>5</sup> He traveled with the army for years, working as a cook and a laundress for white military men.<sup>6</sup>

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\* Professor of Legal Skills at Northeastern University School of Law. I would like to thank my research assistant, Mollie Freeman-Lynde, for her excellent work on this piece. I would also like to thank Aziza Ahmed, Pooja Gehi, and Chase Strangio for their help with this piece.

<sup>1</sup> We do not and cannot know what pronouns Cathey would prefer to have used for him. I choose to alternate masculine and feminine pronouns in light of this uncertainty. Virtually everyone else who writes about Cathey uses feminine pronouns, seemingly only because he was assigned female at birth.

<sup>2</sup> FROM THE *ST. LOUIS DAILY TIMES*, JANUARY. 2, 1876, NATIONAL PARK SERVICE, at Source # 1, available at [http://www.nps.gov/goga/forteachers/upload/BS\\_PrimarySources\\_2008-01-18\\_med.pdf](http://www.nps.gov/goga/forteachers/upload/BS_PrimarySources_2008-01-18_med.pdf) (last visited Oct. 12, 2014).

<sup>3</sup> FROM THE *ST. LOUIS DAILY TIMES*, *supra* note 2, at Source # 1, Column 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Cathay Williams as Contraband*, in *FEMALE BUFFALO SOLDIER—WITH DOCUMENTS* (2002), available at <http://www.buffalosoldier.net/CathayWilliamsFemaleBuffaloSoldierWithDocuments.htm>.

<sup>6</sup> *Id.*

After the Civil War, Cathey began presenting herself as a man and enlisted as a soldier in the US Army on November 15, 1866.<sup>7</sup> At the time, women were not permitted to enlist.<sup>8</sup> According to the enlistment papers, she enlisted voluntarily for a three-year term of service.<sup>9</sup> An army surgeon examined Cathey upon enlistment, and determined that she was fit for duty. In a later newspaper interview, Cathey stated that she enlisted in part because her cousin and friend both enlisted, and in part because she “wanted to make [her] own living and not be dependent on relations or friends.”<sup>10</sup>

Cathey served for just over two years in the 38th US Infantry, Company A, an African-American unit that was deployed to fight the Apache Tribe.<sup>11</sup> He caught small pox and other illnesses while serving, and had to be hospitalized.<sup>12</sup> He was finally diagnosed with neuralgia, a “catch-all term for any acute pain caused by a nerve,” while in Fort Bayard, New Mexico.<sup>13</sup>

On October 14th, she received a medical discharge.<sup>14</sup> Cathey explained later that eventually she “got tired [of serving in the Army]

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<sup>7</sup> DECLARATION OF RECRUIT, ST. LOUIS, MISSOURI, NATIONAL PARK SERVICE, at Source # 1, available at [http://www.nps.gov/goga/forteachers/upload/BS\\_Primary\\_Sources\\_2008-01-18\\_med.pdf](http://www.nps.gov/goga/forteachers/upload/BS_Primary_Sources_2008-01-18_med.pdf) (last visited Oct. 12, 2014).

<sup>8</sup> THE COLONIAL WILLIAMSBURG FOUNDATION, TIME LINE: WOMEN IN THE U.S. MILITARY (2008), available at [http://www.history.org/history/teaching/enewsletter/volume7/images/nov/women\\_military\\_timeline.pdf](http://www.history.org/history/teaching/enewsletter/volume7/images/nov/women_military_timeline.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> *Cathay Williams Story*, in FEMALE BUFFALO SOLDIER-WITH DOCUMENTS (2002), available at <http://www.buffalosoldier.net/CathayWilliamsFemaleBuffaloSoldierWithDocuments.htm>.

<sup>11</sup> *Cathay Williams in Cowboy Poetry*, in FEMALE BUFFALO SOLDIER-WITH DOCUMENTS (2002), available at <http://www.buffalosoldier.net/CathayWilliamsFemaleBuffaloSoldierWithDocuments.htm>.

<sup>12</sup> *Cathay Williams Story*, *supra* note 10.

<sup>13</sup> *An Analysis of Cathay Williams' Medical Condition and Efforts to Gain Pension and Disability Allowances*, in FEMALE BUFFALO SOLDIER-WITH DOCUMENTS (2002), available at <http://www.buffalosoldier.net/CathayWilliamsFemaleBuffaloSoldierWithDocuments.htm>.

<sup>14</sup> *Id.*

and wanted to get off.”<sup>15</sup> As a result she “played sick, complained of pains in [her] side, and rheumatism in [her] knees.”<sup>16</sup> She also said that “[t]he post surgeon found out I was a woman and I got my discharge. The men all wanted to get rid of me after they found out I was a woman. Some of them acted real bad to me.”<sup>17</sup> The discharge papers, issued on October 14th of the same year, made no explicit mention of gender and used masculine pronouns to refer to Cathey. The surgeon stated that Cathey was of “a feeble habit. He is continually on sick report without benefit. He is unable to do military duty . . . .”<sup>18</sup> The captain also wrote a statement that Cathey had been under his command since May 20, 1867, “and has been since feeble both physically and mentally, and much of the time quite unfit for duty.”<sup>19</sup>

After his time in the military, Cathey moved to Colorado, where he resumed living as a woman and made money cooking and washing.<sup>20</sup> He married a man.<sup>21</sup> At the time, men were not permitted to marry other men.<sup>22</sup> Before long, his husband robbed him of money, a watch and chain, and a team of horses.<sup>23</sup> Cathey had his husband arrested for the theft.<sup>24</sup> He supported himself as a seamstress and laundress for some years, and may have had diabetes.<sup>25</sup> His toes were amputated and he

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<sup>15</sup> *Cathay Williams Story*, *supra* note 10.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> ARMY OF THE UNITED STATES, CERTIFICATE OF DISABILITY FOR DISCHARGE, NATIONAL PARK SERVICE, at Source # 11, *available at* [http://www.nps.gov/goga/forteachers/upload/BS\\_PrimarySources\\_2008-01-18\\_med.pdf](http://www.nps.gov/goga/forteachers/upload/BS_PrimarySources_2008-01-18_med.pdf) (last visited Oct. 12, 2014).

<sup>19</sup> *Id.*

<sup>20</sup> *Cathay Williams Story*, *supra* note 10.

<sup>21</sup> *Id.*

<sup>22</sup> *American Gay Rights Movement: A Timeline*, INFORMATION PLEASE, <http://www.infoplease.com/ipa/A0761909.html> (last visited Oct. 12, 2014).

<sup>23</sup> *Cathay Williams Story*, *supra* note 10.

<sup>24</sup> *Id.*

<sup>25</sup> *An Analysis Of Cathay Williams' Medical Condition and Efforts To Gain Pension And Disability Allowances*, *supra* note 13.

walked with a crutch.<sup>26</sup> He applied to the military for a disability pension, based in part on a claim of deafness.<sup>27</sup> While a few white people assigned female at birth had received pensions for their military service while presenting themselves as men, a white male doctor claimed that Cathey was not disabled and the military denied her claim in February 1892.<sup>28</sup> The rejection letter listed lack of accurate documentation as the basis for the denial.<sup>29</sup>

### *B. Reflections*

The questions that Cathey's experiences permit us to grapple with many of the complexities still surrounding US military service today.

The Union Army often appears as a liberating force in narratives of the Civil War, sweeping through the South and setting slaves free—but that story is not simple. The army may have given Cathey a way out of one form of enslavement, but it promptly forced him to work for white people again against his will. Was it profoundly meaningful for him to no longer be a slave, to receive wages for his work? Or was it a profound insult to be proclaimed free yet not permitted to have control over his life: to choose whether, how, and for whom to work? He did work that many other people who were perceived as women did for the army—"women's work" of cooking—even though he said he didn't know how to do these forms of work before getting pressed into service.<sup>30</sup> Another job of women traveling with the army was to have sex with the men.<sup>31</sup> Did he experience sexual exploitation when

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *See id.*

<sup>30</sup> *Cathay Williams Story*, *supra* note 10.

<sup>31</sup> *The Civil War: Sex and Soldiers*, CASE WESTERN RESERVE UNIVERSITY, <http://www.case.edu/affil/skuyhistcontraception/online-2012/Civil-War.html> (last visited Oct. 12, 2014) (noting that "[i]n the eyes of military leadership, prostitutes

working as a slave on the plantation, as so many Black people perceived as women did?<sup>32</sup> Did he experience sexual exploitation when working for the army, as so many people perceived as women did?

From her own words, it seems that family, friendship, and the opportunity to earn money independently motivated her to join the military as a soldier.<sup>33</sup> Joining the military may well have been one of the only ways that she could earn much money, given the limited and exploited options available to Black women in the aftermath of the war. Was she also proud to be a part of a force that at least in part fought against slavery and that permitted African-Americans to serve? Was she excited about the challenge and camaraderie of military life? Was presenting herself as a man solely a strategy to earn money? Was it also to protect herself from sexual violence? A rejection of white patriarchal gender norms? An expression of a male gender identity? Some combination of these, or something else entirely?

How did he feel about the labor he did for the military as a soldier, which likely involved killing Apache people and advancing white colonial rule? How did he feel about serving in a segregated unit, with white people still giving the orders at the highest levels? It seems like it was at least partly his own choice to leave the military. Was it because of discomfort with these racial and colonial politics? Because of the way the army treated soldiers generally, or Black soldiers in particular, or him specifically after others began perceiving him as female? What did he mean when he said others started to treat him “bad”? Did he just not care for military duties, and if not, what about them? Were any of

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and ‘camp followers’ drove venereal disease to alarming levels, and threatened military readiness”).

<sup>32</sup> Joe, *The Rape of Black Women under Slavery: Part II*, RACISM REVIEW (Oct. 14, 2009), <http://www.racismreview.com/blog/2009/10/14/the-rape-of-black-women-under-slavery-part-ii/> (describing experiences of sexual exploitation through the lens of one Black former slave).

<sup>33</sup> *Cathay Williams Story*, *supra* note 10.

the Apache people his unit fought and killed also people that a white patriarchal society would perceive as “cross-dressed,”<sup>34</sup> and if so, how did he see himself in relation to those people?

Temporary though they may have been, did Cathey get pride, pleasure, satisfaction, or other value from her participation in those two supposed mainstays of an upstanding life in the United States—marriage and the military? Did she feel betrayed when her husband robbed her and the military denied her benefits? How did she make the choice to advocate for access to benefits, and what were her goals and strategies, assuming that she knew (and surely she did) that she would have gotten those benefits if her disabilities were perceived as “real,” or if she were perceived as male, or if she were white? What were her experiences living as a single, disabled, Black, older, working woman and veteran in the United States at that time?

Even though we may not be able to answer these questions, I raise them to show some of the ambiguities, trade-offs, and hard choices involved for people considering military service, and to show that these dilemmas are not new. Race, disability, class, and gender intersect in people’s interactions with the military, and they have for a long time. While these issues have changed over time, they have not sprung up anew in just the last few years.

## II. MOVING FORWARD

Currently, many of the same dilemmas, tensions, and paradoxes about military service persist in different forms. Still, many people of color serve in the military, and are often ordered to fight different groups of people of color to support the interests of wealthy white

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<sup>34</sup> See JOEY MOGUL ET AL., *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES 1* (Michael Bronski ed., 2011).

people in positions of power.<sup>35</sup> Still, formal gender-based rules prohibit certain people from serving—but many of those formally prohibited find ways to serve anyway.<sup>36</sup> Still, the military is rife with sexual violence.<sup>37</sup> Still, many people acquire illnesses and injuries in their military service.<sup>38</sup> Still, many people want to leave military service before the military permits them to do so.<sup>39</sup> Still, many disabled veterans do not receive benefits.<sup>40</sup> Still, the choices people make about

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<sup>35</sup> See DENA AL-ADEEB, *Reflection in a time of war: A letter to my sisters*, in THE COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY 116 (2006).

<sup>36</sup> See JAIME M. GRANT ET AL., NATIONAL CENTER FOR TRANSGENDER EQUALITY & NATIONAL GAY AND LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 30 (2011), available at [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf) (noting that 20 percent of trans people have served in the military).

<sup>37</sup> DEPARTMENT OF DEFENSE, DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2013, at 2 (2013), available at [http://www.sapr.mil/public/docs/reports/FY13\\_DoD\\_SAPRO\\_Annual\\_Report\\_on\\_Sexual\\_Assault.pdf](http://www.sapr.mil/public/docs/reports/FY13_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf) (noting an increase in reports of sexual assault in all four branches of service).

<sup>38</sup> See Bob Brewin, *Mental Illness Leading Cause of Hospitalization of for Active-Duty Troops*, NEXTGOV.COM (May 17, 2012), <http://www.nextgov.com/health/2012/05/mental-illness-leading-cause-hospitalization-active-duty-troops/55797/>. See also Lisa Chedekel & Matthew Kauffman, SPECIAL REPORT: MENTALLY UNFIT, FORCED TO FIGHT, HARTFORD COURANT (May 14, 2006), <http://www.courant.com/news/special-reports/hc-unfit0515.artmay14,0,3907246>; Patricia Kime, *Mental disorders among troops up 65% since 2000*, ARMYTIMES (July 11, 2012, 13:34 EST), <http://www.armytimes.com/news/2012/07/military-mental-health-diagnoses-071112w/>.

<sup>39</sup> See, e.g., *United States v. Mejia-Castillo*, No. ARMY20040654, WL 6842543, at \*8 (Army Ct.Crim.App. Mar. 26, 2009) (upholding court-martial conviction of service member for failing to report for duty). See also *Isenbarger v. Farmer*, 463 F. Supp. 2d 13, 16 (D.D.C. 2006) (dismissing claim of officer who alleged the Army unlawfully extended his term of active duty); *Gengler v. United States ex rel. Dep't of Def. & Navy*, 453 F. Supp. 2d 1217, 1219 (E.D. Cal. 2006) (dismissing claim of officers who alleged the Navy unlawfully refused to release them from active duty after their seven-year contractual term of service).

