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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AIDEN STOCKMAN; NICOLAS TALBOTT; TAMASYN REEVES; JAQUICE TATE; JOHN DOES 1-2; JANE DOE; and EQUALITY CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. 5:17-CV-01799-JGB-KK

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISSOLVE THE PRELIMINARY INJUNCTION

Date: May 14, 2018
Time: 9:00 a.m.
Courtroom: 1
Judge: Hon. Jesus G. Bernal

STATE OF CALIFORNIA,

Plaintiff-Intervenor,

v.

DONALD J. TRUMP, et al.

Defendants.

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INTRODUCTION

Plaintiffs' Opposition to Defendants' Motion to Dissolve the Preliminary Injunction mischaracterizes the nature of the new policy on transgender military service. Like the policy adopted by then Defense Secretary Ash Carter ("Carter Policy"), the military's new policy presumptively disqualifies individuals with the medical condition of gender dysphoria but contains multiple exceptions allowing some transgender individuals to serve. The two policies differ in the scope of their exceptions—a matter that is well within the discretion owed to the nation's senior military leadership. Applying the highly deferential standard owed to professional military judgments, the Department's new policy passes muster. Plaintiffs fail in their attempt to place the opinions of their experts on equal footing with the judgments of military leaders because the Constitution allocates military decision-making authority to the political branches.

Nor will Plaintiffs suffer any harm if the preliminary injunction is dissolved. The Government has appealed an order from the *Karnoski* Court that denied the Government's motion to dissolve the preliminary injunction, *see* 17-1297, 2018 WL 1784464, at *14 (W.D. Wash. Apr. 13, 2018), and has moved to stay the district court's extension of the preliminary injunction to the new DoD policy pending appeal, *see Karnoski v. Trump*, No. 18-35347 (9th Cir.), Dkt. 3-1. Regardless of how the Ninth Circuit rules on the motion, this Court should not leave its preliminary injunction in place. If the Ninth Circuit grants a stay of the preliminary injunction, this Court must dissolve it. And if the Ninth Circuit denies the stay, the nationwide injunction in the *Karnoski* case would remain in place, thereby protecting Plaintiffs from any alleged harm.

ARGUMENT

I. The New DoD Policy Moots Plaintiffs' Current Challenge.

Plaintiffs' opposition rests on the faulty premise that DoD's new policy is substantively the same as the policies set forth in the President's Twitter statement and Memorandum issued in 2017. *See* Pls.' Opp. 5; AR327–29 (2017 Mem.), Dkt. 93-4.

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Plaintiffs' argument echoes the *Karnoski* Court, which improperly dismissed the new policy as simply a more detailed version of "the 'Ban'" announced by the President last year. 2018 WL 1784464, at *1 n.1. This simply is not the case.

One cannot fairly maintain that DoD's new policy, which turns on the basis of a medical condition and its associated treatment and contains a nuanced set of exceptions allowing some transgender individuals to serve, is the same as, or even implements, the President's statement on Twitter that "the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military." Pls.' Opp. 2. Nor does the new policy "implement" the 2017 Memorandum, especially as that document has been understood by this Court and Plaintiffs. Both understood that Memorandum to "formalize[] the government's policy . . . to reinstate the ban on military service by transgender individuals." Compl. 1–2, ECF No. 1; *see also* Order 18, Dkt. 79. While Plaintiffs speculated that those service members who relied on the Carter Policy "will be subject to involuntary separation," Compl. 2, the new DoD policy allows them to continue to serve under the terms of the Carter Policy.[1]

This understanding of DoD's new policy is made plain by comparison to the long-standing policy that existed before the Carter Policy. Unlike the new policy, the pre-Carter policy generally disqualified individuals on the basis of transgender status, not the medical condition of gender dysphoria. Report 10, 12–13, 20–21, Dkt. 83-2. Moreover, transgender individuals at that time were generally unable to serve in their preferred gender, while the new policy categorically lets some transgender individuals, including many Plaintiffs here, do so. These differences explain why Secretary Mattis had to recommend that the President "revoke" his 2017 Memorandum to "allow[]" the

[1] In what seems to contradict their earlier position, Plaintiffs now contend that the new policy's reliance exception is a "continuation" of the 2017 Memorandum because that memorandum instructed Secretary Mattis "to determine how to address transgender individuals currently serving in the United States military." Pls.' Opp. 9. Continuation or not, there is no disputing that when this Court entered the preliminary injunction, it believed, and Plaintiffs represented, that the currently serving plaintiffs feared discharge.

