IN THE 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.**	Civ. Action No. 19-cv-06334

PLAINTIFFS' SUPPLEMENTAL BRIEF REGARDING MOOTNESS

On Friday, October 11, 2019, at approximately the same time this Court began its hearing on Plaintiffs' motion for a preliminary injunction in this case, a judge in the United States District Court for the Southern District of New York entered a nationwide preliminary injunction halting the implementation of the Final Rule that is the subject of this litigation. Mem. Op. and Order Granting Prelim. Inj. *State of New York v. United States Department of Homeland Security*, No. 1:19-cv-07777-GBD Doc. 110 (S.D.N.Y. Oct. 11, 2019). During the hearing, a second district court entered an injunction, but limited it to a handful of states and municipalities, not including Illinois. Prelim. Inj. *City and County of San Francisco v. U.S. Citizenship and Immigration*

Services, No. 19-cv-04717-PJH Doc. 115 (N.D. Cal. October 11, 2019). Having been informed of the first two injunctions,[1] the Court invited the parties to submit supplemental briefing regarding whether Plaintiffs' motion for a preliminary injunction in this action is moot. It is not.

Nationwide preliminary injunctions entered elsewhere do not defeat Plaintiffs' own concrete interest in this case because they are preliminary relief and remain subject to modification by the issuing court or reversal on appeal.[2] *See* 13B Wright & Miller, Federal Practice § 3533.2.1 (3d ed. 2008) ("Mootness may be denied because [a] decision is subject to reopening on appeal, at least if there is a realistic prospect of reopening[.]"); *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) ("[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot") (internal quotation marks and citation omitted). Because the *preliminary* injunctions that have been entered remain subject to modification and review, relief from this Court remains imperative. As Plaintiffs have demonstrated, if the Final Rule becomes effective, both Plaintiffs and the communities they serve in Illinois would suffer irreparable harm. Mem. at *46–52. That prospect remains live so long as the other judicial orders barring implementation of the Final Rule in Illinois are only preliminary and subject to reversal. Importantly, each case involves its own assessment not just of a likelihood of success on questions relating to the lawfulness of the Final Rule, but also of individual parties' particular rights, obligations, and harms. Plaintiffs thus

[1] Shortly after the hearing in this case, a third district court entered a nationwide injunction. Order Granting Prelim. Inj. *State of Washington v. United States Department of Homeland Security*, No: 4:19-CV-4210-RMP ECF No. 162 (E.D. Wash. Oct. 11, 2019).

[2] At the hearing, Defendants' counsel stated that the government likely would appeal the other injunctions. Later Friday afternoon, one of the Defendants—Ken Cuccinelli, the Director of Citizenship and Immigration Services, also a Defendant in the New York case—personally warned that "[a]n objective judiciary *will* see that this rule lies squarely within long-held existing law," suggesting that Defendants will seek further review. Ken Cuccinelli (@USCISCuccinelli), Twitter (Oct. 11, 2019, 12:46 PM), twitter.com/USCISCuccinelli/status/1182744201370460167 (emphasis added); *See also* Elliot Spagat & Deepti Hajela, *Judges Block Green Card Denials for Immigrants on Public Aid*, Washington Post (Oct. 11, 2019, 6:05 PM), https://www.washingtonpost.com/national/judge-blocks-green-card-denials-for-poorer-immigrants/2019/10/11/88f0e61e-ec5e-11e9-a329-7378fbfa1b63_story.html.

maintain a strong and concrete interest in an order from this Court—resting on the Illinois- and Cook County-specific harms that Plaintiffs have demonstrated—that will enable Plaintiffs to enforce their own federal rights no matter what may occur elsewhere.

The Supreme Court also has recognized that it is neither uncommon nor problematic for federal government defendants to face overlapping litigation. "Government litigation frequently involves legal questions of substantial public importance . . . . Because of [that fact] the government is more likely than any private party to be involved in lawsuits against different parties which nonetheless involve the same legal issues." *U.S. v. Mendoza*, 464 U.S. 154, 160 (1984). The Supreme Court thus declined to apply nonmutual collateral estoppel against the government for fear that it "would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue. Allowing only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question[.]" *Id*. So too here. The validity of the Final Rule is a legal question with national significance, and this Court's consideration of the Rule will further the development of the law on this important topic. This is perhaps particularly so here with multiple decisions being issued within a matter of days; it would make little sense for the law to permit three courts to weigh in on a matter of national importance, but bar the fourth.

