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Molly C. Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

July 4, 2018

Re: *Karnoski v. Trump*, Case No. 18-35347
Plaintiffs' Response to Defendants' Notice of Supplemental Authority

Dear Ms. Dwyer:

Plaintiffs submit this letter in response to Defendants' reliance on *Trump v. Hawaii*, No. 17-935 (June 26, 2018) ("*Hawaii*").

First, *Hawaii* emphasized that the policy at issue—a proclamation regarding admission into the country by individuals from particular countries—was neutral on its face toward religion. The plaintiffs in *Hawaii* argued that the proclamation was nonetheless motivated by an intent to exclude Muslims based on statements by President Trump. Here, the policy at issue is not facially neutral towards transgender people: it was formalized through presidential memoranda titled, "Military Service by Transgender Individuals." Had the proclamation in *Hawaii* instead been titled, "Muslim Admission Policy," there is no question that the case would have been resolved differently.

Defendants also urge this Court to ignore the 2017 Presidential Memorandum. But that Memorandum is not merely "extrinsic evidence" of intent here. As the district court found and the undisputed facts show, it specifically ordered both of the documents Defendants rely upon (the Department of Defense Report and February 22, 2018 memorandum), as well as the three bans they implement as to accession, retention (subject to a reliance exception), and transition-related surgical care.

Second, *Hawaii* only applied rational basis review to the plaintiffs' Establishment Clause claim because the Court concluded that the policy at issue was not motivated by an intent to exclude Muslims. It certainly did not hold, however, that a facially discriminatory classification should be tested under rational basis review, as Defendants have argued here.

Third, Justice Thomas' lone concurrence regarding "nationwide injunctions" does not constitute Rule 28(j) "authority," let alone address precedent that injunctive relief should correspond to the scope of the constitutional violation, *see* Pls.' Answering Br., Dkt. 40, at 58-59, or constitute the significant change in law required to dissolve an injunction. *Sharp v. Weston*, 233 F.3d 1166, 1170 (9th Cir. 2000).

Respectfully submitted,

s/ Peter C. Renn

Peter C. Renn
Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Court by using the appellate CM/ECF system on July 4, 2018. I certify that all participants in the case registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Peter C. Renn
Peter C. Renn