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.

CHAD F. WOLF, 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

PLAINTIFF COOK COUNTY'S SUPPLEMENTAL BRIEF IN SUPPORT OF SUMMARY JUDGMENT

I. Introduction.

Pursuant to this Court's order, Dkt. 216, Plaintiff Cook County, Illinois ("the County") submits this supplemental brief in support of the County's motion for summary judgment on Counts I-III, Dkt. 200, which was filed jointly with Plaintiff Illinois Coalition for Immigrant and Refugee Rights, Inc. ("ICIRR"). In the event that this Court grants Plaintiffs' motion for summary judgment on Counts I-III, the Court will have resolved all of the County's claims in this case, as the County is not a party

to the Count IV equal protection claim asserted by ICIRR. *See* Compl. ¶¶ 140–69. Accordingly, should ICIRR elect to continue its equal protection claim under those circumstances, the County requests the entry of final judgment in its favor pursuant to Federal Rule of Civil Procedure 54(b) as to Counts I-III, as summary judgment on those claims resolves all disputes between the County and the Defendants. Alternatively, if the Court grants Plaintiffs' motion for summary judgment and ICIRR thereafter elects to voluntarily dismiss its equal protection claim, then the Court's ruling on Counts I-III should result in a Rule 58 final judgment, as all pending claims will have been resolved.

II. Argument.

When a case presents more than one claim for relief, or when multiple parties are involved, Rule 54(b) allows a district court to enter final judgment on "one or more, but fewer than all claims or parties" provided there is no just reason for delay. Fed. R. Civ. P. 54(b). As such, a judgment under Rule 54(b) "is proper only if it either resolves all disputes with one party, or resolves a separate claim between parties remaining in the suit in the district court, 'separate' meaning having minimal factual overlap." *Continental Cas. Co. v. Anderson Excavating & Wrecking Co.*, 189 F.3d 512, 516 (7th Cir. 1999) (internal citations omitted). Here, should the Court grant the County's motion for summary judgment on Counts I-III, and should ICIRR thereafter continue to prosecute its Count IV claim, entry of a Rule 54(b) in favor of the County would be appropriate based upon either ground: (1) such a ruling would resolve all of the County's claims; and/or (2) the Administrative Procedure Act ("APA") claims

asserted in Counts I-III remain "separate" from ICIRR's equal protection claim.

A district court may enter an appealable judgment under Rule 54(b) as "to separate parties whether or not their claims are separate" so as "to minimize uncertainty about who is in and who is out of the case." *Lawyers Title Ins. Corp. v. Dearborn Title Corp.*, 118 F.3d 1157, 1162 (7th Cir. 1997) (citing *National Metalcrafters v. McNeil*, 784 F.2d 817, 821 (7th Cir. 1986)); *see also Continental*, 189 F.3d at 518 (explaining that "allowing the entry of judgment for or against a party in a multiparty case even though the party's claim overlaps the claims of other parties is to enable a party (and its adversaries) to determine at the earliest possible opportunity whether it is securely out of litigation"). In other words, "[a]n order that disposes finally of a claim against one party to the suit can be certified for an immediate appeal under [Rule 54(b)] even if identical claims remain pending between the remaining parties." *National Metalcrafters*, 784 F.2d at 821. Here, an order granting Plaintiffs' motion for summary judgment, and thus vacating the Final Rule, would resolve all of the County's claims. And the County, as a local government entity, has an interest in determining "whether it is securely out of litigation" so that it can most efficiently direct its resources towards serving the public. *Lawyers Title*, 118 F.3d at 1162. For this reason, if the County's motion for summary judgment is granted and ICIRR elects to continue its equal protection claim, this Court should enter a Rule 54(b) judgment in the County's favor.

