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17 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 NATIONAL URBAN LEAGUE et al.,

20 Plaintiffs,

21 v.

22 WILBUR L. ROSS, JR., et al.,

23 Defendants.

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Date: TBD
Time: TBD
Place: Courtroom 8
Judge: Hon. Lucy H. Koh

1 **I. INTRODUCTION**

2 Yesterday, Defendants responded to the question the Court posed on August 26 to
3 determine, practically speaking, how far in advance of the September 30 deadline the Court
4 needed to rule on Plaintiffs’ motion for a stay and preliminary injunction. Defendants’ answer—
5 after waiting a full week—was a three-sentence, non-explanation: immediately. According to
6 Defendants, they have already started shutting down the Census count a month before the
7 already accelerated deadline, and in the middle of litigation challenging the legitimacy of that
8 accelerated deadline. In light of this information, Plaintiffs have no recourse but to ask this
9 Court to enter a temporary restraining order (“TRO”) to maintain the status quo and to prevent
10 Defendants from taking any further actions to implement the shortened timelines in the August 3,
11 2020 Rush Plan,¹ until the September 17 hearing on Plaintiffs’ pending preliminary injunction
12 motion. Otherwise, Plaintiffs and the public interest will be irreparably harmed by Defendants’
13 unilateral actions even before the parties’ mutually agreed briefing schedule is complete.

14 **II. DISCUSSION**

15 During the August 26, 2020 Case Management Conference (“CMC”), the Court asked the
16 parties when a ruling on the pending motion for a preliminary injunction was needed in order to
17 provide meaningful relief. Plaintiffs explained that their answer necessarily would depend, in
18 part, on whether and when the Census Bureau intended to wind down its field operations in
19 advance of the September 30, 2020 deadline imposed by the Rush Plan. And counsel for
20 Defendants was unable to provide an answer to that question. The Court accordingly asked
21 Defendants to provide the answer promptly in a separate filing, rejecting their request to delay
22 answering until their opposition brief on Friday, September 4. The Court’s order required
23 Defendants to “file a statement identifying when the Census Bureau will begin taking steps to
24 conclude its field operations” by September 2, 2020. Dkt. 45 at 2.

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¹ The Court asked Defendants what terminology the Census Bureau uses to refer to the April 13
and August 3 Plans, but allowed them to answer that question in their opposition filing due later
this week. Plaintiffs accordingly continue to refer to the April 13, 2020 Plan as the “COVID-19
Plan” and the August 3, 2020 Plan as the “Rush Plan,” for ease of reference and to remain
consistent with prior filings.

1 Yesterday, Defendants filed a Statement purporting to respond to the Court’s question.
2 Dkt. 63 (“Statement”). Defendants’ response is a single, three-sentence paragraph telling the
3 Court that (1) “the Census Bureau has already begun taking steps to conclude field operations”;
4 (2) “[t]hose operations are scheduled to be wound-down throughout September by geographic
5 regions based on response rates within those regions”; and (3) “any order by the Court to extend
6 field operations, regardless of whether those operations in a particular geographic location are
7 scheduled to be wound-down by September 30 or by a date before then, could not be
8 implemented at this point without significant costs and burdens to the Census Bureau.” *Id.*

9 Defendants’ response is lacking in detail and clarity in crucial respects. But the one thing
10 it makes clear is that the irreparable harm detailed in Plaintiffs’ preliminary injunction motion
11 has already begun and, accordingly, more immediate relief is needed.

12 Defendants admit that, sometime before September 2, they had “already” started to
13 conclude field operations. As explained in Plaintiffs’ pending motion for a stay and preliminary
14 injunction, those field operations did not even begin in the vast majority of this country until
15 August 9. *See* Dkt. 36, Pls.’ Mot. for Stay & Prelim. Injunc. at 10, 18; *see also* Dkt. 36-2,
16 Thompson Decl. ¶ 19. So, according to Defendants, they began taking steps to end field
17 operations in some geographic regions after *only three weeks*. And Defendants say they fully
18 intend to continue winding down such operations “throughout September.” Dkt. 63. Immediate
19 relief is needed to prevent the irreparable harm Plaintiffs and the public interest will suffer as a
20 result. *See* Dkt. 36 at 12-13, 17-21, 25-27, 29-32; *see also* Dkt. 36-2, Thompson Decl. ¶¶ 15-20;
21 Dkt. 36-3, Hillygus Decl. ¶¶ 5, 13, 20; Dkt. 36-4, Louis Decl. ¶¶ 16, 18, 20.

