

The Honorable Marsha J. Pechman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

RYAN KARNOSKI, et al.,
Plaintiffs, and
STATE OF WASHINGTON,
Plaintiff-Intervenor,
v.
DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,
Defendants.

Case No. 2:17-cv-01297-MJP
**PLAINTIFFS’ AND PLAINTIFF-
INTERVENOR’S OPPOSITION TO
DEFENDANTS’ MOTION TO STAY
DISCOVERY PENDING DISPOSITION
OF MANDAMUS PETITIONS**

NOTE ON MOTION CALENDAR:
October 1, 2020

INTRODUCTION

1
2 Defendants' motion to stay discovery because of the Court's denial of Defendants' motion
3 to quash four depositions is not only baseless, but also premature and potentially unnecessary.
4 Plaintiffs advised Defendants that (1) they do not plan on taking these depositions until further
5 discovery and related proceedings, including the District Court's *in camera* review, is complete,
6 and (2) they may not decide to take some or all of the depositions at all, depending on the
7 outcome of that additional discovery. Plaintiffs also agreed to stipulate to a court order barring
8 them from noticing these depositions pending further order of this Court and without first
9 providing at least 30 days' notice to Defendants. This will allow ample time for Defendants to
10 seek relief—and the Court to consider their request in view of subsequent discovery, including
11 other depositions and the Court's *in camera* review—if and when Plaintiffs notice these
12 depositions. Defendants' claimed "emergency"—and attempt to further slow the progress of this
13 litigation—is thus entirely of Defendants' own invention. Defendants' motion to stay the four
14 depositions should be denied without prejudice, with the understanding that Defendants may re-
15 raise the issue after Plaintiffs notice one or more of the depositions.

16 Defendants' further request to stay *all* discovery reveals the true goal of their motion.
17 Defendants do not cite any authority supporting their request, or explain why their disagreement
18 with the depositions of four witnesses provides a basis for stopping all discovery. Nor do they
19 explain why the depositions of other witnesses, including witnesses Defendants offer up in their
20 motion, should not go forward, or why the entirely separate review of documents withheld on
21 grounds of privilege should be stayed. Indeed, Defendants are asking to pause the very
22 "granular" review of thousands of admittedly relevant documents that Defendants themselves
23 *demand*ed in their pending, second mandamus petition. This latest request, which demonstrates
24 just how far Defendants will go to avoid discovery into the truth of their assertion that the
25 "Mattis Policy" was adopted independent from the directives of the President, should be denied.

1 **A. There is no basis to stay all discovery.**

2 There is no basis for a stay of all discovery, and Defendants do not provide one. In recent
 3 months, this Court has given Defendants exactly what they repeatedly demanded: the most
 4 “granular” review possible through *in camera* review of documents withheld on the basis of the
 5 deliberative process privilege (DPP).¹ Now that such review has revealed Defendants’ DPP over-
 6 designation, Defendants change course and ask this Court to halt further discovery. (Motion to
 7 Stay, Dkt. 601 (“Mot.”) at 2–4.) Defendants’ only bases for such relief are two extreme and
 8 unsupported arguments that this Court and the Ninth Circuit have both already rejected:
 9 (1) discovery should be limited to an “administrative record”; and (2) discovery is limited in
 10 “military cases.”

11 First, Defendants argue that discovery should be limited to an “administrative record.” But
 12 the so-called “administrative record” does not relate to an agency rule-making or adjudicatory
 13 proceeding. Indeed, it is not an administrative record at all, but rather a collection of documents
 14 assembled by Defendants’ attorneys after-the-fact. This Court rejected this argument two-and-a-
 15 half years ago. (Dkt. 235 at 2.) And, the Ninth Circuit likewise recognized discovery should not
 16 be confined to that limited record, finding that heightened scrutiny is warranted; further
 17 discovery is needed to determine the nature and scope of military deference; and even with a
 18 “presumption of deference”—which may or may not be warranted here based on what discovery
 19 uncovers—“deference does not mean abdication.” *Karnoski v. Trump*, 926 F.3d 1180, 1202 (9th
 20 Cir. 2019) (citation omitted).²

21 _____
 22 ¹ Although Plaintiff-Intervenor did not issue the deposition notices at issue here, it joins Plaintiffs’ Opposition to
 Defendants’ motion to stay all discovery. Washington is confused by and disagrees with Defendants’ drastic request
 when the issues they have presented to the Ninth Circuit involve two requests for production and four depositions.