<sup>40</sup> NEWS 21 STAFF, FLORIDA CENTER FOR INVESTIGATIVE REPORTING, RETURNING IRAQ AND AFGHAN WAR VETS FIND LITTLE GOVERNMENT SUPPORT, INVESTIGATION FINDS (Aug. 26, 2013), available at <http://fcir.org/2013/08/26/iraq-afghanistan-war-veterans-florida/>.



military service can be complex and strongly influenced by the need to make money.<sup>41</sup>

Trans inclusion in the military has surged to national attention recently, primarily because of events in 2013. The army court-martialed Chelsea Manning, a white transgender woman whom some hail as a hero for revealing US war crimes and whom others condemn as a traitor for leaking confidential information.<sup>42</sup> Kristen Beck, a white transgender woman and former Navy Seal, came out publicly and published an autobiography.<sup>43</sup> Jennifer Pritzker, a white transgender woman veteran and billionaire, donated more than a million dollars to the Palm Center to research trans people in military service.<sup>44</sup> Also, since Don't Ask Don't Tell (DADT) was repealed in 2011, some advocates in lesbian, gay, and bisexual communities have seized on trans inclusion in the military as the "next frontier" for lesbian, gay, bisexual, and transgender (LGBT) rights.<sup>45</sup> US media has had a certain

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<sup>41</sup> See Barbara Sutton & Julie Novkov, *Rethinking Security, Confronting Inequality*, in SECURITY DISARMED: CRITICAL PERSPECTIVES ON GENDER, RACE, AND MILITARIZATION 3, 18 (Barbara Sutton, Sandra Morgen, & Julie Novkov, eds., 2008) (describing how the government funds the military through reducing access to basic necessities for the public and then recruits soldiers through offering access to those necessities).

<sup>42</sup> Chelsea Manning, *'I am Chelsea': Read Manning's Full Statement*, TODAY NEWS (Aug. 22, 2013), <http://www.today.com/news/i-am-chelsea-read-mannings-full-statement-6C10974052>.

<sup>43</sup> Chuck Hadad et al., *Former Navy Seal Comes Out as Trans: 'I want some happiness'*, CNN, (Jun. 7, 2013), <http://www.cnn.com/2013/06/07/us/transgender-veteran/>. Other trans service members and veterans also came out that year, like Bryce Celotto, a transgender man of color. However, they did not receive nearly the same amount of media attention. *Bryce Celotto On Being Transgender In The Army National Guard*, HUFFINGTON POST (Sept. 6, 2013), [http://www.huffingtonpost.com/2013/09/06/transgender-military-army-national-guard\\_n\\_3882797.html](http://www.huffingtonpost.com/2013/09/06/transgender-military-army-national-guard_n_3882797.html).

<sup>44</sup> Michelle Garcia, *Trans Billionaire Reporting for Duty*, THE ADVOCATE (Nov. 12, 2013), <http://www.advocate.com/print-issue/current-issue/2013/11/12/trans-billionaire-reporting-duty>.

<sup>45</sup> Karen Ocamb, *Breaking: OutServe-SLDN Pick Trans Activist Allyson Robinson as Executive Director*, LGBT POV (Oct. 24, 2012), <http://lgbtpov.frontiersla.com/>

fascination with white trans women veterans for much longer, though, as is obvious from the headlines about Christine Jorgensen's transition in the 1950s.<sup>46</sup> While some media and policy makers frame transgender service in the military as a "new" issue and discuss it only in relation to white American trans women who have served, in fact this issue goes back as far in time as militaries do. And as William Cathey's story suggests, it has deep and inextricable connections to race, class, and disability politics.

At the risk of oversimplifying political positions, it seems to me that so far the debate about trans inclusion in the military has started shaking out in familiar and somewhat limited ways. Political conservatives tend to prioritize the effectiveness of the US military and the imagined comfort of cisgender<sup>47</sup> service members over other concerns, and either support or reject trans inclusion based on their view of how it would impact those priorities (although some may oppose inclusion simply out of hatred and a desire to hurt or deny the existence of trans people).<sup>48</sup> Political liberals tend to prioritize equality

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2012/10/24/breaking-outserve-sldn-pick-trans-activist-allyson-robinson-as-executive-director/ (announcing that an LGBT group that worked for the repeal of DADT selected a white trans woman as their new leader, and explaining that the fight for trans inclusion remains). Some have even referred to the exclusion of trans people as the "new DADT," which is particularly odd since these policies have been in place since before DADT. See Kate Miller, *The New DADT: The Military's Ban on Transgender Service*, OUTSERVE MAGAZINE, Jan. 31, 2012, <http://outservemag.com/2012/01/the-new-dadt-the-militarys-ban-on-transgender-service/>; Mike Spies, *The Next Don't Ask Don't Tell*, VOCATIV, Mar. 18, 2014, <http://www.vocativ.com/culture/lgbt/next-dont-ask-dont-tell/>.

<sup>46</sup> The Daily News ran a story titled "Ex-GI Becomes Blonde Bombshell" in 1952. Stephanie Barajas, *Christine Jorgensen*, OUT HISTORY, <http://www.outhistory.org/exhibits/show/tgi-bios/christine-jorgensen> (last visited Oct. 12, 2014).

<sup>47</sup> "Cisgender" or "cis" refers to people who are not transgender or trans.

<sup>48</sup> See, e.g., Tony Perkins, *Fundamentally Trans-Forming America*, FAMILY RESEARCH COUNCIL, (Mar. 20, 2014), <http://www.frc.org/washingtonupdate/state-id-ology-wins-big-in-court>; *Commission Finds 'No Compelling Medical Reason' To Exclude Transgender Americans From Military*, CBS LOCAL (Mar. 13, 2014), <http://sanfrancisco.cbslocal.com/2014/03/13/commission-finds-no-compelling->

and the end of discrimination over other concerns, and support trans inclusion on that basis.<sup>49</sup> Political radicals tend to center the direct impact of the US military on people of color and other marginalized groups abroad and at home, and from that perspective oppose the US military altogether. They may oppose trans inclusion because a more inclusive military could be a larger military that would do more harm.<sup>50</sup> I position myself among radicals on this issue, but I want to take seriously the impact of these issues on a wide range of stakeholder groups, and build on the work of women of color feminists, disability justice theorists, and prison abolitionists to expand the debate beyond its limited framing.

Ultimately, to advance justice for trans people when it comes to the US military, we should consider a much wider array of potential interventions than simply supporting or opposing formal inclusion. I propose taking large and diverse constituencies seriously, including trans people and others whom the US military harms; trans people and others who may not want to join the military if they have other options; and trans people and others directly involved in the US military as aspiring service members, current service members, or veterans. If we

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medical-reason-to-exclude-transgender-americans-from-military/ (quoting Elaine Donnelly from the Center for Military Readiness as predicting increased sexual assault and privacy intrusion against cisgender soldiers if trans people served in the military).

<sup>49</sup> See, e.g., *NCTE Welcomes Review of Outdated Military Regulations Barring Transgender Service*, NATIONAL CENTER FOR TRANSGENDER EQUALITY (May 10, 2014), <http://transequality.org/news.html#Hagel2014>; *LGBT Equality*, SERVICE WOMEN'S ACTION NETWORK, <http://servicewomen.org/lgbt-equality/> (last visited Oct. 12, 2014).

<sup>50</sup> See, e.g., Chris Geidner, *Meet The Trans Scholar Fighting Against The Campaign For Out Trans Military Service*, BUZZFEED NEWS (Sept. 9, 2013), <http://www.buzzfeed.com/chrisgeidner/meet-the-trans-scholar-fighting-against-the-campaign-for-out#48f7piw>.

consider none of these stakeholders to be disposable,<sup>51</sup> the possibilities we need to consider go far beyond simply whether or not the US military should include trans people.

In this article, I work from the premise that no one is disposable, and that those most impacted by this issue ought to be at the center of the analysis. With that grounding, I explore the interests of these various stakeholders, and I conclude with some recommendations. These recommendations focus heavily on demilitarization, an approach that I think would create the greatest benefit for the stakeholders with the most at risk, even though some stakeholders certainly would not agree with it. However, my recommendations do not stop there; I also propose interventions that could improve the lives and opportunities of trans people and others, including service members, veterans, low-income people, and people seeking to recover from the ravages of war.

As a white transgender Muslim US citizen academic who has never been directly on either end of a gun or bomb, I consider myself implicated and impacted by these issues, but more peripherally than many. When people argue over these issues, they are often indirectly arguing over the worthiness of my life as a trans person, a Muslim, or both. As a US citizen taxpayer, voter, and consumer, I share some responsibility for what this country's military is and does. At the same time, neither my life nor my livelihood is directly on the line in this debate. I offer my ideas, and my thoughts on the ideas of others, in the hope of furthering this conversation—but not of having the final word.

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<sup>51</sup> See Reina Gossett & Dean Spade, *No One Is Disposable: Everyday Practice of Prison Abolition*, BARNARD CENTER FOR RESEARCH ON WOMEN (Feb. 7, 2014), <http://bcrw.barnard.edu/event/no-one-is-disposable-everyday-practices-of-prison-abolition/> (video series expanding on prison abolitionist notion that no one is disposable).

### III. IMPACT ON STAKEHOLDERS

#### *A. Trans People, and Other People, the US Military Harms*

When arguing for or against trans inclusion in the military, some people downplay, disregard, or even celebrate the opportunity to do more harm to military targets.<sup>52</sup> However, the people the US military targets ought to be the people at the center of any analysis of US military policy, because they are the ones most directly impacted by it.<sup>53</sup> When we discuss trans issues and the US military, it is important to remember that some of the victims of US military aggression are also trans, or don't fit mainstream US or local gender norms. I do not mean to suggest that only trans lives matter, but to insist that trans people other than white trans people from the United States also have a stake in this debate.

Thus, in this section, I first wish to center on the trans and cis Iraqis, Afghanis, Pakistanis, Yemenis, and others killed, raped, bereaved, imprisoned, poisoned, disabled, or impoverished through US military action. Next, I will call attention to the trans Muslims and trans people of color around the world whom US military interventions may harm less directly through fueling racism and Islamophobia, incentivizing migration without providing safe harbors, and increasing police tools for violence against communities of color. Finally, I will address the possibility that Muslim, Arab, and South Asian trans people could be turned into another group of victims supposedly in need of rescuing

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<sup>52</sup> See, e.g., THE HAGUE CENTRE FOR STRATEGIC STUDIES, *LGBT MILITARY PERSONNEL: A STRATEGIC VISION FOR INCLUSION* 12 (2014) (pointing out that inclusion may permit recruitment of better-qualified personnel and increase morale).

<sup>53</sup> Cf. Gabriel Arkles et al., *The Role of Lawyers in Trans Liberation: Building A Transformative Movement for Social Change*, 8 SEATTLE J. FOR SOC. JUST. 579, 605 (2010) (arguing for leadership of those most directly affected by an issue in determining how to address that issue).

through destruction, in the way that images of Muslim, Arab, and South Asian women and gay people have already been deployed to justify war.

### 1. Those Directly Targeted

In the United States, we often hear only about the impact of military ventures on US soldiers and US interests. As Chelsea Manning stated:

We consciously elected to devalue life both in Iraq and Afghanistan. When we engaged those that we perceived were the enemy, we sometimes killed innocent civilians. Whenever we killed innocent civilians, instead of accepting responsibility for our conduct, we elected to hide behind the veil of national security and classified information in order to avoid any public accountability.<sup>54</sup>

Taking the idea that no one is disposable to heart, we have to reject this differential valuing of human life. Nermin Al-Mufti, an Iraqi woman speaking at UCLA in 2003, explained:

[F]or thirteen years, twenty-six million Iraqis have been demonized in the Western media in a very ugly way, as if we are not human beings, as if we are not the same Iraqis who have a rich history, as if we are not the same Iraqis living where civilization began, the same Iraqis who introduced the very basis of mathematics.<sup>55</sup>

From 2001 to the beginning of 2013, more than 330,000 people died directly due to war in Iraq, Afghanistan, and Pakistan.<sup>56</sup> 201,885 of

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<sup>54</sup> *Text of Bradley Manning's Letter to President*, ASSOCIATED PRESS (Aug. 21, 2013, 7:00 PM), <http://bigstory.ap.org/article/text-bradley-mannings-letter-president>.

<sup>55</sup> Azza Basarudin & Khanum Shaikh, *On Occupation and Resistance: Two Iraqi Women Speak Out*, in VOICES OF RESISTANCE: MUSLIM WOMEN ON WAR, FAITH, AND SEXUALITY 30, 32 (Sarah Husain ed., 2006).

<sup>56</sup> See *Human Costs of War: Direct War Death in Afghanistan, Iraq, and Pakistan October 2001–February 2013*, WATSON INST. FOR INT'L STUDIES,

those people were civilians.<sup>57</sup> In addition to killing people, the US military has imprisoned people and tortured them.<sup>58</sup> It has raped people—mostly women—both in and out of detention.<sup>59</sup> It has destroyed universities, museums, and ancient works of art.<sup>60</sup> It has used weapons that have caused rampant deadly cancer among children.<sup>61</sup> It has destroyed crucial infrastructure and contributed to worsened poverty.<sup>62</sup> It has physically and psychologically injured many people.<sup>63</sup> It has supported some of the most conservative factions in creating new governments and undermined work of marginalized groups within the

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[http://costsofwar.org/sites/default/files/HMCHART\\_2.pdf](http://costsofwar.org/sites/default/files/HMCHART_2.pdf) (last visited Oct. 12, 2014).

