IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VICTOR MOCANU V. ROBERT S. MUELLER, ET AL.	CIVIL ACTION No. 07-0445
GUISEPPE CUSUMANO V. MICHAEL B. MUKASEY, ET AL.	CIVIL ACTION No. 07-0971
MOHAMMAD BARIKBIN V. UNITED STATES, ET AL.	CIVIL ACTION No. 07-3223
ANDREW O. NEWTON, M.D. V. DONALD MONICA, et al.	CIVIL ACTION No. 07-2859
TONGZIAO ZHANG V. MICHAEL CHERTOFF, et al.	CIVIL ACTION No. 07-2718
SAID HUSSAIN V. MICHAEL B. MUKASEY, et al.	CIVIL ACTION No. 08-195

DEFENDANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL OF THIS COURT'S INJUNCTIVE ORDER

Defendants, through their undersigned counsel, hereby respectfully submit their emergency motion for a stay pending a determination by the Solicitor General whether to file an appeal of this court's February 8, 2008, Order (Enclosure 1) enjoining Defendants from using the FBI name check program as a factor in the decision making as to the Plaintiffs' naturalization applications, unless United States Citizenship and Immigration Services ("USCIS") initiates a notice and comment procedure concerning its use of the Federal Bureau of Investigation ("FBI") National Name Check Program ("NNCP") for investigations of naturalization applicants within thirty (30) days of the Order.

BACKGROUND

Plaintiffs allege that they are lawful permanent residents ("LPRs") whose naturalization applications have been pending for two to three years. They contend that their applications have been unreasonably delayed due to USCIS's use of the NNCP.

In an order dated February 8, 2008, this court concluded that USCIS' use of the NNCP has never been authorized by statute or regulation, and that its continued application to plaintiffs is improper because it has caused unreasonable delays to the adjudication of plaintiffs' naturalization applications. In its Order, this court enjoined USCIS from using the NNCP as a factor in the decision making as to the Plaintiffs' naturalization applications, unless a notice and comment procedure concerning USCIS's use of the NNCP for investigations of naturalization applicants is initiated within thirty (30) days of the Order.

ARGUMENT

I. THE FEBRUARY 8, 2008 ORDER IS IMMEDIATELY APPEALABLE AS OF RIGHT.

______Because the instant motion seeks a stay pending appeal, and the arguments presented in this memorandum are geared primarily towards the irreparable danger that appellate review will be lost without such relief, it is important at the threshold to demonstrate why the court of

appeals would have jurisdiction over the pertinent order in the event that USCIS were authorized to notice an appeal.

The February 8, 2008 order is appealable as an interlocutory order pursuant to 28 U.S.C. § 1292(a)(1), which provides as follows, in pertinent part:

> [T]he courts of appeals shall have jurisdiction of appeals from . . . [i]nterlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions . . . except where direct review may be had in the Supreme Court.

Id. As the February 8, 2008 order explicitly enjoins USCIS from using the FBI name check program as a factor in the decision making as to the Plaintiffs' naturalization applications, unless United States Citizenship and Immigration Services ("USCIS") initiates a notice and comment procedure concerning the Federal Bureau of Investigation ("FBI") name check program within thirty (30) days of the Order, this injunction falls squarely within 28 U.S.C. § 1292(a)(1).

II. A STAY PENDING POSSIBLE APPEAL IS JUSTIFIED IN THE INSTANT CIRCUMSTANCES.

As the Third Circuit Court of Appeals has held, in determining whether to grant a stay, the district courts shall consider the following factors:

> (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.

Republic of Philippines v. Westinghouse Elec. Corp., 949 F.2d 653, 658 (3d Cir. 1991); *Mutual Ben. Life Ins. Co. v. Zimmerman*, 787 F.Supp. 71 (D.N.J. 1992) (citing *Republic of Philippines*). These factors form a continuum on which the court balances each factor. *See, e.g., Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991) ("The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury [the movant] will suffer absent the stay. Simply stated, more of one excuses less of the other.") (citation omitted); *Cuomo v. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985). Here, a stay is fully warranted because the government is likely to succeed on the merits and unquestionably would suffer irreparable harm if a stay were not issued, while a stay would have no impact on the plaintiffs' current position and would be in the public interest.

