JOSEPH H. HUNT
Assistant Attorney General
Civil Division

JAMES BURNHAM
Deputy Assistant Attorney General

ANTHONY J. COPPOLINO
Deputy Director

ANDREW E. CARMICHAEL
ROBERT M. NORWAY
MATTHEW SKURNIK
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Telephone: (202) 616-8188
Email: matthew.skurnik@usdoj.gov

Counsel for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AIDEN STOCKMAN; NICOLAS TALBOTT; TAMASYN REEVES; JAQUICE TATE; JOHN DOES 1-2; JANE DOE; and EQUALITY CALIFORNIA, Plaintiffs, v. DONALD J. TRUMP, et al. Defendants.	CASE NO. 5:17-CV-01799-JGB-KK **DEFENDANTS' OPPOSITION TO PLAINTIFFS' AND PLAINTIFF-INTERVENOR'S MOTIONS TO VACATE SCHEDULING ORDER** Date: June 3, 2019 Time: 9:00 a.m. Courtroom: 1 Judge: Hon. Jesus G. Bernal

STATE OF CALIFORNIA,

Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530
Tel: (202) 616-8188

INTRODUCTION

After neglecting to request discovery for nearly a year, Plaintiffs[1] now ask this Court to vacate the scheduling order and indefinitely extend their discovery period, even though just three months ago they agreed to and jointly proposed the schedule currently in place. Since the Court entered that schedule, little has changed. Plaintiffs recently and belatedly served some discovery requests, and Defendants' responses under the Federal Rules of Civil Procedure are not due until May 15, 2019. And although Plaintiffs point to the fact that the Ninth Circuit has not yet ruled on the mandamus petition in the related *Karnoski* case, *see In re Donald J. Trump*, No. 18-72159 (9th Cir. 2018), surely Plaintiffs were aware of that possibility when they agreed to the current schedule just three months ago.

Accordingly, Plaintiffs have not shown good cause to vacate the scheduling order. Discovery does not close until August, leaving ample time for Plaintiffs to pursue any discovery within the current schedule. Moreover, it has been almost a year since Defendants produced tens of thousands of documents and an approximately 3,000-page administrative record and made numerous civilian and military officials available for deposition—yet Plaintiffs have not noticed a single deposition or, until just recently, served any of their own discovery requests. In these circumstances, there is no need or good cause to vacate the current schedule and allow an indefinite period of discovery in the meantime. And although Plaintiffs note Defendants' agreement to vacate the district court schedule in *Karnoski*, that agreement was reached under far different circumstances—in particular, an impending trial date was in place that needed to be vacated, and the Ninth Circuit had recently stayed the discovery order in dispute in that case. No such circumstances exist here. In contrast, Plaintiffs here *agreed* to proceed, but did little in the meantime, while betting on a favorable outcome from the

[1] "Plaintiffs" as used in this opposition refers to both the original plaintiffs and plaintiff-intervenor California.

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530
Tel: (202) 616-8188

Ninth Circuit in *Karnoski*. That is not good cause.

For these reasons, Plaintiffs' motions should be denied. If, however, the Court were inclined to defer discovery until the Ninth Circuit rules on related discovery issues in *Karnoski*, then the Court should stay proceedings entirely and enter a new schedule thereafter. In no event should the Court simply vacate the current schedule and allow Plaintiffs, who have been dilatory to date, to "aggressively pursue discovery" indefinitely, Pls.' Mot. 4, while arguing at the same time that absent a ruling from the Ninth Circuit, they lack the "necessary guidance to tailor their discovery requests, and claims, moving forward." *Id.* Such an approach is likely to needlessly replicate the very same discovery disputes already before the Ninth Circuit, as demonstrated by the similarities between some of Plaintiffs' recent discovery requests and those at issue in the Ninth Circuit. The better course, in the event the Court thinks it prudent to wait for a ruling on related discovery issues, would be to stay this case until the Ninth Circuit rules and a new schedule can be entered. The parties could then proceed with discovery and to resolution of this case. But having sat on their hands, there is no good cause for now giving Plaintiffs an indefinite right to seek discovery without any schedule or limitation.

In sum, Plaintiffs should be required to pursue any discovery by August on the schedule they jointly proposed a mere three months ago. Alternatively, if the Court is inclined to defer discovery until the Ninth Circuit has ruled on related discovery issues, this case should be stayed until such ruling occurs and a new schedule is entered.

