

1 [Counsel identified on signature pages]

2

3

4

5

6

7

8

9

10

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

11

12

13

14

NATIONAL URBAN LEAGUE, et al.,

CASE NO. 5:20-cv-05799-LHK

15

Plaintiffs,

**STIPULATION AND [PROPOSED]
ORDER REGARDING CENSUS AND
POPULATION COUNTS AND 21-DAY
STAY OF PROCEEDINGS**

16

v.

17

WILBUR L. ROSS, JR., et al.,

18

Defendants.

19

20

21

22

23

24

25

26

27

28

1 Pursuant to Civil Local Rules 6-2 and 7-12, the parties to this action, by their respective
2 counsel, respectfully submit the following Joint Stipulation:

3 WHEREAS, for the reasons set forth below, in light of the current depositions, motions
4 and discovery deadlines on calendar and the pending transition to a new Administration,
5 Defendants have requested a 21-day stay of the case in order to provide for an orderly transition
6 and to let the new Administration assess this case;

7 WHEREAS, Defendants state that the Census Bureau will not be in position to finalize or
8 provide apportionment data until many weeks after January 20, 2021, the date on which the
9 incoming Administration will take responsibility for supervision of the Census Bureau;

10 WHEREAS, Defendants state that the Census Bureau will not be in position to finalize or
11 provide reports, estimates, or data relating to (i) the July 21, 2020 Presidential Memorandum on
12 Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census or (ii)
13 Executive Order 13880, entitled Collecting Information About Citizenship Status in Connection
14 with the Decennial Census (July 11, 2019), until many weeks after January 20, 2021;

15 WHEREAS, this ongoing litigation has required Defendants to expend substantial
16 resources, including for preparation of many depositions scheduled for next week and the
17 production of numerous documents and materials;

18 WHEREAS, Defendants believe that the public interest would be served by staying all
19 proceedings in this litigation for 21 days, in that such a stay would permit the incoming
20 Administration to evaluate the Census Bureau's and the Department of Commerce's operations
21 and assess, among other things, the interests of the United States and its litigating positions in
22 light of Plaintiffs' claims in this case;

23 WHEREAS, Plaintiffs are amenable to a 21-day stay, based on Defendants' express
24 acknowledgments and representations below, provided to ensure that Plaintiffs are not prejudiced
25 in any way by a stay.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOW, THEREFORE, DEFENDANTS HEREBY STIPULATE AS FOLLOWS:

- 1) Reports, estimates, or data relating to the July 21, 2020 Presidential Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census will not be finalized, reported or publicly disclosed prior to the change of Administration on January 20, 2021. Should such information be finalized after the change of Administration but prior to the end of the proposed stay, Defendants would provide Plaintiffs with 7 days’ detailed notice prior to reporting or publicly disclosing it.
- 2) Reports, estimates, or data relating to Executive Order 13880, entitled Collecting Information About Citizenship Status in Connection with the Decennial Census (July 11, 2019), will not be finalized, reported or publicly disclosed prior to the change of Administration on January 20, 2021. Should such information be finalized after the change of Administration but prior to the end of the stay, Defendants would provide Plaintiffs with 7 days’ detailed notice prior to reporting or publicly disclosing it.
- 3) Neither the Census Bureau nor the Department of Commerce will report or publicly disclose any population counts or estimates relating to the population as of April 1, 2020, including counts or estimates of the illegal alien/undocumented immigrant population, prior to the change of Administration on January 20, 2021. To the extent such population counts or estimates are developed after the change of Administration but prior to the end of the stay, Defendants would provide Plaintiffs with 7 days’ detailed notice prior to reporting or publicly disclosing them.
- 4) That the restrictions contained in (1) – (3) above shall not apply to Defendants’ obligations to respond to information requests from Congress or the Office of the Inspector General.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FURTHER, THE PARTIES JOINTLY STIPULATE AS FOLLOWS:

a) That the Court enter a 21-day stay of this case, effective beginning on January 15, 2021 and lifting on February 5, 2021, with any deadlines currently due January 15, 2021 becoming due on February 5, 2021, and all other deadlines commensurately shifted;

