

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF ALABAMA  
**SOUTHERN DIVISION**

STATE OF ALABAMA, and MORRIS J.  
BROOKS, JR., Representative for  
Alabama's 5th Congressional District,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
COMMERCE; and WILBUR L. ROSS, in  
his official capacity as Secretary of  
Commerce; BUREAU OF THE CENSUS,  
an agency within the United States  
Department of Commerce; and STEVEN  
DILLINGHAM, in his official capacity as  
Director of the U.S. Census Bureau,

*Defendants,*

and

DIANA MARTINEZ; RAISA SEQUEIRA;  
SAULO CORONA; IRVING MEDINA;  
JOEY CARDENAS; FLORINDA P.  
CHAVEZ; and CHICANOS POR LA  
CAUSA;

COUNTY OF SANTA CLARA,  
CALIFORNIA; KING COUNTY,  
WASHINGTON; and CITY OF SAN JOSÉ,  
CALIFORNIA,

*Defendant-Intervenors.*

Civil Action No. 2:18-cv-00772-RDP

**JOINT STATUS REPORT**

In response to the Court's order on July 23, 2019, the parties have conferred and now submit this joint report stating their respective positions regarding how this case should proceed. The parties conferred through telephone conference calls on August 9 and August 14, 2019. Representatives from each party participated in each call.

### **Plaintiffs' Position**

Plaintiffs the State of Alabama and Representative Morris Brooks take the position that discovery on issues of standing and possible remedies should begin promptly. Plaintiffs do not presently anticipate needing discovery on the merits of their claims.

Plaintiffs propose that when standing discovery is complete, the parties submit motions for summary judgment that address both standing and the merits. This approach would allow the Court to resolve all substantive issues in one order, which would also allow standing and merits issues to be addressed in any potential appeal. If after considering summary judgment motions, the Court concludes that material issues of fact exist as to standing, Plaintiffs propose that the Court conduct an evidentiary hearing on standing issues and make findings of fact before resolving the case.

As discussed below, Defendant-Intervenors intend to file motions for judgment on the pleadings. Even if such motions are filed, the parties agree that discovery will proceed while those motions are briefed and argued. Plaintiffs propose that the Court resolve standing before resolving the merits to avoid the possibility that the Plaintiffs lose on the merits before this Court and prevail on the merits on appeal before having to return to this Court to litigate standing to obtain relief.

As discussed below, Defendant-Intervenors have proposed bifurcated discovery—discovery regarding standing would close before discovery regarding the merits. Defendant-Intervenors have also proposed similarly bifurcating motions for summary judgment, with motions

addressing standing being resolved before motions addressing the merits. Plaintiffs do not foresee any need for merits discovery and are opposed to bifurcating motions for summary judgment out of concern it will unnecessarily delay final resolution of this case.

Plaintiffs propose closing the pleadings period shortly after the September 6, 2019 status conference. Martinez-Intervenors propose that the pleadings be closed on October 1, 2019.

### **Plaintiffs' Proposed Deadlines for Discovery and Dispositive Motions**

<b>Event</b>	<b>Plaintiffs' Proposed Date</b>
Initial Disclosures	September 20, 2019
Final Date for Parties to Amend Pleadings or to Join Parties	September 20, 2019 <sup>1</sup>
Deadline for Production of the Federal Administrative Record	October 4, 2019
Deadline to File Motion for Judgment on the Pleadings	October 18, 2019 <sup>2</sup>
Discovery Opens	October 18, 2019
Disclosure of Plaintiff's Expert Witnesses	December 6, 2019
Defendants and Intervenors' Expert Rebuttal Disclosures	January 10, 2019
Plaintiff's Expert Reply Disclosures	January 31, 2020

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<sup>1</sup> Opposition to any amendment to the pleadings shall be due 21 days after amended pleadings are filed. Reply briefs in support of the amended pleadings shall be due 14 days after the opposition is filed.

<sup>2</sup> Opposition to the motion for judgment on the pleadings shall be due 28 days after the motion is filed. Reply briefs in support of the motion for judgment on the pleadings shall be due 21 days after the opposition is filed—additional time for the reply to accommodate the Thanksgiving holiday.

