The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al,

Plaintiffs,

v.

DONALD TRUMP, et al,

Defendants.

STATE OF WASHINGTON,

Intervenor-Plaintiff,

v.

DONALD TRUMP, et al,

Intervenor-Defendants.

Case No: 2:17-cv-1297-MJP

REPLY IN SUPPORT OF WASHINGTON'S MOTION FOR SUMMARY JUDGMENT

Oral Argument: March 27, 2018

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TABLE OF CONTENTS

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Unit
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TABLE OF AUTHORITIES

Cases

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Unit
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
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Statutes

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Unit
800 Fifth Avenue, Suite 2000
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Other Authorities

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I. INTRODUCTION

Defendants fail to adduce any evidence to justify the unconstitutional Transgender Military Service Ban ("Ban") announced by the President on Twitter on July 26, 2017, memorialized in a subsequent Presidential Memorandum dated August 25, 2017, and long embedded in the historically discriminatory policies and practices of the military. The Ban has not been revoked or rescinded. Any alleged forthcoming implementation plans for the unconstitutional Ban fail to render the policy unreviewable. Summary judgment should be granted without further delay.

II. ARGUMENT

A. Summary Judgment Should Be Granted

Where the moving party establishes that it is entitled to judgment as a matter of law based on undisputed material facts, summary judgment should be granted. *See* Fed. R. Civ. Pro. 56(a). *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Washington has met this standard, establishing through Defendants' own statements and evidence that the facially discriminatory Ban is unrelated to any important governmental interest, and does not further the military's goals of readiness, unit cohesion, or cost control. ECF 150. Rather than produce any evidence to the contrary that might "demonstrate[] that there is a genuine issue of material fact for trial," Defendants continue to rely on naked allegations that the post hoc justification for the President's unconstitutional policy is forthcoming. *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986)). However, "mere allegation and speculation do not create a factual dispute for purposes of summary judgment." *Nelson v. Pima Cmty. Coll.*, 83 F.3d 1075, 1081–82 (9th Cir. 1996) (citing *Witherow v. Paff*, 52 F.3d 264, 266 (9th Cir. 1995)). If evidence justifying the President's unconstitutional Ban existed at the time he announced the policy, Defendants would have produced it. Defendants have failed to do so. Accordingly, the Court should grant Washington's Motion for Summary Judgment without further delay.

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B. Defendants Raise No Material Disputed Issues of Fact About the Policy at Issue

1. There is no dispute that Washington challenges Defendants' Ban

Washington moves for summary judgment on Defendants' longstanding "policy of prohibiting transgender individuals from serving openly in the military," ECF 103 at 22, including the President's Memorandum directing the United States Military to return to its longstanding discriminatory policy that authorizes the discharge of openly transgender service members (the "Retention Directive"); prohibits the accession of openly transgender individuals (the "Accession Directive"); and prohibits the funding of certain surgical procedures for transgender service members (the "Medical Care Directive"). ECF 150 at 2-3; ECF 104 ¶¶ 24-26; ECF 103 at 3-4, 23. The President announced the Ban on Twitter on July 26, 2017, and, one month later, on August 25, 2017, issued a Presidential Memorandum directing the Secretaries of Defense and Homeland Security to effectuate it, ordering that the Accession Directive takes effect on January 1, 2018, and that the Retention and Medical Care Directives take effect on March 23, 2018. ECF 34-6; ECF 34-7 §§ (1)(b), 2(a)-(b), (3). On September 14, 2017, Secretary of Defense Mattis issued Interim Guidance to the military identifying the intent of the Department of Defense ("DoD") to "carry out the President's policy and directives" and to identify "a plan to implement the policy and directives in the Presidential Memorandum." ECF 69-1 at 2-3. These facts are undisputed and squarely identify the policy upon which Washington seeks summary judgment.

2. Defendants' professed confusion about the state of their own Ban does not create a fact question

Defendants argue that there are open questions regarding "which is the current applicable military policy for service by transgender persons" and "whether there has been a final decision concerning the military policy." ECF 194 at 2. But the policy announced by the President on Twitter and memorialized by Presidential Memorandum has never been revoked or rescinded. Professing confusion about the state of their own policy does not create a fact question where

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none exists.

