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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AIDEN STOCKMAN, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 5:17-cv-1799-JGB-KK

**DEFENDANTS' RESPONSE TO
THE COURT'S NOVEMBER 1,
2017 ORDER**

1 On November 1, 2017, this Court entered an Order noting that the Court in *Doe v.*
2 *Trump*, Case No. 17-01597 (D.D.C.), has issued a nationwide injunction on matters which
3 appear to substantially overlap with the issues in this case and directing the parties to
4 address in supplemental briefs (1) whether *Jane Doe* affects this case and, if so, how; and (2)
5 whether the Court should stay this matter pending further proceedings in *Jane Doe*. ECF
6 No. 42. The nationwide preliminary injunction entered by the Court in *Jane Doe*
7 significantly affects this case, and in light of that injunction, the Court should stay this case
8 pending further proceedings in *Jane Doe*.
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11 On October 30, 2017, the Court in *Doe v. Trump* issued the attached Memorandum
12 Opinion and Order preliminarily enjoining the Government from enforcing the directives
13 related to accessions and retention in the President's August 25, 2017 Memorandum
14 regarding military service by transgender individuals. Exhibit 1, *Doe v. Trump* Opinion and
15 Order. The Court explained that "[t]he effect of the Court's Order is to revert to the status
16 quo with regard to accession and retention that existed before the issuance of the
17 Presidential Memorandum." *Id.* at *Doe* Order, p. 2. In sum, under that status quo, no
18 currently serving transgender individual is subject to discharge based solely on gender
19 dysphoria or transgender status, and revisions to the accessions policy for transgender
20 individuals made in June 2016 are scheduled to take effect on January 1, 2018.
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23 Although Defendants disagree with the *Doe* Court's Opinion and Order, and are
24 considering whether to appeal the preliminary injunction, they are complying with the
25 Order. Accordingly, the *Doe* Court has provided the Plaintiffs in this case with the remedy
26 they seek at this stage. ECF No. 15 p.2 of 44 (Plaintiffs "move this Court to grant a
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1 preliminary injunction prohibiting Defendants from implementing the ban on military
2 service by transgender individuals, as expressly directed by President Donald J. Trump on
3 August 25, 2017.”).

4 In these circumstance, this Court should stay further proceedings in this case while
5 the preliminary injunction in *Doe* remains in place, until after the Defendants have
6 completed the review directed in the Presidential Memorandum in early 2018.

7 The court “has broad discretion to stay proceedings as an incident to its power to
8 control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am.*
9 *Co.*, 299 U.S. 248, 254 (1936). In deciding whether to stay proceedings, courts consider (1)
10 “the possible damage which may result from the granting of a stay,” (2) “the hardship or
11 inequity which a party may suffer in being required to go forward,” and (3) “the orderly
12 course of justice measured in terms of the simplifying or complicating of issues, proof, and
13 questions of law which could be expected to result from a stay.” *Lockyer v. Mirant Corp.*,
14 398 F.3d 1098, 1110 (9th Cir. 2005). These factors weigh in favor of a stay of proceedings
15 in this case, including as to Plaintiffs’ motion for a preliminary injunction and Defendants’
16 motion to dismiss.

17 First, because the *Doe* Court has already entered a nearly identical preliminary
18 injunction to the one sought by the Plaintiffs in this case, Plaintiffs have obtained the relief
19 they seek through their motion and, thus, will not be injured by a stay in this case as long as
20 the *Doe* preliminary injunction remains in place. The parties can alert the Court if the
21 preliminary injunction in *Doe* is lifted, and the Court can end the stay and resume its
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1 consideration of Plaintiffs' motion for a preliminary injunction and Defendants' motion to
2 dismiss.

