**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**

**THE CITY OF CHICAGO,**

*Plaintiff,*

*v.*

**JEFFERSON BEAUREGARD SESSIONS III,**
**Attorney General of the United States**

*Defendant.*

**Civil Action No. 1:17-cv-5720**

**Hon. Harry D. Leinenweber**

**OPPOSITION TO DEFENDANT'S MOTION TO STAY**
**NATIONWIDE APPLICATION OF PRELIMINARY INJUNCTION**

## INTRODUCTION

The Attorney General requests a stay of the Court's nationwide injunction in this case based on his suggestion of an urgent "Hobson's choice." But his claimed urgency rings hollow. The Attorney General waited until the last minute to announce the novel, unlawful conditions challenged here, repeatedly told this Court that there was no need for expedition, and then inexplicably waited eleven days after this Court's September 15 decision to file the instant motion. He cannot now complain that time is suddenly of the essence. And even if any supposed urgency were not of the Attorney General's own making, there is no "Hobson's choice" here. The Attorney General lacks authority to impose the conditions at issue. They are *unlawful*. This Court so held after briefing and argument, and the Attorney General never even tries to explain why the Seventh Circuit is likely to disagree.

The Attorney General's argument for a stay instead boils down to a freestanding claim that he should be allowed to impose these unlawful, *ultra vires* conditions on every jurisdiction in the Nation except Chicago, including the scores of jurisdictions that have appeared as amici in this litigation. In support, the Attorney General asserts that this Court lacks the power to enjoin unlawful conduct by the defendant in a way that benefits anyone but the plaintiffs before it: Even where a federal court finds that a single government policy is unlawful or unconstitutional, his theory goes, the court is bound to go no farther than preventing that policy's application to the plaintiff alone. But the Attorney General's argument ignores that *he is a party in this case*; this Court simply restrained a defendant properly before it (the Attorney General) from the challenged unlawful conduct (conditioning JAG funds without legal authority). The fact that others will benefit as a byproduct of the Court's ruling does not somehow render the injunction here legally defective. The Attorney General's crabbed view of federal judicial power would mean that no court *ever* has the power to issue an injunction with nationwide effect without first certifying a class action; that

injunctions must *always* be artificially restricted such that their benefits flow only to the parties in the litigation; and that, in practice, the federal government may blatantly violate state and local prerogatives or individual rights, unless and until each victim files a motion to intervene in an existing suit or brings a separate emergency action. No such rule exists, nor should it, because it would be both inefficient and unjust.

The Attorney General's radical position is not the law. (Though the proposed intervention of current amicus U.S. Conference of Mayors as a representative for jurisdictions across the country would obviate the Attorney General's objection even if it were not baseless.) This Court plainly has the power to issue a nationwide injunction against the Attorney General, who is the defendant in this case. *See, e.g.*, *Lineback v. Spurlino Materials, LLC*, 546 F.3d 491, 504 (7th Cir. 2008); Fed. R. Civ. P. 65(d). And it properly did so here, consistent with its ample discretion to craft remedies for violations of the law. *See, e.g.*, *Russian Media Grp., LLC v. Cable Am., Inc.*, 598 F.3d 302, 307 (7th Cir. 2010). The Attorney General thus is not likely to succeed in winning a reversal from the Seventh Circuit on this or any other issue. Nor can the Attorney General show irreparable harm here, where his notice and access conditions are a totally novel innovation, and this Court's injunction actually *preserves* the status quo ante. *See, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017). And meanwhile, in light of the uniform national formula grant program that Congress envisioned with the Byrne JAG program—not to mention the hundreds of jurisdictions whose grant applications are at stake, and who will be subjected to an unlawful federal incursion on their rights if a stay is ordered—the public interest overwhelmingly favors retaining the nationwide injunction against the Attorney General's unlawful notice and access conditions. A stay is not warranted, and the Attorney General's motion should be denied.

## BACKGROUND

This Court is familiar with the underlying facts in this case, and Chicago recounts only the relevant background here. In late July 2017, the Department of Justice issued a two-paragraph press release and accompanying press "backgrounder" announcing that it would impose two new conditions on FY 2017 Byrne JAG grantees: the notice and access conditions. *E.g.*, Compl. ¶¶ 55-56. A few days later, on August 3, the Department released the FY 2017 Byrne JAG application containing those new conditions. *E.g.*, Compl., Ex. D. Chicago filed suit four days later, on August 7, 2017. While Byrne JAG applications are normally due about six weeks after they are issued, this year the Department gave states and localities barely four weeks, until September 5, to file their applications. Sachs Decl. ¶ 10; *see also* Compl. ¶ 67.

