

The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

RYAN KARNOSKI, et al.,

*Plaintiffs, and*

STATE OF WASHINGTON,

*Plaintiff-Intervenor,*

v.

DONALD J. TRUMP, in his official capacity  
as President of the United States, et al.,

*Defendants.*

Case No. 2:17-cv-01297-MJP

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO STAY  
PRELIMINARY INJUNCTION PENDING  
APPEAL**

NOTED FOR CONSIDERATION:  
May 18, 2018

**TABLE OF CONTENTS**

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

- Introduction..... 1
- Background..... 1
- Argument ..... 2
  - A. Defendants Cannot Meet the High Standard for a Stay Pending Appeal of a Preliminary Injunction..... 2
    - 1. Defendants Have Not—and Cannot—Make the Strong Showing of Likelihood of Success on the Merits Required to Justify a Stay ..... 3
    - 2. The Government Does Not Show Irreparable Harm Pending Appeal, While a Stay Would Harm Plaintiffs and the Public Interest ..... 9
- Conclusion ..... 10
- Certificate of Service ..... 12

**TABLE OF AUTHORITIES**

Cases

1

2

3 *Bray v. Alexandria Women’s Health Clinic,*

4 506 U.S. 263 (1993)..... 7

5 *Christian Legal Soc’y v. Martinez,*

6 561 U.S. 661 (2010)..... 7

7 *Cnty. House, Inc. v. City of Boise,*

8 490 F.3d 1041 (9th Cir. 2007) ..... 5

9 *Grutter v. Bollinger,*

10 539 U.S. 306 (2003)..... 7

11 *Hernandez v. Sessions,*

12 872 F.3d 976 (9th Cir. 2017) ..... 13

13 *Johnson v. California,*

14 543 U.S. 499 (2005)..... 9, 11

15 *Latta v. Otter,*

16 771 F.3d 456 (9th Cir. 2014) ..... 13

17 *Melendres v. Arpaio,*

18 695 F.3d 990 (9th Cir. 2012) ..... 13

19 *Mem. Hosp. v. Maricopa Cnty.,*

20 415 U.S. 250 (1974)..... 11

21 *Nken v. Holder,*

22 556 U.S. 418, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009)..... 5

23 *Pac. Shores Props. LLC v. City of Newport Beach,*

24 730 F.3d 1142 (9th Cir. 2013) ..... 7

25 *Rostker v. Goldberg,*

26 453 U.S. 57 (1981)..... 7

27 *Schwenk v. Hartford,*

28 204 F.3d 1187 (9th Cir. 2000) ..... 7

*Sessions v. Morales-Santana,*

137 S.Ct. 1678 (2012)..... 9

*Sharp v. Weston,*

233 F.3d 1166 (9th Cir. 2000) ..... 6

1 *Sports Form, Inc. v. United Press Int’l, Inc.*,  
686 F.2d 750 (9th Cir. 1982) ..... 5

2

3 *Stone v. Trump*,  
No. MJG-17-2459, 2017 WL 5589122 (D. Md. Nov. 21, 2017)..... 4

4 *United States v. Virginia*,  
518 U.S. 515 (1996)..... 9

5

6 *W. States Paving Co. v. Wash. State Dep’t of Transp.*,  
407 F.3d 983 (9th Cir. 2005) ..... 9

7

8 *Washington v. Trump*,  
847 F.3d 1151 (9th Cir. 2017) ..... 5, 6

9 *Witt v. Dep’t of Air Force*,  
527 F.3d 806 (9th Cir. 2008) ..... 8

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1 **INTRODUCTION**

2 On December 11, 2017, this Court preliminarily enjoined all Defendants and anyone acting  
 3 on their behalf from implementing the government’s Ban on open service by transgender  
 4 persons, finding the prohibition “likely unconstitutional.” (*See* Dkt. No. 103 at 2.) On April 13,  
 5 2018, in ruling on the parties’ summary judgment motions, the Court ordered that the very same  
 6 injunction was to remain in effect. (*See* Dkt. No. 233.) For the second time, and again faced with  
 7 an unfavorable ruling, Defendants seek to stay the preliminary injunction pending appeal so they  
 8 may immediately alter the status quo and commence implementing the Ban and engaging in  
 9 unconstitutional discrimination. (*See* Dkt. No. 106, #238.) They did not meet the standard before,  
 10 and they do not meet it now.

