[Not Scheduled For Oral Argument]
No. 22-5234

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

SUKHBIR TOOR, *et al.*,
Plaintiffs-Appellants,

v.

DAVID BERGER, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia

RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR INJUNCTION PENDING APPEAL OR, IN THE ALTERNATIVE, TO EXPEDITE APPEAL

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INTRODUCTION

The U.S. Marine Corps is the country's chief expeditionary force, prepared to be the first to respond to crises anywhere in the world. To fulfill that unique role in protecting national security, the Corps has over decades honed an immersive training program that psychologically transforms recruits to put the needs of the unit and the mission above their own. The Corps accomplishes this necessary transformation by instilling the mindset that Marine recruits are part of a collective endeavor acting toward a common purpose.

Plaintiffs are prospective enlistees in the Marines who allege that their religious beliefs would preclude them from complying with the Corps' strict uniform and grooming policies. The Marine Corps has granted a religious accommodation that, subject to some limitations, would allow plaintiffs to wear non-standard articles and to maintain uncut hair and unshorn beards after they have completed training. The Corps denied an accommodation with respect to the recruit training period, however, explaining that strict compliance with uniform and grooming policies during training is integral to transforming recruits from individuals to combat-ready Marines.

Over a month ago, the district court rejected plaintiffs' request for a preliminary injunction that would require the Marine Corps to conduct its recruit training in a manner that the Corps has concluded would compromise its national defense mission. Plaintiffs' present motion for an injunction pending appeal asks the Court to superintend Marine Corps training procedures and override professional military judgments. Plaintiffs' request for such extraordinary relief should be denied.

Plaintiffs failed to demonstrate a likelihood of success on the merits. The Marine Corps extensively explained its military judgment that the group discipline of complying with strict uniform and grooming requirements is the least restrictive means to further the government's compelling interests in unit cohesion and mission accomplishment. Plaintiffs' counterarguments ignore key facets of the Corps' explanation and rely on inapt comparisons. For example, plaintiffs repeatedly invoke the policies of other military services but fail to acknowledge the distinctive feature of the Corps: that all of its operating forces are specifically trained for expeditionary service.

Plaintiffs' contentions as to the balance of equities and public interest are similarly deficient. Plaintiffs identify no impending deadline or other barrier imposed by the Marine Corps that would obstruct enlistment should

they eventually prevail in their challenge. Yet they seek an immediate alteration of longstanding Marine Corps training policies that serve critical military interests. The district court explained that plaintiffs' asserted harms are outweighed by the public's paramount interest in national defense.

The extent of expedition that plaintiffs request in the alternative is also unwarranted. Plaintiffs waited nearly a month to seek relief from the district court's order, and the newly asserted need for urgency does not compel a schedule that places the brunt of expedition on the government. The government stands ready to submit its appellate brief within 30 days after plaintiffs file their opening brief to allow timely consideration of this appeal.

STATEMENT

I. The Marine Corps Training Policies

The Marine Corps is the chief expeditionary force of the U.S. military. Marines must be ready "to deploy at a moment's notice to respond to military exigencies" anywhere in the world. Dkt. No. 35-1, ¶ 28 (Jeppe Decl.). In order to serve as part of the country's force-in-readiness, Marine recruits are taught to sacrifice their own needs for the needs of the unit's mission. *See id.* ¶ 17 ("Recruit training instills the understanding of, and ability to, put the needs of the unit over an individual Marine's needs."); *see*

also Dkt. No. 1-13, ¶ 3.d (same). This essential "transformation process" from an individual mindset to a "team mentality" occurs during an intensive 13-week training program. Jeppe Decl. ¶ 18.

For decades, the Marine Corps has utilized "a tried and proven . . . training method that fosters the psychological transformation from individual to Marine." Jeppe Decl. ¶¶ 19, 27. The various "tools" that the Marine Corps employs are designed to "strip[]" each recruit "of their individuality" and "forg[e] . . . unit cohesion." *Id.* ¶ 17; *see id.* ¶ 25 (explaining that recruits must "commit to accepting a role in support of the team" that "runs counter to humanity's most primal survival instincts"). For example, until they complete a rigorous field exercise late in the training, Marine recruits are prohibited from using the pronoun "I" and instead refer to themselves in the third person as "this recruit." *See* Depot Order 1513.6G ¶ 3034(2), at 3-49, *available at* https://perma.cc/4SCN-AQL2.

