

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Stephen R. Patton
To Call Writer Directly:
+1 312 862 3501
stephen.patton@kirkland.com

300 North LaSalle
Chicago, IL 60654
United States

+1 312 862 2000

www.kirkland.com

Facsimile:
+1 312 862 2200

August 10, 2018

Molly C. Dwyer
Clerk of Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: *Karnoski v. Trump*, No. 18-35347 (calendared for argument Oct. 10, 2018)

Dear Ms. Dwyer:

Plaintiffs-Appellees (“Plaintiffs”) submit this response to Defendants-Appellants’ Rule 28(j) letter [Dkt. 98-1] attaching this Court’s decision in *City and County of San Francisco v. Trump*, Nos. 17-17478, 17-17480, 2018 WL 3637911 (9th Cir. Aug. 1, 2018)—a decision that supports Plaintiffs, not the government.

After affirming the judgment for plaintiffs, this Court in *San Francisco* remanded for further consideration of the permanent injunction’s scope, citing the absence of record evidence beyond discrete grants affecting California. *Id.* Crucially, however, this Court rejected any “blanket restriction of all nationwide injunctions,” emphasizing that “an injunction is not necessarily made overbroad by extending benefit or protections to persons other than the prevailing parties.” *Id.* at *13. *San Francisco* thus reaffirmed the long-standing rule that nationwide injunctions are appropriate where “necessary to give Plaintiffs a full expression of their rights” and reiterated that a district court maintains “considerable discretion” to craft a remedy that “fit[s] the nature and extent of the constitutional violation.” *Id.* That is particularly true in an area requiring uniform national policy—like a military-wide personnel exclusion. *See Washington v. Trump*, 847 F.3d 1151, 1166-67 (9th Cir. 2017) (discussing risk of “fragmented” immigration policy).

Here, the district court determined nationwide relief is “dictated by the extent of the violation established.” SER.5. The court examined Plaintiffs’ “affidavits” and other “specific facts” to conclude that the Ban—which targets transgender people—has “already denied [Plaintiffs] the opportunity to serve in the military on the same terms as others; has deprived

KIRKLAND & ELLIS LLP

Molly C. Dwyer
August 10, 2018
Page 2

them of dignity; and has subjected them to stigmatization.” ER.16. “Such stigmatic injury, when identified in specific terms, is one of the most serious consequences of discriminatory government action[,]” and military-wide relief is necessary to prevent stigmatizing all transgender troops as second-class service members. *Id.* (internal quotes omitted). In short, consistent with this Court’s precedents—including *San Francisco*—the district court appropriately declined to dissolve the preliminary injunction, since the appropriate remedy for a facially unconstitutional scheme is to enjoin enforcement as a whole, and not to remove a handful of individuals from its reach. *See* Answering Br. at 58-59.

Respectfully submitted,

/s/ Stephen R. Patton

Stephen R. Patton
KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, IL 60654
(312) 862-3501
stephen.patton@kirkland.com

cc: all counsel
(via CM/ECF)

KIRKLAND & ELLIS LLP

Molly C. Dwyer
August 10, 2018
Page 3

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2018, the attached letter was filed electronically through the Court's CM/ECF system, and was provided by electronic mail to all counsel of record.

/s/ Stephen R. Patton

Stephen R. Patton

KIRKLAND & ELLIS LLP

300 N. LaSalle

Chicago, IL 60654

(312) 862-3501

stephen.patton@kirkland.com