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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 4, 2021
)
WILBUR L. ROSS, ET AL.,) PAGES 1-32
)
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
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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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UNDER LAW
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FOR PLAINTIFF CITY OF CHICAGO: CITY OF CHICAGO LAW DEPARTMENT
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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 THE DEFENDANTS: U.S. DEPARTMENT OF JUSTICE
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SAN JOSE, CALIFORNIA JANUARY 4, 2021

P R O C E E D I N G S

(ZOOM PROCEEDINGS CONVENED AT 2:34 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.

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 FOR THE SAME PLAINTIFFS.

MS. ROBINSON: AND GOOD AFTERNOON.

ANNE ROBINSON OF LATHAM & WATKINS FOR THE SAME PLAINTIFFS.

MR. EZRA ROSENBERG: AND GOOD AFTERNOON AND HAPPY HOLIDAYS, YOUR HONOR.

EZRA ROSENBERG FROM THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW FOR THOSE SAME PLAINTIFFS AND NAVAJO NATION.

MR. WOLF: GOOD AFTERNOON, YOUR HONOR.

THOMAS WOLF, BRENNAN CENTER FOR JUSTICE, FOR THE SAME PLAINTIFFS AND NAVAJO NATION.

1 THE CLERK: THANK YOU.

2 FOR PLAINTIFF NAVAJO NATION.

3 MR. SEARLE: GOOD AFTERNOON, YOUR HONOR.

4 JASON SEARLE, NAVAJO DEPARTMENT OF JUSTICE, ON BEHALF OF
5 NAVAJO NATION.

6 THE CLERK: THANK YOU.

7 FOR PLAINTIFF CITY OF LOS ANGELES, CALIFORNIA.

8 MR. DUNDAS: GOOD AFTERNOON.

9 MIKE DUNDAS FOR THE CITY OF LOS ANGELES.

10 THE CLERK: FOR PLAINTIFF CITY OF SALINAS,
11 CALIFORNIA.

12 MR. MUTALIPASSI: GOOD AFTERNOON AND HAPPY NEW YEAR.

13 MICHAEL MUTALIPASSI ON BEHALF OF THE CITY OF SALINAS.

14 THE CLERK: FOR PLAINTIFF CITY OF CHICAGO, ILLINOIS.

15 MS. HIRSCH: GOOD AFTERNOON.

16 REBECCA HIRSCH ON BEHALF OF THE CITY OF CHICAGO.

17 THE CLERK: FOR PLAINTIFF COUNTY OF LOS ANGELES,
18 CALIFORNIA.

19 MR. HOLTZMAN: GOOD AFTERNOON.

20 DAVID HOLTZMAN OF HOLLAND & KNIGHT FOR THE COUNTY OF
21 LOS ANGELES.

22 THE CLERK: THANK YOU.

23 DID I MISS ANYONE FOR PLAINTIFFS?

24 MR. GODFREY: YES. MERRILL GODFREY, AKIN, GUMP,
25 STRAUSS, HAUER & FELD, FOR GILA RIVER INDIAN COMMUNITY.

1 GOOD AFTERNOON, YOUR HONOR.

2 THE CLERK: THANK YOU.

3 AND FOR ALL DEFENDANTS.

4 MR. SVERDLOV: GOOD AFTERNOON.

5 ALEXANDER SVERDLOV FOR THE DEFENDANTS FROM THE U.S.

6 DEPARTMENT OF JUSTICE, CIVIL DIVISION.

7 MR. COGHLAN: GOOD AFTERNOON, YOUR HONOR.

8 JOHN COGHLAN FROM THE DEPARTMENT OF JUSTICE ON BEHALF OF
9 THE DEFENDANTS.

10 MR. ROSENBERG: GOOD AFTERNOON, YOUR HONOR.

11 BRAD ROSENBERG, ASSISTANT DIRECTOR OF THE FEDERAL PROGRAMS
12 BRANCH, ON BEHALF OF THE DEFENDANTS.

13 MS. KELLEHER: GOOD AFTERNOON, YOUR HONOR.

14 DIANE KELLEHER, I'M AN ASSISTANT DIRECTOR AT THE
15 DEPARTMENT OF JUSTICE. I'M HERE ON BEHALF OF THE DEFENDANTS
16 WITH MY COLLEAGUES.

17 THE COURT: ALL RIGHT. GOOD AFTERNOON. WELCOME TO
18 EVERYONE AND HAPPY NEW YEAR. I HOPE EVERYONE IS DOING WELL.

19 I WANT TO THANK ALL OF YOU AND OUR THREE JUDGE COURT ON
20 KEEPING THE CASE GOING THROUGH THE HOLIDAYS. I ESPECIALLY WANT
21 TO THANK JUDGE COUSINS, JUDGE VAN KEULEN, AND JUDGE HIXSON.
22 THEY WERE EVEN REVIEWING DOCUMENTS YESTERDAY. THEY HAVE REALLY
23 GONE ABOVE AND BEYOND AND I THINK WE ALL OWE THEM AN INCREDIBLE
24 DEBT OF GRATITUDE, ESPECIALLY ME, SO THANK YOU TO THEM.

25 LET ME FIRST -- WE HAVE JUST A FEW HOUSEKEEPING MATTERS TO

1 HANDLE TODAY.

2 LET ME FIRST ASK ABOUT THE ISSUE OF THE THREE JUDGE COURT,
3 WHETHER PLAINTIFFS STILL INTEND TO OPPOSE THAT MOTION, OR NOT.

4 MR. HUSENY: YES, YOUR HONOR, PLAINTIFFS DO INTEND TO
5 OPPOSE THAT MOTION. WE DON'T THINK IT IS WELL FOUNDED.

6 I BELIEVE OUR OPPOSITION TO THAT TECHNICALLY IS DUE, UNDER
7 THE MOTION CALENDAR, NEXT WEEK. WE PLAN TO FILE AN OPPOSITION
8 TO THAT.

9 THE COURT: OKAY. SO YOUR OPPOSITION IS DUE ON THE
10 12TH, AND THE GOVERNMENT'S REPLY IS DUE ON THE 19TH.

11 NOW, I KNOW YOU'RE VERY BUSY WITH DISCOVERY ON ALL SIDES.
12 IS THAT SOMETHING THAT YOU ALL WOULD CONSIDER EXPEDITING? I
13 ACTUALLY DON'T THINK I'LL NEED A HEARING. I THINK IT COULD BE
14 DECIDED ON THE PAPERS, AND I COULD TRY TO DO IT AS QUICKLY AS
15 IT'S BRIEFED.

16 IF IT'S A GRANT, IT'LL BE A RELATIVELY SHORT ORDER,
17 SIMILAR TO WHAT I DID IN CITY OF SAN JOSE. I GUESS A DENIAL
18 COULD BE A LITTLE BIT MORE COMPLEX, BUT WOULD NOT HAVE ALL THE
19 TIME CONSTRAINTS NECESSARILY THAT A GRANT WOULD.

20 LET ME HEAR WHETHER THE PARTIES WANT TO HAVE THAT ADVANCED
21 OR YOU'RE FINE WITH THE CURRENT SCHEDULE, WHICH WOULD BE THE
22 12TH, THE 19TH, AND THEN I'LL TRY TO RULE AS QUICKLY AFTER THE
23 19TH AS POSSIBLE, BUT WE DO HAVE A HEARING DATE ON THE 28TH.

24 MR. HUSENY: FOR PLAINTIFFS, YOUR HONOR, WE ARE FINE
25 WITH THAT SCHEDULE. OF COURSE WE'RE WILLING TO FILE EARLIER IF

1 YOUR HONOR WOULD LIKE US TO DO SO, BUT WE'RE FINE WITH THAT
2 SCHEDULE AS IT EXISTS.

3 THE COURT: OKAY. DO YOU WANT TO BE HEARD,
4 MS. KELLEHER OR MR. ROSENBERG, MR. COGLAN OR MR. SVERDLOV?

5 MR. SVERDLOV: YOUR HONOR -- THANK YOU, YOUR HONOR.

6 WE ARE ALSO FINE WITH THE NORMAL SCHEDULE, AND WE ALSO
7 THINK THE MOTION CAN BE RESOLVED ON THE PAPERS WITHOUT THE NEED
8 FOR ARGUMENT.