<sup>57</sup> *Id.*

<sup>58</sup> Jamie Tarabay, *Abu Ghraib Closes, Bitter Memories of Torture Remain*, AL JAZEERA AMERICA (Apr. 26, 2014), <http://america.aljazeera.com/articles/2014/4/15/abu-ghraib-s-infamousend.html>; *Iraq: Detainees Describe Torture in Secret Jail*, HUMAN RIGHTS WATCH (Apr. 27, 2010), <http://www.hrw.org/news/2010/04/27/iraq-detainees-describe-torture-secret-jail>.

<sup>59</sup> Gwyn Kirk et al., *Women and the U.S. Military in East Asia*, INCITE!, <http://www.incite-national.org/page/women-us-military-east-asia> (last visited Oct. 2, 2014); Bonnie Mann, *Manhood, Sexuality, and Nation in Post-9/11 United States*, in SECURITY DISARMED: CRITICAL PERSPECTIVES ON GENDER, RACE, AND MILITARIZATION 179, 191 (Barbara Sutton, Sandra Morgen, & Julie Novkov eds., 2008) (“America is shocked, and fascinated, by the role of its women as perpetrators of the torture. Other images, for example, one of male soldiers, penises exposed, standing over a naked, bound, and kneeling Iraqi woman, don’t even make the news.”).

<sup>60</sup> WAR AND OCCUPATION IN IRAQ, GLOBAL POLICY FORUM, 13–22 (2007), available at <https://www.globalpolicy.org/component/content/article/168/37146.html>.

<sup>61</sup> Dahr Jamail, *Iraq: War’s Legacy of Cancer*, AL JAZEERA (Mar. 15, 2013), <http://www.aljazeera.com/indepth/features/2013/03/2013315171951838638.html>.

<sup>62</sup> Dahr Jamail, *Iraq: A Country in Shambles*, AL JAZEERA (Jan. 9, 2012), <http://www.aljazeera.com/indepth/features/2012/01/20121411519385348.html>.

<sup>63</sup> Neta C. Crawford, COSTS OF WAR, ASSESSING THE HUMAN TOLL OF THE POST-9/11 WARS: THE DEAD AND WOUNDED IN AFGHANISTAN, IRAQ, AND PAKISTAN, 2001–2011, at 7–8 (2011), available at <http://costsofwar.org/sites/default/files/articles/13/attachments/CrawfordAssessingTheHumanToll.pdf> (noting widespread, but largely uncounted, physical and psychological injuries to Iraqi, Afghani, Yemeni, and Pakistani people as a result of US military intervention).

countries.<sup>64</sup> It has disabled huge numbers of people, both in the sense of causing people to acquire impairments and illnesses, and in the sense of destroying infrastructure and reproducing hierarchies that subordinate—*disable*—people with impairments and illnesses.<sup>65</sup> The survivors, disabled and not, have lost loved ones and parts of their culture and country. Thus, some of the stakeholders in debates over trans people in the US military are the people, both trans and cis, whom the US military may kill or otherwise harm in its ventures.

## 2. Those Indirectly Harmed

Those not directly in the paths of the bombs, even those who live in the United States, also suffer from the fallout of military campaigns. Muslims, Arabs, and South Asians are vilified no matter where or how they live.<sup>66</sup> The racism and Islamophobia that both fuels and is fueled by military adventures affects trans and gender nonconforming Muslims, Arabs, and South Asians, among others. One genderqueer Palestinian lesbian in the United States reflects on how people react to her in bathrooms:

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<sup>64</sup> Greg Mitchell, *A Long List of What We Know Thanks to Chelsea Manning*, THE NATION (Aug. 23, 2013), <http://www.thenation.com/blog/175879/too-often-forgotten-amazingly-long-list-what-we-know-thanks-private-manning?rel=facebook#> (noting US support for corrupt and repressive regimes); Alessandra Garusi, *The Silent Revolution*, REVOLUTIONARY ASS'N OF THE WOMEN OF AFGHANISTAN (May 23, 2013), <http://www.rawa.org/rawa/2013/05/23/the-silent-revolution.html>; Yifat Susskind & Yanar Mohammed, *A Decade of Occupation for Iraqi Women*, COMMON DREAMS (Mar. 19, 2013), <http://www.owfi.info/EN/article/72/>.

<sup>65</sup> For a brief description of the social model of disability, see *Social Model of Disability*, MICHIGAN DISABILITY RIGHTS COALITION, <http://www.copower.org/models-of-disability/182-social-model-of-disability.html> (last visited Oct. 5, 2014).

<sup>66</sup> See Rokhsana Bahramitash, *Saving Iranian Women: Orientalist Feminism and the Axis of Evil*, in SECURITY DISARMED: CRITICAL PERSPECTIVES ON GENDER, RACE, AND MILITARIZATION 101, 109 (Barbara Sutton, Sandra Morgen, and Julie Novkov eds. 2008).



[W]hile I am inside a public women’s restroom, I am often mistaken for an Arab man. The fear in women’s eyes as they recoil from me cannot be mistaken. The stereotype of Arab men as violent and hypersexualized is, I believe, a major aspect of why these women fear me. They fear being raped. They fear being hurt. They mistrust. The fear has been so intense at times that I have felt compelled to assure women of their safety, assure them that indeed I am a woman. But, of course, I cannot assure them that I am not Palestinian.<sup>67</sup>

War also impacts immigration. Refugees from Iraq, Afghanistan, and other war-torn countries sometimes can obtain legal status to live in the United States or other “Western” countries because they are trans or queer, because they are members of dissident political factions, or for other reasons.<sup>68</sup> Part of the reason why people actually leave their countries is that their countries are poor and are getting bombed.<sup>69</sup> In the United States and other countries, though, refugees and other immigrants from countries targeted by the US military—including women, LGBTQ people, and trans people—face serious discrimination and potential detention and deportation, in part because they are demonized as potential terrorists.<sup>70</sup>

Military weapons and techniques also filter into use by law enforcement and correction officers in the United States and elsewhere.<sup>71</sup> Law enforcement and corrections often target trans people,

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<sup>67</sup> Huda Jadallah, *Reflections of a Genderqueer Palestinian American Lesbian Mother*, in ARAB AMERICAN FEMINISMS 276 (Rabab Abdulhadi, Evelyn Alsultany, & Nadine Christin Naber eds., 2011).

<sup>68</sup> See Paul Canning, *Press Statement*, IRAQI LGBT, June 4, 2010, <http://iraqilgbtuk.blogspot.com/>.

<sup>69</sup> Pooja Gehi, *Gendered (in)security: Migration and Criminalization in the Security State*, 35 HARV. J. L. & GENDER 357, 385 (2012).

<sup>70</sup> Sima Shaksary, *The Irony of Rights: Healthcare for Queer and Transgender Refugee Applicants in Turkey*, JADALIYYA (Sept. 2, 2013), [http://www.jadaliyya.com/pages/index/13940/the-irony-of-rights\\_healthcare-for-queer-and-trans](http://www.jadaliyya.com/pages/index/13940/the-irony-of-rights_healthcare-for-queer-and-trans).

<sup>71</sup> Radley Balko, *Rise of the Warrior Cop*, WALL STREET J. (Aug. 2, 2013, 4:44 PM ET), available at <http://online.wsj.com/news/articles/SB10001424127887>

and particularly disabled trans people of color, for violence, arrest, and imprisonment.<sup>72</sup> Thus, the investment in the military can harm marginalized communities in the United States in directly physically violent ways.

### 3. Those who May Be Used

Beyond these harms, it is possible that the United States may begin to use transphobia as an excuse for invading countries. In other words, the United States might cite examples of mistreatment of trans people in Arab, South Asian, and other countries as a justification for US military intervention. This possibility should concern those who genuinely care about trans lives, because US invasion has not helped others held up as victims in need of saving so far.

Already US discourse about Muslim, Arab, and South Asian trans people, gender nonconforming people, basha posh,<sup>73</sup> and hijra<sup>74</sup> tends to be objectifying or pathologizing, using these groups as evidence of the depravity of Muslim, Arab, and South Asian societies.<sup>75</sup> Transphobia

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323848804578608040780519904 (describing a police assault on a veteran's home and the increasing militarization of police, including use of equipment such as bayonets, M-16 rifles, and armored personnel carriers).

<sup>72</sup> Gabriel Arkles, *Gun Control, Mental Illness, and Black Trans and Lesbian Survival*, 42 SW. L. REV. 855, 889 (2013); Gehi, *supra* note 69, at 368.

<sup>73</sup> Basha posh refers to people in Afghanistan who are born with vulvas and who are raised as boys. My understanding of basha posh is mediated through US, English-language sources; I have no definition of basha posh that comes from basha posh themselves.

<sup>74</sup> Hijra refers to South Asian people born with penises who have feminine forms of self-expression, and who may not identify as women or as men. My understanding of hijras is mediated through English-language sources, most of them from the United States or the United Kingdom; I have no definition of hijra that comes from hijra themselves. For more information about some concerns of Indian hijra, see Preksha Malu, *Hijra Community Turns Up in Pink to Voice Their Concerns*, DNAINDIA.COM (Jan. 14, 2015), <http://www.dnaindia.com/mumbai/report-hijra-community-turns-up-in-pink-to-voice-their-concerns-2052257>.

<sup>75</sup> See, e.g., Beenish Ahmed, *Pakistan's Transgender Community is Hiding Out in a Hostile City*, VICE NEWS (May 19, 2014, 5:24 AM), <https://news.vice.com/>

has not yet been used as a justification for war, or at least not nearly to the same extent that misogyny and homophobia have. If trans people were included in the US military, however, we might see transphobia held up as an excuse for war more often.

The United States, European nations, and Israel—with US backing—often use the misogyny and homophobia of Arab and/or Muslim countries to justify attacking them.<sup>76</sup> We can learn from the experiences of the Arab and Muslim cisgender women and lesbian, gay, bi, and queer people who the United States and other countries have already set out to liberate.

Women’s organizations in Afghanistan and Iraq have made it clear that US military intervention and occupation has not improved their lives, even if the previous regime was oppressive. For example, in 2013 the Organization for Women’s Freedom in Iraq issued a press release stating:

A decade after the US invasion of Iraq, only one of the strawman arguments for going to war remains standing: “We did it for democracy and women’s rights.” And yet we hear the same thing again and again from women in the shelters we operate throughout Iraq: “Why are we living in these violent times?” They don’t mourn the fall of Saddam, but women here have suffered 10 years of spiraling abuse, including a spike in

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article/pakistans-transgender-community-is-hiding-out-in-a-hostile-city; Diane Anderson-Minshall, *Why is this Trans Kid in Afghanistan Jubilant?*, THE ADVOCATE (Feb. 24, 2013, 1:10 PM ET), <http://www.advocate.com/society/youth/2013/02/24/why-trans-kid-afghanistan-jubilant>; Majeed Babar & Ron Synovitz, *Despite Gains, Pakistan’s Transgender Community Under Attack*, RADIO FREE EUROPE / RADIO LIBERTY (Oct. 26, 2013), <http://www.rferl.org/content/pakistan-transgender-eunuchs/25148690.html>; Nadia Hashimi, *Afghan Girls Dressed as Boys, Recipe for Gender Dysphoria?*, PSYCHOLOGY TODAY (May 8, 2014), <http://www.psychologytoday.com/blog/girls-and-boys/201405/afghan-girls-dressed-boys-recipe-gender-dysphoria>.

<sup>76</sup> See JASBIR PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* 43 (Inderpal Grewal, Caren Kaplan & Robyn Wiegman, eds., 2007).

“honor killings,” forced veiling, and a growing tolerance for beating women into subordination. . . . They want to move beyond mere survival and build the country they dream of.<sup>77</sup>

When asked whether the situation had improved in Afghanistan after 11 years of occupation, the leader of the Revolutionary Afghan Women’s Association said,

No, unfortunately it hasn’t. Today Afghanistan is the 2nd country in the world for corruption. It produces the 90% of opium. And it’s the most dangerous place for women: 90% of Afghan female population have experienced domestic violence in their lives (rapes, arranged marriages, etc.); 2,300 women committed suicide in 2011.<sup>78</sup>

Queer, trans, and feminist Palestinians repeatedly remind those who would seek to “help” them that their experiences cannot be separated from the experiences of all Palestinians living under US-funded Israeli military occupation.<sup>79</sup>

Overall, US military intervention has harmed many trans and cis people, both in countries we have attacked and within US borders. It seems unlikely that openly welcoming trans people into the US military would help those people so harmed, and it might hurt them. At the very least, it sidesteps the issues most important to these communities.

*B. Trans People Who Do Not Want to Join the Military—at Least if They Have Alternatives*

Another group of trans stakeholders are those trans people who do not want to join the military, register for selective service, or continue

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<sup>77</sup> Susskind & Mohammed, *supra* note 64.

<sup>78</sup> Garusi, *supra* note 64.

<sup>79</sup> See, e.g., *Anti-Militarism Organizing Resources*, INCITE!, <http://www.incite-national.org/page/anti-militarism-organizing-resources> (last visited Oct. 2, 2014); *Women and the U.S. Military in East Asia*, INCITE!, <http://www.incite-national.org/page/women-us-military-east-asia> (last visited Oct. 2, 2014).

military service. Nationalist fervor should not prevent us from considering the needs of people who need income, but who want more and different options than military service, and who may be vulnerable to an economic draft. In this section, I first consider low-income trans people with few ways to survive, then trans people who do not wish to register for selective service, and finally trans people in the military who want to get out of it. All of these constituencies matter when considering trans issues and the US military.

