

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AIDEN STOCKMAN, *et al.*,

Plaintiffs-Appellees,

STATE OF CALIFORNIA,

Intervenor-Plaintiff-Appellee,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Defendants-Appellants.

No. 18-56539

**GOVERNMENT’S MOTION FOR EXTENSION OF TIME
FOR FILING OPENING BRIEF**

Defendants-Appellants respectfully request an extension of time within which to file their opening brief in this preliminary-injunction appeal. Pursuant to this Court’s order of November 19, the opening brief for the government is currently due on December 14, 2018. *See* Ninth Cir. Rule 3-3. On November 20, the government filed a motion to hold the briefing schedule in abeyance pending resolution of a related preliminary-injunction appeal, *Karnoski v. Trump*, No. 18-35347 (9th Cir. argued Oct. 10, 2018). The abeyance motion is fully briefed and remains pending before the Court. In light of the impending deadline for the government’s opening brief, the government respectfully

requests an extension of time, such that the opening brief would be due 14 days after this Court rules on the government's motion to hold the briefing schedule in abeyance.* Plaintiffs-Appellees and Intervenor-Plaintiff Appellee do not consent to this request, but do not intend to file oppositions.

The reasons for this request are as stated in the following declaration.

Respectfully submitted,

JOSEPH H. HUNT

Assistant Attorney General

HASHIM M. MOOPPAN

Deputy Assistant Attorney General

s/ Brinton Lucas

BRINTON LUCAS

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December 7, 2018

* If this Court grants the motion for an abeyance of the briefing schedule, an extension would not be necessary, as briefing would be deferred pending resolution of *Karnoski*.

DECLARATION OF BRINTON LUCAS

I, Brinton Lucas, hereby declare as follows:

1. In this appeal, the government seeks review of the district court's refusal to dissolve a preliminary injunction against the government. The district court's order prevents the adoption of a military policy announced by Secretary of Defense James Mattis in March 2018.

2. Pursuant to the Court's briefing order of November 18, 2018, the government's opening brief is due on December 14, 2018. *See* Ninth Cir. Rule 3-

3. The government has not previously sought an extension of time.

3. On November 20, the government filed a motion to hold the briefing schedule in abeyance pending resolution of a related appeal, *Karnoski v. Trump*, No. 18-35347 (9th Cir. argued Oct. 10, 2018), including any proceedings before the Supreme Court in that case. As the motion explained, a decision by this Court in *Karnoski* would be binding circuit precedent that would control this appeal. That decision will likely resolve or, at a minimum, substantially redefine, the issues in this case. The government's abeyance motion is fully briefed and remains pending with this Court.

4. In light of the impending deadline for the government's opening brief, the government respectfully requests an extension of time for filing the opening brief, such that the opening brief would be due 14 days after this Court rules on the government's motion to hold the briefing schedule in abeyance. This

extension would conserve the resources of the parties and of this Court, and would avoid the need for the government to prepare its opening brief while the abeyance motion is pending. If this Court grants an abeyance of the briefing schedule, it will be unnecessary for the parties to prepare briefs prior to the resolution of *Karnoski* by this Court or the Supreme Court.

5. The undersigned counsel, Brinton Lucas, is the government attorney principally responsible for the preparation of the brief for the government. Since the docketing of the government's appeal, Mr. Lucas has been engaged in other pressing appellate matters for the Department of Justice, including preparation for oral argument in the related appeal of *Doe 2 v. Trump*, No. 18-5257 (D.C. Cir.) (oral argument scheduled Dec. 10, 2018), as well as the filing of the government's motion for a stay pending appeal in *Doe 2 v. Trump*, No. 18-5257 (D.C. Cir. Dec. 3, 2018), and the stay motion and abeyance motion filed in the present case.

6. As counsel for the government, Mr. Lucas has exercised diligence in this appeal and will continue to do so. An extension of the deadline for the opening brief will permit counsel to complete preparation of the government's brief in this matter after this Court rules on the government's pending motion for an abeyance of the briefing schedule.

7. Counsel for the government has contacted Amy Quartarolo, counsel for Plaintiffs-Appellees, and Sharon O'Grady, counsel for Intervenor-Plaintiff-Appellee, the State of California. Both Plaintiffs-Appellees and Intervenor-

Plaintiff Appellee do not consent to this request, but do not intend to file oppositions.

8. No transcript was ordered in this case, so the court reporter is not in default.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

s/ Brinton Lucas

BRINTON LUCAS

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December 7, 2018

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 789 words, excluding the parts of the filing exempted under Rule 32(f), according to the count of Microsoft Word 2013.

I further certify that this filing complies with the typeface and the type style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, using Microsoft Word 2013.

s/ Brinton Lucas

Brinton Lucas

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2018, I electronically filed the foregoing using the appellate CM/ECF system, which, pursuant to Circuit Rule 25.5(f), constitutes service on all parties registered for electronic filing.

s/ Brinton Lucas

Brinton Lucas

Counsel for Appellants