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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

16 **STATE OF CALIFORNIA by and through**
Attorney General Xavier Becerra;
 17 **COUNTY OF LOS ANGELES; CITY OF**
LOS ANGELES; CITY OF FREMONT;
 18 **CITY OF LONG BEACH; CITY OF**
OAKLAND; CITY OF STOCKTON,

Plaintiffs,

v.

22 **WILBUR L. ROSS, JR., in his official**
capacity as Secretary of the U.S.
 23 **Department of Commerce; U.S.**
DEPARTMENT OF COMMERCE; RON
 24 **JARMIN, in his official capacity as Acting**
Director of the U.S. Census Bureau; U.S.
 25 **CENSUS BUREAU; DOES 1-100,**

Defendants.

3:18-cv-01865

PLAINTIFFS' UNOPPOSED MOTION
TO ENTER FINAL JUDGMENT AFTER
REMAND; [PROPOSED] ORDER

Hearing Date: September 12, 2019
 Time: 1:30 p.m.
 Dept: 3
 Trial Date: January 7, 2019
 Judge: The Honorable Richard G.
 Seeborg
 Action Filed: March 26, 2018

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 State of California, County of Los Angeles, and Cities of Los Angeles, Fremont, Long Beach, Oakland, and Stockton, and Plaintiff-in-Intervention Los Angeles Unified School District 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.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Following the Supreme Court's decision in *Dep't 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. 207. The same day, Defendants filed a notice of appeal of the final judgment. ECF No. 208. 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 v. California*, --- S. Ct.--, 2019 WL 1258816 (2019).

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

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

10 A writ of mandate subsequently issued from the Supreme Court to the Ninth Circuit Court
11 of Appeals, and on July 26, 2019, the Ninth Circuit Court of Appeals remanded the action to this
12 Court. ECF No. 235.

13 **III. PLAINTIFFS’ REQUEST TO ENTER FINAL JUDGMENT AFTER REMAND**

14 Following the Supreme Court’s decision in *Department of Commerce v. New York*, on July
15 11, 2019, the President issued an Executive Order stating that “[a]fter examining every possible
16 alternative, the Attorney General and the Secretary of Commerce have informed me that the
17 logistics and timing for carrying out the census, combined with delays from continuing litigation,
18 leave no practical mechanism for including the [citizenship] question on the 2020 decennial
19 census.” Exec. Order 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019) (“The [Supreme]
20 Court’s ruling . . . has now made it impossible, as a practical matter, to include a citizenship
21 question on the 2020 decennial census questionnaire.”).

22 Accordingly, the parties agree that entry of a final judgment is appropriate and have
23 conferred about the language of the [Proposed] Final Judgment After Remand, Order of Vacatur,
24 and Permanent Injunction. The proposed judgment permanently enjoins Defendants from
25 including a citizenship question on the 2020 decennial census questionnaire; from delaying the
26 process of printing the 2020 decennial census questionnaire after June 30, 2019, for the purpose
27 of including a citizenship question; and from asking persons about their citizenship status on the
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1 2020 census questionnaire or otherwise asking a citizenship question as part of the 2020
2 decennial census.

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

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

7
8 Dated: July 30, 2019

Respectfully Submitted,

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13 Supervising Deputy Attorneys General
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15 TODD GRABARSKY
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15 /s/ Gabrielle D. Boutin
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19 *through Attorney General Xavier Becerra*

18 Dated: July 30, 2019

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Dated: July 30, 2019

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Dated: July 30, 2019

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FILER'S ATTESTATION

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

Dated: July 30, 2019

/s/ Gabrielle D. Boutin
GABRIELLE D. BOUTIN

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[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. 207, 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: _____

HON. RICHARD SEEBORG
United States District Judge

EXHIBIT A

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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
CITY OF SAN JOSE, et al., Plaintiffs, v. WILBUR L. ROSS, et al., Defendants.	[PROPOSED] FINAL JUDGMENT AFTER REMAND, ORDER OF VACATUR, AND PERMANENT INJUNCTION

Case No. 18-cv-01865-RS

 18-cv-02279-RS

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

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:

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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.

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8 **IT IS SO ORDERED.**

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10 Dated: _____, 2019

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RICHARD SEEBORG
United States District Judge

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CASE NOS. 18-cv-01865-RS, 18-cv-02279-RS

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CERTIFICATE OF SERVICE

Case Name: **State of California, et al. v. Wilbur L. Ross, et al.** No. **3:18-cv-01865**

I hereby certify that on July 30, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

PLAINTIFFS’ UNOPPOSED MOTION TO ENTER FINAL JUDGMENT AFTER REMAND; [PROPOSED] ORDER

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 30, 2019, at Sacramento, California.

Eileen A. Ennis

Declarant

/s/ Eileen A. Ennis

Signature