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June 24, 2019

The Honorable Scott S. Harris  
Clerk of the Court  
Supreme Court of the United States  
One First Street, N.E.  
Washington, D.C. 20543

Re: *Department of Commerce, et al. v. New York, et al.*, No. 18-966

Dear Mr. Harris:

The Court heard oral argument in the above-captioned matter on April 23, 2019. On June 12, 2019, respondents New York Immigration Coalition, et al., moved this Court for a limited remand for further discovery concerning newly discovered evidence. On June 20, 2019, petitioners opposed that motion.

We write to inform the Court of two changed circumstances that may have a material impact on the disposition of respondents' motion and/or the merits of this case.

First, on Monday, June 24, 2019, in two consolidated cases that also concern the decision to add a citizenship question to the 2020 Census, the U.S. District Court for the District of Maryland issued a memorandum opinion concerning its order granting plaintiffs' motion for an indicative ruling on the basis of the same newly discovered evidence raised in respondents' motion for limited remand. *See Kravitz v. Dep't of Commerce*, No. 18-cv-1041, Dkt. No. 175 (D. Md. June 24, 2019) (Attachment A). The district court ruled that the newly discovered evidence bears on the *Kravitz* plaintiffs' claim of discriminatory purpose, which the court initially dismissed and is presently pending before the Fourth Circuit. It found that plaintiffs' motion raised "a substantial issue," *id.* at 14, which "potentially connects the dots between a discriminatory purpose ... and [the Secretary's] decision," *id.* at 8. The court determined that "[i]f the case is remanded, the Court will reopen

discovery for no more than 45 days, order an expedited evidentiary hearing, and provide a speedy ruling.” *Id.* at 13.

Second, on June 21, petitioner United States Census Bureau released a paper titled, “Predicting the Effect of Adding a Citizenship Question to the 2020 Census” (Attachment B).<sup>1</sup> The Bureau concludes that “the addition of a citizenship question will have an 8.0 percentage point larger effect on self-response rates in households that may have noncitizens relative to those with only U.S. citizens,” translating to “an overall 2.2 percentage point drop in self-response in the 2020 census, increasing costs and reducing the quality of the population count.” (Attachment B at 1). As it did previously, the Census Bureau used a regression analysis accounting for variables including household size, home ownership, income, the presence of children in the home, employment status, and various demographic characteristics (including marital status, sex, race/ethnicity, age, and educational attainment). *Id.* at 11. This new evidence indicates that the addition of a citizenship question will have a substantially greater impact on noncitizen self-response rates than was evident in the record available to the district court at trial.

We would appreciate your circulating this letter and its attachments to Members of the Court.

Respectfully submitted,



Dale E. Ho  
*Counsel of Record for  
Respondents New York  
Immigration Coalition, et al.*

cc: See attached service list

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<sup>1</sup> Available at <https://apps.npr.org/documents/document.html?id=6165808-U-S-Census-Bureau-Working-Paper-Understanding>. An earlier version of this paper can be found at J.A.967, and was cited in the decision below at Pet. App. 143a. The earlier version represented the Census Bureau’s “best,” “conservative estimate” of the effect of the citizenship question, and concluded that it would reduce census responses by at least 5.8% among non-citizen households, approximately 6.5 million people. J.A.761–762, 821, 826–827, 1005, 1008. The updated version of the Census Bureau’s analysis is based on more recent data and has revised this estimate upwards.

SERVICE LIST: No. 18-966, *Department of Commerce, et al. v. New York, et al.*

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