

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STATE OF NEW YORK, et al.,

Plaintiffs,

-v-

UNITED STATES DEPARTMENT OF COMMERCE, et al.,

Defendants.
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18-CV-2921 (JMF)

MEMORANDUM
OPINION AND ORDER

JESSE M. FURMAN, United States District Judge:

On September 28, 2018, Defendants filed yet another application for a stay of discovery in these cases, “including” but not limited to the depositions of Secretary of Commerce Wilbur L. Ross, Jr., and John M. Gore, Acting Assistant Attorney General for the Civil Rights Division — this time “pending Supreme Court review.” (Docket No. 359). The application — which does not even bother to recite the requirements for a stay, let alone attempt to show that those requirements have been met — is hard to understand as anything more than a pro forma box-checking exercise for purposes of seeking relief in the Supreme Court. This Court has already rejected Defendants’ requests for stays of discovery altogether, of the Assistant Attorney General Gore’s deposition, and of Secretary Ross’s deposition, (*see* Docket No. 308; Docket No. 345, at 12), and it adheres to its views on the merits of those requests.

To the extent that Defendants request a stay of all discovery, their application is particularly frivolous — if not outrageous — given their inexplicable (and still unexplained) two-month delay in seeking that relief, *see New York v. U.S. Dep’t of Commerce*, No. 18-CV-2921 (JMF), 2018 WL 4279467, at *2 (S.D.N.Y. Sept. 7, 2018), and their representation to the Second Circuit only last week that they were *not* actually seeking a stay of all discovery, (*see* Docket No. 360, at 1-2). If anything, the notion that Defendants will suffer irreparable harm absent a stay of all discovery is even more far-fetched now than it was when first requested on August 31, 2018, as the parties are nearly three months into discovery and only days away from completing it. The Court will not permit (and doubts that either the Second Circuit or the Supreme Court would permit) Defendants to use their arguably timely challenges to the Orders authorizing depositions of Assistant Attorney General Gore and Secretary Ross to bootstrap an untimely — and almost moot — challenge to the July 3rd Order authorizing extra-record discovery, particularly when only nine business days remain before the close of such discovery and much apparently remains to be done. (*See* Docket No. 360-1).

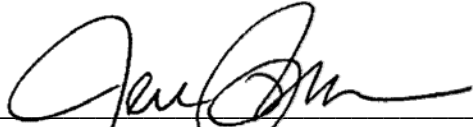
Unless and until this Court’s Orders are stayed by a higher court, Defendants shall comply with their discovery obligations completely *and* expeditiously; the Court will not look kindly on any delay, and — absent relief from a higher court — will not extend discovery beyond October 12th given the November 5th trial date. As for the deposition of Secretary Ross,

which has been administratively stayed by the Court of Appeals (*see* Docket No. 360-3), the Court takes Defendants at their word when they say that the deposition “can be conducted expeditiously should [the Second Circuit] deny the government’s petition,” (Pets. for Mandamus at 32, Nos. 18-2856 & 18-2857 (2d Cir. Sept. 27, 2018)). In light of that representation, and the discovery deadline of October 12, 2018, Defendants should endeavor to ensure that Secretary Ross remains available for a deposition on October 11, 2018, so that the deposition may take place before discovery closes in the event that the administrative stay is lifted by that date and Defendants’ efforts to obtain permanent relief fail.

For the foregoing reasons, Defendants’ latest application for stay of discovery in these cases, “including” the depositions of Secretary Ross and Assistant Attorney General Gore, is DENIED. The Clerk of Court is directed to terminate Docket No. 359.

SO ORDERED.

Dated: September 30, 2018
New York, New York



JESSE M. FURMAN
United States District Judge