11 **BACKGROUND**

12 Defendants’ stay request is predicated on an erroneous proposition: that Department of  
 13 Defense’s (“DoD”) Report and Recommendations on Military Service by Transgender Persons  
 14 (the “Implementation Plan”) is a “new” policy that is different from the one this Court already  
 15 enjoined. The facts show otherwise. President Trump’s 2017 Memorandum ordered DoD to  
 16 “submit to [the President] a plan for implementing both the general polic[ies] . . . and the specific  
 17 directives” it announced. (Dkt. No. 34, Ex. 7.) In other words, on its face it “order[ed] the  
 18 directives to be implemented by specific dates”—it did *not* request “a study to determine whether  
 19 or not the directives should be implemented,” as the government continually argues. *Stone v.*  
 20 *Trump*, No. MJG-17-2459, 2017 WL 5589122, at \*10 (D. Md. Nov. 21, 2017); *accord* (Dkt. No.  
 21 103, at 13.) Following those explicit orders, DoD provided the President with the requested  
 22 Implementation Plan—which, unsurprisingly, implements the President’s commands. Then,  
 23 Implementation Plan in hand, the President issued a new memorandum, in which he purportedly  
 24 “revoke[d]” his previous directives so DoD could go forward with the Implementation Plan *he*  
 25 *ordered* and the Secretary created to “carry out the President’s policy and directives.” (Dkt. No.  
 26 69-1 at 1.) This Court correctly concluded President Trump’s 2018 Memorandum and the  
 27 Implementation Plan continued “the very same violations that caused it and other courts to enjoin  
 28 the Ban in the first place.” (Dkt. No. 233 at 12.)

1 Against that backdrop, Defendants fail to meet the stringent requirements for a stay, let  
 2 alone show that the Court abused its discretion in continuing to keep the preliminary injunction  
 3 in place. The thrust of Defendants’ motion is that they will supposedly suffer irreparable harm if  
 4 they are not permitted to continue discriminating against transgender persons who wish to join  
 5 and serve in the military on equal footing with their fellow Americans. At the same time,  
 6 Defendants completely ignore the substantial constitutional harms that a stay would impose upon  
 7 transgender service members and those seeking to join the military. All the while, Plaintiffs  
 8 remain likely to succeed on the merits of their claims against Defendants’ unconstitutional Ban.  
 9 Defendants’ insistence that the most sophisticated military in the world cannot maintain the  
 10 status quo pending appeal without incurring grave risk rings hollow, as confirmed by the  
 11 experience and judgment of senior military leaders.

## 12 ARGUMENT

### 13 **A. Defendants Cannot Meet the High Standard for a Stay Pending Appeal of a** 14 **Preliminary Injunction**

15 This Court should stay the preliminary injunction—now in force for over five months,  
 16 following Defendants’ voluntary dismissal of their initial appeal. A stay pending appeal “is an  
 17 intrusion into the ordinary processes of administration and judicial review.” *Nken v. Holder*, 556  
 18 U.S. 418, 427, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) (internal citation and quotation marks  
 19 omitted). It is therefore “not a matter of right, even if irreparable injury might otherwise result.”  
 20 *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017) (internal citation and quotation marks  
 21 omitted). When determining whether to grant a stay, a court considers (1) whether the  
 22 government “has made a strong showing that [it] is likely to succeed on the merits, (2) whether  
 23 the [government] will be irreparably injured absent a stay; (3) whether issuance of the stay will  
 24 substantially injure the other parties interested in the proceeding; and (4) where the public  
 25 interest lies.” *Id.* Defendants’ already demanding burden to show they are likely to succeed on  
 26 the merits of their appeal is elevated even higher by the “limited and deferential” abuse-of-  
 27 discretion standard of review for preliminary injunctions. *Cnty. House, Inc. v. City of Boise*, 490  
 28 F.3d 1041, 1047 (9th Cir. 2007); *see also Sports Form, Inc. v. United Press Int’l, Inc.*, 686 F.2d

1 750, 752 (9th Cir. 1982).

