

**U.S. Department of Justice**

Civil Division

950 Pennsylvania Ave. NW, Rm. 3138

Washington, DC 20530

Tel: 202-305-7920

VIA CM/ECF

November 7, 2018

Mr. Mark Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue NW
Washington, DC 20001

RE: *Doe 2 v. Trump*, No. 18-5257 (D.C. Cir.) (oral argument scheduled December 10, 2018)

Dear Mr. Langer:

This is an appeal from the district court's August 6, 2018 decision preliminarily enjoining the Department of Defense's policy concerning military service by transgender individuals. This Court granted the government's motion to expedite briefing, which was completed on November 5. A panel of this Court is scheduled to hear oral argument in this case on December 10. One other challenge to the Department's policy is pending in another appellate court. The Ninth Circuit heard oral argument on October 10 in *Karnoski v. Trump*, No. 18-35347 (9th Cir.), in which the government has appealed from a preliminary injunction.

In light of the importance of the issues at stake and the military's compelling interest in maintaining an effective national defense, the Solicitor General intends to preserve the opportunity for the Supreme Court to hear and decide the issues presented by these cases during the current Term. The nationwide preliminary injunctions at issue prevent the military from implementing a policy that, in its professional judgment, is necessary to ensure readiness, good order and discipline, steady leadership, unit cohesion, and effectiveness and lethality, among other interests. *See, e.g.*, JA300-09. It is critically important to the armed forces that the injunction not remain in place any longer than is necessary. Accordingly, the Solicitor General has determined that the

government will file a petition for a writ of certiorari before judgment in this case by November 23 in order to preserve the Supreme Court's ability to hear and decide the case this Term. If this Court were to issue an adverse decision before the Supreme Court considered that petition in January, the government would ask the Supreme Court to treat the petition as one for a writ of certiorari seeking review of this Court's decision.*

The government recognizes that a panel of this Court is preparing to hear oral argument in this case on December 10, and it appreciates the time and energy that the Court has already invested in this case, including by expediting its review. The government will be prepared to present oral argument as scheduled, but defers to the panel's determination regarding how to proceed in light of this development.

Sincerely,

s/ Brinton Lucas

Brinton Lucas

Counsel to the Assistant Attorney General

cc: all counsel (via CM/ECF)

* The government also will file a petition for a writ of certiorari before judgment in *Karnoski* if the Ninth Circuit has not issued a decision by November 23.

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit 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/ Brinton Lucas

BRINTON LUCAS