No. 17-2991

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.

On Appeal from the United States District Court for the Northern District of Illinois, No. 17-cv-5720 (Leinenweber, J.)

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INTRODUCTION AND SUMMARY OF ARGUMENT

As relevant to this en banc appeal, the City of Chicago—the only plaintiff in the case—obtained a nationwide preliminary injunction against two conditions on federal funding grants made by the Department of Justice (DOJ) to states and localities. Yet there is no dispute that an injunction limited solely to Chicago's grant would fully remedy the City's injury. Accordingly, the injunction should be vacated insofar as it extends beyond the City because the entry of an injunction broader than necessary to remedy the plaintiff's injury exceeds a court's authority under both Article III standing requirements and fundamental principles of equity.

As the Supreme Court recently reaffirmed, "'standing is not dispensed in gross': A plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)). And that controlling precedent simply confirms what this Court had, until the panel opinion in this case, long recognized: "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).

Equity dictates the same result. It is a black-letter rule that injunctions "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). Nationwide injunctions departing from this rule, as Justice Thomas recently emphasized, "did not emerge until a century

and a half after the founding," and they "take a toll on the federal court system—preventing legal questions from percolating through the federal courts, encouraging forum shopping, and making every case a national emergency for the courts and for the Executive Branch." *Trump v. Hawaii*, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring). Moreover, as Judge Manion recognized in his panel dissent, such injunctions create an inequitable "one-way[] ratchet" under which any prevailing plaintiff obtains relief on behalf of all others, but a victory by the government would not preclude other potential plaintiffs from "run[ning] off to the 93 other districts for more bites at the apple." *City of Chicago v. Sessions*, 888 F.3d 272, 298 (7th Cir. 2018) (Manion, J., dissenting in part); *cf. United States v. Mendoza*, 464 U.S. 154, 158-62 (1984) (holding that non-parties to an adverse decision against the federal government may not invoke the decision to preclude the government from continuing to defend the issue in subsequent litigation).

For all these reasons, this Court should unequivocally hold that injunctive relief may not go any further than necessary to redress a plaintiff's own injuries. Thus, the preliminary injunction here should be vacated insofar as it extends beyond the application of the challenged grant conditions to Chicago itself.

STATEMENT OF THE CASE

DOJ makes grants to states and localities to provide additional funding for law enforcement purposes through the Edward Byrne Memorial Justice Assistance Grant Program (Byrne JAG Program). *See* 34 U.S.C. §§ 10151-10158. The grant funds are divided among grantees based on a statutory formula, largely premised on population and crime statistics. *Id.* § 10156.

This case involves a challenge by the City of Chicago to two conditions that DOJ imposed on the grants, requesting the City's basic cooperation with the enforcement of federal law against aliens held in criminal custody by the City. The district court concluded that the grant conditions exceed the government's statutory authority and issued a preliminary injunction that prohibits DOJ from imposing them. A panel of this Court affirmed that ruling. *See City of Chicago*, 888 F.3d at 276-87. Although the government firmly disagrees with that determination and intends to continue vigorously defending its statutory authority to impose these reasonable conditions, the propriety of the injunction as applied to the City of Chicago's grant is not at issue in this en banc proceeding.

Rather, this en banc proceeding concerns only the extension of the preliminary injunction beyond Chicago, the only plaintiff in this case. Chicago did not and could not claim that it would be harmed by imposition of the conditions on other grant applicants. But the district court nonetheless granted a nationwide preliminary injunction, prohibiting DOJ from imposing the conditions on grant applicants who

were not before the court. The district court declared that there was "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." D. Ct. Merits Op. 41 [Short App. 41].

The government asked the district court to stay pending appeal the nationwide application of the preliminary injunction. The district court denied the motion, stating that it had broad remedial authority to address a constitutional violation, and that the legal issues would not differ from jurisdiction to jurisdiction. D. Ct. Stay Op. 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 in this case. *Id.* at 11 [App. 110]. The court declared that if the Attorney General wishes to impose the condition on other jurisdictions that are not parties to this case, "he must await a decision that upholds his authority to do so." *Id.* at 12 [App. 111].