2 **1. Defendants Have Not—and Cannot—Make the Strong Showing of Likelihood**  
 3 **of Success on the Merits Required to Justify a Stay**

4 Defendants’ request for a stay fails at the outset, coming nowhere close to a “strong  
 5 showing” that they are “likely to succeed on the merits.” *Washington*, 847 F.3d at 1164. Because  
 6 the government sought to dissolve a preliminary injunction, it was required to show “a  
 7 significant change in facts or law warrants revision or dissolution of the injunction.” *Sharp v.*  
 8 *Weston*, 233 F.3d 1166, 1170 (9th Cir. 2000). Instead, Defendants offer only a perfunctory  
 9 recitation of arguments this Court has already considered and properly rejected. Indeed, the  
 10 government admits the very same factors that led to the Court’s decision both to enter, and  
 11 maintain, the preliminary injunction govern the outcome here—yet the government offers  
 12 nothing new to suggest the outcome should be any different the third time around. (*See* Dkt. No.  
 13 238 at 2.) Defendants’ only argument on this point is that they are likely to succeed on their  
 14 deference claim, which they submit should apply to the “new” policy. (*Id.*) Yet, as this Court  
 15 already found, the Implementation Plan does not “substantively rescind or revoke the Ban,” but  
 16 rather threatens “the very same violations that caused [this and other courts] to enjoin the Ban in  
 17 the first place.” (Dkt. No. 233 at 12.) Moreover, the government mischaracterizes this Court’s  
 18 most recent ruling as “expressly reserv[ing] final ruling on the degree of deference that DoD’s  
 19 *new policy* should receive.” (Dkt. No. 238 at 4 (emphasis added).) To the contrary, the Court  
 20 concluded that “whether *the Ban*”—the very same Ban that has been in existence at every stage  
 21 of this case—“is entitled to deference raises an unresolved question of fact.” (Dkt. No. 233 at 26  
 22 (emphasis added).) This is a far cry from finding that Defendants are likely to succeed on their  
 23 deference claim.

24 Indeed, the government fails to make the required strong showing of likelihood of success  
 25 on the merits of its appeal for the very same reasons that Plaintiffs continue to show a likelihood  
 26 of success on their constitutional claims. *First*, as this Court has already found, the Ban is subject  
 27 to strict scrutiny because it discriminates based on a suspect classification. (*See* Dkt. No. 233 at  
 28 20–24.) *Second*, the Ban cannot survive strict scrutiny for two independent reasons: (a) the

1 government only offers impermissible *post hoc* justifications for the Ban, and (b) the  
2 government’s scant *post hoc* evidence fails to provide a compelling governmental interest, or to  
3 show that the Ban is narrowly tailored to achieve it. *See Grutter v. Bollinger*, 539 U.S. 306, 333  
4 (2003).

5 a. The Ban Is Subject to Strict Scrutiny

6 As this Court has held, discrimination against transgender people exhibits all the indicia  
7 of a suspect classification. (*See* Dkt. No. 233, at 21–24.) And it is settled law in this circuit that  
8 discrimination on the basis of gender identity or perceived gender nonconformity also is a form  
9 of gender discrimination, requiring intermediate scrutiny. *See Schwenk v. Hartford*, 204 F.3d  
10 1187, 1201–02 (9th Cir. 2000). The Ban therefore triggers some form of heightened scrutiny  
11 under equal protection. Additionally, at a minimum, heightened scrutiny is also required under  
12 due process and the First Amendment, because the Ban burdens a fundamental liberty interest to  
13 live in accordance with one’s gender identity. (Dkt. No. 103 at 18–20.)

