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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, ET AL., ) C-20-05799 LHK  
)  
PLAINTIFFS, ) SAN JOSE, CALIFORNIA  
)  
VS. ) JANUARY 11, 2021  
)  
WILBUR L. ROSS, ET AL., ) PAGES 1-74  
)  
DEFENDANTS. )  
\_\_\_\_\_ )

TRANSCRIPT OF ZOOM PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:  
  
FOR THE PLAINTIFFS: LATHAM & WATKINS  
BY: MELISSA A. SHERRY  
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WASHINGTON, D.C. 20004

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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APPEARANCES (CONTINUED)

FOR THE PLAINTIFFS: LATHAM & WATKINS  
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FOR PLAINTIFF CITY OF CHICAGO:  
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APPEARANCES CONTINUED ON NEXT PAGE

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APPEARANCES (CONTINUED)

FOR PLAINTIFF COUNTY OF LOS ANGELES HOLLAND & KNIGHT  
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FOR PLAINTIFF GILA RIVER INDIAN COMMUNITY: AKIN GUMP STRAUSS HAUER & FELD  
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FOR THE DEFENDANTS: U.S. DEPARTMENT OF JUSTICE  
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BY: BRAD P. ROSENBERG  
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BY: JOHN V. COGHLAN  
1100 L STREET NW  
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SAN JOSE, CALIFORNIA JANUARY 11, 2021

P R O C E E D I N G S

(ZOOM PROCEEDINGS CONVENED AT 3:07 P.M.)

THE CLERK: GOOD AFTERNOON, YOUR HONOR.

THE COURT: GOOD AFTERNOON.

THE CLERK: CALLING CASE 20-5799, NATIONAL URBAN LEAGUE, ET AL, VERSUS ROSS, ET AL.

COUNSEL, MAY I PLEASE HAVE APPEARANCES 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.

MR. HUSENY: GOOD AFTERNOON, YOUR HONOR.

SADIK HUSENY OF LATHAM & WATKINS FOR THOSE PLAINTIFFS.

MS. SHERRY: GOOD AFTERNOON.

MELISSA ARBUS SHERRY FROM LATHAM & WATKINS FOR THE SAME PLAINTIFFS.

MS. ROBINSON: ANNE ROBINSON OF LATHAM & WATKINS FOR THE SAME PLAINTIFFS.

MR. BAUER: AND STEVE BAUER OF LATHAM & WATKINS ALSO FOR THOSE PLAINTIFFS.

MR. SAINI: GOOD AFTERNOON, YOUR HONOR.

AJAY SAINI FROM THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS FOR THOSE PLAINTIFFS, AS WELL AS THE NAVAJO NATION.

MR. WOLF: GOOD AFTERNOON, YOUR HONOR.

1 THOMAS WOLF, BRENNAN CENTER FOR JUSTICE, FOR THOSE SAME  
2 PLAINTIFFS, AND ADDITIONALLY THE NAVAJO NATION.

3 THE CLERK: THANK YOU.

4 FOR PLAINTIFF NAVAJO NATION.

5 MR. SEARLE: YOUR HONOR, JASON SEARLE, NAVAJO D.O.J.,  
6 ON BEHALF OF NAVAJO NATION.

7 THE CLERK: THANK YOU.

8 FOR PLAINTIFF CITY OF LOS ANGELES, CALIFORNIA.

9 MS. GOLDSTEIN: GOOD AFTERNOON, YOUR HONOR.

10 DANIELLE GOLDSTEIN FROM THE OFFICE OF THE CITY ATTORNEY  
11 FOR THE CITY OF LOS ANGELES ON BEHALF OF THE CITY OF  
12 LOS ANGELES.

13 THE CLERK: THANK YOU.

14 FOR PLAINTIFF CITY OF SALINAS, CALIFORNIA.

15 MR. MUTALIPASSI: GOOD AFTERNOON.

16 MICHAEL MUTALIPASSI FOR THE CITY OF SALINAS.

17 THE CLERK: THANK YOU.

18 FOR PLAINTIFF CITY OF CHICAGO, ILLINOIS.

19 MS. HIRSCH: GOOD AFTERNOON, YOUR HONOR.

20 REBECCA HIRSCH ON BEHALF OF THE CITY OF CHICAGO.

21 THE CLERK: THANK YOU.

22 FOR PLAINTIFF COUNTY OF LOS ANGELES, CALIFORNIA.

23 MR. HOLTZMAN: GOOD AFTERNOON, YOUR HONOR.

24 DAVID HOLTZMAN OF HOLLAND & KNIGHT FOR THE COUNTY OF  
25 LOS ANGELES.

1 THE CLERK: THANK YOU.

2 AND FOR PLAINTIFF GILA RIVER INDIAN COMMUNITY.

3 MR. GODFREY: GOOD AFTERNOON.

4 MERRILL GODFREY, AKIN, GUMP, STRAUSS, HAUER & FELD, ON  
5 BEHALF OF THE GILA RIVER INDIAN COMMUNITY.

6 THE CLERK: THANK YOU.

7 AND FOR ALL DEFENDANTS.

8 MR. COGHLAN: GOOD AFTERNOON, YOUR HONOR.

9 JOHN COGHLAN, DEPARTMENT OF JUSTICE, ON BEHALF OF ALL  
10 DEFENDANTS.

11 MS. KELLEHER: GOOD AFTERNOON, YOUR HONOR.

12 DIANE KELLEHER FROM THE DEPARTMENT OF JUSTICE ON BEHALF OF  
13 ALL DEFENDANTS.

14 MR. ROSENBERG: GOOD AFTERNOON, YOUR HONOR.

15 BRAD ROSENBERG, ALSO FROM THE DEPARTMENT OF JUSTICE, ON  
16 BEHALF OF DEFENDANTS.

17 MR. SVERDLOV: AND GOOD AFTERNOON, YOUR HONOR.

18 ALEXANDER SVERDLOV FROM THE DEPARTMENT OF JUSTICE FOR ALL  
19 DEFENDANTS.

20 THE COURT: GOOD AFTERNOON. WELCOME TO EVERYONE.

21 SO LET ME JUST ASK, WHAT IS THE CENSUS BUREAU'S LATEST  
22 ESTIMATE OF WHEN THE CENSUS BUREAU WILL GIVE CENSUS NUMBERS TO  
23 THE COMMERCE SECRETARY?

24 MR. COGHLAN: YOUR HONOR, THE LATEST I'VE HEARD AS OF  
25 TODAY IS THE TARGET DATE IS -- NOT THE TARGET DATE, THE

1 EXPECTED DATE OF COMPLETION IS MARCH 6TH.

2 THE COURT: OKAY. AND THAT IS FOR THE CENSUS BUREAU  
3 TO GIVE THE NUMBERS TO THE COMMERCE SECRETARY?

4 MR. COGHLAN: I BELIEVE THAT'S CORRECT, YOUR HONOR,  
5 YES.

6 THE COURT: OKAY. AND THEN HOW MUCH AFTER WOULD THE  
7 COMMERCE SECRETARY NEED TO PROVIDE THOSE NUMBERS TO THE  
8 PRESIDENT?

9 MR. COGHLAN: I DO NOT BELIEVE THEY WILL NEED MUCH  
10 TIME, YOUR HONOR. USUALLY I BELIEVE IT'S A COUPLE DAYS.

11 THE COURT: OKAY. AND THEN HOW MUCH TIME WOULD THE  
12 PRESIDENT NEED TO PROVIDE THOSE NUMBERS TO THE HOUSE? IS THAT  
13 ALSO A COUPLE DAYS? OR --

14 MR. COGHLAN: I BELIEVE THAT -- I BELIEVE THAT'S  
15 CORRECT, YOUR HONOR. IT'S NOT A GREAT DEAL OF TIME.

16 THE COURT: OKAY. I BELIEVE LAST WEEK YOU THOUGHT  
17 THE DATE WAS SOMETIME AFTER FEBRUARY 9TH. DO YOU KNOW IF ANY  
18 ADDITIONAL ANOMALIES WERE IDENTIFIED THAN THE ONES YOU THOUGHT  
19 HAD BEEN IDENTIFIED WHEN YOU, YOU KNOW, LET US KNOW DURING THE  
20 CMC LAST, I GUESS IT WAS MONDAY, JANUARY 4TH?

21 MR. COGHLAN: YES, YOUR HONOR. I BELIEVE NO NEW  
22 ANOMALIES HAVE BEEN IDENTIFIED AT THIS POINT. THE MARCH 6TH  
23 DATE ACCOUNTS FOR THE ONES WE MENTIONED LAST WEEK.

24 THE COURT: I SEE. OKAY. ALL RIGHT. SO THEY'RE  
25 STILL WORKING ON RESOLVING -- ARE THERE OTHER ANOMALIES AS WELL

1 THAT THEY'RE CONTINUING TO RESOLVE, OTHER THAN THE ONES THAT  
2 YOU REPORTED THEY HAD FOUND BEFORE JANUARY 4TH?

3 MR. COGHLAN: YES, YOUR HONOR.

4 SO I KNOW THERE WERE PREVIOUS ANOMALIES THAT WERE  
5 DISCLOSED DUE TO THE CENSUS'S WORKING THROUGH ALL OF THESE  
6 ISSUES AS WELL AS, YOU KNOW, NORMAL DATA PROCESSING ISSUES THAT  
7 THEY'D BE WORKING THROUGH ABSENT ANY OF THOSE ANOMALIES.

8 THE COURT: OKAY. WHAT IS THE TOTAL NUMBER OF  
9 ANOMALIES THAT STILL NEED TO BE RESOLVED THUS FAR?

10 MR. COGHLAN: I -- YOUR HONOR, I'LL BE HONEST, I'M  
11 NOT ENMESHED ENOUGH IN THE SPECIFICS OF THOSE.

12 I CAN SPEAK TO COMMERCE AND GET BACK TO YOU WITH MORE  
13 SPECIFICS IF POSSIBLE. I JUST KNOW THEY'RE WORKING THROUGH  
14 THEM DILIGENTLY, YOU KNOW, TO ENSURE THIS CAN BE COMPLETED AS  
15 CLOSE TO THE DEADLINE AS POSSIBLE IN AN ACCURATE MANNER AND  
16 THAT THE BEST ESTIMATE AS OF THIS POINT IS MARCH 6TH.

17 THE COURT: ALL RIGHT. THANK YOU.

18 LET ME ASK THE PLAINTIFFS, DO YOU AGREE WITH THE  
19 DEFENDANTS THAT THE DEFENDANTS HAVE IDENTIFIED THE PREVIOUS  
20 ANOMALIES, THE ONES THAT PRECEDE THE JANUARY 4TH -- WELL, I  
21 DON'T RECALL ANYTHING SPECIFIC BEING TOLD ABOUT THE  
22 JANUARY 4TH -- WAS JANUARY 4 ONE ANOMALY OR MULTIPLE, IF YOU  
23 KNOW?

24 MR. COGHLAN: I BELIEVE IT WAS -- I DON'T KNOW THE  
25 EXACT NUMBER OF ANOMALIES THAT WERE IDENTIFIED, YOUR HONOR. I



1 JUST KNOW WHEN THEY WERE IDENTIFIED.

2 I BELIEVE THAT THE TIMEFRAME THE COURT REFERENCED IS  
3 ACCURATE.

4 THE COURT: OKAY. SO JANUARY 4TH, THEY IDENTIFIED --  
5 SORRY, THAT'S A DIFFICULT ONE -- THEY IDENTIFIED ONE OR MORE  
6 ANOMALIES.

7 LET ME ASK, FROM THE PLAINTIFFS' PERSPECTIVE, DO YOU AGREE  
8 THAT YOU HAVE THE DOCUMENTS OR INFORMATION THAT YOU NEED FROM  
9 THE DEFENDANTS ABOUT ANY ANOMALIES DISCOVERED BEFORE THE  
10 JANUARY 4TH?

11 MR. HUSENY: THANK YOU, YOUR HONOR.

12 NO, WE DO NOT BELIEVE WE HAVE THOSE MATERIALS. WE HAVE  
13 SOME. WE'VE IDENTIFIED SOME. AND IN PARTICULAR, THERE WERE  
14 SOME MATERIALS PRODUCED I THINK AT THE VERY, VERY END OF  
15 DECEMBER, DECEMBER 31ST.

16 THAT WAS A SET OF DOCUMENTS THAT WE FLAGGED FOR YOUR HONOR  
17 LAST WEEK THAT TOLD US AS WELL THAT IT LOOKED LIKE, AT THAT  
18 POINT AT LEAST, THAT THE DATE FOR THE DISTRIBUTION OF THE  
19 NUMBERS WAS GOING TO BE FEBRUARY, AND SOME OF THOSE DOCUMENTS  
20 TALK ABOUT ANOMALIES AT A HIGH LEVEL.

21 WE DON'T HAVE, AS FAR AS I'M AWARE, THE DOCUMENTS WE HAVE  
22 ASKED FOR THAT DETAIL WHAT THOSE ANOMALIES ARE AND HOW THEY  
23 HAVE BEEN FIXED AND WHAT THEY HAVE DONE OR NOT DONE TO THE  
24 COUNT NUMBERS THAT WE HAVE BEEN ASKING ABOUT.

25 SO WHILE WE HAVE SOME MATERIALS THAT REFER TO ANOMALIES

1 BEFORE JANUARY 4, CERTAINLY NOT ALL OF THEM.

2 AND I WOULD ONLY FLAG FOR YOUR HONOR AS WELL THAT ONE OF  
3 THE INTERROGATORIES WE ASKED WAS SPECIFICALLY ABOUT ANOMALIES.  
4 THE DEFENDANTS LAY OUT WHAT THOSE ANOMALIES WERE, AND THAT WAS  
5 ONE OF THE INTERROGATORIES THAT DEFENDANTS DECIDED WERE AFTER  
6 THE LIMIT OF TEN THAT YOUR HONOR HAD SET FOR THE  
7 INTERROGATORIES AND THEY REFUSED TO ANSWER THAT.

8 SO NOT ONLY DO WE NOT HAVE A FULL SET OF DOCUMENTS  
9 REGARDING THE PRE-JANUARY 4 ANOMALIES, WE ALSO DON'T HAVE AN  
10 INTERROGATORY ANSWER ON THAT.

11 AND WE CERTAINLY DON'T HAVE ANYTHING THAT MR. COGHLAN  
12 REFERENCED LAST WEEK, JANUARY 4, THE ANOMALIES THAT HE HAD  
13 FLAGGED THEN AND YOUR HONOR WAS JUST DISCUSSING WITH HIM NOW.  
14 WE'VE RECEIVED NOTHING, AS YOUR HONOR KNOWS FROM OUR STATEMENT,  
15 FROM THE DEFENDANTS SINCE DECEMBER 31ST.

16 SO TO THE EXTENT THERE IS A BRAND NEW SET OF ANOMALIES,  
17 JANUARY 4 OR, FRANKLY, ANYTHING AFTER DECEMBER 31ST, WE HAVE NO  
18 IDEA WHAT THOSE ARE BECAUSE WE HAVE NOT RECEIVED ANY RECENT  
19 DOCUMENTS.

20 THE COURT: OKAY. LET ME FOLLOW UP ON THAT.

21 THE DEFENDANTS' LAST DOCUMENT PRODUCTION WAS  
22 DECEMBER 31ST, AND WHEN WE WERE TOGETHER LAST MONDAY,  
23 JANUARY 4TH, FOR A CMC. THE DEFENDANTS' PROPOSAL TO THE  
24 PLAINTIFFS -- AND I'M JUST LOOKING AT THE JOINT DISCOVERY  
25 STATUS REPORT, ECF 424 FILED ON JANUARY 4TH, 2021. IT SAYS --

1 AND I'M GOING TO JUST QUOTE IT -- "DEFENDANTS' ACTUAL PROPOSAL  
2 -- WHICH PLAINTIFFS HAVE FAILED TO GRASP -- WAS FOR ALL  
3 DEFENDANTS' DOCUMENT PRODUCTIONS TO BE COMPLETED THIS WEEK SO  
4 THAT ALL FACT DEPOSITIONS COULD TAKE PLACE THE WEEK OF  
5 JANUARY 11." THIS IS ON PAGE 11 OF THAT DOCUMENT.

6 SO THAT MEANS THAT THE DOCUMENTS WOULD HAVE ALL BEEN  
7 PRODUCED BY JANUARY 8TH, BUT THE DEFENDANTS HAVEN'T PRODUCED  
8 ANY DOCUMENTS AT ALL IN JANUARY. TODAY IS MONDAY, THE 11TH.

9 I'M JUST WONDERING, IF YOU THOUGHT YOU COULD COMPLETE YOUR  
10 DOCUMENT PRODUCTION BY LAST FRIDAY, WHY HAVEN'T YOU MADE ANY  
11 PRODUCTIONS IN THE MONTH OF JANUARY? AND DO YOU ANTICIPATE  
12 MAKING SOME, AND WHEN?

13 MS. KELLEHER: YOUR HONOR, THIS IS DIANE KELLEHER. I  
14 CAN SPEAK TO THAT.

15 WE DO PLAN ON MAKING ADDITIONAL PRODUCTIONS. THERE WILL  
16 BE A PRODUCTION GOING OUT TO PLAINTIFFS TONIGHT I THINK, WHICH  
17 WILL INCLUDE THE REPORT WITH THE MARCH 6TH ANOMALY TRACKER I  
18 BELIEVE IT'S CALLED. SO THAT WILL HAVE SOME OF THAT  
19 INFORMATION.

20 AND I THINK OUR DOCUMENT PRODUCTIONS LAST WEEK WERE  
21 SOMEWHAT DELAYED BECAUSE WE WERE CRUNCHING A VARIETY OF NUMBERS  
22 IN RESPONSE TO QUESTIONS FROM THE PLAINTIFF RELATED TO  
23 DOCUMENTS WITH EOP.GOV ADDRESSES, AS WELL AS DOCUMENTS THAT  
24 WERE CARVED OUT AS A RESULT OF OUR EFFORT TO ENSURE THAT  
25 ATTORNEY WORK PRODUCT IS NOT PRODUCED TO THE PLAINTIFFS SINCE

1 THE DISCOVERY PERIOD IS COEXTENSIVE WITH THE PENDENCY OF THIS  
2 LAWSUIT.

3 SO OUR RELATIVITY CONTRACTOR WAS WORKING THROUGH SOME OF  
4 THE PLAINTIFFS' REQUESTS FOR INFORMATION, AND UNFORTUNATELY  
5 THAT TOOK MORE TIME PROBABLY THAN WE HAD THOUGHT IT WOULD AND  
6 INADVERTENTLY SLOWED US DOWN IN TERMS OF WALKING AND CHEWING  
7 GUM AT THE SAME TIME AND GETTING PRODUCTIONS OUT.

8 BUT WE DO INTEND TO MAKE THOSE PRODUCTIONS AND WE WILL GET  
9 THEM OUT TO PLAINTIFF AS QUICKLY AS WE ARE ABLE TO TONIGHT AND  
10 THE REST OF THIS WEEK.

11 THE COURT: SO I'D LIKE SOME COMMITMENTS ABOUT WHEN  
12 YOU'RE GOING TO MAKE ADDITIONAL PRODUCTIONS, BECAUSE I'M  
13 DISAPPOINTED. IF I READ A DOCUMENT SAYING DEFENDANTS ARE  
14 PROPOSING COMPLETING THEIR PRODUCTION BY JANUARY 8TH AND THEN I  
15 FIND OUT THERE'S BEEN NOTHING PRODUCED IN THE CALENDAR YEAR  
16 2021, IT IS A BIT OF A DISAPPOINTMENT.

