

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. WECHAT USERS ALLIANCE, *et al.*,

Plaintiffs-Appellees,

v.

No. 20-16908

JOSEPH R. BIDEN, JR.,
President of the United States, *et al.*,

Defendants-Appellants.¹

**DEFENDANTS-APPELLANTS'
UNOPPOSED MOTION FOR ABEYANCE**

Pursuant to Federal Rule of Appellate Procedure 27, defendants-appellants respectfully request that the Court hold this case in abeyance, with status reports due at 60-day intervals. Plaintiffs do not oppose this motion.

This appeal involves a series of prohibitions issued by the Secretary of Commerce that regulate various transactions related to the WeChat mobile application. *See* 2-ER-224; *see also* Exec. Order No. 13,943, 85 Fed. Reg. 48,641 (Aug. 6, 2020) (Executive Order directing the Secretary to identify which transactions to

¹ Per Federal Rule of Appellate Procedure 43(c)(2), a prior public officer's successor is automatically substituted as a party.

prohibit). The district court enjoined those prohibitions from taking effect, and the government appealed that injunction to this Court.

As the Biden Administration has taken office, the Department of Commerce has begun a review of certain recently issued agency actions, including the Secretary's prohibitions regarding the WeChat mobile application at issue in this appeal. In relation to those prohibitions, the Department plans to conduct an evaluation of the underlying record justifying those prohibitions. The government will then be better positioned to determine whether the national security threat described in the President's August 6, 2020 Executive Order, and the regulatory purpose of protecting the security of Americans and their data, continue to warrant the identified prohibitions. The Department of Commerce remains committed to a robust defense of national security as well as ensuring the viability of our economy and preserving individual rights and data privacy.

This Court, and other courts, have granted similar relief where an agency sought to reconsider an action that was on review in the court of appeals. *See, e.g.,* Order, Dkt. No. 24, *State of California v. Cochran* (9th Cir. No. 20-16802) (vacating briefing schedule and staying proceedings for two months); *City of Arlington v. FCC*, 668 F.3d 229, 236 (5th Cir. 2012) (noting that the court had held a petition in abeyance while the agency was addressing a reconsideration motion); *Prometheus Radio Project v. FCC*, 652 F.3d 431, 443 (3d Cir. 2011) (same); *Sierra Club v. EPA*, 551 F.3d 1019, 1023 (D.C. Cir. 2008) (same). This Court should do the same here.

A review of the prohibitions at issue here may narrow the issues presented or eliminate the need for this Court's review entirely. To allow new agency officials sufficient time to become familiar with the issues in this case and to allow the agency to adequately consider the issues presented in this appeal, the government thus respectfully moves to place this appeal in abeyance, with status reports due at 60-day intervals.

Plaintiffs have authorized us to state that this motion is unopposed.

Respectfully submitted,

H. THOMAS BYRON III

s/ Sean Janda

SEAN JANDA
*Attorneys, Appellate Staff
Civil Division, Room 7260
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530
(202) 514-3388*

FEBRUARY 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 417 words, according to the count of Microsoft Word.

s/ Sean Janda

Sean Janda