

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JANE DOE 2, *et al.*,

Plaintiffs,

v.

JAMES MATTIS, in his official capacity as  
Secretary of Defense, *et al.*,

Defendants.

Civil Action No. 17-cv-1597 (CKK)

**DEFENDANTS' MOTION TO STAY THE PRELIMINARY INJUNCTION PENDING  
APPEAL**

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## INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 62, the Government respectfully requests a stay of the Court's nationwide preliminary injunction, pending the resolution of the Government's appeal in the Court of Appeals for the D.C. Circuit, and, if that court affirms, pending the filing and disposition of a petition for a writ of certiorari and any further proceedings in the Supreme Court. At a minimum, the Government respectfully requests that the Court stay the nationwide scope of the injunction pending the resolution of the Government's appeal in the court of appeals and any further proceedings in this Court. The preliminary injunction bars the military from implementing a policy that Secretary of Defense James Mattis announced earlier this year after an extensive review of military service by transgender individuals, and even a stay of only the nationwide scope of the injunction—which would prevent the injunction from sweeping beyond the parties to this case—would ensure that the injunction does not cause more harm to the Government than is necessary while the court of appeals resolves the Government's appeal. The Supreme Court has previously stayed a nationwide injunction against another military policy to the extent it swept beyond the parties to the case, *see U.S. Dep't of Def. v. Meinhold*, 510 U.S. 939 (1993), and this Court should follow the same course.

As set forth below, by November 23, the Solicitor General intends to file a petition for a writ of certiorari before judgment in the pending appeal. The Solicitor General has also determined that, if necessary, the Government will file in the Supreme Court a request, as an alternative to certiorari before judgment, for a stay of this Court's preliminary injunction. The Government therefore respectfully requests a stay of the preliminary injunction in this Court, and for this Court to rule on this request by December 3, 2018, so that, if necessary, the Government may further seek stays in the court of appeals and in the Supreme Court in a timely fashion. *See* S. Ct. R. 23.3.<sup>1</sup>

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<sup>1</sup> On November 21, 2018, Government counsel has contacted counsel for Plaintiffs, who indicated that Plaintiffs oppose this motion.

## PROCEDURAL BACKGROUND<sup>2</sup>

Plaintiffs filed this action on August 9, 2017, raising constitutional challenges to the President’s statements on Twitter concerning military service by transgender individuals. Compl., Dkt. 1.<sup>3</sup> Similar suits were filed in the Western District of Washington, the District of Maryland, and the Central District of California. *See Karnoski v. Trump*, No. 17-cv-1297 (W.D. Wash. filed Aug. 28, 2017); *Stone v. Trump*, No. 17-cv-2459 (D. Md. filed Aug. 28, 2017); *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal. filed Sept. 5, 2017).

In October 2017, the Court issued a nationwide preliminary injunction, requiring the military “to revert to the *status quo* with regard to accession and retention that existed before the issuance of” the Presidential Memorandum, dated August 25, 2017. Order, Dkt. 60. The Government appealed, *see* Dkt. 66, and sought a partial stay so that the military would not have to implement the accession standards set forth in the policy put in place in June 2016 by then-Secretary of Defense Ash Carter (the “Carter policy”) before finishing its review of those standards, Defs.’ Mot. 1, Dkt. 73; *see* Gov’t Stay Mot., *Doe 1 v. Trump*, No. 17-5267, (D.C. Cir. Dec. 11, 2017). After both this Court and the Court of Appeals denied a stay, Order, Dkt. 75; *see Doe 1 v. Trump*, No. 17-5267, 2017 WL 6553389, at \*1 (D.C. Cir. Dec. 22, 2017) (per curiam), the Government dismissed its appeal on the expectation that Secretary Mattis would soon be proposing a final policy that would render any appeal moot, *Doe 1 v. Trump*, No. 17-5267, Doc.1711445 (D.C. Cir. Jan. 4, 2018).

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<sup>2</sup> The background regarding the creation of the military’s new policy is set forth in Defendants’ motion to dissolve the preliminary injunction. *See* Defs.’ Mot. 3–9, Dkt. 96.

