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

COOK COUNTY, ILLINOIS,

et al.,

Plaintiffs,

vs.

CHAD F. WOLF, in his official capacity as Acting Secretary of U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY,

et al.,

Defendants.

Case No. 19-cv-6334

Judge Gary Feinerman

PLAINTIFF ICIRR'S MOTION FOR
EXPEDITED DISCOVERY ON EQUAL PROTECTION CLAIM

Plaintiff Illinois Coalition for Immigrant and Refugee Rights, Inc. (ICIRR) hereby moves under Federal Rule Civil Procedure 26(d) for expedited discovery in further support of its equal protection claim. As this Court held in its Order of May 19, 2020, ICIRR has made a "strong showing" in support of its claim that Defendants violated the Equal Protection Clause of the United States Constitution, and, as this Court already has held, the Final Rule imposes serious and irreparable harm to ICIRR. Dkt. 150 at 25; Dkt. 106 at 29. Indeed, the current COVID-19 pandemic has exacerbated the harm not only to ICIRR and immigrant communities, but also to the public at large as it undermines public health initiatives.

ICIRR's equal protection claim alleges that the Final Rule, "while facially race-neutral, is intended to disadvantage certain races and succeeds in doing so." Dkt. 150 at 24. "The task of assessing . . . motivation, however, is not a simple matter; on the contrary, it is an inherently

complex endeavor, one requiring the trial court to perform a 'sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'" *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999) (citing *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). Because, as this Court explained, evidence of discriminatory intent "almost certainly will not be 'disclose[d]' in the agency's 'contemporaneous explanation' for [its] action," discovery is critical to ICIRR's and this Court's ability to conduct the searching inquiry that the Equal Protection Clause requires. ICIRR is entitled to discovery both because its allegations of animus do not "sound[] in the register of a prototypical APA challenge" and because ICIRR has made "a strong showing that DHS's stated reason for promulgating the Final Rule—protecting the fisc—obscures what ICIRR alleges is the real reason—disproportionately suppressing nonwhite immigration." Dkt. 150 at 26.

An expedited discovery schedule is appropriate because, based "on the entirety of the record to date and the reasonableness of the request in light of all the surrounding circumstances," expedited discovery is necessary to minimize continued irreparable harm to ICIRR and to immigrant communities throughout Illinois. *Ibarra v. City of Chicago*, 816 F. Supp. 2d 541, 554 (N.D. Ill. 2011) (quoting *Merrill Lynch v. O'Connor*, 194 F.R.D. 618, 624 (N.D. Ill. 2000)). In particular, (1) ICIRR already has made a strong showing that the Final Rule was motivated by discriminatory animus; (2) Plaintiffs (ICIRR and co-plaintiff Cook County) already have established that the Final Rule is causing significant irreparable harm to ICIRR, and the recent COVID-19 pandemic has exacerbated those harms; (3) absent preliminary relief (which Plaintiffs already had obtained on other counts but at this point has been stayed by the Supreme Court), expedited discovery is necessary to develop the factual record in this case for

trial and judgment; and (4) Plaintiffs already have established that the balance of harms and public interest support the speedy resolution of this claim. In support of this Motion, ICIRR states as follows:

1. Courts in the Seventh Circuit evaluate a motion for expedited discovery "on the entirety of the record to date and the reasonableness of the request in light of all the surrounding circumstances." *Merrill Lynch*, 194 F.R.D. at 624. In applying the reasonableness standard, courts consider: "(1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the opposing party to comply with the requests; and (5) how far in advance of the typical discovery process the request was made." *Ibarra*, 816 F. Supp. 2d at 554. All of these factors are squarely met here.

2. ICIRR already has sought and obtained preliminary relief from this Court after "amply establish[ing]" irreparable harm resulting from the Final Rule. Dkt. 106 at 31; 28–29. Plaintiffs therefore have shown,[1] and this Court has agreed, that this irreparable harm cannot be remedied adequately by monetary damages. As this Court explained, the Final Rule has caused and continues to cause irreparable harm to Plaintiffs because it has: (1) "cause[d] immigrants to disenroll from, or refrain from enrolling in, medical benefits, in turn leading them to forgo routine treatment and rely on more costly, uncompensated emergency care from CCH" (Cook County Health and Hospitals System); (2) "increase[d] the entire County's risk of vaccine-preventable and other communicable diseases"; and (3) forced ICIRR to "divert resources away from its existing programs to respond to the effects of the Final Rule." *Id.* at 28–29. In addition,

[1] See Dkt. 27 and Dkt. 100, which are expressly incorporated by reference herein.

it is well established that "[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm." *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) (holding that violation of Due Process Clause "constitutes proof of an irreparable harm"); *Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 739 (S.D. Ind. 2016) ("[E]qual protection rights are so fundamental to our society that any violation of those rights causes irreparable harm." (quoting *Back v. Carter*, 933 F. Supp. 738, 754 (N.D. Ind. 1996)), *aff'd*, 838 F.3d 902 (7th Cir. 2016)). This harm cannot be redressed by money damages, and thus legal remedies are inadequate. *See Ezell v. Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (holding that "for some kinds of constitutional violations, irreparable harm is presumed" because they implicate "intangible and unquantifiable interests" that "cannot be compensated by damages"). Based on these harms, this Court granted a Preliminary Injunction of the Final Rule, the merits of which remain pending before the Seventh Circuit. The same considerations that weighed in favor of preliminary relief continue to support the speedy resolution of this case to minimize continuing irreparable harm to ICIRR, Illinois immigrant communities, and public health in Illinois. The discovery that ICIRR seeks may support either a new request for preliminary relief or a ruling on the merits of the equal protection claim. In either case, the nature of the harms resulting from the Final Rule's implementation necessitates quick action.

4. The urgency of this matter has only increased since October 2019, when this Court entered a preliminary injunction. Since that time, additional evidence has confirmed that the Final Rule is chilling immigrants and even U.S. citizen families from seeking public medical benefits. For example, a nationally representative study conducted in December 2019 showed that "[m]ore than one in seven adults in immigrant families (15.6 percent) reported that they or a

family member avoided a noncash government benefit program, such as Medicaid, the Children's Health Insurance Program (CHIP), the Supplemental Nutrition Assistance Program (SNAP), or housing subsidies, in 2019 for fear of risking future green card status." Hamutal Bernstein, et al., *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute 2 (May 2020), https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-charge-rule-immigrant-families-continued-avoiding-public-benefits-in-2019_2.pdf. This chilling effect was even greater (26.2 percent) among low-income immigrant families. *See id.* Among those reportedly avoiding noncash government benefit programs based on the public charge rule, many reported that they avoided medical benefits: Approximately half said their families avoided Medicaid or CHIP, approximately 20 percent avoided free or low-cost medical care for the uninsured, and 14.1 percent avoided marketplace health insurance. *Id.* at 7.

