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Attorneys for Plaintiffs
CITY OF SAN JOSE and BLACK ALLIANCE
FOR JUST IMMIGRATION

[Additional Counsel Listed on Signature Page]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY OF SAN JOSE, a municipal corporation;
and BLACK ALLIANCE FOR JUST
IMMIGRATION, a California Non-Profit
Corporation,

Plaintiffs,

v.

WILBUR L. ROSS, JR., in his official capacity
as Secretary of the U.S. Department of
Commerce; et al.,

Defendants.

Case No. 3:18-cv-02279

Judge: Hon. Richard G. Seeborg
Dept: 3

**PLAINTIFFS' NOTICE
OF UNOPPOSED MOTION TO ENTER
FINAL JUDGMENT AFTER REMAND;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF; ~~PROPOSED~~ ORDER**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 12, 2019, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Richard Seeborg in Department 3 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs City of San Jose and Black Alliance for Just Immigration (“Plaintiffs”) will and hereby do move this Court to enter Plaintiffs’ [Proposed] Final Judgment After Remand, Order of Vacatur, and Permanent Injunction, attached as “Exhibit A” to this motion.

This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the accompanying [Proposed] Final Judgment After Remand, Order of Vacatur, and Permanent Injunction, the papers and pleadings on file in this action, and such matters as may be presented to the Court at or before the time of the hearing.

Although Plaintiffs have filed this request as a noticed motion in accordance with Local Rule 7-1, Defendants do not oppose this motion and the parties do not require a hearing.

Respectfully submitted,

Dated: July 30, 2019

MANATT, PHELPS & PHILLIPS, LLP

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BLACK ALLIANCE FOR JUST IMMIGRATION

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Following the Supreme Court’s decision in *Department of Commerce v. New York*, 139 S. Ct. 2551, 2019 WL 2619473 (2019), Plaintiffs and Defendants conferred about the terms of a proposed final judgment in this action. Plaintiffs now request that the Court enter the [Proposed] Final Judgment After Remand, Order of Vacatur, and Permanent Injunction attached hereto as “Exhibit A.” Defendants do not oppose this motion.

II. PROCEDURAL BACKGROUND

This Court entered final judgment in this action on March 13, 2019. ECF No. 197. The same day, Defendants filed a notice of appeal of the final judgment. ECF No. 198. On March 18, 2019, Defendants filed a petition for writ of certiorari before judgment in the United States Supreme Court. Petition for a Writ of Certiorari Before Judgment, *Ross, et al. v. San Jose, et al*, --- S. Ct. ---, 2019 WL 1258816 (2019).

On June 27, 2019, the United States Supreme Court issued its opinion in the case of *Department of Commerce v. New York*, affirming the portion of the district court’s judgment holding that Secretary Ross’s decision to add a citizenship question to the 2020 Census violates the Administrative Procedure Act. *Dep’t of Commerce v. New York*, 139 S. Ct. at 2573-2576.

On June 28, 2019, the Supreme Court granted Defendants’ petition for writ of certiorari before judgment in this action. Its order directed as follows: “The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Department of Commerce v. New York*, 588 U.S. ____ (2019).” *Ross, et al. v. San Jose, et al*, --- S. Ct. ---, 2019 WL 1243674 (2019).

A writ of mandate subsequently issued from the Supreme Court to the Ninth Circuit Court of Appeals, and on July 30, 2019, the Ninth Circuit Court of Appeals remanded the action to this Court. ECF No. 224.

III. PLAINTIFFS’ REQUEST TO ENTER FINAL JUDGMENT AFTER REMAND

Following the Supreme Court’s decision in *Department of Commerce v. New York*, on July 11, 2019, the President issued an Executive Order stating that “[a]fter examining every

possible alternative, the Attorney General and the Secretary of Commerce have informed me that the logistics and timing for carrying out the census, combined with delays from continuing litigation, leave no practical mechanism for including the [citizenship] question on the 2020 decennial census.” Exec. Order 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019) (“The [Supreme] Court’s ruling . . . has now made it impossible, as a practical matter, to include a citizenship question on the 2020 decennial census questionnaire.”).

Accordingly, the parties agree that entry of a final judgment is appropriate and have conferred about the language of the [Proposed] Final Judgment After Remand, Order of Vacatur, and Permanent Injunction. The proposed judgment permanently enjoins Defendants from including a citizenship question on the 2020 decennial census questionnaire; from delaying the process of printing the 2020 decennial census questionnaire after June 30, 2019, for the purpose of including a citizenship question; and from asking persons about their citizenship status on the 2020 census questionnaire or otherwise asking a citizenship question as part of the 2020 decennial census.

Defendants have informed Plaintiffs that they do not oppose this motion and that they intend to file a notice of non-opposition shortly after it is filed.

