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 8 *Attorneys for Plaintiff-Intervenor State of
 California*

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 12 RIVERSIDE DIVISION

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

Plaintiffs,

18 v.

19 **DONALD J. TRUMP, et al.,**

20 Defendants.

22 **STATE OF CALIFORNIA,**

23 Plaintiff-Intervenor,

24 v.

25 **DONALD J. TRUMP, et al.,**

26 Defendants.

5:17-CV-01799-JGB-KKx

**PLAINTIFF-INTERVENOR
 STATE OF CALIFORNIA'S
 REPLY IN SUPPORT OF MOTION
 TO VACATE SCHEDULING
 ORDER**

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

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INTRODUCTION

Plaintiffs have shown good cause as to why this Court should vacate the current schedule in this case. Defendants’ arguments to the contrary are not persuasive, and, in fact, underscore the reasons this Court should vacate the schedule.

Plaintiffs should not be required to stick to a schedule that may result in them having to prepare their case without the benefit of the Ninth Circuit’s discovery ruling in *Karnoski* and any documents Defendants are required to produce as a result. Defendants’ recent responses to Plaintiffs’ requests for production confirm that the ruling in *Karnoski* will impact this case.

Defendants attempt to portray Plaintiffs as having unreasonably delayed in serving discovery requests. But Plaintiffs have waited to serve discovery requests to avoid duplicating work in the three related cases and in light of the discovery and discovery disputes proceeding in those cases. And vacating the schedule here would not “reward” Plaintiffs with indefinite discovery, as Defendants suggest, but instead would avoid prejudice to the Plaintiffs by allowing them to continue discovery after the Ninth Circuit’s anticipated *Karnoski* ruling.

Plaintiffs’ motion to vacate the schedule should be granted.

ARGUMENT

I. DEFENDANTS CONTINUE TO INVOKE THE PRIVILEGES AT ISSUE IN *KARNOSKI*, DEMONSTRATING THE NEED TO VACATE THE SCHEDULE WHILE THE NINTH CIRCUIT CONSIDERS *KARNOSKI*

The same discovery issues are in dispute in this case as in *Karnoski*—specifically, whether the deliberative process privilege protects certain requested materials. See Decl. of Amie L. Medley, ¶ 6, Ex. 5 (ECF No. 151-1). Because the Ninth Circuit’s ruling in *Karnoski* will impact how the parties proceed in this case, this Court should vacate the schedule until the Ninth Circuit’s ruling.

Defendants’ responses to Plaintiffs’ requests for production, served on May 15, 2019, confirm, as Plaintiffs rightly anticipated when they filed their

1 motions to vacate the schedule, that Defendants would raise the same objections to
2 Plaintiffs' discovery requests as they have in *Stone, Doe, and Karnoski*. While the
3 State has not completed review of the documents Defendants produced (which the
4 Attorney General's office received on May 17) and any redactions, Defendants'
5 written objections and responses invoke deliberative process privilege over
6 requested documents, just as in *Karnoski*.

7 For example, in their response to the State's request for documents and
8 communications concerning the implementation of the March 12, 2019 directive
9 implementing the military ban, Defendants objected to the request in its entirety and
10 refused to produce any responsive documents, based on (among other reasons) the
11 deliberative process privilege and the presidential communications privilege. *See*
12 Declaration of Lara Haddad ("Haddad Decl."), Exhibit 1 attached thereto,
13 "Defendants' Objections and Responses to Plaintiff-Intervenor State of California's
14 First Set of Requests for Production to Patrick Shanahan, et al.," at 3-4. Defendants
15 are taking the same position with regard to privilege in this case as they did in
16 *Karnoski*, alleging the requested information (such as communications concerning
17 the development and implementation of the military ban and the development of the
18 waiver process) is privileged.

19 Because the Ninth Circuit's ruling will address those same issues, and thereby
20 impact how the parties proceed, this Court should vacate the schedule so that
21 *Karnoski* can first resolve those issues.

22 **II. PLAINTIFFS HAVE DILIGENTLY PURSUED THIS ACTION**

23 Plaintiffs have diligently pursuant this action. Because it is one of four similar
24 cases pending against the same Defendants, the case involves unique
25 circumstances. One such circumstance is the cross-use agreement allowing for the
26 sharing of documents across all four cases (which Defendants urged Plaintiffs to
27 enter into in order to minimize Defendants' burden of responding to multiple
28 duplicative requests). Decl. of Adam S. Sieff, ¶¶ 2-3, 5 (ECF No. 150-1).

1 Despite acknowledging this agreement, Defendants accuse Plaintiffs of having
2 done “nothing” for nearly one year. Opp. at 4. Not so. By virtue of the cross-use
3 agreement, Defendants have already provided documents in response to the
4 discovery requests served in other cases, and Plaintiffs have reviewed them.
5 Plaintiffs refrained from serving requests at the same time as other Plaintiffs served
6 their requests in order to avoid duplication, and they have endeavored to tailor their
7 recent requests to seek information not already requested by other parties (such as
8 requests that specifically focus on recent events, such as the issuance of the March
9 12, 2019 directive). Decl. of Adam S. Sieff, ¶¶ 2-3, 5 (ECF No. 150-1). Plaintiffs
10 have been diligent in pursuing discovery, given the cross-use agreement, pending
11 Ninth Circuit decision, and events that have occurred in the interim.

