

October 10, 2018

The Honorable Jesse M. Furman
United States District Court for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Centre Street, Room 2202
New York, NY 10007

RE: *Plaintiffs' Status Report in State of New York, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-2921 (JMF).

Dear Judge Furman,

Pursuant to Paragraph 1(A) of the Court's Individual Rules and Practices, Plaintiffs write to advise the Court of developments since the administrative stay was issued by Justice Ginsburg on October 9, and not otherwise mentioned in Defendants' October 10 notice to this Court. (Docket No. 374.)

First, Defendants have taken the position that the administrative stay applies unilaterally to stay Plaintiffs' discovery, but not Defendants' discovery. *See* Ex. 1. In particular, Defendants have taken the position that Justice Ginsburg's stay order does not affect Defendants' ability to continue taking depositions scheduled for this week of Plaintiffs' expert or fact witnesses. *Id.* Accordingly, Defendants deposed Plaintiffs' expert John Thompson, the former Census Director, earlier today; will depose Dr. Matthew Barreto tomorrow; and will depose Dr. Hermann Habermann on Friday. Defendants also intend to take fact depositions of the individual members of the NYIC Plaintiff organizations this week. Defendants have not yet confirmed that they will make Dr. John Abowd – Defendants' rebuttal expert – available on his scheduled deposition date of October 12, notwithstanding Defendants' view that discovery related to Plaintiffs' standing is unaffected by the stay. *See* Ex. 2.

Second, Defendants have advised the parties of their view that the administrative stay applies to separate litigation in other jurisdictions for which Defendants never sought or requested a stay. *See* Ex. 1. Plaintiffs in the Maryland and California lawsuits challenging the citizenship question – as well as the New York Plaintiffs – noticed the depositions of several fact witnesses to be deposed on October 10 and 11. In addition to the depositions of Secretary Ross and Mr. Gore, two other Commerce Department fact witnesses were scheduled to be deposed this week: David Langdon (scheduled for today, October 10) and Sahra Park-Su (October 11). Yesterday evening, after the administrative stay was issued by Justice Ginsburg, counsel for the plaintiffs in the Maryland and California cases asked Defendants to confirm that the Langdon and Park-Su depositions would proceed because Defendants have never sought a stay of discovery in those cases. Defendants responded that in light of Justice Ginsburg's stay, they would not make those fact witnesses available for their scheduled depositions in those cases either. Ex. 1. Mr. Langdon's deposition therefore did not proceed today, and Ms. Park-Su's deposition will not proceed tomorrow unless the stay is lifted. Plaintiffs intend to depose these witnesses on the earliest possible date once authorized to conclude discovery.

With respect to Defendants' request that the Court schedule a conference to set future proceedings, Plaintiffs' position is that no adjustments to the pretrial and trial calendar are necessary or warranted at this point. In light of the Court's prior orders, Plaintiffs are proceeding on the expectation that all deadlines scheduled by this Court are intact. (Docket No. 363, Docket No. 362, Docket No. 323, Docket No. 199.) Defendants have offered to make their four remaining fact deponents available "promptly" if those depositions are authorized following Supreme Court review, "including after the scheduled close of discovery," Ex. 1. In the interest of concluding discovery as soon as the administrative stay is lifted, Plaintiffs have asked Defendants to provide conditional dates for the depositions of Secretary Ross and Mr. Gore, *see* Ex. 2, and if necessary will seek leave of Court to conduct those depositions after October 12.

Finally, there were several remaining disputes regarding the adequacy of Defendants' document productions and privilege assertions that were open when Justice Ginsburg's administrative stay was issued. Plaintiffs wish to advise the Court that if the parties do not resolve those disagreements, Plaintiffs intend to seek expedited relief from this Court as soon as the administrative stay is lifted.

Respectfully submitted,

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