17 SO I'D LIKE YOU TO MAKE SOME COMMITMENTS. WHEN ARE YOU  
18 GOING TO MEET ALL OF YOUR DOCUMENT PRODUCTION?

19 MS. KELLEHER: I THINK IN SOME WAYS THAT DEPENDS A  
20 LITTLE BIT ON --

21 THE COURT: UNFORTUNATELY, WE'RE RUNNING OUT OF TIME.

22 MS. KELLEHER: UNDERSTOOD, YOUR HONOR.

23 I THINK IN SOME WAYS THAT DEPENDS A BIT ON PLAINTIFFS AS  
24 THEY HAD PROPOSED AN ADDITIONAL TEN CUSTODIANS ON TOP OF I  
25 BELIEVE THE 18 OR 21 CUSTODIANS THAT WE CURRENTLY HAVE.

1 SO I THINK, FRANKLY, IF PLAINTIFFS ARE GOING TO INSIST ON  
2 THOSE, THEN I'M NOT SURE I CAN GIVE THAT INFORMATION TONIGHT.

3 BUT I COULD DEFINITELY --

4 THE COURT: OKAY. BUT LET ME STOP YOU THERE. LET'S  
5 MAKE A COMMITMENT FOR THE CUSTODIANS YOU ALREADY HAVE.

6 MS. KELLEHER: CERTAINLY.

7 THE COURT: LET ME GET THEM -- LET ME GET A PIECE OF  
8 PAPER. WHY DON'T WE GO THROUGH WHO ARE THE CUSTODIANS, WHICH  
9 ONES HAVE YOU COMPLETED PRODUCTION, AND WHEN WERE THOSE  
10 COLLECTIONS?

11 MS. KELLEHER: THEY WERE --

12 THE COURT: GO AHEAD, PLEASE.

13 MS. KELLEHER: THERE WAS A COLLECTION I THINK ON  
14 NOVEMBER 23RD, AND THEN THERE WAS ALSO A COLLECTION LAST WEEK,  
15 AND THEN THERE'S SOME THAT WE'RE GOING TO TRY TO PRODUCE THIS  
16 WEEK.

17 THE COURT: OKAY. SO YOU COLLECTED DOCUMENTS ON  
18 NOVEMBER 23RD, AND THEN -- WHAT ARE ALL YOUR DOCUMENT  
19 COLLECTION DATES, PLEASE?

20 MS. KELLEHER: THOSE ARE THE --

21 THE COURT: YOU SAID NOVEMBER 23RD, AND WHAT'S THE  
22 OTHER DATE? I'M SORRY, I JUST DIDN'T WRITE IT DOWN FAST  
23 ENOUGH.

24 MS. KELLEHER: OH, I BELIEVE IT'S -- I THINK IT'S  
25 DATES LAST WEEK, YOUR HONOR, BUT I'M NOT CERTAIN AND I DON'T

1 WANT TO INADVERTENTLY GIVE THE WRONG INFORMATION. I CAN TRY TO  
2 FIGURE THAT OUT QUICKLY.

3 THE COURT: OKAY. IF YOU COULD, PLEASE.

4 MS. KELLEHER: SURE.

5 THE COURT: SO HAVE ALL OF THE DOCUMENTS -- THE  
6 DOCUMENTS COLLECTED FROM NOVEMBER 23RD, HAVE THOSE ALL EITHER  
7 BEEN PRODUCED OR LOGGED?

8 MS. KELLEHER: THEY'VE EITHER BEEN PRODUCED OR  
9 LOGGED, OR TO THE EXTENT THEY WERE CONSIDERED A PART OF OUR  
10 LITIGATION SCREENING CARVEOUT, THEY WERE NEITHER PRODUCED NOR  
11 LOGGED AS WE WERE CONSIDERING THEM UNDER OUR OBJECTIONS AS SORT  
12 OF WITHIN THE UNIVERSE OF LITIGATION WORK PRODUCT THAT'S NOT  
13 SUBJECT TO THE DISCOVERY REQUESTS.

14 THE COURT: OKAY. WELL, LET'S -- ACTUALLY, LET ME  
15 ASK ABOUT THAT. SO YOU HAVE 907 DOCUMENTS THAT YOU HAVE NOT  
16 PRODUCED TO PLAINTIFFS, NOT GIVEN TO IN CAMERA REVIEW BY THE  
17 MAGISTRATE JUDGE PANEL, AND HAVE NOT PUT ON YOUR PRIVILEGE LOG?

18 MS. KELLEHER: YES, YOUR HONOR.

19 THE COURT: BECAUSE THEY'RE PRIVILEGED; RIGHT?  
20 YOU'RE CLAIMING -- ARE YOU CLAIMING SOME FORM OF PRIVILEGE ON  
21 THEM?

22 MS. KELLEHER: I THINK, YOUR HONOR, TO BE SURE, IT'S  
23 MORE THAN 907. IT'S SIMPLY BECAUSE THE PLAINTIFFS ARE SEEKING  
24 DISCOVERY FOR THE TIME PERIOD WHEN WE AT THE DEPARTMENT OF  
25 JUSTICE AND OTHERS AT COMMERCE AND CENSUS ARE LITIGATING THIS

1 CASE, AND THE SUBJECT MATTER OF THIS CASE IS COEXTENSIVE WITH  
2 THE DISCOVERY THEY'RE SEEKING.

3 AND SO IN ATTEMPTING TO DO THE LITIGATION SCREENING, WE'RE  
4 TRYING TO CARVE OUT -- I DON'T THINK ANYONE ON PLAINTIFFS' SIDE  
5 WANTS TO SEE DRAFTS OF DECLARATIONS, DRAFTS OF LITIGATION  
6 MATERIALS.

7 BUT JUST GIVEN THE OVERLAP BETWEEN THE CASE AND THE  
8 DISCOVERY REQUESTS, I THINK THAT WOULD BE VERY LIKELY HAD WE  
9 NOT JUST TRIED TO SCREEN OUT THOSE LITIGATION DOCUMENTS. AND  
10 WE DID STATE THAT IN OUR RESPONSES AND OBJECTIONS, THAT WE  
11 WOULD NOT PRODUCE ANY LITIGATION MATERIALS.

12 THE COURT: OKAY. SO THIS IS -- I'M ASKING -- SO  
13 YOU'RE SAYING THE NUMBER IS BIGGER THAN 907. WHAT IS THE  
14 NUMBER THEN?

15 MS. KELLEHER: I BELIEVE THE NUMBER IS SOMEWHERE  
16 AROUND 19,000 BECAUSE -- OR IT MAY BE LESS THAN THAT. IT'S  
17 SOME NUMBERS THAT WE'VE RECENTLY GIVEN.

18 WE'VE BEEN WORKING -- THAT'S PART OF THE REASON WE WERE  
19 WORKING ON THOSE NUMBERS LAST WEEK FOR PLAINTIFFS, AND WE  
20 PROVIDED THEM THE NAMES AND THE TERMS THAT WE USED IN ORDER TO  
21 DO THAT LITIGATION SCREENING, AND THAT'S SOMETHING THE PARTIES  
22 HAVE BEEN DISCUSSING ABOUT IN TERMS OF WHETHER THE PLAINTIFFS  
23 AGREED THAT WE HAD -- EITHER THE TERMS OR THE NAMES WERE TOO  
24 BROAD, OR WHETHER WE BELIEVED THEY WERE SUFFICIENT AND THE  
25 PLAINTIFFS WERE SUGGESTING THEY WERE TOO BROAD.

1 THE COURT: SO I'M LOOKING AT DEFENDANTS' RESPONSE TO  
2 ORDER AFTER AUDIT OF WITHHELD DOCUMENTS -- IT'S ECF 435 FILED  
3 ON JANUARY 6TH OF 2021 -- AND IT SAYS THERE ARE 907 DOCUMENTS  
4 SEGREGATED AND NOT PRODUCED AS PART OF DEFENDANTS' SCREENING  
5 FOR LITIGATION TERMS AND ATTORNEY WORK PRODUCT, 907 DOCUMENTS.

6 IS THIS WHAT YOU'RE REFERRING TO?

7 MS. KELLEHER: YES, YOUR HONOR, A SUBSET. THOSE ARE  
8 DOCUMENTS WITH EOP.GOV IN THEM, SO THEY'RE ESSENTIALLY -- THE  
9 LARGER NUMBER, THE MUCH LARGER NUMBER I WAS REFERRING TO WAS  
10 FROM OUR ENTIRE COLLECTION.

11 THE COURT: OKAY. I'M UNCLEAR. IS ANYONE REVIEWING  
12 THESE TO DETERMINE WHETHER THEY ACTUALLY ARE PRIVILEGED?

13 MS. KELLEHER: NO, YOUR HONOR. WE HAD SIMPLY USED  
14 THE LITIGATION SCREENING TERMS AS PART OF OUR -- AND CONSISTENT  
15 WITH OUR OBJECTIONS.

16 ESSENTIALLY I THINK THE VIEW WAS THAT IF WE IDENTIFIED  
17 THESE TERMS, ESSENTIALLY IT WAS A WAY OF SAYING THESE ARE  
18 ESSENTIALLY LITIGATION DOCUMENTS, AND SO TO CREATE A LOG THAT  
19 SAYS "DIANE KELLEHER TO BRAD ROSENBERG, REQUEST FOR COMMENTS ON  
20 A DECLARATION," YOU KNOW, IT'S REALLY IN NO ONE'S INTEREST TO  
21 HAVE THOSE LOGGED. AND I CERTAINLY WOULDN'T EXPECT THE  
22 PLAINTIFFS TO DO THAT ON THEIR SIDE IN RESPONSE TO OUR  
23 DISCOVERY REQUESTS.

24 SO WE WERE ATTEMPTING TO SCREEN OUT THAT CATEGORY.

25 THE COURT: OKAY. I'M NOT TALKING ABOUT THE ONES



1 THAT ARE FROM COUNSEL TO COUNSEL.

2 BUT ARE YOU SCREENING OUT ANYTHING THAT SAYS PRESIDENTIAL  
3 MEMORANDUM?

4 MS. KELLEHER: NO, YOUR HONOR.

5 THE COURT: OKAY. LET ME HEAR FROM MR. HUSENY OR  
6 ANYONE FROM THE PLAINTIFFS.

7 IS THIS AN ISSUE THAT IS WORTH FURTHER DISCUSSION, OR DO  
8 YOU FEEL LIKE YOU'RE MEETING AND CONFERRING -- I DIDN'T  
9 UNDERSTAND, AND I TALKED TO JUDGE COUSINS AS WELL, WE DIDN'T  
10 UNDERSTAND WHAT THIS SEGREGATED AND NOT PRODUCED CATEGORY WAS.

11 IS THIS SOMETHING YOU'RE GETTING CLARIFICATION ON OR IS  
12 THERE ANYTHING -- AT THIS POINT --

13 MS. ROBINSON: YOUR HONOR, THIS IS MS. ROBINSON FOR  
14 THE PLAINTIFFS.

15 AND, NO, THIS IS AN ISSUE THAT WE PLAN TO FILE A MOTION  
16 FOR WAIVER OF PRIVILEGE ON LATER TODAY OR POSSIBLY TOMORROW  
17 MORNING AS WE FLAGGED IN THE STATUS REPORT.

18 AND THE REASON IS BECAUSE THERE ARE ACTUALLY 25 -- OVER  
19 25,000 DOCUMENTS. THE MOST RECENT NUMBER WE GOT FROM  
20 DEFENDANTS -- AND THE NUMBER IS EVER CHANGING -- BUT THE MOST  
21 RECENT NUMBER IS 25,795 DOCUMENTS THAT HAVE BEEN COMPLETELY  
22 CARVED OUT OF ANY PRIVILEGE REVIEW WHATSOEVER.

23 AND TO BE CLEAR, AS MS. KELLEHER EXPLAINED, THERE IS  
24 CERTAINLY CASE LAW THAT SUPPORTS THE IDEA THAT  
25 LITIGATION-RELATED DOCUMENTS NEED NOT BE REVIEWED AND LOGGED IN

1 SOME SITUATIONS, AND PLAINTIFFS AND DEFENDANTS HAVE ALWAYS HAD  
2 AGREEMENT THAT THE DOCUMENTS THAT INCLUDE D.O.J. COUNSEL -- SO  
3 JUST AS MS. KELLEHER GAVE THE EXAMPLE, MS. KELLEHER TO  
4 MR. ROSENBERG, THAT THAT WOULD NOT NEED TO BE LOGGED -- AS WELL  
5 AS THE LITIGATION ATTORNEYS AT THE DEPARTMENT OF COMMERCE.

6 HOWEVER, THERE ARE MANY THOUSANDS OF DOCUMENTS -- AND WE  
7 STILL DON'T KNOW THE PRECISE NUMBER AFTER MANY WEEKS OF  
8 PRESSING FOR JUST THAT INFORMATION -- MANY THOUSANDS OF  
9 DOCUMENTS THAT CONTAIN NO ATTORNEY AT ALL, SIMPLY ONE OF THESE  
10 SEVEN SEARCH TERMS THAT INCLUDE D.O.J., W.P., ATTORNEY-CLIENT,  
11 AS WELL AS -- SO THAT'S ONE CATEGORY, SEARCH TERMS THAT HAVE NO  
12 ATTORNEYS ON THEM.

13 THE COURT: WHAT DOES W.P. STAND FOR?

14 MS. ROBINSON: I THINK W.P. IS WORK PRODUCT.

15 BUT, MS. KELLEHER, THIS IS YOUR TERM, SO I DON'T MEAN TO  
16 SPEAK FOR YOU.

17 THE COURT: WHAT ARE THE SEVEN SEARCH TERMS, PLEASE?

18 MS. ROBINSON: SURE. SO IT'S -- LET'S SEE. W.P. --

19 THE COURT: MS. KELLEHER, THESE ARE YOUR SEARCH  
20 TERMS. WHAT ARE THEY?

21 MS. KELLEHER: YOUR HONOR, I WAS JUST TRYING TO CALL  
22 THEM UP RIGHT NOW. I'M SORRY, I DON'T HAVE THEM IN FRONT OF  
23 ME. I APOLOGIZE.

24 THE COURT: NO PROBLEM. I CAN WAIT. I HAVE TIME.

25 MS. KELLEHER: SURE.

1 (PAUSE IN PROCEEDINGS.)

2 MS. ROBINSON: I DO HAVE THEM IF THAT WOULD BE  
3 HELPFUL.

4 THE COURT: OKAY.

5 MS. ROBINSON: OKAY. SO THEY'RE ATTORNEY-CLIENT;  
6 WORK PRODUCT; A.C.P.; DECLARATION WITHIN TEN DRAFT; D.O.J.;  
7 USDOJ.GOV; AND THEN W.P.

8 THE COURT: ALL RIGHT. SO ARE YOU WORKING WITH THEM  
9 ON WHETHER SOME OF THESE ARE OVERLY BROAD?

10 MS. ROBINSON: WELL, WE FINISHED -- IN OUR VIEW, WE  
11 FINISHED WORKING WITH THEM. WE NOW HAVE SOME SENSE THAT THESE  
12 ARE THOUSANDS OF DOCUMENTS THAT DON'T HAVE ANY ATTORNEY ON  
13 THEM.

14 SO IN OUR VIEW, THIS IS OVERLY BROAD, AND GIVEN THAT FACT  
15 DISCOVERY IS ABOUT TO CLOSE AND THE OBFUSCATION AND DELAY IN  
16 THIS PROCESS, WE PLAN TO MOVE FOR WAIVER ON THOSE DOCUMENTS  
17 THAT HAVE NO ATTORNEY ON THEM WHATSOEVER AND THAT IN OUR VIEW  
18 SHOULD HAVE BEEN PROPERLY LOGGED MANY WEEKS AGO SO WE COULD  
19 PROPERLY REVIEW AND ASSESS THEIR ASSERTIONS OF PRIVILEGE AND  
20 TAKE THOSE TO THE MAGISTRATE JUDGE IF NECESSARY.

21 THE HISTORY OF THIS CASE IS THAT ONLY 25 PERCENT OF THEIR  
22 ACTUAL ASSERTIONS OF PRIVILEGE HAVE BEEN SUSTAINED, SO IN  
23 PLAINTIFFS' VIEW, WE'VE BEEN HIGHLY PREJUDICED BY THE FACT THAT  
24 DEFENDANTS HAVE PUT TO THE SIDE LARGE SWATHS OF DOCUMENTS THAT  
25 THEY HAVEN'T EVEN REVIEWED THEMSELVES TO SEE IF THEY, IN FACT,

1 EVEN MERIT AN ASSERTION OF PRIVILEGE, MUCH LESS ARE ACTUALLY  
2 PRIVILEGED.

3 THE COURT: SO MS. KELLEHER, YOU HAPPENED TO GIVE THE  
4 EXAMPLE OF ATTORNEYS WHO ARE ON THE E-MAIL.

5 MS. KELLEHER: YES, YOUR HONOR.

6 THE COURT: MS. ROBINSON IS SAYING THEY ARE NOT  
7 ASKING YOU TO LOG ONES THAT HAVE ATTORNEYS ON THE TO AND FROM.  
8 WHAT IS YOUR POSITION ON E-MAILS OR DOCUMENTS THAT HAVE NO  
9 ATTORNEY EITHER IN THE RECIPIENT OR THE CARBON COPY OR THE  
10 SENDER WHO ARE NOT INVOLVED IN THE DISTRIBUTION AT ALL? WHAT'S  
11 YOUR POSITION? YOU'RE STILL NOT REQUIRED TO REVIEW THOSE?

12 MS. KELLEHER: YOUR HONOR, FIRST I'D SAY THAT  
13 PLAINTIFFS DISAGREE WITH US IN TERMS OF --

14 THE COURT: NO, NO, NO. ANSWER MY QUESTION. ANSWER  
15 MY QUESTION. WHAT IS YOUR POSITION? ARE YOU UNWILLING TO  
16 REVIEW DOCUMENTS THAT WERE NOT SENT, RECEIVED, CREATED, CARBON  
17 COPIED, TO OR FROM A LAWYER?

18 MS. KELLEHER: NO, YOUR HONOR, I DON'T THINK THAT'S  
19 OUR POSITION.

20 I THINK, AS AN INITIAL MATTER, WE DON'T AGREE WITH THE WAY  
21 THE PLAINTIFFS HAVE --

22 THE COURT: OKAY. SO LET ME STOP YOU.

23 MS. KELLEHER: SURE.

24 THE COURT: WHEN ARE YOU GOING TO REVIEW THOSE  
25 DOCUMENTS OF WHATEVER THE NUMBER IS, 25,000, 19,000, WHEN ARE

1 YOU GOING TO REVIEW THE ONES THAT DO NOT HAVE AN ATTORNEY AS A  
2 SENDER, RECIPIENT, DRAFTER? WHEN ARE YOU GOING TO REVIEW  
3 THOSE?

4 BECAUSE THOSE ARE NOT PROPERLY -- AT A MINIMUM, THOSE ARE  
5 NOT PROPERLY CARVED OUT, WHICH YOU AGREE WITH ME ON. SO WHEN  
6 ARE YOU GOING TO REVIEW THOSE?

7 MS. KELLEHER: YOUR HONOR, WE HAD UNDERSTOOD THERE TO  
8 STILL BE MEETING AND CONFERRING, BUT PLAINTIFFS APPEAR TO BE  
9 SEEKING A WAIVER OF ALL PRIVILEGES.

10 SO, I MEAN, AT THIS POINT, IS THERE A POINT TO US  
11 REVIEWING OR LOGGING THOSE DOCUMENTS GIVEN THAT PLAINTIFFS SEEM  
12 TO BE SEEKING THE WHOLE UNIVERSE?

