IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BROCK STONE, et al., Plaintiffs, vs. DONALD J. TRUMP, et al., Defendants.	Case No. 1:17-cv-02459-MJG

MOTION TO COMPEL INITIAL DISCLOSURES

Pursuant to Federal Rule of Civil Procedure 37(a)(1), Plaintiffs respectfully move the Court for an order compelling Defendants to provide complete initial disclosures consistent with Federal Rule of Civil Procedure 26(a)(1). This motion is based on Plaintiffs' Memorandum of Law and accompanying declarations and exhibits, filed concurrently with this motion; on the record in this action; and on other oral or written argument that may be offered by the parties at or before any hearing on this motion.

A proposed order is attached hereto.

Dated: January 26, 2018

Respectfully submitted,

/s/ *Peter J. Komorowski*

Deborah A. Jeon (Bar No. 06905)
David Rocah (Bar No. 27315)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MARYLAND
3600 Clipper Mill Road, #350
Baltimore, MD 21211
Telephone: (410) 889-8555
Fax: (410) 366-7838
jeon@aclu-md.org
rocah@aclu-md.org

Joshua A. Block*
Chase B. Strangio*
James Esseks*
Leslie Cooper*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: 212-549-2627
Fax: 212-549-2650
jblock@aclu.org
cstrangio@aclu.org
jesseks@aclu.org
lcooper@aclu.org

Attorneys for Plaintiffs

David M. Zionts*
Carolyn F. Corwin*
Jaclyn E. Martínez Resly*
Augustus Golden*
Jeff Bozman*
Marianne F. Kies (Bar No. 18606)
Christopher J. Hanson*
Tom Plotkin*
Peter J. Komorowski (Bar No. 20034)
COVINGTON & BURLING LLP
One CityCenter
850 Tenth St. NW
Washington, DC 20001
Telephone: (202) 662-6000
Fax: (202) 778-5987
dzionts@cov.com
ccorwin@cov.com
jmartinezresly@cov.com
agolden@cov.com
jbozman@cov.com
mkies@cov.com
chanson@cov.com
tplotkin@cov.com
pkomorowski@cov.com

Mitchell A. Kamin*
Nicholas A. Lampros*
COVINGTON & BURLING LLP
1999 Avenue of the Stars, Suite 3500
Los Angeles, California 90067
Telephone: (424) 332-4800
Facsimile: (424) 332-4749
mkamin@cov.com
nlampros@cov.com

* *Admitted pro hac vice*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2018, copies of the foregoing and any exhibits were served via CM/ECF on all counsel of record.

/s/ Peter J. Komorowski
Peter J. Komorowski

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BROCK STONE, et al., Plaintiffs, vs. DONALD J. TRUMP, et al., Defendants.	Case No. 1:17-cv-02459-MJG

[PROPOSED] ORDER

Upon consideration of Plaintiffs' Motion to Compel Initial Disclosures and any opposition thereto, it is ORDERED this _____ day of _____, 2018, that Plaintiffs' Motion to Compel Initial Disclosures is GRANTED.

Accordingly, it is hereby ORDERED that Defendants shall, not later than two business days from the date of this Order, serve corrected initial disclosures on Plaintiffs, which, consistent with the requirements of Federal Rule of Civil Procedure 26(a)(1)(i) and (ii), identifies "each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses" and provides a copy or description of "all documents, electronically stored information, and tangible things that disclosing party has in its possession, custody, or control and may use to support its claims or defenses."

DATED:

_____
Hon. Marvin J. Garbis
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BROCK STONE, et al., Plaintiffs, vs. DONALD J. TRUMP, et al., Defendants.	Case No. 1:17-cv-02459-MJG

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL INITIAL DISCLOSURES

Federal Rule of Civil Procedure 26(a)(1) and this Court's Scheduling Order (ECF No. 100) required Defendants to disclose the individuals, documents, and information that Defendants "may use" to support their defenses by January 9, 2018. Defendants' two-sentence "initial disclosure" contains none of the required identifications, and is tantamount to no disclosure at all:

> The Department of Defense is currently undertaking a study of policies concerning transgender service members and upon completion of that study, and the development of any new policies resulting from that study, Defendants will supplement these disclosures as appropriate consistent with Federal Rule of Civil Procedure 26(e).

