

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RYAN KARNOSKI, et al.,
Plaintiffs-Appellees,

STATE OF WASHINGTON, Attorney General's
Office Civil Rights Unit,
Intervenor-Plaintiff-Appellee,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,
Defendants-Appellants.

No. 18-35347
Argued October 10,
2018

In re DONALD J. TRUMP, et al.,

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,
Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON, SEATTLE,

Respondent,

RYAN KARNOSKI, et al.,
Real Parties in Interest.

No. 18-72159
Argued October 10,
2018

**UNOPPOSED MOTION TO DISMISS PLAINTIFF-APPELLEE CONNOR
CALLAHAN WITHOUT PREJUDICE**

Pursuant to Federal Rule of Appellate Procedure 42(b), Plaintiffs-Appellees

Ryan Karnoski, Staff Sergeant Cathrine Schmid, D.L., Chief Warrant Officer

Lindsey Muller, Petty Officer First Class Terece Lewis, Petty Officer Second Class Phillip Stephens, Petty Officer Second Class Megan Winters, Jane Doe, Conner Callahan, Human Rights Campaign, Gender Justice League, and American Military Partners Association (also, real parties in interest in appeal number 18-72159, hereinafter “Plaintiffs-Appellees”) respectfully move for an order dismissing Plaintiff-Appellee Conner Callahan from this appeal without prejudice. Defendants-Appellants Donald J. Trump, Patrick M. Shanahan, and the United States Department of Defense (“Defendants-Appellants”) do not oppose this motion and agree both that (i) Mr. Callahan may be dismissed without prejudice, and (ii) Mr. Callahan will bear his own costs and fees, and Defendants-Appellants will bear their own costs and fees as to him.

A. The Case and Status of Appeal.

Plaintiffs-Appellees are nine transgender individuals currently serving or wishing to serve in the U.S. military and three organizations representing similarly situated individuals. On August 28, 2017, Plaintiffs filed suit challenging the constitutionality of the ban on open service and accessions by transgender individuals. Plaintiffs—joined by the State of Washington as an intervenor—sought a preliminary injunction to maintain the status quo that existed before the current administration reversed the military’s prior policy of open service by transgender people. The district court—and three other federal district courts—

issued preliminary injunctions to preserve the status quo pending review of this hasty and discriminatory policy reversal. *See Doe v. Trump*, 275 F.3d 167 (D.D.C 2017); *Stone v. Trump*, 280 F. Supp. 3d 747 (D. Md. 2017); *Stockman v. Trump*, No. 17-cv-1799-JGB-KK, Dkt. 79 (C.D. Cal. Dec. 22, 2017).

The Department of Defense (“DoD”) provided the president with an implementation plan on February 22, 2018.

On March 23, 2018, the government filed a motion to dissolve the preliminary injunction, which the district court denied. Defendants appealed that denial to this Court (Appeal No. 18-35347). Defendants separately petitioned this Court for a writ of mandamus regarding a discovery order issued by the district court regarding disputes over the deliberative process and executive privileges (Appeal No. 18-72159). Oral argument was held in both appeals on October 10, 2018. Dkt. 119.

B. Plaintiffs-Appellees’ Request To Dismiss Mr. Callahan.

Plaintiffs-Appellees request that Mr. Callahan be voluntarily dismissed from this appeal because his claims have become moot. Mr. Callahan has discontinued his current effort to enlist in the United States military. Because Mr. Callahan may have a future desire to serve in the United States military as an openly transgender man, Plaintiffs-Appellees request that Mr. Callahan be dismissed without prejudice.

Counsel for Plaintiffs-Appellees conferred with counsel for Defendants-Appellants, who do not oppose the relief sought. Accordingly, Defendants-Appellants do not oppose dismissing Mr. Callahan from the appeal without prejudice, and do not oppose Mr. Callahan's request that he should bear his own costs and fees, and Defendants-Appellants should bear their own costs and fees as to him.

CONCLUSION

For the reasons described above, Plaintiffs-Appellees respectfully request an order from this Court dismissing Mr. Callahan from this appeal without prejudice, and ordering that Mr. Callahan will bear his own costs and fees and that Defendants-Appellants will bear their own costs and fees as to him. After an order from this Court dismisses Mr. Callahan from this appeal, Plaintiffs will take steps to dismiss him from the originating case at the United States District Court for the Western District of Washington.

DATED: April 8, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion complies with the type-volume limitation of Ninth Circuit Rules 27-1 and 32-3 because it contains 582 words.

This Motion complies with the typeface and the type style requirements of Federal Rule of Appellate Procedure 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

By: s/ Kara N. Ingelhart
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United State Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 8, 2019.

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

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