12 The Ninth Circuit’s anticipated decision in the *Karnoski* dispute over
13 deliberative process privilege has also impacted Plaintiffs’ discovery approach.
14 The *Karnoski* plaintiffs filed their Motion to Compel on May 10, 2018—over a year
15 ago. Decl. of Amie L. Medley, ¶ 7, Ex. 6 (ECF No. 151-1). The Defendants’
16 position with regard to deliberative process privilege has remained consistent across
17 all four cases, and Plaintiffs took that into account when deciding what information
18 to request. However, in light of recent events and with the deadline to initiate
19 discovery in this case set for June 21, 2019, Plaintiffs proceeded to serve their
20 requests for production. Defendants trivialize the fact that Plaintiffs are entitled to
21 whatever documents the Ninth Circuit might order Defendants to produce if their
22 writ petition is unsuccessful. Those documents have the potential to affect
23 Plaintiffs’ approach in this litigation, including their selection of expert witness.
24 Defendants seem to argue that because they have produced *some* documents in the
25 related cases, Plaintiffs are able to proceed with their case without further discovery
26 and without waiting for the Ninth Circuit’s ruling on deliberative process privilege.
27 Defendants’ Opposition (“Opp.”) at 4. That is not the case. Plaintiffs will be
28 prejudiced if the current schedule is left in place.

1 **III. THE COURT SHOULD VACATE THE CURRENT SCHEDULE TO PREVENT**
2 **DUPLICATIVE DISPUTES AND TO SERVE JUDICIAL ECONOMY**

3 As discussed in the State’s motion and noted above, the current case schedule
4 should be vacated because the Ninth Circuit’s ruling on the pending issue in
5 *Karnoski* will affect the current case. Defendants, in fact, state in their opposition
6 that allowing discovery to continue without a ruling from the Ninth Circuit would
7 “inevitably lead to the same disputes already before the Ninth Circuit.” Opp. at 6.
8 Plaintiffs agree—Defendants’ responses to the State’s first set of discovery requests
9 confirm the presence of the same dispute in this case, as Defendants have claimed
10 the deliberative process privilege in response to part or all of every request. The
11 State intends to dispute the privilege claim absent guidance from the Ninth Circuit.
12 See Haddad Decl. Exhibit 1. By vacating the schedule, the Court can avoid the
13 need to resolve the dispute over deliberative process privilege in this case while the
14 Ninth Circuit is considering a very similar issue that will inform the Court’s
15 decision here. Vacating the schedule would also avoid the need for the parties in
16 this case to separately litigate that same issue.

17 Defendants argue that the Court should instead stay the entire case, in part to
18 prevent Plaintiffs from pursuing discovery with no end date. Opp. at 5-8. As a
19 threshold matter, an opposition brief is not the proper vehicle for obtaining a stay.
20 See Fed. Rule Civ. Proc. 7. In any event, vacating the schedule—the relief actually
21 at issue in this motion—would not prejudice Defendants, as they allege. Plaintiffs
22 have served their first discovery requests and do not intend to serve requests
23 duplicative of those in the related cases, as described above. Defendants’ assertion
24 that Plaintiffs will engage in indefinite discovery is speculative at best. In contrast,
25 vacating the schedule would avoid potential prejudice to Plaintiffs who, as
26 described above, are entitled to any documents produced in the other cases as a
27 result of the Ninth Circuit’s decision.

28 Plaintiffs’ motions to vacate the schedule should be granted.

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CONCLUSION

For the foregoing reasons, and those set out in Plaintiffs’ motions and memoranda of points authorities, Plaintiffs request that the current schedule be vacated and the parties be ordered to submit a joint schedule within twenty-one days of the Ninth Circuit’s ruling in *Karnoski*.

Dated: May 20, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/ Lara Haddad
LARA HADDAD
Deputy Attorney General
*Attorneys for Plaintiff-Intervenor
State of California*

1 XAVIER BECERRA
Attorney General of California
2 MARK R. BECKINGTON
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3 AMIE L. MEDLEY
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8 *Attorneys for Plaintiff-Intervenor State of
California*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CENTRAL DISTRICT OF CALIFORNIA
12 RIVERSIDE DIVISION

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

Plaintiffs,

18 v.

20 **DONALD J. TRUMP, et al.,**

Defendants.

22 **STATE OF CALIFORNIA,**

23 Plaintiff-Intervenor,

24 v.

25 **DONALD J. TRUMP, et al.**

26 Defendants.
27
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Case No. 5:17-CV-01799-JGB-KKx

**DECLARATION OF LARA
HADDAD IN SUPPORT OF
MOTION TO VACATE
SCHEDULING ORDER**

Date: June 2, 2019
Time: 9:00 a.m.
Courtroom: 1
Judge: Hon. Jesus G. Bernal

1 I, LARA HADDAD, declare:

2 1. I AM A Deputy Attorney General at the California Department of Justice
3 and one of the attorneys of record for Plaintiff-Intervenor State of California. The
4 facts stated in this declaration are within my own personal knowledge, and if called
5 upon to do so, I could and would competently testify thereto.

