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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AIDEN STOCKMAN; NICOLAS TALBOTT; TAMASYN REEVES; JAQUICE TATE; JOHN DOES 1-2; JANE DOE; and EQUALITY CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. 5:17-CV-01799-JGB-KK

PLAINTIFFS' OPPOSITION TO MOTION TO STAY PENDING APPEAL

Assigned to The Hon. Jesus G. Bernal

Date: January 7, 2019
Time: 9:00 a.m.
Place: Courtroom 1

STATE OF CALIFORNIA,
Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

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I. INTRODUCTION

Defendants demonstrate no reason why this Court's preliminary injunction – issued nearly one year ago – should be stayed, and no reason why they now should be permitted a third bite at the apple to challenge the injunctive relief properly ordered by this Court.

On December 22, 2017, this Court "preliminarily enjoin[ed] the Accession, Retention, and Sex Reassignment Surgery Directives" (the "ban") (the "PI Order," Dkt. No. 79 at 20), rejecting many of the same arguments that Defendants now raise in their motion to stay ("Motion") (Dkt. No. 130), and concluding that (i) Plaintiffs "demonstrated their Equal Protection claim will likely succeed on the merits," (ii) Plaintiffs would suffer "irreparable injury" should the ban go into effect, and (iii) the "balance of equities and public interest weighs in favor of injunctive relief." (Dkt. No. 79 at 19-20.)

In the twelve months since this Court's Order, Defendants have repeatedly sought to sidestep this Court's injunction in order to ban military service by transgender people. Initially, Defendants raised the same arguments they raise now in a failed motion to dissolve that injunction. (Dkt. Nos. 82, 124.) Subsequently, Defendants filed a series of motions to stay – not only in this Court, but also in the Ninth Circuit and United States Supreme Court without even waiting for this Court to rule on the present Motion. (*Stockman*, No. 18-678 (Supreme Court of the United States, filed on December 13, 2018); *Stockman*, No. 18-56539 (Ninth Circuit, filed on December 3, 2018).)

With unexplained urgency and disregard for proper procedure, and without any new facts or law that might justify another request to revisit the injunctive relief ordered by this Court, Defendants demand relief. But, "all Plaintiffs seek during this litigation is to serve their Nation with honor and dignity, volunteering to face extreme hardships, to endure lengthy deployments and separation from family and friends, and to willingly make the ultimate sacrifice of their lives if necessary to

protect the Nation, the people of the United States, and the Constitution against all who would attack them." *Doe I v. Trump*, No. 17-5267, 2017 WL 6553389 at *3 (D.C. Cir. Dec. 22, 2017). The government can point to no "extraordinary circumstances" to support Defendants' third request in this Court to ban Plaintiffs from military service, nor is there any explanation for Defendants' delay in seeking a stay. This Court should deny Defendants the "extraordinary remedy" of staying this Court's preliminary injunction.

II. BACKGROUND

In July 2017, President Trump announced that he would no longer permit transgender people to serve in the United States military. (Dkt. No. 28-6.) On August 25, 2017, President Trump formally ordered the Department of Defense ("DOD") and Department of Homeland Security ("DHS") to develop a plan to reinstate a ban on military service by transgender individuals (the "August 25 Directive"). (Dkt. No. 28-7.) Plaintiffs brought this action challenging the ban on equal protection grounds, among others. (Dkt. No. 1.) On November 16, 2017, this Court allowed the State of California to intervene to join Plaintiffs in challenging the ban. (Dkt. No. 66.)

On December 22, 2017, this Court enjoined Defendants from reinstating a ban on military service by transgender people. (PI Order at 16.) The Court concluded that Plaintiffs were likely to succeed in their equal protection challenge, that Plaintiffs would suffer irreparable injury if the ban were enforced, and that the public interest weighed in favor of granting injunctive relief. (*Id.* at 15-16.) Defendants did not seek a stay. On February 22, 2018, Secretary of Defense James Mattis provided the President with a plan to implement the ban (the "Implementation Plan"). On March 23, 2018, the government publicly released the Implementation Plan and moved to dissolve the injunction that same day. (Dkt. No. 82.) On September 18, 2018, this Court denied Defendants' motion, finding the Implementation Plan would subject Plaintiffs to substantially the same constitutional

injuries the preliminary injunction seeks to prevent, and that the balance of hardships and the public interest strongly favored keeping the injunction in place. (Dkt. No. 124.) The government appealed that ruling to the Ninth Circuit, but chose not to seek a stay.

