May 3, 2018

**VIA ECF**

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

RE: ***State of New York, et al. v. United States Department of Commerce, et al.,*** **18-CV-2921-JMF (S.D.N.Y)**

Dear Judge Furman:

Pursuant to the Court's April 5, 2018 Notice of Initial Pretrial Conference (ECF No. 18), the parties in the above-captioned matter submit a joint letter in anticipation of the initial pretrial conference scheduled for May 9, 2018 at 3:00 PM (ECF No. 43).

**(1) Brief statement of the nature of the action and the principal defenses thereto.**

Plaintiffs bring this action to enforce Defendants' constitutional obligation to conduct an "actual Enumeration" of the national population every ten years, by determining the "whole number of persons" in the United States. U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2. On March 26, 2018, Defendants announced their decision to use the 2020 Census to demand information on the citizenship status of every resident in the country; and on March 29, Defendants transmitted a report of that determination to Congress as required by the Census Act. 13 U.S.C. § 141(f)(2). Plaintiffs allege that this determination will fatally undermine the accuracy of the population count; jeopardize critical federal funding needed by states and localities to provide services and support for their residents; deprive historically marginalized immigrant communities of critical public and private resources over the next ten years; and impair the right of Plaintiffs' residents to equal representation.

Plaintiffs allege that Defendants' determination violates the Constitution and the Administrative Procedure Act. U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2; 5 U.S.C. § 706(2). Plaintiffs accordingly seek declaratory and injunctive relief to enjoin Defendants from demanding person-by-person citizenship information on the 2020 Census.

Defendants assert that Plaintiffs' challenge to the Secretary of Commerce's decision to reinstate a citizenship question on the 2020 Census questionnaire is without merit. Defendants intend to file a motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction and under 12(b)(6) for failure to state a claim, combined with a motion in the alternative for summary judgment under Rule 56 based upon an administrative record that will be produced along with Defendant's motion.

Defendants' principal arguments and defenses will be as follows: (1) Plaintiffs lack Article III standing because they fail to allege a sufficiently non-speculative injury-in-fact caused by the government action challenged, rather than by the independent actions of third parties not before the Court; (2) the Court lacks jurisdiction over Plaintiffs' APA claim because the

Secretary's decision as to what questions to include in the census questionnaire is committed to agency discretion by law and hence not subject to review under the APA, *see* 5 U.S.C. § 701(a)(2); (3) Defendants are entitled to dismissal of or summary judgment on Plaintiffs' Enumeration Clause claim because the Clause mandates only that an actual enumeration be conducted, with no restrictions on the form of the census questionnaire, and the Secretary makes clear in his decision that he intends to conduct an actual enumeration while following the long-established practice of requesting citizenship information, thereby fully complying with the constitutional requirement; (4) even if the Secretary's decision is reviewable under the APA, Defendants are entitled to summary judgment on Plaintiffs' APA claim because the Secretary's decision is not arbitrary/capricious or otherwise contrary to law.

The collection of citizenship data by the Census has been a long-standing historical practice: The decennial census surveys often included the question up until 1950. Then, the question was asked on the long-form survey sent to 1 in 6 households until 2000. Since 2005, the question has been asked every year on the American Community Survey, which is sent annually to 1 in 38 households.

**(2) A brief explanation of why jurisdiction and venue lie in this Court.**

Plaintiffs assert that the Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a), as well as under the judicial review provisions of the APA, 5 U.S.C. § 702. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and (e)(1). Defendants are United States agencies or officers sued in their official capacities. Plaintiffs State of New York and City of New York are residents of this judicial district, and the other Plaintiffs consent to adjudication of these issues in this district.

Defendants contend that this Court lacks subject-matter jurisdiction over all of Plaintiffs' claims because Plaintiffs lack Article III standing and that the Court lacks subject-matter jurisdiction over Plaintiffs' APA claim because the challenged decision is committed to agency discretion.

**(3) A statement of all existing deadlines, due dates, and/or cut-off dates.**

Pursuant to Rule 12(a)(2) and Rule 15(a)(3) of the Federal Rules of Civil Procedure, Defendants have until June 8, 2018 to serve an answer or file a motion to dismiss.