3. The potential of future changes in the implementation plan does not render the Ban unreviewable

Defendants urge the Court to delay ruling on Washington's motion for summary judgment pending the alleged future announcement of an updated implementation plan for the President's unconstitutional policy. ECF 194 at 9-12. However, any alleged forthcoming changes to the implementation plan have no bearing on Washington's motion against the undisputed policy. Thus, there is no reason for delay.

Defendants' own statements and evidence establish that Secretary Mattis is allegedly in the process of devising an updated implementation plan for the President's unconstitutional policy. In an August 29, 2017 statement, Secretary Mattis announced receipt of the Presidential Memorandum and DoD's intent to "carry out the President's policy direction." ECF 197, Ex. 2 at 1. Secretary Mattis indicated that DoD, in consultation with the Department of Homeland Security, would develop an "implementation plan" for the President's policy. *Id*. ("To that end, I will establish a panel of experts serving within the Departments of Defense and Homeland Security to provide advice and recommendations on the implementation of the president's direction."). Secretary Mattis also stated that he "expect[ed] to issue interim guidance" to the military "concerning the President's direction . . . ." *Id*. He did so on September 14, 2017. In the Interim Guidance, Secretary Mattis stated more specifically that, "[n]ot later than February 21, 2018, I will present the President with a plan to implement the policy and directives in the Presidential Memorandum." ECF 69-1 at 2. While February 21 has come and gone, Defendants' evidence makes plain that the alleged forthcoming announcement is an updated "implementation plan" for the President's unconstitutional policy. *Id*. Despite the possibility of future changes to the implementation plan, the President's unconstitutional policy itself remains in place, unrevoked and unrescinded.

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Defendants argue that judicial economy demands that this Court wait until Defendants develop a final implementation plan for the Ban before the Court determines whether the Ban is constitutional. A challenge to a policy is moot only when the challenged policy is clearly rescinded or superseded.[1] Instead, courts generally require more from Defendants than promises of future changes before finding a policy unreviewable or rejecting a claim as moot.[2] Even the cases that Defendants rely upon do not support this Court finding otherwise.[3]

Instead, courts have found that claims against the Government are "fit for decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *City of Seattle v. Trump*, No. 17-497-RAJ, 2017 WL 4700144, at *6 (W.D. Wash. Oct. 19, 2017) (quoting *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624, 627 (9th Cir. 1989)). *See also Hawaii v. Trump*, 878 F.3d 662, 678-79 (9th Cir. 2017) (rejecting Government's argument that potential future discretionary actions make the Travel Ban unreviewable); *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 529 (N.D. Cal. 2017) (rejecting Government's argument that policy was unreviewable because the Government was still determining enforcement mechanisms and finding that "[w]aiting for the Government to decide how it wants to apply the Order would only cause more hardship and would not resolve the legal question at

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[1] *See Cty of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (holding that case is moot only where there is no reasonable expectation that alleged violation will recur, and interim relief or events have completely and irrevocably eradicated the effects of the alleged violation); *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (noting that when the Government asserts mootness based on such a change in its practices it bears a heavy burden of showing that the challenged conduct cannot reasonably be expected to start again).

[2] *See Jacobus v. Alaska*, 338 F.3d 1095, 1102-03 (9th Cir. 2003) ("[D]ismissal of a case 'on grounds of mootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that it sought'" and noting that likelihood of reenactment is a significant factor in the evaluation of mootness) (quoting *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 224 (2000)).

[3] *See Burke v. Barnes*, 479 U.S. 361, 363 (1987) (mooting a claim that *only* sought to "litigate the validity of a statute which by its terms had already expired"); *U.S. Dep't of Treasury v. Galioto*, 477 U.S. 556, 559-60 (1986) (finding claim moot *after* Congress altered the challenged statute and rectified the constitutional concerns raised by plaintiff's lawsuit); *Kremens v. Bartley*, 431 U.S. 119, 128-29 (1977) (finding claim moot *after* statutory fix was made to protect plaintiffs' constitutional rights); *Gulf of Me. Fisherman's All. v. Daley*, 292 F.3d 84, 88 (1st Cir. 2002) (finding claim moot *after* a regulation had been "replaced by a series of subsequent" regulations); *Bunker Ltd. P'ship v. United States*, 820 F.2d 308, 312 (9th Cir. 1987) (finding moot claim "[w]here new legislation represents a complete substitution for the law as it existed at the time of a district court's decision" but affirming that if "the new statutory provision has manifestly not changed the law, a controversy arising under the old statutory provision … is not moot").