6 2. Attached hereto as Exhibit 1 is a true and correct copy of Defendants'
7 Objections and Responses to Plaintiff-Intervenor State of California's First Set of
8 Requests for Production to Patrick Shanahan, et al.

9 I declare under penalty of perjury under the laws of the State of California
10 that the foregoing is true and correct and that this declaration was executed on May
11 20, 2019 in Los Angeles, California.

12
13 /s/ Lara Haddad

Lara Haddad

Deputy Attorney General

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EXHIBIT 1

1 JOSEPH H. HUNT
2 Assistant Attorney General
3 Civil Division

4 JAMES BURNHAM
5 Deputy Assistant Attorney General

6 JOHN R. GRIFFITHS
7 Branch Director

8 ANTHONY J. COPPOLINO
9 Deputy Director

10 ANDREW E. CARMICHAEL
11 ROBERT M. NORWAY
12 MATTHEW SKURNIK
13 United States Department of Justice
14 Civil Division, Federal Programs Branch
15 1100 L Street, N.W.
16 Washington, D.C. 20530
17 Telephone: (202) 616-8188
18 Email: Matthew.Skurnik@usdoj.gov

19 *Counsel for Defendants*

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

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

27 Plaintiffs,

28 v.

DONALD J. TRUMP, et al.

Defendants.

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

**DEFENDANTS' OBJECTIONS
AND RESPONSES TO
PLAINTIFF-INTERVENOR
STATE OF CALIFORNIA'S FIRST
SET OF REQUESTS FOR
PRODUCTION TO PATRICK
SHANAHAN, in his
official capacity as Acting Secretary
of Defense; JOSEPH F.**

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DUNFORD, JR., in his official capacity as Chairman of the Joint Chiefs of Staff; **RICHARD V. SPENCER**, in his official capacity as Secretary of the Navy; **MARK T. ESPER**, in his official capacity as Secretary of the Army; **HEATHER A. WILSON**, in her official capacity as Secretary of the Air Force; and **KEVIN K. MCALEENAN**, in his official capacity as Acting Secretary of Homeland Security

Judge: Hon. Jesus G. Bernal

STATE OF CALIFORNIA,
Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

1 **DEFENDANTS’ OBJECTIONS AND RESPONSES TO PLAINTIFF-**
2 **INTERVENOR’S FIRST SET OF REQUESTS FOR PRODUCTION TO**
3 **SECRETARY SHANAHAN, CHAIRMAN DUNFORD, SECRETARY**
4 **SPENCER, SECRETARY ESPER, SECRETARY WILSON, AND**
5 **SECRETARY MCALEENAN**

6 Pursuant to Federal Rules of Civil Procedure 26 and 34, Defendants, through
7 their undersigned counsel, hereby submit initial objections and responses to Plaintiff-
8 Intervenor the State of California’s First Set of Requests for Production, served April
9 15, 2019.¹ In presenting these objections, Defendants do not waive any further
10 objection in pretrial motions practice or at trial to the admissibility of evidence on the
11 grounds of relevance, materiality, privilege, competency, or any other appropriate
12 ground.

13 **Objections to Definitions and Instructions**

14 1. Defendants object to Definition 3 of “Department of Defense” as
15 substantially overbroad, ambiguous, and disproportionate to the needs of the case.
16 Among other things, Plaintiff-Intervenor has defined “Department of Defense” to
17 encompass all employees and officers of the Office of the Secretary of Defense, the
18 Department of the Navy, the Department of the Army, and the Department of the Air
19 Force, thus covering more than a million people.

20 2. Defendants object to Definition 4 of “Department of Homeland Security”
21 as substantially overbroad, ambiguous, and disproportionate to the needs of the case.

22 3. Defendants object to Definition 5 of “President” as substantially
23 overbroad, ambiguous, and disproportionate to the needs of the case. Among other
24 things, Plaintiff-Intervenor has defined “President” to include “Donald J. Trump before
25

26 ¹ These objections and responses are limited to Secretary Shanahan, Chairman
27 Dunford, Secretary Spencer, Secretary Esper, Secretary Wilson, and Secretary
28 McAleenan. Defendants will produce, or already have produced, separate objections
 for the President.

1 his inauguration to the Presidency,” even though this lawsuit is brought against the
2 President in his official capacity only.

3 **General Objection to All Requests for Production**

4 Defendants object to Plaintiff-Intervenor’s requests that purport to seek
5 information outside of the administrative record because discovery beyond the limits of
6 the Administrative Procedure Act is inappropriate in this case. The Department of
7 Defense’s administrative processes resulted in final agency action supported by the
8 administrative record. In determining whether that final agency action is “contrary to
9 constitutional right,” 5 U.S.C. § 706(2)(B), the Court “shall review the whole record,”
10 *id.* § 706. The Court’s review is therefore limited to “the full administrative record that
11 was before the Secretary at the time he made his decision.” *Citizens to Preserve Overton*
12 *Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971).