9 THE COURT: OKAY. ALL RIGHT.

10 WOULD YOU ALL PREFER THEN THAT I VACATE THE HEARING NOW,
11 OR WOULD YOU RATHER I KEEP IT ON THE CALENDAR JUST IN CASE?

12 MR. SVERDLOV: YOUR HONOR, WE WOULD BE FINE WITH THE
13 COURT VACATING THE HEARING. WE DON'T THINK IT'S NECESSARY.

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

15 THE COURT: OKAY. WHY DON'T WE DO THIS: I AGREE
16 WITH THE PARTIES THAT I DON'T THINK A HEARING WILL BE
17 NECESSARY, BUT WITHOUT SEEING THE PLAINTIFF'S OPPOSITION, I
18 WOULD WANT TO RESERVE THE POSSIBILITY OF HAVING ONE IF WE NEED
19 ONE, WHICH I DON'T -- I AGREE WITH YOU, I DON'T THINK WE WILL,
20 BUT JUST IN THE EVENT THAT WE DO, WE WOULD HAVE A DATE THAT
21 WE'RE ALL RESERVING.

22 SO WHY DON'T WE KEEP THE HEARING AS IT IS CURRENTLY
23 SCHEDULED, AND AS SOON AS I KNOW THAT IT CAN BE VACATED, I WILL
24 SO YOU CAN NO LONGER HAVE TO RESERVE THAT DATE ON YOUR
25 SCHEDULES.

1 OKAY. ALL RIGHT. AS FAR AS THE FACT DISCOVERY EXTENSION,
2 I'M GOING TO AGREE WITH THE DEFENDANTS' PROPOSAL THAT IT BE
3 EXTENDED FOR ALL PARTIES THROUGH JANUARY 21 INSTEAD OF JUST AS
4 TO THE DEFENDANTS. OKAY? SO THAT'S CASE-WIDE EXTENSION TO THE
5 21ST.

6 ALL RIGHT. NOW, IT SOUNDS LIKE THERE ARE A NUMBER OF
7 POSSIBLE MOTIONS THAT ARE NOT QUITE RIPE, AND WHAT I'D LIKE TO
8 DO, RATHER THAN CONTINUING TO EXTEND THE SCHEDULE WHEN IT SEEMS
9 PREMATURE BECAUSE -- NUMBER ONE, I WANT TO APPRECIATE THE
10 PARTIES FOR WORKING OUT THE DISPUTES REGARDING THE DEPOSITION
11 NOTICE TOPICS FOR TOMORROW'S DEPOSITION, SO THANK YOU FOR
12 RESOLVING THAT AMONGST YOURSELVES AND NOT REQUIRING THE
13 MAGISTRATE JUDGES OR ME TO GET INVOLVED.

14 SO THIS IS WHAT I WAS GOING TO PROPOSE: WHAT IF WE HAD --
15 AND TELL ME WHEN YOU THINK IT'S RIPE. I WAS GOING TO SUGGEST
16 HAVING A CMC EITHER THIS THURSDAY OR THIS FRIDAY AFTERNOON AND
17 HAVE YOU FILE A JOINT CASE MANAGEMENT STATEMENT THE DAY BEFORE,
18 AND IF YOU THINK IT'S RIPE AT THAT TIME, I'LL SET A SCHEDULE TO
19 BRIEF MOTIONS; OR IF YOU'RE STILL WORKING ON IT, YOU CAN LET ME
20 KNOW AND I WOULD CONTINUE THE CMC TO, YOU KNOW, PERHAPS NEXT
21 TUESDAY OR WEDNESDAY, THE 12TH OR THE 13TH. I JUST WANT TO
22 KEEP THINGS MOVING.

23 SO WHAT ARE YOUR THOUGHTS? WHAT WOULD GIVE YOU ENOUGH
24 TIME TO TRY TO MAKE SOME PROGRESS AND THEN FOR US TO MEET
25 AGAIN?

1 MR. HUSENY: THANK YOU, YOUR HONOR.

2 THE SOONER THE BETTER FOR PLAINTIFFS. WE'RE VERY READY.
3 WE'RE VERY CLOSE TO READY, I SHOULD SAY, TO FILE THE MOTION TO
4 COMPEL, OR RENEWED MOTION TO COMPEL ANY MORE SANCTIONS ON AT
5 LEAST ONE OF THE ISSUES THAT WE FLAGGED IN OUR PORTION OF THE
6 DISCOVERY STATUS REPORT. WE CAN PROBABLY FILE THAT TOMORROW.

7 UNFORTUNATELY, WE THINK THAT ISSUE IS NOW LOCKED IN.
8 WE'VE BEEN WORKING WITH THE DEFENDANTS TO TRY AND RESOLVE IT.
9 WE DON'T THINK IT'S GOING TO BE RESOLVED FROM THE CONVERSATION
10 WE HAD AT LENGTH OVER THIS WEEKEND.

11 SO WE WOULD PREFER FOR THIS THURSDAY OR FRIDAY FOR THERE
12 TO BE A HEARING SET, AND WE COULD FILE BY THE END OF THE DAY
13 TOMORROW, IF NOT SOONER TOMORROW, OUR MOTION, AND THEN CONFER,
14 OF COURSE, WITH YOUR HONOR ON WHATEVER SCHEDULE YOU THINK MAKES
15 SENSE.

16 BUT THE SOONER WE HAVE A HEARING DATE THE BETTER, BECAUSE
17 AT LEAST FOR THAT ISSUE, WE THINK THAT IS VERY, VERY CLOSE TO
18 RIPE.

19 THERE'S A SECOND POTENTIAL MOTION THAT ESSENTIALLY
20 ENCOMPASSES THE REST OF THE DISPUTE THAT'S LAID OUT IN THE
21 STATUS REPORT, AND THAT HAS TO DO WITH DIFFERENT SOURCES AND
22 CUSTODIANS AND OTHER MATERIALS THAT WE HAVEN'T GOTTEN,
23 INCLUDING RECENT MATERIALS.

24 THAT ALL CAN PROBABLY BE WRAPPED UP INTO A SECOND MOTION
25 IF WE CAN'T REACH AGREEMENT. THERE'S BEEN SOME MOVEMENT ON

1 THAT, I'M PLEASED TO REPORT, SO HOPEFULLY WE CAN CRYSTALIZE
2 WHATEVER THOSE ISSUES MAY BE.

3 BUT ON THIS FIRST -- ON THIS FIRST ISSUE, WE DO THINK THE
4 SOONER THE BETTER.

5 THE COURT: OKAY. WELL, I WANTED TO HAVE THE MOTIONS
6 ACTUALLY, BOTH MOTIONS THAT YOU'RE CONTEMPLATING BE DECIDED BY
7 THE MAGISTRATE JUDGE, SO I WOULD ACTUALLY ASK THAT YOU WORK
8 THROUGH JUDGE COUSINS TO SET ANY HEARING OR BRIEFING SCHEDULE
9 AND WORK WITH THE THREE JUDGE PANEL.

10 MR. HUSENY: VERY GOOD, YOUR HONOR.

11 THE COURT: OKAY. I WAS THINKING, SEPARATE FROM
12 THAT, FROM THE MOTIONS WHICH WOULD BE DECIDED BY THE THREE
13 JUDGE MAGISTRATE JUDGE PANEL, HAVING A CMC AND HAVING A JOINT
14 CASE MANAGEMENT STATEMENT FILED JUST SO I CAN, YOU KNOW, STAY
15 ON TOP OF WHAT'S HAPPENING. AND ALSO, YOU KNOW, TO THE EXTENT,
16 YOU KNOW, THE COURT'S SORT OF INVOLVEMENT OR SCRUTINY HELPS
17 THINGS MOVE ALONG, I'D LIKE TO PROVIDE THAT ADDITIONAL
18 INCENTIVE TO TRY TO WORK THINGS OUT ON A FASTER BASIS.