5. The ongoing COVID-19 pandemic is further exacerbating the harms resulting from this chilling effect because it has made many immigrant families even more vulnerable to medical and economic hardship. Public benefits exist for temporary crises like these, but some of the people hit hardest by this pandemic cannot avail themselves of these benefits due to the Final Rule. The Illinois immigrant community has felt an especially pronounced economic impact from the virus because immigrants are disproportionately employed in industries adversely affected by the COVID-19 outbreak, such as food service, manufacturing, and domestic work. Ex. 1, Benito Decl. ¶ 11. Many immigrants already have lost their jobs and thus are more likely than ever to need public assistance during this crisis. *See id.*; *see also* Dulce Gonzalez, et al., *Hispanic Adults in Families with Noncitizens Disproportionately Feel the Economic Fallout*

from COVID-19, Urban Institute (May 2020), https://www.urban.org/sites/default/files/publication/102170/hispanic-adults-in-families-with-noncitizens-disproportionately-feel-the-economic-fallout-from-covid-19_0.pdf (finding that among Hispanic adults in families with noncitizens nationwide: over two-thirds (68.8 percent) reported that they or a family member lost a job, work hours, or work-related income because of the outbreak; more than a quarter (25.1 percent) reported an unmet need for medical care in the family because of costs in the last thirty days; and more than half (55.8 percent) were worried about having enough money to pay for medical costs in the next month). At the same time, immigrants in Illinois represent a disproportionate share of the essential workers who interact daily with the public, including health care aides and grocery store employees, which increases their risk of exposure, need for testing, and need for treatment. Ex. 1, Benito Decl. ¶¶ 9, 11. The Final Rule deters immigrants and even immigrant families with U.S. citizen members from accessing publicly funded healthcare, thus undermining public health efforts that encourage testing and treatment for COVID-19.[2] The Final Rule puts immigrants and their families at greater risk from COVID-19 and thwarts Illinois' effectiveness in addressing the pandemic.

6. In light of the severe harms experienced by the community it serves, it is no surprise that ICIRR itself is increasingly impacted by the Final Rule during the COVID-19 pandemic. Since the global health emergency began, ICIRR and its member organizations have

[2] The risk of community transmission of COVID-19 only underscores the reasonableness of ICIRR's request. Given that deferred treatment in the context of a pandemic is likely to have ripple effects throughout the community, it is especially prudent to resolve a legal challenge to the Final Rule quickly. If ICIRR succeeds in obtaining preliminary relief or final judgment invalidating the Final Rule, speedy resolution will mitigate any potential collateral consequences resulting from the Final Rule's chilling effect.

received an increased volume of calls from immigrants seeking assistance with food, housing, and medical care, as well as increased concern that using public benefits will subject them to the public charge rule. *Id.* ¶¶ 8, 12. Specifically, callers have expressed concern that receiving COVID-19 related medical testing or treatment for themselves or their family members will subject them to a public charge classification. *Id.* ¶ 13. This concern is primarily coming from seniors or individuals with underlying health conditions, who are at greater risk of serious health complications and death due to COVID-19. *Id.* Moreover, USCIS posted an alert on its website stating that USCIS was required to "consider the receipt of certain cash and non-cash public benefits, including those that may be used to obtain testing or treatment for COVID-19 in a public charge inadmissibility determination," and including most forms of federally funded Medicaid. *See* https://www.uscis.gov/greencard/public-charge. Due to confusion around this USCIS guidance, ICIRR member organizations and partners reported that some immigrants feared they could not access medical treatment or testing for COVID-19 due to the public charge rule. Ex. 1, Benito Decl. ¶ 7. As a result, ICIRR was forced to divert additional resources to educating immigrants about the Final Rule, including issuing statements to encourage immigrants to seek medical care, creating a detailed fact sheet, and conducting webinars. *Id.* ¶ 7.

12. Seeking to mitigate these harms as efficiently as possible, ICIRR seeks narrowly tailored initial discovery to uncover highly probative evidence of discriminatory animus by relevant decisionmakers:

(1) any documents or communications within DHS or DHS components related to the purpose, effect, or potential impact of the Public Charge Rule on individuals by national origin, race, or ethnic group;

(2) any documents or communications between DHS or DHS components and the White House related to the purpose, effect, or potential impact of the Public Charge Rule on individuals by national origin, race, or ethnic group;

(3) any documents or communications between DHS or DHS components and the Departments of State, Health and Human Services, Agriculture, Housing and Urban Development, and Centers for Medicare and Medicaid Services ("CMS") related to the purpose, effect, or potential impact of the Public Charge Rule on individuals by national origin, race, or ethnic group; and

(4) documents or communications within DHS or DHS components or shared among DHS, its components, or the White House related to the Federation for American Immigration Reform, Center for Immigration Studies, or Immigration Reform Institute.

ICIRR is including with this Motion a proposed list of search terms that, based on review of publicly released emails, it believes to be indicative of responsiveness to these requests. In addition, ICIRR is including a proposed list of custodians, including specific individuals associated with Stephen Miller, Francis Cissna, and Kenneth Cuccinelli. *See* Ex. 2, Plaintiff ICIRR's Request for Production of Documents.

ICIRR also intends to depose Miller, Cissna, Cuccinelli, Claire Grady, Jon Feere, and Kathy Neubel Kovarik, and reserves the right to seek additional depositions depending on the results of the document productions. Miller is a senior advisor to the President, and previously released email correspondence shows that he had a key oversight role in the issuance of the Public Charge Rule. Cissna served as the Director of United States Citizenship and Immigration Services (USCIS) from October 8, 2017 to May 24, 2019 and played a key role in the formulation of the Public Charge Rule. Cuccinelli currently serves as the acting Secretary of Homeland Security, and was Acting Director of USCIS from June 10, 2019 until March 1, 2020. Grady worked at DHS under then-Secretary Kirstjen Nielsen during the relevant time period. Feere has served as a senior advisor to Immigration and Customs Enforcement since January

2017, and is an important member of the Administration's immigration policy team. Kovarik has served as the Chief of Staff of USCIS since February 3, 2020, and is an important member of the policy-making team at USCIS. According to publicly released emails, both Feere and Kovarik had weekly immigration policy meetings with Miller. Appendix B to Ex. 2 contains more information about ICIRR's Proposed List of Deponents.

The Court already has ruled that discovery is warranted and that statements by these decisionmakers are "unquestionably pertinent" to ICIRR's equal protection claim. Dkt. 150 at 17–19. And, although the Court has not yet determined the full scope of discovery in this case, the limited discovery into communications by these individuals about the public charge rule and the depositions requested are the bare minimum necessary for this Court to perform "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266.

12. Regarding the purpose of discovery, the Court already has acknowledged that discovery is necessary to ensure that any "racial motivations underlying racially motivated policymaking" do not "remain concealed." Dkt. 150 at 24–25. ICIRR asks that necessary discovery be expedited so that ICIRR may potentially seek preliminary relief to mitigate the irreparable harm that compounds as the Rule remains in effect and move this case toward resolution as quickly as possible.

