IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIERRA CLUB, *et. al.*, *Plaintiffs-Appellees,* v. DONALD J. TRUMP, *in his official capacity as President of the United States*, *et al.*, *Defendants-Appellants.*	No. 19-16102

REP. ANDY BARR'S CONSENT MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF STAY

Pursuant to FED. R. APP. P. 27 and Circuit Rule 27-1 and 29-3, movant Andy Barr respectfully seeks this Court's leave to file the accompanying *amicus curiae* brief in support of the federal appellees' motion to stay the preliminary injunction. The parties conferred pursuant to Circuit Rules 27-1 and 29-3, and all parties consent to the timely filing of this *amicus* brief. In support of this motion for leave to file, Rep. Barr states as follows:

1. Rep. Barr has represented Kentucky's 6th congressional district since 2013.

2. A lawyer by training, Rep. Barr also taught constitutional law at the University of Kentucky and Morehead State University when his practice was based in Kentucky.

3. Rep. Barr supports the President's attention to the humanitarian and public-safety emergency on the southern border as both a citizen and as a Member

of Congress. In his legislative capacity, Rep. Barr has a significant interest in protecting the statutory scheme that Congress enacted to delegate power in emergencies to the President, not to courts.

4. In addition to supplementing the federal appellees' discussion of the zone-of-interests test, the merits, and the criteria for stays, the proffered brief also discusses issues of Article III standing that the federal appellees do not discuss, but which movant respectfully submits this Court has the obligation to consider *sua sponte*. *See* Barr Br. at 6-8.

5. Movant Barr thus respectfully submits that his proffered brief could aid the Court in resolving this case and will not prejudice the parties.

WHEREFORE, Rep. Barr respectfully request this Court's leave to file the accompanying *amicus* brief.

Dated: June 10, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. The accompanying motion complies with the type-volume limitation of FED. R. APP. P. 27(d)(2)(A) and Local Rule 27-1 because:

The motion contains 280 words and 2 pages, excluding the parts of the motion exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. The accompanying motion complies with the typeface and type style requirements of FED. R. APP. P. 27(d)(1)(E) because:

The motion has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

Dated: June 10, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2019, I electronically filed the foregoing motion — together with the accompanying *amicus curiae* brief — with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered for service via CM/ECF.

/s/ Lawrence J. Joseph
Lawrence J. Joseph

No. 19-16102

In the United States Court of Appeals for the Ninth Circuit

SIERRA CLUB; SOUTHERN BORDER COMMUNITIES COALITION,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *in his official capacity as President of the United States*; PATRICK SHANAHAN, *in his official capacity as Acting Secretary of the Defense*; KEVIN K. MCALEENAN, *in his official capacity as Acting Secretary of Homeland Security*; STEVEN TERNER MNUCHIN, *in his official capacity as Secretary of the Department of the Treasury*,
Defendants-Appellants.

ON APPEAL FROM U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NO. 4:19-CV-00892-HSG, HON. HAYWOOD S. GILLIAM, JR., DISTRICT JUDGE

BRIEF FOR *AMICUS CURIAE* REP. ANDY BARR IN SUPPORT OF FEDERAL DEFENDANTS-APPELLANTS IN SUPPORT OF STAY

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IDENTITY, INTEREST AND AUTHORITY TO FILE

Amicus curiae Rep. Andy Barr seeks the Court's leave to file this brief for the reasons set forth in the accompanying motion for leave to file.[1] As explained in the motion for leave to file, Rep. Barr (hereinafter, "*Amicus*") has an ongoing interest in federal immigration policy both as the Representative elected to the 116th Congress for Kentucky's Sixth Congressional District and as a citizen. For these reasons, Rep. Barr has direct interests in the issues raised here.

STATEMENT OF THE CASE

Two membership groups (collectively, "Plaintiffs") have sued various federal Executive officers (collectively, the "Government") to challenge actions flowing from the Presidential Proclamation on Declaring a National Emergency Concerning the Southern Border of the United States, 84 Fed. Reg. 4949 (Feb. 15, 2019), including actions by the Department of Defense ("DoD") under 10 U.S.C. §§ 284, 2808. In the Proclamation, the President relied on authority delegated by Congress in the National Emergencies Act, 50 U.S.C. §§ 1601-1651. Although Plaintiffs premise their standing on aesthetic injuries and assert a claim under the National Environmental Policy Act, 42 U.S.C. §§ 42 U.S.C. § 4331-4347 ("NEPA"), the

[1] By analogy to FED. R. APP. P. 29(a)(4)(E), the undersigned counsel certifies that: counsel for *amicus* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity — other than *amicus*, its members, and its counsel — contributed monetarily to this brief's preparation or submission.

primary driver of this litigation appears to be Plaintiffs' policy dispute with the Government on whether an emergency exists at the southern border and on immigration policy generally.