19 MS. KELLEHER: YOUR HONOR, IF I MIGHT, THIS IS
20 DIANE KELLEHER ON BEHALF OF THE DEFENDANTS.

21 IS IT POSSIBLE THAT WE COULD SET A CMC AND A JOINT CASE
22 MANAGEMENT STATEMENT FOR SOMETIME NEXT WEEK? I MEAN, I DO
23 AGREE WITH MR. HUSENY THAT THE ISSUE IN TERMS OF THE
24 AVAILABILITY OF CERTAIN TYPES OF CENSUS DATA AND AT WHAT LEVEL
25 HAS LATELY CRYSTALLIZED AND WE CAN PROBABLY WORK OUT A SCHEDULE

1 WITH THE MAGISTRATE JUDGE PANEL THAT WOULD GIVE US SUFFICIENT
2 TIME TO OPPOSE THE MOTION.

3 BUT I JUST WONDER IF THERE'S A WAY TO SORT OF -- SINCE
4 THAT WILL TAKE SOME TIME TO BRIEF AND THEN BE RESOLVED BY THE
5 MAGISTRATES, IF THE CMC MIGHT THEN BE BETTER SCHEDULED FOR NEXT
6 WEEK. THAT'S JUST ONE THOUGHT THAT I HAD.

7 THE COURT: ALL RIGHT. THANK YOU.

8 LET ME HEAR FROM THE PLAINTIFFS.

9 MR. HUSENY: TWO THOUGHTS, YOUR HONOR. THE FIRST IS
10 WE DO THINK THAT IT HAS BEEN VERY, VERY HELPFUL TO MOVING THE
11 DISCOVERY ISSUES ALONG TO HAVE CASE MANAGEMENT CONFERENCES SET
12 WITH YOUR HONOR, SO HAVING IT SET FOR NEXT WEEK I THINK WOULD
13 JUST CREATE AN ADDITIONAL BUFFER WHEN WE DON'T REALLY HAVE THAT
14 MUCH, AS YOU SAW FROM OUR FILING, AND THE ADDITIONAL TWO WEEKS
15 THAT YOU'VE NOW PROVIDED. THERE'S NOT MUCH ROOM LEFT IN THE
16 SCHEDULE IF WE'RE TO KEEP THE TRIAL DATE SQUARE WHERE IT IS IN
17 MARCH IF THERE'S AN ADDITIONAL LENGTHY AMOUNT OF TIME TO
18 RESOLVE THE DISCOVERY DISPUTES.

19 SO THE SOONER I THINK WE CAN RESOLVE THOSE, THE BETTER.
20 AND THAT MEANS, TO US, HAVING THE CASE MANAGEMENT CONFERENCE
21 SET FOR THIS WEEK IS MORE BENEFICIAL AND, WE THINK,
22 APPROPRIATE.

23 THERE'S ONE POINT I JUST WANTED TO RAISE ON THIS ONE
24 MOTION. WE UNDERSTAND THAT YOUR HONOR WANTS IT TO BE HEARD BY
25 THE MAGISTRATE JUDGE PANEL, AND THAT'S GREAT.

1 IT DOES REFER, HOWEVER, TO AN EARLIER ORDER OF YOUR HONOR.
2 THE REASON WE'RE FILING THIS MOTION FIRST IS BECAUSE YOUR
3 HONOR'S DECEMBER 10TH ORDER GRANTING OUR MOTION TO COMPEL AND
4 YOUR HONOR'S DECEMBER 12TH ORDER REJECTING DEFENDANTS' MOTION
5 FOR RECONSIDERATION AND CLARIFYING YOUR ORDER TO COMPEL IS WHAT
6 IS AT ISSUE IN THIS PARTICULAR MOTION. WE THINK YOU ORDERED
7 THE PRODUCTION TO START WITH CERTAIN MATERIALS AND THOSE
8 HAVEN'T BEEN PRODUCED.

9 SO TO THE EXTENT THE MAGISTRATE JUDGES CAN RULE ON THAT
10 MOTION AS WELL, TERRIFIC. I JUST WANTED TO FLAG THAT POINT
11 BECAUSE IT MAY BE THAT THAT MOTION IS SOMETHING THAT YOUR HONOR
12 WANTS TO HEAR OR WANTS TO SET A DIFFERENT SORT OF SCHEDULE THAN
13 JUST THE NORMAL MOTION TO COMPEL IN THE FIRST INSTANCE THAT
14 MIGHT BE HEARD BY THE MAGISTRATE JUDGE PANEL.

15 THE COURT: AND YOU'RE TALKING ABOUT THE ONE YOU
16 INTEND TO FILE TOMORROW?

17 MR. HUSENY: CORRECT, YOUR HONOR.

18 THE COURT: WELL, WITHOUT SEEING YOUR MOTION AND
19 KNOWING EXACTLY WHAT ISSUE YOU'RE RAISING, IT'S A LITTLE BIT
20 DIFFICULT FOR ME TO MAKE THAT CALL.

21 WHY DON'T YOU JUST GO AHEAD AND FILE IT AS SOON AS YOU CAN
22 AND I'LL TAKE A LOOK AND SEE IF IT'S ONE I WANT TO DECIDE IN
23 THE FIRST INSTANCE. OTHERWISE I'D PREFER TO HAVE THE
24 MAGISTRATE JUDGES DO IT.

25 MR. HUSENY: OKAY.

1 MR. ROSENBERG: AND, YOUR HONOR, THIS IS -- I'M
2 SORRY. THIS IS BRAD ROSENBERG.

3 I THINK IN LIGHT OF THE COURT'S -- OF WHAT THE COURT JUST
4 SAID, THAT MAKES A GREAT DEAL OF SENSE.

5 I WOULD ALSO -- SOMETIMES PARTIES HAVE DIFFERENT WAYS OF
6 FRAMING ISSUES, AND SO I MIGHT SUGGEST THAT BEFORE THE COURT
7 DECIDES WHETHER IT SHOULD BE HEARD BY THE MAGISTRATE JUDGES IN
8 THE FIRST INSTANCE OR BY YOU, THAT THE GOVERNMENT HAVE AN
9 OPPORTUNITY TO RESPOND TO PLAINTIFFS' MOTION BECAUSE WE MIGHT
10 SEE THINGS DIFFERENTLY THAN PLAINTIFFS DO.

11 THE COURT: ALL RIGHT. YOU KNOW WHAT? LET'S JUST
12 SET A BRIEFING SCHEDULE ON THIS NOW IN CASE I DO HAVE TO DECIDE
13 IT.