The Marine Corps' policies on dress and grooming during training are at issue here. Recruits may wear only standard issue apparel and equipment. Jeppe Decl. ¶ 17. All recruits must comply with strict grooming requirements. As relevant here, men receive buzz haircuts to the scalp each week for the first 10 weeks of recruit training. *Id.* Additionally, male

recruits are obligated to shave their faces daily throughout the full duration of training. *Id.* Colonel Jeppe, who is the Branch Head of the Manpower Military Policy Branch at Marine Corps headquarters, explained that the group discipline of complying with these strict requirements is necessary to foster a team mentality and further the "Corps' compelling interest in mission accomplishment, unit cohesion, and good order and discipline," which are "at their highest during recruit training." *Id.* ¶ 27.

II. Prior Proceedings

Movants are three individuals of the Sikh faith who seek to enlist in the Marine Corps. Dkt. No. 1, ¶¶ 27, 30 (Compl.). They each requested a religious accommodation that would allow them to wear non-standard articles and to maintain uncut hair and unshorn beards. Jeppe Decl. ¶ 11. Following an extensive administrative process, *id.* ¶¶ 4-10, their requests were denied with respect to recruit training, but post-training accommodations were approved for each plaintiff, *id.* ¶¶ 12-13; *see also* Dkt. No. 1-2 (decision of Deputy Commandant as to plaintiff Jaskirat Singh), and their administrative appeals are pending. The remaining plaintiff, who does not join this motion, complied with the uniform and grooming requirements

during his initial training and is currently serving as a captain in the Marine Corps. *See* Compl. ¶ 19.

As relevant here, plaintiffs' complaint asserts violations of the Religious Freedom Restoration Act (RFRA) and the Free Exercise Clause. Compl. ¶¶ 233-67. On August 24, the district court denied plaintiffs' request for a preliminary injunction, finding that plaintiffs failed to show that the balance of equities and public interest support the extraordinary remedy of injunctive relief. Dkt. No. 45, at 2 (Op.).

The district court noted the Marine Corps' interests "in mission accomplishment, unit cohesion, and good order and discipline," which depend "on the shared identity as Marines that is forged in basic training." Op. 9 (quotation marks omitted). And the court recognized that "the broader need to protect national security—a goal in which the Marine Corps plays a unique role—is readily apparent." Op. 10. The court explained, however, that it need not consider the merits or irreparable harm because "any such showing [on those factors] would be *defeated* by the remaining factors," including "the public interest alone." Op. 10.

Citing the Supreme Court's decision in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008), the district court recognized the

"public interest in national defense that is rooted in the military's ability to conduct its training." Op. 10 (quotation marks omitted). The court credited the attestations from Colonel Jeppe "outlin[ing] the Marine Corps' interest in mission accomplishment, which requires successful training that transforms recruits into Marines." Op. 12. The court concluded that plaintiffs' requested relief "would pose a documented risk to national security" by hindering the Corps' "ability to conduct training exercises in the military's curated manner." Op. 13 (alteration and quotation marks omitted). Therefore, the court adjudged plaintiffs' asserted harms to be outweighed by these critical interests in "[e]nsuring successful training and mission accomplishment and protecting national security." Op. 12.

On September 19, almost a month after the district court's August 24 preliminary injunction denial, plaintiffs moved for an injunction pending appeal in district court. *See* Dkt. No. 51. In a minute order issued the next day, the court denied the motion, reiterating that the "requested injunction would require the military to conduct its basic training in a manner that it has credibly alleged will compromise the Marine Corps' national defense mission." *See* 9/20/22 Minute Order. Consistent with its expressed intent "to continue this litigation in an efficient and accelerated manner," Op. 10 n.2, the

court has ordered that fact and expert discovery concerning recruit training shall conclude by the end of this calendar year, *see* 9/22/22 Minute Order.

Plaintiffs sought an injunction pending appeal in this Court on September 23.

ARGUMENT

Plaintiffs ask this Court to enter an injunction pending appeal that would override the Marine Corps' considered military judgment about what is necessary to prepare Marine recruits to serve in the chief expeditionary force of the U.S. military. The motion should be denied. To obtain the "exceptional remedy" of an injunction pending appeal, plaintiffs must show that the district court likely "abused its discretion" in denying a preliminary injunction. *John Doe Co. v. Consumer Fin. Prot. Bureau*, 849 F.3d 1129, 1131 (D.C. Cir. 2017). Plaintiffs have not established that they are likely to succeed on the merits or suffer irreparable harm, let alone that the district court erred in its careful assessment that the balance of equities and public interest weigh decisively against requiring an immediate alteration of Marine Corps training policies that serve critical military interests.

