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CITY OF SAN JOSE and BLACK ALLIANCE  
8 FOR JUST IMMIGRATION

9 *[Additional Counsel Listed on Signature Page]*

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 CITY OF SAN JOSE, a municipal corporation;  
14 and BLACK ALLIANCE FOR JUST  
IMMIGRATION, a California Non-Profit  
15 Corporation,

16 Plaintiffs,

17 v.

18 WILBUR L. ROSS, JR., in his official capacity  
as Secretary of the U.S. Department of  
19 Commerce; et al.,

20 Defendants.

Case No. 3:18-cv-02279

Judge: Hon. Richard G. Seeborg  
21 Dept: 3

**PLAINTIFFS' NOTICE  
OF UNOPPOSED MOTION TO ENTER  
FINAL JUDGMENT AFTER REMAND;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF; ~~PROPOSED~~ ORDER**



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**LAWYERS’ COMMITTEE FOR CIVIL RIGHTS  
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*Attorneys for Plaintiffs* CITY OF SAN JOSE and  
BLACK ALLIANCE FOR JUST IMMIGRATION

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Following the Supreme Court’s decision in *Department of Commerce v. New York*, 139 S.  
4 Ct. 2551, 2019 WL 2619473 (2019), Plaintiffs and Defendants conferred about the terms of a  
5 proposed final judgment in this action. Plaintiffs now request that the Court enter the [Proposed]  
6 Final Judgment After Remand, Order of Vacatur, and Permanent Injunction attached hereto as  
7 “Exhibit A.” Defendants do not oppose this motion.

8 **II. PROCEDURAL BACKGROUND**

9 This Court entered final judgment in this action on March 13, 2019. ECF No. 197. The  
10 same day, Defendants filed a notice of appeal of the final judgment. ECF No. 198. On March 18,  
11 2019, Defendants filed a petition for writ of certiorari before judgment in the United States  
12 Supreme Court. Petition for a Writ of Certiorari Before Judgment, *Ross, et al. v. San Jose, et al*,  
13 --- S. Ct. ---, 2019 WL 1258816 (2019).

14 On June 27, 2019, the United States Supreme Court issued its opinion in the case of  
15 *Department of Commerce v. New York*, affirming the portion of the district court’s judgment  
16 holding that Secretary Ross’s decision to add a citizenship question to the 2020 Census violates  
17 the Administrative Procedure Act. *Dep’t of Commerce v. New York*, 139 S. Ct. at 2573-2576.

18 On June 28, 2019, the Supreme Court granted Defendants’ petition for writ of certiorari  
19 before judgment in this action. Its order directed as follows: “The judgment is vacated, and the  
20 case is remanded to the United States Court of Appeals for the Ninth Circuit for further  
21 consideration in light of *Department of Commerce v. New York*, 588 U.S. \_\_\_\_ (2019).” *Ross, et*  
22 *al. v. San Jose, et al*, --- S. Ct. ---, 2019 WL 1243674 (2019).

23 A writ of mandate subsequently issued from the Supreme Court to the Ninth Circuit Court  
24 of Appeals, and on July 30, 2019, the Ninth Circuit Court of Appeals remanded the action to this  
25 Court. ECF No. 224.

26 **III. PLAINTIFFS’ REQUEST TO ENTER FINAL JUDGMENT AFTER REMAND**

27 Following the Supreme Court’s decision in *Department of Commerce v. New York*, on  
28 July 11, 2019, the President issued an Executive Order stating that “[a]fter examining every

1 possible alternative, the Attorney General and the Secretary of Commerce have informed me that  
2 the logistics and timing for carrying out the census, combined with delays from continuing  
3 litigation, leave no practical mechanism for including the [citizenship] question on the 2020  
4 decennial census.” Exec. Order 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019) (“The  
5 [Supreme] Court’s ruling . . . has now made it impossible, as a practical matter, to include a  
6 citizenship question on the 2020 decennial census questionnaire.”).

7 Accordingly, the parties agree that entry of a final judgment is appropriate and have  
8 conferred about the language of the [Proposed] Final Judgment After Remand, Order of Vacatur,  
9 and Permanent Injunction. The proposed judgment permanently enjoins Defendants from  
10 including a citizenship question on the 2020 decennial census questionnaire; from delaying the  
11 process of printing the 2020 decennial census questionnaire after June 30, 2019, for the purpose  
12 of including a citizenship question; and from asking persons about their citizenship status on the  
13 2020 census questionnaire or otherwise asking a citizenship question as part of the 2020  
14 decennial census.

15 Defendants have informed Plaintiffs that they do not oppose this motion and that they  
16 intend to file a notice of non-opposition shortly after it is filed.

17 Plaintiffs therefore ask this Court to enter the attached [Proposed] Final Judgment After  
18 Remand, Order of Vacatur, and Permanent Injunction.