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military to implement its preferred framework. Mattis Mem. 3, Dkt. 83-1.

Rather than address these differences between the pre-Carter framework and the new policy, Plaintiffs cite to statements by Secretary Mattis that (1) DoD will "carry out the President's policy direction"; (2) it will "comply with" the 2017 Memorandum; (3) it will "develop[] an Implementation Plan … to effect the policy and directives" in the 2017 Memorandum; and (4) it will assemble a panel to "conduct an independent multi-disciplinary review and study of relevant data and information . . . to inform the implementation plan." Pls.' Opp. 7; Dkt. No. 99-1, 99-2. But Plaintiffs ignore other statements by Secretary Mattis explaining that the Panel of Experts would engage in "an *independent* multi-disciplinary review and study of relevant data and information pertaining to transgender Service members," Dkt. No. 99-2 (emphasis added); *accord* Report 17, and that the Panel was charged to provide its "best military advice . . . without regard to any external factors," Mattis Mem. 1. Nor do Plaintiffs mention that "[t]he Panel made recommendations based on each Panel member's independent military judgment," Report 4; or that the new policy is, in Secretary Mattis's words, the product of "the Panel's professional military judgment," "the Department's best military judgment," and his "own professional judgment," Mattis Mem. 2, 3.[2]

And in any event, none of the statements on which Plaintiffs rely changes the reality that the new policy differs significantly from both the pre-Carter framework and the 2017 Memorandum. Rather, the statements on which Plaintiffs rely simply reflect that the 2017 Memorandum directed the military to conduct "further study" and maintain the pre-Carter accession policy while doing so. AR327–28 (2017 Mem. §§ 1(a), 2(a)), Dkt. 93-4. As Secretary Mattis explained in recommending the new policy to the President, the 2017 Memorandum had "made clear that we could advise you 'at any

[2] Although Plaintiffs suggest that the new policy was "manufactured after the fact to justify an existing ban," Pls.' Opp. 14, DoD's review process began at the initiative of Secretary Mattis based on the recommendation of the Services *before* the President made his statement on Twitter, *see* AR326 (Mattis Deferral Mem.), Dkt. 93-4; Mattis Mem. 1.

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time, in writing, that a change to [the pre-Carter] policy is warranted,'" and that is exactly what he did. Mattis Mem. 1. At best, one could say that the military "implemented" the 2017 Presidential Memorandum by studying the issue and advising the President that a new and different policy was appropriate.[3]

In the face of the new policy's plain terms, Plaintiffs further dispute that this framework turns on gender dysphoria and its attendant treatment because it "prohibits transgender people—including those who have neither transitioned nor been diagnosed with gender dysphoria—from serving unless they are willing and able to adhere to all standards associated with their biological sex." Pls.' Opp. 9 (quoting *Karnoski*, 2018 WL 1784464 at *13). But the Carter Policy treated transgender persons that had neither transitioned nor been diagnosed with gender dysphoria in the same manner as the new policy: such individuals could serve only in their biological sex. Report 15; *see* AR2416–17 (DoDI 1300.28), Dkt. 93-14 ("recogniz[ing] a Service member's gender by the member's gender marker in the DEERS," which may be changed *only* after a "military medical provider determines that a Service member's gender transition is complete").[4]

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[3] Nor does this challenge remain live under the voluntary cessation doctrine. *Contra* Pls.' Opp. 10 (citation omitted). Aside from the fact that the new policy is substantially different from the 2017 Memorandum, this doctrine is of limited applicability when members of the Executive Branch change a policy in good faith. The presumption of regularity—the rule that "[e]very public officer is presumed to act in obedience to his duty, until the contrary is shown"—applies "*a fortiori*" to the President. *Martin v. Mott*, 25 U.S. (12 Wheat.) 19, 33 (1827) (Story, J.). It would be inconsistent with that heightened presumption, and inappropriate under the separation of powers, for courts to imply that the Head of the Executive Branch revoked an order to avoid judicial review, especially where, as here, there is no evidence to support such a charge, and where that order presumed that the military would develop its own policy.

