UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC., Plaintiff, v. U.S. DEPARTMENT OF JUSTICE, Defendant.	Case No. 18-cv-09363(AJN)

PLAINTIFF'S REPLY IN SUPPORT OF ITS CROSS-MOTION FOR SUMMARY JUDGMENT

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The Freedom of Information Act (FOIA) request filed by Plaintiff NAACP Legal Defense and Educational Fund, Inc. (LDF) seeks public records regarding the federal government's decision to add a citizenship status question to the 2020 decennial census (LDF's Request). Specifically, LDF asked the U.S. Department of Justice (DOJ or Department) for records relating to its purported need for citizenship status data to enforce Section 2 of the Voting Rights Act (Section 2) and protect minority voters, as well as the consequences of obtaining citizenship data from the 2020 decennial census on Black and other racial minority communities. The Department's delay, obfuscation, and failure to provide public records in response to LDF's Request keeps the parties before this Court.

PRELIMINARY STATEMENT

The Court is now well aware of the facts of this case and likely the status of the substantive litigation challenging the decision to add the citizenship status question in this District. However, it is necessary herein to briefly clarify the context in which LDF's Request was processed at the DOJ.

By the Department's own statement, a search for records responsive to other FOIA requests regarding DOJ's role in the addition of the citizenship status question was completed in January 2018 and forwarded to the FOIA office on February 12, 2018.[1] Yet, when the Department responded to LDF's Request on May 31, 2018, it inexplicably withheld (a) all records pursuant to a claimed law enforcement exemption, as well as (b) portions of records pursuant to Exemption 5.[2] LDF administratively appealed DOJ's decision to withhold all responsive records in full.

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[1] Decl. of Tink Cooper ¶ 11, May 13, 2019, ECF No. 24 ("Cooper Decl.").

[2] Exemption 5 relates to records claimed to be attorney work product, pre-decisional deliberative materials, and/or attorney-client material.

DOJ claims that it was conducting additional searches in the summer of 2018 to respond to LDF's Request. Yet when the Department responded to LDF's administrative appeal on September 28, 2018, it again withheld all records in full. It would not be for another two months, on November 16, 2018—after LDF initiated this lawsuit—that DOJ would produce any records for which it had "completed" a search months earlier.

The delays did not end here. After DOJ "completed" its search and productions, LDF made clear that it took issue with the adequacy of the agency's search. The parties jointly set a briefing schedule only for DOJ to seek a last-minute extension so that it could conduct another search.[3] The production resulting from that search took over a month and resulted in three pages of emails being produced to LDF. Ultimately, DOJ produced 178 pages in full or with redactions and withheld 63 pages in full.[4]

Almost all of the documents that the Department have identified focused narrowly on email correspondence around the December 12, 2017 request from Justice Management Division General Counsel Arthur E. Gary to the Census Bureau formally requesting the addition of the citizenship status question (the "Gary Letter"), and drafts of the Gary Letter.[5] To date, DOJ has identified only one memo that reflects "legal analysis, recommendations, and advice concerning

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[3] Consent Letter Mot. for Extension of Time, Apr. 5, 2019, ECF No. 20.

[4] On November 16, 2018, DOJ produced 78 pages of email correspondence in full or in part and withheld 42 pages in full that appear to be non-final drafts of the Gary Letter in response to Part (2) of LDF's Request. *See* Cooper Decl. Exs. D & E; *Vaughn* Index at 4. On February 14, 2019, DOJ informed LDF that the agency had no records responsive to Parts (1), (3), (4), and (5) of LDF's Request. *See* Cooper Decl. Ex. F. On March 15, 2019, DOJ released 97 pages in full—83 pages of which are U.S. Supreme Court briefs—and withheld in full what appears to be the handwritten note from James Uthmeier accompanied by his memo. *See* Cooper Decl. Exs. G & H; *Vaughn* Index at 5.

