No. 20-2537

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF CONNECTICUT, STATE OF VERMONT, MAKE THE ROAD NEW YORK, AFRICAN SERVICES COMMITTEE, ASIAN AMERICAN FEDERATION, CATHOLIC CHARTIES COMMUNITY SERVICES (ARCHDIOCESE OF NEW YORK), and CATHOLIC LEGAL IMMIGRATION NETWORK INC.,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, PETER T. GAYNOR, in his official capacity as Acting Secretary of the United States Department of Homeland Security, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, DIRECTOR KENNETH T. CUCCINELLI II, in his official capacity as Acting Director of United States Citizenship and Immigration Services, and UNITED STATES OF AMERICA.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of New York

REPLY BRIEF FOR APPELLANTS

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INTRODUCTION

As this Court recognized in granting the government's motion for a stay pending appeal, the district court issued a preliminary injunction that is "virtually identical" to the district court's earlier injunctions that were then pending on appeal before this Court. JA 574. The district court lacked jurisdiction to enter such an injunction. Under well-settled law, once a party files a timely notice of appeal the district court no longer has jurisdiction over "those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). That jurisdiction-stripping rule is important: it prevents the "waste of judicial resources" that would otherwise occur were "two courts to be considering the same issues in the same case at the same time." *New York State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1349 (2d Cir. 1989). And it prevents district courts from changing the status quo while an appeal is pending in this Court, thereby ensuring that both this Court and the parties can focus on a static target while resolving a pending appeal.

That jurisdiction-stripping rule serves a particularly important function where—as here—a higher court has stayed the district court's earlier preliminary injunction. In those circumstances, allowing a district court to issue seriatim preliminary injunctions against the same conduct based on new factual circumstances would raise the prospect of on-again-off-again injunctions as the case bounces back and forth between a district court firmly convinced that an injunction should be in place and this Court or the Supreme Court directing that it should not be. Indeed, the

challenged preliminary injunction here not only flies in the face of the Supreme Court's order staying the district court's earlier preliminary injunctions in these very cases but also of decisions staying similar injunctions issued by other courts across the country, each of which has been stayed either by a court of appeals or by the Supreme Court. *See Wolf v. Cook County*, 140 S. Ct. 681 (2020); *City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 944 F.3d 773 (9th Cir. 2019); Order, *Casa de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019).

Contrary to plaintiffs' arguments, the mere fact that the district court purported to rebalance the equities based on newly arising facts and circumstances did not give it jurisdiction to issue the challenged injunction. The challenged injunction enjoins the same rule based on the same merits claims brought by the same plaintiffs, and—like the earlier injunctions—it does so nationwide. Indeed, the district court adopted its earlier merits analysis wholesale before moving on to the equities. As explained in the government's opening brief, a district court cannot be allowed to circumvent the jurisdiction-stripping effect of a notice of appeal simply by citing some changed facts and purporting to rebalance the equities, while doubling down on merits analysis that was then pending on review in this Court.

Even if this Court were to conclude that the district court had jurisdiction to issue the challenged injunction, it should at the very least limit the injunction's geographic scope to apply only to the plaintiff States. An injunction 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). As this Court recognized in limiting the scope of the earlier preliminary injunctions, plaintiffs here allege harms stemming from application of the Rule to individuals living within the plaintiff States, and there is no need for an injunction that extends beyond those plaintiff States in order to remedy those harms. *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 88 (2d Cir. 2020). The nationwide scope of the challenged injunction is particularly problematic given that the Supreme Court and other Circuits have stayed other preliminary injunctions issued across the country. *New York*, 969 F.3d at 88. Allowing the nationwide scope of the district court's injunction to stand would effectively override those rulings and stays issued by the Supreme Court and other federal courts of appeals, thereby dictating treatment of the Rule for the entire country.