[4] Nor is it the case that all transgender service members who are willing to meet the standards associated with their biological sex are being "force[d] to suppress the very characteristic that defines them as transgender in the first place." Pls.' Opp. 9 (quoting *Karnoski*, 2018 WL 1784464, at *12). To the contrary, as the RAND Report explained, only "a subset" of transgender individuals "choose to *transition*, the term used to refer

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Plaintiffs also argue that the new DoD policy "bars accession by transgender people who no longer have gender dysphoria because they have successfully transitioned." Pls.' Opp. 9. But Plaintiffs fail to recognize that considering history of a medical condition, even if cured, is a standard military practice (and was used under the Carter Policy), and that a diagnosis or a history of many medical conditions is presumptively disqualifying. *See* AR210–61 (DoDI 6130.03), Dkt. 93-3 (setting "medical standards for appointment, enlistment, or induction in the military services"); *see also* Report 8–13 (discussing medical standards for accessions, including discussing disqualifying conditions, such as a history of chest or genital surgery or mental health conditions). In addition, the military's concerns relate not just to gender dysphoria, but to its associated treatment of gender transition as well. *See, e.g.*, Report 35–41.

Because the policy challenged in Plaintiffs' complaint has been revoked and replaced with a new policy, the basis for the Court's preliminary injunction is now moot. Plaintiffs' complaint does not even mention the new policy—an omission made stark by the fact that plaintiffs in two of the related cases have, since the new policy was released, filed amended complaints addressing its issuance. *See* Second Am. Compl., *Doe v. Trump*, No. 17-cv-1597 (D.D.C.), Dkt. No. 106; Second Am. Compl., *Stone v. Trump*, No. 17-cv-02459 (D. Md.), Dkt. No. 148. Because the basis for the Court's preliminary injunction no longer presents a live controversy, the Court should not only dissolve the injunction, but dismiss the case as well. *See* Fed. R. Civ. P. 12(h)(3).

II. The New Policy Is Subject To A Highly Deferential Form Of Review.

As set forth above, the new DoD policy is based on medical considerations arising from gender dysphoria and medical issues arising from gender transition. Accordingly, under well-established constitutional principles, the policy does not classify on the basis of a suspect classification, and thus is subject to rational basis

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to the act of living and working in a gender different from one's sex assigned at birth." AR114 (RAND Report 6), Dkt. 93-3.

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review. *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 365–68 (2001).[5]

Although Plaintiffs argue that heightened scrutiny applies, Pls.' Opp. 11–14, the new policy should not be subject to heightened scrutiny given the military context. Through a number of cases all involving challenges to military policies, the Supreme Court has set forth a specialized framework that applies in this discrete area. Although the Supreme Court has declined to attach a label to this framework, in practice it most closely resembles rational-basis review. *See* Defs.' Mot. 9–14.

Plaintiffs' attempts to dispute this framework fall short. They point out that in its earlier decision granting a preliminary injunction, the Court "held that 'discrimination on the basis of one's transgender status is subject to intermediate scrutiny.'" Pls.' Opp. 11 (quoting Order 19, Dkt. 79). However, that holding did not apply to the new DoD policy and rested on the Court's conclusion that deference to the Executive was inappropriate because the military had not "act[ed] with measure" or conducted "serious study and evaluation" in support of its decision. Op. 18. There is no dispute that the new policy is the result of an extensive review process by senior military leaders and is based on the considered judgment of the Department of Defense.[6]

Turning to the relevant precedents, Plaintiffs claim that *Ballard* did not involve a *post hoc* rationale, Pls.' Opp. 12, even though the Court expressly justified the challenged gender classification by hypothesizing that "Congress *may* [] quite rationally have

[5] Here, Plaintiffs' reliance on rhetorical extremes underscores the weakness of their case. They compare the new policy to a rule allowing Muslims to serve only if they renounce their faith or a claim "that laws limiting marriage only to male-female couples did not discriminate against gay people because a gay person could marry a person of the opposite sex." Pls.' Opp. 8. At a minimum, those analogies are plainly inapt for the simple reason that neither involves medical issues that impact military readiness.