14 SO IF YOU FILE IT TOMORROW -- AND I'M SAYING "YOU"
15 PLAINTIFFS -- THAT WILL BE JANUARY 5.

16 WHEN WOULD THE DEFENDANTS FILE THEIR OPPOSITION, AND WOULD
17 YOU WANT A REPLY?

18 MS. KELLEHER: YOUR HONOR, COULD WE HAVE UNTIL --

19 THE COURT: THERE'S LESS THAN THREE WEEKS OF
20 DISCOVERY LEFT, SO WE NEED TO EXPEDITE EVERYTHING.

21 MS. KELLEHER: UNDERSTOOD, YOUR HONOR. WOULD IT BE
22 POSSIBLE FOR US TO FILE A RESPONSE ON MONDAY?

23 THE COURT: NO. THAT'S TOO LATE.

24 MS. KELLEHER: I GUESS THEN THE -- I'M TRYING TO
25 DECIDE IF FRIDAY OR OVER THE WEEKEND, WOULD THAT BE POSSIBLE?

1 THE COURT: NO. THAT'S TOO LATE. I WAS GOING TO
2 SUGGEST OPPOSITION ON THE 7TH AND REPLY ON THE 8TH.

3 AND WHY DON'T WE HAVE YOU FILE IT BY AN EARLIER TIME THAN
4 MIDNIGHT TOMORROW. WHEN CAN YOU FILE IT TOMORROW?

5 MS. KELLEHER: YOUR HONOR, I WOULD ASK TO BE GIVEN
6 UNTIL -- WOULD 9:00 O'CLOCK PACIFIC --

7 THE COURT: OH, I'M SORRY. YOU CAN -- YOU CAN -- I'M
8 TALKING ABOUT THE ACTUAL MOTION.

9 MS. KELLEHER: OH, I'M SORRY, YOUR HONOR. APOLOGIES.

10 THE COURT: WHEN CAN YOU FILE IT ON THE 5TH?

11 MR. HUSENY: WE CAN FILE IT AT 6:00 P.M. PACIFIC IF
12 THAT WORKS, YOUR HONOR.

13 THE COURT: AND THEN ON THE 7TH, YOU HAVE UNTIL
14 MIDNIGHT --

15 MS. KELLEHER: OKAY.

16 THE COURT: -- PACIFIC TIME, SO 3:00 A.M. D.C. TIME.

17 MS. KELLEHER: WE LOVE THE NIGHTLIFE OVER HERE.
18 THANK YOU, YOUR HONOR.

19 THE COURT: OKAY. AND THEN ON THE REPLY, I WOULD
20 PREFER NOT MIDNIGHT. SO WHEN CAN YOU DO IT ON THE REPLY?

21 MR. HUSENY: AS SOON AS YOUR HONOR WOULD PREFER. WE
22 CAN DO THAT BY 5:00 P.M. THE FOLLOWING DAY, OR NOON. WHENEVER
23 YOUR HONOR WOULD LIKE, WE CAN DO.

24 THE COURT: SO IF THEY FILE BY MIDNIGHT ON THE 7TH,
25 YOU COULD DO IT -- YOU WANT TO JUST DO IT BY NOON, OR DO YOU

1 WANT UNTIL, LIKE, 2:00?

2 MR. HUSENY: WE CAN CERTAINLY DO IT BY NOON, BUT I
3 WOULD LOVE UNTIL 2:00, YOUR HONOR, IF THAT IS A CHOICE.

4 THE COURT: ALL RIGHT. DO IT BY 2:00, PLEASE.

5 ALL RIGHT. AND THEN WE'LL TAKE A LOOK AT THE FULL
6 BRIEFING AND THEN DECIDE, BUT I WILL ALERT -- I'VE ALREADY
7 ALERTED TO THE MAGISTRATE JUDGE PANEL THAT I'D LIKE THEM TO
8 HANDLE THESE MOTIONS, SO I'LL COORDINATE WITH THEM. OKAY?

9 NOW, DO YOU THINK A HEARING IS NECESSARY? OR THIS IS ONE
10 THAT CAN BE DECIDED ON THE PAPERS? I MEAN, THUS FAR EVERYTHING
11 IS BEING DECIDED ON THE PAPERS, ESPECIALLY IN COVID TIMES.

12 MR. HUSENY: WE THINK IT PROBABLY CAN BE DECIDED ON
13 THE PAPERS, YOUR HONOR, BUT BECAUSE IT INVOLVES A PREVIOUS
14 ORDER TO COMPEL FROM YOUR HONOR, IT MIGHT MAKE SENSE TO HAVE A
15 HEARING SCHEDULED IN CASE THERE IS SOME DISCUSSION THAT SHOULD
16 HAPPEN.

17 SO, AGAIN, WE THINK IT PROBABLY CAN BE DECIDED ON THE
18 PAPERS BY YOUR HONOR OR THE MAGISTRATE JUDGE PANEL IF THAT'S
19 WHERE YOU DECIDE TO MOVE IT TO, BUT IF WE COULD HAVE A HEARING
20 SCHEDULED FOR EARLY MAYBE NEXT WEEK, THAT MIGHT HELP, AGAIN,
21 MOVE THINGS ALONG IN CASE IT'S NECESSARY.

22 THE COURT: WELL, WHAT I'D LIKE TO DO IS NOT SET A
23 HEARING DATE, BECAUSE I DON'T KNOW WHO'S GOING TO DECIDE IT AND
24 WHO WILL NEED TO HAVE A HEARING.

25 SO WITHOUT KNOWING WHAT THIS MOTION IS, I'D RATHER WAIT TO

1 DECIDE WHO'S GOING TO DECIDE IT AND WHETHER THERE NEEDS TO BE A
2 HEARING AND WHEN THAT SHOULD BE. OKAY?

3 NOW, THE SECOND MOTION, THAT CAN GO TO THE MAGISTRATE
4 JUDGES PANEL?

5 MR. HUSENY: YES, YOUR HONOR.

6 THE COURT: OKAY. SO I WOULD ASK YOU TO WORK WITH
7 THE PANEL, ESPECIALLY WORKING THROUGH JUDGE COUSINS'S COURTROOM
8 DEPUTY ON ANY -- IF YOU NEED TO SCHEDULE ANYTHING WITH HIM,
9 OKAY? BECAUSE HE'S COORDINATING WITH JUDGES VAN KEULEN AND
10 HIXSON. OKAY?

11 MR. HUSENY: VERY GOOD, YOUR HONOR.

12 THE COURT: OKAY. NOW, SEPARATELY, DO WE NEED A CMC
13 AND A JOINT CASE MANAGEMENT STATEMENT?

14 AND I THINK, MR. HUSENY, YOU'RE SAYING DO IT THIS WEEK.
15 MS. KELLEHER IS SAYING DO IT NEXT WEEK.

16 NOW THAT WE HAVE THIS SCHEDULE FOR BRIEFING THIS FIRST
17 MOTION, MR. HUSENY, YOU THINK IT STILL SHOULD HAPPEN THIS WEEK?

18 MR. HUSENY: NO, YOUR HONOR. ACTUALLY, WITH THE
19 MOTION IN PLACE, EARLY NEXT WEEK IS FINE FOR THE CMC. WE
20 WANTED IT JUST IN CASE THE -- THAT WE NEEDED TO DISCUSS FURTHER
21 WITH YOU ON MOTION LOGISTICS. BUT WITH THAT SCHEDULE, WE THINK
22 MONDAY OR TUESDAY FOR THE FOLLOW-ON CMC WOULD BE APPROPRIATE.

23 THE COURT: THE ONLY THING I THOUGHT WE MAY TALK
24 ABOUT AT THE END OF THE WEEK IS IF THERE ARE ANY ISSUES WITH
25 THE DEPOSITION TOMORROW.

1 MS. KELLEHER: I BELIEVE, YOUR HONOR, THERE WAS SOME
2 THOUGHT, DEPENDING ON HOW YOUR HONOR DECIDED THE ISSUE OF THE
3 SCHEDULE ADJUSTMENT, THAT THERE MIGHT BE SOME FLEXIBILITY IN
4 THE DATE OF THE DEPOSITION. SO I THINK OUR COLLEAGUES WHO ARE
5 HANDLING THE DEPOSITION FOR PLAINTIFFS AND DEFENDANTS MAY KNOW
6 MORE THAN THAT.

7 BUT I THINK -- I THINK THERE WAS SOME THOUGHT THEY MIGHT
8 EXTEND THAT BY A FEW DAYS DEPENDING ON HOW YOUR HONOR ADJUSTED
9 IF THE SCHEDULE WAS CHANGED IN ANY WAY.

10 THE COURT: I DON'T UNDERSTAND WHY THAT SHOULD KEEP
11 GETTING ADJUSTED. ISN'T THAT JUST A "WHAT ARE THE DOCUMENTS"
12 DEPOSITION?

13 MS. KELLEHER: NO, YOUR HONOR, THIS IS A -- I THINK
14 THEY'RE SUBSTANTIVE TOPICS FOR THE DEPARTMENT OF COMMERCE
15 DEPOSITION.

16 THE COURT: OKAY. ALL RIGHT. WELL, WHY DON'T YOU
17 ALL WORK THAT OUT AMONGST YOURSELVES? WHAT IF WE HAVE A CMC
18 NEXT TUESDAY, JANUARY 12TH, AND YOU FILE YOUR JOINT CASE
19 MANAGEMENT STATEMENT ON THE 11TH? HOW DOES THAT SOUND?