ARGUMENT

I. The District Court Did Not Have Jurisdiction To Issue The New Preliminary Injunction

A. Plaintiffs do not contest that "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982); *accord Leonhard v. United States*, 633 F.2d 599, 609 (2d Cir. 1980) ("[T]he filing of a timely and sufficient notice of appeal immediately transfers jurisdiction, as to any matters involved in the appeal,

from the district court to the court of appeals."). Thus, "[o]nce a proper appeal is taken," the district court lacks jurisdiction over all "matters involved in the appeal," and "may generally take action only in aid of the appeal or to correct clerical errors as allowed by" the Federal Rules of Civil Procedure. *Id.* at 609-610; *see also New York State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1349 (2d Cir. 1989) (stating that an appeal "terminates the district court's consideration and control over those aspects of the case that are on appeal").

For the reasons given in the government's opening brief, that jurisdiction-stripping rule applies here. Br. 19-21. The district court's new preliminary injunction necessarily turns on "matters involved in the appeal" of the original preliminary injunctions, *Leonhard*, 633 F.2d at 609, including plaintiffs' likelihood of success on the merits and the degree of harm an injunction blocking the Rule will cause to the government and the public.

Plaintiffs' primary response is to argue that the new injunction was "premised on new facts and circumstances that were not, and could not have been, at issue in the first injunction"—namely, the COVID-19 pandemic and new alleged harms to plaintiffs arising out of the pandemic. Gov. Pls.' Br. 33-34. But the relevant question is not whether any of the facts and circumstances were new, but rather whether, as plaintiffs properly put it, the district court exercised "'jurisdiction respecting the questions raised and decided in the order' on appeal." *Id.* at 31 (quoting *Terry*, 886 F.2d at 1350). Here, there can be no serious dispute that the district court's new

preliminary injunction turned on issues decided in the order that was then on appeal. *See* Br. 19-20. For example, the district court recognized that it could not issue its new preliminary injunction unless it first determined that plaintiffs were "likely to succeed on the merits" of their challenge to the Rule. SA 18 (quotation marks omitted). And in concluding that plaintiffs satisfied that requirement, the district court simply incorporated by reference its earlier merits analysis regarding the very issues that were then pending before this Court. SA 22 ("[T]his Court has already found that Plaintiffs are likely to succeed on the merits of their claims."). As the motions panel recognized in granting the government's motion for a stay pending appeal, "the district court undertook to reconsider the very preliminary injunction that was under review in this Court, and simply provided new reasons to justify the preliminary relief itself." JA 575. That is precisely what the jurisdiction-stripping rule prohibits.

Plaintiffs also assert that a district court "retains jurisdiction to issue additional injunctive relief based on new circumstances not addressed in the pending appeal." Gov. Pls.' Br. 32. But the only in-circuit precedent plaintiffs cite in support of that claim is *International Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Eastern Air Lines, Inc.*, 847 F.2d 1014 (2d Cir. 1988).[1] As explained in the government's opening

[1] Plaintiffs also cite a 1998 decision from the Seventh Circuit, *Adams v. City of Chicago*, 135 F.3d 1150, but that case does not support plaintiffs' argument. In that case, the district court denied the plaintiffs' original motion for a preliminary

brief (Br. 22-23), and as the motions panel of this Court already recognized in granting defendants' stay (JA 575-576), that case does not support plaintiffs' assertion. *International Ass'n of Machinists* held only that, "where an appeal of an injunction is pending, Federal Rule of Civil Procedure 62 grants the district court specific authority to 'suspend, modify, restore, or grant an injunction during the pendency of the appeal,'" but that rule "should be 'narrowly interpreted to allow district courts to grant only such relief as may be necessary to preserve the status quo.'" JA 575-576. That holding has no application here because there is no question that the district court's injunction "*disrupted* the status quo by imposing an injunction where the Supreme Court had stayed the preexisting injunctions." JA 576 (emphasis added). Plaintiffs claim that *International Ass'n of Machinists* nevertheless supports jurisdiction here because the injunction at issue in that case did more than "preserve the status quo," yet this Court nevertheless reached the merits and affirmed the injunction. 847 F.3d at 1018. But this Court reached the merits only because the parties consented to treat