b) That the Court resolve Plaintiffs’ Renewed Motion to Compel and for Sanctions, ECF No. 433, except that Plaintiffs ask the Court to hold their request for sanctions contained therein in abeyance and not resolve it at this time, subject to Plaintiffs renewing such request in the future if warranted given the parties’ ongoing discussions on these matters. If the Magistrate Judge Panel issues a decision on Plaintiffs’ Motion to Compel, the parties reserve their right to appeal that decision to the District Court and the appellate courts, and to seek a stay pending any appeal of any adverse decision;

c) That the parties file a Joint Case Management Statement on February 3, 2021, for a Further Case Management Conference on February 5, 2021 at 10:00 a.m. PT;

d) That, should the parties not reach earlier resolution, the case shall restart on February 5, 2021 under the exact same schedule currently in place, and Defendants will not resist or challenge Plaintiffs taking any of the depositions currently noticed or producing any of the documents and materials Defendants currently are obligated to produce, but Defendants may assert the objections that they would have had in the normal course.

Dated: January 15, 2021

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny
Sadik Huseny

Sadik Huseny (Bar No. 224659)
sadik.huseny@lw.com
Steven M. Bauer (Bar No. 135067)
steven.bauer@lw.com
Amit Makker (Bar No. 280747)
amit.makker@lw.com
Shannon D. Lankenau (Bar. No. 294263)
shannon.lankenau@lw.com
LATHAM & WATKINS LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: 415.391.0600
Facsimile: 415.395.8095

Melissa Arbus Sherry (*pro hac vice*)
melissa.sherry@lw.com
Richard P. Bress (*pro hac vice*)
rick.bress@lw.com
Anne W. Robinson (*pro hac vice*)
anne.robinson@lw.com
Tyce R. Walters (*pro hac vice*)
tyce.walters@lw.com
Gemma Donofrio (*pro hac vice*)
gemma.donofrio@lw.com
Christine C. Smith (*pro hac vice*)
christine.smith@lw.com

LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004
Telephone: 202.637.2200
Facsimile: 202.637.2201

*Attorneys for Plaintiffs National Urban League;
League of Women Voters; Black Alliance for
Just Immigration; Harris County, Texas; King
County, Washington; City of San Jose,
California; Rodney Ellis; Adrian Garcia; and
the NAACP*

Dated: January 15, 2021

By: /s/ Jon M. Greenbaum
Kristen Clarke (*pro hac vice*)
kclarke@lawyerscommittee.org
Jon M. Greenbaum (Bar No. 166733)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (*pro hac vice*)
erosenberg@lawyerscommittee.org

Ajay Saini (*pro hac vice*)
asaini@lawyerscommittee.org
Maryum Jordan (Bar No. 325447)
mjordan@lawyerscommittee.org
Pooja Chaudhuri (Bar No. 314847)
pchaudhuri@lawyerscommittee.org

**LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW**
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: 202.662.8600
Facsimile: 202.783.0857

*Attorneys for Plaintiffs National Urban League;
City of San Jose, California; Harris County,
Texas; League of Women Voters; King County,*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Washington; Black Alliance for Just Immigration; Rodney Ellis; Adrian Garcia; the NAACP; and Navajo Nation

Wendy R. Weiser (*pro hac vice*)
weiserw@brennan.law.nyu.edu
Thomas P. Wolf (*pro hac vice*)
wolft@brennan.law.nyu.edu
Kelly M. Percival (*pro hac vice*)
percivalk@brennan.law.nyu.edu
BRENNAN CENTER FOR JUSTICE
120 Broadway, Suite 1750
New York, NY 10271
Telephone: 646.292.8310
Facsimile: 212.463.7308

Attorneys for Plaintiffs National Urban League; City of San Jose, California; Harris County, Texas; League of Women Voters; King County, Washington; Black Alliance for Just Immigration; Rodney Ellis; Adrian Garcia; the NAACP; and Navajo Nation

Mark Rosenbaum (Bar No. 59940)
mrosenbaum@publiccounsel.org
PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, California 90005
Telephone: 213.385.2977
Facsimile: 213.385.9089