For all of these reasons, federal courts across the country consistently have ruled on motions for preliminary injunctions, even when a different nationwide injunction was in place, in circumstances like those present here. For example, in litigation surrounding Executive Order 13769 (the "travel ban"), the Fourth Circuit upheld a nationwide injunction of the Order, *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017), and the Ninth Circuit subsequently upheld a separate nationwide injunction issued by a Hawai'i district court. *Hawai'i*

v. Trump, 859 F.3d 741 (9th Cir. 2017) (*vacated and remanded, Trump v. Hawai'i*, 138 S. Ct. 377 (2017). Similarly, in litigation surrounding the Deferred Action for Childhood Arrivals ("DACA") policy, the Ninth Circuit upheld a nationwide preliminary injunction issued by a California district court, *Regents of the University of California v. U.S. Department of Homeland Security*, 908 F.3d 476 (9th Cir. 2018), even though a New York district court already had issued a separate nationwide injunction. *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018). Earlier this year, a district court in the Northern District of California issued a preliminary injunction blocking implementation of rules concerning religious and moral objections to the Affordable Care Act's contraceptive mandate. *California v. Health and Human Services*, 351 F. Supp. 3d 1267 (N.D. Cal. 2019). The next day, a Pennsylvania district court issued a nationwide injunction of the same rules. *Pennsylvania v. Trump*, 351 F. Supp. 3d 791 (E.D. Penn. 2019). In briefing before the Ninth Circuit addressing whether the Pennsylvania nationwide injunction rendered an appeal of the California injunction moot, all parties, including DOJ, agreed that it did not. Suppl. Br. for the Federal Appellants at *2, *California v. Health and Human Services*, No. 19-15072 Doc. 152 (9th Cir. May 20, 2019) ("The possibility that the Pennsylvania injunction may not persist is sufficient reason to conclude that this appeal is not moot.").

Plaintiffs' motion for preliminary injunction is not moot. Plaintiffs renew their request that this Court enter an injunction staying the implementation of the Final Rule in the State of Illinois, for all of the reasons expressed in Plaintiffs' briefs and at argument.

Dated: October 13, 2019

KIMBERLY M. FOXX
Cook County Illinois State's Attorney

Respectfully submitted,

COOK COUNTY, ILLINOIS

By /s/ Jessica M. Scheller
Jessica M. Scheller, Assistant State's Attorney
Chief; Advice, Business & Complex Litigation Division

Lauren Miller, Special Assistant State's Attorney
Civil Actions Bureau
500 W. Richard J. Daley Center Place, Suite 500
Chicago, IL 60602
Phone: (312) 603-6934
Phone: (312) 603-4320
Jessica.Scheller@cookcountyil.gov
Lauren.Miller@cookcountyil.gov

/s/ David E. Morrison
David E. Morrison
Steven A. Levy
A. Colin Wexler
Takayuki Ono
Juan C. Arguello
Goldberg Kohn Ltd.
Special Assistant State's Attorneys
55 E. Monroe St., Suite 3300
Chicago, IL 60603
Phone: (312) 201-4000
Fax: (312) 332-2196
david.morrison@goldbergkohn.com
steven.levy@goldbergkohn.com
colin.wexler@goldbergkohn.com
takayuki.ono@goldbergkohn.com
juan.arguello@goldbergkohn.com

Counsel for Cook County, Illinois

ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS, INC.

By /s/ David A. Gordon
David A. Gordon
Tacy F. Flint
Sidley Austin LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7000 (Telephone)
(312) 853-7036 (Facsimile)
dgordon@sidley.com
tflint@sidley.com

Yvette Ostolaza (*pro hac vice pending*)
Texas Bar No. 00784703
Robert S. Velevis (*pro hac vice pending*)
Texas Bar No. 24047032
SIDLEY AUSTIN LLP
2021 McKinney Ave, Suite 2000

Dallas, Texas 75201
(214) 981-3300 (Telephone)
(214) 981-3400 (Facsimile)
Yvette.ostolaza@sidley.com
rvelevis@sidley.com

By */s/ Caroline Chapman*
Caroline Chapman
Meghan P. Carter
Shelmun Dashan
LEGAL COUNCIL FOR HEALTH JUSTICE
17 N. State, Suite 900
Chicago, IL 60602
Phone: (312) 605-1958
Fax: 312-427-8419
cchapman@legalcouncil.org
mcarter@legalcouncil.org
sdashan@legalcouncil.org

By */s/ Katherine E. Walz*
Katherine E. Walz
Gavin M. Kearney
Andrea Kovach
Militza M. Pagan
SHRIVER CENTER ON POVERTY LAW
67 E. Madison, Suite 2000
Chicago, IL 60603
Phone: (312) 368-2679
Fax: (312) 263-3846
katewalz@povertylaw.org
gavinkearney@povertylaw.org
andreakovach@povertylaw.org
militzapagan@povertylaw.org

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

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on October 13, 2019, she caused the attached **PLAINTIFFS' SUPPLEMENTAL BRIEF REGARDING MOOTNESS** 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)

Joshua Kolsky (Joshua.kolsky@usdoj.gov)

Eric Soskin (Eric.Soskin@usdoj.gov)

Tom Walsh (thomas.walsh2@usdoj.gov)

/s/ Marlow Svatek