On November 20, 2018, the government filed a motion to hold the briefing schedule in abeyance pending the related appeal of *Karnoski v. Trump*, No. 18-35347 (9th Cir. oral argument heard Oct. 10, 2018) ("*Karnoski*"), and any further proceedings before the Supreme Court in that case. (*Stockman*, No. 18-56539, Dkt. No. 11.) On December 7, 2018, the government filed an unopposed motion to extend the deadline for its opening brief on appeal. (*Id.*, Dkt. No. 24.) Then, on December 11, 2018, the Ninth Circuit issued an order suspending briefing on the appeal pending further order. (*Stockman*, No. 18-56539, Dkt. No. 25.)

On November 23, 2018, the government filed a petition for a writ of certiorari before judgment in this case, as well as in *Karnoski* and *Doe 2, et al., v. Trump, et al.*, No. 17-01597 ("*Doe*"). (*Stockman*, No. 18-678 (filed Nov. 23, 2018).)

On November 28, 2018, the government filed its Motion, seeking to stay the preliminary injunction pending appeal.[1] (Dkt. No. 130.) Before briefing was

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[1] Defendants' Motion notes that Plaintiffs did not waive the requirements of Local Rule 7-3 prior to Defendants filing their motion. (Motion at 2 n.1.) On November 21, 2018 – the day before Thanksgiving – Defendants informed Plaintiffs that Defendants would seek a stay of this Court's preliminary injunction. Plaintiffs reminded Defendants that under Local Rule 7-3, the parties are required to confer at least 7 days before the filing of a motion, and asked for confirmation that Defendants planned to comply with the Local Rules. Defendants informed Plaintiffs that they intended to file that very day, and requested that Plaintiffs waive the requirements of Local Rule 7-3. If Plaintiffs did not, Defendants stated they would inform this Court that Plaintiffs "were unwilling to provide" their position before November 28. Plaintiffs requested that the parties have a telephone conference to discuss the basis for the requested relief. The parties spoke by telephone regarding the Motion on November 27, and Plaintiffs advised Defendants at that time that they saw no basis for the requested relief and intended to oppose.

Defendants' did not request that their Motion be heard on shortened time, but requested in the Motion that the Court rule by December 3, 2018 – a date two weeks

completed or this Court had been given the opportunity to rule on the motion at hand, the government sought the same relief in the Ninth Circuit and the Supreme Court of the United States. (*Stockman*, No. 18-678 (filed on December 13, 2018); *Stockman*, No. 18-56539, Dkt. No. 23.) Those petitions are currently pending.

III. ARGUMENT

A stay pending appeal is available "only under extraordinary circumstances." *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983).[2] It is an "exercise of judicial discretion," for which the government must show: (1) that it is likely to prevail on the merits, (2) that it will suffer irreparable injury, (3) that staying the injunction will not cause hardship to other interested parties, and (4) that permitting the government to exclude otherwise fit and qualified transgender people from military service will serve the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017).

As an initial matter, Defendants do not explain their delay in seeking a stay, and for that reason alone, have forfeited any claim upon this Court's equitable discretion. In addition, not one of the relevant factors favors granting Defendants this extraordinary relief. Defendants have failed to meet their "heavy burden," and their motion should be denied. *Id.* at 493.

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before Plaintiffs' opposition was due and over a month before the Motion was noticed for hearing. (Motion at 1.)