<sup>3</sup> After DoD issued its new policy in March 2018, Plaintiffs filed their second amended complaint. Second Am. Compl., Dkt. 106. Plaintiffs challenge the constitutionality of what they characterize as a “ban on military service by transgender individuals,” *id.* ¶ 1, as allegedly “announced in . . . tweets [by the President on July 26, 2017,] promulgated to the Department of Defense in [the Presidential] Memorandum” issued on August 25, 2017, and finalized in DoD’s new policy dated February 22, 2018, *id.* ¶ 83; *see also id.* ¶¶ 37, 38, 74, 75, 79, 80, 85.

In March 2018, the Government informed the district court that the President had issued a new memorandum, which revoked his 2017 memorandum (and any similar directive) and allowed the military to adopt Secretary Mattis's proposed policy. *See* Defs.' Notice, Dkt. 95; *see also* Defs.' Mot. to Dissolve the Prelim. Inj., Dkt. 96 (refiled as Dkt. 116). In light of that new policy, the Government moved to dissolve the October 2017 injunction. Defs.' Mot. to Dissolve the Prelim. Inj., Dkt. 96 (refiled as Dkt. 116).

In August 2018, the Court denied the Government's motion. Order, Dkt. 156; Mem. Op., Dkt. 157. The Court characterized DoD's new policy as a plan that merely "*implements* the President's 2017 directives that the military not allow transgender individuals to serve in the military." Mem. Op. 24. And it dismissed the development of DoD's new policy and accompanying report as "*post hoc* processes" that "appear to have been constrained by, and not truly independent from, the President's initial policy decisions." *Id.* at 33. The court therefore concluded that "the circumstances of this case" had not "in fact genuinely changed in such a way that the . . . preliminary injunction is no longer warranted." *Id.* at 31.<sup>4</sup>

The Government appealed, *see* Dkt. 162, and moved to expedite the briefing schedule, explaining that the Court's injunction "prevents the adoption of a Mattis policy that the military, in its best professional judgment, has determined is necessary," Gov't Mot. to Expedite Briefing Schedule, *Doe 2 v. Trump*, No. 18-5257, at 3 (Sept. 10, 2018), Dkt. 1749739. The Court of Appeals granted that motion and has scheduled oral argument for December 10, 2018. Order, *Doe 2 v. Trump*, No. 18-5257, at 3 (Sept. 12, 2018), Dkt. 1750252; Order, *Doe 2 v. Trump*, No. 18-5257 (Oct. 17, 2018), Dkt. 1755741.

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<sup>4</sup> In a separate order, the Court dismissed the President as a party and dissolved the preliminary injunction "only to the extent it ran against the President." Order, Dkt. 154; Mem. Op., Dkt. 155. The Court explained that "[s]ound separation-of-powers principles counsel the Court against granting [injunctive or declaratory] relief against the President directly." Mem. Op. 3, Dkt. 155.

On November 7, 2018, the Government informed this Court that 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 these issues during the current term. *See* Defs.' Notice of Filing, Exh. A, Dkt. 178-1. By November 23, the Solicitor General intends to file a petition for a writ of certiorari before judgment. *See id.* The Government's filing of the petition on November 23 would allow the petition to be distributed on December 26, 2018, for consideration at the Court's January 11, 2019 conference, without a motion for expedition. The Solicitor General intends to file an alternative request for a stay, if necessary, of the preliminary injunction in the Supreme Court. *See* S. Ct. R. 23.3 (requiring parties to seek relief in the lower court before seeking a stay in the Supreme Court).

### ARGUMENT

Pursuant to Federal Rule of Civil Procedure 62(c), "while an appeal is pending from an interlocutory order that grants an injunction, such as here, a federal court may "suspend, modify, restore or grant an injunction.'" *In re Guantanamo Bay Detainee Litig.*, 706 F. Supp. 2d 120, 123 (D.D.C. 2010) (quoting Fed. R. Civ. P. 62(c)). In considering whether to grant a stay pending appeal, this Court considers four factors: (1) the applicant's likelihood of success on the merits; (2) whether the applicant will suffer irreparable injury; (3) the balance of hardships to other parties interested in the proceeding; and (4) the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). All of those factors support a stay of the preliminary injunction or, at a minimum, its nationwide scope.

