
From: Barrow, Clark (Federal); [REDACTED] b(6)
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Sent: 8/7/2019 4:25:58 PM

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Subject: Briefing materials submitted on 8.7.19 to 8.8.19

Attachments: 1) Meeting with UK Trade Minister Truss_sec_08062019.docx; 2) Call with Ambassador Pyatt, Greece_sec_08072019.docx; 3) Briefing with Census and Y and R on 2020 Census Advertising Campaign_08-06-2019_Final.docx; 4) Briefing with Census Leadership - Aug 8 2019 Meeting.docx; 4.1) Attachment 1 - Executive Order.pdf; 4.2) Attachment 2 - CQAS-09661signed-Johnson-IRS.pdf; 4.3) Attachment 3 - CQAS-09661signed-Rosenblum-DHS.pdf; 4.4) Attachment 4 - CQAS-09661signed-Arndt-State.pdf; 4.5) Attachment 5 - CQAS-09661signed-Hargan-HHS.pdf; 4.6) Attachment 6 - CQAS-09661signed-Brown-SSA.pdf; 4.7) Attachment 7 - Internal Census Bureau memorandum from John Abowd.pdf; 5) Meeting with Adam Boehler OPIC_sec_080719.docx; 6) ITA Info Memo on Carbon and Alloy Steel Threaded Rods CVD Prelim_sec_072419.docx

- 1) Meeting with UK Trade Minister Truss
- 2) Call with Ambassador Pyatt, Greece
- 3) Briefing with Census and Y&R on 2020 Census Advertising Campaign
- 4) Briefing with Census Leadership - Aug 8 2019 Meeting
- 4.1) Attachment 1 - Executive Order
- 4.2) Attachment 2 - Letter from Dr. Dillingham to IRS
- 4.3) Attachment 3 - Letter from Dr. Dillingham to DHS
- 4.4) Attachment 4 - Letter from Dr. Dillingham to State Department
- 4.5) Attachment 5 - Letter from Dr. Dillingham to HHS
- 4.6) Attachment 6 - Letter from Dr. Dillingham to SSA
- 4.7) Attachment 7 - Internal Census Bureau memorandum from John Abowd
- 5) Meeting with Adam Boehler OPIC
- 6) ITA Info Memo on Carbon and Alloy Steel Threaded Rods CVD

William Clark Barrow

Associate Director

Office of the Executive Secretariat | U.S. Department of Commerce

Direct: (202) 482-4892 | Cell: [REDACTED] b(6)

BRIEFING MEMORANDUM FOR THE SECRETARY

FROM: Eli Corso-Phinney, UK Desk Officer, (202) 482-7941
EVENT: Meeting with Elizabeth Truss, UK Secretary for International Trade
DATE: Thursday, August 8, 2019, from 10:00 – 10:30 a.m.

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- **Secretary Truss:** Before her promotion to head the UK's Department for International Trade, Liz Truss served as Chief Secretary to the Treasury in then-PM Theresa May's government. In her first policy proposal as Trade Secretary, Truss has advocated for the

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creation of up to 10 “freeports” to boost trade after Britain leaves the EU. Freeports – normally an area of a country where its taxes and tariffs do not apply – allow companies to import goods, store them and re-export them without paying UK taxes. Companies can also undertake manufacturing or other work on imported components and re-export them without paying UK duties.

- **Brexit:** The House of Commons is still unable to agree on a way forward on Brexit, and

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PM Johnson, for his part, has stated unequivocally that his government intends to lead the UK out of the EU on October 31, with or without a Withdrawal Agreement in place with the EU.

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ATTACHMENT 1: PARTICIPANT BIOGRAPHY AND FULL PARTICIPANTS LIST



Elizabeth (Liz) Truss

Secretary of State for International Trade, United Kingdom of Great Britain and Northern Ireland

Elizabeth Truss was appointed Secretary of State for International Trade on July 24, 2019. She was elected as the Conservative MP for south west Norfolk in 2010. Truss studied philosophy, politics and economics at Merton College, Oxford, graduating in 1996.

Truss was previously a member of the Liberal Democrats party, switching to the Conservative Party in 1996. In 2012, she was appointed as Under-Secretary of State at the Department of Education, overseeing issues such as childcare, assessment, qualifications and curriculum reform. She was appointed as Secretary of State for Environment, Food and Rural Affairs during the 2014 cabinet reshuffle, and in this role she promoted growing British agriculture exports. She was appointed Secretary of State for Justice after Theresa May became PM in 2016, then Chief Secretary to the Treasury in 2017.

Truss worked in the private sector prior to her election to Parliament. She previously worked for Shell as a commercial manager and Cable & Wireless as an economics director.

The Secretary of State has overall responsibility for the business of the department. The Secretary of State is the Departmental lead on trade and investment promotion in the defense and security sector.

Full List of Participants

Government of the United Kingdom

- Elizabeth Truss, Secretary of State for International Trade
- Freya Jackson, Counselor, Head of Global and Economic Policy Group, British Embassy
- James Caldecourt, Special Advisor to the Secretary of State
- Alex Cocker, Private Secretary to the Secretary of State
- Nerissa Chesterfield, Special Advisor to the Secretary of State
- Toby Orr, Director of Communication and Marketing
- Anne Collett, Deputy Head, Trade and Agriculture Team, British Embassy

Commerce

- Wilbur Ross, Secretary
- David De Falco, Executive Director for Europe
- Ellen House, Director for Western and Northern Europe
- Eli Corso-Phinney, UK Desk Officer

b(5) - DP

BRIEFING MEMORANDUM FOR THE SECRETARY

FROM: Aileen Wall, Greece Desk Officer, (202) 482-5229;
Thomas Smith, Greece Desk Officer (PMF), **b(6)**
EVENT: Call with Ambassador Geoffrey Pyatt, U.S. Ambassador to Greece
DATE: Thursday, August 8, 2019, TBD

CONTEXT & PURPOSE

Ambassador Geoffrey Pyatt would like to have a follow up conversation to your July 10 call. The Ambassador would like to discuss a possible business roundtable for Greek leaders, including Prime Minister Kyriakos Mitsotakis, on the margins of the United National General Assembly (UNGA) **b(5) - DP**

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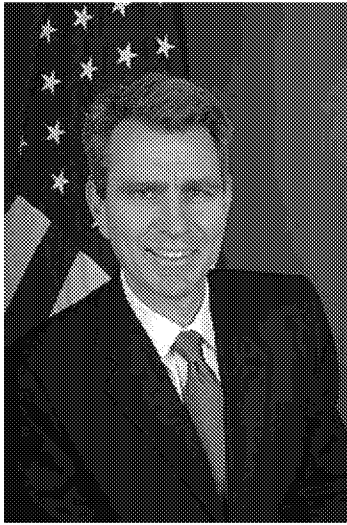
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(See Attachment 1 for Biographies and Participants List).

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ATTACHMENT 1: BIOGRAPHIES AND FULL PARTICIPANT LIST



Geoffrey R. Pyatt

U.S. Ambassador to Greece

Geoffrey R. Pyatt was confirmed as U.S. Ambassador to Greece in July 2016. Prior to his current appointment, Ambassador Pyatt was U.S. Ambassador to Ukraine from 2013 to 2016.

Ambassador Pyatt was the Principal Deputy Assistant Secretary of the Bureau of South and Central Asian Affairs from 2010 to 2013.

Prior to that he worked as deputy chief of the U.S. mission to the International Atomic Energy Agency. From 2002 to 2007

Ambassador Pyatt served at the U.S. Embassy in New Delhi, first as Minister Counselor for Political Affairs and beginning in June 2006 as Deputy Chief of Mission.

Prior to his India assignment, he served at the American Consulate General in Hong Kong, managing the trade and export control dialogue with the Hong Kong Special Administrative Region of China.

From 1997 to 1999, he was Principal Officer of the American Consulate in Lahore - representing the United States in Pakistan's largest and politically most important province.

His Washington assignments include Director for Latin America on the National Security Council staff (1996-97), Special Assistant to the Deputy Secretary of State (1995-96) and Staff Assistant to the Assistant Secretary of State for Latin America (1994). He was Political Officer in New Delhi, India from 1992-94 and Economic Officer and Vice-Consul in Tegucigalpa, Honduras from 1990-92.

Prior to joining the Foreign Service, he worked with The Inter-American Dialogue, a Washington-based think tank that brings together leading citizens of the Americas.

Participant List

Commerce

- Wilbur Ross, Secretary of Commerce
- James Rockas, Deputy Director of Policy and Strategic Planning
- Earl Comstock, Deputy Chief of Staff
- Aileen Wall, Greece Desk Officer

State

- Geoffrey Pyatt, U.S. Ambassador to Greece
- Chip Laitinen, Economic Counselor, U.S. Embassy Athens

August 8, 2019

BRIEFING MEMORANDUM FOR THE SECRETARY

FROM: Ali Ahmad, Associate Director for Communications, Census Bureau.
301-763-8789
EVENT: Briefing with Census and VMLY&R on the 2020 Census Advertising Campaign
DATE: Thursday, August 7, 2019, from 12:00 PM-2:00 PM
PLACE: Secretary's Conference Room

ROLE IN EVENT

- You will receive a briefing from Census Bureau leadership and VMLY&R, the prime contractor for the 2020 Census Advertising campaign, on the advertisements that will be used to support the 2020 Census.

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FULL LIST OF PARTICIPANTS

VMLY&R and Lead Subcontractors

- Alex Hughes, Integrated Communications Contract Census Programs Director
- Jack Benson, Deputy Program Director
- Belle Frank, Strategy Director
- Sarah Evans, Research Lead
- Carlos Alcazar, Culture One World b(5) - DP
- Austin Patrick, Account Managing Director Carol H. Williams Advertising b(5) - DP
- Ed Chang, Managing Director, TDW+Co b(5) - DP
- Bassam Hassan, Middle Eastern North African Lead, VMLY&R
- Devin Rote, Technical Support, VMLY&R

Commerce

- Wilbur Ross, Secretary
- Karen Dunn Kelley, Deputy Secretary
- Steve Dillingham, Census Bureau Director
- Ron Jarmin, Census Bureau Deputy Director
- Enrique Lamas, Senior Advisor to the Census Bureau Deputy Director
- Christa Jones, Chief of Staff, Census Bureau
- Ali Ahmad, Associate Director for Communications, Census Bureau of the Census
- Burton Reist, Assistant Director for Communications Directorate, Census Bureau
- Lizannette Velez, Contracting Officers Representative for the Integrated Communications Contract, Census Bureau
- Kaile Bower, Chief, Integrated Partnership and Communications Branch, Census Bureau

August 8, 2019

BRIEFING MEMORANDUM FOR THE SECRETARY

FROM: James Treat, Assistant Director for Decennial Census Programs, 301.763.3609
EVENT: Briefing with Census Leadership on Executive Order 13880
DATE: Thursday, August 8, 2019, from 3:00 PM-4:00 PM
PLACE: Department of Commerce, Secretary's Office/Conference Room

CONTEXT & PURPOSE

The Census Bureau Director will provide an update on plans to address Executive Order 13880 on collecting information about citizenship status in connection with the Decennial Census. (See Attachment 1 for the Executive Order). Staff would like to update the Secretary on **b(5) - DP**

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AGENDA

1. Action Updates – Dr. Dillingham
2. Milestone Schedule – see schedule – Jim Treat
3. Update on **b(5) - DP** – Jim Treat
4. Update on the **b(5) - DP** – Ali Ahmad

BACKGROUND

- On July 11, 2019, the President signed Executive Order 13880 on collecting information about citizenship status in connection with the Decennial Census. The order directed the Secretary of Commerce and the Director of the Census Bureau to produce a citizenship data through the use of administrative records. (See Attachments 2 through 6 for Dr. Dillingham's letters to the IRS, DHS, State Department, HHS, and SSA, respectively, and see Attachment 7 for an Internal Census Bureau Memorandum from John Abowd.)

FULL LIST OF PARTICIPANTS

- Wilbur Ross, Secretary
- Karen Dunn Kelley, Deputy Secretary
- Steve Dillingham, Director of the Census Bureau
- Ron Jarmin, Deputy Director of the Census Bureau
- Ali Ahmad, Associate Director for Communications, Census Bureau
- John Abowd, Associate Director for Research and Methodology, Census Bureau
- Enrique Lamas, Senior Advisor to the Director, Census Bureau
- Steve Smith, Senior Advisor to the Director, Census Bureau

- James Treat, Assistant Director for Decennial Census Programs, Census Bureau
- Michael Berning, Assistant Division Chief for the Data Acquisition and Curation, Economic Reimbursable Surveys Division, Census Bureau

ATTACHMENTS

1. Executive Order
2. Letter from Dr. Dillingham to IRS
3. Letter from Dr. Dillingham to DHS
4. Letter from Dr. Dillingham to State Department
5. Letter from Dr. Dillingham to HHS
6. Letter from Dr. Dillingham to SSA
7. Internal Census Bureau memorandum from John Abowd



EXECUTIVE ORDERS

**Executive Order on Collecting Information about
Citizenship Status in Connection with the Decennial
Census**

— IMMIGRATION

Issued on: July 11, 2019



By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. In *Department of Commerce v. New York*, No. 18-966 (June 27, 2019), the Supreme Court held that the Department of Commerce (Department) may, as a general matter, lawfully include a question inquiring about citizenship status on the decennial census and, more specifically, declined to hold that the Secretary of Commerce’s decision to include such a question on the 2020 decennial census was “substantively invalid.” That ruling was not surprising, given that every decennial census from 1820 to 2000 (with the single exception of 1840) asked at least some respondents about their citizenship status or place of birth. In addition, the Census Bureau has inquired since 2005 about citizenship on the American Community Survey — a separate questionnaire sent annually to about 2.5 percent of households.

The Court determined, however, that the explanation the Department had provided for including such a question on the census was, in the circumstances of that case,

insufficient to support the Department's decision. I disagree with the Court's ruling, because I believe that the Department's decision was fully supported by the rationale presented on the record before the Supreme Court.

The Court's ruling, however, has now made it impossible, as a practical matter, to include a citizenship question on the 2020 decennial census questionnaire. After examining every possible alternative, the Attorney General and the Secretary of Commerce have informed me that the logistics and timing for carrying out the census, combined with delays from continuing litigation, leave no practical mechanism for including the question on the 2020 decennial census.

Nevertheless, we shall ensure that accurate citizenship data is compiled in connection with the census by other means. To achieve that goal, I have determined that it is imperative that all executive departments and agencies (agencies) provide the Department the maximum assistance permissible, consistent with law, in determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective. When the Secretary of Commerce decided to include the citizenship question on the census, he determined that such a question, in combination with administrative records, would provide the most accurate and complete data. At that time, the Census Bureau had determined based on experience that administrative records to which it had access would enable it to determine citizenship status for approximately 90 percent of the population. At that point, the benefits of using administrative records were limited because the Department had not yet been able to access several additional important sets of records with critical information on citizenship. Under the Secretary of Commerce's decision memorandum directing the Census Bureau "to further enhance its administrative record data sets" and "to obtain as many additional Federal and state administrative records as possible," the Department has sought access to several such sets of records maintained by other agencies, but it remains in negotiations to secure access. The executive action I am

taking today will ensure that the Department will have access to all available records in time for use in conjunction with the census.

Therefore, to eliminate delays and uncertainty, and to resolve any doubt about the duty of agencies to share data promptly with the Department, I am hereby ordering all agencies to share information requested by the Department to the maximum extent permissible under law.

Access to the additional data identified in section 3 of this order will ensure that administrative records provide more accurate and complete citizenship data than was previously available.

I am also ordering the establishment of an interagency working group to improve access to administrative records, with a goal of making available to the Department administrative records showing citizenship data for 100 percent of the population. And I am ordering the Secretary of Commerce to consider mechanisms for ensuring that the Department's existing data-gathering efforts expand the collection of citizenship data in the future.

Finally, I am directing the Department to strengthen its efforts, consistent with law, to obtain State administrative records concerning citizenship.

Ensuring that the Department has available the best data on citizenship that administrative records can provide, consistent with law, is important for multiple reasons, including the following.

First, data on the number of citizens and aliens in the country is needed to help us understand the effects of immigration on our country and to inform policymakers considering basic decisions about immigration policy. The Census Bureau has long maintained that citizenship data is one of the statistics that is "essential for agencies and policy makers setting and evaluating immigration policies and laws."

Today, an accurate understanding of the number of citizens and the number of aliens in the country is central to any effort to reevaluate immigration policy. The United States has not fundamentally restructured its immigration system since 1965. I have explained many times that our outdated immigration laws no longer meet contemporary needs. My Administration is committed to modernizing immigration laws and policies, but the effort to undertake any fundamental reevaluation of immigration policy is hampered when we do not have the most complete data about the number of citizens and non-citizens in the country. If we are to undertake a genuine overhaul of our immigration laws and evaluate policies for encouraging the assimilation of immigrants, one of the basic informational building blocks we should know is how many non-citizens there are in the country.

Second, the lack of complete data on numbers of citizens and aliens hinders the Federal Government's ability to implement specific programs and to evaluate policy proposals for changes in those programs. For example, the lack of such data limits our ability to evaluate policies concerning certain public benefits programs. It remains the immigration policy of the United States, as embodied in statutes passed by the Congress, that "aliens within the Nation's borders [should] not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations" and that "the availability of public benefits [should] not constitute an incentive for immigration to the United States" (8 U.S.C. 1601(2)). The Congress has identified compelling Government interests in restricting public benefits "in order to assure that aliens be self-reliant in accordance with national immigration policy" and "to remove the incentive for illegal immigration provided by the availability of public benefits" (8 U.S.C. 1601(5), (6)).

Accordingly, aliens are restricted from eligibility for many public benefits. With limited exceptions, aliens are ineligible to receive supplemental security income or food stamps (8 U.S.C. 1612(a)). Aliens who are "qualified aliens" — that is, lawful permanent residents, persons granted asylum, and certain other legal immigrants — are, with limited exceptions, ineligible to receive benefits through Temporary

Assistance for Needy Families, Medicaid, and State Children's Health Insurance Program for 5 years after entry into the United States (8 U.S.C. 1613(a)). Aliens who are not "qualified aliens," such as those unlawfully present, are generally ineligible for Federal benefits and for State and local benefits (8 U.S.C. 1611(a), 1621(a)).

The lack of accurate information about the total citizen population makes it difficult to plan for annual expenditures on certain benefits programs. And the lack of accurate and complete data concerning the alien population makes it extremely difficult to evaluate the potential effects of proposals to alter the eligibility rules for public benefits.

Third, data identifying citizens will help the Federal Government generate a more reliable count of the unauthorized alien population in the country. Data tabulating both the overall population and the citizen population could be combined with records of aliens lawfully present in the country to generate an estimate of the aggregate number of aliens unlawfully present in each State. Currently, the Department of Homeland Security generates an annual estimate of the number of illegal aliens residing in the United States, but its usefulness is limited by the deficiencies of the citizenship data collected through the American Community Survey alone, which includes substantial margins of error because it is distributed to such a small percentage of the population.

Academic researchers have also been unable to develop useful and reliable numbers of our illegal alien population using currently available data. A 2018 study by researchers at Yale University estimated that the illegal alien population totaled between 16.2 million and 29.5 million. Its modeling put the likely number at about double the conventional estimate. The fact is that we simply do not know how many citizens, non-citizens, and illegal aliens are living in the United States.

Accurate and complete data on the illegal alien population would be useful for the Federal Government in evaluating many policy proposals. When Members of Congress propose various forms of protected status for classes of unauthorized

immigrants, for example, the full implications of such proposals can be properly evaluated only with accurate information about the overall number of unauthorized aliens potentially at issue. Similarly, such information is needed to inform debate about legislative proposals to enhance enforcement of immigration laws and effectuate duly issued removal orders.

The Federal Government's need for a more accurate count of illegal aliens in the country is only made more acute by the recent massive influx of illegal immigrants at our southern border. In Proclamation 9822 of November 9, 2018 (Addressing Mass Migration Through the Southern Border of the United States), I explained that our immigration and asylum system remains in crisis as a consequence of the mass migration of aliens across our southern border. As a result of our broken asylum laws, hundreds of thousands of aliens who entered the country illegally have been released into the interior of the United States pending the outcome of their removal proceedings. But because of the massive backlog of cases, hearing dates are sometimes set years in the future and the adjudication process often takes years to complete. Aliens not in custody routinely fail to appear in court and, even if they do appear, fail to comply with removal orders. There are more than 1 million illegal aliens who have been issued final removal orders from immigration judges and yet remain at-large in the United States.

Efforts to find solutions that address the immense number of unauthorized aliens living in our country should start with accurate information that allows us to understand the true scope of the problem.

Fourth, it may be open to States to design State and local legislative districts based on the population of voter-eligible citizens. In *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), the Supreme Court left open the question whether "States may draw districts to equalize voter-eligible population rather than total population." Some States, such as Texas, have argued that "jurisdictions may, consistent with the Equal Protection Clause, design districts using any population baseline — including total population and voter-eligible population — so long as the choice is rational and

not invidiously discriminatory". Some courts, based on Supreme Court precedent, have agreed that State districting plans may exclude individuals who are ineligible to vote. Whether that approach is permissible will be resolved when a State actually proposes a districting plan based on the voter-eligible population. But because eligibility to vote depends in part on citizenship, States could more effectively exercise this option with a more accurate and complete count of the citizen population.

The Department has said that if the officers or public bodies having initial responsibility for the legislative districting in each State indicate a need for tabulations of citizenship data, the Census Bureau will make a design change to make such information available. I understand that some State officials are interested in such data for districting purposes. This order will assist the Department in securing the most accurate and complete citizenship data so that it can respond to such requests from the States.

To be clear, generating accurate data concerning the total number of citizens, non-citizens, and illegal aliens in the country has nothing to do with enforcing immigration laws against particular individuals. It is important, instead, for making broad policy determinations. Information obtained by the Department in connection with the census through requests for administrative records under 13 U.S.C. 6 shall be used solely to produce statistics and is subject to confidentiality protections under Title 13 of the United States Code. Information subject to confidentiality protections under Title 13 may not, and shall not, be used to bring immigration enforcement actions against particular individuals. Under my Administration, the data confidentiality protections in Title 13 shall be fully respected.

Sec. 2. Policy. It is the policy of the United States to develop complete and accurate data on the number of citizens, non-citizens, and illegal aliens in the country. Such data is necessary to understand the effects of immigration on the country, and to inform policymakers in setting and evaluating immigration policies

and laws, including evaluating proposals to address the current crisis in illegal immigration.

Sec. 3. Assistance to the Department of Commerce and Maximizing Citizenship

Data. (a) All agencies shall promptly provide the Department the maximum assistance permissible, consistent with law, in determining the number of citizens, non-citizens, and illegal aliens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective. In particular, the following agencies shall examine relevant legal authorities and, to the maximum extent consistent with law, provide access to the following records:

- (i) Department of Homeland Security, United States Citizenship and Immigration Services – National-level file of Lawful Permanent Residents, Naturalizations;
- (ii) Department of Homeland Security, Immigration and Customs Enforcement – F1 & M1 Nonimmigrant Visas;
- (iii) Department of Homeland Security – National-level file of Customs and Border Arrival/Departure transaction data;
- (iv) Department of Homeland Security and Department of State, Worldwide Refugee and Asylum Processing System – Refugee and Asylum visas;
- (v) Department of State – National-level passport application data;
- (vi) Social Security Administration – Master Beneficiary Records; and
- (vii) Department of Health and Human Services – CMS Medicaid and CHIP Information System.

(b) The Secretary of Commerce shall instruct the Director of the Census Bureau to establish an interagency working group to coordinate efforts, consistent with law, to maximize the availability of administrative records in connection with the census, with the goal of obtaining administrative records that can help establish citizenship status for 100 percent of the population. The Director of the Census Bureau shall chair the working group, and the head of each agency shall designate a representative to the working group upon request from the working group chair.

(c) To ensure that the Federal Government continues to collect the most accurate information available concerning citizenship going forward, the Secretary of Commerce shall consider initiating any administrative process necessary to include a citizenship question on the 2030 decennial census and to consider any regulatory changes necessary to ensure that citizenship data is collected in any other surveys and data-gathering efforts conducted by the Census Bureau, including the American Community Survey. The Secretary of Commerce shall also consider expanding the distribution of the American Community Survey, which currently reaches approximately 2.5 percent of households, to secure better citizenship data.

(d) The Department shall strengthen its efforts, consistent with law, to gain access to relevant State administrative records.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
July 11, 2019.



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

July 31, 2019

The Honorable Barry W. Johnson
Director, Statistics of Income Division
Internal Revenue Service
77 K Street, NE
Washington, DC 20024

Dear Director Johnson:

I am writing to request your assistance as the U.S. Department of Commerce (the Department) and the Census Bureau prepare to execute a strategic implementation plan to comply with the requirements of the President's Executive Order 13880 of July 11, 2019 *Collecting Information About Citizenship Status in Connection With the Decennial Census* (enclosed). As you may be aware, the Executive Order directs that "[a]ll agencies shall promptly provide the Department the maximum assistance permissible, consistent with the law, in determining the number of citizens, non-citizens, and illegal aliens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective" [Sec 3. (a)]. To this end, I am reaching out to formalize a process to move forward with your assistance.

The Executive Order further directs that the Director of the Census Bureau "establish an interagency working group to coordinate efforts, consistent with law, to maximize the availability of administrative records in connection with the census, with the goal of obtaining administrative records that can help establish citizenship status for 100 percent of the population. The Director of the Census Bureau shall chair the working group, and the head of each agency shall designate a representative to the working group upon request from the working group chair" [Sec 3. (b)].

As the working group chair, I ask that you designate a representative from your Agency to serve on this important working group by Friday, August 9, 2019. My goal is to hold our first working group meeting later in August to assess the relevant data sources, review the guidelines that govern our information sharing agreements, and identify the next steps to fully comply with Section 3 of this Executive Order.

Please provide the designee's contact information to:

Mike Berning
Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
Telephone: 301-763-2028
Email: michael.a.berning@census.gov



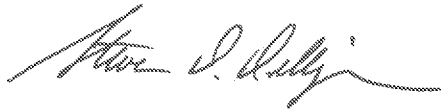
census.gov

The Honorable Barry W. Johnson

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Thank you in advance for your cooperation. I look forward to working with you and your subject matter experts to successfully implement this Presidential order.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven D. Dillingham", with a stylized flourish at the end.

Steven D. Dillingham
Director

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

July 31, 2019

The Honorable Marc Rosenblum
Deputy Assistant Secretary
DHS Office of Immigration Statistics
Office of Strategy, Policy, and Plans, Mail Stop 0445
2707 Martin Luther King Avenue, SE
Washington, DC 20528-0445

Dear Deputy Assistant Secretary Rosenblum:

I am writing to request your assistance as the U.S. Department of Commerce (the Department) and the Census Bureau prepare to execute a strategic implementation plan to comply with the requirements of the President's Executive Order 13880 of July 11, 2019 *Collecting Information About Citizenship Status in Connection With the Decennial Census* (enclosed). As you may be aware, the Executive Order directs that "[a]ll agencies shall promptly provide the Department the maximum assistance permissible, consistent with the law, in determining the number of citizens, non-citizens, and illegal aliens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective" [Sec 3. (a)]. To this end, I am reaching out to formalize a process to move forward with your assistance.

The Executive Order further directs that the Director of the Census Bureau "establish an interagency working group to coordinate efforts, consistent with law, to maximize the availability of administrative records in connection with the census, with the goal of obtaining administrative records that can help establish citizenship status for 100 percent of the population. The Director of the Census Bureau shall chair the working group, and the head of each agency shall designate a representative to the working group upon request from the working group chair" [Sec 3. (b)].

As the working group chair, I ask that you designate a representative from your Agency to serve on this important working group by Friday, August 9, 2019. My goal is to hold our first working group meeting later in August to assess the relevant data sources, review the guidelines that govern our information sharing agreements, and identify the next steps to fully comply with Section 3 of this Executive Order.

Please provide the designee's contact information to:

Mike Berning
Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
Telephone: 301-763-2028
Email: michael.a.berning@census.gov



census.gov

The Honorable Marc Rosenblum

2

Thank you in advance for your cooperation. I look forward to working with you and your subject matter experts to successfully implement this Presidential order.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven D. Dillingham", with a stylized flourish at the end.

Steven D. Dillingham
Director

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

July 31, 2019

The Honorable Rachel M. Arndt
Deputy Assistant Secretary for Passport Services
Bureau of Consular Affairs, U.S. Department of State
CA/PPT
SA-17, Floor 4
Washington, DC 20522-1704

Dear Deputy Assistant Secretary Arndt:

I am writing to request your assistance as the U.S. Department of Commerce (the Department) and the Census Bureau prepare to execute a strategic implementation plan to comply with the requirements of the President's Executive Order 13880 of July 11, 2019 *Collecting Information About Citizenship Status in Connection With the Decennial Census* (enclosed). As you may be aware, the Executive Order directs that "[a]ll agencies shall promptly provide the Department the maximum assistance permissible, consistent with the law, in determining the number of citizens, non-citizens, and illegal aliens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective" [Sec 3. (a)]. To this end, I am reaching out to formalize a process to move forward with your assistance.

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Economic Reimbursable Surveys Division
Telephone: 301-763-2028
Email: michael.a.berning@census.gov



census.gov

The Honorable Rachel M. Arndt

2

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Sincerely,

A handwritten signature in black ink, appearing to read "Steven D. Dillingham". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steven D. Dillingham
Director

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

July 31, 2019

The Honorable Eric Hargan
Deputy Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 614G
Washington, DC 20201

Dear Deputy Secretary Hargan:

I am writing to request your assistance as the U.S. Department of Commerce (the Department) and the Census Bureau prepare to execute a strategic implementation plan to comply with the requirements of the President's Executive Order 13880 of July 11, 2019 *Collecting Information About Citizenship Status in Connection With the Decennial Census* (enclosed). As you may be aware, the Executive Order directs that "[a]ll agencies shall promptly provide the Department the maximum assistance permissible, consistent with the law, in determining the number of citizens, non-citizens, and illegal aliens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective" [Sec 3. (a)]. To this end, I am reaching out to formalize a process to move forward with your assistance.

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Mike Berning
Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
Telephone: 301-763-2028
Email: michael.a.berning@census.gov



census.gov

The Honorable Eric Hargan

2

Thank you in advance for your cooperation. I look forward to working with you and your subject matter experts to successfully implement this Presidential order.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve D. Dillingham", with a long horizontal flourish extending to the right.

Steven D. Dillingham
Director

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Office of the Director
Washington, DC 20233-0001

July 31, 2019

The Honorable Jason Brown
Associate Commissioner for
Office of Research, Evaluation, and Statistics
Social Security Administration
250 E., SW, Suite 8120
Washington, DC 20254

Dear Associate Commissioner Brown:

I am writing to request your assistance as the U.S. Department of Commerce (the Department) and the Census Bureau prepare to execute a strategic implementation plan to comply with the requirements of the President's Executive Order 13880 of July 11, 2019 *Collecting Information About Citizenship Status in Connection With the Decennial Census* (enclosed). As you may be aware, the Executive Order directs that "[a]ll agencies shall promptly provide the Department the maximum assistance permissible, consistent with the law, in determining the number of citizens, non-citizens, and illegal aliens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing that objective" [Sec 3. (a)]. To this end, I am reaching out to formalize a process to move forward with your assistance.

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Please provide the designee's contact information to:

Mike Berning
Assistant Division Chief for Data Acquisition and Curation
Economic Reimbursable Surveys Division
Telephone: 301-763-2028
Email: michael.a.berning@census.gov



census.gov

The Honorable Jason Brown

2

Thank you in advance for your cooperation. I look forward to working with you and your subject matter experts to successfully implement this Presidential order.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven D. Dillingham", with a long horizontal flourish extending to the right.

Steven D. Dillingham
Director

Enclosure

August 8, 2019

BRIEFING MEMORANDUM FOR THE SECRETARY

FROM: Michael Fuchs, Team Lead, Office of Finance and Insurance Industries,
(202) 482-3279
EVENT: Meeting with Adam Boehler, President and CEO of USIDFC Designee
DATE: Thursday, August 8, 2019, from 3:30 – 4:00 pm.

b(5) - DP

b(5) - DP

Background:

- The BUILD ACT of 2018 was signed into law on October 5, 2018. The Act creates a development financial institution that merges the Overseas Private Investment Corporation (OPIC) with USAID's Development Credit Authority (DCA).

b(5) - DP

b(5) - DP

ATTACHMENT 1: PARTICIPANT BIOGRAPHIES AND FULL PARTICIPANTS LIST



ADAM BOEHLER

Senior Advisor HHS Secretary, Deputy Administrator Centers for Medicare & Medicaid Services (CMS) and Director of the Center for Medicare and Medicaid Innovation

Adam is widely regarded as an innovative leader in the private sector and has designed and implemented new, patient-focused approaches to healthcare delivery.

Before coming to CMS, Adam was founder and CEO of Landmark Health, a company that provides home-based medical care. Landmark was founded on the premise of passionate people transforming how care is delivered to those who need it most - the most chronically ill. Landmark is one of the largest home-based

medical groups in the country, with over 20 locations and over 80,000 chronic patients under management.

Additionally, before joining CMS, Adam was an Operating Partner at Francisco Partners, a global private equity firm with a focus on healthcare technology and services and the founder and Chairman of Avalon Health Solutions, the leading provider of laboratory benefit management services.

Previously, Adam was Founder and CEO of Accumen, a leading provider of comprehensive laboratory management services to health systems. Adam was also a Principal at Accretive, LLC, where he was responsible for healthcare investments. Prior to joining Accretive, Adam was Executive Vice President and General Manager at MedeAnalytics, the leading provider of healthcare analytics with over 600 hospital and insurance clients.

Adam started his career at Battery Ventures, a leading technology venture capital firm with over \$2 billion under management, focusing on investments in software and emerging technologies. Adam graduated magna cum laude from the Wharton School of the University of Pennsylvania. He resides in New Orleans, LA with his wife, Shira, and their four young children.

Full List of Participants

OPIC

- Adam Boehler, President and CEO Designee, U.S. International Development Finance Corp.
- David Bohigian, Acting President and CEO, OPIC
- Edward Burrier, VP External Affairs

Commerce

- Wilbur Ross, Secretary
- Michael Fuchs, Team Lead, Industry & Analysis Office of Finance and Insurance Industries

August 6, 2019

INFORMATION MEMORANDUM FOR THE SECRETARY

FROM: Jeffrey I. Kessler
Assistant Secretary for Enforcement and Compliance
Desk: (202) 482-4503; Cell **b(6)**

SUBJECT: Preliminary Determinations in the Countervailing Duty (CVD) Investigations of Imports of Carbon and Alloy Steel Threaded Rod from China and India

SUMMARY

On Tuesday, July 23, 2019, the Department of Commerce (Commerce) announced its preliminary determinations in the CVD investigations of imports of carbon and alloy steel threaded rod from China and India.

b(5) - DP

b(5) - DP

b(5) - DP

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]; Semsar, Joseph (Federal)[JSemsar@doc.gov]; Glover, Rebecca (Federal)[RGlover@doc.gov]; Manning, Kevin (Federal)[KManning@doc.gov]
From: Ali Mohammad Ahmad (CENSUS/ADCOM FED)[ali.m.ahmad@census.gov]
Sent: Mon 8/12/2019 5:23:16 PM (UTC-04:00)
Subject: Re: Tweet by Hansi Lo Wang on Twitter

I'll be giving you a call.

Ali Ahmad, Associate Director
Communications Directorate
U.S. Census Bureau
O: 301-763-8789 | M: **b(6)**
Ali.M.Ahmad@census.gov
[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Monday, August 12, 2019 2:18:10 PM
To: Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>; Semsar, Joseph (Federal) <JSemsar@doc.gov>; Glover, Rebecca (Federal) <RGlover@doc.gov>; Manning, Kevin (Federal) <KManning@doc.gov>
Subject: Re: Tweet by Hansi Lo Wang on Twitter

Thanks Ali. Call me if we need to chat about this.

--
David Dewhirst
Deputy General Counsel
U.S. DEPARTMENT OF COMMERCE
ddewhirst@doc.gov
c. **b(6)**

From: "Ali Mohammad Ahmad (CENSUS/ADCOM FED)" <ali.m.ahmad@census.gov>
Date: Monday, August 12, 2019 at 2:05 PM
To: "Dewhirst, David (Federal)" <DDewhirst@doc.gov>, "Semsar, Joseph (Federal)" <JSemsar@doc.gov>, "Glover, Rebecca (Federal)" <RGlover@doc.gov>, "Manning, Kevin (Federal)" <KManning@doc.gov>
Subject: Tweet by Hansi Lo Wang on Twitter

Hansi Lo Wang ([@hansilowang](https://twitter.com/hansilowang))

8/12/19, 2:03 PM
[@uscensusbureau](https://twitter.com/uscensusbureau) [@bgdailynews](https://twitter.com/bgdailynews) [@RepPressley](https://twitter.com/RepPressley) 3. But [@uscensusbureau](https://twitter.com/uscensusbureau), I'm still waiting for an answer to this question, which I've emailed to your public information office:

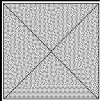
Is the bureau planning to include citizens and noncitizens, including unauthorized immigrants, in the 2020 apportionment count?

[Download](#) the Twitter app

b(5) - DP

b(5) - DP

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]; Semsar, Joseph (Federal)[JSemsar@doc.gov]; Glover, Rebecca (Federal)[RGlover@doc.gov]; Manning, Kevin (Federal)[KManning@doc.gov]
From: Ali Mohammad Ahmad (CENSUS/ADCOM FED)[ali.m.ahmad@census.gov]
Sent: Mon 8/12/2019 2:05:09 PM (UTC-04:00)
Subject: Tweet by Hansi Lo Wang on Twitter



Hansi Lo Wang (@hansilowang)

8/12/19, 2:03 PM

@uscensusbureau @bgdailynews @RepPressley 3. But @uscensusbureau, I'm still waiting for an answer to this question, which I've emailed to your public information office:

Is the bureau planning to include citizens and noncitizens, including unauthorized immigrants, in the 2020 apportionment count?

[Download](#) the Twitter app

b(5) - DP

To: Dillingham, Steven[steven.dillingham@census.gov]; Kelley, Karen (Federal)[KKelley@doc.gov]; Walsh, Michael (Federal)[MWalsh@doc.gov]; Semsar, Joseph (Federal)[JSemsar@doc.gov]; Glover, Rebecca (Federal)[RGlover@doc.gov]; Hull, Cordell (Federal)[CHull@doc.gov]; O'Connor, Kasey (Federal)[KO'Connor@doc.gov]; Dewhirst, David (Federal)[DDewhirst@doc.gov]; Manning, Kevin (Federal)[KManning@doc.gov]; Jarmin, Ron S[ron.s.jarmin@census.gov]; Lamas, Enrique[enrique.lamas@census.gov]
Cc: Stanley, Christopher J[christopher.j.stanley@census.gov]
From: Ali Mohammad Ahmad (CENSUS/ADCOM FED)[ali.m.ahmad@census.gov]
Sent: Fri 8/9/2019 6:07:24 PM (UTC-04:00)
Subject: FYSA- NPR Tweet on US Census Bureau Response to Rep. Pressley Question on Citizenship and Apportionment.



Hansi Lo Wang

@hansilowang

Follow

UPDATE: On July 24, @RepPressley asked if @uscensusbureau Director Steven Dillingham could confirm that citizenship data collected pursuant to President Trump's recent executive order will not be used in the bureau's apportionment count. Today, bureau replied, per @LinaFuego 🗣️

“The issue you asked about is currently in litigation and we do not comment on ongoing litigation, but the Census Bureau will fulfill its constitutional mandate to conduct a complete and accurate 2020 Census and enumerate all persons living in the United States of America.”

3:03 PM - 9 Aug 2019

1 Retweet 3 Likes



1

1

♡ 3



Stacy ❤️👉❤️ **Proud Mom Lee** @haemama · 13s

Replying to @hansilowang @RepPressley and 2 others

Ruh roh



To: Dewhirst, David (Federal)[DDewhirst@doc.gov]; Hull, Cordell (Federal)[CHull@doc.gov]; Semsar, Joseph (Federal)[JSemsar@doc.gov]; O'Connor, Kasey (Federal)[KO'Connor@doc.gov]; Glover, Rebecca (Federal)[RGlover@doc.gov]; Manning, Kevin (Federal)[KManning@doc.gov]
Cc: Stanley, Christopher J[christopher.j.stanley@census.gov]
From: Ali Mohammad Ahmad (CENSUS/ADCOM FED)[ali.m.ahmad@census.gov]
Sent: Thur 8/8/2019 9:43:00 AM (UTC-04:00)
Subject: For Review & Feedback by COB- Response to Rep. Pressley & TPs for General Use

b(5) - DP

I knw a subset of us are meeting today so I don't expect feedback until after that, but I wanted to keep all up to date on the state of planning post yesterday's 4 p.m. call. Director hasn't reviewed these, **b(5) - DP**

b(5) - DP

E-mail Response to Representative Ayanna Pressley (D-MA)

- Will the bureau be producing block level data on citizens and non-citizens?

b(5) - DP

- Will citizenship data be used for apportionment counts? Provide written answer in next 10 days (Aug 3 –calendar days-or Aug 7-business days)

b(5) - DP

- Have you or anyone you know of discussed including citizenship data in the redistricting file?

b(5) - DP

b(5) - DP

b(5) - DP

Ali Ahmad, Associate Director
Communications Directorate

U.S. Census Bureau

O: 301-763-8789 | M:

b(6)

Ali.M.Ahmad@census.gov

[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: McNerney, Robert (Federal) [RMcNerney@doc.gov]
Sent: 7/25/2019 11:51:27 AM
To: Glover, Rebecca (Federal) [RGlover@doc.gov]; Schaffer, Ari (Federal) [ASchaffer@doc.gov]; Manning, Kevin (Federal) [KManning@doc.gov]
CC: Ali M Ahmad (ali.m.ahmad@census.gov); Quinley, Kevin [kevin.quinley@census.gov]; Stanley, Christopher J [christopher.j.stanley@census.gov]; Walsh, Michael (Federal) [MWalsh@doc.gov]; Dewhirst, David (Federal) [DDewhirst@doc.gov]; Semsar, Joseph (Federal) [JSemsar@doc.gov]; Freitas, Jessica (Federal) [JFreitas@doc.gov]
Subject: TPM: Census Director Can't Say Whether Data Is Being Collected To Boost GOP Electorally

Census Director Can't Say Whether Data Is Being Collected To Boost GOP Electorally

By Tierney Sneed | July 25, 2019 11:13 am

--

Census Bureau Director Steven Dillingham couldn't say on Wednesday whether the citizenship data his agency is helping to collect will be used to drastically change the way political power is doled out across the country to favor the Republican Party.

At a hearing in front of a House Oversight subcommittee, Dillingham was asked by Rep. Ayanna Pressley (D-MA) about President Trump's recent executive order directing the government to assemble citizenship data from existing records. He issued the order after the administration lost the legal fight to add a citizenship question to the 2020 census.

In announcing the order, Trump and Attorney General Bill Barr floated using the data for redistricting and apportionment, in what would be major voting rights overhauls that would boost the GOP to the detriment of Latino and Democratic-leaning areas of the country.

On Wednesday, Pressley asked Dillingham several questions related to the order. Dillingham repeatedly struggled to respond and appeared altogether unprepared to answer basic questions about the Census Bureau's plans in following Trump's directive.

He couldn't say whether the data collection project would produce citizenship data that was "block-level" — meaning granular enough that it could be used in redistricting.

Pressley asked him to confirm that the citizenship data collected would not be used in the Census Bureau's apportionment count, which determines how many U.S. representatives and Electoral College votes each state gets. Barr earlier this month alluded to the idea of using citizenship data if a lawsuit seeking to exclude undocumented immigrants from apportionment is successful.

"Let me get you back to you on that," Dillingham said Wednesday, while declining to saying whether citizenship should be used in that count. "I just need to know the mechanics, congresswoman, and I will get back to you on that."

Asked by Pressley if the citizenship data will be used in the allocation of funding for federal health care programs, Dillingham demurred by saying that the Bureau does not choose how the data it produces is used.

She asked Dillingham if he has been involved in discussions about including citizenship data in the redistricting file the Census Bureau produces for state level map-drawers. Including it will likely lead some GOP states to exclude noncitizens from how they draw legislative districts, which would shift political representation away from immigrant-rich regions, and towards white, rural and Republican-leaning ones. The Census Bureau has already indicated, via regulatory actions, that it is considering giving states citizenship data for redistricting, and Trump, earlier this month, more or less said his administration would do so.

Dillingham pondered Pressley's question for a few second, muttering "redistricting file" under his breath.

“Congresswoman, let me get back to you on that,” Dillingham said, as he pointed to the executive order: “Whatever that executive order says.”

Dillingham agreed to respond in writing within 10 days to Pressley’s question about apportionment.

[Watch video of the exchange here.](#)

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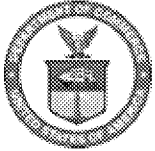
Robert McNerney

Press Assistant

Office of the Secretary | Department of Commerce

RMcNerney@doc.gov

202-482-1986



From: McNerney, Robert (Federal) [RMcNerney@doc.gov]
Sent: 7/24/2019 1:22:55 PM
To: Glover, Rebecca (Federal) [RGlover@doc.gov]; Manning, Kevin (Federal) [KManning@doc.gov]; Schaffer, Ari (Federal) [ASchaffer@doc.gov]
CC: Ahmad, Ali M [ali.m.ahmad@census.gov]; Quinley, Kevin [kevin.quinley@census.gov]; Stanley, Christopher J [christopher.j.stanley@census.gov]; Walsh, Michael (Federal) [MWalsh@doc.gov]; Foti, Anthony (Federal) [AFoti@doc.gov]; Schaffer, Ari (Federal) [ASchaffer@doc.gov]; Kluttz, Lawson (Federal) [LKluttz@doc.gov]; Tillotson, Erica P. (Federal) [ETillotson@doc.gov]
Subject: (PRESS RELEASE) Kaine Joins Effort To Block Trump Administration From Gathering, Politicizing Citizenship Information

Kaine Joins Effort To Block Trump Administration From Gathering, Politicizing Citizenship Information

WASHINGTON, D.C. – Today, U.S. Senator Tim Kaine joined Senator Brian Schatz and their colleagues in pushing back against President Trump’s executive action ordering federal agencies to turn over citizenship data from existing government records for political purposes. Kaine and Schatz introduced new legislation to overturn Trump’s executive order.

“After his misguided efforts to add a citizenship question to the census were blocked by the Supreme Court, President Trump is now attempting to bypass the Court’s ruling by issuing this executive order. As both the President and Attorney General Barr have signaled, this data could be used to advance harmful immigration policies and discriminatory redistricting. We need to prevent that from happening and block this administration from politicizing citizenship data,” **said Kaine.**

The legislation to overturn Trump’s executive order is also cosponsored by Senators Dick Durbin (D-IL), Patty Murray (D-WA), Dianne Feinstein (D-CA), Jack Reed (D-RI), Sherrod Brown (D-OH), Cory Booker (D-NJ), Richard Blumenthal (D-CT), Kirsten Gillibrand (D-NY), Michael Bennet (D-CO), Amy Klobuchar (D-MN), Mazie Hirono (D-HI), and Tammy Duckworth (D-IL).

Kaine also joined Schatz in a letter to Secretary of Commerce Wilbur Ross and Attorney General William Barr warning that the Senate could restrict federal funds that would be used to carry out the order.

“The executive order directing federal agencies to compile citizenship data through administrative records and merge it with decennial census data is a blatant effort to collect this information for political and discriminatory purposes,” **the Senators wrote.** “We will work to prohibit the Department of Commerce, or any other agency, from using federal funds to carry out this action.”

In addition to Kaine and Schatz, the letter is also signed by Senators Dick Durbin (D-IL), Patty Murray (D-WA), Dianne Feinstein (D-CA), Jack Reed (D-RI), Sherrod Brown (D-OH), Kirsten Gillibrand (D-NY), Sheldon Whitehouse (D-RI), Elizabeth Warren (D-MA), Bob Casey (D-PA), Cory Booker (D-NJ), Tammy Duckworth (D-IL), Amy Klobuchar (D-MN), and Mazie Hirono (D-HI).

The full text of the letter can be found below and [here](#).

Dear Secretary Ross and Attorney General Barr:

The executive order directing federal agencies to compile citizenship data through administrative records and merge it with decennial census data is a blatant effort to collect this information for political and discriminatory purposes. We

write in strong opposition to this attempt to inappropriately mix this administration's harmful immigration policies with the ordinarily nonpartisan decennial census and nonpartisan work of federal statistical agencies generally. Furthermore, we will work to prohibit the Department of Commerce, or any other agency, from using federal funds to carry out this action.

Litigation surrounding the administration's efforts to add a citizenship question to the 2020 Census form, as well as documents from a partisan operative recently disclosed as part of that litigation, revealed that the proposal to collect citizenship information was designed both to depress the 2020 Census count and to be "advantageous to Republicans and Non-Hispanic Whites" and "clearly be a disadvantage to the Democrats" in gerrymandering efforts. Furthermore, in his remarks on the proposed citizenship question, Attorney General Barr raised the possibility that these data could be used to change the population base used for congressional apportionment—a purpose, we should note, that would blatantly violate the U.S. Constitution's apportionment clause.

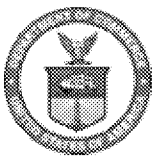
In addition, the president justified his executive order by citing the use of citizenship data for immigration and other public policy purposes, stating, for example, that "data on the number of citizens and aliens in the country is needed to help us understand the effects of immigration on our country and to inform policymakers considering basic decisions about immigration policy," and that "[t]he Federal Government's need for a more accurate count of illegal aliens in the country is only made more acute by the recent massive influx of illegal immigrants at our southern border."

The president's executive order bypasses the successful legal challenges to the citizenship question and forces this information into 2020 Census data using methods that have not been reviewed for accuracy, legality, and feasibility. This is an unlawful overreach of executive authority. The failed attempt to add a citizenship question clearly illustrated the true intent of this administration to assist discriminatory redistricting, apportionment, and public policy decisions that harm communities of color, and particularly immigrant populations.

The president's attempt to sustain the controversy over citizenship data in the decennial census—which is the basis for allocating federal funding and congressional and legislative districts—makes clear that his purpose is not a robust 2020 Census, but rather a partisan and discriminatory attack on people living in our country. Our government must never use decennial census data to otherize, separate, or disenfranchise people living in our country.

--

Robert McNerney
Press Assistant
Office of the Secretary | Department of Commerce
RMcNerney@doc.gov
202-482-1986



To: Manning, Kevin (Federal)[KManning@doc.gov]
From: Dewhirst, David (Federal)[b(6)]
b(6)

Sent: Fri 8/2/2019 10:32:46 AM (UTC-04:00)
Subject: Re: WaPo AL Case Inquiry

b(5) - DP/AC

--
David Dewhirst
Deputy General Counsel for Litigation
U.S. DEPARTMENT OF COMMERCE
ddewhirst@doc.gov
c. b(6)

From: "Manning, Kevin (Federal)" <KManning@doc.gov>
Date: Friday, August 2, 2019 at 10:31 AM
To: "Dewhirst, David (Federal)" <DDewhirst@doc.gov>
Subject: RE: WaPo AL Case Inquiry

b(5) - DP/AC

From: Dewhirst, David (Federal)
Sent: Friday, August 02, 2019 10:28 AM
To: Manning, Kevin (Federal) <KManning@doc.gov>
Subject: Re: WaPo AL Case Inquiry

b(5) - DP/AC

David Dewhirst
Deputy General Counsel for Litigation
U.S. Department of Commerce
ddewhirst@doc.gov
c. b(6)

*Sent from my iPad. Please excuse any typos.

From: Manning, Kevin (Federal) <KManning@doc.gov>
Sent: Friday, August 2, 2019 10:25:17 AM
To: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Subject: WaPo AL Case Inquiry

b(5) - DP/AC
b(5) - DP/AC

From: Bahrapour, Tara <tara.bahrapour@washpost.com>
Sent: Thursday, August 01, 2019 5:27 PM
To: Manning, Kevin (Federal) <KManning@doc.gov>
Subject: comment for story on Alabama census case

Hi Kevin,

I hope you're well. I'm writing a story about Alabama's lawsuit against the Department of Commerce and Census Bureau over including undocumented immigrants in apportionment (Civil action no. 2:18-cv-00772-RDP. Can someone at Commerce comment on the following questions:

1. How does the Commerce Department's defense against the Alabama lawsuit and the motion to dismiss it line up with Attorney General Barr's July 11 comments in the Rose Garden, as follows:

The course the President has chosen today will bring unprecedented resources to bear on determining how many citizens and non-citizens are in our country, and will yield the best data the government has had on citizenship in many decades. That information will be used for countless purposes, as the President explained in his remarks today. For example, there is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of that dispute, this data may be relevant to those considerations. We will be studying this issue.

Was A.G. Barr alluding to the Alabama case, and if so how does the Commerce Department reconcile that with its defense against that case?

2. The federal judge in that case wrote the following in deciding to allow intervention in the case:

The decision to permit intervention in this case is particularly significant in light of Defendants' rather halfhearted Motion to Dismiss for Lack of Jurisdiction. (Doc. # 45). Indeed, the court is concerned that Defendants have overlooked a key argument as to why Plaintiffs potentially lack Article III standing—i.e., whether Plaintiffs' claimed representational injury is likely to be redressed by a favorable decision of this court. See *Franklin v. Massachusetts*, 505 U.S. 788 (1992). Allowing intervention will increase the prospect that the court will be more fully informed of the best arguments that support Defendants' position.

Can someone at Commerce comment on why its attorneys did not offer argument the judge refers to, in the motion to dismiss? And/or comment generally about the importance of defending this case?

Deadline is Friday at 5pm.

Many thanks,
Tara

Tara Bahrapour
The Washington Post
1301 K Street NW
Washington, DC 20071
o: 202-334-9602
c: 202-629-7991
tara.bahrapour@washpost.com

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]; Jarmin, Ron S[ron.s.jarmin@census.gov]
Cc: Walsh, Michael (Federal)[MWalsh@doc.gov]; Kelley, Karen (Federal)[KKelley@doc.gov]
From: Christa D Jones (CENSUS/DEPDIR FED)[Christa.D.Jones@census.gov]
Sent: Sun 7/7/2019 2:06:49 PM (UTC-04:00)
Subject: Re: Options Update
Options 07062019 1052 PM + DD at 07072019 200PM.docx

Here are revisions.

b(5) - AC/WP/DP

b(5) - AC/WP/DP

Let us know if this works or if you have more questions.

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Sunday, July 7, 2019 1:12:28 PM
To: Christa D Jones (CENSUS/DEPDIR FED); Ron S Jarmin (CENSUS/DEPDIR FED)
Cc: Walsh, Michael (Federal); Kelley, Karen (Federal)
Subject: Re: Options Update

Thanks!

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From: Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>
Sent: Sunday, July 7, 2019 6:30:50 PM
To: Dewhirst, David (Federal); Jarmin, Ron S
Cc: Walsh, Michael (Federal); Kelley, Karen (Federal)
Subject: Re: Options Update

Working on it right now. Hoping to get it to you asap.

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Sunday, July 7, 2019 12:27:36 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED)
Cc: Walsh, Michael (Federal); Kelley, Karen (Federal); Christa D Jones (CENSUS/DEPDIR FED)
Subject: Re: Options Update

Do we have an ETA on getting the next draft of the doc?

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From: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>
Sent: Sunday, July 7, 2019 4:22:06 PM
To: Dewhirst, David (Federal)
Cc: Walsh, Michael (Federal); Kelley, Karen (Federal); Jones, Christa D
Subject: Re: Options Update

I started responding but needed to stop to get ready to give a talk. I'll be out of pocket for several hours so I've asked Christa to respond so we can keep this moving.
Thanks

Ron

Sent from my iPhone

On Jul 7, 2019, at 3:47 AM, Dewhirst, David (Federal) <DDewhirst@doc.gov> wrote:

CUI/PRIV/DL ONLY

Ron,

b(5) - AC/WP/DP

Thanks!

David Dewhirst
Travel: **b(6)**

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From: Walsh, Michael (Federal)
Sent: Sunday, July 7, 2019 7:31:28 AM
To: Dewhirst, David (Federal)
Subject: Fwd: Options Update

Sent from my iPhone

Begin forwarded message:

From: "Christa D Jones (CENSUS/DEPDIR FED)" <Christa.D.Jones@census.gov>
Date: July 6, 2019 at 10:53:47 PM EDT
To: "Walsh, Michael (Federal)" <MWalsh@doc.gov>, "Ron S Jarmin (CENSUS/DEPDIR FED)" <Ron.S.Jarmin@census.gov>
Cc: "Kelley, Karen (Federal)" <KKelley@doc.gov>
Subject: Re: Options Update

Mike--here's the doc.

From: Walsh, Michael (Federal) <MWalsh@doc.gov>
Sent: Saturday, July 6, 2019 9:38:07 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED)
Cc: Kelley, Karen (Federal); Christa D Jones (CENSUS/DEPDIR FED)
Subject: Re: Options Update

Thanks very much. Really appreciate it.

Sent from my iPhone

> On Jul 6, 2019, at 9:36 PM, Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>
wrote:

>

> Mike,

>

> We're close to having stuff you.

>

> Thanks

>

> Ron

>

> Sent from my iPhone

<Options 07062019 1052 PM + DD at 07072019 0635 AM.docx>

To: Jarmin, Ron S[ron.s.jarmin@census.gov]
Cc: Walsh, Michael (Federal)[MWalsh@doc.gov]; Kelley, Karen (Federal)[KKelley@doc.gov]
From: Dewhirst, David [b(6)]
[b(6)]
Sent: Sun 7/7/2019 6:45:51 AM (UTC-04:00)
Subject: Re: Options Update
Options 07062019 1052 PM + DD at 07072019 0635 AM.docx

CUI/PRIV/DL ONLY

Ron,

b(5) - AC/WP/DP

Thanks!

David Dewhirst
Travel [b(6)]

Get [Outlook for iOS](#)

From: Walsh, Michael (Federal)
Sent: Sunday, July 7, 2019 7:31:28 AM
To: Dewhirst, David (Federal)
Subject: Fwd: Options Update

Sent from my iPhone

Begin forwarded message:

From: "Christa D Jones (CENSUS/DEPDIR FED)" <Christa.D.Jones@census.gov>
Date: July 6, 2019 at 10:53:47 PM EDT
To: "Walsh, Michael (Federal)" <MWalsh@doc.gov>, "Ron S Jarmin (CENSUS/DEPDIR FED)" <Ron.S.Jarmin@census.gov>
Cc: "Kelley, Karen (Federal)" <KKelley@doc.gov>
Subject: Re: Options Update

Mike--here's the doc.

From: Walsh, Michael (Federal) <MWalsh@doc.gov>
Sent: Saturday, July 6, 2019 9:38:07 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED)
Cc: Kelley, Karen (Federal); Christa D Jones (CENSUS/DEPDIR FED)
Subject: Re: Options Update

Thanks very much. Really appreciate it.

Sent from my iPhone

> On Jul 6, 2019, at 9:36 PM, Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov> wrote:

>

> Mike,

>

> We're close to having stuff you.

>

> Thanks

>

> Ron

>

> Sent from my iPhone

DRAFT, DELIBERATIVE, PRE-DECISIONAL

Subcommittee on Civil Rights and Civil Liberties Hearing
“Beyond the Citizenship Question: Repairing the Damage and Preparing to Count ‘We the People’ in 2020.”
July 24, 2019

Questions from Chairman Jamie Raskin

1. For what purpose does the Bureau intend to use the citizenship question field test currently in the field?

b(5) - DP

2. The Bureau’s website has a Frequently Asked Questions page for foreign-born respondents that includes the following question and answer:

Q: Does the Does the Census Bureau collect immigration data?

A: No. The U.S. Census Bureau collects and publishes survey data on the characteristics of foreign-born residents of the United States, such as country of birth, U.S citizenship status, and year of entry into the United States. By comparison, the Department of Homeland Security Office of Immigration Statistics publishes statistics and reports based on administrative data, such as the numbers of persons obtaining legal permanent resident status, refugees and asylees, naturalizations, nonimmigrant admissions, and enforcement actions.

Is that answer still accurate? Will the implementation of the Executive Order change that answer?

b(5) - DP

3. The Bureau’s website has a Frequently Asked Questions page for foreign-born respondents that includes the following question and answer:

Q: Does the Census Bureau collect data on the legal status of the foreign born?

A: No. The Census Bureau does not collect data on the legal status of the foreign born. The Department of Homeland Security Office of Immigration Statistics publishes statistics and reports based on administrative data, such as the numbers of persons obtaining legal permanent resident status, refugees and asylees, naturalizations, nonimmigrant admissions, and enforcement actions. It also provides estimates of the unauthorized immigrant population in the United States.

Is that answer still accurate? Will the implementation of the Executive Order change that answer?

b(5) - DP

4. The Bureau's website includes the following statement regarding the 2020 Census: "No law enforcement agency (not the DHS, ICE, FBI, or CIA) can access or use your personal information at any time." Is that still the case? Will the implementation of the Executive Order change that answer?

b(5) - DP

5. What is the Bureau's communication plan to counteract the negative impact of the citizenship question?

b(5) - DP

b(5) - DP

This includes, for example:

- a. What specific messaging is the Bureau doing in immigrant and minority communities that are afraid of responding due to the citizenship question?

b(5) - DP

- b. How will the Census ensure that its staffers are not confused with Immigrations and Customs Enforcement or other law enforcement?

b(5) - DP

- c. What will Census workers say if a respondent asks about the citizenship question?

b(5) - DP

d. What will Census workers say if a respondent asks whether the Bureau is collecting information on their citizenship or legal status?

b(5) - DP

e. What will Census workers say if a respondent says they are afraid to respond?

b(5) - DP

f. What will Census workers say if a respondent asks if they can refuse to answer?

b(5) - DP

g. What will Census workers say if a respondent asks what the penalty is for not answering?

b(5) - DP

h. What will Census workers say if a respondent asks if they will be prosecuted or fined for not answering?

b(5) - DP

6. The Bureau has an information sharing agreement with the Department of Homeland Security.
- a. What is the purpose of that agreement?

b(5) - DP

- b. What specific data will DHS be sharing with the Bureau, and what will the Bureau use it for?

b(5) - DP

- c. Will DHS be providing citizenship or immigration status data to the Bureau? If so, will that data be anonymized such that the Bureau will not be able to identify the citizenship or immigration status of any individuals or households?

b(5) - DP

b(5) - DP

Questions from Congressman Wm. Lacy Clay

7. What are the names of the minority-owned subcontractors and minority-owned suppliers participating in the Census 2020 marketing and advertising efforts for African Americans? For each subcontractor or supplier, please identify:

b(5) - DP

- a. The areas of the country they are responsible for covering;

b(5) - DP

- b. The value of their contracts;

b(5) - DP

- c. When each contract was executed and when they expire; and

b(5) - DP

- d. How each contractor was selected.

b(5) - DP

8. How much money is Census Bureau allocating for African American media advertising, and how that compares to the overall advertising budget.

b(5) - DP

Questions from Congresswoman Debbie Wasserman Schultz

9. The Bureau currently plans to carry over \$1 billion in funding to 2020. Will the Bureau commit to using some of those funds to open Questionnaire Assistance Centers?

b(5) - DP

10. If the Bureau will not open Questionnaire Assistance Centers, will it commit to assigning Census staffers in hard-to-count communities to stationary locations at predictable times during hours most likely to get foot traffic from the communities?

b(5) - DP

Questions from Congressman Jimmy Gomez

11. Which neighborhoods are receiving a paper questionnaire form in the initial mailing, and which will be receiving a post-card directing them online?

b(5) - DP

b(5) - DP

Questions from Congresswoman Ayanna Pressley

12. Will citizenship data collected pursuant to President Trump's July 11, 2019 Executive Order on the Census be used in the Bureau's redistricting file?

b(5) - DP

- a. Will it be included automatically in the files given to all states?

b(5) - DP

- b. Will states who do not want to use citizenship data in redistricting be able to obtain a redistricting file that does not include that data?

b(5) - DP

13. Will the Bureau's redistricting file include breakdowns by Citizen Voting Age Population (CVAP)?

b(5) - DP

- a. Will it be included automatically in the files given to all states?

b(5) - DP

b. Will states who do not want to use citizenship data in redistricting be able to obtain a redistricting file that does not include that data?

b(5) - DP

14. Has anyone in the Administration indicated to you that block-level data produced by the Bureau may be used to identify neighborhoods for immigration enforcement?

b(5) - DP

15. Will citizenship data collected pursuant to the Executive Order be used in the Bureau's congressional apportionment counts? In a statement sent to Congresswoman Pressley on August 9, 2019, the Bureau stated:

"The issue you asked about it currently in litigation and we do not comment on ongoing litigation, but the Census Bureau will fulfill its constitutional mandate to conduct a complete and accurate 2020 Census and enumerate all persons living in the United States of America."

As the Bureau is aware, the Supreme Court has clearly and repeatedly ruled that parallel litigation does not preclude Congress from investigating an issue and is not a valid reason to withhold information from Congress. Please clearly state whether citizenship data will be used in the Bureau's congressional apportionment counts.

b(5) - DP

b(5) - DP

16. How should a member of the public report something they suspect is a fraudulent Census document? Is there a number, email, website, or social media account people can contact right now?

b(5) - DP

17. How can someone contact the Bureau to determine if something is a legitimate document or contact from the 2020 Census? Is there a mechanism in place that people can contact right now?

b(5) - DP

Question from Congresswoman Carolyn Maloney

18. What is the Bureau's detailed plan to improve its background check process and ensure its hiring for the 2020 Census stays on schedule?

b(5) - DP

b(5) - DP

Questions from Congresswoman Carol Miller

19. According to Census Bureau data, 51 percent of my district in southern West Virginia is considered “hard to count.” How does the Census Bureau plan to count rural hard-to-count communities?

b(5) - DP

- a. How has the 2020 Census rural hard-to-count strategy changed since the 2010 Census?

b(5) - DP

b(5) - DP

b. What steps is the Census Bureau taking to ensure an accurate enumeration in WV-03?

b(5) - DP

20. Rural children under five years old are particularly difficult to count. How does plan to increase awareness to accurately count rural children?

b(5) - DP

b(5) - DP

21. My district also has low internet connectivity. How does the Census Bureau plan to reach those in my district without reliable internet access?

b(5) - DP

22. What portion of the integrated communications contract is allocated to rural media, partnership and outreach?

b(5) - DP

23. How many partnership specialists will be hired in West Virginia, including WV-3?

b(5) - DP

24. Address canvassing in the 2018 Test revealed device connectivity issues in very rural areas. What changes has the Census Bureau made in response to these problems in the 2018 Test?

b(5) - DP

b(5) - DP

From: Heller, Megan (Federal) [MHeller@doc.gov]
Sent: 8/14/2019 1:21:27 PM
To: Trayer, Thais-Lyn (CIV) [b(6)]; Cannon, Michael (Federal) [MCannon@doc.gov]; Freitas, Jessica (Federal) [JFreitas@doc.gov]; DiGiacomo, Brian (Federal) [bDiGiac@doc.gov]; Dewhirst, David (Federal) [DDewhirst@doc.gov]
CC: Lynch, Christopher M. (CIV) [b(6)]; Stern, Mark (CIV) [b(6)]; Sinzdak, Gerard J (CIV) [b(6)]; Ehrlich, Stephen (CIV) [b(6)]
Subject: RE: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863
Attachments: [b(5) - WP] Re: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Thais-Lyn –

b(5) - DP/AC/WP

Please let me know if you have any questions.

Megan

Megan Heller
Associate Chief Counsel, Office of Appellate Services
Senior Counsel, General Litigation Division
Office of the Assistant General Counsel for Employment, Litigation, & Information
Office of the General Counsel
U.S. Dept. of Commerce
1401 Constitution Ave. NW, Room 5890
Washington, D.C. 20230
Office: (202) 482-4837
Cell: [b(6)]
mheller@doc.gov

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From: Trayer, Thais-Lyn (CIV) [b(6)]
Sent: Tuesday, August 13, 2019 3:12 PM
To: Cannon, Michael (Federal) <MCannon@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Freitas, Jessica (Federal) <JFreitas@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiac@doc.gov>; Dewhirst, David (Federal) <DDewhirst@doc.gov>
Cc: Lynch, Christopher M. (CIV) [b(6)]; Stern, Mark (CIV) [b(6)] Sinzdak, Gerard J (CIV) [b(6)]; Ehrlich, Stephen (CIV) [b(6)]
Subject: RE: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863

Hi all,

[b(5) - WP] If you could send any comments by mid-day tomorrow at the latest, that would be great.

Thanks,

Thais-Lyn

From: Cannon, Michael (Federal) <MCannon@doc.gov>
Sent: Monday, August 12, 2019 4:53 PM
To: Trayer, Thais-Lyn (CIV) [b(6)]; Ehrlich, Stephen (CIV) [b(6)] Heller, Megan (Federal) <MHeller@doc.gov>; Freitas, Jessica (Federal) <JFreitas@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiac@doc.gov>; Dewhirst, David (Federal) <DDewhirst@doc.gov>
Cc: Lynch, Christopher M. (CIV) [b(6)]; Sinzdak, Gerard J (CIV) [b(6)] Stern, Mark (CIV) [b(6)]
Subject: RE: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Thais-Lyn,

A real pleasure to also meet you . Thanks for all your work on this!

Best regards,

Mike

Michael A. Cannon
Chief, General Litigation Division
Office of the Assistant General Counsel for Employment, Litigation, and Information
Office of the General Counsel
U.S. Department of Commerce
Telephone: (202) 482-5395
Cell: [b(6)]
Facsimile: (202) 482-5858
Email: mcannon@doc.gov

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From: Trayer, Thais-Lyn (CIV) [b(6)]
Sent: Monday, August 12, 2019 4:46 PM

To: Ehrlich, Stephen (CIV) [b(6)] Cannon, Michael (Federal) <MCannon@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Freitas, Jessica (Federal) <JFreitas@doc.gov>
Cc: Lynch, Christopher M. (CIV) [b(6)] Sinzduk, Gerard J (CIV) [b(6)] Stern, Mark (CIV) [b(6)]
Subject: RE: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Hi all,

It's nice to meet you over email, and I'm looking forward to working with you on this appeal.

b(5) - DP/AC/WP

Thanks,

Thais-Lyn

Thais-Lyn Trayer
Civil Appellate Staff
United States Department of Justice
[b(6)]

From: Ehrlich, Stephen (CIV) [b(6)]
Sent: Monday, August 12, 2019 4:39 PM
To: Cannon, Michael <MCannon@doc.gov>; Heller, Megan <MHeller@doc.gov>; Freitas, Jessica <JFreitas@doc.gov>
Cc: Trayer, Thais-Lyn (CIV) [b(6)] Lynch, Christopher M. (CIV) [b(6)] Sinzduk, Gerard J (CIV) [b(6)] Stern, Mark (CIV) [b(6)]
Subject: FW: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

b(5) - DP/AC/WP

Stephen Ehrlich
Trial Attorney
U.S. Department of Justice
Civil Division | Federal Programs Branch
[b(6)]

From: Trayer, Thais-Lyn (CIV) [b(6)]
Sent: Monday, August 12, 2019 4:10 PM
To: Stern, Mark (CIV) [b(6)] Sinzdak, Gerard J (CIV) [b(6)] Ehrlich, Stephen (CIV) [b(6)] Lynch, Christopher M. (CIV) [b(6)]
Subject: FW: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Hi all,

I received the below email from opposing counsel just now [b(5) - DP/AC/WP]

b(5) - AC/WP/DP

Thanks very much,

Thais-Lyn

From: Alderdice, Jacob D [b(6)] [mailto:jacob@jenner.com]
Sent: Monday, August 12, 2019 3:50 PM
To: Trayer, Thais-Lyn (CIV) [b(6)]
Cc: DL Jenner-NAACP [b(6)] [mailto:dl@jenner.com]; [b(6)] [mailto:mailman.yale.edu]; 'Michael Wishnie' [b(6)] [mailto:ylsclinics.org]; Renee Burbank [b(6)] [mailto:YLSClinics.org]; Berry, Bradford [b(6)] [mailto:naacpnet.org]; Alter, Benjamin [b(6)] [mailto:naacpnet.org]
Subject: NAACP v. Bureau of the Census, USCA4 Appeal 19-1863 - Motion to Seal

Counsel,

Attached please find the documents filed in connection with the Plaintiff-Appellants' sealing motion today. They are also being sent to you by certified mail.

Regards,
Jake

Jacob D. Alderdice

Jenner & Block LLP
919 Third Avenue, New York, NY 10022-3908 | jenner.com
[b(6)] TEL
[b(6)] [mailto:jenner.com]
[Download V-Card](#) | [View Biography](#)

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To: JEST, JOE (Federal)[JJEST@doc.gov]; KLASON, PETER (Federal)[PKLASON@doc.gov]; Klein, Zachary (Federal)[zklein@doc.gov]
Cc: Dewhirst, David (Federal)[DDewhirst@doc.gov]; Heilferty, Robert (Federal)[RHeilferty2@doc.gov]
From: DiGiacomo, Brian (Federal) [REDACTED] b(6)
[REDACTED] b(6)
Sent: Thur 8/8/2019 8:48:39 AM (UTC-04:00)
Subject: House QFRs [REDACTED] b(5) - DP
FY2020 Consolidated House QFRS for OSEC review - OGC edits.docx

Joe, Peter & Zach: the attached responses to House questions were sent around by Andy Sudhakar of AGC/L&R yesterday. [REDACTED] b(5) - DP/AC

b(5) - DP/AC

Bob: I copied you in case you weren't aware of this as well.

Andy says that the deadline for response is Friday at 5:00 pm. Maybe you have already seen these responses. If so, please disregard then.

Brian D. DiGiacomo
Assistant General Counsel for Employment, Litigation, and Information
Office of the General Counsel
Room 5896
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230
Office Phone: 202-482-5393
Cell Phone: [REDACTED] b(6)

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]
Cc: Stanley, Christopher J[christopher.j.stanley@census.gov]; Hull, Cordell (Federal)[CHull@doc.gov]
From: Ali Mohammad Ahmad (CENSUS/ADCOM FED)[ali.m.ahmad@census.gov]
Sent: Tue 8/6/2019 4:45:46 PM (UTC-04:00)
Subject: Re: Tweet by Hansi Lo Wang on Twitter

b(5) - DP/AC

I've updated the draft language slightly.

Ali Ahmad, Associate Director
Communications Directorate
U.S. Census Bureau
O: 301-763-8789 | M: **b(6)**
Ali.M.Ahmad@census.gov
[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Tuesday, August 6, 2019 4:43:21 PM
To: Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>
Cc: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Hull, Cordell (Federal) <CHull@doc.gov>
Subject: Re: Tweet by Hansi Lo Wang on Twitter

+ Cordell

--
David Dewhirst
Deputy General Counsel for Litigation
U.S. DEPARTMENT OF COMMERCE
ddewhirst@doc.gov
c. **b(6)**

From: "Ali Mohammad Ahmad (CENSUS/ADCOM FED)" <ali.m.ahmad@census.gov>
Date: Tuesday, August 6, 2019 at 3:58 PM
To: "Dewhirst, David (Federal)" <DDewhirst@doc.gov>
Cc: "Stanley, Christopher J" <christopher.j.stanley@census.gov>
Subject: Tweet by Hansi Lo Wang on Twitter

Hansi Lo Wang ([@hansilowang](https://twitter.com/hansilowang))

8/6/19, 3:54 PM

UPDATE: [@uscensusbureau](https://twitter.com/uscensusbureau) has not provided [@RepPressley](https://twitter.com/RepPressley) a written response yet about if citizenship data will be used in apportionment count after #2020Census. Pressley's spokesperson [@LinaFuego](https://twitter.com/LinaFuego) tells me bureau says "they are doing everything possible" to respond by end of week. [twitter.com/hansilowang/st...](https://twitter.com/hansilowang/status/1151111111)

FYSA
[Download](#) the Twitter app

BC-DOC-0000026163

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]; Cannon, Michael (Federal)[MCannon@doc.gov]; Craig, Russell (Federal)[rCraig2@doc.gov]
Cc: DiGiacomo, Brian (Federal)[bDiGiaco@doc.gov]
From: Lucas, Jennifer (Federal) [b(6)]
[b(6)]
Sent: Tue 9/24/2019 5:26:15 PM (UTC-04:00)
Subject: RE: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing
QFRs Senate 7-16-19 hearing Peters and Harris-DIR edits-clean + MC bhr comments-edits mc JMA.docx
07-24-2019-HOR-Civ Liberties hearing QFRs-DIR edits-clean + MC bhr edits-comments mc JMA.docx

Attached are the revised QFRs. Please let me know if you have additional comments [b(5) - DP/AC]
[b(5) - DP/AC]

Thanks,
Jennifer

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Monday, September 16, 2019 12:12 PM
To: Cannon, Michael (Federal) <MCannon@doc.gov>; Lucas, Jennifer (Federal) <JLucas@doc.gov>; Craig, Russell (Federal) <rCraig2@doc.gov>
Cc: DiGiacomo, Brian (Federal) <bDiGiaco@doc.gov>
Subject: Re: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

CUI/PRIV

b(5) - DP/AC

--
David Dewhirst
Deputy General Counsel
U.S. DEPARTMENT OF COMMERCE
ddewhirst@doc.gov

c: [b(6)]

From: "Cannon, Michael (Federal)" <MCannon@doc.gov>
Date: Monday, September 16, 2019 at 11:24 AM
To: "Lucas, Jennifer (Federal)" <JLucas@doc.gov>, "Craig, Russell (Federal)" <rCraig2@doc.gov>
Cc: "Dewhirst, David (Federal)" <DDewhirst@doc.gov>, "DiGiacomo, Brian (Federal)" <bDiGiaco@doc.gov>
Subject: RE: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Thanks Jennifer. I know that Russ responded in my absence, and I appreciate that.

b(5) - DP/AC

Thanks!

Mike

Michael A. Cannon
Chief, General Litigation Division

Office of the Assistant General Counsel for Employment, Litigation, and Information
Office of the General Counsel
U.S. Department of Commerce
Telephone: (202) 482-5395
Cell: **b(6)**
Facsimile: (202) 482-5858
Email: mcannon@doc.gov

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From: Lucas, Jennifer (Federal) <JLucas@doc.gov>
Sent: Monday, September 16, 2019 9:11 AM
To: Cannon, Michael (Federal) <MCannon@doc.gov>; Craig, Russell (Federal) <rCraig2@doc.gov>
Cc: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Subject: FW: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Please see Census' response to your comment on p. 3 and let me know if **b(5) - DP/AC**

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Friday, September 13, 2019 4:37 PM
To: Lucas, Jennifer (Federal) <JLucas@doc.gov>; Tadlock, Tara A <tara.a.tadlock@census.gov>
Cc: Lang, Alan <alan.lang@census.gov>
Subject: Re: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Jennifer, we have responses to the comments thus far. Please let us know if we get more or if there are any questions on these edits.

From: Lucas, Jennifer (Federal) <JLucas@doc.gov>
Sent: Wednesday, September 11, 2019 9:32 AM
To: Tara Tadlock (CENSUS/OCIA FED) <tara.a.tadlock@census.gov>
Cc: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Alan Lang (CENSUS/OCIA FED) <alan.lang@census.gov>; Tara Tadlock (CENSUS/OCIA FED) <tara.a.tadlock@census.gov>
Subject: RE: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Attached and below are **b(5) - DP** Please provide your response. Thanks, Jennifer

OCIO:

b(5) - DP

From: Tara Tadlock (CENSUS/OCIA FED) <tara.a.tadlock@census.gov>
Sent: Thursday, September 5, 2019 3:06 PM
To: Lucas, Jennifer (Federal) <JLucas@doc.gov>
Cc: Stanley, Christopher J <christopher.j.stanley@census.gov>; Lang, Alan <alan.lang@census.gov>; Tadlock, Tara A <tara.a.tadlock@census.gov>
Subject: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Jennifer,

Please find attached the draft QFR responses from Director Dillingham's hearing before the House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties on July 24, 2019.

Chris Stanley is on leave until next Thursday, but you can reply all to Chris, Alan, and myself with any questions.

Thank you,
Tara

Tara Tadlock

Congressional Affairs Office Branch Chief

Office of Congressional and Intergovernmental Affairs (OCIA)

U.S. Census Bureau
Office 301-763-7798

Cell b(6)
tara.a.tadlock@census.gov

[census.gov](https://www.census.gov)

Connect with us on [Social Media](#)

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]
From: Walsh, Michael (Federal)[b(6)]
Sent: Sun 7/7/2019 1:31:28 AM (UTC-04:00)
Subject: Fwd: Options Update
[Options 07062019 1052 PM.docx](#)
[ATT00001.htm](#)

Sent from my iPhone

Begin forwarded message:

From: "Christa D Jones (CENSUS/DEPDIR FED)" <Christa.D.Jones@census.gov>
Date: July 6, 2019 at 10:53:47 PM EDT
To: "Walsh, Michael (Federal)" <MWalsh@doc.gov>, "Ron S Jarmin (CENSUS/DEPDIR FED)" <Ron.S.Jarmin@census.gov>
Cc: "Kelley, Karen (Federal)" <KKelley@doc.gov>
Subject: Re: Options Update

Mike--here's the doc.

From: Walsh, Michael (Federal) <MWalsh@doc.gov>
Sent: Saturday, July 6, 2019 9:38:07 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED)
Cc: Kelley, Karen (Federal); Christa D Jones (CENSUS/DEPDIR FED)
Subject: Re: Options Update

Thanks very much. Really appreciate it.

Sent from my iPhone

> On Jul 6, 2019, at 9:36 PM, Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov> wrote:
>
> Mike,
>
> We're close to having stuff you.
>
> Thanks
>
> Ron
>
> Sent from my iPhone

To: Creech, Melissa L[melissa.l.creech@census.gov]
Cc: Dewhirst, David (Federal)[DDewhirst@doc.gov]
From: Hull, Cordell (Federal) [b(6)]
[b(6)]
Sent: Mon 7/1/2019 1:58:57 PM (UTC-04:00)
Subject: RE: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Confidential – Deliberative – Pre-decisional

Melissa:

Thanks for your patience.

b(5) - DP/AC

b(5) - DP/AC

Any questions, please let me know. Thanks.

Cordell

Cordell A. Hull
Deputy General Counsel for Special Projects
U.S. Department of Commerce
(202) 482-2694
chull@doc.gov

From: Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov>
Sent: Wednesday, June 12, 2019 1:46 PM
To: Hull, Cordell (Federal) <CHull@doc.gov>
Subject: Re: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Thanks, Cordell. No problem. I know you have your hands full right now.

Melissa L. Creech

Deputy Chief Counsel

Office of the Chief Counsel for Economic Affairs

BC-DOC-0000026192

U.S. Department of Commerce

Telephone (301) 763-9844

Facsimile (301) 763-6238

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From: Hull, Cordell (Federal) <CHull@doc.gov>

Sent: Wednesday, June 12, 2019 12:30 PM

To: Melissa L Creech (CENSUS/PCO FED)

Subject: Re: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Let me check with Dewhirst, et al. We are crashing on something today.

On Jun 12, 2019, at 12:19 PM, Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov> wrote:

Hi Cordell:

Just wanted to follow up with you and see if you had any thoughts on

b(5) - DP/AC

b(5) - DP/AC

Thanks, Melissa

Melissa L. Creech

Deputy Chief Counsel

Office of the Chief Counsel for Economic Affairs

U.S. Department of Commerce

Telephone (301) 763-9844

Facsimile (301) 763-6238

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permanently delete the e-mail and any attachments immediately. Thank you.

From: Melissa L Creech (CENSUS/PCO FED)

Sent: Wednesday, June 5, 2019 9:42 AM

To: Hull, Cordell (Federal); DiGiacomo, Brian (Federal)

Cc: Dewhirst, David (Federal); Cannon, Michael (Federal); Manning, Kevin (Federal)

Subject: Re: Senator Toomey's Pittsburgh Office Meeting 3 June 19

All:

b(5) - DP/AC

Thanks, Melissa

Melissa L. Creech

Deputy Chief Counsel

Office of the Chief Counsel for Economic Affairs

U.S. Department of Commerce

Telephone (301) 763-9844

Facsimile (301) 763-6238

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From: Hull, Cordell (Federal) <CHull@doc.gov>
Sent: Wednesday, June 5, 2019 9:05 AM
To: DiGiacomo, Brian (Federal); Melissa L Creech (CENSUS/PCO FED)
Cc: Dewhirst, David (Federal); Cannon, Michael (Federal); Manning, Kevin (Federal)
Subject: RE: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Confidential – Deliberative – Pre-decisional

b(5) - DP/AC

Cordell

Cordell A. Hull
Deputy General Counsel for Special Projects
U.S. Department of Commerce
(202) 482-2694
chull@doc.gov

From: DiGiacomo, Brian (Federal)
Sent: Wednesday, June 5, 2019 9:00 AM
To: Creech, Melissa L <melissa.l.creech@census.gov>
Cc: Hull, Cordell (Federal) <CHull@doc.gov>; Dewhirst, David (Federal) <DDewhirst@doc.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>; Manning, Kevin (Federal) <KManning@doc.gov>
Subject: RE: Senator Toomey's Pittsburgh Office Meeting 3 June 19

b(5) - DP/AC

b(5) - DP/AC

Brian D. DiGiacomo
Assistant General Counsel for Employment, Litigation, and Information
Office of the General Counsel
Room 5896
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230
Office Phone: 202-482-5393
Cell Phone: **b(6)**

From: Melissa L Creech (CENSUS/PCO FED) <Melissa.L.Creech@census.gov>
Sent: Wednesday, June 5, 2019 8:23 AM
To: DiGiacomo, Brian (Federal) <bDiGiaco@doc.gov>
Subject: Fw: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Hi Brian:

b(5) - DP/AC

Thanks, Melissa

Melissa L. Creech

Deputy Chief Counsel

Office of the Chief Counsel for Economic Affairs

U.S. Department of Commerce

Telephone (301) 763-9844

Facsimile (301) 763-6238

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From: Miles F Ryan III (CENSUS/PCO FED)
Sent: Tuesday, June 4, 2019 12:55 PM
To: Melissa L Creech (CENSUS/PCO FED)
Cc: Letitia W McKoy (CENSUS/PCO FED); Miles F Ryan III (CENSUS/PCO FED)
Subject: Fw: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Melissa,

Below is language I have drafted as a proposed response to a query we have received from program staff.

b(5) - DP/AC

b(5) - DP/AC

Hope the above information and background is helpful.

Best,

Miles

Miles F. Ryan, III
Attorney Advisor
Office of the Chief Counsel for Economic Affairs
Office of the General Counsel
U.S. Department of Commerce
< miles.f.ryan.iii@census.gov >

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review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

From: Kristin D Koslap (CENSUS/POP FED)

Sent: Tuesday, June 4, 2019 11:29 AM

To: Steven Wilson (CENSUS/POP FED); James Whitehorne (CENSUS/ADDC FED); Miles F Ryan III (CENSUS/PCO FED)

Cc: Lavita M Gardner (CENSUS/OCIA FED); Jason Devine (CENSUS/POP FED)

Subject: Re: Senator Toomey's Pittsburgh Office Meeting 3 June 19

b(5) - DP/AC

b(5) - DP/AC

I'm copying Miles, because I would like legal staff to

b(5) - DP/AC

b(5) - DP

Thanks!

Kristin Koslap, Statistician, Population & Housing Programs Branch, Population Division, U.S. Census Bureau

Office 301.763.5958 Room **b(6)** Kristin.D.Koslap@census.gov

census.gov Connect with us on [Social Media](#)

From: Steven Wilson (CENSUS/POP FED)

Sent: Tuesday, June 4, 2019 11:04:42 AM

To: James Whitehorne (CENSUS/ADDC FED)

Cc: Lavita M Gardner (CENSUS/OCIA FED); Jason Devine (CENSUS/POP FED); Kristin D Koslap (CENSUS/POP FED)

Subject: Re: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Adding Jason and Kristin

Steven G. Wilson, Chief

Population and Housing Programs Branch

U.S. Census Bureau

o: [301-763-6051](tel:301-763-6051) m: **b(6)**

census.gov @uscensusbureau

On Jun 4, 2019, at 10:22 AM, James Whitehorne (CENSUS/ADDC FED) <James.Whitehorne@census.gov> wrote:

Hi Lavita -

b(5) - DP

I have CC'd Steve Wilson from POP Division **b(5) - DP** so may have more to add.

Best Regards

James

b(5) - DP

b(5) - DP

James Whitehorne

Chief

Census Redistricting & Voting Rights Data Office

Associate Director for the Decennial Census

U.S. Census Bureau

Office: 301.763.4039 Room: b(6)

Fax: 301.763.4348

james.whitehorne@census.gov

[census.gov](https://www.census.gov)

Connect with us on [Social Media](#)

From: Lavita M Gardner (CENSUS/OCIA FED)

Sent: Tuesday, June 4, 2019 10:12 AM

To: James Whitehorne (CENSUS/ADDC FED)

Subject: Fwd: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Hi James,

I received a question regarding

b(5) - DP

b(5) - DP

--

LáVita Gardner, MPA, PMP

Congressional Liaison, Congressional Affairs Branch, Office of Congressional & Intergovernmental Affairs

U.S. Census Bureau

O: (301) 763-4237 | M:

b(6)

[census.gov](https://www.census.gov) @uscensusbureau

Begin forwarded message:

From: "Lil Paul Reyes (CENSUS/PH FED)" <Lil.Paul.Reyes@2020census.gov>

Date: June 3, 2019 at 1:31:34 PM EDT

To: "Dwayne W Lehman (CENSUS/PH FED)" <dwayne.w.lehman@2020census.gov>, "Stephen M Shope (CENSUS/PH FED)" <stephen.m.shope@2020census.gov>,

BC-DOC-0000026201

"Roxanne Wallace (CENSUS/PH FED)" <roxanne.wallace@2020census.gov>
Cc: "Lavita M Gardner (CENSUS/OCIA FED)" <lavita.m.gardner@census.gov>
Subject: Re: Senator Toomey's Pittsburgh Office Meeting 3 June 19

Sounds great Dwayne.

I am including our OCIA contact, Lavita Gardner.

Lavita - **b(5) - DP**
b(5) - DP

Paul Reyes

Assistant Regional Census Manager

Philadelphia Regional Census Center

U.S. Census Bureau

Office: 267.780.2402

lil.paul.reyes@2020census.gov

From: Dwayne W Lehman (CENSUS/PH FED)
Sent: Monday, June 3, 2019 1:01 PM
To: Stephen M Shope (CENSUS/PH FED); Roxanne Wallace (CENSUS/PH FED); Lil Paul Reyes (CENSUS/PH FED)
Subject: Senator Toomey's Pittsburgh Office Meeting 3 June 19

All,

I met with Matt Blackburn, Western PA Director for Senator Toomey's Pittsburgh office. **b(5) - DP**

Paul - **b(5) - DP**

b(5) - DP We did use the slides, more for visuals, but most of the meeting was conversational.

