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

ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS, INC., Plaintiff, v. ALEJANDRO MAYORKAS, in his official capacity as 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

JOINT STATUS REPORT

Pursuant to this Court's order, Dkt. 244, Plaintiff ICIRR and Defendants submit the following joint status report in advance of the February 26, 2021 status hearing.

I. Case Status Update

The parties conferred by telephone on February 10, 2021 and February 18, 2021, regarding the status of proceedings. Plaintiff ICIRR and Plaintiff Cook County (terminated November 2, 2020, *see* Dkt. 221) also participated in a call with the Office of the Solicitor General on February 16, 2021 regarding the status of the petition for certiorari in this matter, No. 20-450 (U.S.), which is set for conference today, February 19, 2021.

PLAINTIFF'S POSITION:

At this time, Defendants are still requesting that the U.S. Supreme Court and the U.S. Court of Appeals for the Seventh Circuit overturn this Court's prior rulings and uphold the Rule.

On February 18, 2021, Deputy Solicitor General Curtis Gannon advised Plaintiff by email that Defendants will not file anything with the Supreme Court before its February 19, 2021 conference to

rescind Defendants' request for review.

Enforcement of this Court's final judgment vacating the Rule remains stayed by the Seventh Circuit, and briefing on that appeal has been suspended since November 19, 2020. *See* ECF No. 21, *Cook County v. Wolf*, No. 20-3150 (7th Cir.).

Although Plaintiff appreciates that the Defendants are preparing the reports required by the Executive Order (*see* Dkt. 241), which are due April 5, 2021, the Executive Order does not commit DHS to any policy change or set any timeline for implementation of any change that DHS eventually recommends. The Executive Order cannot and does not suspend enforcement of or vacate the Rule, nor does it guarantee that further court action in the Supreme Court or by new plaintiffs in other forums will not succeed in keeping the Rule in place.

At this point, courts across the country have agreed that the Rule is invalid, and (now that the Fourth Circuit panel opinion has been vacated) every circuit court opinion on the merits of the Rule has agreed. But despite weeks of assurances that they are reviewing the Rule, Defendants are still enforcing the Rule and urging that the Supreme Court uphold it. A stay of these proceedings while the Defendants consider a potential change in policy thus means allowing well-established harms to stay in place indefinitely, while ICIRR and its members are forced to continue to divert resources to combat the broad chilling effect of the Rule. Plaintiff cannot consent to leaving this invalid rule in place, hurting people each day.

At the prior hearing, Plaintiff expressed its concern that the Defendants would ask for a two-week extension and then when the two weeks ran out ask for a further extension, and we would be stuck indefinitely. Defendants are now asking for another 60 days, but there is certainly no guarantee that 60 days will be enough.

This Court's proceedings provide a distinct path to

relief that is different than what is currently pending with the Seventh Circuit and Supreme Court. There is also value in this Court allowing Plaintiff the opportunity to reveal the extent to which white nationalism spurred this Rule, to obtain this revelation on the record, and to seek accountability for the machinations that allowed it to take root in the first place. However, if the Defendants agree to end their appeal of the final judgment, allowing the vacatur to go into effect, Plaintiff is open to talking to them about staying the equal protection claim. In that situation, the harm would largely be abated. In the absence of that, Plaintiff does not consent to a stay of any period.

If the court is inclined to grant the Defendants more time, Plaintiff respectfully requests that any stay be brief—7 or 14 days, for example—so that ICIRR and the communities ICIRR serves are not left hanging indefinitely.

DEFENDANTS' POSITION:

As explained in Defendants' February 3, 2021 Motion to Amend, President Biden issued an Executive Order calling on the Department of Homeland Security ("DHS") to "review [its] agency actions related to implementation of the public charge ground of inadmissibility" (i.e., the Public Charge Rule at issue here) and to "identif[y] . . . any steps" it "intend[s] to take or ha[s] taken" regarding the Public Charge Rule by April 3, 2021.[1] Accordingly, DHS is currently reviewing the Public Charge Rule, and the Department of Justice ("DOJ") is likewise assessing how to proceed with its appeals in relevant litigations in light of the aforementioned Executive Order. Thus, a time-limited stay is appropriate, and may spare the parties and the Court from the burdens associated with briefing and resolving the merits of the equal protection claim (and related discovery disputes), all of which may ultimately prove unnecessary.

[1] *See* https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/.

Although, as Plaintiffs note, the Rule currently remains in effect while DHS and DOJ undertake the review required by President Biden's Executive Order, this would only be a meaningful argument against a time-limited stay if Plaintiffs could demonstrate that the parties could brief, and the Court could resolve, a dispositive motion on the equal protection claim on a far more accelerated timeline. But Plaintiffs make no such showing; indeed, they fail to disclose whether and when they intend to raise any further discovery disputes, nor do they even suggest that they plan on promptly moving for summary judgment on the equal protection claim. And even if the parties promptly commenced summary judgment briefing, it is highly unlikely the Court would render a decision on or before April 3—when DHS must "identif[y] . . . any steps" it "intend[s] to take or ha[s] taken" regarding the Public Charge Rule.

Thus, the Court should enter a time-limited stay. Defendants are amenable to Plaintiffs' proposal: a brief stay of up to two weeks. This would provide DHS and DOJ with additional time to assess how they wish to proceed, and further developments during that time period may either moot Plaintiffs' equal protection claim or ultimately lead Plaintiffs to agree that a more lengthy stay (or a voluntary dismissal) is appropriate.

Dated: February 19, 2021

Respectfully submitted,

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