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April 19, 2021

VIA ECF

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 Seventh Street
San Francisco, CA 94103

Re: *In re Donald J. Trump, et al.*, Case Nos. 20-70365 & 20-72793

Dear Ms. Dwyer:

Plaintiffs submit this letter pursuant to the Court's February 16, 2021 Order directing the parties to address the impact of the President's Executive Order *Enabling All Qualified Americans to Serve Their Country in Uniform*, Exec. Order No. 14,004, 86 Fed. Reg. 7471 (Jan. 28, 2021), on this litigation and the need for the Court to address the pending petitions for mandamus. ECF No. 48.

As the Court knows, on January 25, 2021, President Biden issued Executive Order 14,004 "revok[ing]" "the Presidential Memorandum of March 23, 2018" challenged in this case. Executive Order 14,004 provides that "[t]he Secretary of Defense, and Secretary of Homeland Security with respect to the Coast Guard, shall,

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after consultation with the Joint Chiefs of Staff about how best to implement this policy and consistent with applicable law, take all necessary steps to ensure that all directives, orders, regulations, and policies of their respective departments are consistent with this order,” including by “establishing a process by which transgender service members may transition gender while serving, along with any further steps that the Secretary of Defense and Secretary of Homeland Security deem appropriate to advance the policy described in section 1 of this order.” *Id.* § 3(a). It further provides that “[t]he Secretary of Defense and the Secretary of Homeland Security shall report to [the President] within 60 days of the date of this order on their progress in implementing the directives in this order and the policy described in section 1 of this order.” *Id.* § 3(d).

On March 31, 2021, Defendants provided Plaintiffs with copies of Department of Defense Instruction (“DoDI”) 6130.03 (Medical Accession Standards) and DoDI 1300.28 (In Service Transition), which implemented Executive Order 14,004 for the Department of Defense and rescinded the policy challenged in this case. *See* W.D. Wash. ECF No. 678 Exs. A & B. DoDI 6130.03 and DoDI 1300.28 will not take effect until April 30, 2021.

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On April 9, 2021, the parties jointly requested that the district court stay the litigation for 60 days, until June 11, 2021, to allow time for DoDI 6130.03 and DoDI 1300.28 to take effect and for the parties to determine what further proceedings, if any, will be necessary in this case. W.D. Wash. ECF No. 678. The district court granted that request on April 15, 2021, directing the parties to file a joint status report on June 11, 2021 setting forth their positions on what proceedings, if any, may be required. W.D. Wash. ECF No. 679.

For the same reasons—to allow time for the government’s new policy to take effect and to determine whether any further proceedings are necessary—Plaintiffs respectfully request that this Court stay its consideration of the pending mandamus petitions and direct the parties to file letters in 60 days addressing the need, if any, for the Court to resolve the pending petitions for mandamus. Subject to further discussions between the parties regarding the terms on which the underlying litigation may be resolved, Plaintiffs are hopeful that there may not be a need for any further court proceedings.

The requested stay of the Court’s submission and consideration of the pending mandamus petitions will not prejudice the government. The purported harm for

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which the government sought this Court's intervention in its mandamus petitions relates to discovery Plaintiffs sought in the district court litigation—proceedings that the district court stayed in their entirety at the parties' joint request. There is no need for this Court to resolve the government's discovery disputes at this juncture given that the underlying litigation itself may be resolved without further court proceedings.

Respectfully submitted,

/s/ Stephen R. Patton

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2021, the attached letter was filed electronically through the Court's CM/ECF system, and was provided by electronic mail to all counsel of record.

/s/ Stephen R. Patton

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