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issue"). This Court recently rejected similar arguments from the Government. *See Seattle*, 2017 WL 4700144, at *6. The Court should do so here.

C. There Are No Material Disputed Issues of Fact Regarding Washington's Standing

Washington has standing to challenge the Ban at the summary judgment stage, consistent with *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). ECF 150 at 5. Washington has presented evidence supporting its standing to protect its sovereign and quasi-sovereign interests to challenge the Ban. *See* ECF 55; ECF 57; ECF 56-8; ECF 97. Further, Washington has an interest in protecting all Washington residents, including Washington-based Private Plaintiffs and similarly situated Washington residents, from the discriminatory impact of the Ban. ECF 35; ECF 36; ECF 39; ECF 130; ECF 131; ECF 134. Based on this evidence, this Court has already ruled that Washington has standing to challenge the Ban when it granted Plaintiffs' request for a preliminary injunction. ECF 103 at 11-12.

Defendants fail to adduce any contrary evidence, and there are no material disputed issues of fact as to Washington's standing. Defendants' reliance on hollow arguments that "Washington has not even attempted to satisfy its burden to demonstrate standing to sue[,]" and that this Court "expressly declined to decide whether Washington possessed standing to sue" in granting its motion to intervene, ECF 194 at 9, are incorrect and unavailing.

1. Washington has standing to protect its sovereign and quasi-sovereign *parens patriae* interests

a. Washington has standing to protect is sovereign interests

The Ban injures Washington's sovereign interests in protecting its territory and maintaining its antidiscrimination laws. ECF 103 at 11; ECF 57 ¶¶ 6-13. A state has sovereign protectable interest in "preserv[ing] its sovereign territory." *Massachusetts v. EPA*, 549 U.S. 497, 518-19 (2007) (affirming that states have an "independent interest" in protecting the natural environments and resources within the state's boundaries) (quoting *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907)).

ATTORNEY GENERAL OF WASHINGTON
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Recruitment for Washington's National Guard is subject to DoD policies governing accession into military service – including the Ban. ECF 57 ¶¶ 14-15; 10 U.S.C. § 12201(b). The Ban diminishes the number of individuals eligible to serve in emergency circumstances, when Washington needs assistance the most by excluding qualified Washingtonians from the pool of candidates who can join Washington's National Guard.[4] ECF 103 at 11-12. Washington relies heavily on its National Guard to "assist with emergency preparedness and disaster recovery planning, including protecting Washington State's natural resources from wildfires, landslides, flooding, and earthquakes." ECF 103 at 11 (citing ECF 97 at 8); *see also* ECF 57 ¶¶ 6-11. Washington cannot afford to lose potential qualified Guard members or applicants, as each lost Guard member negatively impacts Washington's ability to respond and mitigate harms to its territory. ECF 103 at 11-12. As the Ban excludes potential qualified individuals from Washington's National Guard, it negatively impacts Washington's ability to protect its residents in emergency situations and to protect its natural resources.

Washington also has sovereign interests in maintaining and enforcing its longstanding antidiscrimination laws. *See* Wash. Rev. Code § 49.60.010 (finding that discrimination "menaces the institutions and foundation of a free democratic state"). Protecting Washington's legal code from the Ban is a legitimate exercise of Washington's sovereign power and Washington has standing to protect its sovereign interests. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982). Washington also has standing because the Ban requires Washington to discriminate against its own people by forcing Washington to bar transgender individuals from serving in its National Guard in violation of Washington's anti-discrimination laws.[5] By permitting, and even requiring discrimination, the Ban impairs Washington's unique interest in making and enforcing its civil rights protections.

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[4] The Ban also negatively impacts Washington's ability to recruit non-transgender individuals to join the Washington National Guard as they may favor working for an inclusive and non-discriminatory employer.

[5] *Contra* Wash. Rev. Code §§ 49.60.030; 49.60.040(26); 49.60.180 (guaranteeing a civil right to be free from sex or gender identity discrimination, including in employment).