Even when courts enter preliminary injunctions, those same courts regularly find cause to stay their own rulings entering, dissolving, or modifying injunctions. *See, e.g., Wash. Metro. Area Transit Comm'n v. Holiday Tours*, 559 F.2d 841, 842 (D.C. Cir. 1977) (holding that the district court did not abuse its discretion by entering permanent injunction and then staying it pending appeal); *Thiry v. Carlson*, 891 F. Supp. 563, 567 (D. Kan. 1995) (granting stay pending appeal of court's own order

dissolving preliminary injunction). Cause to stay the preliminary injunction exists here. Although the Court ruled that its preliminary injunction now covers DoD's new policy, the Court should stay its injunction pending Defendants' appeal, so that the new policy can be implemented.

**I. The Government Is Likely To Succeed On The Merits Of Its Appeal.**

**A. Plaintiffs' Constitutional Challenges Lack Merit.**

As explained in Defendants' Motion to Dissolve the Preliminary Injunction, Plaintiffs' equal-protection challenge to DoD's new policy lacks merit. *See* Defs.' Mot. 9–42, Dkt. 116. Under DoD's new policy, individuals may “not be disqualified from service solely on account of their transgender status.” DoD Report and Recommendations 19, Dkt. 96-2. Like the Carter policy before it, DoD's new policy turns on a medical condition (gender dysphoria) and its treatment (gender transition)—not any suspect or quasi-suspect classification. *See id.* at 7–8. Rational-basis review therefore applies, and DoD's new policy satisfies that deferential review because it reflects, *inter alia*, the military's reasoned and considered judgment that “making accommodations for gender transition” would “not [be] conducive to, and would likely undermine, the inputs—readiness, good order and discipline, sound leadership, and unit cohesion—that are essential to military effectiveness and lethality.” *Id.* at 41.

**B. The Nationwide Scope Of The Preliminary Injunction Is Improper.**

Even if Plaintiffs were likely to succeed on their constitutional claims, however, the nationwide scope of the preliminary injunction is improper. The injunction transgresses both Article III and longstanding equitable principles by affording relief that is not necessary to redress any cognizable, irreparable injury to Plaintiffs. And it frustrates the development of the law, while obviating the requirements for and protections of class-action litigation.

Plaintiffs lack Article III standing to seek injunctive relief beyond what is needed to redress an actual or imminent injury-in-fact to Plaintiffs themselves. “[S]tanding is not dispensed in gross,” and

“a plaintiff must demonstrate standing . . . for each form of relief that is sought.” *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (citations omitted); see *Gill v. Whitford*, 138 S. Ct. 1916, 1933 (2018) (“The Court’s constitutionally prescribed role is to vindicate the individual rights of the people appearing before it.”). “The remedy” sought thus “must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established.” *Whitford*, 138 S. Ct. at 1931 (quoting *Lewis v. Casey*, 518 U.S. 343, 357 (1996)). “The actual-injury requirement would hardly serve [its] purpose . . . of preventing courts from undertaking tasks assigned to the political branches, if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy *all* inadequacies in that administration.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006) (quoting *Lewis*, 518 U.S. at 357 (brackets omitted)).

Applying that principle, the Supreme Court has invalidated injunctions that afforded relief that was not shown to be necessary to prevent cognizable injury to the plaintiff himself. For example, in *Lewis*, the Court held that an injunction directed at certain prison practices was overbroad, in violation of Article III, because it enjoined practices that had not been shown to injure any plaintiff. 518 U.S. at 358. The injunction “mandated sweeping changes” in various aspects of prison administration designed to improve prisoners’ access to legal services, including library hours, lockdown procedures, access to research facilities and training, and “direct assistance” from lawyers and legal support staff for “illiterate and non-English-speaking inmates.” *Id.* at 347–348 (citation omitted).