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injunction. *See* 135 F.3d at 1153. While the plaintiffs' appeal of that original preliminary injunction was pending, the plaintiffs asked the Seventh Circuit to remand the appeal to the district court so that the plaintiffs could again move for a preliminary injunction based on new facts. The Seventh Circuit directed the plaintiffs to first seek an indicative ruling from the district court, and to then ask for a remand if the district court indicated that it was inclined to grant the plaintiffs' second request for a preliminary injunction. *Id.* Although the court suggested that course might not have been necessary in that case because the then-governing Seventh Circuit Rule codifying the indicative-ruling procedure applied only to final judgments, the court did not discuss the jurisdiction-stripping rule at issue here, *id.* at 1153-54, and there is no dispute that the indicative-ruling procedure now applies to preliminary injunctions (indeed, plaintiffs now seek to rely on it, *see infra* pt. B).

the new motion in that case "as a new action" and to treat the "motion to vacate the injunction as an appeal." *Id.* Plaintiffs concede that "the parties did not reach such an agreement here," Gov. Pls.' Br. 33 n.6, and do not explain why this Court bothered with its jurisdictional analysis if the case stands generally for the proposition that the jurisdiction-stripping rule can be evaded so long as there are new factual developments (as there were in that case).

Plaintiffs mistakenly assert that a notice of appeal only strips the district court of "jurisdiction to vacate or alter [an] injunction in ways that would undermine or interfere with the orderly disposition of the pending appeal." Gov. Pls.' Br. 32. But this Court has held that the jurisdiction-stripping effect of a notice of appeal is not so limited. The jurisdiction-stripping rule exists in part "[b]ecause it is a waste of judicial resources for two courts to be considering the same issues in the same case at the same time." *Terry*, 886 F.2d at 1349. Thus, the filing of a notice of appeal does not only prevent a district court from "vacat[ing] or alter[ing]" the order that is the subject of the appeal, Gov. Pls.' Br. 32, but instead entirely "terminates the district court's consideration and control over those aspects of the case that are on appeal," *Terry*, 886 F.2d at 1349.

In any event, plaintiffs offer no explanation for why the new injunction does not interfere with the orderly disposition of the prior appeal. Indeed, as explained in DHS's opening brief, allowing a district court to simply rebalance the harms and issue a "new" preliminary injunction—enjoining exactly the same conduct on exactly the

same merits argument—while an appeal of an earlier preliminary injunction is pending would be unworkable. The prospect of seriatim preliminary injunctions against the same conduct based on new factual circumstances (but the same merits arguments) would create a moving target for both litigants and this Court and could result in a string of on-again-off-again injunctions as the district court repeatedly issues new injunctions that this Court or the Supreme Court then stays pending appeal. And even in the absence of a stay, it would greatly interfere with the orderly disposition of an appeal of a preliminary injunction if a new, superseding injunction could pop up at any time.

B. In the alternative, plaintiffs invoke Federal Rule of Civil Procedure 62.1 and Federal Rule of Appellate Procedure 12.1, which govern the issuance of indicative rulings. The district court acknowledged the potential that a reviewing court might determine that it did not "have jurisdiction to issue this injunction" and therefore issued an indicative ruling in the alternative. SA 31. Plaintiffs assert that—if this Court concludes that the district court lacked jurisdiction—it should rely on the district court's alternative indicative ruling and remand this case "for the district court to issue the second injunction now, while retaining jurisdiction over this appeal so that the Court can quickly resolve the appeal as soon as the district court reissues its order." Gov. Pls.' Br. 37.

Plaintiffs have not properly invoked the indicative-ruling procedure. If the district court issues an indicative ruling both Federal Rule of Civil Procedure 62.1 and

Federal Rule of Appellate Procedure 12.1 require that the moving party "*promptly* notify the circuit clerk" of the district court's indicative ruling so that the court of appeals may consider whether to remand for further proceedings. Fed. R. Civ. P. 62.1 (emphasis added); Fed. R. App. P. 12.1 (emphasis added). The moving party can then file a motion in this Court asking to remand the action under Federal Rule of Appellate Procedure 12.1. *See, e.g.*, *Augustine v. Commissioner of Soc. Sec. Admin.*, No. 16-3914, 2017 WL 5634294, at *1 (2d Cir. July 17, 2017) ("Appellee moves, unopposed, to remand this action to the district court under Federal Rule of Appellate Procedure 12.1."); *Arnold v. Colvin*, No. 16-3313, 2017 WL 4404581, at *1 (2d Cir. Feb. 3, 2017) ("Appellee moves to remand this action to the district court under Federal Rule of Appellate Procedure 12.1.").

