

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

NATIONAL ASSOCIATION FOR)
THE ADVANCEMENT OF)
COLORED PEOPLE; PRINCE)
GEORGE’S COUNTY) Case No. 19-1863
MARYLAND; PRINCE GEORGE’S)
COUNTY MARYLAND NAACP)
BRANCH; ROBERT E. ROSS; H.)
ELIZABETH JOHNSON,)

Appellants,)

vs.)

BUREAU OF THE CENSUS;)
STEVEN DILLINGHAM, Director,)
Bureau of the Census; WILBUR)
ROSS, Secretary of Commerce; and)
THE UNITED STATES,)

Appellees.)

**PLAINTIFFS-APPELLANTS’ REPLY IN FURTHER SUPPORT OF THEIR
MOTION TO EXPEDITE APPEAL AND MOTION TO SEAL**

Appellants National Association for the Advancement of Colored People, Prince George’s County Maryland, Prince George’s County Maryland NAACP Branch, Robert E. Ross, and H. Elizabeth Johnson, by undersigned counsel, submit this reply in response to the Government Appellees’ August 15, 2019 opposition (ECF No. 10) to Appellants’ Motion to Expedite this appeal (ECF No. 5) and

Appellants' Motion to Seal unredacted versions of two exhibits submitted with the motion to expedite. (ECF No. 6)

In further support of their motions, Plaintiffs-Appellants state:

Motion to Expedite

1. The government's opposition to Plaintiffs' motion to expedite primarily focuses on the merits of this appeal in opposing expedition, but the merits are not before the Court in this motion and will be fully addressed in Plaintiffs' opening brief, in which Plaintiffs will amply demonstrate the errors below.

2. In the motion to expedite, Plaintiffs demonstrated the need for expedited consideration of this appeal; principally, that Plaintiffs are challenging decisions of the Census Bureau that have already begun to take effect—such as sharp reductions in in-field address canvassing for the 2020 Census—or decisions that will imminently take effect—such as reductions in the 2020 Census advertising program set to begin this fall. As set forth in more detail in the motion, Plaintiffs' appeal must be heard promptly if they are to obtain effective relief from the government's significant cutbacks to key operations in the 2020 Census.

3. In its opposition, the government states, without support, that Plaintiffs “have provided no basis for advancing the schedule already established by the Court.” (ECF No. 10 at 5.) But Plaintiffs' motion to expedite specifies in detail and with support in the motion and in the reports from Drs. Mark Doms and Sunshine

Hillygus the urgency of resolving the present appeal, so that Plaintiffs may obtain effective relief with sufficient time prior to the 2020 Census. Accordingly, Plaintiffs' motion to expedite should be granted pursuant to the schedule specified in the motion.

Motion to Seal Unredacted Reports

4. In support of their motion to expedite, Plaintiffs filed the Declaration of Susan Kohlmann and two expert reports as exhibits to the declaration. (ECF Nos. 5-2, -3, -4.) Because the expert reports filed as exhibits each contain a small amount of material designated "confidential" by Defendants during discovery in the District Court, Plaintiffs filed ***redacted*** versions on the public docket, (ECF Nos. 5-3, 5-4), and separately moved to file under seal ***unredacted versions***. (Motion to Seal, ECF No. 6.)

5. On August 12, 2019, the same day that Plaintiffs filed the motion to seal the ***unredacted*** expert reports submitted in support of their motion to expedite, this Court granted the motion to seal. The unredacted reports were the subject of the motion to seal and are properly sealed. The Court promptly deemed the motion to seal as a certificate of confidentiality for the reports. (ECF No. 8.)

6. However, it appears that the Court has applied the certificate of confidentiality to both the redacted and unredacted versions of the expert reports, and thus removed the unredacted reports from the public docket. This was not the

intent of Plaintiffs, who regret any confusion their motion may have caused. The government has not objected to the redactions made in the reports, which have been provided by Plaintiffs to the government. Any objections to the redactions should thus be deemed waived and the *redacted* reports should be restored to the public docket.

7. In addition, the government has consented to the sealing of the *unredacted* expert reports.

8. The government objects to the “filing” of the expert reports at all, redacted or unredacted, because they are “not properly a part of the record below.” (ECF No. 10 at 7.) But Plaintiffs are filing the expert reports pursuant to Rule 27 of the Federal Rules of Appellate Procedure, which permits the filing of an affidavit and supporting papers “necessary to support a motion.” Fed. R. App. P. 27(a)(2)(B).

9. As explained in Plaintiffs’ motion to expedite, the reports lay out the “detrimental effects and harm to Plaintiffs’ communities” as a result of the upcoming decisions of the Census Bureau and the rapid pace at which those decisions are approaching, thus supporting the need to resolve this appeal in an expedited manner. (ECF 5 at ¶¶ 21-22.). They are properly filed under Rule 27, and the government offers no contrary authority.

For the foregoing reasons, and for the reasons stated in Plaintiffs' motion to expedite, Plaintiffs-Appellants respectfully request that this Court grant the motion to expedite their appeal.

Dated: August 16, 2019

Respectfully submitted,

/s/ Susan J. Kohlmann

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† This motion does not purport to state the views of Yale Law School, if any.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE
REQUIREMENTS**

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

1. The attached reply complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A). The reply contains 755 words (according to the Microsoft Word 2013 count function), excluding the parts of the reply exempted by Federal Rule of Appellate Procedure 27(a)(2)(B).

2. The attached reply complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The reply has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman type style.

Date: August 16, 2019

BY: /s/Susan J. Kohlmann
Susan J. Kohlmann

CERTIFICATE OF SERVICE

I, Susan J. Kohlmann, certify that today, August 16, 2019, I have caused a true and correct copy of the foregoing Reply in Further Support of Appellants' Motion to Expedite Briefing and Motion to Seal to be filed with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit via the appellate CM/ECF, which will send a notice of this filing to all participants in this case, including counsel for appellees.

BY: /s/Susan J. Kohlmann
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