The Supreme Court held that the plaintiffs lacked standing to seek, and the district court thus lacked authority to grant, such broad relief. *Lewis*, 518 U.S. at 358–360. The district court had “found actual injury on the part of only one named plaintiff,” who claimed that a legal action he had filed was dismissed with prejudice as a result of his illiteracy and who sought assistance in filing legal claims. *Id.* at 358. “At the outset, therefore,” the Supreme Court held that “[it] c[ould] eliminate from the proper scope of the injunction provisions directed at” the other claimed inadequacies that allegedly harmed

“the inmate population at large.” *Id.* “If inadequacies of th[at] character exist[ed],” the Court explained, “they ha[d] not been found to have harmed any plaintiff in this lawsuit, and hence were not the proper object of this District Court’s remediation.” *Id.*

Here, likewise, Plaintiffs lack standing to seek an injunction that goes beyond redressing any harm to Plaintiffs themselves. Even if the individual Plaintiffs had shown any cognizable, irreparable injuries from the application of DoD’s new policy to particular individuals, those purported injuries would be fully redressed by an injunction limited to them. Those injuries could not justify further enjoining the policy as to numerous other individuals to whom Plaintiffs have no connection whatsoever.

The Supreme Court also has recognized and applied the corollary principle that, where a plaintiff faces actual or imminent injury at the outset of a suit but that injury is subsequently redressed or otherwise becomes moot, the plaintiff no longer can seek injunctive relief to redress alleged harms to anyone else—unless the plaintiff is the representative of a certified class. For example, in *Alvarez v. Smith*, 558 U.S. 87 (2009), the Supreme Court held that the plaintiffs’ challenge to a state-law procedure for disputing the seizure of vehicles or money had become moot because their “underlying property disputes” with the State “ha[d] all ended”: the cars that had been seized from the plaintiffs had been returned, and the plaintiffs had either forfeited the money seized or had “accepted as final the State’s return of some of it.” *Id.* at 89; *see id.* at 92. The Supreme Court accordingly held that the plaintiffs could no longer seek declaratory or injunctive relief against the State’s policy. *Id.* at 92. Although the plaintiffs had “sought certification of a class,” class certification had been denied, and that denial was not appealed. *Id.* “Hence the only disputes relevant” in the Supreme Court were “those between th[ose] six plaintiffs” and the State concerning specific seized property, “and those disputes [were] . . . over.” *Id.* And although the plaintiffs “continue[d] to dispute the lawfulness of

the State’s hearing procedures,” their “dispute [was] no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” *Id.*

Similarly, in *Summers v. Earth Island Institute*, 555 U.S. 488 (2009), the Supreme Court held that a plaintiff lacked standing to seek to enjoin certain Forest Service regulations after the parties had resolved the controversy regarding the application of those regulations to the specific project that had caused that plaintiff’s own claimed injury. *Id.* at 494–497. The plaintiff’s “injury in fact with regard to that project,” the Supreme Court held, “ha[d] been remedied,” and so he lacked standing to maintain his challenge to the regulations. *Id.* at 494. The Supreme Court expressly rejected a contrary rule that, “when a plaintiff has sued to challenge the lawfulness of certain action or threatened action but has settled that suit, he retains standing to challenge the basis for that action”—in *Earth Island*, “the regulation in the abstract”—“apart from any concrete application that threatens imminent harm to his interests.” *Id.* Such a rule would “fly in the face of Article III’s injury-in-fact requirement.” *Id.*

The same conclusion logically follows where, as here, a plaintiff’s only injury has been eliminated by an injunction barring application of the challenged law or policy to the plaintiff. If a plaintiff himself is no longer in any imminent danger of suffering injury from the law or policy—whether because his injury has become moot through happenstance or settlement, as in *Alvarez* and *Earth Island*, or because a plaintiff-specific injunction prevents any future injury to that plaintiff from the law or policy—he lacks standing to press for additional injunctive relief. The fact that the challenged law or policy would still cause concrete injury to nonparties is irrelevant. As *Alvarez* and *Earth Island* both demonstrate, the plaintiff must show the relief he seeks is necessary to redress his own actual or imminent injury-in-fact; potential injuries to others who are not parties to the case do not entitle the plaintiff to seek relief on their behalf.