On the same day the partial stay was denied, the government sought a partial stay in this Court of the preliminary injunction as it applied to grant applicants other than Chicago. A panel of this Court denied the government's request for a partial stay on November 21, 2017, without opinion. *See* Dkt. No. 33.

On April 19, 2018, the same panel affirmed the district court's preliminary 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." *City of Chicago*, 888 F.3d at 287. Although the panel was unanimous on the merits, it divided on the issue now before the en banc Court—whether the district court exceeded its authority in extending the preliminary injunction to cover non-parties across the country.

The panel majority held that the district court permissibly exercised its discretion in entering a nationwide preliminary injunction. The panel majority relied heavily on the Supreme Court's decision concerning a stay of a nationwide preliminary injunction in *Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam). Noting that the dissenting Justices would have reached the issue presented here and sided with the government's argument "that injunctive relief should not extend beyond that necessary to provide complete relief to the particular plaintiff," the panel majority concluded that the government's position "did not carry the day in *Trump* and should not do so here either." *City of Chicago*, 888 F.3d at 289.

The panel majority held that because "[t]he City had standing to seek injunctive relief," there was no further Article III constraint on "the terms of that injunction." *City of Chicago*, 888 F.3d at 289. The panel majority therefore believed that it was unnecessary for Chicago to demonstrate any injury resulting from the issuance of grants to all the other jurisdictions in the country. *Id.* at 289-90.

The panel majority further concluded that the injunction did not constitute an abuse of the district court's equitable authority. It recognized that nationwide injunctions give rise to "forum shopping by plaintiffs" and "limit[] the input of other

courts," and thus stated that they "should be utilized only in rare circumstances." *City of Chicago*, 888 F.3d at 288. But it nevertheless concluded that a nationwide injunction was warranted here 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," *id.* at 290-91, 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," *id.* at 291. 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," *id.* at 292, declaring that amicus briefs indicated that "a significant number of award recipients oppose the conditions," *id.* Third, the panel majority held that "the structure of the Byrne JAG program itself supports . . . a nationwide injunction," based on the majority's assumption that "the recipients of the grant are interconnected" because available funds might be redistributed among applicants in the event that some jurisdictions are unwilling to accept the conditions. *Id.*

Judge Manion dissented from the affirmance of the preliminary injunction insofar as it extended beyond Chicago. He concluded that the majority had erroneously 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." *City of Chicago*, 888 F.3d at 296 (Manion, J., dissenting in part). Judge Manion emphasized that the nationwide injunction circumvents the Supreme Court's unequivocal holding that "nonmutual offensive collateral estoppel . . . does not apply against the Government in such a way as to preclude relitigation of issues" in separate suits brought by non-parties to the initial litigation. *Id.* (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 the principles articulated in *Mendoza* do not apply when a case presents a purely legal question. He responded 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.* at 297.

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." *City of Chicago*, 888 F.3d at 297 (Manion, J., dissenting in part). 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. *Id.* at 298. 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 stated that "[t]he 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." *Id.* at 299.

The government filed a petition for partial rehearing en banc on the extension of the preliminary injunction beyond Chicago to encompass non-party jurisdictions nationwide. The government concurrently filed a renewed motion for a stay of the injunction insofar as it applied to jurisdictions other than Chicago. This Court granted the petition for partial rehearing en banc, Dkt. No. 128, and subsequently stayed the injunction "as to geographic areas in the United States beyond the City of Chicago pending the disposition of the case by the en banc court," Dkt. No. 134. This Court then ordered supplemental briefing to "address the appropriate scope of the preliminary injunction, the arguments raised in the dissent to the panel opinion, and the Supreme Court's decision in *Trump v. Hawaii*." Dkt. No. 137.

ARGUMENT

BOTH ARTICLE III AND EQUITY REQUIRE THAT THE PRELIMINARY INJUNCTION BE LIMITED TO CHICAGO, THE ONLY PLAINTIFF IN THIS CASE

A. Article III Standing Requirements Preclude an Injunction That Extends Beyond What Is Necessary to Redress Chicago's Injury.

1. To establish Article III 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); *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."); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803) ("The province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion.").

