

**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

Hon. Marvin J. Garbis

**PLAINTIFFS' MOTION TO MODIFY THE SCHEDULING ORDER**

Plaintiffs respectfully move this Court, pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure and Local Rule 105.9, to temporarily suspend the deadlines for discovery set forth in this Court's Scheduling Order, ECF 100.

As explained in the attached Memorandum of Law, Plaintiffs request that the Court suspend certain discovery deadlines while Plaintiffs meet and confer with Defendants in order to jointly propose a modified schedule. Good cause exists to grant the motion, as Plaintiffs have been diligently pursuing discovery, multiple discovery disputes require resolution, Defendants have not yet completed their document production, Plaintiffs have been unable to schedule depositions as a result of the discovery disputes and delayed document production, and Defendants' recent announcement of steps to implement the Transgender Service Member Ban has created the need for a limited amount of supplemental discovery. Defendants have advised that they consent to Plaintiffs' proposal to temporarily suspend discovery-related deadlines.

For the reasons identified above and in the supporting Memorandum, Plaintiffs' motion to modify the Scheduling Order should be granted.

Dated: April 23, 2018

David M. Zions\*  
Carolyn F. Corwin\*  
Mark H. Lynch (Bar No. 12560)  
Augustus Golden\*  
Jeff Bozman\*  
Marianne F. Kies (Bar No. 18606)  
Christopher J. Hanson\*  
Joshua D. Roselman\*  
Peter J. Komorowski (Bar No. 20034)  
Mark Neuman-Lee\*  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth St. NW  
Washington, DC 20001  
Telephone: (202) 662-6000  
Facsimile: (202) 778-5987  
dzions@cov.com  
ccorwin@cov.com  
mlynch@cov.com  
agolden@cov.com  
jbozman@cov.com  
mkies@cov.com  
chanson@cov.com  
jroselman@cov.com  
pkomorowski@cov.com  
mneumanlee@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

Sara D. Sunderland\*  
COVINGTON & BURLING LLP  
One Front Street  
San Francisco, California 94111  
Telephone: (415) 591-7004  
Facsimile: (415) 591-6091  
ssunderland@cov.com

\* *Admitted pro hac vice*

Respectfully submitted,

/s/ Marianne F. Kies

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*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of April 2018, a copy of the foregoing *Motion to Modify the Scheduling Order* was filed via ECF in the United States District Court for the District of Maryland.

/s/ Marianne F. Kies

**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

**[PROPOSED] ORDER**

**ORDER GRANTING MOTION TO MODIFY THE SCHEDULING ORDER**

Upon consideration of Plaintiffs' Motion to Modify the Scheduling Order, it is on this \_\_\_\_ day of \_\_\_\_\_, 2018, hereby

**ORDERED**, that the motion is GRANTED; and it is further

**ORDERED** that all discovery-related deadlines set forth in the Court's Scheduling Order, ECF 100, are temporarily suspended. This includes the deadlines for Proponent's Rule 26(a)(2) disclosures, Opponent's Rule 26(a)(2) disclosures, Reply Rule 26(a)(2) disclosures, and discovery-related motions, and the discovery deadline.

It is **FURTHER ORDERED** that the parties are to meet and confer and file a proposed amended schedule for these discovery-related deadlines by \_\_\_\_\_, 2018.

\_\_\_\_\_  
HON. MARVIN J. GARBIS  
UNITED STATES DISTRICT JUDGE

**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

Hon. Marvin J. Garbis

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO MODIFY THE  
SCHEDULING ORDER**

**INTRODUCTION**

Discovery in this case is set to close tomorrow, April 24, 2018. *See* ECF 100. Since entry of the Court's scheduling order, Plaintiffs have diligently sought discovery from Defendants, including by propounding discovery requests on January 3, 2018. Several significant discovery-related disputes have arisen and remain unresolved, including disputes over Defendants' assertions of deliberative process privilege to withhold information and documents related to the decisions at issue in this case, whether Plaintiffs may maintain their suit against President Trump, and the validity of Defendants' assertions of the presidential communications privilege. Further, Defendants' March 23 announcement of steps to implement the Transgender Service Member Ban has delayed the progress of discovery and will necessitate a limited number of additional discovery requests. Finally, in the parallel *Doe v. Trump* litigation, No. 17-1597 (D.D.C.), Defendants' document productions will not be completed until May 15, 2018. *Id.*, ECF No. 113 (Apr. 18, 2018). This in turn will affect the timing of document production in this case. For the foregoing reasons and as explained further below, good cause exists for the Court to grant Plaintiffs' Motion to Modify the Scheduling Order. Defendants have consented to

Plaintiffs' request to suspend the existing deadlines to provide an opportunity for the parties to negotiate over new deadlines.

### STATEMENT OF FACTS

On December 27, 2017, the Court entered a Scheduling Order requiring that all discovery in this matter be concluded by April 24, 2018, with all discovery-related motions to be filed by that date. ECF 100 at 1–2. Plaintiffs promptly served their first set of interrogatories and requests for production of documents (“RFPs”) on January 3, 2018. Kies Decl., Exs. 1, 2.

On February 9, 2018, Defendants served objections and responses to Plaintiffs' interrogatories and RFPs. *See, e.g., id.*, Exs. 3, 4.<sup>1</sup> Defendants objected to every single request on multiple grounds, including on the basis of various purported privileges. *Id.* President Trump refused to respond to any discovery requests, citing separation of powers principles. *See id.*, Exs. 5, 6. The great majority of the other Defendants' interrogatory responses state merely that the answer “may be derived” from a review of “certain documents” in Defendants' document productions, “to the extent” the information is not privileged. *See, e.g., id.*, Ex. 3 at 6–8. But Defendants have not identified those documents, as required by Federal Rule of Civil Procedure 33(d)(1).

Also on February 9, 2018, Defendants produced approximately 17,000 documents. This production was identical to their January 2018 productions in *Doe v. Trump*, No. 17-1597 (D.D.C.), minus information pertinent to the individual *Doe* plaintiffs. Kies Decl. ¶ 9. Defendants made a supplemental production on March 9, 2018. *Id.* ¶ 10. Defendants have not yet completed their production of documents and have been ordered to do so by the District Court in

---

<sup>1</sup> In the interest of not overburdening the Court, Plaintiffs have not included as exhibits the objections and responses served by each Defendant. The objections and responses served on behalf of the Department of Defense are representative of those served by all Defendants (other than President Trump).

*Doe* by May 15, 2018. *Doe v. Trump*, No. 17-1597 (D.D.C.), ECF No. 113 (Apr. 18, 2018).

Defendants also have promised to supplement other discovery responses, including their interrogatory responses, but have not done so as of the date of this filing. Kies Decl. ¶ 15.

Numerous discovery disputes are pending, and Plaintiffs are working diligently to resolve them all despite Defendants' failure to respond to several letters and their refusal to discuss certain discovery issues. *See id.* ¶¶ 11–18, Exs. 7–10.

Defendants previously represented that they will agree to adjusting the discovery schedule to avoid prejudicing Plaintiffs. *See* ECF 107 at 1. Plaintiffs contacted Defendants on April 18, 2018, to request their consent regarding modifying the Scheduling Order in light of the issues detailed above, and, on April 23, 2018, Defendants consented to a temporary suspension of all discovery deadlines.

#### **APPLICABLE LAW AND ARGUMENT**

“[A] district court has wide latitude in controlling discovery.” *Ardrey v. United Parcel Serv.*, 798 F.2d 679, 682 (4th Cir. 1986) (noting that a district court “may not, through discovery restrictions, prevent a plaintiff from pursuing a theory or entire cause of action”) (citations omitted). Under Federal Rule of Civil Procedure 16(b)(4), once a scheduling order has been entered, it may be modified “only for good cause and with the judge’s consent.” *See Nourison Rug Corp. v. Parvizian*, 535 F.3d 295, 298 (4th Cir. 2008). To demonstrate good cause, the movant must “show that the deadlines [could not] reasonably be met despite the party’s diligence.” *Cook v. Howard*, 484 F. App’x 805, 815 (4th Cir. 2012) (quotations omitted). “[T]he primary consideration is the diligence of the moving party.” *Montgomery v. Anne Arundel Cty., Maryland*, 182 F. App’x 156, 162 (4th Cir. 2006) (citation omitted); *see also Tawwaab v. Virginia Linen Serv., Inc.*, 729 F. Supp. 2d 757, 768 (D. Md. 2010) (“good cause exists where the moving party has diligently made efforts to meet court imposed deadlines”) (citing *Rassoull v.*

*Maximus, Inc.*, 209 F.R.D. 372, 374 (D. Md. 2002)). Courts may also consider “whether the moving party acted in good faith, the length of the delay and its effects, and whether the delay will prejudice the non-moving party.” *Elat v. Ngoubene*, 993 F. Supp. 2d 497, 520 (D. Md. 2014) (citations omitted).

Plaintiffs, with Defendants’ consent, seek a temporary suspension of the discovery deadlines set by the Scheduling Order, ECF 100, so that they may have time to meet and confer with Defendants in order to jointly propose an amended procedural schedule. The Scheduling Order sets April 24, 2018, as the deadline for completing discovery and filing discovery-related motions. ECF 100. Plaintiffs have proceeded diligently and in good faith by timely serving discovery demands, promptly raising concerns with Defendants’ productions, and notifying the Court during status conferences of the multiple discovery issues with Defendants’ productions and the need to suspend the deadlines for expert disclosures. Indeed, a number of discovery disputes remain to be resolved, and Defendants recently acknowledged that they will be unable to complete their document productions until late May, although the court in the *Doe* case subsequently ordered them to complete their productions by May 15, 2018. *See Doe v. Trump*, No. 17-1597 (D.D.C.), ECF No. 113 (Apr. 18, 2018).

Based on Plaintiffs’ diligence, Defendants’ ongoing efforts to comply with their discovery obligations, and the announcement of Defendants’ plan for implementation of the Ban, there is ample good cause to suspend the discovery deadlines in anticipation of entering an amended discovery schedule. Defendants’ recent admission that they cannot complete their document production until sometime in May provides good cause by itself to extend the discovery deadlines. Moreover, Defendants have withheld information and numerous responsive documents based on privilege, and motions practice will be needed to resolve disputes about these assertions of privilege. Plaintiffs are today serving a motion to compel challenging

Defendants' assertions of deliberative process privilege as the basis for withholding information and documents relating to the governmental decisions at issue in this case. Once the Court has ruled on whether declaratory relief is available against the President, Plaintiffs may also move to compel production of information and documents Defendants have withheld on the basis of the presidential communications privilege.

Furthermore, on March 23, 2018, just a month ago, Defendants released an Implementation Plan for the President's Transgender Service Member Ban. ECF 120-1, 120-2, 120-3. The Implementation Plan is plainly relevant to Plaintiffs' challenge to the Ban, and will likely necessitate a limited amount of additional discovery. Defendants have repeatedly stated to Plaintiffs and the Court that the Implementation Plan is the form of the Ban Defendants intend to defend. It was impossible to obtain discovery on the Implementation Plan prior to its disclosure on March 23, and there surely is good cause to explore through discovery this critical aspect of the policy being challenged in this lawsuit. In addition, Plaintiffs' expert disclosures will need to take into account the Implementation Plan and discovery materials relevant to the Plan. The need to resolve disputes regarding privilege and the release of the Implementation Plan have delayed both Plaintiffs' expert disclosures and the scheduling of depositions.

Suspending, and then extending, the April 24 deadline set by the Scheduling Order for completing discovery and filing discovery-related motion would not unduly prejudice Defendants. Defendants have consented to the proposal to suspend the schedule. Defendants have also admitted they cannot complete document production by April 24, and thus an extension is in Defendants' best interests. Plaintiffs' existing discovery requests cover most of the subjects relevant to Defendants' recent activity. Any supplemental discovery requests will be limited in scope and confined to recent time periods.

Because Plaintiffs have acted diligently in pursuing discovery and requesting this modification of the Scheduling Order, and because there is no undue prejudice to Defendants from suspending and then extending the schedule, there is good cause to suspend the deadlines for completion of discovery and filing of discovery-related motions to permit the parties to negotiate and propose a revised schedule. Plaintiffs' motion to modify the Scheduling Order should be granted.

### **CONCLUSION**

For the reasons identified above, the Scheduling Order should be modified to suspend discovery deadlines and permit the parties to negotiate and propose new dates for these deadlines.

Dated: April 23, 2018

David M. Zions\*  
Carolyn F. Corwin\*  
Mark H. Lynch (Bar No. 12560)  
Augustus Golden\*  
Jeff Bozman\*  
Marianne F. Kies (Bar No. 18606)  
Christopher J. Hanson\*  
Joshua D. Roselman\*  
Peter J. Komorowski (Bar No. 20034)  
Mark Neuman-Lee\*  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth St. NW  
Washington, DC 20001  
Telephone: (202) 662-6000  
Facsimile: (202) 778-5987  
dzions@cov.com  
ccorwin@cov.com  
mlynch@cov.com  
agolden@cov.com  
jbozman@cov.com  
mkies@cov.com  
chanson@cov.com  
jroselman@cov.com  
pkomorowski@cov.com  
mneumanlee@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

Sara D. Sunderland\*  
COVINGTON & BURLING LLP  
One Front Street  
San Francisco, California 94111  
Telephone: (415) 591-7004  
Facsimile: (415) 591-6091  
ssunderland@cov.com

\* *Admitted pro hac vice*

Respectfully submitted,

/s/ Marianne F. Kies

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*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of April 2018, a copy of the foregoing *Memorandum in Support of Motion to Modify the Scheduling Order* was filed via ECF in the United States District Court for the District of Maryland.

/s/ Marianne F. Kies

**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 MARIANNE F. KIES IN SUPPORT OF  
MOTION TO MODIFY THE SCHEDULING ORDER**

I, MARIANNE F. KIES, 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, except those stated upon information and belief, and as to all such facts stated upon information and belief, I am informed and believe that the same are true.

2. I am an attorney with Covington & Burling LLP, and I represent Plaintiffs in this action.

3. Attached hereto as "Exhibit 1" is a true and correct copy of Plaintiffs' First Set of Interrogatories to Defendants, served on January 3, 2018.

4. Attached hereto as "Exhibit 2" is a true and correct copy of Plaintiffs' First Set of Requests for Production of Documents, served on January 3, 2018.

5. Attached hereto as “Exhibit 3” is a true and correct copy of Defendants’ Objections and Responses to Plaintiffs’ First Set of Interrogatories to Secretary Mattis, served on February 9, 2018.

6. Attached hereto as “Exhibit 4” is a true and correct copy of Defendants’ Objections and Responses to Plaintiffs’ First Set of Requests for Production of Documents to Secretary Mattis, served on February 9, 2018.

7. Attached hereto as “Exhibit 5” is a true and correct copy of Defendants’ Objections and Responses to Plaintiffs’ First Set of Interrogatories to Defendant Donald J. Trump, served on February 9, 2018.

8. Attached hereto as “Exhibit 6” is a true and correct copy of Defendants’ Objections and Responses to Plaintiffs’ First Set of Requests for Production of Documents to Defendant Donald J. Trump, served on February 9, 2018.

9. Defendants’ made an initial production in this matter on February 9, 2018, containing approximately 17,000 documents. This production was identical to their initial production in *Doe, et al. v. Trump, et al.*, No. 17-1597 (D.D.C.), minus information pertinent to the individual *Doe* plaintiffs.

10. Defendants made a supplemental production of documents on March 9, 2018. Defendants still have not completed their document production and have advised they are not likely to until sometime in May.

11. Attached hereto as “Exhibit 7” is a true and correct copy of a letter from my colleague and co-counsel Augustus Golden sent to Defendants’ counsel Ryan Parker on February 21, 2018, outlining numerous deficiencies in Defendants’ discovery objections and privilege logs, including their claims of deliberative process privilege.

12. Defendants did not substantively respond to this letter. Instead, during a March 1, 2018 conference with the Court, they requested that Plaintiffs identify particular privilege log entries for re-consideration. Plaintiffs advised that this proposal was likely not feasible given the inadequacy of the information provided in Defendants' privilege logs.

13. On March 9, 2018, I sent an email to Mr. Parker confirming Plaintiffs' view that it was not possible to provide a line-by-line identification of deficient entries, and requesting a further meet and confer session to discuss the ongoing deficiencies in Defendants' discovery responses. Attached hereto as "Exhibit 8" is a true and correct copy of that correspondence.

14. On March 13, 2018, counsel for Plaintiffs and Defendants met and conferred in person at Defendants' counsel's offices. In attendance for Plaintiffs were my colleagues and co-counsel Mark Lynch and Mark Neuman-Lee, and myself. In attendance for Defendants were Mr. Parker and other attorneys. This meet and confer session did not resolve our dispute regarding Defendants' assertion of the deliberative process privilege or the presidential communications privilege.

15. During the meet and confer session of March 13, 2018, Defendants agreed to supplement their responses to Plaintiffs' interrogatories to, at minimum, direct Plaintiffs to specific Bates numbers of responsive documents. To date they have not provided such supplementation.

16. Attached hereto as "Exhibit 9" is a true and correct copy of a letter I sent to Mr. Parker on March 16, 2018, further describing the ongoing deficiencies in Defendants' document production and interrogatory responses. Defendants have not, to date, provided any substantive response to this letter.

17. Attached hereto as “Exhibit 10” is a true and correct copy of a letter I sent to Mr. Parker on April 9, 2018, requesting a response to my letter of March 16 and further explaining why Defendants’ assertions of the deliberative process privilege were deficient. Defendants have not, to date, provided any substantive response to this letter.

18. Defendants have refused to meet and confer regarding the presidential communications privilege pending a decision on their partial motion for judgment on the pleadings addressing claims against the President.

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

Executed this 23<sup>rd</sup> day of April, 2018.



---

Marianne F. Kies (Bar No. 18606)

# **Exhibit 1**

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

BROCK STONE, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 v. ) No. 1:17-cv-02459-MJG  
 )  
 DONALD J. TRUMP, *et al.*, )  
 )  
 Defendants.<sup>1</sup> )

**PLAINTIFFS' FIRST SET OF INTERROGATORIES  
TO DEFENDANTS**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and D. Md. Local Rule 104, Plaintiffs hereby request that Defendants answer the following interrogatories separately, fully, and under oath, by serving written responses on the undersigned counsel, to the attention of Marianne F. Kies at the offices of Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, DC 20001-4956.

**DEFINITIONS**

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure and Local Rules.

---

<sup>1</sup> Mark T. Esper has been substituted as the Secretary of the Army pursuant to Federal Rule of Civil Procedure 25(d).

1. “Person” means any natural person, firm, proprietorship, partnership, joint venture, group, trust, estate, governmental entity, agency, association, corporation, or any other type of organization or entity.

2. “Communication” means any transmission of information (whether formal or informal) by one or more Persons and/or between two or more Persons by means including, but not limited to, telephone conversations, letters, faxes, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and face-to-face conversations.

3. “Document” has the full meaning ascribed to it by Federal Rule of Civil Procedure 34(a), and means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including, but not limited to, all written, typewritten, handwritten, printed, or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings or text messages in Defendants’ possession, custody, or control. “Documents” include, but are not limited to, books, papers, contracts, memoranda, invoices, correspondence, notes, studies, reports, manuals, photographs, drawings, charts, graphs, data compilations, other writings, microfilm, microfiche, audio recordings, video recordings, electronic mail, and any other information stored in electronic form, and each different version or copy of each Document, including, but not limited to, drafts.

4. “Identify,” when used with respect to: (a) an individual, shall mean to provide the individual’s full name, job title, and employer during the period referred to, and current or last known address and telephone number and business address and telephone number; (b) any entity other than an individual, shall mean to provide the entity’s full name and current or last-known address (designating which is provided).

5. “Including” or “Includes” means “including, but not limited to” or “including without limitation.”