### 1. Low-Income Trans People with Limited Ways to Survive

A lot of trans people are poor.<sup>80</sup> Employment discrimination against trans people is extraordinarily common, as is harassment and discrimination in education.<sup>81</sup> Shut out of most licit forms of employment, some trans people participate in criminalized economies, such as sex work, which expose them to high risk of police harassment and arrest, and which do not provide them with any of the benefits of labor and employment law.<sup>82</sup> Other trans people seek access to public benefits, which, if they can access them at all, lead to intense surveillance, onerous and often humiliating rituals of application and recertification, and work requirements that force them to work for less

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<sup>80</sup> Dean Spade, *Keynote Address: Trans Law and Politics on a Neoliberal Landscape*, 18 TEMP. POL. & CIV. RTS. L. REV. 353, 358 (2009) (“Trans people are disproportionately poor because of employment discrimination, family rejection, troubles accessing school, medical care, and social services.”).

<sup>81</sup> MAKE THE ROAD NEW YORK, TRANSGENDER NEED NOT APPLY: A REPORT ON GENDER IDENTITY JOB DISCRIMINATION (2010), available at [http://www.maketheroad.org/pix\\_reports/TransNeedNotApplyReport\\_05.10.pdf](http://www.maketheroad.org/pix_reports/TransNeedNotApplyReport_05.10.pdf); EMILY A. GREYTAK ET AL., GAY, LESBIAN AND STRAIGHT EDUC. NETWORK, HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION’S SCHOOLS (2009), available at <http://glsen.org/sites/default/files/Harsh%20Realities.pdf>.

<sup>82</sup> See Darby Hickey, *Policing Gender, Arresting Sex*, HUFFINGTON POST (Jan. 6, 2013, 5:12 AM), [http://www.huffingtonpost.com/darby-hickey/policing-gender-arresting-sex\\_b\\_2065863.html](http://www.huffingtonpost.com/darby-hickey/policing-gender-arresting-sex_b_2065863.html).

than minimum wage without the protections of labor or employment law.<sup>83</sup>

The military is the largest employer in the United States.<sup>84</sup> That this employer explicitly and unapologetically discriminates against trans people leads to concern not only about the direct discrimination the institution practices, but also about the message it communicates to other US employers about the worthiness of trans people as employees.

However, opening up military jobs to trans people has serious risks as well. Many people have pointed out that an economic draft pushes many poor and working class young people, many of them people of color, into enlisting. Certainly, the armed forces are aware of class in their recruiting. “[C]ategorizing potential recruits based on . . . their parents’ socioeconomic status may be useful for targeting recruiting strategies[.]”<sup>85</sup> Depending on branch of service, 27 to 50 percent of low-ranking enlisted service members are people of color.<sup>86</sup>

If military jobs opened up to trans people, we might see more trans people faced with a choice between militarized work and criminalized work. However, military jobs are not necessarily particularly *good* jobs, despite propaganda to the contrary.<sup>87</sup> You cannot quit these jobs and

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<sup>83</sup> See, e.g., *Brukhman v. Giuliani*, 727 N.E.2d 116, 118 (N.Y. 2000); *Johns v. Stewart*, 57 F.3d 1544, 1557 (10th Cir. 1995).

<sup>84</sup> See *About the Department of Defense (DOD)*, U.S. DEP’T OF DEFENSE, <http://www.defense.gov/pubs/dod101/> (last visited Oct. 5, 2014) (“With over 1.4 million men and women on active duty, and 718,000 civilian personnel, we [the Department of Defense] are the nation’s largest employer.”).

<sup>85</sup> LISA M. PENNEY ET AL., U.S. ARMY RESEARCH INST. FOR THE BEHAVIORAL & SOC. SCIENCES, AN ANNOTATED BIBLIOGRAPHY OF RECRUITING RESEARCH CONDUCTED IN THE U.S. ARMED SERVICES AND IN FOREIGN SERVICES (2001), available at <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA389679>.

<sup>86</sup> MILITARY LEADERSHIP DIVERSITY COMMISSION, FROM REPRESENTATION TO INCLUSION: DIVERSITY LEADERSHIP FOR THE 21ST-CENTURY MILITARY (2011), available at [http://diversity.defense.gov/Portals/51/Documents/Special%20Feature/MLDC\\_Final\\_Report.pdf](http://diversity.defense.gov/Portals/51/Documents/Special%20Feature/MLDC_Final_Report.pdf).

<sup>87</sup> Kenyon Farrow, *A Military Job Is Not Economic Justice*, HUFFINGTON POST (Feb. 16, 2011, 12:09 PM EST), <http://www.huffingtonpost.com/kenyon-farrow/>

your employer can change the terms of your contract unilaterally at any time.<sup>88</sup> Rampant sexual assault occurs in the ranks.<sup>89</sup> You risk your life, and if you survive, you will likely have acquired a disability, and you likely will not get all the health care you need.<sup>90</sup> You must directly kill or disable others or indirectly contribute to the killing and disabling of others.<sup>91</sup> After you finish your job, you may have a very hard time finding another.<sup>92</sup> So the choices that we would offer trans people could be: uncertain and inadequate public benefits, criminalized and stigmatized sex work, or dangerous and damaging military work—none of them subject to the protections of employment and labor law. Aaron

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post\_1732\_b\_824046.html.

<sup>88</sup> AIMEE ALLISON & DAVIS SOLNIT, *ARMY OF NONE: STRATEGIES TO COUNTER MILITARY RECRUITMENT, END WAR, AND BUILD A BETTER WORLD* 6 (2007).

<sup>89</sup> Jennifer Hlad & John Vandiver, *Pentagon's Annual Report Shows Sexual Assault Numbers Up Sharply*, STARS AND STRIPES (May 7, 2013), <http://www.stripes.com/news/pentagon-s-annual-report-shows-sexual-assault-numbers-up-sharply-1.219952>.

<sup>90</sup> M. Audrey Burnam et al., *Mental Health Care For Iraq And Afghanistan War Veterans*, 28 HEALTH AFFAIRS, no. 3, 771–82 (2009), available at <http://content.healthaffairs.org/content/28/3/771.full>; Karen McVeigh, *US Military Veterans Face Inadequate Care After Returning from War*, GUARDIAN (Mar. 26, 2013, 1:20 PM EDT), <http://www.theguardian.com/world/2013/mar/26/us-veterans-inadequate-care-war>; Gregg Zoroya, *VA Didn't Pay Some Veterans' Health Costs, Report Says*, USA TODAY (Mar. 7, 2014, 4:23 PM), <http://www.usatoday.com/story/news/nation/2014/03/07/va-veterans-disabled-insurance-claims-denied-millennium/6133691/>; *Veterans Dying Because of Treatment Delays at VA Hospitals, Document Says*, FOX NEWS (Feb. 2, 2014), <http://www.foxnews.com/health/2014/02/02/veterans-dying-because-treatment-delays-at-va-hospitals-document-says/>.

<sup>91</sup> *Entry from February 09, 2013*, THE BIG APPLE (Feb. 9, 2013), [http://www.barrypopik.com/index.php/new\\_york\\_city/entry/join\\_the\\_army\\_travel\\_the\\_world\\_meet\\_interesting\\_people\\_and\\_kill\\_them](http://www.barrypopik.com/index.php/new_york_city/entry/join_the_army_travel_the_world_meet_interesting_people_and_kill_them) (discussing common anti-war saying: “Join the Army, travel the world, meet interesting people and kill them”).

<sup>92</sup> Brad Plumer, *The Unemployment Rate for Recent Veterans is Incredibly High*, WASHINGTON POST (Nov. 11, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/11/11/recent-veterans-are-still-experiencing-double-digit-unemployment/>.

Myracle, a trans veteran involved in Iraq Veterans Against the War, says:

As someone who cares very deeply about my fellow trans people, if what we really care about is strengthening trans people, military enlistment is not the way to go about that. . . . [I] can't endorse anyone joining the military, knowing what I know, and having seen what I've seen—the way sexual assault is covered up and hidden, and the victims are re-victimized by the system . . . I can't endorse people being involved in that.<sup>93</sup>

While it is urgent to expand access to jobs for trans people, it is not at all clear that these are the types of jobs that most trans people want the most, or that it is ethical to focus on making these jobs available to trans people before making other, better jobs available.<sup>94</sup> It is also notable that much of the demand for trans inclusion in the military—or at least the demand that has been most prominent in the media—has come from white, middle-class and wealthy trans people. As Reina Gossett, Director of Membership at the Sylvia Rivera Law Project, says, “When a handful of white trans women with access to billions of dollars try to make trans ppl—who’ll be POC & poor—weapons of war I realize anything is possible.”<sup>95</sup> Most of the goals articulated by and for low-income trans communities of color instead call for things like affordable housing, access to quality consensual healthcare, an end to

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<sup>93</sup> Toshio Meronek, *Transgender Activist Speaks Out Against Campaign to End Trans Military Ban*, TRUTHOUT (July 21, 2014, 9:43 AM), <http://www.truthout.org/news/item/25015-transgender-activists-speak-out-against-campaign-to-end-trans-military-ban>.

<sup>94</sup> Laurelai Bailey, *Why I Am Against Transgender Military Service in the US*, LAURELAI (Sept. 10, 2013), <http://laurelai.info/index.php/why-i-am-against-transgender-military-service-in-the-us/>.

<sup>95</sup> Reina Gossett, *We Don't Need No Trans Cops Rolling Down the Worlds Blocks*, REINA GOSSETT (Sept. 10, 2013), <http://www.reinagossett.com/we-dont-need-no-trans-cops-rolling-down-the-worlds/>.



murders of trans women of color, and an end to police violence and incarceration.<sup>96</sup>

## 2. Selective Service Registration

In general, the US government requires “male” citizens, lawful permanent residents, and certain other immigrants between the ages of 18 and 26 to register for selective service.<sup>97</sup> The purpose of selective service is to create a record of people who could be subject to a draft.<sup>98</sup> Even people deeply opposed to military service must register for selective service.<sup>99</sup> Some people, trans and cis, do not wish to register for selective service.

Currently, trans women and other trans people assigned male at birth, like cis men, must register for selective service, based on the military’s wrongful interpretation of what it means to be “male.”<sup>100</sup> Unlike cis men, in the event of a draft, trans women may be excluded from forced service because they are trans.<sup>101</sup> Trans men and other trans people assigned female at birth, like cis women, do not have to register for selective service.<sup>102</sup> But unlike cis women, they must get proof that they need not register to avoid losing various benefits.<sup>103</sup> This proof outs them as trans.<sup>104</sup>

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<sup>96</sup> *Trans Action for Social and Economic Justice*, in COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY 227, 230 (2006).

<sup>97</sup> 50 U.S.C. app. § 454.

<sup>98</sup> *Id.* § 451.

<sup>99</sup> *Conscientious Objection and Alternative Service*, SELECTIVE SERVICE SYSTEM, <http://www.sss.gov/FSConsobj.htm> (last updated Apr. 30, 2012).

<sup>100</sup> *The Selective Service: How the Selective Service Impacts Transgender People*, NAT’L CENTER FOR TRANSGENDER EQUALITY, [http://transequality.org/Resources/Selective\\_Service\\_only.pdf](http://transequality.org/Resources/Selective_Service_only.pdf) (last visited Oct. 5, 2014).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

In reality, many trans people have no idea whether or not they must register for selective service. Those required to register who do not do so, whether out of choice or confusion, face a wide range of consequences, including ineligibility for federal financial aid and a barrier to naturalization.<sup>105</sup>

An end to the exclusion would not necessarily ease the confusion of trans people about whether they are required to serve, particularly for genderqueers and others without a binary gender identity. If the end to the exclusion came with acknowledgment of trans people's gender identities, it would presumably mean that trans men would be required to register. If an actual draft were imposed, trans people could not avoid service because they were trans. Trans inclusion does nothing to address the concerns of young people who do not wish to register with selective service, people facing barriers to financial aid or naturalization because of their failure to register, or people deeply opposed to participating in the military.

### **3. People Who Want to Get Out of Compulsory Service**

Some people who are in the US military want to get out of it, for any number of reasons. People who join the US military with good intentions sometimes find disillusionment on the battlefield. Myracle says, "I really thought we were the good guys and that we were doing the right thing, and I learned on the ground that that really wasn't the case. That kind of shook my understanding of the military to the core."<sup>106</sup>

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<sup>105</sup> See 8 C.F.R. § 245a.4 (b) (7), 315.2; 50 U.S.C. app. § 462. See also *Selective Serv. Sys. v. Minnesota Pub. Interest Research Grp.*, 468 U.S. 841, 859 (1984) (upholding constitutionality of regulation requiring selective service registration as a condition of receiving federal financial aid).

<sup>106</sup> Meronek, *supra* note 93.

Generally, service members are not allowed to just quit, unless they have finished serving whatever period of time the military has dictated they must. One of the curious things about grounds that make one ineligible for service is that they can work as a double-edged sword. Sometimes, they keep people out who want to get in. But sometimes, they can let people out who want to get out. Of course, it is not always so easy. Indeed, coming out as gay was not enough to get out of the military under DADT if the military thought you were coming out *because* you wanted to get out.<sup>107</sup> But it is still a tool that some trans people—and conceivably, although far less probably, cis people pretending to be trans—may be able to use to get out of military service that they would otherwise be trapped in.

Because trans people are excluded largely through grounds of medical ineligibility that also exclude many disabled people, approaches to arguing for (or against) trans inclusion can also have ramifications for disabled people. While some disabled people may want to serve, others may already be serving and want to end that service.<sup>108</sup> If trans advocates push to say that just having a certain psychiatric diagnosis or surgical history should not prevent service unless the military can show a real link between that diagnosis or history and ability to serve, it could risk cutting off an escape route for both trans and disabled service members who no longer wish to serve.

Inclusion arguments can also bolster broad compulsory military service beyond US borders. The United States directly and indirectly pressures other countries to adopt US-defined “human rights” frameworks, notwithstanding the United States’ rather deplorable

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<sup>107</sup> Julian E. Barnes, *Military’s Refusal to Discharge Lesbian a New Catch-22*, LOS ANGELES TIMES (Apr. 2, 2010), available at <http://articles.latimes.com/2010/apr/02/nation/la-na-dont-ask2-2010apr02>.