23 ² The Ninth Circuit did *not* simply “reject[] Plaintiffs’ contention that no deference is owed here.” (Mot. at 4.)
 24 Rather, it found that, “[o]n the current record” (which at that time was limited largely to documents publicly
 available, including the DOD Report), “a presumption of deference is owed, because the 2018 Policy *appears to*
 25 *have been* the product of independent military judgment.” *Karnoski*, 926 F.3d at 1202 (emphasis added). The Court
 found that Plaintiffs were entitled to discover and present “additional evidence to support [their] ... contention that
 26 the 2018 Policy was nothing more than an implementation” of the President’s August 25, 2017 directives and
 therefore *not* “the product of independent military judgment.” *Id.* Similarly, the Ninth Circuit did *not* “reject”
 Plaintiffs’ theory that the “Mattis Policy” simply implemented the President’s August 25, 2017 directive. (Mot. at 5
 27 n.2.) To the contrary, it found that “Plaintiffs raise non-frivolous arguments that the 2018 Policy did not
 independently analyze the impact of transgender individuals serving in the armed services, but rather implemented
 28 the [President’s August 25,] 2017 Memorandum,” which “may require the district court to consider the basis of the
 President’s initial decision, as well as the 2018 Policy.” *Karnoski*, 926 F.3d at 1204.

1 Second, Defendants argue that discovery is limited in cases that involve the military. But
 2 they do not cite any support for this argument because there is none. *Trump v. Hawaii* was not a
 3 military case nor did it involve “a challenge to a military policy such as this one,” as Defendants
 4 incorrectly claim. (Mot. at 1.) The decision is also inapposite: it did not involve a policy subject
 5 to heightened scrutiny, and did not purport to address the scope of discovery or the application of
 6 any privilege. Nor do *Rostker* or *Goldman* (Mot. at 2) provide any support. Neither even
 7 addressed, let alone purported to limit, the scope of discovery in cases involving the military.

8 **B. Defendants’ request to stay the depositions at issue should be denied without**
 9 **prejudice.**

10 Defendants’ request to stay the four depositions is at best premature and potentially
 11 unnecessary. None of the depositions are currently even noticed, and Plaintiffs have advised
 12 Defendants: (1) they do not plan to take the depositions until further discovery, including this
 13 Court’s *in camera* review of documents withheld on grounds of privilege, is completed;
 14 (2) depending on the results of that further discovery, they may not notice some or all of the
 15 depositions; and (3) Plaintiffs stipulate to the immediate entry of an order that would bar them
 16 from noticing the depositions pending further order of this Court and without first providing at
 17 least 30 days advance notice, to give Defendants ample time to seek relief at that time.
 18 (Unopposed Mot. for Extension of Time, Dkt. 608, at 1.) Under these circumstances, Defendants
 19 cannot show any harm, let alone the *immediate, irreparable* harm required for a stay. As
 20 discussed below, Defendants also do not satisfy any of the other requirements for a stay as to
 21 these depositions.

22 1. Defendants Are Not Likely To Succeed On The Merits.

23 a. The Court Did Not “Misapply the Exceptional Circumstances Analysis.”

24 Defendants cannot demonstrate a likelihood of success on the merits. Indeed, settled law
 25 allows depositions of high-ranking government officials where, as here, “they ha[ve] personal
 26 involvement or knowledge relevant to the case.” *E.g.*, *United States v. Sensient Colors, Inc.*, 649
 27 F. Supp. 2d 309, 322 (D.N.J. 2009); *see also* *Mattis Opp.*, Dkt. No. 587, at 18 n.6 (citing 11
 28

1 similar cases). And here, the undisputed facts establish that each of these witnesses has personal
2 involvement and unique knowledge with respect to the issues on which Plaintiffs seek to depose
3 them. Nor do Defendants dispute that such a showing distinguishes *this* case from the cases on
4 which Defendants relied, which involved senior officials who were *not* directly or were only
5 tangentially involved in the matter in dispute. (*See* Mattis Opp., Dkt. 587, at 21–22 n.9.)

