IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CITY OF CHICAGO,

Plaintiff-Appellee,

v.

JEFFERSON B. SESSIONS III, ATTORNEY GENERAL OF THE UNITED STATES,

Defendant-Appellant.

No. 17-2991

DEFENDANT-APPELLANT'S MOTION FOR PARTIAL STAY OF PRELIMINARY INJUNCTION PENDING A PETITION FOR REHEARING EN BANC AND, IF NECESSARY, A PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION AND SUMMARY

Defendant-appellant, the Attorney General, respectfully asks this Court to stay the nationwide preliminary injunction that was issued against certain federal grant conditions on September 15, 2017, insofar as the injunction applies to entities other than the City of Chicago—the only plaintiff in this case. A panel of this Court affirmed the injunction on April 19, 2018, with Judge Manion dissenting as to the injunction's nationwide application to non-parties. As a practical matter, the nationwide injunction is improperly and gratuitously interfering with grants to all other jurisdictions in the country, and it also preempts litigation over the challenged grant conditions that is pending in other courts across the country. As a legal matter, the panel decision conflicts with published decisions of this Court. *See McKenzie v. City of Chicago*, 118 F.3d 552 (7th Cir. 1997). The Attorney General thus moves for a stay pending a forthcoming petition for rehearing en banc, and, if necessary, a petition for a writ of certiorari. The Attorney General respectfully requests that this motion be considered by the Court en banc under Internal Operating Procedure 1(a)(2). The Attorney General also respectfully suggests that this Court order a response to this motion by Friday, April 27, given the delays to the grant program and Chicago's familiarity with these issues.

The district court enjoined two conditions on federally funded grants for law enforcement purposes made by the Department of Justice to states and localities under the Edward Byrne Memorial Justice Assistance Grant Program ("Byrne JAG

Program"). Both conditions concern aliens in the United States who have committed or are suspected of committing crimes, and who are being held in custody by the grantee jurisdiction for its own law enforcement purposes. The first condition requires that, with respect to any "program or activity" funded by this law-enforcement related grant, the grantee respond to a specific written request from the federal government to provide notification of an alien's release date. The second condition, a measure to ensure the safety of federal law enforcement officials and the public, requires that the grantee allow federal agents access to correctional facilities for the purpose of meeting with aliens in order to inquire about their right to remain in the United States. The district court concluded that these two conditions were not authorized by the statute governing the Byrne JAG Program. Although the government respectfully disagrees with the panel's ruling on the merits, for present purposes a stay is needed from the en banc court only to correct the flawed nationwide application of this ruling.

Although the only plaintiff in this action is the City of Chicago, the district court did not limit its injunction to the City, but instead made its order applicable to all grant applicants across the country. The district court did not suggest that extending its order to non-parties nationwide was in any respect necessary to prevent injury to Chicago. Nor did the panel majority, in affirming this broad injunction, suggest that such a sweeping injunction was necessary to remedy Chicago's asserted injury. Instead, the panel majority justified the scope of the order based on: its view

that consideration of the legal issue by multiple courts was unnecessary because the legal question involved "will not vary from one locality to another," Maj. Op. 30; its belief that "[t]he public interest would be ill-served here by requiring simultaneous litigation of this narrow question of law in countless jurisdictions," particularly as some of them had filed amicus briefs, Maj. Op. 32-33; and mistaken assumptions about the operation of the Byrne JAG Program, Maj. Op. 34.

This request for a partial stay does not ask the Court to consider at this juncture the panel majority's ruling on the merits of the underlying dispute. It asks only that the Court apply settled principles of standing and equity to limit the application of the injunction to the plaintiff, as urged by Judge Manion's partial dissent. *See* Partial Dissent 41-49. The panel majority's decision on this question directly conflicts with this Court's decision in *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997), which reversed an injunction that precluded the City of Chicago from operating a demolition program with respect to entities other than the plaintiffs. In that case, the Court explained that when "a class has not been certified, the only interests at stake are those of the named plaintiffs," and that in the absence of certification a court cannot "grant relief to non-parties." *Id.* at 555; *see also Scherr v. Marriott International, Inc.*, 703 F.3d 1069, 1075 (7th Cir. 2013) (plaintiff lacked standing to seek an injunction broader than necessary to remedy her own injury); *Laskowski v. Spellings*, 546 F.3d 822, 825 (7th Cir. 2008) ("The general rule is that a plaintiff has

standing to sue only for injuries to his *own* interests that can be remedied by a court order.").