Defendants have ignored Plaintiffs' repeated attempts to ascertain whether Defendants will immediately correct their January 9 "Initial Disclosures," necessitating this Motion to Compel. In light of the expedited discovery schedule in this case, Plaintiffs respectfully request that the Court order Defendants to respond to this motion, if at all, by no later than Wednesday, January 31, with Plaintiffs' reply due on Monday, February 5.

BACKGROUND

Following a telephone conference with the parties on December 13, 2017 (ECF No. 94), the Court issued a Scheduling Order on December 27, 2017 (ECF No. 100). The discovery

timeline outlined in the Scheduling Order is identical to the schedule agreed upon by both parties in their Joint Proposed Scheduling Order submitted to the Court on December 20, 2017. *See id.*; ECF No. 98. All parties and the Court agreed that a brisk discovery timeline was appropriate for this action. Accordingly, the Scheduling Order required Rule 26(a)(1) initial disclosures to be served no later than January 9, 2018, and orders that all discovery must be completed by April 24, 2018. ECF No. 100.

Plaintiffs served their initial disclosures on January 9. Defendants, by contrast, served only a two-sentence document that—although styled as "Defendants' Initial Disclosures"—contained no disclosures at all:

> Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A), Defendants make the following initial disclosures based on the information reasonably available as of this date.
>
> The Department of Defense is currently undertaking a study of policies concerning transgender service members and upon completion of that study, and the development of any new policies resulting from that study, Defendants will supplement these disclosures as appropriate consistent with Federal Rule of Civil Procedure 26(e).

Declaration of Mitchell Kamin ("Kamin Decl."), Ex. 1.

Plaintiffs conferred with Defendants the next day by telephone, on January 10. In this call, Plaintiffs' counsel stated that Defendants' initial disclosures were manifestly inadequate and requested that they be corrected promptly. Kamin Decl. ¶ 4. Plaintiffs' counsel further informed defense counsel of Plaintiffs' intention to send a letter detailing Plaintiffs' concerns. Defendants agreed to consider Plaintiffs' letter, *id.*, which Plaintiffs sent via email on January 11, 2018, Kamin Decl., Ex. 2. Plaintiffs' January 11 letter explained why Defendants' "Initial Disclosures" are inconsistent with both the Federal Rules and common sense; among other things, Defendants' vigorous defense of this lawsuit, which challenges actions taken by Defendants in July and August

2017, establishes that Defendants *must* be aware of at least some facts and information which Defendants "may" use to defend against Plaintiffs' claims. *Id.* at 2. Their failure to timely disclose those facts and information is inexcusable.[1]

Defendants have not responded to Plaintiffs' January 11 letter, despite subsequent follow-up emails from Plaintiffs' counsel on January 19 and 22. Kamin Decl., Exs. 3, 4.

ARGUMENT

I. Legal Standard

Federal Rule of Civil Procedure 26(a)(1) requires that a party "must, without awaiting a discovery request," identify "each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses" and provide a copy or description of "all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses." Fed. R. Civ. P. 26(a)(1)(A)(i), (ii). Initial disclosures are to be made based on the information "then reasonably available" to the party, and a party is not excused from this obligation simply because "it has not fully investigated the case." *Id.* 26(a)(1)(E). The purpose of initial disclosures is for parties to provide "basic information that is needed . . . to prepare for trial or make an informed decision about settlement." *Id.* 26(a)(1), advisory committee's note (1993 Amendment § (a)).