13. Further, the burden on Defendants in responding to these requests is minimal. ICIRR's requests are limited to a narrow set of specific individuals whom ICIRR already has established made repeated statements reflecting racial animus and/or were involved in the implementation of the public charge rule. Moreover, ICIRR's equal protection claim has been

tested by a motion to dismiss. In addition, Defendants already have been ordered to produce a privilege log and thus to identify certain inter- and intra-agency communications related to the public charge rule that were omitted from the original administrative record. *See Washington, et al. v. Dep't of Homeland Security, et al.*, Case No. 19-cv-5210, ECF No. 219 (E.D. Wa. May 13, 2020) (ordering DHS to produce a privilege log and holding that this would not irreparably harm DHS because it "should have been aware of what was included and excluded from the record and why" in November 2019 when it produced the administrative record) (attached as Exhibit 3).

14. Finally, ICIRR's request to expedite discovery is eminently reasonable as it is made at the beginning of the typical Federal Rule of Civil Procedure 26 discovery process but just prior to the parties conferring pursuant to Rule 26(f). This matter has been pending for eight months, ICIRR's equal protection claim has survived a motion to dismiss, and ICIRR was granted permission to begin Rule 26 discovery on that claim. ICIRR requests that limited discovery be initiated with tighter deadlines than would ordinarily be permitted under the Federal Rules given the ongoing irreparable injuries it sustains each day that the Final Rule remains in place.

15. Due to the urgent nature of the relief requested, ICIRR proposes the following expedited discovery schedule:

- ICIRR's discovery requests are attached to this Motion as Exhibit 2;
- Defendants' discovery responses and production of responsive documents due 14 days following a ruling from this Court on this Motion;
- ICIRR's deadline to conduct depositions: 21 days following Defendants' deadline for discovery responses and production of responsive documents.

ICIRR asks that limited expedited discovery be completed as quickly as possible due to the exigent circumstances of this case. This Court "has wide discretion in managing the discovery process." *Ibarra*, 816 F. Supp. 2d at 554. Accelerated discovery is reasonable under the totality of the circumstances present here, and this Court should grant ICIRR's request for an expedited schedule.

16. ICIRR's counsel asked Defendants' counsel during a meet-and-confer call on June 1, 2020 whether they would be amenable to an expedited discovery schedule given the irreparable harm to ICIRR. After discussing with their clients, Defendants' counsel advised that they would not agree to ICIRR's proposed expedited discovery schedule. In a further written response, Defendants' counsel stated that ICIRR's proposed expedited discovery schedule is "structurally impossible to meet" in light of "objections" and "negotiations (and possibly litigation) over discovery scope." *See* Ex. 4. Parties engaging in discovery have those same issues in every case, yet expedited discovery is not "structurally impossible" in those cases where faster timelines are ordered. In particular, given that Defendants themselves went to the Supreme Court to obtain—and in fact did obtain—a stay, they should be required to engage in prompt discovery and not play for delay.

WHEREFORE, Plaintiff ICIRR respectfully requests that this Court:

a. Enter the expedited schedule on limited discovery relevant to its equal protection claim requested herein; and

b. Order any and all further appropriate relief.

Dated: June 9, 2020

Respectfully submitted,

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Counsel for Illinois Coalition For Immigrant and Refugee Rights, Inc.

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on June 9, 2020, she caused the attached **Plaintiff ICIRR's Motion for Expedited Discovery on Equal Protection Claim** to be served via the Court's ECF system and by email upon:

Keri L. Berman (Keri.L.Berman@usdoj.gov)

Kuntal Cholera (Kuntal.Cholera@usdoj.gov)

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/s/ Marlow Svatek

EXHIBIT 1

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

COOK COUNTY, ILLINOIS,

et al.,

Plaintiffs,

vs.

CHAD F. WOLF, in his official capacity as Acting Secretary of U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY,

et al.,

Defendants.

Case No. 19-cv-6334

Judge Gary Feinerman

DECLARATION OF LAWRENCE L. BENITO IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Lawrence L. Benito, Executive Director of the Illinois Coalition for Immigrant and Refugee Rights (ICIRR), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein and make this declaration based on my personal knowledge. I submit this declaration in support of Respondents' application in the above-captioned matter. In my role as the Executive Director of ICIRR, I am responsible for running all facets of the organization including the leadership of our membership and coalitions.

2. ICIRR is a non-profit organization located in Chicago, Illinois. ICIRR is dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society in Illinois and beyond. ICIRR is a membership-based organization, representing nearly 100 nonprofit organizations and social and health service providers throughout Illinois, many of which provide health care, nutrition, housing,

and other services for immigrants, including immigrants of color, regardless of their immigration status or financial means. A core mission of ICIRR and its member organizations is to provide health and social services to immigrant Illinoisans. ICIRR member organizations include community health centers, health and nutrition programs, social service providers and other organizations that work to ensure immigrants receive the support they need to be successful. Created in 1986, ICIRR has been at the forefront of helping immigrants realize and contribute to the dream that is America. In that time, ICIRR won establishment of an Office of New Americans within the Governor's office (2005) and the Office of the Mayor of the City of Chicago (2011); created the New Americans Initiative (2005), which has helped 534,000 people gain access to citizenship and assisted 105,394 immigrants prepare applications for citizenship; created the Immigrant Family Resource Project ("IFRP") (1999), which has connected more than 500,000 individuals and families to safety net services; and led efforts to create the Cook County Direct Access Program, which has expanded healthcare services to over 25,000 individuals. ICIRR also operates the Immigrant Healthcare Access Initiative ("IHAI"), which works to increase access to care and improve health literacy for tens of thousands of low-income uninsured immigrants in Illinois, in order to reduce their reliance on emergency room care and to improve the overall public health of the community. As a part of IHAI, ICIRR leads the Illinois Alliance for Welcoming Healthcare, an alliance comprised of 25 healthcare providers, including clinics and hospitals, and 20 community-based organizations that convene to create and share best practices in the provision of healthcare services to immigrants and their families. ICIRR also leads the Healthy Communities Cook County ("HC3") coalition, which seeks to address and mitigate barriers to accessing healthcare for the uninsured, regardless of immigration status, through policy and systems change.

3. In spring 2018, in direct response to the Proposed and Final Rule and the growing fear and confusion within immigrant communities, ICIRR co-founded the Protecting Immigrant Families-Illinois coalition ("PIF-IL"). PIF-IL was created specifically to (1) respond to the proposed changes to the public charge rule; and (2) provide assistance and accurate information to immigrant communities seeking to safely make use of public benefits for which they are eligible.

4. Since the news leaked about a proposed change to the public charge rule that penalizes immigrants who use safety net programs, ICIRR and its member organizations have seen a decrease in immigrants enrolling in public benefit programs and increase in immigrants seeking to disenroll from public benefit programs. In June 2019, ICIRR conducted a survey of its member organizations to document the impact of the Proposed Final Rule on its organizations and the individuals they serve. From responses to that survey, ICIRR ascertained that there was a reduction in enrollment in public benefits programs, even those benefits not subject to the public charge rule, such as unemployment benefits and WIC. The survey also confirmed that immigrants, even those who are not subject to the public charge rule, were attempting to disenroll from SNAP, Medicaid, TANF, and WIC for themselves and even their U.S. citizen children out of fear that the rule will harm their immigration status and options.