ARGUMENT

I. The Current Scheduling Order Should Remain In Place.

The Court should deny Plaintiffs' motion to vacate the scheduling order. There have been no material changed circumstances since the parties jointly proposed the current schedule a mere three months ago that would justify now vacating that schedule. Plaintiffs argue that when they agreed to the current schedule, they

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530
Tel: (202) 616-8188

"anticipated an imminent Ninth Circuit decision on the *Karnoski* Petition," Cal.'s Mot. 6, and that vacating the agreed-upon schedule is now necessary because "there is no certainty as to when the Ninth Circuit will issue its decision." Pls.' Mot. 4 n.2. But Plaintiffs' own incorrect guesses as to the date of a Ninth Circuit decision are no basis for good cause to vacate the schedule. Although it is true that neither the Court nor the parties can know when the Ninth Circuit will rule, this was also the case when Plaintiffs agreed to the schedule a mere three months ago. The only thing that has changed since the schedule was entered in February is that Plaintiffs have waited months and then finally decided to serve discovery requests. Clearly, this alone does not justify vacating the schedule to which the parties previously agreed.

Nor have Plaintiffs shown that the current schedule is unworkable. The next deadline on the schedule is for the initial designation of expert witnesses on May 24, 2019. Plaintiffs do not need a ruling from the Ninth Circuit in order to designate expert witnesses. Indeed, the Plaintiffs in *Karnoski* have already designated their expert witnesses without such a ruling. And plaintiff-intervenor California has indicated that it "is preparing to initially designate expert witnesses in compliance with the May 24, 2019, deadline set forth in the current Order." Cal.'s Mot 8. More generally, the close of discovery is not until August, giving Plaintiffs ample time to pursue discovery.

At best, Plaintiffs' motions to vacate the scheduling order are premature. The deadline for Defendants to respond to Plaintiffs' discovery requests under the Federal Rules of Civil Procedure has not even passed yet. And if a ruling from the Ninth Circuit creates a potential need to revisit the schedule, the parties can meet and confer about the issue at that time.

Moreover, Plaintiffs' purported need for additional time to pursue discovery is belied by the actions they have taken in this case. Although Plaintiffs argue that they have been "diligent in readying their case for trial," all of Plaintiffs' actions that they claim demonstrate "diligence" took place in April 2019. *See* Pls.' Mot. 6; Cal.'s Mot. 8.

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530
Tel: (202) 616-8188

Plaintiffs have sat on their rights since the initial preliminary injunction was entered in 2017 and did not serve any discovery until last month. Plaintiffs now attribute this failure to serve discovery until April 2019 to their reliance on the cross-use agreement and the discovery produced in the related cases. *See* Pls.' Mot. 2. But a cross-use agreement with other litigants in related cases does not excuse Plaintiffs' choice to do nothing for nearly one year. Defendants have produced tens of thousands of pages of documents and an approximately 3,000-page administrative record, and the vast majority of this production took place almost a year ago. Even if Plaintiffs were waiting to review these productions before serving their own discovery requests, they could have done so months ago. Additionally, Defendants have made numerous civilian and military officials available for deposition—and the plaintiffs in the related cases have taken some depositions—yet Plaintiffs here have not noticed a single deposition in this case. Accordingly, any need for additional time is of Plaintiffs' own making. Plaintiffs are not justified in doing nothing for almost a year and then seeking an indefinite extension of discovery.

Plaintiffs next argue that vacating the schedule and permitting Plaintiffs to pursue endless discovery "will not prejudice or inconvenience Defendants." Cal.'s Mot. 9; *see also* Pls.' Mot. 7. But permitting Plaintiffs to "aggressively pursue discovery," Pls.' Mot. 4, with no deadline for the close of discovery obviously *will* prejudice Defendants. There currently is a schedule in place under which Plaintiffs would be required to make decisions on discovery, to be followed by summary judgment motions to resolve the merits—all in the foreseeable future. To supplant that schedule with *no* limitations on discovery in time or scope, *and* the prospect of re-litigating discovery disputes already before the Court of Appeals, *see infra* Section II, would be patently prejudicial to Defendants.