6. “Relating to,” “Referring to,” or “Concerning,” when referring to any given subject matter, means any information or Document that constitutes, comprises, involves, contains, embodies, reflects, identifies, states, mentions, alludes to, refers directly or indirectly to, or is in any way relevant to the particular subject matter identified.

7. “Date” means the exact date, month, and year, if ascertainable, or, if not, the best available approximation.

8. “Describe” means to state what is requested to be described, Including all facts and opinions known and held Relating to what is requested to be described, and Identifying (i) each Person involved or having any knowledge of each fact or opinion that Relates to what is so described; (ii) each Document evidencing the answer or response given or Relating to said subject-matter in any way; and (iii) all relevant or material Dates and time periods, specifying the way in which said Dates or time periods Relate to the subject-matter described.

9. “Individual Defendants” means Donald J. Trump, James Mattis, Mark Esper, Richard Spencer, and Heather Wilson.

10. “Military Services” refers to any of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, or the United States Coast Guard.

11. “You,” “Your,” or “Defendants” refers to the Individual Defendants, their predecessors (where applicable), and their respective agencies and agency components (Including the Executive Office of the President and Military Services) and all others acting or purporting to act on behalf of the Individual Defendants, their predecessors, or their agencies or agency components, Including current or former officials, officers, subordinates, employees, contractors, agents, and attorneys.

12. The “Working Group” shall refer to the working group directed by former Secretary of Defense Ashton Carter in his “Memorandum for Secretaries of the Military Departments,” dated July 28, 2015. (Ex. A in ECF No. 13-4, *Doe v. Trump*, No. 17-1597 (D.D.C.).)

13. The “Open Service Directive” shall refer to the directive issued by former Secretary of Defense Ashton Carter titled “Memorandum for Secretaries of the Military Departments,” *et al.*, dated June 30, 2016. (ECF No. 40-4.)<sup>2</sup>

14. The “Accessions Readiness Memorandum” shall refer to the memorandum issued by Deputy Secretary of Defense Robert O. Work titled

---

<sup>2</sup> Unless otherwise stated, ECF numbers refer to documents filed in this case.

“Memorandum for Secretaries of the Military Departments, Chiefs of the Military Services,” dated May 8, 2017.

15. The “Accessions Deferral Memorandum” shall refer to the memorandum issued by Secretary of Defense James N. Mattis titled “Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff,” dated June 30, 2017. (ECF No. 40-11.)

16. The “Tweets” shall refer to the series of tweets issued by President Trump on Twitter on July 26, 2017 that stated: “After consultation with my Generals and military experts, 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. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you.” (ECF No. 40-22.)

17. The “Transgender Service Member Ban” or “Ban” shall refer to the memorandum issued by President Trump on August 25, 2017 titled “Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security.” (ECF No. 40-21.)

18. The “Interim Guidance” shall refer to the memorandum issued by Secretary of Defense James N. Mattis with the subject line “Military Service by Transgender Individuals — Interim Guidance,” dated September 14, 2017. (ECF No. 60-5.)

19. “Panel of Experts” means the individuals who collectively comprise the “panel of experts” referred to in the Interim Guidance.

20. The words “and” as well as “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of these requests any information that might otherwise be construed as falling outside the scope of these requests.

21. Words used in the singular shall, when the context permits, be deemed to include the plural, and words used in the plural shall, when the context permits, be deemed to include the singular. The masculine gender shall, when the context permits, be deemed to include the feminine or neuter genders.

### **INSTRUCTIONS**

1. Pursuant to Federal Rule of Civil Procedure 26(e), these interrogatories are continuing and You must revise or supplement Your responses whenever new or additional responsive information becomes known.

2. Each interrogatory solicits all information that is known to You or in Your possession, custody, or control, and all information available to You from Your employees, contractors, agents, representatives, consultants, attorneys, accountants, advisors, or other person(s) directly or indirectly connected with You or subject to your control.

3. Each interrogatory is to be construed independently and not by or with reference to any other paragraph for purposes of limiting the scope of any particular interrogatory.

4. These interrogatories are to be answered in detail. If You cannot answer any interrogatory in full, You should answer it to the extent possible and explain your inability to answer any further.

5. If You claim that the language of any interrogatory is vague or ambiguous, then You must identify the language you believe is ambiguous and describe the different interpretations that You believe may apply to such language. Regardless of any vagueness or ambiguity You claim, You are to answer the interrogatory to the best of your ability.

6. If any of the answers to these interrogatories are derived from Documents in Your possession or under Your control, please attach a copy thereof to Your answers; in the alternative, please describe each of the Documents with specificity and state when and where they will be available to Plaintiffs' counsel for inspection and copying. Each page of every Document You attach or produce must be marked with a unique identifier or "Bates stamp."

7. If You contend that information responsive to any interrogatory is protected from disclosure pursuant to any privilege, then You must comply with Federal Rule of Civil Procedure 26(b)(5) and the operative scheduling order (ECF No. 100) and describe that information to the extent possible and the nature of the privilege claimed.

8. Unless otherwise specified, these Interrogatories cover the period July 13, 2015 through the present.

## INTERROGATORIES

### *TO BE ANSWERED BY DEFENDANT TRUMP*

**Interrogatory No. 1:** State the Date on which President Trump decided that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.”

**Interrogatory No. 2:** Identify all Documents and Communications reviewed, referenced, relied upon directly or indirectly, or considered by President Trump on or before July 26, 2017 as a basis or impetus for deciding that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.”

**Interrogatory No. 3:** Identify each one of the “Generals and military experts” referenced in the Tweets.

**Interrogatory No. 4:** For each of the “Generals and military experts” referenced in the Tweets, Identify and Describe all Communications between that individual and President Trump Concerning military service by transgender people, Including the Date of the Communication.

**Interrogatory No. 5:** Identify and Describe the basis for President Trump’s assertion that his Tweets announcing the Ban did the military a “great favor.”

**Interrogatory No. 6:** Identify all Persons with whom President Trump (or others acting or purporting to act on his behalf) has communicated Concerning the Tweets or the Ban, Including any Defendants, informal advisors, members of the United States Congress, and representatives or agents of the “Alliance Defending Freedom,” “Focus on the Family,” the “Family Research Council,” “Heritage Action

for America,” and “Breitbart News,” and Including the Date of any such Communication.

**Interrogatory No. 7:** Describe the basis for President Trump’s assertion in the Tweets that military service by transgender individuals would entail (i) “tremendous medical costs” and (ii) “disruption,” Including Identifying any Documents or Communications that support the basis for those two assertions.

**Interrogatory No. 8:** State whether President Trump received advice from any attorney Concerning the Tweets or the Ban and for each such attorney (a) state the Date the advice was communicated to President Trump; (b) state the subject matter of such advice; (c) Identify all Communications containing or transmitting such advice; and (d) Identify all persons to whom the substance of this advice has ever been disclosed.

**Interrogatory No. 9:** Describe the “meaningful concerns” referenced in the Ban, and Identify all Persons who expressed those concerns to President Trump, including the specific “meaningful concern[]” articulated by each such Person and the Date on which the concern was expressed.

**Interrogatory No. 10:** Identify all Documents and Communications reviewed, relied upon directly or indirectly, or considered by President Trump in preparing and issuing the Transgender Service Member Ban, indicating which component of the Ban each Document or Communication pertains to (medical care, accessions, discharge).

***TO BE ANSWERED BY DEFENDANT MATTIS***

**Interrogatory No. 11:** Describe the basis for Secretary Mattis’s assertion in the Accessions Deferral Memorandum that “it is necessary to defer the start of accessions [of transgender individuals into the military] for six months [until January 1, 2018].”

**Interrogatory No. 12:** Identify all Communications between Secretary Mattis or his staff, on the one hand, and President Trump or any officer or employee of the Executive Office of the President (Including Vice President Pence), on the other, Concerning the issue of military service by transgender individuals.

***TO BE ANSWERED BY ALL DEFENDANTS***

**Interrogatory No. 13:** Identify the members of the Working Group, Including name, title, contact information, and qualifications.

**Interrogatory No. 14:** Identify all meeting or conference Dates of the Working Group, Including Identifying the attendees of each meeting or conference and Describing what was discussed during each meeting or conference.

**Interrogatory No. 15:** Identify all Documents and Communications Concerning military service by transgender individuals that were requested, received, considered directly or indirectly, or consulted by Defendants—including the Panel of Experts—since January 20, 2017, and, for each such Document, Identify the Person who transmitted it to You and state the Date(s) of transmission and receipt.

**Interrogatory No. 16:** For every meeting attended by You between January 20, 2017 and the present, at which military service by transgender individuals was

discussed, (a) state the Date of the meeting; (b) Identify all participants in the meeting; (c) Describe the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

**Interrogatory No. 17:** Identify all Persons involved in drafting or publishing:

(i) the Accessions Readiness Memorandum, (ii) the Accessions Deferral Memorandum, (iii) the Tweets, (iv) the Ban, (v) the Interim Guidance, and (vi) any forthcoming recommendations of the Panel of Experts, Including the implementation plan due on February 21, 2018. For each such Person, (a) Describe that Person's role in drafting the document; (b) state the Date(s) of that Person's participation in drafting the document; and (c) Identify all Documents memorializing or reflecting such participation.

**Interrogatory No. 18:** Identify all Documents that comprise or embody assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of, Defendants between June 30, 2016 and August 25, 2017, concerning transgender individuals serving in the military, Including (a) the effect of transgender individuals serving in the military on military readiness; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

**Interrogatory No. 19:** Identify all Documents that comprise or embody assessments, reports, evaluations, studies, or other research published, conducted,

performed by, or at the request of Defendants from August 25, 2017 through the present Concerning transgender individuals serving in the military, Including (a) the effect of transgender individuals serving in the military on military readiness; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

**Interrogatory No. 20:** Identify all members of the Panel of Experts, including each individual's name, title, contact information, and qualifications.

**Interrogatory No. 21:** Identify all meeting or conference Dates of the Panel of Experts, Including Identifying the attendees of each meeting or conference and Describing what was discussed during each meeting or conference.

**Interrogatory No. 22:** State, broken down by Military Service, the number of current and former service members who have identified to their chain of command as transgender since June 30, 2016.

**Interrogatory No. 23:** State, broken down by Military Service, the number of current and former service members whom military medical personnel have diagnosed with gender dysphoria since June 30, 2016.

**Interrogatory No. 24:** State, broken down by Military Service, the number of surgeries performed as treatment for gender dysphoria that the military has performed on current and former service members since June 30, 2016, Including as to each surgery the date, description of the procedure, and cost to the military of the procedure.

Dated: January 3, 2018

David M. Zions\*  
Carolyn F. Corwin\*  
Mark H. Lynch (Bar No. 12560)  
Jaclyn E. Martínez Resly\*  
Jeff Bozman\*  
Marianne F. Kies (Bar No. 18606)  
Christopher J. Hanson\*  
Joshua Rovenger†  
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  
dzions@cov.com  
ccorwin@cov.com  
mlynch@cov.com  
jmartinezresly@cov.com  
jbozman@cov.com  
mkies@cov.com  
chanson@cov.com  
jrovenger@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*

† *Pro hac vice* application forthcoming

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

Respectfully submitted,

/s/ Mitchell A. Kamin  
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*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of January 2018, a true and correct copy of the foregoing Plaintiffs' First Set of Interrogatories to Defendants was served by e-mail on counsel of record for Defendants.

*/s/ Mitchell A. Kamin*

---

Mitchell A. Kamin

# **Exhibit 2**

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

BROCK STONE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:17-cv-02459-MJG
	)	
DONALD J. TRUMP, <i>et al.</i> ,	)	
	)	
Defendants. <sup>1</sup>	)	

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and D. Md. Local Rule 104, Plaintiffs hereby serve their First Set of Requests for Production of Documents to Defendants.

**DEFINITIONS**

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure and Local Rules.

1. "Person" means any natural person, firm, proprietorship, partnership, joint venture, group, trust, estate, governmental entity, agency, association, corporation, or any other type of organization or entity.

2. "Communication" means any transmission of information (whether formal or informal) by one or more Persons and/or between two or more Persons by means including, but not limited to, telephone conversations, letters, faxes,

---

<sup>1</sup> Mark T. Esper has been substituted as the Secretary of the Army pursuant to

electronic mail, text messages, instant messages, other computer linkups, written memoranda, and face-to-face conversations.

3. “Document” has the full meaning ascribed to it by Federal Rule of Civil Procedure 34(a), and means the complete original (or complete copy where the original is unavailable) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including, but not limited to, all written, typewritten, handwritten, printed, or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings or text messages in Defendants’ possession, custody, or control. “Documents” include, but are not limited to, books, papers, contracts, memoranda, invoices, correspondence, notes, studies, reports, manuals, photographs, drawings, charts, graphs, data compilations, other writings, microfilm, microfiche, audio recordings, video recordings, electronic mail, and any other information stored in electronic form, and each different version or copy of each Document, including, but not limited to, drafts.

4. “Including” or “Includes” means “including, but not limited to” or “including without limitation.”

5. “Relating to,” “Referring to,” or “Concerning,” when referring to any given subject matter, means any information or Document that constitutes, comprises, involves, contains, embodies, reflects, identifies, states, mentions,

---

Federal Rule of Civil Procedure 25(d).

alludes to, refers directly or indirectly to, or is in any way relevant to the particular subject matter identified.

6. “Date” means the exact date, month, year, and time if ascertainable, or, if not, the best available approximation.

7. “Social Media” means all forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content, including, but not limited to, Facebook, Twitter, LinkedIn, Google+, YouTube, Pinterest, Instagram, Tumblr, Flickr, Reddit, Snapchat, and WhatsApp.

8. “Individual Defendants” means Donald J. Trump, James Mattis, Mark Esper, Richard Spencer, and Heather Wilson.

9. “Military Services” refers to any of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, or the United States Coast Guard.

10. “You,” “Your,” or “Defendants” refers to the Individual Defendants, their predecessors (where applicable), and their respective agencies and agency components (Including the Executive Office of the President and Military Services) and all others acting or purporting to act on behalf of the Individual Defendants, their predecessors, or their agencies or agency components, Including current or former officials, officers, subordinates, employees, contractors, agents, and attorneys.

11. The “Working Group” shall refer to the working group directed by former Secretary of Defense Ashton Carter in his “Memorandum for Secretaries of the Military Departments,” dated July 28, 2015. (Ex. A in ECF No. 13-4, *Doe v. Trump*, No. 17-1597 (D.D.C.).)

12. The “Open Service Directive” shall refer to the directive issued by former Secretary of Defense Ashton Carter titled “Memorandum for Secretaries of the Military Departments,” *et al.*, dated June 30, 2016. (ECF No. 40-4.)<sup>2</sup>

13. The “Accessions Readiness Memorandum” shall refer to the memorandum issued by Deputy Secretary of Defense Robert O. Work titled “Memorandum for Secretaries of the Military Departments, Chiefs of the Military Services,” dated May 8, 2017.

14. The “Accessions Deferral Memorandum” shall refer to the memorandum issued by Secretary of Defense James N. Mattis titled “Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff,” dated June 30, 2017. (ECF No. 40-11.)

15. The “Tweets” shall refer to the series of tweets issued by President Trump on Twitter on July 26, 2017 that stated: “After consultation with my Generals and military experts, 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. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs

---

<sup>2</sup> Unless otherwise stated, ECF numbers refer to documents filed in this case.

and disruption that transgender in the military would entail. Thank you.” (ECF No. 40-22.)

16. The “Transgender Service Member Ban” or “Ban” shall refer to the memorandum issued by President Trump on August 25, 2017 titled “Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security.” (ECF No. 40-21.)

17. The “Interim Guidance” shall refer to the memorandum issued by Secretary of Defense James N. Mattis with the subject line “Military Service by Transgender Individuals — Interim Guidance,” dated September 14, 2017. (ECF No. 60-5.)

18. “Panel of Experts” means the individuals who collectively comprise the “panel of experts” referred to in the Interim Guidance.

19. The words “and” as well as “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of these requests any information that might otherwise be construed as falling outside the scope of these requests.

20. Words used in the singular shall, when the context permits, be deemed to include the plural, and words used in the plural shall, when the context permits, be deemed to include the singular. The masculine gender shall, when the context permits, be deemed to include the feminine or neuter genders.

## INSTRUCTIONS

1. Unless otherwise agreed in writing, all Documents are to be produced to the attention of Marianne Kies at the offices of Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, DC 20001-4956.
2. Each page of every Document must be marked with a unique identifier or “Bates stamp.”
3. If Defendants object to any portion of any Request, Defendants shall identify the portion to which Defendants object, state the basis for the objection, and respond to the remainder. Pursuant to Federal Rule of Civil Procedure 34(b)(2)(C), Defendants’ objection must state whether any responsive materials are being withheld on the basis of the objection(s).
4. Produce all Documents within Your possession, custody, or control, including all Documents in the possession, custody, or control of any of Your agency and its components, officials, officers, subordinates, employees, contractors, agents, representatives, consultants, attorneys, accountants, advisors, or other person(s) directly or indirectly connected with You or subject to your control.
5. Documents that are in paper form or that constitute other physical objects from which recorded information may be visually read, as well as audio or video tapes or text messages or Social Media data and similar recordings, including drafts, should be produced in their original form or in copies that are exact duplicates of the originals. Computer files and similar electronic records should be produced in a readable form mutually agreed upon by the parties.

6. Produce all Documents in the order in which they appear in Your files. Documents that, in their original condition, are stapled, clipped, or otherwise fastened together shall be produced in this same condition.

7. Produce password-protected Documents with any applicable passwords.

8. Pursuant to Federal Rule of Civil Procedure 26(b)(5) and the operative scheduling order (ECF No. 100), if You contend that any responsive Document is protected from disclosure pursuant to any privilege, please specify the nature of the privilege that is being claimed. In addition: for (A) oral Communications, please specify (i) the name of the Person making the communication and the names of Persons present while the communication was made, and, where not apparent, the relationship of the Persons present to the Person making the communication, (ii) the Date and place of the Communication, and (iii) the general subject matter of the Communication; and for (B) Documents, please specify: (i) the type of document, (ii) the general subject matter of the Document; (iii) the Date of the Document, and (iv) such other information as is sufficient to identify the Document, Including, where appropriate, the author, addressee, custodian, and any other recipient of the Document, and, when not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

9. If no Documents responsive to a particular Request exist, or if such Documents exist but are not in Your possession, custody, or control, then Your response to that Request shall so state.

10. If any of the requested Documents was previously, but is no longer, in Defendants' possession or subject to Defendants' control, state what disposition was made of the Document and when, including the Date it left Defendants' possession or control, identify the Person to whom Defendants transferred it if applicable, and explain the reasons for such disposition.

11. If a Request asks for a Document which no longer exists, then in response to such a Request, Defendants shall identify each such Document; identify all information that was contained in each such Document; state the Date on which each such Document ceased to exist; state what happened to cause each such Document to cease to exist; state why each such Document was caused to or happened to cease to exist; state the time periods during which such types of Documents were maintained; identify each Person having knowledge of the circumstances under which each such Document ceased to exist; and identify each Person having knowledge of each such Document and state the substance of said knowledge.

12. Each paragraph is to be construed independently and not by or with reference to any other paragraph for purposes of limiting the scope of any particular Request.

13. Pursuant to Federal Rule of Civil Procedure 26(e), these Requests are continuing and You must revise or supplement Your responses and production whenever new or additional responsive information becomes known.

14. Unless otherwise specified, these Requests cover the period July 13, 2015 through the present.

## **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** All Documents and Communications that You have conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning military service by transgender individuals.

**REQUEST FOR PRODUCTION NO. 2:** All Documents and Communications Concerning the Working Group's composition, structure, research, findings, and conclusions, Including the Working Group's interview notes, evaluations, analyses, summaries, and memoranda, and Including any Communications between the Working Group and You.

**REQUEST FOR PRODUCTION NO. 3:** All Documents and Communications prepared between November 2015 and June 2016 and submitted to the Secretary of Defense via the Undersecretary of Defense for Personnel & Readiness Concerning military service and accessions into the Military Services by transgender individuals, Including assessments from service medical commands, other Defense Department health care agencies, and the Office of Cost Assessment and Program Evaluation ("CAPE").