Deadline to File Discovery Motions	March 13, 2020
All Discovery (Jurisdictional & Merits) Closes	March 27, 2020
Motions for Summary Judgment Re: Jurisdiction & Merits	April 27, 2020

### **Defendants' Position<sup>3</sup>**

Defendants propose first producing an administrative record before beginning discovery. Defendants then think there should be discovery regarding standing and possible remedies. Defendants do not believe that any merits discovery is necessary or appropriate. After a more complete record has been created with respect to standing and possible remedies, Defendants anticipate challenging whether Plaintiffs have established sufficient injury and redressability, as well as the related question of whether and, if so, the extent to which Defendants could comply with any Court order regarding remedy.

Defendants propose the following schedule:

<b>Event</b>	<b>Parties' Proposed Date</b>
Initial Disclosures Regarding Standing and Possible Remedies	September 20, 2019
Final Date for Parties to	October 1, 2019 <sup>4</sup>

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<sup>3</sup> United States Department of Commerce; Wilbur L. Ross (Secretary of Commerce); Bureau of the Census; and Steven Dillingham (Director of the U.S. Census Bureau).

<sup>4</sup> Opposition to any amendment to the pleadings shall be due 21 days after amended pleadings are filed. Reply briefs in support of the amended pleadings shall be due 14 days after the opposition is filed.

Amend Pleadings or to Join Parties	
Deadline for Production of the Federal Administrative Record	November 1, 2019
Deadline to File Motion for Judgment on the Pleadings	November 22, 2019 <sup>5</sup>
Discovery Opens Regarding Standing and Possible Remedies	November 15, 2019
Disclosure of Plaintiffs' Expert Witnesses Regarding Standing and Possible Remedies	January 15, 2020
Defendants and Intervenors' Expert Rebuttal Disclosures Regarding Standing and Possible Remedies	February 19, 2020
Plaintiffs' Expert Reply Disclosures Regarding Standing and Possible Remedies	March 2, 2020
Deadline to File Discovery Motions Regarding Standing and Possible Remedies	April 17, 2020
Discovery Regarding Standing and Possible Remedies Closes	May 1, 2020
Motions for Summary Judgment	June 1, 2020

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<sup>5</sup> Opposition to the motion for judgment on the pleadings shall be due 30 days after the motion is filed. Reply briefs in support of the motion for judgment on the pleadings shall be due 30 days after the opposition is filed—additional time for the reply to accommodate end-of-year holidays.

**Martinez Intervenors' Position<sup>6</sup>**

The Martinez Intervenors agree that Defendants should produce an administrative record prior to the commencement of discovery. Martinez Intervenors are considering filing a cross claim against Defendants. Martinez Intervenors intend to file a Rule 12(c) motion for judgment on the pleadings. Martinez Intervenors propose allowing discovery to move forward while the Rule 12(c) motion is briefed and argued. Finally, Martinez Intervenors propose two different discovery deadlines, with jurisdictional discovery closing first, followed by briefing on jurisdictional issues, and merits discovery to close later, followed by briefing on the merits if needed.

**Martinez Intervenors' Proposed Deadlines for Discovery and Dispositive Motions**

<b>Event</b>	<b>Parties' Proposed Date</b>
Initial Disclosures	September 20, 2019
Final Date for Parties to Amend Pleadings or to Join Parties	October 1, 2019 <sup>7</sup>
Deadline for Production of the Federal Administrative Record	November 1, 2019
Deadline to File Motion for Judgment on the Pleadings	November 22, 2019 <sup>8</sup>
Discovery Opens	November 15, 2019

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<sup>6</sup> Diana Martinez; Raisa Sequeira, Saulo Corona, Irving Medina, Joey Cardenas, Florinda P. Chavez and Chicanos Por La Causa.

<sup>7</sup> Opposition to any amendment to the pleadings shall be due 21 days after amended pleadings are filed. Reply briefs in support of the amended pleadings shall be due 14 days after the opposition is filed.

<sup>8</sup> Opposition to the motion for judgment on the pleadings shall be due 30 days after the motion is filed. Reply briefs in support of the motion for judgment on the pleadings shall be due 30 days after the opposition is filed—additional time for the reply to accommodate end-of-year holidays.