[5] *See generally* Cooper Decl., Exs. D–J, May 13, 2019, ECF No. 24-4–24-10 (Post-Complaint productions from Civil Rights Division); *see generally* Cooper Decl., Ex. K, May 13, 2019, ECF No. 24-11 ("*Vaughn* Index").

the legal authority for reinstating a citizenship question on the decennial census"—a memo that was authored by James Uthmeier, an attorney at the U.S. Department of Commerce.[6] Contrary to DOJ's assertions, these supplemental efforts do not demonstrate thoroughness, but rather are part of a pattern of delay and obfuscation in releasing non-exempt public records.

This is of course happening against the backdrop of the Department's futile defense of the citizenship status question in federal court. In *New York v. Department of Commerce*, the court found that "Secretary Ross was aggressively pressing to add a citizenship question to the census before the idea of justifying it on the basis of [Voting Rights Act] enforcement was first floated . . . and that Secretary Ross's aides then fed DOJ with the rationale for the request rather than vice-versa."[7] The U.S. Supreme Court similarly viewed the decision with skepticism, stating, "We cannot ignore the disconnect between the decision made and the explanation given"[8] and noting that "[a]ccepting contrived reasons would defeat the purpose of the enterprise" of administrative law.[9]

The three most substantive items that DOJ identified in response to LDF's Request were a single externally generated legal analysis—the Uthmeier memo—and two amici briefs filed with the U.S. Supreme Court.[10] Yet it cannot be that in such a high-profile action— adding language to the decennial census that had not been included since at least 1950—that this constitutes the full extent of materials that the DOJ's Civil Rights Division reviewed and/or relied upon to inform its decision to add the citizenship status question as necessary to enforce Section 2 and protect

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[6] *Vaughn* Index at 5.

[7] *New York v. U.S. Dep't of Commerce*, 351 F. Supp. 3d 502, 568–69 (S.D.N.Y. 2019), *aff'd in part, rev'd in part,* 139 S. Ct. 2551 (2019).

[8] *Dep't of Commerce*, 139 S. Ct. at 2575.

[9] *Id.* at 2576.

[10] As discussed *infra* at 7-8 & nns.21-22, one of these briefs was submitted by the United States and the other by former directors of the U.S. Census Bureau. ECF No. 24-8 at 6-98.

minority voting rights. All that LDF seeks here is for the agency to conduct a search for the records of analyses to which DOJ has referred and on which it relied in defending the decision to add a citizenship status question to the 2020 decennial census. DOJ's limited productions thus far include no reference to or indication of this analysis.

ARGUMENT

FOIA requires agencies to perform a search reasonably calculated to identify all relevant records[11]—a search that DOJ has failed to conduct here. The Department's Opposition to Plaintiff's Cross-Motion for Summary Judgment ("Opposition-Reply") only adds to the factual support of LDF's position. DOJ construed LDF's request too narrowly by focusing almost entirely on correspondence about and drafts of the Gary Letter. The limited records produced do not match the vigor with which the Department defended the addition of the citizenship status question to the census. The implication that DOJ requested the significant policy change of adding a citizenship status question to the decennial census, and DOJ's vigorous defense of that decision—based on nothing more than the cursory analysis contained in the Gary Letter, one memorandum prepared by an attorney from another agency, and two amicus briefs—defies belief. DOJ's refusal to conduct an additional search of the "Census Database"[12] is non-sensical. Summary judgment in DOJ's favor is inappropriate.[13]

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[11] *Bloomberg L.P. v. Bd. of Governors of Fed. Res. Sys.*, 649 F. Supp. 2d 262, 271 (S.D.N.Y. 2009), *aff'd*, 601 F.3d 143 (2d Cir. 2010).

[12] *See* Mem. of Law Supp. Pl.'s Cross-Mot. Summ. J. & Opp'n Def.'s Mot. Summ. J. at 10, June 10, 2019, ECF No. 26 ("LDF's Cross-Mot."); Cooper Decl. ¶ 20.