He indicated that the Pittsburgh office did not receive the letter from OCIA, but requested I forward it to him. I will do so.

We are setting up a meeting with Sen. Toomey's Erie office.

He did ask one question that has not crossed my mind, and I could not answer:

"What if the President rejects the report the Bureau of the Census delivers to him by the end of the year?"

b(5) - DP

Thank you,

Dr. Dwayne W. Lehman

Partnership Specialist

U.S. Department of Commerce - Bureau of Census

Philadelphia Regional Census Bureau

Mobile: **b(6)**

dwayne.w.lehman@2020census.gov

To: Ahmad, Ali M[ali.m.ahmad@census.gov]
Cc: Stanley, Christopher J[christopher.j.stanley@census.gov]; Hull, Cordell (Federal)[CHull@doc.gov]
From: Dewhirst, David (Federal) [b(6)]
[b(6)]
Sent: Tue 8/6/2019 5:07:26 PM (UTC-04:00)
Subject: Re: Tweet by Hansi Lo Wang on Twitter
[b(5) - DP/AC]

My edits attached.

--
David Dewhirst
Deputy General Counsel for Litigation
U.S. DEPARTMENT OF COMMERCE
ddewhirst@doc.gov
c. [b(6)]

From: "Ali Mohammad Ahmad (CENSUS/ADCOM FED)" <ali.m.ahmad@census.gov>
Date: Tuesday, August 6, 2019 at 4:47 PM
To: "Dewhirst, David (Federal)" <DDewhirst@doc.gov>
Cc: "Stanley, Christopher J" <christopher.j.stanley@census.gov>, "Hull, Cordell (Federal)" <CHull@doc.gov>
Subject: Re: Tweet by Hansi Lo Wang on Twitter

I've updated the draft language slightly.

Ali Ahmad, Associate Director

Communications Directorate
U.S. Census Bureau
O: 301-763-8789 | M: [b(6)]
Ali.M.Ahmad@census.gov
[census.gov](https://www.census.gov) | [@uscensusbureau](https://twitter.com/uscensusbureau)

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Tuesday, August 6, 2019 4:43:21 PM
To: Ali Mohammad Ahmad (CENSUS/ADCOM FED) <ali.m.ahmad@census.gov>
Cc: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Hull, Cordell (Federal) <CHull@doc.gov>
Subject: Re: Tweet by Hansi Lo Wang on Twitter

+ Cordell

--
David Dewhirst
Deputy General Counsel for Litigation
U.S. DEPARTMENT OF COMMERCE
ddewhirst@doc.gov
c. [b(6)]

From: "Ali Mohammad Ahmad (CENSUS/ADCOM FED)" <ali.m.ahmad@census.gov>

Date: Tuesday, August 6, 2019 at 3:58 PM

To: "Dewhirst, David (Federal)" <DDewhirst@doc.gov>

Cc: "Stanley, Christopher J" <christopher.j.stanley@census.gov>

Subject: Tweet by Hansi Lo Wang on Twitter



Hansi Lo Wang ([@hansilowang](#))

8/6/19, 3:54 PM

UPDATE: [@uscensusbureau](#) has not provided [@RepPressley](#) a written response yet about if citizenship data will be used in apportionment count after [#2020Census](#). Pressley's spokesperson [@LinaFuego](#) tells me bureau says "they are doing everything possible" to respond by end of week. [twitter.com/hansilowang/st...](#)

FYSA

[Download](#) the Twitter app

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]; Hull, Cordell (Federal)[CHull@doc.gov]
Cc: O'Connor, Kasey (Federal)[KO'Connor@doc.gov]
From: Christopher J Stanley (CENSUS/OCIA FED)[christopher.j.stanley@census.gov]
Sent: Tue 8/20/2019 3:01:40 PM (UTC-04:00)
Subject: Re: incoming question from Pelosi district office
[Pelosi District Office Question Draft Response 8.16.19.docx](#)

If you did, I didn't see your comments. The attachment is included here again for your convenience.

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Tuesday, August 20, 2019 3:00:11 PM
To: Hull, Cordell (Federal) <CHull@doc.gov>; Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Cc: O'Connor, Kasey (Federal) <KO'Connor@doc.gov>
Subject: Re: incoming question from Pelosi district office

Did I comment on this last week?

David Dewhirst
Deputy General Counsel
U.S. Department of Commerce
ddewhirst@doc.gov
c [b(6)]

*Sent from my iPhone. Please excuse any typos.

From: Hull, Cordell (Federal) <CHull@doc.gov>
Sent: Tuesday, August 20, 2019 2:44:11 PM
To: Stanley, Christopher J <christopher.j.stanley@census.gov>
Cc: Dewhirst, David (Federal) <DDewhirst@doc.gov>; O'Connor, Kasey (Federal) <KO'Connor@doc.gov>
Subject: Re: incoming question from Pelosi district office

Confidential – Deliberative – Pre-decisional
[b(5) - DP/AC]

On Aug 20, 2019, at 2:15 PM, Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov> wrote:

Confidential – Deliberative – Pre-decisional

Pelosi District Office question

“Can people living in San Francisco who are willing to participate in the 2020 Census but unwilling/unable to provide their address able to use the address of a service provider, such as a sanctuary (e.g. a soup kitchen, church, benefits office, nonprofit, etc.)? The city’s immigrant population is fearful given the current political climate, and our homeless population may be missed during the three-day enumeration of group quarters.”

b(5) - DP

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]; O'Connor, Kasey (Federal)[KO'Connor@doc.gov]
Cc: Stanley, Christopher J[christopher.j.stanley@census.gov]
From: Hull, Cordell (Federal) [b(6)]
[b(6)]
Sent: Fri 8/16/2019 5:07:44 PM (UTC-04:00)
Subject: FW: incoming question from Pelosi district office
Pelosi District Office Question Draft Response 8.16.19.docx

Confidential – Deliberative – Pre-decisional

+Dewhirst

[b(5) - DP/AC] flagging for Dave’s awareness/input.

Cordell A. Hull
Deputy General Counsel for Special Projects and
Performing the non-exclusive functions and duties of the
Assistant Secretary for Legislative and Intergovernmental Affairs
U.S. Department of Commerce
(202) 482-2694
chull@doc.gov

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Friday, August 16, 2019 2:31 PM
To: Hull, Cordell (Federal) <CHull@doc.gov>; O'Connor, Kasey (Federal) <KO'Connor@doc.gov>
Subject: incoming question from Pelosi district office

DRAFT – DELIBERATIVE – PRE-DECISIONAL

A census partnership specialist in the SF area got this question from a district staff in Pelosi's local office. He routed it to us for advice. Attached is a draft, pre-decisional answer [b(5) - DP/AC]
[b(5) - DP/AC]

Please let me know if you have any questions or thoughts.

Chris Stanley, Chief

Office of Congressional and Intergovernmental Affairs
U.S. Census Bureau
O: 301-763-4276 | M: [b(6)]
census.gov | @uscensusbureau

Pelosi District Office question

“Can people living in San Francisco who are willing to participate in the 2020 Census but unwilling/unable to provide their address able to use the address of a service provider, such as a sanctuary (e.g. a soup kitchen, church, benefits office, nonprofit, etc.)? The city’s immigrant population is fearful given the current political climate, and our homeless population may be missed during the three-day enumeration of group quarters.”

b(5) - DP

To: Barranca, Steven (Federal) [SBarranca1@doc.gov]
From: Walsh, Michael (Federal) [b(6)]
[b(6)]
Sent: Tue 7/9/2019 10:25:19 AM (UTC-04:00)
Subject: Fwd: Letter from Secretary of State Merrill
AL Secretary of State John Merrill letter to the President (2020 US Census) 7.4.2019.pdf
ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "John R. Ashcroft" [b(6)]@sos.mo.gov>
Date: July 9, 2019 at 10:24:51 AM EDT
To: "MWalsh@doc.gov" <MWalsh@doc.gov>
Subject: Letter from Secretary of State Merrill

Mr. Walsh,

Secretary Merrill of Alabama has asked me to forward the attached letter requesting that the citizenship question be included in the census.

Thank you.

Jay Ashcroft

ALABAMA STATE CAPITOL
600 DEXTER AVENUE
SUITE S-105
MONTGOMERY, AL 36130



b(6)

FAX (334) 242-4993

WWW.SOS.ALABAMA.GOV

b(6)

SOS.ALABAMA.GOV

JOHN H. MERRILL
SECRETARY OF STATE

July 4, 2019

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

Please accept this letter of support regarding your consideration with the issuance of an Executive Order, or continuing other legal remedies, directing the inclusion of the citizenship question on the 2020 United States Census form.

I fully support your efforts which will ensure only the most accurate data is used when apportioning the seats in the United States House of Representatives, as well as the crafting of effective national public policy, a great deal of which is made utilizing accurate census data and its corresponding federal funding formulas.

Furthermore, I am the Chief Election Official for the State of Alabama, and in 2015, I requested and was successful in obtaining the approval of the Executive Director of the United States Election Assistance Commission for Alabama to require proof of citizenship for citizens to apply to be a registered voter in the State of Alabama.

Alabama has a great deal at stake with the data produced by the 2020 Census if non-U.S. citizens are counted and could lose a seat in Congress if non-U.S. citizens are calculated in the 2020 Census in other parts of the nation.

I appreciate your leadership with this issue and remain fully supportive of your administration and its goal to ensure only the most accurate data is ascertained in the 2020 United States Census.

Most respectfully,


JOHN H. MERRILL
Secretary of State

To: Barranca, Steven (Federal)[SBarranca1@doc.gov]
From: Walsh, Michael (Federal) b(6)
b(6)

Sent: Mon 7/8/2019 11:47:07 AM (UTC-04:00)

Subject: print request

Opinion.pdf

b(5) - DP/AC/PCP

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<https://www.documentcloud.org/documents/4426785-commerce2018-03-26-2.html>

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**DEPARTMENT OF COMMERCE ET AL. *v.* NEW YORK
ET AL.****CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT**

No. 18–966. Argued April 23, 2019—Decided June 27, 2019

In order to apportion congressional representatives among the States, the Constitution requires an “Enumeration” of the population every 10 years, to be made “in such Manner” as Congress “shall by Law direct,” Art. I, §2, cl. 3; Amdt. 14, §2. In the Census Act, Congress delegated to the Secretary of Commerce the task of conducting the decennial census “in such form and content as he may determine.” 13 U. S. C. §141(a). The Secretary is aided by the Census Bureau, a statistical agency in the Department of Commerce. The population count is also used to allocate federal funds to the States and to draw electoral districts. The census additionally serves as a means of collecting demographic information used for a variety of purposes. There have been 23 decennial censuses since 1790. All but one between 1820 and 2000 asked at least some of the population about their citizenship or place of birth. The question was asked of all households until 1950, and was asked of a fraction of the population on an alternative long-form questionnaire between 1960 and 2000. In 2010, the citizenship question was moved from the census to the American Community Survey, which is sent each year to a small sample of households.

In March 2018, Secretary of Commerce Wilbur Ross announced in a memo that he had decided to reinstate a citizenship question on the 2020 census questionnaire at the request of the Department of Justice (DOJ), which sought census block level citizenship data to use in enforcing the Voting Rights Act (VRA). The Secretary’s memo explained that the Census Bureau initially analyzed, and the Secretary considered, three possible courses of action before he chose a fourth option that combined two of the proposed options: reinstate a citizen-

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ship question on the decennial census, and use administrative records from other agencies, *e.g.*, the Social Security Administration, to provide additional citizenship data. The Secretary “carefully considered” the possibility that reinstating a citizenship question would depress the response rate, the long history of the citizenship question on the census, and several other factors before concluding that “the need for accurate citizenship data and the limited burden of the question” outweighed fears about a lower response rate.

Here, two separate suits filed in Federal District Court in New York were consolidated: one filed by a group States, counties, cities, and others, alleging that the Secretary’s decision violated the Enumeration Clause and the requirements of the Administrative Procedure Act; the other filed by non-governmental organizations, adding an equal protection claim. The District Court dismissed the Enumeration Clause claim but allowed the other claims to proceed. In June 2018, the Government submitted the Commerce Department’s “administrative record”—materials that Secretary Ross considered in making his decision—including DOJ’s letter requesting reinstatement of the citizenship question. Shortly thereafter, at DOJ’s urging, the Government supplemented the record with a new memo from the Secretary, which stated that he had begun considering the addition of a citizenship question in early 2017 and had asked whether DOJ would formally request its inclusion. Arguing that the supplemental memo indicated that the record was incomplete, respondents asked the District Court to compel the Government to complete the administrative record. The court granted that request, and the parties jointly stipulated to the inclusion of additional materials that confirmed that the Secretary and his staff began exploring reinstatement of a citizenship question shortly after his 2017 confirmation, attempted to elicit requests for citizenship data from other agencies, and eventually persuaded DOJ to make the request. The court also authorized discovery outside the administrative record, including compelling a deposition of Secretary Ross, which this Court stayed pending further review. After a bench trial, the District Court determined that respondents had standing to sue. On the merits, it ruled that the Secretary’s action was arbitrary and capricious, based on a pretextual rationale, and violated the Census Act, and held that respondents had failed to show an equal protection violation.

Held:

1. At least some respondents have Article III standing. For a legal dispute to qualify as a genuine case or controversy, at least one plaintiff must “present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.” *Davis v.*

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Federal Election Comm'n, 554 U. S. 724, 733. The District Court concluded that the evidence at trial established a sufficient likelihood that reinstating a citizenship question would result in noncitizen households responding to the census at lower rates than other groups, which would cause them to be undercounted and lead to many of the injuries respondents asserted—diminishment of political representation, loss of federal funds, degradation of census data, and diversion of resources. For purposes of standing, these findings of fact were not so suspect as to be clearly erroneous. Several state respondents have shown that if noncitizen households are undercounted by as little as 2%, they will lose out on federal funds that are distributed on the basis of state population. That is a sufficiently concrete and imminent injury to satisfy Article III, and there is no dispute that a ruling in favor of respondents would redress that harm. Pp. 8–11.

2. The Enumeration Clause permits Congress, and by extension the Secretary, to inquire about citizenship on the census questionnaire. That conclusion follows from Congress's broad authority over the census, as informed by long and consistent historical practice that "has been open, widespread, and unchallenged since the early days of the Republic." *NLRB v. Noel Canning*, 573 U. S. 513, 572 (Scalia, J., concurring in judgment). Pp. 11–13.

3. The Secretary's decision is reviewable under the Administrative Procedure Act. The APA instructs reviewing courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U. S. C. §706(2)(A), but it makes review unavailable "to the extent that" the agency action is "committed to agency discretion by law," §701(a)(2). The Census Act confers broad authority on the Secretary, but it does not leave his discretion unbounded. The §701(a)(2) exception is generally limited to "certain categories of administrative decisions that courts traditionally have regarded as 'committed to agency discretion,'" *Lincoln v. Vigil*, 508 U. S. 182, 191. The taking of the census is not one of those areas. Nor is the statute drawn so that it furnishes no meaningful standard by which to judge the Secretary's action, which is amenable to review for compliance with several Census Act provisions according to the general requirements of reasoned agency decisionmaking. Because this is not a case in which there is "no law to apply," *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 410, the Secretary's decision is subject to judicial review. Pp. 13–16.

4. The Secretary's decision was supported by the evidence before him. He examined the Bureau's analysis of various ways to collect improved citizenship data and explained why he thought the best course was to both reinstate a citizenship question and use citizen-

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ship data from administrative records to fill in the gaps. He then weighed the value of obtaining more complete and accurate citizenship data against the uncertain risk that reinstating a citizenship question would result in a materially lower response rate, and explained why he thought the benefits of his approach outweighed the risk. That decision was reasonable and reasonably explained, particularly in light of the long history of the citizenship question on the census. Pp. 16–20.

5. The District Court also erred in ruling that the Secretary violated two particular provisions of the Census Act, §6(c) and §141(f). Section 6’s first two subsections authorize the Secretary to acquire administrative records from other federal agencies and state and local governments, while subsection (c) requires the Secretary, to the maximum extent possible, to use that information “instead of conducting direct inquiries.” Assuming that §6(c) applies, the Secretary complied with it for essentially the same reasons that his decision was not arbitrary and capricious: Administrative records would not, in his judgment, provide the more complete and accurate data that DOJ sought. The Secretary also complied with §141(f), which requires him to make a series of reports to Congress about his plans for the census. And even if he had violated that provision, the error would be harmless because he fully informed Congress of, and explained, his decision. Pp. 20–23.

6. In order to permit meaningful judicial review, an agency must “disclose the basis” of its action. *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 167–169. A court is ordinarily limited to evaluating the agency’s contemporaneous explanation in light of the existing administrative record, *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U. S. 519, but it may inquire into “the mental processes of administrative decisionmakers” upon a “strong showing of bad faith or improper behavior,” *Overton Park*, 401 U. S., at 420. While the District Court prematurely invoked that exception in ordering extra-record discovery here, it was ultimately justified in light of the expanded administrative record. Accordingly, the District Court’s ruling on pretext will be reviewed in light of all the evidence in the record, including the extra-record discovery.

It is hardly improper for an agency head to come into office with policy preferences and ideas, discuss them with affected parties, sound out other agencies for support, and work with staff attorneys to substantiate the legal basis for a preferred policy. Yet viewing the evidence as a whole, this Court shares the District Court’s conviction that the decision to reinstate a citizenship question cannot adequately be explained in terms of DOJ’s request for improved citizenship

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data to better enforce the VRA. Several points, taken together, reveal a significant mismatch between the Secretary's decision and the rationale he provided. The record shows that he began taking steps to reinstate the question a week into his tenure, but gives no hint that he was considering VRA enforcement. His director of policy attempted to elicit requests for citizenship data from the Department of Homeland Security and DOJ's Office of Immigration Review before turning to the VRA rationale and DOJ's Civil Rights Division. For its part, DOJ's actions suggest that it was more interested in helping the Commerce Department than in securing the data. Altogether, the evidence tells a story that does not match the Secretary's explanation for his decision. Unlike a typical case in which an agency may have both stated and unstated reasons for a decision, here the VRA enforcement rationale—the sole stated reason—seems to have been contrived. The reasoned explanation requirement of administrative law is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public. The explanation provided here was more of a distraction. In these unusual circumstances, the District Court was warranted in remanding to the agency. See *Florida Power & Light Co. v. Lorion*, 470 U. S. 729, 744. Pp. 23–28.

351 F. Supp. 3d 502, affirmed in part, reversed in part, and remanded.

ROBERTS, C. J., delivered the opinion for a unanimous Court with respect to Parts I and II, and the opinion of the Court with respect to Parts III, IV–B, and IV–C, in which THOMAS, ALITO, GORSUCH, and KAVANAUGH, JJ., joined; with respect to Part IV–A, in which THOMAS, GINSBURG, BREYER, SOTOMAYOR, KAGAN, and KAVANAUGH, JJ., joined; and with respect to Part V, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which GORSUCH and KAVANAUGH, JJ., joined. BREYER, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in part and dissenting in part.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 18–966

DEPARTMENT OF COMMERCE, ET AL., PETITIONERS
v. NEW YORK, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 27, 2019]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Secretary of Commerce decided to reinstate a question about citizenship on the 2020 census questionnaire. A group of plaintiffs challenged that decision on constitutional and statutory grounds. We now decide whether the Secretary violated the Enumeration Clause of the Constitution, the Census Act, or otherwise abused his discretion.

I
A

In order to apportion Members of the House of Representatives among the States, the Constitution requires an “Enumeration” of the population every 10 years, to be made “in such Manner” as Congress “shall by Law direct.” Art. I, §2, cl. 3; Amdt. 14, §2. In the Census Act, Congress delegated to the Secretary of Commerce the task of conducting the decennial census “in such form and content as he may determine.” 13 U. S. C. §141(a). The Secretary is aided in that task by the Census Bureau, a statistical agency housed within the Department of Commerce. See §§2, 21.

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The population count derived from the census is used not only to apportion representatives but also to allocate federal funds to the States and to draw electoral districts. *Wisconsin v. City of New York*, 517 U. S. 1, 5–6 (1996). The census additionally serves as a means of collecting demographic information, which “is used for such varied purposes as computing federal grant-in-aid benefits, drafting of legislation, urban and regional planning, business planning, and academic and social studies.” *Baldrige v. Shapiro*, 455 U. S. 345, 353–354, n. 9 (1982). Over the years, the census has asked questions about (for example) race, sex, age, health, education, occupation, housing, and military service. It has also asked about radio ownership, age at first marriage, and native tongue. The Census Act obliges everyone to answer census questions truthfully and requires the Secretary to keep individual answers confidential, including from other Government agencies. §§221, 8(b), 9(a).

There have been 23 decennial censuses from the first census in 1790 to the most recent in 2010. Every census between 1820 and 2000 (with the exception of 1840) asked at least some of the population about their citizenship or place of birth. Between 1820 and 1950, the question was asked of all households. Between 1960 and 2000, it was asked of about one-fourth to one-sixth of the population. That change was part of a larger effort to simplify the census by asking most people a few basic demographic questions (such as sex, age, race, and marital status) on a short-form questionnaire, while asking a sample of the population more detailed demographic questions on a long-form questionnaire. In explaining the decision to move the citizenship question to the long-form questionnaire, the Census Bureau opined that “general census information on citizenship had become of less importance compared with other possible questions to be included in the census, particularly in view of the recent statutory

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requirement for annual alien registration which could provide the Immigration and Naturalization Service, the principal user of such data, with the information it needed.” Dept. of Commerce, Bureau of Census, 1960 Censuses of Population and Housing 194 (1966).¹

In 2010, the year of the latest census, the format changed again. All households received the same questionnaire, which asked about sex, age, race, Hispanic origin, and living arrangements. The more detailed demographic questions previously asked on the long-form questionnaire, including the question about citizenship, were instead asked in the American Community Survey (or ACS), which is sent each year to a rotating sample of about 2.6% of households.

The Census Bureau and former Bureau officials have resisted occasional proposals to resume asking a citizenship question of everyone, on the ground that doing so would discourage noncitizens from responding to the census and lead to a less accurate count of the total population. See, e.g., *Federation of Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (DC 1980) (“[A]ccording to the Bureau[,] any effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count”); Brief for Former Directors of the U. S. Census Bureau as *Amici Curiae* in *Evenwel v. Abbott*, O. T. 2014, No. 14–940, p. 25 (inquiring about citizenship would “invariably lead to a lower response rate”).

B

In March 2018, Secretary of Commerce Wilbur Ross announced in a memo that he had decided to reinstate a question about citizenship on the 2020 decennial census questionnaire. The Secretary stated that he was acting at

¹The annual alien registration requirement was repealed in 1981. See §11, 95 Stat. 1617 (1981).

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the request of the Department of Justice (DOJ), which sought improved data about citizen voting-age population for purposes of enforcing the Voting Rights Act (or VRA)—specifically the Act’s ban on diluting the influence of minority voters by depriving them of single-member districts in which they can elect their preferred candidates. App. to Pet. for Cert. 548a. DOJ explained that federal courts determine whether a minority group could constitute a majority in a particular district by looking to the citizen voting-age population of the group. According to DOJ, the existing citizenship data from the American Community Survey was not ideal: It was not reported at the level of the census block, the basic component of legislative districting plans; it had substantial margins of error; and it did not align in time with the census-based population counts used to draw legislative districts. DOJ therefore formally requested reinstatement of the citizenship question on the census questionnaire. *Id.*, at 565a–569a.

The Secretary’s memo explained that the Census Bureau initially analyzed, and the Secretary considered, three possible courses of action. The first was to continue to collect citizenship information in the American Community Survey and attempt to develop a data model that would more accurately estimate citizenship at the census block level. The Secretary rejected that option because the Bureau “did not assert and could not confirm” that such ACS-based data modeling was possible “with a sufficient degree of accuracy.” *Id.*, at 551a.

The second option was to reinstate a citizenship question on the decennial census. The Bureau predicted that doing so would discourage some noncitizens from responding to the census. That would necessitate increased “non-response follow up” operations—procedures the Bureau uses to attempt to count people who have not responded to the census—and potentially lead to a less accurate count of the total population.

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Option three was to use administrative records from other agencies, such as the Social Security Administration and Citizenship and Immigration Services, to provide DOJ with citizenship data. The Census Bureau recommended this option, and the Secretary found it a “potentially appealing solution” because the Bureau has long used administrative records to supplement and improve census data. *Id.*, at 554a. But the Secretary concluded that administrative records alone were inadequate because they were missing for more than 10% of the population.

The Secretary ultimately asked the Census Bureau to develop a fourth option that would combine options two and three: reinstate a citizenship question on the census questionnaire, and also use the time remaining until the 2020 census to “further enhance” the Bureau’s “administrative record data sets, protocols, and statistical models.” *Id.*, at 555a. The memo explained that, in the Secretary’s judgment, the fourth option would provide DOJ with the “most complete and accurate” citizen voting-age population data in response to its request. *Id.*, at 556a.

The Secretary “carefully considered” the possibility that reinstating a citizenship question would depress the response rate. *Ibid.* But after evaluating the Bureau’s “limited empirical evidence” on the question—evidence drawn from estimated non-response rates to previous American Community Surveys and census questionnaires—the Secretary concluded that it was not possible to “determine definitively” whether inquiring about citizenship in the census would materially affect response rates. *Id.*, at 557a, 562a. He also noted the long history of the citizenship question on the census, as well as the facts that the United Nations recommends collecting census-based citizenship information, and other major democracies such as Australia, Canada, France, Indonesia, Ireland, Germany, Mexico, Spain, and the United Kingdom inquire about citizenship in their censuses. Altogether,

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the Secretary determined that “the need for accurate citizenship data and the limited burden that the reinstatement of the citizenship question would impose outweigh fears about a potentially lower response rate.” *Id.*, at 557a.

C

Shortly after the Secretary announced his decision, two groups of plaintiffs filed suit in Federal District Court in New York, challenging the decision on several grounds. The first group of plaintiffs included 18 States, the District of Columbia, various counties and cities, and the United States Conference of Mayors. They alleged that the Secretary’s decision violated the Enumeration Clause of the Constitution and the requirements of the Administrative Procedure Act. The second group of plaintiffs consisted of several non-governmental organizations that work with immigrant and minority communities. They added an equal protection claim. The District Court consolidated the two cases. Both groups of plaintiffs are respondents here.

The Government moved to dismiss the lawsuits, arguing that the Secretary’s decision was unreviewable and that respondents had failed to state cognizable claims under the Enumeration Clause and the Equal Protection Clause. The District Court dismissed the Enumeration Clause claim but allowed the other claims to proceed. 315 F. Supp. 3d 766 (SDNY 2018).

In June 2018, the Government submitted to the District Court the Commerce Department’s “administrative record”: the materials that Secretary Ross considered in making his decision. That record included DOJ’s December 2017 letter requesting reinstatement of the citizenship question, as well as several memos from the Census Bureau analyzing the predicted effects of reinstating the question. Shortly thereafter, at DOJ’s urging, the Gov-

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ernment supplemented the record with a new memo from the Secretary, “intended to provide further background and context regarding” his March 2018 memo. App. to Pet. for Cert. 546a. The supplemental memo stated that the Secretary had begun considering whether to add the citizenship question in early 2017, and had inquired whether DOJ “would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.” *Ibid.* According to the Secretary, DOJ “formally” requested reinstatement of the citizenship question after that inquiry. *Ibid.*

Respondents argued that the supplemental memo indicated that the Government had submitted an incomplete record of the materials considered by the Secretary. They asked the District Court to compel the Government to complete the administrative record. The court granted that request, and the parties jointly stipulated to the inclusion of more than 12,000 pages of additional materials in the administrative record. Among those materials were emails and other records confirming that the Secretary and his staff began exploring the possibility of reinstating a citizenship question shortly after he was confirmed in early 2017, attempted to elicit requests for citizenship data from other agencies, and eventually persuaded DOJ to request reinstatement of the question for VRA enforcement purposes.

In addition, respondents asked the court to authorize discovery outside the administrative record. They claimed that such an unusual step was warranted because they had made a strong preliminary showing that the Secretary had acted in bad faith. See *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 420 (1971). The court also granted that request, authorizing expert discovery and depositions of certain DOJ and Commerce Department officials.

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In August and September 2018, the District Court issued orders compelling depositions of Secretary Ross and of the Acting Assistant Attorney General for DOJ's Civil Rights Division. We granted the Government's request to stay the Secretary's deposition pending further review, but we declined to stay the Acting AAG's deposition or the other extra-record discovery that the District Court had authorized.

The District Court held a bench trial and issued findings of fact and conclusions of law on respondents' statutory and equal protection claims. After determining that respondents had standing to sue, the District Court ruled that the Secretary's action was arbitrary and capricious, based on a pretextual rationale, and violated certain provisions of the Census Act. On the equal protection claim, however, the District Court concluded that respondents had not met their burden of showing that the Secretary was motivated by discriminatory animus. The court granted judgment to respondents on their statutory claims, vacated the Secretary's decision, and enjoined him from reinstating the citizenship question until he cured the legal errors the court had identified. 351 F. Supp. 3d 502 (SDNY 2019).

The Government appealed to the Second Circuit, but also filed a petition for writ of certiorari before judgment, asking this Court to review the District Court's decision directly because the case involved an issue of imperative public importance, and the census questionnaire needed to be finalized for printing by the end of June 2019. We granted the petition. 586 U. S. ____ (2019). At the Government's request, we later ordered the parties to address whether the Enumeration Clause provided an alternative basis to affirm. 586 U. S. ____ (2019).

II

We begin with jurisdiction. Article III of the Constitu-

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tion limits federal courts to deciding “Cases” and “Controversies.” For a legal dispute to qualify as a genuine case or controversy, at least one plaintiff must have standing to sue. The doctrine of standing “limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong” and “confines the federal courts to a properly judicial role.” *Spokeo, Inc. v. Robins*, 578 U. S. ___, ___ (2016) (slip op., at 6). To have standing, a plaintiff must “present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant’s challenged behavior; and likely to be redressed by a favorable ruling.” *Davis v. Federal Election Comm’n*, 554 U. S. 724, 733 (2008).

Respondents assert a number of injuries—diminishment of political representation, loss of federal funds, degradation of census data, and diversion of resources—all of which turn on their expectation that reinstating a citizenship question will depress the census response rate and lead to an inaccurate population count. Several States with a disproportionate share of noncitizens, for example, anticipate losing a seat in Congress or qualifying for less federal funding if their populations are undercounted. These are primarily future injuries, which “may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U. S. 149, 158 (2014) (internal quotation marks omitted).

The District Court concluded that the evidence at trial established a sufficient likelihood that the reinstatement of a citizenship question would result in noncitizen households responding to the census at lower rates than other groups, which in turn would cause them to be undercounted and lead to many of respondents’ asserted injuries. For purposes of standing, these findings of fact were not so suspect as to be clearly erroneous.

We therefore agree that at least some respondents have

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Article III standing. Several state respondents here have shown that if noncitizen households are undercounted by as little as 2%—lower than the District Court’s 5.8% prediction—they will lose out on federal funds that are distributed on the basis of state population. That is a sufficiently concrete and imminent injury to satisfy Article III, and there is no dispute that a ruling in favor of respondents would redress that harm.

The Government contends, however, that any harm to respondents is not fairly traceable to the Secretary’s decision, because such harm depends on the independent action of third parties choosing to violate their legal duty to respond to the census. The chain of causation is made even more tenuous, the Government argues, by the fact that such intervening, unlawful third-party action would be motivated by unfounded fears that the Federal Government will itself break the law by using noncitizens’ answers against them for law enforcement purposes. The Government invokes our steady refusal to “endorse standing theories that rest on speculation about the decisions of independent actors,” *Clapper v. Amnesty Int’l USA*, 568 U. S. 398, 414 (2013), particularly speculation about future unlawful conduct, *Los Angeles v. Lyons*, 461 U. S. 95, 105 (1983).

But we are satisfied that, in these circumstances, respondents have met their burden of showing that third parties will likely react in predictable ways to the citizenship question, even if they do so unlawfully and despite the requirement that the Government keep individual answers confidential. The evidence at trial established that noncitizen households have historically responded to the census at lower rates than other groups, and the District Court did not clearly err in crediting the Census Bureau’s theory that the discrepancy is likely attributable at least in part to noncitizens’ reluctance to answer a citizenship question. Respondents’ theory of standing

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thus does not rest on mere speculation about the decisions of third parties; it relies instead on the predictable effect of Government action on the decisions of third parties. Cf. *Bennett v. Spear*, 520 U. S. 154, 169–170 (1997); *Davis*, 554 U. S., at 734–735. Because Article III “requires no more than *de facto* causality,” *Block v. Meese*, 793 F. 2d 1303, 1309 (CA DC 1986) (Scalia, J.), traceability is satisfied here. We may therefore consider the merits of respondents’ claims, at least as far as the Constitution is concerned.

III

The Enumeration Clause of the Constitution does not provide a basis to set aside the Secretary’s decision. The text of that clause “vests Congress with virtually unlimited discretion in conducting the decennial ‘actual Enumeration,’” and Congress “has delegated its broad authority over the census to the Secretary.” *Wisconsin*, 517 U. S., at 19. Given that expansive grant of authority, we have rejected challenges to the conduct of the census where the Secretary’s decisions bore a “reasonable relationship to the accomplishment of an actual enumeration.” *Id.*, at 20.

Respondents ask us to evaluate the Secretary’s decision to reinstate a citizenship question under that “reasonable relationship” standard, but we agree with the District Court that a different analysis is needed here. Our cases applying that standard concerned decisions about the population count itself—such as a postcensus decision not to use a particular method to adjust an undercount, *id.*, at 4, and a decision to allocate overseas military personnel to their home States, *Franklin v. Massachusetts*, 505 U. S. 788, 790–791 (1992). We have never applied the standard to decisions about what kinds of demographic information to collect in the course of taking the census. Indeed, as the District Court recognized, applying the “reasonable relationship” standard to *every* census-related decision “would

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lead to the conclusion that it is unconstitutional to ask *any* demographic question on the census” because “asking such questions bears no relationship whatsoever to the goal of an accurate headcount.” 315 F. Supp. 3d, at 804–805. Yet demographic questions have been asked in *every* census since 1790, and questions about citizenship in particular have been asked for nearly as long. Like the District Court, we decline respondents’ invitation to measure the constitutionality of the citizenship question by a standard that would seem to render every census since 1790 unconstitutional.

We look instead to Congress’s broad authority over the census, as informed by long and consistent historical practice. All three branches of Government have understood the Constitution to allow Congress, and by extension the Secretary, to use the census for more than simply counting the population. Since 1790, Congress has sought, or permitted the Secretary to seek, information about matters as varied as age, sex, marital status, health, trade, profession, literacy, and value of real estate owned. See *id.*, at 801. Since 1820, it has sought, or permitted the Secretary to seek, information about citizenship in particular. Federal courts have approved the practice of collecting demographic data in the census. See, e.g., *United States v. Moriarity*, 106 F. 886, 891 (CC SDNY 1901) (duty to take a census of population “does not prohibit the gathering of other statistics, if ‘necessary and proper,’ for the intelligent exercise of other powers enumerated in the constitution”). While we have never faced the question directly, we have assumed that Congress has the power to use the census for information-gathering purposes, see *Legal Tender Cases*, 12 Wall. 457, 536 (1871), and we have recognized the role of the census as a “linchpin of the federal statistical system by collecting data on the characteristics of individuals, households, and housing units throughout the country,” *Department of Commerce v.*

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United States House of Representatives, 525 U. S. 316, 341 (1999) (internal quotation marks omitted).

That history matters. Here, as in other areas, our interpretation of the Constitution is guided by a Government practice that “has been open, widespread, and unchallenged since the early days of the Republic.” *NLRB v. Noel Canning*, 573 U. S. 513, 572 (2014) (Scalia, J., concurring in judgment); see also *Wisconsin*, 517 U. S., at 21 (noting “importance of historical practice” in census context). In light of the early understanding of and long practice under the Enumeration Clause, we conclude that it permits Congress, and by extension the Secretary, to inquire about citizenship on the census questionnaire. We need not, and do not, decide the constitutionality of any other question that Congress or the Secretary might decide to include in the census.

IV

The District Court set aside the Secretary’s decision to reinstate a citizenship question on the grounds that the Secretary acted arbitrarily and violated certain provisions of the Census Act. The Government contests those rulings, but also argues that the Secretary’s decision was not judicially reviewable under the Administrative Procedure Act in the first place. We begin with that contention.

A

The Administrative Procedure Act embodies a “basic presumption of judicial review,” *Abbott Laboratories v. Gardner*, 387 U. S. 136, 140 (1967), and instructs reviewing courts to set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U. S. C. §706(2)(A). Review is not available, however, “to the extent that” a relevant statute precludes it, §701(a)(1), or the agency action is “committed to agency discretion by law,” §701(a)(2). The Government

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argues that the Census Act commits to the Secretary's unreviewable discretion decisions about what questions to include on the decennial census questionnaire.

We disagree. To be sure, the Act confers broad authority on the Secretary. Section 141(a) instructs him to take “a decennial census of population” in “such form and content as he may determine, including the use of sampling procedures and special surveys.” 13 U. S. C. §141. The Act defines “census of population” to mean “a census of population, housing, and matters relating to population and housing,” §141(g), and it authorizes the Secretary, in “connection with any such census,” to “obtain such other census information as necessary,” §141(a). It also states that the “Secretary shall prepare questionnaires, and shall determine the inquiries, and the number, form, and subdivisions thereof, for the statistics, surveys, and censuses provided for in this title.” §5. And it authorizes him to acquire materials, such as administrative records, from other federal, state, and local agencies in aid of conducting the census. §6. Those provisions leave much to the Secretary's discretion. See *Wisconsin*, 517 U. S., at 19 (“Through the Census Act, Congress has delegated its broad authority over the census to the Secretary.”).

But they do not leave his discretion unbounded. In order to give effect to the command that courts set aside agency action that is an abuse of discretion, and to honor the presumption of judicial review, we have read the §701(a)(2) exception for action committed to agency discretion “quite narrowly, restricting it to ‘those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion.’” *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 586 U. S. ___, ___ (2018) (slip op., at 12) (quoting *Lincoln v. Vigil*, 508 U. S. 182, 191 (1993)). And we have generally limited the exception to “certain categories of administrative decisions

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that courts traditionally have regarded as ‘committed to agency discretion,’” *id.*, at 191, such as a decision not to institute enforcement proceedings, *Heckler v. Chaney*, 470 U. S. 821, 831–832 (1985), or a decision by an intelligence agency to terminate an employee in the interest of national security, *Webster v. Doe*, 486 U. S. 592, 600–601 (1988).

The taking of the census is not one of those areas traditionally committed to agency discretion. We and other courts have entertained both constitutional and statutory challenges to census-related decisionmaking. See, *e.g.*, *Department of Commerce*, 525 U. S. 316; *Wisconsin*, 517 U. S. 1; *Carey v. Klutznick*, 637 F. 2d 834 (CA2 1980).

Nor is the statute here drawn so that it furnishes no meaningful standard by which to judge the Secretary’s action. In contrast to the National Security Act in *Webster*, which gave the Director of Central Intelligence discretion to terminate employees whenever he “deem[ed]” it “advisable,” 486 U. S., at 594, the Census Act constrains the Secretary’s authority to determine the form and content of the census in a number of ways. Section 195, for example, governs the extent to which he can use statistical sampling. Section 6(c), which will be considered in more detail below, circumscribes his power in certain circumstances to collect information through direct inquiries when administrative records are available. More generally, by mandating a population count that will be used to apportion representatives, see §141(b), 2 U. S. C. §2a, the Act imposes “a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.” *Franklin*, 505 U. S., at 819–820 (Stevens, J., concurring in part and concurring in judgment).

The Secretary’s decision to reinstate a citizenship question is amenable to review for compliance with those and other provisions of the Census Act, according to the general requirements of reasoned agency decisionmaking.

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Because this is not a case in which there is “no law to apply,” *Overton Park*, 401 U. S., at 410, the Secretary’s decision is subject to judicial review.

B

At the heart of this suit is respondents’ claim that the Secretary abused his discretion in deciding to reinstate a citizenship question. We review the Secretary’s exercise of discretion under the deferential “arbitrary and capricious” standard. See 5 U. S. C. §706(2)(A). Our scope of review is “narrow”: we determine only whether the Secretary examined “the relevant data” and articulated “a satisfactory explanation” for his decision, “including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983) (internal quotation marks omitted). We may not substitute our judgment for that of the Secretary, *ibid.*, but instead must confine ourselves to ensuring that he remained “within the bounds of reasoned decisionmaking,” *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U. S. 87, 105 (1983).

The District Court set aside the Secretary’s decision for two independent reasons: His course of action was not supported by the evidence before him, and his stated rationale was pretextual. We focus on the first point here and take up the question of pretext later.

The Secretary examined the Bureau’s analysis of various ways to collect improved citizenship data and explained why he thought the best course was to both reinstate a citizenship question and use citizenship data from administrative records to fill in the gaps. He considered but rejected the Bureau’s recommendation to use administrative records alone. As he explained, records are lacking for about 10% of the population, so the Bureau would still need to estimate citizenship for millions of voting-age

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people. Asking a citizenship question of everyone, the Secretary reasoned, would eliminate the need to estimate citizenship for many of those people. And supplementing census responses with administrative record data would help complete the picture and allow the Bureau to better estimate citizenship for the smaller set of cases where it was still necessary to do so.

The evidence before the Secretary supported that decision. As the Bureau acknowledged, each approach—using administrative records alone, or asking about citizenship and using records to fill in the gaps—entailed tradeoffs between accuracy and completeness. Without a citizenship question, the Bureau would need to estimate the citizenship of about 35 million people; with a citizenship question, it would need to estimate the citizenship of only 13.8 million. Under either approach, there would be some errors in both the administrative records and the Bureau’s estimates. With a citizenship question, there would also be some erroneous self-responses (about 500,000) and some conflicts between responses and administrative record data (about 9.5 million).

The Bureau explained that the “relative quality” of the citizenship data generated by each approach would depend on the “relative importance of the errors” in each, but it was not able to “quantify the relative magnitude of the errors across the alternatives.” App. 148. The Bureau nonetheless recommended using administrative records alone because it had “high confidence” that it could develop an accurate model for estimating the citizenship of the 35 million people for whom administrative records were not available, and it thought the resulting citizenship data would be of superior quality. *Id.*, at 146, 158–159. But when the time came for the Secretary to make a decision, the model did not yet exist, and even if it had, there was no way to gauge its relative accuracy. As the Bureau put it, “we will most likely never possess a fully adequate

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truth deck to benchmark” the model—which appears to be bureaucratese for “maybe, maybe not.” *Id.*, at 146. The Secretary opted instead for the approach that would yield a more complete set of data at an acceptable rate of accuracy, and would require estimating the citizenship of fewer people.

The District Court overruled that choice, agreeing with the Bureau’s assessment that its recommended approach would yield higher quality citizenship data on the whole. But the choice between reasonable policy alternatives in the face of uncertainty was the Secretary’s to make. He considered the relevant factors, weighed risks and benefits, and articulated a satisfactory explanation for his decision. In overriding that reasonable exercise of discretion, the court improperly substituted its judgment for that of the agency.

The Secretary then weighed the benefit of collecting more complete and accurate citizenship data against the risk that inquiring about citizenship would depress census response rates, particularly among noncitizen households. In the Secretary’s view, that risk was difficult to assess. The Bureau predicted a 5.1% decline in response rates among noncitizen households if the citizenship question were reinstated.² It relied for that prediction primarily on studies showing that, while noncitizens had responded at lower rates than citizens to the 2000 short-form and 2010 censuses, which did not ask about citizenship, they responded at even lower rates than citizens to the 2000 long-form census and the 2010 American Community Survey, which did ask about citizenship. The Bureau thought it was reasonable to infer that the citizenship question accounted for the differential decline in noncitizen re-

²Several months after the Secretary made his decision, the Bureau updated its prediction to 5.8%, the figure the District Court later relied on in its standing analysis. See 351 F. Supp. 3d 502, 579 (SDNY 2019).

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sponses. But, the Secretary explained, the Bureau was unable to rule out other causes. For one thing, the evidence before the Secretary suggested that noncitizen households tend to be more distrustful of, and less likely to respond to, *any* government effort to collect information. For another, both the 2000 long-form census and 2010 ACS asked over 45 questions on a range of topics, including employment, income, and housing characteristics. Noncitizen households might disproportionately fail to respond to a lengthy and intrusive Government questionnaire for a number of reasons besides reluctance to answer a citizenship question—reasons relating to education level, socioeconomic status, and less exposure to Government outreach efforts. See App. to Pet. for Cert. 553a–554a, 557a–558a.

The Secretary justifiably found the Bureau’s analysis inconclusive. Weighing that uncertainty against the value of obtaining more complete and accurate citizenship data, he determined that reinstating a citizenship question was worth the risk of a potentially lower response rate. That decision was reasonable and reasonably explained, particularly in light of the long history of the citizenship question on the census.

JUSTICE BREYER would conclude otherwise, but only by subordinating the Secretary’s policymaking discretion to the Bureau’s technocratic expertise. JUSTICE BREYER’s analysis treats the Bureau’s (pessimistic) prediction about response rates and (optimistic) assumptions about its data modeling abilities as touchstones of substantive reasonableness rather than simply evidence for the Secretary to consider. He suggests that the Secretary should have deferred to the Bureau or at least offered some special justification for drawing his own inferences and adopting his own assumptions. But the Census Act authorizes the Secretary, not the Bureau, to make policy choices within the range of reasonable options. And the evidence before

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the Secretary hardly led ineluctably to just one reasonable course of action. It called for value-laden decisionmaking and the weighing of incommensurables under conditions of uncertainty. The Secretary was required to consider the evidence and give reasons for his chosen course of action. He did so. It is not for us to ask whether his decision was “the best one possible” or even whether it was “better than the alternatives.” *FERC v. Electric Power Supply Assn.*, 577 U. S. ___, ___ (2016) (slip op., at 30). By second-guessing the Secretary’s weighing of risks and benefits and penalizing him for departing from the Bureau’s inferences and assumptions, JUSTICE BREYER—like the District Court—substitutes his judgment for that of the agency.

C

The District Court also ruled that the Secretary violated two particular provisions of the Census Act, §6(c) and §141(f).

Section 6 has three subsections. Subsections (a) and (b) authorize the Secretary to acquire administrative records from other federal agencies and from state and local governments.³ Subsection (c) states:

“To the maximum extent possible and consistent with the kind, timeliness, quality and scope of the statistics required, the Secretary shall acquire and use information available from any source referred to in

³The full text of subsections (a) and (b) provides:

“(a) The Secretary, whenever he considers it advisable, may call upon any other department, agency, or establishment of the Federal Government, or of the government of the District of Columbia, for information pertinent to the work provided for in this title.

“(b) The Secretary may acquire, by purchase or otherwise, from States, counties, cities, or other units of government, or their instrumentalities, or from private persons and agencies, such copies of records, reports, and other material as may be required for the efficient and economical conduct of the censuses and surveys provided for in this title.” 13 U. S. C. §6.

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subsection (a) or (b) of this section instead of conducting direct inquiries.” 13 U. S. C. §6(c).

The District Court held, and respondents argue, that the Secretary failed to comply with §6(c) because he opted to collect citizenship data using direct inquiries when it was possible to provide DOJ with data from administrative records alone.

At the outset, §6(c) may not even apply here. It governs the Secretary’s choices with respect to “statistics required.” The parties have assumed that phrase refers to census-related data that the Secretary wishes to acquire, but it may instead refer to particular kinds of statistics that other provisions of the Census Act actually do *require* the Secretary to collect and publish. See, *e.g.*, §41 (“The Secretary shall collect and publish statistics concerning [cotton and cotton production].”); §61 (“The Secretary shall collect, collate, and publish monthly statistics concerning [vegetable and animal oils and the like].”); §91 (“The Secretary shall collect and publish quarterly financial statistics of business operations, organization, practices, management, and relation to other businesses.”). If so, §6(c) would seem to have nothing to say about the Secretary’s collection of census-related citizenship data, which is not a “statistic” he is “required” to collect.

Regardless, assuming the provision applies, the Secretary complied with it, for essentially the same reasons that his decision was not arbitrary and capricious. As he explained, administrative records would not, in his judgment, provide the more complete and accurate data that DOJ sought. He thus could not, “consistent with” the kind and quality of the “statistics required,” use administrative records instead of asking about citizenship directly. Respondents’ arguments to the contrary rehash their disagreement with the Secretary’s policy judgment about which approach would yield the most complete and accu-

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rate citizenship data. For the reasons already discussed, we may not substitute our judgment for that of the Secretary here.

We turn now to §141(f), which requires the Secretary to report to Congress about his plans for the census. Paragraph (1) instructs him to submit, at least three years before the census date, a report containing his “determination of the subjects proposed to be included, and the types of information to be compiled,” in the census. Paragraph (2) then tells him to submit, at least two years before the census date, a report containing his “determination of the questions proposed to be included” in the census. Paragraph (3) provides:

“[A]fter submission of a report under paragraph (1) or (2) of this subsection and before the appropriate census date, if the Secretary finds new circumstances exist which necessitate that the subjects, types of information, or questions contained in reports so submitted be modified, [he shall submit] a report containing the Secretary’s determination of the subjects, types of information, or questions as proposed to be modified.”

The Secretary timely submitted his paragraph (1) report in March 2017. It did not mention citizenship. In December 2017, he received DOJ’s formal request. Three months later, in March 2018, he timely submitted his paragraph (2) report. It did propose asking a question about citizenship.

The District Court held that the Secretary’s failure to mention citizenship in his March 2017 report violated §141(f)(1) and provided an independent basis to set aside his action. Assuming without deciding that the Secretary’s compliance with the reporting requirement is for courts—rather than Congress—to police, we disagree. The Secretary’s March 2018 report satisfied the requirements

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of paragraph (3): By informing Congress that he proposed to include a citizenship question, the Secretary necessarily also informed Congress that he proposed to modify the original list of subjects that he submitted in the March 2017 report. Nothing in §141(f) suggests that the same report cannot simultaneously fulfill the requirements of paragraphs (2) and (3). And to the extent paragraph (3) requires the Secretary to explain his finding of new circumstances, he did so in his March 2018 memo, which described DOJ's intervening request.

In any event, even if we agreed with the District Court that the Secretary technically violated §141(f) by submitting a paragraph (2) report that doubled as a paragraph (3) report, the error would surely be harmless in these circumstances, where the Secretary nonetheless fully informed Congress of, and explained, his decision. See 5 U. S. C. §706 (in reviewing agency action, “due account shall be taken of the rule of prejudicial error”).

V

We now consider the District Court's determination that the Secretary's decision must be set aside because it rested on a pretextual basis, which the Government conceded below would warrant a remand to the agency.

We start with settled propositions. First, in order to permit meaningful judicial review, an agency must “disclose the basis” of its action. *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 167–169 (1962) (internal quotation marks omitted); see also *SEC v. Chenery Corp.*, 318 U. S. 80, 94 (1943) (“[T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.”).

Second, in reviewing agency action, a court is ordinarily limited to evaluating the agency's contemporaneous explanation in light of the existing administrative record.

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Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U. S. 519, 549 (1978); *Camp v. Pitts*, 411 U. S. 138, 142–143 (1973) (*per curiam*). That principle reflects the recognition that further judicial inquiry into “executive motivation” represents “a substantial intrusion” into the workings of another branch of Government and should normally be avoided. *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U. S. 252, 268, n. 18 (1977); see *Overton Park*, 401 U. S., at 420.

Third, a court may not reject an agency’s stated reasons for acting simply because the agency might also have had other unstated reasons. See *Jagers v. Federal Crop Ins. Corp.*, 758 F. 3d 1179, 1185–1186 (CA10 2014) (rejecting argument that “the agency’s subjective desire to reach a particular result must necessarily invalidate the result, regardless of the objective evidence supporting the agency’s conclusion”). Relatedly, a court may not set aside an agency’s policymaking decision solely because it might have been influenced by political considerations or prompted by an Administration’s priorities. Agency policymaking is not a “rarified technocratic process, unaffected by political considerations or the presence of Presidential power.” *Sierra Club v. Costle*, 657 F. 2d 298, 408 (CA9 1981). Such decisions are routinely informed by unstated considerations of politics, the legislative process, public relations, interest group relations, foreign relations, and national security concerns (among others).

Finally, we have recognized a narrow exception to the general rule against inquiring into “the mental processes of administrative decisionmakers.” *Overton Park*, 401 U. S., at 420. On a “strong showing of bad faith or improper behavior,” such an inquiry may be warranted and may justify extra-record discovery. *Ibid.*

The District Court invoked that exception in ordering extra-record discovery here. Although that order was

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premature, we think it was ultimately justified in light of the expanded administrative record. Recall that shortly after this litigation began, the Secretary, prodded by DOJ, filed a supplemental memo that added new, pertinent information to the administrative record. The memo disclosed that the Secretary had been considering the citizenship question for some time and that Commerce had inquired whether DOJ would formally request reinstatement of the question. That supplemental memo prompted respondents to move for both completion of the administrative record and extra-record discovery. The District Court granted both requests at the same hearing, agreeing with respondents that the Government had submitted an incomplete administrative record and that the existing evidence supported a *prima facie* showing that the VRA rationale was pretextual.

The Government did not challenge the court's conclusion that the administrative record was incomplete, and the parties stipulated to the inclusion of more than 12,000 pages of internal deliberative materials as part of the administrative record, materials that the court later held were sufficient on their own to demonstrate pretext. The Government did, however, challenge the District Court's order authorizing extra-record discovery, as well as the court's later orders compelling depositions of the Secretary and of the Acting Assistant Attorney General for DOJ's Civil Rights Division.

We agree with the Government that the District Court should not have ordered extra-record discovery when it did. At that time, the most that was warranted was the order to complete the administrative record. But the new material that the parties stipulated should have been part of the administrative record—which showed, among other things, that the VRA played an insignificant role in the decisionmaking process—largely justified such extra-record discovery as occurred (which did not include the

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deposition of the Secretary himself). We accordingly review the District Court's ruling on pretext in light of all the evidence in the record before the court, including the extra-record discovery.

That evidence showed that the Secretary was determined to reinstate a citizenship question from the time he entered office; instructed his staff to make it happen; waited while Commerce officials explored whether another agency would request census-based citizenship data; subsequently contacted the Attorney General himself to ask if DOJ would make the request; and adopted the Voting Rights Act rationale late in the process. In the District Court's view, this evidence established that the Secretary had made up his mind to reinstate a citizenship question "well before" receiving DOJ's request, and did so for reasons unknown but unrelated to the VRA. 351 F. Supp. 3d, at 660.

The Government, on the other hand, contends that there was nothing objectionable or even surprising in this. And we agree—to a point. It is hardly improper for an agency head to come into office with policy preferences and ideas, discuss them with affected parties, sound out other agencies for support, and work with staff attorneys to substantiate the legal basis for a preferred policy. The record here reflects the sometimes involved nature of Executive Branch decisionmaking, but no particular step in the process stands out as inappropriate or defective.

And yet, viewing the evidence as a whole, we share the District Court's conviction that the decision to reinstate a citizenship question cannot be adequately explained in terms of DOJ's request for improved citizenship data to better enforce the VRA. Several points, considered together, reveal a significant mismatch between the decision the Secretary made and the rationale he provided.

The record shows that the Secretary began taking steps to reinstate a citizenship question about a week into his

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tenure, but it contains no hint that he was considering VRA enforcement in connection with that project. The Secretary's Director of Policy did not know why the Secretary wished to reinstate the question, but saw it as his task to "find the best rationale." *Id.*, at 551. The Director initially attempted to elicit requests for citizenship data from the Department of Homeland Security and DOJ's Executive Office for Immigration Review, neither of which is responsible for enforcing the VRA. After those attempts failed, he asked Commerce staff to look into whether the Secretary could reinstate the question without receiving a request from another agency. The possibility that DOJ's Civil Rights Division might be willing to request citizenship data for VRA enforcement purposes was proposed by Commerce staff along the way and eventually pursued.

Even so, it was not until the Secretary contacted the Attorney General directly that DOJ's Civil Rights Division expressed interest in acquiring census-based citizenship data to better enforce the VRA. And even then, the record suggests that DOJ's interest was directed more to helping the Commerce Department than to securing the data. The December 2017 letter from DOJ drew heavily on contributions from Commerce staff and advisors. Their influence may explain why the letter went beyond a simple entreaty for better citizenship data—what one might expect of a typical request from another agency—to a specific request that Commerce collect the data by means of reinstating a citizenship question on the census. Finally, after sending the letter, DOJ declined the Census Bureau's offer to discuss alternative ways to meet DOJ's stated need for improved citizenship data, further suggesting a lack of interest on DOJ's part.

Altogether, the evidence tells a story that does not match the explanation the Secretary gave for his decision. In the Secretary's telling, Commerce was simply acting on a routine data request from another agency. Yet the

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materials before us indicate that Commerce went to great lengths to elicit the request from DOJ (or any other willing agency). And unlike a typical case in which an agency may have both stated and unstated reasons for a decision, here the VRA enforcement rationale—the sole stated reason—seems to have been contrived.

We are presented, in other words, with an explanation for agency action that is incongruent with what the record reveals about the agency's priorities and decisionmaking process. It is rare to review a record as extensive as the one before us when evaluating informal agency action—and it should be. But having done so for the sufficient reasons we have explained, we cannot ignore the disconnect between the decision made and the explanation given. Our review is deferential, but we are “not required to exhibit a naiveté from which ordinary citizens are free.” *United States v. Stanchich*, 550 F.2d 1294, 1300 (CA2 1977) (Friendly, J.). The reasoned explanation requirement of administrative law, after all, is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public. Accepting contrived reasons would defeat the purpose of the enterprise. If judicial review is to be more than an empty ritual, it must demand something better than the explanation offered for the action taken in this case.

In these unusual circumstances, the District Court was warranted in remanding to the agency, and we affirm that disposition. See *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985). We do not hold that the agency decision here was substantively invalid. But agencies must pursue their goals reasonably. Reasoned decisionmaking under the Administrative Procedure Act calls for an explanation for agency action. What was provided here was more of a distraction.

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* * *

The judgment of the United States District Court for the Southern District of New York is affirmed in part and reversed in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Opinion of THOMAS, J.

SUPREME COURT OF THE UNITED STATES

No. 18–966

DEPARTMENT OF COMMERCE, ET AL., PETITIONERS
v. NEW YORK, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 27, 2019]

JUSTICE THOMAS, with whom JUSTICE GORSUCH and JUSTICE KAVANAUGH join, concurring in part and dissenting in part.

In March 2018, the Secretary of Commerce exercised his broad discretion over the administration of the decennial census to resume a nearly unbroken practice of asking a question relating to citizenship. Our only role in this case is to decide whether the Secretary complied with the law and gave a reasoned explanation for his decision. The Court correctly answers these questions in the affirmative. *Ante*, at 11–23. That ought to end our inquiry.

The Court, however, goes further. For the first time ever, the Court invalidates an agency action solely because it questions the sincerity of the agency’s otherwise adequate rationale. Echoing the din of suspicion and distrust that seems to typify modern discourse, the Court declares the Secretary’s memorandum “pretextual” because, “viewing the evidence as a whole,” his explanation that including a citizenship question on the census would help enforce the Voting Rights Act (VRA) “seems to have been contrived.” *Ante*, at 23, 26, 28. The Court does not hold that the Secretary merely had *additional*, unstated reasons for reinstating the citizenship question. Rather, it holds that the Secretary’s stated rationale did not factor *at all* into his decision.

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The Court’s holding reflects an unprecedented departure from our deferential review of discretionary agency decisions. And, if taken seriously as a rule of decision, this holding would transform administrative law. It is not difficult for political opponents of executive actions to generate controversy with accusations of pretext, deceit, and illicit motives. Significant policy decisions are regularly criticized as products of partisan influence, interest-group pressure, corruption, and animus. Crediting these accusations on evidence as thin as the evidence here could lead judicial review of administrative proceedings to devolve into an endless morass of discovery and policy disputes not contemplated by the Administrative Procedure Act (APA).

Unable to identify any legal problem with the Secretary’s reasoning, the Court imputes one by concluding that he must not be telling the truth. The Court therefore upholds the decision of the District Court—which, in turn, was transparently based on the application of an administration-specific standard. App. to Pet. for Cert. 527a (crediting respondents’ allegations that “the *current* Department of Justice has shown little interest in enforcing the” VRA (emphasis added)).

The law requires a more impartial approach. Even assuming we are authorized to engage in the review undertaken by the Court—which is far from clear—we have often stated that courts reviewing agency action owe the Executive a “presumption of regularity.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 415 (1971). The Court pays only lipservice to this principle. But, the evidence falls far short of supporting its decision. The Court, I fear, will come to regret inventing the principles it uses to achieve today’s result. I respectfully dissent from Part V of the opinion of the Court.¹

¹JUSTICE KAVANAUGH and I join Parts I, II, III, and IV of the opinion

Opinion of THOMAS, J.

I

As the Court explains, federal law directs the Secretary of Commerce to “take a decennial census.” 13 U. S. C. §141(a); see U. S. Const., Art. I, §2, cl. 3; Amdt. XIV, §2; *ante*, at 1–2. The discretion afforded the Secretary is extremely broad. Subject only to constitutional limitations and a handful of inapposite statutory requirements, the Secretary is expressly authorized to “determine the inquiries” on the census questionnaire and to conduct the census “in such form and content as he may determine.” §§5, 141(a); see *ante*, at 14–16, 20–23.² Prior census questionnaires have included questions ranging from sex, age, and race to commute, education, and radio ownership. And between 1820 and 2010, every decennial census questionnaire but one asked some segment of the population a question related to citizenship. The 2010 census was the first since 1840 that did not include any such question.

In March 2018, the Secretary issued a memorandum reinstating a citizenship question on the 2020 census. He explained that the Department of Justice (DOJ) had formally requested reinstatement of the question because the data obtained would help enforce §2 of the VRA. He further explained that the question had been well tested in light of its extensive previous use, that he had consulted with the Census Bureau on the proposal, and that his final

of the Court. JUSTICE GORSUCH joins Parts I, II, III, IV–B, and IV–C.

²JUSTICE ALITO has made a strong argument that the specific decision at issue here—whether to include a citizenship question on the census—is a matter “committed to agency discretion by law.” 5 U. S. C. §701(a)(2); see *post*, at 3 (opinion concurring in part and dissenting in part). As he explains, the Secretary’s decision plainly falls within the scope of the Secretary’s constitutional authority, does not implicate any statutory prohibition, and is among the “inquiries” and “content[s]” of the census that the Secretary is expressly directed to “determine” for himself. §§5, 141(a); see *post*, at 5–15. Nevertheless, I assume, for the purpose of this opinion, that the Secretary’s decision is subject to judicial review.

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decision incorporated feedback from the Bureau. He recognized that staff at the Bureau believed that better data could be obtained through modeling and reliance on existing records, but he disagreed with that assessment, explaining that the data was inconclusive and that he thought it preferable to ask the question directly of the entire population. Respondents brought suit, seeking judicial review of the Secretary's decision under the APA, 5 U. S. C. §706.

II

As relevant here, the APA requires courts to “hold unlawful and set aside” agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” §706(2)(A). We have emphasized that “[r]eview under the arbitrary and capricious standard is deferential.” *National Assn. of Home Builders v. Defenders of Wildlife*, 551 U. S. 644, 658 (2007); see *Glickman v. Wileman Brothers & Elliott, Inc.*, 521 U. S. 457, 466, n. 8 (1997). It requires the reviewing court to determine whether the agency “‘examine[d] the relevant data and articulate[d] a satisfactory explanation for its action.’” *FCC v. Fox Television Stations, Inc.*, 556 U. S. 502, 513 (2009). We have described this as a “‘narrow’ standard of review” under which the reviewing court cannot “‘substitute its judgment for that of the agency,’ and should ‘uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned.’” *Id.*, at 513–514 (citation omitted); accord, *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983).³

³Deferential review of the agency’s discretionary choices and reasoning under the arbitrary-and-capricious standard stands in marked contrast to a court’s plenary review of the agency’s interpretation and application of the law. See §§706(A)–(D) (court must review agency action to ensure that it complies with all “constitutional,” “statutory,”

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Part IV–B of the opinion of the Court correctly applies this standard to conclude that the Secretary’s decision survives ordinary arbitrary-and-capricious review. That holding should end our inquiry.

But the opinion continues. Acknowledging that “no particular step” in the proceedings here “stands out as inappropriate or defective,” even after reviewing “all the evidence in the record . . . , including the extra-record discovery,” *ante*, at 26, the Court nevertheless agrees with the District Court that the Secretary’s rationale for reinstating the citizenship question was “pretextual—that is, that the real reason for his decision was something other than the sole reason he put forward in his memorandum, namely enhancement of DOJ’s VRA enforcement efforts.” 351 F. Supp. 3d 502, 660 (SDNY 2019); see *ante*, at 28. According to the Court, something just “seems” wrong. *Ibid*.

This conclusion is extraordinary. The Court engages in an unauthorized inquiry into evidence not properly before us to reach an unsupported conclusion. Moreover, each step of the inquiry offends the presumption of regularity we owe the Executive. The judgment of the District Court should be reversed.

A

Section 706(2) of the APA contemplates review of the administrative “record” to determine whether an agency’s “action, findings, and conclusions” satisfy six specified standards. See §§706(2)(A)–(F). None instructs the Court to inquire into pretext. Consistent with this statutory text, we have held that a court is “ordinarily limited to evaluating the agency’s contemporaneous explanation in light of the existing administrative record.” *Ante*, at 23

and “procedur[al]” requirements, and is otherwise “in accordance with law”).

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(citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U. S. 519, 549 (1978)); see *SEC v. Chenery Corp.*, 318 U. S. 80, 87 (1943) (“The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based”). If an agency’s stated findings and conclusions withstand scrutiny, the APA does not permit a court to set aside the decision solely because the agency had “other unstated reasons” for its decision, such as “political considerations” or the “Administration’s priorities.” *Ante*, at 24.

Unsurprisingly, then, this Court has never held an agency decision arbitrary and capricious on the ground that its supporting rationale was “pretextual.” Nor has it previously suggested that this was even a possibility. Under “settled propositions” of administrative law, *ante*, at 23, pretext is virtually never an appropriate or relevant inquiry for a reviewing court to undertake.

Respondents conceptualize pretext as a subset of “arbitrary and capricious” review. It is far from clear that they are correct. But even if they were, an agency action is not arbitrary or capricious merely because the decisionmaker has other, unstated reasons for the decision. *Ante*, at 24. Nor is an agency action arbitrary and capricious merely because the decisionmaker was “inclined” to accomplish it before confirming that the law and facts supported that inclination. *In re Dept. of Commerce*, 586 U. S. ___, ___ (2018) (GORSUCH, J., concurring in part and dissenting in part) (slip op., at 2).

Accordingly, even under respondents’ approach, a showing of pretext could render an agency action arbitrary and capricious only in the infinitesimally small number of cases in which the administrative record establishes that an agency’s stated rationale did not factor *at all* into the decision, thereby depriving the action of an adequate

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supporting rationale.⁴ This showing is extremely difficult to make because the administrative record will rarely, if ever, contain evidence sufficient to show that an agency's stated rationale did not actually factor into its decision. And we have stated that a "strong showing of bad faith or improper behavior" is necessary to venture beyond the agency's "administrative findings" and inquire into "the mental processes of administrative decisionmakers." *Overton Park*, 401 U. S., at 420.⁵ We have never before found *Overton Park*'s exception satisfied, much less invalidated an agency action based on "pretext."

Undergirding our arbitrary-and-capricious analysis is our longstanding precedent affording the Executive a "presumption of regularity." *Id.*, at 415; see *United States v. Chemical Foundation, Inc.*, 272 U. S. 1, 14–15 (1926). This presumption reflects respect for a coordinate branch of government whose officers not only take an oath to

⁴We do not have before us a claim that information outside the administrative record calls into question the legality of an agency action based on an unstated, unlawful bias or motivation (e.g., a claim of religious discrimination under the Free Exercise Clause). But to the extent such a claim is viable, the analysis would have nothing to do with the arbitrary-and-capricious review pressed by respondents. See §§706(2)(A)–(C) (addressing agency actions that violate "constitutional" or "statutory" requirements, or that "otherwise [are] not in accordance with law").

⁵Insofar as *Overton Park* authorizes an exception to review on the administrative record, it has been criticized as having "no textual grounding in the APA" and as "created by the Court, without citation or explanation, to facilitate Article III review." Gavoor & Platt, Administrative Records and the Courts, 67 U. Kan. L. Rev. 1, 44 (2018); see *id.*, at 22 (further arguing that the exception was "neither presented by the facts of the case nor briefed by the parties"). The legitimacy and scope of the exception—which by its terms contemplates only "administrative officials who participated in the decision . . . giv[ing] testimony explaining their action," *Overton Park*, 401 U. S., at 420—is an important question that may warrant future consideration. But because the Court's holding is incorrect regardless of the validity of the *Overton Park* exception, I will apply it here.

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support the Constitution, as we do, Art. VI, but also are charged with “faithfully execut[ing]” our laws, Art. II, §3. See *United States v. Morgan*, 313 U. S. 409, 422 (1941) (presumption of regularity ensures that the “integrity of the administrative process” is appropriately respected). In practice, then, we give the benefit of the doubt to the agency.

B

The Court errs at the outset by proceeding beyond the administrative record to evaluate pretext. Respondents have not made a “strong showing of bad faith or improper behavior.” *Overton Park*, *supra*, at 420.

The District Court’s initial order granting extra-record discovery relied on four categories of evidence:

“evidence that [the Secretary] was predisposed to reinstate the citizenship question when he took office; that the [DOJ] hadn’t expressed a desire for more detailed citizenship data until the Secretary solicited its view; that he overruled the objections of his agency’s career staff; and that he declined to order more testing of the question given its long history.” *Dept. of Commerce*, 586 U. S., at ____ (slip op., at 2).

None of this comes close to showing bad faith or improper behavior. Indeed, there is nothing even “unusual about a new cabinet secretary coming to office inclined to favor a different policy direction, soliciting support from other agencies to bolster his views, disagreeing with staff, or cutting through red tape.” *Ibid.* Today all Members of the Court who reach the question agree that the District Court abused its discretion in ordering extra-record discovery based on this evidence. *Ante*, at 25 (“We agree with the Government that the District Court should not have ordered extra-record discovery when it did”).

Nevertheless, the Court excuses the error because, in its

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view, “the new material that the parties [later] stipulated should have been part of the administrative record . . . largely justified such extra-record discovery as occurred.” *Ibid.* Given the requirement that respondents make a “strong showing” of bad faith, one would expect the Court to identify which “new material” supported such a showing. It does not. Nor does the Court square its suggestion that some of the extra-record discovery was *not* “justified” with its consideration of “all . . . the extra-record discovery.” *Ante*, at 25–26. Regardless, I assume that the Court has in mind the administrative-record materials that the District Court would later rely on to establish pretext:

“evidence that [the Secretary] had made the decision to add the citizenship question well before DOJ requested its addition in December 2017; the absence of any mention, *at all*, of VRA enforcement in the discussions of adding the question that preceded the [DOJ] Letter; unsuccessful attempts by Commerce Department staff to shop around for a request by another agency regarding citizenship data; and [the Secretary’s] personal outreach to Attorney General Sessions, followed by the [DOJ] Letter; not to mention the conspicuous procedural irregularities that accompanied the decision to add the question.” 351 F. Supp. 3d, at 661 (citations omitted).

This evidence fails to make a strong showing of bad faith or improper behavior. Taken together, it proves at most that the Secretary was predisposed to add a citizenship question to the census and took steps to achieve that end before settling on the VRA rationale he included in his memorandum. Perhaps he had reasons for adding the citizenship question other than the VRA, but by the Court’s own telling, that does not amount to evidence of bad faith or improper behavior. *Ante*, at 24; see *Dept. of Commerce*, *supra*, at ____ (slip op., at 2).

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The Court thus errs in relying on materials outside the record to support its holding. And the Court does not claim that the evidence in the administrative record alone would prove that the March 2018 memorandum was a pretext. Given the presumption of regularity, the evidence discussed above falls far short of establishing that the VRA rationale did not factor at all into the Secretary's decision.

C

Even if it were appropriate for the Court to rely on evidence outside the administrative record, that evidence still fails to establish pretext. None of the evidence cited by the Court or the District Court comes close to showing that the Secretary's stated rationale—that adding a citizenship question to the 2020 census questionnaire would “provide . . . data that are not currently available” and “permit more effective enforcement of the [VRA],” App. to Pet. for Cert. 548a—did not factor *at all* into his decision.

Once again, the evidence cited by the Court suggests at most that the Secretary had “other unstated reasons” for reinstating the citizenship question. *Ante*, at 24. For example, the Court states that the Secretary's Director of Policy “initially attempted to elicit requests for citizenship data from the Department of Homeland Security and DOJ's Executive Office for Immigration Review.” *Ante*, at 27. But this hardly shows pretext. It simply suggests that the Director believed that citizenship information could be useful in tackling problems related to national security and illegal immigration—a view that would also explain why the Secretary might not have been “considering VRA enforcement” early on. *Ibid.*; see also American Community Survey, *Why We Ask: Place of Birth, Citizenship and Year of Entry* (2016) (explaining that inquiries about “place of birth, citizenship, and year of entry” provide statistics that are “essential for agencies and policy mak-

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ers setting and evaluating immigration policies and laws, understanding how different immigrant groups are assimilated, and monitoring against discrimination”), <https://www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/Citizenship.pdf> (as last visited June 25, 2019).

The Court emphasizes that the VRA rationale for the citizenship question originated in the Department of Commerce, and suggests that DOJ officials unthinkingly fell in line after the Attorney General was looped into the process. See *ante*, at 27. But the Court ignores that the letter was drafted by the then-Acting Assistant Attorney General for Civil Rights and reviewed by five other DOJ attorneys, including the Chief of the DOJ’s Voting Section. 351 F. Supp. 3d, at 554–556. Given the DOJ’s multilayer review process and its explanation for requesting citizenship data, the Court’s suggestion that the DOJ’s letter was inadequately vetted or improperly “influence[d]” by the Department of Commerce is entirely unsupported. *Ante*, at 27. In any event, none of this suggests, much less proves, that the Secretary harbored an unstated belief that adding the citizenship question would *not* help enforce the VRA, or that the VRA rationale otherwise did not factor at all into his decision. It simply suggests that a number of executive officials agreed that adding a citizenship question would support VRA enforcement.

The Court’s other evidence is even further afield. The Court thinks it telling that the DOJ’s letter included “a specific request that Commerce collect the [citizenship] data by means of reinstating a citizenship question on the census,” rather than a more open-ended “entreaty for better citizenship data.” *Ibid.* I do not understand how the specificity of the DOJ’s letter bears on whether the Secretary’s rationale was pretextual—particularly since the letter specifically explained why “census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and in [VRA] litiga-

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tion” than existing data. App. to Pet. for Cert. 568a; see *id.*, at 567a–568a. Unless the Court is now suggesting that agency correspondence must comply with the Court’s subjective, unsupported view of what “might” constitute a “typical request from another agency,” *ante*, at 27, the specificity of the DOJ’s letter is irrelevant. The Court also points to the DOJ’s decision not to meet with the Census Bureau “to discuss alternative ways to meet DOJ’s stated need for improved citizenship data.” *Ibid.* But the Court does not explain how the DOJ’s refusal bears on the *Secretary’s* rationale. Besides, it is easy to understand why DOJ officials would not be interested in meeting with the Census Bureau. The meeting would have been with career employees whose acknowledged purpose was to talk the DOJ out of its request. See 351 F. Supp. 3d, at 557. Having already considered the issue and explained the rationale behind the request, it seems at least plausible that the DOJ officials believed such a meeting would be unproductive.

In short, the evidence cited by the Court establishes, at most, that leadership at both the Department of Commerce and the DOJ believed it important—for a variety of reasons—to include a citizenship question on the census.

The Court also fails to give credit where it is due. The Secretary initiated this process inclined to favor what he called “Option B”—that is, simply “add[ing] a citizenship question to the decennial census.” App. to Pet. for Cert. 552a. But the Census Bureau favored “Option C”—relying solely on “administrative records” to supply the information needed by the DOJ. *Id.*, at 554a. The Secretary considered this view and found it a “potentially appealing solution,” *ibid.*, but concluded that it had shortcomings. Rather than revert to his original inclination, however, he “asked the Census Bureau to develop a fourth alternative, Option D, which would combine Options B and C.” *Id.*, at 555a. And he settled on that solution. Whatever one

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thinks of the Secretary's choice, his willingness to change his mind in light of the Bureau's feedback belies the idea that his rationale or decisionmaking process was a pretext.

The District Court's lengthy opinion pointed to other facts that, in its view, supported a finding of pretext. 351 F. Supp. 3d, at 567–572, 660–664 (discussing the statements, e-mails, acts, and omissions of numerous people involved in the process). I do not deny that a judge predisposed to distrust the Secretary or the administration could arrange those facts on a corkboard and—with a jar of pins and a spool of string—create an eye-catching conspiracy web. Cf. *id.*, at 662 (inferring “from the various ways in which [the Secretary] and his aides acted like people with something to hide that they *did* have something to hide”). But the Court does not rely on this evidence, and rightly so: It casts no doubt on whether the Secretary's stated rationale factored into his decision. The evidence suggests, at most, that the Secretary had *multiple* reasons for wanting to include the citizenship question on the census.

Finally, if there could be any doubt about this conclusion, the presumption of regularity resolves it. Where there are equally plausible views of the evidence, one of which involves attributing bad faith to an officer of a coordinate branch of Government, the presumption compels giving the benefit of the doubt to that officer.

III

The Court's erroneous decision in this case is bad enough, as it unjustifiably interferes with the 2020 census. But the implications of today's decision are broader. With today's decision, the Court has opened a Pandora's box of pretext-based challenges in administrative law.

Today's decision marks the first time the Court has ever invalidated an agency action as “pretextual.” Having

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taken that step, one thing is certain: This will not be the last time it is asked to do so. Virtually every significant agency action is vulnerable to the kinds of allegations the Court credits today. These decisions regularly involve coordination with numerous stakeholders and agencies, involvement at the highest levels of the Executive Branch, opposition from reluctant agency staff, and—perhaps most importantly—persons who stand to gain from the action’s demise. Opponents of future executive actions can be expected to make full use of the Court’s new approach.

The 2015 “Open Internet Order” provides a case in point. In 2015, the Federal Communications Commission (FCC) adopted a controversial order reclassifying broadband Internet access service as a “telecommunications service” subject to regulation under Title II of the Communications Act. See *In re Protecting and Promoting the Open Internet*, 30 FCC Rcd. 5601, 5618 (2015). According to a dissenting Commissioner, the FCC “flip-flopp[ed]” on its previous policy not because of a change in facts or legal understanding, but based on “one reason and one reason alone. President Obama told us to do so.” *Id.*, at 5921 (statement of Comm’r Pai). His view was supported by a 2016 congressional Report in which Republican Senate staff concluded that “the FCC bent to the political pressure of the White House” and “failed to live up to standards of transparency.” Majority Staff Report, Senate Committee on Homeland Security and Governmental Affairs, *Regulating the Internet: How the White House Bowled Over FCC Independence*, 114th Cong., 1st Sess., 29 (Comm. Print 2016). The Report cited evidence strikingly similar to that relied upon by the Court here—including agency-initiated “meetings with certain outside groups to support” the new result, *id.*, at 3; “apparen[t] . . . concern from the career staff that there was insufficient notice to the public and affected stakeholders,” *id.*, at 4; and “regula[r] communicatio[n]” between the FCC Chair-

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man and “presidential advisors,” *id.*, at 25.

Under the malleable standard applied by the Court today, a serious case could be made that the Open Internet Order should have been invalidated as “pretextual,” regardless of whether any “particular step in the process stands out as inappropriate or defective.” *Ante*, at 26. It is enough, according to the Court, that a judge believes that the ultimate rationale “seems to have been contrived” when the evidence is considered “as a whole.” *Ante*, at 26, 28.

Now that the Court has opened up this avenue of attack, opponents of executive actions have strong incentives to craft narratives that would derail them. Moreover, even if the effort to invalidate the action is ultimately unsuccessful, the Court’s decision enables partisans to use the courts to harangue executive officers through depositions, discovery, delay, and distraction. The Court’s decision could even implicate separation-of-powers concerns insofar as it enables judicial interference with the enforcement of the laws.

In short, today’s decision is a departure from traditional principles of administrative law. Hopefully it comes to be understood as an aberration—a ticket good for this day and this train only.

* * *

Because the Secretary’s decision to reinstate a citizenship question on the 2020 census was legally sound and a reasoned exercise of his broad discretion, I respectfully dissent from Part V of the opinion of the Court.

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SUPREME COURT OF THE UNITED STATES

No. 18–966

DEPARTMENT OF COMMERCE, ET AL., PETITIONERS
v. NEW YORK, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 27, 2019]

JUSTICE BREYER, with whom JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, concurring in part and dissenting in part.

I join Parts I, II, IV–A, and V of the Court’s opinion (except as otherwise indicated in this opinion). I dissent, however, from the conclusion the Court reaches in Part IV–B. To be more specific, I agree with the Court that the Secretary of Commerce provided a pretextual reason for placing a question about citizenship on the short-form census questionnaire and that a remand to the agency is appropriate on that ground. But I write separately because I also believe that the Secretary’s decision to add the citizenship question was arbitrary and capricious and therefore violated the Administrative Procedure Act (APA).

There is no serious dispute that adding a citizenship question would diminish the accuracy of the enumeration of the population—the sole constitutional function of the census and a task of great practical importance. The record demonstrates that the question would likely cause a disproportionate number of noncitizens and Hispanics to go uncounted in the upcoming census. That, in turn, would create a risk that some States would wrongfully lose a congressional representative and funding for a host of federal programs. And, the Secretary was told, the

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adverse consequences would fall most heavily on minority communities. The Secretary decided to ask the question anyway, citing a need for more accurate citizenship data. But the evidence indicated that asking the question would produce citizenship data that is *less* accurate, not more. And the reason the Secretary gave for needing better citizenship data in the first place—to help enforce the Voting Rights Act of 1965—was not convincing.

In short, the Secretary’s decision to add a citizenship question created a severe risk of harmful consequences, yet he did not adequately consider whether the question was necessary or whether it was an appropriate means of achieving his stated goal. The Secretary thus failed to “articulate a satisfactory explanation” for his decision, “failed to consider . . . important aspect[s] of the problem,” and “offered an explanation for [his] decision that runs counter to the evidence,” all in violation of the APA. *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983). These failures, in my view, risked undermining public confidence in the integrity of our democratic system itself. I would therefore hold that the Secretary’s decision—whether pretextual or not—was arbitrary, capricious, and an abuse of discretion.

I
A

Three sets of laws determine the legal outcome of this case. First, the Constitution requires an “actual Enumeration” of the “whole number of persons in each State” every 10 years. Art. I, §2, cl. 3; Amdt. 14, §2. It does so in order to “provide a basis for apportioning representatives among the states in the Congress.” *Baldrige v. Shapiro*, 455 U. S. 345, 353 (1982); see also Art. I, §2, cl. 3. The inclusion of this provision in the Constitution itself underscores the importance of conducting an accurate census.

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See *Utah v. Evans*, 536 U. S. 452, 478 (2002) (recognizing “a strong constitutional interest in [the] accuracy” of the enumeration).

Second, the Census Act contains two directives that constrain the Secretary’s ability to add questions to the census. Section 195 says that the Secretary “shall, if he considers it feasible,” authorize the use of statistical “sampling” in collecting demographic information. That means the Secretary must, if feasible, obtain demographic information through a survey sent to a *sample* of households, rather than through the short-form census questionnaire to which *every* household must respond. The other relevant provision, §6(c), says that “[t]o the maximum extent possible and consistent with the kind, timeliness, quality and scope of the statistics required, the Secretary shall acquire and use information available” from administrative sources “instead of conducting direct inquiries.” (Emphasis added.) These provisions, taken together, reflect a congressional preference for keeping the short form short, so that it does not burden recipients and thereby discourage them from responding.

Third, the APA prohibits administrative agencies from making choices that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U. S. C. §706(2)(A). We have said that courts, in applying this provision, must decide “whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 416 (1971). The agency must have “examine[d] the relevant data and articulate[d] a satisfactory explanation for its action[,] including a ‘rational connection between the facts found and the choice made.’” *State Farm*, 463 U. S., at 43. An agency ordinarily fails to meet this standard if it has “failed to consider an important aspect of the problem, offered an explanation for its decision that runs

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counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Ibid.*

Courts do not apply these principles of administrative law mechanically. Rather, they take into account, for example, the nature and importance of the particular decision, the relevance and importance of missing information, and the inadequacies of a particular explanation in light of their importance. The Federal Government makes tens of thousands, perhaps millions, of administrative decisions each year. And courts would be wrong to expect or insist upon administrative perfection. But here, the Enumeration Clause, the Census Act, and the nature of the risks created by the agency’s decision all make clear that the decision before us is highly important to the proper functioning of our democratic system. It is therefore particularly important that courts here not overlook an agency’s (1) failure to consider serious risks of harm, (2) failure to explain its refusal to minimize those risks, or (3) failure to link its conclusion to available evidence. My view, like that of the District Court, is that the agency here failed on all three counts.

B

A brief history of how the census has worked over the years will help the reader understand some of the shortcomings of the Secretary’s decisionmaking process. The Framers wrote into the Constitution a mandate to conduct an “actual Enumeration” of the population every 10 years. Art. I, §2, cl. 3. They did so for good reason. The purpose of the census is to “provide a basis for apportioning representatives among the states in the Congress,” *Baldrige*, 455 U. S., at 353, ensuring that “comparative state political power in the House . . . reflect[s] comparative population,” *Evans*, 536 U. S., at 477. The Framers required an actual count of every resident to “limit political chicanery”

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and to prevent the census count from being “skewed for political . . . purposes.” *Id.*, at 500 (THOMAS, J., concurring in part and dissenting in part).

Throughout most of the Nation’s history, the Federal Government used enumerators, often trained census takers, to conduct the census by going door to door. The enumerators would ask a host of questions, including place of birth, citizenship, and others. But after the 1950 census, the Bureau began to change its approach. Post-census studies revealed that the census had failed to count more than 5 million people and that the undercount disproportionately affected members of minority groups. See M. Anderson, *The American Census: A Social History* 201–202 (1988); Brief for Historians and Social Scientists as *Amici Curiae* 15. Studies showed that statistical sampling would produce higher quality data. Anderson, *American Census*, at 201.

Beginning with the 1960 census, the Bureau consequently divided its questioning into a short form and a long form. The short form contained a list of questions—a short list—that the census would ask of every household. That list included basic demographic questions like sex, age, race, and marital status. The short form did not include, and has never included, a question about citizenship. See *ibid.*; Dept. of Commerce, U. S. Census Bureau, *Measuring America: The Decennial Censuses From 1790 to 2000*, p. 128 (2002). By way of contrast, the long form set forth a host of questions that would be asked of only a sample of households. In 1960, the long form was sent to one in every four households; in subsequent years, it was sent to approximately one in every six. See 351 F. Supp. 3d 502, 520 (SDNY 2019). And it was more recently replaced by the American Community Survey (ACS), which is sent to approximately 1 in 38 households each year. The long form (and now the ACS) has often included a question about citizenship.

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In 1970, the Census Bureau made another important change to the census. It significantly reduced its reliance upon in-person enumerators. See Anderson, *supra*, at 206. Instead, it sent nearly all households a questionnaire by mail. Most households received the short form, and a small sample received the long form. Instructions on the form told each household to fill out the questionnaire and return it to the Census Bureau by mail. Enumerators would follow up with households that did not return the questionnaire.

To maximize accuracy and minimize cost, the Bureau tried to bring about the highest possible “self-response” rate, *i.e.*, to encourage as many households as possible to respond by mail. For that reason, it tried to keep the short form as short as possible. And it consistently opposed placing a citizenship question on that form. It feared that adding a question about citizenship would “inevitably jeopardize the overall accuracy of the population count,” partly because of added response burden but also because, as it explained, noncitizens faced with a citizenship question would be less likely to respond due to fears of “the information being used against them.” *Federation for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (DC 1980).

Likely for similar reasons, Congress amended the Census Act in 1976, enacting the two statutory provisions to which I previously referred. These two provisions, 13 U. S. C. §6(c) and §195, together encourage the Secretary not to ask demographic questions on the short form if the information can be obtained either through the long form or through administrative records.

II

With this statutory and historical background, we can more easily consider the agency decision directly under review. That decision “reinstate[s] [a] citizenship question

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on the 2020 decennial census.” App. to Pet. for Cert. 549a–550a (Memorandum from Wilbur L. Ross, Jr., Secretary of Commerce, to Karen Dunn Kelley, Under Secretary for Economic Affairs (Mar. 26, 2018)). The agency’s decision memorandum provided one and only one reason for making that decision—namely, that the question was “necessary to provide complete and accurate data in response to” a request from the Department of Justice (DOJ). *Id.*, at 562a. The DOJ had requested the citizenship question for “use [in] . . . determining violations of Section 2 of the Voting Rights Act.” *Id.*, at 548a.

The decision memorandum adds that the agency had not been able to “determine definitively how inclusion of a citizenship question on the decennial census will impact responsiveness. However, even if there is some impact on responses, the value of more complete and accurate data derived from surveying the entire population outweighs such concerns.” *Id.*, at 562a. The Secretary’s decision thus rests upon a weighing of potentially adverse consequences (diminished responses and a less accurate census count) against potentially offsetting advantages (better citizenship data). In my view, however, the Secretary did not make reasonable decisions about these potential costs and benefits in light of the administrative record.

A

Consider first the Secretary’s conclusion that he was “not able to determine definitively how inclusion of a citizenship question on the decennial census will impact responsiveness.” *Ibid.* Insofar as this statement implies that adding the citizenship question is unlikely to affect “responsiveness” very much (or perhaps at all), the evidence in the record indicates the contrary.