**(4) A brief description of any outstanding motions.**

There are currently no outstanding motions.

**(5) A brief description of any discovery that has already taken place and of any discovery that is necessary for the parties to engage in meaningful settlement negotiations.**

Defendants' view is that discovery is inappropriate because this case challenges a discrete, final agency action and thus should be decided on the administrative record compiled by the agency. *See* 5 U.S.C. § 706; *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)

("The factfinding capacity of the district court is thus typically unnecessary to judicial review of agency decisionmaking."); *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *Sharkey v. Quarantillo*, 541 F.3d 75, 93 n.15 (2d Cir. 2008). Plaintiffs' assertion of a constitutional claim does not alter this analysis. *See Trudeau v. Fed. Trade Comm'n*, 456 F.3d 178, 186-87 (D.C. Cir. 2006) (holding that APA provides waiver of sovereign immunity for "all equitable actions for specific relief against a Federal agency or officer acting in an official capacity," regardless whether suit is brought under the APA itself); *Harkness v. Sec. of Navy*, 858 F.3d 437, 451 & n.9 (6th Cir. 2017) (rejecting as meritless argument that presence of constitutional claim warranted extra-record discovery and explaining that constitutional claim "is properly reviewed on the administrative record" absent showing of bad faith). Defendants do not join Plaintiffs' proposed Case Management Plan and do not submit their own because it is unnecessary to resolution of this case. *See* Fed. R. Civ. P. 16(b); Fed. R. Civ. P. 26(a)(1)(B)(i) & (f)(1); Local Civil Rule 16.1.

In order to expedite resolution of this matter, Defendants intend to produce the administrative record on or before June 8, 2018, along with their motion to dismiss or in the alternative for summary judgment. Since Plaintiffs have not yet seen the administrative record, their requests for discovery at this time are premature. *See Hoffman*, 132 F.3d at 14 (evaluating adequacy of record in making determination whether to consider extra-record evidence). This is particularly true here because Defendants have strong arguments and intend to move expeditiously for dismissal on the ground that the Court lacks subject-matter jurisdiction to adjudicate this challenge. *See In re United States*, 138 S. Ct. 443, 445 (2017) (granting writ of mandamus and directing district court to rule on Government's threshold arguments for dismissal before requiring completion of administrative record because "those arguments, if accepted, likely would eliminate the need for the District Court to examine a complete administrative record"); *Rivera v. Heyman*, No. 96 Civ. 4489, 1997 WL 86394, at *1 (S.D.N.Y. Feb. 27, 1997) ("A stay [of discovery] pending determination of a dispositive motion that potentially eliminates the entire action will neither substantially nor unduly delay the action, should it continue."); *Boelter v. Hearst Comm'n, Inc.*, No. 15 Civ. 03934, 2016 WL 361554, at *5 (S.D.N.Y. Jan. 28, 2016) (granting motion to stay discovery during pendency of motion to dismiss in part because "none [of the arguments] are frivolous" and resolution of the motion may result in dismissal of the entire action).

Plaintiffs believe that discovery outside of the administrative record is both appropriate and necessary. It is well-established that "courts permit discovery in APA cases if plaintiffs seek to demonstrate bad faith, bias, or improper behavior on the part of the agency." *Outdoor Amusement Bus. Ass'n, Inc. v. Dep't of Homeland Sec.*, No. CV ELH-16-1015, 2017 WL 3189446, at *18 (D. Md. July 27, 2017); *see also, e.g.*, *Tummino v. Von Eschenbach*, 427 F. Supp. 2d 212, 230 (E.D.N.Y. 2006) (recognizing that "bad faith or improper behavior by agency decisionmakers serves as a basis for expanding the scope of review, and thereby the scope of discovery"). Here, Plaintiffs allege, among other things, that Defendants' demand for citizenship information was undertaken in bad faith. Specifically, while Defendants contend that they seek citizenship information in order to enforce the Voting Rights Act, *see* Am. Compl. ¶ 94, substantial evidence suggests that Defendants' stated rationale is, in fact, pretextual. *See id.* ¶¶ 93-102. For example, Plaintiffs have identified specific communications suggesting that Defendants added the citizenship question not because of a desire to enforce the Voting Rights Act, but because they were "officially mandated" to do so by President Trump for reasons

unrelated to the Voting Rights Act. *See id.* ¶¶ 101-2. Moreover, additional discovery is warranted, where as is likely here, the parties dispute the appropriate scope of the administrative record. *See e.g.*, *Camp*, 411 U.S. at 143. For these and other reasons, Plaintiffs are entitled to seek discovery outside of the administrative record.

