

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Stephen R. Patton
To Call Writer Directly:
+1 312 862 3501
stephen.patton@kirkland.com

300 North LaSalle
Chicago, IL 60654
United States

+1 312 862 2000

www.kirkland.com

Facsimile:
+1 312 862 2200

December 21, 2018

VIA ELECTRONIC FILING

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 Seventh Street
San Francisco, CA 94103

Re: *Karnoski v. Trump*, No. 18-35347 Plaintiffs' Response to Defendants-Appellants Rule 28(j) (argued October 10, 2018)

Dear Ms. Dwyer:

Plaintiffs-Appellees submit this response to Defendants-Appellants' Rule 28(j) letter [Dkt. 33-1] regarding *California v Azar*, No. 18-15144, 2018 WL 6566752 (9th Cir. Dec. 13, 2018).

California reaffirmed the long-standing rule that “there is no bar against ... nationwide relief” and the scope of relief must “meet the exigencies of a particular case.” *California*, 2018 WL 6566752, at *15-16. *California* narrowed that preliminary injunction to the five plaintiff States, but recognized that the scope “is dependent as much on the equities of a given case as the substance of the legal issues.” *Id.* at 16 (quote omitted). Here, the exigencies are severe for all transgender servicemembers, who face irreparable damage to the livelihoods they have built serving their country, and for those seeking to embark on such careers. The district court appropriately determined that military-wide relief is “dictated by the extent of the violation established.” [SER.5]

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Defendants concede that plaintiffs must be afforded complete relief. But anything less than a military-wide injunction would place individual plaintiffs under sufferance of a policy marking them presumptively unfit—undermining their stature with commanding officers, and depriving them of assignments, training, and deployment opportunities. Serving as a technical exception to a policy that brands plaintiffs as unfit would be to serve on objectively unequal terms.

Additionally, other concerns raised in *California* do not apply here. *California* was concerned with that district court’s decision to stay “any effort to prepare the case for trial pending appeal” of the injunction, which “magnified” the consequences of broad relief. 2018 WL 6566752, at *16. The parties here have continued to work on discovery issues beyond those in Defendants’ petition for mandamus, and trial remains set for April. Unlike *California*, which found the record of harms to other states undeveloped, plaintiffs have shown harms to transgender people seeking to serve in all military branches, whether stateside or deployed abroad. Accordingly, the district court appropriately declined to dissolve the preliminary injunction, since the proper remedy for a facially unconstitutional scheme is enjoining enforcement as a whole, not removing a handful of individuals from its reach. *See* Plaintiffs-Appellees’ Answering Br. at 58-59.

Respectfully submitted,

/s/ Stephen R. Patton

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KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, IL 60654
(312) 862-3501
stephen.patton@kirkland.com

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2018, the attached letter was filed electronically through the Court's CM/ECF system, and was provided by electronic mail to all counsel of record.

/s/ Stephen R. Patton

Stephen R. Patton
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