6 Defendants likewise ignore Plaintiffs’ detailed factual showing as to each of these
7 witnesses’ personal involvement and unique knowledge with respect to the issues on which
8 Plaintiffs seek to depose them. (*See, e.g.*, Mattis Opp., Dkt. 587, at 18–28; Selva Opp., Dkt. 577,
9 at 18–29; Wilkie Opp., Dkt. 582, at 18–29; Moran Opp., Dkt. 594, at 17–22). This Court
10 appropriately relied on these facts in making specific findings as to each of these witnesses’
11 personal involvement and unique knowledge. (*See* Order, Dkt. 596 (“Order”), at 8–9 (Selva), 9–
12 10 (Wilkie), 11–12 (Mattis), 12–13 (Moran).)

13 Instead, Defendants address only a few of the subjects on which the Court found that each
14 witness had personal, unique knowledge, arguing that Defendants’ preferred witnesses can
15 testify as to the same subjects. (Mot. at 6–8.) Even if Defendants’ claims as to these
16 cherry-picked items withstood analysis—which, as explained below, they do not—they would
17 still not support Defendants’ request that the depositions be quashed. As a factual matter, the
18 Court carefully evaluated—and rejected—Defendants’ arguments that the information sought by
19 Plaintiffs could be provided by other witnesses that Defendants prefer to produce. (*See* Order at 9
20 (Selva), 10–11 (Wilkie), 13 (Moran).) The fact that Defendants are willing to produce other
21 witnesses to testify generally “regarding the development of the challenged policy” (Mot. at 6),
22 is beside the point. The issue under the apex doctrine is whether “the official has unique
23 first-hand knowledge” as to the subjects on which Plaintiffs seek to depose them. (*Id.* at 5.)
24 Defendants do not dispute that each witness was directly involved in, and has unique personal
25 knowledge as to, each of those subjects. Nor do Defendants purport to show that Kurta’s or
26 Hebert’s knowledge was *co-extensive* with that of the witness—for good reason. Each witness is
27 a senior decision-maker who participated in communications and attended meetings *without*
28

1 Kurta and Hebert. Finally, Defendants do not have any response as to the *other* subjects
2 addressed in Plaintiffs’ oppositions and the Court’s Order as to each of these witnesses, which
3 alone would warrant their depositions.

4 **Secretary Wilkie.** Defendants do not address Mr. Wilkie’s central role in this dispute,
5 including his direct involvement and unique knowledge concerning at least ten key issues and
6 events. (*See* Order at 9–10.) Instead, Defendants argue that Mr. Hebert “can knowledgeably
7 testify as to what occurred at [Panel] meetings.” (Mot. at 7.) But the Court found that
8 Mr. Wilkie’s deposition was necessary “to question Mr. Wilkie about circumstances outside the
9 Panel’s official documented meetings” and “his role controlling the flow of information to and
10 from the Panel and his efforts to collect evidence supporting the policy on his own, without
11 Panel involvement.” (Order at 10.) Defendants do not challenge that finding, which is an
12 independent basis for sustaining the Court’s decision.

13 Defendants also argue that Mr. Wilkie cannot have unique knowledge concerning General
14 Selva’s and Deputy Secretary Shanahan’s December 17, 2017 rejection of the Panel’s “Final
15 Report and Recommendations” because an email that references that rejection was also sent “to
16 five other individuals.” (Mot. at 7.) But Plaintiffs do not intend to question Secretary Wilkie
17 solely about this email, but rather about what occurred before, at, and after the
18 December 17, 2017 meeting referenced in the memorandum, including any conversations he had
19 with General Selva and Deputy Secretary Shanahan regarding their concerns and reasons for
20 rejecting the Panel’s Report and Recommendations and whether anything was done thereafter to
21 address those concerns, and if so, what.