[13] *Nat'l Day Laborer Org. Network v. U.S. Immigration & Customs Enf't Agency*, 877 F. Supp. 2d 87, 95 (S.D.N.Y. 2012); *see also Morley v. Cent. Intelligence Agency*, 508 F.3d 1108, 1114 (D.C. Cir. 2007).

I. The Department Failed to Conduct an Adequate Search for Records.

A. The Department Construed LDF's Request Too Narrowly.

LDF's Request contained five parts, and DOJ is obligated to search for records responsive to each of the five parts: (1) documents relating to DOJ's review of whether a citizenship status question on the 2020 decennial U.S. census is necessary to enforce Section 2 and/or how adding the question will improve protections for minority voting rights; (2) documents relating to DOJ's request for a citizenship status question on the 2020 decennial U.S. census as necessary to enforce Section 2; (3) documents relating to DOJ's review of whether a citizenship status question on the American Community Survey (ACS) is "insufficient in scope, detail, and certainty" to enforce Section 2; (4) documents relating to DOJ's review of whether a citizenship status question will have an impact on the response rate of Black or African American people; and (5) documents relating to DOJ's review of whether a citizenship status question will have an impact on the response rate of non-Black or non-African American racial or ethnic groups. DOJ produced some records responsive to Part (2)—those related to the Department's request for a citizenship question by way of the Gary Letter—but identified no records responsive to Parts (1), (3), (4), and (5) after the identified custodians stated that they had no such records other than anything that might be responsive to Part (2).[14] In other words, the only search conducted for those parts was of the custodians' minds. Accepting DOJ's identified custodians does not mean that LDF has to accept a search limited to a mere inquiry of those custodians.[15]

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[14] Cooper Decl. ¶ 18; Suppl. Decl. of Tink Cooper ¶ 8, July 8, 2019, ECF No. 28 ("Suppl. Cooper Decl.").

[15] Throughout Defendant's Opposition-Reply, the agency seems to suggest that because LDF is not taking issue with *more* of the search method—such as the identified custodians—the search must be adequate and reasonable. *See, e.g.*, Mem. of Law in Opp'n to Pl.'s Mot. for Summ. J. & Reply in Supp. of Def.'s Mot. for Summ. J. at 5 (July 8, 2019), ECF No. 27 ("Opp'n-Reply") ("And, notably, Plaintiff does

As LDF stated in its cross-motion for summary judgment, DOJ's search for records responsive to Parts (1), (3), (4), and (5) was conducted in such a way that it was bound to the Gary Letter, such that even if the custodians were queried about these Parts, the primacy of the Gary Letter in the mental search overwhelmed the independent framing of the remainder of the request (e.g., whether or not any citizenship status question is necessary for DOJ to enforce Section 2 and the impact of that question on Black and other people of color).[16] And, as above, arguably with few exceptions (e.g., the two amici briefs), all of the identified records (emails and draft letters) are about that letter.

DOJ's clarifying statements regarding the compilation and composition of the records in the "Census Database" identify records that may be responsive to LDF's Request but for which DOJ did not search. Exhibit L to DOJ's Opposition-Reply contains the subpoena for records related to the substantive census litigation in New York.[17] One of the items in the subpoena requests: "Any DOCUMENTS sufficient to show [DOJ's] Voting Rights Act enforcement efforts, including but not limited to . . . whether those investigations are hindered by a lack of citizenship data, or the particular form in which citizenship data is currently available."[18] Records responsive to this item are potentially also responsive to Parts (1)—seeking records about the relationship between DOJ's Section 2 enforcement and the question—and (3)—seeking records related to the sufficiency of existing citizenship data and the question—of LDF's Request and distinct from records related to the Gary Letter.

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not appear to challenge CRT's selection of custodians."). Failing to conduct an adequate search of the files of adequate custodians is still an inadequate search. Plaintiff otherwise declines Defendant's invitation to bring frivolous claims and arguments before the Court.