ATTORNEY GENERAL OF WASHINGTON
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Washington has significant protectable sovereign interests that give it standing to challenge the Ban. ECF 103 at 11-12. In issuing the preliminary injunction, this Court agreed. ECF 103 at 11-12. Defendants produce no evidence to the contrary.

b. Washington has standing to protect its *parens patriae* interests

Washington has standing as *parens patriae* to protect residents from "the harmful effects of discrimination." [6] *Snapp*, 458 U.S. at 609. Washington is home to approximately 60,000 active and reserve military service members. ECF 103 at 11; ECF 97 at 6. Washington also has approximately 8,000 citizen soldiers in its National Guard. ECF 57 ¶ 8. Each of these Washingtonians works for the military and is part of an organization that seeks to discriminate against transgender Washingtonians. As long as the Ban is in place, each Washington service member is impacted – regardless of whether they are transgender – because their service is governed by a policy that targets their colleagues and teaches them that the military is willing to discriminate against its own. Washington is also home to approximately 32,850 transgender adults. ECF 103 at 11; ECF 97 at 6. The Ban targets these individuals for disfavored treatment by subjecting them to a facially discriminatory government policy.

The Ban subjects thousands of Washingtonians to discriminatory stigma and restricted employment opportunities. This discrimination harms their "health and well-being – both physical and economic[.]" *Snapp*, 458 U.S. at 607. The harm the Ban constitutes to Washingtonians is sufficient injury to confer *parens patriae* standing on Washington. *Id.* at 601-04. The Court agreed and, based on the law and evidence, found Washington had standing to challenge the Ban. ECF 103 at 11. Defendants produce no evidence to the contrary.

2. Washington has standing to challenge the Ban independent from Private Plaintiffs

Defendants argue that "Washington cannot proceed with this case as an Intervenor," ECF 194 at 9, relying on an unpublished Ninth Circuit decision, *Friends of Wild Swan v. Vermillion*,

[6] The United States Supreme Court held that protecting residents from overt federal discrimination is squarely a state concern. *Snapp*, 458 U.S. at 609.

ATTORNEY GENERAL OF WASHINGTON
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(206) 442-4492

694 Fed. Appx. 475 (9th Cir. 2017). Their argument lacks merit. Even if *Friends of Wild Swan* were a binding, published decision, which it is not, it simply stands for the proposition that "[a]n intervenor's right to continue a suit in the absence of the party on whose side intervention was permitted 'is contingent upon a showing by the intervenor that he fulfills the requirements of Art. III.'" 694 Fed. Appx. 475, 476 (9th Cir. 2017) (quoting *Diamond v. Charles*, 476 U.S. 54, 68 (9th Cir. 1986)). However, Washington has shown that it has standing to vindicate its sovereign interests and to protect its residents and quasi-sovereign *parens patriae* interests from Defendants' unconstitutional Ban.[7] Because Washington's sovereign and quasi-sovereign interests meet Article III standing requirements to challenge the Ban separately and distinctly from Private Plaintiffs' standing, Wahington is entitled to summary judgment. ECF 103 at 11-12.

D. The Ban Is Unconstitutional

The Ban fails to pass constitutional muster and summary judgment should be granted. ECF 150 at 8-18.

Betrayed by their own statements and evidence that reveal the discriminatory Ban is unrelated to any important government interest and lacks constitutional justification, Defendants have little choice but to make the same worn arguments: (1) that the forthcoming results of the "final" implementation plan will somehow provide ex-post substantiation for the Ban, *see* ECF 194 at 9-11; (2) that the Court owes "considerable deference" to Defendants' military personnel decisions," *id.* at 13-15, despite a lack of evidence warranting such deference; and (3) that the Ban is constitutional just because Defendants say it is so, *id.* at 15-20. None of these unavailing arguments supply what Defendants lack – evidence justifying the Ban at the time of its

[7] Defendants' argument further fails because an "intervenor is entitled to litigate fully on the merits once intervention is granted." 7C Wright, Miller & Kane, Federal Practice & Procedure § 1920 (3d ed. 2017). As this Court exercises "independent grounds for jurisdiction of the intervenor's claim," Washington may proceed to judgment even if future developments – highly unlikely here – somehow eliminate the standing of each Private Plaintiff. *See Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 478 (2007) (citing cases and treatises); *see also Benavidez v. Eu*, 34 F.3d 825, 30 (9th Cir. 1994); *Indus. Commc'ns & Elecs., Inc. v. Town of Alton*, 646 F.3d 76, 79 (1st Cir. 2011); *Fuller v. Volk*, 351 F.2d 323, 328–29 (3d Cir. 1965) (citing cases)).

