

October 12, 2018

VIA ECF

The Honorable George J. Hazel
United States District Court
District of Maryland
6500 Cherrywood Lane
Greenbelt, MD 20770

Re: Plaintiffs' Supplemental Letter Brief in Reply to Defendants' Response in Opposition to Plaintiffs' Letter Motion Seeking Leave to Depose Kris Kobach and Steve Bannon in *La Unión del Pueblo Entero, et al., v. Ross, et al.*, No. 18-01570

Dear Judge Hazel,

Plaintiffs submit this supplemental letter brief in reply to Defendants' response in opposition (ECF No. 75) to plaintiffs' letter brief seeking leave to depose Kris Kobach and Steve Bannon (ECF No. 70). Plaintiffs seek to supplement the record in this motion with Defendants' interrogatory responses disclosed yesterday in the consolidated cases of *State of New York, et al. v. United States Department of Commerce, et al.*, and *New York Immigration Coalition, et al. v. United States Department of Commerce, et al.*, Case No. 18-Civ.-2921, (the "New York cases"), wherein Defendants admit that Secretary Ross discussed adding a citizenship question with, among other Trump Administration officials, Steve Bannon, and Kris Kobach.¹ See Defendants' Second Supplemental Responses to Plaintiffs' First Set of Interrogatories to Defendant United States Department of Commerce and Wilbur Ross ("Second Supplemental Responses"), attached.

As set forth fully in Plaintiffs' Letter Brief Regarding Discovery Issues ("Pltfs.' Letter Brief"), dated September 19, 2018, ECF No. 70, testimony from Mr. Bannon and Mr. Kobach is relevant and critical to Plaintiffs' claims under § 1985(e) and those under the Due Process Clause of the Fifth Amendment that require proof of conspiratorial discriminatory purpose to deprive Plaintiffs of their constitutional right to equal protection. Defendants' arguments to the contrary are unpersuasive and wrong.

First, although Defendants are correct that Judge Furman denied the New York cases plaintiffs' request to depose Mr. Bannon and Mr. Kobach, plaintiffs in the New York cases do

¹ While Kris Kobach is not a federal government official, he was identified by Defendants as someone referenced in Secretary Ross' Supplemental Memorandum as someone who either "(a) discussed the citizenship question with Secretary Ross, (b) had raised or discussed whether to reinstate a citizenship question, or (c) were consulted by Secretary Ross or his staff regarding whether the Department of Justice would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act." Second Supplemental Responses.

The Honorable George J. Hazel

September 19, 2018

Page 2

not allege a conspiracy claim under § 1985(e), and therefore Judge Furman did not consider whether Mr. Bannon or Mr. Kobach have information relevant to a conspiracy claim under § 1985(e).² As Defendants correctly noted in their Memorandum in Support of their Motion to Dismiss, a claim under 42 U.S.C. 1985(3) requires a plaintiff to “allege non-conclusory facts plausibly showing ‘an agreement or a ‘meeting of the minds’ by defendants to violate the claimant’s constitutional rights’—that is, a ‘joint plan[] to deprive [the plaintiff] of his constitutional rights,’” citing *Simmons v. Poe*, 47 F.3d 1370, 1377 (4th Cir. 1995). ECF No. 54-1 p. 23. Plaintiffs have been unable to depose anyone that has personal knowledge of the conversations between administration officials and Secretary Ross concerning their meeting of the minds and agreement regarding the addition of a citizenship question to the decennial Census. Secretary Ross’s deposition has been stayed by the United States Supreme Court pending the outcome of the Supreme Court’s ruling on Defendants’ Renewed Application for Stay of the deposition of Secretary Ross and Acting Assistant Attorney General John Gore, and for a stay of *all discovery beyond the administrative record* in the New York cases. Deposed Commerce Department employees have provided no knowledge of Secretary Ross’s discussions with Trump Administration officials or with Mr. Kobach.³ The only persons who have personal knowledge about the substance of agreements between Secretary Ross and Mr. Bannon and Mr. Kobach have not been deposed, and documents that evidence these communications do not contain any details or explanation of the substance of those communications.

Second, supplemental responses Defendants disclosed yesterday provide further support for the instant motion and reinforce this Court’s allowance of extra-record discovery in *Kravitz v. Dept. of Commerce*, 2018 WL 4005229. “Here, Plaintiffs have made a strong preliminary showing that Defendants have acted in bad faith, and that Defendants’ stated reason for adding the citizenship question—to further enforce the VRA—was pretextual. . . .” and that the DOJ “request” was “manufactured by senior Department of Commerce officials.” *Id.* at *17. In yesterday’s Second Supplemental Responses—despite Secretary Ross’s congressional testimony that he was not aware of any conversations with the White House about the citizenship

² Defendants incorrectly accuse Plaintiffs of misrepresenting that they are the only plaintiffs in the six cases challenging the addition of a citizenship question to allege intentional discrimination. *See* ECF No. 75 at 4-5. Plaintiffs did not make such a statement. Rather, Plaintiffs argued that this “is the only case among the six pending cases...that alleges a cause of action for conspiracy,” and “it is *the only case before this Court* that alleges that the decision to add the citizenship question was the product of intentional discrimination.” ECF No. 70 at 1 (emphases added). Both of those statements are true.

³ While Kris Kobach is not a federal government official, he was identified by Defendants as someone referenced in Secretary Ross’ Supplemental Memorandum as someone who either “(a) discussed the citizenship question with Secretary Ross, (b) had raised or discussed whether to reinstate a citizenship question, or (c) were consulted by Secretary Ross or his staff regarding whether the Department of Justice would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.” *See* Second Supplemental Response.

question⁴—Defendants now admit that Secretary Ross discussed adding a citizenship question with, among other Trump Administration officials, Jeff Sessions, Steve Bannon, and Kris Kobach. *See* Second Supplemental Response.

Accordingly, testimony from Mr. Kobach and Mr. Bannon should be compelled.

Respectfully submitted,

By: /s/ Burth Lopez

**MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND**

Burth G. Lopez (Bar No. 20461)
Thomas A. Saenz (CA Bar No. 159430)*
Nina Perales (TX Bar No. 24005046)*
Denise Hulett (CA Bar No. 121553)
Andrea Senteno (NY Bar No. 5285341)
Tanya G. Pellegrini (CA Bar No. 285186)
Julia A. Gomez (CA Bar No. 316270)

1016 16th Street NW, Suite 100
Washington, DC 20036
Phone: (202) 293-2828
Facsimile: (202) 293-2849

**ASIAN AMERICANS ADVANCING JUSTICE |
AAJC**

John C. Yang (IL Bar No. 6210478)
Niyati Shah^o (NJ Bar No. 026622005)
Terry Ao Minnis (MD Bar No. 2054)
1620 L Street, NW, Suite 1050
Washington, DC 20036
Phone: (202) 815-1098
Facsimile: (202) 296-2318

^o Admitted in New Jersey and New York only. DC practice limited to federal courts.

**Pending pro hac vice Admission*

⁴ *Hearing on F.Y. 2019 Dep't of Commerce Budget: Hearing Before the Subcomm. on Commerce, Justice, Sci., & Related Agencies of the H. Comm. on Appropriations, 115th Cong. 9 (2018), at 2018 WLNR 8815056 (“Q: Has the President or anyone in the White House discussed with you or anyone on your team about adding this citizenship question? A: I’m not aware of any such.”).*