In light of that looming deadline, Chicago quickly moved—only three days after filing its complaint—for a preliminary injunction and an expedited briefing schedule to allow this Court to rule before September 5. The Attorney General, however, asserted that "*no expedited resolution of the motion or preliminary injunction is needed*," and asked for an extra week (beyond the week that Chicago proposed) to submit its opposition to the injunction. Opp. to Mot. to Expedite, Dkt. No. 28, at 3-4 (emphasis added). The Attorney General noted at that time that the Department's "aim is to issue the award notifications by September 30." *Id.* at 2. In light of these representations, this Court adopted the Attorney General's proposed briefing schedule after the Attorney General agreed that he would accept Chicago's application notwithstanding the City's refusal to comply with the notice and access conditions.

Chicago sought a nationwide injunction here because, as the City explained, Reply Br., Dkt. No. 69, at 15, the Byrne JAG program is a single formula-grant program that Congress intended to be administered uniformly, and so each jurisdiction's access to funds ought to be determined in the same manner. Additionally, Chicago noted, *id.*, the legal issues presented in its case are identical

across all Byrne JAG applicants—if the Attorney General lacks the authority to apply the notice and access conditions to Chicago, he lacks the authority to apply them to any other jurisdiction.

Emphasizing that reasoning, jurisdictions from across the country rushed to participate in the lawsuit as amici and express their support for a nationwide preliminary injunction. Those jurisdictions ranged from Cook County and other subgrantees of Byrne JAG funds received by the City, to the California Legislature, to thousands of local governments that participated either directly as amici (e.g., Santa Clara County, New York City, Los Angeles) or indirectly through national organizations of which they are members (like the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties). *See* Amicus Brief of County of Santa Clara, 36 Additional Cities, Counties and Municipal Agencies, The U.S. Conference Of Mayors, The National League Of Cities, The National Association Of Counties, The International Municipal Lawyers Association, And The International City/County Management Association ("Santa Clara Br."), Dkt. No. 51; Amicus Brief of California State Legislature, Dkt. No. 56 Ex. 1; Amicus Brief of Cook County and Other Byrne JAG Subgrantees, Dkt. No. 66.

This Court held a hearing on the preliminary injunction on September 11. Four days later, the Court issued a 41-page opinion announcing its decision. In relevant part, the Court agreed with Chicago that the notice and access conditions "exceed statutory authority, and, consequently, the efforts to impose them violate the separation of powers doctrine and are *ultra vires*." PI Op., Dkt. No. 78, at 19. Additionally, this Court found that allowing the Attorney General to impose those conditions—which, if acceded to, would cause "the collapse of trust between local law enforcement and immigrant communities that is essential to ferreting out crime," *id.* at 35-36—would cause irreparable harm, and that there would be a "lack of injury afflicting the Attorney General" if an injunction were to issue, *id.* at 38-39. Accordingly, the Court enjoined "the Attorney General's imposition of the notice and access conditions on the Byrne JAG grant." *Id.* at 40-41. The Court

also held that its preliminary injunction would apply nationwide, explaining that there is "no reason to think that the legal issues present in this case are restricted to Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction." PI Op. 41.

Eleven days later, on September 26, the Attorney General noticed an appeal and filed a motion seeking a stay of the nationwide application of the injunction (but not challenging its application as to Chicago). The Attorney General asserted that he was facing imminent, irreparable injury in light of the Department's previously articulated goal of issuing award documents by September 30 (despite his insistence a month ago that no expedition of these proceedings was necessary). *See* Stay Mot., Dkt. No. 81, at 1, 8.

**ARGUMENT**

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009). It is "'an exercise of judicial discretion,'" and the "party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433-434.

The standard for determining whether an applicant has satisfied his burden generally "mirrors that for granting a preliminary injunction." *In re A & F Enters., Inc. II*, 742 F.3d 763, 766 (7th Cir. 2014). Accordingly, the Attorney General "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of [a stay], that the balance of equities tips in his favor, and that [a stay] is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Nken*, 556 U.S. at 435. Importantly, though, an applicant "must make a stronger threshold showing of likelihood of success to meet his burden" for a stay pending appeal because the "applicant's arguments have already been evaluated." *In re Forty-Eight Insulations, Inc.*, 115 F.3d 1294, 1301 (7th Cir. 1997).

