

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

Brock Stone, et al.,

Plaintiffs,

v.

Donald J. Trump, et al.,

Defendants.

Case No. 1:17-cv-02459-MJG

**DECLARATION OF MARIANNE F. KIES IN SUPPORT OF MOTION TO COMPEL
SUPPLEMENTAL INTERROGATORY ANSWERS AND PRODUCTION**

I, MARIANNE F. KIES, depose and say as follows:

1. I make this declaration in support of the remedies and relief sought by Plaintiffs in this case. The following facts are based on my own personal knowledge, except those stated upon information and belief, and as to all such facts stated upon information and belief, I am informed and believe that the same are true.

2. I am an attorney with Covington & Burling LLP, and I represent Plaintiffs in this action.

3. Attached hereto as “Exhibit 1” is a true and correct copy of Plaintiffs’ First Set of Interrogatories to Defendants, served on January 3, 2018.

4. Attached hereto as “Exhibit 2” is a true and correct copy of Plaintiffs’ First Set of Requests for Production of Documents, served on January 3, 2018.

5. Attached hereto as “Exhibit 3” is a true and correct copy of Defendants’ Objections and Responses to Plaintiffs’ First Set of Interrogatories to Secretary Mattis, served on February 9, 2018.

6. Attached hereto as “Exhibit 4” is a true and correct copy of Defendants’ Objections and Responses to Plaintiffs’ First Set of Requests for Production of Documents to Secretary Mattis, served on February 9, 2018.

7. Attached hereto as “Exhibit 5” is a true and correct copy of an initial, partial privilege log listing Department of Defense documents, served by Defendants on February 13, 2018.

8. Attached hereto as “Exhibit 6” is a true and correct copy of Defendants’ Objections and Responses to Plaintiffs’ First Set of Interrogatories to Defendant Donald J. Trump, served by Defendants on February 9, 2018.

9. Attached hereto as “Exhibit 7” is a true and correct copy of Defendants’ Objections and Responses to Plaintiffs’ First Set of Requests for Production of Documents to Defendant Donald J. Trump, served by Defendants on February 9, 2018.

10. During an in-person meeting on March 13, 2018, Defendants’ counsel agreed to supplement Defendants’ responses to Plaintiffs’ interrogatories to, at minimum, direct Plaintiffs to specific Bates numbers of responsive documents. Defendants did not specify a date certain by which this supplementation would be provided, and to date Defendants have not made any such supplementation.

11. Defendants made an initial production in this matter on February 9, 2018, containing approximately 17,000 documents. This production was identical to their initial

production in *Doe, et al. v. Trump, et al.*, No. 17-1597 (D.D.C.), minus information pertinent to the individual *Doe* plaintiffs.

12. Defendants made a supplemental production of a similar number of documents on March 9, 2018. Defendants still have not completed their document production and have advised they are not likely to until sometime in May.

13. On February 13, 2018, Defendants produced twelve privilege logs to Plaintiffs from the President, the Department of Defense, each of the military services, the Chairman of the Joint Chiefs of Staff, and the Defense Health Agency.

14. On March 20, 2018, Defendants produced six additional privilege logs to Plaintiffs.

15. Attached hereto as “Exhibit 8” is a true and correct copy of a letter from my colleague and co-counsel Augustus Golden sent to Defendants’ counsel Ryan Parker on February 21, 2018, outlining numerous deficiencies in Defendants’ discovery objections and privilege logs, including their claims of deliberative process privilege.

16. Defendants did not substantively respond to this letter. Instead, during a March 1, 2018 conference, Defendants requested that Plaintiffs identify particular privilege log entries for re-consideration. Plaintiffs advised that this proposal was likely not feasible given the inadequacy of the information provided in Defendants’ privilege logs.

17. On March 9, 2018, I sent an email to Mr. Parker confirming Plaintiffs’ view that it was not possible to provide a line-by-line identification of deficient entries, and requesting a further meet and confer session to discuss the ongoing deficiencies in Defendants’ discovery responses. Attached hereto as “Exhibit 9” is a true and correct copy of that correspondence.

