

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AIDEN STOCKMAN; NICOLAS
TALBOTT; TAMASYN REEVES;
JAQUICE TATE; JOHN DOES 1-2;
JANE DOE; and EQUALITY
CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. 5:17-CV-01799-JGB-KK

~~PROPOSED~~ PROTECTIVE
ORDER AND CROSS-USE
AGREEMENT

DISCOVERY MATTER

STATE OF CALIFORNIA,
Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

Pursuant to Federal Rule of Civil Procedure 26(c) and 5 U.S.C. §
552a(b)(11), and for good cause shown, the Court hereby enters the following
Protective Order:

1. Good Cause Statement. Good cause exists for the entry of this Order.
This action is one of four related cases challenging the Government’s policy
regarding military service by transgender individuals. *See Doe v. Trump*, No.
1:17-cv-1597 (D.D.C.); *Stone v. Trump*, No. 1:17-cv-02459 (D. Md.); and
Karnoski v. Trump, No. 2:17-cv-01297 (W.D. Wash.). In an attempt to litigate the
four related cases efficiently, the parties to each of the four cases have agreed that

1 discovery material that is produced by any party or non-party in any of the named
2 actions will be deemed produced in all four of the cases. In order to facilitate the
3 sharing of discovery materials, the parties to the other three cases have agreed to,
4 and the courts in the other three cases have entered, protective orders and cross-use
5 agreements that are similar to this Order. Defendants have already produced
6 substantial discovery materials to the plaintiffs in the other three cases. Those
7 discovery materials include information otherwise generally unavailable to the
8 public or otherwise protected from disclosure under state or federal statutes, court
9 rules, case decisions, or common law, including internal documents of the
10 Department of Defense, the United States Army, the United States Air Force, and
11 the United States Navy. Pursuant to Defendants' agreement with Plaintiffs and
12 Intervenor in this case, Defendants are prepared to provide the discovery materials
13 that they have produced in the other three cases to Plaintiffs and Intervenors, once
14 this Order and the accompanying Rule 502(d) Order have been entered by the
15 Court. It is the intent of the parties that information will not be designated as
16 confidential for tactical reasons and that nothing be so designated without a good
17 faith belief that it has been maintained in a confidential, non-public manner, and
18 there is good cause why it should not be part of the public record of this case.
19 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
20 of disputes over confidentiality of discovery materials, to adequately protect
21 information the parties are entitled to keep confidential, to ensure that the parties
22 are permitted reasonable necessary uses of such material in preparation for and in
23 the conduct of trial, to address their handling at the end of the litigation, and to
24 serve the ends of justice, a protective order covering such information is justified
25 in this matter.

26 2. Scope of Order. This Order shall govern the production, use, and
27 disclosure of all information and materials produced by any party or non-party in
28 response to any discovery request in *Stockman v. Trump* (including, but not limited

1 to, documents, interrogatory answers, responses to requests to admit, and
2 deposition transcripts and exhibits), all information contained in those materials,
3 and all copies, excerpts, or summaries of those materials (collectively, “Discovery
4 Material”). Any use of Protected Material at trial shall be governed by the orders
5 of the trial judge. This Order does not govern the use of Protected Material at trial.

6 3. Designation of Protected Material. A party or non-party may, in good
7 faith, designate as CONFIDENTIAL and therefore subject to the protections and
8 requirements of this Order, any Discovery Material that the designating party
9 reasonably believes contains confidential information, including personal,
10 proprietary, or sensitive information not generally disclosed to the public. Subject
11 to the exceptions set forth in Paragraph 6, Discovery Material designated
12 CONFIDENTIAL (“Protected Material”) shall be used by the receiving parties
13 solely for the prosecution or defense of this action or one of the three related cases
14 *Doe v. Trump*, No. 1:17-cv-1597 (D.D.C.); *Stone v. Trump*, No. 1:17-cv-02459 (D.
15 Md.); and *Karnoski v. Trump*, No. 2:17-cv-01297 (W.D. Wash.) (collectively, the
16 “Named Actions”), and shall not be disclosed to any person or entity unless
17 specifically authorized by the terms of this Order or by further order of the Court.
18 Consistent with the requirements of this paragraph, a party may, within fifteen (15)
19 business days of receipt of the Discovery Materials, by written notice to the other
20 parties, designate as CONFIDENTIAL any Discovery Materials produced or given
21 by the other parties or by a non-party but not designated CONFIDENTIAL by that
22 other party or non-party.