[6] This Court should not follow the *Karnoski* Court's recent decision to subject the new policy to strict scrutiny. *See* 2018 WL 1784464, at *11. That court did not cite a single example of another decision concluding that a policy that classified on the basis of transgender status was subject to strict scrutiny, let alone a military policy turning on gender dysphoria adopted after a substantial review process. *Id.*

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believed that women line officers had less opportunity for promotion than did their male counterparts," 419 U.S. at 508 (emphasis added). Indeed, the dissent chided the majority for "go[ing] far to conjure up a legislative purpose" for which he could find "nothing in the statutory scheme or the legislative history to support." *Id.* at 511 (Brennan, J.). In any event, here DoD did not conjure up a military purpose for a predetermined policy, but adopted a nuanced framework following a careful process of agency deliberation and a careful application of professional military judgment.

Plaintiffs next argue that because the policy in *Goldman* was facially neutral, that decision has little relevance. Pls.' Opp. 12. Even assuming, *arguendo,* that the new policy could be read as a facial classification, the deference to the military's decision in *Goldman* was not based on whether the particular constitutional challenge involved a facially neutral policy, but rather on the fact that "the military authorities have been charged by the Executive and Legislative Branches with carrying out our Nation's military policy." 475 U.S. at 508 (citation omitted). In any event, under the framework for free-exercise claims in place at the time, the facially neutral policy at issue would have triggered strict scrutiny had it arisen in the civilian context. *See id.* at 506 (citing cases).

Plaintiffs also assert that the policy in *Rostker* was not justified based on concerns about administrative burdens. Pls.' Opp. 13. But the Court upheld male-only draft registration because (1) women could not be drafted for combat roles, *and* (2) "assuming that a small number of women could be drafted for noncombat roles, Congress simply did not consider it worth the added burdens of including women in draft and registration plans." 453 U.S. at 81. Those "'administrative burdens,'" it explained, could not be dismissed "as insignificant in the context of military preparedness." *Id.*[7]

[7] Plaintiffs' authorities for subjecting a military personnel policy to heightened scrutiny fare no better. *United States v. Virginia*, 518 U.S. 515 (1996), did not even discuss military deference, and for good reason: the policy in that case was justified based on pedagogical interests, not military concerns. *Id.* at 549. And even if military concerns had been at issue, they would have been the concerns of Virginia, not of the political branches of the federal government, which, unlike the states, hold constitutional powers related to

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III. The Department's New Policy Satisfies Highly Deferential Scrutiny.

For the reasons set forth in the DoD Report, the new policy is at least rationally related to the Government's interests in military readiness; in minimizing military costs; and in maintaining order, discipline, leadership, and unit cohesion. Report 14–24. In response, Plaintiffs offer declarations from a former DoD political appointee and two doctors in an attempt to selectively challenge parts of the Report and offer alternative opinions. Plaintiffs thus seek to have this Court substitute its own judgment for that of military leaders on matters of military policy by deciding a battle of the experts. This approach ignores the Constitution's commitment of military decisions "to the political branches directly responsible—as the Judicial Branch is not—to the electoral process." *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973). The fact that Plaintiffs can identify experts with opinions contrary to the military's judgment is irrelevant. *See Goldman*, 475 U.S. at 509 ("[W]hether or not expert witnesses may feel that religious exceptions to [a military policy] are desirable is quite beside the point."). The relevant issue is whether the Government has shown—taking into account the deference due the military's judgment, evidence, and discretion to choose among alternatives—that the new policy is rationally related to the military's proffered interests, and that question admits of only one answer. *See Goldman*, 475 U.S. at 506–508; *Rostker*, 453 U.S. at 64–70.[8]

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the regulation and command of the military. *See Goldman*, 475 U.S. at 507. As for *Witt v. Department of Air Force*, 527 F.3d 806, 821 (9th Cir. 2008), that case involved an as-applied challenge and remand solely to develop an evidentiary record regarding the application of the Government's justifications to the plaintiff—not to test the evidentiary underpinnings of the proffered justifications as a general matter. *Id.* at 821. Indeed, *Witt* agreed that "judicial deference … is at its apogee" when military judgments by the political branches are at issue. *Id.* (quoting *Rostker*, 453 U.S. at 70).