20 MS. KELLEHER: I THINK THAT'S FINE FOR DEFENDANTS,
21 YOUR HONOR. THANK YOU.

22 MR. HUSENY: JUST ONE SECOND, YOUR HONOR. I MAY HAVE
23 ANOTHER DEPOSITION SCHEDULED THAT DAY, AND IT LOOKS LIKE I DO,
24 UNFORTUNATELY. IS IT POSSIBLE TO HAVE THE CASE MANAGEMENT
25 CONFERENCE ON WEDNESDAY, IF AT ALL POSSIBLE? IF NOT, CERTAINLY

1 ONE OF MY COLLEAGUES COULD COVER.

2 THE COURT: I THINK WEDNESDAY WOULD WORK. I JUST
3 DON'T KNOW WHAT MY CRIMINAL CALENDAR IS THAT DAY.

4 LET ME HEAR FROM MS. DIBBLE. DO YOU THINK WE MIGHT HAVE
5 ANY CAPACITY ON WEDNESDAY? I CAN'T REMEMBER IF THAT'S THE DAY
6 WE HAVE THREE OR FOUR SENTENCINGS.

7 THE CLERK: IT IS THAT DAY. I THINK IT WOULD BE
8 DIFFICULT BEFORE 3:00 P.M. TO FIT ANYTHING --

9 THE COURT: UM-HUM.

10 THE CLERK: -- THAT DAY.

11 THE COURT: OKAY. WE COULD DO IT THE 11TH AND FILE
12 YOUR JOINT CASE MANAGEMENT STATEMENT -- WE COULD DO IT THIS
13 MORNING. I WOULD ASK THAT WE THEN SET THE CMC MAYBE AT 3:00
14 BECAUSE IT'S A LITTLE BIT DIFFICULT TO TRY TO PROCESS ALL THE
15 ISSUES THE SAME DAY AND HAVE THE CMC. OR YOU COULD FILE YOUR
16 JOINT CASE MANAGEMENT STATEMENT ON FRIDAY, THE 8TH. I JUST
17 DON'T KNOW WHAT YOU PREFER.

18 MS. KELLEHER: I THINK, YOUR HONOR, IF THERE'S A WAY
19 TO KEEP THE CMC ON TUESDAY OR WEDNESDAY, THAT JUST GIVES US THE
20 ADVANTAGE OF AN ADDITIONAL BUSINESS DAY TO SORT OF PULL THINGS
21 TOGETHER AND TO GIVE UPDATES OR INFORMATION TO THE PLAINTIFFS
22 THAT WE OWE THEM. SO I GUESS IF WE NEED TO DO IT ON MONDAY, I
23 GUESS IDEALLY OUR CASE MANAGEMENT REPORT WOULD BE DUE THAT
24 MORNING, JUST BECAUSE I KNOW SOMETIMES WHEN -- YOU KNOW, HAVING
25 A BUSINESS DAY WHEN FOLKS ARE AVAILABLE AND IN THE OFFICE AND

1 EVERYONE WE NEED TO CHECK IN WITH ON VARIOUS THINGS, IT IS
2 HELPFUL TO US. SO IF IT IS POSSIBLE TO DO THE CMC ON TUESDAY
3 OR WEDNESDAY, I THINK WE'D APPRECIATE THAT, AND TO HAVE THE CMC
4 DUE ON MONDAY.

5 MR. HUSENY: WE'RE OKAY WITH THE CMC STATEMENT DUE
6 MONDAY IF THAT WORKS FOR YOUR HONOR AT 9:00 OR 10:00 A.M. WE
7 WOULD PREFER TO HAVE THE CMC BE ON -- LATER IN THE DAY ON
8 MONDAY, IF POSSIBLE. AGAIN, THE SOONER THE BETTER FROM OUR
9 PERSPECTIVE JUST BECAUSE WE DON'T HAVE A LOT OF TIME LEFT ON
10 THE FACT DISCOVERY CALENDAR.

11 THE COURT: UM-HUM. AND I THINK IT'S IMPORTANT FOR
12 MR. HUSENY, WHO HAS BEEN LEADING THE PLAINTIFFS ON THE
13 DISCOVERY, TO BE PRESENT.

14 MS. KELLEHER: SURE. UNDERSTOOD, YOUR HONOR.

15 THE COURT: OKAY. SO WHY DON'T WE THEN -- WHAT IF I
16 GAVE YOU UNTIL 10:00 A.M. ON MONDAY -- THAT WOULD BE 1:00 P.M.
17 D.C. TIME -- FOR A JOINT CASE MANAGEMENT STATEMENT, SO YOU'D
18 HAVE A LITTLE BIT -- YOU KNOW, YOU'D HAVE HALF A DAY ON MONDAY.
19 DOES THAT WORK?

20 MS. KELLEHER: SURE. THANK YOU, YOUR HONOR.

21 THE COURT: SO THAT'S 10:00 A.M. PACIFIC TIME, 1:00
22 O'CLOCK D.C. TIME.

23 AND I'M SORRY, SINCE I KNOW PRETTY MUCH EVERYONE IS FROM
24 THE EAST COAST, BUT COULD WE SET IT AT 3:00 JUST TO GIVE US
25 SOME TIME TO SORT OF PROCESS ALL THE ISSUES IN YOUR JOINT CASE

1 MANAGEMENT STATEMENT BEFORE WE NEED TO GET TOGETHER?

2 MS. KELLEHER: OF COURSE, YOUR HONOR.

3 THE COURT: OKAY. THANK YOU. SO -- AND IF THERE'S
4 NO REASON TO GET TOGETHER, WE WON'T. I'LL JUST PROBABLY
5 CONTINUE IT. BUT IN CASE THERE'S ANYTHING WE NEED TO HANDLE.

6 OKAY. LET'S TALK ABOUT -- I THINK THAT'S IT FOR KIND OF
7 HOUSEKEEPING, BUT I THINK WE NEED TO NOW TALK ABOUT HOW THE
8 REST OF THE SCHEDULE WILL IMPLICATE -- BE IMPLICATED BY THE
9 EXTENSION OF THE FACT DISCOVERY CUTOFF. OBVIOUSLY I CAN'T HAVE
10 YOU DOING EXPERT REPORTS WHEN YOU HAVEN'T CONCLUDED FACT
11 DISCOVERY YET.

12 SO -- ALL RIGHT. I AM ACCEPTING THE DEFENDANTS' PROPOSAL
13 FOR FACT DISCOVERY BEING FOR ALL PARTIES JANUARY 21, BUT I
14 DON'T THINK IT MAKES SENSE TO HAVE THE OPENING EXPERT REPORTS
15 DUE THE NEXT DAY AS GOVERNMENT PROPOSES BECAUSE I JUST DON'T
16 THINK THAT'S ENOUGH TIME TO INCORPORATE ANY LAST DISCOVERY INTO
17 THE REPORT. SO I'M GOING TO ACCEPT JANUARY 26TH, WHICH IS THE
18 PLAINTIFFS' PROPOSAL, FOR REBUTTAL -- OR I'M SORRY -- OPENING
19 EXPERT REPORTS; THEN FEBRUARY 2ND FOR THE REBUTTAL REPORTS;
20 THEN FEBRUARY 9TH FOR THE CLOSE OF EXPERT DISCOVERY -- THAT'LL
21 GIVE YOU ABOUT A WEEK TO DO THE DEPOSITIONS -- FEBRUARY 16TH TO
22 FILE YOUR CROSS-MOTIONS FOR SUMMARY JUDGMENT, ONE PER SIDE IN
23 THE WHOLE CASE; FEBRUARY 23RD FOR OPPOSITIONS; AND I WILL MOVE
24 THE HEARING DATE TO MARCH 2ND. OKAY?

