

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	18-35347		
District Court/Agency Case Number(s):	2:17-cv-01297		
District Court/Agency Location:	Western District of Washington		
Case Name:	Karnoski, et al.	v.	Trump, et al.
If District Court, docket entry number(s) of order(s) appealed from:	233		
Name of party/parties submitting this form:	Donald J. Trump; United States of America; James Mattis; U.S. Depart		

Please briefly describe the dispute that gave rise to this lawsuit.

On April 13, 2018, the district court denied the Government's motion to dissolve a preliminary injunction entered in December 2017, which enjoins a now-revoked presidential memorandum addressing the accession and retention of transgender service members as well as government funding for their sex reassignment surgeries. The Government, out of an abundance of caution, sought to dissolve that preliminary injunction so that it could implement the new policy proposed in 2018 by the Department of Defense. The district court denied the motion, stating that the preliminary injunction "remains in full force and effect" and that defendants "are enjoined from taking any action relative to transgender people that is inconsistent with the status quo that existed prior to President Trump's July 26, 2017 announcement" that transgender individuals would not be permitted to serve in the military.

Briefly describe the result below and the main issues on appeal.

The district court, without even examining the preliminary-injunction factors with respect to the military's new, 2018 policy, continued its preliminary injunction, which concerns a now-revoked 2017 presidential memorandum addressing a substantially different policy, as to the new 2018 policy. In so doing, the district court ordered the military to maintain a course of action that the Department of Defense has concluded would undermine military effectiveness and lethality. Because the military's 2018 policy is constitutional, plaintiffs cannot demonstrate a likelihood of success on the merits to support a preliminary injunction. The district court also abused its discretion in weighing the equities to conclude that a preliminary injunction against the new policy was warranted.

Describe any proceedings remaining below or any related proceedings in other tribunals.

The Government first requested a stay pending appeal from the district court, on which the district court declined to issue an expedited ruling, and which therefore remains pending before the district court.

Provide any other thoughts you would like to bring to the attention of the mediator.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov). Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

### CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

**Note:** Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

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