

No. 18A-_____

IN THE SUPREME COURT OF THE UNITED STATES

IN RE UNITED STATES DEPARTMENT OF COMMERCE, ET AL.

RENEWED APPLICATION FOR A STAY PENDING DISPOSITION
OF A PETITION FOR A WRIT OF MANDAMUS
TO THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants in the district court, and mandamus petitioners in the court of appeals) are the United States Department of Commerce; Wilbur L. Ross, Jr., in his official capacity as Secretary of Commerce; the United States Census Bureau, an agency within the United States Department of Commerce; and Ron S. Jarmin, in his capacity performing the non-exclusive functions and duties of the Director of the United States Census Bureau (referred to as the Acting Director in this brief).

Respondent in this Court is the United States District Court for the Southern District of New York. Respondents also include the State of New York; the State of Connecticut; the State of Delaware; the District of Columbia; the State of Illinois; the State of Iowa; the State of Maryland; the Commonwealth of Massachusetts; the State of Minnesota; the State of New Jersey; the State of New Mexico; the State of North Carolina; the State of Oregon; the Commonwealth of Pennsylvania; the State of Rhode Island; the Commonwealth of Virginia; the State of Vermont; the State of Washington; the City of Chicago, Illinois; the City of New York; the City of Philadelphia; the City of Providence; the City and County of San Francisco, California; the United States Conference of Mayors; the City of Seattle, Washington; the City of Pittsburgh; the County of Cameron; the State of Colorado; the City of Central Falls; the City of Columbus; the County of El Paso; the County of Monterey; and the County of Hidalgo (collectively

plaintiffs in the district court in No. 18-cv-2921, and real parties in interest in the court of appeals in Nos. 18-2652 and 18-2856). Respondents further include the New York Immigration Coalition; Casa de Maryland, Inc.; the American-Arab Anti-Discrimination Committee; ADC Research Institute; and Make the Road New York (collectively plaintiffs in the district court in No. 18-cv-5025, and real parties in interest in the court of appeals in Nos. 18-2659 and 18-2857).

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General, on behalf of the United States Department of Commerce, the Secretary of Commerce, the United States Census Bureau, and the Acting Director of the United States Census Bureau, respectfully renews his application for a stay of written orders and an oral ruling entered by the United States District Court for the Southern District of New York on September 21, 2018 (App., infra, 5a-16a), August 17, 2018 (id. at 17a-19a), and July 3, 2018 (id. at 95a-107a). Together, these orders specifically compel the depositions of two high-ranking Executive Branch officials -- the Secretary of Commerce, Wilbur L. Ross, Jr., and the Acting Assistant Attorney General (AAG) of the Justice Department's Civil Rights Division, John M. Gore -- and more generally expand discovery beyond the administrative record in this suit under the Administrative Procedure Act (APA), 5 U.S.C. 701 et seq.

On October 5, 2018, Justice Ginsburg denied the government's previous stay application without prejudice, "provided that the Court of Appeals will afford sufficient time for either party to seek relief in this Court before the depositions in question are taken." 18A350 Order (Oct. 5, 2018). That same day, the government renewed its request in the court of appeals for a stay of all three orders. 18-2856 Docket entry No. 44. Earlier today the court of appeals denied mandamus relief to quash Secretary Ross's deposition, saying that its previously entered stay of that deposition would expire in 48 hours -- meaning around 4 p.m. on Thursday, October 11, the day Secretary Ross's deposition is scheduled. App., infra, 130a. The court of appeals also failed to grant any relief with respect to Acting AAG Gore's deposition or extra-record discovery. As a result, absent relief from this Court, Acting AAG Gore's deposition will proceed as scheduled at 9 a.m. tomorrow (Wednesday, October 10). Therefore, and in accordance with Justice Ginsburg's October 5 order, the government respectfully renews its application for a stay in this Court.

This renewed application arises from a pair of consolidated cases challenging the decision by Secretary Ross to reinstate a citizenship question on the decennial census. Questions seeking citizenship or birthplace information were part of every decennial census from 1820 to 1950 (except in 1840); and from 1960 through 2000 the decennial census continued to elicit such information

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