Here, plaintiffs neither notified this Court "promptly" of the district court's indicative ruling, nor filed a timely motion asking this Court to remand this appeal (or the prior appeal) to allow the district court to enter a new injunction. Even if plaintiffs could seek a remand under Federal Rule of Appellate Procedure 12.1 in this appeal at this time, remand under Rule 12.1 is discretionary. *See* Fed. R. App. P. 12.1 (stating that "the court of appeals *may* remand for further proceedings but retains jurisdiction" (emphasis added)). As discussed below, no further injunction by the district court is warranted, as any such injunction would merely be an effort to override the Supreme Court's stay decision. *See infra* Part II. And plaintiffs' significant delay in asking this Court to give effect to the district court's alternative

indicative ruling counsels in favor of this Court exercising its discretion to deny plaintiffs' belated request.

In addition, plaintiffs fundamentally misunderstand the indicative-ruling procedure. The jurisdictional problem with the district court's ruling does not arise from this appeal, which was (obviously) not pending at the time the district court issued the injunction that is now on appeal. The jurisdictional problem arises because the district court issued its new injunction while its earlier injunctions were on appeal. Sending this appeal back would do no good.

II. The District Court Abused Its Discretion In Issuing A New Preliminary Injunction Despite The Supreme Court's Stay Of The Earlier Preliminary Injunctions In These Cases

Because the district court lacked jurisdiction to issue its new preliminary injunction, this Court need not address whether the district court correctly rebalanced the equities in doing so. But as explained in the government's opening brief, even apart from the jurisdictional defect, the district court's renewed injunction gave impermissibly short shrift to the Supreme Court's order staying earlier, nearly identical preliminary injunctions in these cases. Plaintiffs do not contest that the only practical effect of the district court's new preliminary injunction was to override the Supreme Court's determination and to prohibit the Rule from remaining in effect while appellate review of the prior injunctions proceeds. Even if a district court had jurisdiction to reissue a preliminary injunction with new justifications while an appeal of an earlier, substantively identical preliminary injunction was pending, it would not

be appropriate to do so in the unusual circumstance where, as here, the earlier preliminary injunction has been stayed pending appeal by this Court or the Supreme Court.

Plaintiffs attempt to gloss over the Supreme Court's stay by arguing that the Supreme Court's decision did not address the new factual developments on which the district court relied and did not provide a "definitive adjudication on the merits." Gov. Pls.' Br. 39. But the government is not urging that the district court was bound by the Supreme Court's decision as a matter of precedent. Rather, the problem is that the district court's new injunction disrupted the Supreme Court's stay—indeed, that was its sole purpose. The district court could not lift the Supreme Court's stay, and it would not be appropriate to take an action with that practical effect even if it had jurisdiction to do so. And plaintiffs' argument does not even attempt to account for the fact that the Supreme Court denied a request to lift the stay, or address the government's explanation of why the district court over-read the Supreme Court's statement that its denial of the stay did not preclude relief in the district court, *see* Br. 23-24. Like the district court, plaintiffs instead treat this case as if the district court was entitled to determine whether the Rule should remain in effect while the case is pending before the Supreme Court without regard to the Supreme Court's determination on that specific issue.

Presumably recognizing these considerations, the Seventh Circuit, acting through a panel that included the same judges who joined the majority opinion

affirming a preliminary injunction against the Rule, stayed a partial final judgment vacating the Rule pending the Supreme Court's consideration of the government's petition for certiorari in that case. *See* Order, *Cook County v. Wolf*, No. 20-3150 (7th Cir. Nov. 19, 2020). That court also suspended briefing in the court of appeals while the petition for certiorari was pending. This Court should likewise hold that it is inappropriate for a district court to disrupt the Supreme Court's stay.

