

No. 22-10077

**In the United States Court of Appeals
for the Fifth Circuit**

U.S. NAVY SEALs 1-26; U.S. NAVY SPECIAL WARFARE COMBAT-
ANT CRAFT CREWMEN 1-5; U.S. NAVY EXPLOSIVE ORDNANCE
DISPOSAL TECHNICIAN 1; U.S. NAVY DIVERS 1-3,
Plaintiffs-Appellees,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States of America; LLOYD AUSTIN, Secretary, U.S. Department of Defense, individually and in his official capacity as United States Secretary of Defense; UNITED STATES DEPARTMENT OF DEFENSE; CARLOS DEL TORO, individually and in his official capacity as United States Secretary of the Navy,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Texas, Fort Worth Division
No. 4:21-cv-01236

**PARTIALLY OPPOSED MOTION FOR
EXTENSION OF TIME**

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Under Federal Rule of Appellate Procedure 27 and Fifth Circuit Rule 31.4, Plaintiffs-Appellees hereby move this Court for an order granting a 44-day extension of time in which to file Plaintiffs-Appellees' response brief, to and including June 10, 2022. In support of this motion, Plaintiffs-Appellees state as follows:

1. This extension is not for purposes of delay but is based on substantial need. This is Plaintiffs-Appellees' first request for an extension in this case.

2. The current deadline for filing the response brief in this case is April 27, 2022.

3. The extension is necessary, and thus good cause exists for granting the extension, *see* Fifth Cir. R. 26.2, because of the extraordinary press of business and other matters requiring the time and attention of counsel in the intervening period:

a. Undersigned counsel is presenting oral argument in the United States Court of Appeals for the Ninth Circuit on April 21, 2022.

b. Undersigned counsel has a jury trial setting on April 25, 2022 in Travis County District Court.

c. Undersigned counsel has a motion response brief due in the United States District Court for the Northern District of Texas on April 28, 2022.

d. Undersigned counsel has the opening brief in *United States v. Texas*, No. 21-50949 (5th Cir.), due on May 2, 2022.

e. Undersigned counsel has a scheduled evidentiary hearing in the United States District Court for the Middle District of Louisiana on May 9, 2022.

f. Undersigned counsel has a reply brief due in the United States Court of Appeals for the Ninth Circuit on May 17, 2022.

4. The extension is also necessary, and thus good cause exists for granting the extension, *see* Fifth Circuit R. 26.2, because of the potential consolidation of this appeal with a possible additional appeal in this case. On March 28, 2022, before the opening brief was filed in this case, the district court certified a plaintiff class and granted a preliminary injunction to the class based on reasons similar to those underlying the preliminary-injunction order at issue in this appeal. *See* Order on Motions for Class Certification and Class-Wide Preliminary Injunction, *U.S. Navy SEALs 1-26 v. Austin*, No. 4:21-cv-01236-O (N.D. Tex. Mar. 28, 2022) (Dkt. 140). Defendant-Appellant's notice of appeal from that order is due on May 27, 2022. *See* Fed. R. App. P. 4(a)(1)(B). In response to Plaintiffs-Appellees' inquiry, counsel for Defendants-Appellants could not provide an answer as to whether an appeal is planned or when it might be filed. If there is an additional appeal, Plaintiffs-Appellees believe that it should be consolidated with this one to avoid duplicative briefing, which will require a revised briefing schedule. Thus, Plaintiffs-Appellees request that the deadline for the response brief be extended past the appeal deadline to allow for enough time for the Court to consider consolidation of the two appeals before the response brief is due.

5. Counsel has conferred with Sarah Carroll, counsel for Defendants-Appellants, regarding this motion and the above. Defendants-Appellants do not oppose a 30-day extension of time. But a 30-day extension of time on the response brief would

make the brief due the same day as Defendants-Appellants' notice of appeal—May 27, 2022—which would not solve the problem explained above.

CONCLUSION

The Court should grant the motion to extend the deadline for the response brief to June 10, 2022.

Respectfully submitted.

/s/Heather Gebelin Hacker

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CERTIFICATE OF CONFERENCE

On April 11 and 12, 2022, Heather Hacker, counsel for Plaintiffs-Appellees, conferred by e-mail with Sarah Carroll, counsel for Defendants-Appellants. Defendants-Appellants do not oppose a 30-day extension but oppose a longer extension.

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER

CERTIFICATE OF SERVICE

On April 12, 2022, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 554 words, excluding the parts exempted by Rule 27(a)(2)(B); and (2) the typeface and type style requirements of Rule 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the program used for the word count).

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER