JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
ALEXANDER K. HAAS
Branch Director
DIANE KELLEHER
BRAD P. ROSENBERG
Assistant Branch Directors
M. ANDREW ZEE
ALEXANDER V. SVERDLOV
Trial Attorneys
U.S. Department of Justice
Civil Division - Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Telephone: (202) 305-0550

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, *et al*.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., *et al.*,

Defendants.

Case No. 5:20-cv-05799-LHK

DEFENDANTS' SECOND SUPPLEMENTAL BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Two things are now clear in this matter. First, all the briefs and arguments that Plaintiffs have submitted in this case concerning the Replan are wholly irrelevant. The substance and reasonableness of the Replan is beyond the Court's purview, because *Plaintiffs* have cast aside the Replan as the decision they purport to challenge under the APA, and have further induced this Court to do so to Defendants' detriment. Second, the decision Plaintiffs *do* now identify as the relevant subject of their challenge is not, and cannot be, final agency action subject to judicial review under the APA. Indeed, a decision to comply with the law—here the December 31 statutory deadline—cannot by definition violate the APA. Thus, even if the Court were to brush past each of the threshold jurisdictional defects that defeat Plaintiffs' case, Plaintiffs still have no way to prevail on the merits, either on their APA claim or their Enumeration Clause claim. *See* Defs.' Opp. Br. to Mot. for Prelim. Inj., ECF No. 81 (detailing why Plaintiffs' challenge in this matter is non-justiciable, why Plaintiffs lack standing, why APA Section 706 review is not available, and why their all their claims fail on the merits in any event). No injunction can issue under these circumstances. The harm to the completion of the census from the Court's current temporary restraining order need not be extended any more.

I. The Replan Is Now Irrelevant

Plaintiffs spent the past month complaining about the substance of the Replan, and interrogating the Census Bureau's implementation efforts in minute operational detail. *See, e.g.*, Am. Compl. ¶¶ 3, 272, 344; Pls. PI Br. at 2, ECF 36; Pls. Reply at 1-10, ECF 130; Pls. TRO Compliance Br., ECF No. 108. They urged this Court to view the Replan as subject to APA review, and, over Defendants' objections, mired the Court in the process of supervising what was effectively expedited discovery to elucidate the Bureau's deliberations. As it turns out, that was all for nothing. Plaintiffs have now decided that the relevant event they want this Court to review is not the Secretary of Commerce's *approval* of the Replan on August 3, 2020—itself not final agency action for all the reasons we have previously detailed, ECF Nos. 74, 81, 176—but rather the Secretary's *request* on July 29, 2020, that *a* plan be presented to him in the first instance. *See* Pls. Priv. Br. at 2-3, ECF 170 ("Everything after July 29 was mere implementation of the Secretary's decision[.]"); Pls. Supp. Br. at 1, 3, ECF 178; Tr. 9/18/20, ECF 192 44:20-25 ("[I]f

you look at the Fontenot Declaration, it talks about the decision actually being made, it seems, by the Secretary on July 29th. And what Mr. Fontenot and the other experts at the agency were doing, it seems, between July 29 . . . and August 3rd is making it happen[.]").

As Defendants previously observed, ECF No. 81 at 17-21, this confusion about what could be agency action in this case is not surprising, given that Plaintiffs are trying to stretch the APA framework over a broad programmatic attack on the Bureau's operations, which defies such characterization. *See generally Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 893 (1990) (the APA does not permit a plaintiff to attack an agency program "consisting of . . . many individual actions" simply by characterizing it as "agency action"). But Plaintiffs' shift is also significant in another way. By arguing that the decision they wish to challenge is the Secretary's July 29 *request* for a plan, ECF No. 170 at 2-3, Plaintiffs have succeeded in stripping privilege from an immense volume of documents that were generated as part of (and informed) the Replan's formation. *See* Order, ECF 179 ("[W]e find that anything after July 29, 2020, was mere implementation of the Secretary of Commerce's decision and, thus, does not fall within the deliberative process privilege."). Indeed, the Court reproduced *word for word* Plaintiffs' arguments for why July 29, 2020, was the date of the relevant decision, when it found that Plaintiffs were entitled to receive materials Defendants identified as subject to the deliberative process privilege, concluding, without even assessing the deliberativeness of the documents, that no *relevant* deliberations could have occurred after Plaintiffs' asserted decision date. *Compare* Pls. Priv. Br. at 2:20-3:1, ECF 170 *with* Order at 6:13-23, ECF 179.