19  
20 Respectfully submitted,

21 Dated: July 30, 2019

**MANATT, PHELPS & PHILLIPS, LLP**

22  
23 By: /s/ John F. Libby  
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**FILER’S ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, Barbara Gasik hereby attests that concurrence in the filing of this document has been obtained from all the signatories above.

Dated: July 30, 2019

/s/ Barbara Gasik  
Barbara Gasik

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**~~PROPOSED~~ ORDER**

Having considered Plaintiffs' Unopposed Motion to Enter Judgment After Remand ("Motion"), and good cause appearing, the Court orders as follows:

1. Plaintiffs' Motion is GRANTED.
2. To the extent that the March 13, 2019 judgment in this action, ECF No. 197, is still in place, that judgment is hereby VACATED.
3. The Court shall adopt and enter the [Proposed] Final Judgment After Remand, Order of Vacatur, and Permanent Injunction attached as "Exhibit A" to the Motion.

**IT IS SO ORDERED.**

Dated: 8/1/2019

  
HON. RICHARD SEEBORG  
United States District Judge



# **Exhibit A**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., Plaintiffs, v. WILBUR L. ROSS, et al., Defendants.
CITY OF SAN JOSE, et al., Plaintiffs, v. WILBUR L. ROSS, et al., Defendants.

Case No. 18-cv-01865-RS  
18-cv-02279-RS

**[PROPOSED] FINAL JUDGMENT  
AFTER REMAND, ORDER OF  
VACATUR, AND PERMANENT  
INJUNCTION**

In accordance with the Court’s March 6, 2019 Findings of Fact and Conclusions of Law, the June 28, 2019 order of the United States Supreme Court in *Wilbur L. Ross, Secretary of Commerce, et al. v. California, et al.*, No. 18-1214, the Unopposed Motions to Enter Final Judgment After Remand filed by the Plaintiffs on July 30, 2019, and Rule 58(b)(2)(B) of the Federal Rules of Civil Procedure, it is **ORDERED, ADJUDGED, and DECREED** as follows:

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**FINAL JUDGMENT AFTER REMAND**

In Case No. 18-cv-1865-RS:

- Final judgment is entered for Plaintiffs and against Defendants on Plaintiffs’ Second Cause of Action (Violation of APA; 5 U.S.C. § 706).
- Final judgment is entered for Defendants and against Plaintiffs on Plaintiffs’ First Cause of Action (Violation of Constitution’s “Actual Enumeration” Mandate; U.S. Const. art. I, § 2, cl. 3).

In Case No. 18-cv-2279-RS:

- Final judgment is entered for Plaintiffs and against Defendants on Plaintiffs’ Fourth Cause of Action (Violation of APA’s Arbitrary and Capricious Standard; 5 U.S.C. § 706(2)(A)).
- Final judgment is entered for Defendants and against Plaintiffs on Plaintiffs’ First Cause of Action (Violation of Constitution’s “Actual Enumeration” Mandate; U.S. Const. art. I, § 2, cl. 3); Plaintiffs’ Second Cause of Action (Violation of the Constitution’s Apportionment Clause; U.S. Const. amend. XIV, § 2); and Plaintiffs’ Third Cause of Action (Violation of APA’s Requirement that Administrative Action Be in Accordance with Law, Not Contrary to Constitutional Right, and Not Beyond Statutory Authority; 5 U.S.C. § 706(2)).

**VACATUR AND REMAND**

Secretary Ross’s March 26, 2018 decision to include a citizenship question on the 2020 Census is hereby **VACATED**. In light of the permanent injunction below, the decision is not remanded to the Department of Commerce.

**PERMANENT INJUNCTION**

Defendants, including the Secretary of Commerce in his official capacity, the Director of the Census Bureau in his official capacity, and any successors to those offices, together with their agents, servants, employees, attorneys, and other persons who are in active concert or participation with the foregoing, see Fed. R. Civ. P. 65(d)(2), are hereby **PERMANENTLY ENJOINED** from including a citizenship question on the 2020 decennial census questionnaire;

1 from delaying the process of printing the 2020 decennial census questionnaire after June 30, 2019  
2 for the purpose of including a citizenship question; and from asking persons about citizenship  
3 status on the 2020 census questionnaire or otherwise asking a citizenship question as part of the  
4 2020 decennial census.

5 The Court will retain jurisdiction in these cases to enforce the terms of this Order until the  
6 2020 Census results are processed and sent to the President by December 31, 2020.

7

8 **IT IS SO ORDERED.**

9

10 Dated: \_\_\_\_\_, 2019

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RICHARD SEEBORG  
United States District Judge

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CASE NOS. 18-cv-01865-RS, 18-cv-02279-RS

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2019, I served the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: July 30, 2019

/s/ Barbara Gasik  
Barbara Gasik