[2] Defendants misrepresent the rarity of staying an injunction pending appeal. They claim that "when courts enter injunctions, those same courts regularly find cause to stay their own rulings." (Motion at 4.) Yet neither case relied upon by Defendants held that stays of injunctions should be granted regularly. Forty years ago, the court in *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842 (D.C. Cir. 1977), upheld a stay of an injunction restraining the operation of a "motor coach sightseeing service," but did not hold that stays of injunctions should be common. In *Thiry v. Carlson*, 891 F. Supp. 563, 567 (D. Kan. 1995), the court *reinstated* an injunction because – as in the present case – failure to maintain the injunction would "destroy the rights plaintiffs seek to have protected." *Thiry*, 891 F. Supp. at 567. Nothing in Defendants' cited authority alters the Supreme Court precedent holding that a stay pending appeal is an "extraordinary" remedy, *i.e.*, not "regular."

A. The Stay Should Be Denied Because of Defendants' Unexplained Delay in Seeking Relief

The government's Motion is untimely and should be denied for that reason alone. To obtain extraordinary injunctive relief, a party must show that its need for such relief is urgent; unexplained delays in seeking equitable relief undercut the party claiming "irreparable injury." *See Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) (holding that a delay in seeking emergency relief "undercut [moving party's] claim of irreparable harm"); *Oakland Tribune, Inc. v. Chronicle Publ'g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (holding that a moving party's "delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm"); *Lopez v. Heckler, et al.*, 713 F.2d 1432, 1435 (9th Cir. 1983) (holding that "unexplained delay" in government's decision to seek a stay pending appeal weighed against the government's claimed need for emergency relief).

Here, Defendants could have appealed and moved to stay when this Court first enjoined the ban on December 22, 2017. They chose not to do so. On September 18, 2018, this Court declined to dissolve its enjoining of the ban. Rather than acting with the urgency they now claim is required, Defendants waited until the last possible day to file an appeal, a full two months later. And Defendants waited even longer to move for a stay. Defendants only requested a stay (first in this Court and then days later in the Ninth Circuit Court of Appeals and Supreme Court) after filing their petition for writ of certiorari before judgment in the Supreme Court. But that petition has no bearing on Defendants' delay in seeking a stay or the untimeliness of this Motion. To the contrary, the government acknowledges that it is seeking a stay in the Supreme Court only as an alternative to its petition for certiorari before judgment and that no stay is needed if the Supreme Court grants certiorari this term—thereby effectively admitting that there is no genuine basis for emergency relief. (*Stockman*, No. 18-678 (filed Dec. 13, 2018) at 2-3 ("[T]he government seeks . . . a stay only if the Court denies certiorari before judgment.").)

A stay pending appeal is a matter of equity. *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017); *see also Nken*, 556 U.S. at 433. Defendants forewent two opportunities to move for a stay, and make no attempt to explain why this Court should overlook their prior delays in light of the fact that they now are seeking emergency relief. By choosing inaction at every juncture, Defendants have forfeited any claim upon this Court's equitable jurisdiction. For that reason alone, their Motion should be denied.

B. None of the Stay Factors Favors Defendants

As evidenced by this Court's prior Orders, not one factor necessary to obtain a stay pending appeal supports Defendants' request.

First, as this Court held when granting the preliminary injunction and declining to dissolve it, Defendants have not shown a likelihood of success on the merits. Defendants' characterization of the ban as one based solely on a medical condition "does not match reality." (Dkt. No. 124 at 9.) Plaintiffs are "protected by the Fifth Amendment's Due Process Clause[, which] contains within it the prohibition against denying to any person the equal protection of the laws." (PI Order at 19 (citing *United States v. Windsor*, 570 U.S. 744, 755 (2013) (alterations in original).) The ban has not changed since this Court last ruled, and Defendants do not claim otherwise. Because Defendants cannot show a likelihood of success on the merits, their request for a stay should be denied.

Second, the government will not suffer irreparable injury should the status quo remain in place. For two years, openly transgender persons have been allowed to serve in the armed forces, and for nearly a year, they have been allowed to accede into the military. Yet Defendants offer no support for their conclusory statements that transgender service members threaten military readiness. Nor do they point to any changed circumstance, factual or legal, since this Court ruled on the motion to dissolve. "On the record before the Court, there is absolutely no support for the claim that ongoing service of transgender people would have any negative effect[]

on the military at all." (PI Order at 20 (quoting *Stone v. Trump*, 280 F. Supp. 3d 747, 769 (D. Md. 2017).) Nothing has changed to alter that finding. Defendants' "extensive review of military service," (Motion at 1), only "represent[s] after-the-fact justifications for the ban . . . [an] attempt[] to rationalize a decision made on July 26, 2017." (Dkt. No. 124 at 10.) Because, then as now, Defendants can show no irreparable injury, Defendants' Motion should be denied.

