



**U.S. Department of Justice**  
Civil Division

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**VIA CM/ECF**

January 28, 2020

Honorable Molly C. Dwyer, Clerk of Court  
United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103

RE: *Doe v. Trump*, Appeal No. 19-36020  
Oral Argument on the Government's Motion for Stay Pending Appeal: January 9, 2020  
Panel Members: Chief Judge Thomas, Judge Berzon, Judge Bress

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), the Government wishes to bring to the Court's attention the Supreme Court's order yesterday in *Department of Homeland Security v. New York*, No. 19A785, 2020 WL 413786 (2020), staying two district court orders granting universal preliminary injunctions of DHS's "public charge" rule. This Court recently granted a similar stay of an injunction against that rule in *City and County of San Francisco v. USCIS*, 944 F.3d 773 (9th Cir. 2019). Justice Gorsuch's concurring opinion in *New York* is particularly relevant here because of its discussion of universal injunctions. Slip Op. at 1-5.

The Government's motion to stay the universal preliminary injunction pending appeal in this case argued that, even if the Court does not grant a stay in full, it should narrow the scope of the injunction. Dkt. 2-1 at 20-23. The Government explained that the district court had no power to issue a universal injunction here because an injunction limited to the seven individual plaintiffs and the clients of the one organizational plaintiff would be adequate to provide relief to the parties before the court. *Id.* In response, Plaintiffs did not argue that a universal injunction was necessary to provide relief to the named parties; they instead argued that "the challenged policy has demonstrably national, systemwide impact," and that a universal injunction would provide relief to "putative class members across the country." Dkt. 16-1 at 21-22.

As Justice Gorsuch explains in his concurring opinion in *New York*, all universal injunctions "share the same basic flaw—they direct how the defendant must act toward persons who are not parties to the case." Slip Op. at 3. Indeed, when a court "order[s] the government to take (or not take) some action with respect to those who are strangers to the suit, it is hard to see how the court could still be acting in the judicial role of resolving cases and controversies." *Id.* Accordingly, Justice Gorsuch's concurring opinion in *New York* instructs that this Court should, at a minimum, narrow the universal preliminary injunction under review.

Sincerely,

/s/ Courtney E. Moran  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2020, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit 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/ Courtney E. Moran*  
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