I. Plaintiffs Are Unlikely to Succeed on the Merits.

A. Plaintiffs failed to show a likelihood of success on their RFRA claims. Under RFRA, a government regulation that "substantially burden[s] a person's exercise of religion" is permissible if that burden is "the least restrictive means" to further "a compelling governmental interest." 42 U.S.C. § 2000bb-1(a)-(b). In applying the Free Exercise Clause, the Supreme Court has long recognized that "when evaluating whether military needs justify a particular restriction on religiously motivated conduct, courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986). In enacting RFRA, Congress "intend[ed] and expect[ed]" that the "significant deference" courts have "always extended to military authorities" to effectuate their "compelling" interest in "good order, discipline, and security" would "continue under [RFRA]." S. Rep. No. 103-111, at 12 (1993); *see* H.R. Rep. No. 103-88, at 8 (1993).

1. The Marine Corps has a "vital interest" in maintaining an expeditionary force "that functions with maximum efficiency and is capable of easily and quickly responding to continually changing circumstances."

United States v. O'Brien, 391 U.S. 367, 381 (1968). As the Supreme Court has observed, "[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985). Unit cohesion and good order and discipline are essential to accomplishing the Corps' mission of equipping Marines to confront volatile situations in defense of the United States. *See* Jeppe Decl. ¶ 27; *see also Singh v. McHugh*, 185 F. Supp. 3d 201, 222 (D.D.C. 2016) ("There can be no doubt that military readiness and the unit cohesion and discipline of the Army officer corps constitute highly compelling government interests.").

Here, the Marine Corps extensively justified its military judgment that the group discipline of complying with strict uniform and grooming requirements during recruit training is critical to mission accomplishment. The Marine Corps is "an expeditionary force-in-readiness" whose troops must be prepared to conduct military operations worldwide at a moment's notice. Jeppe Decl. ¶¶ 25, 28. The Corps is unique from other uniformed Services in this way—unlike the other Services, "the *entire* operating forces of the Marine Corps are specifically organized, equipped, and trained for

expeditionary service." *Id.* ¶ 25 (emphasis added).[1] Colonel Jeppe explained that Marines must be able to respond to military crises "on the nonlinear, chaotic battlefield." *Id.* ¶ 23; *see id.* ¶ 26 ("The expeditionary mindset is . . . carried with [recruits] into those dangerous and difficult environments for [which] the [Marine Corps] was created."). The "most important element in the Marine Corps' conduct of expeditionary operations" is "a team-oriented state of mind." *Id.* ¶ 25.

That shared identity as Marines is forged during recruit training. The training process must build "the highest level of discipline and a unique trust at an instinctual level" in order to overcome an individual's natural instinct to protect himself over others. Jeppe Decl. ¶ 25. Colonel Jeppe described the necessary "psychological transformation," *id.* ¶ 19, in which recruits are pushed "to the point where they care more about the unit's mission than themselves" by an immersive and intense experience that requires them "to surrender their individual wellbeing and comfort to support another recruit

[1] *See also The Posture of the U.S. Marine Corps: Hearing Before the H. Appropriations Comm. Subcomm. on Defense*, 116th Cong. 1 (Apr. 30, 2019) (statement of Gen. Robert E. Neller, Commandant of the Marine Corps) ("It is this idea of total readiness—a constant preparedness, expeditionary mindset, and aggressive warfighting philosophy—that remains the driving force behind your Marines today.").

without regard for their own welfare," *id.* ¶ 20. Marine recruits are "stripped of their individuality" so that they can "function as a team." *Id.* ¶ 17. It is therefore unsurprising that the Marine Corps' compelling interests in "mission accomplishment, unit cohesion, and good order and discipline are at their highest during recruit training." *Id.* ¶ 24.

Colonel Jeppe detailed the reasons why the uniform and grooming policies at issue in this case are integral to transforming recruits "from individual[s] to Marine[s]." Jeppe Decl. ¶ 19. The training program instills the mindset that Marine recruits are part of a collective endeavor acting toward a common purpose. As they undergo the physical demands of training, all recruits wear and maintain the same clothing and equipment, shave their faces daily, and receive a haircut weekly with their fellow recruits. *See id.* ¶ 17. This shared experience "facilitates the formation of a team mentality, willingness to sacrifice, and an initial inculcation of good order and discipline." *Id.* ¶ 18. Colonel Jeppe stressed that the challenged policies are a "tried and proven" strategy, *id.* ¶ 19, that has been used to "build basic Marines" for decades, *id.* ¶¶ 23, 27.