The Supreme Court recently reaffirmed these principles in *Gill v. Whitford*, 138 S. Ct. 1916 (2018), concluding that a set of voters had not demonstrated standing to challenge alleged statewide partisan gerrymandering of Wisconsin legislative districts. The plaintiffs alleged that voters who shared their political views were disadvantaged

by the way district lines were drawn statewide, and that they were therefore entitled to challenge the entire state map. *Id.* at 1924-25. But the Court concluded that a "plaintiff's remedy must be 'limited to the inadequacy that produced [his] injury in fact,'" and that a voter's "harm [from] the dilution of [his] vote[] . . . is district specific" because it "results from the boundaries of the particular district in which he resides." *Id.* at 1930 (quoting *Lewis v. Casey*, 518 U.S. 343, 357 (1996)). Accordingly, the Court held that "the remedy that is proper and sufficient lies in the revision of the boundaries of the individual's own district," not the broader remedy of "restructuring all of the State's legislative districts." *Id.* at 1930-31. And the Court "caution[ed]" that, on remand, "'standing is not dispensed in gross': A plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Id.* at 1934 (quoting *Cuno*, 547 U.S. at 353); *accord id.* at 1933 ("The Court's constitutionally prescribed role is to vindicate the individual rights of the people appearing before it.").

Likewise, in *Summers v. Earth Island Institute*, 555 U.S. 488 (2009), the Supreme Court held that the plaintiffs lacked standing to challenge Forest Service regulations after the parties had resolved the controversy regarding the application of the regulations to the project that had caused the plaintiffs' alleged injury. Noting that the plaintiffs' "injury in fact with regard to that project ha[d] been remedied," *id.* at 494, the Court held that to allow the plaintiffs to challenge the regulations "apart from any concrete application that threatens imminent harm to [their] interests" would "fly in the face of Article III's injury-in-fact requirement." *Id.*; *see also Lewis*, 518 U.S. at 357

("The actual-injury requirement would hardly serve [its] purpose . . . if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy *all* inadequacies in that administration.").

These cases make clear that where no class has been certified, no justiciable controversy exists once the injury to the actual plaintiffs has been remedied. Thus, in *Alvarez v. Smith*, 558 U.S. 87 (2009), the plaintiffs lacked standing to seek declaratory and injunctive relief against a 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. *Id.* at 92. 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").

Prior to the panel majority's decision, this Court's precedents have adhered to these settled principles. This Court has properly recognized 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). 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).

2. The brief discussion of Article III standing by the panel majority and the district court disregarded these principles. The panel majority concluded that because "[t]he City had standing to seek injunctive relief," there was no further Article III constraint on "the terms of that injunction." *City of Chicago*, 888 F.3d at 289. The district court similarly concluded that, having found what it termed a "constitutional violation"—though the holding was, in fact, a statutory one—"[it] is the nature and scope of the constitutional violation that defines the remedy for this violation, not the particular plaintiff." D. Ct. Stay Op. 4-5 [App. 103-04] (quotation marks omitted). That reasoning is irreconcilable with the precedent of the Supreme Court and this Court.

In *Gill*, as discussed above, the Supreme Court emphasized that "standing is not dispensed in gross" and that "[a] plaintiff's remedy must be tailored to redress the plaintiff's particular injury." 138 S. Ct. at 1934 (quotation marks omitted). The Court thus held that the proper remedy in a vote-dilution challenge brought by an individual voter entails "revising only such districts as are necessary to reshape the voter's district" rather than "restructuring all of the State's legislative districts," *notwithstanding* that the alleged policy of partisan gerrymandering was "statewide in nature" rather than limited to each plaintiff's particular district. *Id.* at 1930-31. That holding makes absolutely clear that it is the scope of the plaintiff's injury, and not the scope of the defendant's policy, that governs the permissible scope of an injunction under Article III.

