

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

BROCK STONE, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States, *et
al.*,

Defendants.

Case 1:17-cv-02459-GLR

Hon. George L. Russell, III

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY THE
PRELIMINARY INJUNCTION AND REQUEST FOR EXPEDITED RULING**

In *Karnoski v. Trump* and *Stockman v. Trump*, the Supreme Court stayed preliminary injunctions like the one in this case, which had blocked the military from implementing the Mattis policy nationwide. Those stays lifted the injunctions in their entirety, including as to the individual plaintiffs in those cases.

In light of the stays granted by the Supreme Court, Plaintiffs do not oppose a stay of the nationwide scope of the injunction in this case. *See* Pls.' Opp'n 1, 6, ECF No. 235. Accordingly, the Court should, at the very minimum, issue such a stay immediately. Plaintiffs contend, however, that the preliminary injunction in this case should be left in place as to five individual plaintiffs.¹ That contention lacks merit. The Supreme Court declined to leave in place the injunctions as to the individual plaintiffs in *Karnoski* and *Stockman*, and nothing about the circumstances of the five individual plaintiffs here is materially different. Because the Supreme Court stayed the *Karnoski* and *Stockman* injunctions in their entirety, a similar stay of

¹ Plaintiffs' brief addresses only five of the twelve individual plaintiffs (Niko Branco, John Doe 2, Ryan Wood, Airman First Class Seven Ero George, and Petty Officer First Class Teagan Gilbert).

this Court’s preliminary injunction, in its entirety, is required.

ARGUMENT

Plaintiffs do not dispute that, in light of the recent stays granted by the Supreme Court in *Karnoski* and *Stockman*, a stay of the nationwide preliminary injunction in this case is appropriate. Plaintiffs nevertheless contend that this Court should issue only a partial stay, leaving the injunction in place as to five individual plaintiffs. The Supreme Court, however, declined to issue such a partial stay in *Karnoski* and *Stockman*, and there are no grounds for a different outcome here.

Plaintiffs contend that the Supreme Court in *Karnoski* and *Stockman* was not presented with the option of granting only a partial stay. *See* Pls.’ Opp’n 2–3 (“The Supreme Court was presented with the question of whether to impose a blanket stay or no stay at all.”). But that is not the case. Defendants’ stay applications in the Supreme Court requested a partial stay—*i.e.*, a stay of “the nationwide scope of [each] injunction”—as an alternative to a stay of each “injunction in its entirety.” *Karnoski* Stay Appl. at 1-2, No. 18-676 (S. Ct. 2018); *Stockman* Stay Appl. at 1-2, No. 18-678 (S. Ct. 2018); *see also Karnoski* Stay Appl. at 3, No. 18-676 (S. Ct. 2018) (“At a minimum, the Court should stay the nationwide scope of the injunction”) (emphasis added); *id.* at 40 (same); *Stockman* Stay Appl. at 3, No. 18-678 (S. Ct. 2018) (same); *id.* at 40 (same); *Karnoski* and *Stockman* Reply at 17, Nos. 18A625, 18A626, 18A627 (S. Ct. 2019) (“At a minimum, the Court should stay the nationwide scope of each injunction, such that each injunction bars the implementation of the Mattis policy only as to the individual respondents in each case who are currently serving in the military or seeking to join it.”). And Defendants’ stay applications spelled out exactly what such a partial stay would mean—namely, that the injunctions would be left in place as to the “individual [plaintiffs] in [each] case who are currently serving in the military or seeking to join it.” *Karnoski* Stay Appl. at 40,

No. 18-676 (S. Ct. 2018); *Stockman* Stay Appl. at 37, No. 18-678 (S. Ct. 2018). The Supreme Court was therefore squarely presented with the option of granting only a partial stay of each injunction. And the Supreme Court necessarily rejected that option when it granted instead a stay of each injunction in its entirety.

Plaintiffs observe that the plaintiffs in *Karnoski* and *Stockman* responded to Defendants' stay applications by "arguing that anything short of a continued nationwide injunction would cause harm." Pls.' Opp'n 2. But that was the plaintiffs' response to Defendants' request for a stay of *the nationwide aspect* of each injunction. The plaintiffs in *Karnoski* and *Stockman* additionally opposed any stay that extended beyond that aspect to cover *the individual plaintiffs themselves*. See, e.g., *Karnoski* Stay Appl. Opp'n at 30–31, 36, No. 18-A625 (S. Ct. 2018) (arguing that the individual plaintiffs would be irreparably harmed by a stay because they themselves would be barred from serving altogether or from serving under what they believed to be equal terms); *Stockman* Stay Appl. Opp'n at 38, No. 18-A627 (S. Ct. 2018) (same). When the Supreme Court stayed each injunction in its entirety, it necessarily rejected the option of leaving each injunction in place as to the individual plaintiffs.