Applying its military expertise derived from battlefield experience, the Marine Corps concluded that there are no less restrictive means as to

plaintiffs that would achieve the compelling goals of mission accomplishment and military discipline. Jeppe Decl. ¶ 27. While granting significant post-training accommodations, the Marine Corps denied accommodations during recruit training, emphasizing that training must equip each and every recruit to serve as part of a unit in volatile and potentially deadly situations, and that the substantial deviations plaintiffs seek from the uniform and grooming standards would threaten the psychological transformation of not only themselves, but also others in their training cycle. *See id.* ¶ 28. And the effects would be amplified if other recruits were granted similar requests. *See id.* ¶ 10 (noting that past accommodations should be considered). The Marine Corps policies therefore satisfy RFRA's "least restrictive means" test, which asks only whether an alternative approach would serve the government's interests "equally well" as the one chosen. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 731 (2014).

2. In their effort to override the Marine Corps' professional military judgment about recruit training necessities, plaintiffs ignore key facets of the Corps' explanation and rely on inapt comparisons. For example, plaintiffs repeatedly invoke (Mot. 12-15) the policies of other U.S. and foreign military services. The Marine Corps, however, highlighted the "unusual and essential

characteristic" that makes it "distinct from these other military services," Jeppe Decl. ¶ 31—namely, that "the *entire* operating forces of the Marine Corps are specifically organized, equipped, and trained for expeditionary service," which requires the ability to "respond quickly to a broad variety of crises and conflicts across the full spectrum of military operations anywhere in the world," *id.* ¶ 25 (emphasis added). Plaintiffs do not acknowledge, much less dispute, this unique feature of the Marine Corps that renders plaintiffs' comparisons inapposite. Their arguments amount to impermissible second-guessing of "professional military judgments" about "the composition, training, equipping, and control of a military force." *Austin v. U.S. Navy Seals 1-26*, 142 S. Ct. 1301, 1302 (2022) (Kavanaugh, J., concurring) (quoting *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973)).

Plaintiffs similarly overlook the Marine Corps' detailed explanation in suggesting (Mot. 12) that there is no basis to distinguish between training accommodations and post-training accommodations. To the contrary, the Marine Corps identified training as a distinctive, formative period where the policies at issue "take on a greater importance." Jeppe Decl. ¶ 24. Colonel Jeppe explained that the team ethos must be instilled "at the very beginning of a recruit's journey to become a Marine." *Id.* ¶ 26. The transformation that

"occur[s] during recruit training marks a common and essential foundation for the rest of the Marine's life and service." *Id.* ¶ 24. The fact that the Marine Corps granted significant accommodations to plaintiffs should they successfully complete training only underscores that the Corps assessed with specificity the particular interests that the policies serve in the context of these "particular religious claimants." *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 431 (2006).

The other Marine Corps practices and policies that plaintiffs raise provide inapt comparators that do not undermine the challenged policies. For example, plaintiffs observe (Mot. 10) that the Marine Corps has certain medical exemption policies with respect to a chronic inflammatory skin condition that can be severe enough to prevent daily shaving. Dkt. No. 35-2, ¶¶ 2, 4. Notably, while an enlisted recruit may receive a temporary waiver from shaving with a razor if the condition presents during training, the Marine Corps does not permit recruits to commence recruit training with such a waiver, *see id.* ¶¶ 4-5; *see also* Jeppe Decl. ¶ 30, and the treatment protocol contemplates hair management through the use of clippers or chemicals, *see, e.g.*, Dkt. No. 1-20, ¶ 5(d) ("A 'no shave' chit period will not normally preclude clipping for the entire period."). Recruits with this

medical condition thus do not receive the same accommodation that plaintiffs seek here—the right to start recruit training with an unshorn beard and keep it throughout.

Nor do plaintiffs advance their argument by pointing to (Mot. 10) the Corps' policies regarding female hairstyles and tattoos. Like their male counterparts, female Marine recruits—who train separately from male recruits—must comply with strict grooming requirements that permit no exceptions, Jeppe Decl. ¶ 32(b). That policy advances the purpose of achieving cohesion through a shared experience, even when it allows minor variations within the tightly circumscribed standards. *Cf. Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) (addressing a law that "prohibit[ed] religious conduct while permitting secular conduct that undermine[d] the government's asserted interests in a similar way"). The same is true for tattoos. Recognizing that tattoos are prevalent and not readily removed, Jeppe Decl. ¶ 32(a), the Marine Corps allows tattoos but places strict limits on their form, content, and placement, including that they not be on the head, neck, or hands, *see* Dkt. No. 1-3, ¶ 4. Particularly when considered with these restrictions, this policy is consistent with the unity and

discipline fostered by imposing a set of uniform and grooming standards that each recruit must follow every day.