[8] When Plaintiffs (and their declarants) are not cherry-picking details, they are mischaracterizing the Report and the underlying evidence. While all of their counterpoints are disputable, one example stands out: their claim that the Report "mischaracterized and rejected the wide body of peer-reviewed research on the effectiveness of transgender medical care." Pls.' Opp. 19. To the contrary, the Report acknowledges that the "prevailing judgment of mental health practitioners is that gender

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Plaintiffs' remaining objections fall short. For instance, they assert that the new policy is unrelated to concerns about deployability because the military already has a universal standard under which any service member who "is nondeployable for more than 12 consecutive months, for any reason," is discharged. Pls.' Opp. 15. But that general rule neither is the military's only deployability standard nor obviates the need to maintain rules that apply to specific medical conditions. For example, the military maintains lists of medical conditions (of which gender dysphoria is one of many) which DoD generally cannot risk accommodating in a forward-deployed environment. *See, e.g.,* AR2584–2614 (CENTCOM Minimal Deployment Standards), Dkt. 93-14. The Court should not second-guess the decision to include gender dysphoria on that list any more than it should second-guess DoD's decision to include, for example, a history of heat stroke or use of anticoagulants. Plaintiffs also complain that the new policy is over- and under-inclusive with respect to deployability concerns. Pls.' Opp. 16. But even if that were the case, *Rostker* and *Goldman* clearly hold that the military has discretion to choose among alternative policy options, regardless of whether the chosen policy draws bright lines. *See* 453 U.S. at 81; 475 U.S. at 509–510.[9]

Further, Plaintiffs contend that because the military already screens for history of suicidality, depression, and anxiety, there is no mental-health-related readiness concern

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dysphoria can be treated" with transition-related care and that numerous studies show that such treatments "can improve health outcomes for individuals with gender dysphoria." Report 24. What the Report questions is whether the *extent* of the improvement in health outcomes and the *strength* of the scientific evidence are adequate to resolve or mitigate the various risks associated with gender dysphoria. How much risk the military is willing to bear with respect to a given medical condition is a matter of military judgment, and DoD has concluded—based on the independent findings of governmental and nongovernmental organizations that have assessed the literature on gender dysphoria treatments—that it should proceed cautiously. *See* Report 24–27.

[9] Here, Plaintiffs invoke *Crawford v. Cushman*, 531 F.2d 1114, 1123 (2d Cir. 1976), Pls.' Opp. 16, yet the relevant portion of *Crawford*, per the Second Circuit, is no longer good law after *Rostker*. *See Mack v. Rumsfeld*, 784 F.2d 438, 439 (2d Cir. 1986) (per curiam).

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justifying the new policy. Pls.' Opp. 16. But gender dysphoria is "associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning," Report 21 (quoting the DSM-V), and a frequent treatment for this condition—gender transition—is unlike any other form of treatment in that it requires a permanent exception from the standards that apply to the patient's biological sex (and remains the subject of "considerable scientific uncertainty.") Report 32. While gender dysphoria is not identical to suicidality, depression, or anxiety, it is sufficiently associated with high rates of those conditions, even after treatment, to justify the risk-mitigating approach adopted by DoD. Report 21–26.

Plaintiffs also complain of DoD's reliance on its interest in maintaining sex-based standards, arguing that "[c]ourts have overwhelmingly rejected the use" of that rationale in other settings. Pls.' Opp. 20. But as Plaintiffs tacitly acknowledge, none of the cases Plaintiffs cite involved the military context, where sex-based standards are necessary to maintain an integrated force and integral to daily life, applying to, among others things, physical fitness and height and weight standards; berthing, showering, and restroom facilities; and contact sports and combat training. Report 28–29. Plaintiffs nowhere address, for example, the concern that physical fitness standards could not be applied fairly or consistently if based on gender identity and not physiology.[10]

Finally, Plaintiffs claim that "there is no rational reason . . . to treat the medical costs incurred by transgender service members differently from the costs incurred by non-transgender service members." Pls.' Opp. 21. But the average medical costs for service members with gender dysphoria are higher than for those without, Report 41, and DoD could rationally conclude that its new policy would at least further the interest in minimizing cost burdens, *see Rostker*, 453 U.S. at 81. Given that Plaintiffs' attacks on the new policy are meritless, a preliminary injunction here would be inappropriate.