13 Further, as recently emphasized by the D.C. Circuit in a challenge to the same
14 military policy at issue in this litigation, the Court must give great deference to the
15 judgment of military officials. *Doe 2 v. Shanahan*, 755 F. App’x 19, 24–25 (D.C. Cir.
16 2019) (per curiam). Such deference means that neither Plaintiffs, Plaintiff-Intervenor,
17 Plaintiffs’ witnesses, nor the Court may undertake an independent evaluation of the
18 evidence, as Plaintiff-Intervenor proposes to do here through its discovery requests.
19 *Rostker v. Goldberg*, 453 U.S. 57, 81 (1981) (“In relying on this testimony . . . the District
20 Court palpably exceeded its authority when it ignored Congress’ considered response
21 to this line of reasoning.”); *id.* at 82–83 (“The District Court was quite wrong in
22 undertaking an independent evaluation of this evidence.”); *Goldman v. Weinberger*, 475
23 U.S. 501, 508 (1986) (“[W]hether or not expert witnesses may feel that religious
24 exceptions to [the challenged military regulation] are desirable is quite beside the
25 point.”); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 25 (2008) (“We accept
26 these officers’ assertions [that a certain practice] is of the utmost importance to the Navy
27 and the Nation.”). Accordingly, the discovery sought cannot be considered by the Court
28

1 and Plaintiff-Intervenor’s requests are overbroad, unduly burdensome, and
2 disproportional to the needs of the case. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
3 Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy
4 is so circumscribed that arguments based on extra-record evidence and discovery are
5 “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
6 *also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for
7 ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453
8 U.S. at 81)). Moreover, as the Supreme Court recently emphasized in *Trump v. Hawaii*,
9 138 S. Ct. 2392, 2420 (2018), the Court’s review of the Department of Defense policy
10 must focus on the stated justifications for the policy—which are set forth in the
11 Secretary of Defense’s Memorandum dated February 22, 2018 and its accompanying
12 report—not on underlying communications or deliberations, particularly as to prior
13 policy statements. Accordingly, Plaintiff-Intervenor’s discovery requests that seek to
14 conduct a fishing expedition into allegations of animus are overbroad, unduly
15 burdensome, and disproportional to the needs of the case.

16 **Specific Objections to Requests for Production**

17 RFP No. 1: Any and all documents and communications between the President,
18 the Department of Defense, the Department of Homeland Security, or any Service
19 Branch of the United States Military with any state, state’s military department, or any
20 other state agency relating to the implementation of the policy announced in the March
21 12, 2019 Directive.

22 Specific Objections: Defendants object to this request to the extent that it seeks
23 (a) attorney work product; (b) communications or information protected by the
24 attorney-client privilege; (c) communications or information protected by the
25 deliberative process privilege; (d) material the disclosure of which would violate
26 legitimate privacy interests and expectations of persons not party to this litigation; or
27

1 (e) communications or information protected by the presidential communications
2 privilege.

3 Defendants further object on the grounds that this request is overbroad, unduly
4 burdensome, and disproportionate to the needs of the case. As further explained above,
5 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
6 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
7 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
8 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
9 is so circumscribed that arguments based on extra-record evidence and discovery are
10 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
11 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
12 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
13 U.S. at 81)).

14 Moreover, even if Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, and the
15 Court were entitled to undertake an independent evaluation of the evidence, this request
16 would be overbroad, unduly burdensome, and disproportionate to the needs of the case
17 to the extent it requests documents and communications with any of the 49 states other
18 than California. There can be no legitimate need for discovery of communications with
19 States that are not parties to this action. Defendants therefore construe the phrases
20 "any state," "state's military department," and "any other state agency" as "California,"
21 "California's military department," and "any other California agency," respectively.
22 With the request thus narrowed, any communications or documents involving
23 "California," "California's military department," or "any other California agency" would
24 already be in the possession of Plaintiff-Intervenor the State of California, and would
25 be equally available to Plaintiff-Intervenor as to Defendants.

26 Response: Subject to and without waiving the above objections, Defendants will
27 not produce any documents responsive to this request.
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1
2 RFP No. 2: Any and all documents and communications between the President,
3 the Department of Defense, the Department of Homeland Security, or any Service
4 Branch of the United States Military with any state, state military department, or other
5 state agency relating to the formulation and/or implementation of the policy announced
6 in the February 22, 2018 Memorandum.

7 Specific Objections: Defendants object to this request to the extent that it seeks
8 (a) attorney work product; (b) communications or information protected by the
9 attorney-client privilege; (c) communications or information protected by the
10 deliberative process privilege; (d) material the disclosure of which would violate
11 legitimate privacy interests and expectations of persons not party to this litigation; or
12 (e) communications or information protected by the presidential communications
13 privilege.

14 Defendants further object on the grounds that this request is overbroad, unduly
15 burdensome, and disproportionate to the needs of the case. As further explained above,
16 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
17 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
18 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
19 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
20 is so circumscribed that arguments based on extra-record evidence and discovery are
21 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
22 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
23 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
24 U.S. at 81)).

25 Moreover, even if Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, and the
26 Court were entitled to undertake an independent evaluation of the evidence, this request
27 would be overbroad, unduly burdensome, and disproportionate to the needs of the case
28

1 to the extent it requests documents and communications with any of the 49 states other
2 than California. There can be no legitimate need for discovery of communications with
3 States that are not parties to this action. We therefore construe the phrases “any state,”
4 “state’s military department,” and “any other state agency” as “California,” “California’s
5 military department,” and “any other California agency,” respectively. With the request
6 thus narrowed, any communications or documents involving “California,” “California’s
7 military department,” or “any other California agency” would already be in the
8 possession of Plaintiff-Intervenor the State of California, and would be equally available
9 to Plaintiff-Intervenor as to Defendants.