Disclosure of Plaintiff's Expert Witnesses	January 15, 2020
Defendants and Intervenors' Expert Rebuttal Disclosures	February 19, 2020
Plaintiff's Expert Reply Disclosures	March 2, 2020
Deadline to File Discovery Motions on Jurisdiction	April 17, 2020
Jurisdictional Discovery Closes	May 1, 2020
Motions for Summary Judgment Re: Jurisdiction	June 1, 2020

Depending on the outcome of any Motions for Judgment on the Pleadings or Motions for Summary Judgment, the parties may seek another case management conference to set a deadline for discovery on the merits to close, should it be necessary, as well as deadlines for the remainder of litigation.

#### **Local Government Intervenors' Position<sup>9</sup>**

The Local Government Intervenors agree with Defendants that an Administrative Record should be filed before discovery commences. In addition, there should be a Rule 26(f) conference and initial disclosures prior to discovery. For the reasons discussed below, standing discovery should be concluded before merits discovery. But once discovery commences, it should be open as to all issues.

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<sup>9</sup> Santa Clara County, California; King County, Washington; and the City of San Jose, California.

The Local Government Intervenors intend to file a Rule 12(c) motion for judgment on the pleadings. We believe it makes sense to set a schedule through Rule 12(c) motions but not any further at this time and hold an additional scheduling conference after the Rule 12(c) motions are decided. If the Court sets a more comprehensive schedule, we prefer that proposed by the Martinez Intervenors. In any event, Plaintiffs' proposed expert disclosure and discovery cutoff dates are too early to provide for an orderly discovery process including the resolution of any discovery disputes.

Additionally, the Local Government Intervenors believe that summary-judgment motions should not be filed until after the Court decides any Rule 12(c) motions so that the parties have the benefit of the Court's views. We propose summary-judgment motions be filed no earlier than two months after the Court's decision, and possibly longer depending on where discovery stands. We concur with the Martinez Intervenors that any summary-judgment motions should proceed on two tracks: first standing, followed by the merits. This will allow the Court to resolve the contested issue of standing before addressing the merits. We propose that any merits summary-judgment motions be filed no earlier than two months after the Court's disposition of any summary-judgment motions regarding plaintiffs' standing.



September 3, 2019

/s/ Morris J. Brooks, Jr.  
Morris J. Brooks, Jr.  
Pro se  
2101 W. Clinton Avenue  
Suite 302  
Huntsville, AL 35805  
(256) 355-9400  
(256) 355-9406—Fax

*Counsel for Plaintiff  
Morris J. Brooks, Jr.*

JOSEPH H. HUNT  
Assistant Attorney General

JOHN R. GRIFFITHS  
Director, Federal Programs Branch

CARLOTTA P. WELLS  
Assistant Branch Director

/s/ Brad P. Rosenberg  
BRAD P. ROSENBERG (DC Bar #467513)  
Assistant Branch Director  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, DC 20005  
Tel: (202) 514-3374  
Fax: (202) 616-8460  
Email: brad.rosenberg@usdoj.gov

*Counsel for Defendants*

/s/ Andrea Senteno  
Thomas A. Saenz (CA Bar No. 159430)  
Denise Hulett (CA Bar No. 121553)  
Andrea Senteno (NY Bar No. 5285341)  
Julia Gomez (CA Bar No. 316270)

Respectfully submitted,

Steve Marshall  
*Alabama Attorney General*

/s/ Edmund G. LaCour Jr.  
*Solicitor General (ASB-9182-U81L)*

James W. Davis (ASB-4063-I58J)  
*Deputy Attorney General*

Winfield J. Sinclair (ASB-1750-S81W)  
Brad A. Chynoweth (ASB-0030-S63K)  
*Assistant Attorneys General*

OFFICE OF THE ATTORNEY GENERAL  
501 Washington Avenue  
Post Office Box 300152  
Montgomery, AL 36130-0152  
Tel: (334) 242-7300  
Fax: (334) 353-8440  
Email: elacour@ago.state.al.us  
jimdavis@ago.state.al.us  
wsinclair@ago.state.al.us  
bchynoweth@ago.state.al.us

