

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

JANE DOE 2, *et al.*,

Plaintiffs

v.

PATRICK M. SHANAHAN, *et al.*,¹

Defendants

Civil Action No. 17-1597 (CKK)

ORDER

(January 30, 2019)

Currently pending before the Court are Plaintiffs' [109] Motion to Compel Compliance with Subpoenas for Production of Documents Directed to Nonparties Family Research Council and Heritage Foundation and [169] Motion to Compel Production of Documents and Information Withheld Under the Deliberative Process Privilege. Also currently pending before the Court are Defendants' [170] Motion for a Protective Order and [171] Motion for a Protective Order. Each of these motions concern the same issue: the permissible breadth and depth of Plaintiffs' discovery requests.

This issue is affected by the United States Court of Appeals for the District of Columbia Circuit's ("D.C. Circuit") per curiam Judgment issued on January 4, 2019. In that decision, the D.C. Circuit reversed this Court's denial of the government's motion to dissolve the preliminary injunction. The D.C. Circuit further vacated without prejudice this Court's preliminary injunction.

In its Judgment, the D.C. Circuit made statements potentially affecting the subjects for which discovery is permissible. Specifically, the D.C. Circuit stated that this Court "made an erroneous finding that the Mattis Plan was not a new policy but rather an implementation of the policy directives enjoined in October 2017." *Jane Doe 2 v. Shanahan*, No. 18-5257, at 2 (D.C. Cir. Jan. 2, 2019) (per curiam). The D.C. Circuit explained that, prior to issuing the Mattis Plan, the government had taken substantial steps to cure the deficiencies in the 2017 Presidential Memorandum including "the creation of a panel of military and medical experts, the consideration of new evidence gleaned from the implementation of the policy on the service of transgender individuals instituted by then-Secretary of Defense Ash Carter ('the Carter Policy'), and a reassessment of the priorities of the group that produced the Carter Policy." *Id.* at 2-3.

In addition to the D.C. Circuit's per curiam Judgment, the United States Supreme Court recently issued a relevant Order in *Trump v. Karnoski*. Order List: 586 U.S. 18A625 (Jan. 22, 2019). In *Karnoski*, the United States District Court for the Western District of Washington issued a preliminary injunction enjoining the government from taking any action on transgender individuals in the military inconsistent with the status quo that existed prior to the 2017 Presidential Memorandum. No. 17-1297, 2017 WL 6311305, at *10 (W.D. Wash. Dec. 11, 2017). Subsequently, on January 22, 2019, the Supreme Court issued an Order staying the district

¹ Pursuant to Fed. R. Civ. P. 25(d), Patrick M. Shanahan is substituted in his official capacity as Acting United States Secretary of Defense.