The panel majority did not attempt reconcile its opinion with decisions such as *McKenzie*. Indeed, the panel majority did not even reference *McKenzie*. The panel majority's conclusion also cannot be reconciled with Supreme Court precedent establishing that the plaintiff must establish standing "separately for each form of relief sought," *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (quotation marks omitted), and that injunctions must "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Nor did the panel cite *United States v. Mendoza*, 464 U.S. 154, 162 (1984), which established that "nonmutual collateral estoppel . . . does not apply against the Government in such a way as to preclude relitigation of issues." The nationwide injunction affirmed in this case effectively supersedes pending litigation about the challenged conditions in other courts.

The clear conflict with the precedent of this Court and the Supreme Court makes it appropriate to review en banc the question of a district court's authority to make an injunction applicable to non-parties nationwide, especially since that question is a recurring one of exceptional importance. A partial stay will result in no injury whatsoever to the City of Chicago, which does not stand to lose any money based on the application of the conditions to other jurisdictions. In contrast, a stay will allow the grant program to go forward with respect to the hundreds of other applicants who

have neither intervened in this suit nor filed their own actions and, indeed, may not dispute the validity of the conditions and may even agree with them. Because of the nationwide injunction, however, the government is unable to issue the grants to any jurisdictions unless it drops conditions that it believes are lawful and warranted. This Court's decisions make clear that no sound basis exists for the ongoing impairment of a significant national grant program, and we respectfully urge the Court to issue a partial stay pending its consideration of a petition for en banc review and, if necessary, a petition for a writ of certiorari.

STATEMENT

A. Grants Under the Byrne JAG Program

Congress created the Byrne JAG Program in 2006 to provide additional funding to state and local law enforcement agencies. *See* Pub. L. No. 109-162, 119 Stat. 2960 (2006). The statute provides that "[f]rom amounts made available to carry out" the program, "the Attorney General may," in accordance with a statutory formula, "make grants to States and units of local government" for certain criminal justice purposes. 34 U.S.C. § 10152(a)(1). The grant funds are divided among grantees based on a statutory formula, largely premised on population and crime statistics. *Id.* § 10156.

When the Office of Justice Programs (OJP)—the Department of Justice entity that administers the program—approves a Byrne JAG application, it sends a grant award document to the applicant, which enumerates, among other things, the

conditions applicable to the award. *See* Hanson Decl., Dkt. 32-1, Exs. A-C [App. 44-99]; OJP Grant Process Overview, *available at* https://ojp.gov/funding/Apply/GrantProcess.htm. Applicants then typically have 45 calendar days to review the special conditions and accept the award documents. *See* OJP Grant Process Overview. The special conditions at issue here were premised on authority vested in the Assistant Attorney General for OJP to "plac[e] special conditions on all grants" and to "determin[e] priority purposes for formula grants." 34 U.S.C. § 10102(a)(6). The two conditions at issue here are designed to ensure a minimum degree of cooperation between federal immigration authorities and the states and localities that receive Byrne JAG funds. The Immigration and Nationality Act permits state criminal proceedings to take precedence over federal immigration proceedings, and the conditions are designed to ensure that states and localities will not use this precedence to frustrate federal immigration enforcement. *See, e.g.*, 8 U.S.C. § 1231(a)(1)(B)(iii) (90-day "removal period" for an incarcerated alien does not begin until after the date of the alien's release).

OJP has received nearly 1,000 applications from state and local jurisdictions seeking fiscal year 2017 Byrne JAG Program funds. Hanson Second Decl., Dkt. 82 ¶ 4. Prior to the entry of the nationwide preliminary injunction, OJP had aimed to issue fiscal year 2017 Byrne JAG Program awards by September 30, 2017, which is the end of the relevant fiscal year. *Id.* ¶¶ 7-8. But because of the nationwide injunction, OJP

has not distributed the grants to any jurisdictions since the injunction was issued, as it cannot do so without dropping the challenged conditions.

