

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

**Directions:** Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

<b>Appeal No. &amp; Caption</b>	Stone v. Trump, No. 17-2398
<b>Originating No. &amp; Caption</b>	No. 17-cv-2459, Stone v. Trump
<b>Originating Court/Agency</b>	District of Maryland

<b>Jurisdiction</b> (answer any that apply)	
Statute establishing jurisdiction in Court of Appeals	12 USC 1292(a)(1)
Time allowed for filing in Court of Appeals	60 days
Date of entry of order or judgment appealed	Nov. 21, 2017
Date notice of appeal or petition for review filed	Dec. 5, 2017
If cross appeal, date first appeal filed	
Date of filing any post-judgment motion	
Date order entered disposing of any post-judgment motion	
Date of filing any motion to extend appeal period	
Time for filing appeal extended to	
Is appeal from final judgment or order?	<input type="radio"/> Yes <input checked="" type="radio"/> No
If appeal is not from final judgment, why is order appealable? Appeal is from order granting preliminary injunction.	

<b>Settlement</b> (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.)	
Is settlement being discussed?	<input type="radio"/> Yes <input checked="" type="radio"/> No

<b>Transcript</b> (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Has transcript been filed in district court?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Is transcript order attached?	<input type="radio"/> Yes	<input type="radio"/> No

<b>Case Handling Requirements</b> (answer any that apply)		
Case number of any prior appeal in same case		
Case number of any pending appeal in same case		
Identification of any case pending in this Court or Supreme Court raising similar issue		
	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does case involve question of first impression?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

<b>Nature of Case</b> (Nature of case and disposition below. Attach additional page if necessary.)
See attached.

**Issues** (Non-binding statement of issues on appeal. Attach additional page if necessary)

Whether the district court erred in holding that plaintiffs have standing and that their claims are ripe for review.

Whether the district court erred in granting plaintiffs' motion for a preliminary injunction.

Whether the district court erred in entering a nationwide injunction.

Whether the district court's injunction prohibits Secretary Mattis from independently exercising his authority to defer the January 1, 2018 deadline for accessions for a limited time to study the issue further or to implement the Carter policy.

**Adverse Parties** (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

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Adverse Party: John Doe

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**Adverse Parties (continued)**

Adverse Party: Kate Cole

Attorney: David Zionts

Address: same

E-mail:

Phone:

Adverse Party: see attached

Attorney:

Address:

E-mail:

Phone:

<b>Appellant</b> (Attach additional page if necessary.)	
Name: DONALD J. TRUMP, in his official capacity  Attorney: Catherine H. Dorsey Address: Civil Division, Room 7236 U.S. Department of Justice 950 Pennsylvania Ave., NW Washington, DC 20530  E-mail: Catherine.Dorsey@usdoj.gov  Phone: (202) 514-3469	Name: JAMES N. MATTIS, in his official capacity  Attorney: Catherine H. Dorsey Address: same  E-mail:  Phone:

<b>Appellant (continued)</b>	
Name: RYAN D. MCCARTHY, in his official capacity  Attorney: Catherine H. Dorsey Address: same  E-mail:  Phone:	Name: see attached  Attorney: Address:  E-mail:  Phone:

<b>Signature:</b> <u>/s Tara S. Morrissey</u> <b>Date:</b> <u>Dec. 20, 2017</u>
<b>Counsel for:</b> <u>Appellants</u>

<b>Certificate of Service:</b> I certify that on <u>Dec. 20, 2017</u> the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below (Attach additional page if necessary):	
Signature: <u>/s/ Tara S. Morrissey</u>	Date: <u>Dec. 20, 2017</u>

**Nature of the Case**

A. For decades, the military has presumptively barred transgender individuals from accession into the armed forces. Last year, however, then-Secretary of Defense Ashton Carter ordered the revision of this accession policy to allow some transgender individuals to enter the military starting on July 1, 2017. On June 30, 2017, Secretary of Defense James Mattis deferred that revision until January 1, 2018 that the services could assess the Carter policy's effect on military readiness.