23 4. Limitations on Use. Subject to the exceptions set forth in Paragraph
24 6, Protected Material and its contents, as well as copies, summaries, notes,
25 memoranda, and computer databases relating thereto, shall be used solely for the
26 purpose of the Named Actions, shall be and remain confidential, and shall not be
27 disclosed in any fashion, nor be used for any purpose other than litigating the
28 Named Actions.

1 5. Limited Disclosure of Protected Material. Except as stated in
2 paragraphs 5 and 6 below, Protected Material may be disclosed, subject to the
3 specific procedures and provisions contained in this Order, to the following
4 persons and/or entities only:

5 a) This Court and the officers, employees, and any stenographic
6 reporters of such courts;

7 b) Counsel representing the parties in the Named Actions and their
8 support personnel whose functions require access to Protected Material
9 (collectively “Attorney Professionals”);

10 c) Outside vendors who perform scanning, photocopying,
11 computer classification, translation, or similar clerical functions, retained by the
12 parties or their counsel in the Named Actions, but only for the purposes of
13 performing such services and only so long as necessary to perform those services;

14 d) Independent experts consulted or retained by counsel for
15 assistance in the preparation or prosecution of claims or defenses in the Named
16 Actions, to the extent reasonably necessary for such experts to prepare a written
17 opinion or to prepare to testify or to assist counsel in the Named Actions;

18 e) A witness who has been noticed or subpoenaed for deposition
19 or a court appearance in the Named Actions to the extent reasonably necessary for
20 the preparation or giving of his or her testimony about Protected Material; or

21 f) Any other person who is so designated by order of this Court or
22 by written agreement of the producing party.

23 No Protected Material may be disclosed to persons identified in
24 subparagraphs (d), (e) or (f) until they have reviewed this Order and have executed
25 a written agreement in the form attached hereto as Exhibit A, which executed
26 agreements shall be maintained by counsel of record for the party making the
27 disclosure to such persons (provided that Counsel who makes such disclosure shall
28 retain the written agreement but shall not be required to produce it to opposing

1 counsel until the deposition of the person or without order of the Court).

2 6. Order Affecting Pseudonym Plaintiff. Use and disclosure of the
3 Pseudonym Plaintiff's identity in this action is governed by the Court's Order
4 Granting Doe Plaintiffs' Motion for Leave to Proceed Under Pseudonyms, ECF
5 No. 13, dated September 29, 2017. Use and disclosure of the Pseudonym
6 Plaintiff's identity in *Stone v. Trump* remain governed by the protective order
7 entered by the Court on September 29, 2017 ("*Stone* Pseudonym Order"). Use and
8 disclosure of the Pseudonym Plaintiffs' identities in *Doe v. Trump* remain
9 governed by the September 13, 2017 protective order entered in *Doe v. Trump*
10 ("*Doe* Pseudonym Order"). Use and disclosure of the Pseudonym Plaintiff's
11 identity in *Karnoski v. Trump* remain governed by the Order Granting Motion to
12 Proceed Under Pseudonym entered by the *Karnoski* Court on October 10, 2017
13 ("*Karnoski* Pseudonym Order"). Insofar as there is any conflict between this Order
14 and the Pseudonym Order in this case or the *Stone*, *Karnoski* and *Doe* Pseudonym
15 Orders, the Pseudonym Orders shall prevail.

16 7. Cross-Use of Discovery Material. Any Discovery Material produced
17 or provided by any party or non-party in any of the Named Actions shall be
18 deemed produced in the other Named Actions and shall be treated consistently
19 with the terms of this Order, with the exception of any Discovery Materials that
20 include personally identifying information in the Named Actions, including
21 information that would lead to the discovery of the identities of plaintiffs
22 proceeding pseudonymously or other information protected by the Pseudonym
23 Orders.

