

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

BROCK STONE, et al.,

Plaintiffs,

v.

Case No. 1:17-cv-02459

DONALD J. TRUMP, et al.,

Defendants.

[PROPOSED] SCHEDULING ORDER

This scheduling order is being entered pursuant to Local Rule 103.9. Any inquiries concerning the schedule should be directed to my chambers, not to the Clerk's Office. Any party who believes that any deadline set forth in this Scheduling Order is unreasonable may request in writing a modification of the Order or that a conference be held for the purpose of seeking a modification of the Order. **The schedule will not be changed except for good cause.**

This case is subject to electronic filing. Please familiarize yourself with the procedures for electronic filing available at: www.mdd.uscourts.gov. You must use the electronic filing system for filing documents with the Clerk and sending case-related correspondence to chambers. **When you electronically file a document that, including attachments, is 15 pages or longer, you must also provide me a paper copy of the document and a paper copy of the notice of electronic filing.** The paper copy should be sent to my chambers directly.

At this time, the parties do not consent to proceed before a United States Magistrate Judge.

I. DEADLINES¹

January 2–9, 2018:	First sets of requests for production of documents and interrogatories
January 9, 2018:	Joint Status Report setting forth a detailed Joint Discovery Plan, including a joint plan or stipulation for handling e-discovery, if necessary

¹ An asterisk next to a deadline means “no later than.”

	*Motions for joinder of additional parties and amendment of pleadings
	*Parties' Rule 26(a)(1) initial disclosures
March 2, 2018:	Proponent's Rule 26(a)(2) disclosures
March 30, 2018:	Opponent's Rule 26(a)(2) disclosures
April 6, 2018:	Reply Rule 26(a)(2) disclosures
April 24, 2018:	*Discovery-related motions filed
April 24, 2018:	Discovery deadline
May 1, 2018:	Status hearing with Court
May 25, 2018:	Dispositive pretrial motions

II. DISCOVERY

Procedure

All the provisions of Local Rule 104 apply, including the following:

- a. All discovery requests must be served in time to assure that they are answered before the discovery deadline. An extension of the deadline will not be granted because of unanswered discovery requests.
- b. The existence of a discovery dispute as to one matter does not justify delay in taking any other discovery. The filing of a motion to compel or a motion for a protective order will not result in a general extension of the discovery deadline.
- c. No discovery materials, including Rule 26(a)(1) and Rule 26(a)(2) disclosures, should be filed with the court.
- d. Motions to compel shall be filed in accordance with Local Rule 104.8 and the applicable CM/ECF procedures.
- e. Please be familiar with the Discovery Guidelines of this Court which are Appendix A to the Local Rules. Appendix D contains guidelines for form discovery requests and confidentiality orders that may be helpful to you.

Privilege Issues

If a party asserts any privilege in its responses to written discovery requests, a complete and detailed privilege log shall be served no later than two business days after the date that the party's discovery response was due.

Number of Depositions

The parties did not reach agreement as to the number of depositions. Each party's position follows. Both parties are available should the Court desire additional briefing or argument as to the below dispute.

The parties' proposals are:

PLAINTIFFS: Each side (Plaintiffs and Defendants) is limited to **15** depositions, subject to the clarification in the following section ("Discovery Coordination"). A 30(b)(6) deposition accounts for one deposition slot, even if the recipient of the 30(b)(6) notice designates more than one individual to testify on the topics requested.

DEFENDANTS: Each side (Plaintiffs and Defendants) is limited to **10** depositions, subject to the clarification in the following section ("Discovery Coordination"). A 30(b)(6) deposition accounts for one deposition slot, even if the recipient of the 30(b)(6) notice designates more than one individual to testify on the topics requested.

Plaintiffs' Position: A modest increase from 10 to 15 depositions is necessary and proportional to the scope and significance of this case, which involves complex constitutional claims and witnesses from the Executive Branch and all the military services. *See* Fed. R. Civ. P. 30(a)(2)(A)(i). Notably, the scheduling order in the related *Doe* case affords 15 depositions to each party. *See* Dkt. 71, *Doe v. Trump*, No. 17-1597 (D.D.C.). Consistent with their statements to Defendants and this Court, Plaintiffs will coordinate their discovery requests with the lawsuit in *Doe* where possible. For example, as explained in the "Discovery Coordination" section below, Plaintiffs agree that any depositions in which Plaintiffs participate in the three related cases will count toward Plaintiffs' 15-deposition limit in this case. Plaintiffs have also agreed that Defendants' depositions of named plaintiffs in the related cases will not count against Defendants' 15 deposition slots. As a practical matter, then, Defendants will be entitled to take more depositions than Plaintiffs. Finally, the expedited nature of discovery in this case is a direct result of Plaintiffs' offer to track the schedule in *Doe* as closely as possible, so that—if discovery requests do overlap between the cases—Defendants need not respond to them on two different timetables.

Defendants' objection to Plaintiffs' request for 15 depositions rests upon the fallacy that this case and *Doe* are "nearly identical." They are not. The cases were brought by different plaintiffs, who are represented by different attorneys. Plaintiffs in this case did not have any say in the deponents selected by the *Doe* plaintiffs. Further, President Trump's medical care ban is at issue in this case; it is not at issue in *Doe*, as the district court found that those plaintiffs lacked standing to challenge that directive. Put simply, *Doe* and *Stone* are different cases, and Defendants have not sought to consolidate them. Plaintiffs have agreed to coordinate with *Doe* discovery to reduce the burden on government witnesses who otherwise could be deposed multiple times.