Where "a party fails to make a disclosure required by Rule 26(a)," any other party "may move to compel disclosure and for appropriate sanctions." Fed. R. Civ. P. 37(a)(3)(A). "[T]he party or person resisting discovery, not the party moving to compel discovery, bears the burden of

[1] This is at least Defendants' second attempt to stall discovery in this case, both predicated on the February 21, 2018 deadline. Defendants requested a stay of discovery until that date during the December 13, 2017 scheduling conference and the Court denied that request. ECF No. 94.

persuasion." *Kinetic Concepts, Inc. v. ConvaTec Inc.*, 268 F.R.D. 226, 243 (M.D.N.C. 2010) (collecting cases).

District courts in this Circuit routinely grant motions to compel where a party fails to provide the disclosures required under Rule 26. *See, e.g.*, *Pledger v. UHS-Pruitt Corp.*, 2013 WL 5603259, at *2 (E.D.N.C. Oct. 11, 2013) (compelling initial disclosures where none were provided); *Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat'l Ass'n*, 2016 WL 3452734, at *2 (D.S.C. June 24, 2016) (holding promise of future supplementation insufficient and compelling initial disclosure of damages computations based on currently known information); *Deakins v. Pack*, 2012 WL 1957795, at *3–4 (S.D. W. Va. May 31, 2012) (compelling supplementation of initial disclosures where disclosing party knew or could easily obtain information required).

II. Defendants' "Initial Disclosures" Are Manifestly Inadequate And Must Be Promptly Supplemented Based On Defendants' Current Knowledge

A. Defendants' Failure To Identify A Single Document Or Individual Is Facially Inadequate Under the Federal Rules of Civil Procedure.

Defendants' Initial Disclosures did not identify *any* individuals likely to have discoverable information, nor did they describe any documents. "[A]n evasive or incomplete disclosure […] must be treated as a failure to disclose." Fed. R. Civ. P. 37(a)(4); *see Mezu v. Morgan State Univ.*, 269 F.R.D. 565, 573 (D. Md. 2010). As such, this Court should issue an order compelling Defendants to provide a complete disclosure based on their current knowledge of the facts.

Defendants' vague promise to "supplement" their Initial Disclosures a month from now does not excuse their failure to produce adequate disclosures in the first place. Although their position is not entirely clear, Defendants appear to suggest that they need not identify any individuals or documents because Defendants are still "studying" President Trump's August 25, 2017 Transgender Service Member Ban for the purpose of generating a February 21, 2018 "implementation plan," and state that Defendants may "supplement" their Initial Disclosure once

that plan is issued. Defendants' use of the term "supplement" is inapt: Defendants have not yet provided any information to supplement. In any event, a party's obligation to timely supplement its disclosures does not discharge Defendants' *current* obligation to provide complete and correct *initial* disclosures, based on the information currently available to Defendants and supported by a reasonable inquiry. *See* Fed. R. Civ. P. 26(g)(1)(A) ("By signing [a disclosure], an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry […] *with respect to a disclosure, it is complete and correct as of the time it is made."* (emphasis added)); *see also* D. Md. Local Rules, Appx. A, Guideline i(e); *In re Oakwood Homes Corp.*, 340 B.R. 510, 541 (Bankr. D. Del. 2006) (requiring initial disclosure as to computation of damages based on "the best information then available").

In addition to being contrary to their obligations under the Federal Rules of Civil Procedure, Defendants' position defies logic. Plaintiffs have alleged claims arising from the President's policy decision to ban transgender individuals from serving in the military, first announced via Twitter on July 26, 2017, and formalized as a memorandum to the Secretary of Defense and Secretary of Homeland Security on August 25, 2017. *See* ECF Nos. 40-22, 40-21. Regardless of the future results of the Department of Defense's ongoing study concerning the *implementation* of the August 2017 Ban, there is no conceivable justification for Defendants' failure to identity witnesses and documents related to the *formation* of that policy now. Nor is there any justification for Defendants not to disclose evidence presently known pertinent to the ongoing "study," such as the individuals who are involved in it, any documents on which those individuals have relied or intend to rely, and any policy recommendations currently being considered based on the study's results to date.