The Attorney General can satisfy none of the requirements for a stay, let alone all of them. His motion must therefore be denied.

## I. THE ATTORNEY GENERAL IS UNLIKELY TO SUCCEED ON THE MERITS

The Attorney General challenges the scope of the injunction on both legal and prudential grounds. But his arguments fail on both counts, and he does not and cannot show a likelihood of success on the merits, let alone the type of strong likelihood required to support a stay.

### A. Article III Permits Courts To Issue Relief That Benefits More Than The Parties Immediately Before It

The Attorney General first attacks the nationwide injunction by proposing a novel rule: A court lacks the power to enjoin conduct that benefits anyone but the parties before it. That is not the law.

Article III courts are vested with "the judicial Power of the United States," which includes the "broad power to restrain acts" by injunction. *Lineback v. Spurlino Materials, LLC*, 546 F.3d 491, 504 (7th Cir. 2008) (quoting *NLRB v. Express Pub'g Co.*, 312 U.S. 426, 435-37 (1941)). That power extends fully to each of the "parties," *see* Fed. R. Civ. P. 65(d), including, necessarily, the *defendant* in the case or controversy before the court. Accordingly, particularly in cases involving facial challenges to government policy, when a court "strike[s] down a statute, rule, or ordinance on the ground that it is constitutionally offensive," that relief "generally will benefit not only the claimant but all other persons subject to the practice or the rule under attack." Wright & Miller, *Federal Practice & Procedure* § 1771 (3d ed. 2017); *see also, e.g., Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786 (7th Cir. 2013) (affirming statewide preliminary injunction issued to restrain Wisconsin law); *Decker v. O'Donnell*, 661 F.2d 598, 618 (7th Cir. 1980) (affirming nationwide preliminary injunction in suit by three Wisconsin plaintiffs challenging statute and Labor Department employment regulation promulgated thereunder that restricted federal funds for employment at

sectarian schools). It is thus entirely natural that injunctive relief that ends the defendant's injury-causing conduct may also benefit non-parties who are injured by the very same conduct. *See Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 420 (1977) ("[I]f there has been a systemwide impact …there [may] be a systemwide remedy.").[1]

Nor is federal courts' injunctive power subject to arbitrary geographic constraints. Rather, its use is "determined by the nature and scope of the constitutional violation." *Missouri v. Jenkins*, 515 U.S. 70, 88, 89 (1995). The injunctive power accordingly "extends across the country" and, in "appropriate circumstances," courts thus have the power to issue nationwide injunctions. *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) (collecting cases), *aff'd by equally divided Court*, 136 S. Ct. 2271 (2016); *see also Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.").

The Attorney General nowhere supports the radical position that an injunction can never *benefit* any persons beyond those before the court. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645 (2017) (cited in Stay Mot. at 4) stands only for the unassailable proposition that a plaintiff must have standing to pursue the relief she herself seeks; here, there is no question that Chicago has standing to pursue the relief sought: an injunction against the Attorney General's notice and access conditions.

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[1] To the extent that the Attorney General suggests that class action certification is required in a case such as this, that cannot be right. Class status would be required to bind *non*-parties to the litigation, but it is not required to prevent a defendant—already a party to the case—from implementing a single law or policy that the defendant promulgated. *See* Fed. R. Civ. P. 65(d) and related discussion, *supra* at 6-7. Indeed, Rule 23(b)(2), which provides for mandatory class status in injunctive cases like this one, was modeled after pre-1966 lawsuits where blanket relief from an unlawful government policy was granted before the advent of Rule 23 as we know it. *See, e.g.*, *Bailey v. Patterson*, 323 F.2d 201, 206 (5th Cir. 1963) (striking down Mississippi transportation segregation law, and explaining that "whether or not appellants may properly represent all Negroes similarly situated [as a formal class action], the decree to which they are entitled is the same") (cited in Fed. R. Civ. P. 23, Advisory Cmte. Notes to 1966 Amendments).

*Id.* at 1650-1651 (collecting cases). And the very language the Attorney General quotes (at 5) from *Lewis v. Casey*, 518 U.S. 343 (1996), confirms that the proper scope of injunctive relief is determined by reference to the "*inadequacy* that produced the injury in fact" not the "injury in fact" alone. *Id.* at 357; *see also Jenkins*, 515 U.S. at 88, 89. Any other rule would upset the settled practice of courts in most civil-rights and constitutional cases.