5. Since the U.S. Supreme Court decision lifting the Illinois injunction, some organizations who are part of ICIRR's Immigrant Family Resource Program ("IFRP") report receiving an increased number of calls from individuals expressing fears about how the use of public benefits could subject them to the public charge rule. They are either afraid to enroll in public benefits they are eligible for or are seeking to disenroll from public benefits they already receive. In an effort to alleviate those fears and slow declining enrollment, one IFRP organization is planning to record a public charge informational video for the community.

Increased confusion due to the USCIS Public Charge COVID-19 guidance

6. On or around March 13, 2020, the U.S. Citizenship and Immigration Services (USCIS) posted an alert (in English only). This alert explained that while the Public Charge rule "does not restrict access to testing, screening, or treatment of communicable diseases, including COVID-19," USCIS was nonetheless required to "consider the receipt of certain cash and non-cash public benefits, including those that may be used to obtain testing or treatment for COVID-19 in a public charge inadmissibility determination," including most forms of federally funded Medicaid. *See* https://www.uscis.gov/greencard/public-charge.

7. Due to confusion around this USCIS guidance, ICIRR member organizations and IFRP partners report that some immigrants fear that they cannot access medical treatment or testing for COVID-19 due to the public charge rule.

Increased need for food, housing, and medical assistance in light of COVID-19

8. Since the global health emergency began and Illinois residents became subject to a shelter in place order on March 21, 2020, ICIRR and its member and IFRP partner organizations have received an increase in calls from immigrants seeking assistance with food, housing, and medical care, as well as an increased concern that using public benefits will subject them to the public charge rule.

9. Immigrants in Illinois, including individuals subject to the public charge rule, are predominately employed in fields or industries that are disproportionately impacted by the COVID-19 pandemic, in that they are now either unemployed or considered essential workers. It is predicted that nearly 1.5 million Illinois workers will lose employment or hours due to COVID-19.

10. Out of concern for the public health, Illinois has joined other states in closing all non-essential businesses, including bars, restaurants, and most manufacturing businesses where immigrants are disproportionately employed. Many have now lost their jobs as a result. Immigrants are also disproportionately employed as domestic workers, such as cleaning staff, personal care aides, or nannies, and many have lost their employment due to their employers' losing their own job or experiencing a decline of income. All of these individuals and their families are thus more likely than ever to need public assistance, including SNAP, Medicaid, and housing assistance.

11. At the same time, immigrants also are disproportionately employed in fields deemed essential, including home health care aides and grocery store employees. This essential status and the inability to work from home increases their exposure to COVID-19 and their need for quality treatment and preventative care for themselves and the health of everyone they contact.

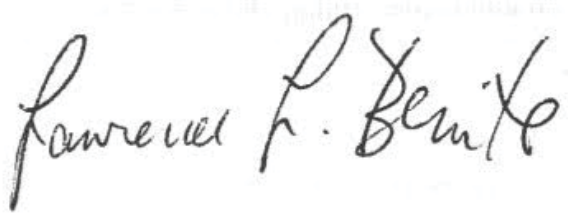
12. Organizations that are part of ICIRR's IFRP network and public benefit coordinators employed at organizations who are a part of PIF-Illinois report an increased volume of calls from immigrants, especially mixed-status households, who have lost employment as a result of COVID-19. These callers report needing cash assistance, free health care, rental assistance, and help feeding their children, including U.S. citizen children. They are seeking information about enrolling in Section 8 or public housing, SNAP, and Medicaid, but they are concerned that such enrollment, including for their U.S. citizen children, will subject them to the public charge rule. They are also afraid to apply for unemployment benefits out of fear of becoming a public charge, even though they will not be subject to the public charge rule for using unemployment benefits. Callers afraid to apply for SNAP are referred to food pantries. Because many food pantries in Latinx neighborhoods in Chicago have either closed or are seeing a marked

increase in requests for food assistance, fewer residents will have their food security needs met through local pantries.

13. Since the COVID-19 crisis, fear remains rampant among immigrants calling these organizations for advice regarding medical testing and treatment. Callers are expressing concern that receiving COVID-19 related medical testing or treatment for themselves, their families or their family members will subject them to the public charge rule. This concern is primarily coming from seniors or individuals with underlying health conditions, even though they are at greater risk of serious health complications or even death due to COVID-19. Many callers are concerned that seeking COVID-19 related medical testing or treatment may risk their ability to stay in the country.

I, Lawrence L. Benito, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 29th day of May 2020 in Cook County, Illinois.



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Lawrence L. Benito

EXHIBIT 2

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

COOK COUNTY, ILLINOIS, et al.,
Plaintiffs,
vs.
CHAD F. WOLF, in his official capacity as Acting Secretary of U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,
Defendants.

Case No. 19-cv-6334

Judge Gary Feinerman

PLAINTIFF ICIRR'S REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff Illinois Coalition for Immigrant and Refugee Rights, through undersigned counsel, requests that Defendants respond to the following Requests for Production within 14 days of the Court's ruling on Plaintiff's underlying Motion for Expedited Discovery. Please produce for inspection and copying the documents specified in the Requests below to the offices of SIDLEY AUSTIN LLP, One South Dearborn Street, Chicago, IL 60603, in accordance with the instructions set forth below.

INSTRUCTIONS

1. These requests seek all responsive documents in Defendants' possession, custody, or control, or in the possession, custody, or control of Defendants' agents, employees, representatives, accountants, attorneys (unless privileged), and all other persons acting for Defendants or on Defendants' behalf.

2. Produce all documents in the form, order, and manner in which they are regularly maintained, or, in the alternative, identify, by number, the request or requests pursuant to which Defendants are producing each document. In the absence of an agreement to the contrary,

Plaintiff requests that all electronically stored information ("ESI") be produced in a reasonably usable electronic format pursuant to Fed. R. Civ. P. 34(a)(1)(A).

3. These requests are continuing in character so as to require Defendants to promptly produce supplemental documents if Defendants identify additional or different documents that are responsive at any time before trial in accordance with Fed. R. Civ. P. 26(e).

4. A contention that some portion of the documents responsive to these requests may already be in the possession, custody, or control of Plaintiff does not excuse compliance with these requests.

5. Defendants must produce the original or a copy of the original of each requested document, as well as all non-identical copies, such as documents and drafts with notations, markings, and the like.

6. If a document is undated but it appears otherwise responsive to a request, it should be produced.

7. If a request seeks a document that is no longer in existence, please identify each such document, and with respect thereto:

a. Identify the information contained in the document;

b. State the circumstances under which the document ceased to exist; and

c. Identify all persons who have knowledge or had knowledge of the document and its contents.

8. If, in responding to these requests, Defendants encounter what Defendants deem to be an ambiguity when construing any request, instruction, or definition, please set forth the matter deemed ambiguous and the construction used in responding.