<sup>108</sup> See generally *Operation Recovery*, IRAQ VETERANS AGAINST THE WAR, <http://www.ivaw.org/operation-recovery> (last visited Oct. 5, 2014).

record on human rights.<sup>109</sup> Trans military inclusion here—or even sufficient demand for it—could seriously risk trans inclusion in other countries’ militaries where the context for military participation is quite different. Cindy Patton explores this issue in the context of how the struggle for gay inclusion in the US military impacted gay men seeking exemptions from military service in Taiwan.<sup>110</sup> She describes a situation where a group of gay men in Taiwan sought exclusion from compulsory service in the military, which had been imposing martial law. They expected an interview with a psychiatrist and exemption from service. Instead, the US struggle for gay inclusion in the military changed the situation. Patton writes:

Taiwan’s homosexuals no longer benefit from an official policy that once relieved them of service. Thus, instead of the expected battery of questions about their perverse desires and deviant practices, the gay petitioners of 1993 were treated to a rant about their nationalist feelings: “You are unpatriotic! You care nothing about your country! All you are doing is trying to get out of your obligation! What is wrong with you? Don’t you know the American gays *want* to serve their country?”<sup>111</sup>

Patton goes on to ask how US-generated discourses “travel—and what they do when they arrive,” commenting, “isn’t it a bit frightening to imagine a nation that first recognizes its gay citizens as cannon fodder?”<sup>112</sup>

To take up Patton’s question, we must ask ourselves how the discourse about trans inclusion in the US military has travelled and will

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<sup>109</sup> *United States*, HUMAN RIGHTS WATCH, <http://www.hrw.org/united-states> (last visited Oct. 5, 2014).

<sup>110</sup> Cindy Patton, *Stealth Bombers of Desire: The Globalization of “Alterity” in Emerging Democracies*, in QUEER GLOBALIZATIONS: CITIZENSHIP AND THE AFTERMATH OF COLONIALISM 195 (Arnaldo Cruz-Malavé & Martin F. Malansan IV eds., 2002).

<sup>111</sup> *Id.* at 196.

<sup>112</sup> *Id.*

travel beyond US borders. Not only at home, but abroad, it could be used as a sword to force more unwilling people into military service, potential early death, potential killing, and probable trauma.

### *C. Trans People, and Others, Involved in the US Military*

Some people who argue against trans inclusion in the military may disregard or downplay the impact on trans service members and veterans. But again, no one is disposable. While all of us should be held meaningfully accountable for our role in perpetrating US military violence, accountability does not mean abandonment or an end to treating people with dignity, respect, and compassion.<sup>113</sup> Accountability also should not fall solely or primarily on the shoulders of service members. Rather, the people and institutions with the power to set US military policy, but who never need to put their own lives on the line to carry it out, should bear special responsibility. The needs, experiences, and concerns of trans service members and veterans matter. Thus, in this section, I first review policies about trans service members and veterans, then give some attention to the experiences of trans people who want to join the military, trans people who currently serve, and trans veterans.

#### **1. Current Military Policies About Trans People**

The exclusion of trans people from military service is not the same as the recently repealed exclusion of gay, lesbian, and bisexual people through DADT. In fact, it is a number of different policies. Military

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<sup>113</sup> CREATIVE INTERVENTIONS TOOLKIT: A PRACTICAL GUIDE TO STOP INTERPERSONAL VIOLENCE, CREATIVE INTERVENTIONS (2012), *available at* <http://www.creative-interventions.org/wp-content/uploads/2012/06/2.CI-Toolkit-Some-Basics-Pre-Release-Version-06.2012.pdf> (noting the need for neither colluding with nor demonizing a person who does harm when working toward accountability).

policies treat trans experience as a medical, psychological, and behavioral issue.

Department of Defense (DOD) Instruction 6130.03 sets out criteria of medical eligibility for service. One of the grounds for medical ineligibility that can affect trans people, as well as people with intersex conditions or differences of sexual differentiation, involves genitals. Specifically, under the section for both “female genitalia” and “male genitalia,” the DOD lists “[h]istory of major abnormalities or defects of the genitalia” as a ground for disqualification, elaborating with the examples of “change of sex, hermaphroditism, pseudohermaphroditism, or pure gonadal dysgenesis.”<sup>114</sup> This restriction affects those trans people who have had genital surgery. While most trans people have not had genital surgery, a significant number have.<sup>115</sup>

The DOD also lists “[c]urrent or history of psychosexual conditions, including but not limited to transsexualism, exhibitionism, transvestism, voyeurism, and other paraphilias.”<sup>116</sup> While neither transsexualism nor transvestism are current diagnoses according to the current Diagnostic and Statistical Manual of Mental Disorders (DSM-V), gender dysphoria and transvestic disorder could be interpreted as included under this language.<sup>117</sup> Again, not all trans people have such diagnoses—one study found that a little over half of trans people had received gender related diagnoses<sup>118</sup>—but many could be diagnosed in these ways.

These forms of ineligibility are not the only barriers to open trans military service. Regulations governing background investigations list

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<sup>114</sup> DoDI 6130.03 (April 28, 2010) (diagnostic codes omitted).

<sup>115</sup> GRANT ET AL., *supra* note 35, at 33.

<sup>116</sup> DoDI 6130.03 (April 28, 2010) (diagnostic codes omitted).

<sup>117</sup> See DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (hereinafter DSM-V), at §§ 451, 702 (Am. Psychiatric Ass’n, 5th ed., 2013).

<sup>118</sup> GRANT ET AL., *supra* note 35, at 78.

circumstances in which someone will not clear the check. These circumstances include “[a]ll indications of moral turpitude, heterosexual promiscuity, aberrant, deviant, or bizarre sexual conduct or behavior, transvestitism, transsexualism, indecent exposure, rape, contributing to the delinquency of a minor, child molestation, wife-swapping, window-peeping, and similar situations from whatever source[.]”<sup>119</sup>

While not specific to trans people, the DOD instruction also lists past suicide attempts as a ground for ineligibility, which could serve to disqualify almost as many trans people because, according to a recent national survey, around 41 percent of trans people have attempted suicide.<sup>120</sup> History of past arrests can also lead to ineligibility for service.<sup>121</sup> While this criterion also does not directly target trans people, it would have a disproportionate impact, particularly on transgender people of color who frequently get arrested because of pervasive police profiling and involvement in survival crimes.<sup>122</sup>

These grounds for ineligibility can be used to turn someone down who seeks to enlist. They can also be used to discharge someone. For example, Landon Wilson, a white trans man, was a high-level cryptographer working in Afghanistan before he was discharged for being trans.<sup>123</sup>

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<sup>119</sup> 32 C.F.R. § 154 app. D (1993).

<sup>120</sup> See GRANT ET AL., *supra* note 35, at 2.

<sup>121</sup> 32 C.F.R. § 154 app. D (1993).

<sup>122</sup> E.g., SAN FRANCISCO DEP’T OF HEALTH, THE TRANSGENDER COMMUNITY HEALTH PROJECT (1999), available at <http://hivinsite.ucsf.edu/InSite?page=cftg-02-02> (finding that 65 percent of transgender women and 29 percent of transgender men had a history of incarceration); GRANT ET AL., *supra* note 35, at 163 (noting that 16 percent of trans people had been incarcerated in jail or prison); BETH E. RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION 123 (2012) (noting that Black women who experience male violence are likely to be criminalized).

<sup>123</sup> Michelangelo Signorile, *Landon Wilson, Transgender Navy Sailor, On Being Discharged and His Documentary Project*, HUFFINGTON POST (May 3, 2014),

Beyond these generally applicable policies and regulations, particular people caught acting in ways that do not match military gender norms may get court-martialed. For example, courts have found that cross-dressing is conduct unbecoming of an officer and a gentleman.<sup>124</sup> These court-martial convictions can lead to less than honorable discharges and resulting denial of benefits, as well as possible time in a military prison or brig.<sup>125</sup> Currently, conduct unbecoming of an officer and a gentleman can result in a sentence of up to a year in prison.<sup>126</sup>

In addition to these medical, psychological, and behavioral approaches to excluding trans people from service, military policies also prevent access to gender-affirming healthcare and gender-appropriate identification documents for trans service members and veterans. Through regulations, the military excludes trans healthcare coverage for both active service members and veterans.<sup>127</sup> Military policies for changing name on discharge papers remain overly restrictive.<sup>128</sup>

## 2. Trans People Seeking to Join the Military

Out trans people—particularly trans people who have had genital surgery or received a gender-related psychiatric diagnosis—cannot currently join the military. Some trans people do want to join the military and have been turned away.

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[http://www.huffingtonpost.com/2014/05/03/landon-wilson-transgender-navy-n\\_5253439.html](http://www.huffingtonpost.com/2014/05/03/landon-wilson-transgender-navy-n_5253439.html).

<sup>124</sup> *See, e.g.*, United States v. Guerrero, 31 M.J. 692, 695 (N-M. C.M.R. 1990) *aff'd*, 33 M.J. 295 (C.M.A. 1991).

<sup>125</sup> MANUAL FOR COURTS-MARTIAL, at Pt. IV, ¶ 59.e (United States, 2012), available at <http://www.apd.army.mil/pdffiles/mcm.pdf>.

<sup>126</sup> *Id.*

<sup>127</sup> 32 C.F.R. § 199.4 (2014); 38 C.F.R. § 17.272 (2008).

<sup>128</sup> *Veterans and Military Issues*, NATIONAL CENTER FOR TRANSGENDER EQUALITY, <http://transequality.org/Issues/military.html> (last visited Oct. 3, 2014).



Trans people may want to join the military for a variety of reasons. Some might join because of the economic pressures described above. A study found that trans people who are serving or have served in the military are more likely than other trans people to have lost a job, housing, or family support due to anti-trans bias.<sup>129</sup> The data do not reveal whether they had those experiences before, during, or after their service, though. Regardless, that alone does not explain the high number of trans people in service, particularly given data that show middle-aged white trans women with some higher education are more likely than other groups of trans people to have served.<sup>130</sup>

Some people have also put forward psychological reasons for trans women joining the military in such numbers. One psychiatrist has posited that joining the military, and volunteering for particularly dangerous assignments while in the military, is a flight into hypermasculinity for trans women.<sup>131</sup> According to him, trans women join the military because they are hoping the military can do what so many people say it will—make a man out of them.<sup>132</sup> Failing that, trans women expect that they will die in service.<sup>133</sup> Either eventuality—finally becoming the real men that everyone insists they ought to be or dying in the attempt—seems like a preferable alternative to continuing to live their lives knowing that they are trans women.<sup>134</sup> While I am suspicious of generalized psychological theories about the motivations

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<sup>129</sup> JACK HARRISON-QUINTANA & JODY L. HERMAN, STILL SERVING IN SILENCE: TRANSGENDER SERVICE MEMBERS AND VETERANS IN THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 4 (2013), available at [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/still\\_serving\\_in\\_silence.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/still_serving_in_silence.pdf).

<sup>130</sup> *Id.* at 5.

<sup>131</sup> George R. Brown, *Transsexuals in the Military: Flight Into Hypermasculinity*, 17 ARCHIVES OF SEXUAL BEHAV. 527 (1988).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

of marginalized groups of people, it does seem like this is at least part of the reason why some trans women join the military.<sup>135</sup>

Trans men, who remain largely invisible in mainstream culture, have not received the same attention or positing of theories about their reasons for military service. However, the pop psychology view seems to be that the military would be a naturally appealing venture for trans men and masculine-of-center people assigned female at birth, reasoning that it is one of the only environments that, to some extent, encourages rather than punishes masculinity among those perceived as women. As one white trans woman veteran said, “Saying the military prefers masculine qualities to feminine ones is like saying the sky’s blue.”<sup>136</sup>

Genderqueers and trans people with non-binary gender identities have been so thoroughly left out of dialogue on trans military service<sup>137</sup> that I have not even found any speculation about gender specific psychological motivations for their joining, except to the extent they are swept in under the flight into hypermasculinity theory for people assigned male at birth or the opportunity to express masculinity theory for people assigned female at birth.

Trans people also join the military for the host of reasons why other people join the military: desire to serve their country, desire for challenge and camaraderie, commitment to carry on a family tradition or to rebel against family expectations, hope for self-improvement, excitement about being a part of something bigger than themselves or about participating in violence, bias against Arabs or whoever else has

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<sup>135</sup> Autumn Sandeen, *How the Military Discriminates Against Transgender Individuals* RH REALITY CHECK (Sept. 6, 2013), <http://rhrealitycheck.org/article/2013/09/06/how-the-military-discriminates-against-transgender-individuals/>.

<sup>136</sup> See Andrew Tighman, *Deployed Soldier Begins Sex Change*, ARMY TIMES (Oct. 15, 2012), <http://www.armytimes.com/article/20121015/NEWS/210150309/Deployed-soldier-begins-sex-change>.

<sup>137</sup> See Meronek, *supra* note 93 (“the campaign ‘is not a push for trans inclusion. It’s a push for binary-identified trans people inclusion.’”).

lately been designated an “enemy,” anger at oppressive regimes abroad, or any number of other reasons. In one study, young trans men were particularly likely to want to serve and to have been denied the opportunity to do so.<sup>138</sup> As one of these men said, “I am a patriotic and God-fearing twenty-one-year-old male (of transsexual history) from a military family. . . . [.] I want to serve my country, badly, and think about this constantly.”<sup>139</sup> A white trans man who is currently deployed in Afghanistan and who is keeping his trans identity a secret explained, “I love knowing that because of what I am doing, my family is at home sleeping well and safe.”<sup>140</sup> Some may also join based on lies recruiters tell. The founder of the Coalition Against Militarism in our Schools describes the story of a teenager whose recruiter falsely told him that if he enlisted, he could bring his father—who had been deported to Mexico two years previously—home to the United States.<sup>141</sup> The current exclusionary policies harm trans people who want to join and may not do so, at least in the sense of limiting their options.