Third, as this Court already recognized in granting and declining to dissolve the preliminary injunction, Plaintiffs will be irreparably harmed should the ban go into effect. Defendants do not even attempt to argue otherwise. The record is replete with evidence submitted by Plaintiffs, as well as former service secretaries and military experts, explaining the concrete, negative effects the ban would have on Plaintiffs were it allowed to go into effect. (*See e.g.*, Dkt. Nos. 16-28, 102 (declarations in support of motion for preliminary injunction)); *see also*, *Doe 1*, No. 17-1597, Dkt. No. 187 at 23-24. Should the ban go into effect, aspiring transgender service members would be barred from enlisting, currently serving transgender service members ready to begin transition could be barred from doing so or face discharge, and openly serving transgender members of the military would be required to serve on grossly unequal terms. "A few strokes of the legal quill may easily alter the law, but the stigma of being seen as less-than is not so easily erased." (PI Order at 20 (citing *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015).) "Plaintiffs have appropriately demonstrated irreparable injury." (PI Order at 20.) Accordingly, Defendants cannot satisfy this factor essential to their request for a stay.

Finally, the balance of hardships weighs strongly against a stay. While Defendants claim the injunction causes "irreparable injury to the [merged] interests of the [g]overnment and the public," (Motion at 10), the government and public cannot be harmed when the interest they seek to enforce is unconstitutional. "[I]t is always in the public interest to prevent the violation of a party's constitutional

rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citations and quotation marks omitted); *see also Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *New York Progress & Protection PAC v. Walsh,* 733 F.3d 483, 488 (2d Cir. 2013) (holding that the government does not have an interest in enforcing unconstitutional law). "Plaintiffs have [already] shown the balance of equities and public interest weighs in favor of granting injunctive relief," and no subsequent development changes that holding. (PI Order at 20.) In addition, "maintaining the injunction pending appeal advances the public's interest in a strong national defense, as it allows skilled and qualified service members to continue to serve their country." *Karnoski*, No. 17-1297, Dkt. No. 283 at 5; *see also Doe 1*, No. 17-1597, Dkt. No. 187 at 26 ("Absent corroborating evidence, the Court is not prepared to find that allowing Plaintiffs to voluntarily serve and defend their country, while this country faces a prolonged period of warfare, is against the public interest.").

For all the reasons set forth in this Court's prior Orders (Dkt. Nos. 79, 124), Defendants cannot satisfy the standard for a stay of the preliminary injunction and their Motion should be denied.

C. The Injunction Must Be Nationwide to Remedy the Injury Inflicted on Plaintiffs by the Ban

Defendants' alternative request to narrow the injunction to apply only to Plaintiffs has no merit. (Motion at 11-12.) Defendants misconceive the breadth and nature of the injury caused by the ban, the relevant case law, and the well-reasoned opinion of this Court.

"[N]ationwide relief in federal district court" is appropriate when "necessary to give prevailing parties the relief to which they are entitled." *California v. Azar*, No. 18-15144, at 42 (9th Cir. 2018) (citing *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987) (stating that nationwide injunctions are appropriate where injuries are sufficiently broad in scope)). When a policy unconstitutionally discriminates based on a characteristic shared by the members of a protected group, as the ban

does here, it inflicts a class-based injury that can be remedied only by enjoining the entire policy. *See Madsen v. Women's Health Ctr., Inc.,* 512 U.S. 753, 765 (1994) (equitable principles support an injunction that is "necessary to provide complete relief to the plaintiffs") (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). Courts may enjoin federal policy where plaintiffs are injured by an unlawful rule. *Earth Island Inst. v. Ruthenbeck*, 490 F.3d 687, 699 (9th Cir. 2007) (affirming program-wide injunction against EPA because APA allows courts to "hold unlawful and set aside" flawed agency action), *rev'd on other grounds sub nom., Summers v. Earth Island Inst.*, 555 U.S. 488, 500-01 (2009); *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996) ("[A]n injunction is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit – even if it is not a class action – if such breadth is necessary to give prevailing parties the relief to which they are entitled."). Put simply, "the remedy must be no broader *and* no narrower than necessary to redress the injury."[3] *Azar*, at 46 (emphasis added).