Particularly given that the parties agree that "expeditious resolution of this case will benefit all parties," *see infra* at (8), Plaintiffs respectfully request to begin discovery forthwith. In the alternative, to the extent that the Court wishes to delay any decision on the propriety of discovery until after Defendants have produced the administrative record, Plaintiffs request that Defendants expedite production of the record. Defendants made the decision to add the citizenship question in late March; Census Bureau officials previously indicated that they anticipate having the administrative record complete by Memorial Day.[1] Accordingly, to the extent that the Court declines to allow Plaintiffs to initiate discovery without delay, Plaintiffs request that Defendants produce the administrative record no later than May 25, 2018.

**(6) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any.**

To date, there have been no settlement discussions.

**(7) A statement confirming that the parties have discussed the use of alternate dispute resolution mechanisms**

The parties confirm that they have discussed the use of alternate dispute resolution mechanisms and due to the nature of this action, do not believe that a settlement conference before a Magistrate Judge; participation in the District's Mediation Program; and/or retention of a privately retained mediator would be appropriate.

**(8) Any other information that the parties believe may assist the Court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case.**

Plaintiffs contend that, given the unique circumstances of the decennial census, timing is of the essence in this case. There is a risk that Census Bureau preparations for the 2020 Census will be finalized or significantly advanced during the pendency of this litigation, which would make Defendants' compliance with any eventual remedial order by this Court much more difficult or expensive. Indeed, the Census Bureau has indicated in its public planning documents that it intends to start printing the physical 2020 Census questionnaire by May 2019. Preparations for the online 2020 Census questionnaire may be conducted earlier. Further, Defendant Ron Jarmin, performing the non-exclusive functions and duties of the Director of the U.S. Census Bureau, testified under oath before Congress on April 18, 2018, that the Census

[1] *See* https://apps.npr.org/documents/document.html?id=4445787-House-Oversight-Democrats-Letter-to-Rep-Trey-Gowdy (letter from House Committee on Oversight and Government Reform, referencing briefing from the Commerce Department and Census Bureau).

Bureau would like to "have everything settled for the questionnaire this fall."[2] He noted that the Census Bureau wants to resolve this issue "very quickly," because if the Census questionnaire is not finalized by Spring 2019 or early Summer 2019, changes are going to "cost money."

In addition, Plaintiffs are concerned that protracted litigation could exacerbate nonresponse and reduce participation in the 2020 Census within immigrant communities. This deterrent effect began on March 26, 2018, when immigrant communities learned that Census Bureau Secretary Wilbur Ross, Jr. directed the Census Bureau to add a citizenship demand to the 2020 Census. Plaintiffs respectfully seek an expedited review of this dispute, as the longer Defendants' decision to add a citizenship question on the 2020 Census stands, the more challenging it will be to conduct meaningful outreach in these communities to counteract this deterrent effect and resulting harms.

Defendants generally agree with Plaintiffs that expeditious resolution of this case will benefit all parties, but disagree with Plaintiffs' assertions in their Proposed Case Management Schedule to the effect that initial disclosures and discovery should be required. As indicated above, this case presents a challenge to a discrete agency action that can and should be resolved on the basis of the agency record to be produced by June 8, 2018.

Regarding novel and dispositive issues presented by this case, Defendants note that, although challenges to census *methodologies* are justiciable, Plaintiffs' attempt to challenge the form of the actual census questionnaire appears to be unprecedented. That decision, which is committed to the discretion of the Secretary of Commerce, *see* 13 U.S.C. § 141, is not justiciable.

[2] *House Appropriations Committee, Commerce, Justice, Science and Related Agencies Subcommittee Hearing on Bureau of the Census*, 115th Cong. 20 (April 18, 2018).

