

No. 22-10077

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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U.S. NAVY SEALS 1-26; U.S. NAVY SPECIAL WARFARE COMBATANT  
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, Indi-  
vidually and in his Official Capacity as United States Secretary of the Navy,  
*Defendants-Appellants.*

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**DEFENDANTS-APPELLANTS' OPPOSITION TO  
MOTION FOR EXTENSION**

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Plaintiffs-appellees have requested a second extension of time to file their response brief. The request should be denied.

1. The government's opening brief in the first appeal has been on file for more than two months. Plaintiffs have already obtained a 44-day extension on their response brief, which is currently due June 10. Under the current briefing schedule, therefore, plaintiffs have already been afforded 74 days to prepare their response brief. Plaintiffs' suggestion that the press of other business (largely involving deadlines after June 10) necessitates further delay is unpersuasive.

2. Nor does plaintiffs' consolidation motion justify plaintiffs' request for a second, 28-day extension for the appellee brief. Consolidation is not warranted here for the reasons identified in the government's opposition to that motion, and plaintiffs should be held to the current briefing schedule in this appeal whether or not the consolidation motion is granted. As the government explained in its opposition to the consolidation motion, a consolidated briefing schedule would be inefficient and unworkable, given the differing issues to be addressed in each appeal.

Accordingly, as the government noted, if the court does consolidate the appeals, the Court should set a briefing schedule without extensions for the second appeal—with the government's brief due 40 days from the Court's order, the response brief due 30 days after that, and the reply brief due 21 days later—and should set both appeals for argument at the earliest possible date after briefing of the second appeal. That approach would allow the two appeals to be considered in tandem without further delay

in the present case, further confirming there is no need for the second extension plaintiffs now request in this appeal.

## CONCLUSION

Plaintiffs' motion for an extension should be denied.

Respectfully submitted,

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*/s/ Lowell V. Sturgill Jr.*

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JUNE 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2022, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

*/s/ Lowell V. Sturgill Jr.*  
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LOWELL V. STURGILL JR.

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d) because it contains 291 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

*/s/ Lowell V. Sturgill Jr.*  
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LOWELL V. STURGILL JR.