### 3. Trans People Serving in Silence or in Prison

Many trans people currently serve in the military, despite formal prohibitions on service. In a large national survey of trans people, 20 percent of respondents were or had been in the military, and 2 percent had tried to join the military and been refused.<sup>142</sup> In the general US public, 10 percent of people have served in the military.<sup>143</sup> Most trans people in the military are likely keeping the fact that they are trans a secret and putting any social, legal, or medical gender transition on

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<sup>138</sup> HARRISON-QUINTANA & HERMAN, *supra* note 129, at 8.

<sup>139</sup> *Id.*

<sup>140</sup> Tighman, *supra* note 136.

<sup>141</sup> ALLISON & SOLNIT, *supra* note 88, at xix.

<sup>142</sup> See GRANT ET AL., *supra* note 35.

<sup>143</sup> *Id.*

hold, as many other trans people in the military have done in the past.<sup>144</sup>

Serious sexism, homophobia, and transphobia have been and still are central to how the US military functions.<sup>145</sup> Admitting women and gay people has not changed these dynamics. One Pentagon study found that around 70 rapes occur in the military each day.<sup>146</sup> Women, queer people, trans people, and those who date trans people are vulnerable to harassment, rape, beating, and even murder in the military. One trans veteran recounts: “I was raped twice in the military because I was butch/lesbian/gender nonconforming. The first time was a gang-rape.”<sup>147</sup> Another states: “My US Navy enlistment was short, two years of a six-year enlistment because when my gender feelings were discovered I was twice raped at sea.”<sup>148</sup> Cisgender man Barry Winchell was murdered because of his relationship with a transgender woman.<sup>149</sup>

Military regulations deny service members access to gender-affirming healthcare.<sup>150</sup> The consequence of this denial is that trans people in the military often cannot access the medical care they need, including care offered to cis service members.<sup>151</sup> Even if they can afford it on their own, they must either forego or hide their healthcare

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<sup>144</sup> HARRISON-QUINTANA & HERMAN, *supra* note 129, at 9.

<sup>145</sup> See, e.g., Sutton & Novkov, *supra* note 41, at 16–17 (describing some of the impact of militarism on women and people of color).

<sup>146</sup> Hlad & Vandiver, *supra* note 89.

<sup>147</sup> HARRISON-QUINTANA & HERMAN, *supra* note 129, at 9.

<sup>148</sup> *Id.*

<sup>149</sup> Calpernia Adams, *Soldier’s Girl—The Reality*, CALPERNIA, <http://www.calpernia.com/aboutme/soldiers-girl/> (last visited Oct. 4, 2014).

<sup>150</sup> 32 C.F.R. § 199.4 (2014); 38 C.F.R. § 17.272 (2008).

<sup>151</sup> JOCELYN ELDERS & ALAN M. STEINMAN, PALM CENTER, REPORT OF THE TRANSGENDER MILITARY SERVICE COMMISSION (2014), *available at* [http://www.palmcenter.org/files/Transgender%20Military%20Service%20Report\\_0.pdf](http://www.palmcenter.org/files/Transgender%20Military%20Service%20Report_0.pdf) (noting that the military already provides hormone treatments and some gender-affirming surgeries to cis service members, while denying them to trans service members).

in order to not lose their jobs. Some trans people in the military do in fact lose their jobs. One trans veteran said: “I served in the US Navy when I figured things out and was told to leave or be dishonorably discharged.”<sup>152</sup> Dishonorable discharge is a particularly severe threat because it means no access to veterans’ benefits and likely future employment discrimination.<sup>153</sup>

Military service is very gender-segregated, based on a binary understanding of gender.<sup>154</sup> Like other gender-segregated settings, military life can pose problems to trans people who do not fit easily into conventional binary conceptions of gender. Trans people have to keep quiet about being trans if they want to avoid being kicked out of the military, and quite possibly being subjected to a great deal of violence along the way. They may have to delay any expression of their gender identity until after they leave military service, which can be toxic and soul-destroying. As one veteran describes, “I gave up most of my life and lived a lie.”<sup>155</sup>

Trans service members who step out of line, in any number of ways, also risk incarceration. Chelsea Manning is one example of a trans service member currently serving time in a military prison. We have no way of knowing just how many trans people are in military prisons. Assuming that the concerns of trans people in military prisons are generally consistent with the concerns of trans people in other sorts of

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<sup>152</sup> HARRISON-QUINTANA & HERMAN, *supra* note 129, at 10.

<sup>153</sup> Marisa Penalzoa & Quil Lawrence, *Other-Than-Honorable Discharge Burdens Like A Scarlet Letter*, NPR (Dec. 9, 2013), <http://www.npr.org/2013/12/09/249342610/other-than-honorable-discharge-burdens-like-a-scarlet-letter>.

<sup>154</sup> See, e.g., Bryce Celotto *On Being Transgender In The Army National Guard*, *supra* note 43 (“Ironically enough, it was my military police training that brought out the gender dysphoria because everything in the military is so gender segregated.”).

<sup>155</sup> HARRISON-QUINTANA & HERMAN *supra* note 130, at 9.

prisons, the top priority of most of them is probably freedom.<sup>156</sup> Beyond that, imprisoned trans people, like other people, tend to want access to health care and other basic necessities, safety from assault, and the capacity to express their gender identities.<sup>157</sup> Only after a law suit did the military agree to provide Manning with hormones; it has not yet agreed to allow her to grow her hair long or express her gender in other ways.<sup>158</sup>

Many trans people who are serving or have served seek the opportunity to serve openly, with no further exclusions of trans people.<sup>159</sup> Others oppose inclusion.<sup>160</sup> Some seek different policy changes, such as access to changing their name on DD-214s (discharge papers), access to gender-affirming healthcare, passage of federal employment discrimination protections, training and education on trans issues, and military adoption of harassment policies.<sup>161</sup>

#### 4. Trans Veterans

I haven't read a single story when a trans\* woman of color was attacked and lived. I've slowly accepted the fact that my chances of surviving in Afghanistan were higher than my

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<sup>156</sup> See Alexander L. Lee, *Nowhere to Go but out: The Collision Between Transgender and Gender-Variant Prisoners and the Gender Binary in America's Prisons*, at 9 (University of California, Berkeley, Boalt Hall School of Law, 2003) (unpublished note), [http://www.prearesourcecenter.org/sites/default/files/library/Nowheretogobutoutthecollisionbetweentransgendersandgenders-variantprisoners\\_0.pdf](http://www.prearesourcecenter.org/sites/default/files/library/Nowheretogobutoutthecollisionbetweentransgendersandgenders-variantprisoners_0.pdf).

<sup>157</sup> PASCAL EMMER ET AL., HEARTS ON A WIRE COLLECTIVE, THIS IS A PRISON, GLITTER IS NOT ALLOWED: EXPERIENCES OF TRANS AND GENDER VARIANT PEOPLE IN PENNSYLVANIA'S PRISON SYSTEMS (2011), available at <http://www.scribd.com/doc/56677078/This-is-a-Prison-Glitter-is-Not-Allowed>.

<sup>158</sup> Lolita C. Baldor & David Dishneau, *Chelsea Manning's Hormone Treatment OK'd, but Not Long Hair*, ABC NEWS (Feb. 13, 2015), <http://abcnews.go.com/US/wireStory/chelsea-mannings-hormone-treatment-okd-long-hair-28951450>.

<sup>159</sup> HARRISON-QUINTANA & HERMAN, *supra* note 129, at 11.

<sup>160</sup> Meronek, *supra* note 93; Bailey, *supra* note 91.

<sup>161</sup> HARRISON-QUINTANA & HERMAN, *supra* note 129, at 11.

chances being out in America. Once I transition, life expectancy goes out the window.<sup>162</sup>

—a trans woman of color veteran

Again, trans veterans are a very diverse group. Some trans veterans go on to wonderful careers and other rewarding ventures.<sup>163</sup> The situation for veterans overall, however, is bleak, and worse in some significant ways for trans veterans.

For new veterans aged 18–24, the unemployment rate averaged 20.4 percent in 2012, more than five percentage points higher than the average among non-veterans aged 18–24.<sup>164</sup> 30 percent of Iraq and Afghanistan veterans have contemplated suicide.<sup>165</sup> 80 percent of Iraq and Afghanistan veterans say they do not think veterans are getting as much care as they need.<sup>166</sup>

The regulatory exclusion of coverage for trans health care prevents trans veterans from getting their gender-affirming health care needs met through the Department of Veterans Affairs (VA).<sup>167</sup> Over 70 percent of

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<sup>162</sup> Brynn Tannehill, *Pondering Male Privilege Post-Transition*, HUFFINGTON POST (Aug. 13, 2013), [http://www.huffingtonpost.com/brynn-tannehill/pondering-male-privilege-post-transition\\_b\\_3744103.html](http://www.huffingtonpost.com/brynn-tannehill/pondering-male-privilege-post-transition_b_3744103.html).

<sup>163</sup> For just one example, Denise Brogan-Kator, a white trans woman veteran, became a lawyer and now serves as legislative counsel for the Family Equality Council. She reports that the other veterans from her unit in submarine service have embraced her. Jennifer Bendery, *For Transgender Veterans, An Awkward ID Problems Awaits Simple Fix*, THE HUFFINGTON POST (Aug. 24, 2012), [http://www.huffingtonpost.com/2012/08/24/transgender-veterans\\_n\\_1828459.html](http://www.huffingtonpost.com/2012/08/24/transgender-veterans_n_1828459.html).

<sup>164</sup> See Tom Tarantino, *The Ground Truth on Veterans' Unemployment*, TIME (Mar. 22, 2013), <http://nation.time.com/2013/03/22/the-ground-truth-about-veterans-unemployment/>.

<sup>165</sup> Bill Briggs, *22 Veterans Commit Suicide Each Day, Report Says*, NBC NEWS (Jan. 2, 2013), [http://usnews.nbcnews.com/\\_news/2013/02/01/16811249-22-veterans-commit-suicide-each-day-va-report](http://usnews.nbcnews.com/_news/2013/02/01/16811249-22-veterans-commit-suicide-each-day-va-report).

<sup>166</sup> *Id.*

<sup>167</sup> 38 C.F.R. § 17.272 (2008).

trans veterans do not receive services at all from the VA.<sup>168</sup> Those who do receive services from the VA at times experience discrimination or violence while there. One trans woman was raped at a VA hospital.<sup>169</sup> Another was arrested, in part for wearing a skirt that was too short.<sup>170</sup>

Moreover, disabled trans veterans often run into significant problems getting access to full disability pensions and benefits. As a part of the process for determining eligibility, the VA determines to what extent a person is disabled and to what extent that disability is connected to the person's military service.<sup>171</sup> In many cases, the agency has told trans veterans that most of their disability is attributable to gender identity, not to a service-related disability.<sup>172</sup>

For example, one trans woman had to leave military service following an investigation into her suspected "homosexual advances or activity."<sup>173</sup> While serving, other service members raped her.<sup>174</sup> She experienced post-traumatic stress disorder (PTSD).<sup>175</sup> When she applied for veterans disability benefits, the agency concluded that it was childhood sexual violence and gender identity disorder (GID), not

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<sup>168</sup> See NIKOLA ALENKIN, USC SCHOOL OF SOCIAL WORK CENTER FOR INNOVATION AND RESEARCH ON VETERANS & MILITARY FAMILIES, THE TRANSGENDER VETERAN EXPERIENCE: POLICY IMPACTS ON TREATMENT, (2013), available at [http://cir.usc.edu/wp-content/uploads/2013/10/2012-10-CIR-Policy-Brief\\_Transgender-Veteran-Experience\\_N.Alenkin.pdf](http://cir.usc.edu/wp-content/uploads/2013/10/2012-10-CIR-Policy-Brief_Transgender-Veteran-Experience_N.Alenkin.pdf).

<sup>169</sup> See HARRISON-QUINTANA & HERMAN, *supra* note 129, at 10.

<sup>170</sup> *United States v. Encinger*, 4:10CR3027, 2010 WL 2771884, at \*2 (D. Neb. July 13, 2010).

<sup>171</sup> 38 C.F.R. § 3.4 (2014).

<sup>172</sup> See, e.g., *Rock v. West*, 16 Vet. App. 47, at \*1 (1998); *Soho v. United States*, CIV.07-3051-CL, 2008 WL 151831, at \*1 (D. Or. Jan. 14, 2008); *Whitworth v. Brown*, 15 Vet. App. 315, at \*3 (1997); (TITLE REDACTED BY AGENCY), 03-17 729, 2006 WL 4424172, at \*14-15 (2006).

<sup>173</sup> *Smith v. Shinseki*, 07-1541, 2009 WL 1444430, at \*1 (Vet. App 2009) *aff'd*, 422 F. App'x 888 (Fed. Cir. 2011).

<sup>174</sup> *Id.* at 2.

<sup>175</sup> *Id.*



PTSD from service, that caused her current disability.<sup>176</sup> In another case, the agency told a trans woman veteran who had experienced multiple psychiatric hospitalizations, homicidal and suicidal thinking, hallucinations, and other symptoms that GID was the primary cause of her disability.<sup>177</sup> While GID has been associated with suicidal thinking, particularly for people who are not getting all the gender-affirming treatment they need and who are experiencing severe transphobia in their lives, it has not been associated with homicidal thinking or hallucinations.<sup>178</sup>

Disabled trans veterans also find themselves financially harmed in other sorts of proceedings. For example, a state court ordered a trans woman to pay more a month in child support than she received from her military pension, which was her only income.<sup>179</sup> The court characterized her unemployment as “voluntary” and thus imputed to her an income she did not actually receive.<sup>180</sup> The court reasoned that her disability did not force her to leave military service—rather she voluntarily chose to retire from service to begin her medical gender transition.<sup>181</sup>

As noted above, while it is not clear from the data whether these experiences happened before, after, or during military service, trans people who have served in the military are more likely than other trans people to have experienced discrimination in employment and housing, as well as rejection from their families.<sup>182</sup>

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<sup>176</sup> *Id.*

<sup>177</sup> *Hawkins v. Shinseki*, 09-0842, 2010 WL 3034720, \*2–3 (Vet. App. July 29, 2010).

