

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Counsel identified on signature pages]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**JOINT CASE MANAGEMENT
STATEMENT**

Date: January 15, 2021
Time: Noon
Place: Courtroom 8
Judge: Hon. Lucy H. Koh

1 Pursuant to Civil Local Rule 16-10(d) and the Court's January 11, 2021 Case
2 Management Order (Dkt. 444), the parties to this action, by their respective counsel, respectfully
3 submit the following Joint Case Management Statement in anticipation of the Further Case
4 Management Conference scheduled for January 15, 2021 at noon. For the reasons set forth
5 below, in light of the current depositions, motions and discovery deadlines on calendar and the
6 pending transition to a new Administration, Defendants have requested a 21-day stay of the case
7 in order to provide for an orderly transition and to let the new Administration assess the case.
8 Pursuant to Defendants' express representations set forth below, which ensure that various
9 counts and data will not be pushed out until after the new Administration is in place (and only
10 upon advance notice to Plaintiffs) and otherwise ensure that Plaintiffs will not be prejudiced in
11 any way, Plaintiffs agree to the 21-day stay.

12 The parties look forward to discussing this matter with the Court at the case management
13 conference scheduled for later today.

14 **I. REQUEST FOR 21-DAY STAY OF LITIGATION TO ALLOW FOR**
15 **TRANSITION TO THE NEW ADMINISTRATION**

16 As the Defendants have stated in prior Case Management Conferences, the Census
17 Bureau is working to complete an accurate census as quickly as possible. However, it has now
18 become evident that the Census Bureau will not be in position to finalize or provide
19 apportionment data until many weeks after January 20, 2021, the date on which the incoming
20 Administration will take responsibility for supervision of the Census Bureau. It has also become
21 clear that the Census Bureau will not be in position to finalize or provide reports, estimates, or
22 data relating to (i) the July 21, 2020 Presidential Memorandum on Excluding Illegal Aliens from
23 the Apportionment Base Following the 2020 Census or (ii) Executive Order 13880, entitled
24 Collecting Information About Citizenship Status in Connection with the Decennial Census (July
25 11, 2019), until many weeks after January 20, 2021. This ongoing litigation has required
26 Defendants to expend substantial resources, including for preparation of many depositions
27 scheduled for next week and the production of numerous documents and materials. In
28

1 Defendants' view, the additional expenditure of these resources during a transition to the new
2 Administration, and when Defendants are now representing to Plaintiffs and the Court that they
3 are not in a position to finalize or provide any of the information set forth above, would not be
4 the most efficient use of resources. Moreover, because this litigation is occurring during a
5 transition to the new Administration, Defendants believe that it may, in fact, divert the incoming
6 Administration's attention from the Census Bureau's statutory duties during a time period critical
7 for the Census Bureau to complete those duties.

8 Defendants believe that the public interest would be served by staying all proceedings in
9 this litigation for 21 days. Such a stay would permit the incoming Administration to evaluate the
10 Census Bureau's and the Department of Commerce's operations and assess, among other things,
11 the interests of the United States and its litigating positions in light of Plaintiffs' claims in this
12 case. The proposed stay would apply to any outstanding obligations to the Court, as well as to
13 all outstanding discovery except as noted below. A stay would have the benefit of allowing the
14 Census Bureau to focus its resources during the pendency of the stay on continuing its efforts to
15 complete the census.

16 In light of the impossibility of Defendants finalizing or providing the above information
17 until many weeks after the change in Administration on January 20, 2021, and to facilitate the
18 transition of census matters to the next Administration, Defendants, by and through their counsel
19 at the Department of Justice, acknowledge and represent to this Court that:

20 1) Reports, estimates, or data relating to the July 21, 2020 Presidential Memorandum on
21 Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census will not be
22 finalized, reported or publicly disclosed prior to the change of Administration on January 20,
23 2021. Should such information be finalized after the change of Administration but prior to the
24 end of the proposed stay, Defendants would provide Plaintiffs with 7 days' detailed notice prior
25 to reporting or publicly disclosing it.

26 2) Reports, estimates, or data relating to Executive Order 13880, entitled Collecting
27 Information About Citizenship Status in Connection with the Decennial Census (July 11, 2019),
28 will not be finalized, reported or publicly disclosed prior to the change of Administration on

1 January 20, 2021. Should such information be finalized after the change of Administration but
2 prior to the end of the stay, Defendants would provide Plaintiffs with 7 days' detailed notice
3 prior to reporting or publicly disclosing it.

4 3) Neither the Census Bureau nor the Department of Commerce will report or publicly
5 disclose any population counts or estimates relating to the population as of April 1, 2020,
6 including counts or estimates of the illegal alien/undocumented immigrant population, prior to
7 the change of Administration on January 20, 2021. To the extent such population counts or
8 estimates are developed after the change of Administration but prior to the end of the stay,
9 Defendants would provide Plaintiffs with 7 days' detailed notice prior to reporting or publicly
10 disclosing them.

