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VIA CM/ECF

April 17, 2020

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

RE: *Karnoski v. Trump*, No. 20-70365

Dear Ms. Dwyer:

We write in response to plaintiffs' Rule 28(j) letter regarding an order issued by the magistrate judge in *Stone v. Trump*, No. 17-2459 (D. Md. Apr. 9, 2020). The magistrate judge erred, and the order repeats the same errors that are presented by the orders of the district court in this case. The government has asked the district court in *Stone* to stay the magistrate judge's order pending the district court's consideration of the government's objections, which the government intends to file no later than April 23, 2020. The government has further requested that the stay extend for a reasonable period following the district court's decision on the government's objections to allow the Solicitor General to determine whether to seek relief in the Fourth Circuit, if necessary. *See* No. 17-2459, Doc. 301.

The magistrate judge's decision in *Stone* substantially relied on the orders of the district court that are the subject of the present mandamus proceedings. Based on that reasoning, the magistrate judge concluded that the *Stone* plaintiffs had overcome the deliberative process privilege with regard to many of the same documents at issue here. The magistrate judge provided no additional analysis that could apply here. It did not explain why it could properly order further disclosures without considering whether or to what extent such disclosures were warranted in light of the extensive materials already disclosed. The magistrate judge instead merely assumed a need for further intrusions into military deliberations. Nor did the magistrate judge expand on plaintiffs' purported

need for additional documents or consider the government's serious interests in confidentiality, and instead simply applied the baseline standard of relevance.

Sincerely,

s/ Ashley Cheung
Ashley Cheung
Attorney

cc: all counsel (via CM/ECF)

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Ashley Cheung

ASHLEY CHEUNG