



**U.S. Department of Justice**  
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VIA CM/ECF

June 25, 2021

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

RE: *In re Trump*, No. 20-70365 (Clifton, Callahan, Friedland, JJ.)  
*In re Trump*, No. 20-72793 (Clifton, Callahan, Friedland, JJ.)

Dear Ms. Dwyer:

Pursuant to the Court's April 20, 2021 order, the government submits this letter addressing the status of the underlying litigation and the need for the Court to address the government's petitions for mandamus.

The Court has before it the government's February 2020 mandamus petition in No. 20-70365, along with the government's September 2020 petition and motion to stay all discovery in No. 20-72793. The Court heard argument on October 14, 2020 on both petitions, which concern discovery matters in plaintiffs' challenge to the Department of Defense's now-rescinded Mattis Policy on military service by transgender individuals.

On January 25, following the change in administration, President Biden issued an Executive Order revoking the Mattis Policy, changing the military's policy to allow transgender individuals to serve, and directing the military to report its progress in implementing this new policy within 60 days. Executive Order 14004—Enabling All Qualified Americans to Serve Their Country in Uniform, Doc. 667-1 (EO). The EO also directs the Secretary of Defense and Secretary of Homeland Security to “establish[] a process by which transgender service members may transition gender while serving.” *Id.* at 2-3. The Department of Defense's new policies took effect on April 30.

On February 1, in light of the EO, the parties jointly agreed to a stay of the litigation in the expectation of dismissal after 60 days. Doc. 668. The district court has subsequently extended that stay on several occasions. *E.g.*, Docs. 674, 679.

Most recently, on June 10, the parties filed a joint status report requesting that the district court continue the stay of the case until July 29 to allow time for the parties “to negotiate the dismissal of this action, including any allocation of costs and fees.” Doc. 682 at 2-3. On June 15, the district court stayed the case until July 29. Doc. 683.

In the meantime, plaintiffs have not yet dismissed their claims or withdrawn their discovery requests, and the district court’s discovery orders remain outstanding. *See* No. 20-70365, Add. 1-6, 46, 78-85; No. 20-72793, Add. 1-29. Accordingly, the government’s mandamus petitions remain live. *GATX/Airlog Co. v. U.S. Dist. Ct. for N. Dist. of California*, 192 F.3d 1304, 1306 (9th Cir. 1999) (“A case is moot only if interim events have completely and irrevocably eradicated the effects of an allegedly improper ruling.”). The government expects that this case will soon be dismissed in light of the new Department of Defense policies, in which case we will notify the Court promptly that the mandamus petitions are moot.

Sincerely,

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s/ Ashley A. Cheung  
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cc: all counsel (via CM/ECF)

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2021, 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 A. Cheung*  
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ASHLEY A. CHEUNG