10 Response: Subject to and without waiving the above objections, Defendants will
11 not produce any documents responsive to this request.

12
13 RFP No. 3: Any and all documents and communications relating to the cost or
14 estimated cost to states, state military departments, or other state agencies of the
15 formulation and/or implementation of the policy announced in the March 12, 2019
16 Directive.

17 Specific Objections: Defendants object to this request to the extent that it seeks
18 (a) attorney work product; (b) communications or information protected by the
19 attorney-client privilege; (c) communications or information protected by the
20 deliberative process privilege; (d) material the disclosure of which would violate
21 legitimate privacy interests and expectations of persons not party to this litigation; or
22 (e) communications or information protected by the presidential communications
23 privilege. Without waiver of the objections, a privilege log will be provided by the
24 government, which describes the privileged documents that have been withheld and the
25 basis for privilege at issue for those documents.

26 Defendants further object on the grounds that this request is overbroad, unduly
27 burdensome, and disproportionate to the needs of the case. As further explained above,
28

1 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs’ witnesses, nor the Court may
2 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
3 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
4 Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy
5 is so circumscribed that arguments based on extra-record evidence and discovery are
6 “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
7 *also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for
8 ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453
9 U.S. at 81)).

10 Response: Subject to and without waiving the above objections, Defendants will
11 conduct a reasonable search and produce any nonprivileged documents responsive to
12 this request in Defendants’ possession, custody, or control.

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14 RFP No. 4: Any and all documents and communications relating to the cost or
15 estimated cost to states, state military departments, or other state agencies of the
16 formulation and/or implementation of the policy announced in the February 22, 2018
17 Memorandum.

18 Specific Objections: Defendants object to this request to the extent that it seeks
19 (a) attorney work product; (b) communications or information protected by the
20 attorney-client privilege; (c) communications or information protected by the
21 deliberative process privilege; (d) material the disclosure of which would violate
22 legitimate privacy interests and expectations of persons not party to this litigation; or
23 (e) communications or information protected by the presidential communications
24 privilege. Without waiver of the objections, a privilege log will be provided by the
25 government, which describes the privileged documents that have been withheld and the
26 basis for privilege at issue for those documents.

1 Defendants further object on the grounds that this request is overbroad, unduly
2 burdensome, and disproportionate to the needs of the case. As further explained above,
3 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
4 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
5 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
6 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
7 is so circumscribed that arguments based on extra-record evidence and discovery are
8 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
9 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
10 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
11 U.S. at 81)).

12 Response: Subject to and without waiving the above objections, Defendants
13 previously produced documents responsive to this request or withheld documents
14 responsive to this request pursuant to a valid privilege and will provide Plaintiffs with
15 logs documenting that withholding.

16
17 RFP No. 5: Any and all documents and communications, including but not
18 limited to, studies, memoranda, or reports relating to the impact on states, state military
19 departments, or other state agencies of the formulation and/or implementation of the
20 policy announced in the March 12, 2019 Directive.

21 Specific Objections: Defendants object to this request to the extent that it seeks
22 (a) attorney work product; (b) communications or information protected by the
23 attorney-client privilege; (c) communications or information protected by the
24 deliberative process privilege; (d) material the disclosure of which would violate
25 legitimate privacy interests and expectations of persons not party to this litigation; or
26 (e) communications or information protected by the presidential communications
27 privilege. Without waiver of the objections, a privilege log will be provided by the
28

1 government, which describes the privileged documents that have been withheld and the
2 basis for privilege at issue for those documents.

3 Defendants further object on the grounds that this request is overbroad, unduly
4 burdensome, and disproportionate to the needs of the case. As further explained above,
5 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
6 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
7 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
8 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
9 is so circumscribed that arguments based on extra-record evidence and discovery are
10 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
11 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
12 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
13 U.S. at 81)).

14 Response: Subject to and without waiving the above objections, Defendants will
15 conduct a reasonable search and produce any nonprivileged documents responsive to
16 this request in Defendants' possession, custody, or control.

17
18 RFP No. 6: Any and all documents and communications, including but not
19 limited to, studies, memoranda, or reports relating to the impact on states, state military
20 departments, or other state agencies of the formulation and/or implementation of the
21 policy announced in the February 22, 2019 Memorandum.

22 Specific Objections: Defendants object to this request to the extent that it seeks
23 (a) attorney work product; (b) communications or information protected by the
24 attorney-client privilege; (c) communications or information protected by the
25 deliberative process privilege; (d) material the disclosure of which would violate
26 legitimate privacy interests and expectations of persons not party to this litigation; or
27 (e) communications or information protected by the presidential communications
28

1 privilege. Without waiver of the objections, a privilege log will be provided by the
2 government, which describes the privileged documents that have been withheld and the
3 basis for privilege at issue for those documents.

4 Defendants further object on the grounds that this request is overbroad, unduly
5 burdensome, and disproportionate to the needs of the case. As further explained above,
6 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
7 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
8 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
9 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
10 is so circumscribed that arguments based on extra-record evidence and discovery are
11 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
12 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
13 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
14 U.S. at 81)).

