

**[NOT YET SCHEDULED FOR ORAL ARGUMENT]**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

JANE DOE 2, *et al.*,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as  
PRESIDENT OF THE UNITED STATES,

Defendants-Appellants.

No. 18-5257

**GOVERNMENT’S MOTION TO EXPEDITE BRIEFING SCHEDULE**

Pursuant to 28 U.S.C. § 1657(a) and D.C. Circuit Rules 27 and 47.2(a), the government respectfully requests that the Court dispense with procedural and substantive motions and immediately commence with briefing on the following schedule:

Government’s opening brief:	September 21, 2018
Plaintiffs’ answering brief:	October 22, 2018
Government’s reply brief:	November 5, 2018

In support of the motion, the government states as follows:

1. This appeal arises from plaintiffs’ action for preliminary injunctive relief, challenging the military’s policy regarding service by transgender persons. In October 2017, the district court entered a preliminary injunction enjoining multiple directives in a 2017 presidential memorandum, effectively “revert[ing] to the *status quo*” of a

2016 military policy. Doc. 61, at 4. In March 2018, Secretary of Defense James Mattis announced a new policy, and the President “revoke[d]” his 2017 memorandum “and any other directive” on military service by transgender persons. Out of an abundance of caution, the government moved to dissolve the prior preliminary injunction to allow the military to safely adopt its recent 2018 policy. The district court denied the motion and concluded instead that implementing the 2018 policy “would violate the Court’s October 30, 2017 preliminary injunction.” Doc. 157, at 34. The government filed this appeal from that decision under 28 U.S.C. § 1292(a)(1), which permits review of interlocutory orders “granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions.”

**2.** The Court has set a schedule for the filing of preliminary motions. Procedural motions are due no later than September 28, 2018, and dispositive motions are due no later than October 15, 2018. Aside from the instant motion, the government does not intend to file any other procedural or substantive motions and instead requests that this Court commence with briefing immediately.

**3.** Courts “shall expedite the consideration of . . . any action for temporary or preliminary injunctive relief” or for “good cause” shown. 28 U.S.C. § 1657(a); *see* D.C. Cir. R. 47.2(a). Both conditions are met here.

**a.** This action is plainly an “action for . . . preliminary injunctive relief” within the meaning of 28 U.S.C. § 1657(a). Plaintiffs filed this action, seeking a preliminary injunction, and in fact obtained that relief. *See* Doc. 61. The operative complaint

“seeks declaratory, preliminary, and permanent injunctive relief” and requests that the district court “[i]ssue a preliminary and permanent injunction.” Doc. 106, at 2, 20. Significantly, § 1657(a) is not limited to review of orders *granting* preliminary injunctions. The statute broadly covers “any action” for “preliminary injunctive relief,” 28 U.S.C. § 1657(a), and therefore covers the array of reviewable preliminary-injunction orders arising from such actions. *See American Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 n.8 (D.C. Cir. 2001) (recognizing § 1657(a) covers “the granting or denying of a preliminary injunction”); *see also* 28 U.S.C. § 1292(a)(1) (listing various reviewable orders). This district court’s order denying the government’s motion to dissolve a prior preliminary injunction qualifies—even under a narrower conception of § 1657(a)—as the court made a determination extending its prior injunction to forbid the military from implementing its 2018 policy. *See* Doc. 157, at 34. The order in effect operates as a new injunction against the new policy and this appeal would resolve whether that preliminary injunction is warranted.

**b.** There is, in any event, good cause to expedite this appeal. The district court’s order prevents the adoption of a 2018 policy that the military, in its best professional judgment, has determined is necessary. The order instead relies on an October 2017 injunction—concerning a now-revoked 2017 presidential memorandum—to continue requiring the military to implement a 2016 policy that had not yet gone into full effect. As a result, the Nation’s military is operating under a policy that is two iterations obsolete. The military has determined, moreover, that the

2016 policy poses “substantial risks” and threatens to “undermine readiness, disrupt unit cohesion, and impose an unreasonable burden on the military that is not conducive to military effectiveness and lethality.” Doc. 96-1, at 3. This military determination that a new policy is required involves “complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force” and is entitled to great weight. *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 24 (2008) (quotation omitted). Expedited briefing is warranted to resolve the urgent and significant military issues presented by this appeal, and prompt resolution is especially needed as the district court decided these issues in the preliminary-injunction context.

4. The government's requests that this Court commence with briefing, beginning with the government's opening brief due September 21, 2018. The government's proposed briefing schedule would provide plaintiffs the standard 30 days (until October 22, 2018) to file an answering brief. The government's motion for an expedited briefing schedule therefore only cuts short its own time to file a brief.

5. Counsel for the government contacted counsel for plaintiffs, Paul R.Q. Wolfson, to notify them of the government's intent to file this motion for expedited briefing. In doing so, counsel for the government offered to truncate its briefing time through this proposed schedule to accommodate counsel's other litigation commitments. Counsel for plaintiffs have indicated that they do not consent to this motion.

Respectfully submitted,

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SEPTEMBER 2018

## **CERTIFICATION OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 878 words, according to the count of Microsoft Word.

s/Tara S. Morrissey  
TARA S. MORRISSEY

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2018, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/Tara S. Morrissey  
TARA S. MORRISSEY