Plaintiffs argue that "[t]he Supreme Court did not have an opportunity to consider the individualized circumstances facing Plaintiffs in this case were they to be subject to a stay of the injunction." Pls. Opp'n 3. But the individualized circumstances of the five individual plaintiffs in this case are materially indistinguishable from those of the individual plaintiffs in *Karnoski* and *Stockman*. Just as in this case, the plaintiffs in *Karnoski* and *Stockman* include both individuals who are already in the military and individuals who aspire to join the military. See First Am. Compl. ¶¶ 7–15, *Karnoski v. Trump*, No. 17-cv-1297 (W.D. Wash. Sept. 14, 2017), ECF No. 30; Compl. ¶¶ 10–17, *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal. Sept. 5, 2017), ECF No. 1. Like Plaintiffs Niko Branco, Ryan Wood, and John Doe 2, *Karnoski* plaintiff

Conner Callahan aspires to join the military and has completed his gender transition. *See* First Am. Compl. ¶¶ 135, 138, *Karnoski v. Trump*, No. 17-cv-1297 (W.D. Wash. Sept. 14, 2017), ECF No. 30. Similarly, *Stockman* plaintiffs Aiden Stockman, Nicolas Talbott, and Tamasyn Reeves all aspire to join the military, *see* Compl. ¶¶ 10–12, *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal. Sept. 5, 2017), ECF No. 1, and have “gone through gender transition,” Pls.’ Opp’n to Defs.’ Mot. to Dissolve the Prelim. Inj. 21–22, *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal. Apr. 25, 2018), ECF No. 98. In addition, like Plaintiffs Airman First Class Seven Ero George and Petty Officer First Class Teagan Gilbert, *Karnoski* plaintiff Staff Sergeant Cathrine Schmid is currently a member of the military and aspires to become an officer. *See* First Am. Compl. ¶¶ 61–62, *Karnoski v. Trump*, No. 17-cv-1297 (W.D. Wash. Sept. 14, 2017), ECF No. 30.

As the foregoing shows, the alleged harms faced by the *Karnoski* and *Stockman* plaintiffs are not materially different from the alleged harms faced by the five plaintiffs here. Plaintiffs Branco, Wood, and Doe 2 contend that because they have undergone gender transition, they will not be permitted to join the military if the preliminary injunction is stayed. Pls.’ Opp’n 4. But the Supreme Court considered the same argument from the similarly situated *Karnoski* and *Stockman* plaintiffs. *See Karnoski* Stay Appl. Opp’n at 30–31, No. 18-A625 (S. Ct. 2018) (arguing that “Plaintiffs who seek to enlist would be barred from doing so”); *Stockman* Stay Appl. Opp’n at 38, No. 18-A627 (S. Ct. 2018) (arguing that “Respondents who have not yet enlisted will be barred from doing so”); *see also* Pls.’ Opp’n to Defs.’ Mot. to Dissolve the Prelim. Inj. 21–22, *Stockman v. Trump*, No. 17-cv-1799 (C.D. Cal. Apr. 25, 2018), ECF No. 98 (arguing that these plaintiffs suffer harm by being “barred” from joining the military). Plaintiffs George and Gilbert contend that they may not be able to commission as officers. Pls.’ Opp’n 5. But *Karnoski* plaintiff Schmid faces that same alleged harm. *See* Order 7, *Karnoski v. Trump*, No. 17-cv-1297 (W.D. Wash. Dec. 11, 2017), ECF No. 103 (“Plaintiff Schmid has been refused

consideration for appointment as a warrant officer and faces a credible threat of being denied opportunities for career advancement.”). Because the Supreme Court considered similar allegations of harm from similarly situated plaintiffs and nevertheless determined that a full stay of each injunction was warranted, the Supreme Court’s order leaves no room for a different result here.

Finally, Plaintiffs contend in a footnote that, in evaluating a stay applicant’s probability of success on the merits, the courts of appeals require a showing of a “likelihood of success,” whereas the Supreme Court requires a showing of a “fair prospect that a majority of the Court will conclude that the decision below was erroneous.” Pls. Opp’n 2 n.1. Plaintiffs, however, make no attempt to explain how those two showings are materially different. Nor do they attempt to explain what any of this has to do with the question before this Court. Plaintiffs have already acknowledged that, in light of the Supreme Court’s order, a stay of the nationwide aspect of the injunction in this case is appropriate. The only dispute concerns whether that stay should extend to the five individual plaintiffs in this case. The success-on-the-merits factor cannot help Plaintiffs here, because it cannot distinguish the five individual plaintiffs in this case from the individual plaintiffs in *Karnoski* and *Stockman*, whose injunctions were stayed in their entirety by the Supreme Court. In any event, this Court should decline to consider any argument raised only in a footnote. *See Sanders v. Callender*, No. CV DKC 17-1721, 2018 WL 337756, at *7 n.5 (D. Md. Jan. 9, 2018).

REQUEST FOR EXPEDITED RULING

Plaintiffs present no argument in opposition to Defendants’ request for an expedited ruling. *See generally* Pls.’ Opp’n. By failing to make any argument to the contrary, Plaintiffs effectively concede that the Court should issue an expedited ruling. *See Mayfield v. Nat’l Ass’n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 377 (4th Cir. 2012).

In light of the Supreme Court's order and the fact that this Court's preliminary injunction is the only remaining injunction among the four related cases, Defendants respectfully request that the Court immediately stay the preliminary injunction in its entirety.

CONCLUSION

For these reasons and for the reasons set forth in Defendants' Motion, the Government respectfully requests that this Court immediately stay the preliminary injunction, in its entirety, pending the resolution of Defendants' Motion to Dissolve the Preliminary Injunction, ECF No. 120, and if the Court denies that motion, pending an appeal to the Court of Appeals for the Fourth Circuit and any further proceedings before the Supreme Court.

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