

**[NOT YET SCHEDULED FOR ORAL ARGUMENT]**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

JANE DOE 2, *et al.*,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as  
PRESIDENT OF THE UNITED STATES,

Defendants-Appellants.

No. 18-5257

**GOVERNMENT’S REPLY IN SUPPORT OF  
MOTION TO EXPEDITE BRIEFING SCHEDULE**

Plaintiffs’ response to the government’s proposed briefing schedule agrees that the Court should dispense with preliminary motions and does not dispute that an expedited schedule is mandated by statute and this Court’s rules. *See* 28 U.S.C. § 1657(a); D.C. Cir. Rule 47.2(a). Yet plaintiffs offer (Br. 3 n.4) a schedule that would have the government’s brief due on November 2, 2018, which is nearly *two weeks* later than the Court’s default briefing schedule of 40 days for the opening brief (from today, October 22) were this Court to bypass preliminary motions. Such a protracted schedule is particularly unwarranted in the context of an injunction against the military, which this Court recognized in an earlier appeal in this very case warrants extraordinary expedition. *See Doe v. Trump*, No. 17-5267 (D.C. Cir. Dec. 22, 2017)

(providing government 14 days to file opening brief and plaintiffs 11 days to file answering brief).

Delay is especially unjustified where the government has offered to substantially cut short its own briefing time to minimize any conflict with a bench trial involving one of plaintiffs' attorneys and has offered plaintiffs the full 30-day briefing window for their answering brief.

The government's proposed schedule would have the government file its opening brief ten days from today, no later than September 21, 2018. Plaintiffs nonetheless fault (Br. 1) the government for waiting "three full weeks" to file its notice of appeal. The government sensibly put off appeal during that period, given that the district court had indicated that it would be ruling on the parties' cross-motions for summary judgment, which could have obviated any preliminary-injunction appeal. *See* Doc. 156 at 2 n.2. Indeed, the government filed its notice of appeal 3 days after the district court denied summary judgment to both parties. *See* Doc. 159, 162. Plaintiffs in any event fail to explain how spending those three weeks (out of 60 days) to settle on appeal is unreasonable or why that consideration would weigh in favor of delay. *See* 28 C.F.R. § 0.20(b) (requiring for appeal "consultation with each agency or official concerned" and approval by Solicitor General).

The government also offered its proposed schedule—which would have plaintiffs' answering brief due no later than October 22, 2018—in a legitimate attempt to accommodate the schedule of plaintiffs' counsel, after being informed that lead

counsel had a trial at the end of October and beginning of November. The October 22 date reasonably limits any overlap with that bench trial to one week, while providing plaintiffs 30 days to respond and still preserving an appropriately expedited schedule. Plaintiffs' additional assertion (Br. 3) that the government has "already briefed" a similar appeal in the Ninth Circuit highlights that plaintiffs' lead counsel and other attorneys can begin preparing their answering brief immediately, well before any bench trial. Any "disadvantage" that plaintiffs claim (Br. 2) is also reciprocal, as the government will need to prepare its own brief in the next ten days.

Plaintiffs last raise (Br. 2-3) that they have two briefs due in district court on discovery issues. The government, however, proposed staying discovery pending this appeal, but plaintiffs refused, notwithstanding that they are benefiting from a preliminary injunction in the interim and that significant portions of discovery would be rendered unnecessary were the government to prevail on its merits arguments in this appeal. Discovery briefing is an insufficient reason to delay this appeal, moreover, as the government has those same briefing commitments in district court but does not request to extend the briefing schedule in this Court.

Respectfully submitted,

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SEPTEMBER 2018

## CERTIFICATION OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 599 words, according to the count of Microsoft Word.

s/Tara S. Morrissey  
TARA S. MORRISSEY

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 11, 2018, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/Tara S. Morrissey  
TARA S. MORRISSEY