Likewise, in *McKenzie*, which the panel majority did not even address, this Court summarily 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. As this Court explained, the district court's rationale "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.* This Court held that "the injunction exceeded the district judge's powers under Article III of the Constitution." *Id.* at 555 n.*. It reasoned that the plaintiffs' "interests c[ould] be protected by an injunction that prevents the City from demolishing their properties," so the district court was wrong to "enjoin the entire program, despite the lack of class certification." *Id.* at 555. As this Court explained, where "a class has not been certified, the only interests at stake are those of the named plaintiffs." *Id.* (citing *Baxter v. Palmigiano,* 425 U.S. 308, 310 n.1 (1976)). The Article III requirements that Chicago properly invoked as a defendant apply with equal force when it is a plaintiff.

Similarly, 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. *Id.* at 1075. This Court reasoned that although the plaintiff had established that she faced an imminent injury from the

defendant's use of spring-hinged door closers at one particular hotel, she had not 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.*

The panel majority asserted that past cases "have not found a lack of jurisdiction solely because a nationwide injunction was imposed in the absence of a class action," *City of Chicago*, 888 F.3d at 290, but that assertion is misguided for two reasons. *First*, as this Court recognized in *McKenzie*, broad injunctions are sometimes necessary to provide "effective relief to the plaintiffs," such as in cases involving "reapportionment and school desegregation." 118 F.3d at 555; *accord Gill*, 138 S. Ct. at 1930. The appropriate scope of relief varies from case to case depending on what is necessary to fully redress the plaintiff's own injury. For example, in *Gill*, it would not have been improper to redraw the plaintiffs' own districts if they had been unconstitutionally gerrymandered even though that would incidentally benefit other similarly situated voters within those districts, but it was impermissible to go beyond redressing the plaintiffs' own asserted vote-dilution injuries by entertaining a challenge to the entire state map. 138 S. Ct. at 1930-31. Here, the panel majority did not and could not contend that a nationwide injunction is necessary to remedy Chicago's own injury, which can be fully addressed by an injunction limited solely to its own grant. *Second*, even if some cases affirmed overbroad injunctions without addressing Article III's standing requirements, "the existence of unaddressed jurisdictional defects has no

precedential effect." *Lewis*, 518 U.S. at 352 n.2. The panel majority did not cite any case in which the Supreme Court or this Court has held that Article III permits an injunction to go beyond what is necessary to redress the plaintiff's own injury, and the government is not aware of any such precedent conflicting with the cases cited above.

In short, because a court's "constitutionally prescribed role is to vindicate the individual rights of the people appearing before it," *Gill*, 138 S. Ct. at 1933, Chicago does not have standing to seek an injunction broader than necessary to remedy its own injury. And Chicago properly does not claim that an injunction that extends to all grant applicants is necessary to remedy its claimed harm from the imposition of the challenged grant conditions. Thus, having granted preliminary injunctive relief to Chicago, the district court had no authority to extend its injunction to jurisdictions across the country.

B. Traditional Equitable Principles Preclude an Injunction That Extends Beyond What Is Necessary to Redress Chicago's Injury.

1. Even apart from Article III's jurisdictional constraints, injunctions that go beyond a plaintiff's own injuries exceed the power of a court sitting in equity. Several equitable principles cut decisively against such injunctions.

First, paralleling the rule under Article III, the rule in equity is that injunctions "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)); *see U.S. Dep't of Def. v. Meinhold*, 510

U.S. 939 (1993) (granting stay of military-wide injunction except as to individual plaintiff). For example, in *Virginia Society for Human Life, Inc. v. Federal Election Commission*, 263 F.3d 379 (4th Cir. 2001), the Fourth Circuit vacated an injunction that precluded an agency from enforcing, against any entity, a regulation found to have violated the First Amendment. The court explained that an injunction covering the plaintiff "alone adequately protects it from the feared prosecution," and that "[p]reventing the [agency] from enforcing [the regulation] against other parties in other circuits does not provide any additional relief to [the plaintiff]." *Id.* at 393. Likewise, in *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644 (9th Cir. 2011), although the Ninth Circuit held that an agency's regulation was facially invalid, it vacated the district court's injunction insofar as it barred the agency from enforcing the regulation against entities other than the plaintiff. *Id.* at 664 ("[I]njunctive relief generally should be limited to apply only to named plaintiffs where there is no class certification.") (alteration in original; quotation marks omitted)). This principle applies with even greater force to a preliminary injunction, an equitable tool designed merely to "preserve the relative positions of *the parties* until a trial on the merits can be held." *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (emphasis added); *accord Zepeda v. U.S. INS*, 753 F.2d 719, 728 n.1 (9th Cir. 1983).