Indeed, plaintiffs' analogies to tattoos and other characteristics like height, weight, and race reveal their misimpression that the uniform and grooming requirements are simply intended to make recruits "appear identical" (Mot. 12). That conception of the purpose of the challenged policies is too narrow, as evidenced by the Marine Corps' consistent pursuit of diversity and inclusion. *See* Mot. 21-22. Rather, the challenged policies do exactly what plaintiffs imply is acceptable—namely, require recruits to form "a strong, uniformly committed team," Mot. 12, by carrying out a set of regimented practices. For the reasons already discussed, the Marine Corps has shown that the collective experience of complying with strict uniform and grooming requirements is essential to building a cohesive unit ready to face military exigencies across the globe, and that professional military judgment about what is needed for mission accomplishment is entitled to significant deference. *See, e.g.*, *Goldman*, 475 U.S. at 507.

B. Plaintiffs' Free Exercise claims likewise lack merit. Even if plaintiffs could establish that the challenged training policies are subject to strict scrutiny (Mot. 16-17), the government would satisfy that test, which

involves the same means-ends analysis as RFRA. In any event, plaintiffs cannot establish that predicate because neutral and generally applicable rules receive rational-basis review. *See Kaemmerling v. Lappin*, 553 F.3d 669, 677 (D.C. Cir. 2008). The Marine Corps' uniform and grooming policies are facially neutral regulations that do not single out religion for differential treatment or suppress religious belief. And the policies are eminently rational, *see Trump v. Hawaii*, 138 S. Ct. 2392, 2420 (2018), especially when viewed in light of the "far more deferential" standards applicable to military decision-making, *see Goldman*, 475 U.S. at 507.

II. The Balance of Equities and Public Interest Also Preclude an Injunction Pending Appeal.

A. The circumstances here do not present an urgent situation reflecting "a 'clear and present' need for equitable relief to prevent irreparable harm." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (quoting *Wisconsin Gas Co. v. Federal Energy Regulatory Comm'n*, 758 F.2d 669, 674 (D.C. Cir. 1985)). Plaintiffs identify no impending deadline or other barrier imposed by the Marine Corps that would obstruct enlistment should they eventually prevail in their challenge.

To facilitate orderly resolution of this litigation, the district court has committed to conduct proceedings "in an efficient and accelerated manner,"

Op. 10 n.2, and the government stands ready to submit its appellate brief within 30 days after plaintiffs file their opening brief. Perhaps recognizing that the need to demonstrate their fitness to join the Marine Corps does not constitute irreparable harm warranting the extraordinary relief they seek, plaintiffs' motion does not mention the expiration dates of their enlistment qualification test results or Delayed Entry Program contract. *See* Op. 3 (reciting dates). And the Marine Corps has sua sponte undertaken consideration to waive or extend those dates. The sole reference to timing in plaintiffs' motion is an unexplained assertion that one movant (and others not party to the case) may be "forced to abandon his plan to serve as a Marine" if unable to commence training in early 2023. Mot. 23. Plaintiffs have not met their burden to show that "irreparable injury is *likely* in the absence of an injunction." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

Extraordinary relief is not warranted when plaintiffs identify nothing that would be irreparably lost in the interim. Plaintiffs effectively seek to be excused from demonstrating such irreparable harm, arguing that no further showing is necessary in light of their allegations that the Marine Corps' training policies violate their "First Amendment freedoms." Mot. 17-18. But the status quo does not result in any "loss of First Amendment freedoms, for

even minimal periods of time," *Elrod v. Burns*, 427 U.S. 347, 373 (1976), because plaintiffs remain free to adhere to their stated religious beliefs by retaining their unshorn hair while the case proceeds. The challenged uniform and grooming policies do not regulate plaintiffs' civilian conduct. Moreover, plaintiffs' claim of "immediate, ongoing injury" (Mot. 18) is difficult to reconcile with their unexplained, nearly monthlong delay in seeking an injunction pending appeal. *Cf. Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975).