Finally, Plaintiffs contend that Defendants will not suffer any prejudice because Defendants agreed to vacate the schedule in *Karnoski* pending a ruling from the Ninth

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530
Tel: (202) 616-8188

Circuit. That argument is flatly wrong. The agreement in *Karnoski* took place under far different circumstances. To start with, Defendants agreed to vacate the schedule in *Karnoski* in light of an impending trial date. *See Karnoski v. Trump*, No. 17-cv-01297 (W.D. Wash.), Dkt. 330. Here, trial is not scheduled to take place until February 2020. Additionally, when Defendants had first agreed to vacate some of the dates on the *Karnoski* schedule, *see id.*, Dkt. 318, the Ninth Circuit had recently *stayed* the district court's discovery order pending the Ninth Circuit's consideration of the Government's mandamus petition that addressed the scope of discovery in that case, *see In re Donald J. Trump*, No. 18-72159 (9th Cir. 2018), Dkt. 36.[2] At that time, the *Karnoski* plaintiffs had not served additional discovery requests, so the case was effectively stayed. Thus, the schedule was vacated in *Karnoski* in light of an imminent trial date and where the particular discovery order in dispute had been stayed by the Court of Appeals. Neither circumstance is presented in this case.[3] For these reasons, the agreement in *Karnoski* does not support Plaintiffs' motion to vacate the scheduling order in this case.

II. In The Alternative, The Court May Consider Staying This Case Pending A Ruling By The Ninth Circuit.

For the reasons discussed above, the current scheduling order should remain in place. However, if the Court is inclined to defer discovery pending a ruling by the Ninth Circuit on related discovery issues, it should simply stay this case until such ruling and enter a new schedule thereafter. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to

---

[2] Vacating the schedule in *Karnoski* took place in two stages. First, the parties jointly proposed vacating the deadlines for filing discovery motions, completing discovery, and filing dispositive motions. *Karnoski v. Trump*, No. 17-cv-01297 (W.D. Wash.), Dkt. 318 (noting that the parties "do not currently seek to extend any of the existing trial or pre-trial dates"). The parties later jointly proposed vacating the upcoming trial and pre-trial dates pending a ruling by the Ninth Circuit. *Id.*, Dkt. 330.

[3] The *Karnoski* plaintiffs have recently begun serving Defendants with additional discovery requests. Accordingly, Defendants are considering whether to request a stay of the *Karnoski* case pending a ruling by the Ninth Circuit.

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530
Tel: (202) 616-8188

control the disposition of the causes on its docket . . . ."); *cf Stockman v. Trump*, No. 18-56539 (9th Cir. December 19, 2018), Dkt. 28 (staying interlocutory appeal pending similar appeal in *Karnoski*).

Instead, Plaintiffs propose that the scheduling order be vacated so that they can "aggressively pursue discovery" with no end date. Pls.' Mot. 4. They intend to do so despite asserting that, without a ruling from the Ninth Circuit, they lack the "necessary guidance to tailor their discovery requests, and claims, moving forward." Pls.' Mot. 4. Plaintiffs cannot have it both ways. If they think they can conduct discovery now, then they should do so on the schedule currently in place. But if they now think they need the Ninth Circuit's decision before proceeding with discovery, then they should wait for the Ninth Circuit to rule, and then proceed with the case at that time.

What Plaintiffs should not be permitted to do is to serve discovery now, meet and confer (and potentially litigate) over Defendants' privilege assertions, and then, with no schedule in place, wait for the Ninth Circuit to rule, "serve new discovery requests, and further meet and confer with Defendants, in response to the Ninth Circuit's ruling on privilege issues." Pls.' Mot. 6–7. Such a process would at the least needlessly duplicate efforts. Worse, it would inevitably lead to the same disputes already before the Ninth Circuit. Plaintiffs cannot dispute that their recent discovery requests seek many of the same documents as the requests at issue in the mandamus petition currently before the Ninth Circuit in *Karnoski*. This includes not only sweeping requests for deliberative materials from the Department of Defense and military services, but also presidential communications. *Compare, e.g.*, *Stockman* Pls.' First Set of Reqs. for Prod.at Req. for Prod. 1, Dkt. 150-5 (requesting "[d]ocuments and communications between the President of the United States, on the one hand, and the Department of Defense, on the other hand . . . related to the service and/or accession of Transgender individuals in any Service Branch"), *with Karnoski* Pls.' Second Reqs. For Prod., Exh. A at Req. for Prod. 34 (requesting "[a]ll Communications . . . between

