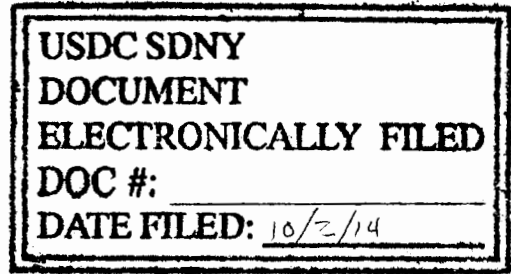


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
EVELYN HOUSER, PRECIOUS DANIELS, :
FELICIA RICKETT-SAMUELS, CHYNELL :
SCOTT, and SCOTTY DESPHY, :

Plaintiffs, :

- against - :

PENNY PRITZKER, Secretary, United States :
Department of Commerce, :

Defendant. :
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**ORDER AMENDING
THE COURT'S JULY 1, 2014
MEMORANDUM
DECISION AND ORDER**

10cv3105-FM

FRANK MAAS, United States Magistrate Judge.

On June 28, 2013, Plaintiffs filed a Motion for Class Certification, seeking to certify the following classes pursuant to Rule 23(b)(2) for the liability phase of the case and for class-wide injunctive relief: *All African American and Latino applicants who applied for temporary employment during the 2010 decennial and were harmed by one or both of the following employment practices: (1) Defendant's use of the 30-day letter as a screening device; (2) Defendant's use of adjudication criteria to screen applicants.* ECF No. 176 at 26.

In their motion, Plaintiffs also requested certification for post-liability monetary relief claims under Rule 23(b)(3), or in the alternative of an issues class under Rule 23(c)(4), of the following subclasses: *All African American and Latino applicants who applied for temporary employment during the 2010 decennial and were barred for one of the following*

reasons: (1) based solely on the procedural requirements imposed by the 30-day letter; (2) based solely on the delay in adjudicating the applicant; (3) based on exclusions that are not job related. ECF No. 176 at 26.

On December 16, 2013, Defendant filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction (“Defendant’s Motion to Dismiss”), seeking to dismiss Plaintiffs’ Second Amended Complaint on the grounds that each of the named Plaintiffs lacked Article III standing to assert claims of disparate impact under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. (“Title VII”). ECF No. 225.

On July 1, 2014, this Court issued a Memorandum Decision and Order on Plaintiffs’ Motion for Class Certification and Defendant’s Motion to Dismiss (“Order”). The Order dismissed the claims of one of the African-American named Plaintiffs, Vivian Kargbo, and the claims of both Latino named Plaintiffs, Ignacio Riesco and Anthony Gonzalez. For the reasons set forth in the Court’s order, the Court concluded that Plaintiffs Kargbo, Riesco, and Gonzalez could not demonstrate an injury-in-fact sufficient to prove Article III standing. See ECF No. 265 at 26-27. The Court also granted certification under Rule 23(b)(2) of a class for purposes of determining liability and affording injunctive relief. Because the Court found that both of the Latino named Plaintiffs lacked standing, the class definition in the Order was limited to “African-American applicants who sought temporary employment during the 2010 Decennial Census and claim to have been harmed by the Census Bureau’s 30-day Letter, its Adjudication Criteria, or both.” Id. at 60. The Order provided, however, that Plaintiffs could move to amend the Second Amended Complaint and class certification order in the event they were able to identify a suitable Latino class representative. Id.

On July 29, 2014, Defendant notified the Court that it had discovered an error in running the selection certificates for the geographic regions in which the named Plaintiffs could have been considered for temporary employment with the 2010 Decennial Census. ECF No. 278. Defendant indicated that, as a result of this error, one or more of the Latino plaintiffs who had been dismissed by the Court's July 1, 2014 Order may, in fact, have had standing to bring their claims. *Id.* at 1-2. Defendant thereafter informed the Court on August 6, 2014, that based on the newly produced selection certificates, Plaintiff Anthony Gonzalez would, in fact, have appeared on at least one selection certificate and therefore would have been eligible for hire under the standard set forth by the Court in its Order. ECF No. 280 at 2.

In light of Defendant's recent disclosure and its acknowledgment that, pursuant to the Order, Plaintiff Gonzalez would have appeared as eligible on at least one selection certificate for his geographic region, the Court hereby concludes that Plaintiff Gonzalez has Article III standing to proceed as a class representative. Further, the Court grants Plaintiffs' unopposed motion to join Edward Zahnle and Alexis Mateo as named plaintiffs and proposed class representatives for Latinos who applied for temporary employment with Defendant during the 2010 Decennial Census and claim they were thereafter harmed by the Census Bureau's 30-day letter. Notwithstanding Defendant's agreement to not oppose Plaintiffs' motion to join Edward Zahnle and Alexis Mateo as named plaintiffs and proposed class representatives, Defendant preserves all Article III standing arguments raised in Defendant's Motion to Dismiss.

Accordingly, the Court amends its July 1, 2014 Order insofar as that Order dismissed Plaintiff Gonzalez and limited the certified class to African-American applicants who sought temporary employment during the 2010 Decennial Census. Mr. Gonzalez is hereby reinstated as a class representative. The class definition is amended as follows:

The Plaintiffs' class shall be limited to (1) African-American applicants who sought temporary employment during the 2010 Decennial Census and claim to have been harmed by the Census Bureau's 30-day Letter, its Adjudication Criteria, or both; and (2) all Latino applicants who sought temporary employment during the 2010 Decennial Census and claim to have been harmed by the Census Bureau's 30-day Letter, its Adjudication Criteria, or both.

Nothing in this Order is intended to prevent the Government from exercising its right to challenge the Court's July 1, 2014 Order either through its motion for reconsideration, via appeal, or through additional motion practice or at trial as appropriate; nor does the Government waive any defenses as against the newly added Plaintiffs Gonzalez, Zahnle and Mateo; nor do Plaintiffs waive any corresponding right to oppose such defenses or other relief sought by Defendants.

The remainder of the Court's July 1, 2014 Order remains in effect in all other respects.

SO ORDERED.

Dated: New York, New York
October 2, 2014



FRANK MAAS
United States Magistrate Judge

Copies to all counsel via ECF