

18-56539

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

<p>AIDEN STOCKMAN, et al., Plaintiffs-Appellees, v. STATE OF CALIFORNIA, Intervenor-Plaintiff- Appellee, DONALD J. TRUMP, in his official capacity as President of the United States, et al., Defendants-Appellants.</p>
--

**THE STATE OF CALIFORNIA'S OPPOSITION TO
MOTION TO STAY DISTRICT COURT
INJUNCTION**

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General
SHARON L. O'GRADY
Deputy Attorney General
State Bar No. 102356
455 Golden Gate Avenue, Suite
11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3834
Fax: (415) 703-1234
Email: Sharon.OGrady@doj.ca.gov
*Attorneys for Intervenor-Plaintiff-
Appellee State of California*

The government's motion to stay the preliminary injunction pending appeal should be denied for the reasons stated in the opposition filed by Plaintiffs-Appellees Aiden Stockman, Nicolas Talbot, Tamasyn Reeves, Jaquice Tate, John Does 1-2, Jane Doe, and Equality California (the "Opposition").

California additionally notes that this case is just one of three cases in which a district court has issued a nationwide injunction prohibiting implementation of the government's policy banning transgender individuals from joining or serving in the military ordered by President Trump. A stay in this case would have no practical effect unless the injunctions issued in the other cases are also stayed. This Court has already rejected a similar request by the government to stay a nationwide injunction against the ban in *Karnoski v. State of Washington*, observing that "[a] stay pending appeal 'is an intrusion into the ordinary processes of administration and judicial review,'" and that "a stay of the preliminary injunction would upend, rather than preserve, the status quo." No. 18-35347, Order, Dkt. No. 90 at 2 (filed July 18, 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). And the district court denied the government's motion for a stay of the preliminary injunction in *Doe I v. Trump*, No. 17-1597, Order, Dkt. No. 187 (filed D.D.C. Nov. 30, 2018).

As discussed in the Opposition, the government has made no showing that it will suffer irreparable harm if a stay is denied. In contrast, allowing the

transgender ban to become effective, or narrowing it to apply only to the individual plaintiffs in this case, would directly impact the State's National Guard and the Reserve Officers' Training Corps programs at California's public universities and colleges. The transgender ban would impede the California National Guard's ability to recruit and retain members; force California to violate its anti-discrimination laws and discriminate against its own residents in staffing the California National Guard; and threaten the State's ability to safeguard its public institutions of higher education from discrimination in their ROTC programs. *See Stockman v. Trump*, No. 5:17-cv-01799, Mot. to Intervene, Dkt. No. 52 at 3-5 (filed C.D. Cal. Nov. 8, 2017); *id.*, Decl. of Enrique A. Monagas in Supp. of St. of Cal.'s Mot. to Intervene, Dkt. No. 52-2 (filed C.D. Cal. Nov. 8, 2017).

Dated: December 13, 2018

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General

S/ SHARON L. O'GRADY

SHARON L. O'GRADY
Deputy Attorney General
*Attorneys for Intervenor-Plaintiff-Appellee
State of California*

SA2018103452

CERTIFICATE OF SERVICE

Case Name: **Stockman, Aiden, et al. v.** No. **18-56539**
Donald J. Trump, et al.

I hereby certify that on December 13, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

THE STATE OF CALIFORNIA'S OPPOSITION TO MOTION TO STAY DISTRICT COURT INJUNCTION

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 13, 2018, at San Francisco, California.

Susan Chiang
Declarant

s/ Susan Chiang
Signature