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[10] Plaintiffs also err in claiming that "[n]ot a single case" supports DoD's reasonable concerns about legal risks. Pls.' Opp. 20 n.7; *see, e.g.*, *Franciscan All., Inc. v. Burwell*, 227 F. Supp. 3d 660, 686–89 (N.D. Tex. 2016) ("sex" in Title IX excludes gender identity).

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IV. The Equities Cut In Favor Of Dissolving The Preliminary Injunction.

The leaders of DoD concluded that absent implementation of the new policy, there will remain "substantial risks" that threaten to "undermine readiness, disrupt unit cohesion, and impose an unreasonable burden on the military that is not conducive to military effectiveness and lethality." Mattis Mem. 2; *see also, e.g.*, Report 32–35, 41, 44. Such "specific, predictive judgments" from senior military officials, including the Secretary of Defense himself, "about how the preliminary injunction would reduce the effectiveness" of the military, merit significant deference. *Winter*, 555 U.S. at 27.

In contrast, Plaintiffs face little risk of harm. Many of the individual Plaintiffs would qualify for the new policy's reliance exception—and thus would be able to continue serving in their preferred gender, obtain commissions, and receive medical treatment—because they received a diagnosis of gender dysphoria from a military medical provider while the Carter Policy was in effect.[11] *See* Report 43.

Plaintiffs respond by invoking the exception's severability provision, Pls.' Opp. 23, apparently speculating that DoD will "terminate their service at any time in the event it becomes disadvantageous to Defendants' litigation position." Pls.' Opp. 22–23. But this reading is not consistent with that the provision, which simply states: "[S]hould [the] decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption is and should be deemed severable from the rest of the policy." Report 43. Thus, for Plaintiffs to be discharged from the military on the basis of their gender dysphoria, the following would have to occur: First, a court would have to rule that (1) the entire DoD policy was unlawful due to the

[11] The *Karnoski* Court questioned whether the reliance exception would apply in that case, as it was not convinced that the currently serving plaintiffs there had been diagnosed with gender dysphoria by a military medical provider since the Carter Policy took effect. *See* 2018 WL 1784464, at *7 n.7. In doing so, it missed that service members could receive treatment under the Carter Policy—which all of the Plaintiffs both here and in *Karnoski* did—only if they had received a diagnosis of gender dysphoria by a military medical provider after that policy took effect. *See, e.g.*, Report 14.

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reliance exemption, (2) the entire DoD policy would be lawful but for that exemption, and (3) that exemption should therefore be severed from the rest of the policy. Second, that decision would have to be upheld upon any further judicial review. Third, with the reliance exception gone, officials within DoD would then have to make the independent decision to discharge current service members who have been diagnosed with gender dysphoria. Finally, these five Plaintiffs would have to be processed for discharge on that basis. *See id.* Given that a highly attenuated chain of events would have to occur before Plaintiffs were discharged, they cannot establish imminent, let alone irreparable, harm. *See Winter*, 555 U.S. at 22 (mere "possibility" of harm insufficient for preliminary relief); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 413–14 (2013).

As for the remaining Plaintiffs, although the Court preliminarily determined that they may be able to satisfy the requirements for standing, *see* Order 12–13, Dkt. 39, it does not follow that they are likely to suffer irreparable harm. As Defendants have argued before, *see* Dkt. No. 36 at 14, the Plaintiffs seeking to join the military have not demonstrated that they have been stable for at least 18 months post-transition as required under the Carter Policy. And even if the new policy might prevent some of them from accessing, that harm would not be irreparable. *Cf. Hartikka v. United States*, 754 F.2d. 1516, 1518 (9th Cir. 1985) (damage to reputation as well as lost income, retirement, and relocation pay resulting from less-than-honorable discharge not irreparable).

CONCLUSION

This Court should dissolve the preliminary injunction issued on December 22, 2017. In light of DoD's judgment that maintaining the Carter Policy poses substantial risks to military readiness, Defendants respectfully request a ruling on this motion as soon as possible and no later than May 23, 2018. If the Court denies this motion, however, Defendants respectfully request that it stay the application of the preliminary injunction to DoD's new policy pending the Ninth Circuit's ruling in *Karnoski*.

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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2018, I electronically filed the foregoing document using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: May 7, 2018

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