Independent of Article III, the nationwide injunction here violates fundamental rules of equity by granting relief broader than necessary to prevent irreparable harm to plaintiffs. The Supreme Court

has long recognized that injunctive relief must “be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (citation omitted). Where no class has been certified, a plaintiff must show that the requested relief is necessary to redress the plaintiff’s own irreparable harm; the plaintiff cannot seek injunctive relief in order to prevent harm to others. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 163 (2010) (plaintiffs “d[id] not represent a class, so they could not seek to enjoin [an agency order] on the ground that it might cause harm to other parties”). Even where a class has been certified, relief is limited to what is necessary to redress irreparable injury to members of that class. *See Lewis*, 518 U.S. at 359–360 (citing *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). “[T]he scope of injunctive relief is dictated by the extent of the violation established” that injured class members, “not by the geographical extent of the plaintiff class.” *Yamasaki*, 442 U.S. at 702.

History confirms that injunctive relief in this case violates “traditional principles of equity jurisdiction.” *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999) (citation omitted). The Supreme Court “ha[s] long held that the jurisdiction” conferred by the Judiciary Act of 1789 “over ‘all suits . . . in equity’ . . . is an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries.” *Id.* at 318 (brackets, citation, and other internal quotation marks omitted). “Substantially, then, the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789.” *Id.* (citation omitted).

Absent-party injunctions were not “traditionally accorded by courts of equity.” *Grupo Mexicano*, 527 U.S. at 319. Indeed, they did not exist at equity at all. They are a modern aberration, with no direct antecedent in English practice, or apparently even in the United States until the mid-

20th century. Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 425 (2017) (“There is an easy, uncomplicated answer to the question whether the national injunction is traceable to traditional equity: *no.*”); *see id.* 424–445 (detailing historical English practice and U.S. practice from Founding to present). Thus, in the late 19th century, the Supreme Court rejected injunctive relief that barred enforcement of a law to nonparties. *Id.* at 429 (discussing *Scott v. Donald*, 165 U.S. 58 (1897)). As a consequence, for example, in the 1930s courts issued more than 1600 injunctions against enforcement of a single federal statute. *Id.* at 434. The nationwide injunction in this case is thus inconsistent with “longstanding limits on equitable relief.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring).

A nationwide injunction like the one in this case also disserves the orderly, evenhanded development of the law. An order by a single district court, as this one, enjoining a federal policy everywhere frequently brings judicial review in all other fora to a halt and deprives other courts, including the Supreme Court, of differing perspectives on important questions. *See United States v. Mendoza*, 464 U.S. 154, 160, 162 (1984) (rejecting application of nonmutual issue preclusion against the government for similar reasons). Permitting such nationwide injunctions also undercuts the primary mechanism Congress has authorized to permit broader relief: class actions. It enables all potential claimants to benefit from nationwide injunctive relief by prevailing in a single district court, without satisfying the prerequisites of Federal Rule of Civil Procedure 23, while failing to afford the Government the corresponding benefit of a definitive resolution of the underlying legal issue as to all potential claimants if it prevails instead. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

### **III. The Balance Of Equities Strongly Supports A Stay Of The Injunction In Its Entirety Or At Least To The Extent It Sweeps Beyond Plaintiffs.**

The nationwide injunction in this case causes direct, irreparable injury to the interests of the Government and the public, which merge here. *See Nken*, 556 U.S. at 435. It does so by forcing the Department to maintain a policy that it has determined 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.” Mattis Memorandum 2, Dkt. 96-1; *cf. Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (“[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.”) (quoting *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). Given this severe harm to the federal government—which far outweighs Plaintiffs’ speculative claims of injury—this Court should stay the injunction in its entirety.

At a minimum, the Court should stay the injunction to the extent it sweeps beyond Plaintiffs. That is what the Supreme Court did in *Meinhold*. In that case, a discharged Navy servicemember brought a facial constitutional challenge against the Department’s “then-existing policy regarding homosexuals.” *Meinhold v. U.S. Dep’t of Def.*, 34 F.3d 1469, 1473 (1994). After the district court enjoined the Department from “taking any actions against gay or lesbian servicemembers based on their sexual orientation” nationwide, the Supreme Court stayed that order “to the extent it conferred relief on persons other than [the plaintiff].” *Id.* (citing *U.S. Dep’t of Def. v. Meinhold*, 510 U.S. 939 (1993)).

