

CITY AND COUNTY OF SAN FRANCISCO



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February 11, 2020

VIA CM/ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *City and County of San Francisco and County of Santa Clara c. United States
Citizenship and Immigration Services, et al.*, Case No. 19-17213

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), San Francisco and Santa Clara provide notice of the Seventh Circuit's February 10, 2020 order in *Cook County, et al. v. Wolf, et al.*, No. 19-3169 (7th Cir.). The plaintiffs in that case brought a lawsuit challenging the validity of the same Department of Homeland Security Rule at issue in the above-captioned case before this Court. The District Court for the Northern District of Illinois entered a geographically limited preliminary injunction prohibiting defendants from implementing the Rule within the state of Illinois. The Seventh Circuit declined to grant a stay of the injunction pending appeal. *See Exhibit A.* As noted in the 28(j) letter submitted by defendants on January 28, 2020, the Supreme Court of the United States later issued a stay pending appeal of two nationwide preliminary injunctions entered by the United States District Court for the Southern District of New York against the Rule. Thereafter, defendants renewed their request to the Seventh Circuit to stay the Illinois injunction pending appeal. *See Exhibit B.* The Seventh Circuit denied the motion on February 10, 2020. *See Exhibit C.*

Here, too, the geographically limited injunction entered by the District Court was appropriate. En banc review of the motions panel's contrary decision to stay the injunction remains warranted.

Very truly yours,

DENNIS J. HERRERA
City Attorney

/s/ Sara Eisenberg

SARA J. EISENBERG
Deputy City Attorney

JAMES R. WILLIAMS
County Counsel

/s/ H. Luke Edwards

H. LUKE EDWARDS
Deputy County Counsel

EXHIBIT A

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

December 23, 2019

Before

DIANE P. WOOD, *Chief Judge*
ILANA DIAMOND ROVNER, *Circuit Judge*
AMY C. BARRETT, *Circuit Judge*

No. 19-3169	COOK COUNTY, et al., Plaintiffs - Appellees v. CHAD F. WOLF, et al., Defendants - Appellants
Originating Case Information:	
District Court No: 1:19-cv-06334 Northern District of Illinois, Eastern Division District Judge Gary Feinerman	

The following are before the court:

1. **APPELLANTS' MOTION FOR A STAY PENDING APPEAL**, filed on November 15, 2019, by counsel for the appellants.
2. **PLAINTIFFS-APPELLEES' OPPOSITION TO DEFENDANTS-APPELLANTS' MOTION FOR STAY PENDING APPEAL**, filed on December 3, 2019, by counsel for the appellees.
3. **APPELLANTS' REPLY IN SUPPORT OF MOTION FOR A STAY PENDING APPEAL**, filed on December 10, 2019, by counsel for the appellants.

IT IS ORDERED that the motion is **DENIED**. An expedited briefing schedule will follow.

Judge Barrett dissents and would grant the motion.

EXHIBIT B

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

RENEWED MOTION FOR STAY PENDING APPEAL

This Court previously denied a stay pending appeal of the preliminary injunction entered by the district court in this case, which barred implementation of a Rule promulgated by the Department of Homeland Security regarding “public charge” inadmissibility determinations under 8 U.S.C § 1182(a)(4)(A). *See* Order (Dec. 23, 2019); 84 Fed. Reg. 41,292 (Aug. 14, 2019) (Rule). On January 27, 2020, the Supreme Court issued an order (attached) granting the government’s motion for a stay pending appeal of two injunctions issued by the United States District Court for the Southern District of New York against that same Rule.

In moving the Supreme Court to stay the preliminary injunctions entered by the Southern District of New York, the government indicated to the Court that if the Court granted its motion with respect to those injunctions, the government intended,

in the first instance, to renew its request to this Court for a stay pending appeal of the preliminary injunction at issue in this case. *See* Application for Stay 13 n.2, *U.S. Dep't of Homeland Security v. State of New York*, No. 19A785 (S. Ct.) (filed Jan. 13, 2020).

Accordingly, the government respectfully requests, in light of the Supreme Court's decision holding that a stay pending appeal of injunctions against enforcement of this Rule is appropriate, that this Court issue a stay pending appeal to allow the Rule to go into effect in Illinois.

This relief is warranted because in granting the stay, the Supreme Court necessarily concluded that the government had a likelihood of success on the merits, that the government would suffer irreparable harm in the absence of a stay, and that no other equitable considerations rendered a stay inappropriate. *See Nken v. Holder*, 556 U.S. 418, 434 (2009); *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers). Those same considerations govern this Court's determination whether to issue a stay, and should lead to the same conclusion in a case involving the same legal challenge to the same Rule based on the same type of alleged harm. *See* Stay Opp'n 3 & n.2 (citing district-court decisions that were before the Supreme Court as agreeing with the arguments presented here).

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

JOHN R. LAUSCH, JR.
United States Attorney

s/ Daniel Tenny

DANIEL TENNY

GERARD SINZDAK

JOSHUA DOS SANTOS

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 368 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 January 28, 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

EXHIBIT C

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
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Chicago, Illinois 60604



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ORDER

February 10, 2020

By the Court:

No. 19-3169	COOK COUNTY, et al., Plaintiffs - Appellees v. CHAD F. WOLF, et al., Defendants - Appellants
Originating Case Information:	
District Court No: 1:19-cv-06334 Northern District of Illinois, Eastern Division District Judge Gary Feinerman	

The following is before the court:

1. **RENEWED MOTION FOR STAY PENDING APPEAL**, filed on January 28, 2020, by counsel for the appellants,
2. **APPELLEES OPPOSITION TO DEFENDANTS RENEWED MOTION FOR STAY PENDING APPEAL**, filed on February 5, 2020, by counsel for the appellees.
3. **REPLY IN SUPPORT OF RENEWED MOTION FOR STAY PENDING APPEAL**, filed on February 7, 2020, by counsel for the appellants.

IT IS ORDERED that the motion is **DENIED**.