24 8. Effect of Designation. The designation of Protected Material pursuant
25 to the Order shall not be construed as a waiver of any objection or a concession by
26 any party that such Protected Material is relevant or material to any issue. Nor
27 shall a failure to object to the designation of any such Protected Material be
28 construed as a concession by the receiving parties that such Protected Material is,

1 in fact, confidential or otherwise entitled to protection under the terms of this
2 Order. All parties maintain their respective rights to object to production of any
3 requested documents on the grounds that they are otherwise not discoverable,
4 including, but not limited to, objections based on any applicable privilege, undue
5 burden, overbreadth, relevance, and proportionality to the needs of the case. Any
6 party may seek an order from the Court determining that specified Protected
7 Material is not entitled to be treated as CONFIDENTIAL, consistent with the
8 requirements set for in Paragraph 11 of this Order. Prior to seeking such an order,
9 the party seeking the order may write a letter to the designating party identifying
10 the Protected Material it challenges. The designating party seeking confidential
11 treatment shall then have four (4) business days from receipt of that letter to
12 respond with its reasons. Failure to provide a timely response to a letter
13 challenging a confidentiality designation shall be deemed a waiver of the right to
14 demand confidential treatment of the challenged material. For the purposes of any
15 motion or other request brought by a party seeking an order from the Court
16 determining that specified Protected Material is not entitled to be treated as
17 CONFIDENTIAL, the burden shall be on the designating party to demonstrate that
18 the Protected Material at issue is entitled to such treatment. Protected Material
19 shall remain subject to the protection of this Order unless and until the Court
20 determines that such Material is not entitled to such designation.

21 9. Mechanics of Designation. No designation of CONFIDENTIAL shall
22 be effective as to a particular page of Protected Material unless there is placed on
23 or affixed to each page of such Protected Material a marking of
24 “CONFIDENTIAL.” In the case of electronic documents produced in native
25 format, such designation may be made on the physical media (e.g., disk, flash
26 drive) containing such electronic documents and on a slipsheet accompanying the
27 native file if the file is served electronically. Testimony may be designated
28 CONFIDENTIAL within ten (10) business days after receipt of a transcript of said

1 testimony by furnishing to counsel for the other parties a detailed statement of the
2 specific portions of any such information, by page and line number or exhibit
3 number, by designating lines and pages as confidential by highlighting or digital
4 marking, or by a statement on the record at the time the testimony is given.
5 Pending the expiration of said ten (10) business days, all parties shall
6 presumptively treat the entire deposition transcript as CONFIDENTIAL. In
7 addition to the requirements of this Order, the court reporter before whom a
8 deposition or other testimony relating to Protected Material is taken shall, at the
9 request of any party, designate a portion of the deposition or any exhibits
10 containing Protected Material as CONFIDENTIAL.

11 10. No Waiver; Late Designation. The failure of a party to designate
12 information or documents as CONFIDENTIAL in accordance with this Order, and
13 the failure to object to such a designation, is not a waiver of the right to do so and
14 shall not preclude a party at a later time from subsequently designating or objecting
15 to the designation of such information or documents as CONFIDENTIAL. The
16 parties understand and acknowledge that a party's failure to designate information
17 or documents as CONFIDENTIAL relieves the other parties of any obligation of
18 confidentiality until such a designation is made. Promptly after written notice to
19 the receiving parties of any such subsequent designation by the producing party,
20 which notice shall specifically identify the documents or information to be
21 designated, the parties shall confer and agree upon a method to mark as
22 CONFIDENTIAL any such subsequently designated documents. All documents
23 containing any such subsequently designated information will be thereafter treated
24 in accordance with this Order.

25 11. Objections to Designations. A party may, at any time, make a good
26 faith challenge to the propriety of a CONFIDENTIAL designation. In the event a
27 party objects in writing to the designation of any material under this Order, the
28 objecting party shall consult with the designating party to attempt to resolve their

1 differences. If the parties are unable to reach an accord as to the proper
2 designation of the material, after giving notice to the designating party, either party
3 may apply to the Court for a ruling regarding the designation. Any motion
4 challenging a party's designation of Protected Material must be brought in strict
5 compliance with Local Rules 37-1 and 37-2, including the Joint Stipulation
6 requirement. If such a motion is made, the designating party has the burden of
7 establishing that the designation is proper. If a timely motion is made, any
8 documents or other materials that have been designated CONFIDENTIAL that are
9 the subject of the motion shall be treated as Confidential until such time as the
10 Court rules that such materials should not be treated as Confidential.