A. <u>Defendants' Appeal Is Likely To Succeed On The Merits.</u>

In its February 8, 2008, order enjoining USCIS, this court found that "the record does not provide any support for the government's assertion, that by using the language 'full criminal background check,' Congress intended for the broader 'name check' investigation . . . [t]here is simply no legislation which mandates or authorizes USCIS to employ an FBI name check as a prerequisite for a lawful permanent resident to become a naturalized citizen." Order at 15-16. In making this finding, this court held counter to numerous decisions holding that the FBI name check can be synonymous with or part of the required "full criminal background check." Exploring the respective holdings in these cited cases, this court found that one case failed to address how "name check" became a required step (*Morral v. Gonzales*, 2007 WL 4233069 (D. Minn., Nov. 28, 2007). *Id.* at 16. This court also found unpersuasive the argument that USCIS's authority to require a name check may be derived by 8 C.F.R. § 335's use of the term "includes", a holding contrary to *Aman v. Gonzales*, 2007 WL 2694820 (D. Colo. Sept. 10, 2007), *Stepchuk v. Gonzales*, 2007 WL 185013 (W.D. Wash., Jan. 18, 2007), *Shalabi v. Gonzales*, 2006 WL 3032413 (E. D. Mo., Oct. 23, 2006), and implicitly, *Wang v. Gonzales*, 2008 WL 45492 (D. Kan., Jan. 2, 2008), which cites *Aman*, *Stepchuk* and *Shalabi. Id.*

Finally, this court found it "problematic that the policy USCIS has adopted . . . was never subject to the notice and comment procedures of rule-making in new regulations." *Id.* at 21. While noting that the government's position that "interpretive" rules are not subject to notice and comment procedures, *see id.*, this court found that "in requiring yet another name check in the naturalization process, USCIS has moved beyond an interpretive rule and its policies have severe impact on thousands of LPRs and their families. *Id.* at 23. Supporting this conclusion, this court concluded that the name check requirement was a substantive change with a substantive adverse impact on plaintiffs. *See id.* at 24.

1. This Court's Analysis Of The Statutory Background Failed To Properly <u>Incorporate The Entire Statutory Framework</u>.

These findings misconstrue the intent of 8 U.S.C. §§ 1443(a) & 1446(a), as well as the Congressional mandate found in Pub L. No. 105-119, Title I, 111 Stat. 2448 (Nov. 26, 1997), and

the regulation interpreting those requirements, 8 C.F.R. § 335. Where terms of a statute are not defined in the statute, a court must construe them in accordance with their ordinary and natural meaning, and the overall policies and objectives of the statute. *See SUPERVALU, Inc. v. Board of Trustees of Southwestern Pennsylvania and Western Maryland Area Teamsters and Employers Pension Fund*, 500 F.3d 334, 340 (3d Cir. 2007). While "statutes [must not be given] a more expansive interpretation than their text warrants . . . it is just as important not to adopt an artificial construction that is narrower than what the text provides." *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 558 (2005)). The plain meaning of 8 U.S.C. §§ 1443(a) & 1446(a), and Pub L. No. 105-119, Title I, 111 Stat. 2448 (Nov. 26, 1997) authorizes USCIS to conduct background investigations into applicants for naturalization, up to and including a personal investigation of the applicant. Accordingly, the inclusion of the FBI name check as part of the required investigation is well within the statutory mandate.