To the extent the Attorney General is arguing that traditional principles of equity impose some additional limitations on the judicial power, that contention is nothing more than an assertion that the Court abused its discretion here. "[B]readth and flexibility are inherent in equitable remedies," leaving courts considerable discretion to address the wrongs committed by the defendant. *Preston v. Thompson*, 589 F.2d 300, 303 (7th Cir. 1978) (quoting *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971)). And for the reasons discussed below, this Court's order falls well within existing "guidelines for the exercise of the district judge's discretion." *Swann*, 402 U.S. at 15.

### B. This Court Did Not Abuse Its Discretion In Issuing A Nationwide Injunction

Article III does not bar this Court from enjoining an unlawful government policy as to all who are affected by it where the government is a party before the Court, as set forth above. Accordingly, the only remaining question is whether the Court abused its discretion by doing so in this case—a question on which the Seventh Circuit will accord significant deference to this Court's determination of the right remedy for the harm and the case. *See, e.g.*, *Russian Media Grp., LLC v. Cable Am., Inc.*, 598 F.3d 302, 307 (7th Cir. 2010) ("[T]he appropriate scope of the injunction is left to the district court's sound discretion") (affirming broad injunction premised on, *inter alia*, defendant's proclivity for unlawful conduct); *see also*, *e.g.*, *H-D Michigan, LLC v. Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 843 (7th Cir. 2012) ("The appropriate scope of the injunction is best left to the district court's sound discretion, because the district court is in the best position to weigh these

interests."); *see also PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1272 (7th Cir. 1995) (cited in Stay Mot. at 5) ("A district court ordinarily has wide latitude in fashioning injunctive relief, and we will restrict the breadth of an injunction only where the district court has abused its discretion.") (affirming scope of injunction).

Especially in light of that deference, the Attorney General falls well short of showing that the Seventh Circuit is likely to find an abuse of discretion here.

This Court's reasoning for the scope of the injunction is clear: This case involves a facial challenge to a single, nationally-integrated federal policy (promulgated under a formula grant program expressly premised on uniformity), and there is "no reason to think that the legal issues present in this case are restricted to Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction." PI Op. 41. The Seventh Circuit has specifically affirmed a nationwide injunction against a federal agency on those very grounds, upholding a nationwide injunction against enforcement of unlawful policies by the Department of Labor that barred funds for a federal public employment program from being paid to employees at a sectarian school because, despite being brought by plaintiffs in Milwaukee, the case had "evolved … into one challenging the facial constitutionality of [a] statute and of the Department of Labor's [implementing] regulation." *Decker*, 661 F.2d at 618 (affirming nationwide injunction in suit by Wisconsin plaintiffs and enjoining challenged federal policy). More recent nationwide injunction cases—which stress the importance of nationwide injunctions in cases involving uniform federal policies with sweeping national effect, and which also highlight the deference owed to district courts in fashioning remedies—are in accord. *E.g.*, *Int'l Refugee Assistance Project v. Trump ("IRAP")*, 857 F.3d 554, 605 (4th Cir. 2017) (no abuse of discretion in issuing nationwide injunction against Trump administration policy banning people from certain countries from entering the United States), *cert.*

*granted*, 137 S. Ct. 2080 (2017)[2]; *Texas*, 809 F.3d at 188 (finding no abuse of discretion where nationwide injunction issued as against Obama administration environmental policy, and emphasizing "uniform," "unified" nature of federal policy at issue).

And the Attorney General's own arguments offer yet another reason for a nationwide injunction. The Attorney General indicates that, if a stay is granted, the Department intends to impose the unlawful notice and access conditions on the nearly 1,000 jurisdictions that have applied for Byrne JAG funds, *see* Stay Mot. at 8, including amici and proposed intervenors here, who hail from all around the country. *See id.* at 9 (claiming stay would "preserv[e] the Department's ability to pursue imposing the notice and access conditions for 2017 Byrne JAG grants"). Broad injunctions are particularly proper where "a proclivity for unlawful conduct has been shown." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949) (cited in *Russian Media Grp.*, 598 F.3d at 307).

