

September 17, 2018

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

RE: Plaintiffs' letter-motion for protective order re: third-party depositions on individual organization members in *New York Immigration Coalition, et al. v. U.S. Dep't of Commerce, et al.*, 18-CV-2921 (JMF)

Dear Judge Furman,

The *NYIC* Plaintiffs¹ write pursuant to Local Civil Rule 37.2 and Rule 2(C) of this Court's Individual Rules and Practices to request an informal discovery conference with the Court, or an order providing the relief described below.

Despite the Court's September 4 order (in response to ECF 101 & 110) requiring Defendants to "explain with specificity" why depositions of non-party members of Plaintiff organizations are necessary, ECF No. 119, Defendants have commenced service of seven Rule 45 subpoenas seeking this testimony starting next Monday. Ex. A. During the September 17 meet-and-confer, Defendants failed to identify any information these witnesses could provide relevant to claims or defenses that could not be provided by representatives of the Plaintiffs' organizations. More troubling, in spite of the holding in *Carey v. Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) that individuals have standing to challenge census-related losses of funding to the jurisdictions in which live by virtue of residency alone, Defendants insisted the discovery was relevant because Defendants erroneously believe that individual members must have an additional connection to specific federal programs.

Federal Rule of Civil Procedure 26(b)(2)(C) authorizes issuance of a protective order limiting discovery if it "can be obtained from some other source that is more convenient, less burdensome, or less expensive," or if there is "good cause" to "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Both provisions apply here. Plaintiffs request a protective order to stop Defendants' unduly burdensome and harassing attempt to depose these individual non-parties.

A. The Testimony Sought Is Irrelevant to Any Issues in this Action and the Relevant Evidence Can Be Obtained from More Convenient, Less Burdensome, and Less Expensive Sources.

A party issuing a subpoena "must demonstrate that the information sought is relevant and material to the allegations and claims at issue in the proceedings." *Night Hawk Ltd. v. Briarpatch Ltd., L.P.*, 03 CIV.1382 RWS, 2003 WL 23018833, at *8 (S.D.N.Y. Dec. 23, 2003). In seeking

¹ Undersigned counsel will be representing each of the individuals. The *NYIC* Plaintiffs also have standing to seek relief because Defendants seek to interfere with the privacy and associational rights of its members, which impacts the organization's rights. See, e.g., *Albany Molecular Research, Inc. v. Schloemer*, 274 F.R.D. 22, 25 (D.D.C. 2011).

depositions of individual non-party members of the Plaintiff organizations, Defendants have pointed solely to those members' role in establishing associational standing, implying that they are entitled to probe about whether any injuries are speculative. *See* ECF No. 101.

Defendants' proffer ignores the principles of associational standing relevant in this case. Both the Supreme Court and the Second Circuit have ruled that Plaintiffs only need to show that they have members who reside in jurisdictions that will be harmed by Defendants' census-related conduct—a showing Plaintiffs have already made. *See, e.g., Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 331–34 (1999) (recognizing individuals had standing to challenge loss of representation by virtue of living in that state); *see also Carey*, 637 F.2d at 838 (applying same principles to funding). Plaintiffs have already provided information about the locations of their members, and because the members have no additional knowledge that could change this, there is no need to depose these non-parties.²

Defendants' proffer also ignores that the *NYIC* Plaintiffs also have organizational standing to challenge the actions under *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). *See* ECF No. 1 ¶¶ 18–22, 28–32, 38–43, 45–47, 55–59. The discovery sought is not germane to organizational standing, which Defendants, in any event, have not challenged. Under Second Circuit law, “the presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.” *Centro de la Comunidad Hispana de Locust Valley*, 868 F.3d 104, 109 (2d Cir. 2017).