11 12. Control of Protected Material. All Protected Material shall be
12 maintained under the direct control of counsel of record of the, who shall be
13 responsible for preventing any disclosure thereof, except as permitted by the terms
14 of this Order. Attorney Professionals may review and make working copies,
15 abstracts, and digests of Protected Material for use in connection with the Named
16 Actions, and such working copies, abstracts, and digests shall be deemed Protected
17 Material under the terms of this Order provided that access to Protected Material,
18 in whatever form stored or reproduced, shall be limited to those persons entitled to
19 receive such information pursuant to the terms of this Order and shall be
20 appropriately marked in accordance with the terms of this Order.

21 13. Return. Unless otherwise instructed by the Court, at the conclusion of
22 this action, including any appeals, all Protected Material, in whatever form stored
23 or reproduced, shall be returned to counsel of record for the party who produced
24 said Protected Material, or the receiving parties shall certify that all such
25 information has been destroyed, except that the attorneys for the parties shall be
26 entitled to retain all litigation documents, including exhibits and their own
27 memoranda, containing Protected Material. Such litigation documents and
28 memoranda shall be used only for the purpose of preserving files on this action,

1 and shall not, without the written permission of the designating party or an order of
2 this Court, be disclosed to anyone other than those to whom such information was
3 actually disclosed, in accordance with this Order, during the course of the Named
4 Actions.

5 14. Filing under Seal. A party that seeks to file under seal any Protected
6 Material must comply with Civil Local Rule 79-5. Protected Material may only be
7 filed under seal pursuant to a court order authorizing the sealing of the specific
8 Protected Material at issue. If a party's request to file Protected Material under
9 seal is denied by the Court, then the receiving party may file the information in the
10 public record unless otherwise instructed by the Court.

11 15. Subpoena of Protected Material. If a person in possession of
12 Protected Material who is not the producing party with respect to that Protected
13 Material receives a subpoena or other request seeking production or other
14 disclosure of Protected Material, that person shall immediately give written notice
15 to counsel for the producing party, identifying the Protected Material sought and
16 the date and time that production or other disclosure is required. In no event
17 should production or disclosure be made without written notice to counsel for the
18 producing party or by further order of the Court or another court of competent
19 jurisdiction. The party that has designated the Protected Materials as
20 CONFIDENTIAL shall bear the burden and expense of seeking protection of its
21 confidential material and nothing in these provisions should be construed as
22 authorizing or encouraging a receiving party in this action to disobey a lawful
23 subpoena or court order issued in another action.

24 16. Inadvertent Disclosure. Should any Protected Material be disclosed,
25 through inadvertence or otherwise, to any person and/or entity not entitled to
26 access or review same, then such person and/or entity:

27 (a) Shall be informed promptly of all provisions of this Order by the
28 responsible party;

1 (b) Shall immediately be identified to all counsel of record in all
2 Named Actions by the responsible party; and

3 (c) Shall be requested, in writing by the responsible party, to return
4 the material to the responsible party.

5 Inadvertent disclosure by the disclosing party of any Protected Material,
6 regardless of whether said Protected Material was so designated at the time of
7 disclosure, shall not be deemed a waiver in whole or in part of the protectability of
8 the Protected Material in accordance with the terms of this Order, either as to the
9 specific Protected Material disclosed, or as to any other information relating
10 thereto or relating to the same or related subject matter.

11 17. Modification. This Order is without prejudice to the right of any party
12 to apply at any time for additional protection, or to amend, modify, or rescind the
13 restrictions of this Order. The party must provide written notice to counsel of
14 record for all parties in the Named Actions specifying the portion(s) of this Order it
15 seeks to amend, modify, or rescind and any additional provisions it may seek to
16 add to the Order. The written notice must be served five (5) business days in
17 advance of filing any such motion. The parties expressly reserve the right to seek
18 modification, amendment, or rescission of this Order by mutual agreement in
19 writing. Any motion seeking to modify or amend this Order must be brought in
20 strict compliance with Local Rules 37-1 and 37-2, including the Joint Stipulation
21 requirement.

22 18. Enforcement. All persons to whom Protected Material is disclosed
23 shall be subject to the jurisdiction of this Court, for the purpose of enforcing this
24 Order. This Order shall continue in full force and effect, and shall be binding upon
25 the parties and all persons to whom Protected Material has been disclosed, both
26 during and after the pendency of this case.

27
28

1 **SO ORDERED.**

2

3 Dated: April 25, 2018

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28


HON. KENLY KIYA KATO
United States Magistrate Judge