14 The government offers two responses to this obvious result, but neither helps. *First*, the  
15 government claims rational basis review applies because the Implementation Plan purportedly  
16 draws lines on the basis of “a medical condition and its attendant treatment—gender dysphoria  
17 and transition—not on the basis of whether a person is transgender.” (Dkt. No. 238 at 4 n.3.)  
18 This assertion strains credulity and logic. The classifications are inescapably based on  
19 transgender status—the President’s 2018 Memorandum alone refers seven times to transgender  
20 people, including in the subject line; and the Implementation Plan’s *title* refers to “Military  
21 Service by Transgender Persons”—and thus trigger strict scrutiny. This tactic built on sophistry  
22 has been attempted before and has failed each time. *See, e.g., Christian Legal Soc’y v. Martinez*,  
23 561 U.S. 661, 689 (2010) (targeting same-sex conduct necessarily targets the status of being  
24 gay); *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 270 (1993); *Pac. Shores Props.*  
25 *LLC v. City of Newport Beach*, 730 F.3d 1142, 1159 n.23 (9th Cir. 2013).

26 *Second*, the government argues a lower tier of scrutiny applies to the military context.  
27 (Dkt. No. 238, at 5.) Not so. The Supreme Court explicitly rejected this argument in *Rostker v.*  
28 *Goldberg*, 453 U.S. 57, 69–71 (1981) (declining “to apply a different equal protection test

1 because of the military context”); *accord Witt v. Dep’t of Air Force*, 527 F.3d 806 (9th Cir.  
 2 2008) (applying heightened scrutiny to military justifications for “Don’t Ask, Don’t Tell”). Nor  
 3 is any deference due to the Implementation Plan, for it is not the product of an independent  
 4 decision-making process to which this Court could even defer. DoD had previously confirmed it  
 5 would “carry out the President’s direction,” and “develop a study and implementation plan” for  
 6 the policies in the 2017 Memorandum and “provide advice and recommendations on the  
 7 implementation of the [P]resident’s policy direction.” (Dkt. No. 197, Ex. 2.) It promised to  
 8 “develo[p] an Implementation Plan” that would “effect the policy and directives in the August  
 9 25, 2017 Presidential Memorandum.” (Declaration of Daniel Siegfried (“Siegfried Decl.”) Ex.  
 10 2.) That is exactly what it did.

11 The hasty review process that led to the Implementation Plan (attached as Exhibit B to the  
 12 Declaration of George R. Brown (“Brown Decl.”)), based on limited data and rife with  
 13 unsupported conclusions, prevents it from even approximating the thorough analysis and  
 14 considered judgment that characterize the military’s usual policymaking process. As explained in  
 15 detail by 34 high-ranking retired military officers and national security officials, the process here  
 16 starkly departs in material ways from the military’s prior searching review and examination of  
 17 major personnel policies. (*See generally* Siegfried Decl. Ex. 10; *id.* at 6–7 (decision to repeal  
 18 Don’t Ask, Don’t Tell was reached after 95 forums at 51 military bases, input from about  
 19 400,000 service-members, and a comprehensive, 256-page report); *id.* at 7–8 (removal of barriers  
 20 to service by women in combat roles proceeded over at least three years and involved over thirty  
 21 studies).) The Implementation Plan’s irregular process resulted in aberrant results that contravene  
 22 the overwhelming consensus of leading medical organizations. (*See* Brown Decl. Ex. D (DoD  
 23 “mischaracterize[s] and reject[s] the wide body of peer-reviewed research”); *accord id.* Ex. C  
 24 (“misuse[s] . . . psychological science”).)

25 b. The Ban Fails Strict Scrutiny

26 The President’s discriminatory Ban cannot survive any form of heightened scrutiny for two  
 27 fundamental reasons. *First*, under heightened scrutiny, the burden is on the government to justify  
 28 its discrimination, limited only to the actual and genuine reasons that motivated its actions *at the*

