



UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
Paula Xinis
UNITED STATES DISTRICT JUDGE

6500 Cherrywood Lane
Greenbelt, MD 20770
(301) 344-0653

December 8, 2020

LETTER ORDER

Re: 19-cv-02710-PX-PAH-ELH, *La Union Del Pueblo Entero, et al. v. Trump, et al.*

Pending before the Court is Plaintiffs' motion seeking expedited discovery to assess the United States Census Bureau's plan for post-processing and reporting efforts for the 2020 decennial Census. ECF No. 136-1. Defendants have opposed the motion. ECF No. 137. For the reasons stated below, the motion is denied.

Generally, discovery in this District begins after Defendants have answered the Complaint and the Court has entered a scheduling order. Loc. R. 803(1); 104(4). Plaintiffs filed their Second Amended Complaint on August 13, 2020, and on August 17, 2020, the Court conducted a recorded status conference concerning the propriety of appointing a three-judge panel to hear the case. ECF No. 103 at 7-8. At that conference, the Court informally stayed Defendants' response to the Amended Complaint until after the resolution of panel appointment.

Since then, neither party has requested that the Court set a new deadline for Defendants to answer or otherwise respond to the Second Amended Complaint. Accordingly, because Defendants have yet to answer the Second Amended Complaint, a scheduling order triggering the commencement of discovery has not issued. The parties' recent pleadings, however, prompt this Court to set a deadline for Defendants to answer or otherwise respond to the Second Amended Complaint by no later than **December 22, 2020**.

As an exception to standard discovery, the Court may permit limited discovery for good cause shown in connection with a pending motion for preliminary injunction. *See L'Occitane, Inc. v. Trans Source Logistics, Inc.*, Civ. No. WMN-09-CV-2499, 2009 WL 3746690, at *1 (D.

Md. Nov. 2, 2009). However, no such motion is pending in this case. Thus, the requested discovery appears premature.

Plaintiffs rightfully point out that the Court had dismissed as moot their previously filed motion for such injunctive relief. Plaintiffs now seek discovery to ascertain whether they will renew the motion to enjoin any revised Census plan. Plaintiffs, however, have failed to demonstrate good cause for the requested discovery or that their requests are reasonable. *Id.* at *2.

Plaintiffs' requests are exceptionally broad, demanding that the Government answer and produce documents on essentially every aspect of the Census post-processing phase. *See, e.g.*, ECF No. 136-2 at 10 ¶¶ 2,3 (requesting “[a]ll documents constituting Your monitoring of, or reporting upon the extent to which You have completed each of the post-processing activities set forth in the currently effective operational plan for conducting the Census” and “Documents sufficient to show the data collection and data quality benchmarks You are using in relation to the Census”). In this respect, Plaintiffs have failed to demonstrate that the requests are reasonably tailored to ascertain the currently operative Census plan sufficient to challenge its constitutionality.

Nor have Plaintiffs shown good cause for such requests. While Plaintiffs rightly contend that the Court allowed possible future challenges to the Census Bureau's new plan, (ECF No. 136-1 at 1), this alone does not justify discovery requests that go far beyond ascertaining the substance of the plan itself. Plaintiffs' position is further called into question when considering their stated rationale for rejecting Defendants' offer to share the discovery produced in *National Urban League v. Ross*, No. 20-cv-5799 (N.D. Cal.). Indeed, Plaintiffs are not obligated to accept the Government's offer to provide to them the *Urban League* discovery. But when considering that this case and *Urban League* concern near identical challenges to the 2020 Census, Plaintiffs' contention that the *Urban League* discovery is inadequate simply does not add up.

Plaintiffs argue that the *Urban League* discovery does not address their discovery needs here because the *Urban League* discovery is “substantially broader” than their requests. ECF No. 136-1 at 2 n.1. But if the *Urban League* discovery is “broader” than that which Plaintiffs seek here, then it stands to reason the *Urban League* discovery would encompass that which Plaintiffs hope to discover here. Certainly, Plaintiffs have not demonstrated otherwise. Thus, the Court cannot find good cause for essentially compelling Defendants to respond to wide ranging discovery requests when Plaintiffs have not even tried to determine whether already-produced discovery in *Urban League* affords them sufficient grounds to renew their preliminary injunction motion. Moreover, while Plaintiffs note that the timeline of the *Urban League* case presents the possibility that discovery there may not be completed before the Census Bureau reports its final Census figures to the President – thereby effectively preventing Plaintiffs from seeking injunctive relief before the calculation of those figures is completed – there is nothing

barring the Court from granting Plaintiffs relief after the fact on a claim challenging the post-processing procedures.

Accordingly, for these reasons, Plaintiffs' motion to expedite discovery is DENIED. Despite the informal nature of this correspondence, it constitutes an ORDER of the Court and shall be docketed as such.

Sincerely,

/S/

Pamela A. Harris
United States Circuit Judge

/S/

Ellen L. Hollander
United States District Judge

/S/

Paula Xinis
United States District Judge