13 THE COURT: LET ME JUST GET AN AGREEMENT FROM YOU,  
14 WHAT IS YOUR LAWFUL BASIS?

15 YOU ARE A CAREER ATTORNEY; CORRECT?

16 MS. KELLEHER: YES, YOUR HONOR.

17 THE COURT: YOU WORK AT THE DEPARTMENT OF JUSTICE;  
18 CORRECT?

19 MS. KELLEHER: YES, I'VE WORKED AT THE DEPARTMENT OF  
20 JUSTICE FOR 20 YEARS, YOUR HONOR.

21 THE COURT: I UNDERSTAND, 20 YEARS.

22 MS. KELLEHER: THANK YOU.

23 THE COURT: SO YOU ARE TELLING ME THAT YOU HAVE NO  
24 LAWFUL BASIS NOT TO REVIEW THOSE DOCUMENTS THAT DO NOT HAVE AN  
25 ATTORNEY AS A SENDER, RECIPIENT, CARBON COPY, CREATOR; CORRECT?

1 YOU HAVE NO BASIS NOT TO DO A REVIEW ON THAT; CORRECT?

2 MS. KELLEHER: YOUR HONOR, WE WOULD DO A REVIEW ON  
3 THAT.

4 THE COURT: OKAY. THEN WHEN WILL YOU DO THAT REVIEW?  
5 THAT'S MY QUESTION.

6 I'M NOT SAYING YOU CAN'T HAVE A DISPUTE.

7 MS. KELLEHER: OKAY.

8 THE COURT: I'M JUST ASKING IF THERE'S A WAY THAT WE  
9 CAN NARROW IT RIGHT NOW. WE HAVE A DISCOVERY CUTOFF IN  
10 EFFECTIVELY TEN DAYS.

11 MS. KELLEHER: YES, YOUR HONOR.

12 THE COURT: WE NEED TO BRING THIS TO A CLOSE. SO  
13 WHEN ARE YOU GOING TO COMMIT TO REVIEWING THAT?

14 AND I WANT A COMMITMENT TODAY, AND I WANT YOU TO FILE  
15 SOMETHING SAYING THAT REVIEW HAS BEEN COMPLETED, AND I WANT YOU  
16 TO SIGN IT UNDER PENALTY OF PERJURY AND FILE IT. OKAY?

17 SO WHEN IS THAT GOING TO HAPPEN, PLEASE? I -- YOU KNOW, I  
18 SEE THIS LONG LIST OF ALL THESE DISPUTES AND I SEE OBSTRUCTION  
19 AND I DON'T SEE COOPERATION, AND I JUST DON'T THINK THAT'S A  
20 GOOD LOOK FOR THE DEPARTMENT OF JUSTICE.

21 MS. KELLEHER: YOUR HONOR --

22 THE COURT: SO I'M ASKING FOR YOUR COOPERATION HERE.

23 IF THERE ARE DOCUMENTS THAT YOU FEEL LIKE YOU DON'T HAVE A  
24 LEGAL BASIS NOT TO REVIEW, THEN PLEASE REVIEW THEM, AND GIVE ME  
25 A DATE BY WHICH YOU WILL DO THAT.

1 MS. KELLEHER: YOUR HONOR, I'LL COMMIT THAT WE'LL DO  
2 THAT BY A WEEK FROM TODAY.

3 THE COURT: THAT'S TOO LONG. THE DISCOVERY CUTOFF --  
4 YOU WANT THEM TO TAKE YOUR FACT DEPOSITIONS NEXT WEEK. YOU'RE  
5 SAYING IN YOUR DOCUMENT, LIKE, IF THEY DON'T TAKE THE  
6 DEPOSITIONS, YOU'VE BEEN HIGHLY PREJUDICED BY THEM NOT TAKING  
7 THE DEPOSITIONS. THAT'S TOO LONG.

8 I MEAN, I -- I'M DISAPPOINTED THAT YOU'VE HAD THAT  
9 POSITION ALL THIS TIME WHEN YOU DON'T HAVE A LEGAL BASIS NOT TO  
10 REVIEW IT. WHY HAVE YOU TAKEN THAT POSITION WHEN YOU HAD NO  
11 LAWFUL AUTHORITY NOT TO REVIEW IT? WHY HAVE YOU TAKEN THAT  
12 POSITION?

13 MS. KELLEHER: YOUR HONOR, WE'VE TAKEN THAT POSITION  
14 BECAUSE SOME -- THE LARGE VOLUME OF DOCUMENTS THAT WE'RE  
15 REFERRING TO, MANY OF THEM DO INVOLVE ATTORNEYS, DEPARTMENT OF  
16 COMMERCE ATTORNEYS WHO ARE AGENCY COUNSEL. WE HAVE GONE BACK  
17 AND FORTH WITH THE PLAINTIFFS ABOUT WHETHER AGENCY COUNSEL  
18 QUALIFY AS A SORT OF LITIGATING ATTORNEY WITH PROGRAM  
19 RESPONSIBILITIES.

20 SO IT'S NOT TO SAY AS IF ALL THE DISCUSSIONS WITH  
21 PLAINTIFFS' COUNSEL HAVE BEEN, THERE'S NO ATTORNEY ON A  
22 DOCUMENT, WE REFUSE TO HAVE ANYTHING TO DO WITH IT. WE'VE BEEN  
23 TRYING TO GIVE THEM NUMBERS AND TRYING TO NARROW THE SCOPE OF  
24 THE DISPUTE.

25 SO WE HAVE NOT BEEN INSISTING THAT ALL 25,000 OF THE

1 DOCUMENTS HAVE NO COUNSEL AND NO LANGUAGE IN THEM THAT WOULD  
2 SUGGEST THEY WERE PRIVILEGED OR PROTECTED.

3 THE COURT: OKAY. GIVE ME A DATE. GIVE ME A DATE  
4 BEFORE A WEEK FROM NOW. BECAUSE YOU AGREE WITH ME THAT THERE'S  
5 NOT A LEGAL BASIS FOR YOUR POSITION, SO I WOULD JUST LIKE TO  
6 BRING THIS FACT DISCOVERY TO A CLOSE. I'M ASKING FOR YOUR  
7 COOPERATION AND YOUR HELP HERE.

8 MS. KELLEHER: OKAY. YES, YOUR HONOR. UNDERSTOOD.  
9 I THINK WE WILL COMMIT TO DOING IT BY THURSDAY OF THIS  
10 WEEK. I JUST -- I DON'T KNOW THE VOLUME, SO THAT'S THE ONLY  
11 REASON.

12 THE COURT: ALL RIGHT.

13 MS. KELLEHER: THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT. I APPRECIATE THAT. I  
15 APPRECIATE THAT.

16 SO BY THE 14TH, AND I WANT YOU TO FILE A DECLARATION -- I  
17 WANT YOU, MS. KELLEHER, UNDER PENALTY OF PERJURY, FILE ME A  
18 DECLARATION SAYING THAT REVIEW WAS COMPLETED. OKAY?

19 MS. KELLEHER: YES, YOUR HONOR.

20 THE COURT: THANK YOU.

21 OKAY. NOW --

22 MS. ROBINSON: YOUR HONOR, IF I MAY?

23 THERE'S ONE MORE CATEGORY OF DOCUMENTS THAT PLAINTIFFS  
24 PLAN TO MOVE FOR WAIVER ON THAT IT MIGHT MAKE SENSE TO ADDRESS  
25 HERE AS WELL.



1 AS MS. KELLEHER SAID, THERE ARE SEVEN DEPARTMENT OF  
2 COMMERCE COUNSEL THAT HAVE BEEN INCLUDED IN THIS CARVEOUT, BUT  
3 ONLY FOUR OF THOSE ARE ACTUALLY LITIGATORS, AND IT'S  
4 PLAINTIFFS' POSITION THAT FOR THE OTHER THREE DEPARTMENT OF  
5 COMMERCE COUNSEL, THOSE ARE ATTORNEYS WHO ARE ADVISING ON MORE  
6 OF THE SUBSTANCE OF THE ISSUES IN THIS CASE AND ARE NOT  
7 LITIGATION COUNSEL, AND SO INCLUDING DOCUMENTS THAT ONLY  
8 CONTAIN THOSE ATTORNEYS -- AND AGAIN, OUR POSITION IS IF  
9 THERE'S A DEPARTMENT OF JUSTICE ATTORNEY ON AN E-MAIL WITH  
10 THOSE ATTORNEYS, THAT IS SAFELY PUT TO THE SIDE -- BUT IF THE  
11 ONLY ATTORNEY ON THAT E-MAIL IS ONE OF THESE THREE DEPARTMENT  
12 OF COMMERCE NON-LITIGATORS, THAT THERE'S ALSO NO BASIS AND NO  
13 SUPPORT IN THE LAW TO PUT THOSE ASIDE AND NOT LOG THOSE.

14 AND WHEN --

15 THE COURT: WHAT ARE THEIR TITLES?

16 MS. ROBINSON: THEIR TITLES ARE -- CHIEFLY, THEY'RE  
17 ECONOMIC ADVISORS. I CAN GIVE YOU THE PRECISE TITLE.

18 SO THE FIRST GENTLEMAN IS NAMED MR. MICHAEL CANNON. HE'S  
19 THE CHIEF COUNSEL FOR ECONOMIC AFFAIRS IN THE OFFICE OF THE  
20 GENERAL COUNSEL.

21 THE NEXT ATTORNEY IS MS. MELISSA CREECH, SHE'S THE DEPUTY  
22 CHIEF COUNSEL FOR ECONOMIC AFFAIRS, ALSO IN THE OFFICE OF  
23 GENERAL COUNSEL.

24 AND THE THIRD ATTORNEY IS MR. MILES RYAN, WHO IS AN  
25 ATTORNEY IN THE OFFICE OF THE CHIEF COUNSEL FOR ECONOMIC

1 AFFAIRS.

2 AND REMARKABLY, DEFENDANTS ACTUALLY HAVE PRODUCED NEARLY  
3 300 DOCUMENTS AS RESPONSIVE TO OUR DOCUMENT REQUESTS THAT  
4 CONTAIN THOSE THREE ATTORNEYS, AND NO OTHER ATTORNEYS, WHICH  
5 SIGNALS TO US ALSO THAT THEY HAVE DOCUMENTS THAT ARE RESPONSIVE  
6 TO OUR REQUESTS FOR PRODUCTION AND NOT PRIVILEGED.

7 THE COURT: WAIT, I'M SORRY. THE -- THEY PRODUCED  
8 DOCUMENTS FROM THOSE THREE INDIVIDUALS, OR DOCUMENTS THAT THOSE  
9 PEOPLE ARE CC'D ON, OR WHAT?

10 MS. ROBINSON: EITHER ONE, THAT THOSE PEOPLE ARE  
11 EITHER TO, FROM, OR CC'D. WE JUST RAN -- WE DIDN'T REVIEW  
12 EVERY DOCUMENT, BUT WE JUST RAN THROUGH THE PRODUCTION DATABASE  
13 WHETHER DOCUMENTS HAD BEEN PRODUCED FROM THOSE THREE ATTORNEYS,  
14 AND THEY HAVE.

15 AND DEFENDANTS HAVE NOT BEEN ABLE TO EXPLAIN TO US THAT  
16 THOSE THREE ATTORNEYS ARE ACTUALLY LITIGATORS, PART OF THEIR  
17 CORE LITIGATION TEAM, SO OUR POSITION IS THAT THEY ARE ALSO  
18 BEING OVERLY BROAD IN CARVING OUT THOUSANDS OF DOCUMENTS THAT  
19 CONTAIN ONLY ONE OF THOSE THREE NON-LITIGATORS.

20 THE COURT: ALL RIGHT.

21 LET ME HEAR FROM COUNSEL AS TO JUST THESE THREE,  
22 MR. CANNON, MS. CREECH, AND MILES RYAN -- IS IT A MR. RYAN?

23 MS. KELLEHER: MR. RYAN, YES.

24 THE COURT: GO AHEAD, PLEASE.

25 MS. KELLEHER: YOUR HONOR, THESE LAWYERS ARE

1 ESSENTIALLY PROGRAM AGENCY COUNSEL WITHIN THE CENSUS BUREAU.  
2 THEY ARE NOT ECONOMIC AFFAIRS LAWYERS. THEY WORK FOR THE  
3 CENSUS BUREAU. CENSUS IS WITHIN THE LEADERSHIP OF THE UNDER  
4 SECRETARY FOR ECONOMIC AFFAIRS AT THE COMMERCE DEPARTMENT. SO  
5 THEY ARE SORT OF PEOPLE WHO ARE ROUTINELY ADVISING THE CENSUS  
6 BUREAU.

7 THEY ARE NOT LITIGATION COUNSEL, BUT THEY ARE ALWAYS  
8 CONSULTED ON MATTERS OF LITIGATION, AND AS THE COURT IS AWARE,  
9 THERE HAS BEEN A SIGNIFICANT AMOUNT OF LITIGATION INVOLVING THE  
10 CENSUS BUREAU.

11 SO WE, IN A LETTER THAT I SENT MS. ROBINSON ON FRIDAY  
12 NIGHT, WHICH WE HAD UNDERSTOOD WAS --

13 THE COURT: LET ME ASK YOU A QUESTION. WHY DID YOU  
14 PRODUCE THEN SOME OF THE DOCUMENTS THAT THEY EITHER SENT,  
15 RECEIVED, OR WERE COPIED ON? DID YOU WAIVE PRIVILEGE AS TO  
16 THOSE DOCUMENTS?

17 MS. KELLEHER: I DON'T KNOW, YOUR HONOR. I DON'T  
18 KNOW WHAT DOCUMENTS THOSE ARE, SO I'M ASSUMING MAYBE THEY WERE  
19 SIMPLY RECIPIENTS ON THOSE OR MAYBE THERE WAS ANOTHER REASON  
20 THEY WERE PRODUCED. WE CAN GO BACK AND CONSULT WITH THEM.

21 THE COURT: SO SOMETIMES WHEN THOSE PEOPLE ARE  
22 INVOLVED, YOU DO REVIEW THEM AND PRODUCE THEM, AND SOMETIMES  
23 YOU JUST SEGREGATE THEM AND DON'T REVIEW THEM AT ALL. THAT'S  
24 INCONSISTENT.

25 MS. KELLEHER: UNDERSTOOD, YOUR HONOR.

1 THE COURT: I DON'T THINK THAT'S CONSISTENT. IF YOU  
2 REVIEWED THEM AND DETERMINED THEY WEREN'T PRIVILEGED SUCH THAT  
3 THEY COULD BE PRODUCED, THEN I THINK YOU SHOULD REVIEW ALL OF  
4 THEM THAT INVOLVE THESE THREE AND DETERMINE WHETHER THEY SHOULD  
5 BE PRODUCED OR NOT BECAUSE YOU'VE ALREADY DONE THAT FOR SOME  
6 DOCUMENTS.

7 MS. KELLEHER: RIGHT. AND YOUR HONOR, FRANKLY --

8 THE COURT: I'D LIKE A COMMITMENT, AT LEAST AS TO  
9 THOSE THREE INDIVIDUALS, THAT YOU WILL REVIEW THEM, AND  
10 ANYTHING THAT SHOULD BE PRODUCED IS PRODUCED AND ANYTHING THAT  
11 SHOULD BE LOGGED SHOULD BE LOGGED.

12 BUT I DON'T THINK THEY SHOULD JUST BE AUTOMATICALLY  
13 SEGREGATED WHEN YOU'VE BEEN INCONSISTENT WITH OTHER DOCUMENTS  
14 THAT ARE FROM, TO, OR CARBON COPIED TO THESE THREE INDIVIDUALS.

15 CAN YOU MAKE A COMMITMENT TO DO THAT BY THE 14TH AS WELL,  
16 PLEASE?

17 MS. KELLEHER: YES, YOUR HONOR, WE WILL.

18 THE COURT: THANK YOU. I APPRECIATE THAT. OKAY. I  
19 APPRECIATE THAT.

20 I MEAN, I THINK ALL OF THIS WILL SAVE EVERYONE TIME OF  
21 HAVING TO FILE A MOTION, AND IT'LL CERTAINLY SAVE THE  
22 MAGISTRATE JUDGE PANEL TIME FROM HAVING TO RESOLVE THIS. SO  
23 I'M VERY APPRECIATIVE. THANK YOU, MS. KELLEHER. I APPRECIATE  
24 IT.

25 OKAY. ALL RIGHT.

1           SO LET ME GO TO THE REST OF MY QUESTIONS. I JUST -- I'M  
2 JUST LOOKING AT A FACT DISCOVERY CUTOFF THAT IS NOW IN TEN  
3 DAYS, SO I JUST NEED TO MAKE SURE THAT EVERYTHING IS PROCEEDING  
4 IN A WAY THAT WE CAN ACTUALLY END DISCOVERY BY NEXT THURSDAY.  
5 SO I APPRECIATE EVERYONE'S PATIENCE AND HELP IN MAKING THIS  
6 HAPPEN.

7           ALL RIGHT. SO THANK YOU.

8           NOW, I WILL WANT, AFTER YOU COMPLETE THE REVIEW ON THE  
9 14TH, I WILL WANT A PRODUCTION -- A PRODUCTION OF THE PRIVILEGE  
10 LOG THAT WOULD INCLUDE THOSE DOCUMENTS, AND THEN ACTUALLY ANY  
11 DOCUMENTS THAT YOU THINK SHOULD BE PRODUCED, I'D LIKE THOSE TO  
12 BE PRODUCED. CAN I HAVE A COMMITMENT AS TO WHEN THAT WOULD BE?

13           MS. KELLEHER: YOUR HONOR, COULD WE AT LEAST HAVE  
14 UNTIL THE NEXT DAY TO START THAT PRODUCTION, JUST BECAUSE I  
15 IMAGINE IN TERMS OF BEING ABLE TO MAKE SURE THEY'RE CORRECTLY  
16 MARKED IN OUR DATABASE ONCE WE'VE DONE THE LISTINGS FOR THE LOG  
17 AND THEN DETERMINED IF ANYTHING NEEDS TO BE PRODUCED?

18           THE COURT: ALL RIGHT. THAT SOUNDS -- THAT SOUNDS  
19 FAIR. THAT'S WHEN IT'S GOING TO START. SO THAT WILL BE -- LET  
20 ME LOOK AT MY CALENDAR. THAT WILL BE THE 15TH.

21           AND WHEN CAN YOU CONCLUDE THAT?

22           MS. KELLEHER: YOUR HONOR, I'M NOT SURE. I DON'T  
23 WANT TO GIVE A DATE AND BE WRONG. I CAN REPORT BACK TO  
24 PLAINTIFFS AND TO YOUR HONOR ONCE WE'RE ABLE TO CONSULT ABOUT  
25 THE VOLUME.

1 THE COURT: OKAY. THAT SOUNDS FINE.

2 BUT I WOULD LIKE, ON THE 15TH, YOU TO START PRODUCTION  
3 FROM THAT REVIEW, AND ALSO CREATE AND PRODUCE A PRIVILEGE LOG,  
4 WHICH YOU CAN AMEND LATER, BUT I WANT THE AMENDMENTS TO BE DONE  
5 PROMPTLY.

6 ALL RIGHT. THANK YOU. I APPRECIATE THAT. THANK YOU VERY  
7 MUCH.

8 MS. KELLEHER: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. OKAY. SO THE PRODUCTION THAT  
10 YOU'RE INTENDING TO MAKE -- OH, YOU WERE GOING TO FIND OUT WHEN  
11 YOU'VE DONE THE DOCUMENT COLLECTION. ONE WAS NOVEMBER 23RD.  
12 WHAT WAS THE OTHER DATE, PLEASE?

