

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 REHEARING EN BANC
AND, IF NECESSARY, A PETITION FOR A WRIT OF CERTIORARI**

As contemplated by this Court's order of April 24, 2018, the Attorney General renews his motion for a partial stay of the nationwide preliminary injunction that was issued with regard to certain federal grant conditions on September 15, 2017, insofar as the injunction extends beyond the City of Chicago—the only plaintiff in this case—to encompass jurisdictions nationwide. The Attorney General respectfully requests that a partial stay be entered pending resolution of the petition for rehearing en banc filed today, and, if necessary, a petition for a writ of certiorari.

This request for a partial stay does not ask the Court to consider the merits of the underlying dispute, which will continue to be litigated below. It asks only that the Court apply settled principles of standing and equity and limit the application of the injunction to the plaintiff. Although Chicago is the only plaintiff in this action, 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 avoid injury to Chicago. Instead, the court justified the scope of its order on the ground that, in its view, “judicial economy counsels against” requiring other jurisdictions who wished to challenge the rulings “to file their own lawsuits.” Stay Op., Dkt. 98, at 11 [App. 110]. The panel majority affirmed, over Judge Manion's partial dissent, holding the court could extend its injunction to non-parties across the country as long as Chicago had standing to bring suit with regard to its own alleged injury. Maj. Op. 28-35.

For the reasons set out in our petition for rehearing en banc, the affirmance of a nationwide injunction directly conflicts with this Court’s decision in *McKenzie v. City of Chicago*, 118 F.3d 552 (7th Cir. 1997), which the panel majority failed even to cite. In *McKenzie*, the plaintiff sought to enjoin application of a program to non-parties “despite the lack of class certification, in order to prevent the City from violating the Constitution.” *McKenzie*, 118 F.3d at 555. Rejecting that contention, 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 may [not] grant relief to non-parties.” *Id.* at 555. *See also 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.”).

As Judge Manion’s partial dissent explained, the nationwide injunction is also irreconcilable with the principle established in *United States v. Mendoza*, 464 U.S. 154 (1984), 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) (omission in original). Judge Manion noted that the majority did not cite *Mendoza*, but that it apparently believed that *Mendoza*’s principles are inapplicable in a case presenting a purely legal question. As Judge Manion observed, “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.* at 43.

The balance of harms and the public interest likewise demonstrate that a partial stay is warranted. Whereas a partial stay will result in no injury at all to Chicago, the stay is necessary to avoid interference with the operation of a nationwide grant program. The Office of Justice Programs (OJP)—the Department of Justice entity that administers the program—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. 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 rehearing en banc and, if necessary, a petition for a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion satisfies the type-volume limitation in Rule 27(d)(2)(A) because it contains 908 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 27, 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