Respectfully submitted,

By: */s Lourdes M. Rosado*
Lourdes M. Rosado, Bureau Chief
Matthew Colangelo, Executive Deputy Attorney General
Laura Wood, Special Counsel
Elena Goldstein, Senior Trial Counsel
Ajay Saini, Assistant Attorney General
Diane Lucas, Assistant Attorney General
Sania Khan, Assistant Attorney General
Alex Finkelstein, Volunteer Assistant Attorney General
Civil Rights Bureau
Office of the New York State Attorney General
28 Liberty, 20th Floor
New York, NY 10005
Lourdes.Rosado@ag.ny.gov
Diane.Lucas@ag.ny.gov
Ajay.Saini@ag.ny.gov
Tel. (212) 416-6348
Fax (212) 416-8074

*Attorney for Plaintiffs*

- and -

CHAD A. READLER
Acting Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
Assistant Branch Director

CAROL FEDERIGHI
Senior Trial Counsel

KATE BAILEY
STEPHEN EHRLICH
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
Tel.: (202) 514-9239
Fax: (202) 616-8470

GEOFFREY S. BERMAN
United States Attorney

By: /s/ Dominika Tarczynska
DOMINIKA TARCZYNSKA
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, NY 10007
Tel. (212) 637-2748
Fax (212) 637-2686
dominika.tarczynska@usdoj.gov

*Attorneys for Defendants*

cc: Counsel for all parties in *State of New York, et al. v. United States Department of Commerce, et al.* (by ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| State of New York, et al.,<br><br>Plaintiffs,<br><br>-v-<br><br>United States Department of Commerce, et al.,<br><br>Defendants. | 18 -CV- 2921 (JMF)<br><br>CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER* |

This Civil Case Management Plan and Scheduling Order is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties [consent ☐ / do not consent ☑] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. [*If all parties consent, the remaining Paragraphs should not be completed. Instead, within three (3) days of submitting this Proposed Case Management Plan and Scheduling Order, the parties shall submit to the Court a fully executed Notice, Consent, and Reference of a Civil Action to a Magistrate Judge, available at* http://nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge.]

2. The parties [have ☑ / have not ☐] conferred pursuant to Fed. R. Civ. P. 26(f).

3. Settlement discussions [have ☐ / have not ☑] taken place.

4. [*If applicable*] Counsel have discussed an informal exchange of information in aid of early settlement and have agreed upon disclosure of the following information within _____ days/weeks:

Not applicable.

*As stated in the May 3, 2018 Joint Letter, Defendants do not join in submitting this proposed Civil Case Management Plan and Scheduling Order.

5. Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motion to amend or to join additional parties shall be filed within 30 days from the date of this Order. [*Absent exceptional circumstances, a date not more than thirty (30) days following the initial pretrial conference. Any motion to amend or to join additional parties filed after the deadline in this paragraph will be subject to the "good cause" standard in Fed. R. Civ. P. 16(b)(4) rather than the more lenient standards of Fed. R. Civ. P. 15 and 21.*]

6. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be completed no later than 14 days from the date of this Order. [*Absent exceptional circumstances, a date not more than fourteen (14) days following the initial pretrial conference.*]

7. [*If applicable*] The plaintiff(s) shall provide HIPAA-compliant medical records release authorizations to the defendant(s) no later than _____.

8. Discovery

   a. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York.

   b. All fact discovery shall be completed no later than July 31, 2018. [*A date not more than 120 days following the initial pretrial conference, unless the Court finds that the case presents unique complexities or other exceptional circumstances.*]

   c. The parties agree that there [is ☑ / is no ☐] need for expert discovery. If the parties agree that there is no need for expert discovery, all discovery shall be completed by the deadline for fact discovery, unless — prior to that date — a party files, and the Court grants, a letter-motion seeking an extension for purposes of taking expert discovery; any such motion should explain why expert discovery has become necessary and propose a schedule for such discovery. [*If any party believes that there is a need for expert discovery, the parties should complete Paragraph 8(d).*]

