

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, *et al.*;

Plaintiffs,

v.

WILBUR L. ROSS, *et al.*,

Defendants.

Civil Action No. 8:18-cv-01570-GJH

**PLAINTIFFS' OPPOSED REQUEST FOR ENTRY OF A SCHEDULING ORDER
AND REQUEST FOR TELEPHONIC CONFERENCE**

LUPE Plaintiffs respectfully request that the Court issue a Fed. R. Civ. P. Rule 16(b) Scheduling Order for the purpose of setting a discovery and motions schedule in this matter. Plaintiffs in this matter conferred with Plaintiffs in *Kravitz, et al. v. U.S. Department of Commerce, et al.*, GJH-18-1041, and the parties agree that because of the time-sensitive nature of the injunctive relief sought, this case should be adjudicated as expeditiously as practicable. Therefore, the *LUPE* and *Kravitz* plaintiffs have conferred and they have agreed to coordinate discovery and adhere to the proposed discovery deadlines in this action, and to the pre-trial dates set forth in the Proposed Scheduling Order filed by the *Kravitz* plaintiffs on August 29, 2018, ECF No. 50. That proposed schedule is:

- Plaintiffs' expert reports shall be due on **October 5, 2018**;
- Defendants' expert reports shall be due on **October 19, 2018**;
- Plaintiffs' rebuttal expert reports shall be due on **October 26, 2018**;
- Fact and expert discovery shall close on **November 2, 2018**;
- Summary judgment motions shall be due on **November 12, 2018**;

- Responses to motions for summary judgment shall be due on **November 27, 2018**;
- Replies in support of motions for summary judgment shall be due on **December 4, 2018**;
- A hearing on motions for summary judgment shall be held on December ____, 2018;
- A pretrial conference shall be held on _____; and
- Trial shall commence on **January ____, 2019**.

Plaintiffs in this matter and plaintiffs in *Kravitz* have been drawn into discovery procedures already underway in *State of New York, et al. v. U.S. Department of Commerce, et al.*, 1:18-cv-02921, a matter before Judge Furman of the Southern District of New York that involves some of the same claims at issue in this matter. In particular, at the direction of Judge Furman, Plaintiffs and the parties in the other five pending cases that challenge the decision to add a citizenship question to the 2020 Decennial Census stipulated to procedures to coordinate discovery in all six pending cases.¹ Declaration of Denise Hulett (“Hulett Decl.”), Ex. 1, Coordination Procedures. On August 4, 2018, Judge Furman entered a text-only order adopting the coordination procedures, and ordering all counsel to file notices of appearance in that case. *State of New York, et al. v. U.S. Dep’t of Commerce, et al.*, 1:18-cv-02921 ECF No. 224. Depositions in *State of New York* began on August 15, 2018, are ongoing, and, in accordance with Judge Furman’s order regarding Coordination Procedures, attorneys in all six cases have participated, asking questions of all deponents. The administrative record and all discovery

¹ Those cases are: *State of New York, et al. v. U.S. Dep’t of Commerce, et al.*, No. 18-cv-2921 (S.D.N.Y.) (Judge Furman); *NYIC, et al. v. U.S. Dep’t of Commerce, et al.*, No. 18-cv-5025 (S.D.N.Y.) (Judge Furman); *Kravitz, et al. v. U.S. Dep’t of Commerce, et al.*, No. 18-cv-1041 (D. Md.) (Judge Hazel); *La Unión del Pueblo Entero, et al. v. Ross, et al.*, No. 18-cv-1570 (D. Md.) (Judge Hazel); *California, et al. v. Ross, et al.*, No. 18-cv-1865 (N.D. Cal.) (Judge Seeborg); and *City of San Jose, et al. v. Ross, et al.*, No. 18-cv-2279 (N.D. Cal.) (Judge Seeborg).

responses and productions have been made available to parties in all six cases, without waiving any plaintiff's right to request additional discovery in any of the six cases.

Because Plaintiffs in this matter raise unique claims of intentional discrimination in violation of the Fifth Amendment to the U.S. Constitution and claims of conspiracy to violate civil rights under 42 U.S.C. § 1985 (3), Plaintiffs anticipate requesting additional discovery from this Court, beyond what is included in the stipulation in *State of New York*. Therefore, Plaintiffs believe a telephonic status conference is necessary to discuss the scope and scheduling of any further discovery motions, to finalize dates for a bench trial, a pre-trial conference, and a hearing on summary judgment motions, in coordination with the scheduling proposal set forth above and filed in the *Kravitz* case.

Plaintiffs' counsel has contacted the Department of Justice regarding this request for entry of a scheduling order, and has been informed that DOJ does not concede that discovery would be appropriate in this case, and will not enter into a stipulation at this time. Defendants oppose the need for a scheduling order due to, *inter alia*, Defendants' pending motion to dismiss. Defendants further communicated that as set forth in the *Kravitz* joint proposed scheduling order, Defendants will adhere to the deadlines therein. *See Kravitz, et al. v. Dep't of Commerce, et al.*, 18-cv-1041 (D. Md. Aug. 29, 2018), ECF No. 50. Defendants' motion to dismiss in this case was filed on August 24, 2018, ECF No. 54, Plaintiffs' opposition is due on September 7, 2018, and Defendants' reply is due on September 21, 2018.

Because of Defendants' current position in opposition to the entry of a scheduling order, it is not possible at this time to submit a joint Fed. R. Civ. P. 26(f) report. However, Local Rule 103-9(b) provides that this Court may enter a scheduling order without awaiting a Rule 26(f) report from the parties or conducting a scheduling conference, so long as Defendants have the

opportunity to request a modification of any deadline they believe is unreasonable. Since Defendants have already agreed to the identical schedule in *Kravitz*, it is unlikely any of the proposed deadlines will be considered unreasonable. Finally, Rule 16(b) requires that a scheduling order is to be entered in this case by September 16, 2018, 90 days after the June 18 service on Defendant Ron Jarmin. ECF No. 36.

Dated: August 31, 2018

Respectfully submitted,

By /s/ Burth G. Lopez

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