1 *time it commenced the discriminatory actions*; the government cannot rely on justifications that  
 2 are conceived to buttress a decision already made. *See Sessions v. Morales-Santana*, 137 S.Ct.  
 3 1678, 1696–97 (2012); *United States v. Virginia*, 518 U.S. 515, 533 (1996); *W. States Paving*  
 4 *Co. v. Wash. State Dep’t of Transp.*, 407 F.3d 983, 991, 993 (9th Cir. 2005). Here, however, the  
 5 government does not offer a single scrap of evidence that its purported justifications for the Ban  
 6 pre-existed its announcement, leaving Defendants in the same position as had they offered no  
 7 justification at all. (*See, e.g.*, Dkt. No. 211 at 2 (“Defendants . . . do not intend to rely on  
 8 information concerning the President’s deliberative process that led to . . . the policy announced  
 9 on Twitter by President Trump on July 26, 2017[.]”).) Rather, the government points only to the  
 10 Implementation Plan to justify its discriminatory policies. It is beyond dispute the Ban was  
 11 announced and ordered in 2017, through the President’s tweets and 2017 Memorandum. The  
 12 government’s purported likelihood of success is premised entirely on the Court accepting the  
 13 President’s counterfactual reality by expunging the history leading to the Implementation Plan  
 14 and pretending at the end of the process *he ordered* that he actually had no role in the decision *he*  
 15 *made* and instructed his subordinates to justify.

16 *Second*, the government must establish that its discrimination is narrowly tailored to  
 17 further a compelling governmental interest. *Johnson v. California*, 543 U.S. 499, 505 (2005).  
 18 Even if the Court were to consider the improper *post hoc* evidence in the Implementation Plan, it  
 19 would still be insufficient to justify the President’s discriminatory policies. The Implementation  
 20 Plan’s recommendation is replete with baseless assumptions, and most importantly, provides no  
 21 *new* information that justifies the Ban’s sweeping exclusion of transgender persons from open  
 22 service and overturning the military’s own prior judgment based on RAND Corporation and the  
 23 Carter Working Group’s (the “Working Group”) thorough and impartial analysis.

24 Standing in stark contrast to the Implementation Plan’s cursory and conclusory process, in  
 25 July 2015 the Working Group convened approximately 25 senior uniformed officers and civilian  
 26 officials from each service branch, including Surgeons General, to identify practical issues  
 27 related to open service and analyze whether such service was consistent with maximum “military  
 28 effectiveness and readiness.” (Dkt. No. 46-1.) It conducted a careful, “evidence-based

1 assessment” of “all the available evidence” and consulted with experts in medicine, health  
 2 insurance, personnel, and readiness, as well as military commanders. (Declaration of Brad R.  
 3 Carson (“Carson Decl.”) ¶ 6, 18.) The Working Group also commissioned RAND Corporation—  
 4 a non-profit, non-partisan research institution with decades of experience advising the military—  
 5 which over the course of nine months conducted a multidisciplinary, detailed, and data-driven  
 6 approach to study (1) the health care needs of the transgender population; (2) the readiness  
 7 implications of open service; and (3) the experiences of foreign militaries. (Dkt. No. 46-2 at  
 8 Preface.) In contrast, the lack of careful analysis that led to the Implementation Plan is apparent  
 9 on its face.

10 For example, the Implementation Plan’s recommendations cite no evidence contradicting  
 11 the Working Group’s finding that open service would have “no greater impact on deployability  
 12 than service by individuals with many other medical conditions that are not disqualifying.”  
 13 (Carson Decl. ¶ 14.) Whereas the Carter policy was tailored to “minimiz[e] any impact on  
 14 deployability” and included provisions that mitigated such impacts in a manner that was  
 15 “consistent with medical standards” and satisfied “military readiness concerns,” (*Id.* ¶¶ 16, 17),  
 16 the Implementation Plan’s recommendations paint transgender service-members with overbroad  
 17 generalizations. Citing *no data* whatsoever, the Implementation Plan speculates that transition-  
 18 related care “could” render a transgender service-member non-deployable for “perhaps even a  
 19 year.” Implementation Plan at 33. The Implementation Plan never disputes the RAND Report’s  
 20 conclusion that the “impact [of open service] on readiness would be minimal—e.g., 0.0015% of  
 21 available deployable labor-years[,]” *Id.* at 34, and it fails to explain why transgender service-  
 22 members should be treated differently from service-members with equally temporary and limited  
 23 periods of non-deployability due to conditions like pregnancy, sleep apnea, appendicitis, or gall  
 24 bladder disease. (*See* Carson Decl. ¶ 20.) To the contrary, a former Chair of the Joint Chiefs of  
 25 Staff determined, based on the evidence, that an “[i]nclusive policy for transgender troops  
 26 *promotes* readiness.” (Dkt. No. 148 ¶ 7 (Declaration of Admiral Mullen) (emphasis added).)