13 MS. KELLEHER: I BELIEVE IT WAS -- SORRY, YOUR  
14 HONOR -- DECEMBER 14TH I BELIEVE WAS THE NEXT ONE.

15 THE COURT: OKAY. HAVE YOU COLLECTED ANYTHING ELSE  
16 SINCE DECEMBER 14TH?

17 MS. KELLEHER: NOT THAT I'M AWARE OF, YOUR HONOR.

18 THE COURT: OKAY. SO EVERYTHING YOU WOULD HAVE  
19 PRODUCED SO FAR WOULD HAVE BEEN GENERATED ON OR BEFORE  
20 DECEMBER 14TH?

21 MS. KELLEHER: OH, YOUR HONOR, I APOLOGIZE.  
22 MR. SVERDLOV IS CORRECTING ME. SO I DON'T WANT TO GIVE  
23 OUT-OF-DATE INFORMATION.

24 MR. SVERDLOV: YES, YOUR HONOR.

25 JUST TO LET YOU KNOW, WE HAVE INDEED COLLECTED MATERIAL

1 FOLLOWING DECEMBER 14TH. I BELIEVE AT THE LAST STATUS  
2 CONFERENCE, I INDICATED THAT PLAINTIFFS HAD RECEIVED SOME OF  
3 THE --

4 THE COURT: I DON'T WANT WHEN IT WAS RECEIVED. I  
5 WANT THE DATES OF COLLECTION.

6 MR. SVERDLOV: YES.

7 THE COURT: SO WHAT IS THE DATE AFTER DECEMBER 14TH,  
8 PLEASE?

9 MR. SVERDLOV: YOUR HONOR, THE DATES HAVE BEEN  
10 ONGOING. PLAINTIFFS HAVE MATERIALS AS RECENT AS -- DATED  
11 DECEMBER 29TH, SO THOSE MATERIALS WERE OBVIOUSLY COLLECTED  
12 FOLLOWING DECEMBER 29TH. AND WE ARE IN THE PROCESS OF  
13 COLLECTING MATERIALS ALL OF THIS WEEK.

14 THESE -- THE --

15 THE COURT: OKAY. THIS IS WHAT I WOULD LIKE. I'M  
16 SORRY TO INTERRUPT YOU. I APOLOGIZE.

17 I WOULD LIKE A DECLARATION UNDER PENALTY OF PERJURY ABOUT  
18 ALL THE DATES OF THE DOCUMENT COLLECTIONS BECAUSE I DON'T WANT  
19 TO PUT YOU ON THE SPOT, YOU MAY NOT KNOW, YOU MAY NOT HAVE  
20 ACCESS TO YOUR RECORDS. I WOULD JUST LIKE IT IN PAPER IN A  
21 DECLARATION OR IN AN AFFIDAVIT. JUST LAY IT OUT WHEN THE  
22 DOCUMENTS WERE COLLECTED. CAN YOU FILE THAT BY TOMORROW?

23 AND I -- WHOMEVER WANTS TO HANDLE THE DECLARATION IS FINE.  
24 CAN YOU DO THAT BY TOMORROW? I'D LIKE A DECLARATION UNDER  
25 PENALTY OF PERJURY GIVING ME ALL OF THE DATES OF DOCUMENT

1 COLLECTION SO FAR.

2 MR. SVERDLOV: WE WILL -- WE WILL FILE THAT TOMORROW,  
3 YOUR HONOR.

4 THE COURT: ALL RIGHT. THANK YOU. I APPRECIATE  
5 THAT. THANK YOU. THANK YOU. I'M VERY GRATEFUL.

6 OKAY. ALL RIGHT. SO LET'S SEE. WHAT ELSE DO WE HAVE?

7 SO YOU SAID YOU WERE MAKING A PRODUCTION TONIGHT? IS THAT  
8 RIGHT? JANUARY 11TH?

9 MS. KELLEHER: YES, YOUR HONOR. I JUST GOT  
10 CONFIRMATION -- AND I'LL SEND AN E-MAIL TO MR. HUSENY AND  
11 MS. ROBINSON -- BUT IT'S BEEN LOADED TO THE PLAINTIFFS' FILE  
12 TRANSFER PROTOCOL WEBSITE.

13 THE COURT: OKAY, TERRIFIC. THANK YOU.

14 LET ME ASK, WILL THAT INCLUDE ANY OF THE LATEST -- WELL, I  
15 MEAN, WHAT'S THE -- I WOULD JUST LIKE AN ANSWER IF YOU HAVE  
16 ONE. WHAT IS THE LATEST DATE YOU'VE DONE ANY DOCUMENT  
17 COLLECTION, IF YOU KNOW? AND MAYBE YOU DON'T KNOW AND  
18 MR. SVERDLOV, MR. ROSENBERG, MR. COGHLAN KNOW.

19 MS. KELLEHER: I THINK -- I KNOW THAT WHEN WE  
20 PRODUCED THE TIMELINES TO PLAINTIFF THAT WERE CURRENT AS OF  
21 DECEMBER 29TH, I BELIEVE THEY WERE COLLECTED ON DECEMBER 29TH.

22 THE ISSUE WAS -- AND IT WAS SOMETHING MR. HUSENY AND I  
23 DISCUSSED IN A MEET AND CONFER -- WAS THAT THEY WERE SORT OF,  
24 INSTEAD OF BEING KIND OF PULLED FROM THE CUSTODIAN, YOU KNOW,  
25 THE SORT OF STOVEPIPE CUSTODIAN PROCESS, THEY WERE PULLED FROM



1 THE KNOWLEDGEABLE PERSONS BECAUSE THERE WAS SUCH A FOCUS --  
2 MR. HUSENY WAS FRUSTRATED THAT HE HAD NOT RECEIVED ADDITIONAL,  
3 YOU KNOW, MORE CLEAR AND UP-TO-DATE INFORMATION ON THE  
4 TIMELINES. SO I KNOW THOSE WERE COLLECTED ON THE 29TH.

5 AND I BELIEVE THAT WE ARE ALSO COLLECTING -- I THINK  
6 COMMERCE USES AN EXTERNAL DRIVE THAT GETS SHIPPED BACK AND  
7 FORTH, AND THEY HAVE RECENTLY DONE A COLLECTION AS OF  
8 JANUARY 7TH.

9 THE COURT: WHAT ABOUT -- COMMERCE INCLUDES THE  
10 BUREAU?

11 MS. KELLEHER: YES, YOUR HONOR.

12 THE COURT: OKAY. SO I JUST WANT TO KNOW WHEN ANY OF  
13 THE LATEST PROCESSING PLANS AND ANOMALIES AND DOCUMENTS RELATED  
14 TO THAT WILL BE PRODUCED, AND YOU'RE TELLING ME THAT WILL BE IN  
15 TODAY'S PRODUCTION?

16 MS. KELLEHER: YES, YOUR HONOR. I BELIEVE SOME --  
17 I'M NOT SURE IF IT WILL BE ALL OF THOSE TYPES OF DOCUMENTS THAT  
18 PLAINTIFFS HAVE REQUESTED, BUT I KNOW THEY WILL RELATE  
19 PARTICULARLY TO THE MARCH 6TH DEADLINE, OR PROJECTION, WHICH  
20 MR. COGHLAN DISCUSSED.

21 THE COURT: OKAY. SO IT'LL GO UP TO THE MARCH 6TH  
22 DATE?

23 MS. KELLEHER: YES, YOUR HONOR.

24 THE COURT: OKAY. CAN I HAVE A DATE -- I WOULD LIKE  
25 THE DEPOSITIONS TO TAKE PLACE NEXT WEEK. I WOULD LIKE TO BE

1 ABLE TO ENFORCE THIS FACT DISCOVERY CUTOFF SO THAT EVERYONE CAN  
2 MOVE ON TO EXPERT DISCOVERY.

3 SO CAN I HAVE A COMMITMENT THAT ANY OF THE DOCUMENTS  
4 RELATED TO THE LATEST PROCESSING PLANS AND ANOMALIES BE  
5 PRODUCED BY THURSDAY? IS THAT REASONABLE? SO YOU CAN ACTUALLY  
6 DO DEPOSITIONS NEXT WEEK AND YOU CAN ACTUALLY COMPLETE THE FACT  
7 PORTION OF THIS CASE. CAN I GET THAT COMMITMENT, PLEASE?

8 MR. SVERDLOV: SO, YOUR HONOR, I THINK PERHAPS  
9 DEFENDANTS WOULD BENEFIT FROM A LITTLE BIT OF CLARIFICATION.

10 BECAUSE THE WORK ON THIS ISSUE IS ONGOING, IF WE WERE TO  
11 COMMIT TO MAKING ALL THE PRODUCTIONS BY THIS FRIDAY, THAT WOULD  
12 I THINK EFFECTIVELY MEAN THAT WE WOULD HAVE TO FINISH  
13 COLLECTING WHATEVER WE HAVE ESSENTIALLY TODAY IN ORDER TO  
14 AFFORD US ENOUGH TIME TO ACTUALLY UPLOAD IT AND PROCESS IT AND  
15 MAKE IT READY FOR PRODUCTION.

16 SO TO THE EXTENT THAT WE COMMIT TO --

17 THE COURT: WELL, LET ME -- OKAY, I SEE YOUR POINT.  
18 YOU RAISE A VERY VALID POINT.

19 I JUST DON'T WANT THERE JUST TO BE OUTDATED DECEMBER  
20 DOCUMENTS IN THE PRODUCTION TODAY AND THEN TO HAVE TO DEAL WITH  
21 NEXT WEEK REQUESTING EXTENSIONS OF ALL THE SCHEDULES BECAUSE  
22 THE PLAINTIFFS DON'T HAVE THE DOCUMENTS THEY NEED TO TAKE THE  
23 DEPOSITIONS. SO THAT'S -- I JUST WANT TO MAKE SURE THAT, OF  
24 WHAT YOU'VE COLLECTED, THAT IT GETS PRODUCED AS QUICKLY AS  
25 POSSIBLE.

1 I MEAN, I'VE SAID THIS BEFORE, AND I'M SORRY TO REPEAT IT,  
2 BUT I WAS DISAPPOINTED THAT THERE HAVE BEEN NO PRODUCTIONS IN  
3 THIS CASE IN THE CALENDAR YEAR 2021. IT'S ALREADY  
4 JANUARY 11TH. WE HAVE A VERY TIGHT TIMEFRAME. YOU REPRESENTED  
5 THAT YOU WOULD PRODUCE ALL YOUR DOCUMENTS BY JANUARY 8TH.

6 SO I'M JUST CONCERNED THAT WE MAY NOT BE ABLE TO MEET OUR  
7 DISCOVERY CUTOFF.

8 SO WHAT CAN YOU DO TO ENSURE ME THAT THE PRODUCTIONS WILL  
9 BE PROMPT AND ENABLE FACT DEPOSITIONS TO GO FORWARD NEXT WEEK,  
10 WHICH I HOPE THEY DO?

11 MR. SVERDLOV: SO, YOUR HONOR, I THINK IT WOULD BE  
12 ENTIRELY REASONABLE FOR EVERYONE TO AGREE THAT THE DOCUMENT  
13 DATE CUTOFF IS SOMETHING LIKE JANUARY 8TH OR JANUARY --

14 THE COURT: NO, THAT'S NOT GOING TO WORK. THAT'S NOT  
15 GOING TO WORK. THE FACT DISCOVERY CUTOFF IS JANUARY 21.

16 MR. SVERDLOV: YOUR HONOR, RESPECTFULLY --

17 THE COURT: YOU MIGHT FIND ANOTHER ANOMALY TODAY.

18 MR. SVERDLOV: WELL, WE MIGHT.

19 THE COURT: AND THEY SHOULD GET THAT.

20 MR. SVERDLOV: THAT IS OUR CONCERN WITH, WITH  
21 COMMITTING TO A CUTOFF FOR DOCUMENT PRODUCTION.

22 IF --

23 THE COURT: FINE. YOU DON'T HAVE TO COMMIT. I'M  
24 SORRY TO INTERRUPT YOU. YOU DON'T HAVE TO COMMIT TO A CUTOFF  
25 OF DOCUMENT PRODUCTION.

1 I'M JUST GOING TO ASK THAT IT BE MORE -- I MEAN, LET ME  
2 ASK YOU, WHY DID YOU ALL REPRESENT THAT YOU WANTED TO HAVE ALL  
3 OF YOUR DOCUMENTS PRODUCED BY LAST WEEK AND THEN NOT MAKE A  
4 PRODUCTION THROUGH JANUARY 11TH? I'M JUST -- I'M JUST CURIOUS  
5 AS TO -- I MEAN, CLEARLY YOU THOUGHT, ON JANUARY 4TH WHEN YOU  
6 MADE THAT STATEMENT, THAT YOU COULD COMPLETE IT BY THE 8TH.  
7 OTHERWISE I DON'T THINK YOU WOULD HAVE MADE THAT STATEMENT.

8 MR. SVERDLOV: WE DID, YOUR HONOR.

9 AND I THINK THE PROBLEM THAT MS. KELLEHER SPOKE TO IS THE  
10 FACT THAT ON THIS EXPEDITED SCHEDULE OF DISCOVERY, WE  
11 ENCOUNTERED QUITE A FEW ADDITIONAL ISSUES AND CHALLENGES THAT  
12 PLAINTIFFS FLAGGED THAT PLAINTIFFS WANTED US TO RUN DOWN.

13 WE ARE IN THE POSITION OF HAVING TO TRIAGE COMPETING  
14 REQUESTS AND TRY TO SATISFY THE COMPETING DEMANDS.

15 AND SO WE MADE THAT REPRESENTATION BECAUSE WE BELIEVED  
16 THAT WE WOULD BE IN A POSITION TO PRODUCE THOSE DOCUMENTS.

17 UNFORTUNATELY, WE SPENT THE WEEK TRYING TO ANSWER  
18 ADDITIONAL QUESTIONS ABOUT, ABOUT THE DOCUMENTS THAT WE HAD  
19 PREVIOUSLY PRODUCED, AND THAT DELAYED OUR ABILITY TO GET THE  
20 DOCUMENTS OUT THE DOOR.

21 WE ARE -- AS MS. KELLEHER INDICATED, WE ARE IN -- WE HAVE  
22 ALREADY MADE SOME DOCUMENTS AVAILABLE TO PLAINTIFFS DURING THE  
23 COURSE OF THIS CALL. THEY WENT UP ON THE FTP SITE. WE'RE  
24 GOING TO BE MAKING MORE PRODUCTIONS THIS WEEK.

25 I THINK SOME OF THESE DISPUTES THAT ARE BROUGHT TO YOUR

1 HONOR DON'T PAINT A FULL PICTURE OF THE AMOUNT OF WORK THAT'S  
2 GOING ON BEHIND THE SCENES TO ACTUALLY GATHER AND PROCESS AND  
3 PRODUCE THESE MATERIALS, WHICH I THINK AS I INDICATED ON THE  
4 LAST CONFERENCE, REALLY AMOUNTS TO A LIVE STREAMING OF ONGOING  
5 CENSUS OPERATIONS, AND THAT'S INCREDIBLY CHALLENGING.

6 MR. HUSENY: YOUR HONOR, IF I JUST MAY RESPOND TO  
7 THAT?

8 PLAINTIFFS' VIEW IS OBVIOUSLY VERY, VERY DIFFERENT. WE'VE  
9 BEEN NOW ENGAGED IN THIS PROCESS FOR TWO MONTHS. THE IDEA THAT  
10 DEFENDANTS HAVE ONLY HAD A WEEK OR TWO TO RESPOND AND PRODUCE  
11 RECENT DOCUMENTS IS JUST NOT TRUE.

12 WE ONLY FIND OUT ABOUT INFORMATION BECAUSE OF THESE CMC'S.  
13 DESPITE WHAT MR. COGHLAN SAID LAST WEEK, WE GOT NOTHING ABOUT  
14 THE ANOMALIES, AND WE HEARD TODAY, AT THE SAME TIME AS YOUR  
15 HONOR, THE NEW DATE IS MOVED TO MARCH 6TH.

16 MEANWHILE, WE'RE PRESSING THEM EVERY DAY FOR THE  
17 INFORMATION IN THE DOCUMENTS AND WE'RE NOT GETTING IT. THE  
18 IDEA THAT LAST WEEK WAS SPENT ENTIRELY BY THE DEFENDANTS  
19 ANSWERING OUR QUESTIONS ABOUT WHY THEY DIDN'T LOG DOCUMENTS  
20 THAT UNDER LAW OF COURSE THEY SHOULD HAVE LOGGED, BE THAT AS IT  
21 MAY, THAT AMOUNT OF TIME -- WHICH IS THEIR ISSUE, FRANKLY --  
22 BUT THAT AMOUNT OF TIME DOESN'T TAKE AWAY FROM DEFENDANTS  
23 ACTUALLY PRODUCING MATERIALS.

24 WE HAVEN'T GOTTEN ANY -- EVEN IF YOU LOOK BACK AT  
25 DECEMBER 31ST, WE RECEIVED 25 DOCUMENTS. WE RECEIVED 84

1 DOCUMENTS.

2 AND WE'VE BEEN VERY FORTHRIGHT. WE SAID WE WERE VERY  
3 APPRECIATIVE -- WHEN MS. KELLEHER PRODUCED THOSE MATERIALS, WE  
4 HAD A MEET AND CONFER AND SHE PRODUCED THEM, WE THOUGHT THAT  
5 WAS A GREAT MOVE FORWARD AND A STEP FORWARD BECAUSE WE FINALLY  
6 RECEIVED SOME RECENT DOCUMENTS.

7 BUT SINCE THEN, NOTHING.

8 AND THEIR REASONING BEING THAT THEY'VE HAD TO RESPOND TO  
9 PRIVILEGE LOG QUESTIONS ABOUT DOCUMENTS THEY SHOULD HAVE  
10 LOGGED, THAT JUST DOESN'T SEEM CREDIBLE TO US, YOUR HONOR.

11 SO WE'RE FINE CONTINUING TO WORK WITH THEM. EVEN THE  
12 REASONING GIVEN EARLIER BY COUNSEL THAT THERE ARE TEN  
13 ADDITIONAL CUSTODIANS THAT ARE IN THE WINGS, WE TOLD THEM WEEKS  
14 AGO THOSE WERE SECONDARY CUSTODIANS, WE WANT YOU TO FOCUS ON A  
15 FEW KEY MATERIALS, AND YET WE'VE RECEIVED NOTHING.

16 SO WE'RE VERY APPRECIATIVE THAT WE'RE NOW GOING TO GET  
17 SOME OF THESE MATERIALS. BUT THE IDEA THAT PLAINTIFFS HAVE  
18 BEEN UNREASONABLE AND NOT WORKING WITH THEM IS JUST NOT TRUE.

19 THE COURT: WELL, YOU KNOW, I WILL SAY, I WAS  
20 DISAPPOINTED THAT MS. KELLEHER IS TAKING THE POSITION THAT SHE  
21 DOESN'T EVEN HAVE TO REVIEW DOCUMENTS THAT DON'T HAVE ANY  
22 ATTORNEYS ON THEM, OR FOR ATTORNEYS FOR WHICH SHE HAS ALREADY  
23 PRODUCED DOCUMENTS AND WAIVED THE PRIVILEGE.

24 SO THE FACT THAT YOU ALL SPENT A WEEK MEETING AND  
25 CONFERRING ON THOSE DOCUMENTS IS A DISAPPOINTMENT, BUT I HOPE

1 IT WILL BE REMEDIED THIS WEEK WITH THESE NEW DEADLINES.

2 NOW, LET ME ASK, WHAT ABOUT THE ASSOCIATE DIRECTOR FOR  
3 FIELD OPERATIONS, TIMOTHY OLSON, OR THE BUREAU CHIEF OPERATING  
4 OFFICER, ENRIQUE LAMAS? WHEN ARE THOSE CUSTODIANS' DOCUMENTS  
5 GOING TO BE PRODUCED?

