

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COOK COUNTY, ILLINOIS, an Illinois governmental entity; and **ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS, INC.**,

Plaintiffs,

vs.

KEVIN K. McALEENAN, in his official capacity as Acting Secretary of U.S. Department of Homeland Security; **U.S. DEPARTMENT OF HOMELAND SECURITY**, a federal agency; **KENNETH T. CUCCINELLI II**, in his official capacity as Acting Director of U.S. Citizenship and Immigration Services; and **U.S. CITIZENSHIP AND IMMIGRATION SERVICES**, a federal agency,

Defendants.

Case No. 19-cv-6334

Judge Gary Feinerman

JOINT RULE 26(f) INITIAL STATUS REPORT

The parties, by and through their respective counsel, hereby submit this Joint Initial Status Report as follows:

A. Nature of the Case

1. Attorneys of record, and lead trial counsel, for each party.

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2. Basis for federal jurisdiction.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under federal law.

3. Nature of the claim(s) and any counterclaim(s), including the amount of damages and other relief sought.

Plaintiffs Cook County and ICIRR bring claims under the Administrative Procedure Act (APA), 5 U.S.C. § 706, et seq., challenging a Department of Homeland Security final rule

pertaining to the “public charge” ground of inadmissibility contained in section 212(a)(4) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(4). With respect to their APA claims, Plaintiffs claim that the final rule exceeds the agencies’ statutory authority, contravenes existing law, and is arbitrary and capricious. Plaintiff ICIRR further claims that the final rule violates the Equal Protection Clause of the Fourteenth Amendment, made applicable to the federal government under the Fifth Amendment. Plaintiffs seek declaratory relief declaring the final rule unlawful and invalid and seek injunctive relief enjoining implementation or enforcement of the final rule in the State of Illinois.

4. Whether the defendant will answer the complaint or, alternatively, whether the defendant will otherwise plead to the complaint.

Defendants intend to move to dismiss Plaintiffs’ claims pursuant to F.R.C.P. 12(b)(6). Defendants intend to answer Plaintiffs’ Complaint.

5. Principal legal and factual issues.

The principal issues in this case are whether Plaintiffs have standing to maintain this suit; whether Plaintiffs fall within the zone of interests of parties allowed to enforce the public charge provision of the INA; whether Defendants’ proposed rule concerning the “public charge” ground of inadmissibility is consistent with the INA; whether Defendants’ proposed rule concerning the “public charge” ground of inadmissibility is arbitrary and capricious under the APA; and whether Defendants’ proposed rule concerning the “public charge” ground of inadmissibility contravenes the Equal Protection Clause of the Fourteenth Amendment, made applicable to the federal government under the Fifth Amendment.

B. Proceedings to Date

1. Summary of all substantive rulings (including discovery rulings) to date.

On October 14, 2019 this Court entered a preliminary injunction enjoining the

implementation of the final rule in the State of Illinois.

2. Description of all pending motions, including date of filing and briefing schedule.

On October 25, 2019, Defendants moved to stay the injunction pending appeal of the Court's preliminary injunction order. That motion was heard on October 30, 2019, and the Court ordered that Plaintiffs file their opposition by November 6 and that Defendants file their reply by November 11. There are no other pending motions at this time.

C. Discovery and Case Plan

1. Summary of discovery, formal and informal, that has already occurred.

None at this time.

2. Whether discovery will encompass electronically stored information, and the parties' plan to ensure that such discovery proceeds appropriately.

For purposes of their APA claims, Plaintiffs seek to discover the final administrative record. Defendants have indicated that the non-privileged components of the final administrative record will be compiled and delivered by November 25, 2019.

Plaintiff ICIRR will also seek certain internal agency communications relevant to its claim under the Equal Protection Clause, which will encompass electronically stored information. Plaintiff ICIRR may also seek to depose certain Defendants to obtain further information relevant to its equal protection claim. Since Defendants have thus far not filed, and the Court has not resolved, a motion to dismiss ICIRR's Equal Protection claim, Defendants currently intend to oppose discovery beyond the non-privileged components of the final administrative record.

This case is exempt from the Mandatory Initial Discovery Pilot Project because it is "an action for review on an administrative record." Fed. R. Civ. P. 26(a)(1)(B)(i).

3. Proposed scheduling order

i. Deadline for Rule 26(a)(1) disclosures, or why Rule 26(a)(1) disclosures are not appropriate.

Rule 26(a)(1) is inapplicable to Plaintiffs’ APA claims under Rule 26(a)(1)(B)(i). Rule 26(a)(1) disclosures related to Plaintiff ICIRR’s equal protection claim will be made by ICIRR and Defendants within thirty (30) days of the filing of Defendants’ answer.

ii. Deadline for issuing written discovery requests.