Finally, Defendants also “contend that this case should be decided on summary judgment,” *see* ECF No. 130 at 2. Yet the Supreme Court and the Second Circuit have repeatedly held that declarations about how an organization’s members will be injured are sufficient to confer standing for the purposes of surviving summary judgment. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (finding an affidavit by Plaintiff organization regarding the risks of the relevant chemical to be sufficient to establish standing); *Nat. Resources Def. Council, Inc. v. F.A.A.*, 564 F.3d 549, 555 (2d Cir. 2009) (finding affidavits submitted by members to be sufficient to establish standing); *Nat. Resources Def. Council, Inc. v. U.S. Food & Drug Admin.*, 710 F.3d 71, 79, 84 (2d Cir. 2013) (explaining that specific facts, set forth by affidavit or other evidence, are sufficient to defend standing at summary judgment). Depositions will not change these facts, especially where—unlike environmental cases where an individual’s specific activities are relevant—the members’ injuries depend solely on where they live.

B. A Protective Order Is Necessary to Protect the Third-Parties from Annoyance, Oppression, and Undue Burden

Defendants have not explained “with specificity what information they seek from the individual members or how deposing individual members -- as opposed to the declarants from the Plaintiff organizations themselves -- would advance their standing arguments.” ECF No. 119.

² While Defendants are free to challenge whether the loss of political representation and funding to the relevant states and jurisdictions is speculative, this is purely a matter for expert testimony and evidence from the Census Bureau—individual organization members have no knowledge relating to these issues.

Three aspects of the Defendants' conduct confirm it is plainly designed to harass, oppress, and intimidate these individuals, as well as the organizational plaintiffs.

1. Defendants have not sought depositions of Plaintiff representatives who submitted declarations or any of witnesses identified in Plaintiffs' initial disclosures who might be able to address any questions Defendants have about organizational and associational standing. As this Court underscored, courts have declined to compel depositions of an organization's non-party members—even where, unlike here, the non-parties themselves had submitted declarations—because “any potential benefits that could develop from taking the members' depositions are outweighed by the unreasonable burden that would be placed on plaintiffs.” *Nat. Resources Def. Council, Inc. v. Mineta*, No. 04-civ-5380 (VM) (RLE), 2005 WL 1075355, *4–*5 (S.D.N.Y. May 3, 2005); *see also Perdue v. Individual Members of Ind. State Bd. of L. Examiners*, No. 1:09-CV-842-TWP-MJD, 2010 WL 5418882, at *2 (S.D. Ind. Dec. 23, 2010) (rejecting argument that, “because they relate to standing,” defendant was “permitted to test the . . . assertions” of anonymous organization members' affidavits through additional discovery). Defendants have not, and cannot, show why they are unable to obtain the information they need from other sources, such as the parties.

2. Without conferring with Plaintiffs about their method of service or requesting information about witness or counsel availability, Defendants sent process servers to the individual third-parties last week with menacing cover letters stating that they were “require[d] to appear in person for deposition” at a specified time and location at a U.S. Attorneys' office. In every case, the deposition was scheduled during business hours when many witnesses would otherwise need to be at work. And these depositions were all unilaterally scheduled in the short period of time immediately after submission of Defendants' expert reports, when Plaintiffs' counsel will occupied working on rebuttal reports.

3. Even if these members had some marginally relevant additional information, Defendants' attempts to depose them are blatant efforts to chill the freedom of association or advocacy of Plaintiffs and their members. *See, e.g., NAACP v. Patterson*, 357 U.S. 449, 462–63 (1958). Here, Defendants' decision to target individuals who may have varied immigration status or live in households or communities of mixed status is suspect given the Trump Administration's current immigration enforcement policies. *See* ECF No. 1 ¶¶ 116–21 (describing immigration enforcement during interactions with government institutions, including courthouses).

For all of these reasons, the Court should enter a protective order barring Defendants from proceeding with these irrelevant, burdensome, and harassing depositions.