B. Plaintiffs Are Prejudiced By Defendants' Failure To Timely Disclose Pursuant To Rule 26(a).

Defendants' refusal to serve complete and accurate initial disclosures prejudices Plaintiffs' ability to litigate this case. Discovery will close on April 24, 2018. ECF No. 100. Defendants apparently intend to "supplement" their Initial Disclosures, if at all, upon completion of the Department of Defense's study into their policies on or after February 21, 2018. In other words, Defendants have unilaterally decided to withhold their evidence from Plaintiffs until only two months of discovery remain. Defendants' obfuscation materially impairs Plaintiffs' ability to investigate the individuals and documents Defendants ultimately choose to reveal. *See Winston v. Land Transp., LLC*, 2007 WL 2471063, at *2 (E.D. Va. Aug. 27, 2007) ("It is beyond question that the disclosures required by Rule 26 are the basis for the framing of further discovery requests by the adverse party."). Moreover, numerous depositions have already been scheduled in the related D.D.C. case. Plaintiffs cannot adequately prepare to participate in those depositions without knowing the materials and information on which Defendants' witnesses would purport to rely.

REQUEST FOR EXPEDITED BRIEFING

In light of the rapid discovery timeline in this case and the ongoing prejudice to Plaintiffs' ability to obtain discovery into Defendants' defenses, it is imperative that Defendants provide complete initial disclosures well in advance of February 21, 2018. Defendants' initial deadline to do so—January 9, 2018—has long since passed. Under a standard briefing schedule this Motion would likely not be decided until after February 21. As such, Plaintiffs respectfully request that Defendants be required to oppose this Motion, if at all, by Wednesday, January 31, 2018. Plaintiffs' reply, if any, should be due on Monday, February 5.

CONCLUSION

For the foregoing reasons, the Court should issue an order compelling Defendants to make complete initial disclosures consistent with Federal Rule of Civil Procedure 26(a)(1) within two business days of the issuance of an order granting this Motion.

CERTIFICATE OF GOOD FAITH CONFERENCE OF COUNSEL

Pursuant to Federal Rule of Civil Procedure 37(a)(1) and Local Rule 104.7, Plaintiffs' counsel hereby certify that on January 10, 2017 at approximately 1:00 p.m. EST they conferred in good faith via telephone with counsel for Defendants regarding Defendants' Initial Disclosures, as described in the accompanying Declaration of Mitchell Kamin. Participating in this conference were Mitchell Kamin and Marianne Kies, counsel for Plaintiffs, and Ryan Parker, counsel for Defendants. During this conference, Plaintiffs' counsel requested prompt correction of Defendants' Initial Disclosures. Plaintiffs' counsel then sent defense counsel a letter on January 11 reiterating Plaintiffs' request in greater detail. Plaintiffs' counsel subsequently sent two follow-up emails requesting a response from Defendants to Plaintiffs' January 11 letter, on January 19 and January 22. Defense counsel has not responded to Plaintiffs' letter, nor the subsequent emails. Plaintiffs were therefore unable to ascertain Defendants' position on this Motion.

Dated: January 26, 2018

Respectfully submitted,

/s/*Peter J. Komorowski*

David M. Zionts*
Carolyn F. Corwin*
Jaclyn E. Martínez Resly*
Augustus Golden*
Jeff Bozman*
Marianne F. Kies (Bar No. 18606)
Christopher J. Hanson*
Tom Plotkin*
Peter J. Komorowski (Bar No. 20034)
COVINGTON & BURLING LLP
One CityCenter
850 Tenth St. NW
Washington, DC 20001
Telephone: (202) 662-6000
Fax: (202) 778-5987
dzionts@cov.com
ccorwin@cov.com
jmartinezresly@cov.com
agolden@cov.com
jbozman@cov.com
mkies@cov.com
chanson@cov.com
tplotkin@cov.com
pkomorowski@cov.com

Mitchell A. Kamin*
Nicholas A. Lampros*
COVINGTON & BURLING LLP
1999 Avenue of the Stars, Suite 3500
Los Angeles, California 90067
Telephone: (424) 332-4800
Facsimile: (424) 332-4749
mkamin@cov.com
nlampros@cov.com