The district court's new injunction here was especially inappropriate because the changed circumstances that the district court identified in support of its new injunction do not logically justify the relief the district court granted. The district court premised its decision on its view that the Rule was likely to discourage the use of public benefits that are covered by the Rule during the COVID-19 pandemic. But the effects the district court identified flow not from the Rule itself but rather from third parties' misunderstandings of the Rule. As this Court recognized, longstanding statutory provisions make "non-citizens who are present in the United States illegally or who are admitted in a lawful non-immigrant (*i.e.*, temporary) status . . . ineligible for almost all federal benefits." *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 53 (2d Cir. 2020). As a result, the vast majority of aliens to whom the Rule is applicable—aliens who seek admission to the United States or who seek adjustment of status to that of a lawful permanent resident—are not currently eligible to receive the public benefits on which the Rule is focused. *See Cook County v. Wolf*, 962 F.3d 208, 237 (7th Cir. 2020) (Barrett, J., dissenting) (noting that aliens seeking admission

or to adjust to legal permanent resident status "are ineligible for the relevant benefits in their current immigration status"). And with respect to the few aliens who are both currently eligible for public benefits and subject to the Rule, on March 13, 2020—the same day that President Trump declared that the COVID-19 outbreak constitutes a national emergency—USCIS issued an alert to ensure that the Rule would not deter aliens from seeking necessary medical treatment or preventive services related to COVID-19. *See* JA 334.

In response, plaintiffs argue that the government is "wrong to assert that the Court must ignore" the harms the district court relied on simply because those harms "purportedly result solely from immigrants' 'mistaken beliefs about how the Rule will be applied.'" Gov. Pls.' Br. 50. But the government's argument is not that this Court must ignore those alleged harms, but rather that this Court, unlike the district court, should assess whether the injunction at issue in this case would actually remedy them. Plaintiffs—like the district court—recite the various alleged harms that confusion about the Rule's effect has caused. *See* Gov. Pls.' Br. 41-48. Plaintiffs do not, however, seriously contest that the harms they identify are caused not by the Rule itself, but by confusion and misunderstanding about how the Rule operates. And while plaintiffs assert that the various harms they identify "support the district court's preliminary injunction," Gov. Pls.' Br. 44, neither plaintiffs nor the district court has explained how the injunction would actually avert the threatened harms. It is not plausible that individuals who are avoiding public benefits, as defined in the Rule,

based on unfounded fears about the Rule's future application will suddenly change their behavior based on the issuance of a time-limited preliminary injunction by the district court in this case. After all, if the Rule's legal effect does not cause those harms, then suspending the Rule's legal effect—especially through a necessarily temporary preliminary injunction—cannot cure them.

Plaintiffs have not offered evidence that would suggest otherwise. For example, they have made no showing that the district court's earlier nationwide injunction increased public benefits usage during the period it was in effect between October 2019 and January 2020. Nor do plaintiffs explain how a new preliminary injunction, which could be stayed or overturned at any time on appeal, is likely to encourage aliens who mistakenly believe that seeking testing and treatment for COVID-19 would be used against them to take advantage of those benefits. And while plaintiffs complain that the agency's clarification about how the Rule will and will not apply during the COVID-19 pandemic has failed to mitigate the harms they identify, Gov. Pls.' Br. 48-49, plaintiffs offer no reason to conclude that a temporary injunction against the Rule will mitigate those harms more effectively than the agency's own clarification directly addressed to COVID-19.

Although plaintiffs argue—as they did before the district court—that harm caused by confusion about the Rule should be counted against the Rule, they fail to establish that a new injunction would materially alter that confusion. Instead, they assert, without citation or explanation, that the injunction will provide needed "clarity

and confidence about using" healthcare and other public benefits. Gov. Pls.' Br. 54. Plaintiffs make no effort to explain why a temporary injunction that is by its terms time limited and also subject to revisiting at any time by the district court or to reversal or stay by this Court or the Supreme Court will provide the "clarity and confidence" that was elusive despite (1) the Rule's complete inapplicability to most aliens who would actually be considering obtaining benefits; and (2) DHS's explicit statement that COVID-19 testing and treatment would not be considered for purposes of the Rule. The public would be better served by a unified message clarifying the circumstances in which the Rule does or does not apply, rather than by the message that an injunction is needed to allow aliens to engage in activities that would not be affected by the Rule in any event.