Respectfully submitted,

By: /s/ Davin M. Rosborough

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Attorneys for *NYIC* Plaintiffs

CC: All Counsel of Record (by ECF)



U.S. Department of Justice

**Civil Division
Federal Programs Branch**

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Trial Attorney
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20 Massachusetts Avenue NW
Washington, District of Columbia 20530

September 10, 2018

Via Process Server

[REDACTED]
[REDACTED]
[REDACTED] Maryland [REDACTED]

**Re: *New York Immigration Coalition v. U.S. Department of Commerce*,
S.D.N.Y. No. 18-cv-5025**

Dear Mr. [REDACTED]:

Enclosed please find a subpoena for your deposition testimony in the above-referenced case. Under Federal Rule of Civil Procedure 45(b)(1), no fees are required to be tendered with this subpoena.

The subpoena requires you to appear in person for deposition at 1:00 p.m. on Wednesday, September 26, 2018, at the United States Attorney's Office, 555 4th Street, NW, Washington, DC 20530.

Please promptly confirm that you have received the subpoena and will appear for the deposition. If it is not possible for you to testify then, please contact me as soon as possible to discuss alternative arrangements. Thank you.

Sincerely,

Garrett Coyle
Trial Attorney

cc: Plaintiffs' counsel (by email)

UNITED STATES DISTRICT COURT

for the

Southern District of New York

New York Immigration Coalition, et al.

Plaintiff

v.

U.S. Department of Commerce, et al.

Defendant

Civil Action No. 18-cv-5025; 18-cv-2921

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

MD

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: United States Attorney's Office
555 4th Street, NW
Washington, DC 20530

Date and Time:

09/26/2018 1:00 pm

The deposition will be recorded by this method: videographer and stenographer

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/10/2018

CLERK OF COURT

OR

/s/ Stephen Ehrlich

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) U.S. Department of Commerce, et al.

, who issues or requests this subpoena, are:
Stephen Ehrlich, U.S. Department of Justice, 20 Massachusetts Ave., NW, Washington, DC 20530

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-cv-5025; 18-cv-2921

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

New York Immigration Coalition, et al.,

Plaintiffs,

v.

U.S. Department of Commerce, et al.,

Defendants.

No. 18-cv-5025

NOTICE OF DEPOSITION

Please take notice that Defendant United States Department of Commerce will take the deposition of [REDACTED] on September 26, 2018, at 1:00 p.m., at the United States Attorney's Office, 555 4th Street, NW, Washington, DC 20530.

The deposition will be taken by stenographic transcription by a reporter certified by law to take depositions. The deposition may also be recorded by audiovisual means.

Dated: September 10, 2018

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
JOSHUA E. GARDNER
Assistant Directors, Federal Programs Branch

/s/ Garrett Coyle
KATE BAILEY
GARRETT COYLE
STEPHEN EHRLICH
CAROL FEDERIGHI
DANIEL J. HALAINEN
MARTIN M. TOMLINSON
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

Counsel for Defendants



U.S. Department of Justice

**Civil Division
Federal Programs Branch**

Garrett Coyle
Trial Attorney
Phone: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

20 Massachusetts Avenue NW
Washington, District of Columbia 20530

September 10, 2018

Via Process Server



**Re: *New York Immigration Coalition v. U.S. Department of Commerce*,
S.D.N.Y. No. 18-cv-5025**

Dear Mr. [REDACTED]:

Enclosed please find a subpoena for your deposition testimony in the above-referenced case. Under Federal Rule of Civil Procedure 45(b)(1), no fees are required to be tendered with this subpoena.

The subpoena requires you to appear in person for deposition at 11:00 a.m. on Tuesday, September 25, 2018, at the United States Attorney's Office, 211 W. Fort Street, Suite 2001, Detroit, Michigan 48226.

Please promptly confirm that you have received the subpoena and will appear for the deposition. If it is not possible for you to testify then, please contact me as soon as possible to discuss alternative arrangements. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "GC", written over a blue circular stamp.

Garrett Coyle
Trial Attorney

cc: Plaintiffs' counsel (by email)

UNITED STATES DISTRICT COURT

for the

Southern District of New York

New York Immigration Coalition, et al.

Plaintiff

v.

U.S. Department of Commerce, et al.