<sup>178</sup> *See* DSM-V, *supra* note 117, at 451–59.

<sup>179</sup> *See* *In re Marriage of Sisk*, 135 Wash. App. 1009, at \*1 (2006).

<sup>180</sup> *Id.* at \*2.

<sup>181</sup> *Id.* at \*2 (“Sisk is not unemployable as a partially disabled transsexual. . . . Ultimately, Sisk’s current unemployment is the result of her voluntary and personal choices.”).

<sup>182</sup> *See*, HARRISON-QUINTANA & HERMAN, *supra* note 129, at 6.

#### IV. FUTURE VISIONS

This  
is a clock  
whose time tells horror  
whose alarm rings oblivion.  
We can't undo time.  
We can stop the ringing.

. . . .  
Pits of cut-off hands, blasted limbs, our muted minds.  
We can't kill a beast which is already dead.  
We can bring back to life collective responsibility—  
the heartbeat of human dignity.

—From “For Afghanistan,” 2001, by Salimah  
Valiani<sup>183</sup>

My analysis does not lead to easy answers. The stakeholders I have identified are large, diverse, and diffuse groups that have no easy way to communicate constructively—indeed, some of them are quite intent on killing others of them. What may be a helpful solution for some could seriously harm others. Yet all of these stakeholders matter. All of their lives are valuable, and all of their opinions and perspectives deserve serious consideration.

Below are some of the proposals that, for the most part, different stakeholders have already developed and that I think have promise. I tried to focus on proposals that would help—or at least not harm—all stakeholders. When proposals conflicted because of different interests and opinions of stakeholder groups, I favored those proposals that seemed likely to do the most good—or the least harm—to the people for whom the stakes were highest.

For those interested in supporting trans people involved in or affected by the military, and for those looking for the “next” LGBT

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<sup>183</sup> See Basarudin & Shaikh, *supra* note 55, at 21–22.

military issue to push forward, I offer these paths, instead of staying within the narrow framing of inclusion or exclusion. First, I discuss ways to curb US military violence, which may particularly benefit those stakeholders harmed by such violence and those who do not wish to serve in the US military, including low-income trans people in the United States. Second, I address ways to support diverse stakeholders, including trans service members and veterans, directly.

#### *A. Curbing US Military Violence*

Opposing or supporting trans inclusion in the military, of course, will not end US military violence toward trans people and others. Below are a few possible approaches, both short-term and long-term, that might contribute to such a goal.

#### **1. Counter Recruitment Tactics**

Counter recruitment can be an important grassroots strategy for curbing US military action and supporting people who may not want to join the military if they have access to relevant facts. The US military invests in extensive early recruitment of youth, often using manipulative and deceptive tactics. People doing counter recruitment often try to create opportunities for parents to protect their children's personal information from recruiters; for veterans to talk to youth about their military experiences; for youth and parents to learn realities of military service; for leaders to support young people in pursuing other opportunities that interest them; and for communities to keep recruiters out of schools and community events.<sup>184</sup>

Aimee Allison, a cisgender woman of color veteran, does counter recruitment at high schools. Here she describes her conversation with a

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<sup>184</sup> ALLISON & SOLNIT, *supra* note 88, at 30.

young woman of color who grew up in a poor immigrant family and who was considering enlisting:

I told her about how one in three young women in the military endures harassment, sexual abuse, and/or rape—and that I was one of them. . . . About what it’s like to be a woman in a male world, where rank is everything and you can’t have it. About what it’s like to be a person of color (and half of the enlisted women in the military are African American) in an oppressive system that feels the closest to slavery of all that I have experienced.<sup>185</sup>

Already, trans communities are facing potential recruitment. In 2013, the state department of California participated in San Francisco Pride for the first time. They set up a booth on the festival grounds with the intent of recruiting for both the National Guard and state militia; however, due to public outcry, the board voted to ban military recruiters from San Francisco Pride in the future.<sup>186</sup> The organization Bash Back Denver has published a zine guide to queer counter recruitment strategies.<sup>187</sup> The guide cheekily exhorts its readers to “be one of those queers you’ve heard about: undermine the army’s ability to fight!”<sup>188</sup> It advises its readers to support people considering enlistment, to listen to veterans and young people, to ask questions, and to help find reliable information, without trying to “convert” people to any particular political belief.<sup>189</sup>

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<sup>185</sup> *Id.* at iv.

<sup>186</sup> See Matthew S. Bajko, *Trans Reservist Becomes Public Advocate*, BAY AREA REPORTER (Jun. 12, 2014), <http://www.ebar.com/news/article.php?sec=news&article=69787>.

<sup>187</sup> See BASH BACK DENVER, *Queer Counter Recruitment* (2009), available at [http://zine.library.info/files/bb\\_queercounterrecruitment.pdf](http://zine.library.info/files/bb_queercounterrecruitment.pdf).

<sup>188</sup> *Id.* at 1.

<sup>189</sup> *Id.* at 9–10.

## 2. Opposing Specific Military Interventions and Occupations, While Increasing Transparency and Education

Opposing specific US military interventions can support trans people harmed in US military actions—and at least some trans troops.

Sharing information about past US military atrocities, such as massacres in the Philippines and Panama,<sup>190</sup> can help with this effort, as can acts like Chelsea Manning's to reveal current US war crimes.<sup>191</sup>

We should also listen to the people most affected regarding whether US military intervention helps or harms them. Overwhelmingly, people in the countries we attack tell us to get out, even if we think we're helping. From Afghanistan, we hear:

If you think that expected average life for women in Afghanistan is 46 and I'm already 38 . . . . Big changes sometimes take a lot of time and things are not moving to the right direction: US have spent billions of dollars and obviously they want to keep control on this area as a strong hold against Iran, Pakistan and China. So there won't be a quick solution. Occupation will continue.<sup>192</sup>

We can work to ensure that the occupation meaningfully ends.

From Iraq we hear: “[E]nd this occupation and pull out all the American troops as soon as possible, not only to protect the Iraqi people, but also to protect the young Americans who are being killed,”<sup>193</sup> and more recently:

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<sup>190</sup> See, e.g., Carlos Westley, *Panama massacre: the real story*, 17 EIR 2 (1990), available at [http://www.larouchepub.com/eiw/public/1990/eirv17n02-19900105/eirv17n02-19900105\\_029-panama\\_massacre\\_the\\_real\\_story.pdf](http://www.larouchepub.com/eiw/public/1990/eirv17n02-19900105/eirv17n02-19900105_029-panama_massacre_the_real_story.pdf); see also REYNALDO C. ILETO, *The Philippine-American War: Friendship and Forgetting*, in VESTIGES OF WAR: THE PHILIPPINE-AMERICAN WAR AND THE AFTERMATH OF AN IMPERIAL DREAM 13–14 (Angel Velasco Shaw & Luis H. Francia eds., 2001).

<sup>191</sup> See Mitchell, *supra* note 64.

<sup>192</sup> See Garusi, *supra* note 64.

<sup>193</sup> See Basarudin & Shaikh, *supra* note 55, at 30–32.

We reject US intervention and protest President Obama's inappropriate speech in which he expressed concern over oil and not over people. . . . We call for a clear international position to curb the deteriorating situation as well as regional interference, and to support the people of Iraq.<sup>194</sup>

From Pakistan we see a giant portrait of a child's face to help humanize the victims of drone attacks.<sup>195</sup>

Whether it is through direct action and political protest, voting, lobbying, refusing to enlist, or refusing to use our consumer or tax dollars to support the military and defense contractors, people in the United States have a special opportunity and obligation to end destructive US military interventions.

### **3. Policy Changes to End or Scale Back Compulsory or Coerced Military Service**

Ending compulsory or coerced military service in the United States could provide significant benefits for service members who rethink their decisions to enlist, for people concerned about selective service registration, and for people who face pressure to enlist because of limited options. These policy changes could include the abolition of the selective service,<sup>196</sup> the end of "stop loss" programs, permission for service members to leave service when they choose, support for better job opportunities for low-income people, and improved access to

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<sup>194</sup> See Falah Alwan, *On recent events in Mosul and other cities in Iraq*, JADALIYYA (Jun. 15, 2014), <http://www.jadaliyya.com/pages/index/18143/on-recent-events-in-mosul-and-other-cities-in-iraq>.

<sup>195</sup> See Nick Robins-Early, *Drone Art Project*, HUFFINGTON POST (Apr. 07, 2014), [http://www.huffingtonpost.com/2014/04/07/drone-art-project\\_n\\_5104999.html](http://www.huffingtonpost.com/2014/04/07/drone-art-project_n_5104999.html); see also, *A Giant Art Installation Targets Predator Drone Operators*, NOT A BUG SPLAT, <http://notabugsplat.com/> (last visited Oct. 12, 2014).

<sup>196</sup> See RICHARD LARDNER, *Selective Service System*, HUFFINGTON POST (Feb. 25, 2013 8:11 AM ), [http://www.huffingtonpost.com/2013/02/25/selective-service-system\\_n\\_2758142.html](http://www.huffingtonpost.com/2013/02/25/selective-service-system_n_2758142.html).

meaningful income support for people who need it. Cultural change to end the transphobia that pushes some trans people to join the military would also support this goal.

An end to compulsory and coerced military service could also prevent some of the military violence against others through forcing deeper democratic support for wars. If not enough people were willing to fight a war, then we would not be able to fight it. If people enlisted and discovered that they were not doing the good they thought they would do, or that their recruiter lied, they could remove themselves from the situation—and if enough people did that, the United States might need to remove itself from some of its wars.

Iraq Veterans Against the War proposes a scaled back version of this proposal. They argue as follows:

Service members who experience [Post-traumatic Stress Disorder, Traumatic Brain Injury, Military Sexual Trauma], and combat stress have the right to exit the traumatic situation and receive immediate support, and compensation. Too often, service members are forced to redeploy back into dangerous combat, or train in situations that re-traumatize them. We say, individuals suffering from trauma have the right to remove themselves from the source of the trauma. Service members who are not physically or mentally healthy shall not be forced to deploy or continue service.<sup>197</sup>

Given the large numbers of service members who experience trauma, injury, or illness, even this proposal could have a significant impact.

### *B. Supporting Stakeholders*

While curbing US military violence is an important way to support many stakeholders, largely through limiting future harm, it is not the

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<sup>197</sup> See generally IVAW, *Operation on Recovery*, <http://www.ivaw.org/operation-recovery> (last visited Oct. 12, 2014).

only way, and it is not enough. Here are some other interventions that could help trans service members and veterans, trans people who do not want to join the military, and trans and cis people harmed through US military action.

### 1. Decarceration

Decarceration is an important strategy for supporting trans and cis people harmed by the military, trans service members incarcerated in military prisons or in fear of becoming incarcerated, and trans people of color targeted for incarceration through poverty and militarized police forces. Decarceration should happen on a number of levels, and can involve both short-term and long-term strategies and goals.

In terms of incarceration of military service members, possibly the smallest level of intervention would be to stop incarceration for cross-dressing. However, as we have seen in criminal law, just ending this formal restriction does not necessarily end the practice.<sup>198</sup> A better intervention might be to end the offense of “conduct unbecoming an officer and a gentleman” and to prohibit the military from incarcerating anyone for an act that they could not be incarcerated for if they had committed it as a civilian. Under that regime, the military could still demote or discharge people for offenses that would not be civilian crimes, but it could not incarcerate people for them. Ultimately, however, ending military incarceration would be most consistent with ending the gendered violence of prisons.<sup>199</sup>

The detention facilities that hold “enemy combatants” should be closed and the detainees released to their families, friends, or

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<sup>198</sup> See Gabriel Arkles, *Correcting Race and Gender: Prison Regulation of Social Hierarchy through Dress*, 87 NYU L. REV. 859, 933–34 (2012).

<sup>199</sup> See generally ANGELA DAVIS, *ARE PRISONS OBSOLETE?* (2003); DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW* (2011).



communities. We have no way of knowing how many people in these facilities, and how many of their family members and friends, are trans or gender nonconforming. Even if by some chance none of them are, ending the gendered forms of torture and humiliation that take place in these facilities and allowing detainees' communities to begin to heal would at least indirectly benefit trans people.

Civilian incarceration, which often disproportionately affects veterans and trans people, also needs to end.<sup>200</sup> Some initial steps toward that goal include developing transformative justice approaches to intervene in, prevent, and address violence; decriminalizing sex work and drugs; increasing meaningful opportunities for parole; and reducing sentences.<sup>201</sup>

## 2. Reinvestment, Redistribution, and Trans Justice

A demand of many social justice movements, including queer and trans ones, has been for the United States to shrink its military budget and instead invest its wealth in community infrastructure.<sup>202</sup> As Gossett

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<sup>200</sup> See generally *id.*

<sup>201</sup> *The Abolitionist Toolkit, Part 6: Abolitionist Steps, Alternative Practices, Seven Easy Steps: Ideas and Questions for Everyday Abolitionist Organizing*, CRITICAL RESISTANCE, <http://criticalresistance.org/wp-content/uploads/2012/06/Ab-Toolkit-Part-6.pdf> (last visited Nov. 10, 2014); *The Abolitionist Toolkit, Part 5: Words Matter: Thoughts on Language and Abolition, Shrinking the System*, CRITICAL RESISTANCE, <http://criticalresistance.org/wp-content/uploads/2012/06/Ab-Toolkit-Part-5.pdf> (last visited Nov. 10, 2014); *Toward Transformative Justice: A Liberatory Approach to Child Sexual Abuse and other forms of Intimate and Community Violence: A Call to Action for the Left and the Sexual and Domestic Violence Sectors*, GENERATION FIVE (June 2007), [http://www.blackandpink.org/wp-content/uploads/G5\\_Toward\\_Transformative\\_Justice-1.pdf](http://www.blackandpink.org/wp-content/uploads/G5_Toward_Transformative_Justice-1.pdf); *Toolkit*, CREATIVE INTERVENTIONS, <http://www.creative-interventions.org/tools/toolkit/> (last visited Nov. 10, 2014).