22 Finally, Defendants argue that Mr. Wilkie cannot have unique knowledge as to the drafting
23 of the DoD Report because 52 other persons “reviewed, revised or commented on drafts” of the
24 Report. (*Id.*) But it is *Defendants* who have represented that the Report was drafted by, and the
25 responsibility of, Mr. Wilkie and the Office of Personnel & Readiness (P&R) he headed, and that
26 Wilkie was one of its principal authors. (*See, e.g.,* Defs.’ Mot. to Quash, Dkt. 580, at 5–7; Wilkie
27 Opp., Dkt. 582, at 13.)
28

1 **Secretary Mattis.** Likewise, Defendants cannot rebut Mr. Mattis’ central role, direct
 2 involvement, and unique first-hand knowledge in, this dispute. (Order at 11–12.) This includes
 3 Defendants’ repeated representation to this Court, the Ninth Circuit, and the Supreme Court that
 4 Secretary Mattis personally approved and recommended the “Mattis Policy” in “the exercise of
 5 his independent judgment” and unrelated to the President’s order and directives. (*See Mattis*
 6 *Opp.*, Dkt. 587, at 19, 21–23.) Defendants likewise ignore the evidence, including emails to and
 7 from Mr. Mattis, suggesting that his decision may have been influenced by animus. (*See Order at*
 8 *11–12; Mattis Opp.*, Dkt. 587, at 26–28.) Defendants’ only response is that the “Court’s order
 9 failed to find that the testimony Plaintiffs seek from Secretary Mattis could not be obtained from
 10 others.” (Mot. at 7.) But even the first sentence of the Court’s discussion as to Mr. Mattis belies
 11 this assertion: “Plaintiffs seek to depose Secretary Mattis about the central issue in this case:
 12 whether the ‘Mattis Policy’ was the result of Secretary Mattis following the orders of his
 13 Commander-in-Chief or the military’s exercise of ‘independent judgment.’” (Order at 11.)

14 **General Selva.** Once again, Defendants do not challenge General Selva’s personal
 15 involvement in, and unique first-hand knowledge of, several key events and issues. (*See Order at*
 16 *8–9.*) Instead, they contend the Court erred in finding that Defendants’ preferred witnesses
 17 (Kurta and Hebert) could not substitute for Selva’s testimony concerning two of these subjects:
 18 (1) General Selva’s role in delaying the Carter Policy; or (2) the role the President’s order and
 19 directives played in General Selva’s decision to reject the Panel’s Final Report. (Mot. at 7–8.) As
 20 to the former, Defendants simply assert—counter-intuitively—that Mr. Selva’s testimony should
 21 be barred because “Plaintiffs have Mr. Hebert’s declaration and appended materials,” which
 22 present *Defendants’* theory with respect to “the decision to delay the Carter policy.” (*Id.* at 8.)
 23 But unlike Selva, Hebert did not make and/or approve that decision, and even if he had, it would
 24 not prevent Plaintiffs from obtaining Mr. Selva’s independent recollection and understanding of
 25 the events leading up to, and reasons for, that decision. As to Selva’s personal knowledge of *his*
 26 reasons for rejecting the Panel’s “Final Report and Recommendations,” Defendants’ only
 27 response is a *non-sequitur*—that “Selva cannot have unique knowledge of his critique of the
 28 Panel’s initial findings in light of the many individuals involved in the discussion,” apparently

1 referring to the December 17, 2017 meeting where Selva informed the Panel of his rejection.
2 (Mot. at 8.) But, at most, those witnesses can testify as to what they recall being said at that
3 meeting, which is not a substitute for Selva’s recollection of *his* reasons for rejecting the Panel’s
4 recommendations or as to *other communications* he had concerning that rejection.