Defendant

Civil Action No. 18-cv-5025; 18-cv-2921

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

[REDACTED] MI [REDACTED]

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: United States Attorney's Office
211 W. Fort Street, Suite 2001
Detroit, MI 48226

Date and Time:

09/25/2018 11:00 am

The deposition will be recorded by this method: videographer and stenographer

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/10/2018

CLERK OF COURT

OR

/s/ Stephen Ehrlich

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) U.S. Department of Commerce, et al.

, who issues or requests this subpoena, are:
Stephen Ehrlich, U.S. Department of Justice, 20 Massachusetts Ave., NW, Washington, DC 20530

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-cv-5025; 18-cv-2921

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

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(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

New York Immigration Coalition, et al.,

Plaintiffs,

v.

U.S. Department of Commerce, et al.,

Defendants.

No. 18-cv-5025

NOTICE OF DEPOSITION

Please take notice that Defendant United States Department of Commerce will take the deposition of [REDACTED] on September 25, 2018, at 11:00 a.m., at the United States Attorney's Office, 211 W. Fort Street, Suite 2001, Detroit, Michigan 48226.

The deposition will be taken by stenographic transcription by a reporter certified by law to take depositions. The deposition may also be recorded by audiovisual means.

Dated: September 10, 2018

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
JOSHUA E. GARDNER
Assistant Directors, Federal Programs Branch

/s/ Garrett Coyle
KATE BAILEY
GARRETT COYLE
STEPHEN EHRLICH
CAROL FEDERIGHI
DANIEL J. HALAINEN
MARTIN M. TOMLINSON
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

Counsel for Defendants



U.S. Department of Justice

**Civil Division
Federal Programs Branch**

Garrett Coyle
Trial Attorney
Phone: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

20 Massachusetts Avenue NW
Washington, District of Columbia 20530

September 10, 2018

Via Process Server



**Re: *New York Immigration Coalition v. U.S. Department of Commerce*,
S.D.N.Y. No. 18-cv-5025**

Dear Ms. [REDACTED]:

Enclosed please find a subpoena for your deposition testimony in the above-referenced case. Under Federal Rule of Civil Procedure 45(b)(1), no fees are required to be tendered with this subpoena.

The subpoena requires you to appear in person for deposition at 1:00 p.m. on Thursday, September 27, 2018, at the United States Attorney's Office, 100 Federal Plaza, Room 610, Central Islip, New York 11722.

Please promptly confirm that you have received the subpoena and will appear for the deposition. If it is not possible for you to testify then, please contact me as soon as possible to discuss alternative arrangements. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "GC", written over a blue circular stamp.

Garrett Coyle
Trial Attorney

cc: Plaintiffs' counsel (by email)

UNITED STATES DISTRICT COURT

for the

Southern District of New York

New York Immigration Coalition, et al.

Plaintiff

v.

U.S. Department of Commerce, et al.

Defendant

Civil Action No. 18-cv-5025; 18-cv-2921

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

NY

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: U.S. District Court – EDNY
100 Federal Plaza, Room 610 – U.S. Attorneys Office
Central Islip, New York 11722

Date and Time:
09/27/2018 1:00 pm

The deposition will be recorded by this method: videographer and stenographer

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/10/2018

CLERK OF COURT

OR

/s/ Stephen Ehrlich

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) U.S. Department of Commerce, et al.

, who issues or requests this subpoena, are:
Stephen Ehrlich, U.S. Department of Justice, 20 Massachusetts Ave., NW, Washington, DC 20530

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-cv-5025; 18-cv-2921

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

New York Immigration Coalition, et al.,

Plaintiffs,

v.

U.S. Department of Commerce, et al.,

Defendants.

No. 18-cv-5025

NOTICE OF DEPOSITION

Please take notice that Defendant United States Department of Commerce will take the deposition of [REDACTED] on September 27, 2018, at 1:00 p.m., at the United States Attorney's Office, 100 Federal Plaza, Room 610, Central Islip, New York 11722.