[16] LDF's Cross-Mot. at 12–13.

[17] Suppl. Cooper Decl., Ex. L, July 8, 2019, ECF No. 28-1.

[18] *Id.* at Att. B at 6.

"With blinkers on, the world can't be fully seen."[19] DOJ's reading of LDF's Request makes an adequate search impossible. This overly narrow reading is unreasonable and has resulted in an inadequate search.

B. The Limited Reference Documents Produced Belie the Adequacy of DOJ's Search.

DOJ spent a year and a half defending the decision of the U.S. Department of Commerce to add—purportedly at DOJ's own request—a citizenship status question to the 2020 decennial U.S. Census. Contrary to DOJ's assertions, it is simply not credible that DOJ undertook these efforts, and vigorously argued both to the Department of Commerce and the courts that such a question was necessary to enforce Section 2 and protect minority voting rights, based on nothing more than the records produced in response to LDF's Request.

The effective absence of any records in the production containing any meaningful analysis of the importance of a citizenship status question to DOJ's ability to enforce Section 2 and protect minority voting rights demonstrates that DOJ's search was incomplete and inadequate. DOJ should be compelled to undertake a search for these overlooked materials. It is true that DOJ produced to LDF "two publicly available briefs filed in the Supreme Court,"[20] but neither of those cases supports DOJ's position that a citizenship status question on the decennial census is necessary for enforcement of Section 2. The Brief of Former Directors of the U.S. Census Bureau states that ACS estimates are currently the best population data available for Section 2 enforcement and that asking about the citizenship status of every household would reduce response rates, cause

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[19] *Brennan Ctr. for Justice at N.Y.U. Sch. of Law v. U.S. Dep't of Justice*, 377 F. Supp. 3d 428, 434 (S.D.N.Y. 2019), *recons. denied*, No. 17 Civ. 6335 (AKH), 2019 WL 2717168 (S.D.N.Y. June 28, 2019).

[20] Opp'n-Reply at 12 (citing ECF No 24-8 pp. 6 to 89 by ECF pagination).

inaccurate responses, and multiply privacy/government intrusion fears.[21] Similarly, the Brief of the United States does not broadly identify inappropriate use of ACS data, but narrowly notes that census data is the most precise for use in redistricting given the comparative form of sample surveys.[22]

Moreover, contrary to DOJ's assertion that LDF "received the very thing it claims is missing,"[23] the Gary Letter cites eight federal court decisions, and none of those decisions nor any analysis thereof was produced. DOJ suggests in its Opposition-Reply that "[i]ndividuals at CRT may well have been aware of such case law and academic literature without creating or retaining records on the topic."[24] However, it is difficult to believe that these individuals would be able to provide the quotes and pincites provided in the Gary Letter without at least having to reference the cases or any analysis thereof. DOJ's failure to identify even these publicly available materials only serves to further underscore the inadequacy of the search.

Nor is it credible that DOJ would undertake such a significant policy initiative on such a scant basis. Given DOJ's strident advocacy that adding a citizenship status question is necessary for DOJ's own efforts to enforce Section 2, it is not credible that the Uthmeier memo – an analysis written by an attorney at another agency – is the only analysis on file at the DOJ analyzing whether existing citizenship status data is sufficient to enforce Section 2 and protect minority voting rights. Moreover, contrary to the agency's assertion otherwise, with DOJ putting the weight of the institution behind a request to add the citizenship status question to the Census, it is *highly relevant*

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[21] Brief for Amici Curiae Former Dirs. of U.S. Census Bureau at 22-23, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (No. 14-490), 2015 WL 5675832, at*12.

[22] Brief for Amici Curiae United States at 22, *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016). (No. 14-940), 2015 WL 5675829, at *22.

[23] Opp'n-Reply at 12.