9. If Defendants elect to withhold any information or document under a claim of privilege, Defendants shall provide a list identifying each document for which privilege is claimed, and with respect thereto:

a. The date the document was produced or generated;

b. The name, address, and title of the person preparing the document;

c. The name, address, and title for or to whom the document was prepared or addressed;

d. The name, address, and title of all persons to whom copies of the document were furnished or otherwise forwarded;

e. Without revealing any privileged information, the subject matter and content of the document; and

f. The nature of the claim of privilege.

10. The relevant period of time for these requests, unless otherwise indicated is January 1, 2017 to the present.

11. Plaintiff reserves the right to pose additional or supplemental requests as discovery continues. By propounding these requests, Plaintiff does not concede that any documents produced in response are relevant or admissible at trial.

DEFINITIONS

1. The term "COMMUNICATION(S)" means any contact or transfer of information between two or more people, whether written, oral or electronic and whether direct or through one or more animate or inanimate agents.

2. The term "DOCUMENT(S)" "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a)(1)(A) and means the original or a copy of any and all handwriting, computer word processing, computer database, typewriting, printing, photo stating, photographing, electronic mail (email), text messages, tweets, blogs, and every other means of recording upon any tangible thing any form of COMMUNICATION or representation, including letters, words, pictures, sounds or symbols, or combinations of them, however produced or reproduced, of every kind and description, in whatever form (e.g., final and draft versions) in YOUR actual or constructive possession, custody, care or control, including, but not limited to, all writings, contracts, policy statements, manuals, telephone messages, summaries and records of telephone conversations, telephone bills, checks, correspondence, letters, telegrams, notes, mailgrams, minutes of any meetings,

agendas, memoranda, interoffice COMMUNICATIONS, reports, studies, forecasts, project analyses, working papers, charts, expense account reports, ledgers, journals, financial statements, statements of account, confirmation slips, calendars, appointment books, diaries, drawings, graphs, photographs, video or audio tape recordings, computer DOCUMENTS. The term "DOCUMENT" also means originals and copies of all of the above upon which notations in writing, print, or otherwise have been made, which do not appear on the originals. This definition covers all DOCUMENTS in YOUR possession, custody or control, regardless of their location, including all copies of such DOCUMENTS, the contents of which differ in any respect from the original.

The requested DOCUMENTS include all attachments, envelopes, explanatory notes or memoranda, and any other material that accompanied the DOCUMENT(s) requested. If the specific DOCUMENT elicited a response, that response is also to be identified and produced. If the DOCUMENT was itself a response, the DOCUMENT to which it is responding is also to be identified and produced.

3. "And" or "or" shall be construed conjunctively or disjunctively, whichever makes the request more inclusive.

4. "Relating to" or "related to" means refers to, relates to, comments on, reflects, mirrors, addresses, discusses, contains information on, indicates, or pertains to, in any way, directly or indirectly, a DOCUMENT, subject, topic, issue, act, or occurrence, and includes, without limitation, comprising, constituting, analyzing, evidencing, comparing, summarizing, discussing, relating, showing, referring to, forming the basis of, containing, concerning, or supporting any event, act, or occurrence.

5. The term "PUBLIC CHARGE RULE" means the rule published on August 14, 2019: Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292, and includes the rule proposed in a Notice of Proposed Rulemaking on October 20, 2018, 83 Fed. Reg. 51,114, and any other implementing policies and guidance issued prior to and after the rule was published, including all documents and communications related to the process to inform, consider, and

finalize the administration or scope of the rule, including documents and communications relating to the draft executive order "Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility," dated January 23, 2017 and including the accompanying Economic Analysis Supplemental Information and Supplemental Final Regulator Impact published concurrently with the rule.

6. The term "WHITE HOUSE" refers to the current President of the United States, the current Vice-President of the United States, and all of their current and former employees, agents, officers, directors, representatives, consultants, advisors, aides, counsel, and staff, including any PERSON who has served in any such capacity at any time since November 8, 2016.

7. The term "DHS" refers to Defendant U.S. Department of Homeland Security, including without limitation, any and all of its component entities; any and all of its employees, agents, contractors, representatives, and attorneys; and any person acting on its behalf. DHS's component entities, including but not limited to U.S. Citizenship and Immigration Services, Customs and Border Protection, and Immigration and Customs Enforcement, are referred to herein as DHS's "components."

8. The term "PERSON(S)" includes a natural person, firm, association, organization, partnership, business, trust, corporation, public entity, agency or department.

9. The term "POLICIES AND PROCEDURES" refers to all reports, memoranda, legal opinions, correspondence, audits, policies, rules, orders, standard operating procedures, adjudicative templates, appendices, formal and informal practices, and any other guidance issued to or adopted by the U.S. Department of Homeland Security or its components, and any drafts thereof. The term includes emails indicating demands, requests, or preferences to take action of a particular nature or at a particular time.

10. The terms "YOU" and "YOUR" means Defendant U.S. Department Homeland Security and anyone acting on its behalf.

REQUESTS FOR PRODUCTION

1. All DOCUMENTS, including but not limited to COMMUNICATIONS, within DHS or DHS's components related to the purpose, effect, or potential impact of the PUBLIC CHARGE RULE on individuals by national origin, race, or ethnic group, including but not limited to non-white individuals or individuals born in or descendent from Asia, Latin America, the Caribbean, Africa, and the Middle East.

2. All DOCUMENTS relating to COMMUNICATIONS between or among DHS or DHS's components and the WHITE HOUSE related to the purpose, effect, or potential impact of the PUBLIC CHARGE RULE on individuals by national origin, race, or ethnic group, including but not limited to non-white individuals or individuals born in or descendent from Asia, Latin America, the Caribbean, Africa, and the Middle East.

3. All DOCUMENTS relating to COMMUNICATIONS between or among DHS or DHS's components and the United States Department of State, the United States Department of Health and Human Services, the United States Department of Agriculture, the United States Department of Housing and Urban Development, and/or the Centers for Medicare and Medicaid Services related to the purpose, effect, or potential impact of the PUBLIC CHARGE RULE on individuals by national origin, race, or ethnic group, including but not limited to non-white individuals or individuals born in or descendent from Asia, Latin America, the Caribbean, Africa, and the Middle East.

4. All DOCUMENTS, including but not limited to COMMUNICATIONS between or among DHS or DHS's components and the WHITE HOUSE, related to the Federation for American Immigration Reform, Center for Immigration Studies, or Immigration Reform Law Institute.

Dated: June 9, 2020

Respectfully Submitted,

/s/ David A. Gordon
David A. Gordon
Tacy F. Flint
Marlow Svatek
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/s/ Caroline Chapman
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/s/ Katherine E. Walz
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Counsel for Illinois Coalition For Immigrant and Refugee Rights, Inc.

Appendix A: Proposed List of Custodians and Search Terms

Custodians and/or Email Domains:

- For Request Nos. 1, 2, and 4: Stephen Miller, Claire Grady, Ronald Vitiello, John Mitnick, John Zadrozny, Mark Koumans, Kathy Nuebel Kovarik, Robert Law, Elizabeth Ann Jacobs, Jon Feere, Lee Francis Cissna, Kenneth Cuccinelli, Chad Wolf, Theodore Wold, David Wetmore, Zina Bash, Gene Hamilton, Kirstjen Nielsen, Mick Mulvaney and Julie Kirchner.

