IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,	*	
Plaintiffs,	*	
v.	*	**Case No.: PWG-18-891**
BUREAU OF THE CENSUS, *et al.*,	*	
Defendants.	*	

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ORDER

On January 21, 2020, Plaintiffs filed a Motion for Preliminary Injunction asking this Court to compel Defendants to expend appropriated funds for the 2020 Census in specific ways. Mot., ECF No. 169.[1] It was supplemented with a request for additional relief that did not involve expenditure of funds. Pls.' Reply, ECF No. 175. I held a hearing today on Plaintiffs' Motion for Preliminary Injunction, and for the reasons stated on the record in open court and incorporated herein by reference, Plaintiffs' motion is DENIED.

In sum, the parties—with a common goal of accomplishing a successful 2020 census that avoids or reduces a differential undercount of hard-to-count populations—dispute the

[1] Defendants responded in opposition combined with a Motion to Dismiss and for Summary Judgment, ECF No. 170, and Plaintiffs filed a Reply, ECF No. 175. Plaintiffs have also filed a Motion Pursuant to Federal Rule of Civil Procedure 56(d), ECF No. 176, requesting that I deny Defendants' motion for summary judgment or defer ruling pending Plaintiffs' taking of discovery on Defendants' factual assertions. Late on March 4, 2020, Defendants also filed a Motion in Limine, ECF No. 179, to exclude two of Plaintiffs' declarations, which I denied for purposes of the preliminary injunction motion, without prejudice to be revisited when we discuss the remaining pending motions at a telephone conference to be scheduled shortly.

constitutionally required methods and means to conduct the census and what role, if any, this Court can play in resolving their dispute. Typically, the purpose of a preliminary injunction is to "protect the status quo and to prevent irreparable harm during the pendency of a lawsuit, ultimately to preserve the court's ability to render a meaningful judgment on the merits." *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 525 (4th Cir. 2003) *abrogated on other grounds by eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006)). To obtain a preliminary injunction, the plaintiff must "establish that [1] he is likely to succeed on the merits, [2] he is likely to suffer irreparable harm in the absence of preliminary relief, [3] the balance of equities tips in his favor, and [4] an injunction is in the public interest." *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011). As a preliminary injunction is "an extraordinary remedy," it "may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. When, as here, a movant seeks to alter the status quo by having a federal court order a particular action, "application of this exacting standard of review is even more searching" because the relief requested "is mandatory rather than prohibitory in nature." *In re Microsoft Corp. Antitrust Litg.*, 333 F.3d at 525.

On the record before me (and for the reasons stated on the record during today's hearing, which I incorporate by reference), I cannot conclude that Plaintiffs have met this exacting standard. Upon review of the likelihood of success on the merits, applying the *Wisconsin* "reasonable relationship" test,[2] as the parties' agreed applies, Plaintiffs have failed to demonstrate that the

[2] *Wisconsin v. New York*, 517 U.S. 1, 20 (1996) ("In light of the constitution's broad grant of authority to congress, the secretary's decision not to adjust need bear only a reasonable relationship to the accomplishment of an actual enumeration of the population keeping in mind the constitutional purpose of the census.").

Defendants have refused to spend the appropriations from Congress in the specific manner that Congress directed. And a lump sum appropriation is best left to the agency to allocate as it sees fit. *Lincoln v. Vigil*, 508 U.S. 182, 192-93 (1993).

Nor does the record before me support a finding of irreparable injury. Plaintiffs have not demonstrated that if the census proceeds as planned, there will be a differential undercount of the magnitude they fear, or that if I were to order the funds spent as they want, the 2020 census would not produce an equal or worse undercount for hard-to-count communities. More importantly, as the United States Supreme Court explained in *Utah v Evans*, if the 2020 census does result in a count that violates the enumeration clause (i.e., a differential undercount as the result of improper methodology that would result in a loss of a representative or federal funds), then at that time, when the census results are known and the consequences forecast without speculation, there is sufficient time to file an enumeration clause challenge that asks for the court to order "revision of the census results." 536 U.S. 452, 464 (2002); *see also Franklin v. Massachusetts*, 505 U.S. 788, 797, 801 (1992).

The balance of interests and the public interest also favor denying Plaintiffs' preliminary injunction. The founders were clear in their allocation of where the power and authority to plan and execute the census should lie—with Congress, which in turn has delegated its broad authority to the Secretary. *See Wisconsin*, 517 U.S. at 20 (citing Art. 1, § 2, cl. 3). While Plaintiffs are right to be concerned about a differential undercount in Prince George's County, it would not be in the public interest for me to substitute my judgment for that of the Constitution, Congress, the Secretary, and the Census Bureau, which would certainly disrupt the conduct of the census in ways that would have consequences far beyond the reaches of Prince George's County. Balancing the impact of granting the injunction against the alternative of allowing the census to proceed as

planned, with the Plaintiffs having the opportunity to prosecute their Enumeration Clause challenge after the results are known, as the Supreme Court discussed in *Utah v. Evans*, seems to me to be far more in the public interest.

Accordingly, the Plaintiffs' Motion for Preliminary Injunction, ECF No. 169, is DENIED. This case shall proceed with consideration of the remaining pending motions in due course.

Dated: March 5, 2020.

/S/
Paul W. Grimm
United States District Judge