Second, longstanding historical practice confirms that injunctions are limited to what is necessary to remedy the plaintiff's injury. It is well established that the scope of a court's statutory authority to enter injunctive relief is circumscribed by the type of

relief that was "traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19 (1999). But the tradition of equity inherited from English law was premised on "providing equitable relief only to parties" because the fundamental role of a court was to "adjudicate the rights of 'individual[s].'" *Trump v. Hawaii*, 138 S. Ct. 2392, 2427-28 (Thomas, J., concurring) (quoting *The Federalist No. 78*, at 466 (Alexander Hamilton) (Clinton Rossiter ed., 1961)). As a result, "a plaintiff could not sue to vindicate the private rights of someone else." *Id.* at 2428. It is thus unsurprising that injunctions like the one here "are a recent development, emerging for the first time in the 1960s and dramatically increasing in popularity only very recently." *Id.* at 2426.

The absence of nationwide injunctions was certainly not for lack of opportunities to seek such relief against federal enactments or policies that were facially invalid. To give a particularly stark counter-example, in the 1930s, courts issued roughly 1600 injunctions against enforcement of a single federal statutory provision. Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 434 (2017). While in some cases before traditional courts of equity, small groups of plaintiffs could join together to bring a "bill of peace" on behalf of an affiliated group, this "kind of proto-class action" was not extended to equitable relief against federal action on behalf of entirely absent, unrepresented parties. *See id.* at 426-27.

Third, nationwide injunctions "take a toll on the federal court system—preventing legal questions from percolating through the federal courts, encouraging forum

shopping, and making every case a national emergency for the courts and for the Executive Branch." *Hawaii*, 138 S. Ct. at 2425 (Thomas, J., concurring); *see also* D. Ct. Stay Op. 13 [App. 112] ("Nationwide injunctions may increase forum shopping, lead to conflicting injunctions, and stymie the development of the law within the Circuits prior to Supreme Court review."). In "'foreclosing adjudication by a number of different courts and judges,'" nationwide injunctions "deprive[] the Supreme Court of the benefit it receives from permitting multiple courts of appeals to explore a difficult question before it grants certiorari." *Los Angeles Haven Hospice*, 638 F.3d at 664 (quoting *Yamasaki*, 442 U.S. at 702); *see also Virginia Soc'y for Human Life*, 263 F.3d at 393 (permitting a court to issue a nationwide injunction "would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue"' (quoting *United States v. Mendoza*, 464 U.S. 154, 160 (1984))). And as the panel majority and the district court both acknowledged, the availability of nationwide injunctions gives rise to "potential forum shopping by plaintiffs." *City of Chicago*, 888 F.3d at 288; D. Ct. Stay Op. 13 [App. 112].

Fourth, issuing injunctions that provide relief to non-parties subverts the class-action mechanism provided under the Federal Rules of Civil Procedure. *See McKenzie*, 118 F.3d at 555; *Zepeda*, 753 F.2d at 727-28. The availability of nationwide injunctions without class certification creates a fundamentally inequitable asymmetry, whereby non-parties can claim the benefit of a single favorable ruling, but are not bound by a loss and can thus go "run[ning] off to the 93 other districts for more bites at the

apple." *City of Chicago*, 888 F.3d at 298 (Manion, J., dissenting in part). In other words, if Chicago prevails, the court issues the relief that might have been appropriate had it certified a class of all grant applicants; but if the federal government prevails, it gains none of the benefits of prevailing in a class action.

Finally, and relatedly, an injunction that extends beyond a plaintiff's injury to cover potential plaintiffs nationwide undermines *Mendoza*'s holding "that nonmutual offensive collateral estoppel simply does not apply against the government." 464 U.S. at 162. That bar on non-parties' invocation of issue preclusion against the federal government is largely meaningless if the first party to obtain a favorable ruling against the government can obtain an injunction that extends to all non-parties who would otherwise be forced to relitigate the issue under *Mendoza*.