1

The administrative record includes repeated Census

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Bureau statements that adding the question would produce a less accurate count because noncitizens and Hispanics would be less likely to respond to the questionnaire. See App. 105, 109–112, 158. The Census Bureau’s chief scientist said specifically that adding the question would have “an adverse impact on self-response and, as a result, on the accuracy and quality of the 2020 Census.” *Id.*, at 109. And the chief scientist backed this statement up by pointing to “[t]hree distinct analyses.” *Ibid.*

The first analysis compared nonresponse rates for the short-form census questionnaire (which did not include a citizenship question) to nonresponse rates for the ACS (which did). Obviously, more people fail to respond to the ACS than to the short form. Yet taking into account the fact that the nonresponse rate will be greater for the ACS than for the short form, the Bureau found that the difference between the two is yet greater for noncitizen households than for citizen households (by 5.1%, according to the Bureau). *Id.*, at 111. This led the Bureau to say that it was a “reasonable inference” that the presence of the citizenship question accounted for the difference. *Ibid.*

The Bureau conducted two additional studies, both analyzing data from the ACS. One study looked at response rates for particular questions on the ACS. It showed that the “no answer” rate for the citizenship question was “much greater than the comparable rates” for other census questions (for example, questions about age, sex, race, and ethnicity). *Id.*, at 110. And it showed that the “no answer” rate for the citizenship question was significantly higher among Hispanics. *Id.*, at 109–110. The last study examined “break-off” rates, *i.e.*, the rate at which respondents stopped answering the questionnaire upon reaching a particular question. It found that Hispanics were significantly more likely than were non-Hispanics to stop answering at the point they reached the citizenship question. *Id.*, at 112. Together, these two

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studies provided additional support for the Census Bureau's determination that the citizenship question is likely to mean disproportionately fewer responses from noncitizens and Hispanics than from others. *Ibid.*

Putting numbers upon these study results, the Census Bureau estimated that adding the question to the short form would lead to 630,000 additional nonresponding households. *Id.*, at 114. That is to say, the question would cause households covering more than 1 million additional people to decline to respond to the census. When the Bureau does not receive a response, it follows up with in-person interviews in an effort to obtain the missing information. The Bureau often interviews what it calls "proxies," such as family members and neighbors. But this followup process is subject to error; and the error rate is much greater than the error rate for self-responses. *Ibid.* The Bureau thus explained that lower self-response rates "degrade data quality" by increasing the risk of error and leading to hundreds of thousands of fewer correct enumerations. *Id.*, at 113–115. The Bureau added that its estimate was "conservative." *Id.*, at 115. It expected "differences between citizen and noncitizen response rates and data quality" to be "amplified" in the 2020 census "compared to historical levels." *Ibid.* Thus, it explained, "the decrease in self-response for citizen households in 2020 could be much greater than the 5.1 percentage points [it] observed during the 2010 Census." *Id.*, at 115–116. Its conclusion in light of this evidence was clear. Adding the citizenship question to the short form was "very likely to reduce the self-response rate" and thereby "har[m] the quality of the census count." *Id.*, at 105, 158.

The Census Bureau's analysis received support from other submissions. Several States pointed out that noncitizens and racial minorities had been undercounted in every prior census. Administrative Record 1091–1092. They also drew attention to recent surveys indicating that

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noncitizens had significant concerns about the confidentiality of census responses. *Ibid.* Former directors of the Census Bureau wrote that adding the citizenship question so late in the process “would put the accuracy of the enumeration and success of the census in all communities at grave risk.” *Id.*, at 1057. The American Sociological Association and Census Scientific Advisory Committee echoed these warnings. See *id.*, at 787, 794–795. On the other hand, the Secretary received submissions by other groups that supported adding the question. See, e.g., *id.*, at 1178–1179, 1206, 1276. But as far as I can tell (or as far as the arguments made here and in the District Court inform the matter), none of these latter submissions significantly added to, or detracted from, the Census Bureau’s submissions in respect to the question’s likely impact on response rates.

2

The Secretary’s decision memorandum reached a quite different conclusion from the Census Bureau. The memorandum conceded that “a lower response rate would lead to . . . less accurate responses.” App. to Pet. for Cert. 556a. But it concluded that neither the Census Bureau nor any stakeholders had provided “definitive, empirical support” for the proposition that the citizenship question would reduce response rates. *Id.*, at 554a. The memorandum relied for that conclusion upon a number of considerations, but each is contradicted by the record.

The memorandum first pointed to perceived shortcomings in the Census Bureau’s analysis of nonresponse rates. It noted that response rates are generally lower overall for the long form and ACS than they are for the short form. *Id.*, at 552a–554a. But the Bureau explained that its analysis accounted for this consideration, see App. 111, and no one has given us reason to think the contrary. The Secretary also noted that the Bureau “was not able to

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isolate what percentage of [the] decline was caused by the inclusion of a citizenship question rather than some other aspect of the long form survey.” App. to Pet. for Cert. 554a. But the Bureau said attributing the decline to the citizenship question was a “reasonable inference,” App. 111, and again, nothing in the record contradicted the Bureau’s judgment. And later analyses have borne out the Bureau’s judgment that the citizenship question contributes to the decline in self-response. See, e.g., *id.*, at 1002–1006, 1008 (August 2018 Census Bureau study).

The memorandum next cast doubt on the Census Bureau’s analysis of the rate at which people responded to particular questions on the ACS. It noted that the “no answer” rate to the citizenship question was comparable to the “no answer” rate for other questions on the ACS, including educational attainment, income, and property insurance. App. to Pet. for Cert. 553a. But as discussed above, the Bureau found it significant that the “no answer” rate for the citizenship question was “much greater” than the “no answer” rate for the other questions that appear on the *short form*—that is, the form on which the citizenship question would appear. App. 110, 124. The Secretary offered no reason why the demographic variables to which he pointed provided a better point of comparison.

Finally, the memorandum relied on information provided by two outside stakeholders. The first was a study conducted by the private survey company Nielsen, in which questions about place of birth and time of arrival had not led to any appreciable decrease in the response rate. App. to Pet. for Cert. 552a. But Nielsen, which in fact urged the Secretary *not* to add the question, stated that its respondents (unlike census respondents) were *paid* to respond, and it is consequently not surprising that they did so. Administrative Record 1276. The memorandum also cited statements by former Census Bureau

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officials suggesting that empirical evidence about the question's potential impact on response rates was "limited." App. to Pet. for Cert. 558a–559a; see also *id.*, at 552a. But there was no reason to expect the former officials to provide more extensive empirical evidence as to a citizenship question when they were not privy to the internal Bureau analyses on this question. And, like Nielsen, the former officials strongly urged the Secretary *not* to ask the question. See Administrative Record 1057.

The upshot is that the Secretary received evidence of a likely drop in census accuracy by a number somewhere in the hundreds of thousands, and he received nothing significant to the contrary. The Secretary pointed out that the Census Bureau's information was uncertain, *i.e.*, not "definitive." But that is not a satisfactory answer. Few public-policy-related statistical studies of risks (say, of many health or safety matters) are definitive. As the Court explained in *State Farm*, "[i]t is not infrequent that the available data do not settle a regulatory issue, and the agency must then exercise its judgment in moving from the facts and probabilities on the record to a policy conclusion." 463 U. S., at 52. But an agency confronted with this situation cannot "merely recite the terms 'substantial uncertainty' as a justification for its actions." *Ibid.* Instead, it "must explain the evidence which is available" and typically must offer a reasoned explanation for taking action without "engaging in a search for further evidence." *Ibid.*

The Secretary did not do so here. He did not explain why he made the decision to add the question without following the Bureau's ordinary practice of extensively testing proposed changes to the census questionnaire. See App. 624–630, 641 (discussing testing process); see also, *e.g.*, Brief for Former Census Bureau Directors as *Amici Curiae* 17–21 (discussing prior examples of questions that the Bureau decided not to add after many years of pretest-

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ing). Without that testing, the Secretary could not treat the Bureau's expert opinions and its experience with the relevant surveys as worthless merely because its conclusions were not precise. The Bureau's opinions were properly considered as evidence of likelihoods, probabilities, or risks.

As noted above, the consequences of mistakes in the census count, of even a few hundred thousand, are grave. Differences of a few thousand people, as between one State and another, can mean a loss or gain of a congressional seat—a matter of great consequence to a State. See 351 F. Supp. 3d, at 594. And similar small differences can make a large difference to the allocation of federal funds among competing state programs. *Id.*, at 596–597; see also *Baldrige*, 455 U. S., at 353–354, n. 9. If near-absolute certainty is what the Secretary meant by “definitive,” that insistence would itself be arbitrary in light of the constitutional and statutory consequences at stake. And if the Secretary instead meant that the evidence does not indicate a serious risk of a less accurate count, that conclusion does not find support in the record.

B

Now consider the Secretary's conclusion that, even if adding a citizenship question diminishes the accuracy of the enumeration, “the value of more complete and accurate data derived from surveying the entire population *outweighs* . . . concerns” about diminished accuracy. App. to Pet. for Cert. 562a (emphasis added). That conclusion was also arbitrary. The administrative record indicates that adding a citizenship question to the short form would produce less “complete and accurate data,” not more.

1

The Census Bureau informed the Secretary that, for about 90% of the population, accurate citizenship data is

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available from administrative records maintained by the Social Security Administration and Internal Revenue Service. App. 146. The Bureau further informed the Secretary that it had “high confidence” that it could develop a statistical model that would accurately impute citizenship status for the remaining 10% of the population. *Ibid.* The Bureau stated that these methods alone—using existing administrative records for 90% of the population and statistical modeling for the remaining 10%—would yield more accurate citizenship data than also asking a citizenship question. *Id.*, at 159. How could that be so? The answer is somewhat technical but readily understandable.

First, consider the 90% of the population (about 295 million people) as to whom administrative records are available. The Government agrees that using these administrative records would provide highly reliable information about citizenship, because the records “require proof of citizenship.” *Id.*, at 117. By contrast, if responses to a citizenship question were used for this group, the Census Bureau predicted without contradiction that about one-third of the noncitizens in this group who respond would answer the question untruthfully, claiming to be citizens when they are not. *Id.*, at 147. Those incorrect answers—about 9.5 million in total—would conflict with the administrative records on file for those noncitizens. And what would the Census Bureau do with the conflicting data? If it accepts the answer to the citizenship question as determinative, it will have less accurate data. If it accepts the citizenship data from administrative records as determinative, asking the question will have served no purpose.

Thus, as to 295 million people—the overwhelming majority of the population—asking the citizenship question would at best add nothing at all. I say “at best” because, for one thing, the Census Bureau informed the Secretary that asking the question would produce 1 million more

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people who could not be linked to administrative records, which in turn would require the Census Bureau to resort to a less accurate source of citizenship data for these people. See *id.*, at 147–149; see also 351 F. Supp. 3d, at 538–539. For another, the policy of the Census Bureau has always been to use census responses rather than administrative records in cases where the two conflict. App. 147. In this case, that practice would mean accepting 9.5 million inaccurate responses even though accurate administrative records are available. See *ibid.* The Census Bureau could perhaps change that practice, but the Secretary’s decision memorandum said nothing about the matter. It did not address the problem.

Second, consider the remaining 10% of the population (about 35 million people) for whom the Government lacks administrative records. The question here is which approach would yield the most “complete and accurate” citizenship data for this group—adding a citizenship question or using statistical modeling alone? To answer this question, we must further divide this group into two categories—those who would respond to the citizenship question if it were asked and those who would not.

Start with the category of about 22 million people who would answer a citizenship question if it were asked. Would their answers regarding citizenship be more accurate than citizenship data produced by statistical modeling? The Census Bureau said no. That is because many of the noncitizens in this group would answer the question falsely, resulting in an estimated 500,000 inaccurate answers. See *id.*, at 148. And those who answer the question falsely would be commingled, perhaps randomly, with those who answer it correctly, thereby casting doubt on the answers of all 22 million, with no way of knowing which answers are correct and which are false. By contrast, the Bureau believed that it could develop a statistical model that would produce more accurate citizenship

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data than these census responses. The Bureau therefore informed the Secretary that it could do better. As the Bureau's chief scientist explained, although "[o]ne might think" that asking the question "could help fill the . . . gaps" in the administrative records, the data did not support that assumption. *Id.*, at 157. Instead, he explained, responses to the citizenship question "may not be reliable," which "calls into question their ability to improve upon" the Bureau's statistical modeling process. *Ibid.*

Next, turn to the more than 13 million remaining people who would not answer the citizenship question even if it were asked. As to this category, the Census Bureau would *still need to use statistical modeling* to obtain citizenship data, because there would be no census response to use instead. Hence, asking the citizenship question would add nothing at all as to this group. To the contrary, as the Government concedes, asking the question would *reduce* the accuracy of the citizenship data for this group, because the relatively inaccurate answers to the citizenship question would diminish the overall accuracy of the Census Bureau's statistical model. See Brief for Petitioners 34 (conceding that the Census Bureau model will be "highe[r] quality" without the question than with it); 351 F. Supp. 3d, at 640 (explaining that asking the question would "corrup[t] . . . the data generated by extrapolating from self-responses through imputation").

In sum, in respect to the 295 million persons for whom administrative records exist, asking the question on the short form would, at best, be no improvement over using administrative records alone. And in respect to the remaining 35 million people for whom no administrative records exist, asking the question would be no better, and in some respects would be worse, than using statistical modeling. The Census Bureau therefore told the Secretary that asking the citizenship question, even in addition to using administrative records, "would result in poorer

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quality citizenship data” than using administrative records alone, and would “still have all the negative cost and quality implications” of asking the citizenship question. App. 159. I could find no evidence contradicting that prediction.

2

If my description of the record is correct, it raises a serious legal problem. How can an agency support the decision to add a question to the short form, thereby risking a significant undercount of the population, on the ground that it will *improve* the accuracy of citizenship data, when in fact the evidence indicates that adding the question will *harm* the accuracy of citizenship data? Of course it cannot. But, as I have just said, I have not been able to find evidence to suggest that adding the question would result in more accurate citizenship data. Neither could the District Court. After reviewing the record in detail, the District Court found that “all of the relevant evidence before Secretary Ross—*all* of it—demonstrated that using administrative records . . . would actually produce more accurate [citizenship] data than adding a citizenship question to the census.” 351 F. Supp. 3d, at 650.

What consideration did the Secretary give to this problem? He stated simply that “[a]sking the citizenship question of 100 percent of the population gives each respondent the opportunity to provide an answer,” which “may eliminate the need for the Census Bureau to have to impute an answer for millions of people.” App. to Pet. for Cert. 556a. He therefore must have assumed, *sub silentio*, exactly what the Census Bureau experts urged him not to assume—that answers to the citizenship question would be more accurate than statistical modeling. And he ignored the undisputed respects in which asking the question would make the existing data less accurate. Other

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than his assumption, the Secretary said nothing, absolutely nothing, to suggest a reasoned basis for disagreeing with the Bureau's expert statistical judgment.

The Government now maintains that the Secretary reasonably discounted the Census Bureau's recommendation because it was based on an untested prediction about the accuracy of its model. But this is not a case in which the Secretary was presented with a policy choice between two reasonable but uncertain options. For one thing, the record is much less uncertain than the Government acknowledges. Although it is true that the Census Bureau at one point told the Secretary that it could not "quantify the relative magnitude of the errors across the alternatives at this time," App. 148, it unequivocally stated that asking the question "*would result in poorer quality citizenship data*" than omitting it, *id.*, at 159 (emphasis added). Thus, even if the Bureau could not "quantify" the relative accuracy of the options, it could and did conclude that one option was likely more accurate than the other. Even in the face of some uncertainty, where all available evidence indicates that one option is better than the other, it is unreasonable to choose the worse option without explanation.

For another thing, to the extent the record reflects some uncertainty regarding the accuracy of the Census Bureau's statistical model, that is because the model needed to be "developed and tested" before it could be employed. *Id.*, at 146. But the Secretary made his decision before any such development or testing could be completed. Having decided to make an immediate decision rather than wait for testing, the Secretary could not dismiss the Bureau's prediction about the inadvisability of that decision on the ground that the prediction reflected likelihoods, probabilities, and risks rather than certainties.

Finally, recall that the Census Act requires the Secretary to use administrative records rather than direct

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inquiries to “the maximum extent possible.” 13 U. S. C. §6(c). That statutory requirement highlights what should be obvious: Whether adding a citizenship question to the short form would produce more accurate citizenship data is a relevant factor—indeed, a critically important factor—that the Secretary was required to consider. Here, the Secretary did not adequately explain why he rejected the evidence that adding the question would yield less accurate data. He did not even acknowledge that the Census Act obliged him to use administrative records rather than asking a question to the extent possible. And he did not explain how obtaining citizenship data that is no better or worse than the data otherwise available could justify jeopardizing the accuracy of the census count.

In these respects, the Secretary failed to consider “important aspect[s] of the problem” and “offered an explanation for [his] decision that runs counter to the evidence before the agency.” *State Farm*, 463 U. S., at 43.

C

The Secretary’s failure to consider this evidence—that adding the question would harm the census count in the interest of obtaining less accurate citizenship data—provides a sufficient basis for setting the decision aside. But there is more. The reason that the Secretary provided for needing more accurate citizenship information in the first place—to help the DOJ enforce the Voting Rights Act—is unconvincing.

The Secretary stated that adding the citizenship question was “necessary to provide complete and accurate data in response to the DOJ request.” App. to Pet. for Cert. 562a. The DOJ’s request in turn asserted that the citizenship data currently available from the ACS was not “ideal” for enforcing the Voting Rights Act. *Id.*, at 567a. One of the DOJ’s principal complaints was that ACS data is reported for *groups* of census blocks rather than for each

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census block itself. The DOJ letter stated that adding a citizenship question could provide it with individual block-by-block data which, the DOJ maintained, would allow it to better enforce the Voting Rights Act's protections for minority voters. *Id.*, at 568a.

This rationale is difficult to accept. One obvious problem is that the DOJ provided no basis to believe that more precise data would in fact help with Voting Rights Act enforcement. Congress enacted the Voting Rights Act in 1965—15 years after the census last asked every household about citizenship. Actions to enforce the Act have therefore *always* used citizenship data derived from sampling. Yet I am aware of no one—not in the Department of Commerce proceeding, in the District Court, or in this Court—who has provided a single example in which enforcement of the Act has suffered due to lack of more precise citizenship data. Organizations with expertise in this area tell us that asking the citizenship question will not help enforce the Act. See, *e.g.*, Brief for NAACP Legal Defense & Educational Fund, Inc., as *Amicus Curiae* 30–36. Rather, the question will, by depressing the count of minority groups, hurt those whom the Act seeks to help. See, *e.g.*, Brief for Leadership Conference on Civil and Human Rights et al. as *Amici Curiae* 21–29.

Another problem with the Secretary's rationale is that, even assuming the DOJ needed more detailed citizenship data, there were better ways of obtaining the needed data. The Census Bureau offered to provide the DOJ with data using administrative records, which, as I have pointed out, are likely just as accurate, if not more accurate, than responses to a citizenship question. The Census Bureau offered to provide this data at the census block level, which would resolve each of the DOJ's complaints about the existing ACS data. See Administrative Record 3289. But the Secretary rejected this alternative without explaining why it would not fully respond to the DOJ's re-

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quest. That failure was particularly problematic given that the Census Act requires the Secretary to use other methods of obtaining demographic information if at all possible. See §§6(c), 195.

Normally, the Secretary would be entitled to place considerable weight upon the DOJ's expertise in matters involving the Voting Rights Act, but there are strong reasons for discounting that expertise here. The administrative record shows that DOJ's request to add a citizenship question originated not with the DOJ, but with the Secretary himself. See Administrative Record 3710. The Voting Rights Act rationale was in fact first proposed by Commerce Department officials. See *ibid.* DOJ officials, for their part, were initially uninterested in obtaining more detailed citizenship data, App. 414, and they agreed to request the data only after the Secretary personally spoke to the Attorney General about the matter, see Administrative Record 2651. And when the acting director of the Census Bureau proposed alternative means of obtaining better citizenship data, DOJ officials declined to meet to discuss the proposal. See *id.*, at 3460.

Taken as a whole, the evidence in the administrative record indicates that the Voting Rights Act rationale offered by the Secretary was not just unconvincing, but pretextual. And, as the Court concludes, further evidence outside the administrative record but present in the trial record supports the finding of pretext. See Part V, *ante*. Among other things, that evidence reveals that the DOJ official who wrote the letter agreed that adding the question "is not necessary for DOJ's VRA enforcement efforts." App. 1113. And that official further acknowledged that he did not "know whether or not [citizenship] data produced from responses to the citizenship question . . . will, in fact, be more precise than the [citizenship] data on which the DOJ is currently relying for purposes of VRA enforcement." *Id.*, at 1102.

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The Court explains, and I agree, that a court normally should not “reject an agency’s stated reasons for acting simply because the agency might also have had other unstated reasons.” *Ante*, at 24. But in this case, “the evidence tells a story that does not match the explanation the Secretary gave for his decision.” *Ante*, at 27. This evidence strongly suggests that the Secretary’s stated rationale was pretextual. I consequently join Part V of the Court’s opinion (except insofar as it concludes that the Secretary’s decision was reasonable apart from the question of pretext). And I agree that the pretextual nature of the Secretary’s decision provides a sufficient basis to affirm the District Court’s decision to send the matter back to the agency.

* * *

I agree with the Court that the APA gives agencies broad leeway to carry out their legislatively delegated duties. And I recognize that Congress has specifically delegated to the Secretary of Commerce the authority to conduct a census of the population “in such form and content as he may determine.” §141(a). But although this delegation is broad, it is not without limits. The APA supplies one such limit. In an effort to ensure rational decisionmaking, the APA prohibits an agency from making decisions that are “arbitrary, capricious, [or] an abuse of discretion.” 5 U. S. C. §706(2)(A).

This provision, of course, does not insist that decisionmakers think through every minor aspect of every problem that they face. But here, the Secretary’s decision was a major one, potentially affecting the proper workings of our democratic government and the proper allocation of hundreds of billions of dollars in federal funds. Cf. *ante*, at 10. Yet the decision was ill considered in a number of critically important respects. The Secretary did not give adequate consideration to issues that should have been

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central to his judgment, such as the high likelihood of an undercount, the low likelihood that a question would yield more accurate citizenship data, and the apparent lack of any need for more accurate citizenship data to begin with. The Secretary's failures in considering those critical issues make his decision unreasonable. They are the kinds of failures for which, in my view, the APA's arbitrary and capricious provision was written.

As I have said, I agree with the Court's conclusion as to pretext and with the decision to send the matter back to the agency. I do not agree, however, with several of the Court's conclusions concerning application of the arbitrary and capricious standard. In my view, the Secretary's decision—whether pretextual or not—was arbitrary, capricious, and an abuse of his lawfully delegated discretion. I consequently concur in the Court's judgment to the extent that it affirms the judgment of the District Court.

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SUPREME COURT OF THE UNITED STATES

No. 18–966

DEPARTMENT OF COMMERCE, ET AL., PETITIONERS
v. NEW YORK, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 27, 2019]

JUSTICE ALITO, concurring in part and dissenting in part.

It is a sign of our time that the inclusion of a question about citizenship on the census has become a subject of bitter public controversy and has led to today’s regrettable decision. While the decision to place such a question on the 2020 census questionnaire is attacked as racist, there is a broad international consensus that inquiring about citizenship on a census is not just appropriate but advisable. No one disputes that it is important to know how many inhabitants of this country are citizens.¹ And the most direct way to gather this information is to ask for it in a census. The United Nations recommends that a census inquire about citizenship,² and many countries

¹As a 2016 Census Bureau guidance document explained, obtaining citizenship statistics is “essential for agencies and policy makers setting and evaluating immigration policies and laws, understanding how different immigrant groups are assimilated, and monitoring against discrimination.” Dept. of Commerce, Census Bureau, American Community Survey, Why We Ask: Place of Birth, Citizenship and Year of Entry, www2.census.gov/programs-surveys/acs/about/qbyqfact/2016/Citizenship.pdf (all Internet materials as last visited June 25, 2019).

²United Nations, Dept. of Economic and Social Affairs Statistics Div., Principles and Recommendations for Population and Housing Censuses 163, 191 (rev. 3, 2017).

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do so.³

Asking about citizenship on the census also has a rich history in our country. Every census, from the very first one in 1790 to the most recent in 2010, has sought not just a count of the number of inhabitants but also varying amounts of additional demographic information. In 1800, Thomas Jefferson, as president of the American Philosophical Society, signed a letter to Congress asking for the inclusion on the census of questions regarding “the respective numbers of native citizens, citizens of foreign birth, and of aliens” “for the purpose . . . of more exactly distinguishing the increase of population by birth and immigration.” C. Wright, *History and Growth of the United States Census* (prepared for the Senate Committee on the Census), S. Doc. No. 194, 56th Cong., 1st Sess., 19 (1900). In 1820, John Quincy Adams, as Secretary of State, was responsible for conducting the census, and consistent with the 1820 Census Act, he instructed the marshals who were charged with gathering the information to ask about citizenship.⁴ In 1830, when Martin Van Buren was Secretary of State, a question about citizenship was again included.⁵ With the exception of the census of 1840, at least some portion of the population was asked a question about citizenship as part of the census through 2000, after which the question was moved to the American Community Survey, which is sent to only a small fraction of the population. All these census inquiries

³See, e.g., Brief for Petitioners 29 (“[O]ther major democracies inquire about citizenship on their census, including Australia, Canada, France, Germany, Indonesia, Ireland, Mexico, Spain, and the United Kingdom, to name a few” (quoting App. to Pet. for Cert. 561a)).

⁴See Act of Mar. 14, 1820, ch. 24, 3 Stat. 550; Wright, *History and Growth of the United States Census*, S. Doc. No. 194, 56th Cong., 1st Sess., 133–137.

⁵See Dept. of Commerce, Census Bureau, *History: 1830 Census Questionnaire*, https://www.census.gov/history/www/through_the_decades/questionnaires/1830_2.html.

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were made by the Executive pursuant to congressional authorization. None were reviewed by the courts.

Now, for the first time, this Court has seen fit to claim a role with respect to the inclusion of a citizenship question on the census, and in doing so, the Court has set a dangerous precedent, both with regard to the census itself and with regard to judicial review of all other executive agency actions. For the reasons ably stated by JUSTICE THOMAS, see *ante*, p. ____ (opinion concurring in part and dissenting in part), today's decision is either an aberration or a license for widespread judicial inquiry into the motivations of Executive Branch officials. If this case is taken as a model, then any one of the approximately 1,000 district court judges in this country, upon receiving information that a controversial agency decision might have been motivated by some unstated consideration, may order the questioning of Cabinet officers and other high-ranking Executive Branch officials, and the judge may then pass judgment on whether the decision was pretextual. What Bismarck is reputed to have said about laws and sausages comes to mind. And that goes for decisionmaking by all three branches.

To put the point bluntly, the Federal Judiciary has no authority to stick its nose into the question whether it is good policy to include a citizenship question on the census or whether the reasons given by Secretary Ross for that decision were his only reasons or his real reasons. Of course, we may determine whether the decision is constitutional. But under the considerations that typically guide this Court in the exercise of its power of judicial review of agency action, we have no authority to decide whether the Secretary's decision was rendered in compliance with the Administrative Procedure Act (APA).

I

The APA authorizes judicial review of “agency action”

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taken in violation of law, 5 U. S. C. §§706(2)(A)–(D), but §701(a)(2) of the APA bars judicial review of agency actions that are “committed to agency discretion by law.” Although we have characterized the scope of §701(a)(2) as “‘narrow,’” *Heckler v. Chaney*, 470 U. S. 821, 830 (1985), there are circumstances in which it applies. And while our cases recognize a strong presumption in favor of judicial review of agency action, see, *e.g.*, *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 586 U. S. ___, ___ (2018) (slip op., at 11), this “is ‘just’ a presumption,” and like all real presumptions, it may be (and has been) rebutted, *Lincoln v. Vigil*, 508 U. S. 182, 190 (1993).⁶

In considering whether the general presumption in favor of judicial review has been rebutted in specific cases, we have identified factors that are relevant to the inquiry: whether the text and structure of the relevant statutes leave a court with any “‘meaningful standard against which to judge the agency’s exercise of discretion,’” *Webster v. Doe*, 486 U. S. 592, 600 (1988) (quoting *Heckler, supra*, at 830); whether the matter at hand has traditionally been viewed as committed to agency discretion, see *ICC v. Locomotive Engineers*, 482 U. S. 270, 282 (1987); whether the challenged action manifests a “general unsuitability” for judicial review because it involves a “complicated balancing of a number of factors,” including judgments regarding the allocation of agency resources or matters otherwise committed to another branch, *Heckler, supra*, at 831–832; and whether judicial review would produce “disruptive practical consequences,” *Southern R.*

⁶Because the §701(a)(2) analysis dictates *whether* APA review may be had, JUSTICE BREYER’s assertion that the APA “supplies [a] limit” on the Secretary’s otherwise “broad” delegation, *ante*, at 22 (opinion concurring in part and dissenting in part), mistakenly assumes the answer to the reviewability question. Cf. *Heckler v. Chaney*, 470 U. S. 821, 828 (1985) (“[B]efore any review at all may be had, a party must first clear the hurdle of §701(a)”).

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Co. v. Seaboard Allied Milling Corp., 442 U. S. 444, 457 (1979) (applying this factor to the reviewability inquiry under §701(a)(1)).

Applying those factors, I conclude that the decision of the Secretary of Commerce to add core demographic questions to the decennial census questionnaire is committed to agency discretion by law and therefore may not be challenged under the APA.⁷

II A

I start with the question whether the relevant statutory provisions provide any standard that courts can apply in reviewing the Secretary’s decision to restore a citizenship question to the census. The provision that directly addresses this question is 13 U. S. C. §141(a), the statute that vests the Secretary with authority to administer the decennial census. This provision gives the Secretary unfettered discretion to include on the census questions about basic demographic characteristics like citizenship. It begins by providing that the Secretary

“shall, in the year 1980 and every 10 years thereafter, take a decennial *census of population . . . in such form and content as he may determine*, including the use of sampling procedures and special surveys.” *Ibid.* (emphasis added).

The two phrases I have highlighted—“census of population” and “in such form and content as he may determine”—are of immediate importance. A “census of popu-

⁷The Government concedes that courts may review constitutional challenges to the Secretary’s actions. Cf. *Webster v. Doe*, 486 U. S. 592, 603 (1988). For the reasons given in the Court’s opinion, see *ante*, at 11–13, I agree that the only remaining constitutional claim at issue—respondents’ Enumeration Clause claim—lacks merit and thus does not constitute a basis for enjoining the addition of the citizenship question.

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lation” is broader than a mere head count. The term is defined as “a census of population . . . *and matters relating to population.*” §141(g) (emphasis added). Because this definition refers to both “a census of population” and “matters relating to population,” the latter concept must include more than a “census of population” in the strict sense of a head count. And it seems obvious that what this additional information must include is the sort of basic demographic information that has long been sought in the census. So the statute clearly authorizes the Secretary to gather such information.

The second phrase, “in such form and content as he may determine,” specifies how this information is to be gathered, namely, by a method having the “form and content” that the Secretary “may determine.” In other words, this is left purely to the Secretary’s discretion. A clearer and less restricted conferral of discretion is hard to imagine.

It is instructive to compare this delegation of authority to the statutory language at issue in one of our most well-known §701(a)(2) cases, *Webster v. Doe*, 486 U. S. 592. There, the relevant statute allowed termination of a Central Intelligence Agency employee whenever the Director “shall deem such termination necessary or advisable in the interests of the United States.” *Id.*, at 600 (internal quotation marks omitted and emphasis deleted). Reasoning that the statute’s “shall *deem*” standard “fairly exudes deference to the Director,” the Court concluded that the text of the statute “appear[ed] . . . to foreclose the application of any meaningful judicial standard of review.” *Ibid.*

The §141(a) language discussed above is even more sweeping than that of the statute in *Webster*. Unlike the Census Act, the statute in *Webster* placed a condition on the Director’s action—in particular, the requirement that he terminate an employee only after concluding that doing so would further the “interests of the United States.” No such condition applies to the Secretary’s determination

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about the form and content of the decennial census, a fact that distinguishes the statute at issue here from others this Court has found to fall outside §701(a)(2) and thus within courts' power to review. See, *e.g.*, *Weyerhaeuser Co.*, 586 U. S., at ____ (slip op., at 10) (statute conditioning agency power to exclude land from critical habitat designation on agency's consideration of "'economic impact'" of designation and "'determin[ation] that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat'").

B

Those arguing in favor of judicial review contend that the §141(a) language that I have discussed so far is limited by language that follows immediately after. That part of §141(a) states:

"In connection with any such census [*i.e.*, the decennial "census of population"], the Secretary is authorized to obtain such other census information as *necessary*." (Emphasis added.)

This means, it is argued, that information about citizenship may be obtained by means of the census only if that is "necessary." But this argument is clearly wrong. The information that must be "necessary" (whatever that means in this context) is "*other* census information." That refers to information other than that obtained in the "census of population," and as explained, the term "census of population" includes not just a head count but other "matters relating to population," a category that encompasses basic demographic information such as citizenship. Accordingly, this argument is definitively refuted by the text of §141. And although it is not necessary to look beyond that text, it is worth noting that this argument, if accepted, would require that the term "necessary" be given a less than strictly literal meaning; otherwise, it would

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run contrary to the broad delegation effected by the first portion of §141(a) by making it all but impossible for the Secretary to include on the census anything other than questions relating to the number of persons living at a particular address. That would be so because it will often not be “necessary” to obtain this information via the census rather than by some other means.

C

Another argument in favor of review relies on 13 U. S. C. §195, which states:

“Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as ‘sampling’ in carrying out the provisions of this title.”

JUSTICE BREYER, for example, interprets this provision to mean that “the Secretary must, if feasible, obtain demographic information through a survey sent to a *sample* of households, rather than through the short-form census questionnaire to which *every* household must respond.” *Ante*, at 3 (opinion concurring in part and dissenting in part). Under that reading of §195, it is asserted, the provision sets forth a judicially reviewable limit on the Secretary’s authority to obtain information through direct inquiries.

This argument fails to take into account that the current version of §195 was enacted as part of the same Act of Congress that included the present version of §141⁸ and that the two provisions are both parts of a unified scheme regarding the use of sampling. Section 141, a provision concerned exclusively with the census, addresses the use

⁸See 90 Stat. 2459.

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of sampling in that particular context. I previously quoted the relevant language, but I repeat it now so that it is clearly in mind. Section 141(a) provides that the Secretary

“shall, in the year 1980 and every 10 years thereafter, take a decennial census of population . . . *in such form and content as he may determine, including the use of sampling procedures and special surveys.*” (Emphasis added.)

What this means is that the Secretary, in conducting the “census of population,” has discretion to choose the form and content of the vehicles used in that project, and among the methods that he may employ, if he sees fit, are sampling and special surveys.

Section 195 is not a census-specific provision, but it does have one (important) thing to say specifically about the census: It prohibits the use of sampling “for the determination of population for purposes of apportionment of Representatives in Congress.” In this one way, it qualifies the Secretary’s discretion regarding the “form and content” of the vehicles used in conducting the “census of population.” And that is what we meant in *Department of Commerce v. United States House of Representatives*, 525 U. S. 316, 338 (1999), when we said that §141(a)’s “broad grant of authority . . . is informed . . . by the narrower and more specific §195.” Otherwise, the text of §195 does not deal specifically with the census. It addresses all the many information-gathering activities conducted by the Commerce Department, and as to these, it says that the Secretary shall use sampling if he deems it “feasible.”

If §195 were read to mean that no information other than a head count can be sought by means of a census questionnaire unless it is not “feasible” to get that information by sampling, then there would be little if anything left of the broad discretion “to use sampling techniques”

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conferred on the Secretary by §141(a). “Feasible” means “capable of being done, executed, or effected,” Webster’s Third New International Dictionary 831 (1961), and it is not clear that the gathering of *any* core demographic information is not “capable of being done” by sampling. So if that were what §195 means, then Congress, in the same Act, would have given the Secretary discretion to use sampling in the census “as he may determine” but also compelled him to use sampling in almost all instances. That is no way to read the provisions of a single Act. A law’s provisions should be read to work together. See A. Scalia & B. Garner, *Reading Law* 180 (2012) (“The provisions of a text should be interpreted in a way that renders them compatible, not contradictory”). See also, *e.g.*, *Parker Drilling Management Services, Ltd. v. Newton*, 587 U. S. ___, ___ (2019) (slip op., at 5–6); *Star Athletica, L. L. C. v. Varsity Brands, Inc.*, 580 U. S. ___, ___ (2017) (slip op., at 6–7); *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U. S. 89, 108 (2010). And if there is tension between a specific provision, like §141’s instruction regarding the use of sampling in the decennial census, and a general one, like §195’s directive regarding the use of sampling in all data-collection activities, the specific provision must take precedence. Cf. *NLRB v. SW General, Inc.*, 580 U. S. ___, ___ (2017) (slip op., at 14).

When §§141 and 195 are read in this way, it is easy to see how they fit together. In using the census to gather information “relating to population” for any use other than the actual enumeration, the Secretary may use sampling “as he may determine.” In conducting all the Department’s efforts to collect data by other means, he may authorize the use of sampling if he thinks that is “feasible.” The upshot for present purposes is that §195 does not require the “counterintuitive resul[t]” of barring the Secretary from including on the census questionnaire the kinds of basic demographic questions that have been

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asked as part of every census in U. S. history. *RJR Nabisco, Inc. v. European Community*, 579 U. S. ____, ____ (2016) (slip op., at 15).

D

One additional provision, 13 U. S. C. §6(c),⁹ requires close consideration. This provision, which was enacted in 1976 in the same Act as §§141(a) and 195, has three subsections. Subsection (a) provides that the Secretary may call on other components of the Federal Government to obtain information that is “pertinent to” the Department’s work. Subsection (b) authorizes the Secretary to “acquire, by purchase or otherwise” from state and local governments and private sources “such copies of records, reports, and other material as may be required for the efficient and economical conduct of the censuses and surveys provided for in this title.” Finally, subsection (c) provides:

“To the maximum extent possible and consistent with the kind, timeliness, quality and scope of the statistics required, the Secretary shall acquire and use information available from any source referred to in subsection (a) or (b) of this section instead of conducting

⁹Section 6 states:

“(a) The Secretary, whenever he considers it advisable, may call upon any other department, agency, or establishment of the Federal Government, or of the government of the District of Columbia, for information pertinent to the work provided for in this title.

“(b) The Secretary may acquire, by purchase or otherwise, from States, counties, cities, or other units of government, or their instrumentalities, or from private persons and agencies, such copies of records, reports, and other material as may be required for the efficient and economical conduct of the censuses and surveys provided for in this title.

“(c) To the maximum extent possible and consistent with the kind, timeliness, quality and scope of the statistics required, the Secretary shall acquire and use information available from any source referred to in subsection (a) or (b) of this section instead of conducting direct inquiries.”

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direct inquiries.”

The District Court interpreted subsection (c) to mean that the Secretary must turn to another federal agency or outside source for demographic information (rather than seeking the information on the census) unless doing so would not be “possible” or “consistent with the kind, timeliness, quality and scope of the statistics required.” This argument fails for reasons similar to those that sank the §195 argument just discussed. Section 6(c) is not a census-specific provision but instead applies generally to all the Commerce Department’s information-gathering activities. If it is read to apply to the “census of population,” it cannot be reconciled with §141(a), which, as noted, broadly authorizes the Secretary to use that vehicle for obtaining information “relating to population,” *i.e.*, core demographic information. If §6(c) applied to the gathering of such information, it would make it hard to justify the inclusion of *any* demographic questions on the census, even though this has been done since 1790. (Is it not possible to get information about age and sex, for example, from any outside source (or combination of sources), even if the Department offers to acquire it from a private source by purchase?) Reading §6(c) to mean what the District Court thought would turn it into the proverbial elephant stuffed into a mouse hole. Section 6(c), however, is a decidedly mouse-like provision. It was enacted with no fanfare and no real explanation,¹⁰ and remained in the shadows, vir-

¹⁰The most respondents can muster are snippets from the legislative history of the 1976 Census Act indicating that §6(c) was enacted to decrease the Secretary’s use of “direct inquiries” in the interest of “reducing respondent burden.” H. R. Rep. No. 94–1719, p. 10 (1976). Even accepting that premise, it simply raises the same question just discussed—namely, whether Congress’s desire to reduce respondent burden, as reflected by §6(c), yields to the Secretary’s broad authorization in §141(a) to “determine” the “form and content” of any direct inquiries on the census. Cf. *id.*, at 11 (characterizing §141 as a “provi-

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tually unused and unnoticed, for more than 40 years.

E

Respondents and the Court cite two other provisions in support of reviewability, but neither has anything to do with the issue of putting a citizenship question on the census. In determining whether statutory provisions include standards that could provide a basis for judicial review, it is necessary to focus on the precise claims at issue, see, e.g., *Webster*, 486 U. S., at 601–602 (distinguishing between statutory and constitutional claims); *Locomotive Engineers*, 482 U. S., at 277–279 (parsing claims under different prongs of reopener statute); *Heckler*, 470 U. S., at 836 (rejecting as “irrelevant” to the agency decision at issue two statutory provisions that were argued to provide “law to apply”). And when viewed in this way, the remaining statutory provisions cited in support of reviewability are of no value.

Respondents point to §141(b), which requires the Secretary to complete the tabulation of total population by States “within 9 months after the census date” and then to report the results to the President. That provision sets out an easily administered deadline, and it has nothing to do with the content of the census questionnaire.

Respondents also claim that §141(f) is relevant to the question of judicial review, but that provision concerns *congressional* review. It directs the Secretary to report to Congress, at specified times, the subjects and questions that he intends to include on the census. According to respondents, the Secretary’s compliance with those requirements is judicially reviewable, and that, they contend, takes the Secretary’s decision to include a citizenship question out from under §701(a)(2).

Respondents fundamentally misunderstand the signifi-

sio[n] directly related to decennial . . . census”).

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cance of congressional reporting requirements in evaluating whether a particular agency action is subject to judicial review. Congressional reporting requirements are “legion in federal law,” *Natural Resources Defense Council, Inc. v. Hodel*, 865 F. 2d 288, 317 (CA DC 1988), and their purpose is to permit Congress to monitor and, if it sees fit, to correct Executive Branch actions to which it objects. When a congressional reporting requirement “[l]ack[s] a provision for judicial review,” compliance “by its nature seems singularly committed to *congressional* discretion in measuring the fidelity of the Executive Branch actor to legislatively mandated requirements.” *Id.*, at 318. In other words, it is Congress, not the Judiciary, that is best situated to determine whether an agency’s responses to Congress are sufficient and, if not, to “take what it deems to be the appropriate action.” *Id.*, at 319.

In that respect, §141(f) actually cuts against judicial review. The Constitution gives Congress the authority to “direct” the “Manner” in which the census is conducted, and by imposing the §141(f) reporting requirements, Congress retained some of that supervisory authority. It did not transfer it to the courts.¹¹

Respondents protest that congressional review may not

¹¹It is notable that Congress, pursuant to its supervisory authority, has in some cases limited the particular demographic characteristics about which the Secretary may require information through census questionnaires. In §221(c), for example, Congress has dictated that “no person shall be compelled to disclose information relative to his religious beliefs or to membership in a religious body.” Similarly, in a series of appropriation Acts, Congress has specified that “none of the funds provided in this or any other Act for any fiscal year may be used for the collection of census data on race identification that does not include ‘some other race’ as a category.” 123 Stat. 3115, note following 13 U. S. C. §5. Those examples highlight that when Congress wishes to limit the Secretary’s authority to require responses to particular demographic questions, it “knows precisely how to do so.” *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, 572 U. S. 915, 923 (2014).

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be enough to guard against a Secretary's abuses, especially when the party in control of Congress stands to benefit. But that complaint simply expresses disagreement with the Framers' choice to vest power over the census in a political body, cf. *Baldrige v. Shapiro*, 455 U. S. 345, 347–348 (1982) (“Under [the] Constitution, responsibility for conducting the decennial census rests with Congress”), and the manner in which Congress has chosen to exercise that power, see *Wisconsin v. City of New York*, 517 U. S. 1, 19 (1996) (Congress has delegated its “virtually unlimited discretion” in conducting the census to the Secretary). In any event, the ability to press constitutional challenges to the Secretary's decisions, see n. 7, *supra*, answers many of the examples in respondents' parade of horrors.

In short, the relevant text of §141(a) “fairly exudes deference” to the Secretary. *Webster*, 486 U. S., at 600. And no other provision of law cited by respondents or my colleagues provides any “meaningful judicial standard” for reviewing the Secretary's selection of demographic questions for inclusion on the census. *Ibid.*

III

In addition to requiring an examination of the text and structure of the relevant statutes, our APA §701(a)(2) cases look to whether the agency action in question is a type that has traditionally been viewed as committed to agency discretion or whether it is instead one that “federal courts regularly review.” *Weyerhaeuser Co.*, 586 U. S., at ____ (slip op., at 12). In cases where the Court has found that agency action is committed to agency discretion by law, an important factor has been the absence of an established record of judicial review prior to the adoption of the APA. See *Heckler*, 470 U. S., at 832–833 (agency nonenforcement); *Locomotive Engineers*, 482 U. S., at 282 (agency decision not to reopen final decision based on material error); *Lincoln*, 508 U. S., at 192 (agency use of lump-sum

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appropriations).

Here, there is no relevant record of judicial review. We are confronted with a practice that reaches back two centuries. The very first census went beyond a mere head count and gathered additional demographic information, and during virtually the entire period prior to the enactment of the APA, a citizenship question was asked of everyone. Notably absent from that long record is any practice of judicial review of the content of the census. Indeed, this Court has never before encountered a direct challenge to a census question. App. to Pet. for Cert. 416a. And litigation in the lower courts about the census is sparse and generally of relatively recent vintage.

Not only is this sort of history significant in all §701(a)(2) cases, see *Locomotive Engineers, supra*, at 282, but we have previously stressed the particular “importance of historical practice” when it comes to evaluating the Secretary’s authority over the census. *Wisconsin, supra*, at 21; see also *ante*, at 13 (opinion of the Court). Moreover, where the relevant question is not whether review may be had at all, but rather the branch with the authority to exercise review, the absence of any substantial record of judicial review is especially revealing. See, e.g., *NLRB v. Noel Canning*, 573 U. S. 513, 525 (2014) (it is “neither new nor controversial” that “longstanding practice of the government can inform our determination of what the law is” (internal quotation marks and citation omitted)); *United States v. Midwest Oil Co.*, 236 U. S. 459, 473 (1915) (“in determining . . . the existence of a power, weight [is] given to . . . usage”). Thus, the absence of any real tradition of judicial review of decisions regarding the content of the census counsels against review in this case.

In an attempt to show that there is no relevant “tradition of nonreviewability,” *Locomotive Engineers, supra*, at 282, respondents contend that this Court has recently engaged in review of the “conduct of the census,” Brief for

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Government Respondents 26–27. But in none of the cases they cite did the Court address an APA challenge to the content of census questions.¹² Some involved constitutional claims about enumeration and apportionment. See *Franklin v. Massachusetts*, 505 U. S. 788, 790, 801 (1992) (constitutional challenge to “method used for counting federal employees serving overseas” as part of “reapportionment determination”); *Wisconsin*, 517 U. S., at 20 (constitutional challenge to Secretary’s decision not to adjust count). Others concerned enforcement of statutes with specific directives. See *Department of Commerce*, 525 U. S., at 343 (holding that §195 bars use of “sampling” to reach actual enumeration for apportionment); *Utah v. Evans*, 536 U. S. 452, 464–465 (2002) (considering whether statistical method violated §195’s bar on use of “sampling” in apportionment enumeration). According to respondents, these cases mean that *all* the Secretary’s census-related decisions are suitable for judicial review and thus fall outside of §701(a)(2), and the Court apparently agrees, rejecting the Government’s §701(a)(2) argument in part because “[w]e and other courts have entertained both constitutional and statutory challenges to census-related decisionmaking.” *Ante*, at 15.

This argument misses the point of §701(a)(2). The question under that provision is whether *the challenged action* “is committed to agency discretion by law,” not whether a different action by the same agency is reviewable under the APA, much less whether an action taken by the same agency can be challenged under the Constitution. Take the example of *Heckler v. Chaney*, *supra*, where the Court considered whether a particular Food and Drug

¹²The same can be said for the lower court cases on which respondents rely. See, e.g., Brief for Government Respondents 26, and n. 6 (collecting cases, none of which “involved the census questionnaire” or the Secretary’s selection of questions).

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Administration (FDA) decision was reviewable under the APA. Many FDA actions are subject to APA review, see, *e.g.*, *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U. S. 609, 627 (1973), but that did not prevent the *Heckler* Court from holding that the particular FDA decision at issue there fell within §701(a)(2). See also, *e.g.*, *Heckler*, *supra*, at 836–837.

Respondents and some of their *amici* contend that the Secretary’s decision is at least amenable to judicial review for consistency with the APA’s reasoned-explanation requirement. See *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983) (describing requirement). Thus, the argument goes, even if no statute sets out a standard that can be used in reviewing the particular agency action in question, a court may review an agency’s explanation of the reasons for its action and set it aside if the court finds those reasons to be arbitrary or irrational.

This argument would obliterate §701(a)(2). Even if a statute expressly gave an agency absolute, unrestricted, unfettered, unlimited, and unqualified discretion with respect to a particular decision, a court could still review the agency’s explanation of the reasons for its decision. That is not what §701(a)(2) means. As we put it previously in answering a similar argument against application of §701(a)(2), it is “fals[e]” to suggest “that if the agency gives a ‘reviewable’ reason for otherwise unreviewable action, the action becomes reviewable.” *Locomotive Engineers*, 482 U. S., at 283. That is because when an action “is committed to agency discretion by law,” the Judiciary has no role to play, even when an agency sets forth “an eminently ‘reviewable’ proposition.” *Id.*, at 282–283.

IV

In sum, neither respondents nor my colleagues have been able to identify any relevant, judicially manageable

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limits on the Secretary's decision to put a core demographic question back on the census. And without an "adequate standard of review for such agency action," *id.*, at 282, courts reviewing decisions about the "form and content" of the census would inevitably be drawn into second-guessing the Secretary's assessment of complicated policy tradeoffs,¹³ another indicator of "general unsuitability" for judicial review. *Heckler, supra*, at 831.

Indeed, if this litigation is any indication, widespread judicial review of the Secretary's conduct of the census will usher in an era of "disruptive practical consequences," and this too weighs against review. *Seaboard Allied Milling Corp.*, 442 U. S., at 457. Cf. *Tucker v. United States Dept. of Commerce*, 958 F. 2d 1411, 1418 (CA7 1992) (expressing doubt about "both the provenance and the practicability" of allowing judicial review of census-related decisions).

Respondents protest that the importance of the census provides a compelling reason to allow APA review. See also *ante*, at 22–23 (opinion of BREYER, J.). But this argument overlooks the fact that the Secretary is accountable in other ways for census-related decisionmaking.¹⁴ If the Secretary violates the Constitution or any applicable statutory provision related to the census, his action is

¹³In determining how the census is to be conducted, the Secretary must make decisions about a bevy of matters, such as the best way to count particular persons or categories of persons with an adequate degree of accuracy (*e.g.*, by face-to-face interviews, telephone calls, questionnaires to be mailed back, contacts with neighbors, or use of existing records); the use of followup procedures and other quality control measures; which persons should be included in which households; and issues concerning where a person should be enumerated. These and countless other factors may affect whether an individual receives or responds to the census questionnaire.

¹⁴Since the time Secretary Ross publicly announced his intent to add the citizenship question, "Congress has questioned the Secretary about his decision in public hearings on several occasions." Brief for Petitioners 50 (collecting examples).

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reviewable. The Secretary is also accountable to Congress with respect to the administration of the census since he has that power only because Congress has found it appropriate to entrust it to him. And the Secretary is always answerable to the President, who is, in turn, accountable to the people.

* * *

Throughout our Nation's history, the Executive Branch has decided without judicial supervision or interference whether and, if so, in what form the decennial census should inquire about the citizenship of the inhabitants of this country. Whether to put a citizenship question on the 2020 census questionnaire is a question that is committed by law to the discretion of the Secretary of Commerce and is therefore exempt from APA review. The District Court had the authority to decide respondents' constitutional claims, but the remainder of their complaint should have been dismissed.

I join Parts I, II, III, IV–B, and IV–C¹⁵ of the opinion of the Court. I do not join the remainder, and insofar as the Court holds that the Secretary's decision is reviewable under the APA, I respectfully dissent.

¹⁵Although I would hold that the Secretary's decision is not reviewable under the APA, in the alternative I would conclude that the decision survives review under the applicable standards. I join Parts IV–B and IV–C on that understanding.

From: MWalsh@doc.gov [MWalsh@doc.gov]
Sent: 7/9/2019 10:25:17 AM
To: Barranca, Steven (Federal) [SBarranca1@doc.gov]
Subject: Fwd: Letter from Secretary of State Merrill
Attachments: AL. Secretary of State John Merrill letter to the President (2020 US Census) 7.4.2019.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "John R. Ashcroft" [b(6)]@sos.mo.gov>
Date: July 9, 2019 at 10:24:51 AM EDT
To: "MWalsh@doc.gov" <MWalsh@doc.gov>
Subject: Letter from Secretary of State Merrill

Mr. Walsh,

Secretary Merrill of Alabama has asked me to forward the attached letter requesting that the citizenship question be included in the census.

Thank you.

Jay Ashcroft

ALABAMA STATE CAPITOL
600 DEXTER AVENUE
SUITE S-105
MONTGOMERY, AL 36130



b(6)

FAX (334) 242-4993

WWW.SOS.ALABAMA.GOV

b(6)

SOS.ALABAMA.GOV

JOHN H. MERRILL
SECRETARY OF STATE

July 4, 2019

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

Please accept this letter of support regarding your consideration with the issuance of an Executive Order, or continuing other legal remedies, directing the inclusion of the citizenship question on the 2020 United States Census form.

I fully support your efforts which will ensure only the most accurate data is used when apportioning the seats in the United States House of Representatives, as well as the crafting of effective national public policy, a great deal of which is made utilizing accurate census data and its corresponding federal funding formulas.

Furthermore, I am the Chief Election Official for the State of Alabama, and in 2015, I requested and was successful in obtaining the approval of the Executive Director of the United States Election Assistance Commission for Alabama to require proof of citizenship for citizens to apply to be a registered voter in the State of Alabama.

Alabama has a great deal at stake with the data produced by the 2020 Census if non-U.S. citizens are counted and could lose a seat in Congress if non-U.S. citizens are calculated in the 2020 Census in other parts of the nation.

I appreciate your leadership with this issue and remain fully supportive of your administration and its goal to ensure only the most accurate data is ascertained in the 2020 United States Census.

Most respectfully,

A handwritten signature in black ink that reads "J. H. Merrill".
JOHN H. MERRILL
Secretary of State

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]
From: MWalsh@doc.gov[MWalsh@doc.gov]
Sent: Sun 7/7/2019 1:31:26 AM (UTC-04:00)
Subject: Fwd: Options Update
[Options 07062019 1052 PM.docx](#)
[ATT00001.htm](#)

Sent from my iPhone

Begin forwarded message:

From: "Christa D Jones (CENSUS/DEPDIR FED)" <Christa.D.Jones@census.gov>
Date: July 6, 2019 at 10:53:47 PM EDT
To: "Walsh, Michael (Federal)" <MWalsh@doc.gov>, "Ron S Jarmin (CENSUS/DEPDIR FED)" <Ron.S.Jarmin@census.gov>
Cc: "Kelley, Karen (Federal)" <KKelley@doc.gov>
Subject: Re: Options Update

Mike--here's the doc.

From: Walsh, Michael (Federal) <MWalsh@doc.gov>
Sent: Saturday, July 6, 2019 9:38:07 PM
To: Ron S Jarmin (CENSUS/DEPDIR FED)
Cc: Kelley, Karen (Federal); Christa D Jones (CENSUS/DEPDIR FED)
Subject: Re: Options Update

Thanks very much. Really appreciate it.

Sent from my iPhone

> On Jul 6, 2019, at 9:36 PM, Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov> wrote:
>
> Mike,
>
> We're close to having stuff you.
>
> Thanks
>
> Ron
>
> Sent from my iPhone

To: Price, Charmonique (Federal)[cprice@doc.gov]; Savoy, Kimberly (Federal)[KSavoy@doc.gov]; Langdon, David (Federal)[DLangdon@doc.gov]; Comstock, Earl (Federal)[EComstock@doc.gov]; Freeman, Michael (Federal)[MFreeman2@doc.gov]; McGaan, Duncan (Federal)[DMcGaan@doc.gov]
Cc: Williams, Allaire (Federal)[AWilliams2@doc.gov]; McDermott, Ryan (Federal)[RMcDermott1@doc.gov]; Rafiekian, Christine (Federal)[CRafiekian@doc.gov]; Brooke, Beatrice E. (Federal)[BBrooke1@doc.gov]; Broome, Cynthia (Federal)[Cbroome@doc.gov]; Graves, William (Federal)[WGraves@doc.gov]
From: McRae, Tisa [REDACTED] b(6)
[REDACTED] b(6)
Sent: Thur 2/6/2020 12:13:21 PM (UTC-05:00)
Subject: FW: Time Critical - Departmental Annual Performance and Plan Report (APPR) 14-069337
[Time Clearance for 14-069337.pdf](#)

Good afternoon,

Please provide the status of your review and clearance. Exec requested clearance by 12PM today.

Thank you in advance,
Tisa

From: McRae, Tisa (Federal)
Sent: Thursday, February 6, 2020 10:08 AM
To: Price, Charmonique (Federal) <cprice@doc.gov>; Savoy, Kimberly (Federal) <KSavoy@doc.gov>; Langdon, David (DLangdon@doc.gov) <DLangdon@doc.gov>; Comstock, Earl (Federal) <EComstock@doc.gov>; Freeman, Michael (Federal) <MFreeman2@doc.gov>; McGaan, Duncan (Federal) <DMcGaan@doc.gov>; Moore, Rhongelyn (Federal) <RMoore2@doc.gov>
Cc: Williams, Allaire (Federal) <AWilliams2@doc.gov>; Comstock, Earl (Federal) <EComstock@doc.gov>; McDermott, Ryan (Federal) <RMcDermott1@doc.gov>; Rafiekian, Christine (Federal) <CRafiekian@doc.gov>; Brooke, Beatrice E. (Federal) <BBrooke1@doc.gov>; Broome, Cynthia (Federal) <Cbroome@doc.gov>; Graves, William (Federal) <WGraves@doc.gov>
Subject: Time Critical - Departmental Annual Performance and Plan Report (APPR) 14-069337

Good afternoon all,

Exec Sec is requesting expediting the attached Time Critical clearance package for the Deputy Secretary's approval. **Please have your clearing officials review and clear no later than 12PM TODAY.** DBD assignments will be sent as well.

Please give me a call if you have any questions.

Thank you in advance,

Tisa McRae
Correspondence Management Analyst
Office of the Secretary
Executive Secretariat
1401 Constitution Avenue, NW
Room 5516
Washington, DC 20230
202-482-9080 (D)
[REDACTED] b(6) (C)
202-482-4090 (F)

To: Price, Charmonique (Federal)[cprice@doc.gov]; Savoy, Kimberly (Federal)[KSavoy@doc.gov]; Langdon, David (Federal)[DLangdon@doc.gov]; Comstock, Earl (Federal)[EComstock@doc.gov]; Freeman, Michael (Federal)[MFreeman2@doc.gov]; McGaan, Duncan (Federal)[DMcGaan@doc.gov]; Moore, Rhongelyn (Federal)[RMoore2@doc.gov]
Cc: Williams, Allaire (Federal)[AWilliams2@doc.gov]; Comstock, Earl (Federal)[EComstock@doc.gov]; McDermott, Ryan (Federal)[RMcDermott1@doc.gov]; Rafiekian, Christine (Federal)[CRafiekian@doc.gov]; Brooke, Beatrice E. (Federal)[BBrooke1@doc.gov]; Broome, Cynthia (Federal)[CBroome@doc.gov]; Graves, William (Federal)[WGraves@doc.gov]
From: McRae, Tisa (Federal) b(6)
b(6)
Sent: Thur 2/6/2020 10:08:10 AM (UTC-05:00)
Subject: Time Critical - Departmental Annual Performance and Plan Report (APPR) 14-069337
[Time Clearance for 14-069337.pdf](#)

Good afternoon all,

Exec Sec is requesting expediting the attached Time Critical clearance package for the Deputy Secretary's approval. **Please have your clearing officials review and clear no later than 12PM TODAY.** DBD assignments will be sent as well.

Please give me a call if you have any questions.

Thank you in advance,

Tisa McRae
Correspondence Management Analyst
Office of the Secretary
Executive Secretariat
1401 Constitution Avenue, NW
Room 5516
Washington, DC 20230
202-482-9080 (D)
b(6) (C)
202-482-4090 (F)

From: McDermott, Ryan (Federal) [RMcDermott1@doc.gov]
Sent: 7/7/2020 10:20:17 PM
CC: Williams, Allaire (Federal) [AWilliams2@doc.gov]; Pepper, Samuel (Federal) [SPepper@doc.gov];
ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 07-08-2020 Briefing Book
Attachments: 7.8.20 Briefing Book FINAL.pdf

See attached for corrected/rotated PowerPoint slides. Thanks.

Ryan McDermott

b(6)

From: McDermott, Ryan (Federal)
Sent: Tuesday, July 7, 2020 9:18 PM
Cc: Williams, Allaire (Federal) <AWilliams2@doc.gov>; Pepper, Samuel (Federal) <SPepper@doc.gov>;
ExecSecBriefingBook <b(6)@doc.gov>
Subject: 07-08-2020 Briefing Book

- 1) THE SCHEDULE OF SECRETARY WILBUR ROSS
- 2) Call-In – Senior Management Decennial Committee
- 3) Call with Tom Caulfield, CEO, GlobalFoundries
- 4) Call with Ahmed Mohammed Al-Sayed, Minister of State and Chairman of the Board of Directors of the Free Zone Authority, Qatar
- 5) b(5) - DP
- 6) ITA Info Memo re: Final Circumvention Rulings in Self-Initiated Steel Cases
- 7) ITA Info Memo re: Preliminary Determination in the Countervailing Duty (CVD) Investigation of Corrosion Inhibitors from China

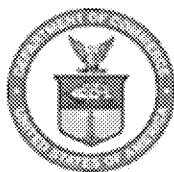
Ryan McDermott

b(6)

Briefing Book
Secretary
Wilbur L. Ross



For July 8, 2020



THE SCHEDULE OF SECRETARY WILBUR ROSS

As Prepared for July 8, 2020

9:00am-10:30am Call-In – Senior Management Decennial Committee
Conference Line – Non-Secure

11:00am-11:15am Call with Tom Caulfield, CEO, GlobalFoundries
Conference Line – Non-Secure

12:00pm-12:30pm **b(5) - DP**

12:00pm-12:15pm Call with Ahmed Mohammed Al-Sayed, Minister of State and
Chairman of the Board of Directors of the Free Zone Authority,
Qatar
IN CAR - Conference Line – Non-Secure

12:30pm-1:00pm

1:00pm-1:15pm

2:00pm-2:05pm

2:05pm-2:35pm

2:35pm-3:20pm

3:20pm-3:30pm

3:35pm-4:05pm

4:05pm-4:20pm

Depart en route **b(6)**

b(5) - DP

6:00pm-6:15pm

6:30pm-6:35pm

6:35pm-6:45pm

6:45pm-7:45pm

b(5) - DP

7:45pm-8:00pm

Depart en route

b(6)

July 7, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

FROM: Christa D. Jones, Chief of Staff, 301-763-7310

RE: Weekly Senior Management Decennial Committee Meeting with Census Bureau Leadership
on Wednesday, July 8, 2020, from 9 AM to 10:30 AM

Census Bureau leadership will brief you and the Deputy Secretary on the status of 2020 Census operations, followed by [REDACTED] b(5) - DP

[REDACTED] b(5) - DP

To conclude, the Census Bureau's Chief Scientist will provide a briefing on Differential Privacy and the 2020 Disclosure Avoidance System (DAS), which will cover the primary features of the 2020 DAS, current initiatives, and upcoming milestones.

See Attachment 1 for Differential Privacy and the U.S. Census; Attachment 2 for [REDACTED] b(5) - DP

[REDACTED] b(5) - DP

Attachment 3 for

[REDACTED] b(5) - DP

Attachment 4 for Phased Restart for the 2020 Decennial Census; and Attachment 5 for Status Reporting: 2020 Decennial Census.

AGENDA

Secretarial Conference Calls

Calls with low response rate cities

Timothy P. Olson

Associate Director for Field Operations, U.S. Census Bureau

Differential Privacy

John M. Abowd

*Associate Director for Research and Methodology and Chief Scientist,
U.S. Census Bureau*

Michael Hawes

*Senior Advisor for Data Access and Privacy, Research and Methodology,
U.S. Census Bureau*

Tori Velkoff

Associate Director for Demographic Programs, U.S. Census Bureau

James Whitehorne

*Census Redistricting & Voting Rights Data Office, Decennial Census Programs,
U.S. Census Bureau*

Kathleen M. Styles
Chief, Decennial Communications and Stakeholder Relationships, U.S. Census Bureau

b(5) - DP

Update

Ben Page
Chief Financial Officer, U.S. Census Bureau

Phased Restart for the 2020 Census

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs, U.S. Census Bureau

2020 Census Performance Reporting

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs, U.S. Census Bureau

ATTACHMENTS

1. Differential Privacy and the U.S. Census
2. **b(5) - DP**
3. **b(5) - DP**
4. Phased Restart for the 2020 Decennial Census
5. Status Reporting: 2020 Decennial Census

Differential Privacy and the 2020 Decennial Census

Michael Hawes

Senior Advisor for Data Access and Privacy
Research and Methodology Directorate
U.S. Census Bureau

July 8, 2020

Shape
your future
START HERE >

United States
Census
2020

Confidentiality of Census Data

Title 13, Section 9 of the U.S. Code prohibits the Census Bureau from releasing identifiable data “furnished by any particular establishment or individual.”

Census Bureau employees are sworn for life to safeguard respondents’ information.

Penalties for violating these protections can include fines of up to \$250,000, and/or imprisonment for up to five years!

The Census Bureau's Privacy Protections Over Time

Throughout its history, the Census Bureau has been at the forefront of the design and implementation of statistical methods to safeguard respondent data.

Over the decades, as we have increased the number and detail of the data products we release, so too have we improved the statistical techniques we use to protect those data.



The Privacy Challenge

Every time you release any statistic calculated from a confidential data source you “leak” a small amount of private information.

If you release too many statistics, too accurately, you will eventually reveal the entire underlying confidential data source.



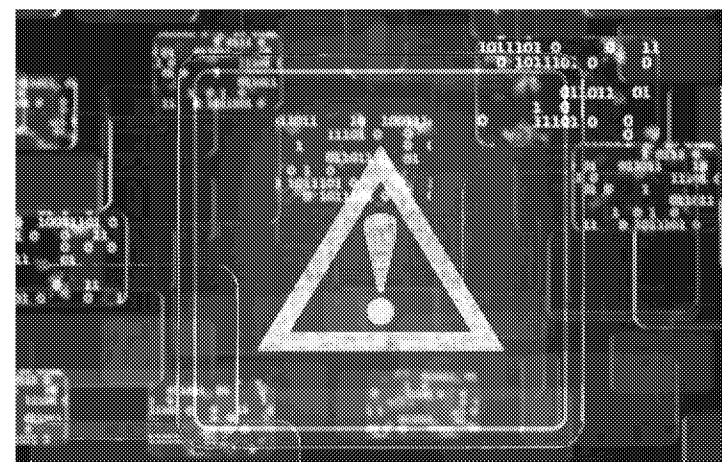
The Growing Privacy Threat

More Data and Faster Computers!

In today's digital age, there has been a proliferation of databases that could potentially be used to attempt to undermine the privacy protections of our statistical data products.

Similarly, today's computers are able to perform complex, large-scale calculations with increasing ease.

These parallel trends represent new threats to our ability to safeguard respondents' data.



Reconstruction

The recreation of individual-level data from tabular or aggregate data.

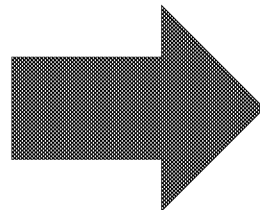
If you release enough tables or statistics, eventually there will be a unique solution for what the underlying individual-level data were.

Computer algorithms can do this very easily.

	4					2	
			7				4
1		7	8			5	
			9			3	8
5							
			6		8		
3						4	5
	8	5				1	9
		9		7	1		

Reconstruction: An Example

	Count	Median Age	Mean Age
Total	7	30	38
Female	4	30	33.5
Male	3	30	44
Black	4	51	48.5
White	3	24	24
Married	4	51	54
Black Female	3	36	36.7



Age	Sex	Race	Relationship
66	Female	Black	Married
84	Male	Black	Married
30	Male	White	Married
36	Female	Black	Married
8	Female	Black	Single
18	Male	White	Single
24	Female	White	Single

This table can be expressed by 164 equations.
Solving those equations takes 0.2 seconds on a
2013 MacBook Pro.

Re-identification

Linking public data to external data sources to re-identify specific individuals within the data.

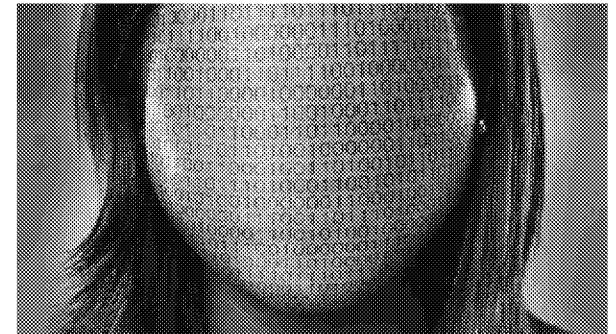
Name	Age	Sex	+	Age	Sex	Race	Relationship
Jane Smith	66	Female		66	Female	Black	Married
Joe Public	84	Male		84	Male	Black	Married
John Citizen	30	Male		30	Male	White	Married

External Data

Confidential Data

Reconstructing the 2010 Census

- The 2010 Census collected information on the age, sex, race, ethnicity, and relationship (to householder) status for ~309 Million individuals. (1.9 Billion confidential data points)
- The 2010 Census data products released over 150 billion statistics
- We conducted an internal experiment to see if we could reconstruct and re-identify the publicly-released 2010 Census records.



Reconstructing the 2010 Census: What Did We Find?

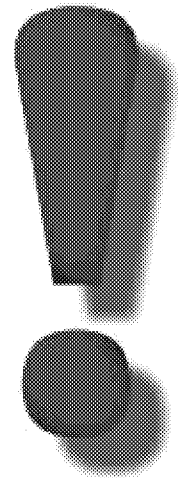
1. On the 309 million reconstructed records, census block and voting age (18+) were correctly reconstructed for all records and for all 6,207,027 inhabited blocks.
2. Block, sex, age (in years), race (OMB 63 categories), and ethnicity were reconstructed:
 1. Exactly for 46% of the population (142 million individuals)
 2. Within +/- one year for 71% of the population (219 million individuals)
3. Block, sex, and age were then linked to commercial data, which provided putative re-identification of 45% of the population (138 million individuals).
4. Name, block, sex, age, race, ethnicity were then compared to the confidential data, which yielded confirmed re-identifications for 38% of the putative re-identifications (52 million individuals).
5. For the confirmed re-identifications, race and ethnicity are learned correctly, though the attacker may still have uncertainty.

The Census Bureau's Decision

To meet its continuing obligations to safeguard respondent information, the Census Bureau has committed to modernizing its approach to privacy protections, and will use differential privacy for the 2020 Census.

The Census Bureau has already successfully deployed differentially private solutions to protect other data products, including:

- Post-Secondary Employment Outcomes (PSEO)
- Veteran Employment Outcomes (VEO)
- OnTheMap for Emergency Management



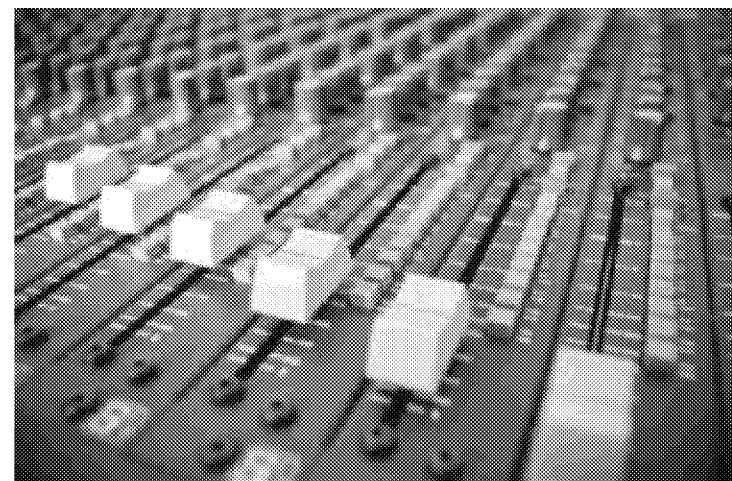
Differential Privacy

All statistical techniques to protect privacy impose a tradeoff between the degree of privacy protection and the resulting accuracy of the data.

- Swap rates, noise injection parameters, cell suppression thresholds, etc. determine this tradeoff.

Differential privacy offers a number of important advantages over traditional statistical techniques to protect privacy.

- Provides quantitative assessment of privacy risk.
- Infinitely tunable – parameter “dials” can be set anywhere from perfect privacy to perfect accuracy.
- Privacy guarantee is mathematically provable and future-proof.
- The precise calibration of statistical noise enables optimal data accuracy for any given level of privacy protection.



Disclosure Avoidance System

The Disclosure Avoidance System (DAS) TopDown Algorithm (TDA) will use differential privacy to provide state-of-the-art control over the privacy/accuracy tradeoff for the 2020 Census Data Products.

- The Census Bureau's Data Stewardship Executive Policymaking Committee (DSEP) will determine TDA parameters (i.e., privacy-loss budget, invariants, etc.) to find the optimal balance between Title 13 confidentiality requirements and data accuracy for priority uses of Census data (including redistricting).

How the TDA works:

1. The TDA ingests the complete Census Edited File microdata;
2. TDA performs a complete tabulation of the microdata and injects precisely calibrated statistical noise into each of the results (excluding state population totals used for apportionment);
3. Beginning at the national level, and moving down the geographic hierarchy, the TDA then reconciles these "noisy" tabulations to ensure internal and hierarchical consistency;
4. TDA then outputs privacy-protected microdata for the entire nation that feed into the Decennial tabulation systems that produce the PL94-171 redistricting data files and other 2020 Census data products.

Current Initiatives

(DAS Development Sprint V)

Remediation of issues from Test Readiness Review (TRR)

- DAS successfully completed the TRR process on 06/15/2020

Preparation for Production Readiness Review

- Scheduled for 10/15/2020

System design improvements to mitigate post-processing (non-DP) error

- The optimization stage of the TDA, that converts the noisy tabulations back into internally/hierarchically consistent microdata introduces additional error that can be addressed through improvements to the algorithm design.
- The DAS Team has identified a number of solutions for addressing these issues without impacting the privacy guarantee.
- Actively engaging with technical and data experts from our advisory committees and the Committee on National Statistics on this issue.

Upcoming Milestones

September 2020

- DSEP will set final list of invariants for the 2020 Census (beyond apportionment totals, which are already invariant)
- The Census Bureau has already announced that state population counts and block-level unit counts (Group Quarters and Housing Units) will be reported as enumerated.

March 2021

- DSEP will set the final privacy-loss budget for the 2020 Census and its allocation across 2020 Census data products.
- This decision will be informed by extensive assessment of data accuracy for priority use cases of decennial data, feedback from our stakeholders, and our legal obligations under Title 13.

June-July 2021

- PL94-171 Redistricting Data files will be released.
- Additional data products, including the Demographic and Housing Characteristics files and Demographic Profiles will follow later in 2021.

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Status Reporting: Phased Restart for the 2020 Decennial Census

Periodic Reporting: Release for July 6, 2020



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census.gov

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Periodic Performance Management Reports

Report Title	Slide Number
2020 Census: Phased Restart Update Leave Status by State	3
2020 Census: Update Leave Progress & Cost	4
2020 Census: Update Leave – Status Update	5
2020 Census: Phased Restart of Paper Data Capture Centers Staffing Status	6
2020 Census: Phased Restart Fingerprinting Status	7
2020 Census: NRFU Tip Sheet	8
2020 Census: County- Level COVID-19 Risk Level Map – Gardiner, Maine Area Census Office	9
2020 Census: County- Level COVID-19 Risk Level Map – Beckley, West Virginia Area Census Office	10
2020 Census: County- Level COVID-19 Risk Level Map – Kansas City, Missouri Area Census Office	11
2020 Census: County- Level COVID-19 Risk Level Map – New Orleans, Louisiana Area Census Office	12
2020 Census: County- Level COVID-19 Risk Level Map – Oklahoma County, Oklahoma Area Census Office	13
2020 Census: County- Level COVID-19 Risk Level Map – Boise, Idaho Area Census Office	14
2020 Census: NRFU Soft Launch – Cycle 1 ACOs	15
2020 Census: NRFU Soft Launch – Cycle 2 ACOs	16-17

Periodic Performance Management Reports

2020 Census: Phased Restart Update Leave Status by State

Source: Unified Tracking System
Data Current as of: July 6, 2020

Decisions to Restart work are informed by data available on the All Hazards Consortium site - "US State and Territory Actions in Response to COVID 19."

State	% Update Leave	HUs in UL Workload	% HUs Complete		Change
			Prior Week	Current Week	
U.S. Total	4.5%	6,805,523	98.2%	98.9%	0.7%
Alabama	3.2%	81,964	99.8%	100.0%	0.2%
Alaska	34.1%	110,022	97.6%	98.2%	0.6%
Arizona	6.6%	214,291	80.7%	85.9%	5.3%
Arkansas	5.0%	77,716	100.0%	100.0%	0.0%
California	2.3%	348,797	99.5%	99.7%	0.2%
Colorado	7.5%	195,895	99.19%	99.92%	0.78%
Connecticut	0.4%	5,868	100.0%	100.0%	0.0%
Florida	1.7%	171,871	98.7%	98.7%	0.0%
Georgia	2.3%	111,905	100.0%	100.0%	0.0%
Hawaii	10.8%	63,303	100.0%	100.0%	0.0%
Idaho	9.0%	70,780	99.9%	99.9%	0.0%
Illinois	0.8%	42,827	99.8%	100.0%	0.2%
Indiana	1.3%	39,142	100.0%	100.0%	0.0%
Iowa	0.9%	14,050	100.0%	100.0%	0.0%
Kansas	2.4%	32,178	100.0%	100.0%	0.0%
Kentucky	3.7%	78,593	100.0%	100.0%	0.0%
Louisiana	4.0%	91,447	100.0%	100.0%	0.0%
Maine	14.2%	111,689	100.0%	100.0%	0.0%
Massachusetts	2.2%	69,244	99.9%	99.9%	0.0%
Michigan	2.2%	106,770	99.40%	99.98%	0.58
Minnesota	3.4%	86,706	92.4%	97.8%	5.4%
Mississippi	3.7%	54,499	100.0%	100.0%	0.0%
Missouri	4.3%	131,018	100.0%	100.0%	0.0%
Montana	19.2%	112,978	93.6%	95.1%	1.4%

State	% Update Leave	HUs in UL Workload	% HUs Complete		Change
			Prior Week	Current Week	
Nebraska	3.5%	30,670	96.192%	99.997%	3.805%
Nevada	3.6%	47,778	98.7%	98.7%	0.0%
New Hampshire	9.9%	65,936	96.0%	100.0%	4.0%
New Jersey	1.1%	40,514	96.9%	100.0%	3.1%
New Mexico	19.2%	200,664	78.5%	87.7%	9.1%
New York	3.0%	270,545	99.19%	99.98%	0.79%
North Carolina	3.3%	164,775	99.8%	100.0%	0.2%
North Dakota	9.9%	40,051	98.6%	98.6%	0.0%
Ohio	0.6%	34,686	100.0%	100.0%	0.0%
Oklahoma	9.8%	187,921	100.0%	100.0%	0.0%
Oregon	1.4%	27,198	100.0%	100.0%	0.0%
Pennsylvania	3.3%	197,124	100.0%	100.0%	0.0%
Rhode Island	1.1%	5,657	100.0%	100.0%	0.0%
South Carolina	2.4%	61,375	100.0%	100.0%	0.0%
South Dakota	12.4%	51,715	92.7%	97.6%	5.0%
Tennessee	0.3%	9,010	100.0%	100.0%	0.0%
Texas	3.6%	441,668	99.9%	100.0%	0.1%
Utah	7.6%	90,972	97.6%	98.0%	0.4%
Vermont	17.2%	61,075	100.0%	100.0%	0.0%
Virginia	0.9%	34,615	100.0%	100.0%	0.0%
Washington	2.8%	92,093	99.8%	99.8%	0.0%
West Virginia	28.8%	289,189	100.0%	100.0%	0.0%
Wisconsin	3.3%	93,399	99.8%	100.0%	0.2%
Wyoming	22.9%	67,114	100.0%	100.0%	0.0%
Puerto Rico	100.0%	1,776,226	100.0%	100.0%	0.0%

Legend: All ACOs with UL Workload Have Restarted All UL Workload Completed



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Periodic Performance Management Reports

2020 Census: Update Leave Progress & Cost

Status:

● On Track

Data current as of:

July 6, 2020

Start Date:

March 15, 2020

Completion Date:

July 20, 2020*

Notes:

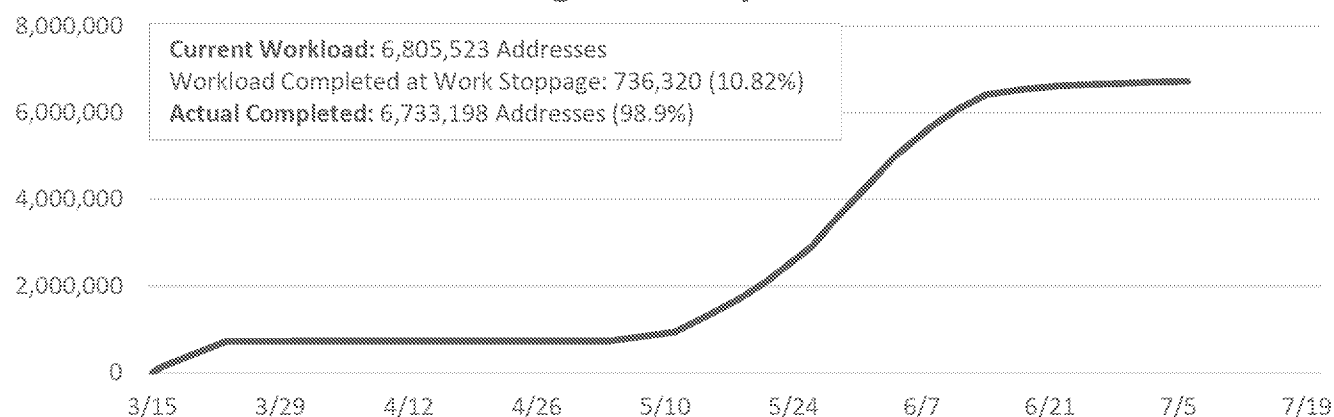
* Addresses in the Update Leave workload that do not self-respond are included in the Nonresponse Followup operation.

- **Current Block Workload:**
311,358 Blocks
- **Actual Completed Blocks:**
304,593 Blocks (97.8%)

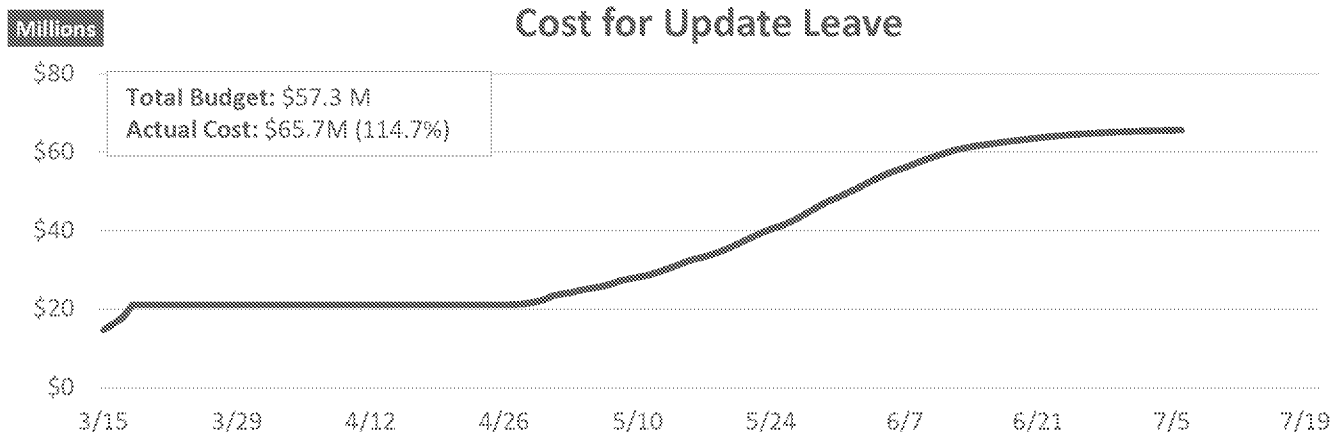
Lister Productivity

- **Addresses per Hour:** 7.9
- **Life Cycle Cost Model Estimate for Addresses per Hour:** 5.3

Progress for Update Leave



Cost for Update Leave



Source: Unified Tracking System



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 Economics and Statistics Administration
 U.S. CENSUS BUREAU
 census.gov

Pre-decisional - Internal Only - Not for Public Distribution.

Periodic Performance Management Reports

2020 Census: Update Leave – Status Update

Source: Unified Tracking System, *Census Data Lake, Decennial Statistical Studies Division*
Data Current as of: July 6, 2020

Operation:

The Update Leave (UL) operation is designed to occur in areas where the majority of housing units either do not have mail delivered to the physical location of the housing unit, or the mail delivery information for the housing unit cannot be verified. A Census Bureau employee will physically deliver a 2020 Census invitation to these housing units.

Workload:

- Update Leave Original Workload (does not change): 6,805,523
- Workload Completed March 18 (date field operations were suspended): 736,320
 - Percentage Completed at suspension: 10.82%
- Workload Completed as of July 6: 6,733,198
- Percentage Completed: 98.94%

Response Rates:

- UL Total Responses (as of March 18): 139,825
 - Internet: 12,478 (8.92%)
 - Paper: 127,189 (90.96%)
 - Phone: 158 (0.11%)
- UL Total Responses (as of July 6): 2,050,676
 - Internet: 1,058,408 (51.61%)
 - Paper: 959,485 (46.79%)
 - Phone: 32,783 (1.60%)

Periodic Performance Management Reports

2020 Census: Phased Restart of Paper Data Capture Centers Staffing Status

Status:

● On Track

Data current as of:

July 1, 2020

Start Date:

January 21, 2020

Completion Date:

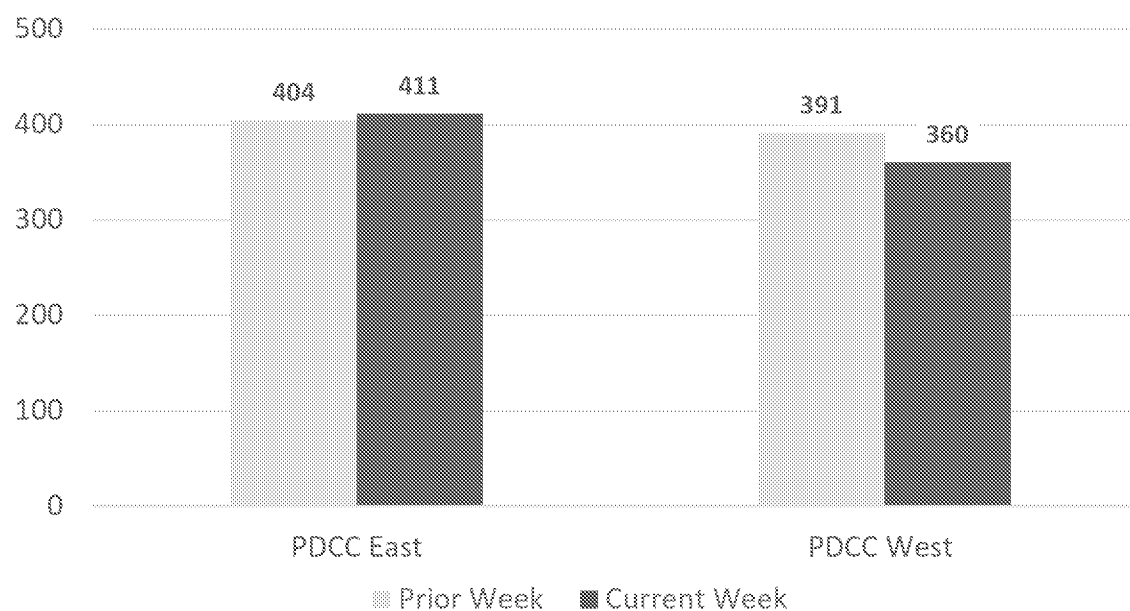
November 30, 2020

Notes:

- Staff in CDC-defined high risk groups have returned to work on the Indiana NPC campuses.
- Increased COVID-19 activity in Arizona is impacting PDCC West staffing.
- There are eight positive COVID-19 cases at PDCC-West; multiple staff are self-monitoring for 14 days.