15 Defendants also object to this request on the grounds that it is vague, ambiguous,
16 and undefined. Defendants are not aware of any policy announced on February 22,
17 2019. Defendants therefore interpret "February 22, 2019" to mean "February 22,
18 2018," which is the date of the Mattis policy.

19 Response: Subject to and without waiving the above objections, Defendants
20 previously produced documents responsive to this request or withheld documents
21 responsive to this request pursuant to a valid privilege and will provide Plaintiffs with
22 logs documenting that withholding.

23
24 RFP No. 7: Any and all documents and communications related to the
25 formulation and/or implementation of Attachment 3, Procedures—Section I: Exempt
26 Individuals, pages 7-8, of the March 12, 2019 Directive.

1 Specific Objections: Defendants object to this request to the extent that it seeks
2 (a) attorney work product; (b) communications or information protected by the
3 attorney-client privilege; (c) communications or information protected by the
4 deliberative process privilege; (d) material the disclosure of which would violate
5 legitimate privacy interests and expectations of persons not party to this litigation; or
6 (e) communications or information protected by the presidential communications
7 privilege. Without waiver of the objections, a privilege log will be provided by the
8 government, which describes the privileged documents that have been withheld and the
9 basis for privilege at issue for those documents.

10 Defendants further object on the grounds that this request is overbroad, unduly
11 burdensome, and disproportionate to the needs of the case. As further explained above,
12 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
13 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
14 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
15 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
16 is so circumscribed that arguments based on extra-record evidence and discovery are
17 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
18 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
19 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
20 U.S. at 81)).

21 Response: Subject to and without waiving the above objections, Defendants will
22 produce their official implementation guidance related to the March 12, 2019 Directive.

23
24 RFP No. 8: Any and all documents and communications related to the
25 formulation and/or implementation of Section C, Paragraph 3, "Exempting Current
26 Service Members Who Have Already Received a Diagnosis of Gender Dysphoria," page
27
28

1 43, of the Department of Defense Report and Recommendations on Military Service
2 by Transgender Persons of the February 22, 2018 Memorandum.

3 Specific Objections: Defendants object to this request to the extent that it seeks
4 (a) attorney work product; (b) communications or information protected by the
5 attorney-client privilege; (c) communications or information protected by the
6 deliberative process privilege; (d) material the disclosure of which would violate
7 legitimate privacy interests and expectations of persons not party to this litigation; or
8 (e) communications or information protected by the presidential communications
9 privilege. Without waiver of the objections, a privilege log will be provided by the
10 government, which describes the privileged documents that have been withheld and the
11 basis for privilege at issue for those documents.

12 Defendants further object on the grounds that this request is overbroad, unduly
13 burdensome, and disproportionate to the needs of the case. As further explained above,
14 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
15 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
16 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
17 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
18 is so circumscribed that arguments based on extra-record evidence and discovery are
19 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
20 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
21 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
22 U.S. at 81)).

23 Response: Subject to and without waiving the above objections, Defendants
24 previously produced documents responsive to this request or withheld documents
25 responsive to this request pursuant to a valid privilege and will provide Plaintiffs with
26 logs documenting that withholding.

1 RFP No. 9: Any and all documents and communications related to the numbers
2 of service members or estimated numbers of service members who currently qualify or
3 will qualify as exempt as provided for in the March 12, 2019 Directive.

4 Specific Objections: Defendants object to this request to the extent that it seeks
5 (a) attorney work product; (b) communications or information protected by the
6 attorney-client privilege; (c) communications or information protected by the
7 deliberative process privilege; (d) material the disclosure of which would violate
8 legitimate privacy interests and expectations of persons not party to this litigation; or
9 (e) communications or information protected by the presidential communications
10 privilege. Without waiver of the objections, a privilege log will be provided by the
11 government, which describes the privileged documents that have been withheld and the
12 basis for privilege at issue for those documents.

13 Defendants further object on the grounds that this request is overbroad, unduly
14 burdensome, and disproportionate to the needs of the case. As further explained above,
15 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
16 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
17 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
18 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
19 is so circumscribed that arguments based on extra-record evidence and discovery are
20 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
21 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
22 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
23 U.S. at 81)).

24 Response: Subject to and without waiving the above objections, Defendants will
25 produce nonprivileged documents containing general treatment and cost data for
26 current service members with a diagnosis of gender dysphoria and data regarding
27 applicants for accession with a diagnosis of gender dysphoria through February 2019
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1 that are responsive to this request and prepared at the request of the House Armed
2 Services Committee that are in Defendants' possession, custody, or control.

3
4 RFP No. 10: Any and all documents and communications related to the numbers
5 of service members or estimated numbers of service members who currently qualify or
6 will qualify as exempt as provided for in the February 22, 2018 Memorandum.

7 Specific Objections: Defendants object to this request to the extent that it seeks
8 (a) attorney work product; (b) communications or information protected by the
9 attorney-client privilege; (c) communications or information protected by the
10 deliberative process privilege; (d) material the disclosure of which would violate
11 legitimate privacy interests and expectations of persons not party to this litigation; or
12 (e) communications or information protected by the presidential communications
13 privilege. Without waiver of the objections, a privilege log will be provided by the
14 government, which describes the privileged documents that have been withheld and the
15 basis for privilege at issue for those documents.