- For Request No. 3, emails between or among any of the following email domains: @hq.dhs.gov, @uscis.dhs.gov, @ice.dhs.gov, @hud.gov, @state.gov, @hhs.gov, @cms.hhs.gov, @usda.gov

Search Terms: ("Public Charge" or "PC" or "1182(a)(4)" or 1182a4) AND ([all the other terms listed below separated by "OR"]):

"Temporary Protected Status"
TPS
Amnesty
Asylum
Refugee
Haiti
Caravan
Honduras
El Salvador
Guatemala
Iran
"Central America"
Africa
Nigeria
Congo
Kenya
Somalia
Ethiopia
Yemen
Sudan
Myanmar
Afghanistan
Pakistan
Syria
Mexico
Terrorist-linked
S1
VOICE
"Victims of Immigration Crime"
Muslim
Arab
Terrorism
"Chain Migration"
"Family Based Immigration"

Minority
White
Non-White
Illegals
“Illegal Aliens”
“Illegal Immigrant!”
“Criminal Aliens”
“Immigrant Crime”
Sharia
Birthright
“American born” or “American-born”
“U.S. born” or “U.S.-born”
Foreign-born
Replace
Replacement
“Replace us”
Richwine
Cuba
Latino
“Lift the Taboo”
“Great replacement”
Black
“Anchor Baby”
“Gang member”
“Sex offender”
Criminal
Rapist
“White Genocide”
“Drug Dealer”
Invade
Invasion
“American Renaissance”
“AmRen”
“Interracial Crime”
“Hispanic Crime”
“Black Crime”
“Mixed-Race”
Radical
“Islamic Terrorism”
“Foreign-born terrorist”
Multicultural
Mariel
Hurricane
“CIS”
IQ
Latin!
European / 5 immigrant
White /5 European
White / 5 immigrant
Alien
Welfare
“Drain on public funds”
“Drain on society”
“Strain on public funds”

"Strain on society"
Section 8
SNAP
CHIP
Unskilled
Unhealthy
Burden
Wall
Flood
Shithole
Huts
AIDS
"Emma Lazarus"
Genocide
Murder!
Terror!
Suspect Countries
MS13
Depend!
Executive Order /10 "public charge"
EO /10 "public charge"
"Protecting Taxpayer Resources by Ensuring Our Immigration Laws Promote Accountability and Responsibility"
"Northern Triangle"
Kris Kobach
Matthew O'Brien
John Tanton
George Borjas
Mark Krikorian
"Immigration Control"
"Radical Islam" /10 (refugee or immigrant)
Low-skill! or "low skill!"
No-skill! or "no skill!"
"Immigration Reform" or FAIR or IRLI
"Center for Immigration Studies" or CIS

Appendix B: Proposed List of Deponents

Deponent List	
Deponent	**Explanation of Deponent's Position/Role**
Stephen Miller	Senior Advisor to the President. Miller is a key advisor to the President on matters of domestic policy and is the chief architect of the administration's immigration policy agenda. Miller has worked in the Executive Office of the President since January 20, 2017, and previously released email correspondence shows that he had a key oversight role in the issuance of the Public Charge Rule.
Lee Cissna	Cissna served as the Director of United States Citizenship and Immigration Services ("USCIS") from October 8, 2017 until May 24, 2019. As the leader of the federal agency tasked with administering the nation's immigration system, Cissna played a key role in executing the administration's immigration policies. Previously released email correspondence shows that Cissna played a key role in the formulation of the Public Charge Rule behind the leadership of Miller. Cissna resigned from USCIS in May 2019, reportedly as a result of Miller's desire to replace him with someone whose views on immigration took a "harder line."
Kenneth Cuccinelli	Cuccinelli currently serves as acting Secretary of Homeland Security, a position he has had since November 13, 2019, and also replaced Cissna as the Director of USCIS in an acting capacity from June 10, 2019 until March 1, 2020. In his capacity as acting USCIS Director, he oversaw the finalization and issuance of the Public Charge Rule. The day after the rule's issuance, Cuccinelli gave a press conference in which he defended the rule by arguing the famous Emma Lazarus poem found on the Statue of Liberty meant to refer to "your tired, your poor" who "could stand on their own two feet."
Claire Grady	Claire Grady worked at DHS under then-Secretary Kirstjen Nielsen after serving in the Department, and its predecessor agencies, for almost three decades. She resigned a few days after Nielsen was fired, and public reporting indicates that she was forced out in an effort to remove members of the Department who did not agree completely with the hard-line immigration policies of the Administration.
Jon Feere	Feere has served as a senior advisor to Immigration and Customs Enforcement since January 2017. Previously released emails indicate that Feere is an important member of the Administration's immigration policy team and that he was an attendee of weekly meetings with Miller at which the Administration's immigration agenda was discussed. Emails previously released as the result of a FOIA request show that Feere frequently provided Miller and others with articles and other materials regarding immigration policy.
Kathy Nuebel Kovarik	Kovarik has served as the chief of staff of USCIS since February 3, 2020 after having served in USCIS's Office of Policy and

	Strategy for more than two years previously. Kovarik is an important member of the policy-making team at USCIS. Kovarik also previously served as a staffer for Senator Grassley alongside Cissna.

EXHIBIT 3

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON; COMMONWEALTH OF VIRGINIA; STATE OF COLORADO; STATE OF DELAWARE; STATE OF ILLINOIS; COMMONWEALTH OF MASSACHUSETTS; DANA NESSEL, Attorney General on behalf of the people of Michigan; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF RHODE ISLAND; STATE OF MARYLAND; STATE OF HAWAI'I,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, a federal agency; KEVIN K. MCALEENAN, in his official capacity as Acting Secretary of the United States Department of Homeland Security; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, a federal agency; KENNETH T. CUCCINELLI, II, in his official capacity as Acting Director of United States Citizenship and Immigration Services,

Defendants.

NO: 4:19-CV-5210-RMP

ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO STAY DISCOVERY ORDER RE: PRIVILEGE LOG

BEFORE THE COURT is the Defendants[1] ("DHS") Motion for Stay of Order or, in the Alternative, for Extension of Time to Produce Privilege Log, ECF No. 213. The Court previously found good cause to expedite hearing of the portion of DHS's motion relating to staying production of a privilege log. ECF No. 215. Having considered Defendants' motion, Plaintiffs'[2] (the "States") opposition, and Defendants' reply, the remaining docket, and the relevant law, the Court is fully informed.