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530
Tel: (202) 616-8188

the President . . . on the one hand, and Secretary Mattis and/or the Department of the Defense, on the other hand, relating or referring to military service by transgender people . . . ."); *see also* Cal. Mot. at 9 (referring to California's requests as "the same types of production requests made by the *Karnoski* plaintiffs"); *id.* at 8 (referring to "the similarities in nature between the pending requests and the requests in *Karnoski*").[4] Thus, not only would proceeding indefinitely with discovery waste resources generally absent guidance from the Ninth Circuit, but it also holds the clear prospect that the same kind of discovery disputes now before the Circuit Court would be replicated in this case. This makes no sense and, as noted above, would prejudice Defendants.[5]

Accordingly, the better course, if the Court is inclined to wait until the Ninth Circuit rules on related discovery issues, would be to simply stay proceedings and enter a new schedule after the Circuit Court rules. That plan would address the key concern Plaintiffs raise in their motions because Plaintiffs would still have the benefit of the Ninth Circuit's decision before proceeding further. And it would serve judicial economy by avoiding needless and duplicative disputes that could be rendered moot by the Ninth Circuit's ruling.

Recent proceedings in the related case *Doe v. Shanahan*, No. 15-cv-1597 (D.D.C.), confirm that a stay is appropriate. In *Doe*, after the D.C. Circuit vacated the *Doe* preliminary injunction and the Supreme Court stayed the preliminary injunctions in the related cases (including in the present case), the *Doe* district court denied without

---

[4] Plaintiffs claim that their requests "target new issues not previously addressed by Defendants' responses and productions in connection with discovery served in the other actions," Pls.' Mot. 3, but that is plainly belied by the requests themselves.

[5] There is also a possibility that the Ninth Circuit may decide there should not be any discovery in these cases, as Judge Williams recently concluded in a concurrence to the D.C. Circuit's opinion vacating the *Doe* preliminary injunction. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C. Cir. 2019) (Williams, J., concurring in the result) ("Where, as here, plaintiffs cannot save their claims with *any* further discovery because the law so clearly forecloses their demands . . . [t]he court should say what the law is and be done with it.").

U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20530
Tel: (202) 616-8188

prejudice various pending discovery motions and directed the parties to meet and confer about how discovery should proceed in light of the intervening rulings. *See* Exh. B (Doe Order). Thus, the parties' earlier efforts to address and brief disputes over privilege were rendered moot. If the Court were to grant Plaintiffs' motion, a similar waste of efforts likely would occur here.

CONCLUSION

For the foregoing reasons, Plaintiffs' motions should be denied and the scheduling order should remain in place. In the alternative, if the Court is inclined to wait for the Ninth Circuit's discovery ruling in *Karnoski*, it should stay this case pending resolution of the mandamus petition and the entry of a new schedule.

Dated: May 13, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

JAMES BURNHAM
Deputy Assistant Attorney General

ANTHONY J. COPPOLINO
Deputy Director

/s/ Matthew Skurnik

ANDREW E. CARMICHAEL
ROBERT M. NORWAY
MATTHEW SKURNIK
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Telephone: (202) 616-8188
Email: matthew.skurnik@usdoj.gov
Counsel for Defendant

EXHIBIT A

Karnoski *Plaintiffs' Second Requests for Production*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	Case No. 2:17-cv-01297-MJP **PLAINTIFFS' SECOND REQUESTS FOR PRODUCTION TO DEFENDANTS** Honorable Marsha J. Pechman

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiffs propound the following requests for production of documents to Defendants to be responded to within 30 days of service. Plaintiffs request that all documents and electronically stored information responsive to the following discovery requests be produced electronically, or alternatively, at the offices of Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654.

SECOND REQUESTS FOR PRODUCTION

26. Documents sufficient to show the total annual amount spent and average, actual, or estimated annual per-person cost of hormone therapy provided to service members for each of fiscal years 2015, 2016, and 2017, and for the year to date of fiscal year 2018, including without limitation hormone therapy for the treatment of hypogonadism, hypothyroidism, hyperthyroidism, prostate cancer, breast cancer, growth hormone deficiency, menopause, osteoporosis, and transgender hormone therapy.

27. All Documents or Communications relating or referring to Secretary James Mattis's February 22, 2018, Memorandum for the President with Subject: Military Service by Transgender Individuals (the "February 22, 2018, Memorandum"), including without limitation: (a) all documents reviewed, considered, or relied upon in preparing the February 22, 2018, Memorandum; and (b) all drafts of the February 22, 2018, Memorandum.