The deposition will be taken by stenographic transcription by a reporter certified by law to take depositions. The deposition may also be recorded by audiovisual means.

Dated: September 10, 2018

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
JOSHUA E. GARDNER
Assistant Directors, Federal Programs Branch

/s/ Garrett Coyle
KATE BAILEY
GARRETT COYLE
STEPHEN EHRLICH
CAROL FEDERIGHI
DANIEL J. HALAINEN
MARTIN M. TOMLINSON
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

Counsel for Defendants



U.S. Department of Justice

**Civil Division
Federal Programs Branch**

Garrett Coyle
Trial Attorney
Phone: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

20 Massachusetts Avenue NW
Washington, District of Columbia 20530

September 10, 2018

Via Process Server



**Re: *New York Immigration Coalition v. U.S. Department of Commerce*,
S.D.N.Y. No. 18-cv-5025**

Dear Ms. [REDACTED]:

Enclosed please find a subpoena for your deposition testimony in the above-referenced case. Under Federal Rule of Civil Procedure 45(b)(1), no fees are required to be tendered with this subpoena.

The subpoena requires you to appear in person for deposition at 8:30 a.m. on Wednesday, September 26, 2018, at the United States Attorney's Office, 555 4th Street, NW, Washington, DC 20530.

Please promptly confirm that you have received the subpoena and will appear for the deposition. If it is not possible for you to testify then, please contact me as soon as possible to discuss alternative arrangements. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "GC", representing Garrett Coyle.

Garrett Coyle
Trial Attorney

cc: Plaintiffs' counsel (by email)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

New York Immigration Coalition, et al.,

Plaintiffs,

v.

U.S. Department of Commerce, et al.,

Defendants.

No. 18-cv-5025

NOTICE OF DEPOSITION

Please take notice that Defendant United States Department of Commerce will take the deposition of [REDACTED] on September 26, 2018, at 8:30 a.m., at the United States Attorney's Office, 555 4th Street, NW, Washington, DC 20530.

The deposition will be taken by stenographic transcription by a reporter certified by law to take depositions. The deposition may also be recorded by audiovisual means.

Dated: September 10, 2018

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
JOSHUA E. GARDNER
Assistant Directors, Federal Programs Branch

/s/ Garrett Coyle
KATE BAILEY
GARRETT COYLE
STEPHEN EHRLICH
CAROL FEDERIGHI
DANIEL J. HALAINEN
MARTIN M. TOMLINSON
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

Counsel for Defendants

UNITED STATES DISTRICT COURT

for the

Southern District of New York

New York Immigration Coalition, et al.

Plaintiff

v.

U.S. Department of Commerce, et al.

Defendant

Civil Action No. 18-cv-5025; 18-cv-2921

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

MD

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: United States Attorney's Office 555 4th Street, NW Washington, DC 20530	Date and Time: 09/26/2018 8:30 am
--	--------------------------------------

The deposition will be recorded by this method: videographer and stenographer

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/10/2018

CLERK OF COURT

OR

/s/ Stephen Ehrlich

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) U.S. Department of Commerce, et al.

, who issues or requests this subpoena, are:
Stephen Ehrlich, U.S. Department of Justice, 20 Massachusetts Ave., NW, Washington, DC 20530

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-cv-5025; 18-cv-2921

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



U.S. Department of Justice

**Civil Division
Federal Programs Branch**

Garrett Coyle
Trial Attorney
Phone: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

20 Massachusetts Avenue NW
Washington, District of Columbia 20530

September 10, 2018

Via Process Server

[REDACTED] NY [REDACTED]

**Re: *New York Immigration Coalition v. U.S. Department of Commerce*,
S.D.N.Y. No. 18-cv-5025**

Dear Ms. [REDACTED]:

Enclosed please find a subpoena for your deposition testimony in the above-referenced case. Under Federal Rule of Civil Procedure 45(b)(1), no fees are required to be tendered with this subpoena.