6 MS. KELLEHER: I BELIEVE MR. LAMAS' DOCUMENTS HAVE  
7 ALREADY BEEN PRODUCED AND IT WOULD ONLY BE ANY UPDATE TO HIS  
8 PRIOR COLLECTION THAT WOULD BE FORTHCOMING, AND MR. OLSON'S  
9 COLLECTION HAS BEEN REMEDIED AND WILL BE PRODUCED TO PLAINTIFFS  
10 THIS WEEK.

11 THE COURT: IT'S NOT GOING TO BE IN TODAY'S  
12 PRODUCTION?

13 MS. KELLEHER: I CAN CHECK, YOUR HONOR, BUT I THINK  
14 THEY HAD PRIORITIZED THE SCHEDULING DOCUMENTS, BECAUSE I THINK  
15 THAT WAS THE INSTRUCTIONS THEY GOT FROM US, THAT THAT WAS THE  
16 PRIORITY FROM PLAINTIFFS. AND IT MAY BE THAT HE'S -- THAT HIS  
17 MATERIALS ARE ALSO IN THERE. I CAN CONFIRM.

18 THE COURT: LET ME HEAR FROM THE PLAINTIFFS. WHAT DO  
19 YOU THINK? MR. LAMAS' DOCUMENTS ARE COMPLETED?

20 MR. HUSENY: WE DON'T THINK THEY'RE COMPLETED, YOUR  
21 HONOR. WE PUSHED FOR THOSE MATERIALS FOR A FEW WEEKS AS WELL.

22 WE DID RECEIVE, AT THE END OF DECEMBER, A PRODUCTION THAT  
23 HAD 700-ODD DOCUMENTS. A VAST BULK OF THOSE, FRANKLY, ARE NOT  
24 PARTICULARLY RELEVANT TO THE CASE. BUT THAT COULD NOT BE THE  
25 FULL SET OF MR. LAMAS' DOCUMENTS.

1 WE DIDN'T GET A PRIVILEGE LOG WITH THAT PRODUCTION. SO TO  
2 THE EXTENT THAT THERE ARE MATERIALS FROM MR. LAMAS THAT WERE  
3 WITHHELD OR MAYBE CARVED OFF AS PART OF THE OVERALL CARVE OFF  
4 DISCUSSION THAT WE'RE HAVING, THAT MAY BE A SEPARATE SET OF  
5 MATERIALS.

6 BUT WE DON'T UNDERSTAND HOW THE MATERIALS THAT WERE  
7 PRODUCED ON DECEMBER 31ST IN ONE FELL SWOOP ARE ALL OF  
8 MR. LAMAS' DOCUMENTS, NOT WHEN YOU LOOK AT THE OTHER CUSTODIANS  
9 AND THE AMOUNT OF MATERIALS PRODUCED, AND FRANKLY THE ROLE  
10 THAT, FROM OUR UNDERSTANDING, OF SOME OF THE DOCUMENTS FROM  
11 OTHER CUSTODIANS THAT INCLUDE MR. LAMAS, HIS ROLE AS  
12 IMPLEMENTING IN PART THE PRESIDENTIAL MEMORANDUM.

13 SO WE DO NOT THINK THAT THAT PRODUCTION IS COMPLETE.

14 THE COURT: OKAY. SO WHAT'S YOUR SUGGESTION ON LAMAS  
15 AND OLSON?

16 MR. HUSENY: WELL, ON LAMAS, YOUR HONOR, IF  
17 MS. KELLEHER OR COUNSEL AFTER THIS CONVERSATION CAN REPRESENT  
18 TO US WHAT THEY DID, HOW MANY DOCUMENTS THEY PULLED, WHAT THEY  
19 REVIEWED AND WHERE THOSE DOCUMENTS ARE, THAT WOULD GIVE US SOME  
20 COMFORT THAT THE 700 IS COMPLETE. WE CAN HAVE THAT  
21 CONVERSATION AND PERHAPS NOT HAVE TO MOVE FORWARD.

22 AND WE OBVIOUSLY DON'T HAVE ACCESS TO THE MATERIALS, BUT  
23 WE DON'T KNOW AND IT DOESN'T MAKE SENSE TO US THAT THE NUMBERS  
24 THEY'VE PROVIDED --

25 THE COURT: OKAY. THIS IS WHAT I WOULD LIKE: I



1           WOULD LIKE A DECLARATION UNDER PENALTY OF PERJURY FROM  
2           MS. KELLEHER REPRESENTING THAT THERE ARE NO FURTHER DOCUMENTS,  
3           LAYING OUT WHAT YOU DID TO COLLECT MR. LAMAS' DOCUMENTS, AND  
4           THAT YOU ARE CERTIFYING THAT THERE ARE NO FURTHER DOCUMENTS OF  
5           HIS THAT SHOULD BE PRODUCED.

6                   NOW, IF IT TURNS OUT THAT WE LATER FIND OUT THAT THERE ARE  
7           SOME, YOU WILL HAVE TO EXPLAIN THE DISCREPANCY.   OKAY?

8                   MS. KELLEHER:   UNDERSTOOD, YOUR HONOR.

9                   THE COURT:   ALL RIGHT.   WHEN CAN YOU FILE THAT  
10          DECLARATION?

11                   MS. KELLEHER:   I CAN FILE IT TOMORROW.

12                   THE COURT:   OKAY.   THANK YOU.

13                   MS. KELLEHER:   AND YOUR HONOR, JUST TO REITERATE, I'M  
14          SORRY THAT WE DID NOT MAKE ANY PRODUCTIONS LAST WEEK.   WE DID  
15          SPEND A LOT OF TIME TRYING TO RESPOND TO PLAINTIFFS' QUESTIONS  
16          AND, I MEAN, FRANKLY, I'M REGRETTING THE TIME WE SPENT ON THAT  
17          BECAUSE IT DOESN'T SEEM LIKE WE MADE MUCH HEADWAY ON THOSE  
18          POINTS AND WE PROBABLY COULD HAVE DONE PRODUCTIONS INSTEAD.

19                   SO WE WILL REDOUBLE OUR EFFORTS TO GET THOSE DOCUMENTS  
20          PRODUCED AS QUICKLY AS WE'RE ABLE TO THIS WEEK.

21                   THE COURT:   ALL RIGHT.   I APPRECIATE THAT.

22                   I MEAN, SPENDING A LOT OF TIME MEETING AND CONFERRING  
23          SAYING YOU DON'T HAVE TO DO REVIEW OF DOCUMENTS THAT YOU THINK  
24          ARE PRIVILEGED AND HAVE NO ATTORNEYS ON THEM, I DON'T THINK  
25          THAT'S A GOOD USE OF TIME.

1 MS. KELLEHER: YOUR HONOR, SOME OF THEM DO -- THEY  
2 SORT OF ORIGINATED WITH ATTORNEYS, SO I DON'T WANT TO MISSPEAK  
3 IN THE SENSE OF -- FOR EXAMPLE, MR. CHRISTY DID 16 DECLARATIONS  
4 FOR YOUR HONOR IN THIS CASE TO ADDRESS COMPLAINTS THAT CAME  
5 INTO THE COURT'S E-MAIL ADDRESS.

6 THE COURT: OKAY. HANG ON A SECOND. YOU'LL PUT IT  
7 IN YOUR DECLARATION.

8 MS. KELLEHER: OKAY. UNDERSTOOD, YOUR HONOR.

9 THE COURT: OKAY. ALL RIGHT.

10 WELL, I GUESS WITH OLSON, WE'LL HAVE TO SEE WHAT'S  
11 PRODUCED TODAY.

12 WHEN ELSE DO YOU THINK YOU'RE GOING TO PRODUCE DOCUMENTS?  
13 I MEAN, I THINK WE ALL UNDERSTAND THAT ASSOCIATE DIRECTOR OLSON  
14 IS AN IMPORTANT WITNESS. BUT WHEN ELSE ARE YOU GOING TO  
15 PRODUCE DOCUMENTS FOR HIM?

16 MS. KELLEHER: I THINK OUR PLAN, YOUR HONOR, IS TO  
17 PRODUCE DOCUMENTS AS MUCH AS WE CAN THIS WEEK AND TO TRY TO GET  
18 THROUGH THE REFRESH AND THE ADDITIONAL -- THE UPDATING TO OUR  
19 PRIOR COLLECTION FROM OUR CUSTODIANS.

20 THE COURT: ALL RIGHT. I THINK I WOULD LIKE A  
21 SIMILAR DECLARATION ABOUT MR. OLSON, BECAUSE HE'S A PRETTY KEY  
22 WITNESS. DO YOU WANT TO DO THAT BY FRIDAY?

23 MS. KELLEHER: CERTAINLY, YOUR HONOR.

24 THE COURT: OKAY. SO THAT WOULD BE THE 15TH, PLEASE.

25 MS. KELLEHER: YES, YOUR HONOR.

1 THE COURT: OKAY. GREAT. THANK YOU.

2 NOW, ANOTHER ISSUE THAT'S RAISED -- I'M JUST TRYING TO  
3 HELP OUT HERE MY MAGISTRATE JUDGE PANEL. I CAN'T HAVE THEM  
4 OVERWHELMED WITH ALL THESE MOTIONS.

5 SO LET ME ASK ABOUT THIS DATA QUALITY EXECUTIVE GUIDANCE  
6 GROUP. I DID GO BACK AND LOOK AT ASSOCIATE DIRECTOR FONTENOT'S  
7 OCTOBER 8TH, 2020 DECLARATION, AND IN PARAGRAPH 11, HE DOES  
8 SAY, QUOTE, "I ALSO NOTE AGAIN FOR THE COURT THAT THE CENSUS  
9 BUREAU IS WATCHING QUALITY INDICATORS CLOSELY, AND THAT WE  
10 FORMED A DATA QUALITY EXECUTIVE GUIDANCE GROUP TO PROVIDE  
11 DIRECTION AND APPROVALS ABOUT QUALITY ASSESSMENTS OF CHANGES TO  
12 THE OPERATIONAL PLANS AND OF THE 2020 CENSUS DURING AND AFTER  
13 THE DATA COLLECTION PROCESS."

14 SO IT SOUNDS LIKE IT'S A PRETTY IMPORTANT GROUP THAT IS  
15 DOING IMPORTANT WORK. WHEN ARE YOU GOING TO BE PRODUCING  
16 DOCUMENTS FROM THIS GROUP? THERE'S MENTION OF A NETWORK SOURCE  
17 REPOSITORY.

18 MR. SVERDLOV: SO, YOUR HONOR, WE HAVE BEEN -- WE  
19 HAVE BEEN COLLECTING THE DATA QUALITY EGG MATERIALS, AS THEY'RE  
20 KNOWN. PLAINTIFFS HAVE SOME OF THEM. WE ARE CONTINUING TO DO  
21 REVIEW OF THOSE MATERIALS.

22 I SHOULD NOTE, YOUR HONOR, THAT THOSE MATERIALS HAVE TO GO  
23 THROUGH THE TITLE 13 DISCLOSURE REVIEW PROCESS, SO THESE ARE  
24 NOT MATERIALS THAT CAN JUST BE PULLED OFF AN E-MAIL --

25 THE COURT: AND WHEN WERE THOSE PRODUCED? BECAUSE I

1 THOUGHT THE PLAINTIFFS THOUGHT THEY HADN'T RECEIVED ANY, BUT  
2 MAYBE I'M MISREMEMBERING IN YOUR JOINT DISCOVERY STATUS REPORT.

3 I'M SORRY. LET ME TAKE A QUICK LOOK.

4 LET ME ASK THE PLAINTIFF, DO YOU THINK YOU'VE GOTTEN SOME  
5 OF THESE, OR NOT? YOU SAY DEFENDANTS STILL HAVE PRODUCED  
6 NOTHING FROM THESE FOUR SOURCES, PARTICULARLY FROM THE EGG  
7 NETWORK SOURCE REPOSITORY AND E-MAIL LIST.

8 MR. HUSENY: THAT'S CORRECT, YOUR HONOR. WE HAVE NOT  
9 RECEIVED THE MATERIALS FROM THOSE SOURCES.

10 WHAT I THINK WE HAVE RECEIVED THAT EITHER ORIGINATES FROM  
11 OR SOMEHOW MAKES ITS WAY THROUGH THE DATA QUALITY EGG GROUP, AS  
12 COUNSEL JUST SAID, ARE A FEW MEETING NOTES, AND THERE'S BEEN  
13 MAYBE ONE PRESENTATION.

14 BUT THIS IS A GROUP THAT IS ENGAGING IN DETAILED  
15 PRESENTATIONS. WE UNDERSTAND FROM MR. FONTENOT AND FROM SOME  
16 OF THE MATERIALS WE'VE RECEIVED THAT THOSE PRESENTATIONS,  
17 THOUGH IN THE TAIL ON THE DATA QUALITY ISSUES THAT THE CENSUS  
18 BUREAU IS WORKING THROUGH, AND THEY'RE ALL IN THAT REPOSITORY  
19 OR IN THIS SEPARATE E-MAIL LIST SERVER.

20 WE DON'T KNOW, FOR EXAMPLE, FOR SURE WHAT'S IN BOTH, BUT  
21 THOSE ARE THE SOURCES THAT HAVE NOT BEEN PULLED AND PRODUCED  
22 FROM.

23 SO WHILE WE HAVE SOME SATELLITE MATERIALS THAT TOUCH ON  
24 EGG, VERY FEW AND NOT THE CORE MATERIALS THAT I THINK ARE  
25 HIGHLY RELEVANT.

1 THE COURT: ALL RIGHT. WELL, THIS IS WHAT I'D LIKE:  
2 I'D LIKE A DECLARATION ON THIS ONE AS WELL OF WHAT YOU PRODUCED  
3 FROM THIS, WHAT YOU COLLECTED, WHEN YOU COLLECTED. OKAY? WHEN  
4 CAN YOU DO A DATA QUALITY EGG DECLARATION?

5 MR. SVERDLOV: YOUR HONOR, CAN I -- CAN I HAVE UNTIL  
6 THURSDAY TO SUBMIT A DECLARATION DISCUSSING THAT?

7 THE COURT: THAT'S FINE. THAT WOULD BE THE 14TH.  
8 OKAY. THANK YOU.

9 ALL RIGHT. THANK YOU FOR YOUR PATIENCE WITH ME ON THIS  
10 LONG CALENDAR.

11 WILL THERE BE ANY EGG DOCUMENTS IN THE PRODUCTION TODAY,  
12 OR ANY OF THE PRODUCTIONS THIS WEEK?

13 MR. SVERDLOV: YOUR HONOR, I DO NOT BELIEVE -- I DO  
14 NOT BELIEVE THERE WILL BE EGG DOCUMENTS IN THE PRODUCTION  
15 TODAY.

16 HOWEVER, WE ARE MAKING ALL EFFORTS TO PRODUCE THEM THIS  
17 WEEK. LIKE I SAID, THEY HAVE TO GO THROUGH THE DISCLOSURE  
18 AVOIDANCE REVIEW PROCESS, AND THAT'S -- THAT'S JUST A MATTER OF  
19 HAVING THE REQUISITE PEOPLE, WHO ARE ALSO WORKING ON COMPLETING  
20 THE CENSUS, TAKE TIME TO REVIEW THESE MATERIALS.

21 WE ARE PUTTING THEM THROUGH REVIEW EXPEDITIOUSLY -- I  
22 SHOULD SAY THE CENSUS BUREAU IS PUTTING THEM THROUGH REVIEW  
23 EXPEDITIOUSLY AND WE HOPE TO HAVE THEM TO PRODUCE THIS WEEK.

24 THE COURT: OKAY. SO HAVE THE DOCUMENTS -- WELL, I  
25 GUESS SINCE THERE'S A -- I WAS GOING TO ASK WHICH, WHICH

1 CUSTODIANS HAVE ALL THE DOCUMENTS THAT HAVE BEEN COLLECTED SO  
2 FAR ALREADY BEEN PRODUCED? BUT IT SOUNDS LIKE THE ANSWER MAY  
3 BE NONE BECAUSE OF THIS SEGREGATION ISSUE. IS THAT RIGHT?

4 MS. KELLEHER: I THINK THAT'S RIGHT, YOUR HONOR,  
5 BECAUSE WE DID RUN THE LITIGATION SCREENING TERMS AGAINST OUR,  
6 ALL OUR CUSTODIANS.

7 THE COURT: OKAY. OKAY.

8 MR. HUSENY: THE SEGREGATION ISSUE, AND ALSO --

9 THE REPORTER: I'M SORRY, MR. HUSENY. CAN YOU REPEAT  
10 THAT?

11 MR. HUSENY: MY APOLOGIES.

12 THE ONLY THING I WOULD ADD, YOUR HONOR, IS THE SEGREGATION  
13 ISSUE, BUT ALSO THE RECENT POLL ISSUE. SO TO THE EXTENT THERE  
14 WERE A LOT OF MATERIALS PRODUCED FOR SOME CUSTODIANS EARLIER,  
15 BUT THEY'RE FROM THE OLDER POLL, THAT IS ALSO SORT OF  
16 COMPLETION, A COMPLETENESS ISSUE.

17 THE COURT: ALL RIGHT. SO YOU DON'T THINK ANY  
18 CUSTODIAN FOR WHOM DOCUMENTS HAVE ALREADY BEEN COLLECTED,  
19 PRODUCTIONS HAVE BEEN COMPLETED? YOU AGREE WITH THAT,  
20 MR. HUSENY?

21 MR. HUSENY: YES, YOUR HONOR.

22 THE COURT: OKAY. ALL RIGHT.

23 LET ME ASK ABOUT DOCUMENT RETENTION POLICIES. DOES THE  
24 DEPARTMENT OF COMMERCE AND THE CENSUS BUREAU HAVE DOCUMENT  
25 RETENTION POLICIES?

1 MS. KELLEHER: YES, YOUR HONOR.

2 THE COURT: OKAY. AND DO THOSE CHANGE WITH  
3 ADMINISTRATIONS?

4 MS. KELLEHER: I DON'T BELIEVE SO, YOUR HONOR. I  
5 THINK THE FEDERAL RECORDS ACT OR THE SORN, THE SYSTEMS OF  
6 RECORD NOTICE, ARE GENERALLY -- AGENCIES PUBLISH THEM IN THE  
7 FEDERAL REGISTER, AND I BELIEVE THEY SORT OF STAY THE SAME  
8 ADMINISTRATION TO ADMINISTRATION.

9 IT'S ONLY, TO THE EXTENT THEY CHANGE, IF THE AGENCY  
10 CHANGES THE DATABASES OR THEIR SYSTEMS, THE USES FOR WHICH THE  
11 DATA ARE USED.

12 THE COURT: OKAY. I THINK IT MIGHT BE HELPFUL FOR ME  
13 TO UNDERSTAND BOTH THE DEPARTMENT OF COMMERCE AND THE CENSUS  
14 BUREAU'S DOCUMENT RETENTION POLICY. CAN YOU FILE THOSE BY  
15 FRIDAY?

16 MS. KELLEHER: YES, YOUR HONOR.

17 THE COURT: OR I DON'T KNOW -- I THINK IT WOULD JUST  
18 BE USEFUL TO KNOW.

19 OKAY. THANK YOU. IF YOU WOULD PLEASE FILE THOSE ON  
20 JANUARY THE 15TH, I APPRECIATE IT.

21 MS. KELLEHER: CERTAINLY, YOUR HONOR.

22 THE COURT: OKAY. ALL RIGHT. NOW, THAT WAS ALL OF  
23 MY -- OH, NOW, YOU SERVED AN INTERROGATORY THAT ASKED FOR  
24 IDENTIFICATION OF ANY OF THE DATA PROCESSING ANOMALIES; IS THAT  
25 CORRECT?

