

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

COMMON CAUSE, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

No. 1:20-cv-02023- CRC-GGK-DLF

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITIES

Plaintiffs write concerning three developments relevant to this case.

First, on September 29, 2020, the Government produced the e-mail attached as Exhibit A in *National Urban League v. Ross*, No. 20-cv-5799 (N.D. Cal.). In that e-mail, Census Bureau Deputy Director Ron Jarmin informed Commerce Secretary Wilbur Ross that, assuming census “field work” was complete on October 5, the Bureau could produce a count of “unlawful aliens in ICE Detention Centers by 12/31,” and that the “[o]ther PM [i.e., *Presidential Memorandum*] *related outputs* would be pushed to 1/11/2021” (emphasis added). This e-mail confirms that, even as of late September, the Bureau had concrete plans regarding implementation of the Memorandum, the details of which the Government has declined to divulge—concrete enough that the Bureau knew precisely how many days it would take to carry them out—and that those plans plainly go beyond mere subtraction of “aliens in ICE Detention Centers.”

Second, on October 14, 2020, a three-judge court of the District of Maryland heard oral argument in *Useche v. Trump*, No. 8:20-cv-2225, another challenge to the Memorandum. The transcript is attached as Exhibit B. That entire colloquy is relevant to the motions *sub judice*. In particular, Plaintiffs direct this Court to: (1) the *Useche* panel’s discussion of the import of the

Jarmin email (discussed *supra*) and the Fontenot Declaration (*Common Cause* ECF No. 76-1) as to standing and ripeness, *see* Ex. B at 7:8-23, 9:3–11:14, 12:10-15, 21:13–22:6, 23:10–24:4, 27:12–28:15, 40:8-22, 65:20–66:14; (2) the panel’s suggestions that the Government is not being candid regarding the Bureau’s concrete plans to implement the Memorandum, *see id.* at 10:24–11:2, 12:6-9, 20:3-11, 29:19-25; and (3) the panel’s discussion of why a post-apportionment remedy may be inadequate, *see id.* at 12:1-21, 13:24–18:15, 58:15–60:8, 68:2–69:19.

Finally, on October 16, the Supreme Court agreed to hear oral argument on the merits in *Trump v. New York*, No. 20-366, on November 30, 2020. Plaintiffs respectfully request that this Court decide the pending motions expeditiously so that this case can be appealed to and resolved by the Supreme Court at the same time it decides *New York*. As Plaintiffs have previously noted, although the issues in the two cases are overlapping, this case involves different categories of plaintiffs, different causes of action, and different evidence vis-à-vis standing and ripeness, so the Supreme Court’s judgment in *New York* may not be conclusive here. It would therefore serve the interests of judicial economy and the orderly administration of justice for the Supreme Court to consider and decide both cases at the same time.

DATED: October 17, 2020

/s/ Daniel S. Ruzumna

Daniel S. Ruzumna (D.C. Bar No. 450040)

BONDURANT MIXSON & ELMORE LLP

EMMET J. BONDURANT*

1201 West Peachtree Street NW

Suite 3900

Atlanta, GA 30309

Telephone: (404) 881-4100

Fax: (404) 881-4111

bondurant@bmelaw.com

PATTERSON BELKNAP WEBB & TYLER LLP

GREGORY L. DISKANT*

DANIEL S. RUZUMNA (D.C. Bar No. 450040)

ARON FISCHER*

JONAH M. KNOBLER*

PETER A. NELSON*

J. JAY CHO*

DEVON HERCHER*

ABIGAIL E. MARION*

1133 Avenue of the Americas

New York, NY 10036

Telephone: (212) 336-2000

Fax: (212) 336-2222

gldiskant@pbwt.com

Attorneys for Plaintiffs

* admitted *pro hac vice*

McDERMOTT WILL & EMERY

MICHAEL B. KIMBERLY (D.C. Bar No. 991549)

500 North Capitol Street, NW

Washington, D.C. 20001

Telephone: (202) 756-8000

Fax: (202) 756-8087

mkimberly@mwe.com

*Attorney for the Individual and
Organizational Plaintiffs*