28. All Documents or Communications reflecting, referring, or relating to any policies that were considered as alternatives, modifications, or refinements to the policies set forth in the final draft of the February 22, 2018, Memorandum.

29. All Documents or Communications relating or referring to the February 2018 Department of Defense Report and Recommendations on Military Service by Transgender Persons (the "Report and Recommendations"), including without limitation: (a) all documents received, reviewed, or considered by the Department of Defense, Panel of Experts, Transgender Service Policy Working Group, and/or any other group or committee within the Department of Defense that reviewed or considered transgender issues; (b) all Communications to, from, or copying the Department of Defense, Panel of Experts, Transgender Service Policy Working Group, and/or any other group or committee within the Department of Defense that reviewed or considered transgender issues; (c) all Documents reflecting, containing, or setting forth any information or data received, reviewed, or considered by the Department of Defense, Panel of Experts, Transgender Service Policy Working Group, and/or any other group or committee within the Department of Defense that reviewed or considered transgender issues; (d) all Documents relating, reflecting, or referring to matters discussed at any meeting of the Panel of Experts, Transgender Service Policy Working Group, and/or any other group or committee within the Department of Defense that reviewed or considered transgender issues; (e) all drafts of the Report and Recommendations.

30. All Documents or Communications reflecting, referring, or relating to any policies that were considered as alternatives, modifications, or refinements to the policies set forth in the Report and Recommendations.

31. All Documents and Communications relating or referring to any person or group providing analysis, advice, or recommendations to Secretary Mattis, the Department of Defense, and/or the Panel of Experts concerning the Report and Recommendations, military service by

transgender people or any restrictions on such service, including the Transgender Service Policy Working Group and/or any other group or committee within the Department of Defense that reviewed or considered transgender issues.

32. All Documents or Communications relating or referring to President Trump's March 23, 2018, Memorandum for the Secretary of Defense and the Secretary of Homeland Security with Subject: Military Service by Transgender Individuals (the "March 23, 2018, Memorandum"), including without limitation: (a) all documents reviewed, considered, or relied upon in preparing the March 23, 2018, Memorandum; and (b) all drafts of the March 23, 2018, Memorandum.

33. All Documents or Communications reflecting, referring, or relating to any policies that were considered as alternatives, modifications, or refinements to the policies set forth in the March 23, 2018, Memorandum.

34. All Communications, on or after January 20, 2017 to the present, between the President, the Executive Office of the President, the Vice President, and/or the Office of the Vice President, on the one hand, and Secretary Mattis and/or the Department of the Defense, on the other hand, relating or referring to military service by transgender people, public policy regarding transgender people, medical treatment for transgender people, and/or transgender people in general.

35. All Communications, on or after January 20, 2017 to the present, between the President, the Executive Office of the President, the Vice President, the Office of the Vice President, Secretary Mattis, the Department of Defense, and/or the Panel of Experts, on the one hand, and non-government third parties, including but not limited to the Heritage Foundation, Heritage Action for America, the Family Research Council, the Center for Military Readiness, the Liberty Council, lobbyists, think tanks, nonprofit organizations, religious organizations, and individuals, on the other hand, concerning military service by transgender people, public policy

regarding transgender people, medical treatment for transgender people, and/or transgender people in general.

DEFINITIONS AND INSTRUCTIONS

1. "You," "your," and "yours," whether or not capitalized, shall mean the Defendants, individually and/or collectively, including Defendants' current and former employees, agents, affiliates, contractors, consultants, representatives, and other persons engaged directly or indirectly by or under the control of Defendants.

2. "President Trump" and the "President" shall mean Donald J. Trump, the President of the United States and also refers to Donald J. Trump before his inauguration to that office and any persons engaged directly or indirectly by or under the control of Donald J. Trump.

3. "Vice President Pence" and the "Vice President" shall mean Michael R. Pence, the Vice President of the United States and also refers to Michael R. Pence before his inauguration to that office and any persons engaged directly or indirectly by or under the control of Michael R. Pence.

4. The "Executive Office of the President" shall mean the Executive Office of the President and all officers and employees thereof, including, but not limited to, the President's Chief of Staff and his office, the Advisors, Senior Advisors, Chief Strategists, and Counselors to the President and their offices, the Assistant to the President for National Security Affairs (also known as the National Security Advisor) and his office, the White House Counsel and his office, and all officers and employees of the National Security Council.