3 Second, a stay would further the orderly course of justice and preserve the Court's
4 resources. The Court in *Doe* did not enjoin the Defendants from completing the review
5 directed by the Presidential Memorandum, under which the Secretary of Defense shall
6 make a policy recommendation to the President on February 21, 2018. In these
7 circumstances, while the policy concerning service by transgender persons is under review,
8 and while the *Doe* preliminary injunction remains in place, further proceedings would make
9 little sense. Because the *Doe* Court has already given Plaintiffs the relief that they seek in
10 this case, this Court need not duplicate the *Doe* Court's efforts by deciding Plaintiffs'
11 motion for a preliminary injunction and Defendants' motion to dismiss while the *Doe*
12 Court's preliminary injunction remains in place. And if the preliminary injunction remains
13 in place until the military adopts a final policy early next year, the issues presented by this
14 case may either become moot or will focus on the policy adopted after that process to the
15 extent it applies to the Plaintiffs. Because Plaintiffs will not be harmed by a stay in these
16 circumstances, and the orderly administration of justice will be furthered, the Court should
17 stay this action while the preliminary injunction in *Doe* remains in place.

18 To the extent Plaintiffs argue that a stay of their preliminary injunction motion
19 would not be appropriate because the Court in *Doe* did not enjoin the Presidential
20 Memorandum's directive regarding sex reassignment surgical procedures from taking effect
21 on March 23, 2017, Plaintiffs' argument is misplaced. Like the Plaintiffs in *Doe*, the
22 Plaintiffs in this matter are not facing an imminent threat of injury from that provision, and
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1 therefore lack standing to challenge it. *See* Exhibit 1, *Doe* Opinion, p.51-52. In addition, a
2 development in a related proceeding need “not settle every question of fact and law” to
3 merit a stay. *Landis v. N. Am. Co.*, 299 U.S. 248, 256 (1936); *see Fairview Hosp. v. Leavitt*, No.
4 05-1065RWR, 2007 WL 1521233, at *3 n.7 (D.D.C. May 22, 2007) (granting a stay pending
5 the resolution of another matter that would likely settle or simplify issues even though
6 resolution of the other matter “would not foreclose the necessity of litigation in [the stayed]
7 case”). Because the *Doe* preliminary injunction has largely resolved the issues in dispute in
8 this matter with respect to Plaintiffs’ pending motion, at least temporarily, this matter
9 should be stayed unless and until changed circumstances warrant further proceedings.
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12 Earlier this year, the Court in *Washington v. Trump*, Case No C17-0141JLR, 2017 WL
13 1050354 (W.D. Wash. March 17, 2017), was faced with a similar situation. In that case, the
14 State of Washington challenged an Executive Order (EO) on immigration and, while its
15 motion for a temporary restraining order was pending, a district court in Hawaii entered a
16 temporary restraining order in another case preliminarily enjoining the enforcement of the
17 provisions of the EO at issue in Washington’s case. *Id.* at *1. In light of the temporary
18 restraining order in the related case, the Court stayed consideration of Washington’s TRO,
19 concluding that Washington would not be harmed by the stay because there was already an
20 injunction in place that provided relief to the plaintiffs in that case and that a stay would
21 likely conserve judicial resources. *Id.* at *4-5. Like in *Washington v. Trump*, the injunction
22 entered by the *Doe* Court protects Plaintiffs from being injured, and unless and until that
23 injunction is lifted, staying this case will likely facilitate the orderly administration of justice
24 and conserve judicial resources. This Court should therefore stay all proceedings, including
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1 with respect to Defendants' motion to dismiss, and not issue a second injunction while the
2 *Doe* Court's injunction remains in place.

3 In the alternative, this Court should at least stay proceedings until Defendants have
4 decided whether or not to appeal the *Doe* Court's injunction. At that time, this Court could
5 lift the stay and, if it so chooses, reschedule the hearing currently set for Monday,
6 November 20. In all events, this Court should refrain from issuing another injunction
7 unless and until the Court of Appeals for the D.C. Circuit vacates the *Doe* injunction.
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9 If the Court decides not to stay these proceedings, it should find that the *Doe*
10 preliminary injunction at least precludes Plaintiffs from showing the imminent harm
11 necessary to establish standing based on future injuries or the likelihood that they will
12 suffer an irreparable harm necessary for a preliminary injunction. Because the *Doe*
13 injunction provides the same relief Plaintiffs are seeking in this suit, while it remains in
14 place, Plaintiffs are not facing imminent or irreparable harm. In addition, if the Court
15 declines to stay this case, it should grant Defendants' motion to dismiss and deny Plaintiffs'
16 motion for a preliminary injunction for the reasons set forth in Defendants' prior
17 submissions.
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21 Dated: November 8, 2017

Respectfully submitted,

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