*Counsel for Plaintiff State of Alabama*

**ZARZAUR**  
Anil A. Mujumdar (ASB-2004-L65M)  
2332 Second Avenue North  
Birmingham, AL 35203  
Telephone: 205.983.7985  
Facsimile: 888.505.0523  
Email: anil@zarzaur.com

**LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
UNDER LAW**

*Ezra D. Rosenberg*  
*Dorian L. Spence*  
1401 New York Avenue NW, Suite 400  
Washington, DC 20005  
Telephone: (202) 662-8600  
Facsimile: (202) 783-9857

MEXICAN AMERICAN LEGAL DEFENSE  
AND EDUCATIONAL FUND  
634 S. Spring St. #1100  
Los Angeles, CA 90014  
Telephone: (213) 629-2512  
Facsimile: (213) 629-0266  
Email: tsaenz@maldef.org  
dhulett@maldef.org  
asenteno@maldef.org  
jgomez@maldef.org

Edward Still  
Bar. No. ASB-4786- 147W  
still@votelaw.com  
429 Green Springs Hwy STE 161-304  
Birmingham, AL 3520  
Telephone: (205) 320-2882  
Facsimile: (205) 320-2882

James U. Blacksher  
Bar No. ASB-2381-S82J  
jblacksher@ns.sympatico.ca  
P.O. Box 636  
Birmingham, AL 35201  
Telephone: (205) 591-7238  
Facsimile: (866) 845-4395

*Counsel for Martinez Defendant-Interveners*

Email: erosenburg@lawyerscommittee.org  
dspence@lawyerscommittee.org

**DEMOCRACY FORWARD**

*Javier M. Guzman*  
*Robin F. Thurston*  
*John T. Lewis*  
Democracy Forward Foundation  
P.O. Box 34553  
Washington, DC 20043  
Telephone: (202) 448-9090  
Email: jguzman@democracyforward.org  
rthurston@democracyforward.org  
jlewis@democracyforward.org

*Attorneys for Defendant-Interveners CITY OF SAN JOSÉ  
and KING COUNTY*

**DEBEVOISE & PLIMPTON LLP**

*Jyotin Hamid*  
*Lauren M. Dolecki*  
*Ming Ming Yang*  
919 Third Avenue  
New York, NY 10022  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836  
Email: jhamid@debevoise.com  
lmdolecki@debevoise.com  
mmyang@debevoise.com

*Ryan M. Kusmin*  
801 Pennsylvania Avenue NW, Suite 500  
Washington, DC 20004  
Telephone: (202) 383-8000  
Facsimile: (202) 383-8118  
Email: rmkusmin@debevoise.com

**CITY OF SAN JOSÉ**

Richard Doyle, City Attorney  
Nora Frimann, Assistant City Attorney  
Office of the City Attorney  
200 East Santa Clara Street, 16th Floor  
San José, CA 95113-1905  
Telephone: (408) 535-1900  
Facsimile: (408) 998-3131

Email: cao.main@sanjoseca.gov

*Attorneys for Defendant-Intervenor CITY OF SAN JOSÉ*

**COPELAND FRANCO SCREWS & GILL, P.A.**

Robert D. Segall (SEG003)  
Post Office Box 347  
Montgomery, AL 36101-0347  
Phone: (334) 834-1180  
Facsimile: (334) 834-3172  
Email: segall@copelandfranco.com

**OFFICE OF THE COUNTY COUNSEL  
COUNTY OF SANTA CLARA**

*James R. Williams, County Counsel  
Greta S. Hansen  
Raphael N. Rajendra  
Marcelo Quiñones  
Laura S. Trice*  
Office of the County Counsel  
County of Santa Clara  
70 West Hedding Street  
East Wing, 9th Floor  
San José, CA 95110  
Email: raphael.rajendra@cco.sccgov.org  
marcelo.quinones@cco.sccgov.org

**LAW OFFICE OF JONATHAN WEISSGLASS**

*Jonathan Weissglass*  
1939 Harrison Street, Suite 150-B  
Oakland, CA 94612  
Telephone: (510) 836-4200  
Email: jonathan@weissglass.com

*Attorneys for Defendant-Intervenor  
COUNTY OF SANTA CLARA, CALIFORNIA*