5. The "Office of the Vice President" shall mean the Office of the Vice President, including, without limitation, the Vice President's Chief of Staff and his office, the Advisors, Assistants, and Deputy Assistants to the Vice President and their offices, and the National Security Advisor to the Vice President and her office.

6. The "Department of Defense" shall mean the Department of Defense and all officers and employees thereof, including, but not limited to, the Secretary of Defense, the Deputy Secretary of Defense, any Undersecretary of Defense, any Assistant Secretary of Defense, any Deputy Assistant Secretary of Defense, the Chairman and Vice Chairman of the Joint Chiefs of Staff, and all employees and officers of the Office of the Secretary of Defense, the Department of the Navy, the Department of the Army, and Department of the Air Force.

7. "Panel of Experts" shall mean the group of senior uniformed and civilian leaders of the Department of Defense and the U.S. Coast Guard established by Secretary Mattis on September 14, 2017, to conduct an independent multi-disciplinary review and study of the relevant data and information pertaining to transgender Service members.

8. "Transgender" shall mean a person whose gender identity differs from the sex they were assigned at birth.

9. "Communication" shall mean any transmission of information by one or more persons to one or more persons by any means including, without limitation, telephone conversations, letters, telegrams, teletypes, telexes, telecopies, e-mail, text messages, computer linkups, written memoranda, and face-to-face conversations; "communication" includes all documents and electronically stored information ("ESI") containing, summarizing, or memorializing any communication.

10. "Document" or "documents" shall have the full meaning ascribed to it by Federal Rule of Civil Procedure 34(a) including ESI, and includes the original and any identical or nonidentical copy, regardless of origin or location, of any writing or record of any type or description, including but not limited to, all writings; records; contracts; agreements; communications (intra or inter-company); correspondence; memoranda; letters; facsimiles; electronic mail (e-mail); text messages; minutes, recordings, transcripts, and summaries of meetings, or recordings of meetings, speeches, presentations, conversations, or telephone calls

(whether recorded in writing, mechanically, or electronically); handwritten and typewritten notes of any kind; statements; reports; voice recordings; desk calendars; diaries; logs; drafts; studies; analyses; schedules; forecasts; surveys; invoices; receipts; computer data; computer printouts; financial statements; balance sheets; statements of operations; audit reports; financial summaries; statements of lists of assets; work papers; pictures; photographs; drawings; computer cards; tapes; discs; printouts and records of all types; instruction manuals; policy manuals and statements; books; pamphlets; and every other device or medium by which information or intelligence of any type is transmitted, recorded, or preserved, or from which intelligence or information can be perceived.

11. "Identify," whether or not capitalized, when used with respect to: (a) an individual, shall mean to provide the individual's full name, job title, and employer during the period referred to, and current or last-known address and telephone number and business address and telephone number; (b) any entity other than an individual, shall mean to provide the entity's full name and current or last-known address (designating which); and (c) a document, shall mean to provide the date, title, subject matter, author(s), recipient(s), and Bates number(s).

12. "Including" or "includes," whether or not capitalized, shall mean "including but not limited to" or "including without limitation."

13. "Relating to" or "related to," whether or not capitalized, when referring to any given subject matter, shall mean any document that constitutes, comprises, involves, contains, embodies, reflects, identifies, states, mentions, alludes to, refers directly or indirectly to, or is in any way relevant to the particular subject matter identified.

14. Produce all documents in the order in which they appear in your files. Documents that, in their original condition, are stapled, clipped, or otherwise fastened together shall be produced in this same condition.

15. Produce all documents within your possession, custody, or control including all documents in the possession, custody, or control of any United States government employee, agent, representative, consultant, attorney, accountant, advisors, or other persons directly or indirectly connected with you or subject to your control, any government department, agency or any other government subdivision.

16. If any responsive document has been lost, destroyed, removed from, or is no longer in your possession, custody, or control for any reason, please identify the document, its last known location, and the circumstances surrounding its loss, destruction, or removal.

17. If you contend that any responsive document is protected from disclosure pursuant to any privilege or work-product doctrine, please specifically set forth the privilege being asserted and any factual or legal basis for its assertion. Also set forth the date and title of the document, its subject matter generally, its author(s) and recipient(s), and its Bates number(s).