Although Plaintiffs seek to raise multiple issues in the underlying litigation, this appeal and the Government's emergency motion to stay concern only Plaintiffs' claims under § 284 and under § 8005 of DoD's fiscal-2019 appropriations bill, DoD Appropriations Act for Fiscal Year 2019, PUB. L. NO. 115-245, div. A, § 8005, 132 Stat. 2981, 2999 (Sept. 28, 2018). Although Plaintiffs do not dispute that DoD may use funds under § 284 for "the counterdrug activities … of any other department or agency of the Federal Government," 10 U.S.C. § 284(a), such as "[c]onstruction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States," *id.* § 284(b)(7), Plaintiffs argue that § 8005 prohibits DoD's transfer of funds within the DoD budget to provide the funding for border-barrier projects under § 284. The District Court entered a preliminary injunction of those activities based on DoD's alleged violation of § 8005, and the Government appealed and moved to stay that injunction.

Federal courts evaluate motions to stay preliminary injunctions pending appeal under a four-factor test:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay

> will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009). Of these, the likelihood of prevailing is the primary factor. *Nken*, 556 U.S. at 438 (Kennedy, J., concurring).

SUMMARY OF ARGUMENT

Plaintiffs' aesthetic interests could qualify as an "injury in fact" for Article III under environmental statutes like NEPA, but those private interests are neither legally protected interests for purposes of Article III under the statutes under which the District Court found Plaintiffs likely to prevail (Section I.A.1) nor within the prudential zone of interests of those statutes (Section I.A.3). On the merits, provisions in the appropriations bill for the Department of Homeland Security ("DHS") do not repeal by implication the separate authority that DoD has for border-barrier construction (Section I.B). While the foregoing points suggest that the Government is likely to prevail, the other stay factors also support the Government. A preliminary injunction in favor of plaintiffs who lack standing inflicts a separation-of-powers injury on the Executive Branch, which constitutes irreparable harm under Circuit precedent (Section II.A). Moreover, a plaintiff that lacks standing cannot suffer irreparable harm, which tips the balance of hardships to the Government (Section II.B). Finally, the public interest merges with the merits, which favors the Government, especially *vis-à-vis* the private interests that Plaintiffs raise (Section II.C).

ARGUMENT

I. THE GOVERNMENT IS LIKELY TO PREVAIL ON THE MERITS.

To stay a preliminary injunction pending appeal, a defendant must either have a meritorious case, *Nken,* 556 U.S. at 438 (Kennedy, J., concurring), or the plaintiff must lack jurisdiction for its claims:

> We need not reach the issue whether … the District Court was justified in issuing a preliminary injunction, because we have concluded that the court lacked jurisdiction to enter an injunction in any event.

United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669, 690 (1973); *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983) (holding that a plaintiff must establish Article III jurisdiction to obtain interim relief). Either way — jurisdictionally or on the merits — the Government is likely to prevail.

A. Plaintiffs lack constitutional and prudential standing for their claims under § 8005.

Federal courts are courts of limited jurisdiction. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). "It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The parties cannot confer jurisdiction by consent or waiver, *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 702 (1982), and federal courts instead have the obligation to assure themselves of jurisdiction before reaching the merits. *Steel Co. v. Citizens for a Better Env't.,* 523

U.S. 83, 95 (1998). As explained below, Plaintiffs lack standing to sue under § 8005. As such, Plaintiffs are unlikely to prevail on the merits.

Under Article III, federal courts cannot issue advisory opinions, *Muskrat v. United States*, 219 U.S. 346, 356-57 (1911), but must instead focus on the cases or controversies presented by affected parties before the court. U.S. CONST. art. III, § 2. "All of the doctrines that cluster about Article III — not only standing but mootness, ripeness, political question, and the like — relate in part, and in different though overlapping ways, to … the constitutional and prudential limits to the powers of an unelected, unrepresentative judiciary in our kind of government." *Allen v. Wright,* 468 U.S. 737, 750 (1984) (internal quotation marks omitted). Under these limits, a federal court lacks the power to interject itself into public-policy disputes when the plaintiff lacks standing.