There is no going back for Plaintiffs. By litigating and prevailing on the issue to the government's detriment, Plaintiffs are bound to that theory of the case. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). The doctrine of judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Pegram v. Herdrich*, 530 U.S. 211, 227, n. 8 (2000); *see also Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) ("Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position."). The Ninth Circuit

"invokes judicial estoppel not only to prevent a party from gaining an advantage by taking inconsistent positions, but also because of general considerations of the orderly administration of justice and regard for the dignity of judicial proceedings, and to protect against a litigant playing fast and loose with the courts." *Id.* (citation and internal quotation and alteration marks omitted). "The doctrine applies to prevent a party from asserting inconsistent positions in different cases, as well as in a single litigation" to the disadvantage of other parties and the Court. *Hannon v. Wells Fargo Bank, N.A.*, No. 14-cv-05381-LHK, 2015 WL 4776305, at *6 (N.D. Cal. Aug. 13, 2015) (Koh, J.). Plaintiffs here would, incontrovertibly, derive an unjust advantage if they were allowed to point to *one* event—the July 29 request by the Secretary—as final agency action to deprive Defendants' of their claim of privilege, and then use revealed documents as a basis to challenge *a later* action—the August 3 Replan announcement—which Plaintiffs just disclaimed as relevant. And even if the documents had not been privileged, they nonetheless should never have been made available to Plaintiffs, since post-decisional materials are not part of the administrative record, an axiomatic proposition Plaintiffs themselves have embraced. *See* Tr. Of 9/16 Hr'g at 73:1-5 (Plaintiffs agreeing that "the APA record ends when the [August 3] decision is made"). A clearer case of gamesmanship is hard to imagine.

Under Plaintiffs' new, controlling, framework, any action or decision made after July 29, 2020, including the development and announcement of the Replan, is now completely irrelevant as a legal matter. *See, e.g.*, *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 800–802 (9th Cir.2013) (agency's "day-to-day operations that merely implement operational plans" were not themselves reviewable under APA); *Village of Bald Head v. U.S. Army Corps of Eng'rs*, 714 F.3d 186, 193–95 (4th Cir.2013) (same); *WildEarth Guardians v. United States Dep't of Justice*, 181 F. Supp. 3d 651, 669 (D. Ariz. 2015) ("[A]n agency's 'ongoing implementation' of a prior decision is not itself a discrete 'final agency action' reviewable under the APA." (internal quotes and citations omitted)). The *only* action that can be evaluated at this point in the evolution of the litigation is the Secretary's request for a plan to meet the statutory deadline in 13 U.S.C. § 141. The substance and reasonableness of the Replan—necessarily formulated after the relevant decision—is not in

dispute.[1] Plaintiffs must take the bitter with the sweet and cannot mix and match decision points and their discovery positions in a way that best suits their objectives.

Plaintiffs' new approach also renders irrelevant any documents that shed light on how the Replan was formulated after July 29—including the documents over which Plaintiffs stripped privilege. A "post-decision bar" blocks the inclusion of such information in the record. *Tri-Valley CAREs v. U.S. Dep't of Energy*, 671 F.3d 1113, 1131 (9th Cir. 2012); *Rybachek v. EPA*, 904 F.2d 1276, 1296 n.25 (9th Cir. 1990) (it is not "appropriate . . . for either party to use post-decision information as a new rationalization either for sustaining or *attacking* the Agency's decision." (emphasis added)). "Parties may not use 'post-decision information as a new rationalization either for sustaining or attacking the Agency's decision.'" *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 450 F.3d 930 at 943 (9th Cir. 2006) (quoting *Ass'n of Pac. Fisheries v. EPA*, 615 F.2d 794, 811–12 (9th Cir. 1980). Indeed, Plaintiffs conceded as much when they agreed that documents post-dating what they identify as the relevant final agency action need not be produced. Tr. 9/15/20, ECF 126 at 72:22-73:5.