The subpoena requires you to appear in person for deposition at 8:30 a.m. on Friday, September 28, 2018, at the United States Attorney's Office, 86 Chambers Street, 3rd floor, New York, New York 10007.

Please promptly confirm that you have received the subpoena and will appear for the deposition. If it is not possible for you to testify then, please contact me as soon as possible to discuss alternative arrangements. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "GC", representing Garrett Coyle.

Garrett Coyle
Trial Attorney

cc: Plaintiffs' counsel (by email)

UNITED STATES DISTRICT COURT

for the

Southern District of New York

New York Immigration Coalition, et al.

Plaintiff

v.

U.S. Department of Commerce, et al.

Defendant

Civil Action No. 18-cv-5025; 18-cv-2921

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

NY

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: U.S. Attorney's Office
86 Chambers Street, 3rd floor
New York, NY 10007

Date and Time:
09/28/2018 8:30 am

The deposition will be recorded by this method: videographer and stenographer

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/10/2018

CLERK OF COURT

OR

/s/ Stephen Ehrlich

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) U.S. Department of Commerce, et al.

, who issues or requests this subpoena, are:
Stephen Ehrlich, U.S. Department of Justice, 20 Massachusetts Ave., NW, Washington, DC 20530

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-cv-5025; 18-cv-2921

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

New York Immigration Coalition, et al.,

Plaintiffs,

v.

U.S. Department of Commerce, et al.,

Defendants.

No. 18-cv-5025

NOTICE OF DEPOSITION

Please take notice that Defendant United States Department of Commerce will take the deposition of [REDACTED] on September 28, 2018, at 8:30 a.m., at the United States Attorney's Office, 86 Chambers Street, 3rd floor, New York, New York 10007.

The deposition will be taken by stenographic transcription by a reporter certified by law to take depositions. The deposition may also be recorded by audiovisual means.

Dated: September 10, 2018

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
JOSHUA E. GARDNER
Assistant Directors, Federal Programs Branch

/s/ Garrett Coyle
KATE BAILEY
GARRETT COYLE
STEPHEN EHRLICH
CAROL FEDERIGHI
DANIEL J. HALAINEN
MARTIN M. TOMLINSON
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

Counsel for Defendants



U.S. Department of Justice

**Civil Division
Federal Programs Branch**

Garrett Coyle
Trial Attorney
Phone: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

20 Massachusetts Avenue NW
Washington, District of Columbia 20530

September 10, 2018

Via Process Server

[REDACTED]
[REDACTED] Maryland [REDACTED]

**Re: *New York Immigration Coalition v. U.S. Department of Commerce*,
S.D.N.Y. No. 18-cv-5025**

Dear Ms. [REDACTED]:

Enclosed please find a subpoena for your deposition testimony in the above-referenced case. Under Federal Rule of Civil Procedure 45(b)(1), no fees are required to be tendered with this subpoena.

The subpoena requires you to appear in person for deposition at 10:00 a.m. on Tuesday, September 25, 2018, at the United States Attorney's Office, 555 4th Street, NW, Washington, DC 20530.

Please promptly confirm that you have received the subpoena and will appear for the deposition. If it is not possible for you to testify then, please contact me as soon as possible to discuss alternative arrangements. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "GC", representing Garrett Coyle.

Garrett Coyle
Trial Attorney

cc: Plaintiffs' counsel (by email)

UNITED STATES DISTRICT COURT

for the

Southern District of New York

New York Immigration Coalition, et al.

Plaintiff

v.

U.S. Department of Commerce, et al.

Defendant

Civil Action No. 18-cv-5025; 18-cv-2921

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: United States Attorney's Office 555 4th Street, NW Washington, DC 20530	Date and Time: 09/25/2018 10:00 am
--	---------------------------------------

The deposition will be recorded by this method: videographer and stenographer

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/10/2018

CLERK OF COURT

OR

/s/ Stephen Ehrlich

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) U.S. Department of Commerce, et al.