Alternatively, a Rule 54(b) judgment should be entered in favor of the County because Plaintiffs' claims under the APA are "separate" from ICIRR's equal

protection claim. For purposes of Rule 54(b), separate claims mean that the "claims are legally distinct and involve at least some separate facts." *Olympia Hotels Corp. v. Johnson Wax Dev. Corp.*, 908 F.2d 1363, 1368 (7th Cir. 1980). Here, Plaintiffs' motion for summary judgment is not based upon extra-record facts, but is based upon statutory language and the administrative record. ICIRR's equal protection claim, in contrast, rests upon fact-intensive claims regarding whether DHS issued the Rule with the intention of disparately impacting nonwhite immigrants—claims that will be the subject of discovery. *See* Compl. ¶¶ 169–88.[1] Accordingly, no overlap exists between the County's claims in Counts I-III and ICIRR's Count IV equal protection claim that would prevent this Court from entering a Rule 54(b) judgment in the County's favor. *See, e.g.*, *Stearns v. Consolidated Mgmt., Inc.*, 747 F.2d 1105, 1108–09 (7th Cir. 1984) (affirming certification of Rule 54(b) judgment on plaintiff's age discrimination claim while her sex discrimination claim against the same employer remained pending in the district court); *see also, e.g.*, *Cohn v. Taco Bell Corp.*, No. 92 C 5852, 1994 U.S. Dist. LEXIS 5908, *12 (N.D. Ill. Apr. 29, 1994) (explaining that if "there is some, but not complete, factual overlap between nominally separate claims, the district court, in its discretion, has the power to enter a Rule 54(b) judgment") (citing *Olympia*, 908 F.2d at 1367–68).

Finally, no just cause for delay exists in granting judgment. The determination

[1] To the extent Count III of the Complaint includes allegations that the Final Rule is arbitrary and capricious because it is a pretext for discrimination, Compl. ¶ 166, Plaintiffs did not move for summary judgment on the basis of these allegations. *See* Dkt. 201 at 6–7, n. 6. Thus, if this Court grants the County's motion for summary judgment on Counts I-III, those allegations would not be further litigated by the County.

of whether there is "no just reason" for delay falls within the district court's discretion. *Stearns*, 747 F.2d at 1108. Here, the claims already have been proceeding separately, and independently, through the appeals process for purposes of this Court's preliminary injunction order. [2] Moreover, the issue of delay weighs in the County's favor; the County has suffered, and will continue to suffer, harms to its proprietary interests through its Health and Hospital System as a result of the Rule.[3] Accordingly, if this Court resolves the County's claims by granting Plaintiffs' motion for summary judgment and vacating the Final Rule, the County submits that the Court should exercise its discretion to enter a Rule 54(b) finding such that the County can exit litigation in the district court, proceed immediately to any appeal that Defendants might file, and direct its limited resources towards serving the public.

III. Conclusion

For the reasons discussed above, the County submits that in the event this Court grants Plaintiffs' motion for summary judgment on Counts I-III and ICIRR elects to continue its equal protection claim, this Court should enter a Rule 54(b) final judgment in favor of Cook County.

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[2] In fact, a Rule 54(b) judgment on Plaintiffs' APA claims may reduce litigation by mooting Defendants' pending petition for a writ of certiorari on the merits of this Court's preliminary injunction order before the U.S. Supreme Court. *See, e.g.*, *Smith v. Frank*, 99 Fed. Appx 742, 743 (7th Cir. 2004) ("Our jurisdiction is limited to 'live cases and controversies,' and when the issues presented are no longer live, the case becomes moot and must be dismissed. While this interlocutory appeal was pending . . . the district court entered a final judgment in the case. The district court's judgment renders this appeal moot.") (internal citations omitted).

[3] Indeed, Cook County Health's proposed budget for fiscal year 2021 totals $3.4 billion, with $312 million allotted for Charity Care. Cook County Health, *Cook County Health Releases FY2021 Preliminary Budget*, *available at* cookcountyhealth.org/press_releases/cook-county-health-releases-fy2021-preliminary-budget/.

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