2. The panel majority and the district court failed to provide any persuasive justification for their disregard of these equitable principles.

a. Both opinions relied heavily on the Supreme Court's decision to grant in part but deny in part a stay of the injunction in *Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam) (*IRAP*), *vacated as moot*, No. 16-1436, 2017 WL 4518553 (U.S. Oct. 10, 2017). *See City of Chicago*, 888 F.3d at 288-90; D. Ct. Stay Op. 7-9 [App. 106-08]. Although the *IRAP* per curiam opinion did not explicitly address the merits of entering injunctive relief broader than necessary to redress a plaintiff's own injuries, the panel majority inferred that a majority of the Court must have implicitly rejected the government's argument simply because the dissenting Justices

"raised the same objections . . . but those arguments did not carry the day." *City of Chicago*, 888 F.3d at 289; *see IRAP*, 137 S. Ct. at 2090 (Thomas, J., dissenting).

This inference was inappropriate. The Supreme Court's partial denial of a stay did not likely, let alone necessarily, connote a sub silentio repudiation of the established principle that injunctive relief should be tailored to remedy a plaintiff's injury. In conducting a discretionary assessment of whether a stay was appropriate, the Court was under no obligation to reach the merits of every question presented, and indeed it emphasized instead solely its discretion in balancing the equities. *IRAP*, 137 S. Ct. at 2087-88. In particular, the Justices who joined the per curiam opinion could have decided to deny the stay in part on equitable grounds regardless of whether there was a likelihood of reversal on the merits. *See Nken v. Holder*, 556 U.S. 418, 433-34 (2009) (outlining standard for a stay). Alternatively, those Justices could have decided that the broad injunction in *IRAP* was necessary to fully redress plaintiffs' own injuries.

The latter possibility is bolstered by a dissent later issued in *Trump v. Hawaii*. Justice Sotomayor, joined by Justice Ginsburg, noted that she would have affirmed a nationwide injunction issued against a successor to the executive order at issue in *IRAP*, based on her view that, "[g]iven the nature of the Establishment Clause violation and the unique circumstances of [the] case, the imposition of a nationwide injunction was 'necessary to provide complete relief to the plaintiffs.'" *Hawaii*, 138 S. Ct. at 2446 n.13 (Sotomayor, J., dissenting) (quoting *Madsen*, 512 U.S. at 765). Thus, far from rejecting the standard advanced by the government here and in *IRAP*, two

Justices of the six-member *IRAP* per curiam expressed their view that the government's standard was simply satisfied in *Hawaii*. Regardless of whether those Justices were correct (or whether their view can be attributed to other members of the *IRAP* per curiam), their reasoning highlights the error in attributing a rationale to the Supreme Court that did not appear in its opinion. Even before Justices Sotomayor and Ginsburg clarified their views, there was no basis for presuming that the Supreme Court resolved the issue without discussing it, much less with the clarity necessary for this Court to overrule its decision in *McKenzie*.

b. The panel majority and the district court likewise erred in justifying the breadth of the injunction on the theory that this case "presents purely a narrow issue of law" that "will not vary from one locality to another." *City of Chicago*, 888 F.3d at 290-91; *accord* D. Ct. Merits Op. 41 [Short App. 41]; D. Ct. Stay Op. 5-6 [App. 104-05]. This reasoning conflates the scope of Chicago's legal argument on the merits with the scope of relief necessary to remedy Chicago's alleged injury from the violation, and it is inconsistent with each of the equitable principles outlined above.

Nothing in the basic equitable rule that injunctions should "be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," *Madsen*, 512 U.S. at 765 (quoting *Yamasaki*, 442 U.S. at 702), suggests that the rule is limited only to cases that turn on their facts rather than resolving purely legal questions. As other courts have recognized, that a challenge is facial does not change the operation of the basic principle. Thus, in *Los Angeles Haven Hospice*, the

Ninth Circuit agreed with the plaintiff that an agency regulation was arbitrary and capricious, 638 F.3d at 661, but reversed the district court's determination that "the facial invalidity of the . . . regulation" permitted a nationwide injunction, *id.* at 665. The Fourth Circuit took the same approach in *Virginia Society for Human Life*, narrowing a nationwide injunction issued against an agency regulation it found unconstitutional where preventing enforcement of the regulation "against other parties in other circuits does not provide any additional relief" to the plaintiff. 263 F.3d at 393. The lack of historical support for the injunction issued here further underscores the point—courts have long ruled on pure issues of law without suggesting that such a ruling permits nationwide relief.