, who issues or requests this subpoena, are:
Stephen Ehrlich, U.S. Department of Justice, 20 Massachusetts Ave., NW, Washington, DC 20530

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-cv-5025; 18-cv-2921

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

New York Immigration Coalition, et al.,

Plaintiffs,

v.

U.S. Department of Commerce, et al.,

Defendants.

No. 18-cv-5025

NOTICE OF DEPOSITION

Please take notice that Defendant United States Department of Commerce will take the deposition of [REDACTED] on September 25, 2018, at 10:00 a.m., at the United States Attorney's Office, 555 4th Street, NW, Washington, DC 20530.

The deposition will be taken by stenographic transcription by a reporter certified by law to take depositions. The deposition may also be recorded by audiovisual means.

Dated: September 10, 2018

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
JOSHUA E. GARDNER
Assistant Directors, Federal Programs Branch

/s/ Garrett Coyle
KATE BAILEY
GARRETT COYLE
STEPHEN EHRLICH
CAROL FEDERIGHI
DANIEL J. HALAINEN
MARTIN M. TOMLINSON
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

Counsel for Defendants



U.S. Department of Justice

Civil Division

Federal Programs Branch

Garrett Coyle
Trial Attorney
Phone: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

20 Massachusetts Avenue NW
Washington, District of Columbia 20530

September 10, 2018

Via Process Server



**Re: *New York Immigration Coalition v. U.S. Department of Commerce*,
S.D.N.Y. No. 18-cv-5025**

Dear Ms. [REDACTED]:

Enclosed please find a subpoena for your deposition testimony in the above-referenced case. Under Federal Rule of Civil Procedure 45(b)(1), no fees are required to be tendered with this subpoena.

The subpoena requires you to appear in person for deposition at 1:00 p.m. on Friday, September 28, 2018, at the United States Attorney's Office, 86 Chambers Street, 3rd floor, New York, New York 10007.

Please promptly confirm that you have received the subpoena and will appear for the deposition. If it is not possible for you to testify then, please contact me as soon as possible to discuss alternative arrangements. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "GC", representing Garrett Coyle.

Garrett Coyle
Trial Attorney

cc: Plaintiffs' counsel (by email)

UNITED STATES DISTRICT COURT

for the

Southern District of New York

New York Immigration Coalition, et al.

Plaintiff

v.

U.S. Department of Commerce, et al.

Defendant

Civil Action No. 18-cv-5025; 18-cv-2921

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

NY

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: United States Attorney's Office
86 Chambers Street, 3rd floor
New York, NY 10007

Date and Time:

09/28/2018 1:00 pm

The deposition will be recorded by this method: videographer and stenographer

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 09/10/2018

CLERK OF COURT

OR

/s/ Stephen Ehrlich

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) U.S. Department of Commerce, et al.

, who issues or requests this subpoena, are:
Stephen Ehrlich, U.S. Department of Justice, 20 Massachusetts Ave., NW, Washington, DC 20530

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-cv-5025; 18-cv-2921

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
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(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

New York Immigration Coalition, et al.,

Plaintiffs,

v.

U.S. Department of Commerce, et al.,

Defendants.

No. 18-cv-5025

NOTICE OF DEPOSITION

Please take notice that Defendant United States Department of Commerce will take the deposition of [REDACTED] on September 28, 2018, at 1:00 p.m., at the United States Attorney's Office, 86 Chambers Street, 3rd floor, New York, New York 10007.

The deposition will be taken by stenographic transcription by a reporter certified by law to take depositions. The deposition may also be recorded by audiovisual means.

Dated: September 10, 2018

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JOHN R. GRIFFITHS
Director, Federal Programs Branch

CARLOTTA P. WELLS
JOSHUA E. GARDNER
Assistant Directors, Federal Programs Branch

/s/ Garrett Coyle
KATE BAILEY
GARRETT COYLE
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DANIEL J. HALAINEN
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Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 616-8016
Fax: (202) 616-8470
E-mail: garrett.coyle@usdoj.gov

Counsel for Defendants