Both USCIS and the former Immigration and Naturalization Service ("INS") have performed background checks, including a criminal history check (also known as a fingerprint check) and a background check (also known as a "name check" or a "G-325A check") on all applicants for naturalization. The INS long considered police department checks and background investigations as part of the investigation of naturalization applicants. *See* Administrative Naturalization, 56 Fed. Reg. 50,475 (Oct. 7, 1991) (codified at 8 C.F.R. § 335.1) (requiring that "the investigation shall consist, at a minimum, of a review of all pertinent records, police department checks, and a neighborhood investigation . . ."). In fact, the INS gave notice beginning in 1995 that the Form G-325, or Biographical Information Form, would be used to "check other agency records (FBI, CIA, etc.) on applications or petitions submitted by applicants for benefits under the [INA]. . .," including naturalization applications. *See Information Collections Under Review*, 60 Fed. Reg. 38,371 (July 26, 2005). These checks are considered to be part of the personal investigation and examination required by 8 U.S.C. §§ 1443(a) & 1446(a).

In 1997, Congress mandated that no funds appropriated or otherwise made available to the former Immigration and Naturalization Service ("INS") shall be used to complete adjudication of an application for naturalization unless the agency has received confirmation

from the FBI that a full criminal background check has been completed. *See* Pub L. No. 105-119, Title I, 111 Stat. 2448 (Nov. 26, 1997). In response to Pub. L. No. 105-119, the agency adopted 8 C.F.R. § 335.2(b), which requires that the full criminal background check, including FBI checks of both criminal and administrative records, be completed before an interview of the applicant has been scheduled. See 8 C.F.R. § 335.2(b); 63 Fed. Reg. 12987 (1998). A full and complete background check is part of the inquiry into whether an applicant possesses good moral character. *See* INA § 316(a)(3), 8 U.S.C. § 1427(a)(3). Moreover, such checks also assist in identifying individuals barred from naturalization under 8 U.S.C. § 1424 -- information that would not necessarily be provided in only a criminal history check.

As a result, this Court erred by not giving proper consideration to this legislative and statutory history which supports Defendants' argument that Congress intended to provide the agency with the discretion to perform various investigations into the backgrounds for applicants for naturalization, which would include the discretion to use the FBI's NNCP as part of the investigation process.

2. This Court's Interpretation Of The Regulation Conflicts With The Vast Majority Of Courts That Have Interpreted The Statute.

The Court erred in failing to give deference to the agency's interpretation of its own regulation that it is charged with implementing. *See Chao v. Community Trust Co.*, 474 F.3d 75, 84-85 (3d Cir. 2007) (internal citations omitted). Federal regulations are subject to one of two levels of deference, described as either *Chevron* or *Skidmore* deference. Under the *Chevron* analysis, if Congress expressly delegates authority to the agency to make rules carrying the force of law and the agency promulgates such rules pursuant to that authority, courts give controlling weight to the regulations unless they are "arbitrary, capricious, or manifestly contrary to the statute." *Chevron U.S.A. Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 844 (1984).

Thus, so long as an agency's construction of a statutory directive, as embodied in a promulgated regulation, is a reasonable construction of the statute, the court will defer to the agency's considered interpretation. *See id.* at 843-44. When an agency's interpretation of its own regulation is at issue, the deference owed to that agency is even more vast. *See Director of*

Workers' Compensation Programs v. Eastern Assoc. Coal Corp., 54 F.3d 141, 147 (3d Cir.1995) ("We accord greater deference to an administrative agency's interpretation of its own regulations than to its interpretation of a statute."). A court must give "substantial deference to an agency's interpretation of its own regulations." *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512, 114 S.Ct. 2381, 129 L.Ed.2d 405 (1994). "Because applying an agency's regulation to complex and changing circumstances calls upon the agency's unique expertise and policy-making prerogatives, [courts] presume that the power authoritatively to interpret its own regulations is a component of the agency's delegated lawmaking powers." *Martin v. Occupational Safety & Health Review Comm.*, 499 U.S. 144, 151, 111 S.Ct. 1171, 113 L.Ed.2d 117 (1991).