* *Admitted pro hac vice*

Attorneys for Plaintiffs

Deborah A. Jeon (Bar No. 06905)
David Rocah (Bar No. 27315)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MARYLAND
3600 Clipper Mill Road, #350
Baltimore, MD 21211
Telephone: (410) 889-8555
Fax: (410) 366-7838
jeon@aclu-md.org
rocah@aclu-md.org

Joshua A. Block*
Chase B. Strangio*
James Esseks*
Leslie Cooper*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: 212-549-2627
Fax: 212-549-2650
jblock@aclu.org
cstrangio@aclu.org
jesseks@aclu.org
lcooper@aclu.org

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Brock Stone, et al., Plaintiffs, v. Donald J. Trump, et al., Defendants.	Case No. 1:17-cv-02459 (MJG)

DECLARATION OF MITCHELL KAMIN IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL INITIAL DISCLOSURES

I, MITCHELL KAMIN, depose and say as follows:

1. I make this declaration in support of the remedies and relief sought by Plaintiffs in this case. The following facts are based on my own personal knowledge.

2. I am an attorney with the law firm of Covington & Burling LLP, and I represent Plaintiffs Brock Stone, Kate Cole, John Doe, Seven Ero George, Teagan Gilbert, Tommie Parker, and the American Civil Liberties Union of Maryland, Inc. in this action.

3. Attached hereto as "Exhibit 1" is a true and correct copy of the initial disclosures served by the Defendants in this action on January 9, 2018 ("Defendants' Initial Disclosures").

4. On January 10, 2018 at approximately 1:00 p.m. EST, my colleague Marianne Kies and I conferred by telephone with Ryan Parker, counsel for Defendants. Among other topics, we discussed Defendants' Initial Disclosures. We conveyed Plaintiffs' position that Defendants' Initial Disclosures were manifestly inadequate and requested that Defendants correct them promptly. Mr. Parker advised us that Defendants did not presently intend to

supplement their disclosures, but that he would consider a letter from Plaintiffs discussing the issue in more detail.

5. Attached hereto as "Exhibit 2" is a true and correct copy of the letter I sent to Mr. Parker by email on January 11, 2018, setting out Plaintiffs' position as we had discussed. This letter reiterated Plaintiffs' request for prompt supplementation of Defendants' Initial Disclosures and advised that Plaintiffs reserved the right to bring a motion to compel if Defendants did not correct their disclosures as requested.

6. Attached hereto as "Exhibit 3" is a true and correct copy of email correspondence sent by Ms. Kies to Mr. Parker on January 19, 2018, on which I was copied, requesting a response on this issue no later than the end of the day on January 22, 2018.

7. Attached hereto as "Exhibit 4" is a true and correct copy of email correspondence between Mr. Parker and me on January 22, 2018, in which I requested confirmation that Defendants would provide a response on this issue by the end of the day, and a reply email from Mr. Parker that ignored that request. I have to date had no further response from Mr. Parker or Defendants' other counsel concerning this issue.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 26th day of January, 2018 in Los Angeles, California.

MITCHELL KAMIN

Exhibit 1

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' INITIAL DISCLOSURES

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A), Defendants make the following initial disclosures based on the information reasonably available as of this date.

The Department of Defense is currently undertaking a study of policies concerning transgender service members and upon completion of that study, and the development of any new policies resulting from that study, Defendants will supplement these disclosures as appropriate consistent with Federal Rule of Civil Procedure 26(e).