25 ARE YOU ALL AVAILABLE? I DON'T KNOW WHETHER THIS WILL BE

1 DECIDED ON THE PAPERS OR NOT. BUT MARCH 2ND AT 1:30 FOR THE
2 HEARING DATE?

3 MS. KELLEHER: YES, YOUR HONOR. I THINK THERE'S VERY
4 LITTLE ON OUR CALENDAR INTO MARCH, SO WE'RE AVAILABLE.

5 THE COURT: OKAY, TERRIFIC.

6 WHAT ABOUT FOR THE PLAINTIFFS?

7 MR. HUSENY: YES, YOUR HONOR, THAT WORKS.

8 THE COURT: OKAY. ALL RIGHT.

9 SO THAT WILL THEN PUT -- LET'S KEEP THE MOTIONS IN LIMINE
10 MARCH 5; OPPOSITIONS TO MOTIONS IN LIMINE MARCH 8TH; FINAL
11 PRETRIAL CONFERENCE, LET'S PLEASE KEEP THAT ON MARCH 11, THAT'S
12 CONSISTENT WITH BOTH SIDES' PROPOSAL, AS WELL AS THE CURRENT
13 SCHEDULE; WE'LL KEEP THE MARCH 19 BENCH TRIAL DATE.

14 AS FAR AS ANY SUBSEQUENT HEARING DATES FOR THE TRIAL, THAT
15 MAY DEPEND ON THE AVAILABILITY OF THE THREE JUDGE COURT,
16 ASSUMING ONE IS CONVENED. BUT I THINK WE CAN OTHERWISE TRY TO
17 KEEP THIS SCHEDULE. OKAY?

18 DOES ANYONE WANT TO BE HEARD ON THESE NEW DATES?

19 MS. KELLEHER: I WAS JUST -- I THINK THOSE ARE
20 ACCEPTABLE, CERTAINLY ACCEPTABLE TO US, YOUR HONOR.

21 WOULD YOUR HONOR PLAN TO ISSUE A NEW ORDER JUST IN TERMS
22 OF IT'LL SHOW UP ON THE DOCKET?

23 THE COURT: YES.

24 MS. KELLEHER: OKAY, WONDERFUL. THANK YOU.

25 THE COURT: I'LL DO A NEW CASE MANAGEMENT ORDER THAT

1 WILL MEMORIALIZE EVERYTHING THAT WAS DECIDED TODAY AND ALL OF
2 THE NEW DATES, AND ALSO SPECIFY WHAT WASN'T DECIDED TODAY, LIKE
3 WHO WILL DECIDE THIS FIRST MOTION FILED TOMORROW; AND, YOU
4 KNOW, IF AND WHEN THERE'S A HEARING, THAT'LL BE DETERMINED BY
5 THE DECISION MAKER AT A LATER TIME.

6 LET ME ASK, I DID HAVE A QUESTION, I WAS WONDERING FROM
7 BOTH SIDES' PERSPECTIVE, IF -- TELL ME HOW THE SCENARIO OR THIS
8 CASE PLAYS OUT DEPENDING ON WHAT HAPPENS, WHETHER A NUMBER IS
9 OR IS NOT REPORTED BY THE 20TH. AND MAYBE IT'S JUST TOO EARLY
10 TO SAY AND WE DON'T KNOW. BUT WHAT ARE THE DIFFERENT
11 SCENARIOS?

12 MR. HUSENY: I CAN START, YOUR HONOR.

13 AND I THINK, THOUGH WE DON'T KNOW WHAT THE ANSWER IS AND
14 WHEN THE NUMBERS WILL BE DISTRIBUTED OR SENT OUT, THE LATEST
15 MATERIALS WE'VE RECEIVED INDICATE THAT IT WILL BE LATER THAN
16 THAT. AGAIN, WE HAVE NOTHING DEFINITIVE IN OUR POSSESSION.
17 THAT'S PART OF THE REASON WE HAVE BEEN PUSHING SO HARD TO GET
18 THE CURRENT REPORTS ON PROCESSING AND WHAT ACTUALLY THE CENSUS
19 BUREAU IS DOING TO TRY TO HANDLE THE ANOMALIES THAT IT HAS
20 IDENTIFIED.

21 IF THE NUMBERS ARE ISSUED PRIOR TO DECEMBER 20TH, WE HOPE
22 TO BE ABLE TO HEAR ABOUT THAT AND UNDERSTAND IT RELATIVELY
23 QUICKLY.

24 WE'RE TAKING DEPOSITIONS NOW OF COMMERCE AND THE CENSUS
25 BUREAU EMPLOYEES PROBABLY NEXT WEEK IN LARGE PART, MAYBE THE

1 WEEK FOLLOWING, AND I THINK WE WILL KNOW AT THAT POINT MORE
2 DEFINITELY WHAT THE BUREAU IS DOING WITH RESPECT TO ITS
3 PROCESSING, ITS HANDLING OF THE ANOMALIES AND WHEN THE NUMBERS
4 WILL ACTUALLY BE SENT TO THE PRESIDENT.

5 WE JUST DON'T KNOW RIGHT NOW, AND IT'S A BIT SPECULATIVE
6 ON OUR END TO THINK THROUGH WHAT, IF ANYTHING, WOULD HAPPEN TO
7 THIS CASE AS A RESULT OF THE NUMBERS BEING SENT. WE DON'T KNOW
8 WHAT THAT REPORT WOULD LOOK LIKE, WE DON'T KNOW WHAT IT WOULD
9 CONTAIN, WE DON'T KNOW WHETHER THE PRESIDENTIAL MEMORANDUM
10 ISSUES THAT WE'VE TALKED ABOUT IN THIS CASE, AND THAT IS THE
11 JULY MEMORANDUM REGARDING UNDOCUMENTED IMMIGRANTS, WHETHER THAT
12 WILL BE SOMEHOW ADMITTED IN THE NUMBERS THAT ARE SENT TO THE
13 PRESIDENT OR NOT.

14 AND BECAUSE WE DON'T KNOW ANY OF THOSE ISSUES, WE DON'T
15 KNOW WHAT THE RIGHT APPROACH WOULD BE ON OUR END WITH RESPECT
16 TO THIS CASE.

17 THERE ARE OBVIOUSLY OTHER CASES INVOLVING THE PRESIDENTIAL
18 MEMORANDUM, THE SUPREME COURT HAS RULED ON RIPENESS AND
19 STANDING ISSUES, AND THOSE MAY BE IMPLICATED BY DECISIONS THAT
20 ARE MADE BY THE BUREAU AND THE DEPARTMENT OF COMMERCE AS WELL.

21 AND ALL OF THAT IS SORT OF UP IN THE AIR AND THERE'S SOME
22 UNCERTAINTY ON OUR END WHAT, IF ANYTHING, WOULD BE APPROPRIATE
23 FOR US TO DO AND HOW QUICKLY WE WOULD HAVE TO COME TO YOUR
24 HONOR WITH RESPECT TO ANY RELIEF WE WOULD REQUEST.

25 IF IT IS AFTER THAT DATE, THEN, AGAIN, WE'LL PROBABLY KNOW

1 THAT WHEN WE TAKE THE DEPOSITIONS NEXT WEEK OF SOME OF THESE
2 INDIVIDUALS AND WE'LL AGAIN TRY TO DETERMINE WHAT IS GOING TO
3 BE INCLUDED IN THE NUMBERS AND WHAT IS HAPPENING, AND DEPENDING
4 ON WHAT IS IN THAT REPORT AND HOW, IF AT ALL, THE PRESIDENTIAL
5 MEMORANDUM IS EMBEDDED WITHIN IT I THINK WILL DETERMINE WHAT
6 OUR NEXT STEPS ARE. RIGHT NOW THERE'S JUST A LOT OF
7 UNCERTAINTY.

8 THE COURT: OKAY. LET ME HEAR FROM THE DEFENDANTS.
9 I DON'T KNOW WHO WISHES TO SPEAK. WHAT -- WILL A NUMBER BE
10 REPORTED TO THE HOUSE OF REPRESENTATIVES BY THE PRESIDENT?
11 WHAT IS THE DATE THAT YOU ARE ANTICIPATING THAT NUMBER BEING
12 REPORTED?