1 MR. HUSENY: THAT'S CORRECT, YOUR HONOR.

2 THE COURT: AND THE DEFENDANTS ARE NOT GOING TO  
3 ANSWER THAT ONE?

4 MR. HUSENY: THAT'S CORRECT. THE THREE  
5 INTERROGATORIES THEY SAID THEY WEREN'T GOING TO ANSWER BECAUSE  
6 THEY WERE -- THEY COUNTED OUT THAT WE HAD -- OUR SUBPARTS  
7 TOTALLED 80 OR 90 INTERROGATORIES IN THEIR REVIEW, WHICH WE  
8 DISAGREE WITH.

9 BUT THE THREE THAT THEY SAID THEY WERE NOT GOING TO ANSWER  
10 HAD TO DEAL WITH THE DATA PROCESSING ANOMALIES, IF I REMEMBER  
11 CORRECTLY, THE PRESIDENTIAL MEMORANDUM, AND THE DENOMINATOR OF  
12 THE COMPLETION RATE NUMBERS, AND THAT IS THE AMOUNT OF TOTAL  
13 ADDRESS UNITS IN THE MASTER ADDRESS FILE, THE MAF, OR A  
14 DERIVATIVE OF THE MAF THAT THE CENSUS BUREAU USES TO COME UP  
15 WITH THE COMPLETION RATES.

16 WE ASKED THOSE THREE TOPICS AND THEY SAID THAT FOR THOSE  
17 THREE TOPICS, THEY WERE NOT GOING TO ANSWER BECAUSE THEY WERE  
18 BEYOND THE SCOPE OF THE TEN INTERROGATORIES THAT WE REQUESTED.

19 THE COURT: THOSE SEEM LIKE PRETTY IMPORTANT  
20 INTERROGATORIES TO THIS CASE, THE MERITS OF THE CASE.

21 MR. HUSENY: THANK YOU, YOUR HONOR. WE BELIEVE SO  
22 CERTAINLY.

23 WE HAVE NOT ENGAGED WITH THE DEFENDANTS YET ON THEIR  
24 RESPONSES TO THE INTERROGATORIES AND ARE PLANNING TO DO THAT IN  
25 MEET AND CONFER.



1 FRANKLY, OUR POSITION IS THEY'VE TAKEN THE VIEW -- AND WE  
2 USED ONE EXAMPLE IN WHAT WE FILED LAST WEEK -- THAT BECAUSE  
3 THEY WOULDN'T PRODUCE THE DATA TO US AND SAID ASK AN  
4 INTERROGATORY, WHICH WE THEN DID, AND ASKED AN INTERROGATORY  
5 THAT SAID, PLEASE ENUMERATE FOR US OR TELL US HOW YOU  
6 ENUMERATED THESE ADDRESSES, WAS IT BY PROXY? WAS IT BY  
7 ADMINISTRATION RECORD? WAS IT POP COUNT ONLY? WAS IT ONLY  
8 PARTICULAR NAMES?

9 WE ASKED THEM TO BREAK DOWN SUBPARTS HOW WE WANTED THE  
10 INTERROGATORY TO LAY OUT BECAUSE WE WERE AFRAID, WITHOUT DOING  
11 THAT, WE WOULDN'T GET A FULL UNDERSTANDING OF THE ENUMERATION.

12 AND THEY BROKE OUT THAT INTERROGATORY INTO I THINK IT WAS  
13 30 DIFFERENT INTERROGATORIES AND SAID, WE'RE NOT GOING TO  
14 ANSWER ALL OF THAT, OR WE'LL ANSWER THOSE PIECES THAT WE  
15 FELT -- OR THAT THEY FELT IT WAS APPROPRIATE TO ANSWER, BUT  
16 THEN USED THE FACT THAT WE WERE PAST THE TEN INTERROGATORY  
17 LIMIT TO NOT ANSWER THE OTHER THREE INTERROGATORIES.

18 SO WE TAKE SOME ISSUE WITH THAT, OF COURSE, FOR A VARIETY  
19 OF REASONS.

20 BUT WE DO AGREE THAT THE THREE INTERROGATORIES WE'D LIKE  
21 THAT THEY DID NOT ANSWER ARE IMPORTANT INTERROGATORIES.

22 THE COURT: I'M GOING TO INCREASE THE LIMIT TO 15  
23 INTERROGATORIES PER SIDE. ALL RIGHT? THAT CANNOT BE A BASIS  
24 NOT TO ANSWER.

25 MR. SVERDLOV: YOUR HONOR, MAY I QUICKLY -- MAY I

1 QUICKLY ADDRESS THIS ISSUE? I THINK THERE'S PERHAPS SOME  
2 CLARITY THAT'S WARRANTED HERE.

3 WE PROVIDED PLAINTIFFS OUR OBJECTIONS AND RESPONSES BY THE  
4 DEADLINE, AND IT SOUNDS TO ME LIKE PLAINTIFFS WISH TO ENGAGE  
5 WITH US IN A MEET AND CONFER, WHICH WE ABSOLUTELY WELCOME. IT  
6 DOESN'T SEEM LIKE THIS IS THE KIND OF ISSUE THAT SHOULD BE  
7 PRESENTED TO THE COURT IN THE FIRST INSTANCE.

8 BUT SINCE PLAINTIFFS HAVE OPENED THE DOOR, I WILL SAY THAT  
9 THE CASE LAW IS FAIRLY CLEAR THAT INTERROGATORIES COUNT FOR  
10 SEPARATE, SEPARATE QUESTIONS, OR SUBPARTS -- EXCUSE ME --  
11 SUBPARTS OF INTERROGATORIES COUNT FOR SEPARATE QUESTIONS WHEN  
12 THEY DEMAND A DISTINCT INQUIRY.

13 AND PLAINTIFFS HAVE STYLED ALL OF THEIR INTERROGATORIES TO  
14 INCLUDE COMPLETELY DISTINCT INQUIRIES, AND MANY TIMES MANY,  
15 MANY DISTINCT INQUIRIES.

16 AND WE HAVE FOLLOWED THE CASE LAW AND THE PRECEDENT IN  
17 APPROPRIATELY NUMBERING THOSE, RENUMBERING THOSE SUBPARTS AS A  
18 SEPARATE INTERROGATORY.

19 I SHOULD SAY, YOUR HONOR, THAT WE DID NOT STAND ON THIS  
20 OBJECTION FOR PURPOSES OF RESPONDING TO THE DATA  
21 INTERROGATORIES. THE KIND OF DATA THAT PLAINTIFFS HAVE BEEN  
22 ASKING FOR HAVE ASKED US TO PULL FROM OUR DATABASES. WE DID  
23 NOT STAND ON THAT OBJECTION BECAUSE WE BELIEVED THAT IN THE  
24 INTERESTS OF GETTING DISCOVERY RESOLVED, PLAINTIFFS -- IT  
25 SERVED EVERYBODY'S INTERESTS FOR US TO PROVIDE THAT

1 INFORMATION.

2 THE INTERROGATORIES THAT COUNSEL IS NOW DISCUSSING WERE  
3 PLACED AT THE END OF PLAINTIFFS' LIST. THEY WERE NOT THE FIRST  
4 INTERROGATORIES. WE WENT DOWN THE LINE FROM THE FIRST  
5 INTERROGATORY UNTIL WE GOT TO TEN AND CLEARLY EXPLAINED TO  
6 PLAINTIFFS IN OUR OBJECTIONS THAT WE WOULD NOT BE PROVIDING  
7 NARRATIVE RESPONSES AFTER THOSE FIRST TEN INTERROGATORIES.

8 I SHOULD -- I SHOULD NOTE THAT --

9 THE COURT: SO WHEN -- I'M SORRY TO INTERRUPT YOU.

10 WHO'S BEING DEPOSED TOMORROW AND WHO'S BEING DEPOSED ON  
11 THURSDAY?

12 MR. HUSENY: YOUR HONOR, WE DON'T KNOW CURRENTLY  
13 WHO -- THE NAME OF THE WITNESS THAT'S BEING DEPOSED ON  
14 THURSDAY. IT IS THE 30(B)(6) WITNESS FOR THE, FOR THE CENSUS  
15 BUREAU.

16 TOMORROW WE HAVE THE 30(B)(6) WITNESS FOR THE DEPARTMENT  
17 OF COMMERCE, AND HIS NAME IS ROBERT BURKETT. THAT'S WHO WE'VE  
18 BEEN TOLD WILL BE THE DEPONENT, 30(B)(6) DEPONENT FOR THE  
19 DEPARTMENT OF COMMERCE.

20 WE DO NOT KNOW WHO THE DEPARTMENT OF CENSUS BUREAU  
21 DEPONENT WILL BE.

22 THE COURT: SO HOW MANY DOCUMENTS DID YOU JUST  
23 PRODUCE TO THE PLAINTIFFS DURING THIS CALL, THIS CONFERENCE  
24 CALL, WHICH STARTED AT 6:00 P.M. EASTERN TIME? HOW MANY  
25 DOCUMENTS DID YOU PRODUCE?

1 MS. KELLEHER: I DON'T KNOW THE VOLUME, YOUR HONOR.  
2 I CAN FIND OUT. I KNOW THEY WERE UPLOADED BEFORE THE  
3 CONFERENCE AND THEN THE UPLOADING PROCESS CONCLUDED WHILE WE  
4 WERE MEETING.

5 THE COURT: WHAT'S THE ANSWER? YOU HAVE FOUR  
6 DEPARTMENT OF JUSTICE LAWYERS HERE. YOU DON'T KNOW THE NUMBER  
7 OF DOCUMENTS THAT WERE PRODUCED DURING THIS CONFERENCE?

8 MS. KELLEHER: I DON'T, YOUR HONOR. I'M SORRY.

9 THE COURT: MR. COGLAN, MR. ROSENBERG, MR. SVERDLOV,  
10 AREN'T YOU IN TOUCH ONLINE? I ALWAYS SEE YOU READING YOUR  
11 COMPUTER MONITORS. NO ONE KNOWS WHAT THE PRODUCTION DOCUMENT  
12 VOLUME WAS?

13 MR. ROSENBERG: YOUR HONOR, I DO NOT HAVE PERSONAL  
14 KNOWLEDGE OF WHAT THE VOLUME OF DOCUMENTS PRODUCED TODAY WERE.  
15 WE'VE BEEN TRYING TO DIVIDE UP SOME OF OUR LABOR.

16 I WILL NOTE THAT IN LIGHT OF THE --

17 THE COURT: OKAY. WHY DON'T YOU CONTACT WHO IS YOUR  
18 VENDOR WHO DID THIS UPLOADING OR WHOMEVER IS RESPONSIBLE FOR  
19 DOING THE UPLOADING? IS THERE NO ONE WHO CAN CONTACT THAT  
20 PERSON RIGHT NOW?

21 IT LOOKS LIKE YOU'RE TRYING TO SANDBAG THE PLAINTIFFS IN  
22 NOT PRODUCING ANYTHING IN JANUARY, AND THEN THE NIGHT BEFORE  
23 THE 30(B)(6), THE CORPORATE REPRESENTATIVE, THE BINDING  
24 TESTIMONY FOR THE COMMERCE DEPARTMENT, YOU SUDDENLY MAKE A  
25 PRODUCTION DURING A 3:00 P.M., 6:00 P.M. EASTERN TIME, CASE

1 MANAGEMENT CONFERENCE AFTER YOU PREVIOUSLY TOLD ME ON  
2 JANUARY 4TH THAT THE DEFENDANTS WOULD COMPLETE THEIR DOCUMENT  
3 PRODUCTION, COULD COMPLETE THEIR DOCUMENT PRODUCTION BY  
4 JANUARY 8TH. YOU SAID LAST WEEK.

5 THE FACT DISCOVERY CUTOFF WAS ACTUALLY JANUARY 7TH. YOU  
6 WANTED ME TO KEEP THE JANUARY 7TH FACT DISCOVERY CUTOFF FOR  
7 DOCUMENTS. YOU ONLY WANTED IT EXTENDED TO JANUARY 14TH FOR  
8 DEPOSITIONS.

9 SO YOU REPRESENTED TO ME THAT YOU WOULD COMPLETE YOUR  
10 DOCUMENT PRODUCTION BY THURSDAY, JANUARY 7TH, AND YOU MADE NO  
11 PRODUCTION WHATSOEVER THE ENTIRE MONTH OF JANUARY UNTIL DURING  
12 THIS CMC, WHICH STARTED AT 6:00 P.M. EASTERN TIME, WHEN YOU  
13 KNOW THE COMMERCE DEPARTMENT'S CORPORATE REPRESENTATIVE, WHO  
14 WILL BE GIVING BINDING TESTIMONY FOR THE COMMERCE DEPARTMENT,  
15 IS TESTIFYING TOMORROW AT DEPOSITION.

16 HOW DO YOU THINK THAT LOOKS?

17 MR. ROSENBERG: YOUR HONOR, IT'S NOT THE ENTIRE MONTH  
18 OF JANUARY. IT'S ONE WEEK.

19 AND THE ISSUE THAT WE ARE FACING IS THAT BECAUSE --

20 THE COURT: OKAY. I'M SORRY, MR. ROSENBERG --  
21 MR. ROSENBERG, DID YOU REPRESENT TO ME ON JANUARY 4TH THAT YOU  
22 COULD COMPLETE DOCUMENT PRODUCTION BY JANUARY 7TH?

23 MR. ROSENBERG: I DON'T RECALL MAKING, PERSONALLY  
24 MAKING -- IF YOU'RE ASKING ME PERSONALLY, I DON'T RECALL  
25 PERSONALLY MAKING THAT REPRESENTATION.

1 THE COURT: OKAY. I'M SORRY.

2 MR. ROSENBERG: THE GOVERNMENT --

3 THE COURT: LET ME JUST --

4 MR. ROSENBERG: CAN I FINISH?

5 THE COURT: -- READ ECF NUMBER 424. "DEFENDANTS'  
6 ACTUAL PROPOSAL -- WHICH PLAINTIFFS HAVE FAILED TO GRASP -- WAS  
7 FOR ALL DEFENDANTS' DOCUMENT PRODUCTION TO BE COMPLETED THIS  
8 WEEK SO THAT ALL FACT DEPOSITIONS COULD TAKE PLACE THE WEEK OF  
9 JANUARY 11."

10 THAT IS IN THE JOINT DISCOVERY STATUS REPORT.

11 MR. ROSENBERG: I AM NOT GOING TO DISPUTE THAT, YOUR  
12 HONOR.

13 THE COURT: ALL RIGHT. THANK YOU.

14 MR. ROSENBERG: WHAT I WILL SAY -- I MEAN, THE COURT  
15 HAS ASKED HOW THIS LOOKS.

16 THE GOVERNMENT HAS BEEN WORKING AS HARD AS POSSIBLE -- THE  
17 DEPARTMENT OF JUSTICE, THE DEPARTMENT OF COMMERCE, AND THE  
18 CENSUS BUREAU -- TO RESPOND TO LITERALLY A VOLLEY OF DISCOVERY  
19 ADVANCES BY PLAINTIFFS' COUNSEL, AND IT'S NOT JUST THE MEET AND  
20 CONFER OVER THE CARVEOUTS. WE HAVE MET AND CONFERRED WITH  
21 PLAINTIFFS' COUNSEL OVER MULTIPLE ISSUES OVER THE LAST WEEK,  
22 AND WE HAVE, FRANKLY, BEEN OVERBURDENED.

23 AND PART OF THE ISSUE IN TERMS OF -- THE COURT HAS ACCUSED  
24 THE GOVERNMENT OF SANDBAGGING THE PLAINTIFFS.

25 PLAINTIFFS AT THE SAME TIME, AND THE COURT AT THE SAME

1 TIME IS ASKING THAT THE GOVERNMENT PRODUCE THESE DOCUMENTS IN  
2 REAL TIME. THAT, BY NECESSITY, IS GOING TO MEAN THAT THERE  
3 WILL BE CONTINUING DOCUMENT PRODUCTIONS. THERE WILL BE  
4 DOCUMENT PRODUCTIONS AFTER TOMORROW'S 30(B)(6) DEPOSITION  
5 BECAUSE THE COURT HAS INDICATED THAT IT WANTS THE GOVERNMENT TO  
6 CONTINUE TO PRODUCE DOCUMENTS TO THE VERY END OF THE FACT  
7 DISCOVERY CUTOFF.

8 SO THAT'S JUST IN THE NATURE OF THE DISCOVERY THAT THE  
9 COURT HAS ORDERED AND THAT PLAINTIFFS ARE REQUESTING AT THIS  
10 POINT IN TIME.

11 THE COURT: THAT'S FAIR.

12 BUT I DO THINK YOU COULD HAVE DONE A PRODUCTION LAST WEEK  
13 AND I'M NOT PERSUADED -- I HAVE FOUR DEPARTMENT OF JUSTICE  
14 LAWYERS HERE, OKAY, VERY SENIOR, VERY EXPERIENCED, THAT ALL  
15 FOUR OF YOU ARE ONLY MEETING AND CONFERRING ON PLAINTIFFS'  
16 DISCOVERY REQUESTS AND THAT NOBODY COULD DO A DISCOVERY  
17 PRODUCTION LAST WEEK. BUT IT'S NEITHER HERE NOR THERE.

18 LET'S TALK ABOUT HAVING ANOTHER CMC. I WANT TO HAVE ONE  
19 THIS WEEK. YOU HAVE DEPOSITIONS TOMORROW AND THURSDAY. THEN I  
20 THINK PROBABLY WEDNESDAY OR FRIDAY MAKES SENSE. LET ME HEAR IF  
21 YOU WANT TO GET TOGETHER.

22 I THINK AT THIS POINT WHEN WE'RE DOWN TO TEN DAYS, I NEED  
23 TO BE MORE INVOLVED. IF YOU WANTED TO MEET EVERY DAY, I WOULD  
24 DO THAT, BUT I THINK YOU HAVE BETTER USE OF YOUR TIME.

25 MR. HUSENY: YOUR HONOR, WE WOULD BE PLEASED TO HAVE

1 ANOTHER, OR TWO, CMC THIS WEEK. I DO THINK THAT IT'S PROBABLY  
2 FAIR TO HAVE ONE ON FRIDAY. I DON'T KNOW THAT WE NEED ANOTHER  
3 ONE ON WEDNESDAY, ONLY BECAUSE I THINK YOUR HONOR'S ORDERS FROM  
4 THIS HEARING HOPEFULLY ARE VERY, VERY CLEAR. WE WILL RECEIVE  
5 THE MATERIALS WE NEED TO AND WE'LL BE ABLE TO USE THEM, AT  
6 LEAST IN PART, FOR THE TWO DEPOSITIONS THIS WEEK AND GETTING  
7 READY FOR, OF COURSE, THE DEPOSITIONS NEXT WEEK.

8 WE HAVEN'T, AS YOUR HONOR KNOWS, BEEN ABLE TO NOTICE THE  
9 THREE FACT DEPOSITIONS FOR NEXT WEEK BECAUSE WE DON'T HAVE ALL  
10 THE MATERIALS SO WE DON'T KNOW WHICH OF THE THREE EMPLOYEES WE  
11 WOULD WANT TO MOVE FORWARD WITH.

12 BUT WE CERTAINLY WOULD AGREE WITH A CMC ON FRIDAY. IF  
13 YOUR HONOR WANTS TO HOLD ONE ON WEDNESDAY AND DECIDE WHETHER IT  
14 MAKES SENSE TO MOVE FORWARD OR NOT, WE HAVE NO ISSUE WITH THAT  
15 AT ALL. WE DO TEND TO GET INFORMATION FROM THE DEFENDANTS  
16 BECAUSE OF THESE CMC'S, AND IT'S SORT OF HARD TO GET  
17 INFORMATION OTHERWISE.