**REQUEST FOR PRODUCTION NO. 4:** All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning the Accessions Readiness Memorandum.

**REQUEST FOR PRODUCTION NO. 5:** All Documents and

Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning the Accessions Deferral Memorandum.

**REQUEST FOR PRODUCTION NO. 6:** All Documents and Communications Concerning military service by transgender individuals between President Trump or Persons acting or purporting to act on President Trump's behalf (Including White House officials and senior staff to the President, such as President Trump's National Security Adviser and Chief of Staff), on the one hand, and the other Defendants and Persons acting or purporting to act on the other Defendants' behalf, on the other hand.

**REQUEST FOR PRODUCTION NO. 7:** All Documents and Communications that President Trump or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or impetus for the Tweets, Including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

**REQUEST FOR PRODUCTION NO. 8:** All Documents and Communications that President Trump or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or impetus for the Transgender Service Member Ban, Including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

**REQUEST FOR PRODUCTION NO. 9:** All Documents and

Communications that Secretary Mattis or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or impetus for the Interim Guidance, Including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

**REQUEST FOR PRODUCTION NO. 10:** All Documents and

Communications that embody, comprise, or constitute the “appropriate evidence and information” referenced in the Interim Guidance.

**REQUEST FOR PRODUCTION NO. 11:** All Documents and

Communications Concerning military service by transgender individuals shared between or amongst You and any current or former member of the United States Congress, Including Representative Vicky Hartzler, Scott Perry, or Steve King, from January 2017 to the present.

**REQUEST FOR PRODUCTION NO. 12:** All Documents and

Communications Concerning military service by transgender individuals shared between or amongst You and the Office of the Vice President of the United States, Including Vice President Pence himself.

**REQUEST FOR PRODUCTION NO. 13:** All Documents and

Communications Concerning military service by transgender individuals shared between or amongst Defendants and organizations opposed to military service by transgender individuals, Including but not limited to representatives and agents of the “Alliance Defending Freedom,” “Focus on the Family,” the “Family Research Council,” “Heritage Action for America,” and “Breitbart News,” from January 2017

to the present.

**REQUEST FOR PRODUCTION NO. 14:** All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed that embody, constitute, comprise, or reflect the reaction of the Department of Defense or any of its components (including Military Services), or any individuals within the Department of Defense or its components, to the Tweets.

**REQUEST FOR PRODUCTION NO. 15:** All Documents and Communications Concerning the purpose, composition, structure, research, analysis, findings, and conclusions of the Panel of Experts.

**REQUEST FOR PRODUCTION NO. 16:** All Documents and Communications conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed by the Panel of Experts, Including any recommendations of the Panel of Experts and the implementation plan due on February 21, 2018.

**REQUEST FOR PRODUCTION NO. 17:** All Documents and Communications that You contend support the Tweets' assertion regarding the "tremendous" costs associated with transgender individuals in the Military Services (ECF No. 40-22), Including the military's provision of medical care to transgender individuals.

**REQUEST FOR PRODUCTION NO. 18:** All Documents and Communications that You contend support the Tweets' assertion regarding the

“disruptive” effect of military service by openly transgender individuals (ECF No. 40-22), Including any purported effect on unit cohesion or military readiness.

**REQUEST FOR PRODUCTION NO. 19:** All Documents and Communications Concerning the Department of Defense’s implementation of accessions of openly transgender individuals into the Military Services as of January 1, 2018.

**REQUEST FOR PRODUCTION NO. 20:** All Documents that You referred to or considered in connection with any defense raised in Your Answer to Plaintiffs’ First Amended Complaint.

**REQUEST FOR PRODUCTION NO. 21:** All Documents and Communications that You referred to or considered in connection with responding to Plaintiffs’ First Set of Interrogatories.

Dated: January 3, 2018

David M. Zions\*  
Carolyn F. Corwin\*  
Mark H. Lynch (Bar No. 12560)  
Jaclyn E. Martínez Resly\*  
Jeff Bozman\*  
Marianne F. Kies (Bar No. 18606)  
Christopher J. Hanson\*  
Joshua Rovenger†  
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  
dzions@cov.com  
ccorwin@cov.com  
mlynch@cov.com  
jmartinezresly@cov.com  
jbozman@cov.com  
mkies@cov.com  
chanson@cov.com  
jrovenger@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*

† *Pro hac vice* application forthcoming

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

Respectfully submitted,

/s/ Mitchell A. Kamin  
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*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of January 2018, a true and correct copy of the foregoing Plaintiffs' First Set of Requests for Production of Documents was served by e-mail on counsel of record for Defendants.

*/s/ Mitchell A. Kamin*

---

Mitchell A. Kamin

# **Exhibit 3**

**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' OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST SET OF  
INTERROGATORIES TO SECRETARY MATTIS**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants, through their undersigned counsel, hereby submit initial objections and responses to Plaintiffs' First Set of Interrogatories to James N. Mattis, in his official capacity as Secretary of Defense, served January 3, 2017.<sup>1</sup> In presenting these objections and responses, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

**Objections to Definitions**

1. Defendants object to Plaintiffs' Definition 3 of "Document" as encompassing "any form of collected data for use with electronic data processing equipment;" "data compilations;" and "any other information stored in electronic form;" insofar as data collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

---

<sup>1</sup> These objections and responses are limited to Secretary Mattis. Defendants will produce, or already have produced, separate objections and responses for other Defendants.

2. Defendants object to Plaintiffs' Definition 8 of "Describe" to the extent that it creates interrogatories with multiple discrete subparts, thus leading to Plaintiffs exceeding the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 8, which applies to Interrogatories 11, 16, 17, and 21, includes both (1) information about the subject matter being described, and (2) "each Document evidencing the answer or response given or Relating to said subject-matter in any way." Thus, Plaintiffs have served more than the allowed 25 interrogatories. *See Smith v. Cafe Asia*, 256 F.R.D. 247, 254 (D.D.C. 2009) (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *Mezu v. Morgan State Univ.*, 269 F.R.D. 565, 572–73 (D. Md. 2010) ("[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related" (omission in original) (quoting *Kendall v. GES Exposition Servs.*, 174 F.R.D. 684, 685–86 (D.Nev.1997).).

**Specific Objections and Responses to Interrogatories to be Answered by Defendant Mattis**

Interrogatory No. 11: Describe the basis for Secretary Mattis's assertion in the Accessions Deferral Memorandum that "it is necessary to defer the start of accessions [of transgender individuals into the military] for six months [until January 1, 2018]."

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 8 of "Describe" seeks information related to "each Person involved or having any knowledge or each fact or opinion," "each Document evidencing the answer or response given or Relating to said subject-matter in any way," and "all relevant or material Dates and time periods." Thus, this interrogatory contains at least three distinct subparts, and Plaintiffs have served more than the allowed 25 interrogatories. *See Smith*, 256 F.R.D. at 254 (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *Mezu*, 269 F.R.D. at 572–73 ("[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related" (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86)).

Response:

Considering the responses from the Secretaries of the Military Departments and Chiefs of the Military Services to the Deputy Secretary of Defense's May 8, 2017 directive to assess their readiness to begin accessing transgender applicants into military service on July 1, 2017, and after consulting with the Service Chiefs and Secretaries, Secretary Mattis concluded it was necessary to defer the July 1, 2017 accessions date for six months in order to evaluate more carefully the impact of transgender accessions on readiness and lethality and to ensure that he personally had the benefit of the views of the military leadership and senior civilian officials who were then arriving in the Department of Defense.

Interrogatory No. 12: Identify all Communications between Secretary Mattis or his staff, on the one hand, and President Trump or any officer or employee of the Executive Office of the President (Including Vice President Pence), on the other, Concerning the issue of military service by transgender individuals.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) communications or information protected by the attorney-client privilege; (b) communications or information protected by the deliberative process privilege; or (c) communications or information protected by the presidential communications privilege.

**Specific Objections and Responses to Interrogatories to be Answered by All Defendants**

Interrogatory No. 13: Identify the members of the Working Group, Including name, title, contact information, and qualifications.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants' document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 14: Identify all meeting or conference Dates of the Working Group, Including Identifying the attendees of each meeting or conference and Describing what was discussed during each meeting or conference.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Response:

The Working Group held formal meetings on the following dates:

- August 19, 2015
- September 3, 2015
- September 16, 2015
- October 1, 2015
- October 14, 2015
- November 2, 2015
- November 18, 2015
- November 24, 2015
- December 8, 2015
- December 15, 2015
- January 12, 2016
- January 19, 2016
- March 11, 2016

- April 27, 2016
- May 23, 2016

Additional information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants' document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 15: Identify all Documents and Communications Concerning military service by transgender individuals that were requested, received, considered directly or indirectly, or consulted by Defendants—including the Panel of Experts—since January 20, 2017, and, for each such Document, Identify the Person who transmitted it to You and state the Date(s) of transmission and receipt.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to “all Documents and Communications” purports to require Defendants to search for and identify documents in any and all locations, regardless of whether (a) the documents are in their possession, (b) they have personal knowledge of the documents, (c) the documents would be redundant, and/or (d) such documents would be likely to yield information that is distinct or that

is relevant. Additionally, the phrase “considered [ ] indirectly” is problematic to the extent that it could be construed to apply to documents and communications with mere peripheral connections to the claims and defenses in this case, and identifying all such documents and communications would be excessively burdensome and disproportionate to the needs of the case.

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants’ document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 16: For every meeting attended by You between January 20, 2017 and the present, at which military service by transgender individuals was discussed, (a) state the Date of the meeting; (b) Identify all participants in the meeting; (c) Describe the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1).

Interrogatory No. 16 contains at least two discrete subparts: (1) a request for information about the meetings, and (2) a separate request for documents distributed, considered, or discussed at the meetings or memorializing such meetings (which exists both because it is stated explicitly and due to the Plaintiffs' definition of "Describe"). *See Smith*, 256 F.R.D. at 254 (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *Mezu*, 269 F.R.D. at 572–73 ("[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related" (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86)).

Finally, Secretary Mattis objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to "every meeting" purports to require the Defendants to identify all meetings in this time period of over one year, despite how briefly or informally military service by transgender individuals was discussed at the meeting. Further, the references to "all Documents" purport to require the Defendants to search for and identify documents in any and all locations, regardless of whether (a) the documents are in their possession, (b) they have personal knowledge of the documents, (c) the documents would be redundant, and/or (d) such documents would be likely to yield information that is distinct or that is relevant.

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants' document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 17: Identify all Persons involved in drafting or publishing: (i) the Accessions Readiness Memorandum, (ii) the Accessions Deferral Memorandum, (iii) the Tweets, (iv) the Ban, (v) the Interim Guidance, and (vi) any forthcoming recommendations of the Panel of Experts, including the implementation plan due on February 21, 2018. For each such Person, (a) Describe that Person's role in drafting the document; (b) state the Date(s) of that Person's participation in drafting the document; and (c) Identify all Documents memorializing or reflecting such participation.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 17 contains at least seven discrete subparts. It asks for information about people involved in drafting (1) the Accessions Readiness Memorandum, (2) the Accessions Deferral Memorandum, (3) the Tweets, (4) the Ban, (5) the Interim Guidance, and (6) any forthcoming recommendations of the Panel of Experts. Due to Plaintiffs' definition of "Describe," it also asks for (7) any documents relating to, or evidencing information about, the roles of individuals in drafting each document or policy. The first through sixth subparts relate to information about discrete documents or policies, and none of those subparts is secondary to another subpart. *See Mezu*, 269 F.R.D. at 572–73 ("Probably the best test of whether subsequent

questions, within a single interrogatory, are subsumed and related is to examine whether the first question is primary and subsequent questions are secondary to the primary question. . . . Genuine subparts should not be counted as separate interrogatories. However, discrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omissions in original) (quoting *Kendall*, 174 F.R.D. at 685–86).). The seventh subpart is a separate request for actual documents. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”). Together, these represent seven distinct interrogatories.

Interrogatory No. 18: Identify all Documents that comprise or embody assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of, Defendants between June 30, 2016 and August 25, 2017, concerning transgender individuals serving in the military, Including (a) the effect of transgender individuals serving in the military on military readiness; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of

discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 18 contains three discrete subparts: (1) documents concerning the effect of transgender individuals serving in the military on military readiness, (2) documents concerning medical costs associated with transgender individuals serving in the military, and (3) documents concerning the impact of transgender individuals serving in the military on unit cohesion. *See Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86).)

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants’ document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 19: Identify all Documents that comprise or embody assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of Defendants from August 25, 2017 through the present Concerning transgender individuals serving in the military, Including (a) the effect of transgender individuals serving in the military on military readiness; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also object to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 19 contains three discrete subparts: (1) documents concerning the effect of transgender individuals serving in the military on military readiness, (2) documents concerning medical costs associated with transgender individuals serving in the military, and (3) documents concerning the impact of transgender individuals serving in the military on unit cohesion. *See Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86).)

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants’ document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 20: Identify all members of the Panel of Experts, including each individual’s name, title, contact information, and qualifications.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

Response:

The Panel of Experts is composed of the following individuals who held or hold the following positions:

Chair

- Anthony M. Kurta – Performing the Duties of Under Secretary of Defense (Personnel & Readiness)
- Robert Wilkie – Under Secretary of Defense for Personnel and Readiness

Members

- Thomas Kelly III – Performing the Duties of the Under Secretary of the Army
- Thomas Dee – Performing the Duties of the Under Secretary of the Navy
- Matthew Donovan – Under Secretary of the Air Force
- Charles D. Michel – Vice Commandant of the Coast Guard
- James McConville – Vice Chief of Staff of the Army
- William Moran – Vice Chief of Naval Operations
- Stephen Wilson – Vice Chief of Staff of the Air Force
- Glenn Walters – Assistant Commandant of the Marine Corps
- Daniel Hokanson – Vice Chief of Staff National Guard Bureau
- John Wayne Troxell – Senior Enlisted Advisor to the Vice Chairman of the Joint Chiefs of Staff

- Daniel Daily – Sergeant Major of the Army
- Steven S. Giordano – Master Chief Petty Officer of the Navy
- Kaleth O. Wright – Chief Master Sergeant of the Air Force
- Ronald L. Green – Sergeant Major of the Marine Corps
- Steven W. Cantrell – Master Chief Petty Officer of the Coast Guard
- Christopher Kepner – Senior Enlisted Advisor National Guard Bureau

Additional information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants’ document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 21: Identify all meeting or conference Dates of the Panel of Experts, Including Identifying the attendees of each meeting or conference and Describing what was discussed during each meeting or conference.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs’ Definition 8 of “Describe” seeks both (1) information about the subject-matter being described, and (2) “each Document evidencing the answer or response given or

Relating to said subject-matter in any way.” Thus, Interrogatory No. 21 contains at least two discrete subparts, and Plaintiffs have served more than the allowed 25 interrogatories. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”); *Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86)).

Response:

The Panel of Experts held formal meetings on the following dates:

- October 13, 2017
- October 19, 2017
- October 26, 2017
- November 2, 2017
- November 9, 2017
- November 16, 2017
- November 21, 2017
- November 30, 2017
- December 7, 2017
- December 13, 2017
- December 22, 2017
- January 4, 2018
- January 11, 2018

Additional information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs

in Defendants' document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 22: State, broken down by Military Service, the number of current and former service members who have identified to their chain of command as transgender since June 30, 2016.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants' document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 23: State, broken down by Military Service, the number of current and former service members whom military medical personnel have diagnosed with gender dysphoria since June 30, 2016.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

Response:

	Current	Former
AIR FORCE	225	44
ARMY	342	85
COAST GUARD	25	2
MARINE CORPS	62	17
NAVY	279	67
OTHER	4	0
<b>TOTAL</b>	<b>937</b>	<b>215</b>

Interrogatory No. 24: State, broken down by Military Service, the number of surgeries performed as treatment for gender dysphoria that the military has performed on current and former service members since June 30, 2016, Including as to each surgery the date, description of the procedure, and cost to the military of the procedure.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; (b) communications or information protected by the presidential communications privilege; or (c) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation.

Response:

	Procedure	Date (Month-Year)	
		Current	Former
AIR FORCE	MASTECTOMY	Nov-17	
		Jan-18	
	ORCHIECTOMY	Oct-17	
ARMY	HYSTERECTOMY	Apr-17	
		May-17	
		Jun-17	
		Sep-17	
		Oct-17	
		Nov-17	
	MASTECTOMY	May-17	
		Jun-17	
		Aug-17	
		Aug-17	
		Sep-17	
		Nov-17	
		Dec-17	
		Dec-17	
	ORCHIECTOMY	Feb-17	
			Apr-17

		Oct-17		
		Dec-17		
		Dec-17		
MARINE CORPS	HYSTERECTOMY		Jun-17	
		Jul-17		
	MASTECTOMY	May-17		
		Jun-17		
		Jun-17		
		Aug-17		
		Sep-17		
		Sep-17		
		Nov-17		
		Dec-17		
		Aug-17		
		NAVY	HYSTERECTOMY	Nov-16
	Dec-16			
	Mar-17			
May-17				
Sep-17				
Nov-17				
Nov-17				
Nov-17				
	MASTECTOMY	Jun-17		

		Aug-17		
		Sep-17		
		Sep-17		
		Oct-17		
		Oct-17		
			Oct-17	
		Oct-17		
		Oct-17		
		Nov-17		
		Dec-17		
		Dec-17		
		Jan-18		
		ORCHIECTOMY		Jul-17
			Jul-17	
			Jan-18	

Secretary Mattis cannot provide the cost for each of the foregoing procedures. Expenses are based on costs stepped down from work centers and assigned based on weighted workload and intermediate products. The Department of Defense does not have a Patient Level Cost Accounting system that can track individual costs to a unique patient.

As to the responses to the interrogatories, see Attachment A.

As to the objections:

Date: February 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 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](mailto:ryan.parker@usdoj.gov)

*Counsel for Defendants*

ATTACHMENT A

VERIFICATION

Based on information that I obtained in the course of my official duties, I declare under penalty of perjury that the substance of the responses to these interrogatories are true and correct to the best of my knowledge and belief.

Date: Feb. 9, 2018

Signature: Stephanie P. Miller  
STEPHANIE P. MILLER

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 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](mailto: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](mailto:mkies@cov.com)

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

# **Exhibit 4**

**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' OBJECTIONS AND RESPONSES TO PLAINTIFFS' FIRST SET OF  
REQUESTS FOR PRODUCTION OF DOCUMENTS TO SECRETARY MATTIS**

Pursuant to Federal Rules of Civil Procedure 26 and 34 and the Local Rules of the U.S. District Court for the District of Columbia, Defendants, through their undersigned counsel, hereby submit initial objections and responses to Plaintiffs' First Set of Requests for Production of Documents to James Mattis, in his official capacity as Secretary of Defense, served January 3, 2017.<sup>1</sup> In presenting these objections and responses, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground. ESI will be produced in TIF format.

---

<sup>1</sup> These objections and responses are limited to Secretary Mattis. Defendants will produce, or already have produced, separate objections and responses for other Defendants.

### **Objection to Definitions**

Defendants object to Plaintiffs' Definition 3 of "Document" as encompassing "any form of collected data for use with electronic data processing equipment;" "data compilations;" and "any other information stored in electronic form;" insofar as data collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

### **Specific Objections to Requests for Production**

RFP No. 1: All Documents and Communications that You have conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning military service by transgender individuals.

#### **Specific Objections:**

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 2: All Documents and Communications Concerning the Working Group's composition, structure, research, findings, and conclusions, Including the Working Group's interview notes, evaluations, analyses, summaries, and memoranda, and Including any Communications between the Working Group and You.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 3: All Documents and Communications prepared between November 2015 and June 2016 and submitted to the Secretary of Defense via the Undersecretary of Defense for Personnel & Readiness Concerning military service and accessions into the Military Services by transgender individuals, Including assessments from service medical commands, other Defense Department health care agencies, and the Office of Cost Assessment and Program Evaluation (“CAPE”).

