U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

June 25, 2019

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Department of Commerce, et. al. v. New York, et al., No. 18-966

Dear Mr. Harris:

The non-governmental respondents (collectively, NYIC) submit yet another post-argument letter, this time purportedly to describe "two changed circumstances" that in their view "may have a material impact" on their recent motion to remand this case. Neither affects the disposition of NYIC's motion or the merits of this case.

First, NYIC notes a recent order by a district court in Maryland, which oversaw a similar case, stating that if the Fourth Circuit were to remand the case to it, it would "reopen discovery" for up to 45 days to permit additional extra-record discovery beyond that which it has already permitted. 6/24/19 NYIC letter Attachment A, at 13. The Maryland plaintiffs' underlying motion, however, is meritless for the same reason as all of NYIC's post-argument filings, including its remand motion in this Court: it is based on a speculative conspiracy theory that is unsupported by the evidence and legally irrelevant to demonstrating that Secretary Ross acted with a discriminatory intent. See Gov't Br. in Opp. to NYIC Resps.' Mot. for Limited Remand (June 20, 2019); 18-cv-2921 D. Ct. Doc. 601 (S.D.N.Y. June 3, 2019); 19-1382 C.A. Doc. 44 (4th Cir. June 24, 2019); 18-cv-1041 D. Ct. Docs. 166 (D. Md. June 10, 2019) and 168-1 (D. Md. June 17, 2019).

Second, NYIC asserts that the Census Bureau released a paper estimating the impact of a citizenship question on census self-response rates. But as the paper itself points out, "[t]he analysis, thoughts, opinions, and any errors presented [t]here are solely those of the authors and do not reflect any official position of the U.S. Census Bureau." 6/24/19 NYIC letter Attachment B, at 1 n.*. In any event, like the earlier study (J.A. 967-1020) on which it is based, the paper (1) is outside the administrative record; (2) postdates the Secretary's decision and thus sheds no light on whether his rationale was arbitrary and capricious; and (3) only predicts the decline in *self-response* rates—and not the net *undercount* after accounting for non-response follow-up operations and other efforts to boost participation. See 6/24/19 NYIC Letter Attachment B, at 14; J.A. 1007-1009. Thus, even assuming arguendo that its analysis is sound, the paper is irrelevant to the disposition of this case.

We would appreciate your circulating this letter to Members of the Court.

Sincerely,

Noel J. Francisco
Solicitor General

cc: See Attached Service List

18-0966
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STATE OF NEW YORK, ET AL.

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