The Supreme Court, in *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1978), emphasized that an administrative agency "should be free to fashion [its] own rules of procedure and to pursue methods of inquiry capable of permitting [it] to discharge [its] multitudinous duties." *Id.* at 543 (internal quotations omitted). In addition, the Supreme Court has recognized that "judicial deference to the Executive Branch is especially appropriate in the immigration context." *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999). Here, the agency has published a regulation implementing the Congressional mandate -- 8 C.F.R. § 335.2. That regulation requires the completion of both "administrative" and "criminal" checks. *See* 8 C.F.R. §§ 335.2(b)(1), (b)(2). Accordingly, in the course of carrying out its mission, USCIS properly interprets the scope of a "personal investigation" and a "full criminal background check" to require the completion of, among other things, an FBI name check. *See* USCIS Fact Sheet, Immigration Security Checks – How and Why the Process Works. *See also Antonishin v. Keisler*, 2007 WL 2788841 (N.D. Ill. Sept. 20, 2007) at *7 (holding that USCIS had proper authority to include the FBI name check as part of the "full criminal background check"). This Court erred in failing to defer to USCIS's determination that a "full criminal background check" requires the agency to request both a fingerprint check and a name check from the FBI.

Chevron deference is not the only type of deference available to an agency interpretation of its governing statutes or regulations. *Mead*, 533 U.S. at 234. Forty years before *Chevron*, the Supreme Court addressed how courts should treat non-binding agency interpretations,

recognizing that "while not controlling upon the courts by reason of their authority, [these interpretations] do constitute a body of experience." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (giving deference to interpretations contained in agency manuals or enforcement guidelines); *see also Hall v. U.S. Environmental Protection Agency*, 273 F.3d 1146, 1156 (9th Cir. 2001) ("[A]n agency interpretation that is not accorded Chevron deference still may be entitled to a respect proportional to its power to persuade." (internal quotation marks omitted)); *Garcia v. Brockway*, 503 F.3d 1092, 1103, n.3 (9th Cir. 2007) (considering a HUD manual and giving it "proper Skidmore weight.").

Under *Skidmore*, an agency's interpretation will merit deference depending upon the "thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Oregon v. Gonzales*, 546 U.S. 243, 268 (2006) (citing *Skidmore*, 323 U.S. at 140); *U.S. v. Jensen*, –F.2d –, 2008 WL 239526, at *11 (N.D. Cal. Jan 25, 2008) (considering a speech by a former Security Exchange Commission (SEC) chairman to determine whether his speech would be given deference as a formal policy statement). Where, as here, (1) USCIS has, since its creation in 2003, uniformly construed section 8 U.S.C. § 335.2 to require the FBI name check as part of the required "full criminal background check"; (2) the former Immigration and Naturalization Service required the FBI name check as part of the required investigation, for decades; and (3) the courts have consistently upheld USCIS's interpretation of the regulation, USCIS's longstanding interpretation is entitled to, and should have been accorded, deference by this court. This court erred by failing to accord that deference.

Moreover, the vast majority of courts that have construed 8 C.F.R. § 335 have, contrary to this court's finding herein, construed the provision to authorize USCIS to include the FBI name check as part of the required "full criminal background check." *See Wang v. Gonzales*, 2008 WL 45492 (D. Kan., January 2, 2008) at *2; *Morral v. Gonzales*, 2007 WL 4233069, *1, n. 2 (D. Minn., Nov. 28, 2007) ("8 C.F.R. § 335 sets forth a multiple-step background-check process for naturalization applicants, of which the FBI name check is but one step."); *Stepchuk v. Gonzales*, 2007 WL 185013, *2 (W. D. Wash., Jan. 18, 2007) ("The FBI's name check may be considered a

part of the requirement for a 'full criminal background check.' "); *Aman v. Gonzales*, 2007 WL 2695820 (D. Colo., Sept. 10, 2007), *3 (citing *Stepchuk*); *Shalabi v. Gonzales*, 2006 WL 3032413, *2 (E.D. Mo. Oct. 23, 2006) ("A 'name check' may certainly be read into the requirement of a full criminal background check."). In holding that the FBI name check may be considered part of the "full criminal background check" required by 8 C.F.R. § 335.2(b), courts have noted that "[b]ecause § 335.2(b) uses the term 'includes' to define a background check, the conditions that follow that term are not exhaustive." *Aman*, 2007 WL 2695820 at *3 (quoting *Stepchuk*, 2007 WL 185013 at *2; *Shalabi*, 2006 WL 3032413 at *2.

