

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

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 28-day extension of time in which to file Plaintiffs-Appellees' response brief, to and including July 8, 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 and to promote judicial efficiency. This is Plaintiffs-Appellees' second request for an extension in this case.

2. The current deadline for filing the response brief in this case is June 10, 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 has a scheduled evidentiary hearing in Howard County, Texas District Court on June 7, 2022.
- b. Undersigned counsel has a response brief due in the underlying case in the United States District Court for the Northern District of Texas on June 8, 2022.
- c. Undersigned counsel has a response brief due in another case in the United States District Court for the Northern District of Texas on June 14, 2022.
- d. Undersigned counsel has a reply brief due in the United States Court of Appeals for the Ninth Circuit on June 16, 2022.

- e. Undersigned counsel will be traveling to Washington, D.C. to take the deposition of a witness in this case (Admiral William K. Lescher, Vice Chief of Naval Operations) on June 28-30, 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 newly filed 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). Plaintiffs-Appellees conferenced the motion to consolidate on May 23, 2022, but Defendant-Appellants declined to say whether they planned to appeal the later order and waited to file their notice of appeal until the deadline of May 27, 2022. *See* Fed. R. App. P. 4(a)(1)(B); case number 22-10534. As soon as that appeal had a case number (even before the initial case check was completed), Plaintiffs-Appellees filed a motion to consolidate that appeal with this one on June 1, 2022. Shortly after counsel conferenced this extension motion, Defendants-Appellants filed a response opposing consolidation. Plaintiffs-Appellees are currently working on a reply and expect to file it by Monday, June 6, at the latest.
5. As outlined in the motion to consolidate, Plaintiffs-Appellees believe that case number 22-10534 should be consolidated with this case to avoid duplicative briefing, which will require a revised briefing schedule. Thus, Plaintiffs-Appellees

respectfully request that the deadline for the response brief be extended to allow enough time for the Court to consider consolidation of the two appeals before the response brief is due, and for preparation of the response brief if the motion to consolidate is denied.

6. Counsel has conferred with Sarah Clark, counsel for Defendants-Appellants, regarding this motion. Defendants-Appellants oppose the requested extension.

CONCLUSION

The Court should grant the motion to extend the deadline for the response brief to July 8, 2022.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

On June 3, 2022, Heather Hacker, counsel for Plaintiffs-Appellees, conferred by e-mail with Sarah Clark, counsel for Defendants-Appellants. Defendants-Appellants oppose the extension and intend to file a response.

/s/ Heather Gebelin Hacker
HEATHER GEBELIN HACKER

CERTIFICATE OF SERVICE

On June 3, 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 595 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