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court’s order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 4: All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning the Accessions Readiness Memorandum.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 5: All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning the Accessions Deferral Memorandum.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential

communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 6: All Documents and Communications Concerning military service by transgender individuals between President Trump or Persons acting or purporting to act on President Trump's behalf (Including White House officials and senior staff to the President, such as President Trump's National Security Adviser and Chief of Staff), on the one hand, and the other Defendants and Persons acting or purporting to act on the other Defendants' behalf, on the other hand.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the

privileged documents that have been withheld and the basis for privilege at issue for those documents.

RFP No. 7: All Documents and Communications that President Trump or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or impetus for the Tweets, Including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

RFP No. 8: All Documents and Communications that President Trump or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or impetus for the Transgender Service Member Ban, Including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

RFP No. 9: All Documents and Communications that Secretary Mattis or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or impetus for the Interim Guidance, Including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the

privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 10: All Documents and Communications that embody, comprise, or constitute the “appropriate evidence and information” referenced in the Interim Guidance.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court’s order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 11: All Documents and Communications Concerning military service by transgender individuals shared between or amongst You and any current or former member of the United States Congress, Including Representative Vicky Hartzler, Scott Perry, or Steve King, from January 2017 to the present.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The foregoing objections do not foreclose the possibility that, to the extent any responsive documents exist, a Member of Congress may seek to oppose the production of information in this case based on the Speech or Debate Clause.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 12: All Documents and Communications Concerning military service by transgender individuals shared between or amongst You and the Office of the Vice President of the United States, Including Vice President Pence himself.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

RFP No. 13: All Documents and Communications Concerning military service by transgender individuals shared between or amongst Defendants and organizations opposed to military service by transgender individuals, Including but not limited to representatives and agents of the "Alliance Defending Freedom," "Focus on the Family," the "Family Research Council," "Heritage Action for America," and "Breitbart News," from January 2017 to the present.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 14: All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed that embody, constitute, comprise, or reflect the reaction of the Department of Defense or any of its components (including Military Services), or any individuals within the Department of Defense or its components, to the Tweets.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log

will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 15: All Documents and Communications Concerning the purpose, composition, structure, research, analysis, findings, and conclusions of the Panel of Experts.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 16: All Documents and Communications conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed by the Panel of Experts, Including any recommendations of the Panel of Experts and the implementation plan due on February 21, 2018.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 17: All Documents and Communications that You contend support the Tweets' assertion regarding the "tremendous" costs associated with transgender individuals in the Military Services (ECF No. 40-22), Including the military's provision of medical care to transgender individuals.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 18: All Documents and Communications that You contend support the Tweets' assertion regarding the "disruptive" effect of military service by openly transgender individuals (ECF No. 40-22), Including any purported effect on unit cohesion or military readiness.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential

communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 19: All Documents and Communications Concerning the Department of Defense's implementation of accessions of openly transgender individuals into the Military Services as of January 1, 2018.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 20: All Documents that You referred to or considered in connection with any defense raised in Your Answer to Plaintiffs' First Amended Complaint.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

RFP No. 21: All Documents and Communications that You referred to or considered in connection with responding to Plaintiffs' First Set of Interrogatories.

Specific Objections:

Secretary Mattis objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

Response:

Subject to and without waiving the above objections, Secretary Mattis will produce any non-privileged documents responsive to this RFP in his possession, custody, and control.

Date: February 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](mailto:ryan.parker@usdoj.gov)

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 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](mailto: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](mailto:mkies@cov.com)

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

# **Exhibit 5**

**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' OBJECTIONS TO PLAINTIFFS' FIRST SET OF  
INTERROGATORIES TO DEFENDANT DONALD J. TRUMP**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants, through their undersigned counsel, hereby submit initial objections to Plaintiffs' First Set of Interrogatories to Defendant Donald J. Trump, served January 3, 2017.<sup>1</sup> In presenting these objections, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

**Objections to Definitions**

1. Defendants object to Plaintiffs' Definition 3 of "Document" as encompassing "any form of collected data for use with electronic data processing equipment;" "data compilations;" and "any other information stored in electronic form;" insofar as data collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

---

<sup>1</sup> These objections are limited to President Trump. Defendants will produce, or already have produced, separate objections for other Defendants.

2. Defendants object to Plaintiffs' Definition 8 of "Describe" to the extent that it creates interrogatories with multiple discrete subparts, thus leading to Plaintiffs exceeding the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 8, which applies to Interrogatories Nos. 5, 7, 9, 16, 17, and 21 includes both (1) information about the subject-matter being described, and (2) "each Document evidencing the answer or response given or Relating to said subject-matter in any way." Thus, Plaintiffs have served more than the allowed 25 interrogatories. *See Smith v. Cafe Asia*, 256 F.R.D. 247, 254 (D.D.C. 2009) (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *Mezu v. Morgan State Univ.*, 269 F.R.D. 565, 572–73 (D. Md. 2010) ("[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related" (omission in original) (quoting *Kendall v. GES Exposition Servs.*, 174 F.R.D. 684, 685–86 (D. Nev. 1997).).

### **General Objection to All Interrogatories**

Defendants object to any discovery directed to the President of the United States in this case, on several grounds, including that such discovery should be foreclosed in this case based on separation of powers principles and that virtually all of the specific discovery sought is subject to executive privilege, and in particular, the presidential communications privilege.

First, such discovery requests are inappropriate where, as here, they are premised on claims for declaratory and injunctive relief brought directly against the President of the United States, who is not a proper defendant on such claims. The Supreme Court has held that it has "no jurisdiction of a bill to enjoin the President in the performance of his official duties."

*Mississippi v. Johnson*, 71 U.S. 475, 501 (1866); *id.* at 500 (“The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department.”). A plurality of the Court later reiterated this principle in *Franklin v. Massachusetts*, 505 U.S. 788, 802–803 (1992). The plurality in *Franklin* found it “extraordinary” that the district court in that case had issued an injunction against the President and two other government officials. *Id.* at 802, 806. “At the threshold,” it said, “the District Court should have evaluated whether injunctive relief against the President was available, and if not, whether appellees’ injuries were nonetheless redressable.” *Id.* at 803. Concurring in *Franklin*, Justice Scalia explained that, under *Mississippi*, courts may impose neither injunctive nor declaratory relief against the President in his official capacity. *Id.* at 827–28 (noting that such principle is “a functionally mandated incident of the President’s unique office, rooted in the constitutional tradition of the separation of powers and supported by our history”). He reasoned that just as the President is absolutely immune from official capacity damages suits, so is he immune from efforts to enjoin him in his official capacity. *Id.* at 827 (“Many of the reasons [the Court] gave in *Nixon v. Fitzgerald*, [457 U.S. 731, 749 (1982)], for acknowledging an absolute Presidential immunity from civil damages for official acts apply with equal, if not greater, force to requests for declaratory or injunctive relief in official-capacity suits that challenge the President’s performance of executive functions”). The lower courts have often applied this settled principle. *See e.g.*, *Swan v. Clinton*, 100 F.3d 973, 976 n.1 (D.C. Cir. 1996) (“similar considerations regarding a court’s power to issue [injunctive] relief against the President himself apply to [the] request for a declaratory judgment”); *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (“With regard to the President, courts do not have jurisdiction

to enjoin him and have never submitted the President to declaratory relief.”) (citations omitted). Under that principle, the President should not be subject to discovery in this case.

Second, the Supreme Court has made clear that discovery directed to the President in civil litigation raises significant separation of powers concerns and should be strictly circumscribed. In *Cheney v. U.S. District Court for District of Columbia*, the Supreme Court explained that where the discovery requests were directed to the Vice President and other senior officials of the Executive Branch who gave advice and made recommendations to the President, it was “not a routine discovery dispute.” 542 U.S. 367, 385 (2004). The Court emphasized that “special considerations control when the Executive Branch’s interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated.” *Id.* at 385. The Supreme Court “has held, on more than one occasion, that ‘[t]he highest respect that is owed to the office of the Chief Executive ... is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery.’” *Id.* (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997)). Further, the Court has held that the Executive’s “constitutional responsibilities and status [are] factors counseling judicial deference and restraint” in the conduct of the litigation against it. *Id.* (quoting *Nixon v. Fitzgerald*, 457 U.S. 731, 753 (1982)) (internal quotation marks omitted).

In *Cheney*, the district court permitted broad discovery directed to the Vice President and other senior officials, and the D.C. Circuit dismissed the government’s mandamus petition to vacate the district court’s discovery orders, holding that the government officials, “to guard against intrusion into the President’s prerogatives, must first assert privilege.” 542 U.S. at 375–76. In vacating the D.C. Circuit’s decision, the Supreme Court described as “anything but appropriate” the “overly broad discovery requests” directed to the Vice President and other

senior officials, which were “unbounded in scope,” and asked for “everything under the sky.” *Id.* at 387–88 (“The Government [ ] did in fact object to the scope of discovery and asked the District Court to narrow it in some way. Its arguments were ignored.”). Noting the separation of powers concerns, the Supreme Court instructed the D.C. Circuit to analyze, on remand, whether the district court’s actions in permitting discovery against the Vice President and other senior officials constituted “an unwarranted impairment of another branch in the performance of its constitutional duties.” *Id.* at 390. It rejected the D.C. Circuit’s “mistaken assumption that the assertion of executive privilege is a necessary precondition to the Government’s separation-of-powers objections.” *Id.* at 391. *Cf. United States v. Poindexter*, 727 F. Supp. 1501, 1503–04 (D.D.C. 1989) (agreeing with the President that “it is undesirable as a matter of constitutional and public policy to compel a President to make his decision on privilege with respect to a large array of documents” and deciding to narrow, on its own, the scope of the discovery directed to the President). These separation of powers concerns were also recognized in *American Historical Association v. National Archives & Records Administration*. 402 F. Supp. 2d 171, 181 (D.D.C. 2005) (Kollar-Kotelly, J.). The Court there found the reasoning in *Cheney* instructive, reiterating the *Cheney* Court’s view that “special considerations control when the Executive Branch’s interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated.” *Id.* at 181 (quoting *Cheney*, 542 U.S. at 385) (internal quotation marks omitted).

In light of these compelling separation of powers concerns, the Court should, at a minimum, require Plaintiffs to exhaust alternative sources of discovery before subjecting the President to discovery. Indeed, on February 21, 2018—a mere two weeks from now—the Secretary of Defense is expected to submit an implementation plan to the President, which could

narrow, if not completely eliminate, any purported reason for such broad discovery directed to the President. Military policy concerning transgender persons will be set forth in that plan, and any discovery, if permitted at all, into the basis for that policy should be directed at DoD in the first instance at that time. This timeline alone weighs heavily in favor of not subjecting the sitting President to discovery.

Finally, virtually all of the discovery directed to the President in this case is subject to the presidential communications privilege. The “presumptive privilege” that attaches to presidential communications is “fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.” *United States v. Nixon*, 418 U.S. 683, 708 (1974); *see In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997) (describing the privilege’s “constitutional origins”). The privilege is broad, protecting the “confidentiality of Presidential communications in performance of the President’s responsibilities.” *United States v. Nixon*, 418 U.S. at 711. *See also In re Sealed Case*, 121 F.3d at 744 (“The *Nixon* cases establish the contours of the presidential communications privilege. The President can invoke the privilege when asked to produce documents or other materials that reflect presidential decisionmaking and deliberations.”). Documents subject to the presidential communications privilege are shielded in their entirety, and the privilege “covers final and post-decisional material as well as pre-deliberative ones.” *In re Sealed Case*, 121 F.3d at 745.

Although the presidential communications privilege is not absolute, the bar to overcoming the privilege is high; it is “more difficult to surmount” than the deliberative process privilege. *In re Sealed Case*, 121 F.3d at 746. A party seeking otherwise privileged presidential material must demonstrate a “focused demonstration of need.” *Id.*; *See also Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1112 (D.C. Cir. 2004). Courts will balance “the public

interests served by protecting the President’s confidentiality in a particular context with those furthered by requiring disclosure.” *In re Sealed Case*, 121 F.3d at 753. To meet this heavy burden of “specific need” in a criminal matter, the party seeking the privileged material must first demonstrate “that each discrete group of the subpoenaed materials likely contains important evidence”—that is, evidence “directly relevant to issues that are expected to be central to the trial,” and not evidence that is “only tangentially relevant or would relate to side issues.” *Id.* at 753–55. The party seeking the discovery must also show “that this evidence is not available with due diligence elsewhere”—that is, notwithstanding other sources of information, the privileged documents are “still needed.” *Id.* (explaining that this standard reflects the Supreme Court’s “insistence that privileged presidential communications should not be treated as just another source of information”).

Where privileged material is sought for use in a civil case, the burden to overcome the presidential communications privilege is even greater. The greater scrutiny is appropriate because “the right to production of relevant evidence in civil proceedings does not have the same ‘constitutional dimensions’” as a request for information in a criminal case. *Cheney*, 542 U.S. at 384 (quoting *United States v. Nixon*, 418 U.S. at 713); *see also Am. Historical Ass’n*, 402 F. Supp. 2d at 181 (explaining that the *Cheney* Court noted that “while withholding necessary materials in an ongoing criminal case constitutes an impermissible impairment of another branch’s essential functions, the same could not be said of document requests in the civil context”); *cf. Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc) (“[T]he sufficiency of the Committee’s showing must depend solely on whether the subpoenaed evidence is *demonstrably critical* to the responsible fulfillment of the Committee’s functions.”) (emphasis added).

In this case—a civil matter seeking discovery directly from the President, in his capacity as Commander-in-Chief, related to his decisionmaking process on a topic involving national security and military concerns—Plaintiffs face a significant burden in order to negate a valid assertion of the presidential communications privilege. Plaintiffs cannot meet this burden, especially where the requested discovery seeks information that, on its face, is privileged (including information about presidential communications, attorney-client and work product materials, and drafts of presidential documents) and would plainly intrude on core presidential deliberations, or where the requested discovery seeks information that could be sought from the Department of Defense or other sources, including publicly available ones.

Accordingly, Defendants object to any discovery requests directed to the President of the United States in this case based on these compelling separation of powers concerns, and in particular object to the discovery sought that is subject to the presidential communications privilege.

**Specific Objections to Interrogatories to be Answered by Defendant Trump**

Interrogatory No. 1: State the Date on which President Trump decided that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.”

**Specific Objections:**

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege, or (b) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that “decided” is vague and ambiguous, as well as undefined by Plaintiffs.

Interrogatory No. 2: Identify all Documents and Communications reviewed, referenced, relied upon directly or indirectly, or considered by President Trump on or before July 26, 2017 as a basis or impetus for deciding that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.”

**Specific Objections:**

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Interrogatory No. 3: Identify each one of the “Generals and military experts” referenced in the Tweets.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Interrogatory No. 4: For each of the “Generals and military experts” referenced in the Tweets, Identify and Describe all Communications between that individual and President Trump Concerning military service by transgender people, Including the Date of the Communication.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Interrogatory No. 5: Identify and Describe the basis for President Trump’s assertion that his Tweets announcing the Ban did the military a “great favor.”

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects on the grounds that the basis for the President’s assertion is set forth in the August 25, 2017 Presidential Memorandum.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs’ Definition 8 of “Describe” seeks both (1) information about the subject-matter being described, and (2) “each Document evidencing the answer or response given or Relating to said subject-matter in any way.” Thus, Interrogatory No. 5 contains at least two discrete subparts, and Plaintiffs have served more than the allowed 25 interrogatories. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”); *Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86).).

Interrogatory No. 6: Identify all Persons with whom President Trump (or others acting or purporting to act on his behalf) has communicated Concerning the Tweets or the Ban, Including any Defendants, informal advisors, members of the United States Congress, and representatives or agents of the “Alliance Defending Freedom,” “Focus on the Family,” the “Family Research Council,” “Heritage Action for America,” and “Breitbart News,” and Including the Date of any such Communication.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The foregoing objections do not foreclose the possibility that, to the extent any responsive communications exist, a Member of Congress may seek to oppose the production of information in this case based on the Speech or Debate Clause.

Interrogatory No. 7: Describe the basis for President Trump’s assertion in the Tweets that military service by transgender individuals would entail (i) “tremendous medical costs” and (ii) “disruption,” Including Identifying any Documents or Communications that support the basis for those two assertions.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects on the grounds that the basis for the President's assertion is set forth in the August 25, 2017 Presidential Memorandum.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Interrogatory No. 7 contains at least four discrete subparts: (1) a request for information about the basis for President Trump's assertion regarding "tremendous medical costs," (2) a separate request for documents supporting that basis, (3) a request for information about the basis for President Trump's assertion regarding "disruption," and (4) a separate request for documents supporting that basis. *See Smith*, 256 F.R.D. at 254 (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *Mezu*, 269 F.R.D. at 572–73 ("[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related" (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86)).

Interrogatory No. 8:

State whether President Trump received advice from any attorney Concerning the Tweets or the Ban and for each such attorney (a) state the Date the advice was communicated to President Trump; (b) state the subject matter of such advice; (c) Identify all Communications containing or transmitting such advice; and (d) Identify all persons to whom the substance of this advice has ever been disclosed.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Interrogatory No. 8 contains at least two discrete subparts: (1) a request for information about communications with any attorney, and (2) a separate request for information about all persons to whom the substance of any advice has ever been disclosed. *See Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86).).

Interrogatory No. 9: Describe the “meaningful concerns” referenced in the Ban, and Identify all Persons who expressed those concerns to President Trump, including the specific “meaningful concern[]” articulated by each such Person and the Date on which the concern was expressed.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 9 contains at least two discrete subparts: (1) a request to identify the “meaningful concerns,” (2) a separate request to identify people and the “meaningful concerns” they articulated. *See Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86).).

Interrogatory No. 10: Identify all Documents and Communications reviewed, relied upon directly or indirectly, or considered by President Trump in preparing and issuing the Transgender

Service Member Ban, indicating which component of the Ban each Document or Communication pertains to (medical care, accessions, discharge)

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

**President Trump's Specific Objections to Interrogatories  
to be Answered by All Defendants**

Interrogatory No. 13: Identify the members of the Working Group, including name, title, contact information, and qualifications.

Specific Objections:

The President objects on the grounds that this Interrogatory is not properly directed to him and should instead be directed to DoD.

To the extent that this interrogatory is deemed to be properly directed to the President, the President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; (b) communications or information protected by the presidential communications privilege; or (c)

material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation.

Interrogatory No. 14: Identify all meeting or conference Dates of the Working Group, Including Identifying the attendees of each meeting or conference and Describing what was discussed during each meeting or conference.

Specific Objections:

The President objects on the grounds that this Interrogatory is not properly directed to him and should instead be directed to DoD.

To the extent that this interrogatory is deemed to be properly directed to the President, the President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

Interrogatory No. 15: Identify all Documents and Communications Concerning military service by transgender individuals that were requested, received, considered directly or indirectly, or consulted by Defendants—including the Panel of Experts—since January 20, 2017, and, for each such Document, Identify the Person who transmitted it to You and state the Date(s) of transmission and receipt.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to “all Documents and Communications” purports to require the President to search for and identify documents in any and all locations, regardless of whether (a) the documents are in his possession, (b) he has personal knowledge of the documents, (c) the documents would be redundant, and/or (d) such documents would be likely to yield information that is distinct or that is relevant. Additionally, the phrase “considered [ ] indirectly” is problematic to the extent that it could be construed to apply to documents and communications with mere peripheral connections to the claims and defenses in this case, and identifying all such documents and communications would be excessively burdensome and disproportionate to the needs of the case.