11 The parties agree that the restrictions contained in (1) – (3) above shall not apply to
12 Defendants' obligations to respond to information requests from Congress or the Office of the
13 Inspector General.

14 Plaintiffs remain ready and willing to continue litigating this case in all respects under the
15 current schedule. However, in light of Defendants' express acknowledgments and
16 representations in this filing, which are provided for the purposes of Plaintiffs not being
17 prejudiced in any way by the 21-day stay Defendants have asked for in light of the upcoming
18 transition to a new Administration, Plaintiffs agree and respectfully ask that the case be stayed
19 for 21 days.

20 Notwithstanding the proposed stay, the parties ask this Court to resolve Plaintiffs'
21 Renewed Motion to Compel and for Sanctions, ECF No. 433, except that Plaintiffs ask the Court
22 to hold their request for sanctions contained therein in abeyance and not resolve it at this time,
23 subject to Plaintiffs renewing such request in the future if warranted given the parties' ongoing
24 discussions on these matters. If the Magistrate Judge Panel issues a decision on Plaintiffs'
25 Motion to Compel, the parties reserve their right to appeal that decision to the District Court and
26 the appellate courts, and to seek a stay pending any appeal of any adverse decision.

27 Defendants acknowledge and represent that, should the parties not reach resolution and
28 the case restart once the 21-day stay is lifted (under the exact same schedule currently in place,
continued by 21 days), Defendants will not resist or challenge Plaintiffs taking any of the

1 depositions currently scheduled, or producing any of the documents and materials Defendants
2 currently are obligated to produce, but Defendants reserve their rights to assert the objections
3 that they would have had in the normal course.

4 The parties propose providing a Joint Case Management Statement two business days
5 before the conclusion of the proposed 21-day stay, should the Court enter a stay.

6 Dated: January 15, 2021

LATHAM & WATKINS LLP

7
8 By: /s/ Sadik Huseny
Sadik Huseny

9 Sadik Huseny (Bar No. 224659)
10 sadik.huseny@lw.com
11 Steven M. Bauer (Bar No. 135067)
12 steven.bauer@lw.com
13 Amit Makker (Bar No. 280747)
14 amit.makker@lw.com
15 Shannon D. Lankenau (Bar. No. 294263)
16 shannon.lankenau@lw.com
17 **LATHAM & WATKINS LLP**
18 505 Montgomery Street, Suite 2000
19 San Francisco, CA 94111
20 Telephone: 415.391.0600
21 Facsimile: 415.395.8095

22 Melissa Arbus Sherry (*pro hac vice*)
23 melissa.sherry@lw.com
24 Richard P. Bress (*pro hac vice*)
25 rick.bress@lw.com
26 Anne W. Robinson (*pro hac vice*)
27 anne.robinson@lw.com
28 Tyce R. Walters (*pro hac vice*)
tyce.walters@lw.com
Gemma Donofrio (*pro hac vice*)
gemma.donofrio@lw.com
Christine C. Smith (*pro hac vice*)
christine.smith@lw.com
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004
Telephone: 202.637.2200
Facsimile: 202.637.2201

*Attorneys for Plaintiffs National Urban League;
League of Women Voters; Black Alliance for
Just Immigration; Harris County, Texas; King
County, Washington; City of San Jose,
California; Rodney Ellis; Adrian Garcia; and
the NAACP*

1 Dated: January 15, 2021

By: /s/ Jon M. Greenbaum
Kristen Clarke (*pro hac vice*)
kclarke@lawyerscommittee.org
Jon M. Greenbaum (Bar No. 166733)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (*pro hac vice*)
erosenberg@lawyerscommittee.org
Ajay Saini (*pro hac vice*)
asaini@lawyerscommittee.org
Maryum Jordan (Bar No. 325447)
mjordan@lawyerscommittee.org
Pooja Chaudhuri (Bar No. 314847)
pchaudhuri@lawyerscommittee.org
**LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW**
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: 202.662.8600
Facsimile: 202.783.0857

*Attorneys for Plaintiffs National Urban League;
City of San Jose, California; Harris County,
Texas; League of Women Voters; King County,
Washington; Black Alliance for Just
Immigration; Rodney Ellis; Adrian Garcia; the
NAACP; and Navajo Nation*

Wendy R. Weiser (*pro hac vice*)
weiserw@brennan.law.nyu.edu
Thomas P. Wolf (*pro hac vice*)
wolft@brennan.law.nyu.edu
Kelly M. Percival (*pro hac vice*)
percivalk@brennan.law.nyu.edu
BRENNAN CENTER FOR JUSTICE
120 Broadway, Suite 1750
New York, NY 10271
Telephone: 646.292.8310
Facsimile: 212.463.7308