B. Prior Proceedings

1. The City of Chicago filed this lawsuit to challenge three conditions that OJP intended to place in Chicago's Byrne JAG Program award documents for fiscal year 2017. *See* Compl., Dkt. 1. The district court concluded that two of the conditions are not authorized by the governing statute. The first condition, which the district court referred to as the "notice" condition, requires that, with respect to any "program or activity" funded by the grant, the grantee must have a policy designed to ensure that, when DHS provides a formal written request for advance notice of the scheduled release date and time for a particular alien at a particular facility, the facility will "as early as practicable" provide the notice to DHS. Hanson Decl., Dkt. 32-1, Ex. A, ¶ 56.1.B [App. 63]. The second condition, which the district court referred to as the "access" condition, requires that, with respect to any "program or activity" funded by the grant, the grantee must have a policy designed to ensure that federal agents are "given access" to correctional facilities for the purpose of meeting with aliens and to "inquire as to such individuals' right to be or remain in the United States." Hansen Decl., Dkt. 32-1, Ex. A, ¶ 56.1.A [App. 63].[1]

[1] The district court rejected Chicago's challenge to an additional condition (which the City previously accepted in FY 2016) that requires grant recipients to certify compliance with 8 U.S.C. § 1373. *See* Merits Op., Dkt. 78, at 20-35 [Short Appendix 20-35]; Hanson Decl., Dkt. 32-1, Ex. C, ¶ 52 [App. 99].

The district court issued a preliminary injunction with respect to the "notice" and "access" conditions, but did not limit its injunction to Chicago, the only plaintiff in the case. Chicago did not claim that a broader injunction was required to avoid irreparable harm to itself. Nevertheless, the district court declared that "[t]his injunction against imposition of the notice and access conditions is nationwide in scope, there being 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." Merits Op., Dkt. 78, at 41 [Short Appendix 41].

2. On October 13, the district court denied the government's motion for a partial stay regarding the application of the injunction to non-parties. The court stated that it had broad remedial authority to address a constitutional violation, and that the legal issues would not differ from jurisdiction to jurisdiction. Stay Op., Dkt. 98, at 4-6 [App. 103-05]. The court expressed the view that "judicial economy counsels against" requiring other jurisdictions who wished to challenge the rulings "to file their own lawsuits," particularly because some of them had filed amicus briefs. Stay Op., Dkt. 98, at 11 [App. 110]. A panel of this Court denied a partial stay on November 21, 2017. But because this Court promptly set a briefing schedule and scheduled oral argument for January 19, 2018, the government did not seek a stay from the en banc Court or the Supreme Court.

3. On April 19, 2018, the same panel affirmed the district court's injunction, holding that Chicago "established a likelihood of success on the merits of its

contention that the Attorney General lacked the authority to impose the notice and access conditions on receipt of the Byrne JAG grants." Maj. Op. 24.

The panel divided on the issue presented by this motion for a partial stay—whether the district court exceeded its authority in extending the injunction to non-parties across the country. The panel majority held that Chicago had standing to seek equitable relief as to its own grant, and that it was unnecessary for Chicago to demonstrate an injury resulting from issuance of grants to all the other jurisdictions in the country. Maj. Op. 28. The panel majority likewise concluded that the injunction did not constitute an abuse of the district court's equitable authority for three reasons. First, the panel majority expressed its view that nationwide relief was appropriate because "the challenge here presents purely a narrow issue of law" that "will not vary from one locality to another," Maj. Op. 30, and that, in its view, the case therefore "does not present the situation in which the courts will benefit from allowing the issue to percolate through additional courts," Maj. Op. 31. Second, the panel majority concluded that "[t]he public interest would be ill-served here by requiring simultaneous litigation of this narrow question of law in countless jurisdictions," Maj. Op. 32-33, declaring that amicus briefs indicated that "a significant number of award recipients oppose the conditions," Maj. Op. 33. Third, the majority held that "the structure of the Byrne JAG program itself supports . . . a nationwide injunction," based on the panel's assumption that "the recipients of the grant are interconnected"

because available funds might be redistributed among applicants in the event some jurisdictions are unwilling to accept the conditions. Maj. Op. 34.