18. On March 13, 2018, counsel for Plaintiffs and Defendants met and conferred in person at Defendants' counsel's offices. In attendance for Plaintiffs were my colleagues and co-counsel Mark Lynch, Mark Neuman-Lee, and myself. In attendance for Defendants were Mr. Parker and other Department of Justice attorneys. This meet and confer session did not resolve the parties' dispute regarding Defendants' assertion of the deliberative process privilege.

19. Attached hereto as "Exhibit 10" is a true and correct copy of a letter I sent to Mr. Parker on March 16, 2018, further describing the deficiencies in Defendants' document productions and interrogatory responses. Defendants have not, to date, provided any substantive response to this letter.

20. Attached hereto as "Exhibit 11" is a true and correct copy of a letter I sent to Mr. Parker on April 9, 2018, requesting a response to my letter of March 16 and further explaining why Defendants' assertions of the deliberative process privilege were deficient. Defendants have not, to date, provided any substantive response to this letter.

21. Attached hereto as "Exhibit 12" is a true and correct copy of a document produced by Defendants in the parallel *Doe* case bearing the Bates range USDOE00081113-16. This document was produced by Defendants with extensive redactions, and it is identified as a "Memorandum for the Record" on the Subject of "Dissenting Opinion from the Majority Recommendations of the 'Military Service by Transgender Individuals - Panel of Experts.'" It appears to have been written by Deputy Assistant Secretary of the Navy Thomas P. Dee.

22. Attached hereto as "Exhibit 13" is a true and correct excerpt of a privilege log produced by Defendants on February 13, 2018 listing Army documents.

23. Attached hereto as "Exhibit 14" is a true and correct excerpt of a privilege log produced by Defendants on February 13, 2018 listing Joint Chiefs of Staff documents.

24. Attached hereto as “Exhibit 15” is a true and correct excerpt of a privilege log produced by Defendants on February 13, 2018 listing Air Force documents.

25. Attached hereto as “Exhibit 16” is a true and correct excerpt of a privilege log produced by Defendants on February 13, 2018 listing Navy documents.

26. Attached hereto as “Exhibit 17” is a true and correct excerpt of a privilege log produced by Defendants on February 13, 2018 listing Defense Health Agency documents.

27. Attached hereto as “Exhibit 18” is a true and correct excerpt of a redaction log produced by Defendants on March 20, 2018 listing Navy documents.

28. Attached hereto as “Exhibit 19” is a true and correct copy of correspondence I received from Defendants’ counsel Ryan Parker on April 19, 2018, regarding the inadvertent production of certain documents which Defendants claim are privileged.

29. Attached hereto as “Exhibit 20” is a true and correct copy of a document produced by Defendants in the parallel *Doe* case bearing the Bates range USDOE00000442-43. This document appears to be a Memorandum prepared by the Secretary of Defense on the Subject of “Terms of Reference - Implementation of President Memorandum on Military Service by Transgender Individuals.” It is signed by Secretary of Defense James Mattis and has a handwritten date of September 14, 2017.

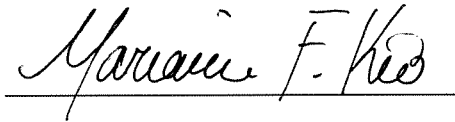
30. Attached hereto as “Exhibit 21” is a true and correct, highlighted excerpt of the transcript from the deposition of Martie Soper taken in the parallel *Doe* case.

31. Attached hereto as “Exhibit 22” is a true and correct copy of an initial, partial privilege log listing categories of documents withheld by the President of the United States, served by Defendants on February 13, 2018.

32. During the parties' meeting of counsel on March 13, 2018, Plaintiffs' counsel also sought to engage Defendants' counsel in a discussion regarding Defendants' various assertions of the presidential communications privilege. Defendants' counsel categorically refused to meet and confer on that topic at that time, and advised they would not do so until after the Court had ruled on Defendants' partial motion for judgment on the pleadings addressing claims against the President.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of April, 2018.

A handwritten signature in cursive script, reading "Marianne F. Kies", is written above a horizontal line.

Marianne F. Kies (Bar No. 18606)