However, Plaintiffs should not be deprived of the opportunity to conduct full and appropriate discovery that is required in this particular case.

Defendants' Position: Federal Rule of Civil Procedure 30(a)(2)(A)(i) permits each side to take ten (10) depositions, and Plaintiffs have not shown that a departure from that limit is warranted here. An increase in the deposition limit is particularly unnecessary in this case, where the parties have agreed to coordinated discovery with the other related cases. The Plaintiffs in *Doe v. Trump*, Case No. 17-1597 (D.D.C.), are litigating nearly identical claims to those brought by the Plaintiffs in this case and will be taking as many as 15 depositions. The parties in this case have agreed that discovery from *Doe* and the other related cases, including deposition testimony, will be admissible in this case. Accordingly, although there could be some overlap, under Plaintiffs' proposal, Plaintiffs could benefit from as many as **thirty** (30) depositions, fifteen (15) taken by the *Doe* Plaintiffs and fifteen (15) additional depositions taken by the Plaintiffs in this case. The number of potential depositions that Plaintiffs could use to support their claims could continue to rise if the other two related cases, *Karnoski v. Trump*, No. 17-cv-1297 (W.D. Wash.) and *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal.) move into discovery. In a case with consolidated discovery, such as this one, the Plaintiffs should be permitted fewer, not more, than the ten (10) depositions contemplated by Federal Rule of Civil Procedure 30.

In addition, in an effort to cooperate with Plaintiffs, Defendants have agreed to the expedited discovery schedule set forth above. Defendants should not, however, be forced to defend additional depositions during a compressed discovery schedule, especially when they will also be defending depositions in the *Doe* case during the same period of time. The Court should, therefore, limit Plaintiffs to ten (10) depositions, or fewer, and allow them to come back to the Court and request additional depositions, if necessary.

Discovery Coordination

The parties did not reach agreement as to discovery coordination. Each party's proposal follows. Both parties are available should the Court desire additional briefing or argument as to the below dispute.

PLAINTIFFS: This case is one of four pending lawsuits challenging President Trump's August 25 directives regarding military service by individuals who are transgender ("Related Cases"). The Related Cases are, in addition to this case: (i) *Doe v. Trump*, No. 17-cv-1597 (D.D.C.); (ii) *Karnoski v. Trump*, No. 17-cv-1297 (W.D. Wash.); and (iii) *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal.). Discovery produced (including deposition testimony) by a party in *Doe*, *Karnoski*, or *Stockman*—including third-party discovery—shall be deemed to have been produced in this case, with the following caveat. If Plaintiffs here choose to question a deponent in one of the Related Cases, that deposition will account for one of Plaintiffs' 15 deposition slots. Similarly, if Defendants here choose to question a deponent in one of the Related Cases, other than the named plaintiffs, that deposition will account for one of Defendants' 15 deposition slots.

DEFENDANTS: This case is one of four pending lawsuits challenging President Trump's August 25 directives regarding military service by individuals who are transgender ("Related Cases"). The Related Cases are, in addition to this case: (i) *Doe v. Trump*, No. 17-cv-1597 (D.D.C.); (ii) *Karnoski v. Trump*, No. 17-cv-1297 (W.D. Wash.); and (iii) *Stockman v. Trump*, No. 17-cv-

1799 (C.D. Cal.). Discovery produced (including deposition testimony) by a party in *Doe*, *Karnoski*, or *Stockman*—including third-party discovery—shall be deemed to have been produced in this case, with the following caveat. If Plaintiffs here choose to **attend** a deposition in one of the Related Cases, that deposition will account for one of Plaintiffs' 10 deposition slots.

III. DISPOSITIVE PRETRIAL MOTIONS

If more than one party intends to file a summary judgment motion, the provisions of Local Rule 105.2.c apply.

After motions and responses thereto have been filed, I will advise you if a hearing is to be scheduled.

IV. PRETRIAL CONFERENCES

A pretrial conference and trial date will be set at the Status Hearing.

The pretrial order shall be submitted seven days before the pretrial conference is held. Counsel shall comply with Local Rule 106, as to submission and contents of the pretrial order.

V. COMPLIANCE WITH LOCAL RULES AND CM/ECF PROCEDURES

The court will demand compliance with the Local Rules and CM/ECF procedures. If you need to obtain a copy of the Local Rules or the CM/ECF procedures, they are available on our website at www.mdd.uscourts.gov.

VI. COMPLIANCE WITH PRIVACY PROTECTION RULE

Counsel are reminded that the Federal Rules of Civil Procedure were amended, effective December 1, 2007, with the addition of a new Rule 5.2 which has detailed requirements requiring the redaction of filings with this court that contain an individual's social security number, tax payer identification number, or birth date, the name of an individual known to be a minor, or a financial account number. It is essential that counsel comply with this rule and with the revised version of the Judicial Conference Privacy Policy adopted in March 2008. For further information on the Judicial Conference Privacy Policy see: http://www.mdd.uscourts.gov/news/news/privacy_memo.pdf.

IT IS SO ORDERED.

Date: December ___, 2017

_____/s/
Marvin J. Garbis
United States District Judge

Dated: December 20, 2017

David M. Zionts*
Carolyn F. Corwin*
Mark H. Lynch (Bar No. 12560)
Jaclyn E. Martínez Resly*
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
mlynch@cov.com
jmartinezresly@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*

‡ Admitted to the Bars of Pennsylvania and New Jersey, admission to the Bar of the District of Columbia pending; and supervised by the principals of the firm.

Respectfully submitted,



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

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

Attorneys for Defendants