Interrogatory No. 16: For every meeting attended by You between January 20, 2017 and the present, at which military service by transgender individuals was discussed, (a) state the Date of the meeting; (b) Identify all participants in the meeting; (c) Describe the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to “every meeting” purports to require the President to identify all meetings in this time period of over one year, despite how briefly or informally military service by transgender individuals was discussed at the meeting. Further, the references to “all Documents” purport to require the President to search for and identify documents in any and all locations, regardless of whether (a) the documents are in his possession, (b) he has personal knowledge of the documents, (c) the documents would be redundant, and/or (d) such documents would be likely to yield information that is distinct or that is relevant.

The President also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 16 contains at least two discrete subparts: (1) a request for information about the meetings, and (2) a separate request for documents distributed, considered, or discussed at the meetings or memorializing such meetings (which exists both because it is stated explicitly and due to the Plaintiffs’ definition of “Describe”). *See Smith*, 256 F.R.D. at 254 (explaining

that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”); *Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86)).

Interrogatory No. 17: Identify all Persons involved in drafting or publishing: (i) the Accessions Readiness Memorandum, (ii) the Accessions Deferral Memorandum, (iii) the Tweets, (iv) the Ban, (v) the Interim Guidance, and (vi) any forthcoming recommendations of the Panel of Experts, including the implementation plan due on February 21, 2018. For each such Person, (a) Describe that Person’s role in drafting the document; (b) state the Date(s) of that Person’s participation in drafting the document; and (c) Identify all Documents memorializing or reflecting such participation.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 17 contains at least seven discrete subparts. It asks for information about

people involved in drafting (1) the Accessions Readiness Memorandum, (2) the Accessions Deferral Memorandum, (3) the Tweets, (4) the Ban, (5) the Interim Guidance, and (6) any forthcoming recommendations of the Panel of Experts. Due to Plaintiffs' definition of "Describe," it also asks for (7) any documents relating to, or evidencing information about, the roles of individuals in drafting each document or policy. The first through sixth subparts relate to information about discrete documents or policies, and none of those subparts is secondary to another subpart. *See Mezu*, 269 F.R.D. at 572–73 ("Probably the best test of whether subsequent questions, within a single interrogatory, are subsumed and related is to examine whether the first question is primary and subsequent questions are secondary to the primary question. . . . Genuine subparts should not be counted as separate interrogatories. However, discrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related" (omissions in original) (quoting *Kendall*, 174 F.R.D. at 685–86).). The seventh subpart is a separate request for actual documents. *See Smith*, 256 F.R.D. at 254 (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"). Together, these represent seven distinct interrogatories.

Interrogatory No. 18: Identify all Documents that comprise or embody assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of, Defendants between June 30, 2016 and August 25, 2017, concerning transgender individuals serving in the military, Including (a) the effect of transgender individuals serving in the military on military readiness; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 18 contains three discrete subparts: (1) documents concerning the effect of transgender individuals serving in the military on military readiness, (2) documents concerning medical costs associated with transgender individuals serving in the military, and (3) documents concerning the impact of transgender individuals serving in the military on unit cohesion. *See Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86)).

Interrogatory No. 19: Identify all Documents that comprise or embody assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of Defendants from August 25, 2017 through the present Concerning transgender individuals serving in the military, Including (a) the effect of transgender individuals serving in

the military on military readiness; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 18 contains three discrete subparts: (1) documents concerning the effect of transgender individuals serving in the military on military readiness, (2) documents concerning medical costs associated with transgender individuals serving in the military, and (3) documents concerning the impact of transgender individuals serving in the military on unit cohesion. *See Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86)).

Interrogatory No. 20: Identify all members of the Panel of Experts, including each individual’s name, title, contact information, and qualifications.

Specific Objections:

The President objects on the grounds that this Interrogatory is not properly directed to him and should instead be directed to DoD.

To the extent that this interrogatory is deemed to be properly directed to the President, the President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

Interrogatory No. 21: Identify all meeting or conference Dates of the Panel of Experts, Including Identifying the attendees of each meeting or conference and Describing what was discussed during each meeting or conference.

Specific Objections:

The President objects on the grounds that this Interrogatory is not properly directed to him and should instead be directed to DoD.

To the extent that this interrogatory is deemed to be properly directed to the President, the President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

The President also objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 8 of "Describe" seeks both (1) information about the subject-matter being

described, and (2) “each Document evidencing the answer or response given or Relating to said subject-matter in any way.” Thus, Interrogatory No. 21 contains at least two discrete subparts, and Plaintiffs have served more than the allowed 25 interrogatories. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”); *Mezu*, 269 F.R.D. at 572–73 (“[D]iscrete or separate questions should be counted as separate interrogatories, notwithstanding they . . . may be related” (omission in original) (quoting *Kendall*, 174 F.R.D. at 685–86)).

Interrogatory No. 22: State, broken down by Military Service, the number of current and former service members who have identified to their chain of command as transgender since June 30, 2016.

Specific Objections:

The President objects on the grounds that this Interrogatory is not properly directed to him and should instead be directed to DoD.

To the extent that this interrogatory is deemed to be properly directed to the President, the President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

Interrogatory No. 23: State, broken down by Military Service, the number of current and former service members whom military medical personnel have diagnosed with gender dysphoria since June 30, 2016.

Specific Objections:

The President objects on the grounds that this Interrogatory is not properly directed to him and should instead be directed to DoD.

To the extent that this interrogatory is deemed to be properly directed to the President, the President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

Interrogatory No. 24: State, broken down by Military Service, the number of surgeries performed as treatment for gender dysphoria that the military has performed on current and former service members since June 30, 2016, including as to each surgery the date, description of the procedure, and cost to the military of the procedure.

Specific Objections:

The President objects on the grounds that this Interrogatory is not properly directed to him and should instead be directed to DoD.

To the extent that this interrogatory is deemed to be properly directed to the President, the President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; (b) communications or information protected by the presidential communications privilege; or (c) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation.

Date: February 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 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](mailto:ryan.parker@usdoj.gov)

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 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](mailto: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](mailto:mkies@cov.com)

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

# **Exhibit 6**

**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' OBJECTIONS TO PLAINTIFFS' FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO DEFENDANT DONALD J. TRUMP**

Pursuant to Federal Rules of Civil Procedure 26 and 34 and the Local Rules of the U.S. District Court for the District of Columbia, Defendants, through their undersigned counsel, hereby submit initial objections to Plaintiffs' First Set of Requests for Production of Documents to Defendant Donald J. Trump, served January 3, 2017.<sup>1</sup> In presenting these objections, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

**Objection to Definitions**

Defendants object to Plaintiffs' Definition 3 of "Document" as encompassing "any form of collected data for use with electronic data processing equipment;" "data compilations;" and "any other information stored in electronic form;" insofar as data collection and translation are

---

<sup>1</sup> These objections are limited to President Trump. Defendants will produce, or already have produced, separate objections for other Defendants.

appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

### **General Objection to All Requests for Production**

Defendants object to any discovery directed to the President of the United States in this case, on several grounds, including that such discovery should be foreclosed in this case based on separation of powers principles and that virtually all of the specific discovery sought is subject to executive privilege, and in particular, the presidential communications privilege.

First, such discovery requests are inappropriate where, as here, they are premised on claims for declaratory and injunctive relief brought directly against the President of the United States, who is not a proper defendant on such claims. The Supreme Court has held that it has “no jurisdiction of a bill to enjoin the President in the performance of his official duties.” *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866); *id.* at 500 (“The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department.”). A plurality of the Court later reiterated this principle in *Franklin v. Massachusetts*, 505 U.S. 788, 802–803 (1992). The plurality in *Franklin* found it “extraordinary” that the district court in that case had issued an injunction against the President and two other government officials. *Id.* at 802, 806. “At the threshold,” it said, “the District Court should have evaluated whether injunctive relief against the President was available, and if not, whether appellees’ injuries were nonetheless redressable.” *Id.* at 803. Concurring in *Franklin*, Justice Scalia explained that, under *Mississippi*, courts may impose neither injunctive nor declaratory relief against the President in his official capacity. *Id.* at 827–28 (noting that such principle is “a functionally mandated incident of the President’s unique

office, rooted in the constitutional tradition of the separation of powers and supported by our history”). He reasoned that just as the President is absolutely immune from official capacity damages suits, so is he immune from efforts to enjoin him in his official capacity. *Id.* at 827 (“Many of the reasons [the Court] gave in *Nixon v. Fitzgerald*, [457 U.S. 731, 749 (1982)], for acknowledging an absolute Presidential immunity from civil damages for official acts apply with equal, if not greater, force to requests for declaratory or injunctive relief in official-capacity suits that challenge the President’s performance of executive functions”). The lower courts have often applied this settled principle. *See e.g., Swan v. Clinton*, 100 F.3d 973, 976 n.1 (D.C. Cir. 1996) (“similar considerations regarding a court’s power to issue [injunctive] relief against the President himself apply to [the] request for a declaratory judgment”); *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (“With regard to the President, courts do not have jurisdiction to enjoin him and have never submitted the President to declaratory relief.”) (citations omitted). Under that principle, the President should not be subject to discovery in this case.

Second, the Supreme Court has made clear that discovery directed to the President in civil litigation raises significant separation of powers concerns and should be strictly circumscribed. In *Cheney v. U.S. District Court for District of Columbia*, the Supreme Court explained that where the discovery requests were directed to the Vice President and other senior officials of the Executive Branch who gave advice and made recommendations to the President, it was “not a routine discovery dispute.” 542 U.S. 367, 385 (2004). The Court emphasized that “special considerations control when the Executive Branch’s interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated.” *Id.* at 385. The Supreme Court “has held, on more than one occasion, that ‘[t]he highest respect that is owed to the office of the Chief Executive ... is a matter that should inform

the conduct of the entire proceeding, including the timing and scope of discovery.” *Id.* (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997)). Further, the Court has held that the Executive’s “constitutional responsibilities and status [are] factors counseling judicial deference and restraint” in the conduct of the litigation against it. *Id.* (quoting *Nixon v. Fitzgerald*, 457 U.S. 731, 753 (1982)) (internal quotation marks omitted).

In *Cheney*, the district court permitted broad discovery directed to the Vice President and other senior officials, and the D.C. Circuit dismissed the government’s mandamus petition to vacate the district court’s discovery orders, holding that the government officials, “to guard against intrusion into the President’s prerogatives, must first assert privilege.” 542 U.S. at 375–76. In vacating the D.C. Circuit’s decision, the Supreme Court described as “anything but appropriate” the “overly broad discovery requests” directed to the Vice President and other senior officials, which were “unbounded in scope,” and asked for “everything under the sky.” *Id.* at 387–88 (“The Government [ ] did in fact object to the scope of discovery and asked the District Court to narrow it in some way. Its arguments were ignored.”). Noting the separation of powers concerns, the Supreme Court instructed the D.C. Circuit to analyze, on remand, whether the district court’s actions in permitting discovery against the Vice President and other senior officials constituted “an unwarranted impairment of another branch in the performance of its constitutional duties.” *Id.* at 390. It rejected the D.C. Circuit’s “mistaken assumption that the assertion of executive privilege is a necessary precondition to the Government’s separation-of-powers objections.” *Id.* at 391. *Cf. United States v. Poindexter*, 727 F. Supp. 1501, 1503–04 (D.D.C. 1989) (agreeing with the President that “it is undesirable as a matter of constitutional and public policy to compel a President to make his decision on privilege with respect to a large array of documents” and deciding to narrow, on its own, the scope of the discovery directed to

the President). These separation of powers concerns were also recognized in *American Historical Association v. National Archives & Records Administration*. 402 F. Supp. 2d 171, 181 (D.D.C. 2005) (Kollar-Kotelly, J.). The Court there found the reasoning in *Cheney* instructive, reiterating the *Cheney* Court’s view that “special considerations control when the Executive Branch’s interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated.” *Id.* at 181 (quoting *Cheney*, 542 U.S. at 385) (internal quotation marks omitted).

In light of these compelling separation of powers concerns, the Court should, at a minimum, require Plaintiffs to exhaust alternative sources of discovery before subjecting the President to discovery. Indeed, on February 21, 2018—a mere two weeks from now—the Secretary of Defense is expected to submit an implementation plan to the President, which could narrow, if not completely eliminate, any purported reason for such broad discovery directed to the President. Military policy concerning transgender persons will be set forth in that plan, and any discovery, if permitted at all, into the basis for that policy should be directed at DoD in the first instance at that time. This timeline alone weighs heavily in favor of not subjecting the sitting President to discovery.

Finally, virtually all of the discovery directed to the President in this case is subject to the presidential communications privilege. The “presumptive privilege” that attaches to presidential communications is “fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.” *United States v. Nixon*, 418 U.S. 683, 708 (1974); *see In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997) (describing the privilege’s “constitutional origins”). The privilege is broad, protecting the “confidentiality of Presidential communications in performance of the President’s responsibilities.” *United States v. Nixon*, 418

U.S. at 711. *See also In re Sealed Case*, 121 F.3d at 744 (“The *Nixon* cases establish the contours of the presidential communications privilege. The President can invoke the privilege when asked to produce documents or other materials that reflect presidential decisionmaking and deliberations.”). Documents subject to the presidential communications privilege are shielded in their entirety, and the privilege “covers final and post-decisional material as well as pre-deliberative ones.” *In re Sealed Case*, 121 F.3d at 745.

Although the presidential communications privilege is not absolute, the bar to overcoming the privilege is high; it is “more difficult to surmount” than the deliberative process privilege. *In re Sealed Case*, 121 F.3d at 746. A party seeking otherwise privileged presidential material must demonstrate a “focused demonstration of need.” *Id.*; *See also Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1112 (D.C. Cir. 2004). Courts will balance “the public interests served by protecting the President’s confidentiality in a particular context with those furthered by requiring disclosure.” *In re Sealed Case*, 121 F.3d at 753. To meet this heavy burden of “specific need” in a criminal matter, the party seeking the privileged material must first demonstrate “that each discrete group of the subpoenaed materials likely contains important evidence”—that is, evidence “directly relevant to issues that are expected to be central to the trial,” and not evidence that is “only tangentially relevant or would relate to side issues.” *Id.* at 753–55. The party seeking the discovery must also show “that this evidence is not available with due diligence elsewhere”—that is, notwithstanding other sources of information, the privileged documents are “still needed.” *Id.* (explaining that this standard reflects the Supreme Court’s “insistence that privileged presidential communications should not be treated as just another source of information”).

Where privileged material is sought for use in a civil case, the burden to overcome the presidential communications privilege is even greater. The greater scrutiny is appropriate because “the right to production of relevant evidence in civil proceedings does not have the same ‘constitutional dimensions’” as a request for information in a criminal case. *Cheney*, 542 U.S. at 384 (quoting *United States v. Nixon*, 418 U.S. at 713); see also *Am. Historical Ass’n*, 402 F. Supp. 2d at 181 (explaining that the *Cheney* Court noted that “while withholding necessary materials in an ongoing criminal case constitutes an impermissible impairment of another branch’s essential functions, the same could not be said of document requests in the civil context”); cf. *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc) (“[T]he sufficiency of the Committee’s showing must depend solely on whether the subpoenaed evidence is *demonstrably critical* to the responsible fulfillment of the Committee’s functions.”) (emphasis added).

In this case—a civil matter seeking discovery directly from the President, in his capacity as Commander-in-Chief, related to his decisionmaking process on a topic involving national security and military concerns—Plaintiffs face a significant burden in order to negate a valid assertion of the presidential communications privilege. Plaintiffs cannot meet this burden, especially where the requested discovery seeks information that, on its face, is privileged (including information about presidential communications, attorney-client and work product materials, and drafts of presidential documents) and would plainly intrude on core presidential deliberations, or where the requested discovery seeks information that could be sought from the Department of Defense or other sources, including publicly available ones.

Accordingly, Defendants object to any discovery requests directed to the President of the United States in this case based on these compelling separation of powers concerns, and in

particular object to the discovery sought that is subject to the presidential communications privilege. Based on the foregoing objections, the President will not produce privileged or non-privileged documents and information that have been identified as potentially responsive.

**Specific Objections to Requests for Production**

RFP No. 1: All Documents and Communications that You have conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning military service by transgender individuals.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 2: All Documents and Communications Concerning the Working Group's composition, structure, research, findings, and conclusions, Including the Working Group's interview notes, evaluations, analyses, summaries, and memoranda, and Including any Communications between the Working Group and You.

Specific Objections:

The President objects on the grounds that this RFP is not properly directed to him and should instead be directed to DoD, as the documents referred to in this RFP would not all be in the possession, custody, and control of the President.

To the extent that this RFP is deemed to be properly directed to any documents that may be in the possession of the President, the President makes the following objections. The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 3: All Documents and Communications prepared between November 2015 and June 2016 and submitted to the Secretary of Defense via the Undersecretary of Defense for Personnel & Readiness Concerning military service and accessions into the Military Services by transgender individuals, Including assessments from service medical commands, other Defense Department health care agencies, and the Office of Cost Assessment and Program Evaluation (“CAPE”).

Specific Objections:

The President objects on the grounds that this RFP is not properly directed to him and should instead be directed to DoD, as the documents referred to in this RFP would not all be in the possession, custody, and control of the President.

To the extent that this RFP is deemed to be properly directed to any documents that may be in the possession of the President, the President makes the following objections. The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court’s order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 4: All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning the Accessions Readiness Memorandum.

Specific Objections:

The President objects on the grounds that this RFP is not properly directed to him and should instead be directed to DoD, as the documents referred to in this RFP would not all be in the possession, custody, and control of the President.

To the extent that this RFP is deemed to be properly directed to any documents that may be in the possession of the President, the President makes the following objections. The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 5: All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed Concerning the Accessions Deferral Memorandum.

Specific Objections:

The President objects on the grounds that this RFP is not properly directed to him and should instead be directed to DoD, as the documents referred to in this RFP would not all be in the possession, custody, and control of the President.

To the extent that this RFP is deemed to be properly directed to any documents that may be in the possession of the President, the President makes the following objections. The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 6: All Documents and Communications Concerning military service by transgender individuals between President Trump or Persons acting or purporting to act on President Trump's behalf (Including White House officials and senior staff to the President, such as President Trump's National Security Adviser and Chief of Staff), on the one hand, and the other Defendants and Persons acting or purporting to act on the other Defendants' behalf, on the other hand.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 7: All Documents and Communications that President Trump or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or

impetus for the Tweets, including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 8: All Documents and Communications that President Trump or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or impetus for the Transgender Service Member Ban, including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 9: All Documents and Communications that Secretary Mattis or any other of the Defendants considered, reviewed, referenced, or relied upon directly or indirectly as a basis or impetus for the Interim Guidance, Including reports, studies, analyses, advice, letters, speeches, articles, columns, commentaries, interviews, and Social Media posts.

Specific Objections:

The President objects on the grounds that this RFP is not properly directed to him and should instead be directed to DoD, as the documents referred to in this RFP would not all be in the possession, custody, and control of the President.

To the extent that this RFP is deemed to be properly directed to any documents that may be in the possession of the President, the President makes the following objections. The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 10: All Documents and Communications that embody, comprise, or constitute the "appropriate evidence and information" referenced in the Interim Guidance.

Specific Objections:

The President objects on the grounds that this RFP is not properly directed to him and should instead be directed to DoD, as the documents referred to in this RFP would not all be in the possession, custody, and control of the President.

To the extent that this RFP is deemed to be properly directed to any documents that may be in the possession of the President, the President makes the following objections. The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 11: All Documents and Communications Concerning military service by transgender individuals shared between or amongst You and any current or former member of the United States Congress, including Representative Vicky Hartzler, Scott Perry, or Steve King, from January 2017 to the present.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the

privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

The foregoing objections do not foreclose the possibility that, to the extent any responsive documents exist, a Member of Congress may seek to oppose the production of information in this case based on the Speech or Debate Clause.