This Court should follow the same course. Indeed, this case and others involving constitutional challenges to DoD’s new policy illustrate the distinct harms to the Government from nationwide injunctions. The Government is currently subject to four different nationwide preliminary injunctions, each requiring the Government to maintain the Carter accession and retention standards. Even if the Government were to prevail in this case, the Government would still need to proceed with its appeal before the Ninth Circuit—which has before it two of these injunctions (in *Karnoski v. Trump*, No. 18-35347, and in *Stockman v. Trump*, No. 18-56539). And even then, the Government would be subject to a fourth nationwide preliminary injunction, issued by the district court in Maryland, that could potentially cover DoD’s new policy. *See Stone v. Trump*, 280 F. Supp. 3d 747 (D. Md. 2017).

Although the Government moved eight months ago to dissolve that injunction in light of the new policy, *see* Gov't Mot. to Dissolve the Prelim. Inj., *Stone, supra* (No. 17-cv-2459) (Mar. 23, 2018), the district court in Maryland has not ruled on the Government's pending motion.

These injunctions both prevent the military from implementing its carefully calibrated policy and force the military to maintain a policy that it has concluded poses a threat to "readiness, good order and discipline, sound leadership, and unit cohesion," which "are essential to military effectiveness and lethality." DoD Report and Recommendations 41, Dkt. 96-2; *see id.* at 44 (explaining that the "risks" associated with maintaining the Carter policy should not be incurred "given the Department's grave responsibility to fight and win the Nation's wars in a manner that maximizes the effectiveness, lethality, and survivability" of servicemembers). Every day that these injunctions remain in effect causes harm to the Government and the public.

Thus, if this Court declines to stay the injunction in its entirety, it should at least stay the nationwide scope of the injunction, thereby preventing the injunction from sweeping beyond what is necessary to provide redress to Plaintiffs. Plaintiffs will suffer no injury—let alone irreparable injury—if the nationwide scope of the injunction is stayed pending the resolution of the Government's appeal and any further proceedings in this Court. Accordingly, the balance of equities warrants, at a minimum, such a partial stay.

### **III. Request for Expedited Ruling**

If this Court has not ruled on Defendants' motion by December 3, 2018,<sup>5</sup> Defendants intend to file for a stay of the Court's preliminary injunction with the Court of Appeals for the D.C. Circuit. If this Court rules on Defendants' motion after Defendants' have filed their motion with the D.C. Circuit, Defendants will provide the D.C. Circuit with this Court's ruling.

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<sup>5</sup> In light of Defendants' request for an expedited ruling, Defendants are willing to forego filing a reply brief in support of this motion.

**CONCLUSION**

The Government respectfully requests that this Court stay the preliminary injunction in its entirety pending the disposition of its appeal and, if the court of appeals affirms the injunction, pending the filing and disposition of a petition for a writ of certiorari and any further proceedings in the Supreme Court. At a minimum, the injunction should be stayed to the extent it sweeps beyond Plaintiffs.

November 21, 2018

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2018, I electronically filed the foregoing Motion to Stay the Preliminary Injunction Pending Appeal using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: November 21, 2018

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**JANE DOE 2, *et al.*,**

**Plaintiffs,**

**v.**

**JAMES MATTIS, in his official capacity as  
Secretary of Defense, *et al.*,**

**Defendants.**

**Civil Action No. 17-cv-1597 (CKK)**

**[PROPOSED] ORDER**

Upon consideration of Defendants' Motion to Stay the Preliminary Injunction Pending Appeal, the opposition, and reply thereto, it is hereby ORDERED that the Motion is GRANTED and that the preliminary injunction is STAYED.

Dated:

\_\_\_\_\_  
COLLEEN KOLLAR-KOTELLY  
UNITED STATES DISTRICT JUDGE