[24] *Id.*

"[w]hether or not such issues are . . . discussed in case law and academic literature *for years*,"[25] as the presence of the discussion would give reason for DOJ to track, obtain, and analyze such records.[26]

That DOJ has considered this issue for some time is further evidenced in the records produced to LDF. As noted in LDF's Cross-Motion, DOJ produced a September 2017 email noting that "questions about citizenship information [were] raised by career policy staff about a year and a half ago."[27] Although "nothing came of it" at the Census Bureau,[28] the timing of this inquiry—spring 2016—corresponds with the timing of the Supreme Court decision in *Evenwel v. Abbott*.[29] This case addressed whether a state could "draw its legislative districts based on total populations" from census data, even though this approach "produces unequal districts when measured by voter-eligible population."[30] The DOJ submitted an amicus brief arguing that the court should not address Texas' "assertion that the Constitution allows States to use alternative population baselines [for redistricting], including voter-eligible population," and maintaining that "[e]qualizing total population[] . . . vindicates the principle of representational equality."[31] These issues closely relate to the citizenship status question here, and, indeed, DOJ produced in response to LDF's Request both the amicus brief that the agency filed as well as another amicus brief.[32] It would almost assuredly be the case that DOJ did an analysis of the decision in *Evenwel*, a case in which its

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25 *Id.* at 11–12 (emphasis added).

26 *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 146 (1989) (finding that district court decisions in the agency's possession at the time of a request were agency records).

27 LDF's Cross-Mot. at 16 (quoting ECF No. 24-5 at 5).

28 Cooper Decl., Ex. E at 5, May 13, 2019, ECF No. 24-5.

29 136 S. Ct. 1120 (2016).

30 *Id.* at 1123.

31 *See id.* at 1126.

32 *See* Cooper Decl., Ex. H at 6–88, May 13, 2019, ECF No. 24-7.

amicus brief discussed whether total population or some other measure was appropriate for apportionment (or protecting minority voting rights). Such analysis would be responsive to LDF's Request, but was not produced.

DOJ suggests that its additional searches—at least one of which "substantially re-identif[ied] nearly all of the same documents previously collected and addressed in CRT's responses to Plaintiff"[33]—"indicate the diligent and good faith nature of CRT's responses."[34] But vain, repetitive efforts do not an adequate search make. "[T]he fact that the circumscribed search Defendant performed turned up responsive, but previously discovered, material does not relieve Defendant of its burden to design a search calculated 'to return all relevant records.'"[35]

Significant changes in positions by agencies or departments are traditionally made through careful deliberative processes and documented through analyses contained in memoranda forwarded to relevant decisionmakers reflecting the views and analyses of all affected components. Even the Department of Justice's process to decide the relatively straightforward question of whether to appeal an adverse outcome in a civil case in district court, such as the present FOIA action, would ordinarily rely on records containing a more robust and thorough analysis than the scant information DOJ now claims it located for the pivotal policy decision of advocating for a major change in the decennial census. The dearth of records that DOJ did manage to produce in response to LDF's Request demonstrates that the search that was conducted was inadequate.

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[33] Cooper Decl. ¶ 23.

[34] Opp'n-Reply at 2 n.1.

[35] *Ctr. for Popular Democracy v. Bd. of Governors of Fed. Res. Sys.*, No. 16-CV-5829(NGG)(SMG), 2019 WL 3207829, at *7 (E.D.N.Y. July 16, 2019) (quoting *Immigrant Def. Project v. U.S. Immigration & Customs Enf't*, 208 F. Supp. 3d 520, 527 (S.D.N.Y. 2016)).