18 THE COURT: SO HOW MANY DOCUMENTS WERE PRODUCED TODAY  
19 DURING THIS CASE MANAGEMENT CONFERENCE? DOES ANYBODY HAVE AN  
20 ANSWER, PLEASE?

21 MS. KELLEHER: YES, YOUR HONOR. WE WERE ABLE TO  
22 COMMUNICATE WITH OUR CONTACT WHO WORKS WITH OUR RELATIVITY  
23 CONTRACTOR AND IT'S 46 DOCUMENTS.

24 THE COURT: SO YOU'RE SAYING WITH ALL THE MEETING AND  
25 CONFERRING WITH PLAINTIFFS LAST WEEK, YOU COULDN'T PRODUCE 46



1 DOCUMENTS?

2 MS. KELLEHER: I DON'T MEAN TO SUGGEST, YOUR HONOR,  
3 THAT THERE WAS NOT ONE OF THE 148 HOURS IN A WEEK -- OR HOWEVER  
4 MANY HOURS ARE IN A WEEK -- THAT WE COULDN'T HAVE DONE IT.

5 IT'S SIMPLY THAT -- I THINK UNFORTUNATELY WE MAY HAVE  
6 TAKEN TOO, TOO EASY OF A VIEW OF THE PRODUCTIONS IN LIGHT OF  
7 THE COURT'S EXTENSION OF THE DISCOVERY SCHEDULE, WHICH I  
8 APOLOGIZE FOR, AND FOCUSED OUR EFFORTS ON RESOLVING THE SORT  
9 OF MATH PROBLEMS WE HAD WITH PLAINTIFFS.

10 SO I APOLOGIZE WE WERE NOT AS FOCUSED ON THE PRODUCTIONS  
11 AS WE SHOULD HAVE BEEN.

12 BUT THE DOCUMENTS PRODUCED ARE CENSUS DOCUMENTS, NOT  
13 COMMERCE DOCUMENTS AS I UNDERSTAND IT. SO TO THE EXTENT THAT  
14 GIVES THE COURT OR THE PLAINTIFFS ANY COMFORT ABOUT TOMORROW'S  
15 DEPOSITION, I WANTED TO MAKE THAT POINT.

16 MR. ROSENBERG: YOUR HONOR, ONE OTHER POINT.

17 THE COURT HAS REFERRED TO A DEPOSITION, THE 30(B)(6)  
18 DEPOSITION OF THE CENSUS BUREAU THAT'S BEEN NOTICED FOR  
19 THURSDAY. WE HAVE NOT HAD A CHANCE TO MEET AND CONFER WITH  
20 PLAINTIFFS ON THAT DATE. THAT WAS JUST THE DATE THAT  
21 PLAINTIFFS HAD CHOSEN FOR THEIR NOTICE. YOU KNOW, WE HAD  
22 PLANNED TO FOLLOW UP WITH PLAINTIFFS SEPARATELY TO SUGGEST AN  
23 ALTERNATE PROPOSED DATE BECAUSE I DO NOT BELIEVE THAT THE  
24 WITNESSES THAT WE INTEND TO MAKE AVAILABLE FOR THAT 30(B)(6)  
25 ARE AVAILABLE ON THURSDAY.

1 THE COURT: WHAT DATE --

2 MR. ROSENBERG: WE CAN FOLLOW UP SEPARATELY WITH  
3 PLAINTIFFS ON THAT.

4 THE COURT: LET'S DO IT RIGHT NOW BECAUSE I DON'T  
5 WANT TO GET ANOTHER LONG JOINT DISCOVERY STATUS STATEMENT.  
6 WHAT DATE WERE YOU PROPOSING?

7 MR. ROSENBERG: TUESDAY.

8 THE COURT: AND WHO ARE YOUR WITNESSES?

9 MR. ROSENBERG: LET ME PULL THAT UP. DO WE HAVE --  
10 I'LL ASK ONE OF MY TEAM MEMBERS IF THEY CAN IDENTIFY THE  
11 WITNESSES, BECAUSE AS THE COURT HAS NOTICED, WE ARE  
12 COMMUNICATING TO TRY TO MAKE THIS AS EFFICIENT AS POSSIBLE FOR  
13 THE COURT.

14 I BELIEVE ONE OF THEM IS AL FONTENOT. THIS IS STILL  
15 SUBJECT TO CHANGE BECAUSE WE'RE STILL CONFERRING INTERNALLY,  
16 BUT IT'S LIKELY TO BE AL FONTENOT, JAMES CHRISTY, AND  
17 BARBARA LOPRESTI. AND WE HAVE CONFIRMED THAT THEY ARE  
18 AVAILABLE ON TUESDAY.

19 THE IDEA IS WE WOULD MAKE THREE WITNESSES AVAILABLE  
20 BECAUSE THOSE -- BECAUSE OF THE BROAD RANGE OF SUBJECTS ON  
21 WHICH PLAINTIFFS SEEK TESTIMONY. WE THINK IT WOULD BE MORE  
22 EFFICIENT TO HAVE WITNESSES WHO ARE BEST ABLE TO SPEAK TO THE  
23 SPECIFIC TOPICS THAT PLAINTIFFS HAVE IDENTIFIED.

24 HOWEVER, WE ALSO PLAN TO -- YOU KNOW, OUR VIEW IS THAT THE  
25 DEPOSITION SHOULD BE LIMITED TO NINE HOURS TOTAL AND THAT

1 PLAINTIFFS, BECAUSE WE'RE TRYING TO MAKE MULTIPLE WITNESSES  
2 AVAILABLE WHO CAN BEST TESTIFY ON THE TOPICS THAT PLAINTIFFS  
3 HAVE IDENTIFIED, SHOULD NOT BE IN A POSITION TO TAKE ADVANTAGE  
4 OF THAT GENEROSITY BY SEEKING TO EXPAND THE SCOPE OF THE  
5 DEPOSITION TO, FOR EXAMPLE, 27 HOURS.

6 THE COURT: HOW MANY HOURS DO YOU THINK ARE NECESSARY  
7 TO TRY TO SLICE THIS WITH THREE DIFFERENT WITNESSES? I WILL  
8 GIVE YOU MORE THAN NINE. 15? THAT WOULD BE FIVE HOURS EACH.  
9 OR YOU COULD DIVIDE IT UP HOWEVER YOU WANT IT.

10 MR. HUSENY: IF WE HAVE FIVE, OR 15 HOURS, YOUR  
11 HONOR, IF THERE ARE THOSE THREE WITNESSES, 15 HOURS SHOULD BE  
12 SUFFICIENT.

13 I WOULD ALSO MAYBE THINK ABOUT 15 TO 18. WE JUST DON'T  
14 KNOW RIGHT NOW WHAT THESE WITNESSES ARE GOING TO TESTIFY TO,  
15 AND MOST IMPORTANTLY, WE DON'T KNOW WHAT OTHER MATERIALS WE  
16 WILL GET BETWEEN NOW AND THEN, PARTICULARLY THE DATA REQUESTS  
17 THAT WE'VE BEEN ASKING FOR FOR A LONG TIME THAT'S CURRENTLY  
18 WITH THE MAGISTRATE JUDGES.

19 SO PERHAPS IF WE COULD LEAVE IT 15 TO 18? I'M CERTAINLY  
20 HOPEFUL THAT WE'RE NOT GOING TO MOVE PAST 15 HOURS FOR THESE  
21 DEPOSITIONS.

22 THE COURT: I'LL SAY 17 HOURS.

23 MR. HUSENY: OKAY.

24 THE COURT: SO 17 HOURS WITH THESE THREE WITNESSES.  
25 YOU ALL WORK OUT THE DATE AMONGST YOURSELVES.

1 OKAY. SO THEN THERE'S GOING TO BE NO DEPOSITION ON  
2 THURSDAY.

3 DO YOU WANT TO MEET THURSDAY OR FRIDAY? I CAN MEET EITHER  
4 DAY.

5 MR. HUSENY: I WOULD SUGGEST THURSDAY, YOUR HONOR.

6 I WAS JUST GOING TO SUGGEST MAYBE TWO CMC'S, EVEN PER YOUR  
7 HONOR'S EARLIER SUGGESTION, JUST BECAUSE WHAT MR. ROSENBERG  
8 JUST TOLD YOU IS NOT SOMETHING THEY'VE TOLD US. WE DON'T HEAR  
9 FROM THEM ON WHO THEIR WITNESSES WILL BE OR THAT THEY CAN'T  
10 MAKE A THURSDAY DEPOSITION UNTIL THIS CMC.

11 SO THE EARLIER THE BETTER IN OUR VIEW. THURSDAY WOULD BE  
12 GREAT FOR US.

13 THE COURT: SO YOU WANT TO DO THURSDAY AND FRIDAY?  
14 THAT'S OKAY BY ME.

15 MR. HUSENY: THAT'S FINE FOR PLAINTIFFS, YOUR HONOR.

16 THE COURT: OKAY.

17 MR. ROSENBERG: YOUR HONOR, CAN I -- CAN I MAKE A  
18 SUGGESTION --

19 THE COURT: YES.

20 MR. ROSENBERG: -- WITH THE COURT'S INDULGENCE?

21 I THINK PART OF THE CHALLENGE FOR THE GOVERNMENT HERE IS  
22 THAT WE ARE BEING ASKED TO RESPOND TO DOCUMENT REQUESTS,  
23 PREPARE WITNESSES FOR MULTIPLE 30(B)(6) DEPOSITIONS, PRESUMABLY  
24 PREPARE WITNESSES FOR FACT DEPOSITIONS, RESPOND TO AN ONSLAUGHT  
25 OF REQUESTS FROM PLAINTIFFS' COUNSEL REGARDING, YOU KNOW, OUR

1 DATA PRODUCTIONS, INCLUDING COUNTING DOWN NUMBERS, RESPONDING  
2 TO MOTIONS TO COMPEL OR FOR SANCTIONS AND VARIOUS OTHER  
3 DISCOVERY MOTIONS, AND I APPRECIATE THAT --

4 THE COURT: CAN I INTERRUPT YOU? I THOUGHT THE  
5 DEPARTMENT OF COMMERCE, OFFICE OF INSPECTOR GENERAL, AND THE  
6 GOVERNMENT ACCOUNTABILITY OFFICE ARE ALSO REQUESTING ALL THESE  
7 SAME DOCUMENTS. AREN'T THERE MULTIPLE GOVERNMENT AGENCIES THAT  
8 ARE REQUESTING INFORMATION ABOUT DATA PROCESSING ANOMALIES  
9 SEPARATE FROM THIS LITIGATION? I GUESS THE HOUSE OVERSIGHT  
10 COMMITTEE AS WELL.

11 I GUESS I WAS HOPING THAT YOU WOULD HAVE SOME EFFICIENCIES  
12 FROM COLLECTING THESE DOCUMENTS FOR THE GAO, FOR THE OIG, FOR  
13 THE HOUSE OVERSIGHT COMMITTEE. I DIDN'T THINK THAT ALL OF THIS  
14 WAS YOUR DOING BRAND NEW SEPARATE THINGS FOR ALL FOUR DIFFERENT  
15 JURISDICTIONS, THAT THERE MIGHT BE SOME --

16 MS. KELLEHER: YOUR HONOR, I THINK THE OTHER ENTITIES  
17 ARE BENEFITING FROM THE EFFICIENCIES OF OUR DOCUMENT  
18 PRODUCTIONS IN THIS CASE, TO THE EXTENT THERE ARE ANY. I THINK  
19 THAT OUR PRODUCTIONS HERE ARE SORT OF ACTUALLY FORMING SOME OF  
20 THE BASES OF THE OTHER INFORMATION THAT'S BEING PROVIDED.

21 THE COURT: BUT THE OFFICE OF INSPECTOR GENERAL'S  
22 REPORT WAS -- HAD A LOT OF INFORMATION THAT I DON'T THINK WAS  
23 AVAILABLE IN THIS CASE, SO THE INSPECTOR GENERAL OBVIOUSLY HAS  
24 MORE INFORMATION.

25 DO YOU KNOW WHICH REPORT I'M TALKING ABOUT, MS. KELLEHER?

1 MS. KELLEHER: NO, YOUR HONOR. I KNOW THERE WAS --  
2 THERE WAS ONE FROM THE FALL EARLIER.

3 THE COURT: RIGHT.

4 MS. KELLEHER: THERE'S BEEN A FEW.

5 THE COURT: THERE WERE TWO -- THERE WAS ONE RECENTLY  
6 ABOUT -- I MEAN, I HAVE IT IN MY CHAMBERS. I CAN GO GRAB IT.

7 BUT IT WAS TALKING ABOUT, YOU KNOW, HOW THE CURRENT -- THE  
8 NUMBER OF -- THERE WERE SOME HOUSES FOR WHICH THERE WERE NO  
9 CONTACTS MADE AT ALL. IT WAS TALKING ABOUT ALL OF THE  
10 ANOMALIES NOT FOLLOWING POLICIES, SOME POLICIES BEING  
11 UNDEVELOPED WITH THE DATA COLLECTION AND, YOU KNOW, IT WENT  
12 THROUGH A LOT OF QUALITY CONTROL MEASURES THAT WERE SKIPPED AND  
13 THAT WERE NOT DONE WITH THIS DATA COLLECTION.

14 DO YOU KNOW WHAT I'M TALKING ABOUT, OR IS THIS SOUNDING  
15 UNFAMILIAR?

16 MS. KELLEHER: NO, NO. YOUR HONOR, I'M RECALLING IT  
17 AS YOU'RE MENTIONING IT.

18 THE COURT: I THINK IT WAS END OF DECEMBER MAYBE, OR  
19 EARLY JANUARY. I DON'T KNOW.

20 DOES ANYONE ON THIS CALL REMEMBER?

21 MR. HUSENY: I THINK IT WAS DECEMBER 28TH, YOUR  
22 HONOR. IT WAS FOCUSSED ON THE REINTERVIEW PROCESS IN  
23 PARTICULAR AND THE DATA QUALITY ISSUES RELATED TO REINTERVIEW,  
24 POTENTIAL FALSIFICATION AND ISSUES LIKE THAT. MY TEAM JUST  
25 SENT ME A LINK. IT'S OIG 21-015-M IS THE REPORT, AND I BELIEVE

1 IT WAS DECEMBER 28TH.

2 THE COURT: OKAY. I RECALL READING IT WHEN IT CAME  
3 OUT. I -- I DON'T BELIEVE THAT THAT TYPE OF DATA -- THAT'S THE  
4 FIRST TIME I LEARNED ABOUT THAT DATA WAS THAT OIG REPORT. I  
5 DON'T -- I WOULD BE SURPRISED THAT THE OIG IS, IS BEHIND WHAT'S  
6 GETTING PRODUCED IN THIS CASE. THAT SEEMS LIKE THAT WAS DATA  
7 THAT I WAS NOT AWARE OF IN THIS LAWSUIT.

8 MR. ROSENBERG: YOUR HONOR, I'M NOT IN A POSITION TO  
9 SPEAK SPECIFICALLY TO THE OIG. I MEAN, THAT'S A SEPARATE --  
10 THAT'S A SEPARATE PROCESS.

11 THE COURT: YEAH.

12 MR. ROSENBERG: IF I MAY, WHERE I WAS GOING WITH MY  
13 COMMENT, I MEAN, PLAINTIFFS' COUNSEL JUST COMPLAINED THAT WE  
14 HAVEN'T INFORMED THEM OF OUR 30(B)(6) WITNESSES FOR THE CENSUS  
15 30(B)(6) DEPOSITION YET AND USED THAT AS AN EXAMPLE OF THE  
16 BENEFIT OF THE CASE MANAGEMENT CONFERENCES.

17 WE RECEIVED THE 30(B)(6) NOTICE ON FRIDAY, WHICH WAS  
18 LITERALLY THE PREVIOUS BUSINESS DAY, AND I MAY HAVE VERY WELL  
19 GOTTEN OUT OF AHEAD OF MY SKIS JUST A LITTLE BIT IN IDENTIFYING  
20 THOSE WITNESSES BECAUSE WE'RE STILL TRYING TO FIGURE OUT, BASED  
21 ON A LONG LIST OF TOPICS, WHO THE BEST WITNESSES WILL BE.

22 SO WE ARE WORKING AS EFFICIENTLY AS WE CAN.

23 AND WE AGREE THAT THERE IS VALUE IN THE CASE MANAGEMENT  
24 CONFERENCES, BUT I WOULD SUGGEST THAT SCHEDULING MULTIPLE CASE  
25 MANAGEMENT CONFERENCES FOR THIS WEEK IS THE TYPE OF ADDITIONAL

1 TIME -- IT TAKES US AWAY FROM SOME OF THE MANY TASKS THAT THE  
2 COURT HAS IDENTIFIED FOR US TO COMPLETE IN THE NEXT WEEK.

3 WE'LL, OF COURSE, APPEAR AT WHATEVER CASE MANAGEMENT  
4 CONFERENCE THE COURT SETS, BUT I DON'T KNOW THAT MULTIPLE CASE  
5 MANAGEMENT CONFERENCES WOULD BE THE MOST EFFICIENT USE OF OUR  
6 TIME IN LIGHT OF THE EXTREMELY EXPEDITED DISCOVERY SCHEDULE  
7 THAT THE COURT AND PLAINTIFFS CONTEMPLATE AND THE GOVERNMENT  
8 WOULD LIKE TO ACCOMMODATE.

9 THE COURT: THAT'S FINE. DO YOU WANT TO DO IT  
10 THURSDAY OR FRIDAY? I'M OPEN TO EITHER DAY. WHAT DO YOU THINK  
11 MAKES SENSE?

12 NOW, THERE ARE A LOT OF THINGS THAT ARE COMING IN ON THE  
13 14TH. MAYBE IT MAKES SENSE TO HAVE THEM COME IN.

14 MR. ROSENBERG: AS MUCH AS I'D LIKE TO KEEP MY FRIDAY  
15 NIGHT OPEN, YOUR HONOR, I THINK FRIDAY MAY MAKE MORE SENSE FROM  
16 THE GOVERNMENT'S PERSPECTIVE, BUT WE COULD BE AVAILABLE ON  
17 EITHER DAY.

18 THE COURT: ALL RIGHT. THANK YOU.

19 WHAT ABOUT THE PLAINTIFFS? FRIDAY?

20 MR. HUSENY: WE ARE FINE WITH FRIDAY, YOUR HONOR, AND  
21 WE'LL MAKE THAT WORK.

22 THE COURT: ALL RIGHT. LET'S DO NOON. THAT WOULD BE  
23 3:00 P.M. EAST COAST TIME. OKAY?

24 SO I AM THEN GOING TO ASK, IF YOU WOULD PLEASE, TO --  
25 COULD YOU FILE A JOINT DISCOVERY STATUS REPORT BY 9:00 A.M.?



1 MS. KELLEHER: YES, YOUR HONOR, THAT'S FINE FOR  
2 DEFENDANTS.

3 THE COURT: OKAY. I DON'T ANTICIPATE CONTINUING THE  
4 ONE ON FRIDAY, SO YOU SHOULD JUST PLAN ON MEETING TOGETHER AT  
5 NOON AND WE'LL JUST DO 9:00 A.M. FOR YOUR REPORT.

6 SO LET ME ASK, IF YOU PRODUCED 46 DOCUMENTS TODAY, WHAT IS  
7 THE VOLUME THAT YOU'RE EXPECTING THE REST OF THIS WEEK?

8 MS. KELLEHER: I DON'T KNOW, YOUR HONOR. I KNOW IT'S  
9 SOME OF THE DATA QUALITY GROUP DOCUMENTS THAT MR. SVERDLOV  
10 MENTIONED, AND THEN THE REFRESH FOR THE CUSTODIANS. BUT I  
11 DON'T KNOW THE VOLUME.