Accordingly, Plaintiff's APA claims now live and die on the pivot point of whether the Secretary's decision to request *a* plan—which could have been any plan—to meet the statutory deadline can be deemed final agency action, such that it would be reviewable under the APA. The correct answer is that Plaintiffs' APA claims perish.

II. The Secretary's Decision to *Request* a Plan for Approval is Not Final Agency Action

The Replan, with its myriad interconnected programmatic choices, is itself not final agency action subject to APA review. *See generally NAACP v. Bureau of the Census*, 945 F.3d 183, 190–91 (4th Cir. 2019) (finding lack of final agency action in a case challenging the various elements of the census operational plan because "the various 'design choices' being challenged expressly are tied to one another"). But there are many *more* reasons why the Secretary's decision to *request* a plan to evaluate cannot be final agency action.

[1] We reflect this new formulation of the case in the timeline the Court ordered the parties to produce. Attach A. *See* Order, ECF 194.

To be final agency action that is reviewable under the APA, "two conditions must be satisfied": the action "must mark the consummation of the agency's decision process" *and* the action must "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997); *see also Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). These two requirements are designed to avoid judicial entanglement in abstract and piecemeal disputes before they concretely affect a party. *See Or. Nat. Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 987 (9th Cir. 2006) (action can be final if it "has the status of law or comparable legal force, and whether immediate compliance with its terms is expected"). And they are robust enough to preclude APA review for one agency's provisions of recommendations to another federal actor who has final decision-making authority. *See, e.g.*, *Franklin*, 505 U.S. at 796-799; *Dalton v. Specter*, 511 U.S. 462, 468-71 (1994).

On its face, the choice to comply with the law and a request that subordinates generate a plan to do so cannot, by definition, be "the consummation" of any process. *Bennett*, 520 U.S. at 177-78. It is the *initiation* of a process, at most. And the request to devise a plan is self-evidently not something that establishes "rights or obligations" for anyone. *Id*. Implementing a request to devise a plan subjects no one to any legal consequences; imposes no disability; and in fact carries absolutely no legal weight at all. The formation of a plan quite literally "presents a moving target," *Franklin*, 505 U.S. at 798, which cannot be final agency action—and a request to formulate a plan is even one step further removed from that. This is especially true given that, regardless of what plan is devised, there is no right to be counted in any particular way, or to be counted at all. *See Confederacion de la Raza Unida v. Brown*, 345 F. Supp. 909, 910 (N.D. Cal. 1972) ("Plaintiffs do not contend, and correctly so, that they have an absolute right to be counted [in the census]."); *Nat'l Law Ctr. on Homelessness & Poverty v. Brown*, CIV. A. 92-2257-LFO, 1994 WL 521334, at *8 (D.D.C. Sept. 15, 1994) ("The Constitution does not provide individuals with a right to be counted . . . .").

In *Franklin*, the Supreme Court held that the Secretary's transmission of a final census report to the President under 13 U.S.C. § 141—a report compiled after the execution of the overall census operational plan—is *itself* not final agency action. 505 U.S. at 798 ("[T]he 'decennial

census' still even after the Secretary reports to the President."). Given this holding, it would make no sense whatever to find the Secretary's *logically and temporally prior* interim request that Bureau officials merely formulate a plan is judicially reviewable.

