



U.S. Department of Justice
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March 3, 2022

VIA CM/ECF

David J. Smith, Clerk
United States Court of Appeals
for the Eleventh Circuit
56 Forsyth St., N.W.
Atlanta, GA 30303

RE: *Navy Seal 1 v. President of the United States*, No. 22-10645

Dear Mr. Smith:

We write in response to plaintiffs' March 3, 2022 letter urging this Court to defer decision on the government's motion for a stay pending appeal, even though the district court's preliminary injunction has forced the Navy to sideline one of its most versatile capital warships at a time of acute international military crisis. The Court should deny plaintiffs' request and immediately grant an administrative stay or, in the alternative, direct plaintiffs to respond to the government's time-sensitive motion by Monday, March 7, if plaintiffs wish to oppose the motion. Granting plaintiffs' requested abeyance would be tantamount to denying a stay.

Plaintiffs also wrongly assert that the government prematurely sought relief from this Court. The government filed an emergency stay motion with the district court on February 28, consistent with Federal Rule of Appellate Procedure 8(a)(1). In light of this case's extraordinary urgency, the government requested the district court to enter an administrative stay by March 2, and indicated that the government would promptly seek relief in this Court if the district court refused to enter a stay. As here, plaintiffs sought to delay proceedings in district court, asking that court to defer their deadline to respond to the government's motion until March 7. The district court denied the government's request for an administrative stay on March 2 and scheduled an evidentiary hearing on the government's stay motion for March 10. But as the stay motion pending before this Court makes clear, relief is needed more urgently.

Contrary to the district court’s view, no fact-finding is needed to grant relief; the materials submitted with the government’s stay motion—which include sworn declarations by some of the highest-level officers in the Navy and Marine Corps—demonstrate conclusively that a stay is warranted. *Cf. Coburn v. McHugh*, 679 F.3d 924, 929 (D.C. Cir. 2012) (noting the presumption that military officers “discharge their duties correctly, lawfully, and in good faith”). This Court should immediately grant an administrative stay of the preliminary injunction, or alternatively order plaintiffs to respond to the government’s time-sensitive motion for a stay pending appeal no later than March 7.

Sincerely,

/s/ Casen B. Ross

Casen B. Ross
U.S. Department of Justice
Appellate Staff, Civil Division

cc (via CM/ECF): Counsel of Record