Judge Manion dissented from the majority's view of the scope of relief, stating that the majority mistakenly endorsed "a gratuitous application of an extreme remedy" by "bypass[ing] Supreme Court precedent, disregard[ing] what the district court actually concluded concerning the equities in this case, and misread[ing] the effect of providing relief to Chicago only." Partial Dissent 42. Judge Manion noted that the nationwide injunction circumvents the Supreme Court's clear statement that "nonmutual collateral estoppel . . . does not apply against the Government in such a way as to preclude relitigation of issues." *Id.* (quoting *United States v. Mendoza*, 464 U.S. 154, 162 (1984)). Responding to the majority's view that *Mendoza* does not apply when a case presents a purely legal question, Judge Manion observed that "if a lack of factual differentiation is all that is needed to distinguish *Mendoza*, then a nationwide injunction is appropriate in every statutory-interpretation case. That cannot be the law." Partial Dissent 43. Turning to the balance of the equities, Judge Manion noted that the district court had found the equities in equipoise, and saw "no basis to second-guess the reasoning of the district court." Partial Dissent 45. He further observed that the majority's concern that litigation in multiple fora would not be in the public interest was misplaced, as it ignored the availability of class action relief. Partial Dissent 46. Such relief "has the benefit of dealing with the one-way-ratchet nature of the nationwide injunction," as it would bind both the government and the

class members, rather than permitting plaintiffs multiple "bites at the apple" in suits against the government. *Id.* Finally, Judge Manion pointed out that "the structure of the Byrne JAG program does not require granting relief to non-parties," as "there are no provisions for redistribution of funds withheld for failing to abide by the Attorney General's 'special conditions,'" and even if such redistribution took place, "Chicago would *benefit* by getting more money." Partial Dissent 48-49.

ARGUMENT

The application of the district court's injunction to non-parties across the country contravenes the unambiguous precedent of this Court as well as the Supreme Court and presents an issue of exceptional importance warranting review by the full Court. Moreover, the balance of harms and the public interest cut strongly against the nationwide injunction, which is unnecessary to remedy Chicago's asserted injuries and which is gratuitously impeding the distribution of the grants to all other jurisdictions. For these reasons, this Court should stay the nationwide aspect of the injunction pending en banc review and, if necessary, certiorari review.

I. A Partial Stay is Warranted Because the Panel Majority's Decision Directly Contravenes this Court's Precedent, Established Principles of Article III Standing, and Limitations on a Court's Equitable Authority.

A. To establish standing, a plaintiff "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (quotation marks omitted). "[S]tanding is not dispensed in gross," and the plaintiff must

establish standing "separately for each form of relief sought." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017) (quotation marks omitted).

Accordingly, this Court has made clear that "plaintiffs lack standing to seek—and the district court therefore lacks authority to grant—relief that benefits third parties." *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997); *see also Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally."). As this Court has emphasized, "[t]he general rule is that a plaintiff has standing to sue only for injuries to his *own* interests that can be remedied by a court order." *Laskowski v. Spellings*, 546 F.3d 822, 825 (7th Cir. 2008).

Applying this principle in *McKenzie,* this Court reversed an injunction that precluded the City of Chicago from operating a demolition program with respect to entities other than the plaintiffs. This Court noted the district court's conclusion "that it was appropriate to enjoin the entire program, despite the lack of class certification, in order to prevent the City from violating the Constitution." *McKenzie*, 118 F.3d at 555. Reversing that holding, this Court declared that the district court's statement "assume[d] an affirmative answer to the question at issue: whether a court may grant relief to non-parties. The right answer is no." *Id.*

Likewise, in *Scherr v. Marriott International, Inc.*, 703 F.3d 1069 (7th Cir. 2013), this Court held that the plaintiff did not have standing to seek an injunction that went

beyond remedying her personal injury, even though the defendant allegedly committed the same legal violation more broadly. The Court noted that the plaintiff had established that she was suffering an imminent injury from the defendant's use of spring-hinged door closers at one particular hotel, and affirmed the injunction as to that hotel. *Id.* at 1074-75. The plaintiff had not, however, established that she would be imminently injured by the defendant's use of the same door closers at the defendant's other hotels, and thus she did not have standing to pursue injunctive relief relating to other hotels. *Id.* at 1075.