   d. [*If applicable*] All expert discovery, including reports, production of underlying documents, and depositions, shall be completed no later than September 14, 2018. [*Absent exceptional circumstances, a date not more than 45 days from the date in Paragraph 8(b) (i.e., the completion of all fact discovery).*]

   e. The parties should not anticipate extensions of the deadlines for fact discovery and expert discovery set forth in the foregoing Paragraphs. Relatedly, the parties should not make a unilateral decision to stay or halt discovery (on the basis of settlement negotiations or otherwise) in anticipation of an extension. If something unforeseen arises, a party may seek a limited extension of the foregoing deadlines by letter-motion filed on ECF. Any such motion must be filed before the relevant deadline and must explain why, despite the parties' due diligence, discovery could not be completed by the relevant deadline.

9. Interim Discovery Deadlines

a. Initial requests for production of documents shall be served by May 30, 2018. [*Absent exceptional circumstances, a date not more than thirty (30) days following the initial pretrial conference.*]

b. Interrogatories pursuant to Rule 33.3(a) of the Local Civil Rules of the Southern District of New York shall be served by May 30, 2018. [*Absent exceptional circumstances, a date not more than thirty (30) days following the initial pretrial conference.*] No Rule 33.3(a) interrogatories need to be served with respect to disclosures automatically required by Fed. R. Civ, P. 26(a).

c. Unless otherwise ordered by the Court, contention interrogatories pursuant to Rule 33.3(c) of the Local Civil Rules of the Southern District of New York must be served no later than thirty (30) days before the close of discovery. No other interrogatories are permitted except upon prior express permission of the Court.

d. Unless otherwise ordered by the Court, depositions of fact witnesses shall be completed by the date set forth in Paragraph 8(b).

i. Absent an agreement between the parties or an order from the Court, depositions are not to be held until all parties have responded to initial requests for document production.

ii. There is no priority in deposition by reason of a party's status as a plaintiff or a defendant.

iii. Absent an agreement between the parties or an order from the Court, non-party depositions shall follow initial party depositions.

e. Unless otherwise ordered by the Court, requests to admit shall be served by no later than thirty (30) days before the close of discovery.

f. Any of the deadlines in Paragraphs 9(a) through 9(e) may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in Paragraph 8(b).

g. In the event that there is expert discovery, no later than thirty (30) days prior to the date in Paragraph 8(b) (i.e., the completion of all fact discovery), the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents, and depositions, provided that (1) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (2) all expert discovery shall be completed by the date set forth in Paragraph 8(c).

10. All motions and applications shall be governed by the Federal Rules of Civil Procedure, the Local Rules of the Southern District of New York, and the Court's Individual Rules and Practices (available at http://nysd.uscourts.gov/judge/Furman).

11. In the case of discovery disputes, parties should follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party shall, in accordance with the Court's Individual Rules and Practices in Civil Cases, promptly file a letter-motion, no longer than three pages, explaining the nature of the dispute and requesting an informal conference. Any letter-motion seeking relief *must* include a representation that the meet-and-confer process occurred and was unsuccessful. Any opposition to a letter-motion seeking relief shall be filed as a letter, not to exceed three pages, within three business days. Counsel should be prepared to discuss with the Court the matters raised by such letters, as the Court will seek to resolve discovery disputes quickly, by order, by conference, or by telephone. **Counsel should seek relief in accordance with these procedures in a timely fashion; if a party waits until near the close of discovery to raise an issue that could have been raised earlier, the party is unlikely to be granted the relief that it seeks, let alone more time for discovery.**

12. All counsel must meet in person for at least one hour to discuss settlement within fourteen (14) days following the close of fact discovery.

13. Absent good cause, the Court will not have summary judgment practice in a non-jury case. Summary judgment motions, if applicable, and any motion to exclude the testimony of experts pursuant to Rules 702-705 of the Federal Rules of Evidence and the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, are to be filed within thirty (30) days of the close of fact or expert discovery (whichever is later). Unless otherwise ordered by the Court, opposition to any such motion is to be filed two (2) weeks after the motion is served on the opposing party, and a reply, if any, is to be filed one (1) week after service of any opposition.

