

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

18-2921 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendants.

18-5025 (JMF) (Consolidated Case)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AS
AMICI CURIAE BY NORMAN Y. MINETA, THE SAKAMOTO SISTERS,
THE COUNCIL ON AMERICAN-ISLAMIC RELATIONS, NEW YORK, INC., AND
THE FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY**

Norman Y. Mineta, the Sakamoto sisters, the Council on American-Islamic Relations, New York, Inc., and the Fred T. Korematsu Center for Law and Equality hereby move for leave to file the attached Proposed Brief of Amici Curiae Norman Y. Mineta, the Sakamoto sisters, the Council on American-Islamic Relations, New York, Inc., and the Fred T. Korematsu Center for Law and Equality in Support of Plaintiffs at Trial. In support of their motion, the proposed amici assert the following:

1. Plaintiffs proceed to trial seeking a declaration and injunction to set aside Commerce Secretary Wilbur L. Ross, Jr.'s decision to include questions regarding citizenship in the 2020 Decennial Census because it is: (1) intentional discrimination against immigrant communities of color in violation of the Due Process Clause of the Fifth Amendment; and, (2) arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act. *See* Second Am. Compl. ¶¶ 183-97 [Dkt. 215 in Civil Action No. 18-2921].

2. Proposed amici include four Japanese Americans incarcerated by the United States during World War II. Amici also include two nonprofit organizations: (1) the Fred T. Korematsu Center for Law and Equality, a center at Seattle University School of Law that is engaged in research, advocacy, and education to promote social justice, including arguing that courts remember and not repeat the lessons of the Japanese American incarceration during World War II, and (2) the Council on American-Islamic Relations, New York, Inc. ("CAIR-NY"), the New York state affiliate of the nation's largest Muslim American civil rights and advocacy organization.

3. This case poses important questions about whether the Commerce Department is using the 2020 Decennial Census in order to unconstitutionally catalogue the citizenship status of every member of every household in the United States. Proposed amici have a strong interest in ensuring the Commerce Department does not repeat the discriminatory manner in which the United States used the decennial census as a means of effectuating the mass removal and incarceration of Japanese Americans during World War II and the surveillance of Arab Americans after 9/11.

4. The Federal Rules of Civil Procedure do not specifically provide for the filing of amicus briefs at the district court level. *See C & A Carbone, Inc. v. Cty. of Rockland, NY*, No.

08-CV-6459-ER, 2014 WL 1202699, at *3 (S.D.N.Y. Mar. 24, 2014) (“There is no governing standard, rule or statute prescrib[ing] the procedure for obtaining leave to file an amicus brief in the district court.” (internal quotation marks omitted)). “District courts have discretion in deciding whether to accept amicus briefs,” *Copeland v. Vance*, 230 F. Supp. 3d 232, 236 (S.D.N.Y. 2017), but this district recognizes that “[t]he primary role of the amicus is to assist the Court in reaching the right decision in a case affected with the interest of the general public,” *Russell v. Bd. of Plumbing Examiners of Cty. of Westchester*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999), *aff’d*, 1 F. App’x 38 (2d Cir. 2001).

5. “‘An amicus brief should normally be allowed . . . when the amicus has an interest in some other case that may be affected by the decision in the present case . . . , or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.’” *Auto. Club of New York, Inc. v. Port Auth. of New York & New Jersey*, No. 11 CIV. 6746 RJH, 2011 WL 5865296, at *2 (S.D.N.Y. Nov. 22, 2011) (quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)).

6. Here, proposed amici are individuals and nonprofits with an interest in the litigation and will offer unique information and perspective. The proposed brief provides information that amici believe is both useful and critical to the Court in evaluating whether Plaintiffs should prevail at trial.

Wherefore, Norman Y. Mineta, the Sakamoto sisters, the Council on American-Islamic Relations, New York, Inc., and the Fred T. Korematsu Center for Law and Equality request that the Court grant leave to file the attached brief as amici curiae.

DATED: October 29, 2018

Respectfully submitted,

/s/ Robert H. Pees

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CERTIFICATE OF SERVICE

I, Robert H. Pees, declare under penalty of perjury that on October 29, 2018, I caused the foregoing documents to be electronically filed with the Court's CM/ECF Filing System, which will send a Notice of Electronic Filing to all parties of record who are registered with CM/ECF.

Respectfully submitted,

/s/ Robert H. Pees

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