Paper Data Capture Staffing by Center

Total Staff: 771, -24 from prior week



Periodic Performance Management Reports

2020 Census: Phased Restart Fingerprinting Status

Status:

● On Track

Data current for
the week of:
July 6, 2020

Start Date:
January 21, 2020

Completion Date:
October 31, 2020

Notes:

Overall Fingerprinting Status

Status	Prior Week	Change from Prior Week	Current Week
Total Number of Applicants that Reached DAPPS	2,956,419	+7,927	2,964,346
Total Number Selected	1,149,065	+29,667	1,178,732
Total Number Fingerprinted	753,749	+28,047	781,796
Total Pending Fingerprinting	395,316	+1,620	396,936
Total Remaining Applicant Pool	1,807,354	-21,740	1,785,614



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Source: Unified Tracking System, Automated Tracking and Control

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Periodic Performance Management Reports

2020 Census: NRFU Tip Sheet

Source: Decennial Census Management Division
Data Current as of: July 2, 2020

Cycle 1A NRFU Soft Launch

Beginning July 16, the Census Bureau will soft-launch sending approximately 11,000 Census Enumerators to follow up with households in communities covered by six area census offices—one in each census region. The six locations are:

- Gardiner, ME (New York Region)
- Beckley, WV (Philadelphia Region)
- New Orleans, LA (Atlanta Region)
- Kansas City, MO (Chicago Region)
- Oklahoma County, OK (Dallas Region)
- Boise, ID (Los Angeles Region)

Key Dates

- 6/18: Census Field Supervisor (CFS) Training
- 7/7: Enumerator Training
- 7/16: Production

CFS/Enumerator Training and Deploy Goals by Office

- Selection and Fingerprint Goals have been achieved for both CFS and Enumerators.
- Plan to train approx. 470 CFSs and 12,000 Enumerators
- Plan to deploy approx. 420 CFSs and 10,600 Enumerators

ACO Name	Current Self-Response Rate (6/29)	NRFU CFS Goal to Train	NRFU CFS Goal to Deploy	NRFU Enums Goal to Train	NRFU Enums Goal to Deploy
Gardiner	53%	78	71	2,078	1,870
Beckley	53%	87	80	2,717	2,454
Kansas City	62%	110	99	2,529	2,225
New Orleans	56%	58	52	1,341	1,181
Oklahoma County	59%	73	66	1,740	1,532
Boise	65%	60	54	1,532	1,349
Totals		466	422	11,937	10,611



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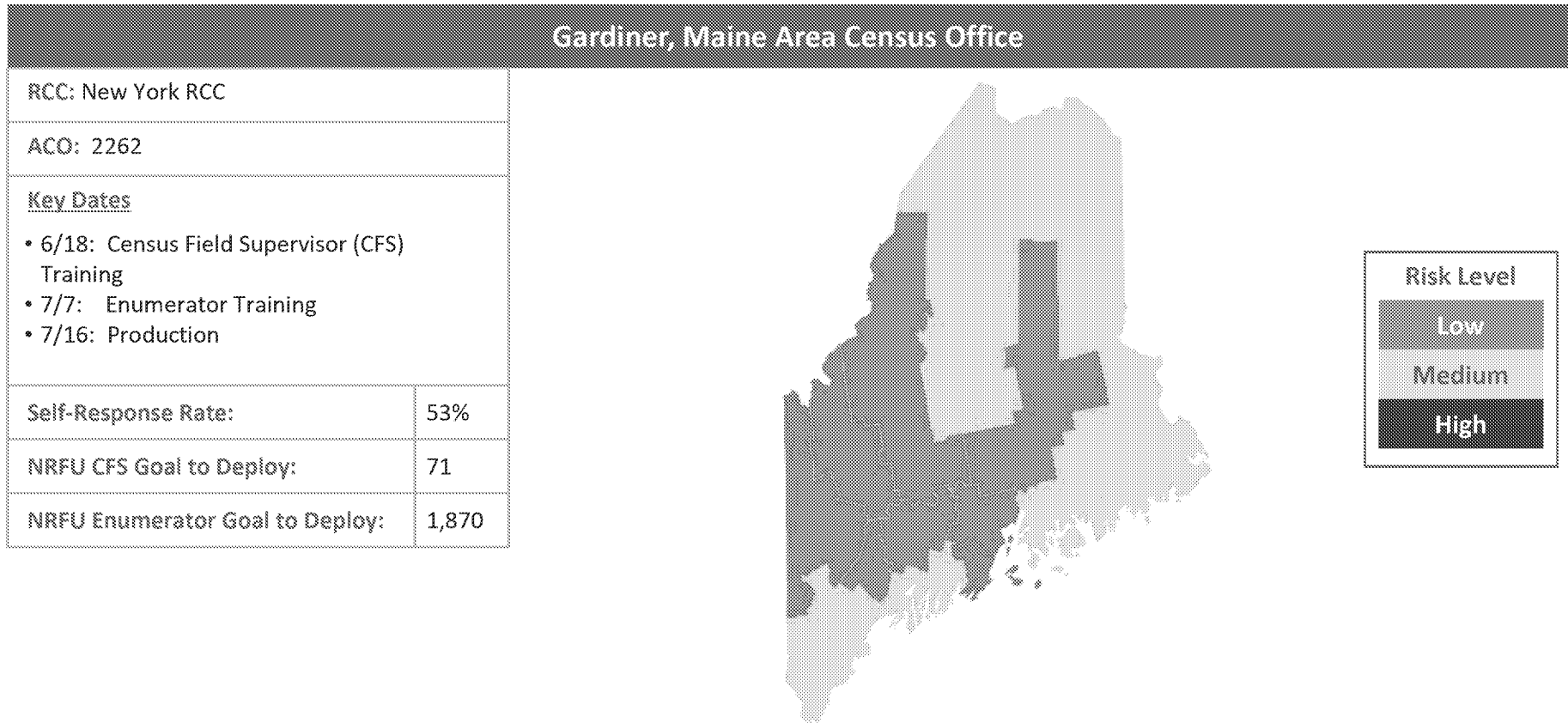
Pre-decisional - Internal Only - Not for Public Distribution.

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Gardiner, Maine Area

Census Office

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020



Note:

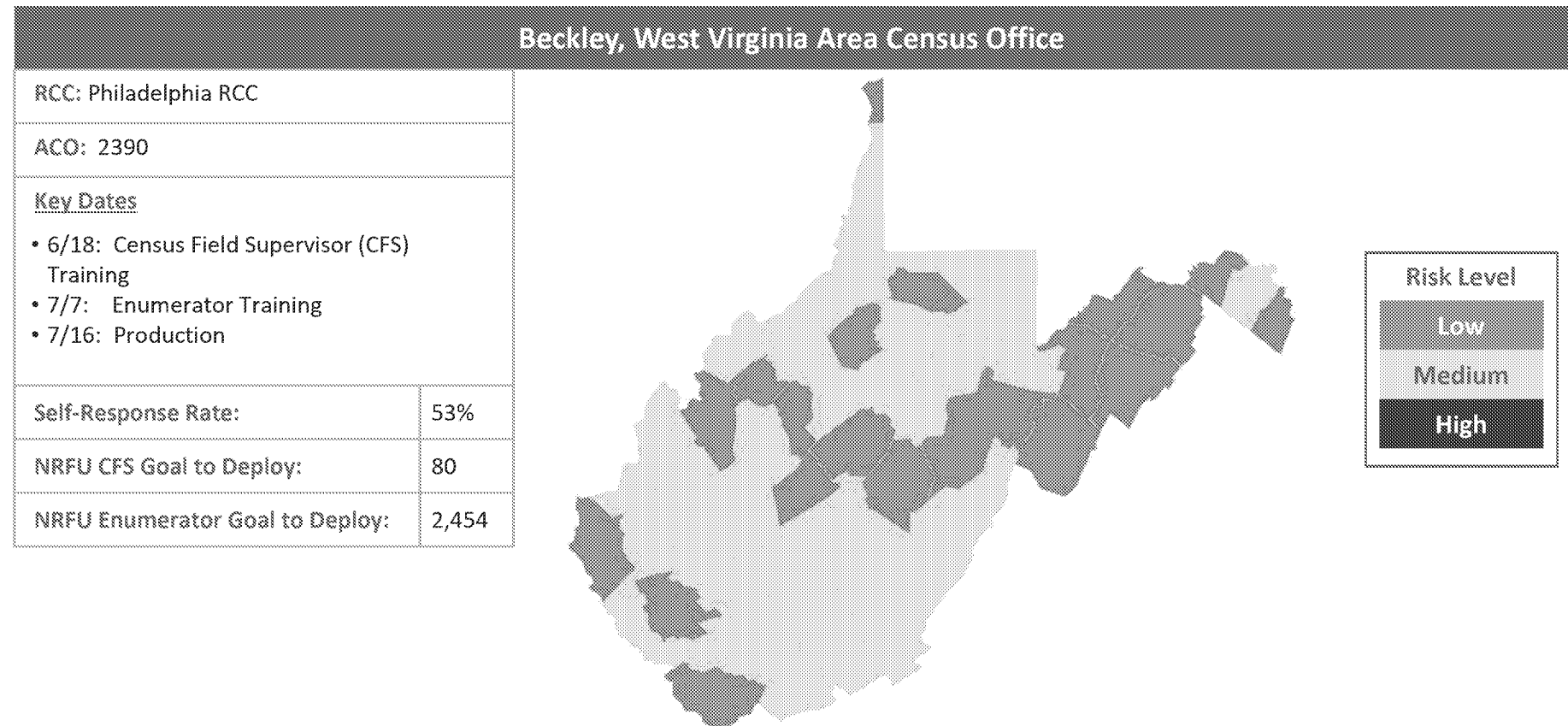
The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Beckley, West Virginia Area

Census Office

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020



Note:

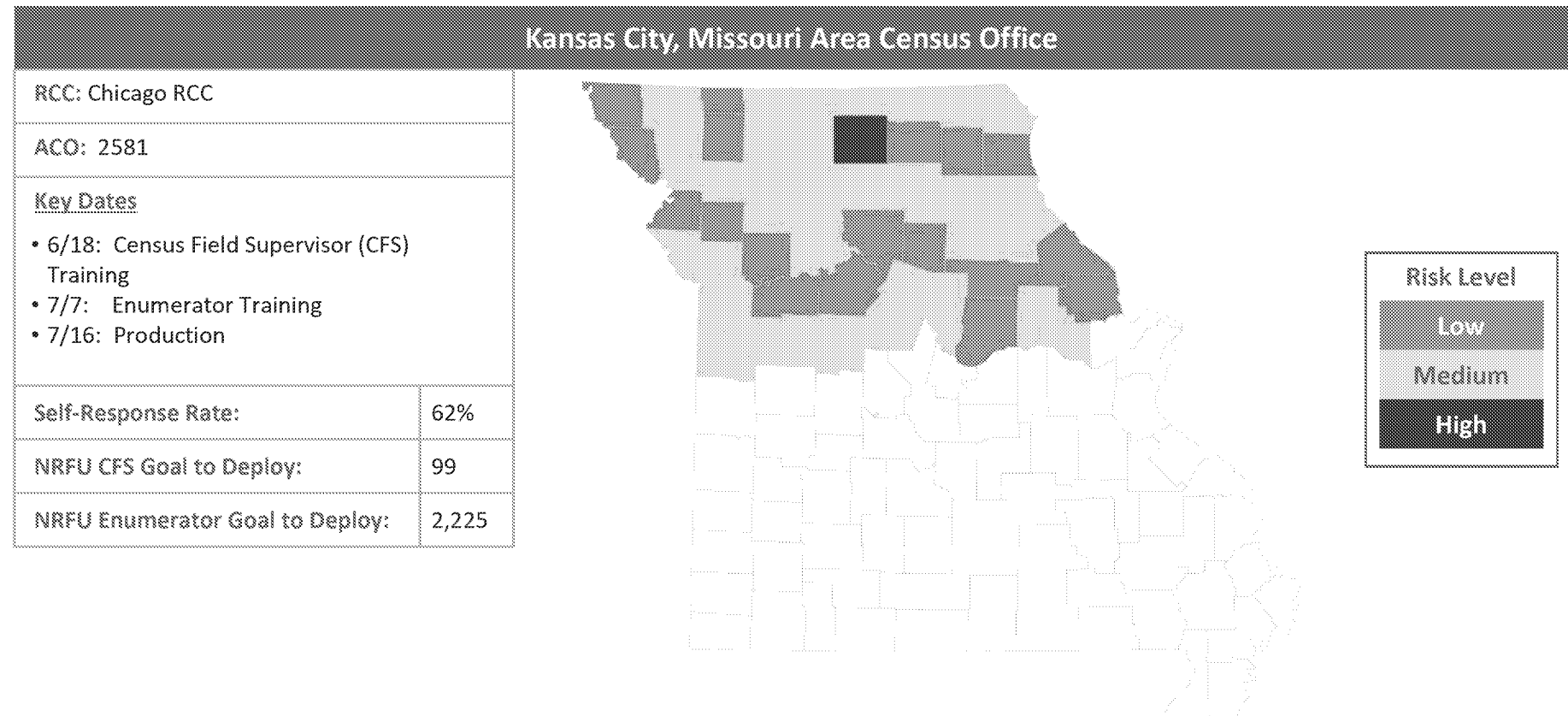
The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Kansas City, Missouri Area

Census Office

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020



Note:

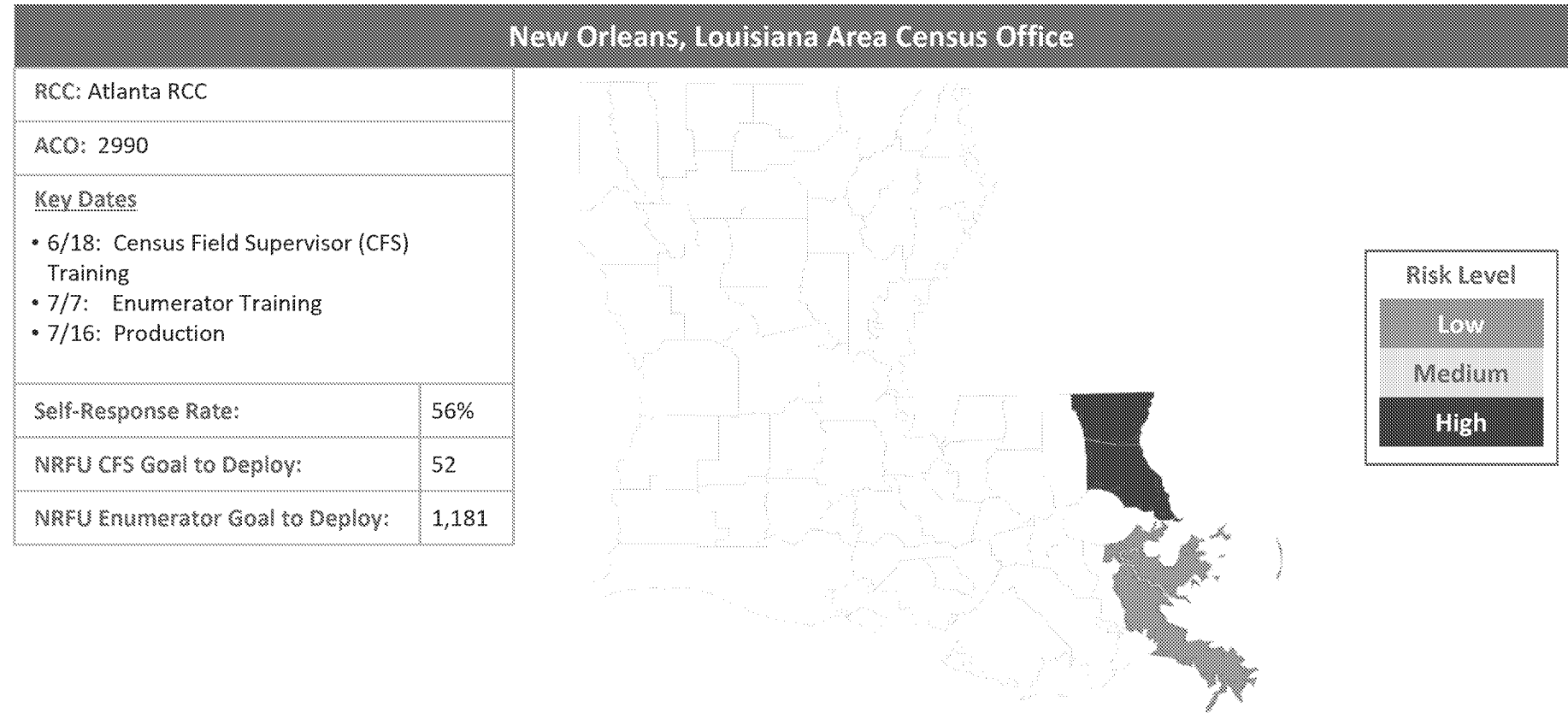
The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – New Orleans, Louisiana

Area Census Office

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020



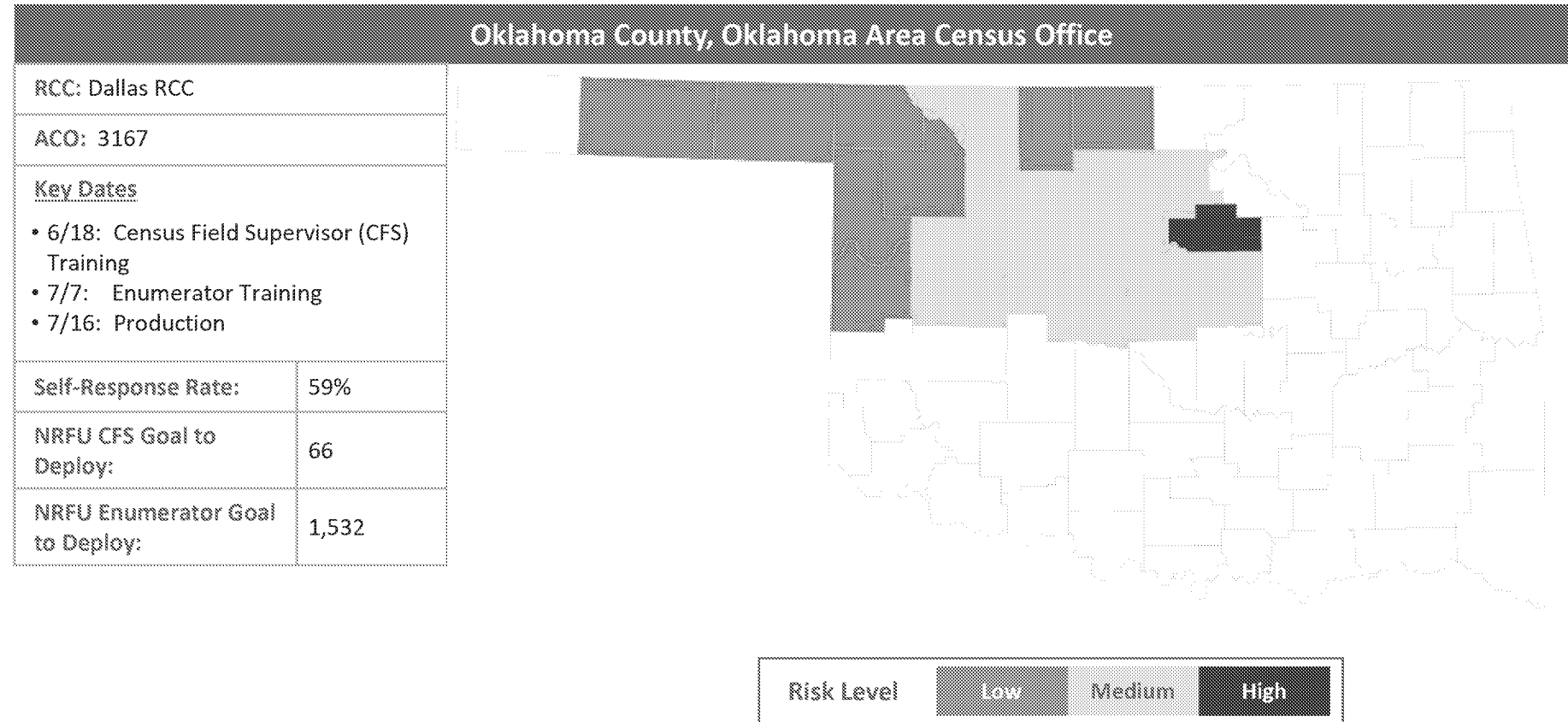
Note:

The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Oklahoma County, Oklahoma Area Census Office

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020



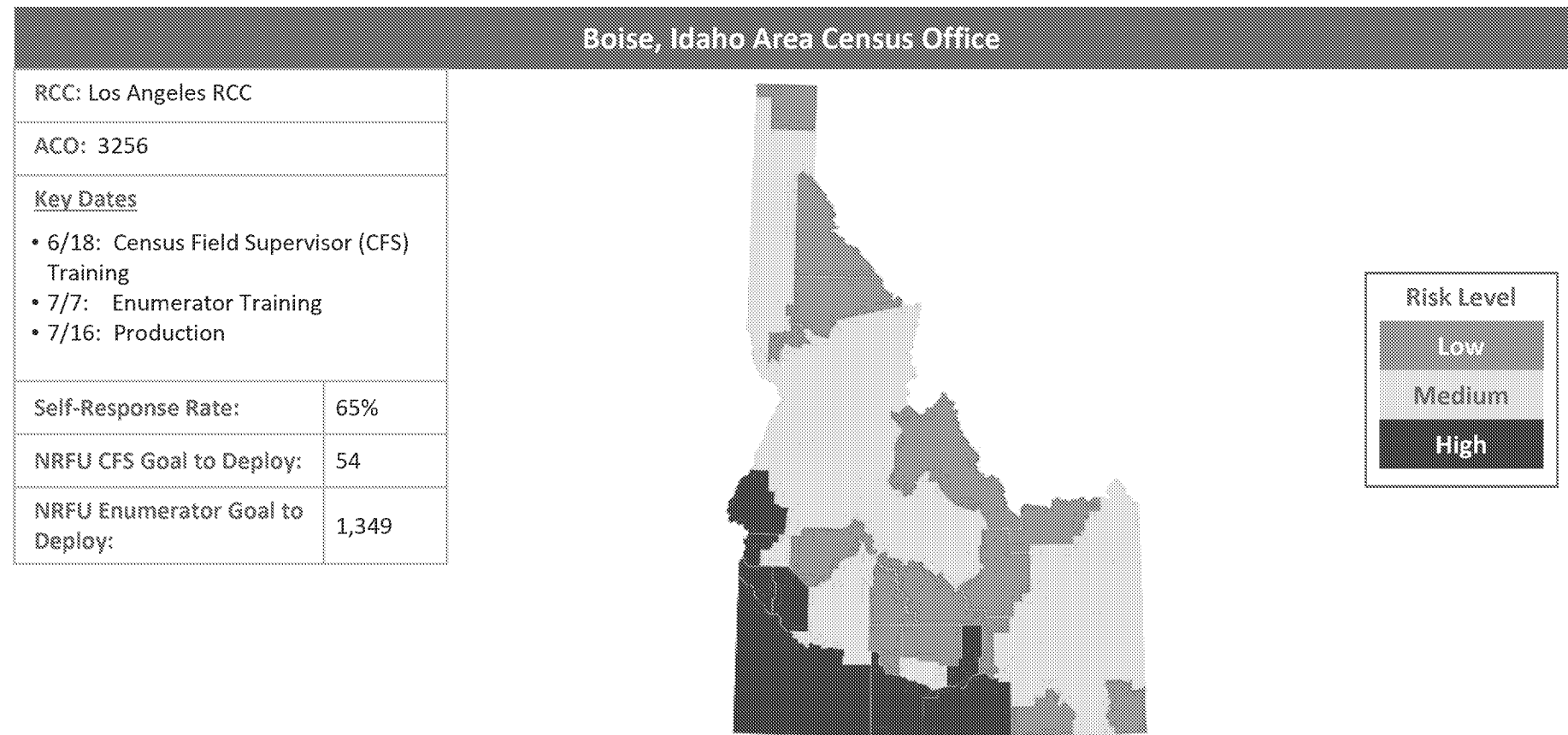
Note:

The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Boise, Idaho Area Census Office

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020



Note:

The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: NRFU Soft Launch – Cycle 1 ACOs

Source: Decennial Census Management Division
Data Current as of: July 2, 2020

Cycle 1A ACOs

RCC	ACO #	City	State	CFS Training Start Date	Enumerator Training Start Date	Production Start
NY	2262	Gardiner	ME	June 18	July 7	July 16
PHI	2390	Beckley	WV	June 18	July 7	July 16
CHI	2581	Kansas City	MO	June 18	July 7	July 16
ATL	2990	New Orleans	LA	June 18	July 7	July 16
DAL	3167	Oklahoma County	OK	June 18	July 7	July 16
LA	3256	Boise	ID	June 18	July 7	July 16

Cycle 1B ACOs

RCC	ACO #	City	State	CFS Training Start Date	Enumerator Training Start Date	Production Start
NY	2254	Hartford	CT	June 25	July 14	July 23
PHI	2379	State College	PA	June 25	July 14	July 23
PHI	2382	Nashville	TN	June 25	July 14	July 23
CHI	2569	Evansville	IN	June 25	July 14	July 23
ATL	2988	Baton Rouge	LA	June 25	July 14	July 23
ATL	2901	Gulfport	MS	June 18	July 14	July 23
DAL	3159	Wichita	KS	June 25	July 14	July 23
LA	3297	Tacoma	WA	June 25	July 14	July 23



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Periodic Performance Management Reports

2020 Census: NRFU Soft Launch – Cycle 2 ACOs

Source: Decennial Census Management Division
Data Current as of: July 2, 2020

RCC	ACO #	City	State	CFS Training Start Date	Enumerator Training Start Date	Production Start
NY	2293	Guaynabo	PR	July 1	July 21	July 30
NY	2294	Caguas	PR	July 1	July 21	July 30
NY	2295	Mayaguez	PR	July 1	July 21	July 30
NY	2253	Danbury	CT	July 1	July 21	July 30
NY	2258	Quincy	MA	July 1	July 21	July 30
NY	2260	Waltham	MA	July 1	July 21	July 30
NY	2261	Worcester	MA	July 1	July 21	July 30
NY	2271	Trenton	NJ	July 1	July 21	July 30
NY	2276	Buffalo	NY	July 1	July 21	July 30
PHI	2359	Hanover	MD	July 1	July 21	July 30
PHI	2361	Hagerstown	MD	July 1	July 21	July 30
PHI	2362	Towson	MD	July 1	July 21	July 30
PHI	2364	Mansfield	OH	July 1	July 21	July 30
PHI	2372	Cranberry Township	PA	July 1	July 21	July 30
PHI	2373	Harrisburg	PA	July 1	July 21	July 30
PHI	2377	Pittsburgh	PA	July 1	July 21	July 30
PHI	2384	Crystal City	VA	July 1	July 21	July 30
DAL	3154	Aurora	CO	July 1	July 21	July 30
DAL	3155	Colorado North	CO	July 1	July 21	July 30
DAL	3157	Denver	CO	July 1	July 21	July 30
DAL	3158	Overland Park	KS	July 1	July 21	July 30
DAL	3162	Bismarck	ND	July 1	July 21	July 30

Periodic Performance Management Reports

2020 Census: NRFU Soft Launch – Cycle 2 ACOs cont'd

Source: Decennial Census Management Division
Data Current as of: July 2, 2020

RCC	ACO #	City	State	CFS Training Start Date	Enumerator Training Start Date	Production Start
CHI	2559	Chicago Central	IL	July 1	July 21	July 30
CHI	2560	Chicago Far Southwest	IL	July 1	July 21	July 30
CHI	2561	Chicago South	IL	July 1	July 21	July 30
CHI	2562	Cook County NW	IL	July 1	July 21	July 30
CHI	2563	Cook County South	IL	July 1	July 21	July 30
CHI	2564	Dekalb	IL	July 1	July 21	July 30
CHI	2565	Oswego	IL	July 1	July 21	July 30
CHI	2566	Peoria	IL	July 1	July 21	July 30
CHI	2567	Skokie	IL	July 1	July 21	July 30
CHI	2571	Indianapolis	IN	July 1	July 21	July 30
CHI	2572	Lake County	IN	July 1	July 21	July 30
CHI	2585	Green Bay	WI	July 1	July 21	July 30
ATL	2910	Atlanta	GA	July 1	July 21	July 30
ATL	2982	Dekalb County	GA	July 1	July 21	July 30
LA	3255	Honolulu	HI	July 1	July 21	July 30
LA	3280	San Francisco	CA	July 1	July 21	July 30
LA	3282	San Mateo	CA	July 1	July 21	July 30
LA	3289	Sunnyvale	CA	July 1	July 21	July 30
LA	3293	Everett	WA	July 1	July 21	July 30
LA	3294	Olympia	WA	July 1	July 21	July 30
LA	3295	Seattle	WA	July 1	July 21	July 30

Status Reporting: 2020 Decennial Census
Periodic Reporting: Release for July 6, 2020











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Periodic Performance Management Reports

Release for July 6, 2020

Status	Report Title	Summary	Slide Number
	2020 Census: Recruiting Ranges Over Time		4
	2020 Census: Applicant Status	Actions taken to achieve our recruiting target were successful. We have achieved our applicant goal.	5
	2020 Census: Remote Alaska Production Progress & Cost	Enumerations have resumed in all remaining areas that were incomplete in mid-March when work was suspended. Lack of access to some villages due to COVID-19 quarantines has required moving the planned completion of the Remote Alaska operation to August 31, 2020.	6
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	7
	2020 Census: Self-Response of Housing Units – Zoomed in View		8
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	9
	2020 Census: Self-Response of Housing Units by Response Mode – Zoomed in View		10
	2020 Census: Self-Response of Housing Units by State		11

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention







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Periodic Performance Management Reports

Release for July 6, 2020

Status	Report Title	Summary	Slide Number
	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	12
	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 997. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 385,000. We have exceeded the 2010 Census numbers for both national and community partners.	13
	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts. The program is rapidly preparing new messages and delivery vehicles in light of the our current environment.	14
	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	15

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention



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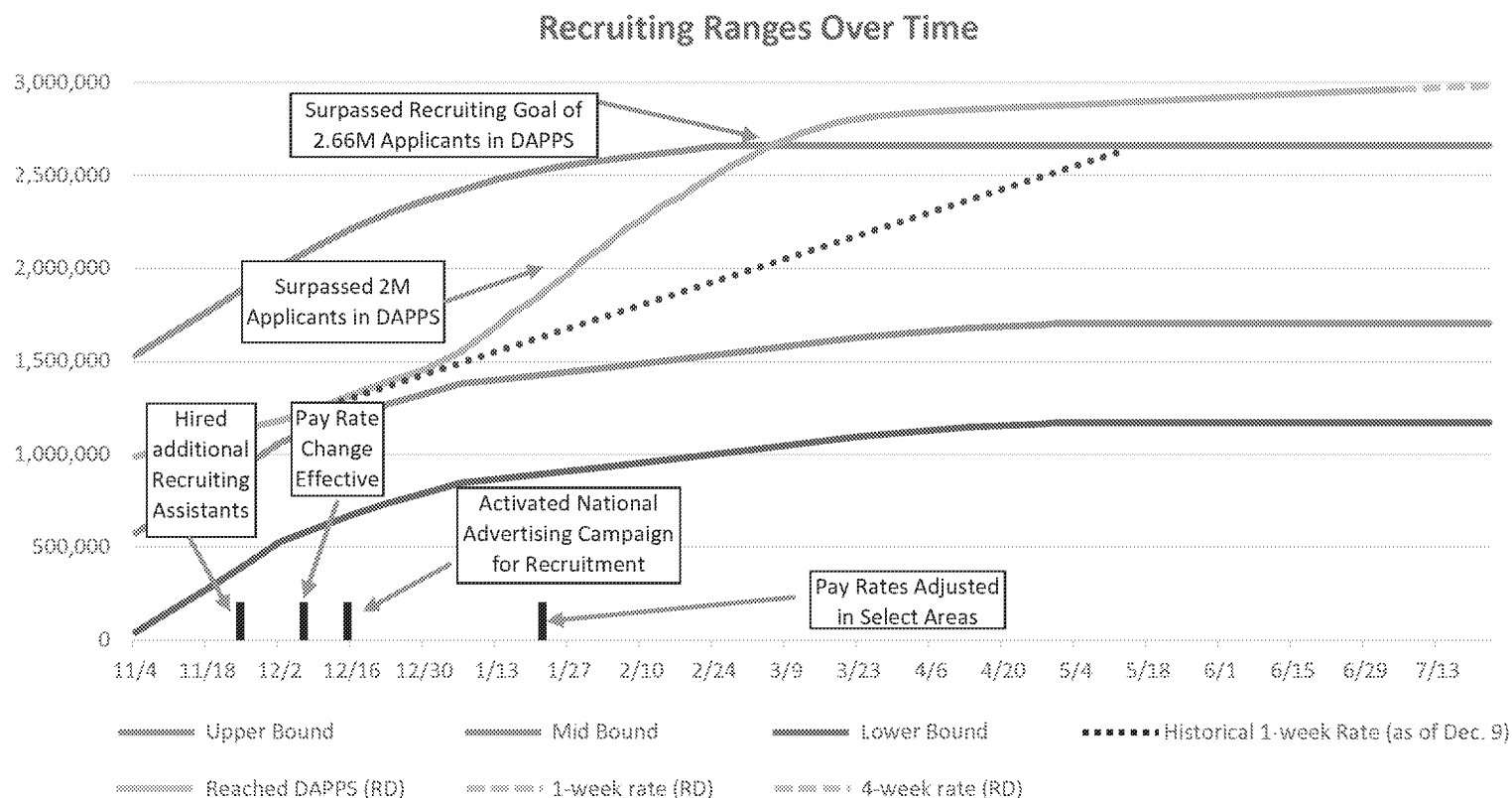
Periodic Performance Management Reports

2020 Census: Recruiting Ranges Over Time

Data current as of:
July 6, 2020

Completion Date:
August 15, 2020

Notes:



1-week averages

As of July 6:

Daily Rate: 1,132 reached DAPPS/day

As of June 29:

Daily Rate: 1,251 reached DAPPS/day

As of June 22:

Daily Rate: 1,315 reached DAPPS/day

Upper Bound:

55% Self Response Rate
1.55 Cases/HR (productivity)
20.5 Hours/Week (availability)
7 Week Operation
500,000 Hired

Mid:

60.5% Self Response Rate
1.55 Cases/HR (productivity)
20.5 Hours/Week (availability)
9 Week Operation
320,000 Hired

Lower Bound:

65.5% Self Response Rate
1.55 Cases/HR (productivity)
20.5 Hours/Week (availability)
9 Week Operation
220,000 Hired



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Source: 2020 R&A/DAPPS Applicant Summary Report

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Periodic Performance Management Reports

2020 Census: Applicant Status

Status:

● On Track

Data current as of:

July 6, 2020

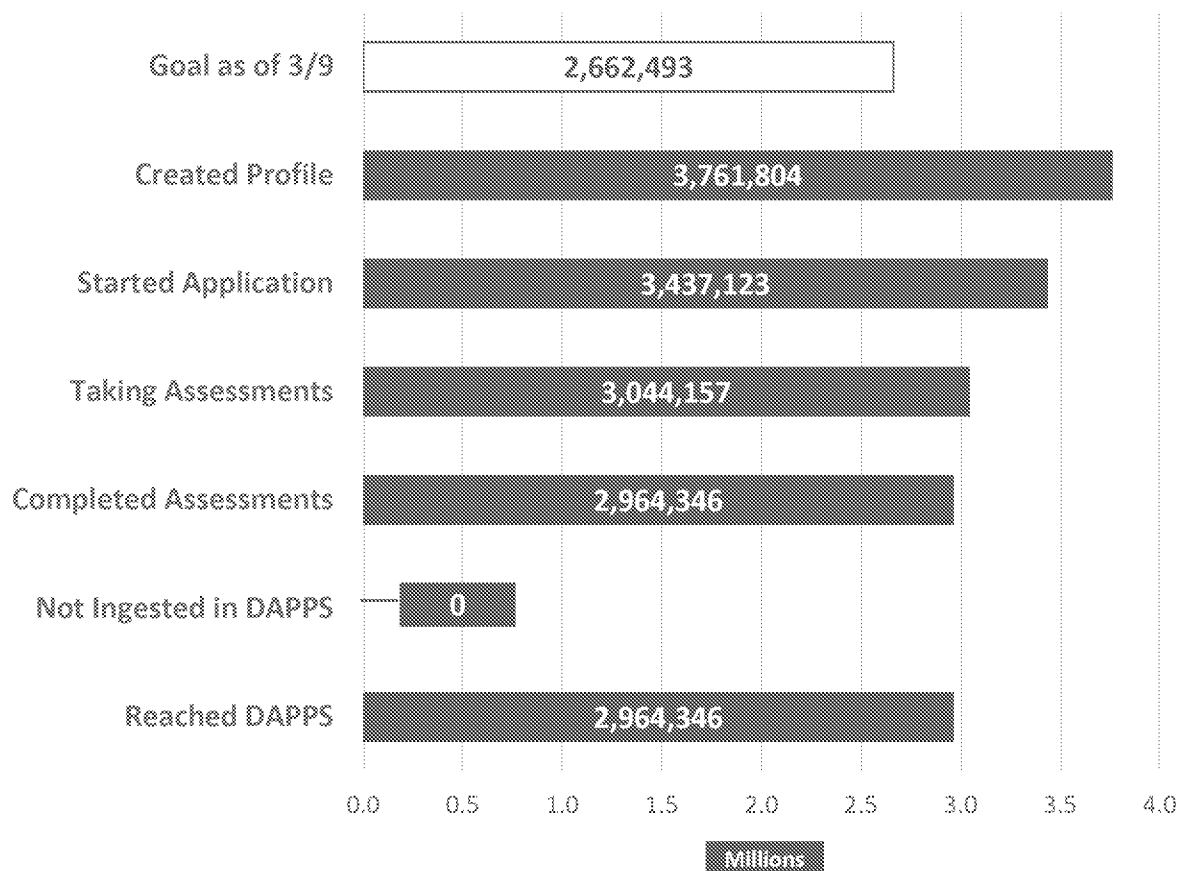
Completion Date:

January 5, 2021

Notes:

- Actions taken to achieve our recruiting target were successful. We have achieved our applicant goal.
- We are communicating with our recruits, selectees, and on-board staff so that staff are ready to work as we recommence all field operations.

Steps in Applying for a Position



Periodic Performance Management Reports

2020 Census: Remote Alaska Progress & Cost

Status:

● On Track

Data current as of:

July 6, 2020

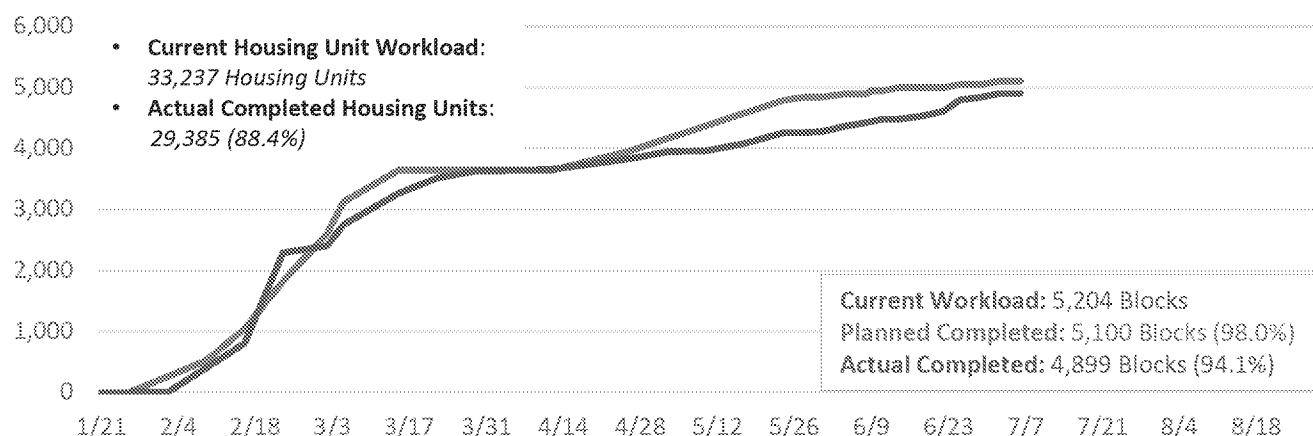
Start Date:

January 21, 2020

Completion Date:

August 31, 2020

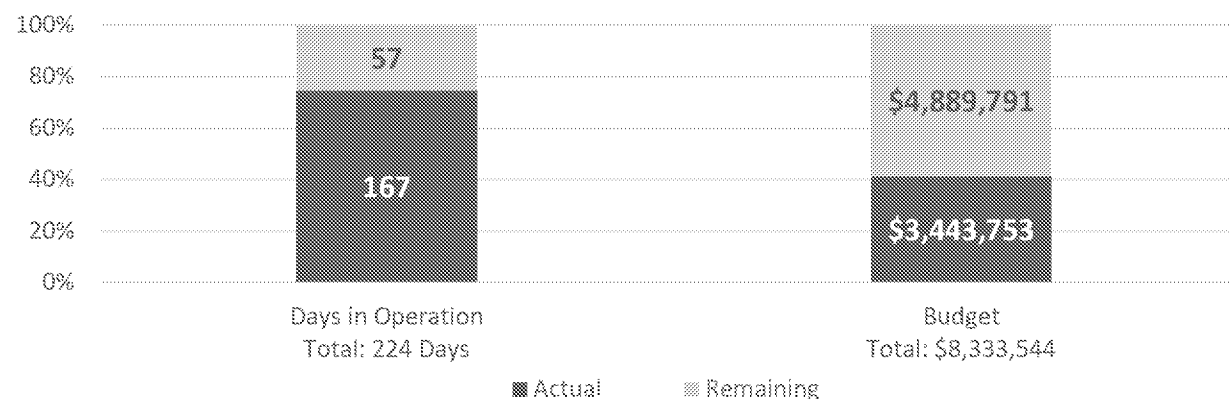
Progress for Remote Alaska Production



Notes:

- Lack of access to some villages due to COVID-19 quarantines has required moving the planned completion of the Remote Alaska operation to August 31, 2020.
- Enumerations have resumed in all remaining areas that were incomplete in mid-March when work was suspended.

Key Performance Indicators for Remote Alaska



Source: Unified Tracking System, Automated Tracking and Control



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Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:

● On Track

Data current as of:

July 6, 2020

Start Date:

March 12, 2020

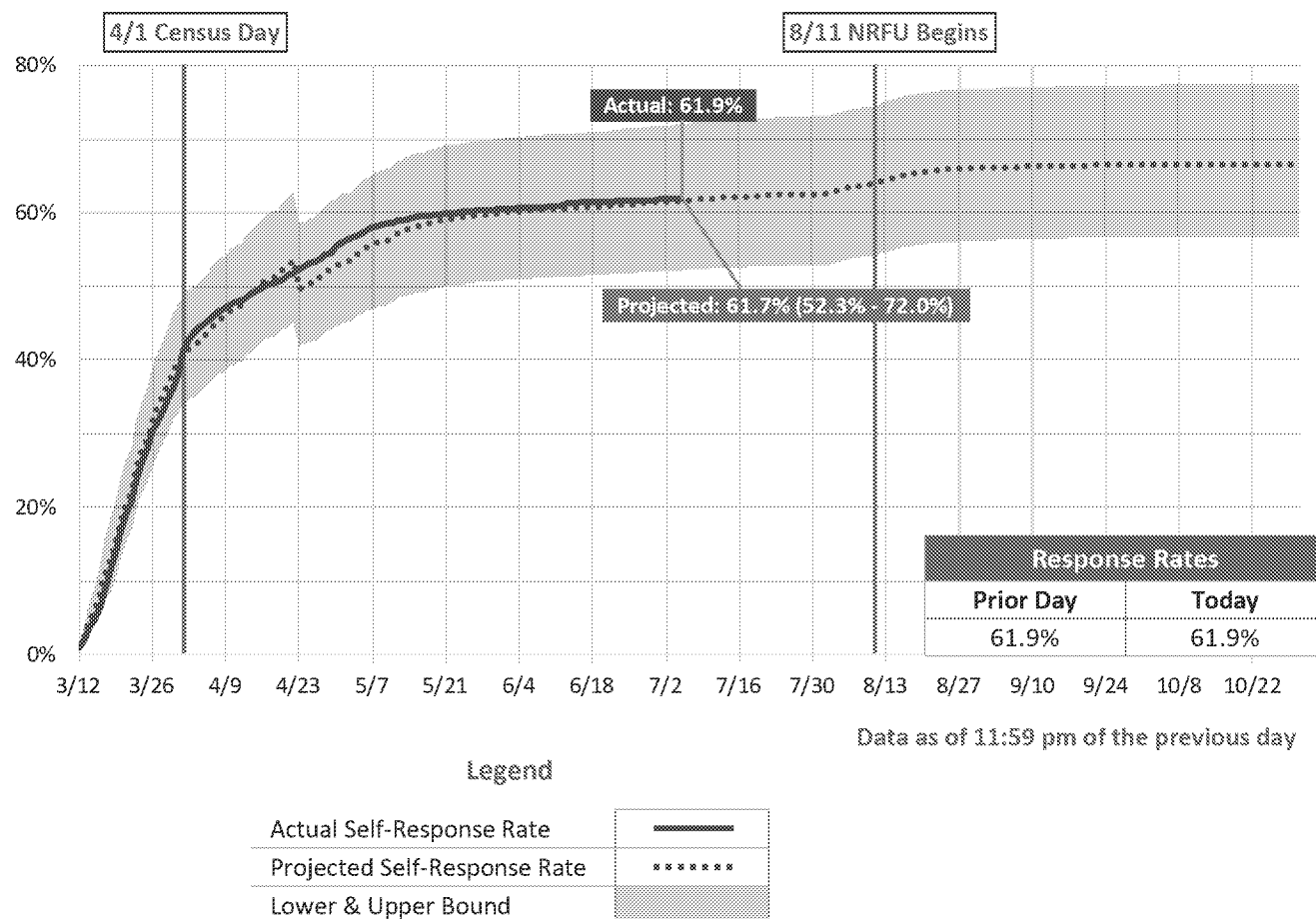
Completion Date:

October 31, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



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Source: Census Data Lake & Decennial Statistical Studies Division

Pre-decisional - Internal Only - Not for Public Distribution.

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units –Zoomed in View

Status:

● On Track

Data current as of:

July 6, 2020

Start Date:

March 12, 2020

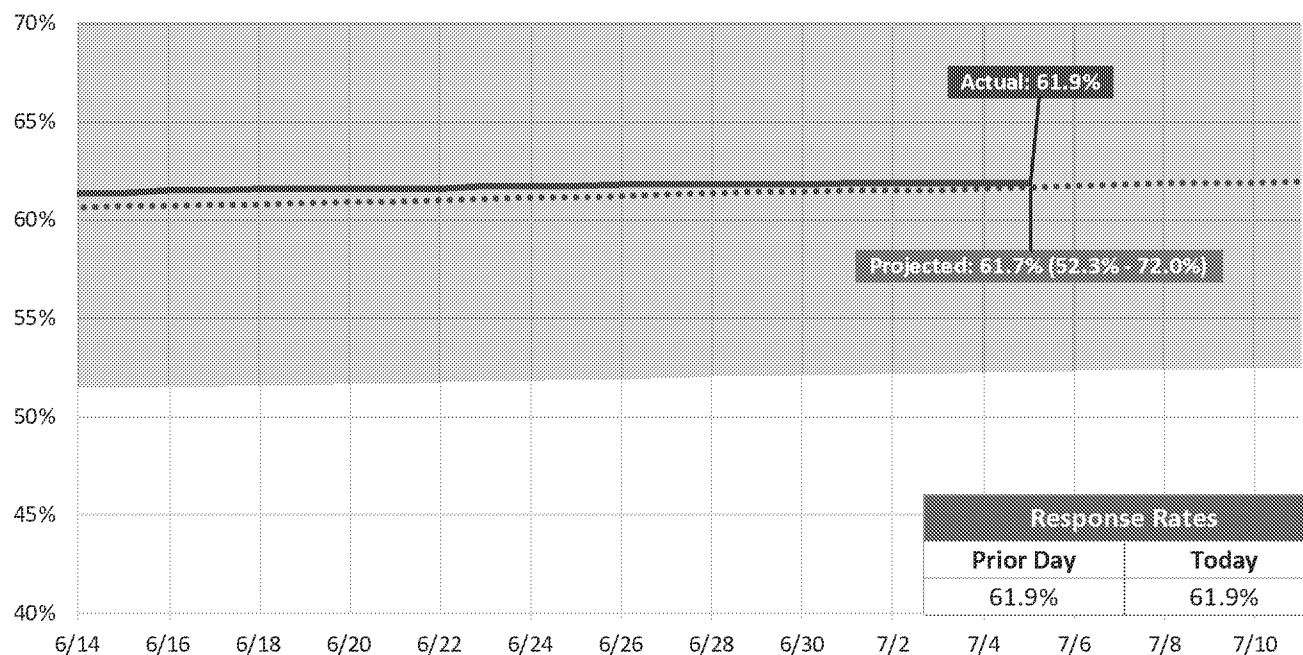
Completion Date:

October 31, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



Response Rates	
Prior Day	Today
61.9%	61.9%

Data as of 11:59 pm of the previous day

Legend

Actual Self-Response Rate	————
Projected Self-Response Rate	*****
Lower & Upper Bound	————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status:

○ Management Focus

Data current as of:

July 6, 2020

Start Date:

March 12, 2020

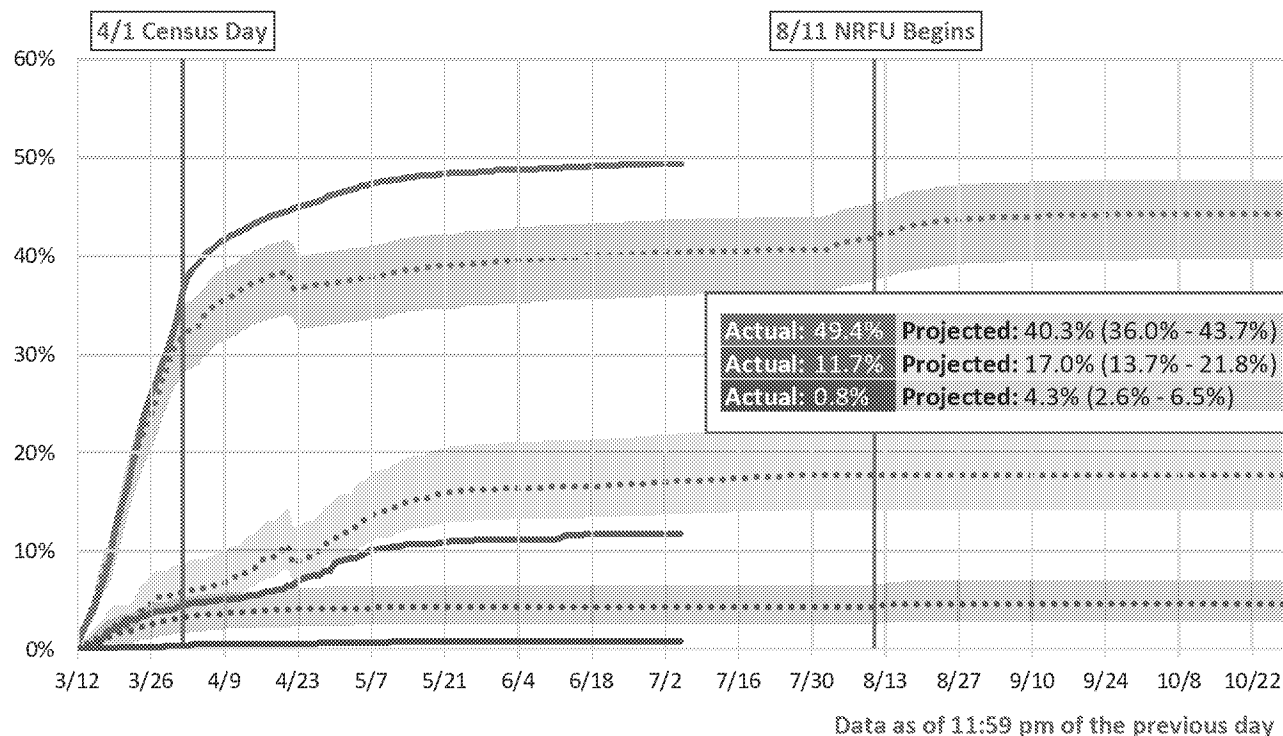
Completion Date:

October 31, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	—————	—————	—————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound			



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Source: Census Data Lake & Decennial Statistical Studies Division

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Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode – Zoomed In

Status:

● *Management Focus*

Data current as of:

July 6, 2020

Start Date:

March 12, 2020

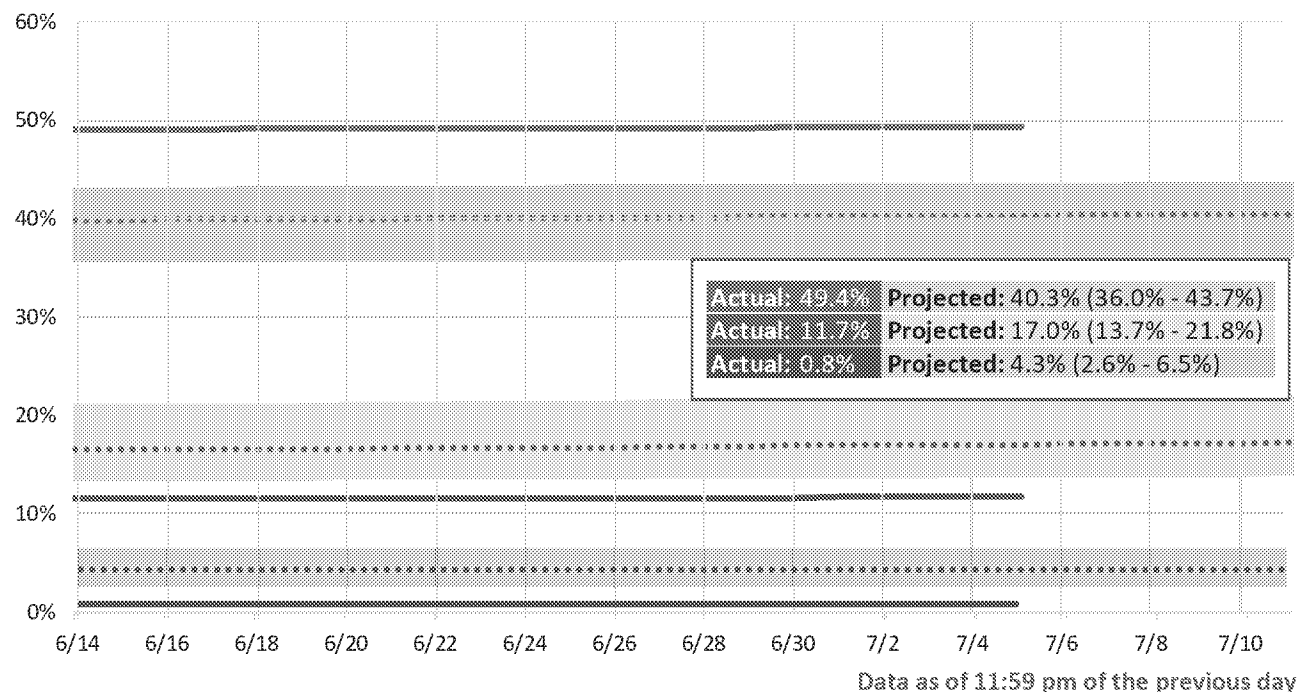
Completion Date:

*October 31, 2020**

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	—————	—————	—————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound			



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Source: Census Data Lake & Decennial Statistical Studies Division

Pre-decisional - Internal Only - Not for Public Distribution.

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division

Data Current as of: July 6, 2020

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
U.S. Total	61.9%	63.5%	66.5%
Minnesota	71.4%	71.6%	74.1%
Wisconsin	68.8%	71.2%	73.5%
Michigan	68.1%	65.4%	67.7%
Iowa	68.0%	71.0%	73.0%
Nebraska	68.0%	68.8%	71.1%
Washington	67.3%	63.7%	67.2%
Virginia	66.7%	66.2%	69.0%
Illinois	66.7%	67.7%	70.5%
Ohio	66.5%	66.2%	69.0%
Indiana	66.3%	67.0%	69.6%
Utah	66.3%	65.4%	68.6%
Maryland	65.8%	66.5%	69.5%
Kansas	65.6%	67.4%	70.0%
Idaho	65.4%	64.6%	67.1%
Connecticut	65.3%	66.3%	69.5%
Kentucky	65.3%	63.0%	65.7%
Colorado	65.2%	64.4%	67.2%
Pennsylvania	65.1%	67.8%	70.2%
Oregon	64.3%	63.9%	66.9%
Massachusetts	63.9%	65.6%	68.8%
New Jersey	63.9%	64.4%	67.6%
South Dakota	63.2%	65.0%	67.1%
California	63.1%	64.7%	68.2%
Missouri	62.0%	65.3%	67.5%
New Hampshire	61.8%	61.5%	64.4%
North Dakota	61.6%	66.8%	68.8%

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
Tennessee	61.4%	63.8%	67.1%
Nevada	61.1%	58.7%	61.4%
Rhode Island	59.8%	62.8%	65.7%
Delaware	59.7%	60.8%	64.1%
Alabama	59.6%	59.5%	62.5%
Florida	59.0%	59.6%	63.0%
Arizona	58.5%	58.5%	61.3%
Hawaii	58.1%	60.7%	64.1%
North Carolina	58.1%	62.1%	64.8%
District of Columbia	58.1%	62.2%	66.0%
Georgia	57.8%	59.5%	62.5%
New York	57.4%	61.3%	64.6%
Mississippi	56.9%	58.1%	61.3%
Texas	56.7%	60.3%	64.4%
Arkansas	56.6%	59.5%	62.3%
South Carolina	56.3%	62.2%	64.7%
Oklahoma	56.3%	58.9%	62.3%
Wyoming	56.1%	61.1%	63.4%
Louisiana	56.1%	57.9%	61.0%
Montana	55.6%	62.3%	64.6%
Vermont	55.3%	58.1%	60.3%
West Virginia	53.4%	56.8%	59.1%
Maine	53.4%	55.3%	57.4%
New Mexico	51.2%	56.9%	60.0%
Alaska	48.0%	51.6%	55.6%
Puerto Rico	23.4%	51.2%	53.8%

Data as of 11:59 pm of the previous day



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Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:

● On Track

Data current as of:

July 4, 2020

Completion Date:

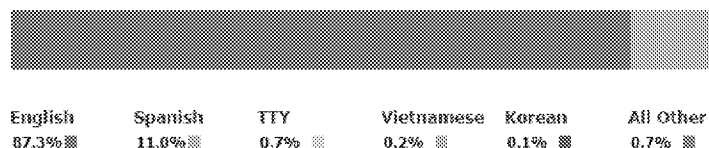
July 31, 2020

(pending contract MOD)

Notes:

To date, 13,957 callers have requested the callback option. These callbacks have resulted in 5,760 completed interviews and 3,648 callers being provided assistance.

Total Inbound Call Volume % (PTD)

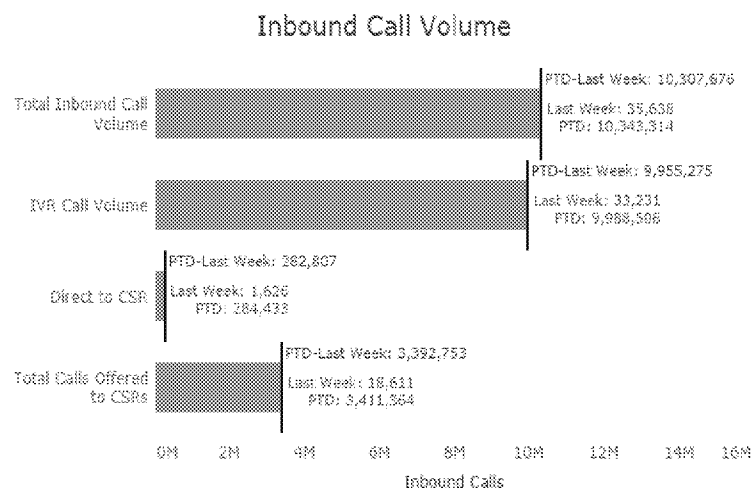


Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	8,295,117	10,343,314
Deflection Rate	47.0%	67.3%
Service Level - 30 Seconds	90.0%	62.4%
Average Handle Time	9:43	9:18

Calls Offered to CSRs by Language

	6/21 - 6/27	6/28 - 7/4	PTD	PTD %
English	18,243	15,100	3,018,288	88.5%
English Puerto Rico	38	48	2,159	0.1%
Spanish	1,974	2,138	258,173	7.6%
Spanish Puerto Rico	634	844	25,443	0.7%
Chinese Mandarin	71	66	10,273	0.3%
Chinese Cantonese	70	88	8,811	0.3%
Vietnamese	34	32	12,653	0.4%
Korean	40	33	12,278	0.4%
Russian	74	52	6,446	0.2%
Arabic	18	18	3,923	0.1%
Tagalog	12	2	2,527	0.1%
Polish	6	7	2,338	0.1%
French	7	3	1,117	0.0%
Haitian Creole	15	16	2,431	0.1%
Portuguese	12	6	1,706	0.1%
Japanese	7	4	2,193	0.1%
TTY	59	42	36,454	1.1%
Group Quarters	176	112	4,151	0.1%
Total	21,490	18,611	3,411,364	100.0%



Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:

● On Track

Data current as of:

July 2, 2020

Completion Date:

March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	373	70,964
Business	127	86,072
Chamber of Commerce/Trade or Professional Association	109	10,456
Education	102	83,779
Government	88	71,019
Faith-Based Organizations	65	39,997
Media	46	8,158
Healthcare	44	14,601
Technology	32	344
International Governmental/ Consulate/ Embassy	11	353
Grand Total	997	385,143

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	423	226,676
Black/African American	91	17,266
Young Children	86	5,715
Asian	78	10,032
Hispanic/Latino	78	12,873
Rural	77	25,268
Native Hawaiian Pacific Islander	47	658
Veterans	41	3,223
Young and Mobile	40	7,339
LGBTQ	24	1,272
Individuals with Disabilities	24	3,167
Elderly	23	8,706
Persons Experiencing Homelessness and Highly Mobile	22	5,453
American Indian/ Alaskan Native	19	3,551
MENA	15	54

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

Completed Community Partnership Events: 397,282



U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
census.gov

Source: Customer Relationship Management Database

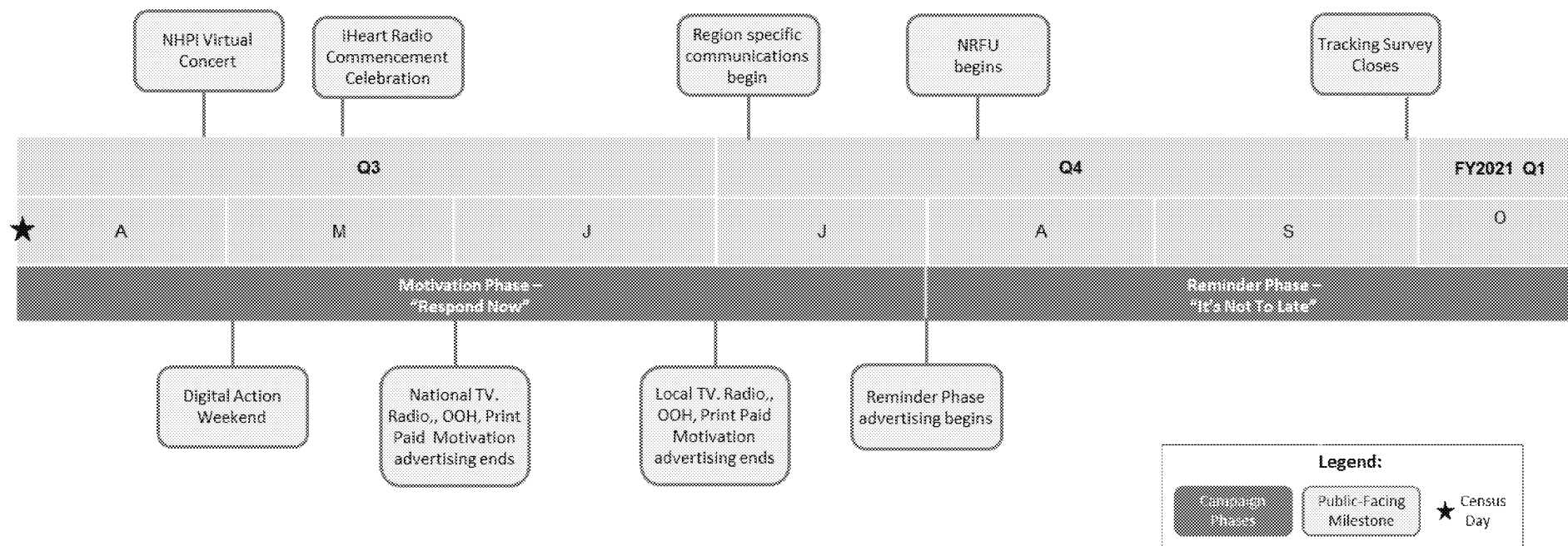
Pre-decisional - Internal Only - Not for Public Distribution.

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication

Data Current as of: July 2, 2020



Significant Accomplishments

- Essence Communications hosted the first of two virtual Essence Festival events, which include Census Bureau participation on 6/27.
- Field recruitment paid search ads began running on 6/31.
- Staff joined the Black Caucus of the American Library Association (BCALA) for "Counting Black Communities - Census 2020 & Libraries", a webinar to help participants strategize on how libraries can assist in increasing the response rate for HTC communities on 7/1 for a Census Solutions activity, and discussion.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: May 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 5/31/2020

\$ Amounts in Millions	IT	Non-IT	Total
Total Planned through May	\$1,686.123	\$4,298.556	\$5,984.679
Available contingency and additional appropriations through May	\$247.942	\$1,432.008	\$1,679.950
Planned Programmatic through May	\$1,438.181	\$2,866.548	\$4,304.729
Total Actual Commitments and Obligations through May	\$1,397.013	\$1,936.113	\$3,333.126
Unplanned commitments/obligations through May related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)	\$98.268	\$209.442	\$307.710
Actual Programmatic Commitments and Obligations through May	\$1,298.745	\$1,726.671	\$3,025.416
Total Plan Variance (\$/%)	\$289.110 (17.1%)	\$2,362.444 (55.0%)	\$2,651.553 (44.3%)
Remaining contingency and additional appropriations planned through May	\$149.674	\$1,222.566	\$1,372.240
Delayed Field Operation Spending through May	\$0	\$1,188.572	\$1,188.572
Non-Field Operational Programmatic Variance through May	\$139.436	(\$48.694)	\$90.741

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of planned contingency funding. The total variance for the resources planned to be available through May is \$2.652 billion, or 44 percent. Below outlines the breakdown:

- The positive variance through May against the original plan in 2020 Census IT systems and operations is \$289 million, or 17 percent. This variance consists of relatively minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, **totaling \$139 million**. The remaining \$150 million represents a portion of contingency funding originally planned in April that has not yet been obligated.
- The positive variance through May against the original plan in 2020 Census non-IT operations is \$2.362 billion, or 55 percent. This variance consists of **\$1.189 billion delayed** spending in the field operations as a result of schedule adjustments, and \$1.223 billion representing a portion of contingency and additional appropriations originally planned in April that has not yet been obligated. This variance is partially offset by a **-\$49 million non-Field variance**, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions were made to use risk-based contingency funds to support \$308 million in unplanned obligations or commitments through May as the result of the operational adjustments. The funds used to date include funding field staff salaries during to the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response throughout the spring, and additional costs for the extension of the Fingerprint Contract and licenses as the result of the operational timing adjustments.

Source: Commerce Business Systems; Decennial Budget Integration Tool



U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
census.gov

Pre-decisional - Internal Only - Not for Public Distribution.

July 7, 2020

BRIEFING MEMORANDUM FOR THE SECRETARY

FROM: Ian Steff, Assistant Secretary for Global Markets

RE: Phone Call with Tom Caulfield, CEO of GlobalFoundries,
on Wednesday, July 8, 2020, from 11 AM to 11:15 AM

b(5) - DP

b(5) - DP

ATTACHMENTS

1. List of Participants and Participant Biography

2.
3.

b(5) - DP

ATTACHMENT 1: List of Participants and Participant Biography

LIST OF PARTICIPANTS

GlobalFoundries

- Thomas Caulfield, CEO
- Other GlobalFoundries Executives TBD

Department of Commerce

- Joe Semsar, Deputy Under Secretary performing the non-exclusive duties of the Under Secretary for International Trade
- Ian Steff, Assistant Secretary for Global Markets



Thomas Caulfield
CEO, GlobalFoundries

Dr. Thomas Caulfield is the Chief Executive Officer of GlobalFoundries. Prior to being named CEO, Dr. Caulfield was Senior Vice President and General Manager of the company's 300 mm semiconductor wafer manufacturing facility (Fab 8), located in Saratoga County, NY. Dr. Caulfield, who joined GlobalFoundries in May 2014, led the operations, expansion and ramp of semiconductor manufacturing production at Fab 8.

Dr. Caulfield has an extensive career in the semiconductor industry spanning engineering, management and global operational leadership with leading technology companies. Most recently, Dr. Caulfield served as president and chief operations officer (COO) at Soraa, the world's leading developer of GaN on GaNTM (gallium nitride on gallium nitride) solid-state lighting technology. Prior to Soraa, Dr. Caulfield served as president and COO of Ausra, a leading provider of large-scale concentrated solar power solutions for electricity generation and industrial steam production. Before that, Dr. Caulfield served as executive vice president of sales, marketing and customer service at Novellus Systems, Inc.

Prior to that, Caulfield spent 17 years at IBM in a variety of senior leadership roles, ultimately serving as vice president of 300mm semiconductor operations for IBM's Microelectronics Division, leading its state-of-the-art wafer fabrication operations in East Fishkill, NY.

ATTACHMENT 2

b(5) - DP

(see attached PowerPoint)

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July 7, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Arica Young, Qatar Desk Officer, (202) 830-5531

RE: Call with H.E. Ahmed Mohammed Al-Sayed, Minister of State and
Chairman of the Board of Directors of the Free Zone Authority in Qatar
On Wednesday, July 8, 2020, from 12 PM to 12:15 PM

b(5) - DP

PARTICIPANT BIOGRAPHY



H.E. Ahmed Mohammed Al-Sayed

Minister of State and Chairman of the Board of Directors of the Free Zone Authority in Qatar

His Excellency Ahmad Al-Sayed is the Minister of State and the Chairman of the Board of Directors, Free Zones Authority, Qatar. HE Al-Sayed is also the Chairman and Managing Director of Doha Venture Capital Fund (DVC), Board Member of Qatar Development Bank and Board Member of Msheireb Properties. Previously, His Excellency served as CEO of the Qatar Investment Authority and Qatar Holding. His Excellency Al-Sayed holds his MBA with Trium Global (from LSE, NYU Stern, HEC Paris), a Master of International Banking & Financial Law from Boston University, and an LLB from Qatar University.

b(5) - DP

b(5) - DP

ATTACHMENTS

1. Meeting Participants
2. Qatar Country Fact Sheet

b(5) - DP

ATTACHMENT 1: Meeting Participants

b(5) - DP

Government of Qatar

- H.E. Ahmed Mohammed Al-Sayed, Minister of State and Chairman of the Board of Directors of the Free Zone Authority
- Others, TBD

USG

- Wilbur Ross, Secretary of Commerce
- Charge d'Affaires Ambassador Greta Holtz, Qatar
- Megan Schildgen, Senior Commercial Officer, Qatar

SUGGESTED TALKING POINTS

b(5) - DP

b(5) - DP

STATISTICS AT A GLANCE
Qatar (Riyal)

DEPARTMENT OF COMMERCE
 UNITED STATES OF AMERICA

INTERNATIONAL
TRADE
 ADMINISTRATION

Qatar (Riyal)



INTERNATIONAL
TRADE
ADMINISTRATION

Nominal GDP (total)	USD 204 billion*
Nominal GDP (per capita)	USD 72,677*

N/A services; N/A manufacturing; 0.2% agriculture

(USD billions)	2017	2018	2019
Exports to the world	85.2	102.5	N/A
Imports from the world	62.2	65.8	N/A
U.S. exports to Qatar	3.1	4.4	6.5
U.S. imports from Qatar	1.2	1.6	1.7
Trade balance with U.S.	1.9	2.9	4.8

(USD billions)	2016	2017	2018
U.S. exports to Qatar	N/A	N/A	N/A
U.S. imports from Qatar	N/A	N/A	N/A

(USD billions)	2017	2018	2019
FDI into U.S. from Qatar	2.25	N/A	N/A
U.S. FDI in Qatar	8.2	10.6	N/A

Principal FDI suppliers to Qatar YEAR
N/A

(percent value)	2017	2018	2019
Real GDP growth rate	1.49%	0.07%	-4.35%
Real GDP per capita growth rate	-2.79%	1.17%	1.55%
Consumer Prices (change)	0.18%	-0.55%	-1.19%
Unemployment	N/A	N/A	N/A

2020: 77 of 190 (83 of 190 in 2018)

2019: 30 of 180

* IMF estimates; † World Bank data; N/A Not available

Office of Legislative & Intergovernmental Affairs: 262-482-3015

International Trade Administration

July 7, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar, Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the Under Secretary
for International Trade

FROM: Ian Saunders, DAS for the Western Hemisphere, (202) 482-2689

b(5) - DP

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ATTACHMENTS

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July 7, 2020

INFORMATION MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Jeffrey I. Kessler
Assistant Secretary for Enforcement and Compliance
Desk: (202) 482-4503; Cell: b(6)

RE: Final Circumvention Rulings in Self-Initiated Steel Cases

b(5) - DP

July 7, 2020

INFORMATION MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Jeffrey I. Kessler
Assistant Secretary for Enforcement and Compliance
Cell b(6)

RE: Preliminary Determination in the Countervailing Duty (CVD)
Investigation of Corrosion Inhibitors from China

b(5) - DP

From: McDermott, Ryan (Federal) [RMcDermott1@doc.gov]
Sent: 7/7/2020 10:18:02 PM
CC: Williams, Allaire (Federal) [AWilliams2@doc.gov]; Pepper, Samuel (Federal) [SPepper@doc.gov];
ExecSecBriefingBook [b(6)]@doc.gov
Subject: 07-08-2020 Briefing Book
Attachments: 7.8.20 Briefing Book FINAL.pdf

- 1) THE SCHEDULE OF SECRETARY WILBUR ROSS
- 2) Call-In – Senior Management Decennial Committee
- 3) Call with Tom Caulfield, CEO, GlobalFoundries
- 4) Call with Ahmed Mohammed Al-Sayed, Minister of State and Chairman of the Board of Directors of the Free Zone Authority, Qatar
- 5) [b(5) - DP]
- 6) ITA Info Memo re: Final Circumvention Rulings in Self-Initiated Steel Cases
- 7) ITA Info Memo re: Preliminary Determination in the Countervailing Duty (CVD) Investigation of Corrosion Inhibitors from China

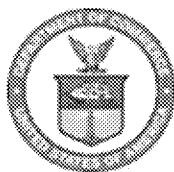
Ryan McDermott

[b(6)]

Briefing Book
Secretary
Wilbur L. Ross



For July 8, 2020



THE SCHEDULE OF SECRETARY WILBUR ROSS

As Prepared for July 8, 2020

9:00am-10:30am Call-In – Senior Management Decennial Committee
Conference Line – Non-Secure

11:00am-11:15am Call with Tom Caulfield, CEO, GlobalFoundries
Conference Line – Non-Secure

12:00pm-12:30pm **b(5) - DP**

12:00pm-12:15pm Call with Ahmed Mohammed Al-Sayed, Minister of State and
Chairman of the Board of Directors of the Free Zone Authority,
Qatar
IN CAR - Conference Line – Non-Secure

12:30pm-1:00pm

1:00pm-1:15pm

2:00pm-2:05pm

2:05pm-2:35pm

2:35pm-3:20pm

3:20pm-3:30pm

3:35pm-4:05pm

4:05pm-4:20pm

Depart en route **b(6)**

b(5) - DP

6:00pm-6:15pm

6:30pm-6:35pm

6:35pm-6:45pm

6:45pm-7:45pm

7:45pm-8:00pm

b(5) - DP

Depart en route

b(6)

July 7, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

FROM: Christa D. Jones, Chief of Staff, 301-763-7310

RE: Weekly Senior Management Decennial Committee Meeting with Census Bureau Leadership
on Wednesday, July 8, 2020, from 9 AM to 10:30 AM

Census Bureau leadership will brief you and the Deputy Secretary on the status of 2020 Census operations, followed by [REDACTED] **b(5) - DP**

[REDACTED] **b(5) - DP**

To conclude, the Census Bureau's Chief Scientist will provide a briefing on Differential Privacy and the 2020 Disclosure Avoidance System (DAS), which will cover the primary features of the 2020 DAS, current initiatives, and upcoming milestones.

See Attachment 1 for Differential Privacy and the U.S. Census; Attachment 2 for [REDACTED] **b(5) - DP**

[REDACTED] **b(5) - DP**

Attachment 3 for

[REDACTED] **b(5) - DP**

Attachment 4 for Phased Restart for the 2020 Decennial Census; and Attachment 5 for Status Reporting: 2020 Decennial Census.

AGENDA

Secretarial Conference Calls

Calls with low response rate cities

Timothy P. Olson

Associate Director for Field Operations, U.S. Census Bureau

Differential Privacy

John M. Abowd

*Associate Director for Research and Methodology and Chief Scientist,
U.S. Census Bureau*

Michael Hawes

*Senior Advisor for Data Access and Privacy, Research and Methodology,
U.S. Census Bureau*

Tori Velkoff

Associate Director for Demographic Programs, U.S. Census Bureau

James Whitehorne

*Census Redistricting & Voting Rights Data Office, Decennial Census Programs,
U.S. Census Bureau*

Kathleen M. Styles
Chief, Decennial Communications and Stakeholder Relationships, U.S. Census Bureau

b(5) - DP

Update

Ben Page
Chief Financial Officer, U.S. Census Bureau

Phased Restart for the 2020 Census

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs, U.S. Census Bureau

2020 Census Performance Reporting

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs, U.S. Census Bureau

ATTACHMENTS

1. Differential Privacy and the U.S. Census
2. **b(5) - DP**
3. **b(5) - DP**
4. Phased Restart for the 2020 Decennial Census
5. Status Reporting: 2020 Decennial Census

Differential Privacy and the 2020 Decennial Census

Michael Hawes

Senior Advisor for Data Access and Privacy
Research and Methodology Directorate
U.S. Census Bureau

July 8, 2020

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your future
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United States
Census
2020

Confidentiality of Census Data

Title 13, Section 9 of the U.S. Code prohibits the Census Bureau from releasing identifiable data “furnished by any particular establishment or individual.”

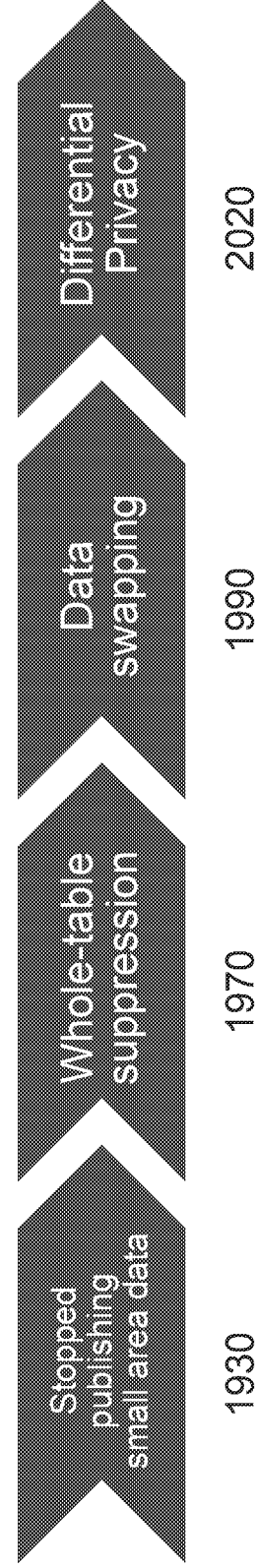
Census Bureau employees are sworn for life to safeguard respondents’ information.

Penalties for violating these protections can include fines of up to \$250,000, and/or imprisonment for up to five years!

The Census Bureau's Privacy Protections Over Time

Throughout its history, the Census Bureau has been at the forefront of the design and implementation of statistical methods to safeguard respondent data.

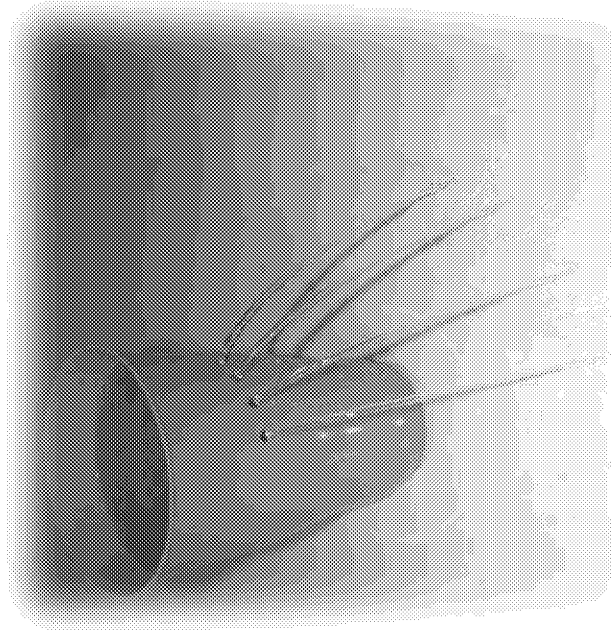
Over the decades, as we have increased the number and detail of the data products we release, so too have we improved the statistical techniques we use to protect those data.



The Privacy Challenge

Every time you release any statistic calculated from a confidential data source you “leak” a small amount of private information.

If you release too many statistics, too accurately, you will eventually reveal the entire underlying confidential data source.

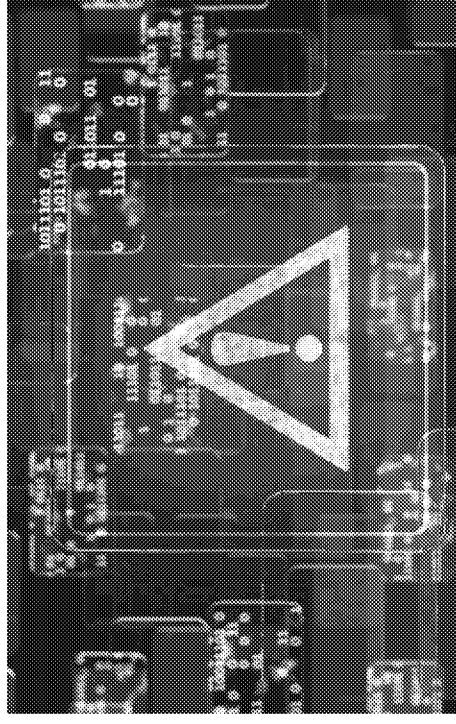


The Growing Privacy Threat

More Data and Faster Computers!

In today's digital age, there has been a proliferation of databases that could potentially be used to attempt to undermine the privacy protections of our statistical data products.

Similarly, today's computers are able to perform complex, large-scale calculations with increasing ease. These parallel trends represent new threats to our ability to safeguard respondents' data.



Reconstruction

The recreation of individual-level data from tabular or aggregate data.

If you release enough tables or statistics, eventually there will be a unique solution for what the underlying individual-level data were.

Computer algorithms can do this very easily.

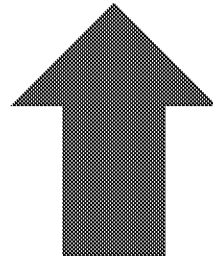
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			7			4
1		7	8		5	
			9		3	8
5						
			6	8		
3					4	5
	8	5			1	9
		9		7	1	

Shape
your future
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United States
Census
2020

Reconstruction: An Example

	Count	Median Age	Mean Age
Total	7	30	38
Female	4	30	33.5
Male	3	30	44
Black	4	51	48.5
White	3	24	24
Married	4	51	54
Black Female	3	36	36.7



Age	Sex	Race	Relationship
66	Female	Black	Married
84	Male	Black	Married
30	Male	White	Married
36	Female	Black	Married
8	Female	Black	Single
18	Male	White	Single
24	Female	White	Single

This table can be expressed by 164 equations.
Solving those equations takes 0.2 seconds on a
2013 MacBook Pro.

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United States
Census
2020

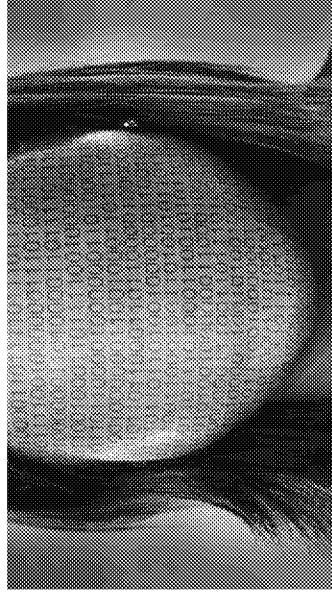
Re-identification

Linking public data to external data sources to re-identify specific individuals within the data.

External Data			Confidential Data		
Name	Age	Sex	+	Age	Sex
Jane Smith	66	Female		66	Female
Joe Public	84	Male		84	Male
John Citizen	30	Male		30	Male
				Race	Relationship
				Black	Married
				Black	Married
				White	Married

Reconstructing the 2010 Census

- The 2010 Census collected information on the age, sex, race, ethnicity, and relationship (to householder) status for ~309 Million individuals. (1.9 Billion confidential data points)
- The 2010 Census data products released over 150 billion statistics
- We conducted an internal experiment to see if we could reconstruct and re-identify the publicly-released 2010 Census records.



Reconstructing the 2010 Census: What Did We Find?

1. On the 309 million reconstructed records, census block and voting age (18+) were correctly reconstructed for all records and for all 6,207,027 inhabited blocks.
2. Block, sex, age (in years), race (OMB 63 categories), and ethnicity were reconstructed:
 1. Exactly for 46% of the population (142 million individuals)
 2. Within +/- one year for 71% of the population (219 million individuals)
3. Block, sex, and age were then linked to commercial data, which provided putative re-identification of 45% of the population (138 million individuals).
4. Name, block, sex, age, race, ethnicity were then compared to the confidential data, which yielded confirmed re-identifications for 38% of the putative re-identifications (52 million individuals).
5. For the confirmed re-identifications, race and ethnicity are learned correctly, though the attacker may still have uncertainty.

Shape
your future
START HERE >

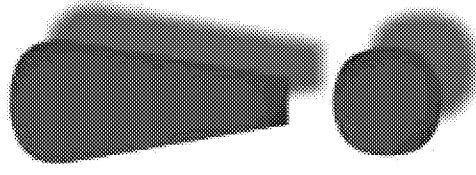
United States
Census
2020

The Census Bureau's Decision

To meet its continuing obligations to safeguard respondent information, the Census Bureau has committed to modernizing its approach to privacy protections, and will use differential privacy for the 2020 Census.

The Census Bureau has already successfully deployed differentially private solutions to protect other data products, including:

- Post-Secondary Employment Outcomes (PSEO)
- Veteran Employment Outcomes (VEO)
- OnTheMap for Emergency Management



Differential Privacy

All statistical techniques to protect privacy impose a tradeoff between the degree of privacy protection and the resulting accuracy of the data.

- Swap rates, noise injection parameters, cell suppression thresholds, etc. determine this tradeoff.

Differential privacy offers a number of important advantages over traditional statistical techniques to protect privacy.

- Provides quantitative assessment of privacy risk.
- Infinitely tunable – parameter “dials” can be set anywhere from perfect privacy to perfect accuracy.
- Privacy guarantee is mathematically provable and future-proof.
- The precise calibration of statistical noise enables optimal data accuracy for any given level of privacy protection.



Disclosure Avoidance System

The Disclosure Avoidance System (DAS) TopDown Algorithm (TDA) will use differential privacy to provide state-of-the-art control over the privacy/accuracy tradeoff for the 2020 Census Data Products.

- The Census Bureau's Data Stewardship Executive Policymaking Committee (DSEP) will determine TDA parameters (i.e., privacy-loss budget, invariants, etc.) to find the optimal balance between Title 13 confidentiality requirements and data accuracy for priority uses of Census data (including redistricting).

How the TDA works:

1. The TDA ingests the complete Census Edited File microdata;
2. TDA performs a complete tabulation of the microdata and injects precisely calibrated statistical noise into each of the results (excluding state population totals used for apportionment);
3. Beginning at the national level, and moving down the geographic hierarchy, the TDA then reconciles these "noisy" tabulations to ensure internal and hierarchical consistency;
4. TDA then outputs privacy-protected microdata for the entire nation that feed into the Decennial tabulation systems that produce the PL94-171 redistricting data files and other 2020 Census data products.

Current Initiatives

(DAS Development Sprint V)

Remediation of issues from Test Readiness Review (TRR)

- DAS successfully completed the TRR process on 06/15/2020

Preparation for Production Readiness Review

- Scheduled for 10/15/2020

System design improvements to mitigate post-processing (non-DP) error

- The optimization stage of the TDA, that converts the noisy tabulations back into internally/hierarchically consistent microdata introduces additional error that can be addressed through improvements to the algorithm design.
- The DAS Team has identified a number of solutions for addressing these issues without impacting the privacy guarantee.
- Actively engaging with technical and data experts from our advisory committees and the Committee on National Statistics on this issue.

Upcoming Milestones

September 2020

- DSEP will set final list of invariants for the 2020 Census (beyond apportionment totals, which are already invariant)
- The Census Bureau has already announced that state population counts and block-level unit counts (Group Quarters and Housing Units) will be reported as enumerated.

March 2021

- DSEP will set the final privacy-loss budget for the 2020 Census and its allocation across 2020 Census data products.
- This decision will be informed by extensive assessment of data accuracy for priority use cases of decennial data, feedback from our stakeholders, and our legal obligations under Title 13.

June-July 2021

- PL94-171 Redistricting Data files will be released.
- Additional data products, including the Demographic and Housing Characteristics files and Demographic Profiles will follow later in 2021.

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Status Reporting: Phased Restart for the 2020 Decennial Census
Periodic Reporting: Release for July 6, 2020

Periodic Performance Management Reports

Report Title	Slide Number
2020 Census: Phased Restart Update Leave Status by State	3
2020 Census: Update Leave Progress & Cost	4
2020 Census: Update Leave – Status Update	5
2020 Census: Phased Restart of Paper Data Capture Centers Staffing Status	6
2020 Census: Phased Restart Fingerprinting Status	7
2020 Census: NRFU Tip Sheet	8
2020 Census: County- Level COVID-19 Risk Level Map – Gardiner, Maine Area Census Office	9
2020 Census: County- Level COVID-19 Risk Level Map – Beckley, West Virginia Area Census Office	10
2020 Census: County- Level COVID-19 Risk Level Map – Kansas City, Missouri Area Census Office	11
2020 Census: County- Level COVID-19 Risk Level Map – New Orleans, Louisiana Area Census Office	12
2020 Census: County- Level COVID-19 Risk Level Map – Oklahoma County, Oklahoma Area Census Office	13
2020 Census: County- Level COVID-19 Risk Level Map – Boise, Idaho Area Census Office	14
2020 Census: NRFU Soft Launch – Cycle 1 ACOs	15
2020 Census: NRFU Soft Launch – Cycle 2 ACOs	16-17

Periodic Performance Management Reports

2020 Census: Phased Restart Update Leave Status by State

Source: Unified Tracking System
Data Current as of: July 6, 2020

Decisions to Restart work are informed by data available on the All Hazards Consortium site - "US State and Territory Actions in Response to COVID 19."

