

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SUSAN TINCHER, ET AL.,

Appellees,

VS.

KRISTIN NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY, U.S. DEPARTMENT
OF HOMELAND SECURITY, ET AL.,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
CASE No.: 25-cv-04669-KMM-DTS
THE HONORABLE KATHERINE MENENDEZ

**PLAINTIFFS-APPELLEES' RENEWED EMERGENCY MOTION TO
IMMEDIATELY LIFT THE ADMINISTRATIVE STAY**

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INTRODUCTION

In light of escalating, imminent risks to the safety of the named plaintiffs and the putative class, Appellees respectfully file this renewed, emergency motion for the Court immediately to lift the administrative stay of the district court's injunction. Intervening events that post-date the parties' filings have created an urgent need for intervention to prevent irreparable injury to the named plaintiffs, protesters, and observers.

This morning a second Minnesotan, Alex Pretti, was killed by federal agents. In response, Appellees anticipate that thousands of protesters and observers will continue to take the streets to exercise their constitutional rights. As the thousands of federal agents deployed to Operation Metro Surge interact with those protesters and observers, it is more essential than ever to reinstate the district court's narrow, considered injunction to prevent violent retaliation against individuals exercising their constitutional rights.

In these circumstances, every hour that a stay remains in place presents new opportunities for irreparable injury to protesters and observers. To prevent that imminent, irreparable harm, Appellees respectfully request that the Court lift the administrative stay immediately, and in no event later than 5:00 pm CT on Sunday, January 25, 2026.

INTERVENING EVENTS

This morning, federal agents shot and killed Minnesotan Alex Pretti¹ in Minneapolis. (Ex. A, Eyewitness Decl. ¶¶ 13-14; Ex. B, Webb. Decl. ¶ 2).² The killing was documented by an eyewitness who recorded the interaction from a nearby sidewalk. (Ex. A ¶ 9; Ex. 1 to Ex. A (Video)³.) According to the sworn declaration, Mr. Pretti was directing traffic in the street with a phone in his hand recording video. (Ex. A ¶ 8.) He was then pepper sprayed “directly in the face” by agents. (*Id.* ¶ 11.) Then “four or five agents” brought

¹ <https://apnews.com/live/minneapolis-ice-shooting-updates-1-24-2026> (last updated Jan. 24, 2026 at 4:54 pm CT).

² In accordance with Fed. R. App. P. 27(a)(2)(B), Appellees submit herewith declarations in support of this motion, (Exs. A, B), one of which has been filed under temporary seal in accordance with District of Minnesota Local Rule 5.6 and is partially redacted. (*See* Doc. 106) These declarations were contemporaneously submitted to the district court, and are attached hereto given the expediency of the situation. In compliance with Rule 27(a)(2)(B)(ii), the affidavits “contain only factual information, not legal argument.”

³ Publicly available video of the incident, including a portion of the video attached as Ex. 1 to Ex. A, can be accessed at: Videos show federal agents killing Minneapolis man, Minnesota Star Tribune, <https://www.startribune.com/videos-show-federal-agents-killing-minneapolis-man/601570108> (last updated Jan. 24, 2026, 3:50 pm) (citing @DropSiteNews, X (Jan. 24, 2026, 12:36 pm), <https://x.com/DropSiteNews/status/2015131503622021472>).

Mr. Pretti to the ground before he was shot multiple times. (*Id.* ¶ 13.) At no time did the declarant see Mr. Pretti hold a gun. (*Id.* ¶¶ 10, 13, 16.)

In response, Appellees anticipate that thousands of individuals will continue to protest and observe ICE activity.⁴ Among them is named Plaintiff Lucia Webb, who has responded to the killing with protest and observation activity. (Webb Decl. ¶ 5.) Ms. Webb is concerned that Appellants will use “escalating tensions” resulting from the shooting “to perpetrate further violence on civilians,” (*id.* ¶ 3), and she reasonably fears for her safety. (*Id.* ¶ 6 (“I am more scared than ever to observe and protest ICE activity.”).)

