

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Greenbelt Division**

THE DISTRICT OF COLUMBIA and  
THE STATE OF MARYLAND,

*Plaintiffs,*

v.

DONALD J. TRUMP, President of the United  
States of America, in his official and in his  
individual capacity,

*Defendant.*

Civil Action No. 8:17-cv-01596-PJM

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR  
PROPOSED DISCOVERY SCHEDULE**

Plaintiffs, the District of Columbia and the State of Maryland, submit this reply in support of their proposed discovery schedule. In his response, Defendant President Donald J. Trump, in his official capacity, expressly “does not object to the discovery schedule proposed by Plaintiffs.” Resp. at 1. Instead, he categorically objects to the commencement of *any* discovery. Although not styled as a motion to stay proceedings, Defendant’s latest filing seeks the same relief as his prior stay motion. As such, Defendant must demonstrate that the stay is warranted in light of judicial economy and the balance of equities and harms. *See* Mem. Op. at 27, *District of Columbia v. Donald J. Trump*, No. 17-CV-1596 (D. Md. Nov. 2, 2018), ECF No. 135 (citing *Int’l Refugee Assistance Project v. Trump*, 323 F. Supp. 3d 726, 731 (D. Md. 2018)).

In rejecting Defendant’s previous request to stay discovery, this Court determined that a stay “would not serve judicial economy,” Mem. Op. at 28; that Defendant would not suffer significant “hardship or inconvenience” given that Plaintiffs’ discovery will focus on third parties, not the Defendant himself, *id.* at 28-29; and that a stay would substantially prejudice Plaintiffs, *id.*

at 30. Nothing has changed in the month since this Court’s well-reasoned decision. Defendant’s statement that he has been “authorized” to seek mandamus in the Fourth Circuit, Resp. at 1—without any indication that he actually intends to file such a petition or the date of this potential filing—does not affect the calculus any more than his (failed) motion to certify an interlocutory appeal.

The ongoing litigation concerning the Trump Administration’s decision to add a citizenship question to the 2020 census is instructive on this point. In that case, the Administration sought stays of discovery and other proceedings—including trial—based on a forthcoming mandamus petition, and the district court soundly denied the requests. *See, e.g., New York v. U.S. Dep’t of Commerce*, No. 18-CV-2921, 2018 WL 4279467, at \*1-\*5 (S.D.N.Y. Sept. 7, 2018) (discovery); *New York v. U.S. Dep’t of Commerce*, No. 18-CV-2921, 2018 WL 5307097 (S.D.N.Y. Oct. 26, 2018) (trial), *as amended*, 2018 WL 5791968 (Nov. 5, 2018). The Second Circuit and the U.S. Supreme Court followed suit. *See, e.g., In re United States Dep’t of Commerce*, Nos. 18-2856 & -2857, 2018 WL 5603576 (2d Cir. Oct. 26, 2018); *In re Dep’t of Commerce*, No. 18A455, 2018 WL 5778244 (U.S. Nov. 2, 2018). Indeed, even after the Administration filed its mandamus petition and the Supreme Court granted certiorari to review its denial, the district court and the Second Circuit still declined to stay proceedings, including potential entry of final judgment. *New York v. U.S. Dep’t of Commerce*, No. 18-CV-2921, 2018 WL 6060304 (S.D.N.Y. Nov. 20, 2018); *In re United States Dep’t of Commerce*, Nos. 18-2856 & -2857, 2018 WL 6138090 (2d Cir. Nov. 21, 2018). If the Supreme Court’s grant of certiorari is not a sufficient basis on which to stay active litigation, then surely Defendant’s suggestion that he might file a mandamus petition is no reason to stay discovery, particularly when discovery will be primarily focused on third parties.<sup>1</sup>

---

<sup>1</sup> Indeed, this Court has already concluded that proceeding with the discovery that Plaintiffs plan to seek is “unlikely to impose any meaningful burden on the President individually” and has recognized that, if

For the foregoing reasons, this Court should enter Plaintiffs' proposed discovery schedule.

Dated: December 2, 2018

Respectfully submitted,

THE STATE OF MARYLAND

THE DISTRICT OF COLUMBIA

BRIAN E. FROSH  
Attorney General of Maryland

KARL A. RACINE  
Attorney General for the District of Columbia

STEVEN M. SULLIVAN  
Solicitor General  
Federal Bar No. 24930

NATALIE O. LUDAWAY  
Chief Deputy Attorney General  
Federal Bar No. 12533

/s/ Leah J. Tulin

LEAH J. TULIN  
Federal Bar No. 20083  
Assistant Attorney General  
200 Saint Paul Place, 20th Floor  
Baltimore, Maryland 21202  
T: (410) 576-6962  
F: (410) 576-7036  
ltulin@oag.state.md.us

/s/ Stephanie E. Litos

STEPHANIE E. LITOS\*  
Assistant Deputy Attorney General  
Civil Litigation Division  
441 Fourth Street, N.W.  
Washington, D.C. 20001  
T: (202) 724-6650  
F: (202) 741-0647  
stephanie.litos@dc.gov

NORMAN L. EISEN  
Federal Bar No. 09460  
neisen@citizensforethics.org  
LAURA C. BECKERMAN\*  
lbeckerman@citizensforethics.org  
STUART C. MCPHAIL\*  
smcpmail@citizensforethics.org  
Citizens for Responsibility and Ethics  
in Washington  
1101 K Street, N.W., Suite 201  
Washington, D.C. 20005

JOSEPH M. SELLERS  
Federal Bar No. 06284  
jsellers@cohenmilstein.com  
CHRISTINE E. WEBBER\*  
Cohen Milstein Sellers & Toll PLLC  
1100 New York Avenue, N.W.  
Washington, D.C. 20005

DEEPAK GUPTA\*  
deepak@guptawessler.com  
DANIEL TOWNSEND\*  
Gupta Wessler PLLC  
1900 L Street, N.W., Suite 312  
Washington, D.C. 20009

*Attorneys for Plaintiffs*

*\*admitted pro hac vice*

---

Defendant later finds any particular aspect of discovery unusually burdensome *on him*, he may request relief from the Court. Mem. Op. at 28-29. The harm to Plaintiffs from a stay, however, would be considerable, given that it would bring the case to a halt despite the Plaintiffs prevailing on Defendant's motion to dismiss.