But even if the Court were to review the Secretary's request to formulate a plan as a discrete and final agency action, what exactly would render the Secretary's decision to *request* a plan unreasonable? By July 29, 2020, it was apparent that Congress was taking no steps to extend the statutory deadline of 13 U.S.C. § 141 despite the Bureau's repeated requests. *See, e.g.*, DOC_222_0001 (Secretary's talking points in Spring, noting that the Bureau needed an extension of the statutory deadline); DOC_8037-38 (transmitting to Secretary a newspaper article which addressed whether Congress would take up the extension); DOC_8071 (discussing repeated requests for deadline extension). The statutory deadline was fast approaching. Surely not even Plaintiffs can chide the Secretary for (1) recognizing that the law requires the Bureau to accomplish the census by the end of the year, and (2) requesting that his staff provide, for his consideration, a plan for how to meet that legal requirement. A fortiori, developing a plan to comply with a statute is action "*in accordance with law*" under the APA. 5 U.S.C. § 706(a)(2). Would Plaintiffs have the Secretary write a decision memo to justify his decision to explore options? Would they have him weigh the pros and cons of attempting to comply with the law?

To ask these questions is to answer them: even if the Secretary's decision to request the Replan were reviewable—and, again, it is not—there is no plausible grounds for concluding that such a decision is arbitrary, capricious, or not in accordance with law in violation of the APA.

Perhaps recognizing their predicament, Plaintiffs use a heads-we-win-tails-you-lose argument to reimagine a "decision" on August 3. *See* ECF No. 178 at 1, 3 (purporting to challenge both the "July 29 decision" and the "August 3 final agency action"). But this effort is incoherent and a shell game. Plaintiffs want to swap from, on the one hand, contending that the July 29 decision by the Secretary is the operative one and everything else is mere implementation of that decision, ECF 170 at 2-3, to, on the other hand, arguing the very next day that "[t]he August 3 announcement of the Replan is and has always been the final agency action Plaintiffs are challenging," ECF No. 178 at 2. Not only does this inability to identify the decision under review

make a mockery of the agency action and finality requirements—which demand a cognizable and discrete action—it renders the case not susceptible to any principled manner of judicial review at all. Plaintiffs chose to upend this case at the eleventh hour by identifying a new date of decision in an effort to obtain voluminous (irrelevant) documents. They cannot escape that choice.

III. Plaintiffs Have No Plausible Enumeration Clause Claim

In addition to torpedoing their APA claims, Plaintiffs shifting the focus of this case to the Secretary's July 29 request for a plan is also fatal to their Enumeration Clause challenge.

As we explained previously, there is no meaningful or cognizable standard under which the Court could evaluate *any* Enumeration Clause argument in this matter. *See* ECF 81 at 4–8. The Enumeration Clause requires a person-by-person headcount; the Supreme Court has never held it to require anything more. *See generally New York*, 139 S. Ct. 2551 (evaluating re-instatement of citizenship question on census form); *Utah v. Evans*, 536 U.S. 452, 452 (2002) (holding that "hot-deck imputation"—a process which imputes characteristics of households based upon the characteristics of neighbors—does not violate the Enumeration Clause); *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999) (holding that statistical sampling violates the Census Act and declining to reach the Enumeration Clause claim); *Wisconsin v. City of New York*, 517 U.S. 1 (1996) (holding that Secretary did not violate Enumeration Clause by declining to correct a census undercount with data from a post-enumeration survey); *Franklin*, 505 U.S. 788 (1992) (confirming that allocating federal employees serving overseas to their home States did not violate the Constitution). The clause does not mandate a "reasonable relationship to an actual enumeration" in all circumstances, because otherwise that standard would have been applied in the census cases post-dated *Wisconsin*. *See Utah*, 536 U.S. at 464 (foregoing the *Wisconsin* "reasonable relationship" standard in determining the constitutionality of imputation); *see also House of Representatives*, 525 U.S. at 346-47 (Scalia, J., concurring in part) (discussing the constitutionality of statistical sampling without reference to the *Wisconsin* reasonable-relationship standard); *id.* at 363 (Stevens, J., dissenting) (same). It wasn't. Indeed, if that standard applied, the Court could not have reached the conclusion it reached in *New York*.