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announcement which Defendants would have produced if it existed. Accordingly, the Court should dismiss Defendants' meritless arguments and grant summary judgment.

1. The Ban violates equal protection principles of the Fifth Amendment

The Ban fails intermediate scrutiny because it openly discriminates against transgender individuals without substantially serving an important governmental interest. ECF 150 at 8-13.

Summary judgment should be granted on Washington's equal protection claim because Defendants fail to show an "exceedingly persuasive justification" for the Ban by proving that (1) it serves "important governmental objectives," and (2) "the discriminatory means employed are substantially related to the achievement of those objectives." *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)). *See* ECF 150 at 8-15. Defendants present no evidence of "important governmental objectives" served by the Ban or evidence that the Ban is "substantially related" to achieving those objectives.[8] *See generally* ECF 197. Further, Defendants have simply presented no evidence – no declarations or documents – at any point during this litigation that support its arguments that military readiness, unit cohesion, and budgets are *actually* put at risk by allowing transgender service members to serve openly and to access surgical care or that those interests were the *actual* basis for the Ban. Instead, Defendants rest on unsupported assertions that these alleged governmental interests justify the Ban.[9] However, without actual evidence of such governmental interests, Defendants'

[8] Defendants object to the Court's prior determination that intermediate scrutiny applies to Plaintiffs' equal protection claims, ECF 194 at 15, but the Court correctly followed established precedent in applying heightened scrutiny in reviewing a policy that discriminates on the basis of transgender status, a quasi-suspect classification, ECF 103 at 15 (citing *Ball v. Massanari*, 254 F.3 817, 823 (9th Cir. 2001)). Courts have long held that heightened scrutiny is the appropriate standard for reviewing policies that make distinctions based on sex and gender identity. *See Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000); *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724-25 (1982); *Virginia*, 518 U.S. at 533; *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, 858 F.3d 1034, 1048 (7th Cir. 2017); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011).

[9] *See* ECF 194 at 19 (presenting no evidence to support the Accessions Directive but arguing that "the President could reasonably conclude that the longstanding accessions policy furthers "unit cohesion"); *Id.* at 17 (presenting no evidence to support the Medical Directive but arguing that Ban on new sex reassignment surgeries for transgender service members is similar to general military "discretion to set the level of care provided at military facilities"); *Id.* (presenting no evidence to support the Retention Directive but arguing that the Interim Guidance inoculates the Ban's Retention Directive from review).

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Ban cannot survive equal protection scrutiny.[10] Further, the Government's own evidence demonstrates that the Ban undermines – not furthers – military readiness and unit cohesion.[11] *See* ECF 150 at 14.

Apart from whether the Ban furthers important governmental interests, Defendants must show a substantial relationship between the Ban and their asserted governmental interests. *Morales-Santana*, 137 S. Ct. at 1690. Just as Defendants fail to present this Court with evidence of important governmental objectives supporting the Ban, Defendants fail to provide evidence that the Ban is substantially related to its purported governmental interests.

Moreover, Defendants' continued promises to the Court that they will someday deliver a "final" implementation plan for the Ban, and supporting evidence, does not save the Ban from Washington's constitutional challenge. Post-hoc rationales are legally insufficient to inoculate sex-based classifications from equal protection challenges, *see Morales-Santana*, 137 S. Ct. at 1696-97. *See also* ECF 150 at 12-13. Defendants' failure to provide this Court with evidence to justify the Ban or to show the Court that there are material disputed issues of fact, leave the Ban vulnerable to Washington's Motion for Summary Judgment.

2. The Ban violates substantive due process protections of the Fifth Amendment

The Ban also violates the substantive due process protections of the Fifth Amendment. ECF 150 at 15-18.

A restriction on a fundamental right – even in the military context – can only be sustained if: (1) the restriction advances an important governmental interest; (2) the intrusion significantly

[10] *See Witt v. Dep't of the Air Force*, 527 F.3d 806, 821 (9th Cir. 2008) (accepting that "unit cohesion" may be an important governmental interest, but remanding for determination whether that interest was actually implicated by the facts); *Watkins v. U.S. Army*, 875 F.2d 699, 709 (9th Cir. 1989) (rejecting military's attempt to bar an exemplary gay soldier from reenlistment where "no evidence" supported military's concerns of a "degrading effect upon unit performance, morale or discipline . . . and job performance").

