

November 22, 2019

The Honorable Jesse M. Furman
Thurgood Marshall U.S. Courthouse
United States District Court for the Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

RE: Governmental Plaintiffs' letter regarding sanctions in *State of New York, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-2921 (JMF).

Dear Judge Furman,

Pursuant to Paragraph 1(A) of this Court's Individual Rules and Practices, the Governmental Plaintiffs¹ submit this letter regarding the NYIC Plaintiffs' pending motion for sanctions or other relief. Docket Nos. 635, 654, 665.

Newly disclosed evidence provided to congressional investigators and made public for the first time on November 12, 2019, reveals that senior federal government officials involved in the decision to add a citizenship question to the decennial census – then-Acting Assistant Attorney General John Gore, and then-General Counsel Peter Davidson – sent and received text messages regarding that decision that were not disclosed in discovery or included in the Administrative Record. *See* House Comm. on Oversight & Reform, *Update on Investigation of Census Citizenship Question Since House Held Attorney General Barr and Commerce Secretary Ross in Contempt of Congress* (Nov. 12, 2019).

Those text messages, combined with other evidence identified by the NYIC Plaintiffs, *see* Docket Nos. 635, 654, raise serious questions both about the accuracy of a number of factual representations Defendants made in this litigation, and about the assurances Defendants gave to the Plaintiffs and this Court regarding Defendants' compliance with their discovery obligations (including that “no custodians have responsive documents or communications that were not also present in their government email addresses,” Docket No. 635-3, Ex. 28; and that “custodians confirmed that they are aware of and adhere to the Department's policy that government business be conducted over government email,” Docket No. 635-3, Ex. 29).

For these reasons, the Governmental Plaintiffs believe that at minimum, the discovery-related relief sought in the NYIC Plaintiffs' pending motion is warranted and justified to determine both the extent of these misrepresentations and the appropriate remedies that should follow.

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

¹ Plaintiff El Paso County, Texas, does not join this letter.

By: /s/ Matthew Colangelo
Matthew Colangelo, *Chief Counsel for Federal Initiatives*
Elena Goldstein, *Deputy Chief, Civil Rights Bureau*
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
Phone: (212) 416-6057
matthew.colangelo@ag.ny.gov

Attorneys for the *State of New York* Plaintiffs