13 MR. COGHLAN: YES, YOUR HONOR.

14 JOHN COGHLAN ON BEHALF OF THE DEFENDANTS.

15 YOUR HONOR, AS WE'VE KIND OF SUGGESTED THROUGHOUT THIS
16 CASE, IT'S A CONTINUING MOVING TARGET. AS MR. HUSENY
17 SUGGESTED, THE DOCUMENTS BEING PRODUCED LAST WEEK AND THE BEST
18 ESTIMATE COMING INTO THIS CONFERENCE REMAIN EARLY FEBRUARY.

19 JUST A LITTLE BIT BEFORE THIS CONFERENCE I GOT A CALL THAT
20 THE CENSUS BUREAU DISCOVERED SOME NEW ANOMALIES THAT THEY'RE
21 DEALING WITH. I DON'T KNOW MUCH AT THIS POINT, BUT I WANT TO
22 BRING THAT TO THE COURT'S ATTENTION. IT IS LIKELY RIGHT NOW TO
23 EXTEND THE PROJECTED DATE, BUT OFFICIALS AT ALL LEVELS OF THE
24 BUREAU CONTINUE TO LOOK AT THIS, FIND WAYS TO HOPEFULLY
25 STREAMLINE THE PROCESS, AND FIND EFFICIENCIES THAT WILL ALLOW

1 THEM TO FINISH AS CLOSE TO THE DEADLINE AS POSSIBLE.

2 ALL THAT BEING SAID, YOUR HONOR, JUST GIVEN THAT IT IS
3 SUCH A MOVING TARGET -- YOU KNOW, I DON'T WANT TO SPECULATE FOR
4 THE COURT. I WANT TO BE AS FORTHRIGHT AS I CAN. I WOULD
5 SUGGEST THAT IT NEED NOT, AT THIS POINT, AFFECT THE SCHEDULE
6 THAT THE COURT HAS LAID OUT.

7 BUT TO THE EXTENT, YOU KNOW, WE LEARN ADDITIONAL
8 INFORMATION, OF COURSE WE WILL BRING IT TO THE COURT'S
9 ATTENTION AS SOON AS WE CAN.

10 THE COURT: I REALLY APPRECIATE THAT. LET ME -- I'M
11 NOT SURE I HEARD YOU. WHAT DID YOU SAY ABOUT FEBRUARY? I
12 THINK I DIDN'T HEAR. WHAT WAS THAT DATE, OR THE SIGNIFICANCE
13 OF FEBRUARY?

14 MR. COGHLAN: SURE, YOUR HONOR.

15 IN RESPONSE TO PLAINTIFFS' REQUEST, THE DEFENDANTS
16 PRODUCED SOME DOCUMENTS THAT CONTAINED PROJECTIONS OF WHEN
17 EMPLOYEES AT THE BUREAU EXPECTED PROCESSING TO FINISH UP, AND
18 THE LATEST OF THOSE PROJECTIONS THAT I HAD SEEN COMING IN HAD
19 SUGGESTED EARLY FEBRUARY.

20 BUT, YOU KNOW, AS WE'VE ALWAYS SAID, YOU KNOW, THESE
21 PROJECTIONS ARE ALWAYS KIND OF SNAPSHOTS IN TIME THAT CONTINUE
22 TO MOVE AND EVOLVE ON A DAILY BASIS, SO THEN IT WAS THE BEST
23 INFORMATION I HAD COMING INTO THE HEARING TODAY.

24 AS I'VE SAID, IT DOES LOOK LIKE THAT -- THE BEST ESTIMATE
25 IS THAT THAT DATE WILL BE MOVED BACK, AND I UNFORTUNATELY DON'T

1 KNOW BY HOW MUCH RIGHT NOW.

2 THE COURT: MOVED BACK LATER INTO FEBRUARY?

3 MR. COGHLAN: I -- I BELIEVE, YOUR HONOR. BUT,
4 AGAIN, I DON'T WANT TO SPECULATE JUST BECAUSE I REALLY DID COME
5 ACROSS THIS INFORMATION JUST AS I WAS COMING INTO THE HEARING,
6 AND SO, YOU KNOW, WE CAN PROVIDE THE COURT WITH, AND PLAINTIFFS
7 WITH THE INFORMATION AS WE RECEIVE IT. WE ARE ENDEAVORING TO
8 DO THAT.

9 THE COURT: OKAY. THANK YOU.

10 SO LET ME ASK A QUESTION. THE SNAPSHOT THAT SAID EARLY
11 FEBRUARY, WHAT WAS THE DATE OF THAT SNAPSHOT?

12 MR. COGHLAN: I BELIEVE IT WAS FEBRUARY 9TH, YOUR
13 HONOR.

14 THE COURT: OKAY. THANK YOU. BUT WHAT WAS THE DATE
15 ON WHICH THE CENSUS BUREAU EMPLOYEES EXPECTED THE DATA
16 PROCESSING TO FINISH ON FEBRUARY 9TH? DOES THAT MAKE SENSE?

17 MS. KELLEHER: I BELIEVE -- YOUR HONOR, IF I MAY?

18 I BELIEVE THAT WAS A DOCUMENT THAT WAS PRODUCED TO
19 PLAINTIFFS LAST WEEK, AND I THINK IT WAS IN OUR DOCUMENT
20 PRODUCTION EITHER 11 OR 12, AND I BELIEVE THEY WERE CURRENT AS
21 OF DECEMBER 29TH.

22 THE COURT: OKAY. THANK YOU. I REALLY APPRECIATE
23 THAT. SO AS OF DECEMBER 29TH, THE CENSUS BUREAU EXPECTED DATA
24 PROCESSING TO FINISH FEBRUARY 9TH, BUT YOU'RE SAYING AS OF
25 TODAY, WHICH IS JANUARY 4TH, THAT DATE IS EXPECTED TO MOVE

1 LATER INTO FEBRUARY? OR BEYOND THE 9TH? IS THAT THE CORRECT
2 UNDERSTANDING?

3 MR. COGHLAN: THAT IS, YOUR HONOR. JUST, AGAIN, WITH
4 CAVEATS TO NOTE THAT IT COULD MOVE IN EITHER DIRECTION, AND
5 OFFICIALS THERE ARE LOOKING AT WAYS TO BOTH IMPROVE THE TIME
6 AND GET IT DONE QUICKLY, BUT AT THE SAME TIME, AS WE SEE TODAY,
7 ANOMALIES SOMETIMES ALSO OCCUR TO PUSH IT THE OTHER WAY.

8 THE COURT: I SEE. YOU MEAN -- YOU MEAN ANOMALIES
9 OCCUR TO PUSH THE DATE BEYOND FEBRUARY 9TH?

10 MR. COGHLAN: THAT'S RIGHT, YOUR HONOR, TO PUSH IT TO
11 THE LATER DATE.

12 THE COURT: ALL RIGHT. AND WHEN WERE THE NEW
13 ANOMALIES DISCOVERED? DO YOU KNOW?

14 MR. COGHLAN: I BELIEVE TODAY, YOUR HONOR. AGAIN,
15 I'M NOT OPERATING WITH COMPLETE INFORMATION, SO I BEG THE
16 COURT'S INDULGENCE. I WANT TO BE AS FORTHCOMING AS I CAN.

17 THE COURT: OKAY. ALL RIGHT. WELL, THANK YOU. I
18 REALLY APPRECIATE THAT INFORMATION.

19 SO LET ME ASK, FROM THE DEFENDANTS' PERSPECTIVE, HOW DOES,
20 IF AT ALL, WHETHER A DATE IS GIVEN -- I MEAN, I'M SORRY,
21 WHETHER THE REPORT TO THE HOUSE IS GIVEN BY A CERTAIN DATE, HOW
22 DOES THAT AFFECT THIS LITIGATION?

23 I'M ALSO JUST TRYING TO SENSE, LIKE, AM I REALLY GOING TO
24 HAVE TO TRY THIS CASE IN MARCH OR NOT? SO I JUST -- YOU KNOW,
25 I WAS HOPING THAT YOU COULD GIVE ME SOME INDICATION OF, YOU

1 KNOW, OKAY, IF WE GO DOWN THIS DECISION TREE, IF THIS HAPPENS,
2 THEN THIS. IF THAT HAPPENS, THEN NO.

3 I MEAN, I WAS JUST HOPING SO I COULD KNOW HOW MUCH PAIN I
4 WILL HAVE DOING SUMMARY JUDGMENTS IN, YOU KNOW, THE SPAN OF
5 FIVE OR SIX DAYS, ET CETERA.

