

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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BRENNAN CENTER FOR JUSTICE		)	
AT NYU SCHOOL OF LAW,		)	
		)	
Plaintiff,		)	
		)	
v.		)	Civil Action No. 1:20-cv-02674-TJK
		)	
UNITED STATES DEPARTMENT OF		)	
COMMERCE, <i>et al.</i> ,		)	
		)	
Defendants.		)	
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**JOINT STATUS REPORT**

Plaintiff and Defendants, by their counsel, respectfully submit this Joint Status Report pursuant to the Court’s Minute Order of March 30, 2021.

Joint Statement of the Parties

The parties jointly provide the following update:

1. On March 25, 2021, Defendants Department of Commerce and the Census Bureau provided Plaintiff revised *Vaughn* index entries for the 174 records previously identified by Plaintiff, and the Department of Commerce disclosed to Plaintiff portions of 36 documents that the Department of Commerce had previously withheld in part or in full.

2. On April 13, 2021, counsel for Plaintiff sent a letter to Defendants’ counsel identifying a number of concerns with Defendants’ revised *Vaughn* indices, including entries in which Plaintiff alleges that the government was over-withholding responsive, segregable information under the deliberative process and the presidential communications privileges. Counsel for Defendants acknowledged receipt of the letter and advised that Defendants would assess and respond to the letter.

3. On April 15, 2021, counsel for Plaintiff and counsel for Defendants met and conferred. During that conversation the parties expressed their intention to make meaningful progress towards resolution of the concerns identified in Plaintiff's April 13, 2021 letter. Counsel for Plaintiff also advised it would be willing to narrow Subpart 4 of its Freedom of Information Act request to one particular individual. Counsel for Defendants will discuss Plaintiff's proposal with Defendants Department of Commerce and the Census Bureau and, after determining the volume of potentially responsive records, make a recommendation on how best to move forward.<sup>1</sup>

4. The parties continue to discuss a resolution for the case and suggest that it would be useful for the Court to direct the parties to file another Joint Status Report in 31 days, on May 17, 2021, by which point the parties intend to have either reached favorable resolution or impasse on the issues identified in Plaintiff's April 13, 2021 letter. By the next joint status report, the parties hopefully will be in a position to provide a proposal to the Court on how the case should proceed, if needed.

#### Plaintiff's Additional Statement

As outlined in its April 13, 2021 letter to Defendants' counsel, Plaintiff remains troubled by the government's continued efforts to shield from public disclosure records concerning the Trump Administration's efforts to undermine the accurate, transparent, and equitable process of apportionment following the 2020 Census, which are a matter of public record.<sup>2</sup> *See New York v.*

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<sup>1</sup> All of the other defendant agencies have completed their rolling productions and/or provided final responses to Plaintiff.

<sup>2</sup> *See also* Opinion, Editorial Board, *Gerrymandering Was Already Going to be Bad This Year. Then the Census was Delayed*, WASH. POST (Apr. 4, 2021 9:00 A.M.), [https://www.washingtonpost.com/opinions/gerrymandering-was-already-going-to-be-bad-this-year-then-the-census-was-delayed/2021/04/03/4ed440c4-91a4-11eb-a74e-1f4cf89fd948\\_story.html](https://www.washingtonpost.com/opinions/gerrymandering-was-already-going-to-be-bad-this-year-then-the-census-was-delayed/2021/04/03/4ed440c4-91a4-11eb-a74e-1f4cf89fd948_story.html); Joseph Choi, *Census Delays Screw Up State Plans for Redistricting*, THE HILL (Mar. 28, 2021 11:43 A.M.), <https://thehill.com/homenews/administration/545286-census-delays-screw-up-state-plans-for-redistricting-ap>; Hansi Lo Wang, *Immigration Hard-Liner Files Reveal 40-Year Bid Behind Trump's Census Obsession*, NPR (Feb. 15, 2021 5:01 A.M.), <https://www.npr.org/2021/02/15/967783477/immigration-hard-liner-files-reveal-40-year-bid-behind-trumps-census-obsession>.

*Trump*, 485 F. Supp. 3d 422, 482 (S.D.N.Y.) (concluding “the Presidential Memorandum is an *ultra vires* violation of Congress’s delegation of its constitutional responsibility to count the whole number of persons in each State and to apportion members of the House of Representatives among the States” and enjoining its enforcement in relevant part), *vacated and remanded on other grounds*, 141 S. Ct. 530 (2020); *City of San Jose v. Trump*, No. 20-cv-05167, 2020 WL 6253433, at \*32 (N.D. Cal. Oct. 22, 2020), *vacated and remanded on other grounds*, 141 S. Ct. 1231 (2020). The public has a right to understand the full extent of those unlawful efforts by their public servants, and simply because Defendants *can* assert a discretionary exemption to prevent such disclosure, does not mean they *should*.

Plaintiff is hopeful that the parties will be able to make meaningful progress on the discrete issues identified in its April 13, 2021 letter in the next 31 days and that, if satisfactorily addressed, may eliminate the need for further litigation. Should the parties be unable to resolve their differences, of course, that too will enable Plaintiff to better determine how it would like to proceed in this case.

#### Defendants’ Additional Statement

As noted above, Defendants received Plaintiff’s April 13, 2021 letter and conferred with Plaintiff’s counsel. Defendants Department of Commerce and the Census Bureau will promptly assess the issues raised by Plaintiff and respond accordingly in advance of the next joint status report. Defendants share Plaintiff’s sentiment that they hope the parties can resolve the outstanding issues without the need for additional litigation.

Dated: April 16, 2021

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Respectfully submitted,

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