These decisions, to which the panel majority made no reference, make clear that where "a class has not been certified, the only interests at stake are those of the named plaintiffs." *McKenzie*, 118 F.3d at 555 (citing *Baxter v. Palmigiano,* 425 U.S. 308, 310 n.1 (1976)). Thus, in *Alvarez v. Smith*, 558 U.S. 87, 92 (2009), plaintiffs lacked standing to seek declaratory and injunctive relief against the State's practice of keeping property in custody without a prompt post-seizure hearing because the plaintiffs had already received the seized property or forfeited their claims to it. The Supreme Court explained that since class certification had been denied, the "only disputes relevant here are those between these six plaintiffs and the State's Attorney . . . and those disputes are now over." *Id.* at 93; *see also Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 163 (2010) (the plaintiffs "d[id] not represent a class, so they could not seek to enjoin [an agency order] on the ground that it might cause harm to other parties").

Basic principles of equity also require that the injunction be limited to the plaintiff in this case. Equitable principles require that injunctions "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Here, there is no dispute that Chicago's injury would be completely remedied by an injunction limited to the City's own grant.

B. As Judge Manion's partial dissent explains, the injunction also contravenes principles established in *United States v. Mendoza*, 464 U.S. 154 (1984), in which the Supreme Court held that "nonmutual offensive collateral estoppel . . . does not apply against the Government in such a way as to preclude relitigation of issues." Partial Dissent 42 (quoting *Mendoza*, 464 U.S. at 162). "[A]llowing nonmutual collateral estoppel against the Government . . . would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue," and "would deprive [the] Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before [the] Court grants certiorari." Partial Dissent 42-43 (quoting *Mendoza*, 464 U.S. at 160). As Judge Manion observed, "the Fourth and Ninth Circuits have both recognized [that] these concerns are just as present in the context of nationwide injunctions." Partial Dissent 43 (citing *L.A. Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664 (9th Cir. 2011); *Va. Soc'y for Human Life, Inc. v. Fed. Election Comm'n*, 263 F.3d 379, 393 (4th Cir. 2001)).

As Judge Manion noted, the panel majority did not cite *Mendoza*, but "it implicitly attempts to distinguish that decision" on the ground that "this case 'does not present the situation in which courts will benefit from allowing the issue to percolate through additional courts and wind its way through the system in multiple independent court actions.'" Partial Dissent 43 (quoting Maj. Op. 31). Judge Manion observed that the panel majority "claims this case is different from ones involving issues 'for which the context of different factual scenarios will better inform the legal principle.'" Partial Dissent 43 (quoting Maj. Op. 31). He explained, however, that "if a lack of factual differentiation is all that is needed to distinguish *Mendoza,* then a nationwide injunction is appropriate in every statutory-interpretation case. That cannot be the law." *Id.* The partial dissent admonished that "[w]e are not the Supreme Court, and we should not presume to decide legal issues for the whole country, even if they are purely facial challenges involving statutory interpretation." Partial Dissent 44. Indeed, there are parallel challenges to the pending grant conditions in several other courts, and the nationwide injunction here renders the work of those courts meaningless. *See City of Los Angeles v. Sessions*, No. 17-7215 (filed Sept. 29, 2017); *City of Philadelphia v. Sessions*, No. 17-3894 (E.D. Pa.) (filed Aug. 30, 2017); *City & County of San Francisco v. Sessions*, No. 17-4642 (N.D. Cal.) (filed Aug. 11, 2017).

Judge Manion also took issue with the panel majority's belief "that avoiding 'widespread, duplicative litigation in the absence of' a nationwide injunction is in the

public interest." Partial Dissent 45-46 (quoting Maj. Op. 33). As Judge Manion explained, the way to avoid duplicative litigation is to file a class action suit. He noted that a "class action has the benefit of dealing with the one-way-ratchet nature of the nationwide injunction. A nationwide injunction ties the Attorney General's hands when he loses, but if Chicago had lost here, then . . . other municipalit[ies] could have filed suit [or continued to litigate their existing suits] against the Attorney General in . . . other jurisdiction[s], and that process could in theory continue until a plaintiff finally prevailed. With a class action, a decision would bind those other municipalities just as it would bind the Attorney General, and they could not run off to the 93 other districts for more bites at the apple." Partial Dissent 46.