<sup>202</sup> See, e.g., *TransJustice, A Project of the Audre Lorde Project, Trans Action for Social and Economic Justice*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* 227 (2006), 230; Kenyon Farrow, *A Military Job Is Not Economic Justice*, HUFFINGTON POST (May 25, 2011 6:30 PM), <http://www.huffingtonpost.com/>

explains, “actually the most pressing needs for our community is getting \*out\* of deadly institutions like prisons, police, jail, detention centers, bad homeless shelters, forced hospitalizations, as well as access to healthcare, meaningful employment, homes.”<sup>203</sup>

Shrinking the military budget could cause a lot of service members to lose jobs, which is not a concern to shrug off lightly. Veterans are already particularly likely to be unemployed, and many veterans are marginalized members of our communities—trans people, people of color, and disabled people.<sup>204</sup> Reinvestment, when it happens, should happen in a way that creates jobs, and provides the training and support needed for former service members, among others, to take them. Our communities would benefit from more workers, such as more teachers, more scientists working on sustainable energy and life-saving vaccines, more sanitation workers in poor neighborhoods, more trans-affirming health care providers in poor neighborhoods, more museum curators and librarians, more personal assistants for disabled people, more construction workers building or refurbishing existing buildings to make them into free or affordable housing, and more artists.

Congress should pass and the Equal Employment Opportunity Commission (EEOC) should enforce a trans-inclusive Employment Nondiscrimination Act (ENDA) that does not create enormous

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kenyon-farrow/post\_1732\_b\_824046.html; Pamela J. Podger et al., *Thousands Rally at Anti-War Gathering in Oakland / Demonstrators Say War Costs Are Draining Funds for Social Services*, SFGATE (April 6, 2003), <http://www.sfgate.com/bayarea/article/Thousands-rally-at-anti-war-gathering-in-Oakland-2657136.php>; *Disarmament*, UNITED NATIONS, <http://www.un.org/en/globalissues/disarmament/> (last visited Oct. 12, 2014); *War Makes Us Poor*, WASHINGTON’S BLOG, <http://www.washingtonsblog.com/2014/04/war-destroying-economy.html> (last visited Oct. 12, 2014).

<sup>203</sup> Reina Gossett, *supra* note 95.

<sup>204</sup> See, Rebecca Ruiz, *Report: A Million Veterans Injured In Iraq, Afghanistan Wars* FORBES (Nov. 4, 2013, 9:46 AM), <http://www.forbes.com/sites/rebeccaruiz/2013/11/04/report-a-million-veterans-injured-in-iraq-afghanistan-wars/> (reporting over one million US veterans disabled in wars in Iraq and Afghanistan).

loopholes for private employers with religious objections to trans or queer existence.<sup>205</sup> However, it is important that we do not assume that anti-discrimination legislation will translate into an end to employment discrimination against trans people—that has not yet worked for people of color, women, or disabled people.<sup>206</sup> It is simply another tool that people should have available to them in resisting discrimination.<sup>207</sup> The pervasive devaluing of trans lives also must end in all of its forms, well beyond what anti-discrimination laws would reach. As just one example, the media must stop ignoring, misgendering, and mocking murdered trans women of color.<sup>208</sup>

More fundamental economic changes also need to happen. In an open letter to the Occupy Movement, the Organization of Women for Freedom in Iraq shares one such vision:

People of the world have come to refuse a culture of wars and also the “democracy” of the rich. It is time for a political system of equal wealth for all, in other words, a socialist system, where free market rules cannot starve billions while filling the pockets of a few. Connecting such a movement globally was beyond even the wildest dreams of most visionaries, but has proven to be within reach in 2011. And your #Occupy movement has played a leading role in igniting

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<sup>205</sup> See *Task Force Action Fund Says No to ENDA*, NAT'L GAY & LESBIAN TASK FORCE (Jul. 08, 2014), [http://www.thetaskforce.org/press/releases/pr\\_af\\_070814](http://www.thetaskforce.org/press/releases/pr_af_070814).

<sup>206</sup> See SPADE, *supra* note 199, at 81–82 (“Discrimination and violence against people of color have persisted despite law changes that declared it illegal . . . . Similarly, the twenty-year history of the Americans with Disabilities Act (ADA) demonstrated disappointing results.”).

<sup>207</sup> See Patricia J. Williams, *Alchemical Notes: Reconstructed Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 430 (1987) (“To say that blacks never fully believed in rights is true; yet it is also true that blacks believed in them so much and so hard that we gave them life where there was none before . . . . We nurtured rights and gave rights life.”).

<sup>208</sup> See Tanisha C. Ford, *Trans Women of Color Speaking Truth to Power*, TRUTH OUT (Aug. 31 2014), <http://truth-out.org/opinion/item/25915-trans-women-of-color-speaking-truth-to-power#>.

it . . . . While hunger and wars are planned and organized by a ruthless 1%, it is the responsibility of the 99% to create a better world, built on values of humanity, equality and prosperity for all. In this world, decision-making will not be taken by World Banks, capitalists, and their representative statesmen, but by the immediate representatives of the working class.<sup>209</sup>

Low-income lesbian, gay bisexual, Two Spirit, transgender, and gender nonconforming New Yorkers have said that to achieve justice they want “to end the use of the law against our communities, to come together for access to housing, jobs, services, institutions, and opportunities; to be treated respectfully, and to hold government officials and each other accountable.”<sup>210</sup> Many organizations and communities are working to make such visions for change into realities.

### **3. Reparations**

We should also do our utmost to make meaningful reparations for the harm US military interventions cause to people targeted for US military action and to veterans.

Reparations must not be superficial or determined by the aggressor. Small payments made to Afghan civilians bereaved or injured by the US military have provoked outrage, not healing. As one Afghan man said, “Afghans must seem like animals to the Americans if they can put

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<sup>209</sup> See *Message of Solidarity to Occupy Wall Street from the OWFI*, OWFI (Nov. 20, 2013), <http://www.owfi.info/EN/article/message-of-solidarity-to-occupy-wall-street-from-the-organization-of-womens-freedom-in-iraq/>.

<sup>210</sup> See QUEERS FOR ECONOMIC JUSTICE, *A FABULOUS ATTITUDE* 54 (2010), available at <http://www.q4ej.org/Documents/afabulousattitudefinalreport.pdf>.

prices on them.”<sup>211</sup> Another Afghan man explained, “They do not respect the traditions, customs and laws of the Afghan people.”<sup>212</sup>

A more fruitful model comes from the Right to Heal coalition, which has demanded reparations for the Iraq War.

The Iraq war is not over for Iraqi civilians and U.S. veterans who continue to struggle with various forms of trauma and injury; for veterans and Iraqis who suffer the effects of environmental poisoning due to certain U.S. munitions and burn pits of hazardous material; and for a growing generation of orphans and people displaced by war.<sup>213</sup>

This coalition, which includes Iraqi and US organizations, demands assessment of the harm from the war and “concrete action . . . for those impacted by the lasting effects of the war,” such as environmental remediation and health clinics.<sup>214</sup>

#### 4. Ending Deportation

US military policy also leads to displacement of many people. The United States should not turn away, detain, or deport survivors of war-torn regions who seek refuge in the United States. This is certainly true for trans migrants, who are particularly likely to experience severe violence in immigration detention and may also experience violence in their countries of origin (in part because of the impact of US

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<sup>211</sup> See Habiburrahman Ibrahim, *Afghan Anger at US Casualty Payments* ONLINE ASIAN TIMES (Apr. 14, 2010), [http://www.atimes.com/atimes/South\\_Asia/LD14Df01.html](http://www.atimes.com/atimes/South_Asia/LD14Df01.html).

<sup>212</sup> *Id.*

<sup>213</sup> DEMANDING THE RIGHT TO HEAL, <http://righttoheal.org/> (last visited Oct. 12, 2014); *US Reparations for Iraq Are Long Overdue*, AMERICAN ALJAZEERA (Nov. 1, 2013, 6:1AM ET), <http://america.aljazeera.com/articles/2013/11/1/us-reparations-iraqwarveteransmaliki.html>.

<sup>214</sup> *Id.*

actions).<sup>215</sup> Immigrants should have the same access to jobs, political participation, and benefits as US citizens.

### 5. Military and Veterans Policy Changes and Services

When considering how to support trans service members and veterans, we should consider what policy changes, if any, will have the greatest positive impact. Aside from formal trans inclusion in the military, a number of other policy changes to alleviate harm to trans service members and veterans deserve attention.

One key area is discharge papers. Veterans must show military discharge papers, commonly referred to as DD-214s, in order to apply for benefits, jobs, and school.<sup>216</sup> If the DD-214 shows the wrong name, then it exposes trans veterans to discrimination and harassment in all of the situations in which they must use it.<sup>217</sup> As many veterans have demanded, the federal government should facilitate changes to these documents whenever needed to indicate a veteran's current identity.<sup>218</sup>

In terms of benefits, the exclusion of coverage for trans health care should be removed from military and veteran regulations. Gender-affirming health care should be available to all who need it. However,

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<sup>215</sup> See, e.g., Pooja Gehi, *Struggles from the Margins: Anti-Immigrant Legislation and the Impact on Low-Income Transgender People of Color*, 30 WOMEN'S RTS. L. REP. 315, 334–41 (2009).

<sup>216</sup> LGBT BAR ASS'N, RECOMMENDATIONS FOR PERMITTING TRANSGENDER VETERANS TO CORRECT MILITARY RELEASE AND DISCHARGE DOCUMENTATION TO ACCOUNT FOR A CHANGE IN NAME AND GENDER (2013), available at <http://www.lgbtbar.org/assets/NLGBT-Memo-re-DD-214-Amendments-for-Gender-Change-FINAL.pdf>.

<sup>217</sup> See Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 752 (2008) (describing how inaccurate ID contributes to economic marginalization of trans people); *Id.* at 2.

<sup>218</sup> See, e.g., Susan Donaldson James, *Transgender Veterans Fight for Military Paperwork to Match New Gender*, ABC NEWS (Nov. 11, 2013), <http://abcnews.go.com/Health/transgender-veterans-fight-military-paperwork-match-gender/story?id=20833096>.

the removal of this restriction should not be prioritized over the removal of comparable restrictions from state Medicaid programs, prisons, private insurance, and other insurers or providers of health care. Service members and veterans should get access to this care not because they deserve it more than others, but because everyone deserves it.

Legal, health, and social service providers who work with veterans ought to learn how to work respectfully and effectively with trans people. Legal, health, and social service providers who work with trans people ought to learn about how to work respectfully and effectively with veterans. Both ought to offer the types of services trans veterans might need. They should push for veterans to have access to as much money through benefits programs as possible—again, not because they deserve income support more than other people, but because everyone deserves income support when they need it and this is one way for some people to get it.

While I do not think the inclusion or exclusion of trans people in the military should absorb our attention, to the extent we cannot or choose not to avoid the issue, we should carefully consider how we articulate and implement our positions—whatever they are. If we choose to oppose ending the exclusions, we ought to consider whether we want to reform them in a way that would minimize the chance of less than honorable discharges and of sudden loss of salary for service members who receive gender-affirming healthcare. If we reject any change to the exclusions, we should strategize other interventions to mitigate the harm to service members and veterans who may face long-term consequences of less than honorable discharges or lose their means of support at a particularly vulnerable time.

If we choose to support an end to the exclusions, we should consider how to do so while robustly opposing US military violence and ending or reducing the profound harm it does to people around the world. We

should consult with disabled communities interested in the issue of military service to coordinate strategies. We should insist on an end to compulsory service for all and a major increase in access to other forms of employment and income support for trans people *before* an end to exclusions from service came into effect. If we disseminate information to policy makers about trans communities, debunking transphobic myths, we should spend at least as much time and money disseminating accurate information about the impact of the US military on people around the world to potential recruits, and debunking racist, sexist, and nativist myths.

Supporting the health and dignity of trans service members and veterans requires more than a narrow focus on whether formal exclusions from service should end. We should give our attention to some of these other forms of policy change, and we should approach any position on formal inclusion in a way that is accountable to all stakeholders.

## V. CONCLUSION

When thinking about trans issues and the military, it is important not to focus narrowly on just one group of impacted people. When we consider people the US military harms directly, people who do not wish to join the military, and people involved in the US military, we find an array of sometimes competing concerns that raise far broader issues than just whether or not trans people should be permitted to join the US military.

In the past and the present, trans participation in the military raises a host of complex problems. How can we best stop the destructive force of the US military, while also supporting service members and veterans, many of whom are trans, poor or working class, disabled, or people of color? How can we act with accountability to trans and gender nonconforming people in places targeted for US military force,



when so many barriers prevent us from even hearing from them? How can we redistribute wealth and power in a way that will create meaningful economic justice and eliminate any possibility of an economic draft? How do we create gender justice such that no trans person would consider the military their best refuge from internal and external transphobia? What can we learn from the history of people like William Cathey/Cathay Williams?

The observations and future visions I have offered here do not resolve all of these questions. While I believe the proposals I describe here to curb US military violence and support stakeholders could go some way toward addressing concerns of many stakeholder groups, I do not pretend that they would address all of them, or that all of the people from these groups would agree with them. Rather, it is my hope that we may take these proposals seriously, work to implement the ones that seem like they will do the most good to the people at the most risk, and develop further proposals, while remembering that no one is disposable.