12 THE COURT: OKAY. AND DO YOU KNOW WHEN, LIKE WHAT  
13 DATES YOU'RE EXPECTING TO DO THAT?

14 MS. KELLEHER: I THINK THE HOPE WAS TO TRY TO DO AS  
15 MANY AS WE COULD EACH DAY THIS WEEK, WITH IDEALLY POTENTIALLY  
16 FINISHING BY THE END OF THIS WEEK, OR AT LEAST FINISHING THE  
17 BULK OF IT BY THE END OF THIS WEEK.

18 THE COURT: SO YOU'RE GOING TO TRY TO DO THEM EVERY  
19 DAY. I MEAN, I -- 46, TO BE HONEST, I'M A LITTLE BIT SURPRISED  
20 BY HOW SMALL THE NUMBER IS BASED ON THE 11 DAYS THAT HAVE  
21 LAPSED SINCE THE LAST PRODUCTION.

22 MS. KELLEHER: UNDERSTOOD, YOUR HONOR.

23 THE COURT: ALL RIGHT. OKAY. WHAT ELSE? I DON'T  
24 HAVE ANY MORE QUESTIONS. DOES ANYONE ELSE -- THE NUMBER OF  
25 INTERROGATORIES IS INCREASED TO 15 PER SIDE.

1           WHAT ELSE? ANYTHING ELSE?

2           MR. HUSENY: THE ONLY OTHER THING I WOULD ADD, YOUR  
3 HONOR, BECAUSE WE JUST HEARD FROM MR. ROSENBERG THAT THERE WILL  
4 BE THREE WITNESSES AND THEY WON'T BE UNTIL NEXT WEEK FOR THE  
5 CENSUS BUREAU.

6           WE HAVE THREE FACT WITNESSES THAT WOULD NEED TO GO NEXT  
7 WEEK, AS WELL AS THREE 30(B)(6) WITNESSES OVER A 17 HOUR  
8 PERIOD. HOPEFULLY WE WON'T USE ALL OF THAT, BUT WE MIGHT USE A  
9 NUMBER OF THAT.

10           AND THERE'S JUST A LIMITED NUMBER OF DAYS FROM MONDAY,  
11 WHICH IS A HOLIDAY, SO WE'RE EXPECTING THAT THERE WON'T BE  
12 DEPOSITIONS THEN. SO BASICALLY TUESDAY, WEDNESDAY, AND  
13 THURSDAY OF NEXT WEEK FOR ALL OF THOSE DEPOSITIONS.

14           I'M NOT SUGGESTING THAT WE DO ANYTHING FURTHER WITH THE  
15 DISCOVERY SCHEDULE RIGHT NOW, OR THE DATE. JUST AS A PRACTICAL  
16 MATTER, IF WE DON'T GET THE 30(B)(6) FOR THE CENSUS BUREAU  
17 UNTIL TUESDAY AND THE REST OF THE MATERIALS ARE COMING THIS  
18 WEEK, IT JUST PUTS A CRUNCH ON THE DEPOSITION SCHEDULE FOR NEXT  
19 WEEK. WE DON'T HAVE FRIDAY UNDER THE COURT'S CURRENT SCHEDULE  
20 FOR DEPOSITIONS, AND THAT MIGHT BE SOMETHING TO CONSIDER.

21           I'M JUST SORT OF ADDRESSING THAT RIGHT NOW BECAUSE I CAN  
22 FORESEE THE ISSUE.

23           THE COURT: I CAN EXTEND THE FACT DISCOVERY CUTOFF TO  
24 JANUARY 22ND. WOULD THAT HELP, TO GIVE YOU ONE MORE DAY?  
25 BECAUSE IT SOUNDS LIKE YOU HAVE -- HOW MANY WITNESSES -- OKAY.

1 I APOLOGIZE.

2 I THINK YOU'VE TAKEN, WHAT, TWO DEPOSITIONS ABOUT  
3 DOCUMENTS; IS THAT RIGHT?

4 MR. HUSENY: YES.

5 THE COURT: OKAY. AND THEN -- AND WHAT DO YOU HAVE  
6 LEFT?

7 MR. HUSENY: WE HAVE THE 30(B)(6) DEPOSITION OF I  
8 BELIEVE IT WAS MR. BURKETT TOMORROW FROM COMMERCE, SO THAT'S  
9 ONE; WE'VE GOT THE SERIES OF WITNESSES NOW FOR THE 30(B)(6)  
10 DEPOSITION FOR THE CENSUS BUREAU; AND THEN WE HAVE THREE TOTAL  
11 FACT WITNESS DEPOSITIONS THAT WE WILL NOTICE ONCE WE RECEIVE  
12 THE REST OF THE MATERIALS.

13 SO THAT'S ESSENTIALLY GOING TO BE A TOTAL OF SEVEN  
14 DIFFERENT WITNESSES BETWEEN NOW AND NEXT -- THE END OF NEXT  
15 WEEK.

16 THE COURT: OKAY. I THINK DOING SEVEN IN THREE DAYS  
17 SOUNDS NOT POSSIBLE. I CAN EXTEND FACT DISCOVERY CUTOFF TO  
18 JANUARY 22.

19 MS. KELLEHER: YOUR HONOR, I KNOW THE PLAINTIFFS HAVE  
20 ALREADY RECEIVED A LARGE NUMBER OF DOCUMENTS, SO TO THE EXTENT  
21 THEY'RE ABLE TO IDENTIFY THE FACT WITNESSES AT THIS MOMENT, OR  
22 IF THEY WANT TO MEET AND CONFER ABOUT IT TODAY OR TOMORROW,  
23 WE'RE -- OBVIOUSLY THE NAMES OF SOME OF THE FOLKS THEY MIGHT BE  
24 INTERESTED IN ARE ON THOSE DOCUMENTS. I'M NOT SURE WHY THEY  
25 NECESSARILY HAVE TO WAIT UNTIL THE CONCLUSION OF THE OTHER

1 DEPOSITIONS.

2 THE COURT: THAT'S UP TO THE -- THAT'S UP TO THE  
3 PLAINTIFFS.

4 SO, I MEAN, HOW MUCH TIME DO YOU THINK YOU NEED? SEVEN  
5 SOUNDS LIKE DIFFICULT TO DO IN THREE DAYS, EVEN FOUR DAYS,  
6 ESPECIALLY BECAUSE YOU'RE ONLY GETTING 46 DOCUMENTS TODAY.

7 THEY HAVE TO DO REVIEW OF ALL THOSE DOCUMENTS THAT THEY'VE  
8 SEGREGATED.

9 WHAT DO YOU WANT? OR DO YOU WANT TO COME BACK ON FRIDAY  
10 WHEN YOU HAVE A BETTER SENSE? I MEAN, I CAN AT THIS POINT  
11 CONTINUE THE DISCOVERY CUTOFF TO FRIDAY, JANUARY 22, EXTEND IT  
12 BY ONE DAY.

13 I DON'T KNOW -- LET ME SEE WHAT THE CALENDAR IS -- HOW  
14 WILL THAT IMPACT THE REST OF THE CALENDAR?

15 MR. HUSENY: I THINK THAT ONE DAY WILL NOT IMPACT THE  
16 REST OF THE CALENDAR, YOUR HONOR.

17 IT CERTAINLY SQUEEZES THE AMOUNT OF TIME BETWEEN THE END  
18 OF FACT DISCOVERY TO THE INITIAL EXPERT REPORTS BEING DUE.  
19 THOSE, OF COURSE, CAN BE WORKED ON NOW DEPENDING ON SOME OF THE  
20 MATERIALS, BUT A LOT OF THE DEPOSITION TESTIMONY WILL AFFECT  
21 THOSE. I DON'T THINK SQUEEZING THAT FROM SEVEN TO SIX DAYS IS  
22 NECESSARILY A HUGE DEAL.

23 I DO THINK IF FACT DISCOVERY EXTENDS TO THE FOLLOWING  
24 WEEK, WHICH IT MIGHT, FOR DEPOSITIONS -- WHICH IT MIGHT NEED TO  
25 DEPENDING ON WHAT WE GET AND WHAT THINGS LOOK LIKE FROM A

1 DOCUMENT PRODUCTION STANDPOINT -- COULD CREATE RIPPLE EFFECTS  
2 OVER THE REST OF THE SCHEDULE. SO I'D NEED TO LOOK AT THAT AND  
3 SEE.

4 I KNOW THAT WE HAD A VERY, VERY TIGHT SCHEDULE EARLIER AND  
5 WE HAD SQUEEZED IT AS MUCH AS WE POSSIBLY COULD LAST WEEK, AND  
6 I THINK EXTENDING FACT DISCOVERY DEPOSITIONS TO THE FOLLOWING  
7 WEEK, WHILE IT MAY BE SOMETHING THAT WE FEEL IS NECESSARY OR  
8 WILL ASK YOUR HONOR TO INDULGE US ON, IT MAY AFFECT THE REST OF  
9 THE SCHEDULE.

10 THE COURT: THAT'S FINE. AND WE CAN TALK MAYBE NEXT  
11 WEEK OR AT THE FACT DISCOVERY -- AFTER THE END OF FACT  
12 DISCOVERY ABOUT HOW IMPORTANT IT IS FOR US TO KEEP THIS  
13 MARCH TRIAL DATE.

14 MS. KELLEHER: YOUR HONOR, I WAS GOING TO SUGGEST  
15 THAT WE COULD ADDRESS THE SCHEDULE ON FRIDAY AND HOPEFULLY --  
16 OBVIOUSLY WE'LL REDOUBLE OUR EFFORTS ON THE PRODUCTION THIS  
17 WEEK, AND MAYBE WE COULD CONFER WITH PLAINTIFFS AND THE COURT  
18 ABOUT THE SCHEDULE AT THAT TIME. MAYBE THE PLAINTIFFS AND THE  
19 COURT WILL HAVE A BETTER PICTURE OF THINGS.

20 THE COURT: WELL, I THINK WE MAY NOT REALLY KNOW  
21 UNTIL THE END OF FACT DISCOVERY WHERE THINGS ARE, AND WE CAN DO  
22 A MODIFICATION OF THE SCHEDULE THIS FRIDAY, BUT WE MAY NEED TO  
23 DO ONE AS WELL AT THE END OF FACT DISCOVERY ONCE WE HAVE A  
24 BETTER SENSE.

25 YOU KNOW, IF WE DON'T HAVE TO KEEP THIS TRIAL DATE OF

1 MARCH 19, THEN THAT WILL CERTAINLY ALLEVIATE A LOT OF THESE  
2 TIGHT DEADLINES.

3 WHY DON'T -- EVERYONE JUST THINK ABOUT WHAT WE NEED TO DO  
4 TO THE SCHEDULE.

5 BUT IT SOUNDS LIKE -- IT'S NOT POSSIBLE TO TAKE SEVEN  
6 DEPOSITIONS IN THREE DAYS, SO AT A MINIMUM IT SOUNDS LIKE I'M  
7 GOING TO EXTEND FACT DISCOVERY CUTOFF NOW TO THE 22ND OF  
8 JANUARY. OKAY?

9 AND THEN WHEN WE MEET AGAIN ON FRIDAY, WE CAN HAVE ANOTHER  
10 DISCUSSION ABOUT WHETHER IT MAKES SENSE TO EXTEND OTHER  
11 DEADLINES.

12 AND THEN AFTER FACT DISCOVERY, I WOULD LIKE TO HAVE  
13 ANOTHER CMC TO, YOU KNOW, FIGURE OUT WHAT MAKES SENSE IN TERMS  
14 OF THE WHOLE SCHEDULE.

15 MR. ROSENBERG: YOUR HONOR, CAN I RAISE --

16 THE COURT: PLEASE.

17 MR. ROSENBERG: -- ONE POINT? I MEAN, I FEEL LIKE  
18 WE'RE IN A SITUATION -- AND MAYBE THIS IS NOT THE RIGHT  
19 ANALOGY -- BUT, YOU KNOW, WE'RE IN A HOLE AND WE'RE TRYING TO  
20 CLIMB OUT OF THE HOLE, AND AT THE SAME TIME, YOU KNOW, DIRT IS  
21 BEING POURED ON TOP OF US. AND THAT'S BECAUSE IF WE EXTEND THE  
22 FACT DISCOVERY DEADLINE FOR DEPOSITIONS, FOR EXAMPLE, WITHOUT  
23 AT LEAST IMPOSING A CUTOFF FOR DOCUMENTS, THEN WE'RE GOING TO  
24 CONSTANTLY BE IN THE SITUATION WHERE THE GOVERNMENT WILL HAVE  
25 CONTINUING OBLIGATIONS TO REVIEW AND PRODUCE AND LOG

1 DOCUMENTS --

2 THE COURT: UM-HUM.

3 MR. ROSENBERG: -- WHICH WOULD LEAD TO A NEVER ENDING  
4 DISCOVERY SITUATION.

5 SO I JUST WANT TO FLAG THAT CONCERN FOR THE COURT --

6 THE COURT: THAT'S A FAIR ONE.

7 MR. ROSENBERG: -- THAT WE MAY NEED TIME TO COMPLETE  
8 DEPOSITIONS, FOR EXAMPLE.

9 BUT WE VERY MUCH DO NEED A CUTOFF AT SOME POINT FOR WHAT  
10 OUR COLLECTION AND PRODUCTION OBLIGATIONS ARE.

11 THE COURT: SO LET ME ASK EVERYONE TO, WHY DON'T  
12 YOU -- I DON'T THINK WE CAN DECIDE THAT TODAY, BUT I THINK  
13 THAT'S A GREAT POINT. SO I WOULD LIKE EVERYONE TO THINK ABOUT  
14 IT, HAVE YOU ALL MEET AND CONFER, AND IT MAY BE SOMETHING THAT  
15 WE, WE CAN'T EVEN DECIDE UNTIL WE HAVE MORE INFORMATION.

16 SO I AM OPEN TO WHATEVER SUGGESTIONS YOU ALL HAVE.

17 I WAS SETTING THE MARCH 19TH DEADLINE IN CASE YOU ALL  
18 NEEDED A JUDGMENT BY APRIL 1ST. I WANTED TO KEEP THAT  
19 POSSIBILITY OPEN.

20 BUT IT MAY BE THAT YOU DON'T NEED A JUDGMENT BY APRIL 1ST,  
21 WHICH IF THAT'S THE CASE, THEN WE DON'T HAVE TO DO THE TRIAL  
22 MARCH 19TH. I WAS JUST INTENDING TO --

23 THE REPORTER: I'M SORRY, YOUR HONOR. I'M HAVING A  
24 HARD TIME HEARING YOU. CAN YOU REPEAT THAT LAST PART?

25 THE COURT: OH, I SAID THAT I WAS PLANNING TO ENTER

1 JUDGMENT BEFORE APRIL 1ST, AND THAT'S WHY I WANTED THE TRIAL  
2 DATE TO BE MARCH 19.

3 BUT IF THAT'S NOT NECESSARY TO GIVE -- TO ISSUE A JUDGMENT  
4 BY THE 1ST OF APRIL, OR BEFORE THE 1ST OF APRIL, THEN THAT  
5 MEANS OUR TRIAL DATE DOES NOT HAVE TO BE MARCH 19TH AND THAT  
6 WOULD RELIEVE A LOT OF THE PRESSURE THROUGHOUT THE ENTIRE  
7 SCHEDULE.

8 SO I WANT EVERYONE TO THINK ABOUT THAT AS WELL. IT MAY  
9 JUST BE THAT WE DON'T HAVE ENOUGH INFORMATION YET TO REALLY  
10 KNOW.

11 SO I -- MR. ROSENBERG, YOU RAISE A GREAT POINT. I WOULD  
12 LIKE EVERYONE TO THINK ABOUT IT AND HAVE YOU ALL MEET AND  
13 CONFER AND MAYBE WE CAN DISCUSS IT ON FRIDAY, BUT WE DON'T HAVE  
14 TO DECIDE IT ON FRIDAY. WE JUST MAY NOT HAVE ENOUGH  
15 INFORMATION TO KNOW.

16 MR. HUSENY: IF I MAY JUST ON THAT POINT, YOUR HONOR?  
17 WE HAVE NO ISSUE AND HAVE NEVER HAD AN ISSUE THAT AT SOME  
18 POINT, WHEN YOU'RE LOOKING AT BIG E-MAIL COLLECTION, THERE'S  
19 ALWAYS A DATA COLLECTION CUTOFF DATE, WE'RE NOW GOING TO STOP  
20 AT THIS DATE.

21 WHAT USUALLY HAPPENS IN MEET AND CONFER IS, WELL, THERE'S  
22 THIS KEY SET OF DOCUMENTS OR THIS SET OF POWERPOINTS OR WHATNOT  
23 AND WE'D LIKE YOU TO DO A TARGETED, UP-TO-DATE COLLECTION ON  
24 THIS ISSUE OR THAT.

25 SO TO THE EXTENT THE DEFENDANTS BRING CURRENT -- THEY'RE



1 CURRENTLY IN NOVEMBER, THAT'S THE PROBLEM. BUT TO THE EXTENT  
2 THEY BRING CURRENT THESE PRODUCTIONS INTO, SAY, THE END OF THIS  
3 WEEK, WE'RE NOT PLANNING TO DO AN EVERY DAY REPULL A PRODUCTION  
4 OR ASK THEM TO DO THAT. WE MAY SAY, THAT'S FINE, NOW LET'S  
5 TALK ABOUT A VERY LIMITED SET OF DOCUMENTS, PERHAPS THE ANOMALY  
6 SPREADSHEETS, PERHAPS THE CURRENT DATA PROCESSING SCHEDULE THAT  
7 YOU CAN UPDATE ON A MORE NARROW BASIS WHICH DEALS WITH ALL OF  
8 THE SORTS OF BURDEN ISSUES THAT THEY MAY HAVE.

9 SO WE WILL MEET AND CONFER WITH THEM ON THAT. WE'VE NEVER  
10 HAD AN ISSUE WITH SOMETHING LIKE THAT.

11 OUR ISSUE, AGAIN, HAS BEEN THAT THEY'RE FROZEN NOW IN  
12 NOVEMBER, WITH THE EXCEPTION OF A FEW OTHER DOCUMENTS.

13 SO WE WILL TALK WITH THEM ABOUT THAT ISSUE FOR CERTAIN.

14 THE COURT: OKAY. YEAH, SEE IF YOU CAN AT LEAST  
15 NARROW THE DISPUTE. AND, YOU KNOW, THIS MAY BE A CONVERSATION  
16 THAT WE HAVE LATER.

17 OKAY. WHAT ELSE FOR TODAY? ANYTHING ELSE FOR TODAY?

18 MR. HUSENY: NO.

19 THE COURT: NO? ALL RIGHT.

20 ALL RIGHT. THANK YOU ALL VERY MUCH. THANK YOU FOR YOUR  
21 PATIENCE. I REALLY APPRECIATE IT.

22 AND I WILL SEE YOU ON FRIDAY AT NOON, 3:00 O'CLOCK EASTERN  
23 TIME.

24 THANK YOU.

25 MR. HUSENY: THANK YOU, YOUR HONOR.

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MS. ROBINSON: THANK YOU, YOUR HONOR.

MS. KELLEHER: THANK YOU, YOUR HONOR.

MR. SVERDLOV: THANK YOU, YOUR HONOR.

THE CLERK: COURT IS ADJOURNED.

(THE PROCEEDINGS WERE CONCLUDED AT 4:40 P.M.)

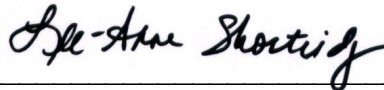
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY

CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF ZOOM PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



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LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: JANUARY 13, 2021