[11] Other courts agree. *See Doe 1 v. Trump*, No. 17-1597 (CKK), 2017 WL 4873042, at *30-33 (D.D.C. Oct, 30, 2017); *Stone v. Trump*, No. MJG-17-2459, 2017 WL 5589122, at *16 (D. Md. Nov. 21, 2017); Order Denying Defendants' Motion to Dismiss and Granting Plaintiffs' Motion for Preliminary Injunction at 20, *Stockman v. Trump*, No. 5:17-cv-1799-JGB (C.D. Cal. Dec. 22, 2017), ECF 79.

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furthers that interest, and (3) a less intrusive means will not substantially achieve the government's interest. *Witt*, 527 F.3d at 819. In this case, the due process and equal protection analyses are closely related. As with the equal protection claim, Defendants fail to provide the Court with evidence sufficient to allow the Ban to meet any prong of the due process test: (1) Defendants have not provided this Court with any evidence of important governmental interests forwarded by the Ban; (2) Defendants' own evidence indicates that the Ban undercuts the purported governmental interests; and (3) Defendants have provided this Court with no evidence that the Ban is the least intrusive means to forward Defendants' purported governmental interests. Thus, there are no material issues of fact in dispute. Summary judgment is appropriate on Washington's claim.

3. This Court owes no deference to a policy that is not the result of a reasoned, well-vetted military decision

Courts only owe deference to well-reasoned policies or practices developed by military experts or the Legislature. *Rostker v. Goldberg*, 453 U.S. 57, 67 (1981). Although courts owe deference to well-reasoned military policies, blind deference to an unsupported policy is never warranted.[12] Here, the Court owes no deference to the Ban because there is no evidence to warrant such deference. ECF 150 13-15.

Defendants provide this Court with no evidence that the Ban was the result of measured consideration and study of military experts. Instead, Defendants imply that the Ban – first announced on Twitter – is somehow the result of measured study directly related to Secretary Mattis' decision to delay transgender accessions for six months. ECF 194 at 10. That argument proves too much. While Secretary Mattis may have been inclined to gather information and perform a review before making any policy changes, ECF 197 at 16 (delaying accessions for 6 months "to evaluate more carefully the impact of such accession on readiness and lethality" and

[12] *See Watkins*, 875 F.2d at 729 (reminding that there are limits to court deference in the military context and noting that "it is unthinkable that the judiciary would defer to the Army's prior 'professional' judgment that black and white soldiers had to be segregated to avoid interracial tensions").

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noting that the Memorandum "in no way presupposed the outcome of the review, nor does it change policies and procedures currently in effect"), President Trump apparently disagreed, spontaneously announcing his Ban on Twitter just a month later. The President's blanket ban on military service by transgender individuals, and necessary surgical care for transgender service members, plainly did not result from measured military decision making. ECF 103 at 3 (tweeting "please be advised that the United States Government will not accept or allow … Transgender individuals to serve in any capacity in the U.S. military"); ECF 56-1 (directing the "return to the longstanding policy and practice" of discriminating against transgender individuals).

Accordingly, Defendants fail to provide this Court any facts supporting their claim that the Ban is the result of well-reasoned military research and consideration requiring deference from this Court.

E. Nationwide Relief is Appropriate

"[W]here a law is unconstitutional on its face, and not simply in its application to certain plaintiffs, a nationwide injunction is appropriate." *Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 539 (N.D. Cal. 2017) (citing *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff.")).[13] The Ban is facially unconstitutional and should be enjoined nationwide to protect Washingtonians who serve in the military across the country. Without a nationwide injunction, Washington's *parens patriae* interests will be inadequately protected.

III. CONCLUSION

For the foregoing reasons this Court should grant Washington's Motion for Summary Judgment.

DATED this 7th day of March, 2018.

[13] *See also Washington v. Trump*, 847 F.3d 1151, 1166–67 (9th Cir. 2017) (affirming nationwide injunction against executive travel ban order).

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Dated this 7th day of March, 2018.

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