At its constitutional minimum, standing presents the tripartite test of whether the party invoking a court's jurisdiction raises a sufficient "injury in fact" under Article III: (a) legally cognizable "injury in fact" that constitutes "an invasion of a legally protected interest," (b) caused by the challenged action, and (c) redressable by a court. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-62 (1992) (internal quotation marks omitted). In addition, the judiciary has adopted prudential limits on standing that bar review even when the plaintiff meets Article III's minimum criteria. *See, e.g.*, *Valley Forge Christian Coll. v. Ams. United for Separation of*

Church & State, Inc., 454 U.S. 464, 475 (1982) (zone-of-intertest test); *Secretary of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 955 (1984) (litigants must raise their own rights). Moreover, all of these constitutional and prudential criteria must align to provide standing for a given injury, *Mountain States Legal Found. v. Glickman*, 92 F.3d 1228, 1232 (D.C. Cir. 1996), and plaintiffs must establish standing separately for each form of relief they request. *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996) ("standing is not dispensed in gross,"); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 & n.5 (2006). The Government argues that Plaintiffs lack prudential standing but appears to concede that Plaintiffs have constitutional standing. In fact, however, Plaintiffs lack both forms of standing.

1. Plaintiffs' aesthetic interests are insufficiently related to an "injury in fact" to satisfy Article III jurisdiction.

A plaintiff can, of course, premise its standing on non-economic injuries, *Valley Forge Christian Coll.*, 454 U.S. at 486 ("standing may be predicated on noneconomic injury"), including a "change in the aesthetics and ecology of [an] area," *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972). But the threshold requirement for the "the irreducible constitutional minimum of standing" is that a plaintiff suffered an "injury in fact" through "an invasion of a *legally protected interest* which is … concrete and particularized" to that plaintiff. *Defenders of Wildlife*, 504 U.S. at 560 (emphasis added). To be sure, the requirement for particularized injury typically poses the biggest problem for plaintiffs — for

example, *Valley Forge Christian College* and *Morton*, *supra*, turned on the lack of a particularized injury — but the requirement for a legally protected interest is even more basic.

As the Supreme Court recently explained in rejecting standing for *qui tam* relators based on their financial stake in a False Claims Act penalty:

> There is no doubt, of course, that as to this portion of the recovery — the bounty he will receive if the suit is successful — a *qui tam* relator has a concrete private interest in the outcome of the suit. But the same might be said of someone who has placed a wager upon the outcome. *An interest unrelated to injury in fact is insufficient to give a plaintiff standing*. The interest must consist of obtaining compensation for, or preventing, the violation of a legally protected right. A *qui tam* relator has suffered no such invasion[.]

Vt. Agency of Nat. Res. v. United States ex rel. Stevens, 529 U.S. 765, 772-73 (2000) (emphasis added, interior quotation marks, citations, and alterations omitted). Thus, even money does not necessarily qualify as an injury in fact. Rather, "Art. III standing requires an injury with a nexus to the substantive character of the statute or regulation at issue." *Diamond v. Charles*, 476 U.S. 54, 70 (1986).[2] The statutes at

[2] After rejecting standing based on an interest in a *qui tam* bounty, *Stevens* held that *qui tam* relators have standing on an assignee theory (*i.e.*, the government has an Article III case or controversy and assigns a portion of it to the *qui tam* relator). *Stevens*, 529 U.S. at 771-73. Outside of taxpayer-standing cases that implicate the Establishment Clause, the nexus test of *Flast v. Cohen*, 392 U.S. 83 (1968), typically arises in cases challenging a failure to prosecute. *See*, *e.g.*, *Nader v. Saxbe*, 497 F.2d 676, 680-82 (D.C. Cir. 1974); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617-18 (1973) ("in the unique context of a challenge to a criminal statute, appellant has failed to allege a sufficient nexus between her injury and the government action which she

issue here have no nexus to Plaintiffs' aesthetic injuries: § 8005 conveys no rights, and § 284 expressly allows building the planned border projects. For this reason, Plaintiffs have not suffered an injury in fact for the claims under § 8005 and § 284.[3]

Fifty years ago, federal courts would have rejected as a generalized grievance any injuries to a plaintiff that challenged only the federal funding of an otherwise lawful project:

> This Court has, it is true, repeatedly held that … injury which results from lawful competition cannot, in and of itself, confer standing on the injured business to question the legality of any aspect of its competitor's operations. But competitive injury provided no basis for standing in the above cases simply because the statutory and constitutional requirements that the plaintiff sought to enforce were in no way concerned with protecting against competitive injury.