Likewise, the panel majority's suggestion that purely legal questions do "not present the situation in which the courts will benefit from allowing the issue to percolate through additional courts and wind its way through the system in multiple independent court actions," *City of Chicago*, 888 F.3d at 291, is inconsistent with the Supreme Court's teachings. *Mendoza* emphasizes that the government is likely to be involved in multiple suits which "involve the same legal issues," and it highlights the negative effects on judicial decisionmaking of a ruling that "freez[es] the first final decision rendered on a particular legal issue." 464 U.S. at 160. And as Judge Manion pointed out, the panel majority's approach would suggest that "a nationwide injunction is appropriate in every statutory-interpretation case. That cannot be the law." *City of Chicago*, 888 F.3d at 297 (Manion, J., dissenting in part).

Similarly, the panel majority's suggestion that "duplicative litigation" supports the entry of a nationwide injunction, *City of Chicago*, 888 F.3d at 292, turns *Mendoza* on its head. The point of *Mendoza* is that the Supreme Court "benefit[s] . . . from permitting several courts of appeals" to consider "important questions of law," 464 U.S. at 160, and the Court specifically concluded that the "economy interests underlying a broad application of collateral estoppel" to questions of "legal doctrine" are outweighed by concerns "peculiarly affect[ing]" litigation against the government, *id.* at 163. Indeed, if anything, such percolation is more valuable, not less, for pure legal questions as opposed to fact-bound issues; appellate courts exercising de novo review of a pure legal question can gain insights by comparing differing analyses of a common question, whereas appellate comparison of decisions arising in fact-heavy contexts is less useful precisely because of the varying factual record in each case and the deferential appellate review of factual findings.

The conflict with class-action rules is also starker with respect to pure questions of law. Such questions are most amenable to class-action treatment, *see* Fed. R. Civ. P. 23(a)-(b) (requiring, *inter alia*, commonality and predominance of questions), and thus it is most inequitable for plaintiffs to end-run that procedure through a "one-way-ratchet . . . nationwide injunction." *City of Chicago*, 888 F.3d at 298 (Manion, J., dissenting in part). This case is a perfect illustration of the problem, as other jurisdictions have attempted to take advantage of Chicago's injunction by filing amicus briefs rather than their own lawsuits—and even worse, the panel majority

treated this litigation gamesmanship as a *benefit* of a nationwide injunction. *Id.* at 292. In any event, there is no basis for presuming that all of the nearly 1,000 applicants for Byrne JAG funds share Chicago's opposition to the conditions as a matter of either law or policy.

c. Finally, the panel majority's belief that "the structure of the Byrne JAG program itself" supports entry of a nationwide injunction was incorrect. *City of Chicago*, 888 F.3d at 292. The panel majority assumed that Byrne JAG funds would be redistributed from jurisdictions that lost funding, but it failed to explain how that redistribution required a nationwide injunction to protect Chicago's interests; an injunction limited to Chicago would protect it from any harm. Indeed, as Judge Manion pointed out, even assuming that funds withheld from other jurisdictions would be redistributed in a way that would affect the City, "Chicago would *benefit* by getting more money." *Id.* at 299 (Manion, J., dissenting in part).

In sum, the settled equitable limits on the statutory authority to issue injunctive relief—which complement Article III's constitutional limits in awarding any relief—apply with full force here and require vacatur of the preliminary injunction's extension to non-plaintiffs.

CONCLUSION

For the foregoing reasons, the district court's preliminary injunction should be vacated insofar as it applies to jurisdictions beyond Chicago.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the Court's order of June 29, 2018, because it contains 6,270 words.

s/ Brad Hinshelwood
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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I further certify that I will cause 35 paper copies of this brief to be received by the Clerk within seven days of the Notice of Docket Activity generated upon acceptance of the brief, in compliance with 7th Circuit ECF Procedure (h)(2).

Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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