Date: January 9, 2018

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

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on January 9, 2018, a copy of the document above was served by email on the following:

Mitchell A. Kamin
COVINGTON & BURLING LLP
1999 Avenue of the Stars, Suite 3500
Los Angeles, California 90067
Telephone: (424) 332-4800
Facsimile: (424) 332-4749
mkamin@cov.com

Marianne F. Kies
COVINGTON & BURLING LLP
One CityCenter
850 Tenth St. NW
Washington, DC 20001
Telephone: (202) 662-6000
Fax: (202) 778-5987
mkies@cov.com

/s/ *Ryan Parker*
RYAN B. PARKER
Senior Trial Counsel
U.S. Department of Justice

Exhibit 2

COVINGTON

BEIJING BRUSSELS DUBAI JOHANNESBURG LONDON
LOS ANGELES NEW YORK SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

Mitchell A. Kamin

Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
T +1 424 332 4759
mkamin@cov.com

Via Email

January 11, 2018

Ryan B. Parker
United States Department of Justice
Civil Division, Federal Programs Branch
T: (202) 514-4336
ryan.parker@usdoj.gov

Re: Defendants' Initial Disclosures in *Stone, et al. v. Trump, et al.*, Case No. 1:17-cv-02459-MJG (D. Md.)

Dear Mr. Parker:

We write regarding the initial "disclosures" served by Defendants in the above-referenced matter on January 9, 2018 ("Initial Disclosures"). Defendants' Initial Disclosures—in their entirety—are as follows:

> *Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A), Defendants make the following initial disclosures based on the information reasonably available as of this date.*
>
> *The Department of Defense is currently undertaking a study of policies concerning transgender service members and upon completion of that study, and the development of any new policies resulting from that study, Defendants will supplement these disclosures as appropriate consistent with Federal Rule of Civil Procedure 26(e).*

For the reasons stated during our telephone conference on Wednesday, January 10, 2018, and discussed further below, Defendants' Initial Disclosures do not comply with Defendants' discovery obligations under federal law or the District Court's orders. Defendants have not disclosed a single witness or document with which they might support their defenses. We cannot comprehend that Defendants are not presently aware of any such witnesses or documents, more than four months after Plaintiffs filed their complaint. Surely, Defendants still intend to defend the constitutionality of the President's challenged actions in 2017; indeed, Defendants have already attempted to do so. The only possible conclusion to draw is that Defendants are aware of evidence on which they might rely but have nevertheless failed to disclose it.

Pursuant to Federal Rule of Civil Procedure 26(a), a party "must" identify "each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses" and provide a copy or

description of "all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses." Fed. R. Civ. P. 26(a)(1)(A)(i), (ii). A party must make its initial disclosures based on the information "then reasonably available to it," and is not excused from that obligation simply because "it has not fully investigated the case." *Id.* 26(a)(1)(E).

As you are aware, Defendants have not identified any individuals or documents likely to provide or contain information which Defendants may use to support their defenses in this case. We understand Defendants' position to be that they are not required to identify any such individuals or documents in light of the fact that Defendants are still "studying" President Trump's August 25, 2017 Transgender Service Member Ban for purposes of generating a February 21, 2018 "implementation plan." You stated that Defendants may "supplement" their Initial Disclosures when that plan is issued.

Defendants' use of the term "supplement" is inapt: Defendants have not provided any information to supplement. In any event, the requirement to timely supplement disclosures does not excuse Defendants' obligation to provide complete and correct *initial* disclosures based on a reasonable inquiry. *See* Fed. R. Civ. P. 26(g)(1)(A); *see also* D. Md. Local Rules, Appx. A, Guideline 1(e). Plaintiffs have alleged claims arising from the President's policy decision to ban transgender individuals from serving in the military, first announced via Twitter on July 26, 2017, and formalized as a memorandum to the Secretary of Defense and Secretary of Homeland Security on August 25, 2017. Regardless of the future results of the Department of Defense's ongoing study concerning the implementation of the Ban, there is no conceivable justification for Defendants' failure to identify witnesses and documents related to the *formation* of that policy now. Nor is there any reason to fail to disclose evidence pertinent to the ongoing study, such as the individuals who are involved in it and any documents on which those individuals have relied or intend to rely.

Defendants' failure to provide complete Initial Disclosures prejudices Plaintiffs' ability to conduct discovery in a timely manner. This concern is particularly pressing given that the discovery deadline in this case is April 24, 2018—less than four months away.