State	% Update Leave	HUs in UL Workload	% HUs Complete		Change
			Prior Week	Current Week	
U.S. Total	4.5%	6,805,523	98.2%	98.9%	0.7%
Alabama	3.2%	81,964	99.8%	100.0%	0.2%
Alaska	34.1%	110,022	97.6%	98.2%	0.6%
Arizona	6.6%	214,291	80.7%	85.9%	5.3%
Arkansas	5.0%	77,716	100.0%	100.0%	0.0%
California	2.3%	348,797	99.5%	99.7%	0.2%
Colorado	7.5%	195,895	99.19%	99.92%	0.78%
Connecticut	0.4%	5,868	100.0%	100.0%	0.0%
Florida	1.7%	171,871	98.7%	98.7%	0.0%
Georgia	2.3%	111,905	100.0%	100.0%	0.0%
Hawaii	10.8%	63,303	100.0%	100.0%	0.0%
Idaho	9.0%	70,780	99.9%	99.9%	0.0%
Illinois	0.8%	42,827	99.8%	100.0%	0.2%
Indiana	1.3%	39,142	100.0%	100.0%	0.0%
Iowa	0.9%	14,050	100.0%	100.0%	0.0%
Kansas	2.4%	32,178	100.0%	100.0%	0.0%
Kentucky	3.7%	78,593	100.0%	100.0%	0.0%
Louisiana	4.0%	91,447	100.0%	100.0%	0.0%
Maine	14.2%	111,689	100.0%	100.0%	0.0%
Massachusetts	2.2%	69,244	99.9%	99.9%	0.0%
Michigan	2.2%	106,770	99.40%	99.98%	0.58
Minnesota	3.4%	86,706	92.4%	97.8%	5.4%
Mississippi	3.7%	54,499	100.0%	100.0%	0.0%
Missouri	4.3%	131,018	100.0%	100.0%	0.0%
Montana	19.2%	112,978	93.6%	95.1%	1.4%

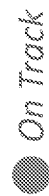
State	% Update Leave	HUs in UL Workload	% HUs Complete		Change
			Prior Week	Current Week	
Nebraska	3.5%	30,670	96.192%	99.997%	3.805%
Nevada	3.6%	47,778	98.7%	98.7%	0.0%
New Hampshire	9.9%	65,936	96.0%	100.0%	4.0%
New Jersey	1.1%	40,514	96.9%	100.0%	3.1%
New Mexico	19.2%	200,664	78.5%	87.7%	9.1%
New York	3.0%	270,545	99.19%	99.98%	0.79%
North Carolina	3.3%	164,775	99.8%	100.0%	0.2%
North Dakota	9.9%	40,051	98.6%	98.6%	0.0%
Ohio	0.6%	34,686	100.0%	100.0%	0.0%
Oklahoma	9.8%	187,921	100.0%	100.0%	0.0%
Oregon	1.4%	27,198	100.0%	100.0%	0.0%
Pennsylvania	3.3%	197,124	100.0%	100.0%	0.0%
Rhode Island	1.1%	5,657	100.0%	100.0%	0.0%
South Carolina	2.4%	61,375	100.0%	100.0%	0.0%
South Dakota	12.4%	51,715	92.7%	97.6%	5.0%
Tennessee	0.3%	9,010	100.0%	100.0%	0.0%
Texas	3.6%	441,668	99.9%	100.0%	0.1%
Utah	7.6%	90,972	97.6%	98.0%	0.4%
Vermont	17.2%	61,075	100.0%	100.0%	0.0%
Virginia	0.9%	34,615	100.0%	100.0%	0.0%
Washington	2.8%	92,093	99.8%	99.8%	0.0%
West Virginia	28.8%	289,189	100.0%	100.0%	0.0%
Wisconsin	3.3%	93,399	99.8%	100.0%	0.2%
Wyoming	22.9%	67,114	100.0%	100.0%	0.0%
Puerto Rico	100.0%	1,776,226	100.0%	100.0%	0.0%

Legend: All ACOs with UL Workload Have Restarted All UL Workload Completed

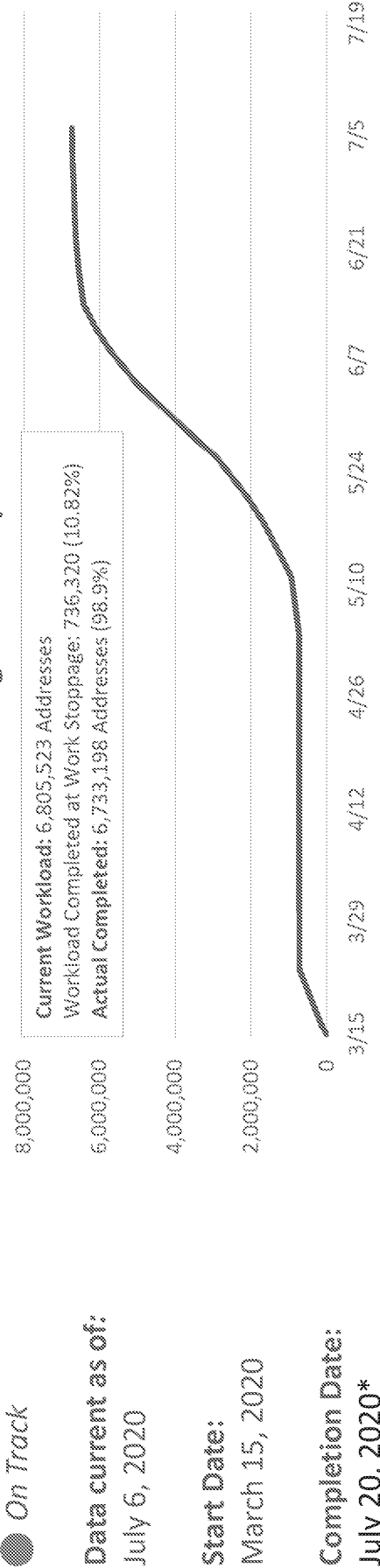
Periodic Performance Management Reports

2020 Census: Update Leave Progress & Cost

Status:



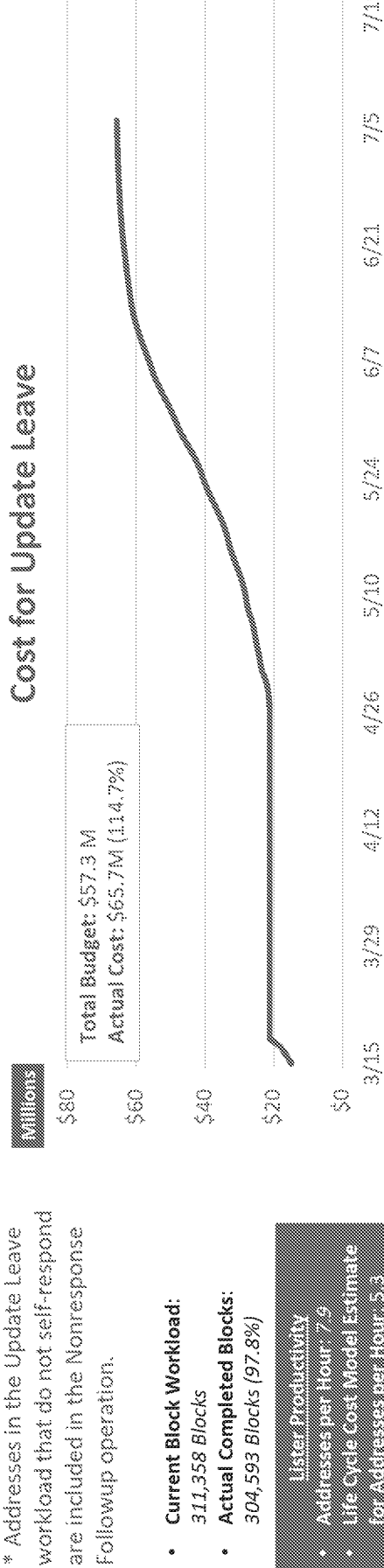
Progress for Update Leave



Notes:

* Addresses in the Update Leave workload that do not self-respond are included in the Non-response Followup operation.

Cost for Update Leave



- **Current Block Workload:**
311,358 Blocks
- **Actual Completed Blocks:**
304,593 Blocks (97.8%)

Lister Productivity

- Addresses per Hour: 7.9
- Life Cycle Cost Model Estimate for Addresses per Hour: 5.3

Periodic Performance Management Reports

2020 Census: Update Leave – Status Update

Source: Unified Tracking System, Census Data Lake, Decennial Statistical Studies Division
Data Current as of: July 6, 2020

Operation:

The Update Leave (UL) operation is designed to occur in areas where the majority of housing units either do not have mail delivered to the physical location of the housing unit, or the mail delivery information for the housing unit cannot be verified. A Census Bureau employee will physically deliver a 2020 Census invitation to these housing units.

Workload:

- Update Leave Original Workload (does not change): 6,805,523
- Workload Completed March 18 (date field operations were suspended): 736,320
 - Percentage Completed at suspension: 10.82%
- Workload Completed as of July 6: 6,733,198
- Percentage Completed: 98.94%

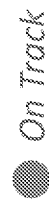
Response Rates:

- UL Total Responses (as of March 18): 139,825
 - Internet: 12,478 (8.92%)
 - Paper: 127,189 (90.96%)
 - Phone: 158 (0.11%)
- UL Total Responses (as of July 6): 2,050,676
 - Internet: 1,058,408 (51.61%)
 - Paper: 959,485 (46.79%)
 - Phone: 32,783 (1.60%)

Periodic Performance Management Reports

2020 Census: Phased Restart of Paper Data Capture Centers Staffing Status

Status:



Paper Data Capture Staffing by Center

Total Staff: 771, -24 from prior week

Data current as of:

July 1, 2020

Start Date:

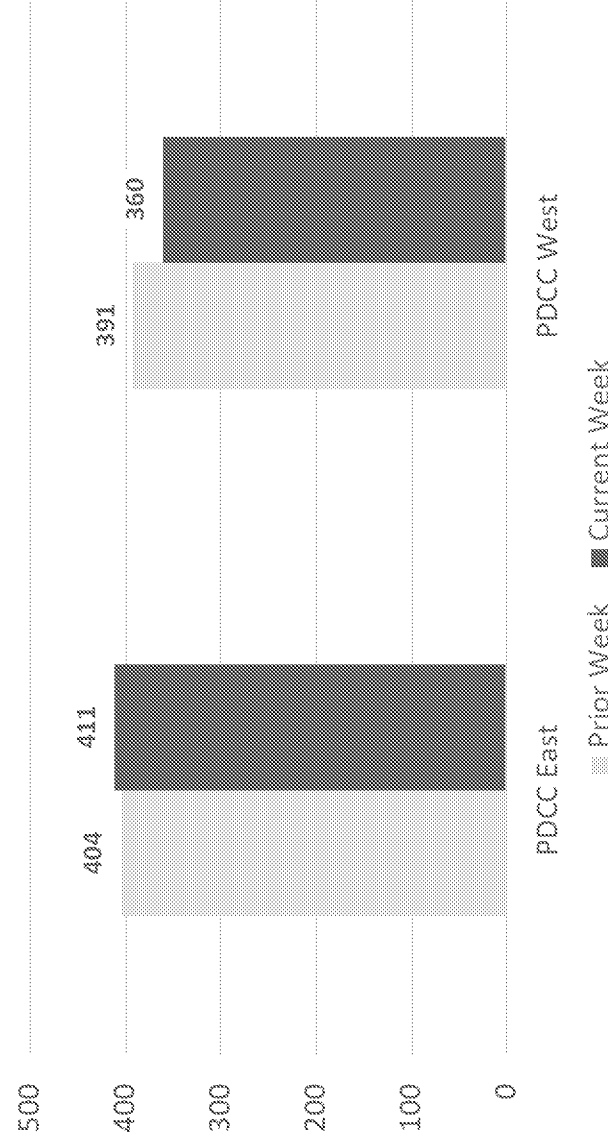
January 21, 2020

Completion Date:

November 30, 2020

Notes:

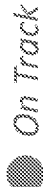
- Staff in CDC-defined high risk groups have returned to work on the Indiana NPC campuses.
- Increased COVID-19 activity in Arizona is impacting PDCC West staffing.
- There are eight positive COVID-19 cases at PDCC West; multiple staff are self-monitoring for 14 days.



Periodic Performance Management Reports

2020 Census: Phased Restart Fingerprinting Status

Status:



On Track

Data current for
the week of:
July 6, 2020

Start Date:
January 21, 2020

Completion Date:
October 31, 2020

Notes:

Overall Fingerprinting Status

Status	Prior Week	Change from Prior Week	Current Week
Total Number of Applicants that Reached DAPPS	2,956,419	+7,927	2,964,346
Total Number Selected	1,149,065	+29,667	1,178,732
Total Number Fingerprinted	753,749	+28,047	781,796
Total Pending Fingerprinting	395,316	+1,620	396,936
Total Remaining Applicant Pool	1,807,354	-21,740	1,785,614

Periodic Performance Management Reports

2020 Census: NRFU Tip Sheet

Source: Decennial Census Management Division
Data Current as of: July 2, 2020

Cycle 1A NRFU Soft Launch

Beginning July 16, the Census Bureau will soft-launch sending approximately 11,000 Census Enumerators to follow up with households in communities covered by six area census offices—one in each census region. The six locations are:

- Gardiner, ME (New York Region)
- Beckley, WV (Philadelphia Region)
- New Orleans, LA (Atlanta Region)
- Kansas City, MO (Chicago Region)
- Oklahoma County, OK (Dallas Region)
- Boise, ID (Los Angeles Region)

Key Dates

- 6/18: Census Field Supervisor (CFS) Training
- 7/7: Enumerator Training
- 7/16: Production

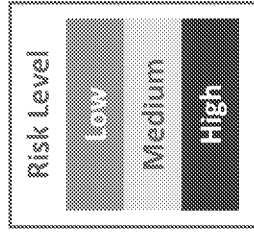
CFS/Enumerator Training and Deploy Goals by Office

- Selection and Fingerprint Goals have been achieved for both CFS and Enumerators.
- Plan to train approx. 470 CFSs and 12,000 Enumerators
- Plan to deploy approx. 420 CFSs and 10,600 Enumerators

ACO Name	Current Self-Response Rate (6/29)	NRFU CFS Goal to Train	NRFU CFS Goal to Deploy	NRFU Enums Goal to Train	NRFU Enums Goal to Deploy
Gardiner	53%	78	71	2,078	1,870
Beckley	53%	87	80	2,717	2,454
Kansas City	62%	110	99	2,529	2,225
New Orleans	56%	58	52	1,341	1,181
Oklahoma County	59%	73	66	1,740	1,532
Boise	65%	60	54	1,532	1,349
Totals		466	422	11,937	10,611

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020

Gardiner, Maine Area Census Office



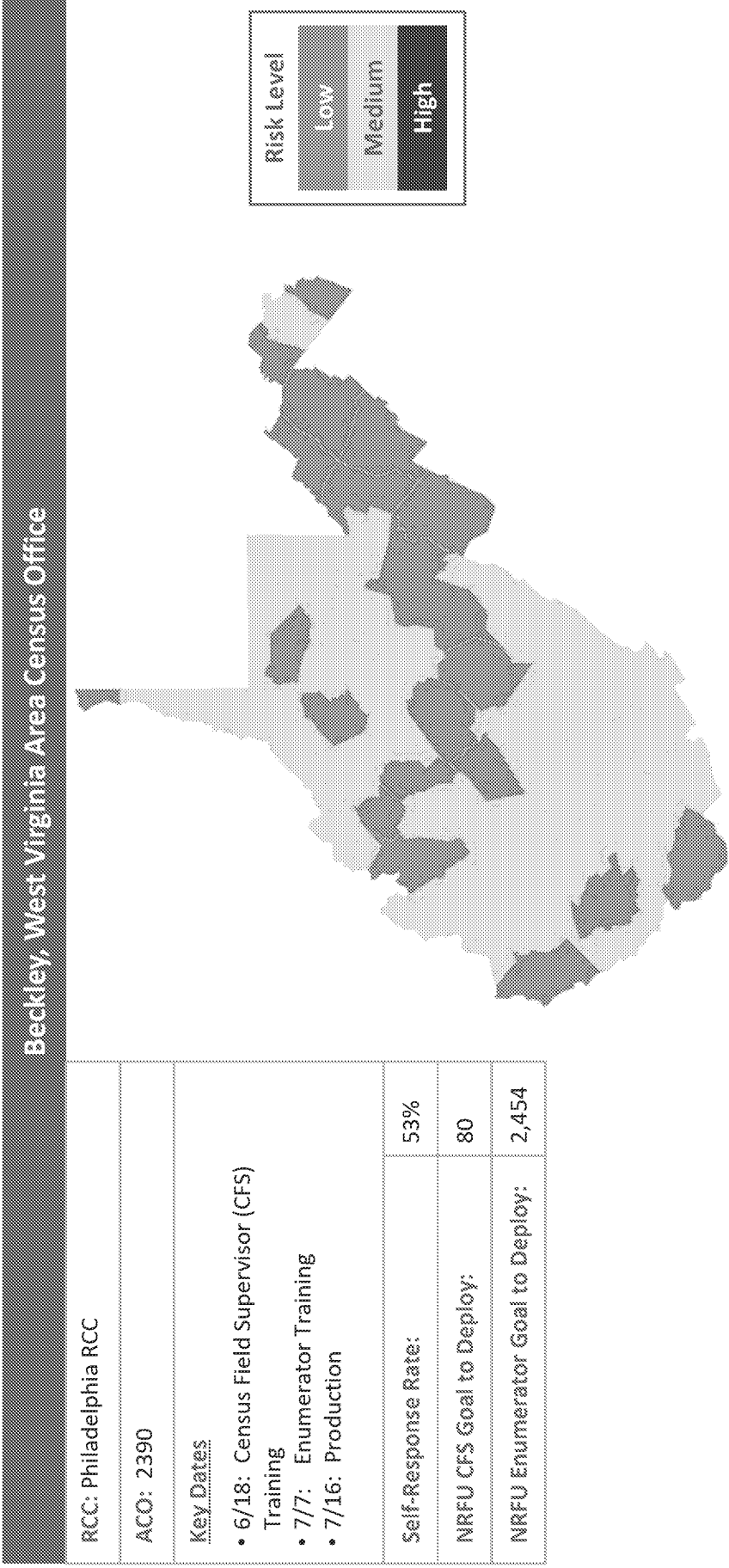
The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Beckley, West Virginia Area

Census Office

Source: *Health and Human Services, USAFacts.org*
 Data Current as of: *July 2, 2020*

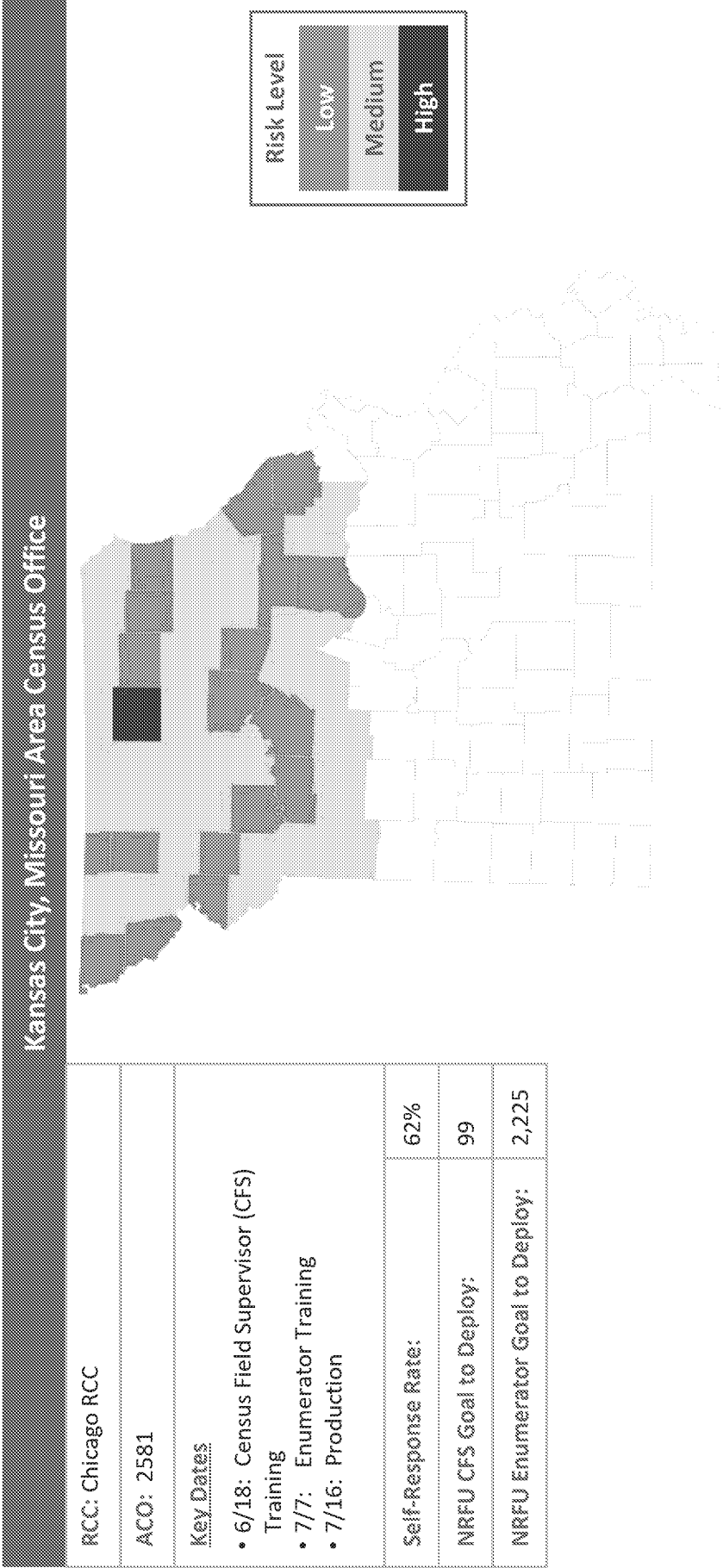


Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Kansas City, Missouri Area

Census Office

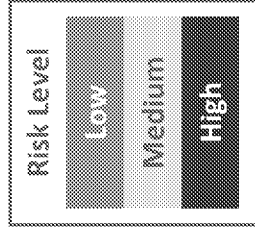
Source: *Health and Human Services, USAFacts.org*
Data Current as of: *July 2, 2020*



Note:

The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020

New Orleans, Louisiana Area Census Office

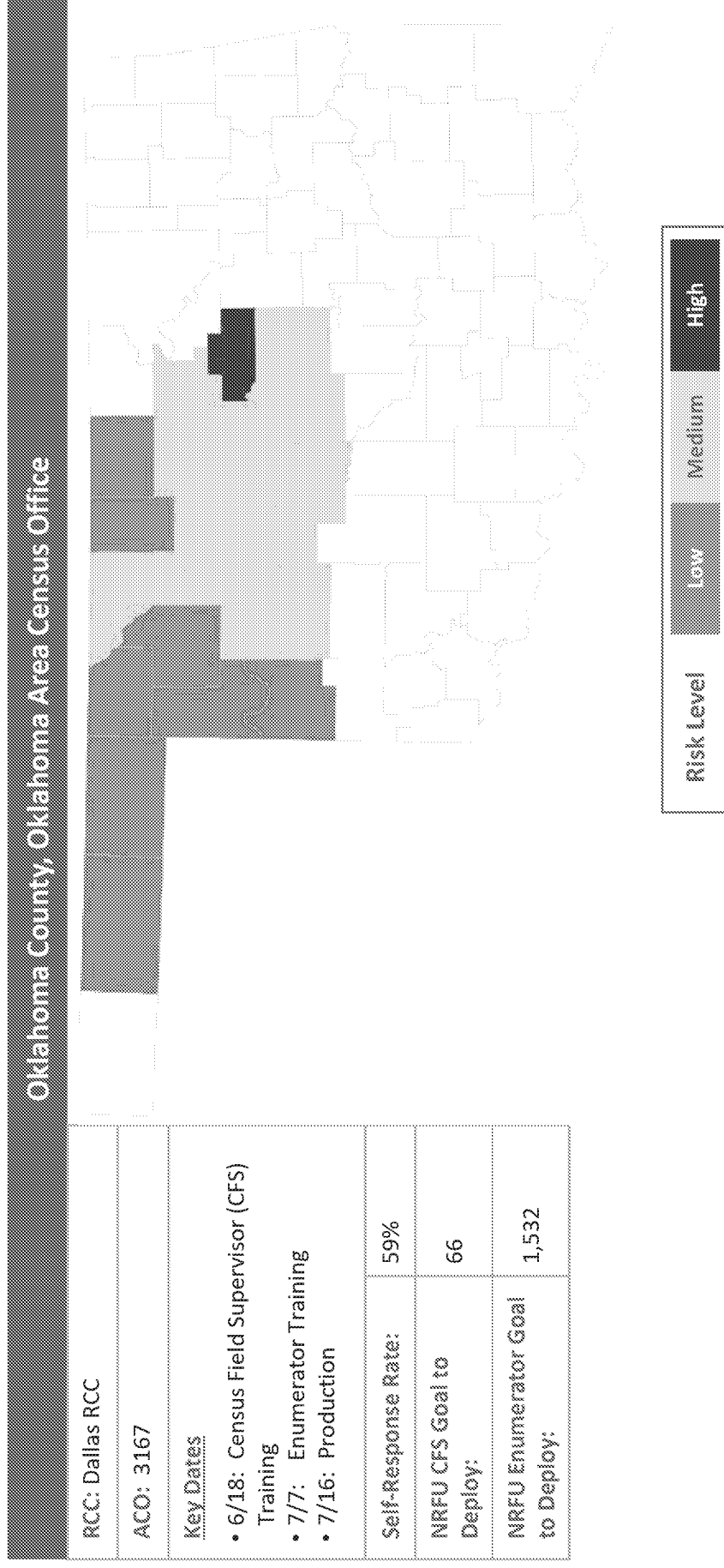
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Economics and Statistics Administration
U.S. CENSUS BUREAU
census.gov

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Oklahoma County, Oklahoma Area Census Office

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020



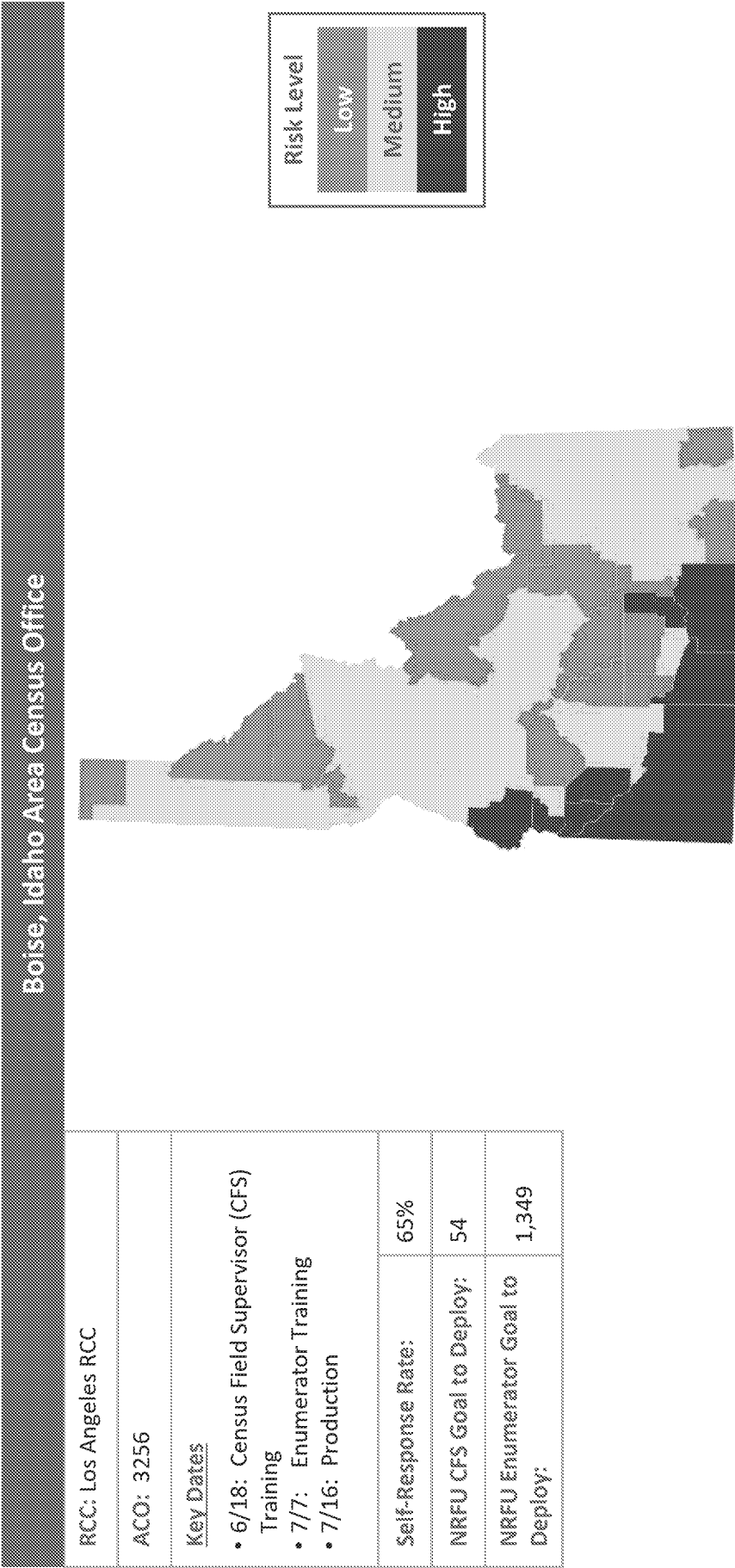
Note:

The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: County- Level COVID-19 Risk Level Map – Boise, Idaho Area Census Office

Source: Health and Human Services, USAFacts.org
Data Current as of: July 2, 2020



Note:

The United States Census Bureau Fusion Center is monitoring a number of sources that are showing concerning COVID-19 trends *on the state level*.

Periodic Performance Management Reports

2020 Census: NRFU Soft Launch – Cycle 1 ACOs

Source: Decennial Census Management Division
Data Current as of: July 2, 2020

Cycle 1A ACOs

RCC	ACO #	City	State	CPS Training Start Date	Enumerator Training Start Date	Production Start
NY	2262	Gardiner	ME	June 18	July 7	July 16
PHI	2390	Beckley	WV	June 18	July 7	July 16
CHI	2581	Kansas City	MO	June 18	July 7	July 16
ATL	2990	New Orleans	LA	June 18	July 7	July 16
DAL	3167	Oklahoma County	OK	June 18	July 7	July 16
LA	3256	Boise	ID	June 18	July 7	July 16

Cycle 1B ACOs

RCC	ACO #	City	State	CPS Training Start Date	Enumerator Training Start Date	Production Start
NY	2254	Hartford	CT	June 25	July 14	July 23
PHI	2379	State College	PA	June 25	July 14	July 23
PHI	2382	Nashville	TN	June 25	July 14	July 23
CHI	2569	Evansville	IN	June 25	July 14	July 23
ATL	2988	Baton Rouge	LA	June 25	July 14	July 23
ATL	2901	Gulfport	MS	June 18	July 14	July 23
DAL	3159	Wichita	KS	June 25	July 14	July 23
LA	3297	Tacoma	WA	June 25	July 14	July 23

Periodic Performance Management Reports

2020 Census: NRFU Soft Launch – Cycle 2 ACOs

Source: Decennial Census Management Division
Data Current as of: July 2, 2020

RCC	ACO #	City	State	CFS Training Start Date	Enumerator Training Start Date	Production Start
NY	2293	Guaynabo	PR	July 1	July 21	July 30
NY	2294	Caguas	PR	July 1	July 21	July 30
NY	2295	Mayaguez	PR	July 1	July 21	July 30
NY	2253	Danbury	CT	July 1	July 21	July 30
NY	2258	Quincy	MA	July 1	July 21	July 30
NY	2260	Waltham	MA	July 1	July 21	July 30
NY	2261	Worcester	MA	July 1	July 21	July 30
NY	2271	Trenton	NJ	July 1	July 21	July 30
NY	2276	Buffalo	NY	July 1	July 21	July 30
PHI	2359	Hanover	MD	July 1	July 21	July 30
PHI	2361	Hagerstown	MD	July 1	July 21	July 30
PHI	2362	Towson	MD	July 1	July 21	July 30
PHI	2364	Mansfield	OH	July 1	July 21	July 30
PHI	2372	Cranberry Township	PA	July 1	July 21	July 30
PHI	2373	Harrisburg	PA	July 1	July 21	July 30
PHI	2377	Pittsburgh	PA	July 1	July 21	July 30
PHI	2384	Crystal City	VA	July 1	July 21	July 30
DAL	3154	Aurora	CO	July 1	July 21	July 30
DAL	3155	Colorado North	CO	July 1	July 21	July 30
DAL	3157	Denver	CO	July 1	July 21	July 30
DAL	3158	Overland Park	KS	July 1	July 21	July 30
DAL	3162	Bismarck	ND	July 1	July 21	July 30

Periodic Performance Management Reports

2020 Census: NRFU Soft Launch – Cycle 2 ACOs cont'd



Source: Decennial Census Management Division
Data Current as of: July 2, 2020

RCC	ACO #	City	State	CFS Training Start Date	Enumerator Training Start Date	Production Start
CHI	2559	Chicago Central	IL	July 1	July 21	July 30
CHI	2560	Chicago Far Southwest	IL	July 1	July 21	July 30
CHI	2561	Chicago South	IL	July 1	July 21	July 30
CHI	2562	Cook County NW	IL	July 1	July 21	July 30
CHI	2563	Cook County South	IL	July 1	July 21	July 30
CHI	2564	Dekalb	IL	July 1	July 21	July 30
CHI	2565	Oswego	IL	July 1	July 21	July 30
CHI	2566	Peoria	IL	July 1	July 21	July 30
CHI	2567	Skokie	IL	July 1	July 21	July 30
CHI	2571	Indianapolis	IN	July 1	July 21	July 30
CHI	2572	Lake County	IN	July 1	July 21	July 30
CHI	2585	Green Bay	WI	July 1	July 21	July 30
ATL	2910	Atlanta	GA	July 1	July 21	July 30
ATL	2982	Dekalb County	GA	July 1	July 21	July 30
LA	3255	Honolulu	HI	July 1	July 21	July 30
LA	3280	San Francisco	CA	July 1	July 21	July 30
LA	3282	San Mateo	CA	July 1	July 21	July 30
LA	3289	Sunnyvale	CA	July 1	July 21	July 30
LA	3293	Everett	WA	July 1	July 21	July 30
LA	3294	Olympia	WA	July 1	July 21	July 30
LA	3295	Seattle	WA	July 1	July 21	July 30

Status Reporting: 2020 Decennial Census
Periodic Reporting: Release for July 6, 2020

Periodic Performance Management Reports

Release for July 6, 2020

Status	Report Title	Summary	Slide Number
	2020 Census: Recruiting Ranges Over Time		4
	2020 Census: Applicant Status	Actions taken to achieve our recruiting target were successful. We have achieved our applicant goal.	5
	2020 Census: Remote Alaska Production Progress & Cost	Enumerations have resumed in all remaining areas that were incomplete in mid-March when work was suspended. Lack of access to some villages due to COVID-19 quarantines has required moving the planned completion of the Remote Alaska operation to August 31, 2020.	6
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	7
	2020 Census: Self-Response of Housing Units – Zoomed in View		8
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	9
	2020 Census: Self-Response of Housing Units by Response Mode – Zoomed in View		10
	2020 Census: Self-Response of Housing Units by State		11

Legend

Not Applicable	Completed	On Track	Management Focus	Requires Attention
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Pre-decisional – Internal Only – Not for Public Distribution.

Periodic Performance Management Reports

Release for July 6, 2020

Status	Report Title	Summary	Slide Number
●	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	12
●	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 997. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 385,000. We have exceeded the 2010 Census numbers for both national and community partners.	13
●	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts. The program is rapidly preparing new messages and delivery vehicles in light of the our current environment.	14
●	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	15

Legend

Not Applicable	Completed	On Track	Management Focus	Requires Attention
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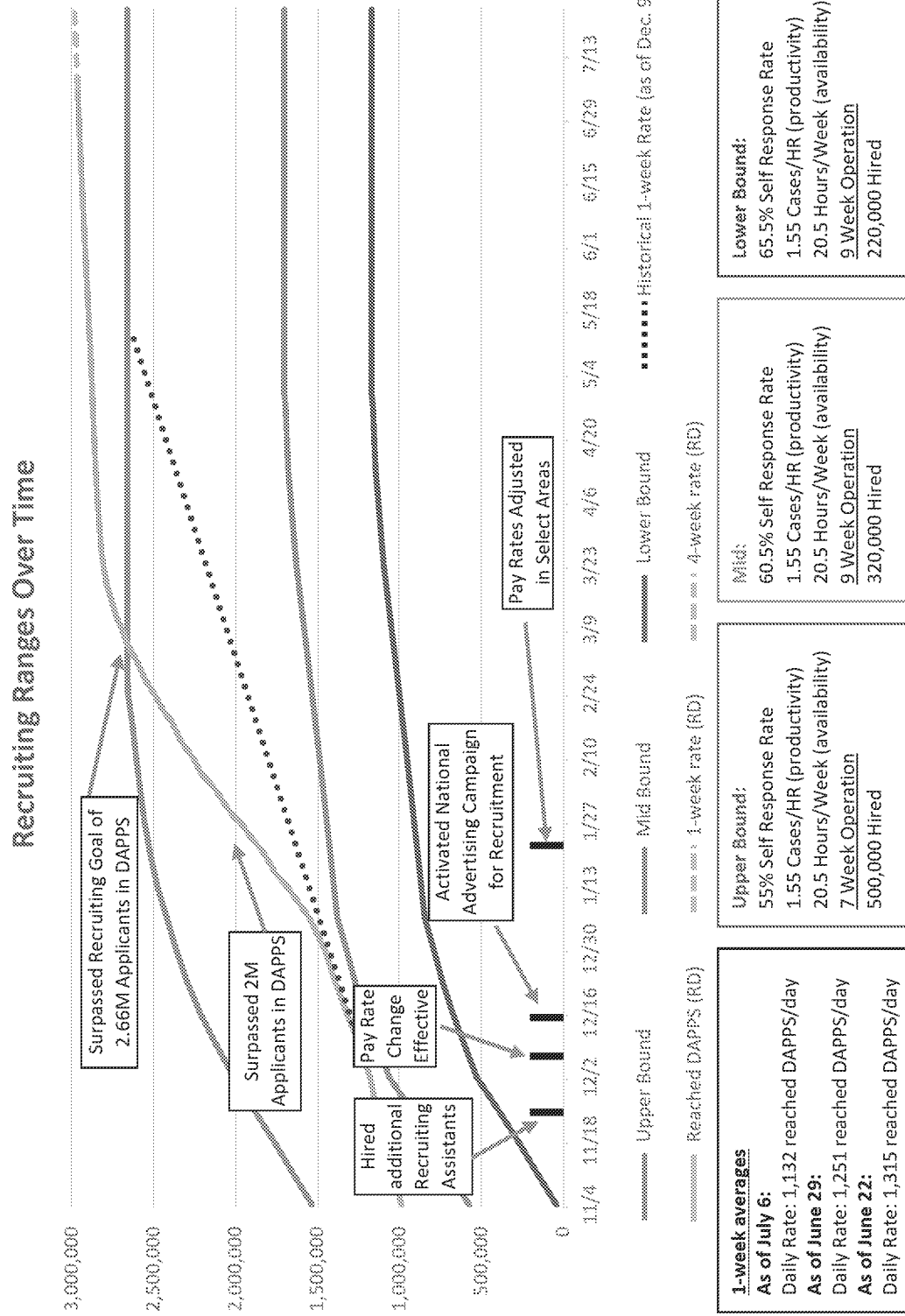
Periodic Performance Management Reports

2020 Census: Recruiting Ranges Over Time

Data current as of:
July 6, 2020

Completion Date:
August 15, 2020

Notes:



Periodic Performance Management Reports

2020 Census: Applicant Status

Status:

● On Track

Data current as of:

July 6, 2020

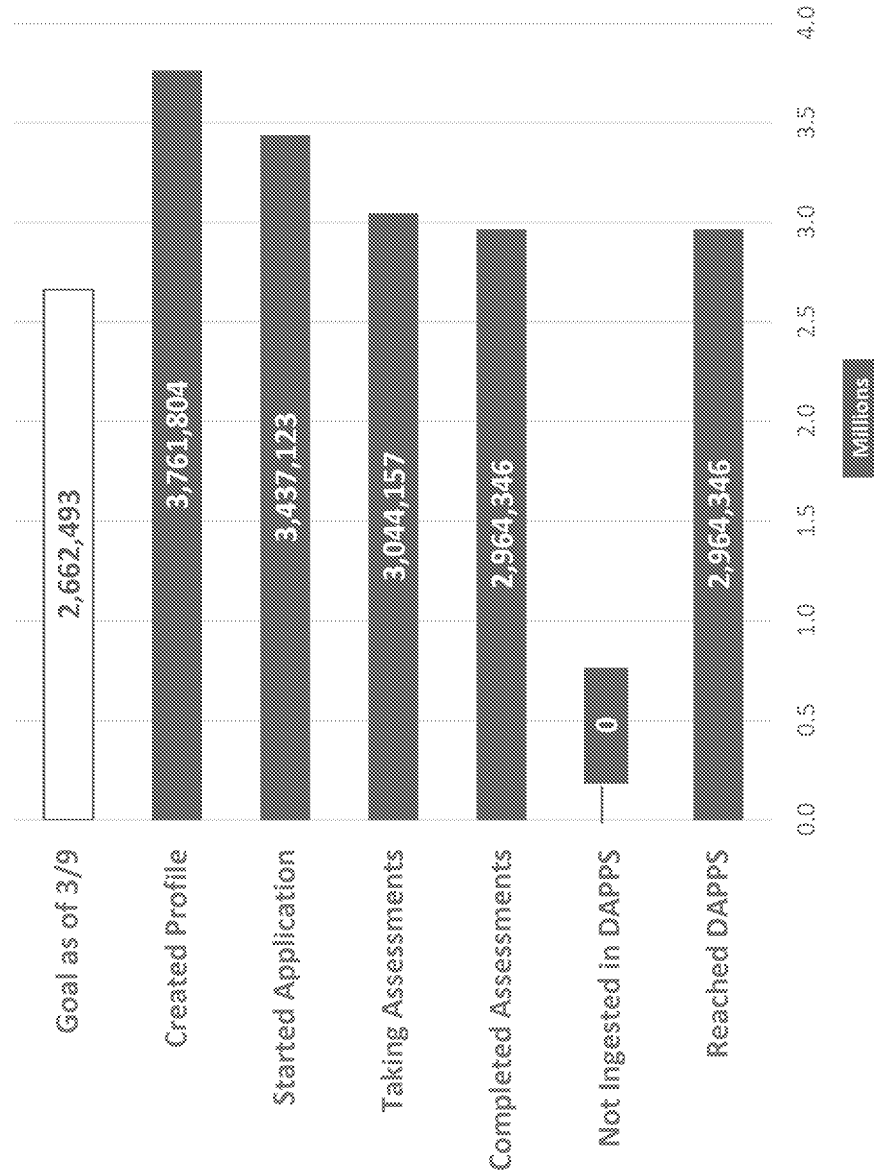
Completion Date:

January 5, 2021

Notes:

- Actions taken to achieve our recruiting target were successful. We have achieved our applicant goal.
- We are communicating with our recruits, selectees, and on-board staff so that staff are ready to work as we recommence all field operations.

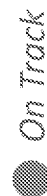
Steps in Applying for a Position



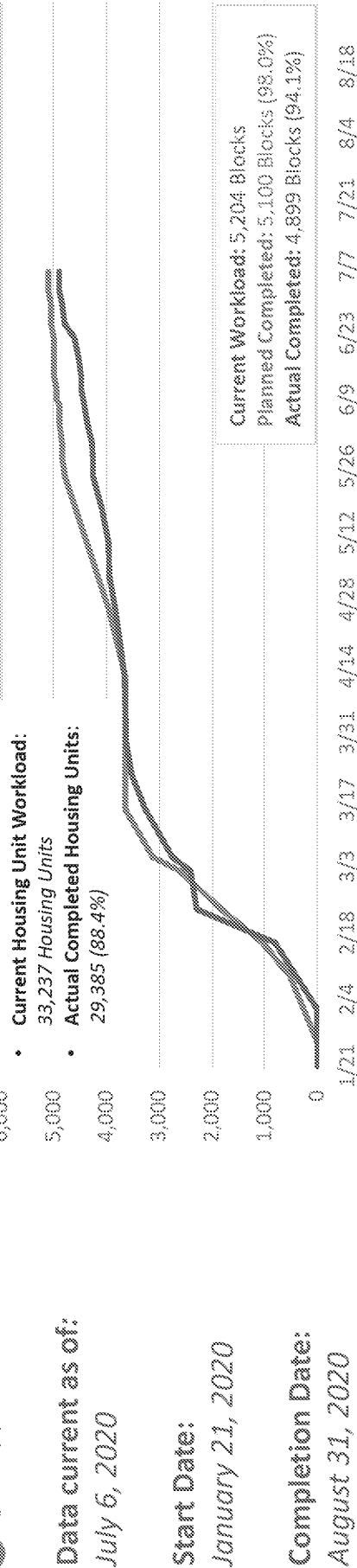
Periodic Performance Management Reports

2020 Census: Remote Alaska Progress & Cost

Status:



Progress for Remote Alaska Production



Start Date:

January 21, 2020

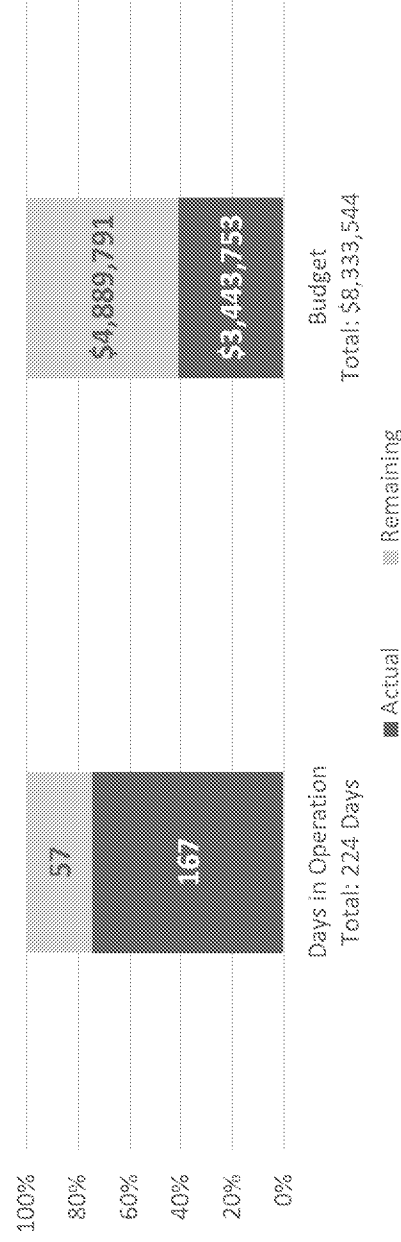
Completion Date:

August 31, 2020

Notes:

- Lack of access to some villages due to COVID-19 quarantines has required moving the planned completion of the Remote Alaska operation to August 31, 2020.
- Enumerations have resumed in all remaining areas that were incomplete in mid-March when work was suspended.

Key Performance Indicators for Remote Alaska



Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:



Actual vs. Projected Self-Response Rates

Data current as of:

July 6, 2020

Start Date:

March 12, 2020

Completion Date:

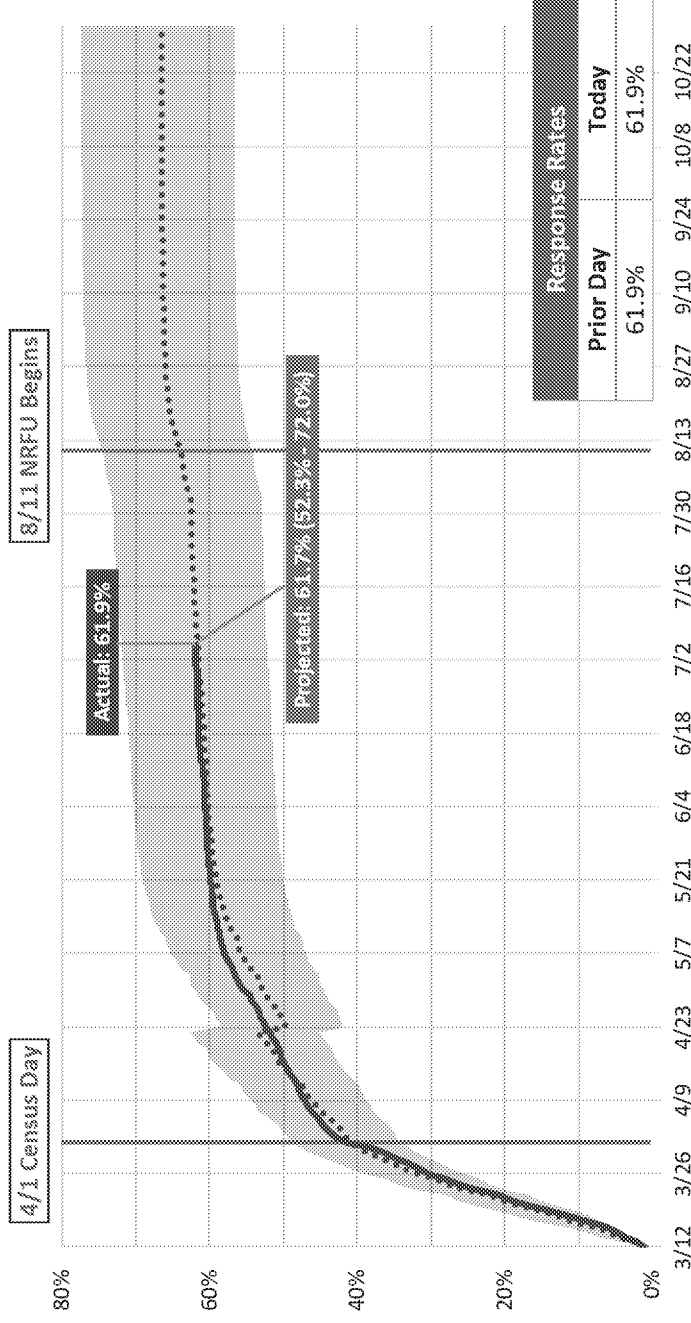
October 31, 2020*

Notes:

* As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.

* Response rates reflect responses from Self-Response and Update Leave.

* * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.



Response Rates	
Prior Day	Today
61.9%	61.9%

Data as of 11:59 pm of the previous day

Legend

Actual Self-Response Rate	—————
Projected Self-Response Rate	*****
Lower & Upper Bound	Shaded Area

Source: Census Data Lake & Decennial Statistical Studies Division

Pre-decisional - Internal Only - Not for Public Distribution.

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units –Zoomed in View

Status:



Actual vs. Projected Self-Response Rates

Data current as of:

July 6, 2020

Start Date:

March 12, 2020

Completion Date:

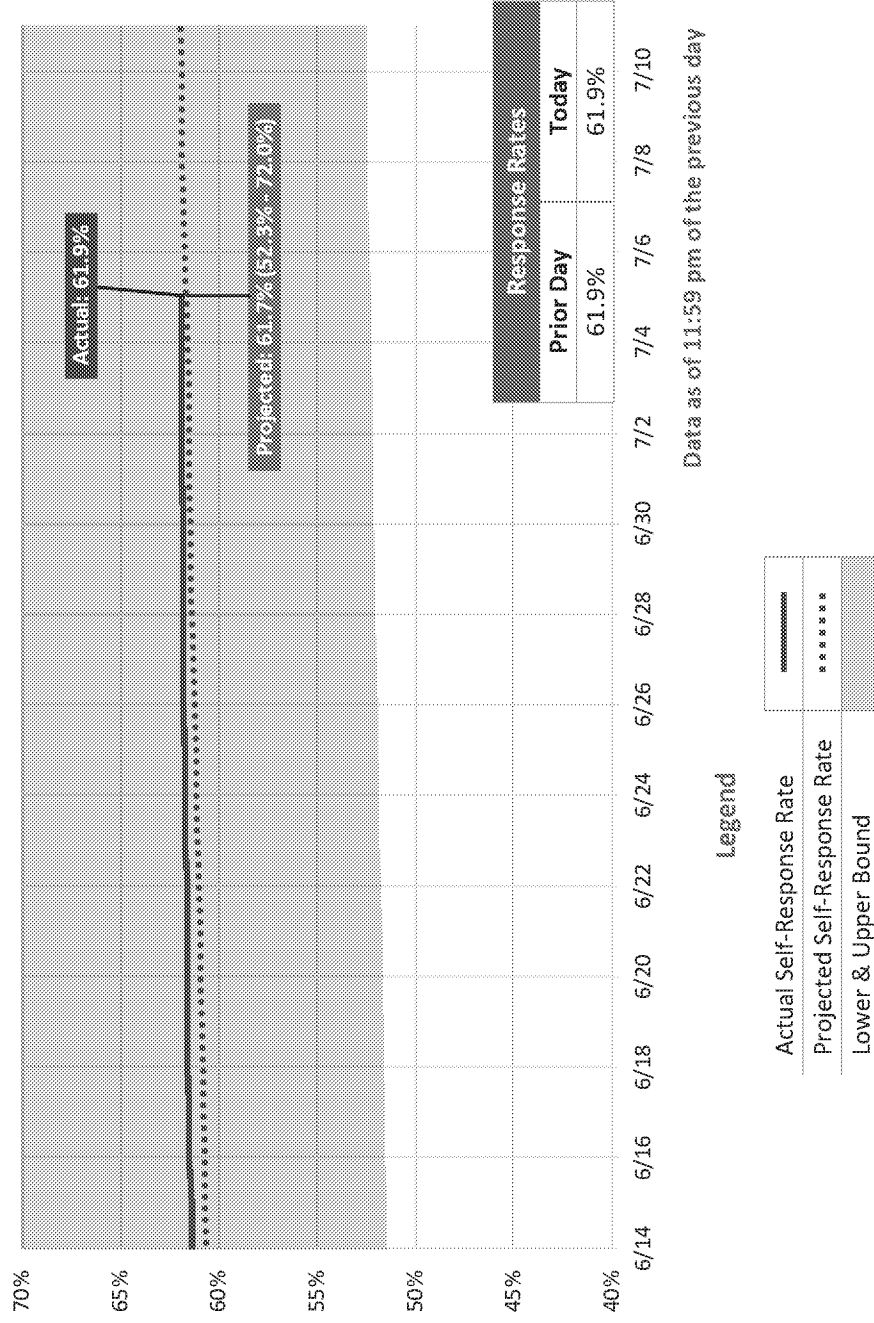
October 31, 2020*

Notes:

* As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.

* Response rates reflect responses from Self-Response and Update Leave.

* * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.



Data as of 11:59 pm of the previous day

Source: Census Data Lake & Decennial Statistical Studies Division

Pre-decisional - Internal Only - Not for Public Distribution.

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status:

Management Focus

Data current as of:

July 6, 2020

Start Date:

March 12, 2020

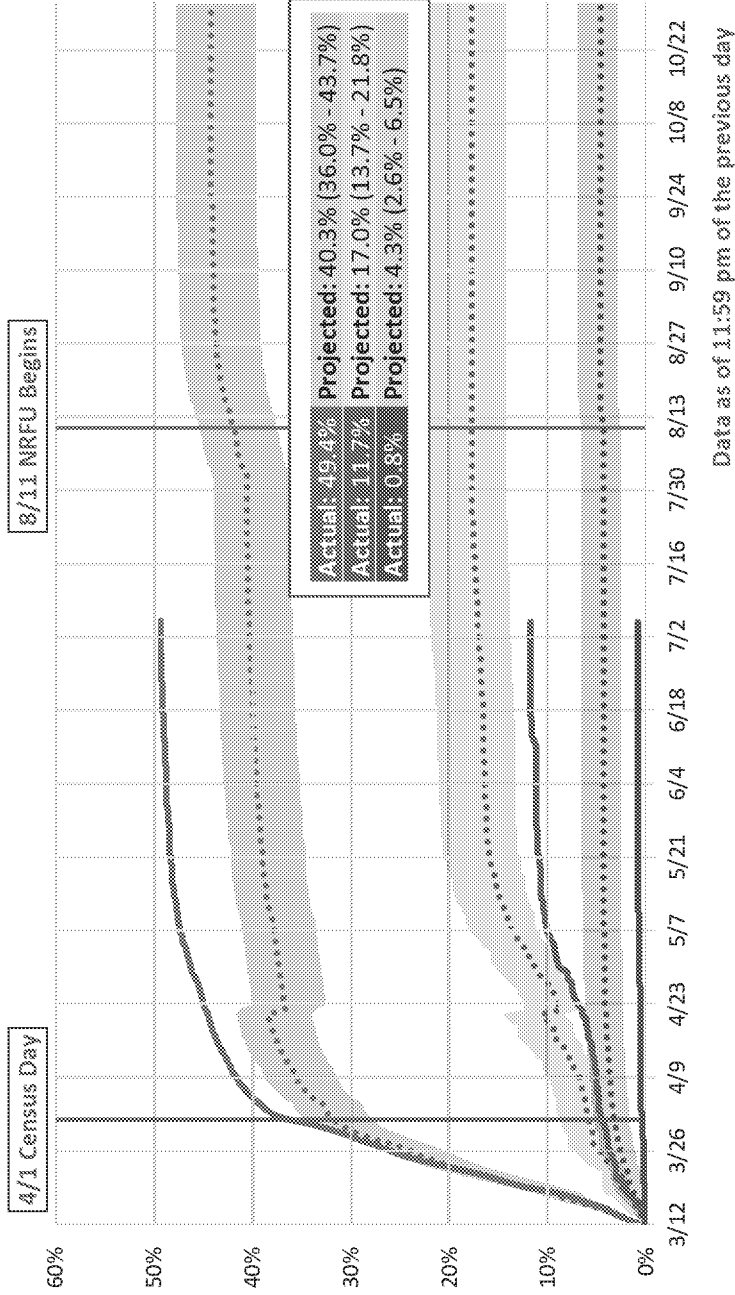
Completion Date:

October 31, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	49.4%	11.7%	0.8%
Projected Self-Response Rate	40.3%	17.0%	4.3%
Lower & Upper Bound	36.0% - 43.7%	13.7% - 21.8%	2.6% - 6.5%

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode – Zoomed In

Status:

Management Focus

Data current as of:

July 6, 2020

Start Date:

March 12, 2020

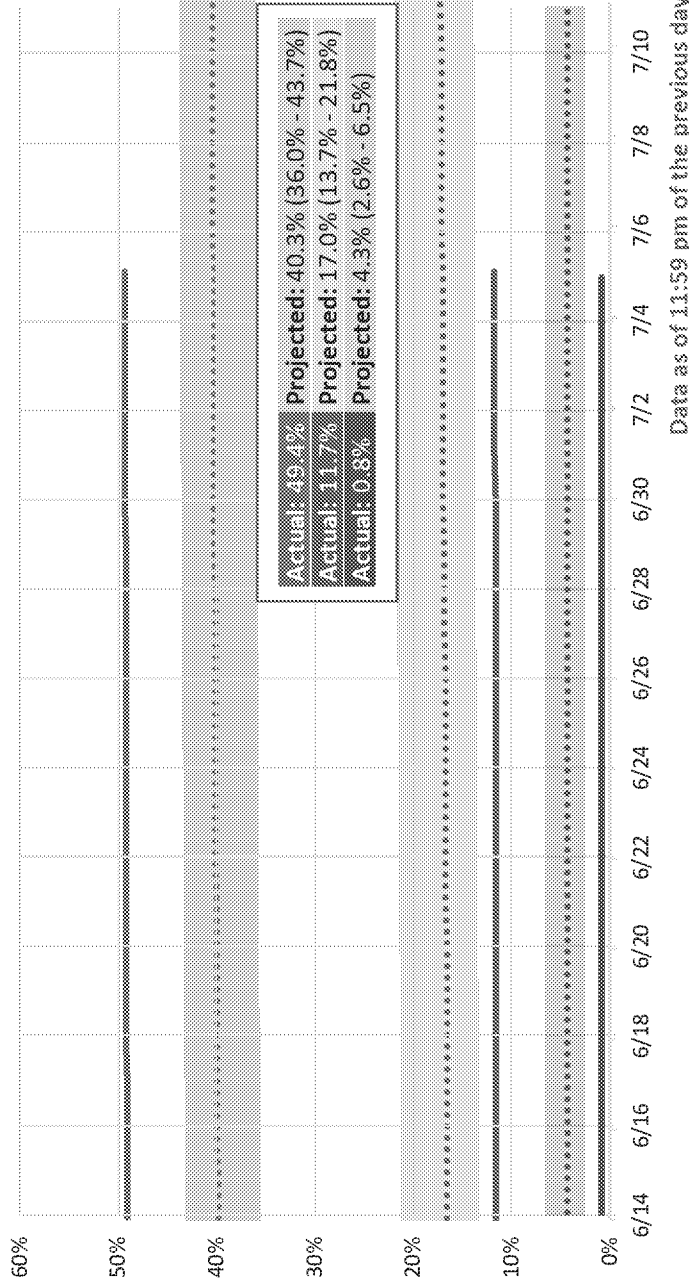
Completion Date:

October 31, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	————	————	————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound			

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division
Data Current as of: July 6, 2020

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
U.S. Total	61.9%	63.5%	66.5%
Minnesota	71.4%	71.6%	74.1%
Wisconsin	68.8%	71.2%	73.5%
Michigan	68.1%	65.4%	67.7%
Iowa	68.0%	71.0%	73.0%
Nebraska	68.0%	68.8%	71.1%
Washington	67.3%	63.7%	67.2%
Virginia	66.7%	66.2%	69.0%
Illinois	66.7%	67.7%	70.5%
Ohio	66.5%	66.2%	69.0%
Indiana	66.3%	67.0%	69.6%
Utah	66.3%	65.4%	68.6%
Maryland	65.8%	66.5%	69.5%
Kansas	65.6%	67.4%	70.0%
Idaho	65.4%	64.6%	67.1%
Connecticut	65.3%	66.3%	69.5%
Kentucky	65.3%	63.0%	65.7%
Colorado	65.2%	64.4%	67.2%
Pennsylvania	65.1%	67.8%	70.2%
Oregon	64.3%	63.9%	66.9%
Massachusetts	63.9%	65.6%	68.8%
New Jersey	63.9%	64.4%	67.6%
South Dakota	63.2%	65.0%	67.1%
California	63.1%	64.7%	68.2%
Missouri	62.0%	65.3%	67.5%
New Hampshire	61.8%	61.5%	64.4%
North Dakota	61.6%	66.8%	68.8%

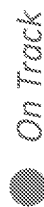
State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
Tennessee	61.4%	63.8%	67.1%
Nevada	61.1%	58.7%	61.4%
Rhode Island	59.8%	62.8%	65.7%
Delaware	59.7%	60.8%	64.1%
Alabama	59.6%	59.5%	62.5%
Florida	59.0%	59.6%	63.0%
Arizona	58.5%	58.5%	61.3%
Hawaii	58.1%	60.7%	64.1%
North Carolina	58.1%	62.1%	64.8%
District of Columbia	58.1%	62.2%	66.0%
Georgia	57.8%	59.5%	62.5%
New York	57.4%	61.3%	64.6%
Mississippi	56.9%	58.1%	61.3%
Texas	56.7%	60.3%	64.4%
Arkansas	56.6%	59.5%	62.3%
South Carolina	56.3%	62.2%	64.7%
Oklahoma	56.3%	58.9%	62.3%
Wyoming	56.1%	61.1%	63.4%
Louisiana	56.1%	57.9%	61.0%
Montana	55.6%	62.3%	64.6%
Vermont	55.3%	58.1%	60.3%
West Virginia	53.4%	56.8%	59.1%
Maine	53.4%	55.3%	57.4%
New Mexico	51.2%	56.9%	60.0%
Alaska	48.0%	51.6%	55.6%
Puerto Rico	23.4%	51.2%	53.8%

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:



Data current as of:
July 4, 2020

Completion Date:

July 31, 2020
(pending contract MOD)

Notes:

To date, 13,957 callers have requested the callback option. These callbacks have resulted in 5,760 completed interviews and 3,648 callers being provided assistance.

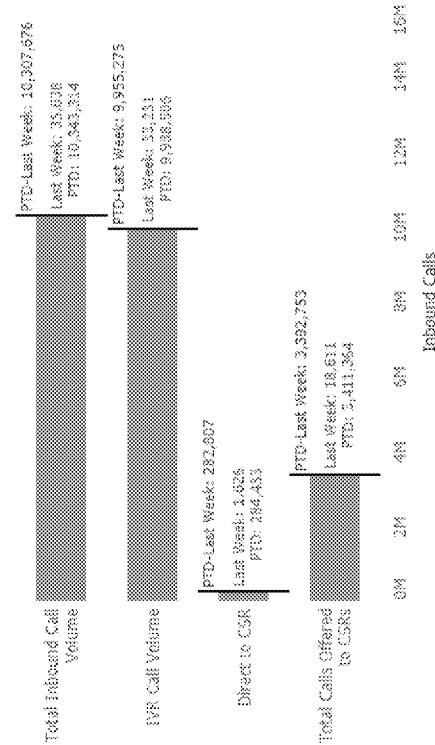
Total Inbound Call Volume % (PTD)



Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	8,295,117	10,343,314
Deflection Rate	47.0%	67.3%
Service Level - 30 Seconds	80.0%	62.4%
Average Handle Time	9:43	9:18

Inbound Call Volume



Calls Offered to CSRs by Language

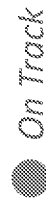
	6/21 - 6/27	6/28 - 7/4	PTD	PTD %
English	18,243	15,100	3,018,288	88.5%
English Puerto Rico	38	48	2,159	0.1%
Spanish	1,974	2,138	258,173	7.6%
Spanish Puerto Rico	634	844	25,443	0.7%
Chinese Mandarin	71	66	10,273	0.3%
Chinese Cantonese	70	88	8,811	0.3%
Vietnamese	34	32	12,653	0.4%
Korean	40	33	12,278	0.4%
Russian	74	52	6,446	0.2%
Arabic	18	18	3,923	0.1%
Tagalog	12	2	2,527	0.1%
Polish	6	7	2,338	0.1%
French	7	3	1,117	0.0%
Haitian Creole	15	16	2,431	0.1%
Portuguese	12	6	1,706	0.1%
Japanese	7	4	2,193	0.1%
TTY	59	42	36,454	1.1%
Group Quarters	176	112	4,151	0.1%
Total	21,490	18,611	3,411,364	100.0%

Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:



Data current as of:
July 2, 2020

Completion Date:
March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	373	70,964
Business	127	86,072
Chamber of Commerce/Trade or Professional Association	109	10,456
Education	102	83,779
Government	88	71,019
Faith-Based Organizations	65	39,997
Media	46	8,158
Healthcare	44	14,601
Technology	32	344
International Governmental/Consulate/Embassy	11	353
Grand Total	997	355,418

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

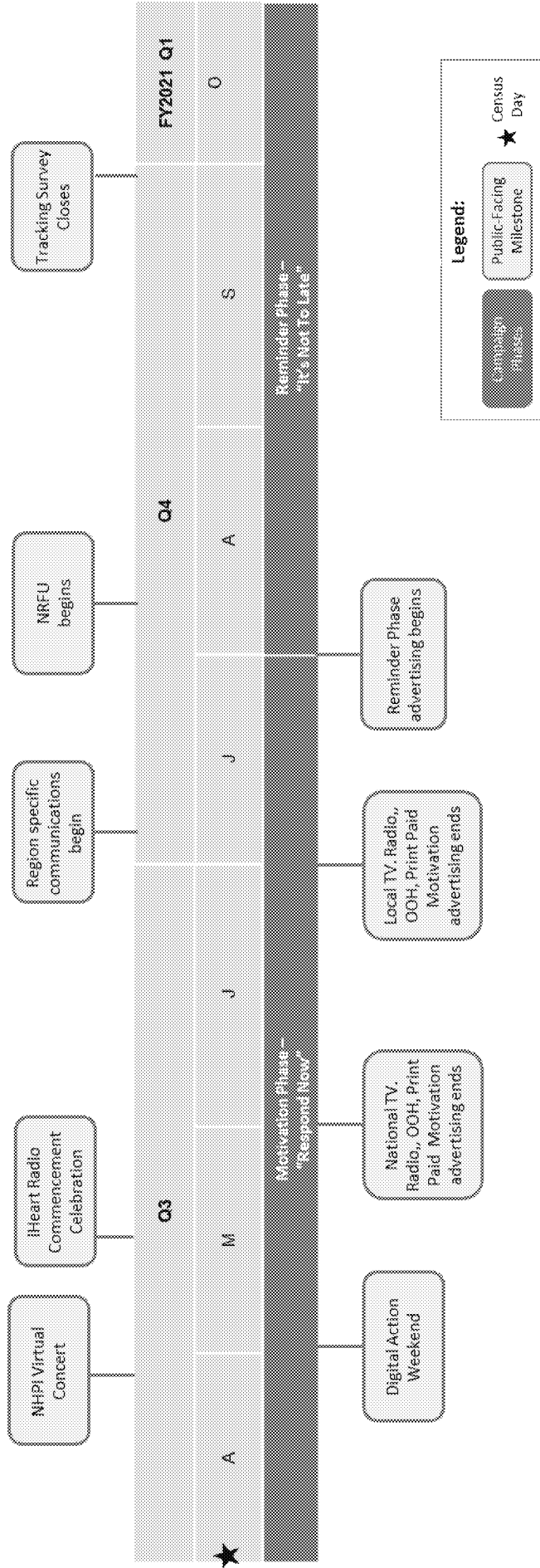
Completed Community Partnership Events: 397,282

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	423	226,676
Black/African American	91	17,266
Young Children	86	5,715
Asian	78	10,032
Hispanic/Latino	78	12,873
Rural	77	25,268
Native Hawaiian Pacific Islander	47	658
Veterans	41	3,223
Young and Mobile	40	7,339
LGBTQ	24	1,272
Individuals with Disabilities	24	3,167
Elderly	23	8,706
Persons Experiencing Homelessness and Highly Mobile	22	5,453
American Indian/Alaskan Native	19	3,551
MENA	15	54

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication
Data Current as of: July 2, 2020



Significant Accomplishments

- Essence Communications hosted the first of two virtual Essence Festival events, which include Census Bureau participation on 6/27.
- Field recruitment paid search ads began running on 6/31.
- Staff joined the Black Caucus of the American Library Association (BCALA) for "Counting Black Communities - Census 2020 & Libraries", a webinar to help participants strategize on how libraries can assist in increasing the response rate for HTC communities on 7/1 for a Census Solutions activity, and discussion.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: May 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 5/31/2020

\$ Amounts in Millions		IT	Non-IT	Total
Total Planned through May		\$1,686.123	\$4,298.556	\$5,984.679
Available contingency and additional appropriations through May		\$247.942	\$1,432.008	\$1,679.950
Planned Programmatic through May		\$1,438.181	\$2,866.548	\$4,304.729
Total Actual Commitments and Obligations through May		\$1,397.013	\$1,936.113	\$3,333.126
Unplanned commitments/obligations through May related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)		\$98.268	\$209.442	\$307.710
Actual Programmatic Commitments and Obligations through May		\$1,298.745	\$1,726.671	\$3,025.416
Total Plan Variance (\$/%)		\$289.110 (17.1%)	\$2,362.444 (55.0%)	\$2,651.553 (44.3%)
Remaining contingency and additional appropriations planned through May		\$149.674	\$1,222.566	\$1,372.240
Delayed Field Operation Spending through May		\$0	\$1,188.572	\$1,188.572
Non-Field Operational Programmatic Variance through May		\$139.436	(\$48.694)	\$90.741

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of planned contingency funding. The total variance for the resources planned to be available through May is \$2.652 billion, or 44 percent. Below outlines the breakdown:

- The positive variance through May against the original plan in 2020 Census IT systems and operations is \$289 million, or 17 percent. This variance consists of relatively minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, **totaling \$139 million**. The remaining \$150 million represents a portion of contingency funding originally planned in April that has not yet been obligated.
- The positive variance through May against the original plan in 2020 Census non-IT operations is \$2.362 billion, or 55 percent. This variance consists of **\$1.189 billion delayed** spending in the field operations as a result of schedule adjustments, and \$1.223 billion representing a portion of contingency and additional appropriations originally planned in April that has not yet been obligated. This variance is partially offset by a **\$49 million** non-field variance, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions were made to use risk-based contingency funds to support \$308 million in unplanned obligations or commitments through May as the result of the operational adjustments. The funds used to date include funding field staff salaries during the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response throughout the spring, and additional costs for the extension of the Fingerprint Contract and licenses as the result of the operational timing adjustments.

July 7, 2020

BRIEFING MEMORANDUM FOR THE SECRETARY

FROM: Ian Steff, Assistant Secretary for Global Markets

RE: Phone Call with Tom Caulfield, CEO of GlobalFoundries,
on Wednesday, July 8, 2020, from 11 AM to 11:15 AM

b(5) - DP

b(5) - DP

ATTACHMENTS

1. List of Participants and Participant Biography

2. **b(5) - DP**
- 3.

ATTACHMENT 1: List of Participants and Participant Biography

LIST OF PARTICIPANTS

GlobalFoundries

- Thomas Caulfield, CEO
- Other GlobalFoundries Executives TBD

Department of Commerce

- Joe Semsar, Deputy Under Secretary performing the non-exclusive duties of the Under Secretary for International Trade
- Ian Steff, Assistant Secretary for Global Markets



Thomas Caulfield
CEO, GlobalFoundries

Dr. Thomas Caulfield is the Chief Executive Officer of GlobalFoundries. Prior to being named CEO, Dr. Caulfield was Senior Vice President and General Manager of the company's 300 mm semiconductor wafer manufacturing facility (Fab 8), located in Saratoga County, NY. Dr. Caulfield, who joined GlobalFoundries in May 2014, led the operations, expansion and ramp of semiconductor manufacturing production at Fab 8.

Dr. Caulfield has an extensive career in the semiconductor industry spanning engineering, management and global operational leadership with leading technology companies. Most recently, Dr. Caulfield served as president and chief operations officer (COO) at Soraa, the world's leading developer of GaN on GaNTM (gallium nitride on gallium nitride) solid-state lighting technology. Prior to Soraa, Dr. Caulfield served as president and COO of Ausra, a leading provider of large-scale concentrated solar power solutions for electricity generation and industrial steam production. Before that, Dr. Caulfield served as executive vice president of sales, marketing and customer service at Novellus Systems, Inc.

Prior to that, Caulfield spent 17 years at IBM in a variety of senior leadership roles, ultimately serving as vice president of 300mm semiconductor operations for IBM's Microelectronics Division, leading its state-of-the-art wafer fabrication operations in East Fishkill, NY.

ATTACHMENT 2:

b(5) - DP

(see attached PowerPoint)

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July 7, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Arica Young, Qatar Desk Officer, (202) 830-5531

RE: Call with H.E. Ahmed Mohammed Al-Sayed, Minister of State and
Chairman of the Board of Directors of the Free Zone Authority in Qatar
On Wednesday, July 8, 2020, from 12 PM to 12:15 PM

b(5) - DP

PARTICIPANT BIOGRAPHY



H.E. Ahmed Mohammed Al-Sayed

Minister of State and Chairman of the Board of Directors of the Free Zone Authority in Qatar

His Excellency Ahmad Al-Sayed is the Minister of State and the Chairman of the Board of Directors, Free Zones Authority, Qatar. HE Al-Sayed is also the Chairman and Managing Director of Doha Venture Capital Fund (DVC), Board Member of Qatar Development Bank and Board Member of Msheireb Properties. Previously, His Excellency served as CEO of the Qatar Investment Authority and Qatar Holding. His Excellency Al-Sayed holds his MBA with Trium Global (from LSE, NYU Stern, HEC Paris), a Master of International Banking & Financial Law from Boston University, and an LLB from Qatar University.

b(5) - DP

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ATTACHMENTS

1. Meeting Participants
2. Qatar Country Fact Sheet

b(5) - DP

ATTACHMENT 1: Meeting Participants

b(5) - DP

Government of Qatar

- H.E. Ahmed Mohammed Al-Sayed, Minister of State and Chairman of the Board of Directors of the Free Zone Authority
- Others, TBD

USG

- Wilbur Ross, Secretary of Commerce
- Charge d'Affaires Ambassador Greta Holtz, Qatar
- Megan Schildgen, Senior Commercial Officer, Qatar

SUGGESTED TALKING POINTS

b(5) - DP

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ATTACHMENT 2: Qatar Country Fact Sheet

STATISTICS AT A GLANCE

Qatar (Riyal)

INTERNATIONAL
TRADE
ADMINISTRATION

GROSS DOMESTIC PRODUCT, 2019

Nominal GDP (total)	USD 204 billion*
Nominal GDP (per capita)	USD 72,677*

ECONOMIC MIX, 2019

N/A services; N/A manufacturing; 0.2% agriculture

FOREIGN MERCHANDISE TRADE

(USD billions)	2017	2018	2019
Exports to the world	85.2	102.5	N/A
Imports from the world	62.2	65.8	N/A
U.S. exports to Qatar	3.1	4.4	6.5
U.S. imports from Qatar	1.2	1.6	1.7
Trade balance with U.S.	1.9	2.9	4.8

U.S. TRADE IN SERVICES

(USD billions)	2016	2017	2018
U.S. exports to Qatar	N/A	N/A	N/A
U.S. imports from Qatar	N/A	N/A	N/A

FOREIGN DIRECT INVESTMENT (FDI), F/U*

(USD billions)	2017	2018	2019
FDI into U.S. from Qatar	2.25	N/A	N/A
U.S. FDI in Qatar	8.2	10.6	N/A

* Terms: TP (F) Foreign Parent (can be subsidiary of foreign owner); UBO (U) Country of Ultimate Beneficial Owner
Supporting U.S. Jobs: N/A

Investing in Innovative R&D: N/A

Principal FDI suppliers to Qatar YEAR
N/A

U.S. Ambassador / Charge D'Affaires to Qatar
Charge d'Affaires Ambassador Greta C. Holtz

Qatari Ambassador to the United States
H.E. Sheikh Meshal bin Hamad Al Thani

Population: ~3 million (2019)
Capital: Doha
Government: Absolute Monarchy
Head of State: Tamim bin Hamad Al Thani, Emir
Head of Gov't: Abdullah bin Nasser bin Khalifa Al Thani, PM
Next Election:

ECONOMY

(percent value)	2017	2018	2019
Real GDP growth rate	1.49%	0.07%	-4.35%
Real GDP per capita growth rate	-2.79%	1.17%	1.55%
Consumer Prices (change)	0.18%	-0.55%	-1.19%
Unemployment	N/A	N/A	N/A

World Bank Ease of Doing Business

2020: 77 of 190 (83 of 190 in 2018)

Transparency International Corruption Perceptions Index

2019: 30 of 180

Additional Trade Data 2019

Ranking as a U.S. export market: 37th largest (0.4% of US exports)

Ranking as a source of U.S. imports: 66th largest (0.07% of US imports)

Ranking in total U.S. trade: 50th largest (0.2% of US Trade)

Principal U.S. merchandise exports to Qatar in 2019:

Transportation Equipment (57.4%); Computer & Elec Product (9.5%);
Elect Equipment, (9.5%); Machinery, exc. Elec 4.8%; Fab Metal (4.4%)

Principal U.S. merchandise imports from Qatar in 2019:

Petroleum & Coal (41.3%); Chemicals (26.5%); Primary Metal Mfg (24.5%)

* IMF estimates; † World Bank data; N/A Not available

ITA leads the Federal Government's efforts to support U.S. job creation through trade and investment. We help American companies export their products and services, fight for market access globally, monitor and enforce our trade agreements, administer our trade laws, and work with state and local economic development organizations to attract foreign investment. ITA is located in more than 100 U.S. cities and more than 70 countries worldwide. ITA provides on-the-ground assistance worldwide—just a phone call or email away.

ITA Staff at Post: 5

Senior Commercial Officer: Megan Schildgen, SCO

PTO Attache: Peter Mehravari (Kuwait)

Enforcement & Compliance Attache: N/A

BIS Attache: N/A

Partnership Posts: None

ITA Country Desk Officer: Anica Young

Office of Legislative & Intergovernmental Affairs: 202-482-3015

U.S. Department of Commerce

International Trade Administration

July 7, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar, Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the Under Secretary
for International Trade

FROM: Ian Saunders, DAS for the Western Hemisphere, (202) 482-2689

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ATTACHMENTS

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July 7, 2020

INFORMATION MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Jeffrey I. Kessler
Assistant Secretary for Enforcement and Compliance
Desk: (202) 482-4503; Cell: b(6)

RE: Final Circumvention Rulings in Self-Initiated Steel Cases

b(5) - DP

July 7, 2020

INFORMATION MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Jeffrey I. Kessler
Assistant Secretary for Enforcement and Compliance
Cell: b(6)

RE: Preliminary Determination in the Countervailing Duty (CVD)
Investigation of Corrosion Inhibitors from China

b(5) - DP

From: Pepper, Samuel (Federal) [SPepper@doc.gov]
Sent: 8/24/2020 1:42:30 PM
CC: McDermott, Ryan (Federal) [RMcDermott1@doc.gov]; Williams, Allaire (Federal) [AWilliams2@doc.gov]; Stevens, Rose (Federal) [RStevens@doc.gov]; ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 08.24.2020 Briefing Book
Attachments: 8.24.20 Briefing Book.pdf; 2) 2020 Census Program Update 08242020.pdf; 4) Census 2020 Backend Processing FINAL.pptx; 4.1) 20200824 Overview slide for PM Final1.pptx

UPDATE:

- 2) 2020 Census Program Update 08242020
- 4) Census 2020 Backend Processing FINAL
- 4.1) 20200824 Overview slide for PM Final1

Samuel "Yates" Pepper

Special Assistant, Executive Secretariat
Office of the Secretary
U.S. Department of Commerce

M: [b(6)]
W: [b(6)]
SPepper@doc.gov

From: Pepper, Samuel (Federal)
Sent: Sunday, August 23, 2020 10:20 PM
Cc: McDermott, Ryan (Federal) <RMcDermott1@doc.gov>; Williams, Allaire (Federal) <AWilliams2@doc.gov>; Stevens, Rose (Federal) <RStevens@doc.gov>; ExecSecBriefingBook [b(6)]>
Subject: 08.24.2020 Briefing Book

0) Schedule for Secretary Wilbur Ross

b(5) - DP

- 4) ITA Info Memo on Canada- Softwood Lumber CVD Investigation WTO Dispute
- 5) ITA Info Memo on China- AD Prelim Difluoromethane

Samuel "Yates" Pepper

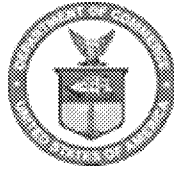
Special Assistant, Executive Secretariat
Office of the Secretary
U.S. Department of Commerce

M: [b(6)]
W: [b(6)]
SPepper@doc.gov

Briefing Book
Secretary
Wilbur L. Ross



For August 24, 2020



THE SCHEDULE OF SECRETARY WILBUR ROSS

As Prepared for August 24, 2020

11:00am-11:30am	Pre-Brief – EARB Conference Line – Non-Secure
11:30am-11:45am	Call with Ahmad Al-Sayed, Minister of State and Chairman of Qatar Free Zones Authority Conference Line – Non-Secure
1:45pm-2:20pm	Senior Management Decennial Committee Conference Line – Non-Secure
2:30pm-3:45pm	Small Group Briefing Conference Line – Non-Secure
5:00pm-5:30pm	EARB Meeting Conference Line – Non-Secure

August 24, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Arica Young, Qatar Desk Officer, b(6)

RE: Call with H.E. Ahmed Mohammed Al-Sayed, Minister of State and
Chairman of the Board of Directors of the Free Zone Authority in Qatar
On Monday, August 24, 2020, Time-TBD

b(5) - DP

PARTICIPANT BIOGRAPHY



H.E. Ahmed Mohammed Al-Sayed

Minister of State and Chairman of the Board of Directors of the Free Zone Authority in Qatar

His Excellency Ahmad Al-Sayed is the Minister of State and the Chairman of the Board of Directors, Free Zones Authority, Qatar. HE Al-Sayed is also the Chairman and Managing Director of Doha Venture Capital Fund (DVC), Board Member of Qatar Development Bank and Board Member of Msheireb Properties. Previously, His Excellency served as CEO of the Qatar Investment Authority and Qatar Holding. His Excellency Al-Sayed holds his MBA with Trium Global (from LSE, NYU Stern, HEC Paris), a Master of International Banking & Financial Law from Boston University, and an LLB from Qatar University.

BACKGROUND

b(5) - DP

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ATTACHMENTS

1. Meeting Participants & Suggested Talking Points
2. Qatar Country Fact Sheet

ATTACHMENT 1: Meeting Participants/Suggested & If Raised Talking Points

Government of Qatar

- H.E. Ahmed Mohammed Al-Sayed, Minister of State and Chairman of the Board of Directors of the Free Zone Authority
- Others, TBD

USG

- Wilbur Ross, Secretary of Commerce

SUGGESTED TALKING POINTS

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ATTACHMENT 2: Qatar Country Fact Sheet

STATISTICS AT A GLANCE

Qatar (Riyal)

INTERNATIONAL
TRADE
ADMINISTRATION

GROSS DOMESTIC PRODUCT, 2019

Nominal GDP (total)	USD 204 billion*
Nominal GDP (per capita)	USD 72,677*

ECONOMIC MIX, 2019

N/A services; N/A manufacturing; 0.2% agriculture

FOREIGN MERCHANDISE TRADE

(USD billions)	2017	2018	2019
Exports to the world	85.2	102.5	N/A
Imports from the world	62.2	65.8	N/A
U.S. exports to Qatar	3.1	4.4	6.5
U.S. imports from Qatar	1.2	1.6	1.7
Trade balance with U.S.	1.9	2.9	4.8

U.S. TRADE IN SERVICES

(USD billions)	2016	2017	2018
U.S. exports to Qatar	N/A	N/A	N/A
U.S. imports from Qatar	N/A	N/A	N/A

FOREIGN DIRECT INVESTMENT (FDI), F/U*

(USD billions)	2017	2018	2019
FDI into U.S. from Qatar	2.25	N/A	N/A
U.S. FDI in Qatar	8.2	10.6	N/A

* Terms: FP (F), Foreign Parent (can be subsidiary of foreign owner); UBO (U), Country of Ultimate Beneficial Owner
Supporting U.S. Jobs: N/A

Investing in Innovative R&D: N/A

Principal FDI suppliers to Qatar YEAR
N/A

U.S. Ambassador / Charge D'Affaires to Qatar
Charge d'Affaires Ambassador Greta C. Holtz

Qatari Ambassador to the United States
H.E. Sheikh Meshal bin Hamad Al Thani

Population: ~3 million (2019)
Capital: Doha
Government: Absolute Monarchy
Head of State: Tamim bin Hamad Al Thani, Emir
Head of Gov't: Abdullah bin Nasser bin Khalifa Al Thani, PM
Next Election:

ECONOMY

(percent value)	2017	2018	2019
Real GDP growth rate	1.49%	0.07%	-4.35%
Real GDP per capita growth rate	-2.79%	1.17%	1.55%
Consumer Prices (change)	0.18%	-0.55%	-1.19%
Unemployment	N/A	N/A	N/A

World Bank Ease of Doing Business

2020: 77 of 190 (83 of 190 in 2018)

Transparency International Corruption Perceptions Index

2019: 30 of 180

Additional Trade Data 2019

Ranking as a U.S. export market: 37th largest (0.4% of US exports)

Ranking as a source of U.S. imports: 66th largest (0.07% of US imports)

Ranking in total U.S. trade: 50th largest (0.2% of US Trade)

Principal U.S. merchandise exports to Qatar in 2019:

Transportation Equipment (57.4%); Computer & Elec Product (9.5%); Elect Equipment, (9.5%); Machinery, exc. Elec 4.8%; Fab Metal (4.4%)

Principal U.S. merchandise imports from Qatar in 2019:

Petroleum & Coal (41.3%); Chemicals (26.5%); Primary Metal Mfg (24.5%)

* IMF estimates; † World Bank data; N/A Not available

ITA leads the Federal Government's efforts to support U.S. job creation through trade and investment. We help American companies export their products and services, fight for market access globally, monitor and enforce our trade agreements, administer our trade laws, and work with state and local economic development organizations to attract foreign investment. ITA is located in more than 100 U.S. cities and more than 70 countries worldwide. ITA provides on-the-ground assistance worldwide—just a phone call or email away.