The Attorney General cites no authority that actually supports his purported prudential argument. He relies instead (at 5) on the Seventh Circuit's *PepsiCo* decision for language about exceeding the plaintiff's "protectible rights," but *PepsiCo*, a trade secrets case involving an employment agreement between private parties, is not on point, and in all events, it *affirmed* a broad injunction based on the substantial discretion owed to district courts. 54 F.3d at 1272. Similarly, he quotes *Madsen v. Women's Health Center* for the proposition "that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," 512 U.S. 753, 765 (1994) (quoting *Yamasaki*, 442 U.S. at 702), but offers no example of any case where this

[2] The Attorney General's attempt to distinguish *IRAP* (at 7) falls flat. Those affected by the unlawful notice and access conditions (*i.e.*, nearly 1,000 local governments across the country) are plainly "dispersed throughout the United States," 857 F.3d at 605. The conditions at issue not only *do* implicate immigration policy, but also arise in the context of a federal formula grant program where there is a comparable interest in preserving a uniform national rule. And as with the Establishment Clause violation at issue in *IRAP*, enforcement of the conditions against non-plaintiffs would have broader effects in this case too, among other reasons because Byrne JAG applicants' fates are bound together by a national formula that allocates a set total amount of funds.

statement was used to justify artificially restricting an injunction in the manner proposed here. *Cf. Yamasaki*, 442 U.S. at 702 (noting that nationwide injunctions may be proper in Rule 23(b)(2) cases "since the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class"). And he cites *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 163 (2010), but that case, in which the Court narrowed an injunction so that it did not apply to discrete policies that *did not harm the plaintiff*, supports Chicago. Here, a single policy inflicts the same harm on Chicago and all Byrne JAG applicants. Under *Monsanto*, there is no reason to pare back the injunctive relief here because *every* aspect of the enjoined policy harms Chicago.

This Court correctly recognized the fundamental efficiency and fairness of a nationwide injunction in this case, which presents a facial challenge to a single set of conditions imposed nationwide on a uniformly administered federal formula grant program. The Attorney General offers no reason to change that position.

## II. THE ATTORNEY GENERAL WILL NOT SUFFER IRREPARABLE HARM ABSENT A STAY

This Court may independently deny the stay request here because the Attorney General will suffer no irreparable harm during the pendency of the appeal. As this Court already found, there is no plausible "claim that a delay in imposition of the new Byrne JAG conditions would permanently harm" any "interest that would be difficult to remedy for money damages." PI Op. 39. Indeed, the Byrne JAG program has operated since its inception without the notice and access conditions, all while Chicago and a host of other jurisdictions have carried out their longstanding Welcoming City-type policies. This Court's injunction simply restores that status quo, which has been in place—without any irreparable harm to the federal government—for over a decade. There is no reason why continuing to preserve that same status quo during the pendency of an appeal in this case would suddenly lead to irreparable injury. To the contrary, the Seventh Circuit has routinely equated "preserving the status quo" with "*preventing* irreparable harm." *See e.g.*, *American Can Co. v.*

*Mansukhani*, 742 F.2d 314, 323 (7th Cir. 1984) (emphasis added); *IDS Life Ins. Co. v. SunAmerica, Inc.*, 103 F.3d 524, 527 (7th Cir. 1996); *Gray-Bey v. United States*, 201 F.3d 866, 869 (7th Cir. 2000).

The Attorney General by contrast seeks a stay that would *disrupt* the status quo. That is improper; indeed, as the Supreme Court has explained, the defining feature of a "stay pending appeal" is that it "return[s] to" rather than "*alter[s]* the legal status quo." *Nken*, 556 U.S. at 428-429; *see, e.g.*, Wright & Miller, *Federal Practice & Procedure* § 2948 (3d ed. 2017) ("[A stay] may not issue if it would disturb the status quo."). Courts will not stay "a district court's order [that] merely return[s] the nation temporarily to the position it has occupied for many previous years." *Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017). And the suggestion of a stay is particularly improper here, where the Attorney General himself disclaimed any potential urgency as to the notice and access conditions earlier in this litigation when it suited him to do so, and where the burden the Attorney General faces is nothing more than showing that his conditions are lawful before he imposes them on the Nation's local governments.[3]

In fact, the Attorney General's claim of irreparable harm is particularly weak here, given the unlawful nature of the notice and access conditions. The Executive has no interest in acting contrary to law, and thus suffers no injury from an injunction that "curtail[s] unlawful executive action." *Hawaii v. Trump*, 859 F.3d 741, 784 (9th Cir.), *cert. granted*, 137 S. Ct. 2080 (2017); *Texas*, 809

[3] In lieu of delaying the notice and access conditions, the Attorney General claims that if a stay is not granted he might instead withhold all Byrne JAG funds from nearly 1,000 jurisdictions until the resolution of this lawsuit—which he contends would also constitute irreparable injury. *See* Stay Mot. at 9. Such a self-inflicted injury—voluntarily sabotaging the entire Byrne JAG program to force compliance with conditions this Court has found unlawful—cannot constitute irreparable injury justifying a stay. And in any event, the Attorney General has no power even to pursue such an end-run around this Court's injunction. Whatever discretion the Attorney General may have to delay disbursement of Byrne JAG funds for ordinary administrative reasons, he cannot suspend disbursement solely to frustrate this Court's injunction, or to pressure jurisdictions to adopt conditions that this Court has already held to be unlawful. And the Attorney General certainly has no ground for delaying Chicago's Byrne JAG award past September 30—as he has done already—given that he has sought no stay of the injunction at all as to Chicago.

