

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

U.S. NAVY SEALs 1-3; on behalf of themselves and all others similarly situated; **U.S. NAVY EXPLOSIVE ORDNANCE DISPOSAL TECHNICIAN 1**, on behalf of himself and all others similarly situated; **U.S. NAVY SEALs 4-26**; **U.S. NAVY SPECIAL WARFARE COMBATANT CRAFT CREWMEN 1-5**; and **U.S. NAVY DIVERS 1-3**,

Plaintiffs,

v.

LLOYD J. AUSTIN, III, in his official capacity as United States Secretary of Defense; **UNITED STATES DEPARTMENT OF DEFENSE**; **CARLOS DEL TORO**, in his official capacity as United States Secretary of the Navy,

Defendants.

Case No. 4:21-cv-01236-O

MOTION TO SET HEARING

Plaintiffs respectfully move this Court to set a hearing on either February 28, 2022 or March 1, 2022 on the pending motions. In support of this Motion, Plaintiffs state the following:

1. Plaintiffs propose that the Court set a hearing for either February 28, 2022 or March 1, 2022 on the following pending motions:
 - a. Plaintiffs' Motion for Class Certification (Dkt. 89);
 - b. Plaintiffs' Motion for Classwide Preliminary Injunction (Dkt. 104);
 - c. Defendants' Motion for Stay Pending Appeal (Dkt. 85);
 - d. Plaintiffs' Motion for Order to Show Cause (Dkt. 95).

2. According to the Local Rules of this Court and the Court's February 7 Order, Plaintiffs' Motion for Classwide Preliminary Injunction and Motion for Class Certification will be fully briefed by February 28, 2022 and March 1, 2022, respectively. If either of these hearing dates work for the Court's schedule, Plaintiffs are willing to file their reply briefs before the hearing date.

3. Plaintiffs believe that setting one hearing for these pending motions will allow the consideration of Plaintiffs' request for classwide preliminary relief to be heard expeditiously, minimize travel for both parties' counsel, and ensure that all relevant evidence is presented at one hearing.

4. If the Court grants Plaintiffs' Motion for Order to Show Cause (Dkt. 95) or believes that a hearing on the motion is necessary, Plaintiffs believe that matter should be heard on the same day as Defendants' Motion for Stay Pending Appeal (Dkt. 85), as they are related. Plaintiffs propose that these pending motions be heard on the same day as the hearing on Plaintiffs' Motion for Classwide Preliminary Injunction and Motion for Class Certification, as they will both be fully briefed before the proposed hearing dates.

5. On February 8, Plaintiffs' counsel conferred with Defendants' counsel before filing this Motion to ascertain whether Defendants are opposed or unopposed. Defendants' counsel is available on the dates proposed but is opposed to any hearing on the pending motions. *See* Cert. of Conf., *infra* p. 4.

WHEREFORE, Plaintiffs respectfully request that the Court grant this Motion and set a hearing on February 28, 2022 or March 1, 2022.

Respectfully submitted this 9th day of February, 2022.

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CERTIFICATE OF CONFERENCE

Plaintiffs' counsel conferred with Defendants' counsel on February 8, 2022 "to determine whether the motion is opposed." L.R. 7(a). Defendants' counsel asked that this statement be included as Defendants' "position":

Defendants do not believe a hearing is necessary on any pending motions. If the Court deems a hearing necessary on Plaintiffs' motion for a preliminary injunction or motion for class certification, Defendants are available on February 28 or March 1 for a hearing on those motions. Defendants oppose combining any hearing on Defendants' motion to stay, as briefing has been completed on that motion and resolution of that motion is of the utmost urgency. Likewise, there is no reason for the Court to wait until the end of the month to deny Plaintiffs' motion to show cause.

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, I electronically filed the foregoing document through the Court's ECF system, which automatically notifies counsel of record for each party.

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER
Counsel for Plaintiffs