B. By contrast, the injunction that plaintiffs request is directly contrary to the public interest and the balance of harms, which "merge" here. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The district court recognized the paramount "public interest in national defense." Op. 10 (quoting *Winter*, 555 U.S. at 24). As the court explained, that interest is "rooted in the military's ability to conduct its training." Op. 10.

The district court relied on Colonel Jeppe's extensive declaration detailing "the Marine Corps' interest in mission accomplishment, which requires successful training that transforms recruits into Marines." Op. 12. The court summarized his thorough attestations that the uniform and grooming requirements are "vital to the recruit transformation process" and

facilitate "the formation of a team mentality, willingness to sacrifice, and an initial inculcation of good order and discipline amongst recruits." Op. 11 (quoting Jeppe Decl. ¶ 18). Requiring the Marine Corps to alter its curated training program would undermine the transformation of not only the three plaintiffs, but also their fellow recruits, into combat-ready Marines.

Based on the evidence submitted by the government, the district court concluded that "disrupting [the Marine Corps'] well-established method of transforming recruits" would "'pose a serious threat to national security.'" Op. 12 (quoting *Winter*, 555 U.S. at 33). The court considered plaintiffs' asserted interests on the other side of the balance but found them to be outweighed by the significant public interests in "[e]nsuring successful training and mission accomplishment and protecting national security" that this case implicates. Op. 12. The court concluded that plaintiffs are not entitled to an injunction "requir[ing] the military to conduct basic training in a manner that it credibly alleges will compromise the Marine Corps' national defense mission." Op. 12-13 (alteration and quotation marks omitted).

Plaintiffs have not carried their burden to show that the district court "likely" abused its discretion in evaluating the balance of harms and public interest. *John Doe Co.*, 849 F.3d at 1131 (alteration omitted). Plaintiffs

declare (Mot. 19) that an injunction would vindicate their constitutional rights, but for the reasons described above, plaintiffs' claims lack merit. In any event, the district court properly weighed the serious harms that the requested injunction would inflict on the public. *See Winter*, 555 U.S. at 23-24, 32 (holding that the public interest precluded a preliminary injunction regardless of the merits).

Without engaging with the substance of Colonel Jeppe's 18-page declaration, plaintiffs dismiss it as "conclusory" (Mot. 20) and urge the Court to question the strength of the military interests in this case (Mot. 19-21). These contentions disregard the abuse-of-discretion standard that governs review of the district court's decision, *see John Doe Co.*, 849 F.3d at 1131; undermine the deference due "to the professional judgment of military authorities concerning the relative importance of a particular military interest," *Winter*, 555 U.S. at 24 (quoting *Goldman*, 475 U.S. at 507); and contravene the "strong judicial policy against interfering with the internal affairs of the armed forces," *Chilcott v. Orr*, 747 F.2d 29, 33 (1st Cir. 1984). Plaintiffs are not entitled to extraordinary relief that would substitute their own views on mission accomplishment and national defense for the judgments of senior military officials.

III. The Extent of Expedition That Plaintiffs Seek in the Alternative Is Unwarranted.

The extraordinary expedition that plaintiffs propose is not warranted. The district court denied plaintiffs' preliminary injunction motion on August 24. Plaintiffs did not move for an injunction pending appeal in district court until September 19, and their appeal has been pending for several weeks. Plaintiffs now request a briefing schedule under which their opening brief would be due October 7, the government's response brief would be due October 21, and the reply brief would be due October 28.

Under that proposed schedule, the government would have only two weeks to prepare and file its brief, whereas plaintiffs would have more than six weeks after the district court entered the order that is the subject of this appeal to file their opening brief. Plaintiffs cannot justify this lopsided form of expedition, particularly when they did not assert any need for urgency until nearly a month after the district court's ruling.

To facilitate prompt consideration of this appeal, the government stands ready to submit its appellate brief within 30 days after plaintiffs file their opening brief. Plaintiffs are free to file their own briefs before the deadlines prescribed in the federal rules. This schedule is adequate to ensure resolution of plaintiffs' appeal in a timely manner.

CONCLUSION

For the foregoing reasons, the Court should deny plaintiffs' motion for an injunction pending appeal.

Respectfully submitted,

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SEPTEMBER 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing opposition complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4,706 words. The opposition complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it has been prepared using Microsoft Word 2016 in proportionally spaced 14-point Century Expd BT typeface.

/s/ Brian J. Springer
BRIAN J. SPRINGER

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2022, I electronically filed the foregoing opposition with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit 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/ Brian J. Springer
BRIAN J. SPRINGER