RFP No. 12: All Documents and Communications Concerning military service by transgender individuals shared between or amongst You and the Office of the Vice President of the United States, Including Vice President Pence himself.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 13: All Documents and Communications Concerning military service by transgender individuals shared between or amongst Defendants and organizations opposed to military service by transgender individuals, including but not limited to representatives and agents of the “Alliance Defending Freedom,” “Focus on the Family,” the “Family Research Council,” “Heritage Action for America,” and “Breitbart News,” from January 2017 to the present.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court’s order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 14: All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed that embody, constitute, comprise, or reflect the reaction of the Department of Defense or any of

its components (including Military Services), or any individuals within the Department of Defense or its components, to the Tweets.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 15: All Documents and Communications Concerning the purpose, composition, structure, research, analysis, findings, and conclusions of the Panel of Experts.

Specific Objections:

The President objects on the grounds that this RFP is not properly directed to him and should instead be directed to DoD, as the documents referred to in this RFP would not all be in the possession, custody, and control of the President.

To the extent that this RFP is deemed to be properly directed to any documents that may be in the possession of the President, the President makes the following objections. The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 16: All Documents and Communications conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed by the Panel of Experts, including any recommendations of the Panel of Experts and the implementation plan due on February 21, 2018.

Specific Objections:

The President objects on the grounds that this RFP is not properly directed to him and should instead be directed to DoD, as the documents referred to in this RFP would not all be in the possession, custody, and control of the President.

To the extent that this RFP is deemed to be properly directed to any documents that may be in the possession of the President, the President makes the following objections. The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 17: All Documents and Communications that You contend support the Tweets' assertion regarding the "tremendous" costs associated with transgender individuals in the Military Services (ECF No. 40-22), Including the military's provision of medical care to transgender individuals.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 18: All Documents and Communications that You contend support the Tweets' assertion regarding the "disruptive" effect of military service by openly transgender individuals (ECF No. 40-22), Including any purported effect on unit cohesion or military readiness.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log

will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 19: All Documents and Communications Concerning the Department of Defense's implementation of accessions of openly transgender individuals into the Military Services as of January 1, 2018.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 20: All Documents that You referred to or considered in connection with any defense raised in Your Answer to Plaintiffs' First Amended Complaint.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

RFP No. 21: All Documents and Communications that You referred to or considered in connection with responding to Plaintiffs' First Set of Interrogatories.

Specific Objections:

The President objects to any discovery request directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege. Without waiver of the general and specific objections, a privilege log will be provided by the government, pursuant to the Court's order, which describes the privileged documents that have been withheld and the basis for privilege at issue for those documents.

The President will not produce any documents responsive to this RFP.

Date: February 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](mailto:ryan.parker@usdoj.gov)

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 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](mailto: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](mailto:mkies@cov.com)

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

# **Exhibit 7**

## COVINGTON

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

### Augustus Golden

Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5742  
agolden@cov.com

### Via Email

February 21, 2018

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

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

Dear Mr. Parker:

We write regarding Defendants' responses to Plaintiffs' interrogatories and requests for production in the above-captioned litigation.

Defendants have objected to Plaintiffs' interrogatories as seeking privileged information, including information purportedly covered by the deliberative process privilege and the presidential communication privilege, and have withheld information on the basis of such objections. Defendants have similarly withheld allegedly privileged documents that are relevant to this matter and responsive to Plaintiffs' requests for production, including documents Defendants claim are protected by the deliberative process privilege and the presidential communication privilege. As discussed below, neither the deliberative process privilege nor the presidential communications privilege appear to be applicable in this litigation. Plaintiffs request that you promptly withdraw these privilege claims and provide the requested information and documents, or, in the alternate, provide adequate justifications for your claims of privilege.

#### I. The Deliberative Process Privilege

##### A. Defendants' Assertion of the Deliberative Process Privilege Is Inappropriate.

Plaintiffs' lawsuit asserts, in part, that Defendants have violated the equal protection and substantive components of the Due Process Clause of the Fifth Amendment through their promulgation and attempted implementation of President Trump's August 25, 2017 Memorandum titled "Military Service by Transgender Individuals" (the "Transgender Service Member Ban"). Plaintiffs assert that President Trump's actions in promulgating the ban are improperly motivated by discriminatory intent and animus against transgender individuals; that the discriminatory intent underlying the ban tainted Defendant's implementation plans; that the implementation study conducted by the "panel of experts" was engineered to reach a pre-determined outcome; and that such actions cannot satisfy examination under a heightened scrutiny standard, which requires a court to examine the actual purpose motivating a policy. To

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 2

litigate this issue, Plaintiffs must obtain evidence regarding the intent underlying the Transgender Service Member Ban.

Defendants' intent in promulgating and attempting to implement the Transgender Service Member Ban is directly at issue in this litigation. The deliberative process privilege "is not appropriately asserted . . . when a plaintiff's cause of action turns on the government's intent." *In re Subpoena Duces Tecum Served on the Comptroller of the Currency*, 145 F.3d 1422, 1424 (D.C. Cir. 1998). For example, when a plaintiff has alleged government misconduct – including the promulgation of unconstitutionally discriminatory policies on the basis of animus – the government may not assert deliberative process privilege, and the plaintiff is not obligated to make any further showing of need for the requested discovery. *See Tri-State Hosp. Supply Corp. v. United States*, 226 F.R.D. 118, 135 (D.D.C. 2005) ("Under the government misconduct exception, there is no need to engage in a balancing test because the privilege does not apply at all."); *Alexander v. F.B.I.*, 186 F.R.D. 154, 163–65 (D.D.C. 1999) (rejecting the government's contention that misconduct is merely a factor to be weighed in connection with the privilege claim); *In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997) ("Moreover, the privilege disappears altogether when there is any reason to believe government misconduct occurred.").

Defendants' invocation of the deliberative process privilege is therefore inappropriate in connection with the present lawsuit. We request that you promptly withdraw all objections on the basis of deliberative process privilege, and promptly produce all documents that you have withheld based on that privilege. In the alternative, and at a minimum, defendants must properly justify their claims of privilege which, as discussed below, are inadequate.

### B. Defendants' Privilege Logs are Insufficient.

Even if the deliberative process privilege could be invoked with respect to some documents in this litigation, Defendants fail to assert the privilege in an appropriate manner. Defendants' privilege logs are insufficient in several respects, and fail to meet the standard required to establish that Defendants are entitled to assert the deliberative process privilege.<sup>1</sup>

Under Federal Rule of Civil Procedure 26(b)(5) a party withholding documents on the basis of privilege must provide information that will enable other parties to assess the claim. Defendants have the burden to provide the requisite information to establish that each withheld or redacted document should be shielded by the deliberative process privilege. *See City of Virginia Beach v. U.S. Dep't of Commerce*, 995 F.2d 1247, 1253-54 (4th Cir. 1993) ("the burden is on the agency to correlate, with reasonable specificity, materials within a document with applicable exemptions"). A privilege log should provide more than vague, boilerplate descriptions that merely identify a broad policy topic and generally allege the document was related to some deliberative activity. *See Burns v. Imagine Films Entm't, Inc.*, 164 F.R.D. 589, 594 (W.D.N.Y. 1996) (the description of a document in a privilege log "should be specific enough to permit the court or opposing counsel to determine whether the privilege asserted applies to that document"). A privilege log should "mirror" the requirements of *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir.

---

<sup>1</sup> As explained below, Defendants' logs also fail to meet the standards required to support their other privilege claims.

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 3

1973), which holds that a party asserting a privilege must provide sufficient detail to allow the assertions to be fully assessed. *United States v. Exxon Corp.*, 87 F.R.D. 624, 637 (D.D.C. 1980). Those requirements are set forth in cases such as *Rein v. U.S. Patent & Trademark Office*, 553 F.3d 353, 368-69 (4th Cir. 2009) (an index that only supplies information on authors, recipients, dates, and “a brief description” is “patently inadequate” to permit a court or opposing counsel to assess whether deliberative process privilege applies to that document); *Coastal States Gas Corp. v. D.O.E.*, 617 F.2d 854, 868 (D.C. Cir. 1980) (the agency claiming deliberative process privilege “has the burden of establishing what deliberative process is involved, and the role played by the documents in issue in the course of that process”); and *Morley v. C.I.A.*, 508 F.3d 1108, 1127 (D.C. Cir. 2007) (“minimal information” in a privilege log is inadequate for a court to make a privilege determination, the log must enable the court or opposing counsel “to pinpoint an agency decision or policy to which these documents contributed”).

Even a cursory look at Defendants’ privilege logs reveals multiple entries that fail to meet the required standard. For example:

- *Stone v. Trump – Air Force Privilege Log* (13 Feb 2018): 16 separate entries, including the entry on row 14 (AF\_00000061 - AF\_00000064), claim deliberative process privilege based on the justification “Predecisional and deliberative internal Air Force document created for the purpose of preparing for and responding to the President’s announcement of the transgender service policy.” On the face of it, neither preparing for nor responding to a Presidential announcement is an action related to deliberation about a future policy decision. This entry fails to identify with sufficient specificity any agency policy-making decision it was related to or the deliberative nature of the document, and thus fails to provide sufficient detail.
- *Stone v. Trump – Army Privilege Log* (13 Feb 2018): 74 separate entries, including the entry on row 3 (ARMY\_15-75, 79), claim deliberative process privilege with a description of “Predecisional and deliberative internal agency document created as part of the agency’s process of developing courses of action for implementing DoD’s policy on the service and accessions of military personnel and the continuous process of assessing the policy’s impact on military readiness.” While this description asserts that the document is “Predecisional and deliberative,” the rest of the entry reveals that this document relates to implementation of an existing policy and assessment of that policy’s impact. There is insufficient information to tie this document to any policy-making deliberative process eligible for deliberative process privilege, and thus these entries fail to provide sufficient detail.
- *Stone v. Trump - Navy Production 1 Privilege Log* (13 Feb 2018): the entry on row 2 (Navy\_00000026) claims deliberative process privilege with a description of “Draft DoD Instruction 6130.03 ‘Medical Standards for Appointment, Enlistment, or Induction in the Military Services.’” This description fails to provide any information regarding any policy-making decision the document relates to and what deliberative elements it may contain. Thus this entry fails to provide sufficient detail.

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 4

- *Stone v. Trump - Navy Production 3 Privilege Log* (13 Feb 2018): dozens of documents are claimed to be protected by the deliberative process privilege for reasons such as “No signature, so it’s a draft document” (rows 25 and 26), “This is not signed so it is a draft document” (row 27), “This is marked draft” (row 155), “This is a draft document” (rows 14, 45, 46, and 136), “Appears to be a draft letter” (row 695), “Much of this is non responsive –” (row 1152), and “Draft; not final” (row 1897). None of these entries provide sufficient detail.
- *Stone v. Trump – DoD Privilege Log for Soper Depo Docs* (13 Feb 2018) and *Stone v. Trump – DHA – Privilege Log* (13 Feb 2018): the 85 separate entries for which Defendants claim privilege in these two logs state the same boilerplate justification for the deliberative process privilege claim: “Predecisional and deliberative internal agency document created as part of the agency’s process of developing courses of action for implementing DoD’s policy on the service and accessions of military personnel and the continuous process of assessing the policy’s impact on military readiness.” Neither implementing an existing policy nor assessing its impact involves a pre-decisional deliberation, and thus these entries fail to provide sufficient detail. As noted below, on the face of the entries some of these documents do not appear to be deliberative or pre-decisional.

Defendants have thus failed to adequately assert the deliberative process privilege under Federal Rule of Civil Procedure 26(b)(5). We request that Defendants promptly provide privilege logs that meet the required standard, or withdraw the privilege claims and produce all withheld documents.

### C. Plaintiffs’ Need Overcomes Any Deliberative Process Privilege Claims.

Even if the deliberative process privilege could apply here and Defendants had met the standards required to claim the privilege, Plaintiffs’ need for the requested discovery would overcome the deliberative process privilege claims. The requested materials are highly relevant to Plaintiffs’ lawsuit, are available only from Defendants, are directly tied to Defendants’ defenses, and production of the discovery Plaintiffs seek would not hamper future policy discussions.

When a party correctly asserts a claim of deliberative process privilege, courts apply a balancing test to determine if the privilege can be overcome: “(1) the relevance of the evidence to the lawsuit; (2) the availability of alternative evidence on the same matters; (3) the government’s role (if any) in the litigation, and (4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions.” *Cipollone v. Liggett Grp., Inc.*, 812 F.2d 1400, 1987 WL 36515, at \*2 (4th Cir. 1987) (per curiam) (unpublished); *F.T.C. v. Warner Commc’ns, Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984). Had Defendants correctly presented their deliberative process privilege claims, this balancing test would weigh heavily in favor of requiring production of the evidence Plaintiffs seek.

When the underlying issue in a lawsuit is the process behind a decision, the balancing test weighs heavily in favor of the party seeking discovery. *See United States v. Bd. of Educ. of the City of Chi.*, 610 F. Supp. 695, 699–700 (N.D. Ill. 1985) (holding a party would “probably be able to make a very powerful showing of necessity” in a case where “the decisionmaking process . . . is the

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 5

case.”); *see also* *Holmes v. Hernandez*, 221 F. Supp. 3d 1011, 1021 (N.D. Ill. 2016) (same); *Newport Pac. Inc. v. Cty. of San Diego*, 200 F.R.D. 628, 639 (S.D. Cal. 2001) (same); *United States v. Irvin*, 127 F.R.D. 169, 174 (C.D. Cal. 1989) (same). In this litigation, the decisionmaking process relating to the Transgender Service Member Ban is a core issue. Plaintiffs allege that the Transgender Service Member Ban was improperly motivated, and the decisionmaking process by which Defendants developed the Transgender Service Member Ban is thus a central issue. Because the evidence Plaintiffs seek is highly relevant to the present lawsuit, the balancing test would weigh in Plaintiffs’ favor.

The other elements of the balancing test also weigh in Plaintiffs’ favor: the requested evidence is available only from Defendants and there is no alternative source, the government is defending the policy at issue, and it is unlikely that disclosure of this evidence subject to a protective order (where appropriate) would hinder future policy discussions. Even if Defendants had properly asserted deliberative process privilege claims, the balancing test would weigh in favor of requiring production of the requested discovery.

### D. Defendants Assert the Privilege for Ineligible Materials.

The deliberative process privilege protects only material that is pre-decisional and deliberative. *See Virginia Beach*, at 1253; *Coastal States*, 617 F.2d at 866. However, many of Defendants’ privilege claims are for post-decisional, non-deliberative, or factual materials that are not eligible for protection under the deliberative process privilege.

#### 1. Post-Decisional Materials

Defendants improperly claim deliberative process privilege for post-decisional material. In *Doe v. Trump*, Case No. 17-cv-1597 (D.D.C.), Defendants contended that while President Trump’s July 26, 2017 Tweets constituted a decision, “that decision had sort of a ripple effect and required the defendants to make a series of additional decisions based on the tweets and that those decisions themselves can give rise to privileged deliberative material.” (Telephone Conf. Tr. at 33:10-15 (Feb 13, 2017)). However, the discussion of how to apply a policy, once promulgated, is not entitled to deliberative process privilege protection. *See Coastal States*, 617 F.2d at 866 (to be “pre-decisional,” a document must be “generated before the adoption of an agency policy”); *Petroleum Info. Corp. v. U.S. Dep’t of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992) (pre-decisional documents are “prepared in order to assist an agency decisionmaker in arriving at [a] decision, rather than to support a decision already made.”) (internal quotations omitted); *see also Safeway, Inc. v. I.R.S.*, No. C 05-3182 SBA, 2006 WL 3041079, at \*9 (N.D. Cal. Oct. 24, 2006) (“discussion of how to apply established policy and law to [] particular facts” not entitled to deliberative process privilege); *Ford Motor Co. v. U.S. Customs & Border Prot.*, No. 06-13346, 2008 WL 4899402, at \*17 (E.D. Mich. Aug. 1, 2008) (magistrate’s report and recommendation), adopted in part and rejected in part on other grounds, 2008 WL 4899401 (E.D. Mich. Nov. 12, 2008) (“discussions of how agency policies and decisions are to be enforced are by nature post-decisional”).

To the extent that material is being withheld because it relates to “additional decisions,” it is Defendants’ burden to identify any such decisions and to justify withholding discovery with reference to those decisions. To satisfy Rule 26(b)(5), Defendants must specify what pre-

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 6

decisional role a withheld or redacted document played in a particular policy-forming process; they cannot merely allege generally that a document relates to some vague category of policy decisions. *See Animal Legal Def. Fund, Inc. v. Dep't of the Air Force*, 44 F. Supp. 2d 295, 299 (D.D.C. 1999) (rejecting privilege claim because agency “utterly failed to specify the role played by each withheld document” in policy-formulation process).

For all materials that post-date President Trump’s July 26, 2017 decision to enact the Transgender Military Service Ban, Defendants must withdraw any claims of deliberative process privilege for documents and information that relate to the implementation or assessment of the Transgender Military Service Ban.<sup>2</sup> Please confirm that you will withdraw these claims or, in the alternative, provide updated privilege logs and objections that provide sufficient specificity so that Plaintiffs may fully evaluate such claims, including whether each allegedly privileged document or interrogatory response relates to any policy decisionmaking process.

### 2. *Non-Deliberative Materials*

Deliberative process privilege “does not protect a document which is merely peripheral to actual policy formation; the record must bear on the formulation or exercise of policy-oriented judgment.” *Ethyl Corp. v. E.P.A.*, 25 F.3d 1241, 1248 (4th Cir. 1994) (“When material could not reasonably be said to reveal an agency’s or official’s mode of formulating or exercising policy-implicating judgment, the deliberative process privilege is inapplicable.”). To be protected under deliberative process privilege, a document must be “a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters.” *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).

Defendants repeatedly claim deliberative process privilege protection for documents that appear on their face to be, at most, peripheral to a deliberative process. For example:

- *Stone v. Trump – Air Force Privilege Log* (13 Feb 2018): documents such as row 708 (AF\_00009948 – 967; AFRC Transgender Training for Medics.pptx) relate to training regarding the implementation for current policy, which would not reflect any deliberation about a policy decision.
- *Stone v. Trump – Army Privilege Log* (13 Feb 2018): documents such as row 7 (ARMY\_212-217; Presentation used during SCCC discussions, outlining the Army’s readiness to begin accessions) relate to capabilities to implement current policy, which would not reflect any deliberation about a policy decision. Documents such as row 17 (ARMY\_322-323; Memorandum from ASD-HA to ASA-M&RA requesting data on transgender Soldiers) and row 21 (ARMY\_330-331; Memorandum from DASD-HSP&O to Army DSG requesting data on transgender Soldiers) relate to peripheral information-gathering activities, and do not reflect any deliberation about a policy decision.

---

<sup>2</sup> To the extent this implementation process required additional policy decisions, please identify those decisions.

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 7

- Stone v. Trump - Navy Production 1 Privilege Log (13 Feb 2018): documents such as row 62 (Navy\_00002897; Definitions for Medical Accessions.) and row 126 (Navy\_00004419; Criteria for Sex Reassignment Surgery Waiver) relate to peripheral activities not related to making recommendations or expressing opinions on legal or policy matters, and are not entitled to deliberative process privilege.
- Stone v. Trump – DoD Privilege Log for Soper Depo Docs (13 Feb 2018): documents such as row 13 (SOPER DEP RFP\_10 00188-00209; Updated Training Slides for AFRC Medics) relate to training for implemented policies, and would not reflect any deliberation about a policy decision. Documents such as row 68 (SOPER DEP RFP\_24 01543; E-mail re: No SCC Meeting This Week - 27 July 2017) are one-page emails stating that a meeting will not be held; it is highly unlikely that these short emails contain any deliberative content.

Non-deliberative materials are not entitled to deliberative process privilege just because they are alleged to be peripheral to a deliberative process. We request that Defendants immediately confirm they will withdraw any claim of deliberative process privilege for non-deliberative documents and information.