Attorneys for Plaintiff City of San Jose

Doreen McPaul, Attorney General
dmcpaul@nndoj.org
Jason Searle (*pro hac vice*)
jasearle@nndoj.org
NAVAJO NATION DEPARTMENT OF JUSTICE
P.O. Box 2010
Window Rock, AZ 86515
Telephone: (928) 871-6345

Attorneys for Navajo Nation

Dated: January 15, 2021

By: /s/ Danielle Goldstein
Michael N. Feuer (Bar No. 111529)
mike.feuer@lacity.org
Kathleen Kenealy (Bar No. 212289)
kathleen.kenealy@lacity.org
Danielle Goldstein (Bar No. 257486)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

danielle.goldstein@lacity.org
Michael Dundas (Bar No. 226930)
mike.dundas@lacity.org
**CITY ATTORNEY FOR THE CITY OF
LOS ANGELES**
200 N. Main Street, 8th Floor
Los Angeles, CA 90012
Telephone: 213.473.3231
Facsimile: 213.978.8312

Attorneys for Plaintiff City of Los Angeles

Dated: January 15, 2021

By: /s/ Michael Mutalipassi
Christopher A. Callihan (Bar No. 203010)
legalwebmail@ci.salinas.ca.us
Michael Mutalipassi (Bar No. 274858)
michaelmu@ci.salinas.ca.us
CITY OF SALINAS
200 Lincoln Avenue
Salinas, CA 93901
Telephone: 831.758.7256
Facsimile: 831.758.7257

Attorneys for Plaintiff City of Salinas

Dated: January 15, 2021

By: /s/ Rafey S. Balabanian
Rafey S. Balabanian (Bar No. 315962)
rbalabanian@edelson.com
Lily E. Hough (Bar No. 315277)
lhough@edelson.com
EDELSON P.C.
123 Townsend Street, Suite 100
San Francisco, CA 94107
Telephone: 415.212.9300
Facsimile: 415.373.9435

Rebecca Hirsch (*pro hac vice*)
rebecca.hirsch2@cityofchicago.org
**CORPORATION COUNSEL FOR THE
CITY OF CHICAGO**
Celia Mexa
Stephen J. Kane
121 N. LaSalle Street, Room 600
Chicago, IL 60602
Telephone: (312) 744-8143
Facsimile: (312) 744-5185

Attorneys for Plaintiff City of Chicago

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 15, 2021

By: /s/ Donald R. Pongrace
Donald R. Pongrace (*pro hac vice*)
dpong race@akingump.com
Merrill C. Godfrey (Bar No. 200437)
mgodfrey@akingump.com
**AKIN GUMP STRAUSS HAUER & FELD
LLP**
2001 K St., N.W.
Washington, D.C. 20006
Telephone: (202) 887-4000
Facsimile: 202-887-4288

*Attorneys for Plaintiff Gila River Indian
Community*

Dated: January 15, 2021

By: /s/ David I. Holtzman
David I. Holtzman (Bar No. 299287)
David.Holtzman@hk law.com
HOLLAND & KNIGHT LLP
Daniel P. Kappes
Jacqueline N. Harvey
50 California Street, 28th Floor
San Francisco, CA 94111
Telephone: (415) 743-6970
Fax: (415) 743-6910

Attorneys for Plaintiff County of Los Angeles

DATED: January 15, 2021

JENNIFER B. DICKEY
Acting Assistant Attorney General

JOHN V. COGHLAN
Deputy Assistant Attorney General

AUGUST E. FLENTJE
Special Counsel to the Assistant
Attorney General

ALEXANDER K. HAAS
Branch Director

DIANE KELLEHER
Assistant Branch Director

/s/ Brad P. Rosenberg
BRAD P. ROSENBERG (DC Bar # 467513)
Assistant Branch Director

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ALEXANDER V. SVERDLOV
STEPHEN EHRLICH
M. ANDREW ZEE
Trial Attorneys
U.S. Department of Justice
Civil Division - Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Telephone: (202) 305-0550

Attorneys for Defendants

ATTESTATION

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: January 15, 2021

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny
Sadik Huseny

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

The stipulation is GRANTED.

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

DATED: _____

Honorable Lucy H. Koh
United States District Judge