

## 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: Place Appeal in Abeyance and Vacate All

Deadlines

Set forth below precise, complete statement of relief sought:

The government respectfully requests that this  
 Court place this appeal in abeyance and vacate  
 all deadlines (including the February 15, 2019  
 deadline for the government's opening brief),  
 in light of the Supreme Court's grant of  
 certiorari before judgment.

State of New York v. 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]

U.S. Department of Justice

American Civil Liberties Union

950 Pennsylvania Ave., NW, Washington, DC 20530

125 Broad St., New York, NY 10004

202-514-0718; gerard.j.sinzdak@usdoj.gov

212-549-2693; dale.ho@aclu.org

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

## Please check appropriate boxes:

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

☒ Yes☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed☐ Opposed☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes☐ No☒ Don't Know

## 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:

As soon as possible. The government's brief is due 2/15/2019

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: 2/15/2019

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

**CONSENT MOTION TO PLACE APPEAL IN ABEYANCE  
AND VACATE ALL DEADLINES**

Pursuant to Second Circuit Rule 27.1, the government respectfully requests that this Court immediately place this case in abeyance and vacate all deadlines, including the deadline for the filing of the government’s opening brief. On February 15, 2019, the Supreme Court granted the government’s petition for a writ of certiorari before judgment in this case challenging the Secretary of Commerce’s decision to reinstate a citizenship question on the 2020 decennial census. *See* Attachment A. The Supreme Court’s action “transfer[s] the case [to the Supreme Court] for review and determination.” *Forsyth v. City of Hammond*, 166 U.S. 506, 513 (1897). Because this case has now been transferred to the Supreme Court, the government requests that the case be immediately placed in abeyance and all deadlines vacated, including the February 15, 2019 deadline for the government’s opening brief.

1. 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 on the 2020 Census, and a permanent injunction barring the Secretary from asking a citizenship question. Doc. 575.

2. On February 1, 2019, this Court granted the government's unopposed request to expedite this appeal, and established a briefing schedule under which the government's opening brief is due February 15, 2019. In its motion to expedite, the government notified this Court that it was planning to petition the Supreme Court for a writ of certiorari before judgment, given that the content of the census questionnaire must be finalized by June 2019.

3. On February 15, 2019, the Supreme Court granted the government's request for certiorari before this Court's judgment.

4. In light of the Supreme Court's action, the government requests that this case be immediately placed in abeyance and all deadlines vacated. As noted, the government's opening brief on appeal is due today, February 15, 2019. The government does not intend to file the brief while this motion is pending. If this Court were not to grant this motion, the government will be prepared to file its brief as further directed by this Court.

5. Counsel for the government contacted counsel for plaintiffs, and all plaintiffs consent to this motion.

For the foregoing reasons, the government respectfully requests that the Court immediately place this case in abeyance and vacate all deadlines.

Respectfully submitted,

JOSEPH H. HUNT

*Assistant Attorney General*

HASHIM M. MOOPPAN

*Deputy Assistant Attorney General*

MARK R. FREEMAN

MARK B. STERN

DANIEL TENNY

s/Gerard Sinz dak

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GERARD SINZDAK

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*202-353-9018*

*Counsel for the Government*

FEBRUARY 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 393 words, according to the count of Microsoft Word.

s/Gerard Sinzduk  
GERARD SINZDAK

**CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 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

# ATTACHMENT A

(ORDER LIST: 586 U.S.)

FRIDAY, FEBRUARY 15, 2019

**CERTIORARI GRANTED**

18-966      DEPT. OF COMMERCE, ET AL. V. NEW YORK, ET AL.

The petition for writ of certiorari before judgment is granted. The case will be set for argument in the second week of the April argument session.