Plaintiffs’ Position: Written discovery requests will be made at least sixty (60) days before the deadline for completing fact discovery. Regardless of whether Defendants plan to file a motion to dismiss Plaintiff ICIRR’s equal protection claim, it is appropriate and customary to set discovery deadlines now, and discovery should begin promptly. Indeed, courts in this district routinely set discovery deadlines regardless of whether the defendant later plans to move to dismiss. Nor is ICIRR required to “file a motion for discovery beyond the non-privileged components of the final administrative record.” To the contrary, under Rule 26 of the Federal Rules of Civil Procedure, the default rule is that Plaintiff ICIRR “may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense ...” Fed. R. Civ. P. 26(b)(1). To the extent Defendants seek to restrict the allowable scope of discovery in this matter, the burden is on Defendants—not ICIRR—to seek a protective order precluding discovery. Fed. R. Civ. P. 26(c).

Defendants’ Position: Defendants believe there should be no discovery permitted in this case beyond production of the non-privileged components of the final administrative record, particularly not before Defendants have filed, and the Court has resolved, a motion to dismiss. ICIRR is the only Plaintiff seeking discovery beyond the final administrative record, and it bases its request on its Equal Protection claim, which the Court did not have to address in its Preliminary Injunction Order. Defendants believe it is thus premature to allocate a particular amount of time

for discovery over this claim. Instead, if the Court does not grant Defendants' motion to dismiss the Equal Protection claim, ICIRR shall file a motion for discovery beyond the non-privileged components of the final administrative record for the Equal Protection Claim, so the Court can benefit from full briefing of the issue.

iii. Deadline for completing fact discovery.

Plaintiffs' Position: Fact discovery for ICIRR's equal protection claim will be complete by October 31, 2020. Plaintiffs disagree with Defendants' position on discovery deadlines for the reasons noted *supra*.

Defendants' Position: As noted *supra*, it is premature to establish a time-table for discovery concerning ICIRR's Equal Protection claim. The parties shall brief the issue if this claim survives a motion to dismiss.

iv. Whether discovery should proceed in phases.

Plaintiffs' Position: Discovery should not proceed in phases.

Defendants' Position: As noted *supra*, it is premature to establish a time-table for discovery concerning ICIRR's Equal Protection claim. The parties shall brief the issue if this claim survives a motion to dismiss.

v. Whether expert discovery is contemplated and, if so, deadlines for Rule 26(a)(2) disclosures and expert depositions.

Plaintiffs' Position: Plaintiff ICIRR anticipates expert discovery related to its equal protection claim. Plaintiffs also reserve the right to call an expert witness in connection with their APA claim. Expert discovery shall conclude sixty (60) days after the conclusion of fact discovery. Plaintiffs disagree with Defendants' position on discovery deadlines for the reasons noted *supra*.

Defendants' Position: As noted *supra*, it is premature to establish a time-table for discovery concerning ICIRR's Equal Protection claim. The parties shall brief the issue if this claim survives

a motion to dismiss.

vi. Deadline for amending the pleadings and bringing in other parties.

Within 45 days of Defendants' answer.

vii. Deadline for filing dispositive motions.

Plaintiffs' Position: For Plaintiff's APA claims, the deadline for filing dispositive motions shall be 45 days after the filing of the complete administrative record, including the resolution over any contested privilege assertions of the Defendants or completeness concerns of the Plaintiffs. For Plaintiff ICIRR's equal protection claim, the deadline for filing dispositive motions shall be 45 days after the conclusion of expert discovery.

Defendants' Position: For Plaintiffs' APA claims, the deadline for filing dispositive motions shall be 45 days after the filing of the non-privileged components of the final administrative record. For ICIRR's Equal Protection claim, it is premature to establish a time-table for summary judgment briefing. Defendants intend to file a motion to dismiss within 45 days after the filing of the non-privileged components of the final administrative record.

4. Whether there has been a jury demand.

Plaintiff ICIRR filed a jury demand with respect to its equal protection claim.

5. Estimated length of trial.

The parties estimate that a trial could take 10-12 days.

D. Settlement

1. Describe settlement discussions to date and whether those discussions remain ongoing.

There have been no settlement discussions to date.

2. Whether the parties request a settlement conference.

The parties do not request a settlement conference.

E. Magistrate Judge

1. Whether the parties consent to proceed before a magistrate judge for all purposes.

The Parties do not consent to proceed before a magistrate judge.

2. Any particular matters that have already been referred to the magistrate judge, and the status of those proceedings.

Not applicable.

Dated: October 30, 2019

KIMBERLY M. FOXX
Cook County Illinois State's Attorney

Respectfully submitted,

COOK COUNTY, ILLINOIS

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