C. A Limited Supplemental Search of the Census Database Is Required for an Adequate Search.

In the face of a patently inadequate search, DOJ mischaracterizes both the extent of its efforts to date and the burden that the agency would incur if it was required to conduct a supplemental search. *First*, DOJ repeatedly references its statement that the agency attempted "to compile the largest possible data collection to locate all documents responsive to Plaintiff's request."[36] DOJ has failed to support how a search for "census" and "citizenship question" alone were sufficient to identify all records potentially responsive even to just Part (2) of LDF's request. Why not "citizenship status question" or "question on citizenship"? What was returned from the use of "'citizenship' AND 'census'"[37] or "'citizenship' AND 'commerce'"[38] that suggested an additional search of the Census Database would have been futile?

Furthermore, these statements are not supported by DOJ's Opposition-Reply, which focuses on the agency's refusal to conduct a supplemental search of the Census Database. DOJ's defense of its search for Parts (1), (3), (4), and (5) falls well short of adequate. Although it is true that an electronic search is not always required, DOJ's justification and legal support for not conducting a search of the Census Database for these Parts fall equally short. Federal courts in the District of the District of Columbia and this District "have ruled that an agency's refusal to perform a search was permissible under FOIA *where it was clear from the face of the request in light of the agency's functions* that the agency would not have any responsive records."[39] In *Amnesty*

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[36] Opp'n-Reply at 8 (quoting Cooper Decl. ¶ 20).

[37] Cooper Decl. ¶ 20.

[38] *Id.*

[39] *Whitaker v. Dep't of Commerce*, No. 5:17-CV-192, 2017 WL 6547880, at *5 (D. Vt. Dec. 20, 2017) (emphasis added), *certificate of appealability denied*, No. 5:17-CV-192, 2018 WL 1972453 (D. Vt. Apr. 26, 2018).

International USA v. CIA, the search was determined to be "futile" because the offices that to which the FOIA request was sent did not operate any programs related to the subject matter of the request; nevertheless, several of the offices still conducted searches to confirm there were no responsive records.[40] Similarly, the search in *Cunningham v. DOJ* "would have been futile as [DOJ's Office of Justice Programs] does not maintain any records concerning law enforcement activity, and by extension, confidential informants."[41] This is most assuredly *not* the case here. The Civil Rights Division is, in fact, responsible for enforcement of Section 2 and protecting minority voting rights, thus the component could certainly have the records that LDF requested, including, for example, documents relating to whether a citizenship status question on the 2020 decennial census is necessary for those purposes.

Second, contrary to DOJ's statements, at no time has LDF dictated that the agency use precise terms. Rather, LDF offers the types of terms that one would expect if the agency was conducting a robust and adequate search. Moreover, LDF has never suggested that the additional terms could not be used in combination with one another. Searching in this method is common in e-discovery, as demonstrated by the combination of terms that DOJ used to search for records to populate the Census Database.[42] Had LDF presented every single combination of terms that it wanted searched and insisted on their use, that *would* constitute an attempt to dictate the terms of the agency's search. But LDF has not done so. Rather, having demonstrated the presence of overlooked materials not produced to LDF, what LDF actually seeks is for the Court to order DOJ to conduct a search for records responsive to all five parts of LDF's Request using the terms of the

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[40] *Amnesty International USA v. CIA*, No. 07 Civ 5435(LAP), 2008 WL 2519908, at *2–*5 (S.D.N.Y., June 19, 2008).

[41] *Cunningham v. DOJ*, 40 F. Supp. 3d 71, 83 (D.D.C. 2014).

[42] *See* Cooper Decl. ¶ 20.

Request itself, offering suggestions as to the potential types of terms that could be used to effectively narrow the search and identify potentially responsive records.[43]