16 Defendants further object on the grounds that this request is overbroad, unduly
17 burdensome, and disproportionate to the needs of the case. As further explained above,
18 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
19 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
20 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
21 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
22 is so circumscribed that arguments based on extra-record evidence and discovery are
23 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
24 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
25 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
26 U.S. at 81)).

1 Response: Subject to and without waiving the above objections, Defendants will
2 produce nonprivileged documents containing general treatment and cost data for
3 current service members with a diagnosis of gender dysphoria and data regarding
4 applicants for accession with a diagnosis of gender dysphoria through February 2019
5 that are responsive to this request and prepared at the request of the House Armed
6 Services Committee that are in Defendants' possession, custody, or control.

7
8 RFP No. 11: Any and all documents and communications relating to the
9 formulation, definition and/or implementation of Attachment 3, Procedures—Section
10 III: Additional Policy Guidance, paragraphs (a) and (b), pages 10-11, of the March 12,
11 2019 Directive.

12 Specific Objections: Defendants object to this request to the extent that it seeks
13 (a) attorney work product; (b) communications or information protected by the
14 attorney-client privilege; (c) communications or information protected by the
15 deliberative process privilege; (d) material the disclosure of which would violate
16 legitimate privacy interests and expectations of persons not party to this litigation; or
17 (e) communications or information protected by the presidential communications
18 privilege. Without waiver of the objections, a privilege log will be provided by the
19 government, which describes the privileged documents that have been withheld and the
20 basis for privilege at issue for those documents.

21 Defendants further object on the grounds that this request is overbroad, unduly
22 burdensome, and disproportionate to the needs of the case. As further explained above,
23 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
24 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
25 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
26 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
27 is so circumscribed that arguments based on extra-record evidence and discovery are
28

1 “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986)); *see*
2 *also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for
3 ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453
4 U.S. at 81)).

5 Response: Subject to and without waiving the above objections, Defendants will
6 produce their official implementation guidance related to the March 12, 2019 Directive.

7
8 RFP No. 12: Any and all documents and communications relating to
9 formulation, definition and/or implementation of the waiver for service members
10 diagnosed with gender dysphoria referenced throughout the Department of Defense
11 Report and Recommendations on Military Service by Transgender Persons in the
12 February 22, 2018 Memorandum.

13 Specific Objections: Defendants object to this request to the extent that it seeks
14 (a) attorney work product; (b) communications or information protected by the
15 attorney-client privilege; (c) communications or information protected by the
16 deliberative process privilege; (d) material the disclosure of which would violate
17 legitimate privacy interests and expectations of persons not party to this litigation; or
18 (e) communications or information protected by the presidential communications
19 privilege. Without waiver of the objections, a privilege log will be provided by the
20 government, which describes the privileged documents that have been withheld and the
21 basis for privilege at issue for those documents.

22 Defendants further object on the grounds that this request is overbroad, unduly
23 burdensome, and disproportionate to the needs of the case. As further explained above,
24 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs’ witnesses, nor the Court may
25 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
26 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
27 Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy
28

1 is so circumscribed that arguments based on extra-record evidence and discovery are
2 “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986)); *see*
3 *also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for
4 ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453
5 U.S. at 81)).

6 Response: Subject to and without waiving the above objections, Defendants
7 previously produced documents responsive to this request or withheld documents
8 responsive to this request pursuant to a valid privilege and will provide Plaintiffs with
9 logs documenting that withholding.

10
11 RFP No. 13: Any and all documents and communications relating to the
12 numbers of service members or estimated numbers of service members, currently
13 stationed in California and California residents currently stationed elsewhere, who
14 qualify and/or would qualify for a waiver as provided for in Attachment 3, Procedures
15 - Section III: Additional Policy Guidance, paragraphs (a) and (b), pages 10-1, of the
16 March 12, 2019 Directive.

17 Specific Objections: Defendants object to this request to the extent that it seeks
18 (a) attorney work product; (b) communications or information protected by the
19 attorney-client privilege; (c) communications or information protected by the
20 deliberative process privilege; (d) material the disclosure of which would violate
21 legitimate privacy interests and expectations of persons not party to this litigation; or
22 (e) communications or information protected by the presidential communications
23 privilege.

24 Defendants further object on the grounds that this request is overbroad, unduly
25 burdensome, and disproportionate to the needs of the case. As further explained above,
26 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs’ witnesses, nor the Court may
27 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
28

1 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
2 Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy
3 is so circumscribed that arguments based on extra-record evidence and discovery are
4 “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
5 *also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for
6 ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453
7 U.S. at 81)).

8 Moreover, Defendants object to this request as overbroad, unduly burdensome,
9 vague, ambiguous, and undefined because there is no way to know whether an individual
10 qualifies or would qualify for a waiver until a waiver request is adjudicated for that
11 individual.

12 Response: Defendants do not track the number of waivers granted based on
13 state of residence and station. Subject to and without waiving the above objections,
14 Defendants will not produce any documents responsive to this request.

15
16 RFP No. 14: Any and all documents and communications relating to the
17 numbers of individuals or estimated numbers of service members, currently stationed
18 in California and California residents currently stationed elsewhere, who qualify and/or
19 would qualify under the medical policy as provided for the Attachment 3, Procedures –
20 Section III: Additional Policy Guidance, paragraphs (a) and (b), pages 10-11 of the
21 March 12, 2019 Directive.