Here, the breadth of the ban demands a nationwide injunction. *First*, the injury to the aspiring and active service member Plaintiffs cannot be remedied by a narrower injunction. As this Court knows, "the ban sends a damaging public message that transgender people are not fit to serve in the military." (PI Order at 20.) Permitting the ban to be implemented – at all – sends an official "message that

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[3] Defendants' citation to *Alvarez v. Smith* has no bearing on this case. Defendants note that where an "injury is subsequently redressed or otherwise becomes moot, the plaintiff no longer can seek injunctive relief." (Motion at 7.) Unlike in this case, however, in *Alvarez v. Smith*, 558 U.S. 87 (2009), the injury had been remedied by returning or providing compensation for the wrongfully seized property. (Motion at 7.) In contrast, Plaintiffs here will suffer injury should the ban go into effect as Defendants seek by this stay. (*See* PI Order at 20.) *Summers v. Earth Island Institute*, 555 U.S. 488 (2009), is similarly inapposite. There, the plaintiff's "injury in fact…ha[d] been remedied" and so plaintiff's challenge to an environmental regulation was mooted and the injunction against the regulation could not persist. Plaintiffs have standing, and this case is not moot. (Dkt. No. 124 at 7-9.)

some citizens are not worthy of the military uniform simply because of their gender." (*Id.*) As a result, even though some Plaintiffs would be allowed access or would be permitted to continue in their service, they would do so on sufferance, as an exception to a rule that deems them unfit. The result is that they would continue to be subject to unconstitutional, differential, and disadvantageous terms, in contrast to all other service members. Further, the "stigma of being set apart as inherently unfit" is a "threat to Plaintiffs' prospects of obtaining long-term assignments," irreparably injuring their stature in the military as well as damaging their career advancement. (*Id.* at 17.) Thus, the ban must be enjoined in its entirety to address the concrete harms that it inflicts on the Plaintiffs who accede or continue in active service. *Second and independently*, a ban narrowed to the individual Plaintiffs, as Defendants' Motion seems to contemplate, would not address the injuries to the transgender military members of organizational Plaintiff Equality California, which has a membership base that extends both within and beyond California. Defendants' Motion altogether neglects to address Equality California's interests and rights. *Third*, a narrowed injunction would not remedy the injury to Plaintiff-Intervenor State of California, the state with both the largest number of active military personnel and the largest number of transgender persons. Defendants' argument that "[a]bsent party injunctions . . . are a modern aberration, with no direct antecedent in English practice," is inapposite; the injuries here are direct and concrete to Plaintiffs and their members and citizens (and, moreover, are permitted in today's jurisprudence regardless of historical antecedents in England). Accordingly, the only way to address Plaintiffs' injuries is to enjoin the entirety of the ban.[4]

[4] Defendants' suggestion that Plaintiffs could only obtain nationwide relief under Federal Rule of Procedure 23 has no merit. (Motion at 14.) First, a narrow injunction would be insufficient to redress Plaintiffs' injuries, regardless of the significant and concrete injury that this ban will cause on other transgender persons. Second, class-based injuries under an equal protection analysis are not subject to Rule 23 class certification requirements.

The Ninth Circuit has recently reaffirmed the legality and necessity of nationwide injunctions in the proper circumstance. *See Azar*, No. 18-15144; *East Bay Sanctuary Covenant, et al. v. Trump, et al*., No. 18-17274, 2018 WL 6428204 (9th Cir. Dec. 7, 2018).