18. Each paragraph is to be construed independently and not by or with reference to any other paragraph for purposes of limiting the scope of any particular request.

19. If no documents responsive to a particular request exist, or if such documents exist but are not in your possession, custody, or control, then your response to that request shall so state.

20. Pursuant to the Federal Rules of Civil Procedure, these requests are continuing and you must revise or supplement your responses and production whenever new or additional responsive information becomes known.

Dated: April 26, 2018

/s/ Jordan M. Heinz

NEWMAN DU WORS LLP Derek A. Newman, WSBA #26967
dn@newmanlaw.com
Samantha Everett, WSBA #47533
samantha@newmanlaw.com
2101 Fourth Ave., Ste. 1500
Seattle, WA 98121
(206) 274-2800

LAMDBA LEGAL DEFENSE AND EDUCATION FUND, INC.
Tara Borelli, WSBA #36759
tborelli@lambdalegal.org
Jon W. Davidson (admitted pro hac vice)
Camilla B. Taylor (admitted pro hac vice)
Peter C. Renn (admitted pro hac vice pending)
Natalie Nardecchia (admitted pro hac vice)
Sasha Buchert (admitted pro hac vice)
Kara Ingelhart (admitted pro hac vice)
Carl Charles (admitted pro hac vice)
730 Peachtree Street NE, Ste. 640
Atlanta, GA 30308

OUTSERVE-SLDN, INC.
Peter Perkowski (admitted pro hac vice)

KIRKLAND & ELLIS LLP
James F. Hurst, P.C. (admitted pro hac vice)
Stephen Patton (admitted pro hac vice)
Jordan M. Heinz (admitted pro hac vice)
Scott Lerner (admitted pro hac vice)
Vanessa Barsanti (admitted pro hac vice)
Daniel I. Siegfried (admitted pro hac vice)
300 North LaSalle
Chicago, IL 60654

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that on April 26, 2018, I caused a true and correct copy of the foregoing document to be served by email on the following counsel of record for Defendants:

Ryan B. Parker
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
ryan.parker@usdoj.gov

s/ Jordan M. Heinz

EXHIBIT B

Doe *Order*

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.

court's preliminary injunction "pending disposition of the Government's appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the Government's petition for a writ of certiorari, if such writ is sought." *Trump v. Karnoski*, Order List: 586 U.S. 18A625 (Jan. 22, 2019). While the Supreme Court's Order contained no legal justification for staying the district court's preliminary injunction, the Order may still be relevant to the parties' discovery disputes.

Based on the recent decisions by the D.C. Circuit and the Supreme Court, the Court **DENIES WITHOUT PREJUDICE** Plaintiffs' [109] Motion to Compel Compliance with Subpoenas for Production of Documents Directed to Nonparties Family Research Council and Heritage Foundation, Plaintiffs' [169] Motion to Compel Production of Documents and Information Withheld Under the Deliberative Process Privilege, Defendants' [170] Motion for a Protective Order, and Defendants' [171] Motion for a Protective Order. The Court **ORDERS** the parties to meet and confer regarding the scope and breadth of discovery as the case now stands. The parties should particularly focus on how the scope and breadth of permissible discovery is affected by the D.C. Circuit's determination that the Mattis Plan is not a continuation of the 2017 Presidential Memorandum but is instead a new plan. The parties are **ORDERED** to file a Joint Status Report by FEBRUARY 26, 2019, informing the Court on how the parties intend to proceed with discovery.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AIDEN STOCKMAN; NICOLAS TALBOTT; TAMASYN REEVES; JAQUICE TATE; JOHN DOES 1-2; JANE DOE; and EQUALITY CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. 5:17-CV-01799-JGB-KK

[PROPOSED] ORDER DENYING MOTIONS TO VACATE SCHEDULING ORDER

Date: June 3, 2019
Time: 9:00 a.m.
Courtroom: 1
Judge: Hon. Jesus G. Bernal

STATE OF CALIFORNIA,

Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

The Court, having reviewed and considered Plaintiffs' and Plaintiff Intervenor's Motions to Vacate Scheduling Order, Dkts. 150–51, concludes that good cause has not been shown to vacate the scheduling order. The motions are hereby DENIED.

Dated: _____

_____
Honorable Jesus G. Bernal
United States District Judge