22 Specific Objections: Defendants object to this request to the extent that it seeks
23 (a) attorney work product; (b) communications or information protected by the
24 attorney-client privilege; (c) communications or information protected by the
25 deliberative process privilege; (d) material the disclosure of which would violate
26 legitimate privacy interests and expectations of persons not party to this litigation; or
27

1 (e) communications or information protected by the presidential communications
2 privilege.

3 Defendants further object on the grounds that this request is overbroad, unduly
4 burdensome, and disproportionate to the needs of the case. As further explained above,
5 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs' witnesses, nor the Court may
6 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
7 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
8 Cir. 2019) (Williams, J., concurring) (noting the court's role in evaluating military policy
9 is so circumscribed that arguments based on extra-record evidence and discovery are
10 "quite beside the point" (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
11 *also id.* (noting that the Supreme Court in "*Rostker* chastised the district court for
12 'palpably exceed[ing] its authority' in 'relying on [such] testimony'" (quoting *Rostker*, 453
13 U.S. at 81)).

14 Moreover, Defendants object to the language "qualify and/or would qualify
15 under the medical policy" as vague, ambiguous, and undefined. The medical policy
16 referred to by the request sets forth how different categories of servicemembers will be
17 treated based on whether they are classified as "exempt." It is thus unclear what it
18 would mean to "qualify" under the medical policy. Accordingly, in responding to this
19 interrogatory, Defendants interpret the phrase "qualify and/or would qualify" to mean
20 "are exempt and/or would be exempt."

21 Response: Defendants do not track the number of exempt service members
22 based on state of residence and station. Subject to and without waiving the above
23 objections, Defendants will not produce any documents responsive to this request.

24
25 RFP No. 15: Any and all documents and communications relating to any request
26 for or action on waivers of enlistment or commissioning criteria for transgender people
27 between July 1, 2010 and the present.
28

1 Specific Objections: Defendants object to this request to the extent that it seeks
2 (a) attorney work product; (b) communications or information protected by the
3 attorney-client privilege; (c) communications or information protected by the
4 deliberative process privilege; (d) material the disclosure of which would violate
5 legitimate privacy interests and expectations of persons not party to this litigation; or
6 (e) communications or information protected by the presidential communications
7 privilege. Without waiver of the objections, a privilege log will be provided by the
8 government, which describes the privileged documents that have been withheld and the
9 basis for privilege at issue for those documents.

10 Defendants further object on the grounds that this request is overbroad, unduly
11 burdensome, and disproportionate to the needs of the case. As further explained above,
12 neither Plaintiffs, Plaintiff-Intervenor, Plaintiffs’ witnesses, nor the Court may
13 undertake an independent evaluation of the evidence, as Plaintiff-Intervenor proposes
14 to do here through its discovery requests. *See Doe 2 v. Shanahan*, 917 F.3d 694, 737 (D.C.
15 Cir. 2019) (Williams, J., concurring) (noting the court’s role in evaluating military policy
16 is so circumscribed that arguments based on extra-record evidence and discovery are
17 “quite beside the point” (quoting *Goldman v. Weinberger*, 475 U.S. 503, 509 (1986))); *see*
18 *also id.* (noting that the Supreme Court in “*Rostker* chastised the district court for
19 ‘palpably exceed[ing] its authority’ in ‘relying on [such] testimony’” (quoting *Rostker*, 453
20 U.S. at 81)).

21 Moreover, the Department of Defense does not require a service member or
22 applicant for enlistment or commissioning to disclose their gender identity and thus
23 Defendants have no means of searching for the requested information as it pertains to
24 “transgender people.” Accordingly, this request is overbroad, unduly burdensome, and
25 disproportional to the needs of the case.

26 Further, even if it were possible for Defendants to search for “[a]ny and all
27 documents and communications relating to any request for or action on waivers of
28

1 enlistment or commissioning criteria for transgender people between July 1, 2010 and
2 the present,” Plaintiff-Intervener’s request includes medical records and sensitive
3 privacy data from both current and former service members and other third parties and
4 therefore the request is overbroad, unduly burdensome, and disproportionate to the
5 needs of the case. Moreover, the medical records and personally identifiable
6 information of non-parties to the litigation are irrelevant to the adjudication of Plaintiff-
7 Intervener’s facial challenge to the Mattis policy. Further, this information is protected
8 from disclosure by the Health Insurance Portability and Accountability Act of 1996
9 (“HIPAA”) and neither Plaintiff-Intervener nor their counsel have provided
10 Defendants satisfactory assurances that they have complied with the provision of 42
11 U.S.C. § 1320d et seq. and 45 C.F.R. § 164.512(e). *See also* 5 U.S.C. § 552a(b)(11).

12 Response: Subject to and without waiving the above objections, Defendants will
13 produce nonprivileged documents containing general treatment and cost data for
14 current service members with a diagnosis of gender dysphoria and data regarding
15 applicants for accession with a diagnosis of gender dysphoria through February 2019
16 that are responsive to this request and prepared at the request of the House Armed
17 Services Committee that are in Defendants’ possession, custody, or control.

18
19 Dated: May 15, 2019

Respectfully submitted,

20
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CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 2019, a copy of the above document was served by email on the following:

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