In resolving a Motion to Compel filed by the States, the Court found that the States had rebutted the presumption that the administrative record is complete, because there is clear evidence that certain communications that the agency relied upon in the rulemaking process were omitted from the record. ECF No. 210 at 11; *see also* ECF No. 195 at 7−8. Consequently, the Court ruled that production of a privilege log by DHS is appropriate and necessary to facilitate further inquiry into the nature and appropriateness of the alleged privilege, or privileges, that DHS seeks

[1] Defendants in this lawsuit are the United States Department of Homeland Security ("DHS"), Acting Secretary of DHS Kevin K. McAleenan, United States Citizenship and Immigration Services ("USCIS"), and Acting Director of USCIS Kenneth T. Cuccinelli II (collectively, "DHS").

[2] The Plaintiffs in this lawsuit are the State of Washington, Commonwealth of Virginia, State of Colorado, State of Delaware, State of Hawai'i, State of Illinois, State of Maryland, Commonwealth of Massachusetts, Attorney General Dana Nessel on behalf of the People of Michigan, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, and State of Rhode Island (collectively, the "States").

to invoke to support exclusion of the communications from the administrative record. *Id.* at 12.

DHS seeks to stay the requirement of providing a privilege log until a not-yet-filed motion to dismiss has been decided. ECF No. 213 at 6. Alternatively, DHS seeks to extend the time to provide a privilege log. *Id.* at 8. The States oppose a stay of the privilege log deadline pending resolution of a forthcoming motion to dismiss, but consent to a limited extension of the privilege log deadline. ECF No. 216.

The four factors to consider regarding a stay of a prior order include: "'(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.'" *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (quoting *Nken v. Holder*, 556 U.S. 418, 433 (2009)).

"'A stay is not a matter of right, even if irreparable injury might otherwise result.'" *Nken*, 556 U.S. at 433 (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)). Rather, a stay is "'an exercise of judicial discretion,'" and "'the propriety of its issue is dependent upon the circumstances of the particular case.'" *Id.* (quoting *Virginian R. Co.*, 272 U.S. at 272−73) (alterations omitted).

DHS makes no showing in its Motion to Stay of a likelihood of success on the merits. Rather, DHS relies on the reasoning of the Ninth Circuit Court of Appeals

motions panel in deciding whether to stay the preliminary injunction in this matter to argue that DHS will succeed with its yet unfiled motion to dismiss. *See* ECF Nos. 213 at 6; 218 at 3 (citing *City & County of San Francisco v. USCIS*, 944 F.3d 773, 805 (9th Cir. 2019)). The merits of the claims raised by the States' Amended Complaint are an open question. The Ninth Circuit's opinion does not purport to determine the merits, nor was the motion panel's decision based on a complete administrative record, which was not yet produced. *See City & County of San Francisco*, 944 F.3d 773; ECF No. 216 at 4. To the extent that DHS is predicting that a forthcoming motion to dismiss will be resolved in their favor, they have not made an adequate showing to support staying the privilege log requirement on that basis.

Next, with respect to whether DHS will be irreparably harmed by the requirement of producing a privilege log, the Court rejects DHS's argument that a privilege log has no relevance at the pleading stage. *See* ECF No. 213 at 6. DHS did not object to producing the administrative record in this matter in November 2019. *See* ECF No. 193 at 2. As early as that production, DHS should have been aware of what was included and excluded from the record and why. By contrast, the States persuasively argue that they will be harmed the longer DHS is excused from compiling a privilege log in the form of "routine deletion, inadvertent loss, and destruction of relevant e-mails, text messages, and other documents." ECF No. 216 at 2.

The public interest factor also disfavors a stay here, as a privilege log facilitates a determination of whether the agency is invoking a privilege to protect a public interest in confidentiality or to the detriment of a competing public interest in disclosure. *See PG&E v. United States*, 70 Fed. Cl. 128, 142 (2006) (requiring defendant agencies to provide specific reasons for protecting documents helps to ensure that "the government official called upon to examine documents 'has inspected the individual documents and determined that the public interest in confidentiality (as distinct from the government's interest in the litigation) outweighs the public interest in disclosure.'") (quoting *Resolution Trust Corp. v. Diamond*, 773 F. Supp. 597, 603 (S.D.N.Y. 1991)).

Therefore, based on all of the relevant factors and in light of the likelihood of serious harm to the States' interest and the public in learning what materials DHS withheld from the administrative record, the Court finds the States' consent to an extended deadline for DHS to produce the privilege log on a rolling basis to be reasonable.

Accordingly, **IT IS HEREBY ORDERED**:

1. DHS's Motion to Stay Motion for Stay of Order or, in the Alternative, for Extension of Time to Produce Privilege Log, **ECF No. 213**, is **DENIED IN PART** with respect to staying production of the privilege log pending a forthcoming motion to dismiss, and **GRANTED IN PART** with respect to extending the deadline for DHS to produce a privilege log as follows:

a. DHS shall produce a privilege log on a rolling basis starting on June 12, 2020.

b. Beginning on June 12, 2020, DHS shall make reports to the Court and the States every other Friday, on their progress toward completion of the privilege log. This report should include DHS's progress on:

i. notifying potential custodians of their obligation to preserve potentially relevant documents, even if assertedly privileged;

ii. segregating all assertedly privileged documents for review; and

iii. logging privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). The numbers of custodians notified and documents segregated and logged that are reported in DHS's report should be stated in absolute terms and as a percentage of the whole, so the States and the Court can assess DHS's progress toward completion.

2. The Motion for Stay of Order, **ECF No. 213**, shall **remaining pending** for further briefing on the issue of whether to stay discovery on the States' equal protection claim. *See* ECF No. 215.

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order and provide copies to counsel.

DATED May 13, 2020.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge

EXHIBIT 4

From: Cholera, Kuntal (CIV)
To: LAUREN MILLER (States Attorney); Morrison, David
Cc: JESSICA SCHELLER (States Attorney); Levy, Steven A.; Svatek, Marlow; Flint, Tacy F.; Gordon, David A.; Farnsworth, Lee; Cowles, William; Rodheim, Andy F.; cchapman@legalcouncil.org; Kate Walz; Militza Pagan; Meghan Carter; Kolsky, Joshua (CIV); Lynch, Jason (CIV)
Subject: RE: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)
Date: Tuesday, June 2, 2020 2:20:25 PM

Counsel,

We have conferred with our client, and as we previewed on the call, ICIRR's proposed expedited schedule is simply not feasible. Bear in mind, once we receive ICIRR's document requests, we will have to provide responses and objections, which will result in negotiations (and possibly litigation) over discovery scope. This process alone can take several weeks. Subsequent document collection, review, and production will likewise take a fair amount of time, especially under current circumstances. We note this to simply point out that ICIRR's requested timeline is structurally impossible to meet.

Best,
Kuntal

From: LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>
Sent: Wednesday, May 27, 2020 10:59 AM
To: Cholera, Kuntal (CIV) <kcholera@CIV.USDOJ.GOV>; Morrison, David <David.Morrison@goldbergkohn.com>
Cc: JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <jkolsky@CIV.USDOJ.GOV>; Lynch, Jason (CIV) <jalynch@CIV.USDOJ.GOV>
Subject: Re: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

Thanks Kuntal. We'll plan for 1PM CT on Monday and will use the same dial-in information:

Dial In: 1.833.201.1976
password: 63972

Lauren E. Miller
Special Assistant State's Attorney
Civil Actions Bureau – Affirmative & Impact Litigation
Cook County State's Attorney's Office
500 Richard J. Daley Center, Chicago, IL 60602
P: 312.603.4320 E: Lauren.Miller@cookcountyil.gov

have received this message in error, please notify the sender and remove it from your system.

