

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, by and through  
Attorney General Xavier Becerra,

Case No. 3:18-cv-01865

Plaintiff,

v.

WILBUR L. ROSS, JR., in his official  
capacity as Secretary of the U.S. Department  
of Commerce; U.S. DEPARTMENT OF  
COMMERCE; RON JARMIN, in his official  
capacity as Acting Director of the U.S.  
Census Bureau; U.S. Census Bureau; DOES  
1-100,

Defendants.

CITY OF SAN JOSE, a municipal corporation;  
and BLACK ALLIANCE FOR JUST  
IMMIGRATION, a California Non-Profit  
Corporation,

Case No. 5:18-cv-02279

Plaintiffs,

**NOTICE**

vs.

WILBUR L. ROSS, JR., in his official capacity  
as Secretary of the U.S. Department of  
Commerce; U.S. DEPARTMENT OF  
COMMERCE; RON JARMIN, in his official  
capacity as Acting Director of the U.S. Census  
Bureau; U.S. CENSUS BUREAU,  
Defendants.

Plaintiffs City of San Jose, Black Alliance for Just Immigration, and the State of California (“Plaintiffs”) file this notice in response to the notice filed by Defendants on October 10, 2018 (Dkt. 87 in 18-cv-01865 and Dkt. 95 in 18-cv-02279) (“Defendants’ Notice”). Defendants did not seek to meet-and-confer with Plaintiffs nor make any effort to seek consent to file a joint notice before unilaterally filing their request for a conference to extend the deadlines previously consented to in this matter. Plaintiffs do not consent to any extension of any deadlines in this matter except as set forth below, and do not believe that a conference is necessary.

1 Defendants notified this Court that Justice Ginsberg, on behalf of the Supreme Court of  
2 the United States, issued a brief stay of three discovery orders issued in *State of New York v. U.S.*  
3 *Department of Commerce*, Nos. 18-cv-2921 & 18-cv-5025 (JMF) (S.D.N.Y.) (“the New York  
4 litigation”), dated July 3, 2018, August 17, 2018, and September 21, 2018. Justice Ginsberg’s  
5 order, which Defendants omitted from their submission, is attached hereto as **Exhibit 1**  
6 (“SCOTUS Order”). The SCOTUS Order stayed three orders of the District Court of the  
7 Southern District of New York: one of which granted extra-record discovery, one of which  
8 granted the deposition of John Gore, and one of which granted the deposition of Wilbur Ross.

9 Defendants assert that discovery authorized by this Court’s August 17, 2018 order (Dkt.  
10 72 in 18-cv-01865 and Dkt. 87 in 18-cv-02279) is similarly stayed. However, Defendants have  
11 not requested a stay from this Court, and the SCOTUS Order does not mention this litigation.

12 When the Supreme Court issued its order, two fact depositions had been noticed to take  
13 place before the close of discovery today on October 11, 2018. Both had been noticed or cross-  
14 noticed by Plaintiffs in this case—in fact one was scheduled to take place at the offices of the San  
15 Jose/BAJI Plaintiffs’ counsel. The parties in all six coordinated cases made plans to participate in  
16 the depositions. Defendants confirmed the depositions, and were aware that they involved  
17 interstate travel, as late as Tuesday afternoon. *See* email from Defendants’ counsel dated October  
18 9, 2018, attached hereto as **Exhibit 2**.

19 Given the coordination and attention that had been put into scheduling the depositions,  
20 and the fact that a stay of discovery in these matters had neither been sought nor granted,  
21 Plaintiffs’ counsel reached out to Defendants’ counsel to suggest that those depositions scheduled  
22 prior to the close of discovery—with the obvious exception of Gore and Ross, which are the  
23 subjects of the mandamus petition—take place as planned. Defendants replied that while they  
24 would take the opportunity to depose the three Plaintiffs’ experts scheduled for this week (two of  
25 which are experts in this matter), they would not produce the previously-scheduled fact witnesses.  
26 Defendants claimed that they “understand Justice Ginsburg’s order to include a stay of further  
27 fact discovery.” *See* email from Defendants’ counsel dated October 10, 2018, attached hereto as  
28 **Exhibit 3**.

1 Plaintiffs had no option but to consent to Defendants' request, as the close of discovery is  
2 upon us. But Plaintiffs do not, and will not, consent to any change in any other deadline in this  
3 case. Time is critical in this matter: Plaintiffs made every effort and gave Defendants ample  
4 opportunity to comply with their discovery obligations in time.

5 In the event that the Supreme Court denies Defendants' petition, Plaintiffs are ready to  
6 depose Messrs. Ross and Gore and expect the witnesses to be promptly produced. Negotiations  
7 are currently under way to secure a provisional date for Gore as soon as next week, so there is no  
8 reason for delay even if the Supreme Court denies mandamus in its entirety. Plaintiffs remain  
9 ready to depose the remaining fact witnesses whose depositions were previously noticed and  
10 scheduled. Plaintiffs' and Defendants' counsel have generally worked cooperatively to schedule  
11 depositions in this matter in a timely fashion, and there is no reason to believe that the remaining  
12 depositions cannot be scheduled promptly.

13 Plaintiffs therefore request that this Court affirm the scheduling order set in this case, as  
14 recently modified by joint stipulation by the parties (Dkt. 86 in 18-cv-01865 and Dkt. 94 in 18-  
15 cv-02279), with the exception that those depositions that were scheduled this week take place  
16 immediately after the stay imposed by the SCOTUS Order is lifted, and that any documents  
17 produced by Defendants after the close of discovery in the New York litigation be produced in  
18 this matter.

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1 Plaintiffs contend there is no need for a conference and no need to further extend  
2 deadlines in this matter.

3 Dated: October 11, 2018

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