On August 25, 2017, the President issued a memorandum directing the military to maintain its longstanding policy and practice regarding transgender service that were in place before June 2016. 82 FR 41319 (Mem.). Those policies would remain in place until there existed a sufficient basis to conclude that ending them would not cause the harms identified by the President. The President also stated that the Secretary of Defense, in consultation with the Secretary of Homeland Security, should advise him at any time if a policy change is warranted. *Id.* § 1(b).

The President then directed the Secretaries of Defense and Homeland Security to maintain the current policy regarding accession of transgender individuals into the military beyond January 1, 2018—when the revision announced in June 2016 was set to take effect—until such time as the Secretary of Defense, in consultation with the Secretary of Homeland Security, provides a recommendation to the contrary that the President finds convincing. *Id.* § 2(a). The President also directed the Departments of Defense and Homeland Security to halt the use of resources to fund 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. *Id.* § 2(b).

The Memorandum also addressed currently serving transgender individuals. It provided that “[a]s part of the implementation plan, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine how to address transgender individuals currently serving in the United States military.” *Id.* And “[u]ntil the Secretary has made that determination, no action may be taken against such individuals under the policy set forth in Section 1(b) of this memorandum.” *Id.*

Other than the provision regarding accessions, the Memorandum's provisions take effect on March 23, 2018. This delayed implementation date was adopted so that the two Cabinet Secretaries could study the issues addressed in the Memorandum and submit an implementation plan to the President by February 21, 2018. *Id.* § 3.

On August 29, 2017, Secretary Mattis issued a statement explaining that the Department of Defense would study the issue, develop an implementation plan, and establish a panel of experts to provide advice and recommendations.

On September 14, 2017, Secretary Mattis issued Interim Guidance regarding military service by transgender individuals. The Interim Guidance confirms that the

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military's longstanding accessions policy, "which generally prohibit[s] the accession of transgender individuals into the Military Services, remain[s] in effect because current or history of gender dysphoria or gender transition does not meet medical standards." *Id.* It emphasizes, however, that this "general[]" prohibition remains "subject to the normal waiver process." *Id.* With respect to current service members, the Interim Guidance states that "no action may be taken to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender status." *Id.* It also directs that "Service members who receive a gender dysphoria diagnosis from a military medical provider will be provided treatment for the diagnosed medical condition." *Id.*

**B.** Plaintiffs include six individual plaintiffs who are currently serving in the military and the America Civil Liberties Union (ACLU). Plaintiffs allege that the Presidential Memorandum violates their equal protection and substantive due process rights under the Fifth Amendment to the Constitution. Plaintiffs also assert a statutory claim under 10 USC 1074. Plaintiffs filed a motion for preliminary injunction. The government opposed plaintiffs' motion and moved to dismiss.

The district court granted plaintiffs' motion for preliminary injunction and denied the government's motion to dismiss the constitutional claims, but dismissed plaintiffs' statutory claim. It held that plaintiffs have standing to challenge the President's directives and that the claims are ripe for review. It further held that plaintiffs are likely to succeed on the merits of their equal protection claim, and that the remaining preliminary-injunction factors weigh in favor of relief.

On December 12, 2017, the government moved to clarify that the injunction does not prevent Secretary Mattis from independently exercising his authority to defer the January 1, 2018 deadline to implement the Carter policy. In the alternative, the government requested a partial stay of the injunction pending appeal. The district court has not yet ruled on that motion. On December 14, the government filed an emergency motion in this Court for a partial stay pending appeal and for a temporary administrative stay.

**Adverse Parties**

**Additional Adverse Parties:** Seven Ero George, Teagan Gilbert, Tommie Parker, and the American Civil Liberties Union of Maryland, Inc.:

**Counsel:**

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**Additional Appellants**

RICHARD SPENCER, in his official capacity as Secretary of the U.S. Department of the Navy; HEATHER WILSON, in her official capacity as Secretary of the U.S. Department of the Air Force:

**Counsel:**

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