



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

November 23, 2018

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Donald J. Trump, President of the United States, et al. v. Ryan Karnoski, et al.,
No. 18-___;
Donald J. Trump, President of the United States, et al. v. Jane Doe 2, et al.,
No. 18-___;
Donald J. Trump, President of the United States, et al. v. Aiden Stockman, et al.,
No. 18-___

Dear Mr. Harris:

The government is today filing three petitions for writs of certiorari before judgment in the above-captioned cases. In lieu of seeking expedition—and in light of the importance of the question presented and the urgent need for its prompt resolution—the government writes to oppose any extensions of time for responses and to waive the 14-day waiting period for reply briefs, thereby allowing the petitions to be distributed on December 26, 2018, for consideration at the January 11, 2019 conference.

These cases concern constitutional challenges to a policy that Secretary of Defense James Mattis announced earlier this year after an extensive review of military service by transgender individuals. In arriving at that new policy, Secretary Mattis and a panel of senior military leaders and other experts determined that the prior policy, adopted by Secretary Mattis's predecessor, posed too great a risk to military effectiveness and lethality. As a result of nationwide preliminary injunctions issued by various district courts, however, the military has been forced to maintain that prior policy for nearly a year.

Although the government has appealed the district courts' injunctions, this Court's immediate review is warranted to ensure that the injunctions do not remain in place any longer than is necessary. Even if the government were immediately to seek certiorari from an adverse decision of one of the courts of appeals in these cases, this Court would not be able to review that decision in the ordinary course until next Term at the earliest. In the interim, the military would be forced nationwide to maintain a policy that, in its professional judgment, risks undermining readiness, disrupting unit cohesion, and weakening military effectiveness and lethality.

Accordingly, the government is filing petitions for writs of certiorari before judgment to the Ninth and D.C. Circuits, which have before them a total of three injunctions enjoining the military from implementing the Mattis policy nationwide.

In filing the petitions today, the government seeks to provide the Court with the opportunity to consider this dispute during the current Term without any need for expedition. Under the Court's distribution schedule, if respondents file their responses to the government's petitions within the 30 days allowed by Rule 15.3, and if the government waives the 14-day waiting period for reply briefs under Rule 15.5, the government's petitions will be distributed on December 26, 2018, for consideration at the January 11, 2019 conference—providing ample time for the Court to consider the petitions, for the parties then to provide plenary briefing if the Court grants review, and for the Court to hear the cases during its April argument session. Any extensions of time for respondents, however, would impede the Court's opportunity to consider these petitions at the January 11, 2019 conference and thereby jeopardize its ability to address this important dispute this Term.

In lieu of a motion to expedite consideration of these petitions, the government therefore writes to oppose any extensions of time for respondents to file their briefs in opposition or responses to the government's petitions in these cases. The government also waives the 14-day waiting period for reply briefs under Rule 15.5. The government has made considerable effort to ensure a speedy resolution of this dispute. In the lead case in the Ninth Circuit, for example, the government briefed the merits of its appeal on an expedited basis and sought expedition of oral argument. The government likewise sought an expedited briefing schedule in the D.C. Circuit. The government now respectfully requests that the Court maintain the schedule provided by its rules for responding to the government's petitions, and thereby ensure that the Court will be able to consider providing a timely and definitive resolution of this dispute in the current Term.

Sincerely,

Noel J. Francisco
Solicitor General

cc: See Attached Service List

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