6 MR. COGLAN: I CERTAINLY APPRECIATE THAT, YOUR
7 HONOR, AND JUST GIVEN HOW ITERATIVE A PROCESS IT IS, YOU KNOW,
8 I HESITATE TO SPECULATE BECAUSE IT DOES CHANGE, YOU KNOW, ON A
9 DAILY BASIS.

10 AND SO I -- I HESITATE TO SUGGEST EXACTLY HOW LONG IT WILL
11 TAKE OR HOW THAT WOULD IMPACT THE COURT'S SCHEDULE BECAUSE I'LL
12 BE AFRAID THAT I SAY ONE THING TODAY AND THEN TOMORROW IT
13 CHANGES.

14 SO I'M HAPPY TO GIVE THE COURT THE BEST INFORMATION WE
15 HAVE NOW. MY SUGGESTION, ON BEHALF OF THE DEFENDANTS, IS THAT
16 WE CONTINUE WITH THE COURT'S SCHEDULE AS IS, WE WILL CONTINUE
17 TO UPDATE THE COURT AND PLAINTIFFS AS WE ARE ABLE TO, AND THEN
18 IF CHANGES NEED TO BE MADE, WE CAN OBVIOUSLY DO SO.

19 BUT DEFENDANTS ARE ENDEAVORING -- THE EMPLOYEES AT THE
20 BUREAU ARE CONTINUING TO WORK AROUND THE CLOCK TO TRY AND GET
21 THIS DONE EXPEDITIOUSLY. THEY CONTINUE TO WORK WITH COUNSEL
22 HERE TO WORK AND RESPOND TO THE REQUESTS FROM PLAINTIFFS.

23 AND SO I THINK BOTH TRACKS ARE MOVING AS WELL AS CAN BE
24 EXPECTED, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU.

1 SO I -- I'D LIKE TO KEEP THE MARCH 19TH TRIAL DATE, WITH
2 THE HOPE THAT, YOU KNOW, IF SOME TYPE OF, YOU KNOW, JUDGMENT IS
3 NECESSARY, THAT THAT COULD BE ISSUED BEFORE APRIL 1ST. SO
4 LET'S KEEP OPERATING ON THAT ASSUMPTION, THAT WE ALL NEED TO BE
5 READY TO GO THROUGH TRIAL IN MARCH.

6 BUT OBVIOUSLY AS FACTS ON THE GROUND CHANGE, IF YOU COULD
7 LET ME KNOW IF YOU THINK THAT THAT WILL SOMEHOW IMPLICATE
8 EITHER THE CASE SCHEDULE OR HOW WE PROCEED, I'D REALLY
9 APPRECIATE IT. I JUST -- IT'S JUST FOR ALL OF YOU AS WELL SO
10 YOU KNOW WHETHER YOU NEED TO KEEP ALL THESE DATES AVAILABLE FOR
11 A FIVE-DAY BENCH TRIAL AND SUMMARY JUDGMENT AND WHATNOT.

12 OKAY. ALL RIGHT. WELL, I APPRECIATE THAT.

13 I WOULD LIKE, WHEN WE GET TOGETHER AGAIN, IF YOU COULD
14 GIVE ME ANOTHER UPDATE ABOUT, YOU KNOW, WHAT THE CURRENT DATE
15 IS AND WHETHER THAT AFFECTS OUR CASE SCHEDULE AND AFFECTS THE
16 WORK THAT NEEDS TO BE DONE IN THIS CASE, THAT WOULD BE REALLY
17 HELPFUL.

18 OKAY. SO WHAT ELSE DO WE NEED TO DO TODAY? I THINK THAT
19 WAS IT ON MY LIST. BUT IF YOU HAD ANYTHING FURTHER, I'D BE
20 HAPPY TO HAVE US DISCUSS IT NOW.

21 MR. HUSENY: NOTHING FURTHER FOR PLAINTIFFS, YOUR
22 HONOR.

23 I WOULD JUST SAY THAT I APPRECIATE MR. COGHLAN'S OFFER TO
24 KEEP US IN THE LOOP ON THE NEW ANOMALIES AND THE NEW
25 DEVELOPMENTS, SO WE WILL FOLLOW UP WITH DEFENDANTS ON ALL OF

1 THAT TO MAKE SURE WE ARE CURRENT AS WELL.

2 BUT FOR THIS HEARING, NOTHING FURTHER FROM PLAINTIFFS.

3 THE COURT: SO YOU HAD PREVIOUSLY REQUESTED DISCOVERY
4 ON THE ANOMALIES; IS THAT RIGHT?

5 MR. HUSENY: YES, YOUR HONOR.

6 THE COURT: OKAY. SO I WOULD ASSUME THERE WOULD BE
7 ONGOING DISCOVERY OBLIGATIONS AS THAT -- AS THOSE FACTS CHANGE
8 AND IT WOULDN'T JUST BE FROZEN BASED ON DATA COLLECTION THAT
9 WAS DONE ON, FOR EXAMPLE, DECEMBER 22ND OR SOMETHING LIKE THAT.

10 IS THAT -- I DON'T KNOW WHO WANTS TO SPEAK FOR THE
11 DEFENDANTS, BUT ARE YOU UNDERSTANDING THAT YOUR DISCOVERY
12 OBLIGATION IS ONGOING AS FACTS ON THE GROUND CHANGE, THAT IT
13 CAN'T JUST BE THE FROZEN SNAPSHOT FROM WHENEVER THAT -- I THINK
14 THE DATA COLLECTION THAT I READ ABOUT IN DIFFERENT JOINT
15 DISCOVERY STATUS REPORTS WAS ACTUALLY EVEN EARLIER IN DECEMBER.

16 MS. KELLEHER: YES, YOUR HONOR.

17 MR. SVERDLOV: YES --

18 MS. KELLEHER: GO AHEAD, ALEX.

19 MR. SVERDLOV: I WOULD BE HAPPY TO ADDRESS THAT.

20 WE OF COURSE UNDERSTAND THAT OUR DISCOVERY OBLIGATIONS ARE
21 ONGOING, WHICH IS WHY PLAINTIFFS HAVE IN THEIR HANDS DOCUMENTS
22 THAT ARE DATED DECEMBER 29TH AND THAT WERE, IN FACT, PRODUCED
23 ON DECEMBER 30TH.

24 SO THERE IS NECESSARILY A CERTAIN LAG TO BEING ABLE TO
25 COLLECT DOCUMENTS, LOAD THEM INTO THE SYSTEM, AND GIVE THEM TO

1 PLAINTIFFS. WE CAN'T FULLY LIVE STREAM THE CENSUS AS I THINK
2 THE PLAINTIFFS WOULD LIKE.

3 BUT WE ARE ABSOLUTELY KEEPING UP WITH OUR DISCOVERY
4 OBLIGATIONS AND PROVIDING UPDATES AS THEY -- AS WE'RE ABLE TO
5 COLLECT DOCUMENTS AND TURN THEM OVER.

6 THE COURT: TERRIFIC. THANK YOU. THANK YOU.

7 OKAY. DID ANYONE HAVE ANYTHING ELSE? OTHERWISE I WILL
8 PLAN TO SEE YOU NEXT WEEK.

9 ANYTHING ELSE? NO?

10 OKAY. THANK YOU ALL. STAY HEALTHY, BE WELL, AND WE'LL BE
11 BACK TOGETHER NEXT WEEK. ALL RIGHT. THANK YOU.

12 MS. KELLEHER: THANK YOU, YOUR HONOR.

13 MR. HUSENY: THANK YOU, YOUR HONOR.

14 MR. SVERDLOV: THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU. BYE-BYE.

16 THE CLERK: COURT'S ADJOURNED. THANK YOU.

17 (THE PROCEEDINGS WERE CONCLUDED AT 3:15 P.M.)
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