

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 19-212

Caption [use short title]

Motion for: Expedite the Briefing Schedule

Set forth below precise, complete statement of relief sought:

The government requests that the Court
set the following expedited briefing schedule:

Opening Brief: February 15, 2019

Answering Brief: March 15, 2019

Reply Brief: March 25, 2019

State of New York v. Department of Commerce

MOVING PARTY: Department of Commerce, et al.

OPPOSING PARTY: State of New York, et al.

☐ Plaintiff☐ Defendant☒ Appellant/Petitioner☐ Appellee/Respondent

MOVING ATTORNEY: Gerard Sinzdak

OPPOSING ATTORNEY: Dale Ho

[name of attorney, with firm, address, phone number and e-mail]

US Department of Justice

American Civil Liberties Union

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Court- Judge/ Agency appealed from: SDNY--Judge Furman

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes☐ No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes☐ No

Has this relief been previously sought in this court?

☐ Yes☐ No

Requested return date and explanation of emergency:

Opposing counsel's position on motion:

☒ Unopposed☐ Opposed☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes☒ No☐ Don't Know

Is oral argument on motion requested?

☐ Yes☒ No

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes☒ No

If yes, enter date:

Signature of Moving Attorney:

s/Gerard Sinzdak

Date: 1/25/2019

Service by:

☒ CM/ECF☐ Other

[Attach proof of service]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

STATE OF NEW YORK, *et al.*,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et al.*,

Defendants-Appellants.

No. 19-212

UNOPPOSED MOTION TO EXPEDITE BRIEFING SCHEDULE

Pursuant to 28 U.S.C. § 1657(a) and Second Circuit Rule 27.1, the government respectfully requests that the Court dispense with procedural and substantive motions and immediately commence with briefing on the following schedule:

Government's opening brief:	February 15, 2019
Plaintiffs' answering brief:	March 15, 2019
Government's reply brief:	March 25, 2019

The government further requests that the Court schedule oral argument as soon as possible after the close of briefing, to facilitate a decision by mid-May 2019.

In support of the motion, the government states as follows:

1. This appeal arises from plaintiffs' actions challenging the Secretary of Commerce's decision to reinstate a citizenship question on the 2020 decennial census. On January 15, 2019, the district court entered final judgment in favor of plaintiffs, an

order vacating the Secretary's decision to reinstate a citizenship question, and a permanent injunction barring the Secretary from asking a citizenship question on the 2020 census. Doc. 575. The government filed this appeal from the district court's final decisions under 28 U.S.C. § 1291. This Court has not yet established a briefing schedule.

2. Courts "shall expedite the consideration of . . . any action" for "good cause" shown. 28 U.S.C. § 1657(a). "Good cause" is "shown if a right under the Constitution of the United States or a Federal Statute (including rights under section 552 of title 5) would be maintained in a factual context that indicates that a request for expedited consideration has merit." *Id.*

There is good cause to expedite this appeal. The district court's order prevents the Secretary of Commerce from reinstating a citizenship question on the 2020 census. The Secretary determined, pursuant to his authority under the Census Act, 13 U.S.C. § 141(a), that reinstating such a question was necessary to provide the Department of Justice with complete and accurate citizenship information for purposes of voting-rights enforcement. Due to the production demands associated with printing and distributing tens of millions of census questionnaires by April 1, 2020, *see* 13 U.S.C. § 141(a), the Secretary must finalize the census questionnaire by the end of June 2019. If this Court does not reach a decision by that time, this case will become moot as a practical matter, and the Secretary will be prevented from implementing his decision to reinstate a citizenship question. The district court

acknowledged the June 2019 deadline and expedited its resolution of the case in order to facilitate timely appellate review. *See* Doc. 574, at 10. An expedited appeal is thus appropriate to ensure that this Court and, if necessary, the Supreme Court have sufficient time to decide this appeal before the June 2019 deadline.

In light of the June 2019 deadline by which a final decision on the content of the census must be reached, the government plans in the near future to petition the Supreme Court for a writ of certiorari before this Court's judgment in parallel to expedited proceedings in this Court. The government will notify this Court if the Supreme Court grants our petition. In the event the Supreme Court denies our certiorari petition so that it may obtain the views of this Court before evaluating the merits of plaintiffs' case, we ask that this Court issue a decision by mid-May, thereby affording the parties time to seek further review in the Supreme Court following this Court's decision.

3. The government requests that this Court commence with briefing under the following schedule:

Government's opening brief: February 15, 2019

Plaintiffs' answering brief: March 15, 2019

Government's reply brief: March 25, 2019

The government further requests that this Court schedule oral argument as soon as possible following the close of briefing.

4. Counsel for the government contacted counsel for plaintiffs, and plaintiffs do not oppose the government's proposed briefing schedule. Plaintiffs take no position on the government's requests as to the timing of oral argument in the Second Circuit and decision.

Respectfully submitted,

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HASHIM M. MOOPPAN

Deputy Assistant Attorney General

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s/Gerard Sinzdak

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JANUARY 2019

CERTIFICATION OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 650 words, according to the count of Microsoft Word.

s/Gerard Sinzduk
GERARD SINZDAK

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/Gerard Sinzduk
GERARD SINZDAK