

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND**

BROCK STONE, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Defendants.

Case 1:17-cv-02459-MJG

Hon. Marvin J. Garbis

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

On October 31, 2017, Plaintiffs filed a notice of supplemental authority, ECF No. 74, and the Memorandum Opinion and Order issued by the Court in *Doe v. Trump*, Case No. 17-1597 (D.D.C., Oct. 30, 2017), ECF No. 74-1. The *Doe* Court entered an order preliminarily enjoining the Government from enforcing the directives related to accessions and retention in the President's August 25, 2017 Memorandum regarding military service by transgender individuals. *Id.* The *Doe* Court also dismissed the plaintiffs' challenges to the Presidential Memorandum's directive that the Government will not pay for sex reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex, for lack of standing. *Id.* In their notice of supplemental authority, Plaintiffs argue that "[t]he preliminary injunction in *Doe* lends further support to the arguments Plaintiffs advance in this case, but does not lessen the need for this Court to enter a preliminary injunction." ECF No. 74.

On the contrary, in light of the *Doe* Court's preliminary injunction, the Court should stay further proceedings in this case at this time. Although Defendants disagree with the *Doe* Court's opinion and order, they are complying with its order and considering whether to appeal. Accordingly, the *Doe* Court's order has, in large measure, provided Plaintiffs with the remedy that they seek at this stage. ECF No. 39 at 40 (asking the Court to "preliminarily . . . enjoin the Defendants from implementing and enforcing the policies and directives encompassed in President Trump's Memorandum for the Secretary of Defense and the Secretary of Homeland Security, dated August 25, 2017 and entitled 'Military Service by Transgender Individuals.'). In these circumstances, no further proceedings are necessary in this case at this time with respect to Plaintiffs' motion for a preliminary injunction. This Court should therefore stay all proceedings, including with respect to Defendants' motion to dismiss, and not issue a second injunction while the *Doe* Court's injunction remains in place.

In the alternative, this Court should at least stay proceedings until Defendants have decided whether or not to appeal the *Doe* Court's injunction. At that time, this Court could lift the stay and, if it so chooses, reschedule the hearing currently set for Thursday, November 9. In all events, this Court should refrain from issuing another injunction unless and until the Court of Appeals for the D.C. Circuit vacates the *Doe* injunction.

Plaintiffs argue that a stay of their preliminary injunction motion would not be appropriate because the Court in *Doe* did not enjoin the Presidential Memorandum's directive regarding sex reassignment surgical procedures from taking effect on March 23, 2017. ECF No. 74 at 1. But like the plaintiffs in *Doe*, the Plaintiffs in this matter are not facing an imminent threat of injury from that provision, and therefore lack standing to challenge it. In addition, a development in a related proceeding need "not settle every question of fact and law" to merit a stay. *Landis v. N. Am. Co.*, 299 U.S. 248, 256 (1936); see *Fairview Hosp. v. Leavitt*, No. 05-1065RWR, 2007 WL 1521233, at *3 n.7 (D.D.C. May 22, 2007) (granting a stay pending the resolution of another matter that would likely settle or simplify issues even though resolution of the other matter "would not foreclose the necessity of litigation in [the stayed] case"). Because the *Doe* preliminary injunction has largely resolved the issues in dispute in this matter with respect to Plaintiffs' pending motion, at least temporarily, this matter should be stayed unless and until changed circumstances warrant further proceedings.

If the Court decides not to stay these proceedings, it should find that the *Doe* preliminary injunction precludes Plaintiffs from showing the imminent harm necessary to establish standing based on future injuries or the likelihood that they will suffer an irreparable harm necessary for a preliminary injunction. Because the *Doe* injunction provides the same relief Plaintiffs are seeking in this suit, while it remains in place, Plaintiffs are not facing imminent or irreparable harm. In addition, if the Court declines to stay this case, it should grant Defendants' motion to dismiss and

deny Plaintiffs' motion for a preliminary injunction for the reasons set forth in Defendants' prior submissions.

Dated: November 7, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Branch Director

ANTHONY J. COPPOLINO
Deputy Director

/s/ Ryan Parker
RYAN B. PARKER
Senior Trial Counsel
ANDREW E. CARMICHAEL
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
Telephone: (202) 514-4336
Email: ryan.parker@usdoj.gov

Counsel for Defendants