### 3. *Factual Materials*

“[P]urely factual material” does not fall within the deliberative process privilege. See *Virginia Beach*, 995 F.2d at 1253; see also *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975) (“it is beyond dispute” that factual documents such as reports or summaries are not covered by deliberative process privilege, and to be covered a document “must be a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters”). The deliberative process privilege does not cover factual material simply because it is used in a deliberative context. *Id.*

Defendants repeatedly claim deliberative process privilege protection for factual information. For example:

- Stone v. Trump – DoD Privilege Log for Soper Depo Docs (13 Feb 2018): the entry on row 45 (SOPER DEP RFP\_18 00608-00661) describes the withheld document as “Health Data for Members with Gender Dysphoria,” and the entry on row 50 (SOPER DEP RFP\_21 00765-00820) describes the withheld document as “PPT slides: ‘Health Data on Active Duty Service Members with Gender Dysphoria.’” Health data is factual material.
- Stone v. Trump – Army Privilege Log (13 Feb 2018): the entry on row 28 (ARMY\_341) describes the withheld document as “Presentation slide showing TG surgical procedures performed at MTFs,” and the entry on row 32 (ARMY\_352-383) describes the withheld document as “Presentation to the panel of experts summarizing health and readiness data of Active Duty members with gender

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 8

dysphoria.” Surgery statistics and “health and readiness data” are factual materials.

- *Stone v. Trump - Navy Production 3 Privilege Log (13 Feb 2018)*: there are several entries showing the document title “Transgender Information\_27 Dec 17” or a variant thereof. Information is factual material. Additionally, 21 documents withheld solely on deliberative process privilege grounds are identified as “Information supporting draft internal agency document which consists of predecisional and deliberative process information.” Information used to support a deliberative process is factual material, and not itself privileged.

Factual material cannot be protected under the deliberative process privilege. At a minimum, documents containing factual material should be redacted and the factual portions produced to Plaintiffs. We request that Defendants immediately confirm they will withdraw any claim of deliberative process privilege for factual documents and information, including when factual material is found within deliberative documents.

## II. The Presidential Communications Privilege

The presidential communications privilege is a qualified privilege that can be overcome by a showing of sufficient need. *See In re Sealed Case*, 121 F.3d at 749. This privilege should be construed narrowly, and it applies only to “communications authored or solicited and received by those . . . [with] broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate.” *Id.* at 752. For advisers with dual responsibilities, the government bears the burden to show that the communication was “in conjunction with the process of advising the President” on official government matters. *Id.*

Defendants have asserted the presidential communications privilege for 3,664 documents in “*Stone v. Trump – POTUS Privilege Log* served on 2.13.18”. The documents are not individually identified, but instead are grouped into 51<sup>3</sup> categories, some of which cover hundreds of documents within a date range. The privilege log fails to identify any specific individual who authored or received such communications.

By refusing to identify the other parties involved in the communications, Defendants have forced Plaintiffs to seek discovery directly from the President. Information about the President’s decisionmaking process (including his motivation for acting and the basis for his decision) is critical to multiple issues in this litigation and cannot be obtained from other sources when the identities of such sources are purposefully withheld. Additionally, the presidential communications privilege may not be claimed where communications are unrelated to decisionmaking by the President. And regardless of Defendants’ position on the applicability of the presidential communications privilege and whether Plaintiffs’ need for the requested

---

<sup>3</sup> Only a single entry on the privilege log – row 35 – identifies documents that are not claimed to be protected by the presidential communications privilege.

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 9

discovery would outweigh the privilege, Defendants must submit a proper privilege log that complies with their obligations under the Federal Rules of Civil Procedure.

### A. Presidential Communications Are at the Heart of this Litigation.

The core issues in this litigation are why President Trump decided to promulgate the Transgender Service Member Ban and the basis for such an action. In his July 26, 2017 tweets, President Trump publicly asserted that he decided to promulgate the Transgender Service Member Ban based on communications with others, thereby putting at issue communications he now seeks to withhold. *See* Dkt. No. 40-22 (Sept. 14, 2017) (“After consultation with my Generals and military experts”). Indeed, the President’s references to his personal involvement in relevant communications in the tweets strongly evidences Plaintiffs’ need for discovery into materials where Defendants have claimed the presidential communications privilege. *See, e.g., Sun Oil Co. v. United States*, 514 F.2d 1020, 1025 (Ct. Cl. 1975) (denying motion for protective order claiming presidential communications privilege over documents providing advice to President on a particular decision where President publicly admitted to personally making that decision and decision was alleged to be based on impermissible extraneous or political reasons).

Because President Trump’s decisions and actions are at the heart of this case and because he has relied on presidential communications to support his decisions, we request that Defendants promptly either withdraw their claims of presidential communications privilege and provide all withheld information and documents or provide adequate justification for their assertions.

### B. The Withheld Information is Critical, and there are No Alternative Sources.

The presidential communications privilege may be overcome where “the evidence sought [is] directly relevant to issues that are expected to be central to the trial,” and “this evidence is not available with due diligence elsewhere.” *In re Sealed Case*, 121 F.3d at 754. Evidence of unique information possessed only by the President, or top presidential advisors, establishes a strong need for discovery directly from the President. *See Dellums v. Powell*, 561 F.2d 242, 248-49 (D.C. Cir. 1977) (“the substantial violations of constitutional rights” at issue, the evidence “that the Department of Justice played a leading role” in the activity at issue, and “the attendance of a White House aide and briefing of [the] attorney general on these matters” all demonstrated a substantial need for White House recordings “to establish [the attorney general’s] responsibility for the violations.”).

As explained above, the evidence Plaintiffs seek is critical to both Plaintiffs’ claims and Defendants’ defenses in this litigation, and is directly relevant to issues that will be central at trial, including whether the Transgender Military Service Ban violates the Fifth Amendment because it was motivated by discriminatory intent and animus. So long as Defendants decline to name the “Generals and military experts” and any other parties who allegedly were involved in developing the Transgender Military Service Ban, the evidence at issue is available only from a single source: the White House. In these circumstances, Defendants must withdraw their claims of presidential communications privilege and provide all withheld information and documents.

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 10

### C. Defendants Fail to Identify Any Presidential Decisionmaking After July 26, 2017.

As the party asserting the presidential communications privilege, it is Defendants' burden to identify the individuals involved in the communications, that these individuals are responsible for advising the President on the subject at issue, and that the communication was "in conjunction with the process of advising the President" on official government matters, as opposed to "information regarding governmental operations that do not call ultimately for direct decision making by the President." *In re Sealed Case*, 121 F.3d at 752.

Defendants have admitted that President Trump's July 26, 2017 tweets were a decision. *See Doe v. Trump*, Case No. 17-cv-1597 (D.D.C.) (Telephone Conf. Tr. at 33:10-15 (Feb 13, 2017)). They also appear to take the position that the August 25 memorandum was a decision, but that document merely implemented the July 26 decision. Defendants have taken the position in this litigation that there will not be any *further* Presidential decision until February 21, 2018. *See* Order re: Rule 26(a) Compliance, Dkt. No. 107 (Feb. 6, 2018); *see also* Defendants' Amendment Initial Disclosures (Feb. 16, 2018) (indicating that no materials requiring ultimate Presidential decisionmaking will be presented to the President until February 21, 2018). In the absence of a presidential decision, the presidential communications privilege does not apply. Thus, unless Defendants can show that documents related to the Transgender Service Member Ban between July 26, 2017 and February 21, 2018 are related to advising the President on an issue that calls for direct presidential decisionmaking, such documents are presumptively not eligible for protection under the presidential communications privilege, and Defendants must demonstrate that some other privilege provides grounds to withhold such documents.

### D. Defendants Claim Privilege for Non-Privileged Material.

Rows 49-52 of the POTUS privilege log claim presidential communications privilege for communications with "outside third parties." Such communications are not protected by the presidential communications privilege, because such communications have not been maintained as confidential. *See In re Sealed Case*, 121 F.3d at 744 (privilege applies only to documents "that the President believes should remain confidential"); *see also id.* at 741-42 (determining that the President's sharing of a communication with counsel for a cabinet secretary waived any privilege claim). All claims of presidential communications privilege related to such documents should be withdrawn.

### E. Defendants Must Serve a Proper Privilege Log.

The POTUS privilege log fails to meet the standards set forth in the Federal Rules of Civil Procedure. The log identifies only broad categories of documents and communications, does not describe the individual nature of withheld documents and communications, and fails to provide information sufficient to enable Plaintiffs to assess Defendants' privilege claims.

Unless Defendants are prepared to abandon their claims of presidential communications privilege, we request that they promptly produce a privilege log that meets the requirements of the Federal Rules of Civil Procedure, setting forth individual entries for each document withheld with enough detailed information to enable Plaintiffs to assess Defendants' claims.

## COVINGTON

Ryan B. Parker  
February 21, 2018  
Page 11

### III. Other Privilege Issues

While the focus of this letter is the flaws in Defendants' claims of deliberative process privilege and presidential communications privilege, we note that Defendants' privilege logs are deficient in other respects as well. Plaintiffs reserve the right to identify further issues in future correspondence. However, we make the following points to identify some of the numerous errors we have seen.

#### A. Failure to Identify Attorneys in Some Logs

The privilege logs provided by the President, the U.S. Air Force, the U.S. Navy, and the Department of Defense fail to indicate who, if anyone, is the attorney that received or sent a particular document for which Defendants claim the attorney-client communications privilege.<sup>4</sup> Please promptly serve new logs that provide this information, so that Plaintiffs can assess Defendants' privilege claims.

#### B. Failure to Correctly Assert Attorney-Client Privilege

"A party asserting privilege has the burden of demonstrating its applicability." *N.L.R.B. v. Interbake Foods, LLC*, 637 F.3d 492, 501 (4th Cir. 2011) (citing *United States v. Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982) (per curiam)). To claim attorney-client privilege, a party must, among other things, show that the document or communication was provided for the purpose of obtaining or providing legal advice, and that the advice was maintained in confidence. *Id.* at 501-02; see also *id.* at 502 ("[T]he attorney-client privilege does not apply simply because documents were sent to an attorney.") (citing *Simon v. G.D. Searle & Co.*, 816 F.2d 397, 403 (8th Cir. 1987)). Defendants' logs fail to provide this required level of detail. For example, the "Stone v. Trump – Navy Production 3 Privilege Log (13 Feb 2018)" state the basis for withholding 61 documents solely on the grounds of "Attorney-Client Privilege" as "Communication between client and attorney" or some variant thereof. This description fails to state whether such documents were obtaining or providing legal advice on any issue, and fail to show that the document was maintained in confidence.

#### C. Failure to Identify Individuals on Many Logs

Many of Defendants' privilege logs fail to identify the individuals who authored, sent, or received the withheld documents. For example, the Department of Defense and the POTUS privilege logs do not include specific author, sender, or recipient information; and the privilege log for the Chairman of the Joint Chiefs of Staff frequently identifies groups as authors, senders,

---

<sup>4</sup> Defendants presumably are aware of the requirement to identify attorneys. The privilege logs for the U.S. Army and the Chairman of the Joint Chiefs of Staff identified the names of attorneys with asterisks.

**COVINGTON**

Ryan B. Parker  
February 21, 2018  
Page 12

and recipients, often using an acronym, without specifying which individuals were involved.<sup>5</sup> Please promptly serve new logs that provide this information, so that Plaintiffs can assess Defendants' privilege claims.

**D. Asserting Privilege over Non-Confidential Communications**

An examination of Defendants' privilege logs shows that several withheld documents have not been maintained as confidential documents, and thus are not entitled to privilege. For example, rows 18, 25, 26, and 38 of the DHA's privilege log claim privilege for documents that were shared with external addresses (dodmerb1@gmail.com and thebohreffect@gmail.com).

**E. Deficient Descriptions**

Defendants' failure to meet the standards established by the Federal Rules are not limited to the deliberative process and presidential communications privileges. Their entries for other privileges are similarly deficient. For example, the privilege log for the U.S. Air Force states the basis for withholding 31 documents as attorney-client communications as "Attorney Client privileged confidential communications," and the privilege log for the Chairman of the Joint Chiefs of Staff states the basis for withholding 18 documents as attorney-client communications – alongside other privileges – as "Predecisional and deliverative [sic] document created for the purpose [sic] of analyzing proposed regulatory changes." These descriptions fail to provide sufficient information for Plaintiffs to test Defendants' claims.

\* \* \* \* \*

With respect to Defendants' privilege logs, it would be unduly burdensome for Plaintiffs to identify every flaw in the thousands of entries, particularly in light of the number of systematic errors that pervade the logs. If Defendants continue to claim privilege in the face of the arguments presented in this letter, we request that they promptly serve corrected privilege logs.

---

<sup>5</sup> See *Stone v. Trump* – CJCS Privilege and Redaction Log (13 Feb 2018) rows 25-85 (recipient is "Panel of Experts"), 92 (author is "DOJ"), 95-97 (one recipient is "Transgender Senior Implementation Working Group"), 161 (author is "U.S. Department of Defense"), and 168 (same).

**COVINGTON**

Ryan B. Parker  
February 21, 2018  
Page 13

We are available to further discuss the above issues. Please either confirm that Defendants will take the steps we have requested or explain your reasons for failing to do so by Friday, February 23, 2018. If we cannot resolve these matters promptly, we may be forced to seek the assistance of the Court. We look forward to hearing from you soon.

Sincerely,

/s/ Augustus Golden

Augustus Golden

# **Exhibit 8**

---

**From:** Kies, Marianne  
**Sent:** Friday, March 09, 2018 4:14 PM  
**To:** Parker, Ryan (CIV)  
**Cc:** Kamin, Mitchell A; Carmichael, Andrew E. (CIV)  
**Subject:** RE: Discovery issues in Stone v. Trump

Ryan,

I'm following up on our March 1 meet-and-confer, particularly with respect to issues relating to Plaintiffs' forthcoming motion to compel on privilege issues. As you recall, Plaintiffs served a deficiency letter on February 21, 2018. Defendants have not responded to that letter; instead, you requested during the parties' March 1 call that Plaintiffs identify particular log entries for Defendants' re-consideration. As Mitch and I anticipated on the call, this is an impossible task in light of the lack of information in Defendants' logs. Plaintiffs have nevertheless attempted to narrow the scope of the privilege dispute, and we would like to further confer with you over our proposals. Are you available on Monday afternoon to discuss?

In addition, since February 9, you have advised on several occasions that Defendants would be making "rolling" productions over the course of the next several weeks. Plaintiffs in *Stone* have not received a production from Defendants since February 9, although you stated during our March 1 call that Defendants would be sending us another production on March 5 (this past Monday). You further indicated during the March 1 call that Defendants have simply been producing documents that they already produced in *Doe*, minus individual-plaintiff-specific information. This email confirms that Defendants need not cull individual-plaintiff-specific information before producing documents to Plaintiffs in *Stone*. Do you still estimate that document production will be complete by early April?

As for the ESI protocol: You stated that the March 5 production (which did not occur) would be "more consistent" with Plaintiffs' proposed ESI protocol, which Plaintiffs have been attempting to discuss with Defendants since January 2018. We would like to resolve these issues as soon as possible. Since there is no new production to use as a frame of reference, we request that you redline Plaintiffs' proposed order.

I look forward to hearing from you about a time for a meet-and-confer session on Monday afternoon.

Sincerely,  
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

**COVINGTON**

---

**From:** Kies, Marianne  
**Sent:** Thursday, March 01, 2018 3:49 PM  
**To:** 'Parker, Ryan (CIV)' <Ryan.Parker@usdoj.gov>  
**Cc:** Kamin, Mitchell A <MKamin@cov.com>; 'Carmichael, Andrew E. (CIV)' <Andrew.E.Carmichael@usdoj.gov>  
**Subject:** RE: Discovery issues in Stone v. Trump

Ryan, following up on our conference this morning. Will Defendants agree to lift the expert report deadline?

As discussed in Plaintiffs' February 21 letter, the parties disagree over the proper scope of the presidential communications and deliberative process privileges. We would like to get a legal ruling on these discrete legal questions, which are a predicate to resolving whether Defendants have properly asserted the privileges in response to Plaintiffs' discovery requests and in Defendants' logs. To that end, we propose the following briefing schedule on Defendants' Partial Motion for Judgment on the Pleadings and Motion to Partially Dissolve the Preliminary Injunction, in addition to Plaintiffs' forthcoming Motion to Compel:

**March 9:** Plaintiffs move to compel and oppose Defendants' motion.

**March 16:** Defendants oppose Plaintiffs' motion and reply in support of their motion.

**March 21:** Plaintiffs reply in support of their motion.

Sincerely,  
Marianne

**Marianne Kies**

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5005 | [mkies@cov.com](mailto:mkies@cov.com)  
[www.cov.com](http://www.cov.com)

**COVINGTON**

---

**From:** Kies, Marianne

**Sent:** Tuesday, February 27, 2018 12:36 PM

**To:** 'Parker, Ryan (CIV)' <[Ryan.Parker@usdoj.gov](mailto:Ryan.Parker@usdoj.gov)>

**Cc:** Kamin, Mitchell A <[MKamin@cov.com](mailto:MKamin@cov.com)>; Carmichael, Andrew E. (CIV) <[Andrew.E.Carmichael@usdoj.gov](mailto:Andrew.E.Carmichael@usdoj.gov)>

**Subject:** RE: Discovery issues in Stone v. Trump

Thank you, Ryan. We can use the following dial-in:

1.866.798.7071  
14306328

**Marianne Kies**

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5005 | [mkies@cov.com](mailto:mkies@cov.com)  
[www.cov.com](http://www.cov.com)

**COVINGTON**

---

**From:** Parker, Ryan (CIV) [<mailto:Ryan.Parker@usdoj.gov>]

**Sent:** Tuesday, February 27, 2018 12:28 PM

**To:** Kies, Marianne <[MKies@cov.com](mailto:MKies@cov.com)>

**Cc:** Kamin, Mitchell A <[MKamin@cov.com](mailto:MKamin@cov.com)>; Carmichael, Andrew E. (CIV) <[Andrew.E.Carmichael@usdoj.gov](mailto:Andrew.E.Carmichael@usdoj.gov)>

**Subject:** RE: Discovery issues in Stone v. Trump

Marianne,

11:00 ET on Thursday works for me.

Best,

**Ryan B. Parker**

Senior Trial Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
Tel: 202-514-4336 | [ryan.parker@usdoj.gov](mailto:ryan.parker@usdoj.gov)

---

**From:** Kies, Marianne [<mailto:MKies@cov.com>]  
**Sent:** Tuesday, February 27, 2018 12:25 PM  
**To:** Parker, Ryan (CIV) <[ryparker@CIV.USDOJ.GOV](mailto:ryparker@CIV.USDOJ.GOV)>  
**Cc:** Kamin, Mitchell A <[MKamin@cov.com](mailto:MKamin@cov.com)>  
**Subject:** RE: Discovery issues in Stone v. Trump

How about 11:00 a.m. ET on Thursday?

Best,  
Marianne

**Marianne Kies**

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5005 | [mkies@cov.com](mailto:mkies@cov.com)  
[www.cov.com](http://www.cov.com)

**COVINGTON**

---

**From:** Parker, Ryan (CIV) [<mailto:Ryan.Parker@usdoj.gov>]  
**Sent:** Tuesday, February 27, 2018 12:12 PM  
**To:** Kies, Marianne <[MKies@cov.com](mailto:MKies@cov.com)>  
**Cc:** Kamin, Mitchell A <[MKamin@cov.com](mailto:MKamin@cov.com)>  
**Subject:** RE: Discovery issues in Stone v. Trump

Marianne,

I have a brief due in another matter on Wednesday, and a 5:30 call could be difficult. Are you and Mitch available on Thursday morning?

Best,

**Ryan B. Parker**

Senior Trial Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
Tel: 202-514-4336 | [ryan.parker@usdoj.gov](mailto:ryan.parker@usdoj.gov)

---

**From:** Kies, Marianne [<mailto:MKies@cov.com>]  
**Sent:** Monday, February 26, 2018 9:20 PM  
**To:** Parker, Ryan (CIV) <[ryparker@CIV.USDOJ.GOV](mailto:ryparker@CIV.USDOJ.GOV)>  
**Cc:** Kamin, Mitchell A <[MKamin@cov.com](mailto:MKamin@cov.com)>  
**Subject:** RE: Discovery issues in Stone v. Trump

Ryan,

Could we please set up a call to discuss the pending discovery issues, before our Thursday conference with the Court? Are you available at 5:30 p.m. on Wednesday?