27 Nor do the Implementation Plan’s recommendations provide any support for its repeated  
 28 and conclusory assertion that open service threatens “unit cohesion.” The Working Group

1 addressed the very same questions about privacy and good order and discipline that the  
2 Implementation Plan frames as insuperable obstacles and made an evidence-based determination  
3 that service by transgender persons had not led to “any significant issues or impacted morale or  
4 unit cohesion.” (Carson Decl. ¶ 23.) The Implementation Plan fails to address any of the negative  
5 impacts on readiness, morale, and cohesion imposed by forcing transgender service-members to  
6 serve in silence and ignores the military’s experience with policies permitting women to serve in  
7 combat positions and allowing open service by gay and lesbian personnel, where fears about  
8 “unit cohesion” proved equally unfounded. (*Id.* ¶ 26.)

9 Most strikingly, open service has been in place for nearly two years, and the military  
10 leadership’s own recent testimony to Congress on that experience flatly rejects the  
11 Implementation Plan’s conclusions. Notably, Army Chief of Staff General Mark Milley testified  
12 to Congress that “he monitor[s] very closely” the situation, and “received precisely *zero* reports  
13 . . . of issues of cohesion, discipline, morale and all those sorts of things.” (Siegfried Decl. Ex. 14  
14 at 99–100 (emphasis added).) Chief of Naval Operations Admiral John Richardson and Marine  
15 Corps Commandant General Robert Neller both likewise testified that they have had no reports  
16 of negative impacts to good order and discipline or unit cohesion. (*Id.* Ex. 15 at 83, 85; *see also*  
17 *id.* Ex. 16 at 71–73).) The Implementation Plan’s outcome-driven speculation to the contrary  
18 cannot withstand the actual evidence.

19 Perhaps the most gaping hole in the Implementation Plan’s recommendations relates to its  
20 cost justification—a purported justification that is both legally impermissible *and* unsupported  
21 by the evidence. The Supreme Court has long made clear that cost savings alone cannot justify  
22 discrimination. *See Mem. Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 263 (1974) (government  
23 cannot “protect the public fisc by drawing an invidious distinction between classes” of persons).  
24 Even if it could, the Implementation Plan still fails to provide *any* new data that undermines the  
25 conclusions of the Working Group and RAND. Rather than conducting the detailed, evidence-  
26 based analysis necessary to estimate the cost of transition-related care, the Implementation Plan’s  
27 recommendation assumes such care is “disproportionately costly” based on decontextualized  
28 anecdotes and vague concerns that “it remains to be seen how many [transgender service

1 members] will ultimately obtain surgeries.” Implementation Plan at 41. Nowhere does the  
 2 Implementation Plan contradict the RAND Report’s upper-bound estimate of annual transition-  
 3 related care of \$8.4 million (out of an annual active duty health care budget of \$6.2 *billion*)—  
 4 “budget dust” and “hardly even a rounding error” according to former Secretary of the Navy Ray  
 5 Mabus. (Dkt. No. 46-2 at 36; Dkt. No. 48 ¶ 41.) Nor does the Implementation Plan account for  
 6 the significant costs associated with the Ban, including the loss of qualified personnel. (*See* Dkt.  
 7 No. 46 ¶ 32.) Legal flaws aside, the Implementation Plan’s failure to do the math renders its  
 8 purported cost justifications factually inadequate to sustain the Ban too.

9 **2. The Government Does Not Show Irreparable Harm Pending Appeal, While a**  
 10 **Stay Would Harm Plaintiffs and the Public Interest**

11 Independently, the Court should deny the government’s motion because the government  
 12 cannot meet its burden of showing it will suffer irreparable harm absent a stay pending appeal.  
 13 At the same time, a stay would severely injure Plaintiffs and the public interest.