22 The urgency of this motion is entirely of Defendants’ making. The parties had agreed to
23 an expedited preliminary injunction schedule with the September 30 deadline front of mind.
24 Defendants waited a full week after the CMC to inform the Court that they had already started to
25 shut down operations. Defendants presumably knew that before yesterday. And they also knew
26 why the Court was asking: to determine when a decision was needed. If Defendants’ answer was
27 essentially going to be “now,” they should have informed the Court and Plaintiffs immediately.

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1 Nor can Defendants rely on their own failure to provide crucial details to avoid the
 2 remedy necessitated by the time crunch they created. The Statement says merely that the Bureau
 3 is winding down field operations “by geographic regions based on response rates within those
 4 regions.” Dkt. 63. But which regions, exactly? What response rate triggers the decision to shut
 5 down operations early?² How is that response rate calculated? How many visits does an
 6 enumerator have to make to a household before the Bureau marks it as complete? Is the Bureau
 7 already starting to substitute administrative records and proxy responses for the enumerator
 8 contact attempts they ordinarily would make in order to achieve the response rates that will
 9 enable it to shut down operations?³ Defendants provide no answers.

10 All Plaintiffs know is that Defendants are already starting to close down field operations
 11 *a full month* before the already accelerated September 30 deadline. This leaves Plaintiffs with no
 12 choice but to ask the Court for a TRO to maintain the status quo during the pendency of the
 13 preliminary injunction motion. *See Lamon v. Pliler*, No. CIVS03-0423FCD-CMK-P, 2006 WL
 14 120088, at *1 (E.D. Cal. Jan. 12, 2006) (“The purpose in issuing a temporary restraining order is
 15 to preserve the status quo pending a more complete hearing.”); *Whitman v. Hawaiian Tug &*
 16 *Barge Corp./Young Bros. Ltd. Salaried Pension Plan*, 27 F. Supp. 2d 1225, 1228 (D. Haw. 1998)
 17 (“A temporary restraining order is designed to preserve the status quo until there is an
 18 opportunity to hold a hearing on the application for a preliminary injunction.”). The reasons
 19 preliminary relief is warranted have been briefed, and the standard for issuing a TRO is the same
 20 as the standard for a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox*
 21 *Co.*, 434 U.S. 1345, 1347 n.2 (1977); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d
 22 832, 839 n.7 (9th Cir. 2001); *Nacio Sys., Inc. v. Gottlieb*, No. C 07-3481 PJH, 2007 WL

23 _____
 24 ² For example, San Diego has been reported as one of the regions in which the Bureau intends to
 25 shut down field operations weeks early. *See* Exs. A, B. Yet, as of today, the non-response
 26 follow up completion rate for the San Diego area census office is only 66.0%. *See* Ex. C. The
 Bureau’s own data suggests that most regions are less than 60% complete, and not a single
 region is marked as “complete.” *See* Ex. C.

27 ³ For example, according to an internal Bureau document recently released by the House
 28 Committee on Oversight and Reform, the Bureau intended to make certain “adjustments” to non-
 response follow up operations in order to meet the Rush Plan’s new deadline. *See* Ex. D at 7.
 This document also underscores that each passing day intensifies the harm caused by the
 Bureau’s early termination of non-response follow up operations.

2238210, at *1 (N.D. Cal. Aug. 1, 2007). In the interest of time, and to avoid duplicative filings, Plaintiffs incorporate their preliminary injunction briefing (Dkts. 36, 37) here as the required memorandum of points and authorities (Local Rule 65-1(a)(2)), and remain available for a hearing or any further proceeding at the Court’s convenience.

Plaintiffs’ counsel provided Defendants’ counsel with notice earlier today that Plaintiffs would be filing this TRO motion.⁴

Dated: September 3, 2020

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⁴ The New Parties added in the First Amended Complaint are signatories to this TRO motion but, consistent with the parties’ joint stipulation, Plaintiffs do not and will not rely on them for allegations of harm or injury or for any other purpose.

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ATTESTATION

I, Melissa Arbus Sherry, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: September 3, 2020

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