The partial dissent also explained that no basis exists for the panel majority's assumption that "the structure of the Byrne JAG program itself supports the district court's determination to impose a nationwide injunction because the recipients of the grant are interconnected." Maj. Op. 34. As Judge Manion noted, while the Byrne JAG statute "does provide situations in which money would be withheld and redistributed, there are no provisions for redistribution of funds withheld for failing to abide by the Attorney General's 'special conditions.'" Partial Dissent 48. And, as the partial dissent observed, even assuming that grants withheld from other jurisdictions were redistributed, "Chicago would *benefit* by getting more money." *Id.*

Thus, the alleged rationale for permitting a nationwide injunction in *International Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017), has no applicability

here. Partial Dissent 48. Judge Manion noted that "the Fourth Circuit upheld a nationwide injunction on the President's 'travel ban' because the plaintiffs were 'dispersed throughout the United States,' there was an interest in ensuring uniform application of immigration laws, and the court concluded the ban 'likely violates the Establishment Clause.'" Partial Dissent 48 (quoting *Int'l Refugee Assistance Project*, 857 F.3d at 605). The partial dissent also noted that while "the Supreme Court declined to completely stay the injunction," it did not "directly address[] the merits of why the injunction should be nationwide." *Id.* (citing *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2089 (2017)). "The same [purported] need to protect third parties to provide complete relief is not present here." *Id.*

In sum, the settled Article III and equitable limits on the scope of injunctions apply with full force here. The nationwide aspect of the injunction is clear legal error and should be stayed pending further review.

II. The Balance of Harms and the Public Interest Further Demonstrate That a Partial Stay Is Warranted.

Whereas a partial stay will result in no injury at all to Chicago, for the reasons already discussed, the stay is necessary to avoid interference with the operation of a nationwide grant program. The Office of Justice Programs has received nearly 1,000 applications from state and local jurisdictions for more than $250 million in available FY 2017 Byrne JAG Program funds. Hanson Second Decl., Dkt. 82 ¶ 4. Prior to the entry of the nationwide preliminary injunction, OJP had aimed to issue fiscal year

2017 Byrne JAG Program awards by September 30, 2017, and had already issued two awards. *Id.* ¶¶ 5, 7-8. In light of the injunction, however, DOJ cannot issue the grants with two conditions designed to promote a basic level of cooperation between governments in fulfilling their respective law enforcement responsibilities, a cooperation very much in the public interest.

If the federal government issues the grants subject to the terms of the injunction, it may well lose the ability to include the conditions even if the conditions are ultimately determined to be lawful. States and localities can spend the funds as soon as they are distributed, and attempts to include the conditions at a later date will face many difficulties. Although the Department thus has been delaying issuance of grants to all jurisdictions nationwide, further delay "would hinder the reasonably timely and reliable flow of funding" to support law-enforcement activity around the country, Hanson Second Decl., Dkt. 82 ¶ 10, impose particular burdens for localities with relatively small budgets, *id.* ¶ 11, and disrupt state grant-making processes under which states issue sub-awards of Byrne JAG Program funds, *id.* ¶ 12.

In sum, a partial stay will avoid irreparable harm to the federal government and jurisdictions throughout the country, while causing no injury to Chicago.

CONCLUSION

For the foregoing reasons, the Court should issue a partial stay of the preliminary injunction insofar as it applies beyond plaintiff, the City of Chicago, pending a forthcoming petition for rehearing en banc and, if necessary, a petition for

a writ of certiorari. The Court should consider this motion en banc under Internal Operating Procedure 1(a)(2), and should order a response from Chicago by Friday, April 27.

Respectfully submitted,

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APRIL 2018

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion satisfies the type-volume limitation in Rule 27(d)(2)(A) because it contains 4,797 words. This motion was prepared using Microsoft Word 2013 in Garamond, 14-point font, a proportionally-spaced typeface.

s/ Brad Hinshelwood
Brad Hinshelwood

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 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/ Brad Hinshelwood
Brad Hinshelwood