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July 6, 2018

Molly Dwyer
Clerk of the Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

RE: Karnoski, et al v. Trump, 18-35347 – Washington’s Response to Defendants-Appellants’ Letter of Supplemental Authority

Dear Ms. Molly Dwyer,

On July 2, 2018, Defendants-Appellants submitted a letter pursuant to Federal Rule of Appellate Procedure 28(j) regarding the Supreme Court’s decision in *Trump v. Hawaii*, No. 17-965, 585 U.S. ____, 2018 WL 3116337 (June 26, 2018). Contrary to Defendants-Appellants’ characterization, the *Hawaii* opinion supports Washington’s claims and arguments presented to this Court.

First, while the Court held that the challenged policy in *Hawaii* was facially neutral, the Court reaffirmed that – at a minimum – rational basis review applies when reviewing facially neutral policies. Slip op. at 32. Here, Defendants-Appellants’ ban on military service by transgender individuals articulated in the 2017 Presidential Memorandum and implementing documents, the 2018 Presidential Memorandum, and Secretary Mattis’ February 22, 2018 Policy Recommendation (collectively “the Ban”) is not facially neutral, because it explicitly targets transgender individuals and facially discriminates based on sex and gender identity. *Hawaii* does not eliminate heightened scrutiny of government policies targeting suspect or quasi-suspect classes. *Compare* Defs.-Appellants’ Opening Br. at 20-23, ECF 30.

Second, the Court affirmed that governmental policies will not survive even rational basis review if “the laws at issue lack any purpose other than a ‘bare . . . desire to harm a politically unpopular group.’” Slip op. at 33. The Ban does exactly that. Defendants-Appellants forward no legitimate governmental interest furthered by the ban on military service by transgender individuals. Washington’s Answering Br. at 29-33, ECF 42. Heightened scrutiny applies to this case based on precedents left untouched by *Hawaii*, but the Ban would fail even the rational basis review applied by the *Hawaii* Court.

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Third, Justice Thomas' concurrence regarding nationwide injunctions, written on behalf of one Justice, does not alter precedents affirming that district courts have the authority to issue nationwide injunctions. *See Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2088 (2017); *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987); Washington's Answering Br. at 39-40.

Sincerely,

A handwritten signature in blue ink, appearing to be 'LRB', with a long horizontal stroke extending to the right.

LA ROND BAKER
COLLEEN MELODY
Assistant Attorneys General
ALAN COPSEY
Deputy Solicitor General