From: Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>
Sent: Wednesday, May 27, 2020 9:55 AM
To: LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>; Morrison, David <David.Morrison@goldbergkohn.com>
Cc: JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org <cchapman@legalcouncil.org>; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <Joshua.kolsky@usdoj.gov>; Lynch, Jason (CIV) <Jason.Lynch@usdoj.gov>
Subject: RE: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

2 p.m. (et) on Monday, June 1 is fine.

From: LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>
Sent: Wednesday, May 27, 2020 10:31 AM
To: Cholera, Kuntal (CIV) <kcholera@CIV.USDOJ.GOV>; Morrison, David <David.Morrison@goldbergkohn.com>
Cc: JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <jkolsky@CIV.USDOJ.GOV>; Lynch, Jason (CIV) <jalynch@CIV.USDOJ.GOV>
Subject: Re: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

Thanks Kuntal. Unfortunately, our team has encountered scheduling conflicts with today's meeting -- could we reschedule for early next week? We are available any time after 1PM CT on Monday, June 1st if that works with your schedule.

Additionally, given the length of time the Government has had with the Complaint and the harm that the Rule imposes, Plaintiffs do not consent to a 30-day extension to the June 9, 2020 answer deadline.

Thank you, and apologies again for the scheduling change.
Lauren

Lauren E. Miller
Special Assistant State's Attorney
Civil Actions Bureau – Affirmative & Impact Litigation
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From: Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>
Sent: Tuesday, May 26, 2020 2:21 PM
To: Morrison, David <David.Morrison@goldbergkohn.com>; LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>
Cc: JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org <cchapman@legalcouncil.org>; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <Joshua.kolsky@usdoj.gov>; Lynch, Jason (CIV) <Jason.Lynch@usdoj.gov>
Subject: RE: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

Thanks, David. We will use that number at 3 p.m. (ct) tomorrow.

Separately, the Court recently entered an Order requiring Defendants to answer the Complaint by June 9, 2020. Defendants intend to seek a 30-day extension, allowing us to answer the Complaint by July 9, 2020. Please let us know if Plaintiffs object to this request.

Thank you,
Kuntal

From: Morrison, David <David.Morrison@goldbergkohn.com>

Sent: Monday, May 25, 2020 1:13 PM
To: Cholera, Kuntal (CIV) <kcholera@CIV.USDOJ.GOV>; LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>
Cc: JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <jkolsky@CIV.USDOJ.GOV>; Lynch, Jason (CIV) <jalynch@CIV.USDOJ.GOV>
Subject: RE: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

Let's use this dial in:

Dial In: 1.833.201.1976
password: 63972

David Morrison | **Goldberg Kohn Ltd.** | 55 East Monroe, Suite 3300, Chicago, Illinois 60603 | direct: 312.201.3972 | direct fax: 312.863.7472 | David.Morrison@goldbergkohn.com | www.goldbergkohn.com | Biography |

From: Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>
Sent: Friday, May 22, 2020 3:21 PM
To: LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>
Cc: Morrison, David <David.Morrison@goldbergkohn.com>; JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <Joshua.kolsky@usdoj.gov>; Lynch, Jason (CIV) <Jason.Lynch@usdoj.gov>
Subject: RE: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

Hi Lauren,

Thank you, 3 p.m. (CT) Wednesday works for us. Do you have a dial-in we can use?

Best,

Kuntal

From: LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>
Sent: Friday, May 22, 2020 10:55 AM
To: Cholera, Kuntal (CIV) <kcholera@CIV.USDOJ.GOV>
Cc: Morrison, David <David.Morrison@goldbergkohn.com>; JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <jkolsky@CIV.USDOJ.GOV>; Lynch, Jason (CIV) <jalynch@CIV.USDOJ.GOV>
Subject: Re: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

Thank you Kuntal. Our team has availability for a call at either 9AM or 3PM CT on Wednesday, 5/27. Please let us know if one of those times works for you.

Best,
Lauren

Lauren E. Miller
Special Assistant State's Attorney
Civil Actions Bureau – Affirmative & Impact Litigation
Cook County State's Attorney's Office
500 Richard J. Daley Center, Chicago, IL 60602
P: 312.603.4320 E: Lauren.Miller@cookcountyil.gov

From: Cholera, Kuntal (CIV) <Kuntal.Cholera@usdoj.gov>
Sent: Thursday, May 21, 2020 4:19 PM
To: LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>
Cc: Morrison, David <David.Morrison@goldbergkohn.com>; JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org <cchapman@legalcouncil.org>; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <Joshua.kolsky@usdoj.gov>; Lynch, Jason (CIV) <Jason.Lynch@usdoj.gov>

Subject: RE: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

Hi Lauren,

Hope you all are staying safe. Yes, we will provide Plaintiffs in this matter with any privilege logs we produce on a rolling basis in the *Washington* case. As for a call, we are available on Wednesday (5/27) or Thursday (5/28). Please let us know of your availability on those days.

Best,
Kuntal

From: LAUREN MILLER (States Attorney) <Lauren.Miller@cookcountyil.gov>
Sent: Thursday, May 21, 2020 3:57 PM
To: Cholera, Kuntal (CIV) <kcholera@CIV.USDOJ.GOV>
Cc: Morrison, David <David.Morrison@goldbergkohn.com>; JESSICA SCHELLER (States Attorney) <JESSICA.SCHELLER@cookcountyil.gov>; Levy, Steven A. <steven.levy@goldbergkohn.com>; Svatek, Marlow <msvatek@sidley.com>; 'tflint@sidley.com' <tflint@sidley.com>; 'dgordon@sidley.com' <dgordon@sidley.com>; Farnsworth, Lee <lfarnsworth@sidley.com>; Cowles, Willy <wcowles@sidley.com>; Rodheim, Andy F. <arodheim@sidley.com>; cchapman@legalcouncil.org; Kate Walz <katewalz@povertylaw.org>; Militza Pagan <militzapagan@povertylaw.org>; Meghan Carter <mcarter@legalcouncil.org>; Kolsky, Joshua (CIV) <jkolsky@CIV.USDOJ.GOV>; Lynch, Jason (CIV) <jalynch@CIV.USDOJ.GOV>
Subject: Cook County v. Wolf, No 19-cv-6334 (N.D. Ill.)

Kuntal,

Following the district court's order on Tuesday, we wanted to revisit the production of a privilege log that we first discussed at the end of 2019. It is our understanding that Defendants will produce a privilege log in the pending Washington State case. Please confirm that DHS will be producing that same privilege log in this case as well. Please let us know when you are free for a call to discuss.

Best,
Lauren

Lauren E. Miller
Special Assistant State's Attorney

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