Plaintiffs therefore ask this Court to enter the attached [Proposed] Final Judgment After Remand, Order of Vacatur, and Permanent Injunction.

Respectfully submitted,

Dated: July 30, 2019

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Attorneys for Plaintiffs CITY OF SAN JOSE and
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FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, Barbara Gasik hereby attests that concurrence in the filing of this document has been obtained from all the signatories above.

Dated: July 30, 2019

/s/ Barbara Gasik

Barbara Gasik

~~PROPOSED~~ ORDER

Having considered Plaintiffs' Unopposed Motion to Enter Judgment After Remand ("Motion"), and good cause appearing, the Court orders as follows:

1. Plaintiffs' Motion is GRANTED.
2. To the extent that the March 13, 2019 judgment in this action, ECF No. 197, is still in place, that judgment is hereby VACATED.
3. The Court shall adopt and enter the [Proposed] Final Judgment After Remand, Order of Vacatur, and Permanent Injunction attached as "Exhibit A" to the Motion.

IT IS SO ORDERED.

Dated: 8/1/2019


HON. RICHARD SEEBORG
United States District Judge

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, et al.,

Defendants.

Case No. 18-cv-01865-RS

18-cv-02279-RS

**[PROPOSED] FINAL JUDGMENT
AFTER REMAND, ORDER OF
VACATUR, AND PERMANENT
INJUNCTION**

CITY OF SAN JOSE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, et al.,

Defendants.

In accordance with the Court's March 6, 2019 Findings of Fact and Conclusions of Law, the June 28, 2019 order of the United States Supreme Court in *Wilbur L. Ross, Secretary of Commerce, et al. v. California, et al.*, No. 18-1214, the Unopposed Motions to Enter Final Judgment After Remand filed by the Plaintiffs on July 30, 2019, and Rule 58(b)(2)(B) of the Federal Rules of Civil Procedure, it is **ORDERED, ADJUDGED, and DECREED** as follows:

FINAL JUDGMENT AFTER REMAND

In Case No. 18-cv-1865-RS:

- Final judgment is entered for Plaintiffs and against Defendants on Plaintiffs’ Second Cause of Action (Violation of APA; 5 U.S.C. § 706).
- Final judgment is entered for Defendants and against Plaintiffs on Plaintiffs’ First Cause of Action (Violation of Constitution’s “Actual Enumeration” Mandate; U.S. Const. art. I, § 2, cl. 3).

In Case No. 18-cv-2279-RS:

- Final judgment is entered for Plaintiffs and against Defendants on Plaintiffs’ Fourth Cause of Action (Violation of APA’s Arbitrary and Capricious Standard; 5 U.S.C. § 706(2)(A)).
- Final judgment is entered for Defendants and against Plaintiffs on Plaintiffs’ First Cause of Action (Violation of Constitution’s “Actual Enumeration” Mandate; U.S. Const. art. I, § 2, cl. 3); Plaintiffs’ Second Cause of Action (Violation of the Constitution’s Apportionment Clause; U.S. Const. amend. XIV, § 2); and Plaintiffs’ Third Cause of Action (Violation of APA’s Requirement that Administrative Action Be in Accordance with Law, Not Contrary to Constitutional Right, and Not Beyond Statutory Authority; 5 U.S.C. § 706(2)).

VACATUR AND REMAND

Secretary Ross’s March 26, 2018 decision to include a citizenship question on the 2020 Census is hereby **VACATED**. In light of the permanent injunction below, the decision is not remanded to the Department of Commerce.

PERMANENT INJUNCTION

Defendants, including the Secretary of Commerce in his official capacity, the Director of the Census Bureau in his official capacity, and any successors to those offices, together with their agents, servants, employees, attorneys, and other persons who are in active concert or participation with the foregoing, see Fed. R. Civ. P. 65(d)(2), are hereby **PERMANENTLY ENJOINED** from including a citizenship question on the 2020 decennial census questionnaire;

1 from delaying the process of printing the 2020 decennial census questionnaire after June 30, 2019
2 for the purpose of including a citizenship question; and from asking persons about citizenship
3 status on the 2020 census questionnaire or otherwise asking a citizenship question as part of the
4 2020 decennial census.

5 The Court will retain jurisdiction in these cases to enforce the terms of this Order until the
6 2020 Census results are processed and sent to the President by December 31, 2020.

7
8 **IT IS SO ORDERED.**

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10 Dated: _____, 2019

11
12 RICHARD SEEBORG
United States District Judge

13 CASE NOS. 18-cv-01865-RS, 18-cv-02279-RS
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, I served the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: July 30, 2019

/s/ Barbara Gasik

Barbara Gasik