ITA Staff at Post: 5
Senior Commercial Officer: Megan Schildgen, SCO

PTO Attache: Peter Mehravari (Kuwait)
Enforcement & Compliance Attache: N/A
BIS Attache: N/A

Partnership Posts: None

ITA Country Desk Officer: Arica Young
Office of Legislative & Intergovernmental Affairs: 202-462-3015

U.S. Department of Commerce

International Trade Administration

Status Reporting: Nonresponse Followup for the 2020 Decennial Census

Periodic Reporting: Release for August 24, 2020

Periodic Performance Management Reports

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Periodic Performance Management Reports

2020 Census: Nonresponse Followup At A Glance – August 24, 2020

General

Self-Response Rate: 64.4% **Total Housing Units Enumerated:** 76.5%

Nine states have met or exceeded their final 2010 Census Self-Response Rate:
Colorado, Idaho, Kentucky, Michigan, Nevada, Oregon, Utah, Virginia, Washington

Hurricanes/Tropical Storms: Landfall Estimated Tuesday night, August 25.
Estimated Impact to 5 states: Alabama, Florida, Louisiana, Mississippi, and Texas
Estimated Remaining NRFU Workload Impacted : 5,640,000

Iowa Derecho: 16 Counties in Iowa with an Emergency Declaration
Estimated Remaining NRFU Workload Impacted: 210,000

California Wildfires: 17 Counties Impacted
Estimated Remaining NRFU Workload Impacted: 511,000

Progress

Current Workload: : 61,753,345
Completed Cases: 25,409,978 (41.1%)
Planned Completed Cases: 19,455,348 (31.5%)
Remaining Workload: 36,343,367

83 ACOs have completed over 50% of their NRFU workload

Timing

- **Days in Operation:** 53
- **Days Elapsed:** 15
- **Days Remaining:** 38

Enumerator Productivity

- **Average Hours worked per week (8/13-8/19):** 20.6
- **Average Cases Completed Per Hour:** 2.49
- **Planned Cases Completed Per Hour:** 1.55

Staffing

- **Selections:** 983,942
- **Invited to Training:** 625,311
- **Enumerators Hired Since January 1, 2020:** 384,615
- **Completed Training:** 292,506
- **Currently in Training:** 72,087
- **Active:** 233,072
- **Expected Replacement Training:** 100,310

Calculated Staff Needs

- Remaining workload: 36,343,367 cases
- Remaining weeks: 5.4
- Average cases per week: 6,730,253
- Average cases per hour: 1.55
- Needed hours per week: 4,342,099
- Average enumerator hours per week: 19
- Required average enumerators 228,532 To complete by 9/30
- Required average enumerators 177,112 (assuming 2 cases/hour)

Contingency Budget

- **Contingency Available (as of 3/14/20):** \$2,030 M
- **Expected Contingency Uses for COVID-19:** \$1,106 M
- **Contingency Approvals (through 7/31):** \$934 M
- **Remaining Contingency: (through 7/31):** \$924 M
- **Uncommitted Remaining Contingency:** \$187 M

	Planned	Actual
Overtime	\$100M	\$0.7M
Enumerator Awards	\$300M	--
Other	\$302M	\$11.5M
Total	\$702M	\$12M

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress

Case Progress for Field Enumeration

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

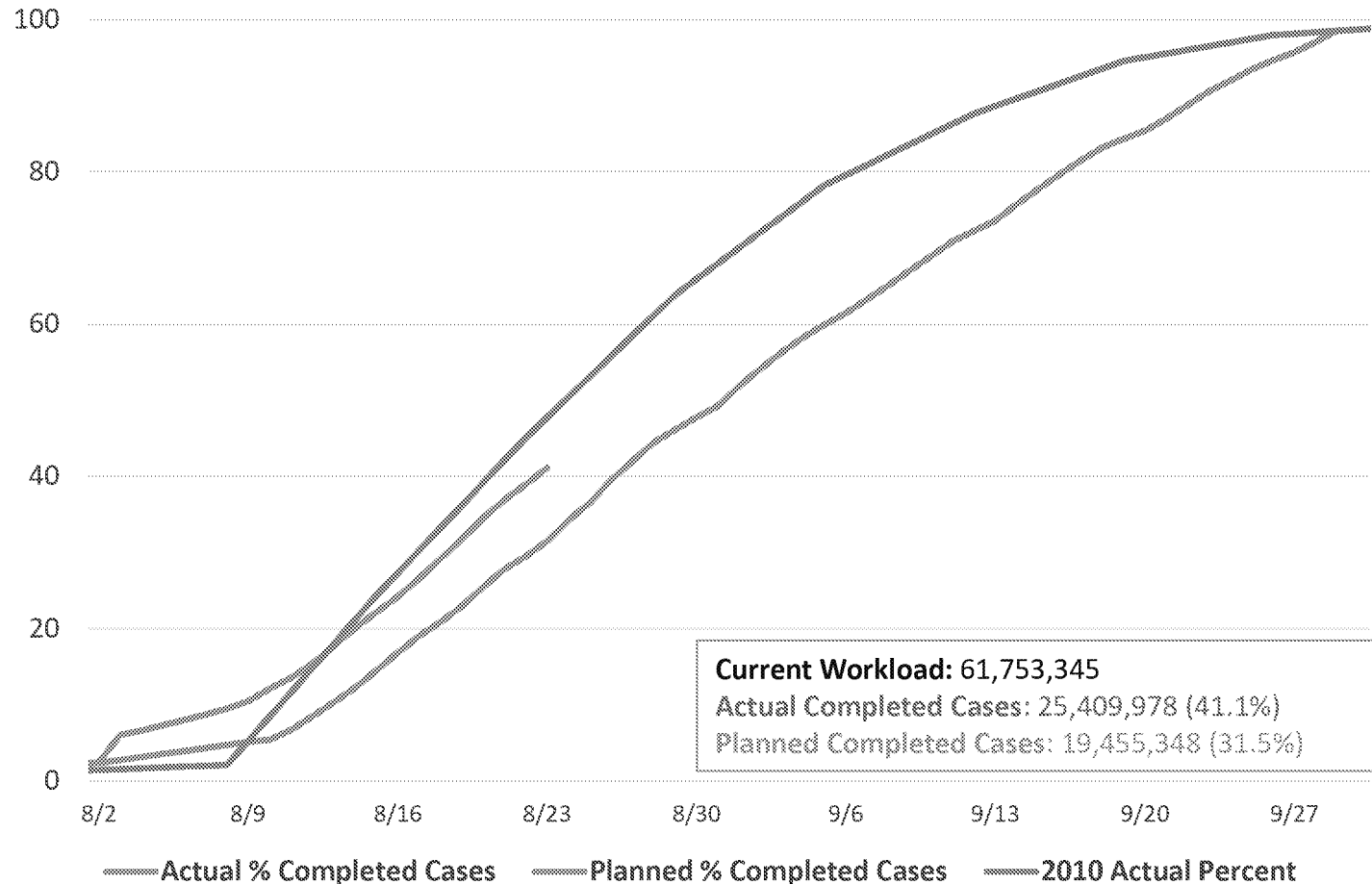
August 9, 2020

Completion Date:

September 30, 2020

Notes:

- Current workload reflects all case types.
- Data are charted beginning with soft launch.



Cases Completed by Telephone:

Pending

Cases Completed by Self-Response:

4,336,339 (17.1% of completed cases)

Remaining Workload:

36,343,367 cases

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress and Cost

Status:
● On Track

Data current as of:
August 24, 2020

Start Date:
August 9, 2020

Completion Date:
September 30, 2020

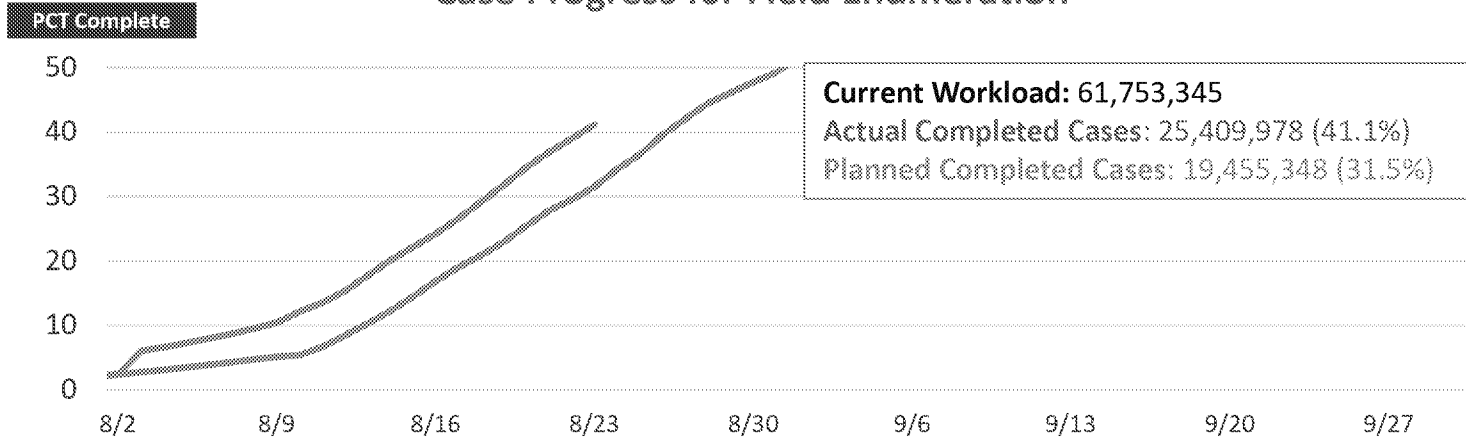
- Notes:
- Current workload reflects all case types. Costs include training and production costs for Enumerators and CFS.
 - Data are charted beginning with soft launch.

Cases Completed by Telephone:
Pending

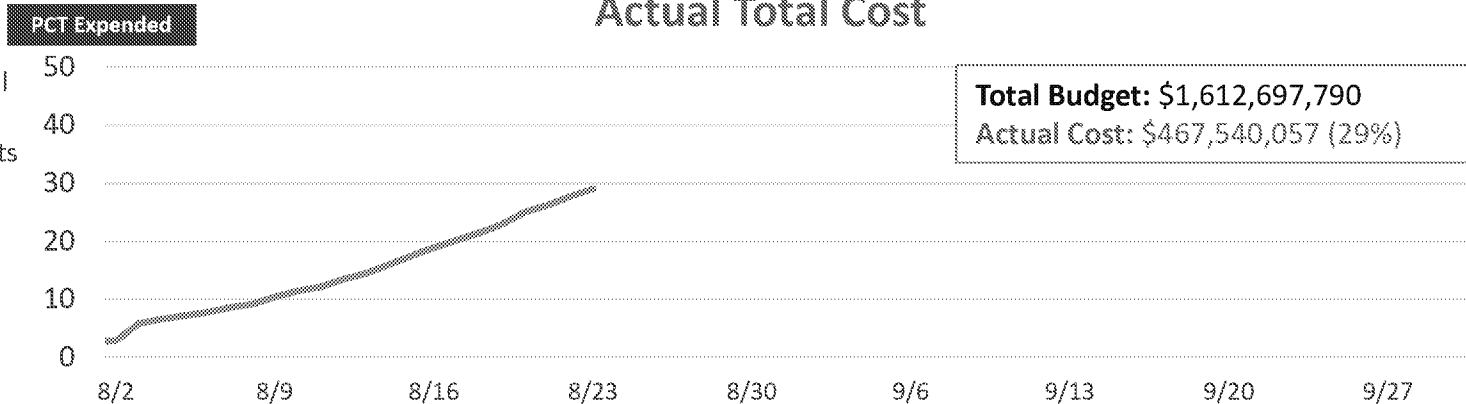
Cases Completed by Self-Response:
4,336,339 (17.1% of completed cases)

Remaining Workload:
36,343,367 cases

Case Progress for Field Enumeration



Actual Total Cost



Data as of 11:59 pm of the previous day

Source: MOJO Hermes

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Staffing

Status:

● On Track

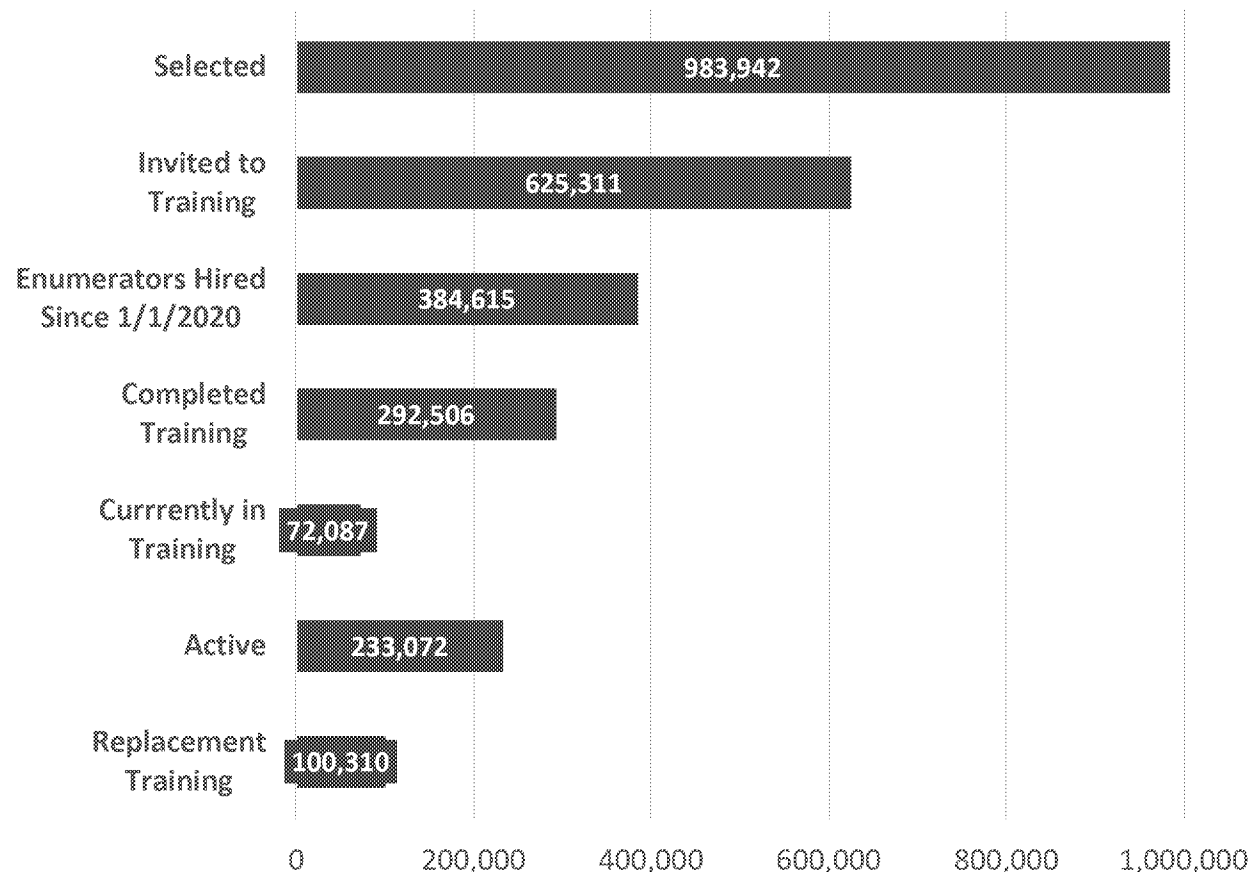
Data current as of:
August 24, 2020

Completion Date:
September 30, 2020

Notes:

- Enumerator Training No Show Rate: 38.5%
- Over the weekend of August 23, the Enumerator Training No Show Rate dropped to 16%.

Nonresponse Followup Onboarding Status



Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Productivity Curve

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

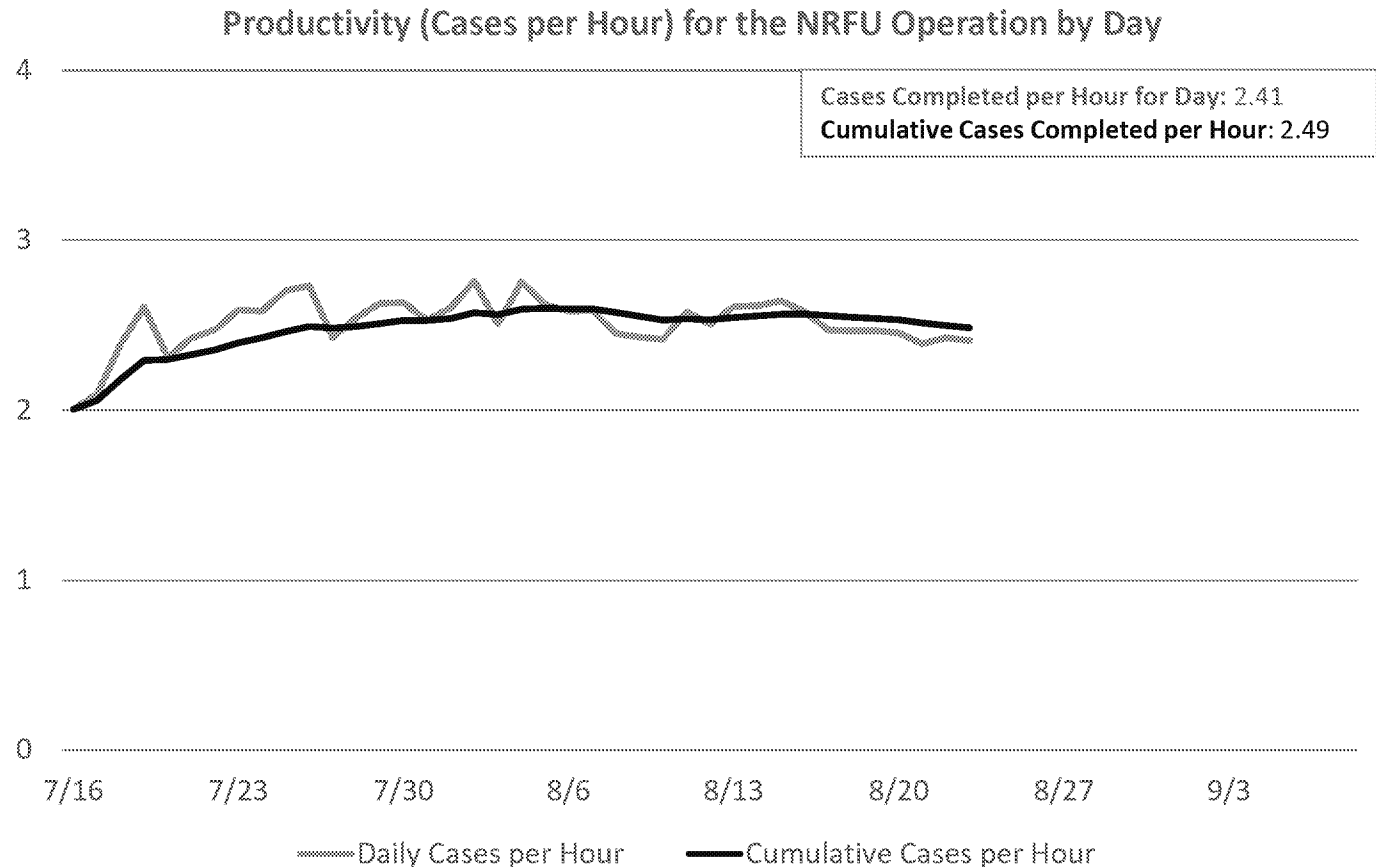
August 9, 2020

Completion Date:

September 30, 2020

Notes:

- Cases per hour include cases that were resolved by enumeration, administrative records, or self-response.
- Data are charted beginning with soft launch



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Work Hours

Status:

● On Track

Data current as of:

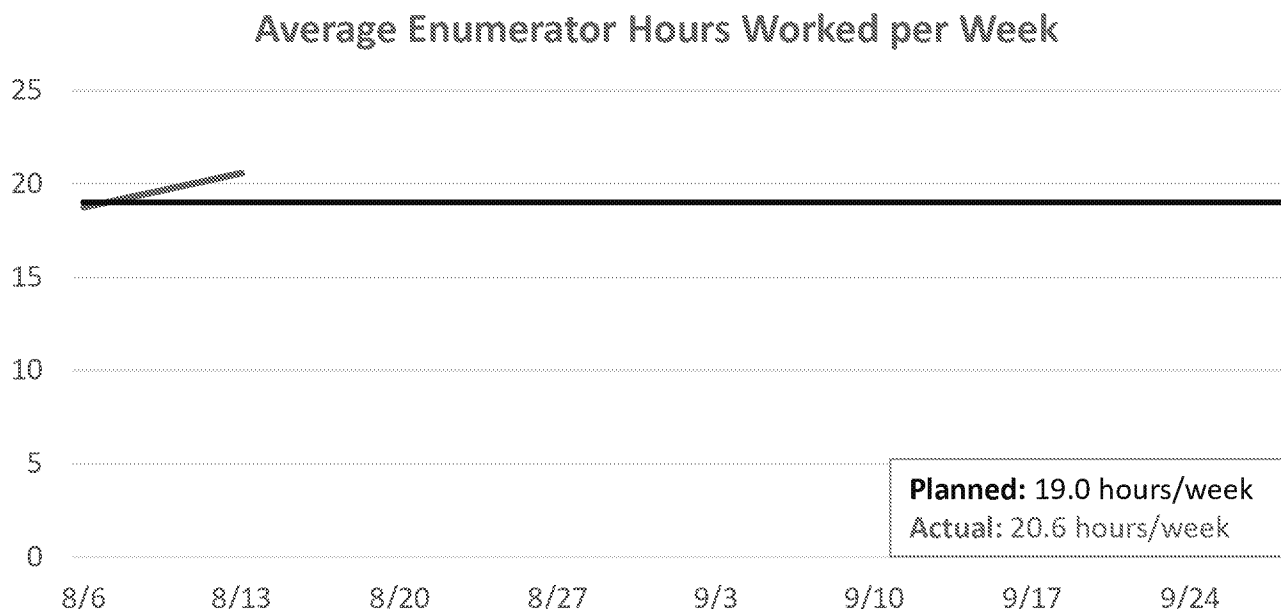
August 24, 2020

Completion Date:

September 30, 2020

Notes:

Preliminary Data - pending receipt of actual payroll data.



Percentage of Enumerators by Hours Worked

Week of	% of Enumerators that Worked < 19 Hours	% of Enumerators that Worked 19-24 Hours	% of Enumerators that Worked 25+ Hours
8/13-8/19	50.95%	15.61%	33.44%

Periodic Performance Management Reports

2020 Census: Housing Unit Enumeration Progress by State

Source: Census Data Lake, Unified Tracking System
Data Current as of: August 24, 2020

Note: Percentages may not sum due to rounding. A limited number of areas were part of the NRFU "soft launch" beginning July 16 and could have higher completion rates due to more time in the field. Percentages for the U.S. Total do not include housing units in Puerto Rico.

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Current Week	% HUs Enumerated Prior Week	Weekly Change
U.S. Total	64.4%	12.1%	76.5%	69.7%	6.8%
Alabama	61.5%	7.6%	69.1%	63.6%	5.5%
Alaska	52.2%	26.6%	78.8%	66.4%	12.4%
Arizona	60.8%	7.2%	68.1%	62.4%	5.7%
Arkansas	58.8%	16.5%	75.4%	64.7%	10.7%
California	66.4%	13.8%	80.2%	72.2%	8.0%
Colorado	67.8%	11.2%	79.0%	73.1%	5.9%
Connecticut	68.5%	16.9%	85.4%	78.0%	7.4%
Delaware	61.9%	11.2%	73.1%	66.2%	6.9%
District of Columbia	60.8%	13.0%	73.8%	66.1%	7.7%
Florida	61.1%	8.3%	69.4%	63.5%	5.9%
Georgia	59.8%	8.1%	67.9%	62.6%	5.3%
Hawaii	61.4%	22.4%	83.8%	74.9%	8.9%
Idaho	68.5%	25.5%	93.9%	88.8%	5.1%
Illinois	69.3%	14.8%	84.1%	78.2%	5.9%
Indiana	68.6%	15.9%	84.5%	77.2%	7.3%
Iowa	69.3%	4.3%	73.6%	69.6%	4.0%
Kansas	68.2%	18.3%	86.5%	80.2%	6.3%
Kentucky	66.7%	8.9%	75.6%	69.8%	5.8%
Louisiana	58.1%	13.3%	71.4%	65.4%	6.0%
Maine	56.6%	28.2%	84.8%	76.7%	8.1%
Maryland	68.8%	13.8%	82.6%	76.5%	6.1%
Massachusetts	66.7%	14.4%	81.1%	74.2%	6.9%
Michigan	69.6%	7.1%	76.7%	71.0%	5.7%
Minnesota	73.4%	9.8%	83.3%	76.9%	6.4%
Mississippi	58.6%	10.3%	68.9%	62.3%	6.6%

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Current Week	% HUs Enumerated Prior Week	Weekly Change
Missouri	64.2%	17.0%	81.2%	74.1%	7.1%
Montana	57.7%	10.2%	67.9%	61.7%	6.2%
Nebraska	69.9%	9.5%	79.4%	72.9%	6.5%
Nevada	63.5%	8.1%	71.6%	65.8%	5.8%
New Hampshire	64.3%	9.9%	74.2%	66.2%	8.0%
New Jersey	66.3%	9.5%	75.8%	69.4%	6.4%
New Mexico	54.9%	9.6%	64.5%	58.9%	5.6%
New York	60.3%	12.0%	72.3%	64.2%	8.1%
North Carolina	60.2%	8.5%	68.7%	62.6%	6.1%
North Dakota	63.5%	16.0%	79.5%	73.3%	6.2%
Ohio	68.5%	11.2%	79.7%	73.1%	6.6%
Oklahoma	58.8%	14.7%	73.5%	66.8%	6.7%
Oregon	67.2%	17.0%	84.2%	76.0%	8.2%
Pennsylvania	67.2%	13.0%	80.2%	73.9%	6.3%
Rhode Island	62.2%	12.8%	75.0%	66.3%	8.7%
South Carolina	58.2%	9.5%	67.7%	61.1%	6.6%
South Dakota	65.1%	9.6%	74.7%	67.9%	6.8%
Tennessee	63.7%	12.6%	76.2%	68.4%	7.8%
Texas	59.6%	12.1%	71.8%	64.2%	7.6%
Utah	68.7%	10.8%	79.5%	72.5%	7.0%
Vermont	58.1%	15.1%	73.1%	62.8%	10.3%
Virginia	69.0%	10.1%	79.1%	73.5%	5.6%
Washington	70.7%	16.7%	87.4%	80.9%	6.5%
West Virginia	55.4%	32.6%	88.1%	80.1%	8.0%
Wisconsin	70.7%	13.5%	84.2%	76.2%	8.0%
Wyoming	58.7%	12.9%	71.6%	63.4%	8.2%
Puerto Rico	31.4%	30.7%	62.1%	No Data	N/A

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Challenge Areas by State

Source: Field Division

Data Current as of: August 24, 2020

State	% of HUs that Self Responded	% of HUs Enumerated in NRFU	% of HUs Enumerated	Event/Issue	Contingency
Alabama	61.5%	7.6%	69.1%	Trop Storm – 800,000 NRFU cases, 5000 enumerators	Designated these areas for telephone contact.
Arizona	60.8%	7.2%	68.1%	Tribal – Ft Mojave and Havasupai reservations closed due to COVID	Partnership working to gain access.
California	66.4%	13.8%	80.2%	Wildfires – 511,000 NRFU Cases, 150 enumerators evacuated, 3 have lost homes Tribal – 6 reservations closed due to COVID	Designated these areas for telephone contact. Partnership working to gain access.
Florida	61.1%	8.3%	69.4%	Trop Storm – 1,100,000 NRFU cases, 5,700 enumerators Tribal – 3 reservations refuse to allow access	Designated these areas for telephone contact. Partnership working to gain access.
Iowa	69.3%	4.3%	73.6%	Derecho/Tornado – 210,000 NRFU cases, 1100 enumerators Tribal – Sac & Fox Reservation closed due to COVID	Bringing in staff from adjacent ACOs. Designated these areas for telephone contact. Partnership working to gain access.
Louisiana	58.1%	13.3%	71.4%	Trop Storm – 650,000 NRFU cases, 3,350 enumerators	Designated these areas for telephone contact.
Michigan	69.6%	7.1%	76.7%	Hiring – Goal – 6800. 5100 Active Enumerators, 2400 in Training Tribal – Huron Potawattami Reservation refusing to allow access	Partnership working to gain access.

Note: Percentages may not sum due to rounding

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Challenge Areas by State (continued)

Source: Field Division

Data Current as of: August 24, 2020

State	% of HUs that Self Responded	% of HUs Enumerated in NRFU	% of HUs Enumerated	Event/Issue	Contingency
Mississippi	58.6%	10.3%	68.9%	Trop Storm – 490,000 NRFU cases, 3500 enumerators	Designated these areas for telephone contact.
Nevada	63.5%	8.1%	71.6%	Tribal - 3 reservations closed due to COVID	Partnership working to gain access.
New Mexico	54.9%	9.6%	64.5%	Tribal – 4 reservations closed due to COVID	Partnership working to gain access.
Texas	59.6%	12.1%	71.8%	Trop Storm – 2,600,000 NRFU cases, 16,000 enumerators	Designated these areas for telephone contact.

Note: Percentages may not sum due to rounding

Tribal Areas that Refused Participation in the 2010 Census

Reservation	2010 Population	2020 NRFU Workload
Miccosukee Tribe of Indians of Florida	406	0 – All Update/Enumerate
Table Mountain Rancheria of California	64	18
Tonawanda Band of Seneca Indians of New York	517	242
Onondaga Nation of New York	468	632
Oneida Nation of New York	500 (est)	31
Tuscarora Nation of New York	1,152	475

2020 Census Bureau Fusion Center: Natural Disaster Situation Report (SITREP)

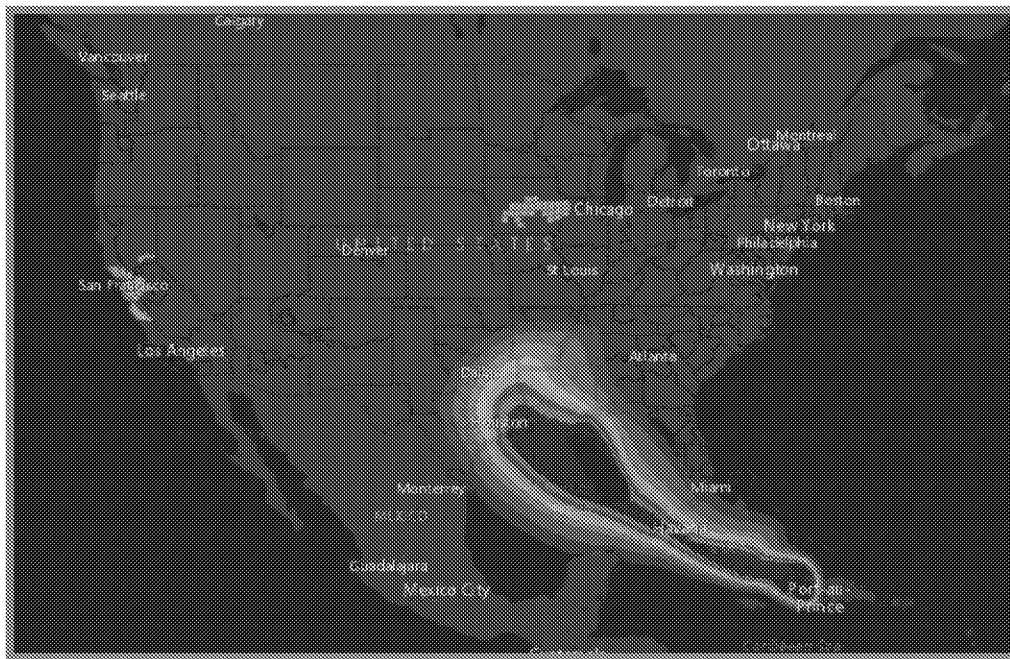
**Hurricane Marco & Tropical Storm Laura, Northern California Wild Fires,
Iowa Derecho**

August 23, 2020

Shape
your future
START HERE >

United States
Census
2020

Overview of Natural Disaster Impact on 2020 Census

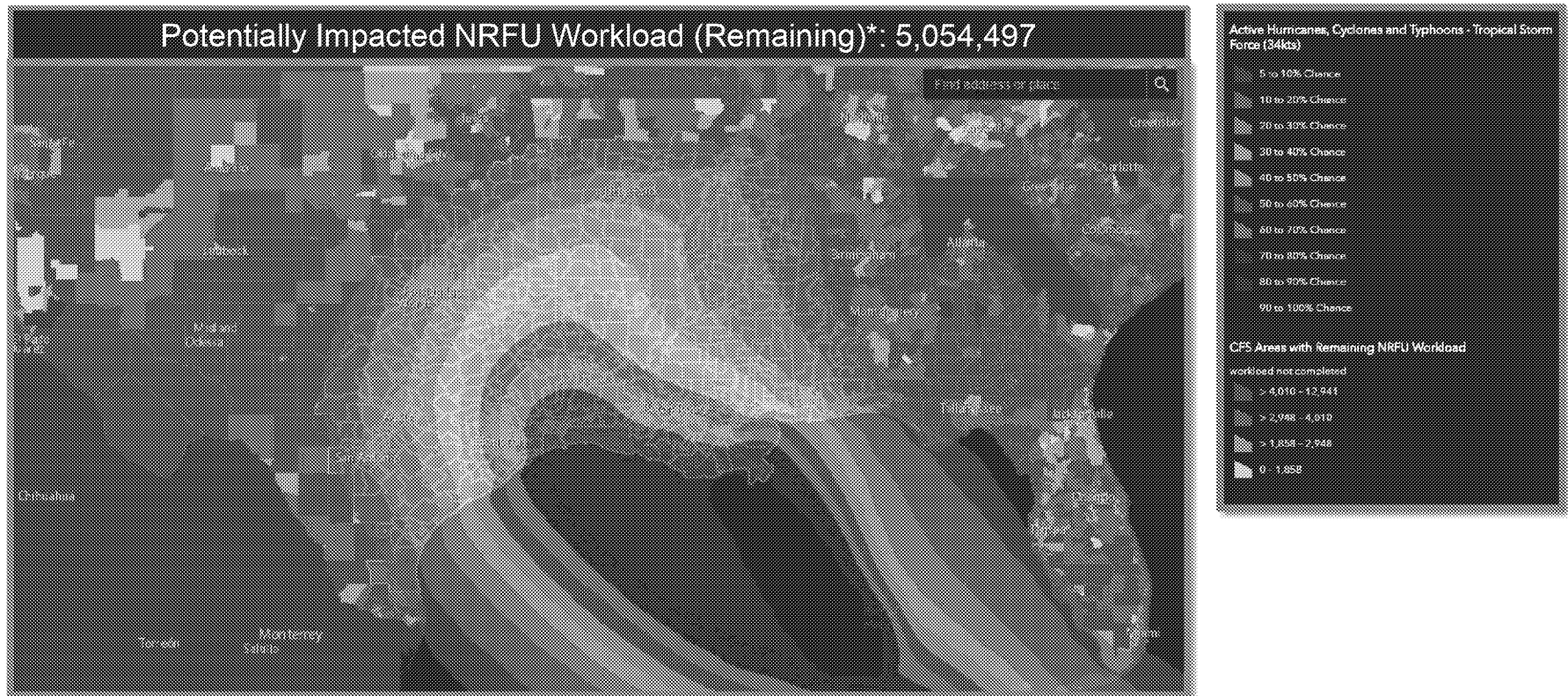


Total of Potentially Impacted NRFU Workload (Remaining)*: 5,773,441

Natural Disaster	Impacted Workload*
Hurricane Marco (Category 1) & Tropical Storm Laura	5,054,497
Lightning Complex and Northern California Wildfires	511,384
Iowa Derecho (August 10, 2020)	207,560

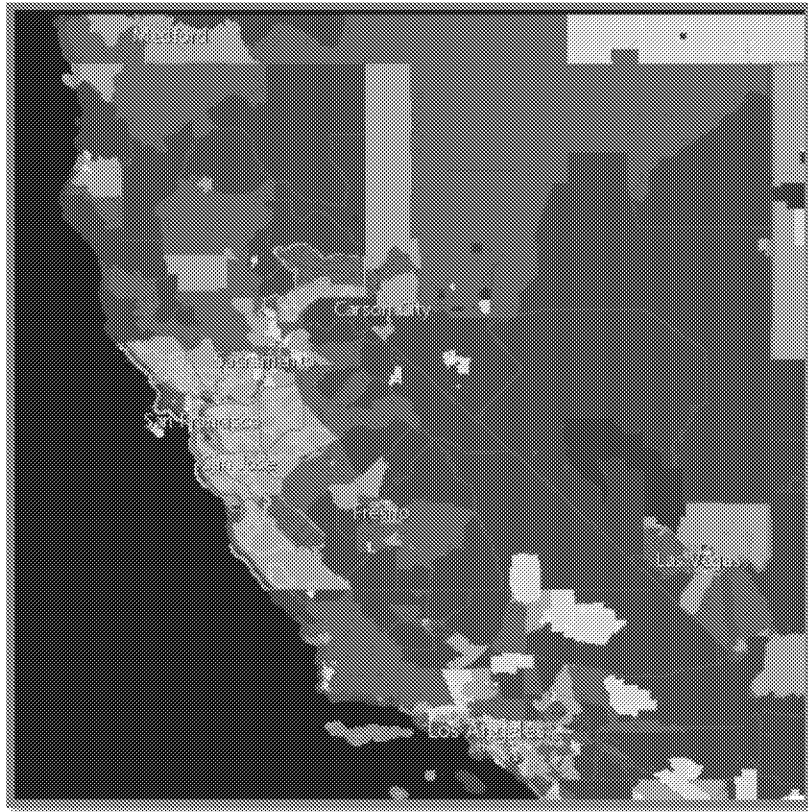
*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Hurricane Marco (Category 1) & Tropical Storm Laura



*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Lightning Complex and Northern California Wildfires



Potentially Impacted NRFU
Workload (Remaining)*: 511,384

California Counties Impacted by Wildfires

CFS Areas with Remaining NRFU Workload

workload not completed

> 4,010 - 12,941

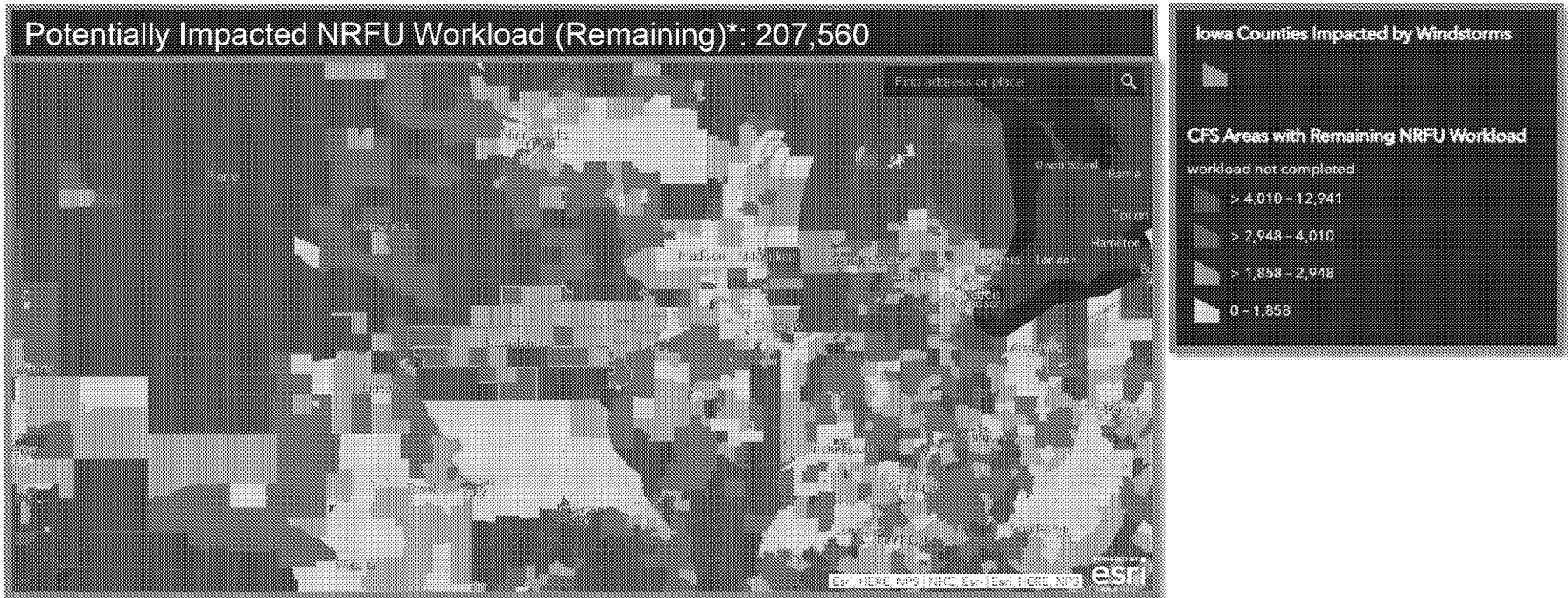
> 2,948 - 4,010

> 1,858 - 2,948

0 - 1,858

*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Iowa Derecho (August 10, 2020)



*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Budgetary Contingency Usage Status

Source: Decennial Budget Office

Data Current as of: August 20, 2020








Notional Contingency Waterfall for Estimated Revised NRFU		
(in millions of \$)		
	Plan (as of 7/31)	Actual to Date (8/20)
Contingency available on 3/14	\$2,030	\$2,030
<i>Risk Based Contingency</i>	<i>\$1,325</i>	<i>\$1,325</i>
<i>Secretarial Contingency</i>	<i>\$705</i>	<i>\$705</i>
Expected Contingency Uses for COVID-19	\$1,106	\$1,106
<i>Actual COVID related approvals</i>	<i>\$934</i>	<i>\$932</i>
<i>Remaining Potential COVID approvals</i>	<i>\$172</i>	<i>\$174</i>
Remaining Original Contingency	\$924	\$924
Additional contingency from estimated operational variance	\$70	\$70
Remaining Contingency before acceleration efforts	\$994	\$994
Potential Costs to Ensure Operational Continuity and Accelerate NRFU	\$702	\$12
<i>Additional Mailing and Advertising</i>	<i>\$50</i>	<i>\$11.5</i>
<i>Training of additional NRFU enumerators (previously approved)</i>	<i>\$64</i>	<i>--</i>
<i>Replacement training of 150k enumerators</i>	<i>\$165</i>	<i>--</i>
<i>Additional overtime for NRFU enumerators</i>	<i>\$100</i>	<i>\$0.7</i>
<i>Weekly enumerator award for exceeding 25 hrs/wk (Up to 5x)</i>	<i>\$150</i>	<i>--</i>
<i>Enumerator retention award for 3 weeks of acceptable work above 25 hrs/wk (Up to 2x)</i>	<i>\$150</i>	<i>--</i>
<i>CFS retention award for 3 weeks of acceptable work (Up to 2x)</i>	<i>\$23</i>	<i>--</i>
Allowance for up to 10% increase in production hours due to unknown factors	\$106	--
Remaining Contingency for Unknowns	\$187	--

Notes

- Actuals to Date represent approved purchases and incurred compensation expenses.
- Bonuses will begin accruing around September 3 due to payroll validation requirements.

Appendix

Periodic Performance Management Reports

Status	Report Title	Summary	Slide Number
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	20
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	21
	2020 Census: Self-Response of Housing Units by State		22
	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	23
	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 1,040. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 393,000. We have exceeded the 2010 Census numbers for both national and community partners.	24
	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts.	25
	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	26

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

March 12, 2020

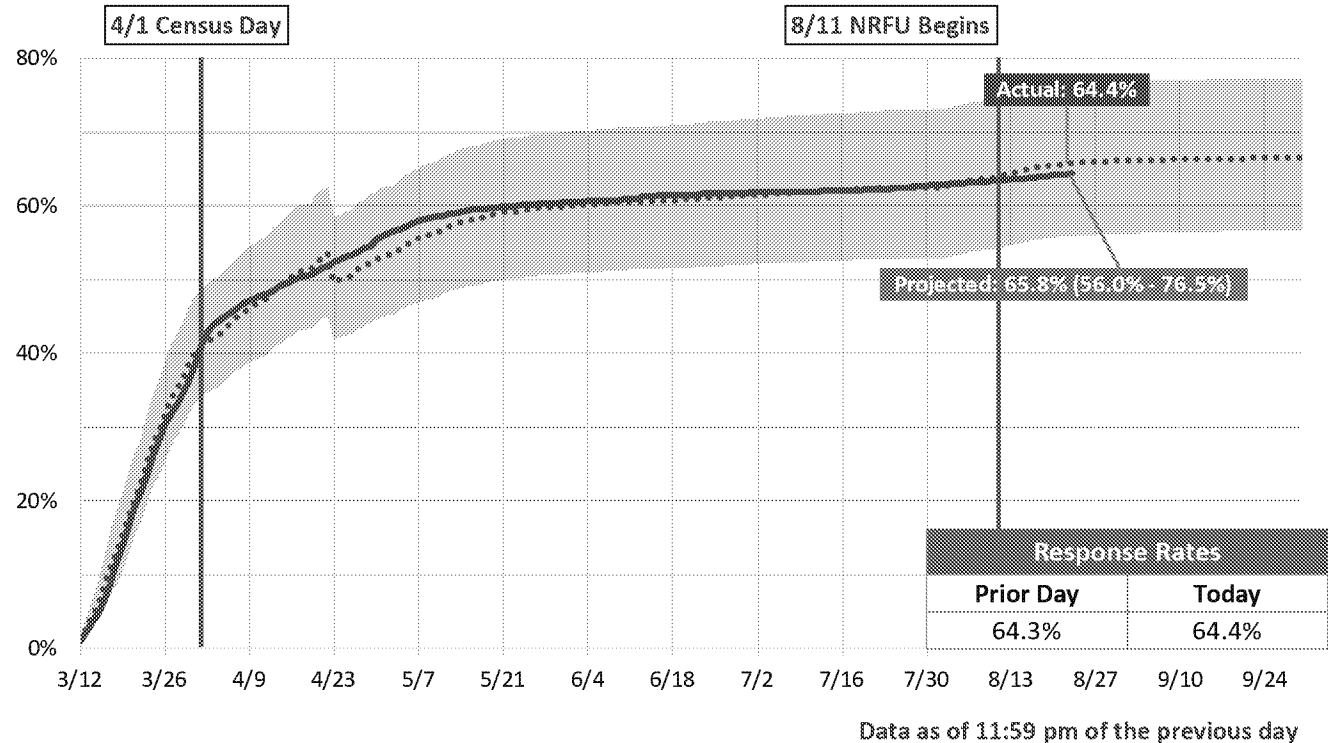
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



Legend

Actual Self-Response Rate	—————
Projected Self-Response Rate	*****
Lower & Upper Bound	—————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status:

○ Management Focus

Data current as of:

August 24, 2020

Start Date:

March 12, 2020

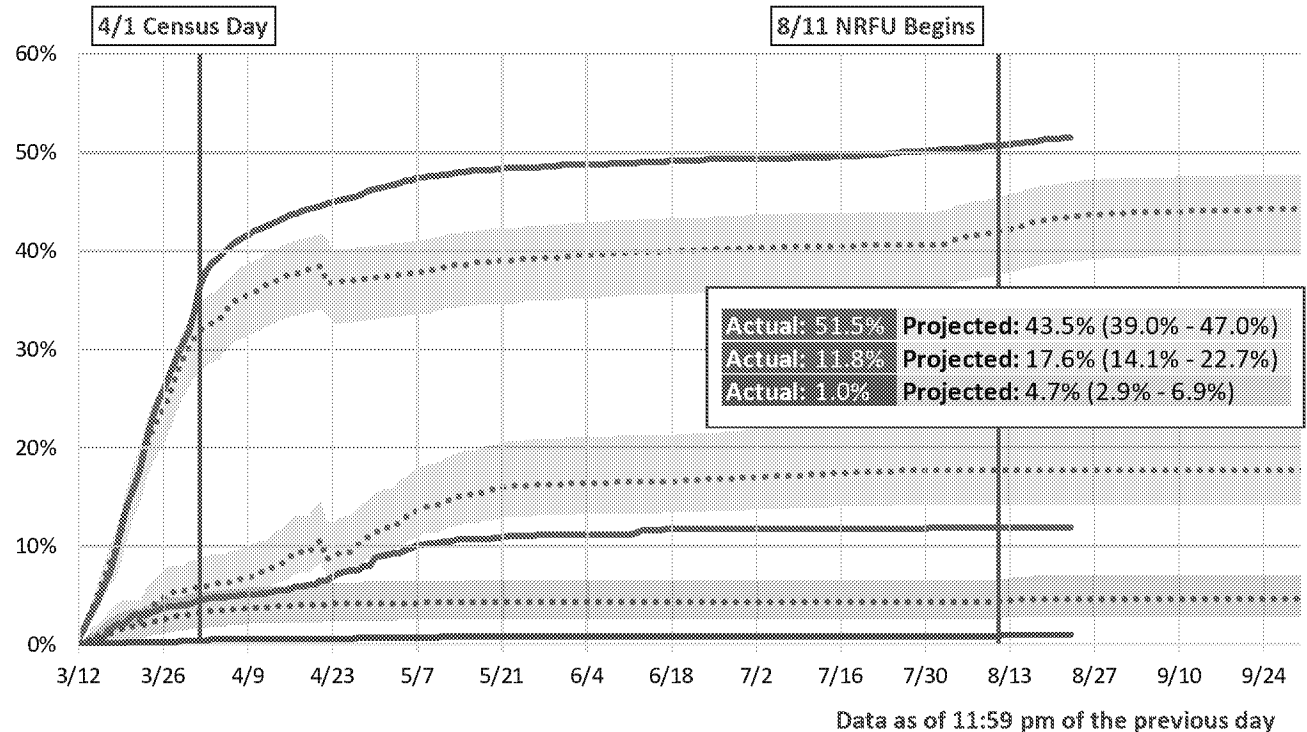
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	—————	—————	—————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound	—————	—————	—————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division

Data Current as of: August 24, 2020

State	Actual	2010 Rate (Final)	2020 Rate (start of NRFU)	2010 Rate (start of NRFU)
U.S. Total	64.4%	66.5%	63.3%	63.5%
Minnesota	73.4%	74.1%	72.5%	71.6%
Wisconsin	70.7%	73.5%	69.7%	71.2%
Washington	70.7%	67.2%	69.1%	63.7%
Nebraska	69.9%	71.1%	69.0%	68.8%
Michigan	69.6%	67.7%	68.9%	65.4%
Iowa	69.3%	73.0%	68.9%	71.0%
Illinois	69.3%	70.5%	68.2%	67.7%
Virginia	69.0%	69.0%	68.0%	66.2%
Maryland	68.8%	69.5%	67.4%	66.5%
Utah	68.7%	68.6%	67.5%	65.4%
Indiana	68.6%	69.6%	67.5%	67.0%
Ohio	68.5%	69.0%	67.5%	66.2%
Idaho	68.5%	67.1%	67.8%	64.6%
Connecticut	68.5%	69.5%	67.1%	66.3%
Kansas	68.2%	70.0%	67.2%	67.4%
Colorado	67.8%	67.2%	66.6%	64.4%
Pennsylvania	67.2%	70.2%	66.3%	67.8%
Oregon	67.2%	66.9%	65.7%	63.9%
Massachusetts	66.7%	68.8%	65.4%	65.6%
Kentucky	66.7%	65.7%	66.0%	63.0%
California	66.4%	68.2%	64.6%	64.7%
New Jersey	66.3%	67.6%	65.2%	64.4%
South Dakota	65.1%	67.1%	64.4%	65.0%
New Hampshire	64.3%	64.4%	63.2%	61.5%
Missouri	64.2%	67.5%	63.4%	65.3%
Tennessee	63.7%	67.1%	62.5%	63.8%

State	Actual	2010 Rate (Final)	2020 Rate (start of NRFU)	2010 Rate (start of NRFU)
North Dakota	63.5%	68.8%	62.7%	66.8%
Nevada	63.5%	61.4%	62.4%	58.7%
Rhode Island	62.2%	65.7%	61.0%	62.8%
Delaware	61.9%	64.1%	60.8%	60.8%
Alabama	61.5%	62.5%	60.8%	59.5%
Hawaii	61.4%	64.1%	59.9%	60.7%
Florida	61.1%	63.0%	60.2%	59.6%
Arizona	60.8%	61.3%	59.9%	58.5%
District of Columbia	60.8%	66.0%	59.6%	62.2%
New York	60.3%	64.6%	59.0%	61.3%
North Carolina	60.2%	64.8%	59.3%	62.1%
Georgia	59.8%	62.5%	59.0%	59.5%
Texas	59.6%	64.4%	58.3%	60.3%
Arkansas	58.8%	62.3%	57.9%	59.5%
Oklahoma	58.8%	62.3%	57.9%	58.9%
Wyoming	58.7%	63.4%	57.6%	61.1%
Mississippi	58.6%	61.3%	58.0%	58.1%
South Carolina	58.2%	64.7%	57.4%	62.2%
Louisiana	58.1%	61.0%	57.3%	57.9%
Vermont	58.1%	60.3%	56.9%	58.1%
Montana	57.7%	64.6%	56.9%	62.3%
Maine	56.6%	57.4%	55.5%	55.3%
West Virginia	55.4%	59.1%	54.9%	56.8%
New Mexico	54.9%	60.0%	53.5%	56.9%
Alaska	52.2%	55.6%	49.9%	51.6%
Puerto Rico	31.4%	53.8%	28.7%	51.2%

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:

● On Track

Data current as of:

August 22, 2020

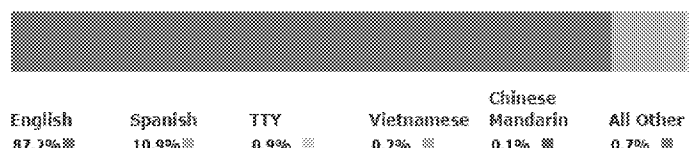
Completion Date:

September 30, 2020

Notes:

To date, 33,402 callers have requested the callback option. These callbacks have resulted in 12,302 completed interviews and 4,410 callers being provided assistance.

Total Inbound Call Volume % (PTD)



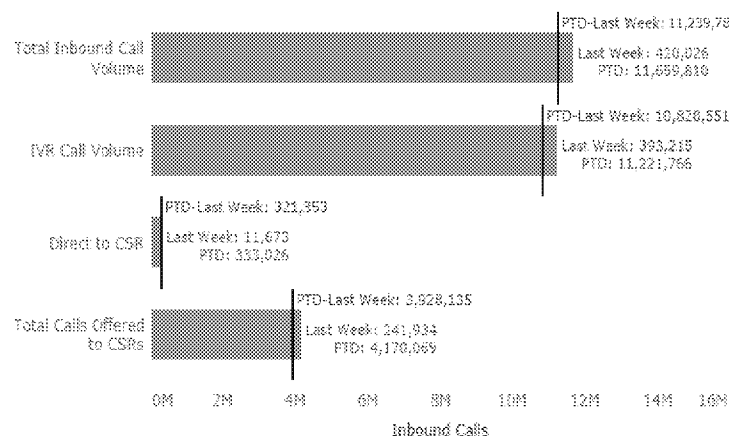
Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	11,100,665	11,659,810
Deflection Rate	47.0%	64.3%
Service Level - 30 Seconds	80.0%	68.0%
Average Handle Time	9:04	9:26

Calls Offered to CSRs by Language

	8/9 - 8/15	8/16 - 8/22	PTD	PTD %
English	164,287	222,948	3,695,185	88.6%
English Puerto Rico	240	181	3,170	0.1%
Spanish	8,950	12,073	310,886	7.5%
Spanish Puerto Rico	3,686	3,243	43,075	1.0%
Chinese Mandarin	400	534	11,805	0.3%
Chinese Cantonese	274	318	10,089	0.2%
Vietnamese	137	169	13,315	0.3%
Korean	285	283	13,244	0.3%
Russian	141	171	7,002	0.2%
Arabic	53	88	4,202	0.1%
Tagalog	31	20	2,692	0.1%
Polish	45	53	2,509	0.1%
French	14	23	1,213	0.0%
Haitian Creole	46	73	2,690	0.1%
Portuguese	38	63	1,903	0.0%
Japanese	40	39	2,329	0.1%
TTY	1,112	1,590	39,866	1.0%
Group Quarters	82	65	4,894	0.1%
Total	179,861	241,934	4,170,069	100.0%

Inbound Call Volume



Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:

● On Track

Data current as of:

August 20, 2020

Completion Date:

March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	384	71,379
Business	139	91,407
Chamber of Commerce/Trade or Professional Association	113	10,559
Education	103	83,552
Government	89	71,296
Faith-Based Organizations	66	40,319
Media	49	8,403
Healthcare	48	14,904
Technology	33	326
International Governmental/ Consulate/ Embassy	16	329
Grand Total	1,040	393,474

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	447	233,457
Black/African American	97	17,715
Young Children	90	5,842
Hispanic/Latino	85	25,668
Rural	80	13,935
Asian	79	10,141
Native Hawaiian Pacific Islander	48	674
Veterans	41	3,263
Young and Mobile	40	7,335
LGBTQ	24	1,276
Individuals with Disabilities	24	3,156
Elderly	24	8,789
Persons Experiencing Homelessness and Highly Mobile	22	5,440
American Indian/ Alaskan Native	19	3,548
MENA	15	80

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

Cumulative Completed Partnership Events: 439,379

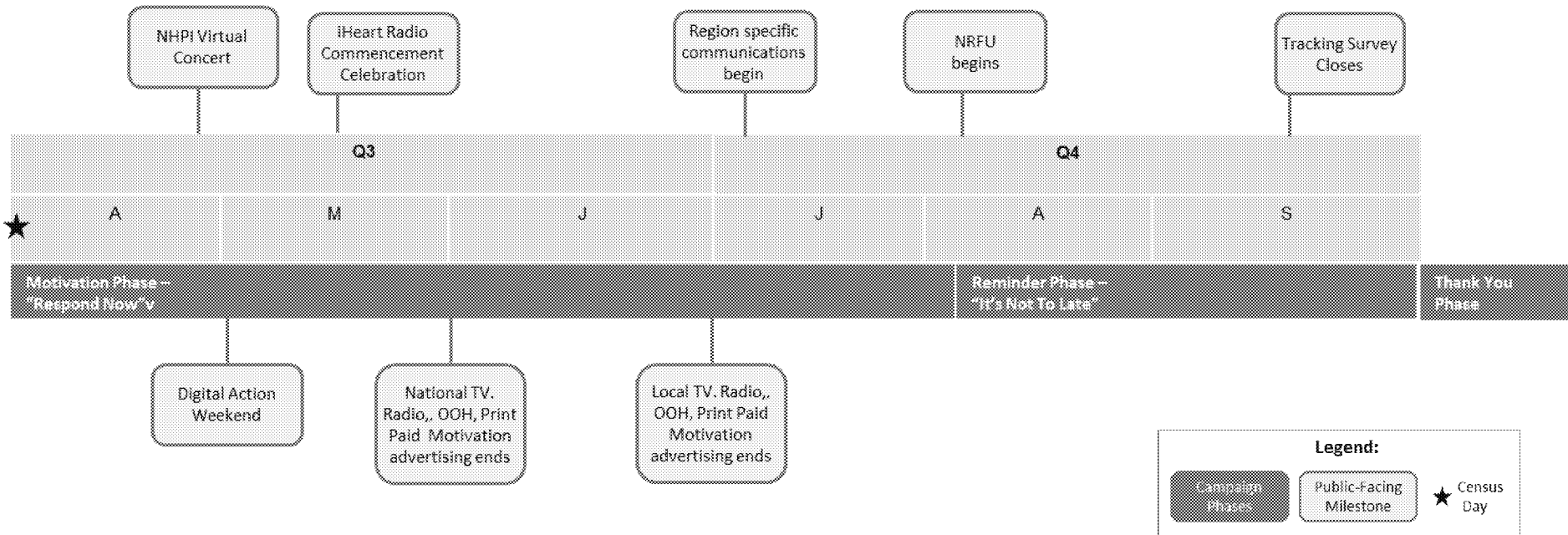
Partnership Events Completed 8/13-8/19: 6,331

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication

Data Current as of: August 19, 2020



Significant Accomplishments

- The New Audience Creative went live on 8/17.
- The Roland Martin Unfiltered (RMU) Activation for the Black/African American (B/AA) audience began on 8/17.
- The Jewish Federations of North America held a 2020 Census Webinar on 8/18.
- The Wonderama House Party (At Home Concert Series) for Los Angeles was held on 8/21.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: July 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 7/31/2020

\$ Amounts in Millions	IT	Non-IT	Total
Total Planned through July	\$1,728	\$5,155	\$6,883
Available contingency and additional appropriations through July	\$248	\$1,432	\$1,680
Planned Programmatic through July	\$1,480	\$3,723	\$5,203
Total Actual Commitments and Obligations through July	\$1,653	\$2,390	\$4,043
Unplanned commitments/obligations through July related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)	\$260	\$300	\$560
Actual Programmatic Commitments and Obligations through July	\$1,393	\$2,090	\$3,483
Total Plan Variance (\$/%)	\$75 (4.3%)	\$2,765 (53.6%)	\$2,840 (41.3%)
Remaining contingency and additional appropriations planned through July	(\$12)	\$1,132	\$1,120
Delayed Field Operation Spending through July	\$0	\$1,690	\$1,690
Non-Field Operational Programmatic Variance through July	\$87	(\$57)	\$30

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of available contingency funding. The total variance for the resources planned to be available through July is \$2.840 billion, or 41 percent. Below outlines the breakdown of the total variance:

- The positive variance through July against the original plan in 2020 Census IT systems and operations is \$75 million, or 4 percent. The positive variance is the result of relatively routine minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, partially offset by \$12 million in IT contingency used as the result of adjusted 2020 Census operations due to COVID-19 beyond the IT contingency estimate.
- The positive variance through July against the original plan in 2020 Census non-IT operations is \$2.765 billion, or 54 percent. This variance consists of \$1.690 billion delayed spending in the field operations as a result of schedule adjustments, and \$1.132 billion representing a portion of available contingency and additional appropriations that has not yet needed to be obligated. This variance is partially offset by a -\$57 million non-Field variance, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While unused contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions have been made to use risk-based contingency funds to support \$560 million in unplanned obligations or commitments through July as the result of the operational adjustments. The funds used to date include funding field staff salaries during to the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response, extending the communication efforts in the motivation and NRFU planning phases, purchases of personal protection equipment, and additional costs for the Fingerprint and CQA Contracts as the result of the operational timing adjustments.



UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, DC 20230

August 22, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

FROM: Cordell A. Hull
Acting Under Secretary for Industry and Security

RE: Export Administration Review Board Meeting **b(5) - DP**
b(5) - DP Monday, August 24, 2020, from 5:00 PM to 5:30 PM

b(5) - DP; b(4)

BACKGROUND

b(5) - DP

Prepared by: Matthew S. Borman, Deputy Assistant Secretary for Export Administration,
Bureau of Industry and Security, contact information (202) 482-5711.

Attachments:

b(5) - DP

EXECUTIVE SECRETARIAT CLEARANCE:

Executive Secretariat

Date



UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, DC 20230

b(5) - DP; b(4)

b(5) - DP; b(3); b(4)

CUI/SP-EXPT

Business Confidential Information Protected from Disclosure under Section 1761(h) of the Export
Control Reform Act

BC-DOC-0000026669

b(5) - DP; b(3); b(4)

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b(5) - DP; b(3); b(4)

CUI/SP-EXPT

Business Confidential Information Protected from Disclosure under Section 1761(h) of the Export
Control Reform Act

BC-DOC-0000026680

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UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, DC 20230

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Pub. L. No. 115-232, 132 Stat. 2208, 2228 (Aug. 13, 2018), and its unauthorized disclosure is prohibited by law.



b(5) - DP; b(3); b(4)

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Washington, DC 20230

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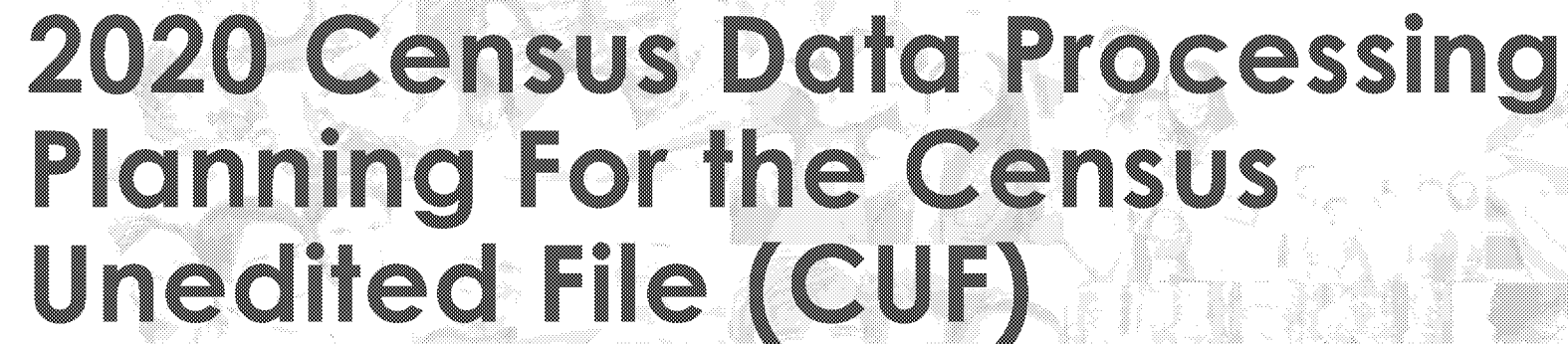
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Bureau of Industry and Security
Washington, DC 20230

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b(5) - DP; b(3); b(4)



2020 Census Data Processing Planning For the Census Unedited File (CUF)

8/24/2020

U//FOUO

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your future
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United States[®]
**Census
2020**

Overview

- This is a viable plan to deliver the final Census Unedited File (CUF) by 12/14/2020
- It cuts a four-month process down to two and a half months
- It optimizes staff and computing resources to be in operation 24/7, weekends and holidays
- It streamlines and limits processes to focus only on Apportionment, separating and deferring redistricting processing
- We have identified any process that could start earlier, run in parallel, or be eliminated

Risks

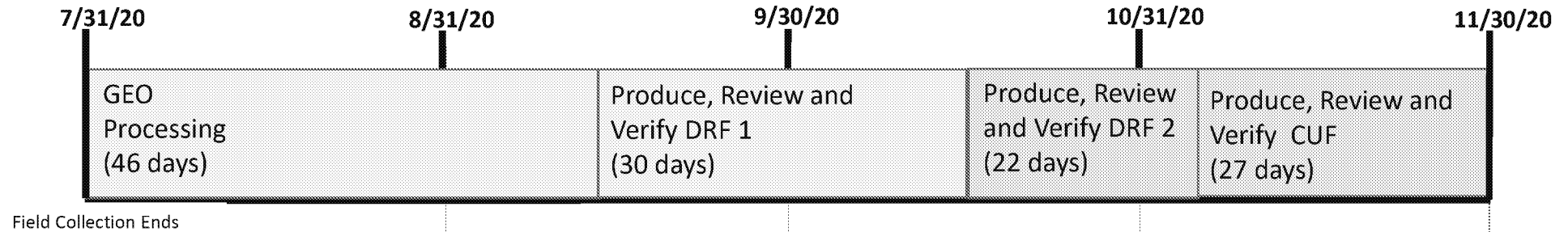
- This plan is contingent on field operations ending 9/30/2020, and depends on a reasonably smooth sequence of processing events
- The increased speed and reduced review time required in this plan and potential errors present risk to data accuracy
- If processing risks are realized, they will require decisions that weigh data accuracy and U.S. Census Bureau reputation against schedule delays

Bottom Line

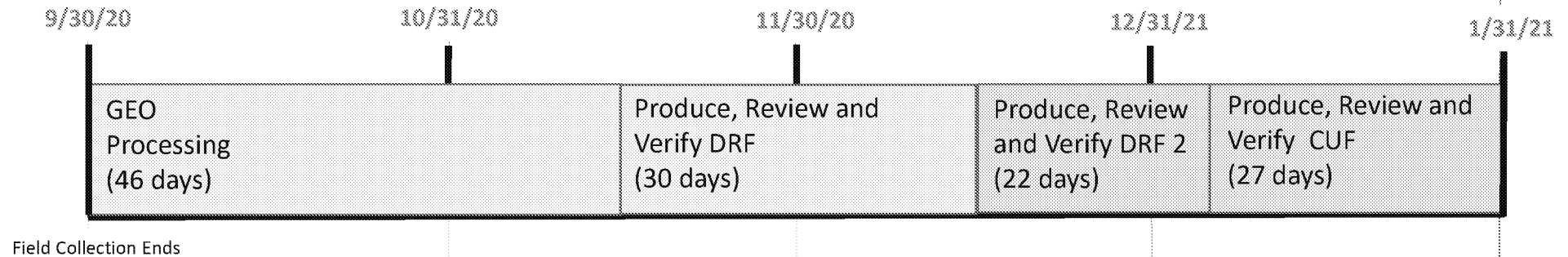
- By closely managing both the process and the risks, our intention continues to be to deliver an accurate, defensible 2020 Census count in compliance with statutory deadlines and the Presidential Memorandum

Re-Planning for 2020 Census Post Processing

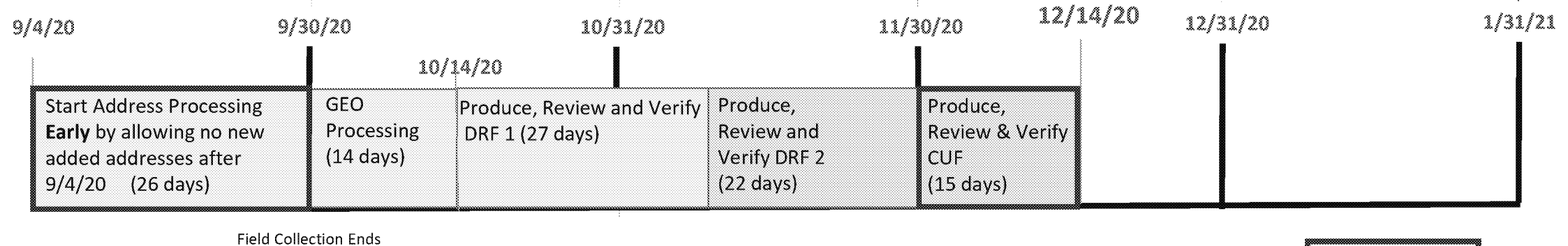
Original Plan (Before COVID 19)



Original Schedule with 9/30 as the end of Field Data Collection (notional)



Current Plan



Unclassified/ For Official Use Only

Most significant Plan changes

Geographic Processing Plan

Confidence that decades of work by the Census Bureau and our Partners have produced the most accurate and complete geographic foundation underpins this plan. Nearly 152 million addresses were included in the 2020 Census enumeration universe. Building the foundation requires human capital, computing power, and adequate time.

We have streamlined, rescheduled, and eliminated processing activities to meet the 12/14/2020 CUF delivery deadline

- No new addresses accepted from data collection operations after 9/4/2020
 - Any new addresses identified between then and 9/30/2020, the last day of data collection operations, and the population associated with those addresses **will not be included in the 2020 Census**
- We have significantly reduced the period of time to update the MAF with new addresses (102 to 29 days)
 - Due to the operational schedule changes, MAF updating for the majority of operations has converged in September (e.g., Remote Alaska, Update Enumerate, NRFU, Non-ID)
- The benchmarking process is shortened from 33 to 20 days, eliminating 13 days worth of processing activities that will be cut now and deferred until the creation of the redistricting data products
- We have cancelled the internal independent review of the final list of addresses that will be used to tabulate 2020 Census data (MAF Extract)
- We are eliminating quality control steps that traditionally resulted in a nationwide delivery of all files at once. Instead states will now be delivered on a flow basis.

Optimized Systems and Staff Resources

- **Improved Decennial Response Processing System (DRPS) Performance in Preparation for 2020 Census Processing**

Upgraded Oracle Real Application Clusters (RAC) to Oracle Exadata environment. Exadata is a high-performing pre-configured combination of hardware and software the provides infrastructure for Oracle databases.

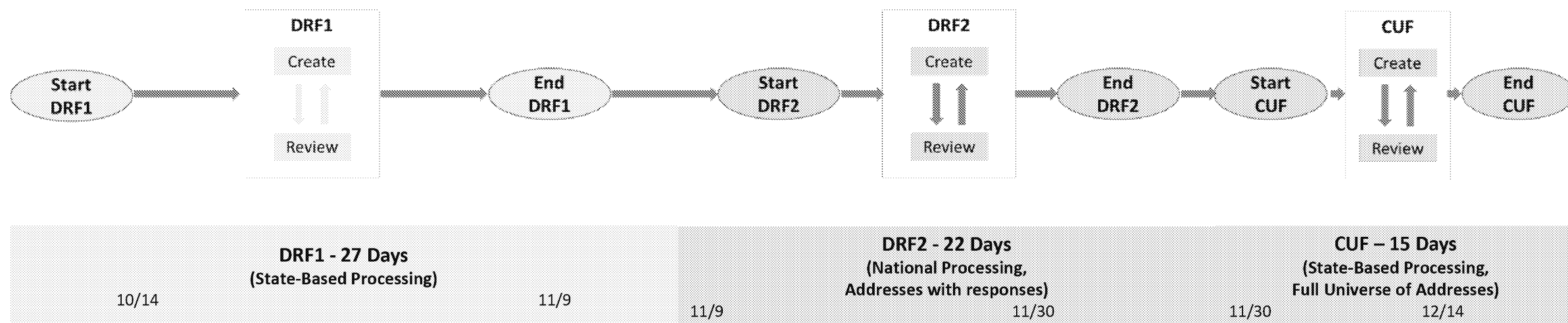
- Infrastructure Platform Optimized for Oracle Databases
- Actively optimizing DRPS processing through monitoring large test executions and consultation with Oracle
- Adjusted code base to address bottlenecks

- **Optimized role assignments to ensure maximum staff resource usage during this shortened production period**

	DRF1 (Decennial Response File 1)	DRF2 (Decennial Response File 2)	CUF (Census Unedited File)
Pre-Covid	Sept 15 – Oct 14, 2020	Oct 14 – Nov 4, 2020	Nov 4 – 30, 2020
Original Schedule with 9/30 as the end of Field Data Collection (notional)	Nov 15 – Dec 14, 2020	Dec 14, 2020 – Jan 4, 2021	Jan 4 - Jan 31, 2021
Current Plan	Oct 14 – Nov 9, 2020	Nov 9 – Nov 30, 2020	Nov 30 – Dec 14, 2020
Schedule Savings from Pre-Covid	3 Days	0 Days	12 Days

Decennial Response Processing and Review

Once geographic processing is complete, we have the frame that will serve as the collection geography for 2020 Census response processing. The process to deliver the Census Unedited File is heavily interactive with multiple concurrent cycles of data creation and review.



Decennial Response File 1 (DRF1) Plan

Produce the Decennial Response File 1 (DRF1) – 27 days

- Integrate final collection geography data with the response data for state-based processing
- Standardize data collection modes data (phone, internet, paper and Non Response Follow Up), incorporating high-quality administrative records data as the response data for housing units that do not have an enumeration.
- Classify living quarters as Housing Units or Group Quarters
- Identify unique persons within an individual response
- Incorporate results from NRFU re-interview and electronic records from group quarters
- Standardize demographic data for person matching
- Remove responses from collection universe depending on residence criteria
- Perform baby delete criteria – flags person records for deletion for babies confirmed to be born after 4/1
- Assign IDs to non-ID cases
- Collate multiple sheet large HU paper responses

Decennial Response File 2 (DRF2) and Census Unedited File (CUF) Plan

Produce Decennial Response File 2 (DRF2) – 22 days

- Remove responses that meet criteria for being born after Census Day
- Execute Primary Selection Algorithm (PSA) - This resolves situations where we have more than one response for a single address and two or more responses (possibly in different states) for the same household
- Review and verify PSA results
- Process DRF2 at the national level

Produce the Census Unedited File (CUF) – 15 days

- Determine the status for every housing unit as occupied, vacant or non-existent
- Identify the universe of data to include in the Census from the Sample Delivery File (SDF) and DRF2 and apply the Count Imputation (CI) operation to fill in the missing housing unit status and the missing household size
- Determine final population count for each address
- Review the population totals and their reasonableness
- Review and verify the data processing steps and products

Early and Ongoing Review to Enhance and Accelerate Final Data Review

New Subject Matter Expert (SME) Review Improvements

- Implemented increased analysis of real time response data to look for trends in data collection and shifting demographics. This helps to offset downstream review and processing risks
- Review of the DRF1 will occur to identify potential issues earlier; in 2010, SME review started with the DRF2
- The focus of the DRF1-CUF review will be on total population counts for apportionment; a separate team of analysts will be compiled to support the additional review of population totals
- An automated issue tracking system and a streamlined communication plan will allow for quicker decision making about identified issues and provide additional information to senior leadership

Other SME Review Methods to Accelerate Data Review

- Use of SME-developed and tested SAS review programs to automate data collection and data processing review
- The most in-depth demographic reasonableness review will be conducted on the first five to ten states produced by DRPS, with later states undergoing more cursory review checks
- Creation of the DRF1 and CUF will operate concurrently with SME Reviews

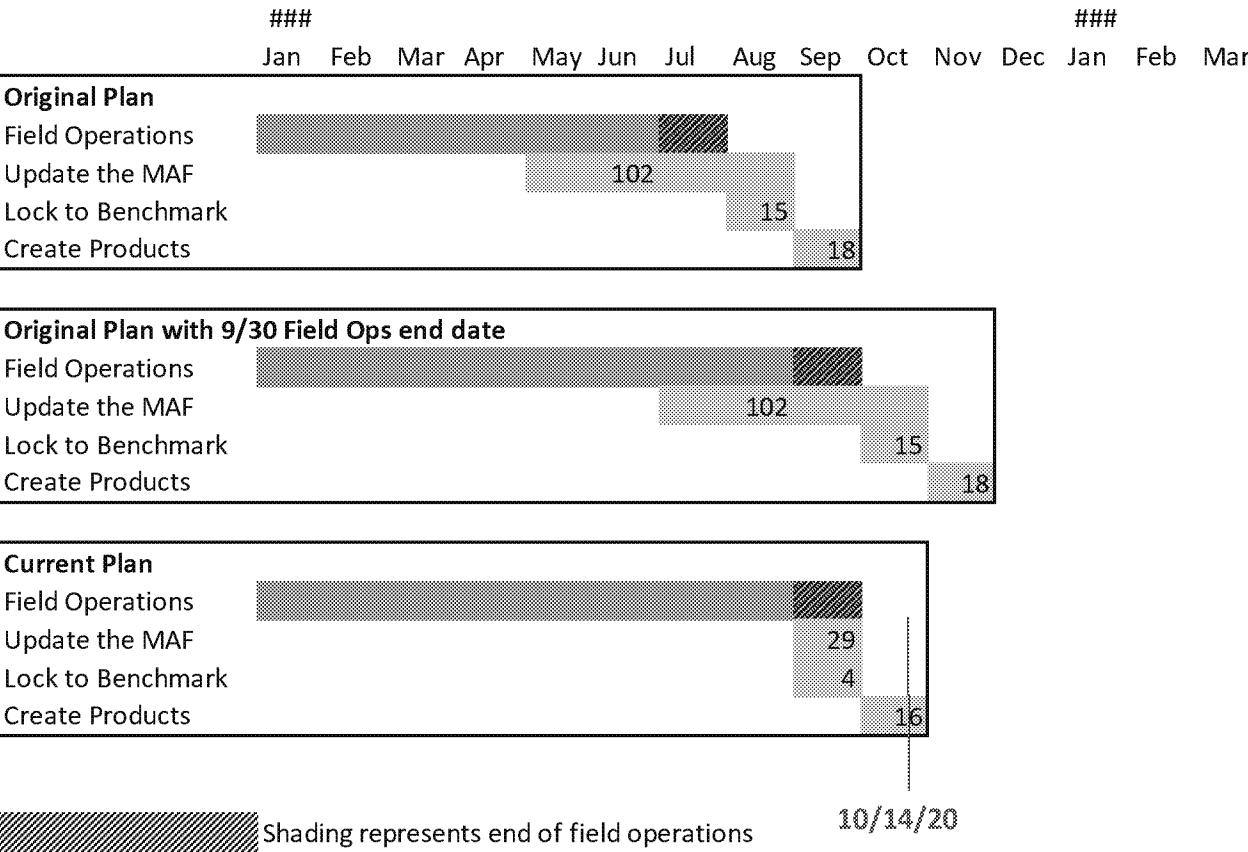
Appendix

Background on Risks

- If we do not complete all field data collection by 9/30/2020, this schedule may not be viable
- The schedule modifications in this plan have limited the ability to recover from a late start, processing delays, or other critical issues
- The risk of delays in processing is real, based on previous Census experience
 - As with every past Census, data anomalies will be detected during processing or review
 - Fixes may require individual states or all states to be re-processed.
 - State, multi-state, and national re-processing has been required in all recent censuses
 - We will not know the full extent of anomalies until we process the entire universe.
- Again, by closely managing both the process and the risks, our intention continues to be to produce an accurate, defensible 2020 Census count in compliance with statutory deadlines and the Presidential Memorandum

Additional Detail on GEO Processing

GEO Processing to meet 12/14/2020 CUF Delivery



Detailed Processing Steps

Activity ID	Activity Name	Calendar	OD	Start	Finish	Var- Start	Var- Finish
20ISR-12170	Conduct Internet Self-Response (ISR) Data Collection	3. 7 Day Federal Holiday thru 2023	230d	12-Mar-20	31-Oct-20	0d	0d
20NID-11020	Conduct Non-ID Clerical Process Operation	3. 7 Day Federal Holiday thru 2023	230d	12-Mar-20	31-Oct-20	0d	0d
20SQO-10500	Conduct Self-Response Quality Assurance	3. 7 Day Federal Holiday thru 2023	230d	12-Mar-20	31-Oct-20	0d	0d
20CQA-10830	Conduct Census Questionnaire Assistance (CQA) Inbound Operation	4. 7 Day No Holidays thru 2023	234d	12-Mar-20	31-Oct-20	0d	0d
20CQA-10840	Conduct Census Questionnaire Assistance (CQA) Outbound Operation	4. 7 Day No Holidays thru 2023	193d	22-Apr-20	31-Oct-20	0d	0d
20CIO-12520	Monitor CQA Outbound CI Telephone Operation	3. 7 Day Federal Holiday thru 2023	187d	24-Apr-20	31-Oct-20	0d	0d
20NRD-31520	Conduct NRFU Reinterview Field Data Collection	3. 7 Day Federal Holiday thru 2023	79d	12-Aug-20	31-Oct-20	0d	0d
20IPC-11080	Conduct 2020 Reminder Phase	4. 7 Day No Holidays thru 2023	79d	14-Aug-20	31-Oct-20	0d	0d
20MTS-22260	Create MAF/TIGER Benchmark for Final Collection Products and Services	3. 7 Day Federal Holiday thru 2023	22d	13-Nov-20*	5-Dec-20	0d	1d
20MTS-20400	Create MAF Extract for Final Collection - MAF/TIGER	3. 7 Day Federal Holiday thru 2023	9d	6-Dec-20	14-Dec-20	1d	1d
20MTS-20410	QC MAF Extract for Final Collection - MAF/TIGER	3. 7 Day Federal Holiday thru 2023	9d	7-Dec-20	15-Dec-20	1d	1d
20MTS-20390	Deliver MAF Extract & Header File to DITD/CarDS for Final Collection - MAF/TIGER	3. 7 Day Federal Holiday thru 2023	2d	16-Dec-20	17-Dec-20	1d	3d
20CAR-50950	DITD/CarDS Receive MAF Extract from MAF/TIGER for Final SDF (Coll)	1. 5 Day Federal Holiday thru 2023	0d	18-Dec-20		1d	1d
20CAR-50980	CarDS Ingests MAF Extract from MAF/TIGER for Final SDF (Coll)	4. 7 Day No Holidays thru 2023	2d	18-Dec-20	19-Dec-20	3d	3d
20CAR-51060	CarDS Creates and Review Final SDF (Coll)	4. 7 Day No Holidays thru 2023	4d	20-Dec-20	23-Dec-20	3d	6d
20CAR-51100	CarDS Delivers Final SDF (Coll) to DRPS	4. 7 Day No Holidays thru 2023	0d		23-Dec-20	6d	6d
20DRP-90590	DRPS Receives and Ingests Final Collection SDF from CarDS	4. 7 Day No Holidays thru 2023	3d	24-Dec-20	26-Dec-20	6d	9d
20DRP-90580	Create Initial Decennial Response File (PCDI/DRF1) - DRPS	1. 5 Day Federal Holiday thru 2023	12d	28-Dec-20	13-Jan-21	5d	5d
20DRP-11590	Deliver Initial Decennial Response File (PCDI/DRF1) to RPO/DSSD - DRPS	1. 5 Day Federal Holiday thru 2023	13d	30-Dec-20	19-Jan-21	5d	5d
20DRP-11600	Receive Approval of Decennial Response File (PCDI/DRF1) from RPO/DSSD - DRPS	1. 5 Day Federal Holiday thru 2023	1d	19-Jan-21	19-Jan-21	5d	5d
20DRP-90750	Create Initial Decennial Response File (PSA/DRF2) - DRPS	1. 5 Day Federal Holiday thru 2023	6d	19-Jan-21	26-Jan-21	5d	5d
20DRP-18430	Deliver Initial Decennial Response File (PSA/DRF2) to RPO/DSSD - DRPS	1. 5 Day Federal Holiday thru 2023	1d	26-Jan-21	26-Jan-21	5d	5d
20RPO-11250	Receive Primary Selection Algorithm File (PSA) (Final PSA/DRF2) from DRPS	1. 5 Day Federal Holiday thru 2023	1d	26-Jan-21	26-Jan-21	5d	5d
20RPO-11260	Perform SME Review of Primary Selection Algorithm File (Final PSA/DRF2)	1. 5 Day Federal Holiday thru 2023	11d	26-Jan-21	9-Feb-21	5d	5d
20DRP-18440	Receive Approval of Decennial Response File (PSA/DRF2) from RPO/DSSD - DRPS	1. 5 Day Federal Holiday thru 2023	1d	9-Feb-21	9-Feb-21	5d	5d
20DRP-90610	Create Initial Census Unedited File (CUF) - DRPS	1. 5 Day Federal Holiday thru 2023	17d	9-Feb-21	4-Mar-21	5d	5d
20RPO-11270	Provide Results and Approval of Primary Selection Algorithm File (Final PSA/DRF2) to DRPS	1. 5 Day Federal Holiday thru 2023	0d		9-Feb-21	5d	5d
20DRP-18460	Deliver Initial Census Unedited File (CUF) to RPO/POP - DRPS	1. 5 Day Federal Holiday thru 2023	15d	11-Feb-21	4-Mar-21	5d	5d
20DRP-18470	Receive Approval of Census Unedited File (CUF) from RPO/POP - DRPS	1. 5 Day Federal Holiday thru 2023	1d	4-Mar-21	4-Mar-21	5d	5d
20DRP-18480	Deliver Final Census Unedited File (CUF) to POP / CDL - DRPS	1. 5 Day Federal Holiday thru 2023	0d		4-Mar-21	5d	5d
20DPD-10730	POP Receives Final CUF from CDL/DRPS	1. 5 Day Federal Holiday thru 2023	0d	5-Mar-21		5d	5d
20PMD-16890	-----Executive Review and Approve CUF-----	4. 7 Day No Holidays thru 2023	30d	5-Mar-21	3-Apr-21	7d	-2d
20DPD-10740	POP Creates/Verifies Apportionment Tables	1. 5 Day Federal Holiday thru 2023	16d	5-Apr-21	26-Apr-21	-1d	0d
20DPD-10750	POP Delivers Final Apportionment Tables to BOC DIR and CQAS	1. 5 Day Federal Holiday thru 2023	0d		26-Apr-21	0d	0d
20DPD-10760	BOC DIR/CQAS Assembles Final Apportionment Transmittal Package	1. 5 Day Federal Holiday thru 2023	4d	27-Apr-21	30-Apr-21	0d	0d
20DPD-10770	BOC DIR Delivers Final Apportionment Transmittal Package to DOC	1. 5 Day Federal Holiday thru 2023	0d		30-Apr-21	0d	0d
20DPD-10850	DOC Delivers Apportionment Counts to President (U.S.C. Article 1, Section 2)	1. 5 Day Federal Holiday thru 2023	0d		30-Apr-21	0d	0d

August 21, 2020

INFORMATION MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Joseph A. Laroski
Deputy Assistant Secretary for Policy and Negotiation
Cell: **b(6)**

RE: Softwood Lumber from Canada Countervailing Duty (CVD) Investigation

b(5) - AC/WP/DP

b(5) - AC/WP/DP

August 21, 2020

INFORMATION MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Joseph Laroski
Deputy Assistant Secretary for Policy and Negotiations
Desk: (202) 482-5788; Mobile **b(6)**

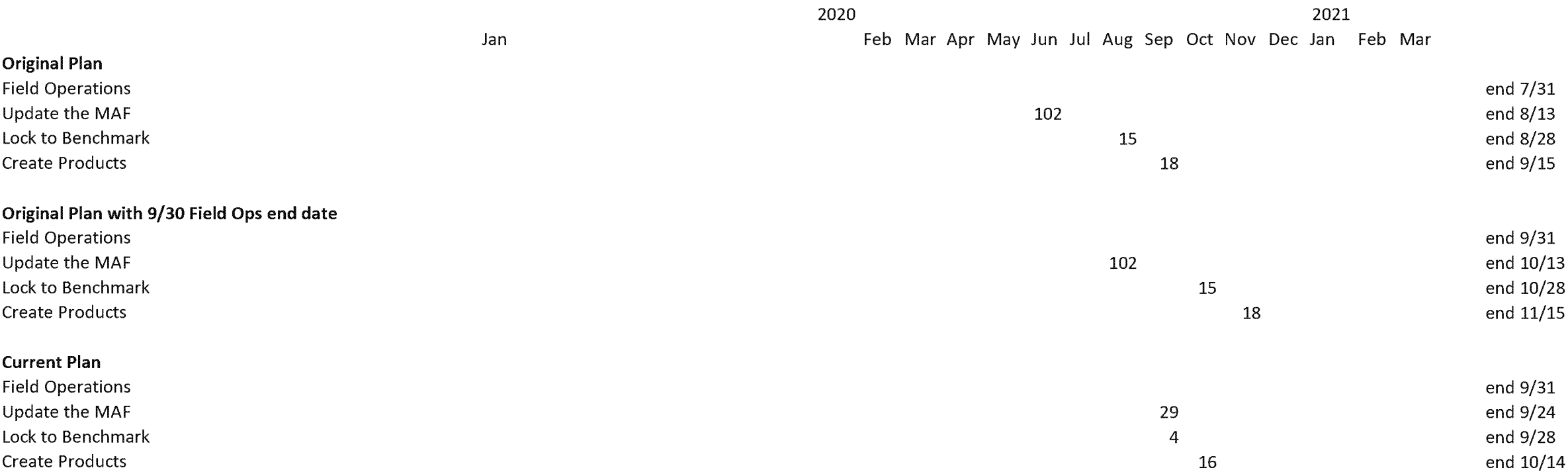
RE: Preliminary Determinations in the Antidumping Duty (AD) Investigations
of Difluoromethane from China

On August 21, 2020, the Department of Commerce (Commerce) announced its preliminary determinations in the AD investigations of difluoromethane from China. Commerce preliminarily determined that exporters from China are dumping diflouromethane in the United States at rates between 161.49 and 221.06 percent.

