

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Stephen R. Patton  
To Call Writer Directly:  
+1 312 862 3501  
stephen.patton@kirkland.com

300 North LaSalle  
Chicago, IL 60654  
United States

+1 312 862 2000

www.kirkland.com

Facsimile:  
+1 312 862 2200

November 12, 2018

## VIA ELECTRONIC FILING

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: *Karnoski v. Trump*, No. 18-35347 (9th Cir.) (oral argument held October 10, 2018, before Judges Fisher, Clifton, Callahan)

Dear Ms. Dwyer:

Plaintiffs-Appellees write in response to the federal government's November 7, 2018 letter. The government provides no basis for the Court to accelerate its decision in this already-expedited appeal. Plaintiffs-Appellees respectfully submit that the Court should decide this case on its own schedule, when it is ready to do so, and without reference to the government's requested deadline or threatened petition for pre-judgment certiorari.

First, the Court has already rejected a similar request—that it should expedite oral argument to ensure a decision “no later than December 2018” so that “the Supreme Court [can] decide” this case “in the 2018 Term.” Dkt. 93, at 4-5; Dkt. 95. The government does not cite any changed circumstance that would warrant a different result here. Instead, it has accelerated its requested decision date—from “December 2018” to “November 23”—without any adequate explanation. The reasons for this Court's denial of the government's prior request apply with even greater force here.

KIRKLAND & ELLIS LLP

Molly C. Dwyer  
November 12, 2018  
Page 2

Second, the government's claimed urgency is belied by its prior actions. The government could have pursued its original appeal from the preliminary injunction—which it commenced nearly a year ago in December 2017—but it instead chose to abandon that appeal. Moreover, after the Court denied its motion to stay in the current appeal last July (*see* Dkt. 90), the government could have sought a stay from the Supreme Court, but did not. More importantly, the government's only claimed harm—that the preliminary injunction prevents it from immediately ending the Carter open service policy, which has now been in effect for more than two years without any showing of any actual adverse effects—does not remotely provide a basis for the Supreme Court's intervention before this Court has issued its decision.

Third, this interlocutory appeal does not present the merits issues on which the government apparently intends to seek certiorari. The issue in this appeal is whether the government demonstrated sufficiently changed circumstances to justify dissolving the preliminary injunction while the litigation proceeds on the merits. Review of that narrow and preliminary issue is not an appropriate vehicle for the Supreme Court to decide the broader constitutional issues in this case.

Plaintiffs-Appellees respectfully submit that the Court should decide this appeal when it is ready to do so and without reference to the government's deadline or threat of a highly unusual—and legally baseless—petition for certiorari before this Court renders its judgment.

Respectfully submitted,

*/s/ Stephen R. Patton*

---

Stephen R. Patton  
KIRKLAND & ELLIS LLP  
300 N. LaSalle  
Chicago, IL 60654  
(312) 862-3501  
*stephen.patton@kirkland.com*

KIRKLAND & ELLIS LLP

Molly C. Dwyer  
November 12, 2018  
Page 3

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of November, 2018, 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*

---

Stephen R. Patton  
KIRKLAND & ELLIS LLP  
300 N. LaSalle  
Chicago, IL 60654  
(312) 862-3501  
*stephen.patton@kirkland.com*