5 **Admiral Moran.** Defendants do not even reference, let alone dispute, Admiral Moran’s
6 personal role and unique knowledge with respect to a number of material issues, including his
7 view that “the Panel is unanimous in the opinion that the data” presented to it was “so poor that it
8 is nearly impossible to take a purely analytic approach” and his raising of questions and requests
9 for data immediately after the Panel’s Recommendations were rejected that do not appear to have
10 been answered or addressed. (*See* Order at 12–13.) Once again, Defendants’ only response is to
11 argue that, as to a subset of those issues, Hebert is a substitute. First, while Defendants do not
12 dispute that Admiral Moran was the only voting member of the Panel who also served on the
13 Carter Working Group, they argue Hebert was also on the Carter Working Group and his
14 “declaration compares the groups’ processes.” (Mot. at 8.) But Mr. Hebert’s knowledge and
15 communications as one of the P&R officials supporting the two working groups are clearly not
16 co-extensive with those of Moran, who was the second-highest officer in the Navy and, unlike
17 Mr. Hebert, a senior, voting member of both groups. And, even as to those meetings and
18 communications in which both participated, Plaintiffs are not required to take Hebert’s word for
19 it. Second, Defendants argue that Admiral Moran’s testimony with respect to his concerns
20 regarding lack of data is foreclosed because his December 18, 2017 email requesting further
21 information was “sent to twenty other Panel members.” (*Id.*) But Admiral Moran’s concerns
22 were not limited to that lone email, and, even as to it, the Court did not find his testimony
23 necessary to establish the questions he asked, but rather “whether this data was gathered, and if it
24 was, why it was not cited in the DoD Report.” (Order at 12.)

25 Defendants’ remaining, scattershot arguments against allowing these depositions are
26 equally baseless. (Mot. at 5–7.) First, Defendants challenge the Court’s introductory finding that,
27 “Plaintiffs have little insight into the decision to delay implementation of the Carter policy, the
28

1 initial rejection of the Panel’s recommendations, the Panel’s final four meetings, the
2 decision-making process about what data was provided to the Panel, or the process used in
3 drafting the Report and Recommendation.” (Mot. at 6 (quoting Order at 4).) But Defendants’
4 “rebuttal” to this observation only highlights its accuracy—and Plaintiffs’ need for additional
5 discovery. As to the decision to delay implementation of the Carter policy, Defendants point only
6 to Mr. Hebert’s declaration, which sets forth Defendants’ position on this disputed issue. (*Id.*)
7 But as discussed above, Plaintiffs are entitled to test the accuracy of the assertions of
8 Defendants’ hand-picked witnesses. As to the remaining three events, Defendants simply assert
9 that they all occurred during a period as to which “Defendants have already produced in excess
10 of 14,000 documents.” (*Id.*) Critically, Defendants do not purport to show that any of these
11 documents address, let alone conclusively answer, the questions as to which Plaintiffs seek to
12 depose these witnesses, nor could they possibly be co-extensive with the testimony of these
13 witnesses. (*See, e.g.,* Mattis Opp., Dkt. 587, at 17–18.)

14 As to the Panel’s final four, undocumented meetings, Defendants’ response that “there is
15 no indication that any minutes . . . were ever created” (Mot. at 6) highlights Plaintiffs’ need for
16 testimony concerning these meetings and what occurred during this critical period after General
17 Selva and Deputy Secretary Shanahan rejected the Panel’s Recommendations on
18 December 15, 2017, and Secretary Wilkie forwarded the same recommendations to Secretary
19 Mattis on February 11, 2018. The fact that Defendants answered interrogatories in which they
20 identified 53 persons, including 25 DOJ and other lawyers, who “reviewed, revised, or
21 commented on” drafts of the DoD Report (*id.* at 7), does not answer Plaintiffs’ questions
22 concerning “the process used in drafting” the Report (*id.* at 6). It only raises further questions,
23 including why almost one-half of these individuals were attorneys, including DOJ lawyers
24 defending this litigation.