BACKGROUND

b(5) - DP

GEO Processing to meet 12/14/2020 CUF Delivery



Shading represents end of field operations

no adds after 9/4

Status Reporting: Nonresponse Followup for the 2020 Decennial Census

Periodic Reporting: Release for August 24, 2020

Periodic Performance Management Reports

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Periodic Performance Management Reports

2020 Census: Nonresponse Followup At A Glance – August 24, 2020

General

Self-Response Rate: 64.4% **Total Housing Units Enumerated:** 76.5%

Nine states have met or exceeded their final 2010 Census Self-Response Rate:
Colorado, Idaho, Kentucky, Michigan, Nevada, Oregon, Utah, Virginia, Washington

Hurricanes/Tropical Storms: Landfall Estimated Tuesday night, August 25.
Estimated Impact to 5 states: Alabama, Florida, Louisiana, Mississippi, and Texas
Estimated Remaining NRFU Workload Impacted : 5,640,000

Iowa Derecho: 16 Counties in Iowa with an Emergency Declaration
Estimated Remaining NRFU Workload Impacted: 210,000

California Wildfires: 17 Counties Impacted
Estimated Remaining NRFU Workload Impacted: 511,000

Progress

Current Workload: : 61,753,345
Completed Cases: 25,409,978 (41.1%)
Planned Completed Cases: 19,455,348 (31.5%)
Remaining Workload: 36,343,367

83 ACOs have completed over 50% of their NRFU workload

Timing

- **Days in Operation:** 53
- **Days Elapsed:** 15
- **Days Remaining:** 38

Enumerator Productivity

- **Average Hours worked per week (8/13-8/19):** 20.6
- **Average Cases Completed Per Hour:** 2.49
- **Planned Cases Completed Per Hour:** 1.55

Staffing

- **Selections:** 983,942
- **Invited to Training:** 625,311
- **Enumerators Hired Since January 1, 2020:** 384,615
- **Completed Training:** 292,506
- **Currently in Training:** 72,087
- **Active:** 233,072
- **Expected Replacement Training:** 100,310

Calculated Staff Needs

- Remaining workload: 36,343,367 cases
- Remaining weeks: 5.4
- Average cases per week: 6,730,253
- Average cases per hour: 1.55
- Needed hours per week: 4,342,099
- Average enumerator hours per week: 19
- Required average enumerators 228,532 To complete by 9/30
- Required average enumerators 177,112 (assuming 2 cases/hour)

Contingency Budget

- **Contingency Available (as of 3/14/20):** \$2,030 M
- **Expected Contingency Uses for COVID-19:** \$1,106 M
- **Contingency Approvals (through 7/31):** \$934 M
- **Remaining Contingency: (through 7/31):** \$924 M
- **Uncommitted Remaining Contingency:** \$187 M

	Planned	Actual
Overtime	\$100M	\$0.7M
Enumerator Awards	\$300M	--
Other	\$302M	\$11.5M
Total	\$702M	\$12M

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress

Case Progress for Field Enumeration

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

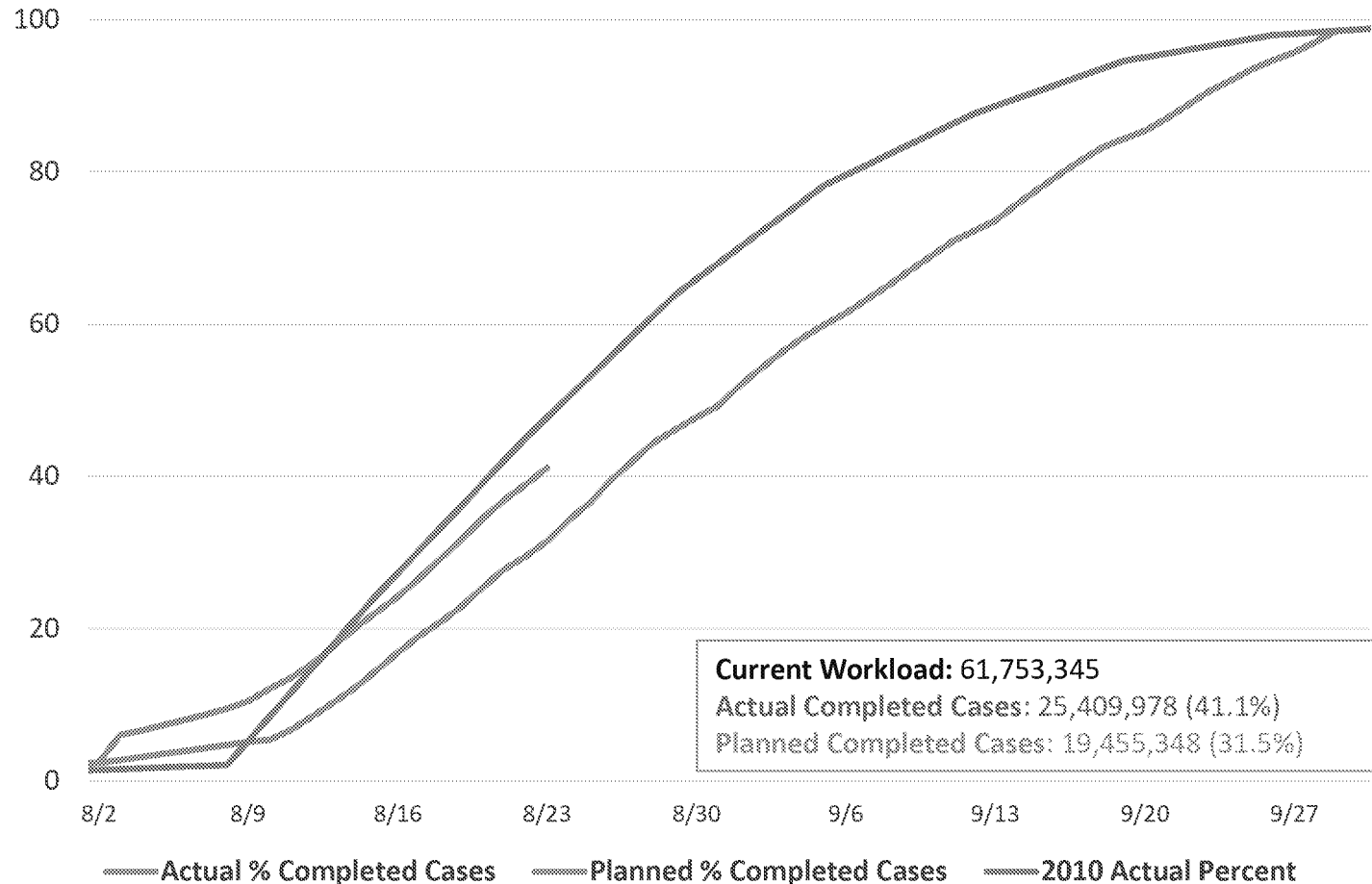
August 9, 2020

Completion Date:

September 30, 2020

Notes:

- Current workload reflects all case types.
- Data are charted beginning with soft launch.



Cases Completed by Telephone:

Pending

Cases Completed by Self-Response:

4,336,339 (17.1% of completed cases)

Remaining Workload:

36,343,367 cases

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress and Cost

Status:
● On Track

Data current as of:
August 24, 2020

Start Date:
August 9, 2020

Completion Date:
September 30, 2020

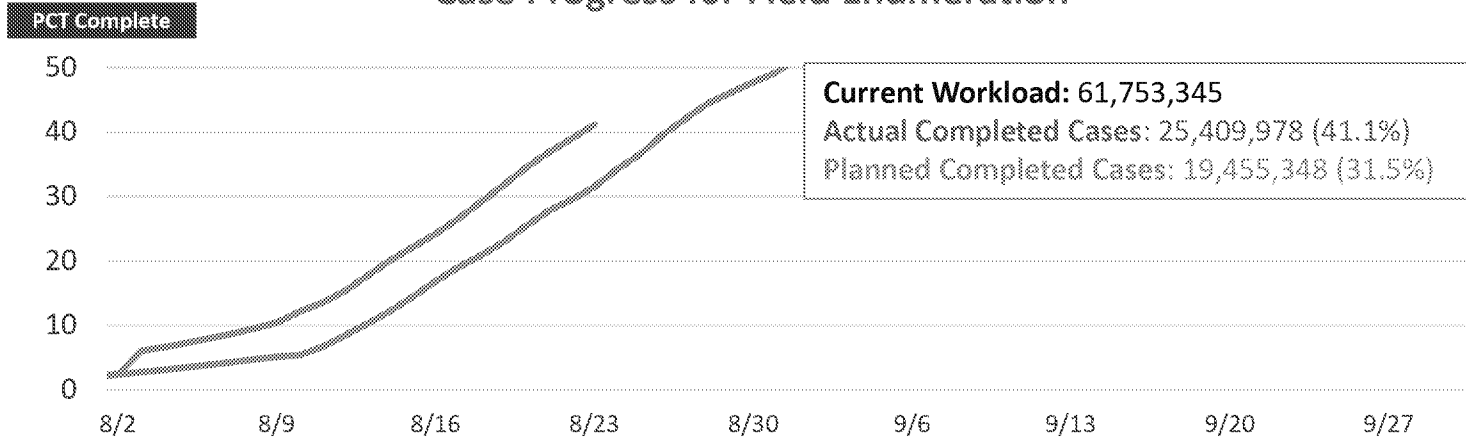
- Notes:
- Current workload reflects all case types. Costs include training and production costs for Enumerators and CFS.
 - Data are charted beginning with soft launch.

Cases Completed by Telephone:
Pending

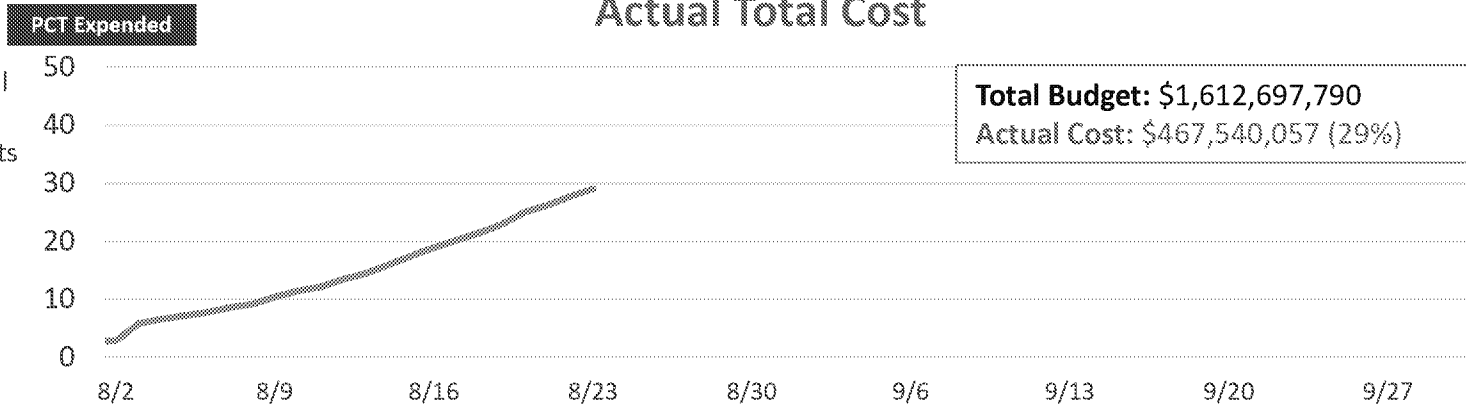
Cases Completed by Self-Response:
4,336,339 (17.1% of completed cases)

Remaining Workload:
36,343,367 cases

Case Progress for Field Enumeration



Actual Total Cost



Data as of 11:59 pm of the previous day

Source: MOJO Hermes

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Staffing

Status:

● On Track

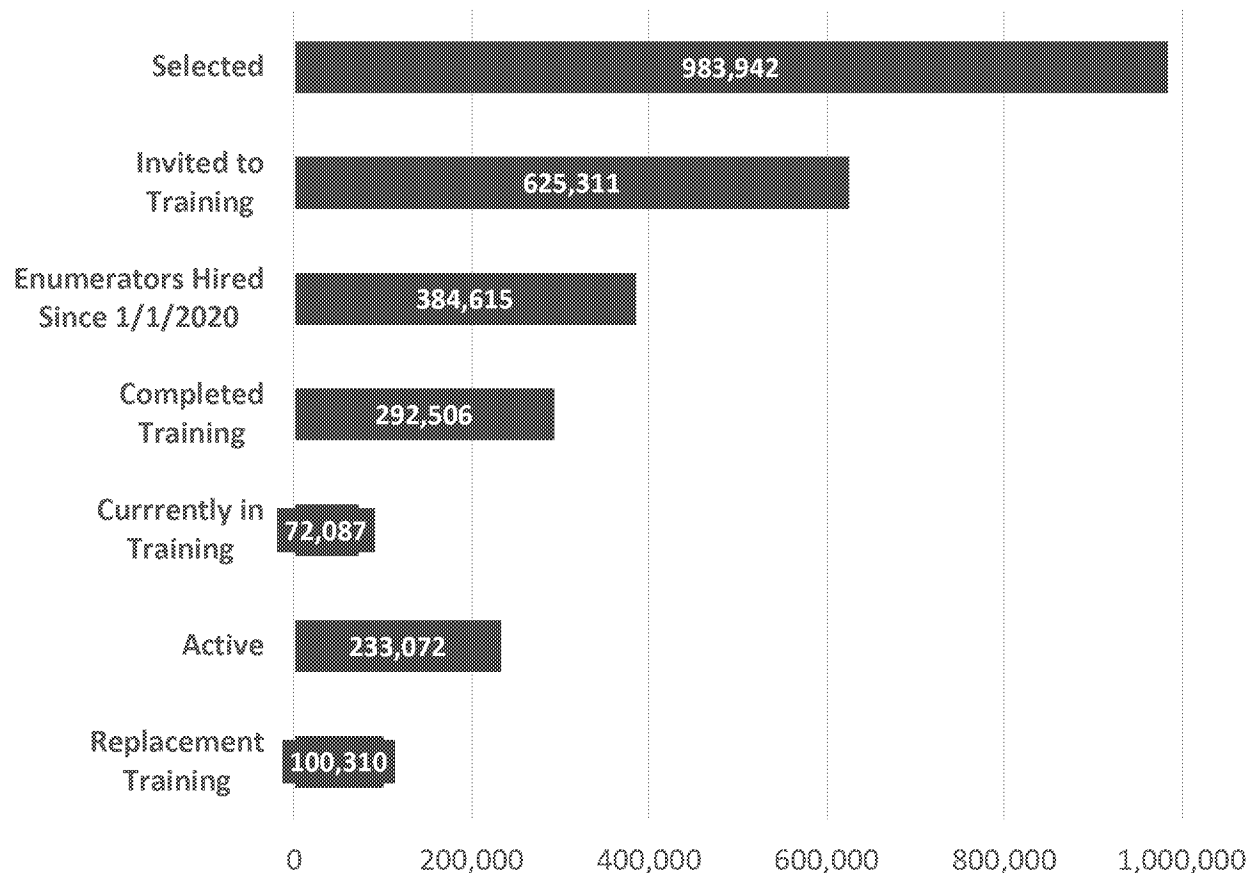
Data current as of:
August 24, 2020

Completion Date:
September 30, 2020

Notes:

- Enumerator Training No Show Rate: 38.5%
- Over the weekend of August 23, the Enumerator Training No Show Rate dropped to 16%.

Nonresponse Followup Onboarding Status



Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Productivity Curve

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

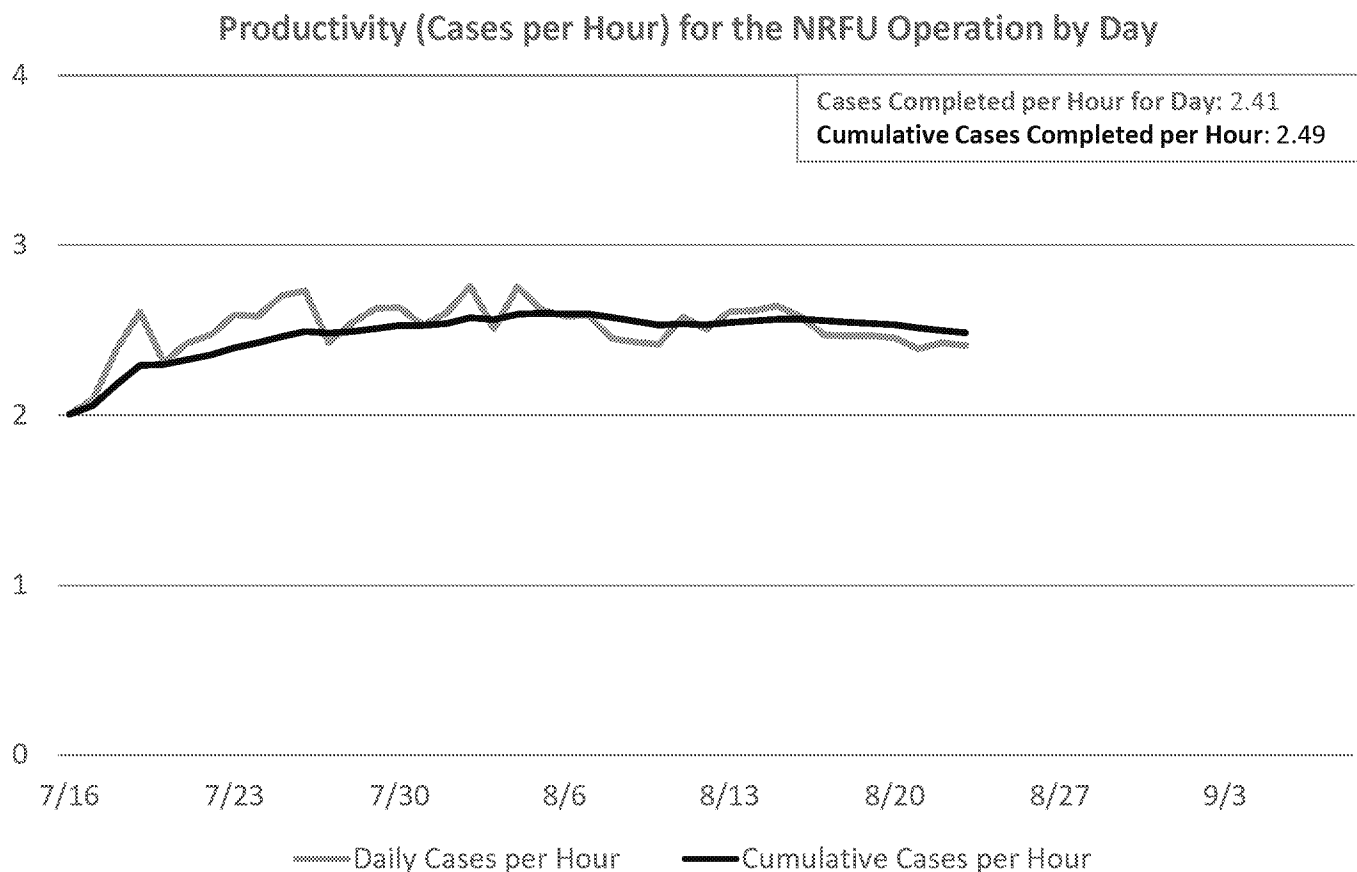
August 9, 2020

Completion Date:

September 30, 2020

Notes:

- Cases per hour include cases that were resolved by enumeration, administrative records, or self-response.
- Data are charted beginning with soft launch



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Work Hours

Status:

● On Track

Data current as of:

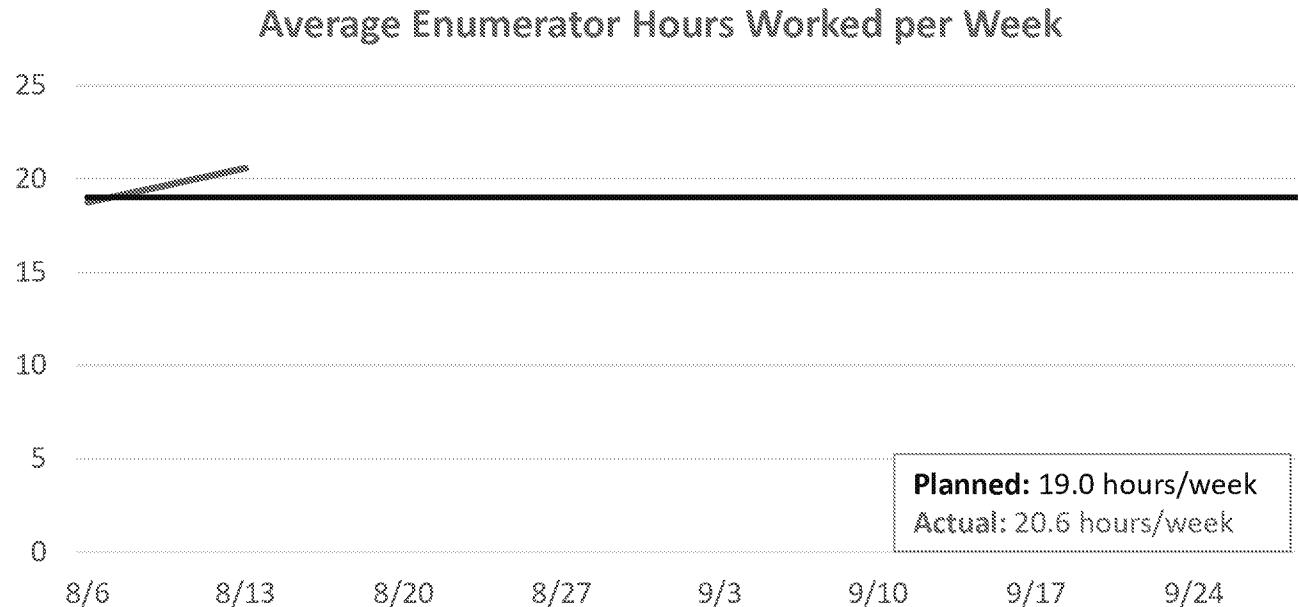
August 24, 2020

Completion Date:

September 30, 2020

Notes:

Preliminary Data - pending receipt of actual payroll data.



Percentage of Enumerators by Hours Worked

Week of	% of Enumerators that Worked < 19 Hours	% of Enumerators that Worked 19-24 Hours	% of Enumerators that Worked 25+ Hours
8/13-8/19	50.95%	15.61%	33.44%

Periodic Performance Management Reports

2020 Census: Housing Unit Enumeration Progress by State

Source: Census Data Lake, Unified Tracking System
Data Current as of: August 24, 2020

Note: Percentages may not sum due to rounding. A limited number of areas were part of the NRFU "soft launch" beginning July 16 and could have higher completion rates due to more time in the field. Percentages for the U.S. Total do not include housing units in Puerto Rico.

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Current Week	% HUs Enumerated Prior Week	Weekly Change
U.S. Total	64.4%	12.1%	76.5%	69.7%	6.8%
Alabama	61.5%	7.6%	69.1%	63.6%	5.5%
Alaska	52.2%	26.6%	78.8%	66.4%	12.4%
Arizona	60.8%	7.2%	68.1%	62.4%	5.7%
Arkansas	58.8%	16.5%	75.4%	64.7%	10.7%
California	66.4%	13.8%	80.2%	72.2%	8.0%
Colorado	67.8%	11.2%	79.0%	73.1%	5.9%
Connecticut	68.5%	16.9%	85.4%	78.0%	7.4%
Delaware	61.9%	11.2%	73.1%	66.2%	6.9%
District of Columbia	60.8%	13.0%	73.8%	66.1%	7.7%
Florida	61.1%	8.3%	69.4%	63.5%	5.9%
Georgia	59.8%	8.1%	67.9%	62.6%	5.3%
Hawaii	61.4%	22.4%	83.8%	74.9%	8.9%
Idaho	68.5%	25.5%	93.9%	88.8%	5.1%
Illinois	69.3%	14.8%	84.1%	78.2%	5.9%
Indiana	68.6%	15.9%	84.5%	77.2%	7.3%
Iowa	69.3%	4.3%	73.6%	69.6%	4.0%
Kansas	68.2%	18.3%	86.5%	80.2%	6.3%
Kentucky	66.7%	8.9%	75.6%	69.8%	5.8%
Louisiana	58.1%	13.3%	71.4%	65.4%	6.0%
Maine	56.6%	28.2%	84.8%	76.7%	8.1%
Maryland	68.8%	13.8%	82.6%	76.5%	6.1%
Massachusetts	66.7%	14.4%	81.1%	74.2%	6.9%
Michigan	69.6%	7.1%	76.7%	71.0%	5.7%
Minnesota	73.4%	9.8%	83.3%	76.9%	6.4%
Mississippi	58.6%	10.3%	68.9%	62.3%	6.6%

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Current Week	% HUs Enumerated Prior Week	Weekly Change
Missouri	64.2%	17.0%	81.2%	74.1%	7.1%
Montana	57.7%	10.2%	67.9%	61.7%	6.2%
Nebraska	69.9%	9.5%	79.4%	72.9%	6.5%
Nevada	63.5%	8.1%	71.6%	65.8%	5.8%
New Hampshire	64.3%	9.9%	74.2%	66.2%	8.0%
New Jersey	66.3%	9.5%	75.8%	69.4%	6.4%
New Mexico	54.9%	9.6%	64.5%	58.9%	5.6%
New York	60.3%	12.0%	72.3%	64.2%	8.1%
North Carolina	60.2%	8.5%	68.7%	62.6%	6.1%
North Dakota	63.5%	16.0%	79.5%	73.3%	6.2%
Ohio	68.5%	11.2%	79.7%	73.1%	6.6%
Oklahoma	58.8%	14.7%	73.5%	66.8%	6.7%
Oregon	67.2%	17.0%	84.2%	76.0%	8.2%
Pennsylvania	67.2%	13.0%	80.2%	73.9%	6.3%
Rhode Island	62.2%	12.8%	75.0%	66.3%	8.7%
South Carolina	58.2%	9.5%	67.7%	61.1%	6.6%
South Dakota	65.1%	9.6%	74.7%	67.9%	6.8%
Tennessee	63.7%	12.6%	76.2%	68.4%	7.8%
Texas	59.6%	12.1%	71.8%	64.2%	7.6%
Utah	68.7%	10.8%	79.5%	72.5%	7.0%
Vermont	58.1%	15.1%	73.1%	62.8%	10.3%
Virginia	69.0%	10.1%	79.1%	73.5%	5.6%
Washington	70.7%	16.7%	87.4%	80.9%	6.5%
West Virginia	55.4%	32.6%	88.1%	80.1%	8.0%
Wisconsin	70.7%	13.5%	84.2%	76.2%	8.0%
Wyoming	58.7%	12.9%	71.6%	63.4%	8.2%
Puerto Rico	31.4%	30.7%	62.1%	No Data	N/A

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Challenge Areas by State

Source: Field Division

Data Current as of: August 24, 2020

State	% of HUs that Self Responded	% of HUs Enumerated in NRFU	% of HUs Enumerated	Event/Issue	Contingency
Alabama	61.5%	7.6%	69.1%	Trop Storm – 800,000 NRFU cases, 5000 enumerators	Designated these areas for telephone contact.
Arizona	60.8%	7.2%	68.1%	Tribal – Ft Mojave and Havasupai reservations closed due to COVID	Partnership working to gain access.
California	66.4%	13.8%	80.2%	Wildfires – 511,000 NRFU Cases, 150 enumerators evacuated, 3 have lost homes Tribal – 6 reservations closed due to COVID	Designated these areas for telephone contact. Partnership working to gain access.
Florida	61.1%	8.3%	69.4%	Trop Storm – 1,100,000 NRFU cases, 5,700 enumerators Tribal – 3 reservations refuse to allow access	Designated these areas for telephone contact. Partnership working to gain access.
Iowa	69.3%	4.3%	73.6%	Derecho/Tornado – 210,000 NRFU cases, 1100 enumerators Tribal – Sac & Fox Reservation closed due to COVID	Bringing in staff from adjacent ACOs. Designated these areas for telephone contact. Partnership working to gain access.
Louisiana	58.1%	13.3%	71.4%	Trop Storm – 650,000 NRFU cases, 3,350 enumerators	Designated these areas for telephone contact.
Michigan	69.6%	7.1%	76.7%	Hiring – Goal – 6800. 5100 Active Enumerators, 2400 in Training Tribal – Huron Potawattami Reservation refusing to allow access	Partnership working to gain access.

Note: Percentages may not sum due to rounding

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Challenge Areas by State (continued)

Source: Field Division

Data Current as of: August 24, 2020

State	% of HUs that Self Responded	% of HUs Enumerated in NRFU	% of HUs Enumerated	Event/Issue	Contingency
Mississippi	58.6%	10.3%	68.9%	Trop Storm – 490,000 NRFU cases, 3500 enumerators	Designated these areas for telephone contact.
Nevada	63.5%	8.1%	71.6%	Tribal - 3 reservations closed due to COVID	Partnership working to gain access.
New Mexico	54.9%	9.6%	64.5%	Tribal – 4 reservations closed due to COVID	Partnership working to gain access.
Texas	59.6%	12.1%	71.8%	Trop Storm – 2,600,000 NRFU cases, 16,000 enumerators	Designated these areas for telephone contact.

Note: Percentages may not sum due to rounding

Tribal Areas that Refused Participation in the 2010 Census

Reservation	2010 Population	2020 NRFU Workload
Miccosukee Tribe of Indians of Florida	406	0 – All Update/Enumerate
Table Mountain Rancheria of California	64	18
Tonawanda Band of Seneca Indians of New York	517	242
Onondaga Nation of New York	468	632
Oneida Nation of New York	500 (est)	31
Tuscarora Nation of New York	1,152	475

2020 Census Bureau Fusion Center: Natural Disaster Situation Report (SITREP)

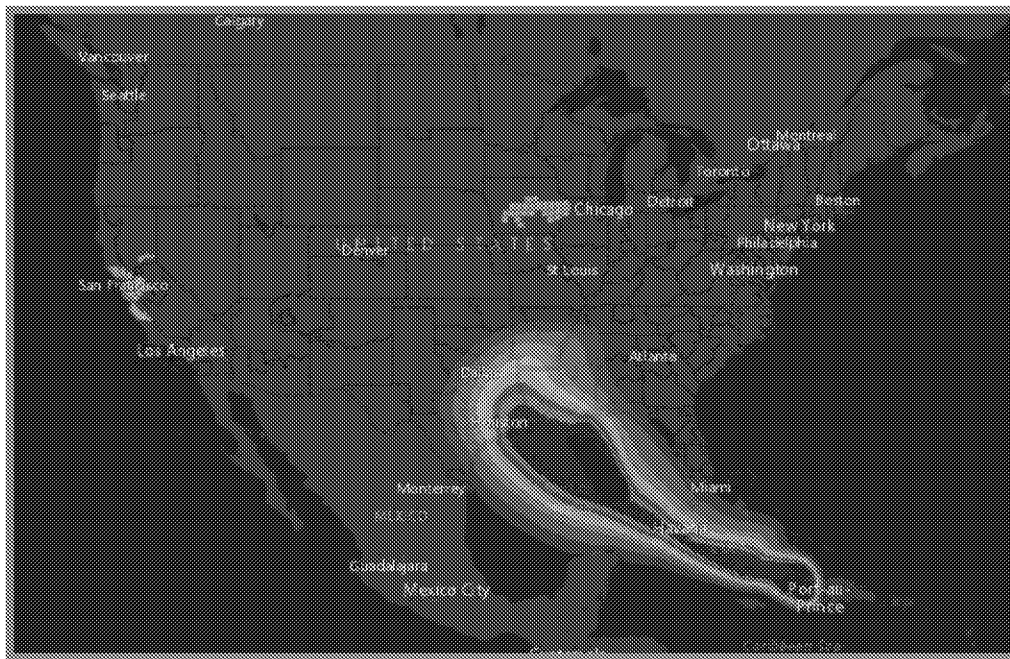
**Hurricane Marco & Tropical Storm Laura, Northern California Wild Fires,
Iowa Derecho**

August 23, 2020

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United States
Census
2020

Overview of Natural Disaster Impact on 2020 Census

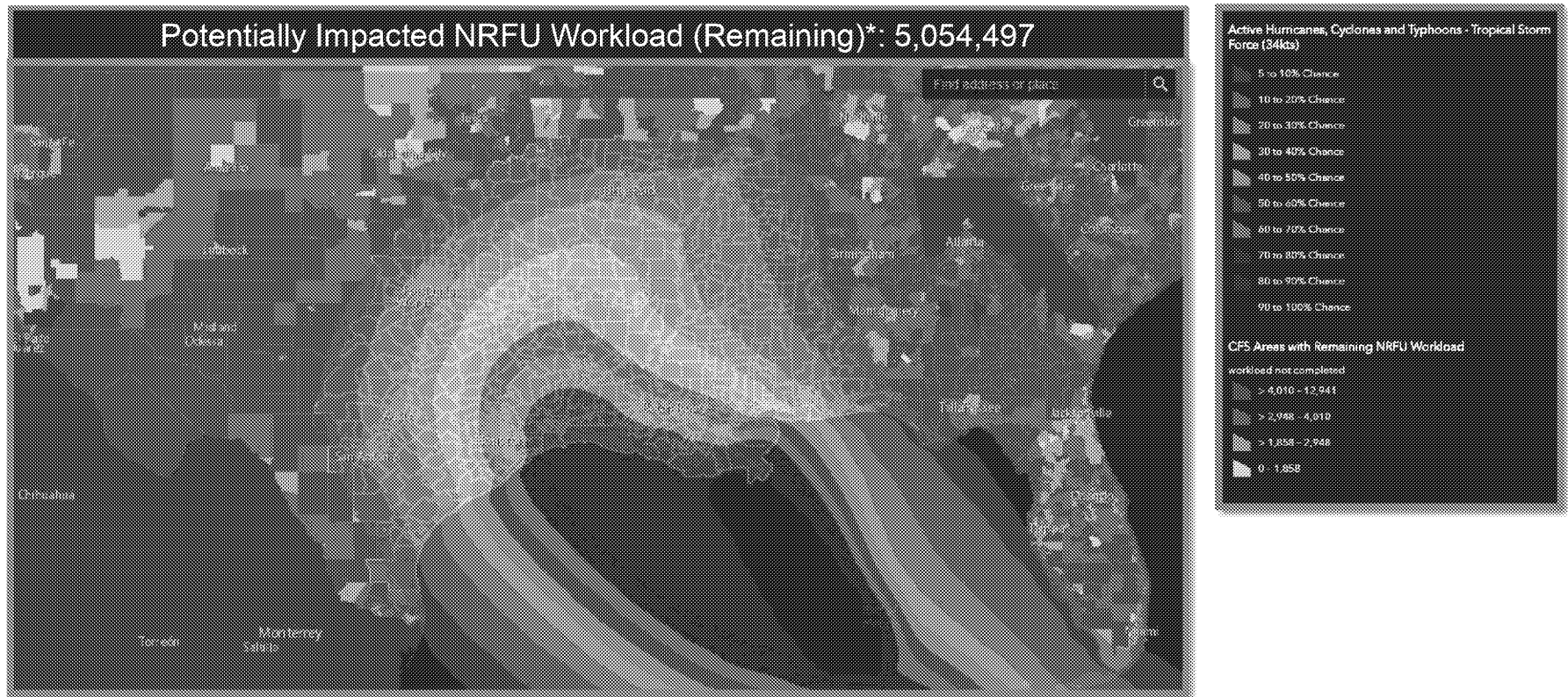


Total of Potentially Impacted NRFU Workload (Remaining)*: 5,773,441

Natural Disaster	Impacted Workload*
Hurricane Marco (Category 1) & Tropical Storm Laura	5,054,497
Lightning Complex and Northern California Wildfires	511,384
Iowa Derecho (August 10, 2020)	207,560

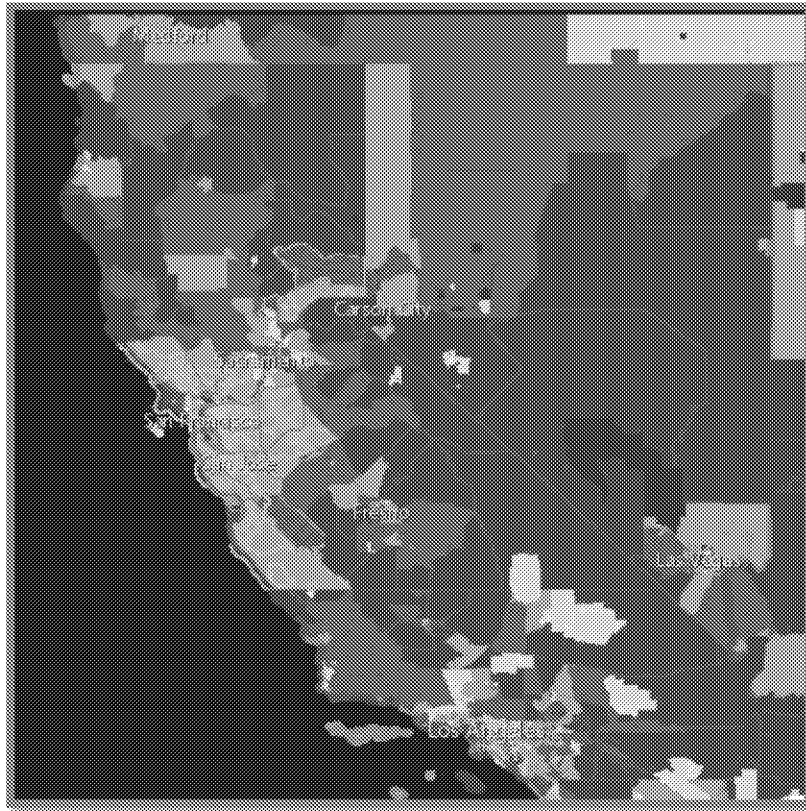
*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Hurricane Marco (Category 1) & Tropical Storm Laura



*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Lightning Complex and Northern California Wildfires



Potentially Impacted NRFU
Workload (Remaining)*: 511,384

California Counties Impacted by Wildfires

CFS Areas with Remaining NRFU Workload

workload not completed

> 4,010 - 12,941

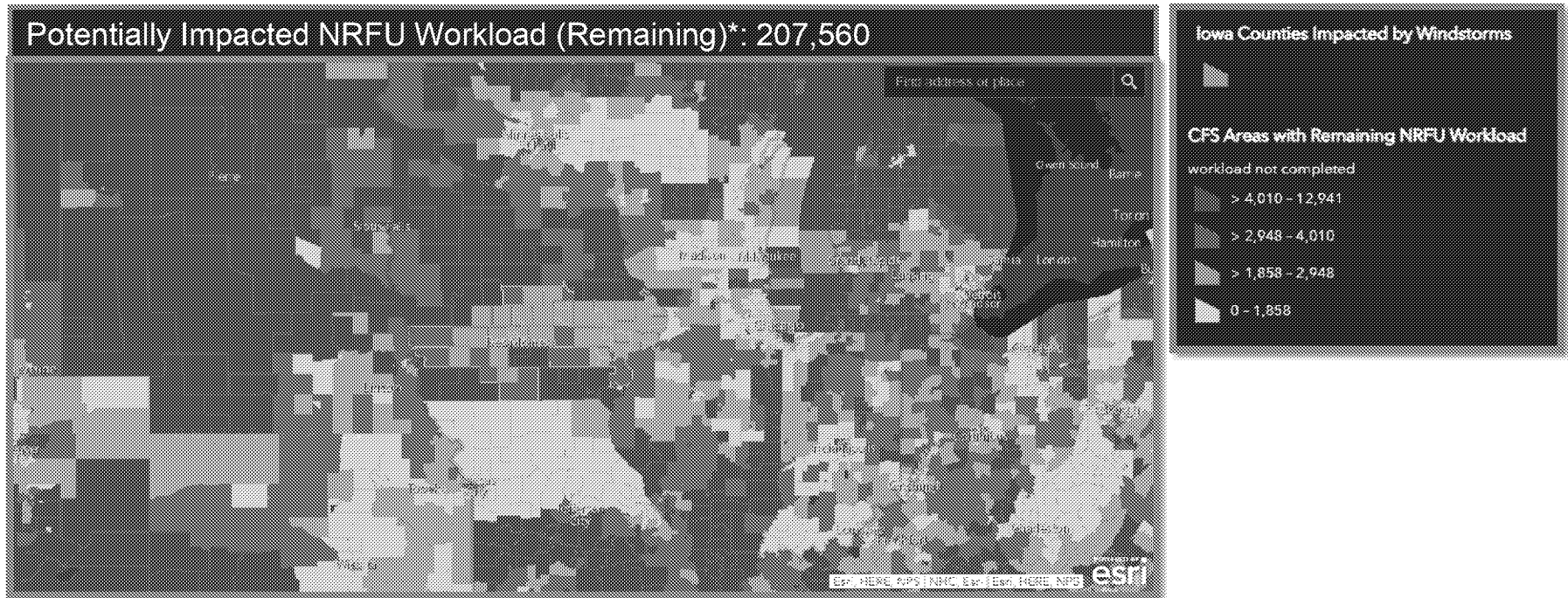
> 2,948 - 4,010

> 1,858 - 2,948

0 - 1,858

*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Iowa Derecho (August 10, 2020)



*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Budgetary Contingency Usage Status

Source: Decennial Budget Office

Data Current as of: August 20, 2020








Notional Contingency Waterfall for Estimated Revised NRFU		
(in millions of \$)		
	Plan (as of 7/31)	Actual to Date (8/20)
Contingency available on 3/14	\$2,030	\$2,030
<i>Risk Based Contingency</i>	<i>\$1,325</i>	<i>\$1,325</i>
<i>Secretarial Contingency</i>	<i>\$705</i>	<i>\$705</i>
Expected Contingency Uses for COVID-19	\$1,106	\$1,106
<i>Actual COVID related approvals</i>	<i>\$934</i>	<i>\$932</i>
<i>Remaining Potential COVID approvals</i>	<i>\$172</i>	<i>\$174</i>
Remaining Original Contingency	\$924	\$924
Additional contingency from estimated operational variance	\$70	\$70
Remaining Contingency before acceleration efforts	\$994	\$994
Potential Costs to Ensure Operational Continuity and Accelerate NRFU	\$702	\$12
<i>Additional Mailing and Advertising</i>	<i>\$50</i>	<i>\$11.5</i>
<i>Training of additional NRFU enumerators (previously approved)</i>	<i>\$64</i>	<i>--</i>
<i>Replacement training of 150k enumerators</i>	<i>\$165</i>	<i>--</i>
<i>Additional overtime for NRFU enumerators</i>	<i>\$100</i>	<i>\$0.7</i>
<i>Weekly enumerator award for exceeding 25 hrs/wk (Up to 5x)</i>	<i>\$150</i>	<i>--</i>
<i>Enumerator retention award for 3 weeks of acceptable work above 25 hrs/wk (Up to 2x)</i>	<i>\$150</i>	<i>--</i>
<i>CFS retention award for 3 weeks of acceptable work (Up to 2x)</i>	<i>\$23</i>	<i>--</i>
Allowance for up to 10% increase in production hours due to unknown factors	\$106	--
Remaining Contingency for Unknowns	\$187	--

Notes

- Actuals to Date represent approved purchases and incurred compensation expenses.
- Bonuses will begin accruing around September 3 due to payroll validation requirements.

Appendix

Periodic Performance Management Reports

Status	Report Title	Summary	Slide Number
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	20
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	21
	2020 Census: Self-Response of Housing Units by State		22
	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	23
	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 1,040. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 393,000. We have exceeded the 2010 Census numbers for both national and community partners.	24
	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts.	25
	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	26

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

March 12, 2020

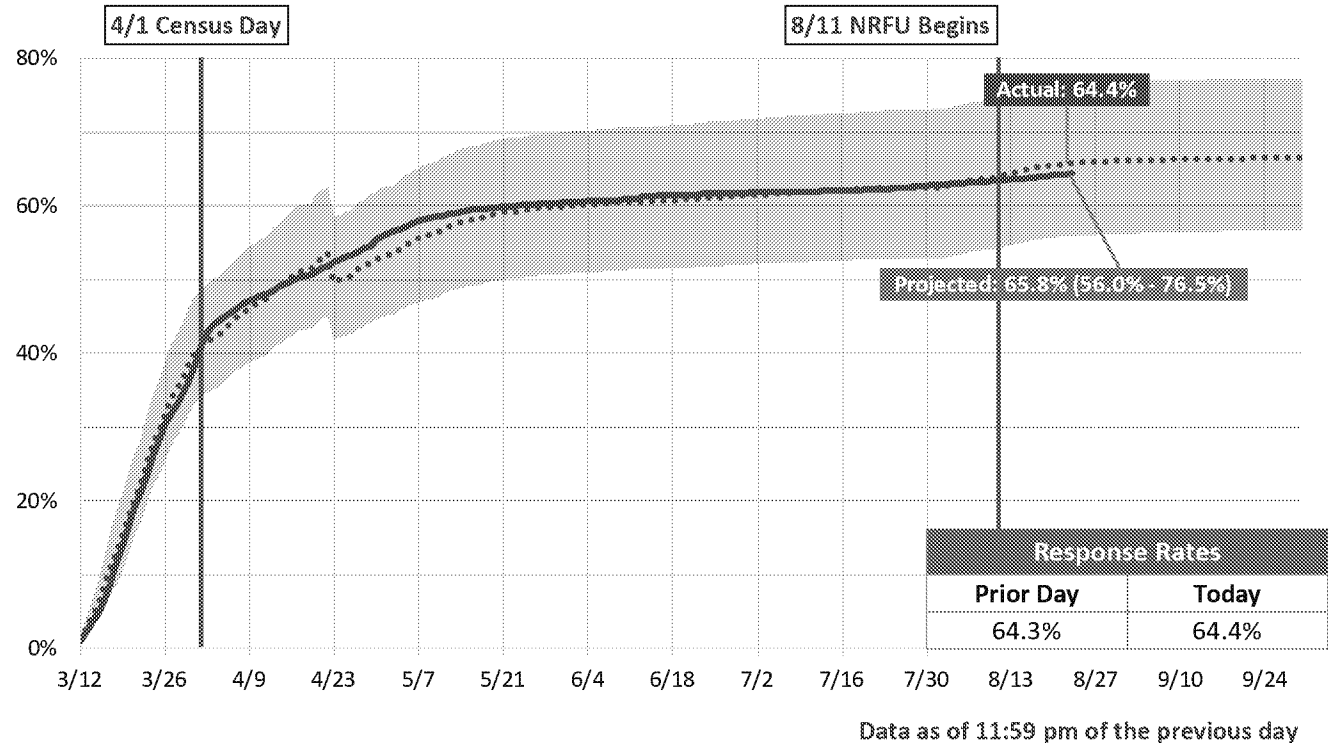
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



Legend

Actual Self-Response Rate	—————
Projected Self-Response Rate	*****
Lower & Upper Bound	—————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status:

○ Management Focus

Data current as of:

August 24, 2020

Start Date:

March 12, 2020

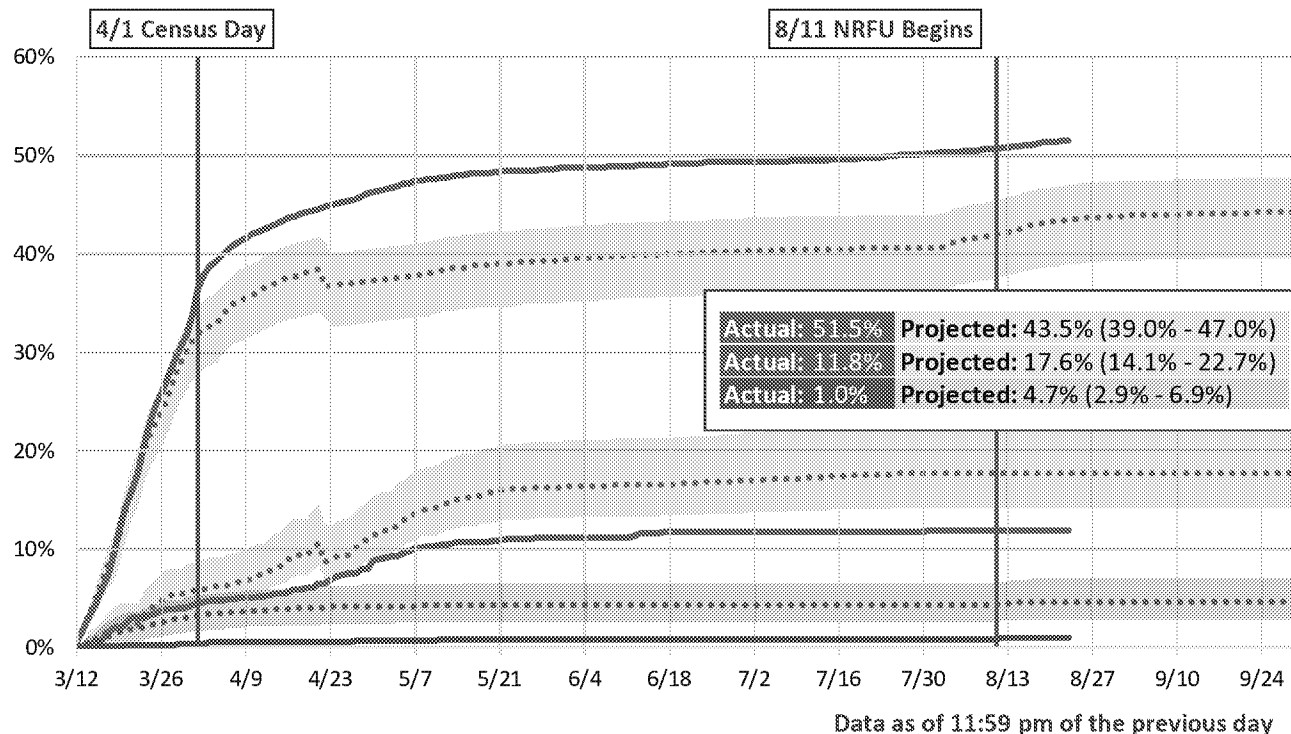
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	—————	—————	—————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound			

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division

Data Current as of: August 24, 2020

State	Actual	2010 Rate (Final)	2020 Rate (start of NRFU)	2010 Rate (start of NRFU)
U.S. Total	64.4%	66.5%	63.3%	63.5%
Minnesota	73.4%	74.1%	72.5%	71.6%
Wisconsin	70.7%	73.5%	69.7%	71.2%
Washington	70.7%	67.2%	69.1%	63.7%
Nebraska	69.9%	71.1%	69.0%	68.8%
Michigan	69.6%	67.7%	68.9%	65.4%
Iowa	69.3%	73.0%	68.9%	71.0%
Illinois	69.3%	70.5%	68.2%	67.7%
Virginia	69.0%	69.0%	68.0%	66.2%
Maryland	68.8%	69.5%	67.4%	66.5%
Utah	68.7%	68.6%	67.5%	65.4%
Indiana	68.6%	69.6%	67.5%	67.0%
Ohio	68.5%	69.0%	67.5%	66.2%
Idaho	68.5%	67.1%	67.8%	64.6%
Connecticut	68.5%	69.5%	67.1%	66.3%
Kansas	68.2%	70.0%	67.2%	67.4%
Colorado	67.8%	67.2%	66.6%	64.4%
Pennsylvania	67.2%	70.2%	66.3%	67.8%
Oregon	67.2%	66.9%	65.7%	63.9%
Massachusetts	66.7%	68.8%	65.4%	65.6%
Kentucky	66.7%	65.7%	66.0%	63.0%
California	66.4%	68.2%	64.6%	64.7%
New Jersey	66.3%	67.6%	65.2%	64.4%
South Dakota	65.1%	67.1%	64.4%	65.0%
New Hampshire	64.3%	64.4%	63.2%	61.5%
Missouri	64.2%	67.5%	63.4%	65.3%
Tennessee	63.7%	67.1%	62.5%	63.8%

State	Actual	2010 Rate (Final)	2020 Rate (start of NRFU)	2010 Rate (start of NRFU)
North Dakota	63.5%	68.8%	62.7%	66.8%
Nevada	63.5%	61.4%	62.4%	58.7%
Rhode Island	62.2%	65.7%	61.0%	62.8%
Delaware	61.9%	64.1%	60.8%	60.8%
Alabama	61.5%	62.5%	60.8%	59.5%
Hawaii	61.4%	64.1%	59.9%	60.7%
Florida	61.1%	63.0%	60.2%	59.6%
Arizona	60.8%	61.3%	59.9%	58.5%
District of Columbia	60.8%	66.0%	59.6%	62.2%
New York	60.3%	64.6%	59.0%	61.3%
North Carolina	60.2%	64.8%	59.3%	62.1%
Georgia	59.8%	62.5%	59.0%	59.5%
Texas	59.6%	64.4%	58.3%	60.3%
Arkansas	58.8%	62.3%	57.9%	59.5%
Oklahoma	58.8%	62.3%	57.9%	58.9%
Wyoming	58.7%	63.4%	57.6%	61.1%
Mississippi	58.6%	61.3%	58.0%	58.1%
South Carolina	58.2%	64.7%	57.4%	62.2%
Louisiana	58.1%	61.0%	57.3%	57.9%
Vermont	58.1%	60.3%	56.9%	58.1%
Montana	57.7%	64.6%	56.9%	62.3%
Maine	56.6%	57.4%	55.5%	55.3%
West Virginia	55.4%	59.1%	54.9%	56.8%
New Mexico	54.9%	60.0%	53.5%	56.9%
Alaska	52.2%	55.6%	49.9%	51.6%
Puerto Rico	31.4%	53.8%	28.7%	51.2%

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:

● On Track

Data current as of:

August 22, 2020

Completion Date:

September 30, 2020

Notes:

To date, 33,402 callers have requested the callback option. These callbacks have resulted in 12,302 completed interviews and 4,410 callers being provided assistance.

Total Inbound Call Volume % (PTD)



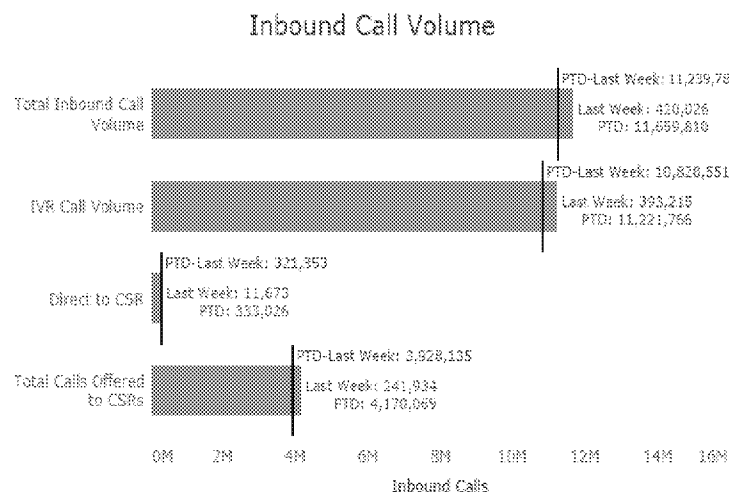
English	Spanish	TTY	Vietnamese	Chinese Mandarin	All Other
87.2%	10.9%	0.9%	0.2%	0.1%	0.7%

Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	11,100,665	11,659,810
Deflection Rate	47.0%	64.3%
Service Level - 30 Seconds	80.0%	68.0%
Average Handle Time	9:04	9:26

Calls Offered to CSRs by Language

	8/9 - 8/15	8/16 - 8/22	PTD	PTD %
English	164,287	222,948	3,695,185	88.6%
English Puerto Rico	240	181	3,170	0.1%
Spanish	8,950	12,073	310,886	7.5%
Spanish Puerto Rico	3,686	3,243	43,075	1.0%
Chinese Mandarin	400	534	11,805	0.3%
Chinese Cantonese	274	318	10,089	0.2%
Vietnamese	137	169	13,315	0.3%
Korean	285	283	13,244	0.3%
Russian	141	171	7,002	0.2%
Arabic	53	88	4,202	0.1%
Tagalog	31	20	2,692	0.1%
Polish	45	53	2,509	0.1%
French	14	23	1,213	0.0%
Haitian Creole	46	73	2,690	0.1%
Portuguese	38	63	1,903	0.0%
Japanese	40	39	2,329	0.1%
TTY	1,112	1,590	39,866	1.0%
Group Quarters	82	65	4,894	0.1%
Total	179,861	241,934	4,170,069	100.0%



Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:

● On Track

Data current as of:

August 20, 2020

Completion Date:

March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	384	71,379
Business	139	91,407
Chamber of Commerce/Trade or Professional Association	113	10,559
Education	103	83,552
Government	89	71,296
Faith-Based Organizations	66	40,319
Media	49	8,403
Healthcare	48	14,904
Technology	33	326
International Governmental/ Consulate/ Embassy	16	329
Grand Total	1,040	393,474

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	447	233,457
Black/African American	97	17,715
Young Children	90	5,842
Hispanic/Latino	85	25,668
Rural	80	13,935
Asian	79	10,141
Native Hawaiian Pacific Islander	48	674
Veterans	41	3,263
Young and Mobile	40	7,335
LGBTQ	24	1,276
Individuals with Disabilities	24	3,156
Elderly	24	8,789
Persons Experiencing Homelessness and Highly Mobile	22	5,440
American Indian/ Alaskan Native	19	3,548
MENA	15	80

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

Cumulative Completed Partnership Events: 439,379

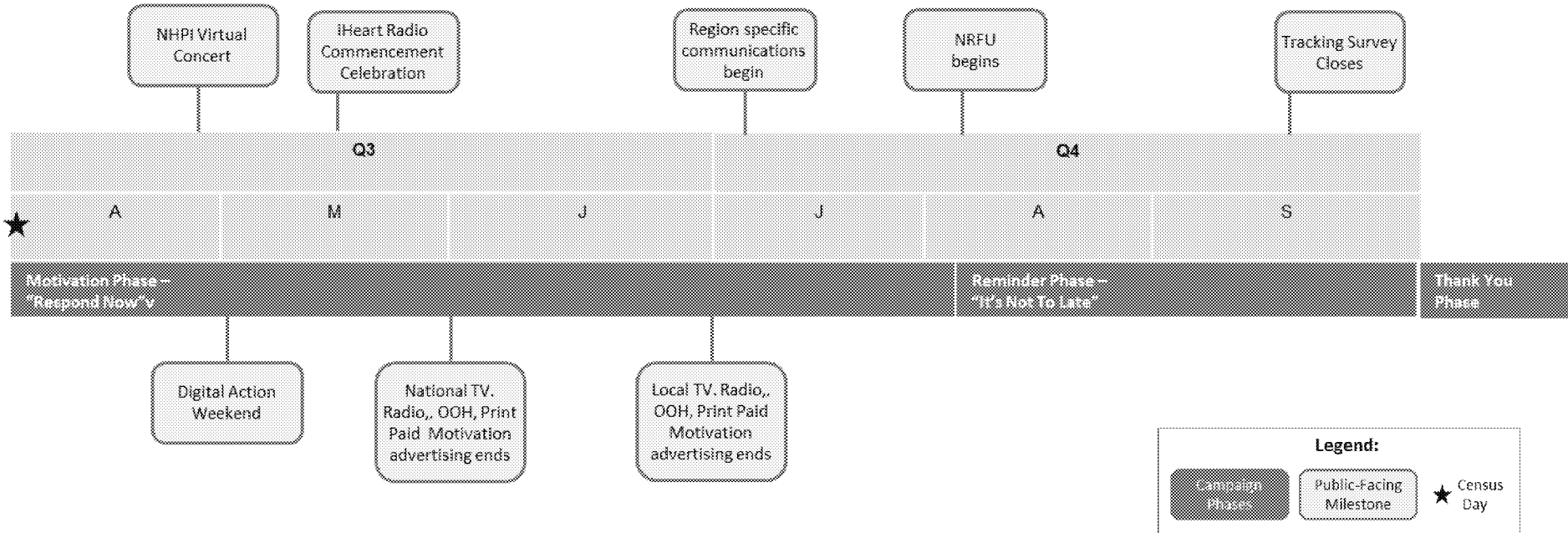
Partnership Events Completed 8/13-8/19: 6,331

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication

Data Current as of: August 19, 2020



Significant Accomplishments

- The New Audience Creative went live on 8/17.
- The Roland Martin Unfiltered (RMU) Activation for the Black/African American (B/AA) audience began on 8/17.
- The Jewish Federations of North America held a 2020 Census Webinar on 8/18.
- The Wonderama House Party (At Home Concert Series) for Los Angeles was held on 8/21.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: July 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

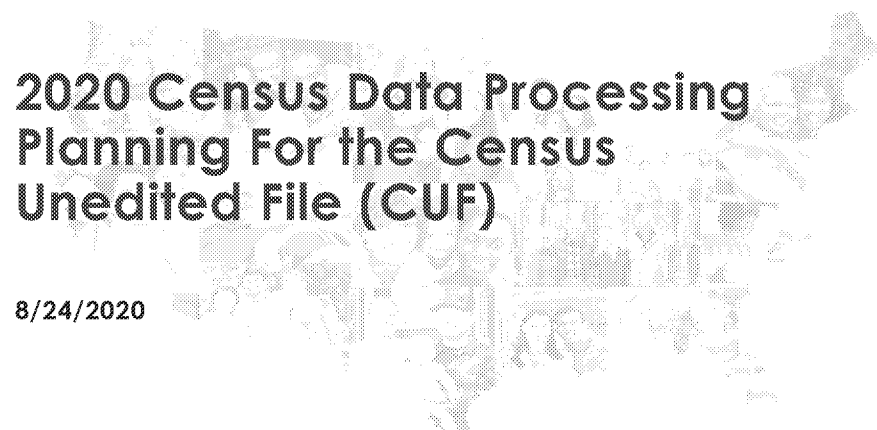
FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 7/31/2020

\$ Amounts in Millions	IT	Non-IT	Total
Total Planned through July	\$1,728	\$5,155	\$6,883
Available contingency and additional appropriations through July	\$248	\$1,432	\$1,680
Planned Programmatic through July	\$1,480	\$3,723	\$5,203
Total Actual Commitments and Obligations through July	\$1,653	\$2,390	\$4,043
Unplanned commitments/obligations through July related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)	\$260	\$300	\$560
Actual Programmatic Commitments and Obligations through July	\$1,393	\$2,090	\$3,483
Total Plan Variance (\$/%)	\$75 (4.3%)	\$2,765 (53.6%)	\$2,840 (41.3%)
Remaining contingency and additional appropriations planned through July	(\$12)	\$1,132	\$1,120
Delayed Field Operation Spending through July	\$0	\$1,690	\$1,690
Non-Field Operational Programmatic Variance through July	\$87	(\$57)	\$30

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of available contingency funding. The total variance for the resources planned to be available through July is \$2.840 billion, or 41 percent. Below outlines the breakdown of the total variance:

- The positive variance through July against the original plan in 2020 Census IT systems and operations is \$75 million, or 4 percent. The positive variance is the result of relatively routine minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, partially offset by \$12 million in IT contingency used as the result of adjusted 2020 Census operations due to COVID-19 beyond the IT contingency estimate.
- The positive variance through July against the original plan in 2020 Census non-IT operations is \$2.765 billion, or 54 percent. This variance consists of \$1.690 billion delayed spending in the field operations as a result of schedule adjustments, and \$1.132 billion representing a portion of available contingency and additional appropriations that has not yet needed to be obligated. This variance is partially offset by a -\$57 million non-Field variance, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While unused contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions have been made to use risk-based contingency funds to support \$560 million in unplanned obligations or commitments through July as the result of the operational adjustments. The funds used to date include funding field staff salaries during to the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response, extending the communication efforts in the motivation and NRFU planning phases, purchases of personal protection equipment, and additional costs for the Fingerprint and CQA Contracts as the result of the operational timing adjustments.



2020 Census Data Processing Planning For the Census Unedited File (CUF)

8/24/2020

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2020 Census

Overview

- This is a viable plan to deliver the final Census Unedited File (CUF) by 12/14/2020
- It cuts a four-month process down to two and a half months
- It optimizes staff and computing resources to be in operation 24/7, weekends and holidays
- It streamlines and limits processes to focus only on Apportionment, separating and deferring redistricting processing
- We have identified any process that could start earlier, run in parallel, or be eliminated

Risks

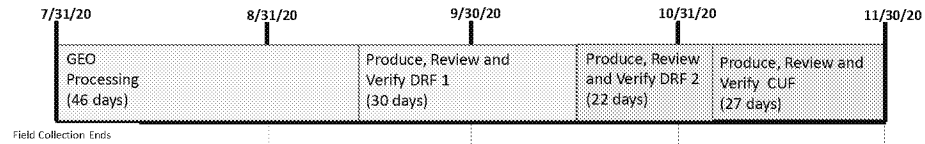
- This plan is contingent on field operations ending 9/30/2020, and depends on a reasonably smooth sequence of processing events
- The increased speed and reduced review time required in this plan and potential errors present risk to data accuracy
- If processing risks are realized, they will require decisions that weigh data accuracy and U.S. Census Bureau reputation against schedule delays

Bottom Line

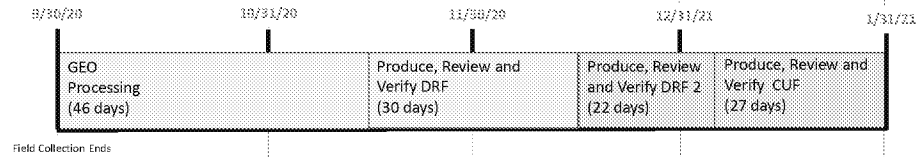
- By closely managing both the process and the risks, our intention continues to be to deliver an accurate, defensible 2020 Census count in compliance with statutory deadlines and the Presidential Memorandum

Re-Planning for 2020 Census Post Processing

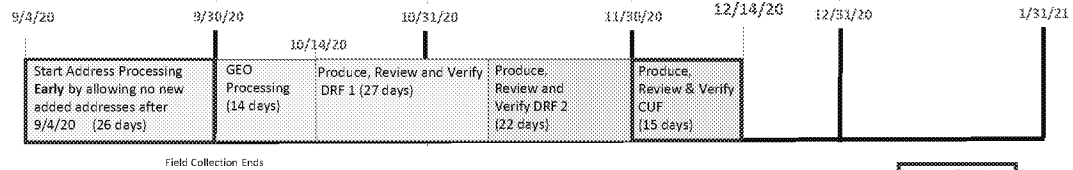
Original Plan (Before COVID 19)



Original Schedule with 9/30 as the end of Field Data Collection (notional)



Current Plan



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Most significant Plan changes

Geographic Processing Plan

Confidence that decades of work by the Census Bureau and our Partners have produced the most accurate and complete geographic foundation underpins this plan. Nearly 152 million addresses were included in the 2020 Census enumeration universe. Building the foundation requires human capital, computing power, and adequate time.

We have streamlined, rescheduled, and eliminated processing activities to meet the 12/14/2020 CUF delivery deadline

- No new addresses accepted from data collection operations after 9/4/2020
 - Any new addresses identified between then and 9/30/2020, the last day of data collection operations, and the population associated with those addresses **will not be included in the 2020 Census**
- We have significantly reduced the period of time to update the MAF with new addresses (102 to 29 days)
 - Due to the operational schedule changes, MAF updating for the majority of operations has converged in September (e.g., Remote Alaska, Update Enumerate, NRFU, Non-ID)
- The benchmarking process is shortened from 33 to 20 days, eliminating 13 days worth of processing activities that will be cut now and deferred until the creation of the redistricting data products
- We have cancelled the internal independent review of the final list of addresses that will be used to tabulate 2020 Census data (MAF Extract)
- We are eliminating quality control steps that traditionally resulted in a nationwide delivery of all files at once. Instead states will now be delivered on a flow basis.

Optimized Systems and Staff Resources

• Improved Decennial Response Processing System (DRPS) Performance in Preparation for 2020 Census Processing

Upgraded Oracle Real Application Clusters (RAC) to Oracle Exadata environment. Exadata is a high-performing pre-configured combination of hardware and software that provides infrastructure for Oracle databases.

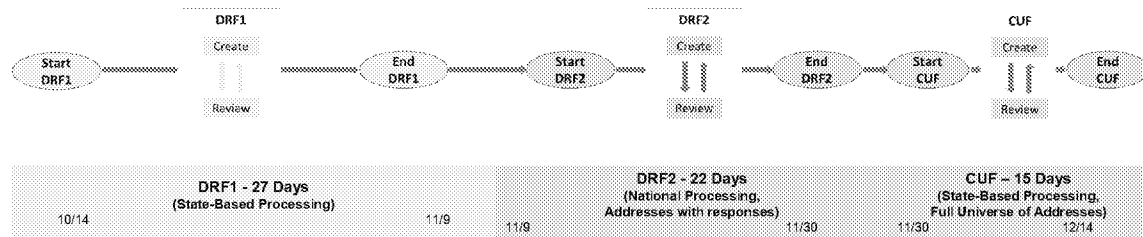
- Infrastructure Platform Optimized for Oracle Databases
- Actively optimizing DRPS processing through monitoring large test executions and consultation with Oracle
- Adjusted code base to address bottlenecks

• Optimized role assignments to ensure maximum staff resource usage during this shortened production period

	DRF1 (Decennial Response File 1)	DRF2 (Decennial Response File 2)	CUF (Census Unedited File)
Pre-Covid	Sept 15 – Oct 14, 2020	Oct 14 – Nov 4, 2020	Nov 4 – 30, 2020
Original Schedule with 9/30 as the end of Field Data Collection (notional)	Nov 15 – Dec 14, 2020	Dec 14, 2020 – Jan 4, 2021	Jan 4 - Jan 31, 2021
Current Plan	Oct 14 – Nov 9, 2020	Nov 9 – Nov 30, 2020	Nov 30 – Dec 14, 2020
Schedule Savings from Pre-Covid	3 Days	0 Days	12 Days

Decennial Response Processing and Review

Once geographic processing is complete, we have the frame that will serve as the collection geography for 2020 Census response processing. The process to deliver the Census Unedited File is heavily interactive with multiple concurrent cycles of data creation and review.



Decennial Response File 1 (DRF1) Plan

Produce the Decennial Response File 1 (DRF1) – 27 days

- Integrate final collection geography data with the response data for state-based processing
- Standardize data collection modes data (phone, internet, paper and Non Response Follow Up), incorporating high-quality administrative records data as the response data for housing units that do not have an enumeration.
- Classify living quarters as Housing Units or Group Quarters
- Identify unique persons within an individual response
- Incorporate results from NRFU re-interview and electronic records from group quarters
- Standardize demographic data for person matching
- Remove responses from collection universe depending on residence criteria
- Perform baby delete criteria – flags person records for deletion for babies confirmed to be born after 4/1
- Assign IDs to non-ID cases
- Collate multiple sheet large HU paper responses

UHE College student example

DRF1 & 2 deal with addresses we have responses for, CUF deals with the whole universe, including addresses without responses.

Decennial Response File 2 (DRF2) and Census Unedited File (CUF) Plan

Produce Decennial Response File 2 (DRF2) – 22 days

- Remove responses that meet criteria for being born after Census Day
- Execute Primary Selection Algorithm (PSA) - This resolves situations where we have more than one response for a single address and two or more responses (possibly in different states) for the same household
- Review and verify PSA results
- Process DRF2 at the national level

Produce the Census Unedited File (CUF) – 15 days

- Determine the status for every housing unit as occupied, vacant or non-existent
- Identify the universe of data to include in the Census from the Sample Delivery File (SDF) and DRF2 and apply the Count Imputation (CI) operation to fill in the missing housing unit status and the missing household size
- Determine final population count for each address
- Review the population totals and their reasonableness
- Review and verify the data processing steps and products

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UHE College student example

DRF1 & 2 deal with addresses we have responses for, CUF deals with the whole universe, including addresses without responses.

Early and Ongoing Review to Enhance and Accelerate Final Data Review

New Subject Matter Expert (SME) Review Improvements

- Implemented increased analysis of real time response data to look for trends in data collection and shifting demographics. This helps to offset downstream review and processing risks
- Review of the DRF1 will occur to identify potential issues earlier; in 2010, SME review started with the DRF2
- The focus of the DRF1-CUF review will be on total population counts for apportionment; a separate team of analysts will be compiled to support the additional review of population totals
- An automated issue tracking system and a streamlined communication plan will allow for quicker decision making about identified issues and provide additional information to senior leadership

Other SME Review Methods to Accelerate Data Review

- Use of SME-developed and tested SAS review programs to automate data collection and data processing review
- The most in-depth demographic reasonableness review will be conducted on the first five to ten states produced by DRPS, with later states undergoing more cursory review checks
- Creation of the DRF1 and CUF will operate concurrently with SME Reviews

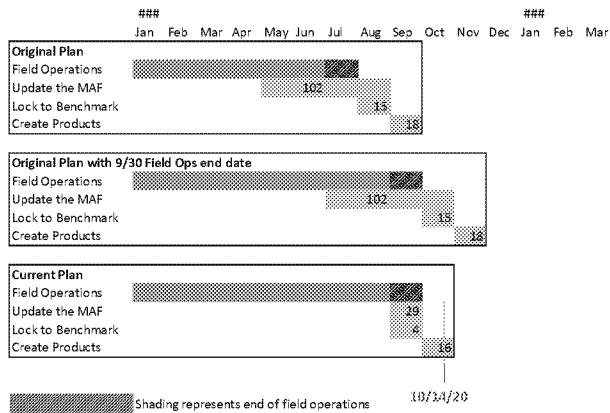
Appendix

Background on Risks

- If we do not complete all field data collection by 9/30/2020, this schedule may not be viable
- The schedule modifications in this plan have limited the ability to recover from a late start, processing delays, or other critical issues
- The risk of delays in processing is real, based on previous Census experience
 - As with every past Census, data anomalies will be detected during processing or review
 - Fixes may require individual states or all states to be re-processed.
 - State, multi-state, and national re-processing has been required in all recent censuses
 - We will not know the full extent of anomalies until we process the entire universe.
- Again, by closely managing both the process and the risks, our intention continues to be to produce an accurate, defensible 2020 Census count in compliance with statutory deadlines and the Presidential Memorandum

Additional Detail on GEO Processing

GEO Processing to meet 12/14/2020 CUF Delivery



Detailed Processing Steps

Activity ID	Activity Name	Calendar	DD	Start	Finish	Var-Start	Var-Finish
20SR-12170	Conduct Internet Self-Response (ISR) Data Collection	5, 7 Day Federal Holiday thru 2023	230d	17-Mar-20	31-Oct-20	0d	0d
20RD-11020	Conduct Non-ID Clinical Process Operation	5, 7 Day Federal Holiday thru 2023	230d	12-Mar-20	31-Oct-20	0d	0d
20SQ-10500	Conduct Self-Response Quality Assurance	5, 7 Day Federal Holiday thru 2023	250d	12-Mar-20	31-Oct-20	0d	0d
20QA-10930	Conduct Census Questionnaire Assistance (CQA) Inbound Operation	4, 7 Day No Holidays thru 2023	234d	12-Mar-20	31-Oct-20	0d	0d
20QA-10940	Conduct Census Questionnaire Assistance (CQA) Outbound Operation	4, 7 Day No Holidays thru 2023	193d	22-Apr-20	31-Oct-20	0d	0d
20CO-12520	Monitor CQA Outbound Call Telephone Operation	5, 7 Day Federal Holiday thru 2023	187d	24-Apr-20	31-Oct-20	0d	0d
20NRD-31520	Conduct NRRU Reminder/View Field Data Collection	5, 7 Day Federal Holiday thru 2023	79d	12-Aug-20	31-Oct-20	0d	0d
20RPC-11080	Conduct 2020 Reminder Phase	4, 7 Day No Holidays thru 2023	79d	14-Aug-20	31-Oct-20	0d	0d
20MTS-22260	Create MAF/TIGER Benchmark for Final Collection Producers and Services	5, 7 Day Federal Holiday thru 2023	22d	13-Nov-20*	5-Dec-20	0d	1d
20MTS-20400	Create MAF Extract for Final Collection - MAF/TIGER	5, 7 Day Federal Holiday thru 2023	9d	6-Dec-20	14-Dec-20	1d	1d
20MTS-20430	QC MAF Extract for Final Collection - MAF/TIGER	5, 7 Day Federal Holiday thru 2023	9d	7-Dec-20	15-Dec-20	1d	1d
20MTS-20330	Deliver MAF Extract & Header File to DTED/CARDS for Final Collection - MAF/TIGER	5, 7 Day Federal Holiday thru 2023	2d	16-Dec-20	17-Dec-20	1d	3d
20CAR-50950	DTED/CARDS Receive MAF Extract from MAF/TIGER for Final SDF (col)	1, 5 Day Federal Holiday thru 2023	0d	18-Dec-20		1d	1d
20CAR-50980	CARDS Ingests MAF Extract from MAF/TIGER for Final SDF (col)	4, 7 Day No Holidays thru 2023	2d	18-Dec-20	19-Dec-20	3d	3d
20CAR-51060	CARDS Creates and Review Final SDF (col)	4, 7 Day No Holidays thru 2023	4d	20-Dec-20	23-Dec-20	3d	6d
20CAR-51100	CARDS Delivers Final SDF (col) to DRPS	4, 7 Day No Holidays thru 2023	0d		23-Dec-20	6d	6d
20DRP-50590	DRPS Receives and Ingests Final Collection SDF from CARDS	4, 7 Day No Holidays thru 2023	3d	24-Dec-20	26-Dec-20	6d	9d
20DRP-50580	Create Initial Decennial Response File (PCDU/DRF1) - DRPS	1, 5 Day Federal Holiday thru 2023	12d	28-Dec-20	13-Jan-21	5d	5d
20DRP-11590	Deliver Initial Decennial Response File (PCDU/DRF1) to RPO/DSSD - DRPS	1, 5 Day Federal Holiday thru 2023	13d	30-Dec-20	19-Jan-21	5d	5d
20DRP-11600	Receive Approval of Decennial Response File (PCDU/DRF1) from RPO/DSSD - DRPS	1, 5 Day Federal Holiday thru 2023	1d	19-Jan-21	19-Jan-21	5d	5d
20DRP-50750	Create Initial Decennial Response File (PSA/DRF2) - DRPS	1, 5 Day Federal Holiday thru 2023	6d	19-Jan-21	26-Jan-21	5d	5d
20DRP-18430	Deliver Initial Decennial Response File (PSA/DRF2) to RPO/DSSD - DRPS	1, 5 Day Federal Holiday thru 2023	1d	26-Jan-21	26-Jan-21	5d	5d
20RPO-11250	Receive Primary Selection Algorithm File (PSA) (Final PSA/DRF2) from DRPS	1, 5 Day Federal Holiday thru 2023	1d	26-Jan-21	26-Jan-21	5d	5d
20RPO-11260	Perform SME Review of Primary Selection Algorithm File (Final PSA/DRF2)	1, 5 Day Federal Holiday thru 2023	11d	26-Jan-21	9-Feb-21	5d	5d
20DRP-18460	Receive Approval of Decennial Response File (PSA/DRF2) from RPO/DSSD - DRPS	1, 5 Day Federal Holiday thru 2023	1d	9-Feb-21	9-Feb-21	5d	5d
20DRP-50610	Create Initial Census Unedited File (CUF) - DRPS	1, 5 Day Federal Holiday thru 2023	17d	9-Feb-21	4-Mar-21	5d	5d
20RPO-11270	Provide Results and Approval of Primary Selection Algorithm File (Final PSA/DRF2) to DRPS	1, 5 Day Federal Holiday thru 2023	0d		9-Feb-21	5d	5d
20DRP-18480	Deliver Final Census Unedited File (CUF) to RPO/POP - DRPS	1, 5 Day Federal Holiday thru 2023	15d	11-Feb-21	4-Mar-21	5d	5d
20DRP-18470	Receive Approval of Census Unedited File (CUF) from RPO/POP - DRPS	1, 5 Day Federal Holiday thru 2023	1d	4-Mar-21	4-Mar-21	5d	5d
20DRP-18490	Deliver Final Census Unedited File (CUF) to POP / CDL - DRPS	1, 5 Day Federal Holiday thru 2023	0d		4-Mar-21	5d	5d
20DPD-10730	POP Receives Final CUF from CDL/DRPS	1, 5 Day Federal Holiday thru 2023	0d	5-Mar-21		5d	5d
20PMD-10390	Executive Review and Approval CUF	4, 7 Day No Holidays thru 2023	30d	5-Mar-21	3-Apr-21	7d	2d
20DPD-10740	POP Creates/Verifies Apportionment Tables	1, 5 Day Federal Holiday thru 2023	16d	5-Apr-21	26-Apr-21	1d	0d
20DPD-10750	POP Delivers Final Apportionment Tables to BOC DIR and CQAS	1, 5 Day Federal Holiday thru 2023	0d		26-Apr-21	0d	0d
20DPD-10760	BOC DIR/CQAS Assembles Final Apportionment Transmittal Package	1, 5 Day Federal Holiday thru 2023	4d	27-Apr-21	30-Apr-21	0d	0d
20DPD-10770	BOC DIR Delivers Final Apportionment Transmittal Package to DOC	1, 5 Day Federal Holiday thru 2023	0d		30-Apr-21	0d	0d
20DPD-10850	DOC Delivers Apportionment Counts to President (U.S.C. Article 1, Section 2)	1, 5 Day Federal Holiday thru 2023	0d		30-Apr-21	0d	0d

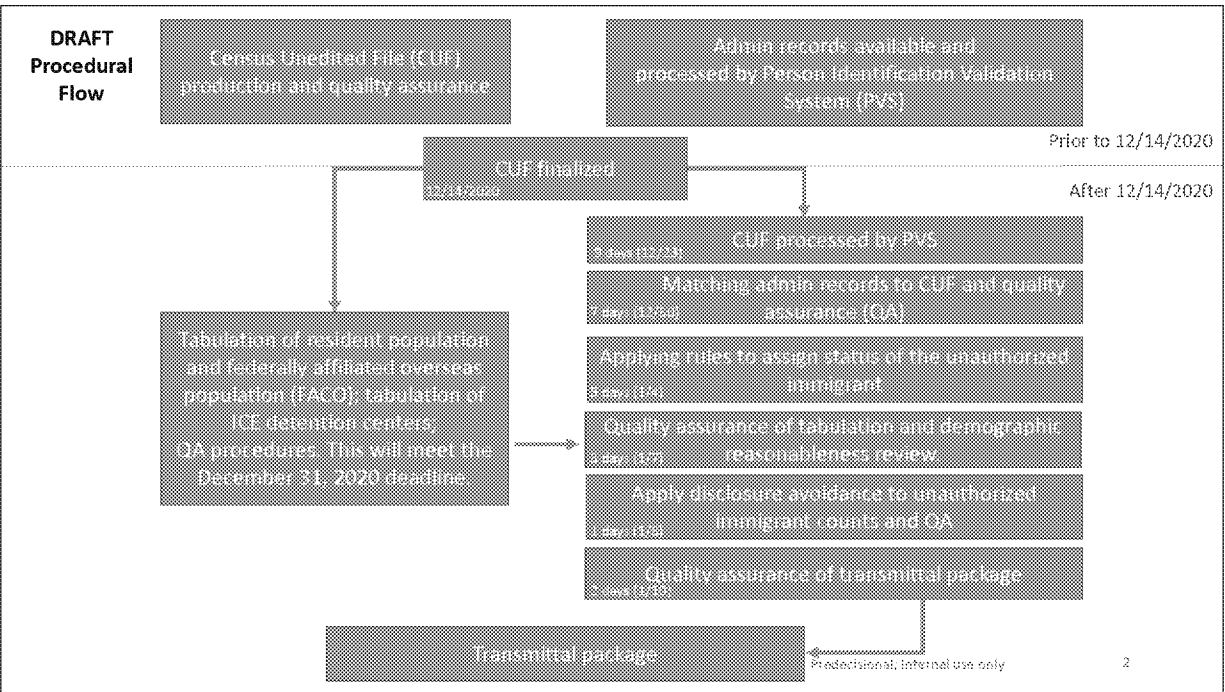
DRAFT

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 24, 2020

Presidentially internal use only

3



From: McDermott, Ryan (Federal) [RMcDermott1@doc.gov]
Sent: 8/17/2020 1:00:12 PM
CC: Williams, Allaire (Federal) [AWilliams2@doc.gov]; Pepper, Samuel (Federal) [SPepper@doc.gov]; Stevens, Rose (Federal) [RStevens@doc.gov]; ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 08-17-2020 Briefing Book
Attachments: 8.17.20 Briefing Book.pdf; 3) 20200817_Overview_of_procedures for PM final.pptx

UPDATE:

Call-In – Small Group Decennial Meeting

From: McDermott, Ryan (Federal)
Sent: Monday, August 17, 2020 12:29 PM
Cc: Williams, Allaire (Federal) <AWilliams2@doc.gov>; Pepper, Samuel (Federal) <SPepper@doc.gov>; Stevens, Rose (Federal) <RStevens@doc.gov>; ExecSecBriefingBook <[b(6)]@doc.gov>
Subject: RE: 08-17-2020 Briefing Book

UPDATE:

Call-In – Small Group Decennial Meeting

From: McDermott, Ryan (Federal)
Sent: Monday, August 17, 2020 11:52 AM
Cc: Williams, Allaire (Federal) <AWilliams2@doc.gov>; Pepper, Samuel (Federal) <SPepper@doc.gov>; Stevens, Rose (Federal) <RStevens@doc.gov>; ExecSecBriefingBook <[b(6)]@doc.gov>
Subject: RE: 08-17-2020 Briefing Book

UPDATE:

Call-In – Senior Decennial Management Committee Meeting

From: McDermott, Ryan (Federal)
Sent: Sunday, August 16, 2020 10:07 PM
Cc: Williams, Allaire (Federal) <AWilliams2@doc.gov>; Pepper, Samuel (Federal) <SPepper@doc.gov>; Stevens, Rose (Federal) <RStevens@doc.gov>; ExecSecBriefingBook <[b(6)]@doc.gov>
Subject: 08-17-2020 Briefing Book

- 1) THE SCHEDULE OF SECRETARY WILBUR ROSS
- 2) Call with Mayor Stan Booker, Lawton, OK
- 3) Call-In – Senior Decennial Management Committee Meeting **FORTHCOMING**
- 4) Call-In – Small Group Decennial Meeting **FORTHCOMING**
- 5) Call with Governor Doug Ducey, Arizona

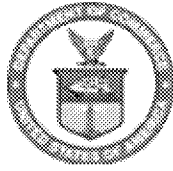
Ryan McDermott

[b(6)]

Briefing Book
Secretary
Wilbur L. Ross



For August 17, 2020



THE SCHEDULE OF SECRETARY WILBUR ROSS

As Prepared for August 17, 2020

7:00am-7:05am	Depart en route Mornings with Maria Drive Time: 5 minutes
7:30am-7:45am	Interview – Mornings with Maria <div style="border: 1px dashed black; padding: 5px; text-align: center;">b(6)</div>
11:00am-11:10am	Call with Mayor Stan Booker, Lawton, OK Conference Line – Non-Secure
1:00pm-1:45pm	Call-In – Senior Decennial Management Committee Meeting Conference Line – Non-Secure
2:00pm-3:30pm	Call-In – Small Group Decennial Meeting Conference Line – Non-Secure
5:00pm-5:15pm	Call with Governor Doug Ducey, Arizona Conference Line – Non-Secure

August 4, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

FROM: Tim Olson, Associate Director of Field Operations, U.S. Census Bureau
b(6)

RE: Call with Mayor Stan Booker, Lawton, OK
on Monday, August 17, 2020, from 11 AM to 11:10 AM

You will make phone calls to mayors of cities with populations of 80,000 or greater and with the lowest response rates for the 2020 Census as of June 30.

These calls are an opportunity to encourage mayors to complement Census Bureau efforts to promote response, which is important to get a complete and accurate count and reduce the workload for census takers conducting in-person follow-up.

As of this late date, there is not enough time to effectively participate in roundtable discussion, as was done following the last round of calls with mayors that were conducted throughout much of May. As an alternative, we can share specific action items and immediately connect them with partnership staff on the ground to coordinate their participation in the promotional surge.

Talking Points

- Mr./Ms. Mayor, thank you for taking my call. I hope you are doing well during this difficult time with the coronavirus and the recent social unrest facing our Nation.
- The purpose of my call is about the 2020 Census. I want to thank you for what you have done so far to promote response in your city.
- Today the national response rate is 61.8% [*will have update for each day*], which is higher than our 60.5% projection. Each percent response represents millions of households, and we are incredibly pleased at the Nation's response to the census thus far.
- However, in your city, the response rate today is xx.x%, which as you know, is lower than most of the Nation.
- We want to work together with you to increase your city's response.
- Given the current environment of the coronavirus, we want to maximize self-response so that we will not have as many households who may not want to open their doors and cooperate with one of our 500,000 census takers.
- Therefore, we are making a big push through advertising, social media, and partnership efforts in the lowest responding areas to increase the response before door knocking begins.
- Your city is included in this final push, which began in mid-July.
- I would like to ask for your help as we continue this final campaign.
- Joining me on this call is Tim Olson from the Census Bureau. Tim is the Census Bureau's Associate Director for Field Operations, and he has some ideas he's heard from other cities that he would like to share with you.

Tim would provide details on these following suggestions on how the mayor and city leaders can work with local partnership staff to promote response:

1. Distribute neighborhood/city specific response flyers in low responding neighborhoods through the use of city volunteers and census staff;
2. Host a community parade in the lowest responding tracts;
3. Rally community partners to actively engage during this final push with response messaging and volunteer support;
4. Bring religious leaders together virtually and urge them to make one final push to their congregants to participate in the census; and
5. Ask the mayor to personally urge her/his residents to respond before door knocking begins using press conferences, social media, and other avenues in local press.

Status Reporting: Nonresponse Followup for the 2020 Decennial Census

Periodic Reporting: August 17, 2020

Periodic Performance Management Reports

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2020 Census: Nonresponse Followup Progress and Cost	5
2020 Census: Nonresponse Followup Enumerator Staffing	6
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Periodic Performance Management Reports

2020 Census: Nonresponse Followup At A Glance – August 17, 2020

General

Self-Response Rate: 63.8%

Offices Operational as of 08/09/20: 248

Timing

- **Days in Operation:** 53
- **Days Elapsed:** 8
- **Days Remaining:** 45

18 ACOs are over 50% complete with NRFU.

Progress

Current Workload: : 61,335,507

Completed Cases: 14,851,615 (24.2%)

Planned Completed Cases: 10,341,647 (16.86%)

Remaining Workload: 46,483,892

Enumerator Productivity

- **Hours per week for last week for Cycle 1a:** 19.0
- **Hours per week for last week for Cycle 1b:** 16.3
- **Hours per week for last week for Cycle 2:** 16.3
- **Average Cases Completed Per Hour:** 2.59
- **Planned Cases Completed Per Hour:** 1.55

Staffing

- **Selections:** 968,280
- **Invited to Training:** 452,740
- **Completed Training:** 263,356
- **Currently in Training:** 78,041
- **Active:** 200,269
- **Expected Replacement Training:** 70,559

Calculated Staff Needs (updated weekly)

- Remaining workload: 46,483,892 cases
- Remaining weeks: 6
- Average cases per week: 7,747,315
- Average cases per hour: 1.55
- Needed hours per week: 4,998,268
- Average enumerator hours per week: 19
- Required average enumerators 263,067 To complete by 9/30
- Required average enumerators 203,877 (assuming 2 cases/hour)

Contingency Budget

- **Contingency Available (as of 3/14/20):** \$2,030 M
- **Expected Contingency Uses for COVID-19:** \$1,106 M
- **Contingency Approvals (through 7/31):** \$934 M
- **Remaining Contingency: (through 7/31):** \$924 M
- **Uncommitted Remaining Contingency:** \$187 M

	Planned	Actual
Overtime	\$100M	\$0.2M
Enumerator Awards	\$300M	--
Other	\$302M	\$11.5M
Total	\$702M	\$12M

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

July 16, 2020

Completion Date:

September 30, 2020

Notes:

Current workload
reflects all case types.