Hardin v. Ky. Utils. Co., 390 U.S. 1, 5-6 (1968) (citations omitted); *Alabama Power Co. v. Ickes*, 302 U.S. 464, 478-79 (1938). This Court need not resolve whether *Ickes* and *Hardin* remain good law because *Stevens* and *Diamond* certainly do. Plaintiffs' aesthetic injuries are sufficient interests to support standing for environmental claims like NEPA, but they are insufficient to support claims under § 8005 and § 284.

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attacks"). Even without the *Flast* nexus test, Article III nonetheless requires that the claimed interest qualify as a "legally protected right." *Stevens*, 529 U.S. at 772-73.

[3] Although this analysis parallels the prudential zone-of-interests test, *Stevens* makes clear that the threshold need for a *legally protected interest* is an element of the threshold inquiry under Article III of the Constitution, not a merely prudential inquiry that a party could waive.

2. The zone-of-interests test applies here to § 8005.

To avoid the zone-of-interests test, the District Court made several legal errors. First, the District Court limited the test to cases arising under statutory review or the Administrative Procedure Act ("APA"), Slip Op. at 29-30 (Gov't Ex. at 29-30). Second, citing *Haitian Refugee Ctr. v. Gracey*, 809 F.2d 794, 811 n.14 (D.C. Cir. 1987), the District Court found the test inapposite to *ultra vires* claims under equity. *Id.* at 30 (Gov't Ex. at 30). These findings are simply wrong.

While it is true that the Supreme Court *first adopted* the test in an APA case, the Court *subsequently adopted* the test for prudential standing generally. *See*, *e.g.*, *Valley Forge Christian Coll.*, 454 U.S. at 475; Gov't Br. at 10-12. Although the Supreme Court provided that "[t]he modern 'zone of interests' formulation … applies to all statutorily created causes of action," *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014), that does not unmoor the test from actions in equity or actions arising under the Constitution.

The District Court's invocation of *Gracey* misapplies that extra-circuit authority. *Gracey* argued that, for *ultra vires* conduct, the zone-of-interests test is inapplicable or it applies the zone from the overarching constitutional issues raised by lawless agency action:

> It may be that a particular constitutional or statutory provision was intended to protect persons like the litigant by limiting the authority conferred. If so, the litigant's interest may be said to fall within the zone protected by

> the limitation. Alternatively, it may be that the zone of interests requirement is satisfied because the litigant's challenge is best understood as a claim that *ultra vires* governmental action that injures him violates the due process clause.

Gracey, 809 F.2d at 812 n.14. Here, Plaintiffs seek to enforce § 8005, not the Due Process Clause or any other constitutional provision. "A claim of error in the exercise of [delegated] power is … not sufficient" to allege *ultra vires* action, *Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 101 n.11 (1984), and Plaintiffs cannot convert their *statutory* arguments into constitutional claims. *Dalton v. Specter*, 511 U.S. 462, 473 (1994). While *Gracey* may apply when government action indeed violates the Constitution, it does not apply here.

3. Plaintiffs' aesthetic interests fall outside § 8005's zone of interests.

Assuming *arguendo* that Plaintiffs have constitutional standing based on their aesthetic injuries, *but see* Section I.A.1, *supra*, Plaintiffs remain subject to the zone-of-interests test, *see* Section I.A.2, *supra*, which defeats their claims for standing to sue under § 8005 and § 284. Quite simply, nothing in the 2019 DoD appropriations act generally or § 8005 specifically supports an intent to protect aesthetic interests from military construction projects funded with transferred funds. For its part, § 284 *expressly allows* the challenged projects, 10 U.S.C. § 284(b)(7), and therefore does not support a right to stop those projects.

To satisfy the zone-of-interests test, a "plaintiff must establish that the injury

he complains of (*his* aggrievement, or the adverse effect *upon him*) falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Air Courier Conference v. Am. Postal Workers Union*, 498 U.S. 517, 523-24 (1991) (interior quotation marks omitted, emphasis in original). Not every frustrated interest falls with a statute's zone of interests:

> [F]or example, the failure of an agency to comply with a statutory provision requiring "on the record" hearings would assuredly have an adverse effect upon the company that has the contract to record and transcribe the agency's proceedings; but since the provision was obviously enacted to protect the interests of the parties to the proceedings and not those of the reporters, that company would not be "adversely affected within the meaning" of the statute.

Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 883 (1990). *Amicus* respectfully submits that environmental interests are even further afield from § 8005 and § 284 than court reporters' fees are from a statute requiring hearings on the record. Not every adverse effect on a private interest falls within the zone of interests that Congress sought to protect in a tangentially related statute.

B. The Plaintiffs are unlikely to prevail in establishing a violation of § 8005.

Plaintiffs have not argued that § 284 prohibits border-barrier construction, but rather argue that § 8005 and provisions of the Consolidated Appropriations Act of 2019, PUB. L. NO. 116-6, 132 Stat. 2981 (2019), related to DHS prohibit DoD from replenishing available funds by transferring appropriated funds. *Amicus* respectfully

submits that the Government handily dispatches Plaintiffs' arguments by showing that DHS requested DoD's assistance months after Congress enacted the 2019 DoD appropriation and that appropriating DHS $1.375 billion for DHS border-wall construction did not deny funds within the meaning of the appropriation statutes. *See* Gov't Br. at 13-17.

With respect to repeals by implication, the Supreme Court recently has explained that a court will not presume repeal "unless the intention of the legislature to repeal is clear and manifest" and "unless the later statute expressly contradicts the original act or … such a construction is absolutely necessary in order that the words of the later statute shall have any meaning at all." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662 (2007) (interior alterations, citations, and quotation marks omitted). Given its silence on DoD transfers and expenditures for border-wall funding, a DHS appropriation cannot implicitly repeal DoD's existing authority.

II. THE REMAINING STAY CRITERIA TIP IN THE GOVERNMENT'S FAVOR.

Although Plaintiffs' lack of standing and weakness on the merits are enough to justify staying the preliminary injunction, *Amicus* addresses the three other *Nken* factors. All three remaining factors weigh in favor of a stay.

A. The Governnment will suffer irreparable harm without a stay.

The Government's motion explains the serious and irreparable harms raised

by a delay in the border-barrier projects. *See* Gov't Br. at 18-22. Quite simply, people will die — whether from border crossings, border interdictions, or drug use and related violence — if this Court allows the District Court's preliminary injunction to remain in place. Moreover, the District Court's enjoining the federal sovereign without Article III jurisdiction violates the separation of powers, which inflicts a separation-of-powers injury on the Executive Branch. Under Circuit precedent, "the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (interior quotation marks omitted). The Government will suffer irreparable injury unless this Court stays the preliminary injunction.

B. The balance of hardships favors the Government.

As the Government explains, the serious and irreparable harms from delaying the border-barrier projects outweigh the minor aesthetic interests Plaintiffs cited in support of the extraordinary relief they have sought. *See* Gov't Br. at 18-22. With respect to their claims of irreparable harm, Plaintiffs have two problems, one factual and one legal. First, factually, the Government's efforts to reduce drug trafficking in the project areas will make the areas *more accessible* to aesthetic interests, not less accessible. Second, legally, injuries that qualify as sufficiently immediate under Article III can nonetheless fail to qualify under the higher bar for irreparable harm, *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149-50, 162 (2010), and an

absence of jurisdiction "negates giving controlling consideration to the irreparable harm." *Heckler v. Lopez*, 464 U.S. 879, 886 (1983) (Brennan, J., dissenting from the denial of motion to vacate the Circuit Justice's stay). The best reading of the applicable laws holds that Plaintiffs lack a cognizable interest here, *see* Section I.A, *supra*, which tips the balance of hardships decidedly to the Government.

C. The public interest favors the Government.

The last stay criterion is the public interest. Where the parties dispute the lawfulness of government programs, this last criterion collapses into the merits. *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994). If the Court agrees with the Government on the merits, the public interest will tilt decidedly toward the Government: "It is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of … governments in carrying out their domestic policy." *Burford v. Sun Oil Co.,* 319 U.S. 315, 318 (1943). In public-injury cases, equitable relief that affects competing public interests "has never been regarded as strictly a matter of right, even though irreparable injury may otherwise result to the plaintiff" because courts also consider adverse effects on the public interest. *Yakus v. United States*, 321 U.S. 414, 440 (1944). The public interest lies in ameliorating the humanitarian and security crises at the border — as demonstrated by the President's declaration of an emergency.

CONCLUSION

For the foregoing reasons and those argued by the Government, this Court should stay the preliminary injunction pending appeal.

Dated: June 10, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) and 29(c)(5), because:

This brief contains 3,554 words and 15 pages, including footnotes, but excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

Dated: June 10, 2019

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