In *Azar*, five states sued federal agencies for interim rules that exempted employers with religious and moral objections from the Affordable Care Act's requirement to cover contraceptive care. Plaintiffs argued that the expanded exemption would cause them economic injury because they would incur significant costs as a result of the reduced access to contraceptive care. The district court issued a nationwide preliminary injunction, which the Ninth Circuit later narrowed to the five plaintiff states because (1) such relief would completely address their economic injury, and (2) there was insufficient evidence presented of a nationwide impact. *Azar*, at 46-47. However, the Ninth Circuit reaffirmed that "there is no bar against . . . nationwide relief in federal district court[s]" and stressed that when necessary to give relief, a national injunction is appropriate. *Id.* at 42 (citing *Bresgal*, 843 F.2d at 1170-71). The court concluded that "[t]he scope of an injunction is dependent as much on the equities of a given case as the substance of the legal issues it presents and courts must tailor the scope to meet the exigencies of the particular case." *Id.* at 46.

Similarly, in *East Bay*, the Ninth Circuit maintained the "uncontroverted line of precedent" holding that a nationwide injunction is appropriate when "necessary to give prevailing parties the relief to which they are entitled," because the "scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff." 2018 WL 6428204, at *22. Here, the claims at issue do not present simple economic injuries that can be redressed by a narrow injunction. The injuries are to constitutional rights of active and aspiring transgender service members. The equities of this case require a nationwide injunction tailored to match the breadth of the injuries. This Court issued that tailored injunction on

December 22, 2017. (Dkt. No. 79.)

Defendants' reliance on *Lewis v. Casey*, 518 U.S. 343 (1996) and *United States Department of Defense v. Meinhold*, 510 U.S. 939 (1993) is misplaced. In *Lewis*, the injunction was deemed overbroad because it enjoined practices not shown to injure the plaintiff. 518 U.S. at 357-58. Here, as this Court already found when analyzing standing, each provision of the ban directly injures a Plaintiff in this matter. (PI Order at 11-16; *see also* Dkt. No. 124 at 7-9.) *Meinhold* is similarly inapposite. Meinhold was discharged under the military's "Don't Ask, Don't Tell" policy for stating during a television interview that he was gay. But the *Meinhold* case did not center on the constitutionality of that policy. Rather, Meinhold raised an as-applied challenge to his discharge, arguing that a simple statement, absent other proof that he had a "desire to commit homosexual acts," was insufficient to warrant a discharge. *Meinhold*, 34 F.3d at 1479. Because the challenged policy was held unlawful only as applied to Meinhold, a broader injunction against the policy was not appropriate.

Here, Plaintiffs' constitutional challenge does not turn on their unique circumstances, but on the ban's aim to "eliminate a person's *trans*ness." (Dkt. No. 124 at 9.) Accordingly, a facial injunction is proper and necessary to address the constitutional injury Plaintiffs would suffer if the ban were allowed to go into effect. *See East Bay*, 2018 WL 6428204, at *22 ("[The] scope of injunctive relief is dictated by the extent of the violation established . . . .").[5]

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[5] Defendants argue that the ban should be narrowed because four independent courts – every court to have considered the matter – have found the ban likely to be unconstitutional and have issued nationwide preliminary injunctions. (Motion at 11.) The fact that other courts have similarly enjoined Defendants' unconstitutional ban is not a reason to narrow the injunction. Relatedly, Defendants' argument that a nationwide injunction will interfere with the development of the law (Motion at 10) is belied by the fact that the case is proceeding in those four district courts, as well as three Courts of Appeal and the Supreme Court of the United States. Further, neither case relied upon by Defendants to prove that argument concerns the necessity of nationwide injunctions. (*Id.* (citing *United States v. Mendoza*, 464 U.S. 154, 155 (1984) (holding plaintiff's action was not collaterally estopped by another party's

IV. CONCLUSION

Because (i) Defendants' Motion is untimely, (ii) Defendants cannot satisfy the standard for staying the effect of the injunction, and (iii) the scope of this Court's preliminary injunction is only as broad as is necessary to address the injuries caused by the ban, Defendants' Motion should be denied.

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action); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974) (discussing notice requirements in class actions)).)

Dated: December 17, 2018

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