This court's order attempts to justify its contrary holding to these cases by stating that because while the term "includes" is not necessarily exhaustive, the FBI name check does not logically follow the list of examples included in the regulation. *See* Order at 19. However, all of these cases, which categorically hold that 8 U.S.C. § 335.2 authorizes USCIS to include the FBI name check as part of the required "full criminal background check", cannot just be dismissed. Their interpretation contradicts this court's interpretation in this case and demonstrate that this court is wrong.

3. This Court's Order Impermissibly Usurps An Administrative Function.

The Supreme Court has held that courts does not have the power to exercise an essentially administrative function. *Federal Power Commission ("FPC") v. Idaho Power Co.*, 344 U.S. 17, 20 (1952)). In *FPC*, the Supreme Court held as follows:

> When the court decided that the license should issue without the conditions, it usurped an administrative function. There doubtless may be situations where the provision excised from the administrative order is separable from the remaining parts or so minor as to make remand inappropriate. But the guiding principle, violated here, is that the function of the reviewing court ends when an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration. *See Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940) ; *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37 (1948).
>
> The Court, it is true, has power 'to affirm, modify, or set aside' the order of the Commission 'in whole or in part.' s 313(b). But that authority is not power to exercise an essentially administrative function. *See Ford Motor Co. v. National Labor Relations Board*, 305 U.S. 364, 373-374 (1939); *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 (1946). The nature of the determination is emphasized by s 10(a) which specifies that the project adopted 'shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan

> * * * for the improvement and utilization of water-power development, and for other beneficial public uses'. Whether that objective may be achieved if the contested conditions are stricken from the order is an administrative, not a judicial, decision.

FPC, 344 U.S. at 20-21. Following FPC, the District of Columbia Circuit Court, in *Natural Resources Defense Council, Inc. v. Train*, 510 F.2d 692 (D.C.Cir. 1975), stated that "[w]here there has been no violation of a statutory duty, we think the proper course is to confine ourselves to a declaration of the intent of Congress and to give the Administrator latitude to exercise his discretion in shaping the implementation of the Act." 510 F.2d at 711-12.

By enjoining USCIS from using the FBI name check program in adjudicating the plaintiffs' naturalization applications unless USCIS initiates a notice and comment procedure regarding its use of the FBI name check program, this court has usurped an administrative function, similar to what the underlying district court did in *FPC*. What this court has ordered -- that USCIS adjudicate plaintiffs' naturalization applications without receiving a definitive response from the FBI regarding their background check -- is essentially equal to issuing a "license without a condition": in this case, U.S. citizenship without the requirement of completing the full criminal background check delineated by 8 U.S.C. § 335. Furthermore, the court's alternative -- that USCIS initiate a notice and comment procedure regarding the use of the FBI name check -- directs USCIS on the specific content of the regulation. In the case of *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117 (D.C. Cir. 1983), the District of Columbia District Court noted that the court's decree at issue did not prescribe the content of the regulations nor direct the agency to enforce the regulations in any particular way; thus, the court's order did not impermissibly infringe on administrative functions. *Citizens for a Better Environment*, 718 F.2d at 1129. In contrast, this court's order in the instant action both prescribes the content of the regulation and directs the agency on the particular way to bring about the regulation, by ordering USCIS to promulgate a regulation on using the FBI name check, and ordering that this must be done by the notice and comment procedure pursuant to the Administrative Procedures Act (APA). Thus, this court, in its Order, has impermissibly usurped USCIS's administrative function by enjoining USCIS in this form and manner.

* * * *

In sum, for all the reasons cited above, Defendants submit that they have shown that this court's reasoning is fundamentally flawed, and that they have both raised a serious question concerning the proper interpretation of 8 U.S.C. § 335, and demonstrated that they are likely to succeed on the merits.