25 Similarly, Defendants’ argument that they identified eleven “alternative witnesses” who
26 “would be able to offer similar or superior testimony on the subjects on which Plaintiffs seek to
27 depose these four witnesses” is inaccurate and fails for similar reasons. (*Id.* at 6–7.) The only
28

1 support Defendants cite (Mattis Mot., Dkt. 585, at 18–19) relates to only one of the four
 2 witnesses (Mattis) and asserts only that “Defendants have offered several other . . . officials as
 3 witnesses *to testify regarding the development of the challenged policy*” and can “answer
 4 questions Plaintiffs may have about *the Panel’s actions, and discuss* information the Panel
 5 considered in *formulating its recommendations.*” (*Id.* at 18–19 (emphasis added).) Such general
 6 information relating to “the development of the challenged policy” and “the Panel’s actions” and
 7 “the information [it] considered” is *not* the universe of what Plaintiffs seek to depose these
 8 witnesses about or at all an “adequate substitute” for their testimony.

9 b. The Court Correctly Found that Plaintiffs Seek Discovery into Facts, Not the
 10 Witnesses’ Mental Impressions.

11 Defendants’ assertion that these depositions should be quashed because they seek these
 12 officials’ “mental processes” likewise fails. **First**, as Plaintiffs made clear in their oppositions
 13 (Dkt. 577 (Selva); Dkt. 582 (Wilkie); Dkt. 587 (Mattis); Dkt. 594 (Moran)) and the Court found
 14 in its Order, Plaintiffs do not seek mental impressions (Order at 11). Rather, they seek facts and
 15 factual testimony that each of these witnesses can uniquely provide.

16 **Second**, even if they did seek mental impressions, the “bad faith” exception would permit
 17 such discovery. As the Court correctly found, the Mattis Policy “discriminates on the basis of
 18 transgender status on its face,” *Karnoski*, 926 F.3d at 1201 n.18, and there is also evidence that
 19 policy was influenced by inaccurate stereotypes and animus. (Order at 11.) While the Court
 20 made these findings in the context of Secretary Mattis, due to his role as the ultimate decision-
 21 maker, those same findings and evidence apply to all four witnesses. *See, e.g., Dep’t of*
 22 *Commerce v. New York*, 139 S. Ct. 2551 (2019) (finding evidence of bad faith on part of
 23 Secretary of Commerce supported depositions of other senior officials).

24 **Third**, even if the presumption did apply, it would not justify barring these depositions
 25 entirely, but only questions seeking “mental impressions.” *See, e.g., Franklin Sav. Ass’n v. Ryan*,
 26 922 F.2d 209 (4th Cir. 1991); Mattis Opp., Dkt. 587, at 23–24, 28.

1 c. Military Deference, Privilege Concerns, and Secretary Wilkie’s Cabinet Duties
2 Do Not Preclude Taking These Depositions.

3 As to military deference and privilege concerns, Defendants simply repeat the same
4 arguments this Court has already considered and rejected, without even attempting to rebut the
5 Court’s reasons for doing so. (*Compare* Mot. at 4, 10–11 *with* Order at 6–7.) And regarding
6 Secretary Wilkie, there is no special rule for cabinet secretaries, nor do Defendants cite one. All
7 senior officials have busy schedules, which is the basis for—and addressed by—the apex
8 doctrine’s “exceptional circumstances” requirement, which Plaintiffs satisfy here.

9 2. Defendants Will Not Suffer Irreparable Harm Without A Stay.

10 Plaintiffs subpoenaed these witnesses in May 2020 in order to ensure that Defendants’
11 motions to quash were resolved, and any depositions completed, by the then-existing fact
12 discovery cutoff. Since that time, the Court has lifted that cut-off and commenced *in camera*
13 review of documents withheld on grounds of privilege, and Plaintiffs have made clear that they
14 do not intend to notice these depositions until that review is complete. Without the risk of an
15 *imminent* deposition, no harm—let alone irreparable harm—is at stake. *See, e.g., Summers v.*
16 *Earth Island Inst.* 555 U.S. 488, 493, 499–500 (2009) (declining to “replace the requirement of
17 ‘imminent harm’ . . . with the requirement of ‘a realistic threat’ . . . [of] harm ‘in the reasonably
18 near future’” (emphasis removed)); *Forster v. Orange Cty.*, No. SACV 18-1551-CJC (JEM),
19 2019 WL 3059562, at *2 (C.D. Cal. June 10, 2019) (denying injunctive relief because plaintiff
20 did “not demonstrate that he [was] in *immediate* danger of suffering irreparable harm”).

