

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023- CRC-GGK-DLF

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs write concerning a new development relevant to their pending Motion for Summary Judgment.

On September 30, 2020, the Census Bureau's Associate Director, Albert E. Fontenot, Jr.—also a declarant in this case—submitted a sworn declaration in *National Urban League v. Ross*, No. 5:20-cv-05799 (N.D. Cal.). That document is attached as Exhibit A. The stated purpose of Mr. Fontenot's declaration was to explain the Census Bureau's present timeline for “submit[ting] apportionment counts [to the President] by the statutory deadline, December 31, 2020.” Ex. A, ¶ 2. In the final paragraph, Mr. Fontenot states that, while the Bureau intends to “submit the required [13 U.S.C. § 141(b)] report” to the President by December 31, 2020, “certain processing steps necessary *to fully implement the Presidential Memorandum* dated July 21, 2020 will not be completed until after December 31, 2020.” *Id.* ¶ 26 (emphasis added).

This statement is relevant here for two reasons. First, it provides sworn confirmation by the Census Bureau's Associate Director that the Bureau intends “to fully implement” the challenged Memorandum and it highlights the Government's failure to provide a similar update to this Court. Second, by revealing that the Bureau's count of undocumented immigrants will be

delivered after, and separate from, the official census report required by 13 U.S.C. § 141(b), this statement underscores that the President's use of that count of undocumented immigrants in the apportionment process will violate 2 U.S.C. § 2a, which requires that the President's apportionment calculation be based on the data transmitted in the official § 141(b) report. *See* Plaintiffs' Opening Br. (ECF 31-1) at 27; Plaintiffs' Reply Br. (ECF 66) at 29-30; *New York v. Trump*, No. 20-cv-5770, Dkt. No. 164, slip op. at 63 (S.D.N.Y. Sept. 10, 2020).

DATED: October 2, 2020

*/s/ Daniel S. Ruzumna*

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