ARGUMENT

Appellees move under Rules 27 and 8(a) of the Federal Rules of Appellate Procedure for an order immediately vacating the administrative stay entered by the Court on January 21, 2026. An administrative stay is a procedural device to “give the court sufficient opportunity to consider the merits of the motion for a stay pending appeal.” *Brady v. Nat’l Football League*,

⁴ <https://apnews.com/live/minneapolis-ice-shooting-updates-1-24-2026> (last updated Jan. 24, 2026 at 4:54 pm CT).

638 F.3d 1004, 1005 (8th Cir. 2011). The purpose “is to minimize harm while an appellate court deliberates.” *United States v. Texas*, 144 S.Ct. 797, 799 (2024) (Barrett, J., concurring). In light of today’s developments in Minneapolis, the protests in response, and ICE’s continued escalations, the only path to “minimize harm” is for this Court immediately to lift the administrative stay. *See id.*

The injunction issued by the district court proscribes only four categories of blatantly unconstitutional conduct:

- a. Retaliating against persons who are engaging in peaceful and unobstructive protest activity, including observing the activities of Operation Metro Surge.
- b. Arresting or detaining persons who are engaging in peaceful and unobstructive protest activity, including observing the activities of Operation Metro Surge, in retaliation for their protected conduct and absent a showing of probable cause or reasonable suspicion that the person has committed a crime or is obstructing or interfering with the activities of Covered Federal Officers.
- c. Using pepper-spray or similar nonlethal munitions and crowd dispersal tools against persons who are engaging in peaceful and unobstructive protest activity, including observing the activities of Operation Metro Surge, in retaliation for their protected conduct[; and]

- d. Stopping or detaining drivers and passengers in vehicles where there is no reasonable articulable suspicion that they are forcibly obstructing or interfering with Covered Federal Agents, or otherwise violating 18 U.S.C. § 111. The act of safely following Covered Federal Agents at an appropriate distance does not, by itself, create reasonable suspicion to justify a vehicle stop.

(Ex. C (Doc. 85) at 82.)

There is no harm to the Appellants from being enjoined from these unconstitutional practices until this Court can resolve Appellants' motion for a stay pending appeal. After all, Appellants have made no showing that they suffered any detriment whatsoever during the five days that the injunction was in effect before it was administratively stayed by this Court.

By contrast, Appellants' unrestrained actions have chilled Appellees and other members of the putative class's free expression (e.g., Webb Decl. ¶¶ 6-7; Ex. A ¶¶ 17-18). Appellees and other members of the putative class face the prospect of deprivation of their constitutional rights, injury, and even death if Appellants persist in their unlawful course of conduct, (*see, e.g.*, Ex. A ¶ 13). Under these circumstances, the "relative consequences" of an administrative stay weigh decidedly in favor of lifting it and allowing the

ordinary appellate process to proceed on an expedited basis. *See United States v. Texas*, 144 S.Ct. at 798.

If this Court does not grant Appellees' motion to vacate the administrative stay prior to the resolution of Appellants' motion for a stay pending appeal, Appellees respectfully request that the Court resolve Appellants' stay motion no later than 5:00 pm CST on Sunday, January 25, 2026. Appellants' motion was filed on January 20, the Court entered the administrative stay on January 21, and Appellees' opposition was filed on January 22. The parties agree that the issues in this case necessitate emergency treatment. In these emergent circumstances, any delay in ruling would convert the administrative stay into a de facto stay pending appeal without this Court finding that Appellants have satisfied the *Nken* factors, in contravention of Supreme Court guidance. *See id.* at 799 (cautioning against the danger of courts using an administrative stay to "avoid *Nken* for too long").

CONCLUSION

Appellees respectfully request that this Court lift the administrative stay as soon as possible and in no event later than 5:00 pm CST on Sunday, January 25, 2026.

Respectfully submitted,

Dated: January 24, 2026

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Dated: January 24, 2026

By: s/Kyle W. Wislocky
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Dated: January 24, 2026

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