

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

\_\_\_\_\_  
JANE DOE 2, JANE DOE 3, JANE DOE 4, )  
JANE DOE 5, JANE DOE 6, JANE DOE 7, )  
JOHN DOE 1, JOHN DOE 2, REGAN V. )  
KIBBY, and DYLAN KOHERE, )

Plaintiffs, )

v. )

DONALD J. TRUMP, in his official capacity as )  
President of the United States; JAMES N. )  
MATTIS, in his official capacity as Secretary of )  
Defense; JOSEPH F. DUNFORD, JR., in his )  
official capacity as Chairman of the Joint Chiefs )  
of Staff; the UNITED STATES DEPARTMENT )  
OF THE ARMY; MARK T. ESPER, in his )  
official capacity as Secretary of the Army; the )  
UNITED STATES DEPARTMENT OF THE )  
NAVY; RICHARD V. SPENCER, in his official )  
capacity as Secretary of the Navy; the UNITED )  
STATES DEPARTMENT OF THE AIR )  
FORCE; HEATHER A. WILSON, in her )  
official capacity as Secretary of the Air Force; )  
the UNITED STATES COAST GUARD; )  
KIRSTJEN M. NIELSEN, in her official )  
capacity as Secretary of Homeland Security; the )  
DEFENSE HEALTH AGENCY; RAQUEL C. )  
BONO, in her official capacity as Director of the )  
Defense Health Agency; and the UNITED )  
STATES OF AMERICA, )

Defendants. )

Civil Action No. 17-cv-1597 (CKK)

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs write to notify the Court of supplemental authority in further support of their opposition to Defendants’ motions for partial judgment on the pleadings and for a protective order to preclude discovery pending resolution of their motion to dissolve the preliminary injunction. *See* Dkts. 92, 108. In a related case pending before the United States District Court for the Western District of Washington, the district court rejected the same arguments

Defendants have made in this case for dismissing the President from the litigation and staying all discovery. *See* Slip Op., *Karnoski v. Trump*, No. 2:17-cv-01297-MJP (Apr. 13, 2018), ECF No. 233. With respect to the President’s immunity from suit, the court in *Karnoski* held that it has “jurisdiction to issue declaratory relief against the President,” and a constitutional challenge to the President’s directives to ban military service by transgender individuals “presents a ‘most appropriate instance’ for such relief.” *Id.* at 29 (quoting *National Treasury Employees Union v. Nixon*, 492 F.2d 587, 616 (D.C. Cir. 1974)).

The court in *Karnoski* likewise rejected the government’s lead argument in this case for staying all discovery—namely, that with the release on March 23, 2018 of Secretary Mattis’s implementation plan and a new memorandum by the President, Plaintiffs’ constitutional challenge is now moot, *see* Dkt. 97, at 6. The court found “that the 2018 Memorandum and the Implementation Plan do not substantively rescind or revoke the Ban, but instead threaten the very same violations that caused it and other courts to enjoin the Ban in the first place.” Slip Op. 12. Indeed, as the court noted, “[t]he Implementation Plan adheres to the policy and directives set forth in the 2017 Memorandum with few exceptions,” *id.*, and the purported exceptions themselves prohibit transgender individuals from serving consistent with their gender identity, *id.* at 13 (“Requiring transgender people to serve in their ‘biological sex’ does not constitute ‘open’ service in any meaningful way, and cannot reasonably be considered an ‘exception’ to the Ban. Rather, it would force transgender service members to suppress the very characteristic that defines them as transgender in the first place.” (footnote omitted)). The court accordingly held that “the 2018 Memorandum and the Implementation Plan do not moot Plaintiffs’ ... existing challenges.” *Id.* at 14.

For the convenience of this Court, the district court's opinion in *Karnoski* is attached to this notice.

April 16, 2018

Claire Laporte (*pro hac vice*)  
Matthew E. Miller (*pro hac vice*)  
Daniel L. McFadden (*pro hac vice*)  
Kathleen M. Brill (*pro hac vice*)  
Michael J. Licker (*pro hac vice*)  
Rachel C. Hutchinson (*pro hac vice*)  
Lauren Godles Milgroom (*pro hac vice*)  
FOLEY HOAG LLP  
155 Seaport Blvd.  
Boston, Massachusetts 02210  
Telephone: 617-832-1000  
Fax: 617-832-7000

Theresa M. Roosevelt (D.C. Bar No. 1021853)  
FOLEY HOAG LLP  
1717 K St. NW  
Washington, D.C. 20009  
Telephone: 202-223-1200  
Fax: 202-785-6687

Jennifer Levi (*pro hac vice*)  
Mary Bonauto (*pro hac vice*)  
GLBTQ LEGAL ADVOCATES & DEFENDERS  
18 Tremont St., Ste. 950  
Boston, Massachusetts 02108  
Telephone: 617-426-1350  
Fax: 617-426-3594

Shannon P. Minter (*pro hac vice*)  
Amy Whelan (*pro hac vice*)  
Christopher F. Stoll (*pro hac vice*)  
NATIONAL CENTER FOR LESBIAN RIGHTS  
870 Market St., Ste. 370  
San Francisco, California 94102  
Telephone: 415-392-6257  
Fax: 415-392-8442

Respectfully submitted,

/s/ Paul R.Q. Wolfson  
Paul R.Q. Wolfson (D.C. Bar No. 414759)  
Kevin M. Lamb (D.C. Bar No. 1030783)  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
1875 Pennsylvania Ave. N.W.  
Washington, D.C. 20006  
Telephone: 202-663-6000  
Fax: 202-663-6363

Alan E. Schoenfeld (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
7 World Trade Center  
250 Greenwich St.  
New York, New York 10007  
Telephone: 212-230-8800  
Fax: 212-230-8888

Christopher R. Looney (*pro hac vice*)  
Harriet Hoder (*pro hac vice*)  
Adam M. Cambier (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
60 State Street  
Boston, Massachusetts 02109  
Telephone: 617-526-6000  
Fax: 617-526-5000

Nancy Lynn Schroeder (*pro hac vice*)  
WILMER CUTLER PICKERING  
HALE & DORR LLP  
350 S. Grand Ave., Ste. 2100  
Los Angeles, California 90071  
Telephone: 213-443-5300  
Fax: 213-443-5400

*Attorneys for Plaintiffs*