B. Defendants Will Be Irreparably Injured Absent A Stay Of The Injunction.

This court's permanent injunction irreparably injures Defendants by preventing USCIS from lawfully applying the provisions of the statute in accordance with the Congressional intent of 8 U.S.C. § 335 to authorize USCIS to include the FBI name check as part of the required "full criminal background check". The injunction, contrary to Congress's clear intent, impermissibly "intrud[es] into the workings of a coordinate branch of the Government," and places an unwarranted burden on USCIS in its adjudication of naturalization applications. *See INS v. Legalization Assistance Project*, 510 U.S. 1301, 1306 (1993) (O'Connor, J., in chambers). Further, this court's interpretation of the regulation conflicts with the interpretation of other courts that have considered the regulation.

Lastly, the Court's ruling has the necessary consequence of ordering the agency to ignore the statutory requirement that USCIS await the FBI background results -- which could result in the adjudication of files that are naked of current background information showing whether the person is a risk to public safety and national security.

In sum, this court's permanent injunction irreparably injures Defendants by preventing USCIS from lawfully applying the provisions of the statute in accordance with Congressional intent to authorize USCIS to investigate naturalization applicants, and thus to determine the scope and extent of those investigations by including the FBI name check as part of the "full criminal background check".

C. Issuance Of The Stay Will Not Substantially Injure Plaintiffs.

Staying the injunction will not substantially injure Plaintiffs because they are not entitled to evade the lawful provisions of the statute. As previously discussed, this court has misconstrued the meaning of 8 U.S.C. § 335. Thus, because the statute is properly construed to

require that FBI name checks be completed as part of the "full criminal background check" required for the adjudication of naturalization applications, Plaintiffs cannot legitimately assert that they will be deprived of any legal right that Congress intended them to have.

Moreover, given the remaining Orders contained within this Court's Order dated February 8, 2008, the six Plaintiffs will not be substantially injured by a stay of the injunction.

D. Granting A Stay Is In The Public Interest.

For the reasons stated above, the equities in this case tip heavily in the Government's favor. This court, based on a questionable interpretation of the statute, is preventing Defendants from applying the lawful provisions of the regulation in accordance with Congress's expressed intent. The court's order constitutes an improper intrusion by a federal court into the workings of a coordinate branch of the Government, infringing on USCIS's ability to properly adjudicate naturalization applications. *See I.N.S. v. Legalization Assistance Project of Los Angeles County Federation of Labor*, 510 U.S. at 1305-06 ("The balance of equities also tips in the INS' favor [where] . . . [t]he order . . . is . . . an improper intrusion by a federal court into the workings of a coordinate branch of the Government.").

Moreover, the Court's Order may cause USCIS to grant citizenship to applicants who have not been fully vetted to determine if something in their backgrounds would make the applicants statutorily ineligible for naturalization.

In sum, contrary to this court's rationale, the injunction does not provide a means for DHS to follow the intent of 8 U.S.C. § 335, but instead, disregards clear Congressional intent for how the statute is to be administered.

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CONCLUSION

Defendants have met all criteria for warranting a stay. Accordingly, this Court should stay the injunction Ordered in the Order of February 8, 2008, enjoining Defendants from using the FBI name check program as a factor in the decision making as to the Plaintiffs' naturalization applications, unless United States Citizenship and Immigration Services ("USCIS") initiates a notice and comment procedure concerning its use of the Federal Bureau of Investigation ("FBI") National Name Check Program ("NNCP") for investigations of naturalization applicants within thirty (30) days of the Order.

Dated: February 15, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Attorney hereby certifies that in accordance with FED. R. CIV. P. 5, LR5.5, and the General Order on Electronic Case Filing (ECF), DEFENDANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL OF THIS COURT'S INJUNCTIVE ORDER was served pursuant to the district court's ECF system as to ECF filers on February 15, 2008, to the following ECF filers:

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In addition, I hereby certify that on this 15st day of February 2008, true and correct copies of the DEFENDANT'S EMERGENCY MOTION FOR STAY PENDING APPEAL OF THIS COURT'S INJUNCTIVE ORDER were served by Federal Express next-day delivery on the following non-ECF filers:

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