

circuit becomes final until the mandate issues[.]” (alteration in original) (internal quotation marks omitted)); *United States v. Jackson*, 549 F.3d 963, 980 (5th Cir. 2008) (“This Court’s decisions are not final until we issue a mandate.” (internal quotation marks omitted)); *Flagship Marine Servs., Inc. v. Belcher Towing Co.*, 23 F.3d 341, 342 (11th Cir. 1994) (“Until the mandate issues, an appellate judgment is not final; the decision reached in the opinion may be revised by the panel, or reconsidered by the en banc court[.]”).²

In addition to lacking any legal basis, the government’s position is belied by its own statement of the facts. The government states that the Department of Defense intends to issue a directive implementing the Mattis Plan “in the near future,” which “will not take effect until 30 days after its release.” That schedule does not warrant disregarding the ordinary procedures that operate to safeguard the Plaintiffs’ serious constitutional interests in this case. Plaintiffs are considering their options with respect to rehearing; given the short time allowed for that consideration—17 days at this point—the government will suffer no prejudice if it waits to issue its directive. The constitutional rights and livelihoods of thousands of prospective and current transgender servicemembers are at stake, and no one—neither Plaintiffs, nor the government, nor

² The government’s notice of appeal from this Court’s order refusing to dissolve the injunction divested this Court of jurisdiction over the injunction except to maintain the status quo. *DeFries*, 129 F.3d at 1302. Under Federal Rule of Civil Procedure 62(d), this Court retains limited jurisdiction pending appeal to “suspend, modify, restore, or grant” an injunction—but *only* to maintain the status quo pending appeal. *See Coastal Corp. v. Texas Eastern Corp.*, 869 F.2d 817, 820 (5th Cir. 1989) (“Having reviewed the existing case law throughout the circuits and paying proper respect to Rule 62(c), we are persuaded that the powers of the district court over an injunction pending appeal should be limited to maintaining the status quo[.]”); *International Ass’n of Machinists and Aerospace Workers, AFL-CIO v. Eastern Air Lines, Inc.*, 847 F.2d 1014, 1018 (2d Cir. 1988) (stating that Rule 62(c) “has been narrowly interpreted to allow district courts to grant only such relief as may be necessary to preserve the status quo pending an appeal where the consent of the court of appeals has not been obtained”).

the public—would benefit under a scenario where the government proceeds as if the injunction has been dissolved, but subsequent proceedings result in the reinstatement of the injunction.

The D.C. Circuit's denial of the government's stay motion as moot offers no support for the government's position. The court stated no reason for its denial. The court may have denied the government's stay motion as moot because that motion sought a stay pending the court's decision; with the decision having issued, the stay request no longer needed to be decided. Alternately, the court may have concluded that its vacatur of the injunction mooted any purported urgency of a stay pending further appeals. In either case, the government was free to move for expedited issuance of the mandate, but it did not do so.

Because the injunction remains in effect, the government may not depart from the status quo or implement any new policy inconsistent with that injunction until the court of appeals issues its mandate.

March 12, 2019

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Exhibit A

 		Search documents in this case: <input type="text"/> <input type="button" value="Search"/>
No. 18A626		
Title:	Donald J. Trump, President of the United States, et al., Applicants v. Jane Doe 2, et al.	
Docketed:		
Linked with 18-677		
Lower Ct:	United States Court of Appeals for the District of Columbia Circuit	
Case Numbers:	(18-5257)	

DATE	PROCEEDINGS AND ORDERS
Dec 13 2018	Response to application (18A626) requested by The Chief Justice, due Friday, December 28, 2018, by noon ET.
Dec 13 2018	Application (18A626) for a stay, submitted to The Chief Justice. <div style="display: flex; justify-content: space-around;"> Proof of Service Main Document </div>
Dec 28 2018	Response to application from respondent Jane Doe 2, et al. filed. <div style="display: flex; justify-content: space-around;"> Main Document Proof of Service </div>
Jan 04 2019	Reply of applicant Donald J. Trump, President of the United States, et al. filed. <div style="display: flex; justify-content: space-around;"> Proof of Service Reply </div>
Jan 22 2019	Application (18A626) denied by The Chief Justice.

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