

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

COOK COUNTY, ILL., et al.,

Plaintiffs-Appellees,

v.

CHAD F. WOLF, ACTING SECRETARY,
DEPARTMENT OF HOMELAND
SECURITY, et al.,

Defendants-Appellants.

No. 19-3169

**REPLY IN SUPPORT OF
RENEWED MOTION FOR STAY PENDING APPEAL**

Plaintiffs identify no basis for distinguishing this case from the ones in which the Supreme Court recently granted a stay pending appeal. This Court should follow the Supreme Court's lead and issue a stay.

Plaintiffs' primary contention is that because the cases before the Supreme Court involved nationwide injunctions, the Supreme Court must have granted a stay on the sole ground that a nationwide injunction was inappropriate. According to plaintiffs, the Supreme Court's stay does not "suggest[] any disagreement with the statutory analysis of the Southern District of New York." Opp'n 4. That is incorrect. Had the basis for the Court's entry of a stay been limited to the nationwide scope of the injunctions at issue there, the Court would have simply limited the scope of the

injunctions. The government's stay application, which plaintiffs attach to their opposition, contemplated that middle-ground outcome. *See* Gov't S. Ct. Stay Application 40 ("At the least, the Court should stay the nationwide effect of the injunctions such that they apply only to aliens whom the governmental and non-governmental respondents identify as receiving services in the jurisdictions in which they operate."). But the Court did not just limit the scope of the injunctions to cover only the jurisdictions in which the challengers in those cases operate; it instead chose to stay the injunctions in their entirety. In doing so, the Court necessarily determined that the government was likely to prevail in its underlying defense of the Rule in those cases, and not just on the ultimate remedy. The government advances the same defense here.

The nationwide scope of the injunctions did add an additional issue and made the harm to the government even greater in those cases, thus explaining the government's decision to seek relief in the Supreme Court from the New York injunctions. Rather than burdening the Supreme Court with two overlapping stay applications from two different circuits, the government filed a single stay application in companion cases that presented all the relevant issues, informing the Supreme Court that depending on how it ruled on that stay application, the government might renew its request for a stay in this case. *See* Gov't S. Ct. Stay Application 13 n.2. Had the Supreme Court accepted only the government's argument about the scope of the injunction—and thus issued only a partial stay—a renewed motion here would not

have been warranted. The Court instead granted a full stay. And while the two-Justice concurrence on which plaintiffs rely separately emphasized concerns about the use and abuse of nationwide injunctions, it did not purport to suggest that the Court's entry of a full stay here turned on those considerations.

Plaintiffs identify no other meaningful difference between the two cases. They note that oral argument in this case is scheduled for February 26; the Second Circuit has scheduled oral argument five days later. *See* Case Calendaring, *New York v. DHS*, No. 19-3591 (2d Cir. Jan. 28, 2020) (setting argument for March 2, 2020); Case Calendaring, *Make the Road New York v. Cuccinelli*, No. 19-3595 (2d Cir. Jan. 28, 2020) (same). And plaintiffs make balance-of-harms arguments no different from those that were before the Supreme Court, *see* Opp'n 5-6, which the Court necessarily rejected in ordering that the preliminary injunctions before it be stayed in their entirety. Plaintiffs identify no basis for this Court to disagree with the Supreme Court's balancing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This reply complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(C) because it contains 573 words. This motion 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/ Daniel Tenny _____
Daniel Tenny

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2020, I filed the foregoing using the Appellate CM/ECF system. Participants in the case are CM/ECF users and service will be effected by the CM/ECF system.

s/ Daniel Tenny

Daniel Tenny