21 3. The Balance Of Hardships And Public Interest Favor Plaintiffs.

22 In stark contrast to Defendants’ inability to show any harm, let alone the irreparable harm
23 required for a stay, Plaintiffs are significantly harmed each day this case continues, and a stay
24 would only further delay the resolution of this suit. Similarly, the public interest “is served by
25 moving forward promptly with discovery . . . to facilitate a timely resolution” of Plaintiffs’
26 claims. *Exeltis USA Inc. v. First Databank, Inc.*, No. 17-cv-04810-HSG, 2018 WL 1989522, at
27 *3 (N.D. Cal. Mar. 5, 2018).

CONCLUSION

1
2 The officials subpoenaed by Plaintiffs may be senior, but they each have personal
3 involvement and unique knowledge with respect to the issues on which Plaintiffs seek to depose
4 them. Accordingly, exceptional circumstances exist to take their depositions. Defendants’
5 Motion to Stay should be denied without prejudice to Defendants re-raising the issue if and when
6 Plaintiffs notice one or more of the depositions. Plaintiffs also respectfully request that the Court
7 include in its order the requirement that Plaintiffs shall not notice these depositions pending
8 further order of this Court and without providing at least 30 days’ advance notice, in order to
9 ensure there is ample time for Defendants to seek relief—and the Court to consider their request
10 in view of subsequent discovery and related proceedings, including the Court’s *in camera*
11 review—at that time.

1 Respectfully submitted September 24, 2020.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NEWMAN DU WORS LLP

s/ Jason B. Sykes
Derek A. Newman, WSBA No. 26967
dn@newmanlaw.com
Jason B. Sykes, WSBA No. 44369
jason@newmanlaw.com
Rachel Horvitz, WSBA No. 52987
rachel@newmanlaw.com
2101 Fourth Ave., Ste. 1500
Seattle, WA 98121
(206) 274-2800

LAMDBA LEGAL DEFENSE AND EDUCATION FUND, INC.

Tara Borelli, WSBA No. 36759
tborelli@lambdalegal.org
Camilla B. Taylor (admitted pro hac vice)
Peter C. Renn (admitted pro hac vice)
Sasha Buchert (admitted pro hac vice)
Kara Ingelhart (admitted pro hac vice)
Carl Charles (admitted pro hac vice)
Paul D. Castillo (admitted pro hac vice)

OUTSERVE-SLDN, INC. N/K/A MODERN MILITARY ASSOCIATION OF AMERICA

Peter Perkowski (admitted pro hac vice)

KIRKLAND & ELLIS LLP

James F. Hurst, P.C. (admitted pro hac vice)
Steve Patton (admitted pro hac vice)
Jordan M. Heinz (admitted pro hac vice)
Daniel I. Siegfried (admitted pro hac vice)
Sam Ikard (admitted pro hac vice)

REDGRAVE LLP

Vanessa Barsanti (admitted pro hac vice)
Counsel for Plaintiffs

OFFICE OF THE WASHINGTON STATE ATTORNEY GENERAL

s/ Chalia I. Stallings-Ala'ilima
Colleen M. Melody, WSBA No. 42275
colleenm1@atg.wa.gov
Chalia I. Stallings-Ala'ilima, WSBA No. 40694
chalias@atg.wa.gov
Assistant Attorneys General
Civil Rights Unit
Attorney General's Office
800 5th Ave, Suite 2000
Seattle, WA 98104
(206) 464-7744

Counsel for Plaintiff-Intervenor State of Washington

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 all participants in the case are registered CM/ECF users and that service of the foregoing documents will be accomplished by the CM/ECF system on September 24, 2020.

s/ Jason B. Sykes
Jason B. Sykes, WSBA No. 44369
jason@newmanlaw.com
2101 Fourth Ave., Ste. 1500
Seattle, WA 98121
(206) 274-2800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28