But even if the Court were to attempt to apply the *Wisconsin* reasonable-relationship standard here, there is still no way Plaintiffs could establish that the Secretary's request for a plan, or the plan itself, would be impermissible. For one, as noted above, an "actual Enumeration" as referenced in *Wisconsin* simply means a person-by-person headcount. Unlike the *post hoc* statistical adjustment at issue in *Wisconsin*—which implicated the concept of estimation—there is no dispute about that issue here. *Compare* Am. Compl. ¶¶ 3, 272, 344 *with Wisconsin*, 517 U.S. at 24 (examining the Secretary's decision that an "'actual Enumeration' would best be achieved without the [ ] statistical adjustment of the census"). For another, Defendants are aware of no decision finding a violation of the reasonable-relationship test. *See NAACP v. Bureau of Census*, --- F. Supp. 3d ---, 2020 WL 1890531, at *6 (D. Md. Apr. 16, 2020) ("I have located no case where a court has found a violation of the *Wisconsin* reasonable relationship standard."). Further, even if the *Wisconsin* standard surreptitiously imported some ineffable concept of accuracy, the Secretary's request for a plan in the face of an impending statutory deadline cannot be said to bear upon census accuracy, which is an impossible standard to measure a census in any event. *See Utah*, 536 U.S. at 504 (Thomas, J., concurring in part and dissenting in part) (canvassing the history of census undercounts, including the first Census in 1790); *Wisconsin*, 517 U.S. at 6 ("Although each [of the 20 past censuses] was designed with the goal of accomplishing an 'actual Enumeration' of the population, no census is recognized as having been wholly successful in achieving that goal."). If anything affects accuracy, it is the deadline itself. And it simply cannot be that the Secretary, with all his "broad authority" to conduct the census, somehow lacks the ability to request an operational plan from his subordinates to meet a statutory deadline enacted under Congress's "virtually unlimited discretion" to control the census. *Wisconsin*, 517 U.S. at 19.

IV. The Court Should Dissolve the Temporary Restraining Order and Deny the Preliminary Injunction

The collapse of Plaintiffs' APA claims and Enumeration Clause claims is sufficient reason to reject their request for a preliminary injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 32-33 (2008); *see also see Munaf v. Geren*, 553 U.S. 674, 690 (2008) (likelihood of success

requires far more than identifying "serious, substantial, difficult, and doubtful" questions); *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) ("[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." (internal quotes and citations omitted; emphasis in original)). And, with the national completion rate for enumeration topping 95 percent, Plaintiffs' claims of harm in this matter are rapidly evaporating. *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) ("[D]emonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." (internal quotation marks omitted)).

Meanwhile, the harm to census operations from continuing to comply with the temporary restraining order is great, and growing by the day. As detailed in the forthcoming supplemental declaration from the Bureau's Associate Director Albert E. Fontenot, the Bureau remains bound by the December 31, 2020, deadline established in 13 U.S.C. § 141. Fontenot Decl. ¶ 2. Having already compressed data processing operations as much as possible, *id.* ¶ 22, the Bureau needs to *finish* its field operations by September 30, 2020 to enable data processing to begin. *Id.* ¶¶ 16-22 (explaining that data processing must be performed sequentially following the completion of field data gathering). Only by doing so can the deadline set by Congress be met.

The most efficient way to complete these field operations is to permit Area Census Offices, as soon as practically possible, to enter the "closeout phase," under which they are given greater discretion to move enumerators around and allocate work to the highest performing enumerators; to grant enumerators more autonomy to complete their cases; and to change a multitude of other procedures to focus first and foremost on the raw count, which is generally faster to achieve. *Id.* ¶¶ 4-14. Closeout procedures are a normal part of census operations, and were engrained in the original Operational Plan for the 2020 census. *Id.* ¶ 5. Yet the Court's Temporary Restraining Order is preventing the Bureau from fully implementing those procedures. *Id.* ¶¶ 6-11.