Third, and most fundamentally, any supplemental search of the Census Database would not be in a vacuum but could be constrained by the universe of identified custodians. The Census Database contains records related to litigation regarding the addition of the citizenship status question to the 2020 decennial Census and to other FOIA requests regarding the addition of the question from the custodians that DOJ has identified as potentially having records responsive to LDF's Request.[44] DOJ suggests that because the database has records extending back ten years there would be many records identified that are not responsive to LDF's request.[45] However, this argument plainly fails to take into account the limited number of custodians to be searched. For example, a supplemental search for any records from John Gore responsive to Part (2) would necessarily not extend back ten years, but would be limited to Mr. Gore's actual service at DOJ—which dates only to January 2017.[46] Moreover, a limited supplemental search of these records is highly likely to identify records related to Parts (1), (3), (4), and (5) of LDF's request—records related to DOJ's purported need for citizenship status data in enforcing Section 2 and protecting minority voting rights but, importantly, disconnected from the "high-profile and likely memorable"[47] Gary Letter and perhaps lost in the memories of the custodians to time.

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[43] LDF's Cross-Mot. at 17.

[44] Cooper Decl. ¶ 20; Suppl. Cooper Decl. ¶ 3.

[45] *See* Suppl. Cooper Decl. ¶ 3.

[46] *See John Gore*, LinkedIn, https://www.linkedin.com/in/john-gore-181a714 (last visited July 25, 2019).

[47] Opp'n-Reply at 6.

CONCLUSION

The government's actions in its efforts to add a citizenship status question to the 2020 decennial census under the cover of a request from the Department of Justice were met by strong and repeated rebuke from the moment that the decision was announced.[48] LDF filed a request for public records to shed light on any review, analysis, and discussion that led to its purported request for this controversial data. Although a citizenship status question will not appear on the 2020 decennial census, the American public, in the spirit of "a general philosophy of full agency disclosure,"[49] should know where exactly the agency stands on this issue and what its role was in the decision to attempt to seek that data.

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[48] *See Dep't of Commerce*, 139 S. Ct. at 2575 ("we cannot ignore the disconnect between the decision made and the explanation given."); *New York*, 351 F. Supp. 3d at 679 ("Secretary Ross's decision to add a citizenship question to the 2020 census — even if it did not violate the Constitution itself — was unlawful for a multitude of independent reasons and must be set aside."); *Kravitz v. U.S. Dep't of Commerce*, 366 F. Supp. 3d 681, 746 (D. Md. 2019) ("In any case, Defendants' post-hoc explanation is still contradicted by the Administrative Record and lacking a foundation in the facts."); *California v. Ross*, 358 F. Supp. 3d 965, 1040 (N.D. Ca. 2019) ("the evidence overwhelmingly shows that Secretary Ross decided to add the citizenship question well before DOJ made the request in December of 2017 and that his reason for doing so was not to improve enforcement of Section 2 of the VRA"); Editorial Board, *The Trump Administration Pushes for a Change That Could Derail the Census*, Wash. Post, Jan. 2, 2018, https://www.washingtonpost.com/opinions/the-trump-administration-pushes-for-a-change-that-could-derail-the-census/2018/01/02/1e4c43d2-f00a-11e7-b390-a36dc3fa2842_story.html?utm_term=.776868860e20; Statement Regarding Press Release, Am. Statistical Ass'n, ASA Statement Regarding Decision to Add Citizenship Question to Decennial Census (Mar. 29, 2018), https://www.amstat.org/ASA/News/ASA-Releases-Statement-on-Census-Citizenship-Question.aspx; NAACP LDF Responds to Citizenship Status Question Inclusion on 2020 Census (Mar. 27, 2018), https://www.naacpldf.org/wp-content/uploads/LDF-Responds-to-Citizenship-Status-Question-Inclusion-on-2020-Census.pdf.

[49] *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 478 (2d Cir. 1999) (quoting *Fed. Labor Relations Auth. v. U.S. Dep't of Veterans Affairs*, 958 F.2d 503, 508 (2d Cir. 1992)).

For the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's cross-motion for summary judgment and require the Department to conduct additional searches for records responsive to the LDF's FOIA request.

Dated: July 29, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2019, a true and correct copy of the foregoing was served on Defendant via its counsel of record through the Court's Electronic Case Filing (ECF) system.

/s/ Leah C. Aden
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