14. Unless otherwise ordered by the Court, within thirty (30) days of the close of all discovery, or, if a dispositive motion has been filed, within thirty (30) days of a decision on such motion, the parties shall submit to the Court for its approval a Joint Pretrial Order prepared in accordance with the Court's Individual Rules and Practices and Fed. R. Civ. P. 26(a)(3). The parties shall also follow Paragraph 5 of the Court's Individual Rules and Practices for Civil Cases, which identifies submissions that must be made at or before the time of the Joint Pretrial Order, including any motions *in limine*.

15. If this action is to be tried before a jury, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions shall be filed on or before the Joint Pretrial Order due date in accordance with the Court's Individual Rules and Practices. Jury instructions may not be submitted after the Joint Pretrial Order due date, unless they meet the standard of Fed. R. Civ. P. 51(a)(2)(A). If this action is to be tried to the Court, proposed findings of fact and conclusions of law shall be filed on or before the Joint Pretrial Order due date in accordance with the Court's Individual Rules and Practices.

16. Unless the Court orders otherwise for good cause shown, the parties shall be ready for trial two weeks after the Joint Pretrial Order is filed.

17. This case [is ☐ / is not ☑] to be tried to a jury.

18. Counsel for the parties have conferred, and the present best estimate of the length of trial is 5-7 days.

19. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below.

Plaintiffs are requesting an expedited pretrial schedule in order to resolve this litigation with sufficient time for Defendants to implement, without unnecessary expense or burden, any remedy that may be ordered by this Court.

**TO BE FILLED IN BY THE COURT IF APPLICABLE:**

_____ shall file a motion for/to _____ no later than _____. Any opposition shall be filed by _____. Any reply shall be filed by _____. At the time any reply is due, the moving party shall supply one courtesy hard copy of all motion papers by mail or hand delivery to the Court in accordance with the Court's Individual Rules and Practices.

The parties shall contact the Chambers of the Magistrate Judge designated to this case on or before _____ in order to schedule settlement discussions under his/her supervision in or about _____.

The parties shall file a joint letter by _____ indicating whether they would like the Court to refer the case to the assigned Magistrate Judge and/or the Court mediation program for settlement purposes and, if so, approximately when they believe a settlement conference should be held.

The next pretrial conference is scheduled for _____ at _____ in Courtroom 1105 of the Thurgood Marshall Courthouse, 40 Centre Street, New York, New York 10007.

Absent leave of Court, by **Thursday of the week prior to any future conference**, the parties shall file on ECF a joint letter, not to exceed three (3) pages, regarding the status of the case. The letter should include the following information in separate paragraphs:

(1) A statement of all existing deadlines, due dates, and/or cut-off dates;

(2) A brief description of any outstanding motions;

(3) A brief description of the status of discovery and of any additional discovery that needs to be completed;

(4) A list of all prior settlement discussions, including the date, the parties involved, whether any third-party (e.g., Magistrate Judge, mediator, etc.) was involved, and the approximate duration of such discussions, if any;

(5) A statement of whether or how the Court could facilitate settlement of the case (for example, through a(nother) settlement conference before the designated designated Magistrate Judge or as part of the Court's Mediation Program);

(6) A statement of the anticipated length of trial and whether the case is to be tried to a jury;

(7) A statement of whether the parties anticipate filing motions for summary judgment; and

(8) Any other issue that the parties would like to address at the pretrial conference or any information that the parties believe may assist the Court in advancing the case to settlement or trial.

This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Further, the use of any alternative dispute resolution mechanism does not stay or modify any date in this Order. Indeed, unless the Court orders otherwise, parties engaged in settlement negotiations must proceed on parallel tracks, pursuing settlement and conducting discovery simultaneously. Parties should not assume that they will receive an extension of an existing deadline if settlement negotiations fail.

Any application to modify or extend the dates herein (except as provided in Paragraph 9(f)) shall be made in a written application in accordance with Court's Individual Rules and Practices for Civil Cases and shall be made no fewer than two (2) business days prior to the expiration of the date sought to be extended. Absent exceptional circumstances, extensions will not be granted after deadlines have already passed.

SO ORDERED.

Dated:
New York, New York

JESSE M. FURMAN
United States District Judge