Moreover, neither plaintiffs nor the district court have even attempted to address the changed circumstances that cut in the other direction. At the time the district court issued its preliminary injunction, the Rule had been in effect for five months. Enjoining a Rule that has already taken effect will only exacerbate the same harms that supposedly justify the injunction—sowing additional confusion about the effects of the Rule and depriving aliens and the government of clarity about which scheme should apply.

III. The District Court Independently Erred By Issuing A Nationwide Injunction

At a minimum, this Court should vacate the new injunction insofar as it sweeps more broadly than necessary to redress plaintiffs' alleged injuries. This Court's decision to similarly limit the district court's earlier preliminary injunctions was correct, and all of the same concerns that drove that decision are at play here. There remains "a volatile litigation landscape" concerning the legality of the public charge rule, *New York*, 969 F.3d at 88. Multiple district courts across the country have issued multiple preliminary injunctions against the Rule, each of those injunctions has been stayed by a court of appeals or the Supreme Court, and appeals of those preliminary injunctions remain pending in courts of appeals or the Supreme Court. And just as this Court saw "no need for a broader injunction at this point," given that the modified injunction "covers the State plaintiffs and the vast majority of the Organizations' operations," so too there is no need for a broader injunction now. *Id.*

Moreover, as this Court also recognized, the nationwide scope of the district court's preliminary injunction is particularly problematic given that the Supreme Court and other Circuits have stayed other preliminary injunctions issued across the country. *New York*, 969 F.3d at 88; *see Wolf v. Cook County*, 140 S. Ct. 681 (2020); *City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 944 F.3d 773 (9th Cir. 2019); Order, *Casa de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019). Two Justices emphasized the inappropriateness of nationwide injunctions in the context of

these very cases. JA 327-331 (Gorsuch, J., concurring, joined by Thomas, J.). The district court's decision here should not be permitted to override those stays issued by the Supreme Court and other federal courts of appeals, thereby dictating treatment of the Rule for the entire country.

That the Fourth Circuit has now granted rehearing en banc and vacated its decision upholding the Rule, *see Casa de Maryland, Inc. v. Trump*, 981 F.3d 311, 313 (4th Cir. 2020), and that the Ninth Circuit has now issued a decision affirming a preliminary injunction against the Rule, *see City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, 981 F.3d 742 (9th Cir. 2020), does not demonstrate that the "litigation landscape" has materially changed. *See* Org. Pls.' Br. 10-12. Neither court has lifted its stay of the Rule. The Fourth Circuit's stay remains in effect while that court conducts en banc proceedings. And the Ninth Circuit's stay will remain in effect until the mandate issues; the government has moved to stay the mandate pending a petition for certiorari—a motion on which the plaintiffs in that case take no position—and has filed a petition for a writ of certiorari in the Supreme Court. Thus, it remains the case that appeals of the various preliminary injunctions against the Rule are still pending. And it remains the case that the preliminary injunction the district court issued here, like nationwide injunction this Court rejected in its prior appeal, supersedes contrary rulings of numerous courts—invalidating the Rule even in circuits where similar preliminary injunctions against the Rule have been stayed.

Plaintiffs also suggest that there are material differences between this appeal and the last one because they assert that the new, temporary injunction issued by the district court will help to prevent the interstate spread of COVID-19. Org. Pls.' Br. 3-9. But the unproven presumptions discussed above regarding the effect of the injunction on aliens who are not affected by the Rule, *see supra* pp. 12-15, are even more tenuous when the injunction in question was issued by a district court on the opposite side of the country whose authority to craft legal rules for far-away States has repeatedly been called into question. Concerns about judicial comity far outweigh any benefit of attempting to limit the spread of COVID-19 within the plaintiff States by influencing behavior by people outside of those States through a temporary injunction of a Rule that, in the vast majority of cases, does not actually apply to those people to begin with.

At the very least, this Court should therefore follow the same course as in the prior appeal and limit the nationwide scope of the district court's injunction.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, and the court's preliminary injunction should be vacated.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 4,790 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Jack Starcher
Jack Starcher

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2021, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Second 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/ Jack Starcher
Jack Starcher