For the foregoing reasons, Plaintiffs request that Defendants immediately supplement their Initial Disclosures to comply with Federal Rule of Civil Procedure 26(a)(1) and the Court's Scheduling Order of December 27, 2017. Plaintiffs reserve all rights to compel disclosure and seek appropriate sanctions under Rule 37(a)(3)(A) and, if necessary, to seek to exclude under Rule 37(c)(1) all witnesses and information not properly disclosed.

Sincerely,

_____

Attorney for Plaintiffs

Exhibit 3

From: Kies, Marianne
To: Kamin, Mitchell A; Parker, Ryan (CIV)
Subject: RE: Stone v. Trump
Date: Friday, January 19, 2018 12:34:00 PM
Attachments: image001.jpg
image003.jpg

Ryan,

We are following up on Mitch's January 11 letter regarding the Defendants' initial disclosures. Given the expedited discovery schedule in this case, we respectfully request that the Government provide its position on the issues discussed in the letter by the close of business (eastern time) on Monday, January 22.

Thank you,

Marianne

Marianne Kies

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5005 | mkies@cov.com
www.cov.com

From: Kamin, Mitchell A
Sent: Thursday, January 11, 2018 8:58 PM
To: Parker, Ryan (CIV) <Ryan.Parker@usdoj.gov>
Cc: Kies, Marianne <MKies@cov.com>
Subject: Stone v. Trump

Ryan -

Please see the attached correspondence.

Best, Mitch

Mitchell Kamin

Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
T +1 424 332 4759 | mkamin@cov.com <mailto mkamin@cov.com>
www.cov.com <http://www.cov.com>

Exhibit 4

From: Parker, Ryan (CIV)
To: Kamin, Mitchell A; Zionts, David; Kies, Marianne
Subject: RE: Stone v. Trump: Lapse of appropriations
Date: Monday, January 22, 2018 1:07:28 PM
Attachments: image003.jpg

Mitch,

Due to changed circumstances concerning the status of appropriations, I'm planning to wait until tomorrow to file the stay motion if it still necessary to do so.

Best,

Ryan B. Parker

Senior Trial Counsel

United States Department of Justice

Civil Division, Federal Programs Branch

Tel: 202-514-4336 | <mailto:ryan.parker@usdoj.gov> ryan.parker@usdoj.gov

From: Kamin, Mitchell A [mailto:MKamin@cov.com]
Sent: Monday, January 22, 2018 12:15 PM
To: Parker, Ryan (CIV) <ryparker@CIV.USDOJ.GOV>; Zionts, David <DZionts@cov.com>; Kies, Marianne <MKies@cov.com>
Subject: RE: Stone v. Trump: Lapse of appropriations

Ryan -

Please provide a detailed basis for your motion. Are you on furlough? How will the stay affect your ability to comply with current deadlines? What length of stay are you requesting? Why are you filing today, rather than waiting to see if the Senate ends the shutdown today?

Also, we are waiting for your response concerning the Government's initial disclosures. Please confirm you will respond today.

Best, Mitch

Mitchell Kamin

Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067-4643
T +1 424 332 4759 | mkamin@cov.com <mailto mkamin@cov.com>
www.cov.com <http://www.cov.com>

From: Parker, Ryan (CIV) [mailto:Ryan.Parker@usdoj.gov]
Sent: Monday, January 22, 2018 8:22 AM
To: Zionts, David <DZionts@cov.com <mailto:DZionts@cov.com> >; Kies, Marianne <MKies@cov.com <mailto:MKies@cov.com> >; Kamin, Mitchell A <MKamin@cov.com <mailto:MKamin@cov.com> >
Subject: Stone v. Trump: Lapse of appropriations

David, Mitch and Marianne,

We will be filing a motion later this morning moving to stay all discovery deadlines in Stone v. Trump because of the lapse of appropriations. Please let us know your clients' position on the motion as soon as possible so we can include it in our motion papers.

Best,

Ryan B. Parker

Senior Trial Counsel

United States Department of Justice

Civil Division, Federal Programs Branch

Tel: 202-514-4336 | <mailto:ryan.parker@usdoj.gov> ryan.parker@usdoj.gov