F.3d at 187; *IRAP*, 857 F.3d at 603. "If anything," courts have held, "the system is improved by such an injunction." *IRAP*, 857 F.3d at 603.

The Attorney General falls back on the argument that irreparable harm occurs whenever the Executive is unable to swiftly implement its preferred policies. But courts have repeatedly rejected that assertion, which would effectively mean there is irreparable injury "whenever an executive action is enjoined." *IRAP*, 857 F.3d at 603; *Hawaii*, 859 F.3d at 783 & n.22; *see also Texas*, 809 F.3d at 186. It would be strange to treat the natural—indeed, intended—consequence of an injunction (namely, to delay executive action that is likely unlawful) as a reason to prevent it from going into effect. That is why courts hold that a delay in implementing a new program caused by an injunction is not irreparable injury: "Injunctions often cause delays, and the government can resume work if it prevails on the merits." *Texas v. United States,* 787 F.3d 733, 767-768 (5th Cir. 2015).

## III. THE EQUITIES AND THE PUBLIC INTEREST DO NOT FAVOR A STAY

This Court can also independently deny the stay request because it is unjust and manifestly contrary to the public interest. In essence, the Attorney General seeks nothing less than permission to subject nearly 1,000 jurisdictions across the country to conditions that this Court has already held to be unlawful. The public would be actively harmed by the imposition of unlawful policy conditions on local governments—particularly so here, where the conditions purport to nullify local policies that promote cooperation between immigrant communities and police, irreparably injuring Chicago and other jurisdictions with similar policies. *See* PI Op. 37.

And the public and the judiciary would also be harmed by the needless administrative burden that the Attorney General would foist upon them to litigate seriatim injunctions of the same unlawful action. According to the Attorney General, in order to block the application of the unlawful conditions as to them, each of the nearly 1,000 applicants for Byrne JAG funds would need to "bring their own challenges." Stay Mot. at 6. Such needless, duplicative litigation would be costly

and wasteful. Indeed, for each of those suits the public will pay three times—for the Attorney General's litigation costs, for the litigation costs of the individual state or local government, and for the cost of the court's time and effort. And while such costs are sometimes necessary, that is not the case here: As this Court held, there is "no reason to think that the legal issues present in this case are restricted to Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction." PI Op. 41. The Attorney General never challenges that reasoning, and yet he maintains that a proliferation of needless and wasteful copycat lawsuits would somehow serve the public interest.

The Attorney General attempts to downplay the costs of the duplicative litigation under his approach by asserting that "most" jurisdictions are "perfectly content to comply with the notice and access conditions"—an inference he draws from the fact that only "a few" have yet filed lawsuits of their own. Stay Mot. at 6. But that assertion ignores the great many jurisdictions—accounting for nearly 20% of all Byrne JAG funds allocated to local governments nationally—that have participated in *this* action directly as amici curiae, as well as the thousands of jurisdictions that have participated through national associations (e.g., the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties). It was well known that Chicago was seeking a nationwide injunction, and it is well settled that such relief is within the power of the federal courts. There was no need for each grant applicant to file suit. Instead, thousands of them appeared or made their voices heard in this case—and made clear to the Court that they view a "nationwide injunction" as essential "to protect the safety" of their communities. Santa Clara Br. 15.[4] The public interest weighs strongly against the Attorney General's stay request.

[4] Further, the fact that there may be jurisdictions that agree with the notice and access conditions is not a reason to stay the nationwide impact of the injunction. Even with the injunction, those jurisdictions remain free to voluntarily provide the notice, and grant the access, that the conditions seek to require.

## CONCLUSION

This Court should deny the Attorney General's request for a stay pending appeal.

October 6, 2017

Respectfully Submitted,

By /s/ Edward N. Siskel

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**CERTIFICATE OF SERVICE**

On the 6th day of October, 2017, I electronically filed the foregoing brief using the Court's CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by that system.

/s/ Edward N. Siskel
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