Sincerely,  
Marianne

**Marianne Kies**

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
T +1 202 662 5005 | [mkies@cov.com](mailto:mkies@cov.com)  
[www.cov.com](http://www.cov.com)

**COVINGTON**

---

**From:** Parker, Ryan (CIV) [<mailto:Ryan.Parker@usdoj.gov>]  
**Sent:** Friday, February 23, 2018 1:40 PM  
**To:** Kies, Marianne <[MKies@cov.com](mailto:MKies@cov.com)>  
**Cc:** Kamin, Mitchell A <[MKamin@cov.com](mailto:MKamin@cov.com)>  
**Subject:** RE: Discovery issues in Stone v. Trump

Marianne,

I received your email and letter. We plan to respond early next week.

Best,

**Ryan B. Parker**  
Senior Trial Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
Tel: 202-514-4336 | [ryan.parker@usdoj.gov](mailto:ryan.parker@usdoj.gov)

---

**From:** Kies, Marianne [<mailto:MKies@cov.com>]  
**Sent:** Wednesday, February 21, 2018 5:30 PM  
**To:** Parker, Ryan (CIV) <[ryparker@CIV.USDOJ.GOV](mailto:ryparker@CIV.USDOJ.GOV)>  
**Cc:** Kamin, Mitchell A <[MKamin@cov.com](mailto:MKamin@cov.com)>  
**Subject:** Discovery issues in Stone v. Trump

Ryan:

I write in regard to several discovery issues in *Stone v. Trump* (D. Md.):

1. Attached is a deficiency letter that regards Defendants' privilege claims. We look forward to conferring with you about the issues raised therein.

2. During our February 9, 2018 telephone conference about the draft ESI protocol, you committed to send us Defendants' redlines by the end of last week (February 16). We have not received them. As you know, the parties agreed to negotiate an ESI protocol several weeks ago (DE 102). As discovery is well underway, can you please send us your redlines to the draft so we can get the protocol on file?

3. During our February 9, 2018 telephone conference, you also indicated that Defendants would be making rolling productions over the course of the next several weeks. When should we expect Defendants' next production, and what will it contain?

4. In accordance with Judge Garbis's February 6, 2018 order (DE 107), Plaintiffs will contact the Court tomorrow to arrange a case-planning conference. Can you please let us know your availability for the conference?

5. Defendants' amended initial disclosures state: *"The Department of Defense is currently undertaking a comprehensive study of policies concerning transgender service members, which will culminate in an implementation plan currently due to be presented to the President on February 21, 2018. Defendants intend to rely upon and defend both the policies within the implementation plan and the support given for those policies."* As today is February 21, please confirm that you will send us the implementation plan, the policies within the implementation plan, and the support given for those policies to us, by the end of the day.

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](mailto:mkies@cov.com)  
[www.cov.com](http://www.cov.com)

**COVINGTON**

---

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

# **Exhibit 9**

## COVINGTON

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

Marianne F. Kies

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

**By Electronic Mail**

March 16, 2018

Ryan B. Parker  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, NW,  
Washington, DC 20530  
T: (202) 514-4336  
*ryan.parker@usdoj.gov*

**Re: Meet-and-Confer in *Stone, et al. v. Trump, et al.*, Case No.  
1:17-cv-02459-MJG (D. Md.)**

Dear Ryan:

I write to summarize and follow up on our March 13, 2018 meet-and-confer session at your office, during which we discussed Defendants' privilege claims.

### **I. Discovery Directed to President Trump**

Defendants have, in conclusory and categorical terms, asserted privilege in response to all of Plaintiffs' requests that are directed to the President and/or that involve presidential or White House communications. In an attempt to narrow the dispute, Plaintiffs began our meeting by proposing that Defendants answer Interrogatories Nos. 1–10 (directed to President Trump), which seek information regarding President Trump's reasons for issuing the Transgender Service Member Ban. On their face, the interrogatories seek information central to the case. Plaintiffs' need for the information presumptively overcomes the qualified presidential-communications privilege and the qualified deliberative-process privilege, where neither of these privileges has been adequately supported or justified.<sup>1</sup> You responded that Defendants are unwilling even to discuss any discovery directed to the President until Defendants' pending motion to dismiss (ECF No. 115) is decided. You even refused to tell us whether the 3,672 documents covered by the POTUS log have been de-duplicated or whether that number is an exaggerated tally of the White House documents at issue. As I stated during our meeting, we believe that Defendants' position lacks merit, and that Defendants' refusal to meaningfully meet-and-confer over Defendants' privilege assertions at this time is inconsistent with Defendants' obligations under the federal rules and Judge Garbis' March 1 order, which contemplates that Plaintiffs' motion to compel on privilege issues will be briefed in "due course"

---

<sup>1</sup> The same is true of—at least—Interrogatory No. 12 (directed to Secretary Mattis) and Requests for Production Nos. 6, 7, and 8.

## **COVINGTON**

Ryan B. Parker  
March 16, 2018  
Page 2

as opposed to *seriatim* following consideration of Defendants' pending motion. ECF No. 116. We understand that the parties are at impasse on this issue.

### **II. Other Defendants' Assertions of Privilege with Respect to Communications with the White House**

Regardless of whether President Trump remains a party to this suit or is subject to discovery requests, Plaintiffs have also served discovery requests on the other Defendants regarding their own communications with the White House and with the Office of the Vice President. *See, e.g.*, Requests for Production Nos. 6, 7, 8, 12; Interrogatory No. 12. In their written responses, each Defendant objected to these requests based on the presidential communications privilege (and the deliberative process privilege). However, with the exception of the log of the Chairman of the Joint Chiefs of Staff, the logs produced to date by Defendants other than President Trump do not identify materials purportedly protected by the presidential communications privilege.

Please promptly clarify whether Defendants other than President Trump are asserting both the presidential communications privilege and the deliberative process privilege in response to Requests for Production Nos. 6, 7, 8, and 12 and Interrogatory No. 12 to Secretary Mattis. If so, by Friday, March 23, 2018, please provide Plaintiffs with a privilege log for those documents reflecting, at a minimum, the sender(s), recipient(s), date, and subject matter of each document or communication. We are requesting this minimal identifying information so that we may make a preliminary assessment as to which of the thousands of documents are of greatest relevance to our case. By requesting only this identifying information at this point, we are not waiving our opportunity to seek a full and proper justification for the claims of privilege.

### **III. Other Documents on Defendants' Privilege Logs**

We have repeatedly requested that Defendants provide compliant and adequate privilege logs. In response, Defendants continue to insist that Plaintiffs undertake the impracticable task of identifying discrete documents for Defendants to re-consider. Without waiving Plaintiffs' objections to Defendants' inadequate privilege logs, Plaintiffs will identify, on a rolling basis, a nonexhaustive list of particular withheld documents for which Plaintiffs will request that Defendants either provide an adequate explanation for why the privilege applies or withdraw the assertion of privileges. Based on Defendants' responses, Plaintiffs will determine which documents are necessary to pursue in a motion to compel. Please confirm that Defendants will provide responses to the challenged entries within 10 calendar days of receipt.

### **IV. Federal Rule of Civil Procedure 33(d) (see Defendants' Answers to Interrog. Nos. 13–16, 18–22)**

As we discussed during our meeting, Defendants are required to provide interrogatory answers that either contain adequate narrative responses or comply with Rule 33(d). You indicated that you intended to provide compliant answers for all Defendants, aside from President Trump. If Defendants object to answering any interrogatory (or portion of an interrogatory), Defendants must object with the specificity required by Rule 33(b)(4). You indicated that, to the extent Defendants choose to rely upon Rule 33(d), Defendants will identify

**COVINGTON**

Ryan B. Parker  
March 16, 2018  
Page 3

specific documents, as required by Rule 33(d)(1). If Defendants withhold such documents on the basis of a privilege, we expect that Defendants will object with the specificity required by Rule 34(b)(2)(B). By March 23, 2018, please provide corrected interrogatory answers that comply with the foregoing Rules.

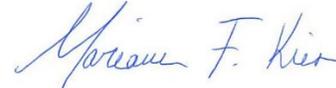
**V. Federal Rule of Civil Procedure 34(b)(2)**

Defendants' written responses to Plaintiffs' requests for production do not comply with Rule 34(b)(2)(B) and (C). By March 23, 2018, please provide corrected responses to Plaintiffs' requests for production that state *with specificity* the grounds for objecting to each request—i.e., a full explanation of why a particular response is subject to the privileges asserted—and indicate whether responsive material is being withheld on the basis thereof.

**VI. Deadline for Discovery Requests**

The Joint Status Report in this case requires all additional written discovery requests to be served by March 24, 2018. ECF No. 102. Please let me know by Monday, March 19, 2018, if Defendants will stipulate to suspend this deadline in light of the pending discovery disputes.

Sincerely,



Marianne F. Kies

# **Exhibit 10**

## COVINGTON

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

Marianne F. Kies

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

### By Electronic Mail

April 9, 2018

Ryan B. Parker  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, NW,  
Washington, DC 20530  
T: (202) 514-4336  
[ryan.parker@usdoj.gov](mailto:ryan.parker@usdoj.gov)

**Re: Discovery Issues in *Stone, et al. v. Trump, et al.*, Case No.  
1:17-cv-02459-MJG (D. Md.)**

Dear Ryan:

I write to follow up on our March 16, 2018 letter, to which Defendants have not responded (nor acknowledged receipt). Please provide a prompt response to that letter, which we previously requested you do no later than March 23, 2018. That date has long since lapsed.

In light of Defendants' March 23 filings, I also write to follow up on several of Plaintiffs' pending discovery requests. For the following reasons, Defendants should promptly and fully respond to Plaintiffs' Requests for Production Nos. 13, 14, 15, and 16 and Interrogatory Nos. 15, 18, and 19, the original responses to which were due on February 9, 2018. Barring a prompt and complete response, Plaintiffs will move to compel.

\* \* \*

As you know, Plaintiffs served their first set of discovery requests on January 3, 2018. Plaintiffs requested, *inter alia*:

- “All Documents and Communications Concerning military service by transgender individuals shared between or amongst Defendants and organizations opposed to military service by transgender individuals, Including but not limited to representatives and agents of the ‘Alliance Defending Freedom,’ ‘Focus on the Family,’ the ‘Family Research Council,’ ‘Heritage Action for America,’ and ‘Breitbart News,’ from January 2017 to the present” (RFP No. 13);
- “All Documents and Communications that You conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed that embody, constitute, comprise, or reflect the reaction of the Department of Defense

## COVINGTON

Ryan B. Parker  
April 9, 2018  
Page 2

or any of its components (including Military Services), or any individuals within the Department of Defense or its components, to the Tweets” (RFP No. 14);

- “All Documents and Communications Concerning the purpose, composition, structure, research, analysis, findings, and conclusions of the Panel of Experts” (RFP No. 15);
- “All Documents and Communications conceived, authored, drafted, created, selected, compiled, received, published, relied upon directly or indirectly, or distributed by the Panel of Experts, Including any recommendations of the Panel of Experts and the implementation plan due on February 21, 2018” (RFP No. 16);
- “[Identification of] all Documents and Communications Concerning military service by transgender individuals that were requested, received, considered directly or indirectly, or consulted by Defendants—including the Panel of Experts—since January 20, 2017, and, for each such Document, Identify the Person who transmitted it to You and state the Date(s) of transmission and receipt” (Interrog. No. 15);
- “[Identification of] all Documents that comprise or embody assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of, Defendants between June 30, 2016 and August 25, 2017, concerning transgender individuals serving in the military, Including (a) the effect of transgender individuals serving in the military on military readiness; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion” (Interrog. No. 18); and
- “[Identification of] all Documents that comprise or embody assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of Defendants from August 25, 2017 through the present Concerning transgender individuals serving in the military, Including (a) the effect of transgender individuals serving in the military on military readiness; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion” (Interrog. No. 19).

Defendants objected to RFPs Nos. 13 through 16 “to the extent” that each seeks: (a) attorney work product; (b) attorney-client communications; (c) communications or information protected by the deliberative process privilege; (d) material “the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation”; or (e) communications or information protected by the presidential communications privilege. Defendants similarly objected to Interrogatory Nos. 15, 18, and 19; moreover, all Defendants save President Trump<sup>1</sup> stated that, “[t]he information responsive to this

---

<sup>1</sup> President Trump has objected “to any discovery requests directed to the President” and has not provided a response to any interrogatory.

## COVINGTON

Ryan B. Parker  
April 9, 2018  
Page 3

interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in Defendants' document production."<sup>2</sup>

Defendants' privilege logs indicate that numerous documents were withheld on the basis of a purported deliberative process privilege. Many documents pertinent to Defendants' so-called "Panel of Experts"—convened after President Trump categorically banned transgender people from serving in the Armed Forces in August 2017—were withheld. A small sampling follows:

- **Army Defendants** withheld documents bearing the Bates range ARMY\_352-383, described as "Presentation to the panel of experts summarizing health and readiness data of Active Duty members with gender dysphoria."
- **The CJCS** privilege log alone contains approximately 65 different entries reflecting documents withheld that were received by the "Panel of Experts."
- **Air Force Defendants** withheld documents bearing the Bates range AF\_00000446-448, described as "UPDATE & DECISION: Transgender Working Group Meeting in Prep for Panel of Experts Prep Session (Read: HTML).msg," and numerous other documents described as "RE: REQUEST -- Support to the Panel of Experts Reviewing DoD Policy on Service by Transgender Persons.msg," *see, e.g.*, AF\_000010454-10456.
- **Department of Defense Defendants** withheld documents bearing the Bates range SOPER DEP RFP\_21 01268-01271, described as "E-mail re: Transgender Panel of Experts Question (with Attachments)."
- **Navy Defendants** withheld a document bearing the Bates number Navy\_00042147, on the stated privilege basis of "Request for information for panel of experts," as well as a document bearing the Bates range Navy\_000004460, described as "Request for Military Medical Providers to Brief Medical Personnel Services (MEDPERS) and the Secretary of Defense (SECDEF) Panel of Experts."

On March 23, 2018, Defendants released the February 22, 2018 "recommendations" (ECF No. 120-1) and a February 2018 "report" regarding military service by people who are transgender (ECF No. 120-2, the "Report"). The Report extensively references findings and conclusions of the "Panel of Experts." *See, e.g.*, Report at 33–34 (citing reports made to the Panel "that, from the time of diagnosis to the completion of a transition plan, the transitioning Service members would be non-deployable for two to two-and-a-half years"); *id.* at 37 (citing incidents reported to the Panel concerning transgender access to bathroom facilities as evidence of the threat transgender service poses to unit cohesion); *id.* at 41 (citing Panel data as evidence that "medical costs for Service members with gender dysphoria have increased nearly three times—or 300%—compared to Service members without gender dysphoria").

Defendants now insist that the existing preliminary injunction should be "dissolved" in light of the February 2018 recommendations and the Report and President Trump's response.

---

<sup>2</sup> As Plaintiffs have previously advised Defendants, this response does not comply with Federal Rule of Civil Procedure 33(d).

## COVINGTON

Ryan B. Parker  
April 9, 2018  
Page 4

Accordingly, the bases for both the recommendations and Report are of central importance to Defendants' defenses, Plaintiffs' claims, and Plaintiffs' continued entitlement to injunctive relief.

Defendants' numerous assertions of deliberative process privilege over materials regarding the Panel of Experts are fundamentally misplaced.<sup>3</sup> As a threshold matter, the deliberative process privilege does not apply at all when, as here, "a plaintiff's cause of action turns on the government's intent." *See In re Subpoena Duces Tecum Served on the Comptroller of the Currency*, 145 F.3d 1422, 1424 (D.C. Cir. 1998). Moreover, this privilege is qualified and narrowly construed, and is overcome under the circumstances here. *FDIC v. Hatziyannis*, 180 F.R.D. 292, 293 (D. Md. 1998); *Bd. of Educ. of the City of Chi.*, 610 F. Supp. 695, 699–700 (N.D. Ill. 1985) (a party "make[s] a very powerful showing of necessity" where "the decisionmaking process . . . is the case"). The process leading to the recommendations "is the case" here, as is Defendants' intent in implementing the ban on military service by transgender persons that President Trump announced in July 2017 and in developing the proposed policy in response to his August 2017 memorandum. This material is relevant to Plaintiffs' claims that the original ban on transgender military service and the implementation of that ban violate equal protection and substantive due process. Moreover, since Defendants are now using the work of the "Panel of Experts" to defend the Recommendations and Report, they may not withhold documents and information relating to the work of the Panel. *See, e.g., HSH Nordbank AG N.Y. Branch v. Swerdlow*, 259 F.R.D. 64, 74 (S.D.N.Y. 2009) (explaining that the "at issue" doctrine "precludes a party from 'disclos[ing] only self-serving communications,' while 'barr[ing] discovery of other communications that an adversary could use to challenge the truth of the claim'").

In addition to withholding documents regarding the Panel of Experts, Defendants have improperly withheld responsive materials comprising, *inter alia*:

- Materials leading up to President's Trump announcement of the Transgender Service Member Ban via Twitter (*see, e.g.,* NAVY\_00003363, described as "Transgender Policy Status Briefing Card" and dated July 26, 2017; numerous entries on the DHA privilege log dated July 24-26, 2017 and identified as "Intradepartment email concerning implementation of transgender policy");
- Materials created in between the Tweets and the August 2017 presidential memorandum (*see, e.g.,* ARMY\_722-724, described as "Execution matrix used in preparation for the release of the Presidential Memorandum;" and dated August 10, 2017; ARMY\_1300-04, described as "Presentation discussing the impact of transgender service on readiness" and dated August 17, 2017; ARMY\_725-728, described as "Presentation showing timeline of events in preparation for release of the Presidential Memorandum" and undated); and
- Materials related to the September 2017 "Interim Guidance" (*see, e.g.,* ARMY\_ARMY\_744-46, described as "Documents providing comments on the draft DoD

---

<sup>3</sup> It is impossible for Plaintiffs to determine how many documents President Trump withheld on any specific ground, given that he has refused even to provide a log of withheld communications.

**COVINGTON**

Ryan B. Parker  
April 9, 2018  
Page 5

Interim Guidance” and dated August 30, 2017; CJCS\_00001113, described as “Final draft of interim transgender policy guidance” and dated September 6, 2017).

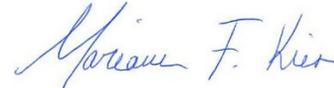
Although the limited and often boilerplate information provided in Defendants’ privilege logs makes it difficult to evaluate conclusively, Defendants also appear to have withheld materials generated in between the finalization of the “Panel of Experts” report and the issuance of the February 2018 recommendations and Report. *See, e.g.*, SOPER DEP RFP\_15 00562-566, described as “Transgender Review Panel Policy Recommendation Worksheet” and undated.

Once again, this is but a small sampling of the documents Defendants have improperly withheld. All of these categories of documents must be produced; they all concern the critical “decisionmaking” process that “*is the case*” here. *See Bd. of Educ. of the City of Chi.*, 610 F. Supp. at 699–700.

Please promptly produce any documents responsive to Requests for Production Nos. 13, 14, 15, and 16, and provide supplemental responses to Plaintiffs’ Interrogatory Nos. 15, 18, and 19 that comply with Rule 33(d). If Defendants assert attorney-client, attorney work-product, or any other privilege over documents and information responsive to these requests, Defendants should supply a full and complete privilege log that complies with District of Maryland Discovery Guideline 10(d).

If Defendants do not fully comply with the above paragraph by April 18, 2018, Plaintiffs will move to compel on the issues raised in this letter and in our March 16, 2018 letter.

Sincerely,

A handwritten signature in blue ink that reads "Marianne F. Kies". The signature is written in a cursive style.

Marianne F. Kies