14 As the Court has already concluded, Plaintiffs face a variety of legally cognizable and  
 15 irreparable harms from the Ban, including exclusion from joining the military, discharge from  
 16 the military, and denial of medical treatment.<sup>1</sup> These injuries are not abstract. And they are  
 17 coupled with the ongoing harm Plaintiffs would suffer, in the absence of an injunction, by being  
 18 marked as unworthy of military service. Even those “grandfathered” in will bear the  
 19 “depri[vation] of dignity,” and “stigmatization” from being labeled as part of an “innately  
 20 inferior” class. (Dkt. No. 103, at 8.) “The Supreme Court has repeatedly emphasized [that]  
 21 discrimination itself, by perpetuating archaic and stereotypic notions or by stigmatizing members  
 22 of the disfavored group as innately inferior and therefore less worthy participants, can cause  
 23 severe injuries to those who are denied equal treatment solely because of their membership in a  
 24

25 <sup>1</sup> Defendants’ assertion that service members who received a diagnosis of gender dysphoria  
 26 before the Carter policy can still qualify for the “grandfather” exception flatly contradicts the  
 27 plain terms of the Implementation Plan, and the document they cite (Department of Defense  
 28 Instruction 1300.28) also does not support their assertion. Plaintiffs Schmid and Muller were  
 both diagnosed with gender dysphoria before the Carter policy, subjecting them to discharge  
 under the Implementation Plan. (*See* Dkt. No. 233 at 15–17; *see also* Declaration of Lindsey  
 Muller; Declaration of Cathrine Schmid.)

1 disfavored group.” *Latta v. Otter*, 771 F.3d 456, 467 n.7 (9th Cir. 2014) (internal quotation  
2 marks and citation omitted).

3 These irreparable injuries threatening Plaintiffs outweigh any claimed harm to the  
4 government pending appeal. Notably, though the Carter Policy allowing open service has now  
5 given the government nearly two years of live experience with open service, the government  
6 relies almost exclusively on hypothetical and speculative concerns. But as Admiral Richardson  
7 testified on the Navy’s direct experience with open service: “It’s steady as she goes.” (Siegfried  
8 Decl. Ex. 15 at 84.) Tellingly, the “best illustration” of a supposedly insurmountable problem the  
9 government can muster from two years of open service—the best justification for placing  
10 thousands of lives and livelihoods in immediate jeopardy—is that a single commander was  
11 “confronted with dueling equal opportunity complaints” arising from a dispute between a  
12 transgender woman and a non-transgender woman. Implementation Plan at 37.

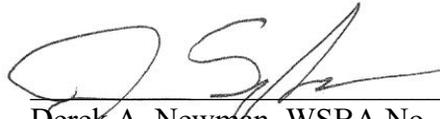
13 As the status quo remains “steady,” the government’s claims of irreparable harm pending  
14 appeal fall flat. In contrast, a stay would irreparably injure Plaintiffs, including through  
15 deprivation of their constitutional rights. “[I]t is always in the public interest to prevent the  
16 violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.  
17 2012) (Internal citations and quotation marks omitted); *see also Hernandez v. Sessions*, 872 F.3d  
18 976, 1000 (9th Cir. 2017). Moreover, maintaining the status quo pending appeal serves to further  
19 the goal of a strong national defense by continuing and permitting the employment of skilled and  
20 qualified service-members dedicated to their country.

## 21 CONCLUSION

22 Due in no small part to the preliminary injunction, transgender troops have continued to  
23 serve openly with honor and distinction for nearly two years, and without any of the ill effects  
24 the Implementation Plan speculates might occur. Flying in the face of logic, experience, and the  
25 Constitution’s promise of equal dignity, the government asks this Court for permission to reverse  
26 course and return to an era of unjustified discrimination on the basis of a characteristic that has  
27 no bearing on an individual’s fitness to serve. The government has not borne its burden of  
28 showing that a stay should issue, and this Court should therefore deny its motion.

1 Respectfully submitted May 14, 2018.

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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that all participants in the case are registered CM/ECF users and that service of the foregoing documents will be accomplished by the CM/ECF system on May 14, 2018.



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