*Attorneys for Plaintiffs National Urban League;
City of San Jose, California; Harris County,
Texas; League of Women Voters; King County,
Washington; Black Alliance for Just
Immigration; Rodney Ellis; Adrian Garcia; the
NAACP; and Navajo Nation*

Mark Rosenbaum (Bar No. 59940)
mrosenbaum@publiccounsel.org
PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, California 90005

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Telephone: 213.385.2977
Facsimile: 213.385.9089

Attorneys for Plaintiff City of San Jose

Doreen McPaul, Attorney General
dmc paul@nndoj.org
Jason Searle (*pro hac vice*)
jasearle@nndoj.org
NAVAJO NATION DEPARTMENT OF JUSTICE
P.O. Box 2010
Window Rock, AZ 86515
Telephone: (928) 871-6345

Attorneys for Navajo Nation

Dated: January 15, 2021

By: /s/ Danielle Goldstein
Michael N. Feuer (Bar No. 111529)
mike.feuer@lacity.org
Kathleen Kenealy (Bar No. 212289)
kathleen.kenealy@lacity.org
Danielle Goldstein (Bar No. 257486)
danielle.goldstein@lacity.org
Michael Dundas (Bar No. 226930)
mike.dundas@lacity.org
CITY ATTORNEY FOR THE CITY OF LOS ANGELES
200 N. Main Street, 8th Floor
Los Angeles, CA 90012
Telephone: 213.473.3231
Facsimile: 213.978.8312

Attorneys for Plaintiff City of Los Angeles

Dated: January 15, 2021

By: /s/ Michael Mutalipassi
Christopher A. Callihan (Bar No. 203010)
legalwebmail@ci.salinas.ca.us
Michael Mutalipassi (Bar No. 274858)
michaelmu@ci.salinas.ca.us
CITY OF SALINAS
200 Lincoln Avenue
Salinas, CA 93901
Telephone: 831.758.7256
Facsimile: 831.758.7257

Attorneys for Plaintiff City of Salinas

Dated: January 15, 2021

By: /s/ Rafey S. Balabonian
Rafey S. Balabonian (Bar No. 315962)
rbalabonian@edelson.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lily E. Hough (Bar No. 315277)
lough@edelson.com
EDELSON P.C.
123 Townsend Street, Suite 100
San Francisco, CA 94107
Telephone: 415.212.9300
Facsimile: 415.373.9435

Rebecca Hirsch (*pro hac vice*)
rebecca.hirsch2@cityofchicago.org
**CORPORATION COUNSEL FOR THE
CITY OF CHICAGO**
Celia Mexa
Stephen J. Kane
121 N. LaSalle Street, Room 600
Chicago, IL 60602
Telephone: (312) 744-8143
Facsimile: (312) 744-5185

Attorneys for Plaintiff City of Chicago

Dated: January 15, 2021

By: /s/ Donald R. Pongrace
Donald R. Pongrace (*pro hac vice*)
dpongance@akingump.com
Merrill C. Godfrey (Bar No. 200437)
mgodfrey@akingump.com
**AKIN GUMP STRAUSS HAUER & FELD
LLP**
2001 K St., N.W.
Washington, D.C. 20006
Telephone: (202) 887-4000
Facsimile: 202-887-4288

*Attorneys for Plaintiff Gila River Indian
Community*

Dated: January 15, 2021

By: /s/ David I. Holtzman
David I. Holtzman (Bar No. 299287)
David.Holtzman@hklaw.com
HOLLAND & KNIGHT LLP
Daniel P. Kappes
Jacqueline N. Harvey
50 California Street, 28th Floor
San Francisco, CA 94111
Telephone: (415) 743-6970
Fax: (415) 743-6910

Attorneys for Plaintiff County of Los Angeles

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: January 15, 2021

JENNIFER B. DICKEY
Acting Assistant Attorney General

JOHN V. COGHLAN
Deputy Assistant Attorney General

AUGUST E. FLENTJE
Special Counsel to the Assistant
Attorney General

ALEXANDER K. HAAS
Branch Director

DIANE KELLEHER
Assistant Branch Director

/s/ Brad P. Rosenberg
BRAD P. ROSENBERG (DC Bar # 467513)
Assistant Branch Director

ALEXANDER V. SVERDLOV
STEPHEN EHRLICH
M. ANDREW ZEE
Trial Attorneys
U.S. Department of Justice
Civil Division - Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Telephone: (202) 305-0550

Attorneys for Defendants

ATTESTATION

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: January 15, 2021

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny
Sadik Huseny