If the Bureau is unable to finish field operations by September 30, 2020, it will be unable to complete the vast task of post-data collection processing in time to provide the data to the

Secretary in accordance with the statutory deadline. *Id.* ¶ 22. This is no mere hypothetical. The Bureau has *already* compressed this data processing as much as possible. *Id.* Thus, were the Court to enjoin the conclusion of field operations, the Bureau's ability to meet its deadline is in serious doubt. *Id.*

Since the passage of 13 U.S.C. § 141, the Bureau has *never once* missed the deadline to report the census results. This Court should not force Congress to deal with the uncertainty of an untimely census report. Following the 1920 census, Congress could not agree on how to conduct apportionment at all—leaving the apportionment numbers from the 1910 census in place for *two* decades until a new census was conducted in 1930. *See U.S. Dept. of Commerce v. Montana*, 503 U.S. 442, 451-53 (1992) (discussing this history). That is the entire reason Congress enacted both the § 141(b)'s statutory deadline and the automatic apportionment formula based on that deadline. *Id.* Plaintiffs' meddling in the current census threatens to upend that carefully crafted statutory scheme. If the enumeration and apportionment report ultimately delivered to Congress is untimely, there is no telling what Congress would do. It is entirely possible that Congress could, as in 1920, simply disregard the untimely results. Surely, everyone can agree that the next ten years of representation and funding should be based on the most current population data available, not data from a decade ago. Plaintiffs, and this Court, should not force Congress into that position.

This Court should therefore dissolve the Temporary Restraining Order and deny Plaintiffs' motion for a preliminary injunction.

V. If The Court Enters A Preliminary Injunction, It Should Grant a Stay Order Pending Appeal

As this Court has repeatedly acknowledged, time is of the essence. Defendants respectfully believe that the Court should promptly deny Plaintiffs' motion for a preliminary injunction. If, however, the Court grants Plaintiffs' motion for a preliminary injunction, the Court should indicate in its Order whether it is will stay its order pending a potential appeal. The court's vague Temporary Restraining Order has seriously impeded census operations due to contempt threat, and if that Order continues, the agency will need relief almost immediately to begin closeout operations. Due to the increasing irreparable harm to the need to complete the census by the

statutory deadline, we anticipate seeking relief from the court of appeals, if appeal is authorized, on September 23, 2020. If this Court takes an action (or no action) to avoid prompt appellate review, Census may need to begin taking closeout steps that it has previously held off under a cautious reading of this Court's vague Temporary Restraining Order. It is impracticable for the agency to return to the Court time and again to get particular actions blessed, and the fact that this would be necessary is yet another indication that the Court is not faced with a challenge to final or discrete agency action but instead with a dynamic and ongoing process of unconsummated administrative decisionmaking.

This Court has allowed the parties to submit supplemental briefing in advance of today's hearing, pursuant to which this brief—and the accompanying declaration of Mr. Fontenot—is being submitted. With this supplemental briefing, Defendants believe that this Court has an adequate legal and factual basis to evaluate whether to stay any preliminary injunction it may enter pending appeal, which rests on the same factors as the injunction showing Plaintiffs must make. *See Nken v. Holder*, 556 U.S. 418, 433-43 (2009) (discussing factors for a stay pending appeal). We therefore request a stay pending a determination whether to appeal and, if appeal is authorized, a stay pending appeal.

DATED: September 22, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

ALEXANDER K. HAAS
Branch Director

DIANE KELLEHER
BRAD P. ROSENBERG
Assistant Branch Directors

/s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV
(New York Bar No. 4918793)

M. ANDREW ZEE (SBN 272510)
Trial Attorneys
U.S. Department of Justice
Civil Division - Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20005
Telephone: (202) 305-0550

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV

Attachment A

Court-Ordered Timeline

July 29, 2020:	Secretary Ross directs Census Bureau to develop a plan to comply with statutory deadline in 13 U.S.C. § 141. *See* ECF 81-1 ¶ 81; DOC_8371-8373
August 3, 2020:	Replan is formally announced, and implementation begins. *See* DOC_0000933. Implementation reflects a myriad of operational decisions and goes through September 5, 2020.
September 5, 2020:	Court enters Temporary Restraining Order, ECF 80. Implementation of the Replan halted. *See* ECF 86 Attach. A, B.