Cases Completed by Telephone:

Pending

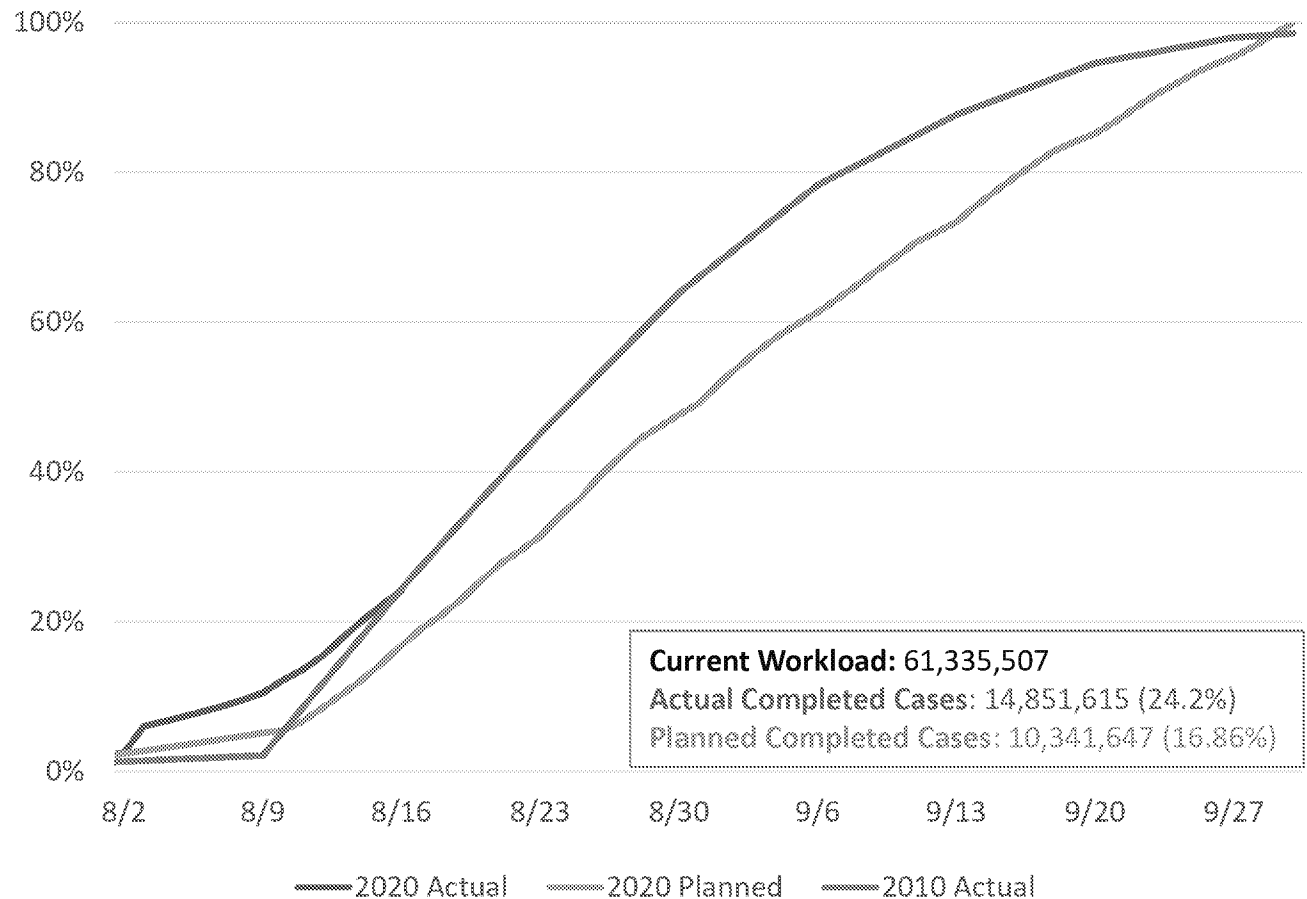
Cases Completed by Self-Response:

3,522,026 (23.7% of completed cases)

Remaining Workload:

46,483,892 cases

Case Progress for Field Enumeration



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress and Cost

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

July 16, 2020

Completion Date:

September 30, 2020

Notes:

Current workload reflects all case types. Costs include training and production costs for NRFU Enumerators and CFS.

Cases Completed by Telephone:

Pending

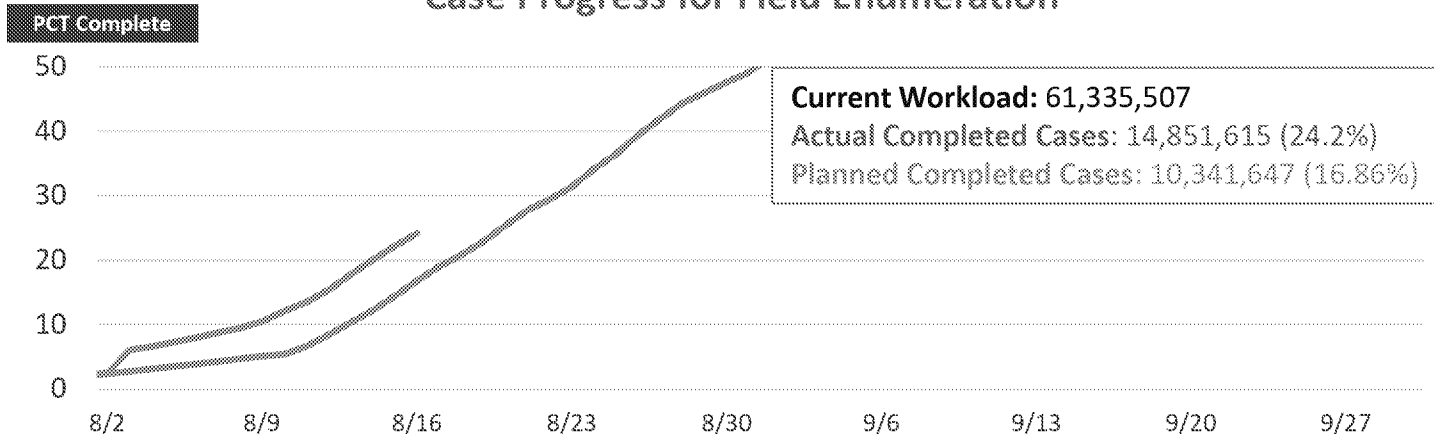
Cases Completed by Self-Response:

3,522,026 (23.7% of completed cases)

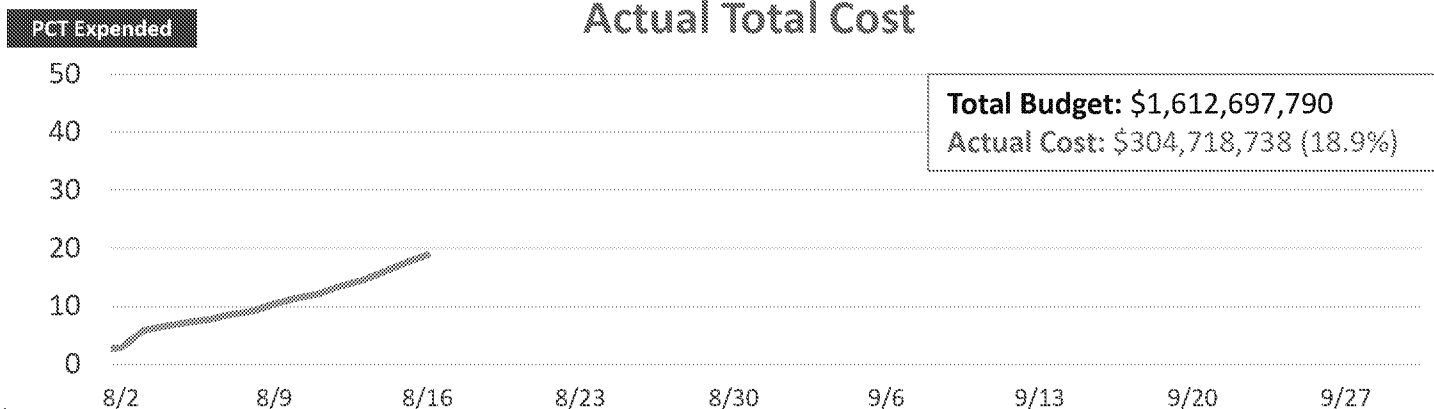
Remaining Workload:

46,483,892 cases

Case Progress for Field Enumeration



Actual Total Cost



Data as of 11:59 pm of the previous day

Source: MOJO Hermes

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Staffing

Status:

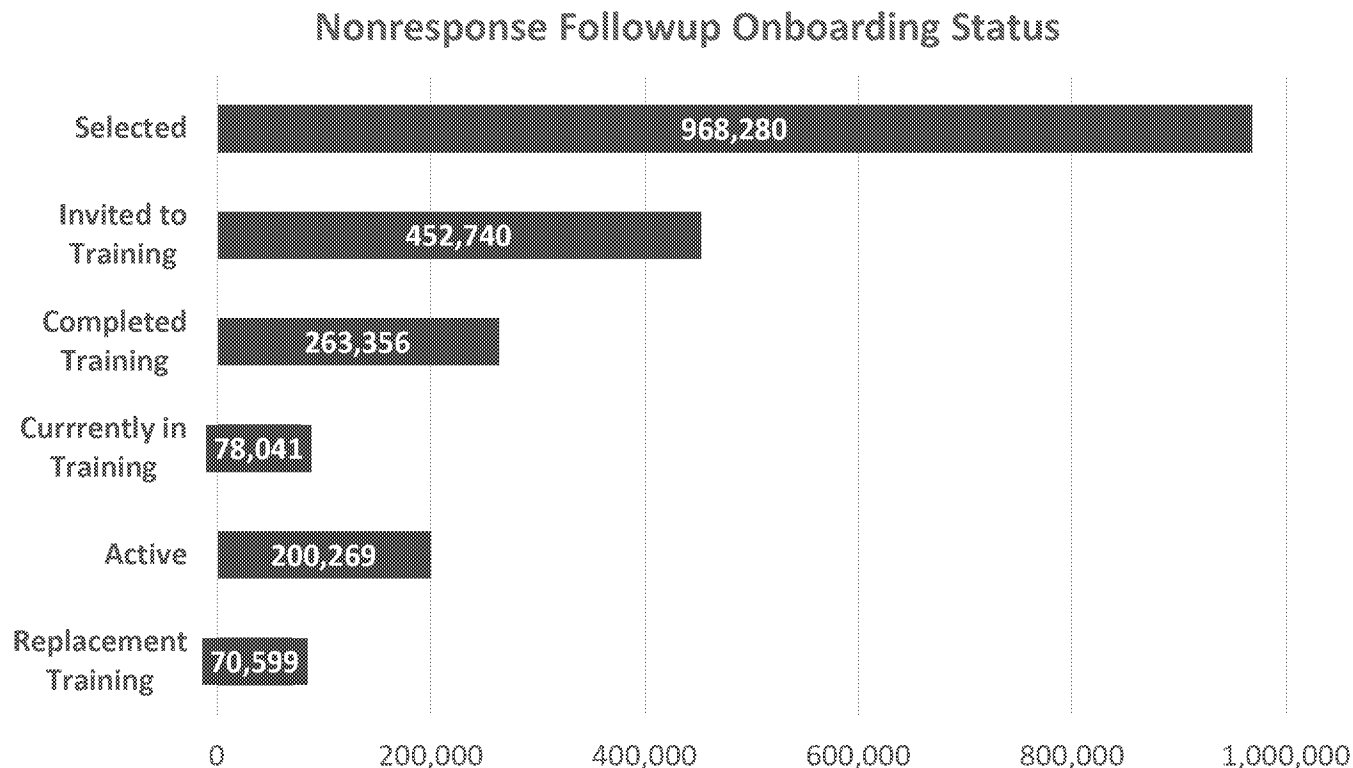
● On Track

Data current as of:
August 17, 2020

Completion Date:
September 30, 2020

Notes:

- Enumerator Training No Show Rate: 33%
- Over the weekend of August 15, the Enumerator Training No Show Rate dropped to 23%.



Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Productivity Curve

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

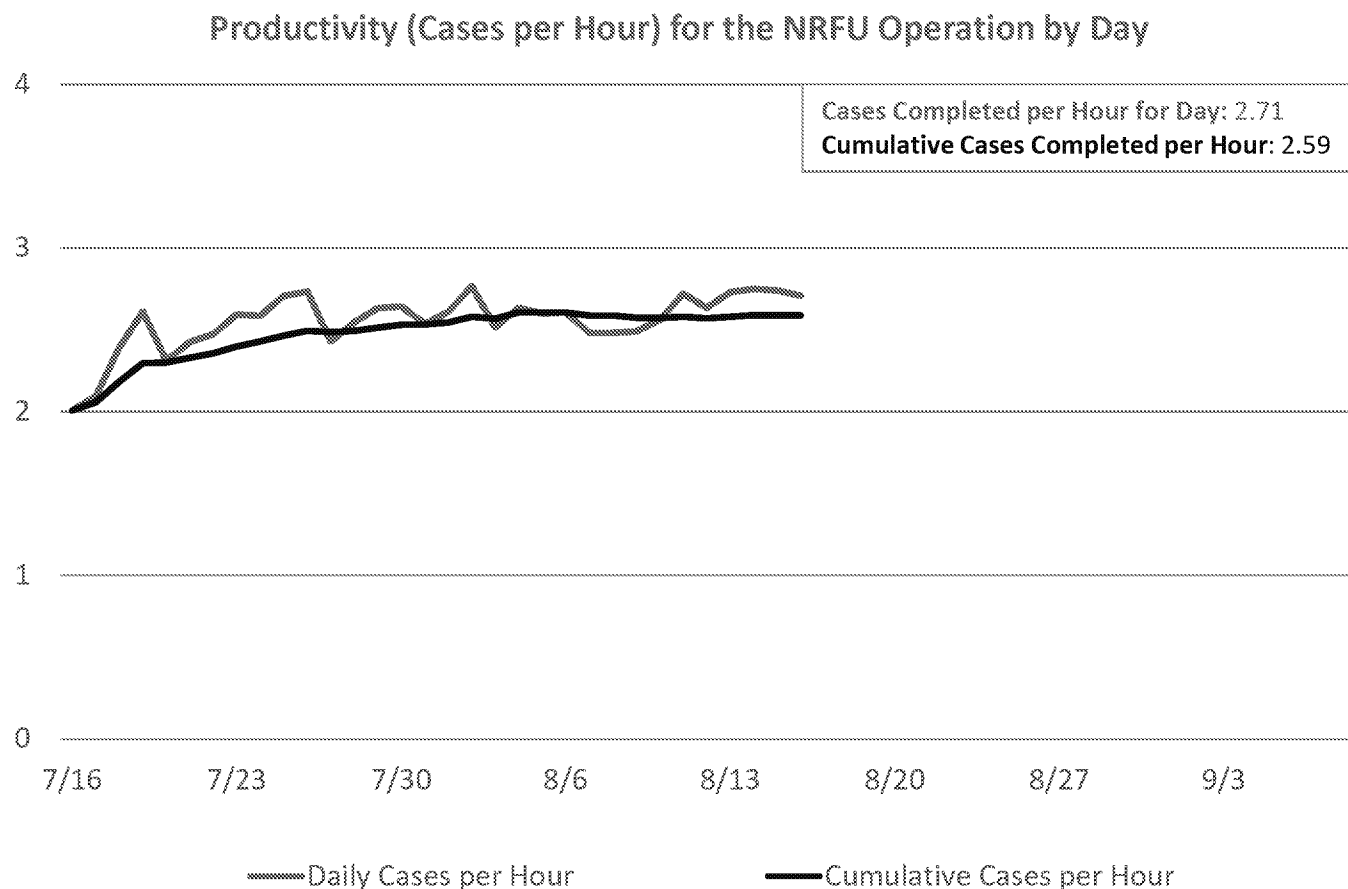
July 16, 2020

Completion Date:

September 30, 2020

Notes:

Cases per hour include cases that were resolved by enumeration, administrative records, or self-response.



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Completion Status by State

Source: Census Data Lake, Unified Tracking System

Data Current as of: August 17, 2020

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Prior Week	% HUs Enumerated Current Week	Weekly Change
U.S. Total	63.8%	5.9%	--	69.7%	--
Alabama	61.2%	2.4%	--	63.6%	--
Alaska	51.1%	15.3%	--	66.4%	--
Arizona	60.4%	2.0%	--	62.4%	--
Arkansas	58.3%	6.4%	--	64.7%	--
California	65.5%	6.7%	--	72.2%	--
Colorado	67.2%	6.0%	--	73.1%	--
Connecticut	67.8%	10.2%	--	78.0%	--
Delaware	61.3%	5.0%	--	66.2%	--
District of Columbia	60.2%	5.9%	--	66.1%	--
Florida	60.6%	2.9%	--	63.5%	--
Georgia	59.3%	3.2%	--	62.6%	--
Hawaii	60.8%	14.2%	--	74.9%	--
Idaho	68.2%	20.6%	--	88.8%	--
Illinois	68.7%	9.5%	--	78.2%	--
Indiana	68.0%	9.1%	--	77.2%	--
Iowa	69.1%	0.5%	--	69.6%	--
Kansas	67.8%	12.5%	--	80.2%	--
Kentucky	66.3%	3.5%	--	69.8%	--
Louisiana	57.7%	7.7%	--	65.4%	--
Maine	56.1%	20.5%	--	76.7%	--
Maryland	68.2%	8.3%	--	76.5%	--
Massachusetts	66.1%	8.2%	--	74.2%	--
Michigan	69.2%	1.8%	--	71.0%	--
Minnesota	72.9%	4.0%	--	76.9%	--
Mississippi	58.3%	4.0%	--	62.3%	--

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Prior Week	% HUs Enumerated Current Week	Weekly Change
Missouri	63.8%	10.3%	--	74.1%	--
Montana	57.2%	4.4%	--	61.7%	--
Nebraska	69.4%	3.5%	--	72.9%	--
Nevada	62.8%	3.0%	--	65.8%	--
New Hampshire	63.6%	2.6%	--	66.2%	--
New Jersey	65.7%	3.8%	--	69.4%	--
New Mexico	54.1%	4.8%	--	58.9%	--
New York	59.6%	4.7%	--	64.2%	--
North Carolina	59.7%	2.8%	--	62.6%	--
North Dakota	63.1%	10.2%	--	73.3%	--
Ohio	68.0%	5.1%	--	73.1%	--
Oklahoma	58.4%	8.4%	--	66.8%	--
Oregon	66.4%	9.5%	--	76.0%	--
Pennsylvania	66.8%	7.1%	--	73.9%	--
Rhode Island	61.5%	4.8%	--	66.3%	--
South Carolina	57.8%	3.3%	--	61.1%	--
South Dakota	64.7%	3.2%	--	67.9%	--
Tennessee	63.1%	5.3%	--	68.4%	--
Texas	58.9%	5.3%	--	64.2%	--
Utah	68.0%	4.5%	--	72.5%	--
Vermont	57.4%	5.5%	--	62.8%	--
Virginia	68.5%	5.0%	--	73.5%	--
Washington	70.0%	10.9%	--	80.9%	--
West Virginia	55.2%	24.9%	--	80.1%	--
Wisconsin	70.2%	6.0%	--	76.2%	--
Wyoming	58.1%	5.3%	--	63.4%	--

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Budgetary Contingency Usage Status

Source: Decennial Budget Office

Data Current as of: August 14, 2020








Notional Contingency Waterfall for Estimated Revised NRFU		
(in millions of \$)		
	Plan (as of 7/31)	Actual to Date (8/14)
Contingency available on 3/14	\$2,030	\$2,030
<i>Risk Based Contingency</i>	<i>\$1,325</i>	<i>\$1,325</i>
<i>Secretarial Contingency</i>	<i>\$705</i>	<i>\$705</i>
Expected Contingency Uses for COVID-19	\$1,106	\$1,106
<i>Actual COVID related approvals</i>	<i>\$934</i>	<i>\$932</i>
<i>Remaining Potential COVID approvals</i>	<i>\$172</i>	<i>\$174</i>
Remaining Original Contingency	\$924	\$924
Additional contingency from estimated operational variance	\$70	\$70
Remaining Contingency before acceleration efforts	\$994	\$994
Potential Costs to Ensure Operational Continuity and Accelerate NRFU	\$702	\$12
<i>Additional Mailing and Advertising</i>	<i>\$50</i>	<i>\$11.5</i>
<i>Training of additional NRFU enumerators (previously approved)</i>	<i>\$64</i>	<i>--</i>
<i>Replacement training of 150k enumerators</i>	<i>\$165</i>	<i>--</i>
<i>Additional overtime for NRFU enumerators</i>	<i>\$100</i>	<i>\$0.2</i>
<i>Weekly enumerator award for exceeding 25 hrs/wk (Up to 5x)</i>	<i>\$150</i>	<i>--</i>
<i>Enumerator retention award for 3 weeks of acceptable work above 25 hrs/wk (Up to 2x)</i>	<i>\$150</i>	<i>--</i>
<i>CFS retention award for 3 weeks of acceptable work (Up to 2x)</i>	<i>\$23</i>	<i>--</i>
Allowance for up to 10% increase in production hours due to unknown factors	\$106	--
Remaining Contingency for Unknowns	\$187	--

Notes

- Actuals to Date represent approved purchases and incurred compensation expenses.
- Bonuses will begin accruing around September 3 due to payroll validation requirements.

Appendix

Periodic Performance Management Reports

Status	Report Title	Summary	Slide Number
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	12
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	13
	2020 Census: Self-Response of Housing Units by State		14
	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	15
	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 1,035. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 392,000. We have exceeded the 2010 Census numbers for both national and community partners.	16
	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts.	17
	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	18

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

March 12, 2020

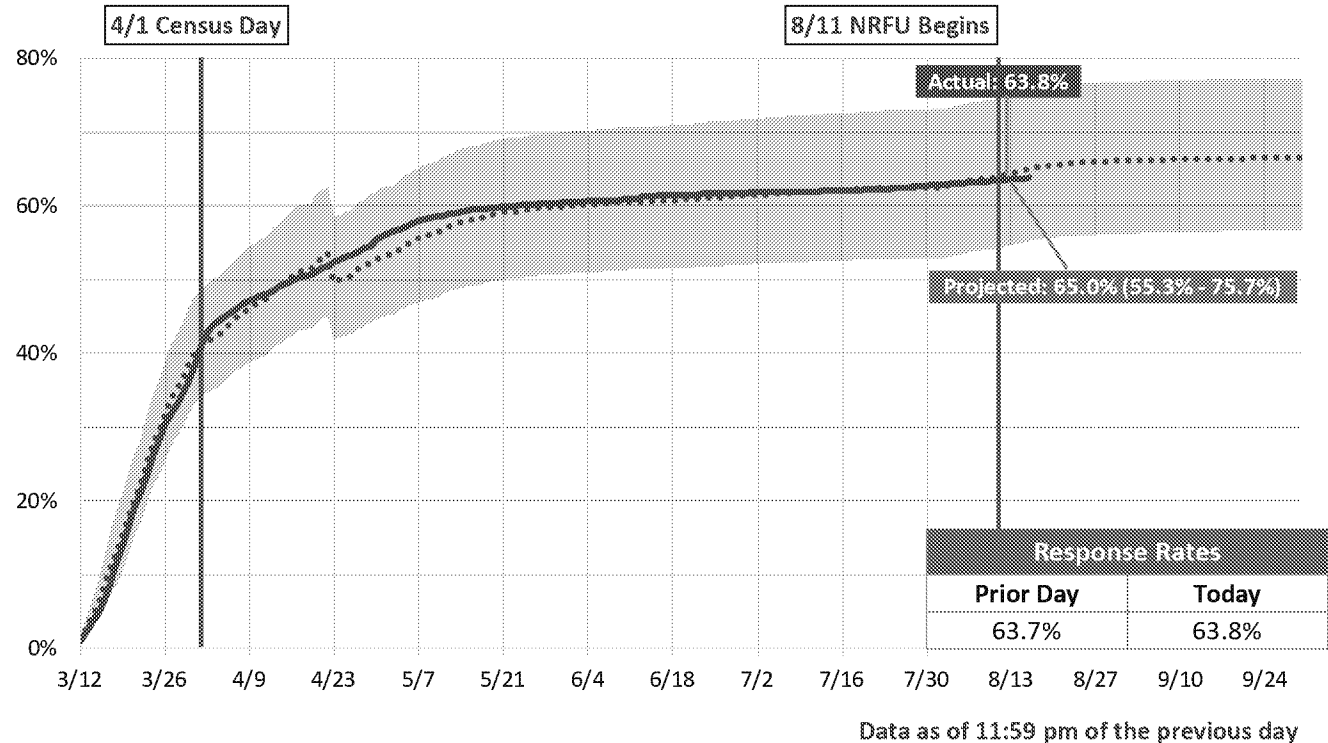
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



Legend

Actual Self-Response Rate	—————
Projected Self-Response Rate	*****
Lower & Upper Bound	—————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status:

○ Management Focus

Data current as of:

August 17, 2020

Start Date:

March 12, 2020

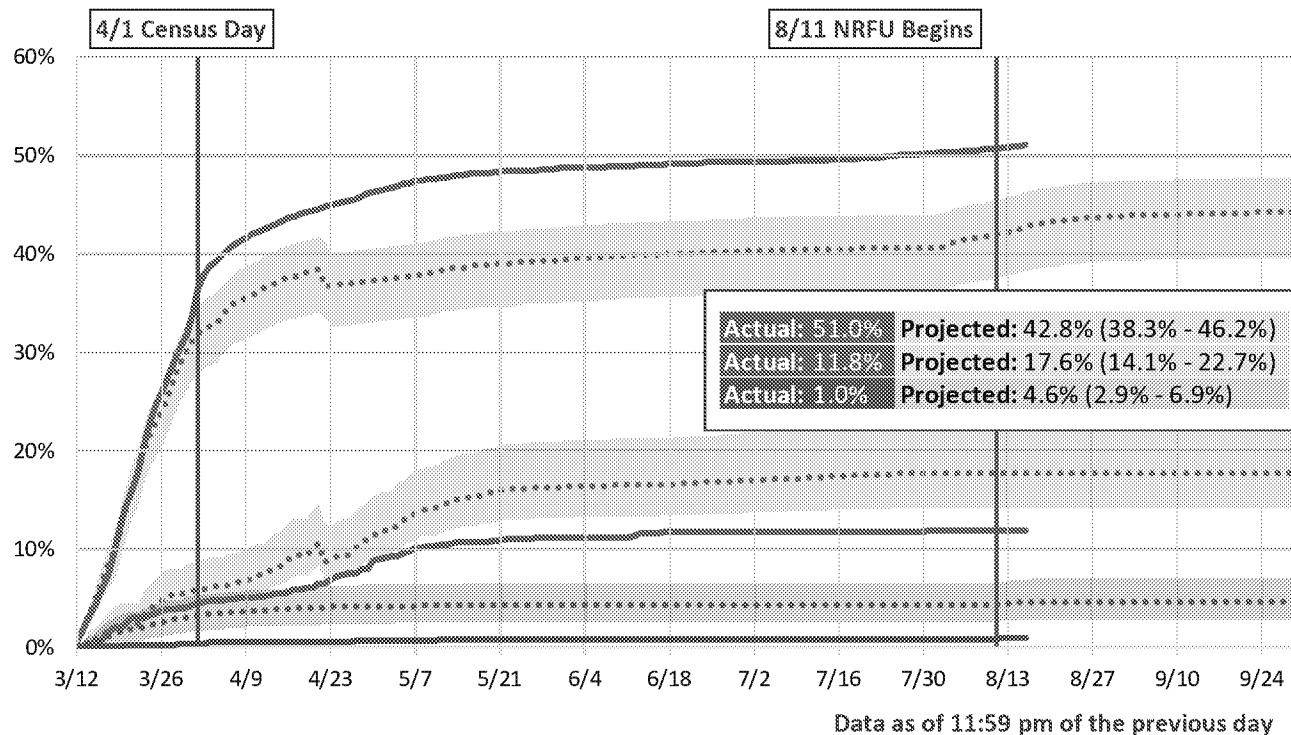
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	—————	—————	—————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound	—————	—————	—————

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division

Data Current as of: August 17, 2020

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
U.S. Total	63.8%	63.3%	63.5%
Minnesota	72.9%	72.5%	71.6%
Wisconsin	70.2%	69.7%	71.2%
Washington	70.0%	69.1%	63.7%
Nebraska	69.4%	69.0%	68.8%
Michigan	69.2%	68.9%	65.4%
Iowa	69.1%	68.9%	71.0%
Illinois	68.7%	68.2%	67.7%
Virginia	68.5%	68.0%	66.2%
Idaho	68.2%	67.8%	64.6%
Maryland	68.2%	67.5%	66.5%
Indiana	68.0%	67.5%	67.0%
Utah	68.0%	67.5%	65.4%
Ohio	68.0%	67.4%	66.2%
Kansas	67.8%	67.2%	67.4%
Connecticut	67.8%	67.1%	66.3%
Colorado	67.2%	66.6%	64.4%
Pennsylvania	66.8%	66.3%	67.8%
Oregon	66.4%	66.0%	63.9%
Kentucky	66.3%	65.7%	63.0%
Massachusetts	66.1%	65.4%	65.6%
New Jersey	65.7%	65.2%	64.4%
California	65.5%	64.6%	64.7%
South Dakota	64.7%	64.4%	65.0%
Missouri	63.8%	63.4%	65.3%
New Hampshire	63.6%	63.2%	61.5%
North Dakota	63.1%	62.7%	66.8%

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
Tennessee	63.1%	62.5%	63.8%
Nevada	62.8%	62.4%	58.7%
Rhode Island	61.5%	61.0%	62.8%
Delaware	61.3%	60.8%	60.8%
Alabama	61.2%	60.8%	59.5%
Hawaii	60.8%	60.2%	60.7%
Florida	60.6%	59.9%	59.6%
Arizona	60.4%	59.9%	58.5%
District of Columbia	60.2%	59.6%	62.2%
North Carolina	59.7%	59.3%	62.1%
New York	59.6%	59.0%	61.3%
Georgia	59.3%	59.0%	59.5%
Texas	58.9%	58.3%	60.3%
Oklahoma	58.4%	58.0%	58.9%
Arkansas	58.3%	57.9%	59.5%
Mississippi	58.3%	57.9%	58.1%
Wyoming	58.1%	57.6%	61.1%
South Carolina	57.8%	57.4%	62.2%
Louisiana	57.7%	57.3%	57.9%
Vermont	57.4%	56.9%	58.1%
Montana	57.2%	56.9%	62.3%
Maine	56.1%	55.5%	55.3%
West Virginia	55.2%	54.9%	56.8%
New Mexico	54.1%	53.5%	56.9%
Alaska	51.1%	49.9%	51.6%
Puerto Rico	30.2%	28.7%	51.2%

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:

● On Track

Data current as of:

August 15, 2020

Completion Date:

September 30, 2020

Notes:

- To date, 24,961 callers have requested the callback option. These callbacks have resulted in 9,931 completed interviews and 4,054 callers being provided assistance.

Total Inbound Call Volume % (PTD)

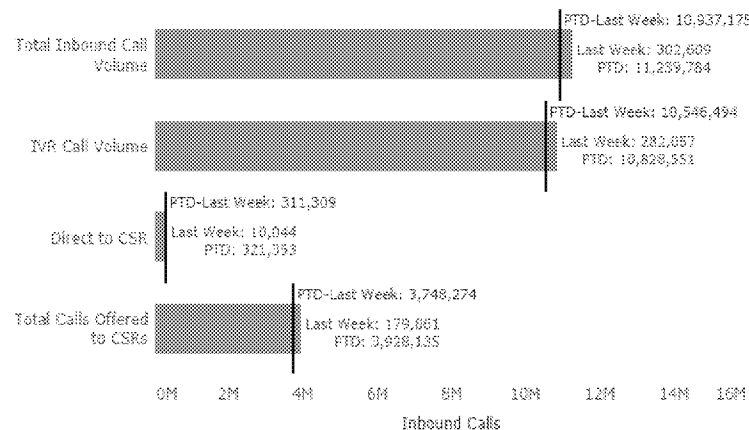


English	Spanish	TTY	Vietnamese	Chinese Mandarin	All Other
87.2%	11.0%	0.8%	0.2%	0.1%	0.7%

Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	10,456,486	11,239,784
Deflection Rate	47.0%	65.2%
Service Level - 30 Seconds	60.0%	66.5%
Average Handle Time	9:04	9:26

Inbound Call Volume



Calls Offered to CSRs by Language

	8/2 - 8/8	8/9 - 8/15	PTD	PTD %
English	87,513	164,287	3,472,237	88.4%
English Puerto Rico	178	240	2,989	0.1%
Spanish	6,813	8,950	298,813	7.6%
Spanish Puerto Rico	2,246	3,686	39,832	1.0%
Chinese Mandarin	233	400	11,271	0.3%
Chinese Cantonese	206	274	9,771	0.2%
Vietnamese	126	137	13,146	0.3%
Korean	145	285	12,961	0.3%
Russian	84	141	6,831	0.2%
Arabic	38	53	4,114	0.1%
Tagalog	28	31	2,672	0.1%
Polish	23	45	2,456	0.1%
French	22	14	1,190	0.0%
Haitian Creole	38	46	2,617	0.1%
Portuguese	39	38	1,840	0.0%
Japanese	20	40	2,290	0.1%
TTY	358	1,112	38,276	1.0%
Group Quarters	105	82	4,829	0.1%
Total	98,215	179,861	3,928,135	100.0%

Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:

● On Track

Data current as of:

August 13, 2020

Completion Date:

March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	382	71,162
Business	138	91,778
Chamber of Commerce/Trade or Professional Association	113	10,540
Education	103	83,528
Government	88	71,287
Faith-Based Organizations	65	40,159
Media	49	8,363
Healthcare	48	14,846
Technology	33	330
International Governmental/ Consulate/ Embassy	15	329
Grand Total	1,035	392,322

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	444	232,392
Black/African American	95	17,715
Young Children	90	5,832
Hispanic/Latino	83	25,668
Rural	80	13,834
Asian	79	10,097
Native Hawaiian Pacific Islander	48	665
Veterans	41	3,261
Young and Mobile	40	7,333
LGBTQ	24	1,277
Individuals with Disabilities	24	3,153
Elderly	24	8,772
Persons Experiencing Homelessness and Highly Mobile	22	5,426
American Indian/ Alaskan Native	19	3,528
MENA	15	79

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

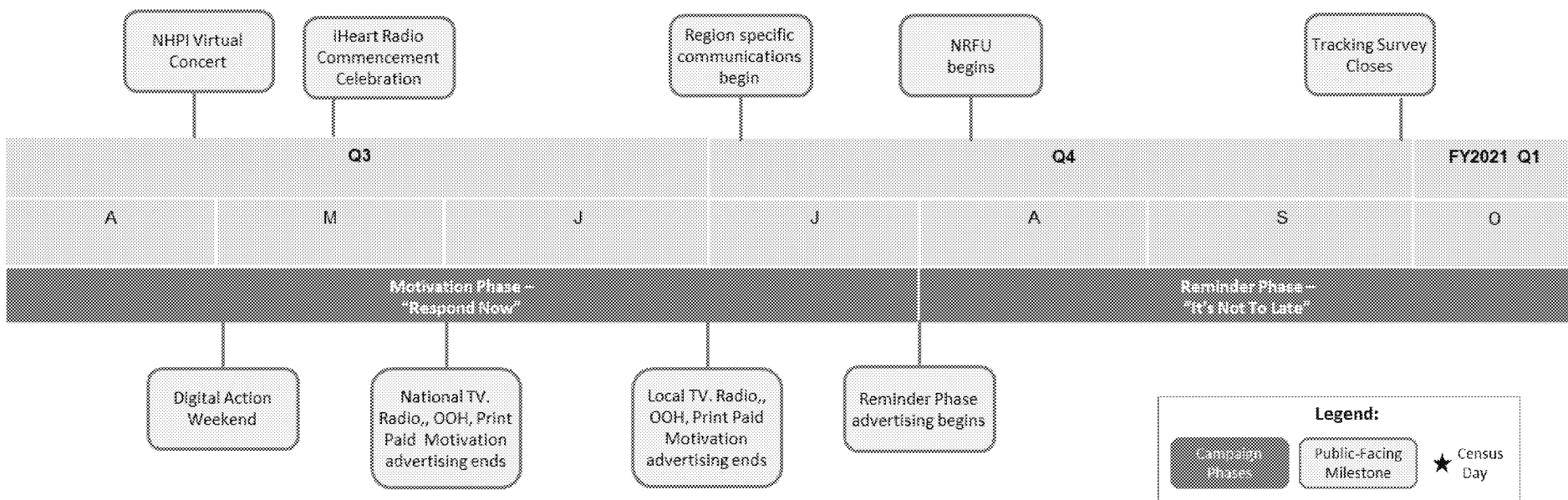
Completed Community Partnership Events: 433,048

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication

Data Current as of: August 13, 2020



Significant Accomplishments

- The reminder email campaign continues with the third installment. The first two installments resulted in a 11.5% digital engagement rate.
- The Wonderama House Party (At Home Concert Series) for New York City was held on 8/14.
- Statistics In Schools (SIS) is contacting SIS ambassadors for back to school outreach and plan on transitioning them to work with SIS staff this fall. They are also pursuing opportunities to present virtually at conferences for the American Indian Education Association and the National Council of Social Studies.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: July 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 7/31/2020

\$ Amounts in Millions	IT	Non-IT	Total
Total Planned through July	\$1,728	\$5,155	\$6,883
Available contingency and additional appropriations through July	\$248	\$1,432	\$1,680
Planned Programmatic through July	\$1,480	\$3,723	\$5,203
Total Actual Commitments and Obligations through July	\$1,653	\$2,390	\$4,043
Unplanned commitments/obligations through July related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)	\$260	\$300	\$560
Actual Programmatic Commitments and Obligations through July	\$1,393	\$2,090	\$3,483
Total Plan Variance (\$/%)	\$75 (4.3%)	\$2,765 (53.6%)	\$2,840 (41.3%)
Remaining contingency and additional appropriations planned through July	(\$12)	\$1,132	\$1,120
Delayed Field Operation Spending through July	\$0	\$1,690	\$1,690
Non-Field Operational Programmatic Variance through July	\$87	(\$57)	\$30

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of available contingency funding. The total variance for the resources planned to be available through July is \$2.840 billion, or 41 percent. Below outlines the breakdown of the total variance:

- The positive variance through July against the original plan in 2020 Census IT systems and operations is \$75 million, or 4 percent. The positive variance is the result of relatively routine minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, partially offset by \$12 million in IT contingency used as the result of adjusted 2020 Census operations due to COVID-19 beyond the IT contingency estimate.
- The positive variance through July against the original plan in 2020 Census non-IT operations is \$2.765 billion, or 54 percent. This variance consists of \$1.690 billion delayed spending in the field operations as a result of schedule adjustments, and \$1.132 billion representing a portion of available contingency and additional appropriations that has not yet needed to be obligated. This variance is partially offset by a -\$57 million non-Field variance, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While unused contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions have been made to use risk-based contingency funds to support \$560 million in unplanned obligations or commitments through July as the result of the operational adjustments. The funds used to date include funding field staff salaries during to the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response, extending the communication efforts in the motivation and NRFU planning phases, purchases of personal protection equipment, and additional costs for the Fingerprint and CQA Contracts as the result of the operational timing adjustments.

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 17, 2020

Overview

- Post data collection processing to finalize the Census Unedited File (CUF)
- Presidential Memorandum teams and data stewardship
- Flowchart of steps needed to complete Presidential Memorandum work and timing
- ICE detention centers tabulation
- Admin records available
- Processing the CUF through the Person Identification Validation System (PVS) and matching to admin records
- Rules for assigning status
- Quality assurance of the unauthorized immigrant counts
- Communication strategy decisions

Post Data Collection Processing to Finalize the Census Unedited File (CUF)

- Post data collection processing is a complex operation that includes several divisions (Decennial Census Management Division; Decennial Information Technology Division; Decennial Statistical Studies Division; Geography Division; Population Division; Social, Economic, and Housing Statistics Division) who all have unique roles in the process.
- Example of some of the activities in this operation include:
 - Geocoding all addresses, meaning that it codes each address to the block level so that it is properly reflected in the correct geography. This geography will form a backbone for all remaining processing.
 - Ensuring that responses from households that responded without the unique identifier or who responded from a previously unidentified address are assigned to the correct location.
 - Merging and standardizing the format of data received from different sources, including mail-in, phone, or internet self-responses; nonresponse follow-up information provided to an enumerator; and “special operations” such as group quarters. This includes clerical coding of write-in responses.
 - De-duplicating data from households who may have responded multiple times in order to avoid “double counting.” This includes reviewing instances where a household provided different information across multiple responses, and determining what information should be counted as part of the official record.
 - Performing statistical techniques to account for missing housing unit status and household size information.
 - Processing the counts for military and civilian personnel working for the federal government and their dependents living overseas as part of the Federally Affiliated Count Overseas operation.
- At each step of the process, experts conduct and document rigorous quality assurance to look for errors in processing or tabulation, including evaluating the data at multiple levels of geography against benchmark data to ensure demographic reasonableness of data.

Presidential Memorandum Teams and Data Stewardship

- Presidential Memorandum (PM) Implementation
 - PM Team
 - Team Leads – Chief Scientist and Chief Demographer
 - Includes experts on admin records, demographers, economists, and statisticians
 - Builds on the experience of the CVAP team for determining methodology and using data sets from the Executive Order 13880
 - PM Executive Guidance Group (EGG)
 - Chair – Director
 - Members – Cogley, Jarmin, Abowd, Creech, Fontenot, Jones, Lamas, Smith, and Velkoff
 - EGG provides the charge to the PM team and gives guidance
- Data Stewardship Executive Policy Committee (DSEP)
 - Membership
 - Chair – Deputy Director/Chief Operating Officer
 - Members – Associate Directors for Decennial, Demographic, Economic, Field, and Research and Methodology; CIO; Chief of Staff; Assistant Directors for Communication and R&M; Chief of PCO; Chief Privacy Officer; two at-large members (Bishop and Lamas)
 - Mission
 - Ensures the Census Bureau maintains its commitment, by fulfilling the legal, ethical, and reporting obligations levied by Title 13 of the U.S. Code, the Privacy Act, and other applicable statutes, including those of governmental and other suppliers of data to the Census Bureau

Census Unedited File (CUF)
production and quality assurance

Admin records available and
processed by Person Identification Validation
System (PVS)

Slide 7

Prior to 12/14/2020

CUF finalized

12/14/2020

After 12/14/2020

Tabulation of resident population
and federally affiliated overseas
population; tabulation of ICE
detention centers;
QA procedures. This will meet the
December 31, 2020 deadline.

Slide 6

CUF processed by PVS

10 days (12/24)

Slide 8

Matching admin records to CUF and quality
assurance (QA)

7 days (12/31)

Slide 8

Applying rules to assign status of the unauthorized
immigrant

5 days (1/5)

Slide 9

Quality assurance of tabulation

3 days (1/8)

Slide 10

Apply disclosure avoidance to unauthorized
immigrant counts and QA

3 days (1/11)

Slide 10

Quality assurance of file, reasonableness, data
product

7 days (1/18)

Slide 11

Transmittal package

Predecisional; Internal use only

Tabulating ICE Detention Centers

- Inmates in ICE detention centers were counted as part of the Group Quarters enumeration process.
- When we have the final CUF, we will tabulate these data to create a count of inmates in ICE detention centers for each state.
- This tabulation can be done by the December 31, 2020 deadline.
- We need to make a decision about whether all inmates are unauthorized. In order to distinguish who is unauthorized, record linkage to the CUF is required pushing this past December 31.
- The PM Team will make a recommendation on whether to use admin records for ICE detention centers.

Administrative Record Sources

- The administrative record sources include
 - SSA Numident
 - State Department U.S. passports and Worldwide Refugee Admissions Processing System (WRAPS) refugee data
 - USCIS naturalization certificates, lawful permanent residents, refugees, asylees, Deferred Action for Childhood Arrivals (DACA), Special Immigrant Juveniles (SIJ), and lawful permanent resident pending applicants and denials
 - CBP Arrival and Departure Information Systems (ADIS)
 - ICE Student Exchange Visitor Information System (SEVIS) student and exchange visa holders and Enforcement and Removal Operation (ERO) data
 - Department of Interior Incident Management Analysis Reporting System (IMARS) and Law Enforcement Management Information System (LEMIS) data
 - Personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers (ITINs), which is public information
- These records will be put through the PVS process to assign Protected Identification Keys (PIK) prior to December and will be ready for matching when the CUF is available.
- We are awaiting delivery of 2 files.
- All MOUs need to be modified to allow tabulation of unauthorized immigrants.

Processing the CUF through the PVS and Matching to Admin Records

- First we process the CUF through the PVS
 - Each of the 50 states plus DC will be run through the PVS programs. The process includes over 20 passes for each state in order to assign PIKs.
 - A team will check the quality of the identifiers and review for any errors due to the PVS process.
 - The final step includes generating the of protected identification keys (PIK) files for each state.
- Next we link the CUF to the admin records
 - We have over two dozen unique administrative record files and each file will be separately compared to the CUF looking for a matching PIK.
 - Pertinent information on authorization status will be maintained on a consolidated file.
 - Once each administrative record file has been processed against the CUF, the data will need to be reconciled for any inconsistencies between administrative record files regarding status.
 - Once those issues are identified and resolved, a final file will be ready for processing.

Assignment Rules

We will apply a series of rules to individuals who have a match between the CUF and admin records to assign an authorized/unauthorized status as of April 1, 2020.

It is possible for admin records to have multiple statuses for an individual (e.g., people who enter in an unauthorized status can be given legal status such as refugee; a student on a visa could overstay their visa and become unauthorized).

If definitive admin records show that someone is a citizen, we assign this person citizenship status. This is the reason that we must use all admin records in the process.

People will be classified as an unauthorized immigrant if they are enumerated in the census and match to an admin record that has a clear indication that they are here illegally as of April 1, 2020.

For each state and DC, we will only tabulate unauthorized immigrants who link directly to a census record. Records that do not match are out of scope.

Quality Assurance on Assignment Rules and Disclosure Avoidance

- Assignment rules will be independently double-programmed (concurrently) and compared to ensure data quality standards.
- Staff will need to investigate any obvious errors and resolve these issues. Since solving these puzzles is not always straightforward, we estimate this step will take three days.
- We will apply disclosure avoidance and then produce the final table of unauthorized immigrants as defined as in the Presidential Memorandum.

Quality Assurance of the Unauthorized Immigrant Counts

After disclosure avoidance is applied, we will do quality assurance of the tabulated unauthorized immigrant counts:

1. Verify file (e.g., does every state have an count?)
2. Data reasonableness review. Typical process: (1) Compare current-year estimates to prior-year estimates (2) Compare to other, similar estimates (benchmarks).
 - No recent Census Bureau estimates of unauthorized immigrants in decennial censuses.
 - Compare to estimates of unauthorized immigrants from Pew Research Center (Pew 2018), Center for Migration Statistics (Warren 2018), and Office of Immigration Statistics (OIS 2018). Specifically, compare levels and rough rank-ordering of states.
3. Produce a table of the unauthorized immigrants for each state and DC and provide to the Secretary.

Communication Strategy Decisions

- The Census Bureau typically is transparent about methodologies used for data products. We need to decide how to publically communicate the methodologies used to create these tabulations and when to do this communication.
- We recommend that we do a federal register notice on the methodology because transparency requires that the American public understand how we derived the counts of unauthorized immigrants and have the opportunity to comment on that methodology.
- Data dissemination strategy – to be determined at a later date.

CUI/PRIVILEGED/DELIBERATIVE

August 12, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Anthony Foti
Performing the delegated duties of the Assistant Secretary for
Legislative and Intergovernmental Affairs, (202) 482-1148

Ian Steff
Assistant Secretary of Commerce for Global Markets, (202) 482-5076

RE: Call with Governor Doug Ducey (R-AZ) regarding Semiconductor
Manufacturing in Arizona, on Monday, August 17, 2020,
from 5 PM to 5:15 PM

b(5) - DP

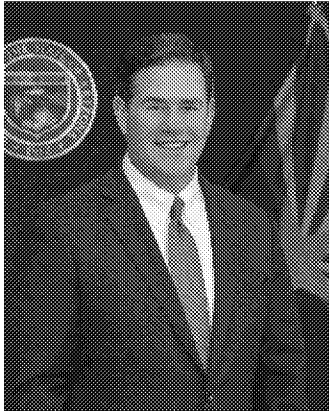
b(5) - DP

ATTACHMENT

1. Participant Biography

ATTACHMENT 1: Participant Biography

PARTICIPANT BIOGRAPHY



Governor Doug Ducey (R-AZ)

Governor Doug Ducey was elected on November 4, 2014 and was sworn into office on January 5, 2015, becoming Arizona's 23rd Governor.

As governor, Ducey's priorities are growing the economy, creating jobs, improving outcomes in K-12 education and balancing the budget. A champion of limited government, economic development and Arizona businesses and families, Governor Ducey has pledged to work every day to ensure "Opportunity for All."

Prior to taking his oath as governor, Ducey served as Arizona's 32nd state treasurer, a position he held since his oath of office in January 2011. As Arizona's chief banker and investment officer, Ducey managed more than \$13 billion in state assets and served as an investment manager for local governments.

As state treasurer, Ducey notably led the opposition of Proposition 204, a tax increase that would have cost Arizona taxpayers \$1 billion per year. With Ducey's leadership, the proposition was soundly defeated by a nearly two-to-one margin. During his tenure, Ducey also oversaw the Permanent Land Endowment Trust Fund. Under his watch, the trust fund surpassed \$5 billion for the first time, with 90 percent of the earnings allocated toward K-12 education.

Before being elected state treasurer, Ducey was chief executive officer of Cold Stone Creamery. An Arizona-born concept, Cold Stone expanded from a handful of locations to more than 1,400 worldwide under Ducey's management.

Governor Ducey was born in Toledo, Ohio. He moved to Arizona to attend Arizona State University's business school, where he earned his Bachelor of Science in finance in 1986. Governor Ducey and his wife, Angela, live in Phoenix with their three sons, Jack, Joe and Sam.

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 17, 2020



Predecisional; internal use only

3

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Predecisional; internal use only

3

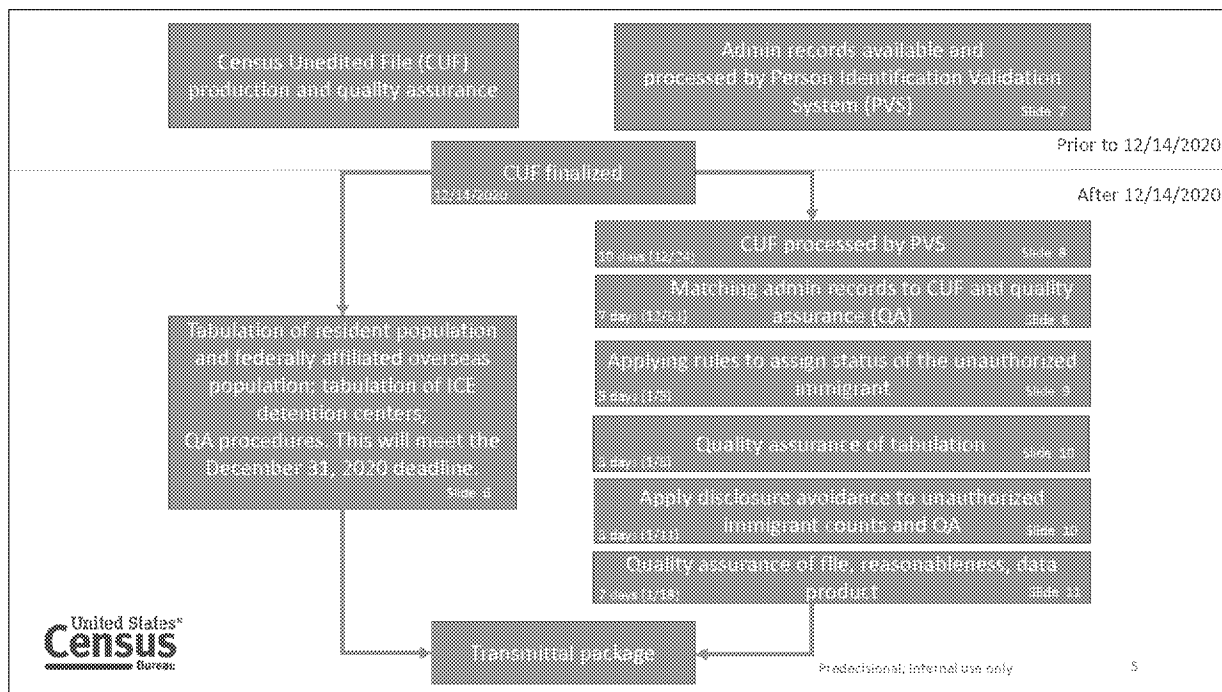
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 - **Membership**
 - Chair – Deputy Director/Chief Operating Officer
 - Members – Associate Directors for Decennial, Demographic, Economic, Field, and Research and Methodology; CIO; Chief of Staff; Assistant Directors for Communication and R&M; Chief of PCO; Chief Privacy Officer; two at-large members (Bishop and Lamas)
 - **Mission**
 - Ensures the Census Bureau maintains its commitment, by fulfilling the legal, ethical, and reporting obligations levied by Title 13 of the U.S. Code, the Privacy Act, and other applicable statutes, including those of governmental and other suppliers of data to the Census Bureau



Predecisional; internal use only

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Tabulating ICE Detention Centers

- Inmates in ICE detention centers were counted as part of the Group Quarters enumeration process.
- When we have the final CUF, we will tabulate these data to create a count of inmates in ICE detention centers for each state.
- This tabulation can be done by the December 31, 2020 deadline.
- We need to make a decision about whether all inmates are unauthorized. In order to distinguish who is unauthorized, record linkage to the CUF is required pushing this past December 31.
- The PM Team will make a recommendation on whether to use admin records for ICE detention centers.

Administrative Record Sources

- The administrative record sources include
 - SSA Numident
 - State Department U.S. passports and Worldwide Refugee Admissions Processing System (WRAPS) refugee data
 - USCIS naturalization certificates, lawful permanent residents, refugees, asylees, Deferred Action for Childhood Arrivals (DACA), Special Immigrant Juveniles (SIJ), and lawful permanent resident pending applicants and denials
 - CBP Arrival and Departure Information Systems (ADIS)
 - ICE Student Exchange Visitor Information System (SEVIS) student and exchange visa holders and Enforcement and Removal Operation (ERO) data
 - Department of Interior Incident Management Analysis Reporting System (IMARS) and Law Enforcement Management Information System (LEMIS) data
 - Personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers (ITINs), which is public information
- These records will be put through the PVS process to assign Protected Identification Keys (PIK) prior to December and will be ready for matching when the CUF is available.
- We are awaiting delivery of 2 files.
- All MOUs need to be modified to allow tabulation of unauthorized immigrants.

Processing the CUF through the PVS and Matching to Admin Records

- First we process the CUF through the PVS
 - Each of the 50 states plus DC will be run through the PVS programs. The process includes over 20 passes for each state in order to assign PIKs.
 - A team will check the quality of the identifiers and review for any errors due to the PVS process.
 - The final step includes generating the of protected identification keys (PIK) files for each state.
- Next we link the CUF to the admin records
 - We have over two dozen unique administrative record files and each file will be separately compared to the CUF looking for a matching PIK.
 - Pertinent information on authorization status will be maintained on a consolidated file.
 - Once each administrative record file has been processed against the CUF, the data will need to be reconciled for any inconsistencies between administrative record files regarding status.
 - Once those issues are identified and resolved, a final file will be ready for processing.



Predecisional; internal use only

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Assignment Rules

We will apply a series of rules to individuals who have a match between the CUF and admin records to assign an authorized/unauthorized status as of April 1, 2020.

It is possible for admin records to have multiple statuses for an individual (e.g., people who enter in an unauthorized status can be given legal status such as refugee; a student on a visa could overstay their visa and become unauthorized).

If definitive admin records show that someone is a citizen, we assign this person citizenship status. This is the reason that we must use all admin records in the process.

People will be classified as an unauthorized immigrant if they are enumerated in the census and match to an admin record that has a clear indication that they are here illegally as of April 1, 2020.

For each state and DC, we will only tabulate unauthorized immigrants who link directly to a census record. Records that do not match are out of scope.

Quality Assurance on Assignment Rules and Disclosure Avoidance

- Assignment rules will be independently double-programmed (concurrently) and compared to ensure data quality standards.
- Staff will need to investigate any obvious errors and resolve these issues. Since solving these puzzles is not always straightforward, we estimate this step will take three days.
- We will apply disclosure avoidance and then produce the final table of unauthorized immigrants as defined as in the Presidential Memorandum.

Quality Assurance of the Unauthorized Immigrant Counts

After disclosure avoidance is applied, we will do quality assurance of the tabulated unauthorized immigrant counts:

1. Verify file (e.g., does every state have an count?)
2. Data reasonableness review. Typical process: (1) Compare current-year estimates to prior-year estimates (2) Compare to other, similar estimates (benchmarks).
 - No recent Census Bureau estimates of unauthorized immigrants in decennial censuses.
 - Compare to estimates of unauthorized immigrants from Pew Research Center (Pew 2018), Center for Migration Statistics (Warren 2018), and Office of Immigration Statistics (OIS 2018). Specifically, compare levels and rough rank-ordering of states.
3. Produce a table of the unauthorized immigrants for each state and DC and provide to the Secretary.

Communication Strategy Decisions

- The Census Bureau typically is transparent about methodologies used for data products. We need to decide how to publically communicate the methodologies used to create these tabulations and when to do this communication.
- We recommend that we do a federal register notice on the methodology because transparency requires that the American public understand how we derived the counts of unauthorized immigrants and have the opportunity to comment on that methodology.
- Data dissemination strategy – to be determined at a later date.

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, *et al.*;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et al.*;

Defendants,

and

DIANA MARTINEZ, *et al.*; COUNTY OF
SANTA CLARA, CALIFORNIA, *et al.*; and
STATE OF NEW YORK, *et al.*;

Defendant-Intervenors.

Civil Action No. 2:18-cv-00772-RDP

**MARTINEZ INTERVENORS' ANSWER TO PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
CROSS-CLAIM AGAINST DEFENDANTS**

Defendant-Intervenors Diana Martinez, Raisa Sequeira, Saulo Corona, Irving Medina, Joey Cardenas, Florinda P. Chavez, and Chicanos Por La Causa (collectively, "Martinez Intervenors"), for themselves alone and no other, answer the First Amended Complaint ("Complaint") for Declaratory Relief of Plaintiffs the State of Alabama, and Morris J. Brooks, Jr., Representative for Alabama's Fifth Congressional District (collectively, "Plaintiffs") as follows:

1. The allegations contained in Paragraph 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is

necessary, Martinez Intervenors deny each and every allegation in Paragraph 1, except as follows: Martinez Intervenors admit that on February 8, 2018 the United States Census Bureau (“Census Bureau”) issued the 2020 Census Residence Criteria and Residence Situations Rule, which speaks for itself.¹

2. The allegations contained in Paragraph 2 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 2.

3. The allegations contained in Paragraph 3 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 3.

4. The allegations contained in Paragraph 4 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs’ action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 4.

5. The allegations contained in Paragraph 5 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs’ action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 5.

¹ The allegations contained in Footnote 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Footnote 1, and further answer that, despite the definition provided by Plaintiffs, the term “illegal aliens” is vague and ambiguous. By Plaintiffs’ definition, persons “who are present in the United States by virtue of either illegal entry in violation of federal immigration statutes or who have entered the United States legally but have remained present in the country beyond the period of time permitted by federal law,” are “illegal aliens,” regardless of whether that person later became a lawful permanent resident or naturalized citizen. Plaintiffs’ definition could also include persons, including long-term residents, who have a form of protected immigration status issued and recognized by federal immigration authorities.

JURISDICTION AND VENUE

6. The allegations contained in Paragraph 6 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 6, and specifically deny that this Court has subject matter jurisdiction over Plaintiffs' suit.

7. The allegations contained in Paragraph 7 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 7.

8. Martinez Intervenors admit that venue is proper in this district.

9. The allegations contained in Paragraph 9 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs' action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 9.

THE PARTIES

1. The allegations contained in the second Paragraph 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 1, except as follows: Martinez Intervenors admit that the State of Alabama is a sovereign state in the United States and that the attorney general of Alabama is Steve Marshall.

2. The allegations contained in the second Paragraph 2 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 3, except as follows: Martinez Intervenors admit that Morris J. Brooks, Jr., is a plaintiff and is a

member of the United States House of Representatives for Alabama's 5th Congressional District. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the remaining allegation in Paragraph 2 that Mr. Brooks is registered to vote in the State of Alabama.

3. Martinez Intervenors admit the allegations stated in the second Paragraph 3 of the Complaint.

4. Martinez Intervenors admit the allegations stated in the second Paragraph 4 of the Complaint.

5. Martinez Intervenors admit the allegations stated in the second Paragraph 5 of the Complaint.

6. Martinez Intervenors admit the allegations stated in the second Paragraph 6 of the Complaint.

ALLEGATIONS

I. Allegations Regarding the Constitutional Requirement to Conduct a Census

7. The allegations contained in the second Paragraph 7 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in the second Paragraph 7, except to aver that U.S. Const. art. I, §2, cl. 3 and U.S. Const. amend. XIV, § 2 speak for themselves.

8. The allegations contained in the second Paragraph 8 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in the second

Paragraph 8, except to aver that U.S. Const. art. II, §1, cl. 2 and U.S. Const. amend. XII speak for themselves.

9. The allegations contained in the second Paragraph 9 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 9, except to aver that 13 U.S.C. § 141 (a)-(b) speaks for itself.

10. Martinez Intervenors admit the allegations stated in the second Paragraph 10 of the Complaint. 13 U.S.C. §§ 2, 4 speak for themselves.

11. The allegations contained in Paragraph 11 of the Complaint state legal conclusions, to which no responsive pleading is required.

12. Martinez Intervenors deny each and every allegation in Paragraph 12 of the Complaint, except to aver that 13 U.S.C. § 221 speaks for itself.

13. Martinez Intervenors admit the allegations contained in Paragraph 13 of the Complaint. 2 U.S.C. § 2a(a) speaks for itself.

14. Martinez Intervenors admit the allegations contained in Paragraph 14 of the Complaint. 2 U.S.C. § 2a(b) speaks for itself.

15. Martinez Intervenors admit the allegations contained in Paragraph 15 of the Complaint. 2 U.S.C. § 2a(b) speaks for itself.

II. Final 2020 Census Residence Criteria and Residence Situations

16. Martinez Intervenors admit the allegations contained in Paragraph 16 of the Complaint.

17. Martinez Intervenors admit the allegations contained in Paragraph 17 of the Complaint.

18. Martinez Intervenors admit the allegations contained in Paragraph 18 of the Complaint; the referenced Census Residence Criteria speaks for itself.

19. The allegations contained in Paragraph 19 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 19, except that the referenced Census Residence Criteria speaks for itself.

20. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 20 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 20, except to aver that 13 U.S.C. § 141 (b) speaks for itself.

21. The allegations contained in Paragraph 21 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 21, except to aver that 2 U.S.C. § 2a(a) speaks for itself.

22. The allegations contained in Paragraph 22 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 22.

23. The allegations contained in Paragraph 23 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors answer that the term “illegal aliens” is vague and ambiguous, and admit each and every other allegation in Paragraph 23.

24. Martinez Intervenors admit the allegations stated in Paragraph 24 of the Complaint.

25. The allegations contained in Paragraph 25 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors admit each and every allegation in Paragraph 25.

26. The allegations contained in Paragraph 26 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors admit each and every allegation in Paragraph 26.

27. Martinez Intervenors admit the allegations contained in Paragraph 27 of the Complaint.

28. The allegations contained in Paragraph 28 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 28.

III. Allegations Regarding Immigration and Apportionment

29. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 29 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 29, except to aver that the referenced Department of Homeland Security (“DHS”) document speaks for itself.

30. Martinez Intervenors deny each and every allegation in Paragraph 30 of the Complaint, except to aver that the referenced DHS, Pew Research Center, and Center for Migration Studies documents speak for themselves.

31. Martinez Intervenors answer the allegations contained in Paragraph 31 of the Complaint by asserting that the term “illegal aliens” is vague and ambiguous, and admit each and every other allegation in Paragraph 31.

32. The allegations contained in Paragraph 32 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 32, except as follows: Martinez Intervenors admit that there are 435 seats in the House of Representatives and aver that 2 U.S.C. § 2a(a) speaks for itself.

33. The allegations contained in Paragraph 33 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 33.

34. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 34 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 34.

35. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 35 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 35.

36. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 36 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 36 except to aver that the referenced DHS document speaks for itself.

37. The allegations contained in Paragraph 37 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 37.

38. The allegations contained in Paragraph 38 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 38.

39. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 39 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 39.

40. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 40 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 40, except that the referenced DHS document speaks for itself.

41. The allegations contained in Paragraph 41 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 41.

42. The allegations contained in Paragraph 42 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 42.

43. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 43 of the Complaint; moreover, the allegations state legal conclusions, to which no responsive pleading is required. However, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 43, except as follows: Martinez Intervenors admit that in the 2000 apportionment, 12 congressional seats and electoral college votes changed hands.

44. The allegations contained in Paragraph 44 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 44.

45. The allegations contained in Paragraph 45 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 45, except as follows: Martinez Intervenors admit that in the 2010 apportionment Louisiana, Missouri, and Ohio each lost one seat in the House of Representatives and one vote in the Electoral College, that Montana did not gain a seat in the House of Representatives or an electoral college vote, that California gained two seats in the House of Representatives and electoral college votes, and that Florida and Texas each gained one seat in the House of Representatives and one electoral college vote.

46. The allegations contained in Paragraph 46 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 46.

47. The allegations contained in Paragraph 47 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 47.

48. The allegations contained in Paragraph 48 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 48.

49. The allegations contained in Paragraph 49 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 49.

IV. Plaintiffs' Alleged Harm.

50. The allegations contained in Paragraph 50 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 50.

51. The allegations contained in Paragraph 51 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 51.

52. Martinez Intervenors admit the allegations stated in Paragraph 52 of the Complaint.

53. Martinez Intervenors admit the allegations stated in Paragraph 53 of the Complaint.

54. Martinez Intervenors admit the allegations stated in Paragraph 54 of the Complaint.

55. Martinez Intervenors admit the allegations stated in Paragraph 55 of the Complaint.

56. The allegations contained in Paragraph 56 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 56.

57. The allegations contained in Paragraph 57 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 57.

58. The allegations contained in Paragraph 58 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 58.

59. The allegations contained in Paragraph 59 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 59.

60. The allegations contained in Paragraph 60 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 60.

61. The allegations contained in Paragraph 61 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 61.

62. The allegations contained in Paragraph 62 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 62.

63. The allegations contained in Paragraph 63 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 63.

64. The allegations contained in Paragraph 64 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 64.

65. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 65 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 65.

66. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 66 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 66.

67. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 67 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the

total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 67.

68. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 68 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 68.

69. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 69 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 69.

70. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 70 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of

accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 70.

71. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 71 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 71.

72. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 72 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 72.

V. Plaintiffs' Challenge to the Census Residence Criteria

73. The allegations contained in Paragraph 73 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs' action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 73.

A. Constitutional Requirements for Apportionment

74. Martinez Intervenors admit the allegations stated in Paragraph 74 of the Complaint. U.S. Const. amend. XIV, § 2, cl. 1 speaks for itself.

75. Martinez Intervenors admit the allegations stated in Paragraph 75 of the Complaint. U.S. Const. Art. I, § 2, cl. 3 speaks for itself.

76. Martinez Intervenors admit the allegations stated in Paragraph 76 of the Complaint. U.S. Const. Art. II, § 1, cl. 2 speaks for itself.

77. The allegations contained in Paragraph 77 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 77, except to aver that *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992) speaks for itself.

78. The allegations contained in Paragraph 78 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 78.

1) Fourteenth Amendment of the U.S. Constitution.

79. The allegations contained in Paragraph 79 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive

pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 79, except to aver that U.S. Const. amend. XIV speaks for itself.

80. The allegations contained in Paragraph 80 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 80, except to aver that *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) speaks for itself.

81. The allegations contained in Paragraph 81 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 81.

82. The allegations contained in Paragraph 82 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 82.

83. The allegations contained in Paragraph 83 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 83.

84. The allegations contained in Paragraph 84 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 84.

85. The allegations contained in Paragraph 85 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 85.

2) Requirement to Apportion Congressional Seats Based on Total Number of Persons.

86. Martinez Intervenors admit the allegations stated in Paragraph 86 of the Complaint. U.S. Const. amen. XIV, § 2, cl. 1 speaks for itself.

87. Martinez Intervenors admit the allegations stated in Paragraph 87 of the Complaint. U.S. Const. art. I, § 2, cl. 3 speaks for itself.

88. The allegations contained in Paragraph 88 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 88.

89. The allegations contained in Paragraph 89 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 89, except to aver that 1 Records of the Federal Convention of 1787 350, 352 (Max Farrand, ed., Yale University Press, 1937) speaks for itself.

90. The allegations contained in Paragraph 90 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 90.

91. The allegations contained in Paragraph 91 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 91.

92. The allegations contained in Paragraph 92 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 92.

93. The allegations contained in Paragraph 93 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 93.

94. The allegations contained in Paragraph 94 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 94.

95. The allegations contained in Paragraph 95 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 95.

96. The allegations contained in Paragraph 96 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 96.

3) Equal Representation Based on Total Population.

97. The allegations contained in Paragraph 97 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 97, except to aver that *Franklin*, 505 U.S. at 804 speaks for itself.

98. The allegations contained in Paragraph 98 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 98, except to aver that *Evenwel v. Abbott*, 136 S. Ct. 1120, 1126 (2016) speaks for itself.

99. The allegations contained in Paragraph 99 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 99.

100. The allegations contained in Paragraph 100 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 100.

101. The allegations contained in Paragraph 101 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 101.

102. The allegations contained in Paragraph 102 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 102.

103. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 103 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 103.

104. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 104 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 104.

105. The allegations contained in Paragraph 105 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 105.

106. The allegations contained in Paragraph 106 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 106.

107. The allegations contained in Paragraph 107 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 107.

108. The allegations contained in Paragraph 108 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 108.

109. The allegations contained in Paragraph 109 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 109.

B. Alleged Violation of the Administrative Procedure Act (APA).

110. The allegations contained in Paragraph 110 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 110, except to aver that 5 U.S.C. § 706(2) speaks for itself.

111. The allegations contained in Paragraph 111 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 111, except to aver that *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) speaks for itself.

112. The allegations contained in Paragraph 112 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 112, except to aver that *Multicultural Media, Telecom, and Internet Council v. FCC*, 873 F.3d 932, 936 (D.C. Cir. 2017) and Residence Rule, 83 Fed. Reg. 5525, at 5526 speak for themselves.

113. The allegations contained in Paragraph 113 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 113, except that *Multicultural Media, Telecom, & Internet Council v. FCC*, 873 F.3d at 937 and the Census Residence Criteria speak for themselves.

114. The allegations contained in Paragraph 114 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 114, except to aver that *Int'l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 626 F.3d 84, 94 (D.C. Cir. 2010) speaks for itself.

115. The allegations contained in Paragraph 115 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 115, except to aver that the Census Residence Criteria and *Sierra Club v. Env'tl. Prot. Agency*, 863 F.3d 834, 838-39 (D.C. Cir. 2017) speak for themselves.

116. The allegations contained in Paragraph 116 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 116.

117. The allegations contained in Paragraph 117 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 117, except to aver that the Census Residence Criteria speaks for itself.

118. The allegations contained in Paragraph 118 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 118.

C. Alleged Violation of the APA For Action in Excess of Statutory Authority.

119. The allegations contained in Paragraph 119 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 119, except to aver that 5 U.S.C. § 706(2)(C) speaks for itself.

120. The allegations contained in Paragraph 120 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 120, except to aver that 13 U.S.C. § 141(a)-(b) speaks for itself.

121. The allegations contained in Paragraph 121 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 121, except to aver that *Johnson v. Governor of Florida*, 405 F.3d 1214, 1229 (11th Cir. 2005) speaks for itself.

122. The allegations contained in Paragraph 122 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 122.

123. The allegations contained in Paragraph 123 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 123.

124. The allegations contained in Paragraph 124 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 124.

125. The allegations contained in Paragraph 125 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 125.

FIRST CAUSE OF ACTION

Alleged Violation of the Fourteenth Amendment (Congressional Apportionment)

126. Answering Paragraph 126 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-125 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

127. The allegations contained in Paragraph 127 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 127, except to aver that U.S. Const. amend. XIV speaks for itself.

128. The allegations contained in Paragraph 128 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 128.

SECOND CAUSE OF ACTION

Alleged Violation of the Fourteenth Amendment, Article I, § 2, and Article II, § 1

(Electoral College Apportionment)

129. Answering Paragraph 129 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-128 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

130. The allegations contained in Paragraph 130 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 130, except that U.S. Const. art II, § 1, cl. 2 speaks for itself.

131. The allegations contained in Paragraph 131 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 131.

THIRD CAUSE OF ACTION

Alleged Violation of Article I, § 2 (Actual Enumeration)

132. Answering Paragraph 132 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-131 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

133. The allegations contained in Paragraph 133 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 133, except to aver that U.S. Const. art. I, § 2, cl. 3 and U.S. Const. amend. XIV speak for themselves.

134. The allegations contained in Paragraph 134 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 134.

FOURTH CAUSE OF ACTION

Alleged Violation of the APA (Arbitrary and Capricious)

135. Answering Paragraph 135 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-134 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

136. The allegations contained in Paragraph 136 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 136, except to aver that 5 U.S.C. § 706(2)(A) speaks for itself.

137. The allegations contained in Paragraph 137 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 137.

138. The allegations contained in Paragraph 138 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 138.

FIFTH CAUSE OF ACTION

Alleged Violation of the APA (Contrary to Law)

139. Answering Paragraph 139 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-138 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

140. The allegations contained in Paragraph 140 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 140, except to aver that 5 U.S.C. § 706(2)(C) speaks for itself.

141. The allegations contained in Paragraph 141 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 141.

142. The allegations contained in Paragraph 142 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 142.

143. The allegations contained in Paragraph 143 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 143.

PRAYER FOR RELIEF

To the extent that any response is required to Plaintiffs' separate Prayer for Relief, Martinez Intervenors deny each and every allegation contained in the Prayer for Relief, and

further deny that the Plaintiffs are entitled to declaratory relief, injunctive relief, or any other form of relief whatsoever.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses to all causes of action purported to be set forth by Plaintiffs in the Complaint, Martinez Intervenors allege as follows, subject to Martinez Intervenor's right to amend and assert such other affirmative defenses as may become available during discovery in this action:

FIRST AFFIRMATIVE DEFENSE: LACK OF STANDING

This Court lacks subject matter jurisdiction over Plaintiffs' claims because Plaintiffs cannot show the injury and redressability necessary to assert standing.

SECOND AFFIRMATIVE DEFENSE: FAILURE TO STATE A CAUSE OF ACTION

Plaintiffs' claim, as set forth in the Complaint, fails to state facts sufficient to constitute a cause of action against Defendants.

THIRD AFFIRMATIVE DEFENSE: LACHES

Some or all of Plaintiffs' claims are barred under the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE: UNCLEAN HANDS

Plaintiffs signed HB 56 into law in June 2011. AL Act 2011-535. The stated purpose of the law is to "discourage illegal immigration within the state." *U.S. v. Alabama*, 691 F.3d 1269 (11th Cir. 2012), *cert. denied*, 569 U.S. 968 (2013). Plaintiffs are now claiming that their decision to drive immigrants and their families out of Alabama is causing them political loss. By virtue of Plaintiffs' own racially discriminatory conduct, Plaintiffs should be barred from recovering against Defendants by the equitable doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE: RESERVATION OF RIGHTS

Because the Complaint is couched in conclusory terms, Martinez Intervenors cannot fully anticipate all affirmative defenses that may be applicable to the claims asserted. Accordingly, Martinez Intervenors reserve the right to assert additional affirmative defenses to the complaint, whether under law, equity, or otherwise, if and to the extent that such affirmative defenses are discovered and apply.

WHEREFORE, Martinez Intervenors respectfully request as follows:

1. That Plaintiffs' Complaint and its causes of action be dismissed with prejudice;
2. That Plaintiffs take nothing by way of the Complaint;
3. That Martinez Intervenors be awarded costs of the suit and attorneys' fees; and
4. That the Court order such other and further relief for Martinez Intervenors as the Court may deem appropriate.

CROSS-CLAIM BY MARTINEZ INTERVENORS FOR DECLARATORY RELIEF

INTRODUCTION

1. On May 21, 2018, the State of Alabama and Congressman Morris J. Brooks, Jr., sued the U.S Department of Commerce, Commerce Secretary Wilbur L. Ross, the U.S. Census Bureau, and Ron Jarmin, acting director of the U.S. Census Bureau at the time. On September 10, 2019, Plaintiffs amended their complaint for declaratory relief.²

2. Plaintiffs Alabama and Brooks seek to set aside the Final 2020 Census Residence Criteria and Residence Situations Rule ("Residence Rule"), 83 Fed. Reg. 5525 (February 8, 2018) (to be codified at 15 C.F.R. Ch. I), as unlawful under federal law and the U.S.

² Plaintiffs replaced Defendant Jarmin with Steven Dillingham, the current director of the U.S. Census Bureau, and removed their assertion of a financial injury based on the inclusion of undocumented immigrants in the decennial enumeration.

Constitution, and seek to exclude undocumented immigrants from the total population count for the purposes of congressional apportionment. ECF Doc. 112, p. 2-4 ¶¶1-5; p. 32, ¶ 144.

3. The U.S. Constitution requires an “actual Enumeration” of every person living in the United States to take place every ten years.

4. The Constitution gives Congress the authority to conduct the Census “in such a Manner as [Congress] shall by Law direct,” and Congress has wide discretion over the conduct of the census. Pursuant to this authority, Congress has delegated the duty of conducting the census to the Secretary of Commerce, subject to federal law.

5. Under the U.S. Constitution, the decennial enumeration of the national population is used to allocate seats in the U.S. House of Representatives to states based on the “whole number of persons in each State.”

6. Federal law requires the Secretary of Commerce to deliver to the President the tabulation of the total population of the states for the apportionment of Representatives in Congress among the several states by the end of the census year. The President must report the tabulation of the total population of the states to Congress within a week after the start of Congress’s new session.

7. Defendants will not conduct an enumeration of undocumented immigrants in the 2020 Census.

8. Any attempt to exclude undocumented immigrants from the total population tabulations reported to the President and Congress would be based on estimations that use probabilistic statistical modeling in order to determine the number of undocumented immigrants in the U.S. Because estimated data is not based on an enumeration, it violates the U.S.

Constitution for the purposes of congressional apportionment and the distribution of electors in the Electoral College, and is thus prohibited.

9. Any attempt to exclude undocumented immigrants from the total population tabulations reported to the President and Congress would exclude persons who are required by the Constitution to be included in the population tabulations used to apportion the House of Representatives and the Electoral College.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1346 over Defendant-Intervenors' causes of action under the United States Constitution and federal statutes. This Court may grant Defendant-Intervenors' request for declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this district. 28 U.S.C. §1391 (e)(1).

PARTIES

Plaintiffs

12. Defendant-Intervenor Diana Martinez is a resident of Ventura County, California. She is a longtime registered voter and lives in the City of Santa Paula, born and raised in California. According to American Community Survey ("ACS") data, Santa Paula is 81.3 percent Latino and 20.8 percent non-U.S. citizen.

13. Defendant-Intervenor Raisa Sequeira is a resident of Miami-Dade County in Florida. She is a registered voter and lives in the City of Miami. According to ACS data, Miami is 72.2 percent Latino and 30.6 percent non-U.S. citizen.

14. Defendant-Intervenor Saulo Corona is a resident of Maricopa County, Arizona. He lives and is registered to vote in the City of Tempe. According to ACS data, Maricopa County is 30.6 percent Latino and 9 percent non-U.S. citizen.

15. Defendant-Intervenors Irving Medina and Florinda P. Chavez are residents of Travis County, Texas. They both live and are registered to vote in Austin. According to ACS data, Austin is 34.5 percent Latino and 12.6 percent non-U.S. citizen.

16. Defendant-Intervenor Joey Cardenas is a resident of Wharton County, Texas. He is a longtime registered voter and lives in Louise, a census-designated place. According to ACS data, Wharton County is 40.3 percent Latino and 6.9 percent non-U.S. citizen.

17. CPLC is headquartered in Phoenix, Arizona and serves individuals who primarily reside in Coconino, Cochise, Maricopa, Pima, and Yuma Counties. CPLC serves individuals who live in neighborhoods, cities, counties, and voting districts with relatively larger Latino and non-U.S. citizen populations when compared to Arizona and the United States. For example, according to ACS data, Yuma County is 62.9 percent Latino and 15.6 percent non-U.S. citizen, while Phoenix is 42.5 percent Latino and 13.3 percent non-U.S. citizen.

Defendants/Defendants

18. Defendant Wilbur L. Ross is Secretary of the U.S. Department of Commerce. The Secretary of Commerce carries out the functions and duties imposed on him by the Census Act, issues rules and regulations to carry out his responsibilities, and delegates functions and duties as necessary.

19. Congress delegated the duty to conduct the Census to the Secretary of Commerce, who must take a census on April 1 every 10 years.

20. By the end of 2020, the Secretary of Commerce is required to deliver the tabulation of the population of each state to the President, who is required to transmit to Congress the total population of each state and the number of congressional seats to which each state is entitled. Ross is sued in his official capacity.

21. Defendant Steven Dillingham is the Director for the U.S. Census Bureau. The Director of the U.S. Census Bureau oversees the 2020 Census operations and is responsible for ensuring the accuracy of the 2020 Census count. Defendant Dillingham directs the Census Bureau and performs Census-related duties assigned by law, regulation, or the Secretary of Commerce. 13 U.S.C. § 21. Dillingham is sued in his official capacity.

22. Defendant U.S. Department of Commerce is an agency of the U.S. government which oversees the U.S. Census Bureau and its conduct of the decennial Census and other Census programs.

23. Defendant U.S. Census Bureau is an agency within the U.S. Department of Commerce. 13 U.S.C. § 2. The Census Bureau is responsible for conducting all Census programs, including the development and implementation of the 2020 Census.

FACTUAL ALLEGATIONS

24. The U.S. Constitution requires an “actual Enumeration” of “the whole number of persons in each State” to take place every ten years.

25. Under the U.S. Constitution, the decennial enumeration of the national population is used to allocate seats in the U.S. House of Representatives to states based on the “whole number of persons in each State,” under the U.S. Constitution. Congressional seats are apportioned to the states based on “their respective Numbers.”

26. The enumeration is also used to allocate the number of electors each state receives in the Electoral College.

27. The Constitution vests Congress with wide authority over the conduct of the Census. Pursuant to this authority, Congress delegated the duty of conducting the decennial Census to the Secretary of Commerce, subject to the provisions of the Census Act of 1976, 13 U.S.C. § 141, et seq. (the “Census Act”), and other applicable federal statutes and regulations.

28. Section 141(f) of Title 13, requires that the Secretary report to Congress his “determination[s]” as to the subjects of the next census not later than three years prior to the April 2020 Census date.

29. Federal law requires the Secretary of Commerce to deliver the “tabulation of total population of states . . . for the apportionment of Representatives in Congress among the several States” to the President by the end of the census year, who must report them to Congress within a week after the start of Congress’s new session.

30. Federal law requires that the President’s transmission to Congress provide a “statement showing the whole number of persons in each State excluding Indians not taxed, as ascertained under [the] decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions[.]”

31. Federal law requires that each State shall be entitled to the number of Representatives shown in such statement.

32. Federal law requires the Clerk of the House of Representatives, within fifteen calendar days after the receipt of the President’s statement to Congress, “to send the executive of each State a certificate of the number of Representatives to which such State is entitled[.]”

Collection of Decennial Census

33. The Census Act states, “Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as ‘sampling’ in carrying out the provisions of this title.” 13 U.S.C. §195.

34. The Secretary of Commerce may delegate authority to carry out his functions and duties to conduct the Census to the Department of Commerce, of which the Census Bureau is a part.

35. To conduct the decennial enumeration, the Census Bureau sends a questionnaire to each household in the U.S. Every head of household is required by law to answer the questions on the Census form truthfully.

Citizenship Data From the Census Bureau’s American Community Survey

36. There will not be a question on the 2020 decennial Census regarding the citizenship of respondents and their household members. Therefore, the decennial Census will not include an actual enumeration of non-citizens or of undocumented immigrants in the U.S.

37. The American Community Survey (“ACS”) is an ongoing, yearly survey by the Census Bureau that collects demographic information including ancestry, citizenship, year of entry to the U.S., educational attainment, income, language proficiency, migration, disability, employment, and housing characteristics from approximately 2.5 percent of U.S. households. ACS data provide estimates of population characteristics, including citizenship, that are based on sample data, and do not provide an enumeration of citizens and non-citizens. The ACS survey does not include a question on legal status of non-citizen respondents. The ACS survey therefore does not provide an estimate or an enumeration of the undocumented population in the U.S.

Defendants' Collection of Citizenship Data for Apportionment

38. The 2020 decennial Census will not include a question on immigration status, including any question to ascertain if the respondent is an undocumented immigrant. The decennial Census will not conduct an enumeration of undocumented immigrants living in the U.S.

39. On July 11, 2019, President Donald J. Trump issued Executive Order (“EO”) 13880 requiring that, among other things, all executive departments and agencies provide the Department of Commerce “the maximum assistance permissible, consistent with law, in determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing” the objective of collecting citizenship data.

40. EO 13880 states, “It is the policy of the United States to develop complete and accurate data on the number of citizens, non-citizens, and illegal aliens in the country.”

41. The data collected under EO 13880 is not an enumeration of individuals, and specifically is not an enumeration of undocumented immigrants, in the U.S.

42. Any data collected under EO 13880 will produce estimations based on statistical probabilities using administrative records. Such estimations based on statistical modeling are not an enumeration.

43. At a press conference announcing the issuance of EO 13880, President Trump stated that his intention in issuing EO 13880 is so that “[t]he Census Bureau can use [citizenship] information, along with information collected through the questionnaire, to create the official census. In other words, as a result of today’s executive order, we will be able to ensure the 2020 Census generates an accurate count of how many citizens, non-citizens, and illegal aliens are in

the United States of America.” The President’s statement is false and incorrect. Administrative records do not provide a count of the total population, nor do they provide an “accurate count,” or an enumeration of citizens, non-citizens, or undocumented immigrations within the total population.

44. At the same press conference announcing the issuance of EO 13880, U.S. Attorney General William Barr stated that “there is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of that dispute, this data may be relevant to those considerations,” and that the DOJ “will be studying this issue.”

45. On July 24, 2019, Defendant Dillingham testified before the House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties. During that hearing, Congresswoman Ayanna Pressley asked Defendant Dillingham, “Can you confirm for us today that the citizenship data collected pursuant to the executive order will not be used in the Bureau’s apportionment counts?” Defendant Dillingham answered, “. . . Let me get back to you on that.” Congresswoman Pressley subsequently asked Defendant Dillingham, “Do you believe it should be used for that purpose?” and Defendant Dillingham answered, “I don’t have any belief whatsoever, I just need to know the mechanics, Congresswoman, and I’ll get back to you on that.”³

46. Upon information and belief, the Census Bureau responded in writing to Congresswoman Pressley’s office regarding the July 24, 2019 exchange in front of Congress, “The issue you asked about is currently in litigation and we do not comment on ongoing

³ Video and Transcript of Testimony of U.S. Census Bureau Director Steven Dillingham on the 2020 Census before House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties, C-Span (Jul. 24, 2019), https://archive.org/details/CSPAN3_20190725_000000_U.S._Census_Bureau_Director_Steven_Dillingham_Testifies_Before_Congress/start/4080/end/4140.

litigation, but the Census Bureau will fulfill its constitutional mandate to conduct a complete and accurate 2020 Census and enumerate all persons living in the United States of America.”⁴

47. These ambiguous statements by Defendants create a live and actual controversy between Defendants, who threaten to report an unconstitutional enumeration of total population, and Martinez Intervenors, who are therefore entitled to declaratory relief.

48. Without an enumeration of the number of undocumented immigrants within the total population, Defendants would be required to use data from estimations based on probabilistic statistical modeling in order to determine the number of undocumented immigrants in the U.S.

49. Under the U.S. Constitution, the use of estimated data based on statistical probabilities to produce, in whole or in part, through addition or subtraction, the total population for the purposes of congressional apportionment is prohibited.

50. If Defendants were to decide to exclude undocumented immigrants from the enumeration reported to Congress for the purpose of apportioning Representatives and electors to the Electoral College without a question on the Census form that counted undocumented immigrants living in the U.S., they would be required to adjust the final enumeration based on probabilistic modeling.

51. If Defendants were to decide to exclude undocumented immigrants from the enumeration reported to Congress for the purpose of apportioning Representatives and electors to the Electoral College, they would be excluding persons constitutionally required to be included in the enumeration reported.

⁴ Hansi Lo Wang, Do Trump Officials Plan To Break Centuries Of Precedent In Divvying Up Congress?, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress>.

52. Martinez Intervenors will be injured if Representatives and electors to the Electoral College are apportioned based on data that excludes undocumented immigrants from the total enumeration reported to Congress. Martinez Intervenors will suffer harm to their representational and electoral interests if a dataset other than a total enumeration consistent with the U.S. Constitution is reported to Congress. The use of such an altered dataset will cause states and other political subdivisions with high proportions of undocumented individuals and/or Latinos to lose congressional representation and Electoral College representation.

CAUSE OF ACTION

COUNT I

(Declaratory Judgment - Violation of the U.S. Constitution)

53. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

54. Article I, Section 2, Clause 3 of the U.S. Constitution requires an “actual enumeration” of people in the United States. The Constitution mandates that the apportionment of congressional seats be conducted on the basis of total population of all persons. U.S. CONST., Amdt. XIV, § 2 (“Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State”).

55. Defendants’ production and report to the President or Congress of an altered dataset using estimations based on statistical probabilities that excludes the undocumented population from the population totals used for congressional apportionment would violate the U.S. Constitution.

56. The production and report of an altered dataset that excludes undocumented immigrants from the total population for the purposes of congressional apportionment will injure Plaintiffs and organizational Plaintiffs’ members by depriving them of representation in the U.S. House of Representatives and the Electoral College.

57. The use of administrative data to produce estimates based on probabilistic modeling to exclude undocumented immigrants from the enumeration for the purposes of Congressional apportionment and apportionment of electors in the Electoral College is unconstitutional.

58. The purposeful exclusion of undocumented immigrants residing in the United States from the population count used for purposes of Congressional apportionment and apportionment of electors in the Electoral College is unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- (a) Declare that production and reporting to the President or to Congress of an altered tabulation for the purposes of congressional apportionment that attempts to exclude the undocumented population violates the U.S. Constitution;
- (b) Enjoin Defendants and their agents from producing and/or reporting to the President or to Congress an altered tabulation for the purposes of congressional apportionment that attempts to exclude the undocumented population;
- (c) Award Plaintiffs reasonable costs, expenses, and attorneys' fees under 28 U.S.C. § 2412; and
- (d) Award such additional relief as the interests of justice may require.

Dated: October 1, 2019

Respectfully submitted,
/s/ Andrea Senteno

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Denise Hulett (CA Bar No. 121553)*
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Counsel for Martinez Intervenors
* *Admitted* Pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all CM/ECF registrants.

Date: October 1, 2019

/s/ Andrea Senteno

Andrea Senteno

**MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND**

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asenteno@maldef.org

Counsel for Martinez Intervenors

To: Dewhirst, David (Federal) [DDewhirst@doc.gov]
From: Lucas, Jennifer (Federal) [b(6)]
Sent: Mon 11/18/2019 9:20:29 AM (UTC-05:00)
Subject: RE: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing
QFRs Senate 7-16-19 hearing Peters and Harris Census reply as of 11-15-2019.docx
07-24-2019-HOR-Civ Liberties hearing Census reply 11-15-19.docx

David,

Attached are the revised QFRs.

b(5) - DP/AC

b(5) - DP/AC

Thanks,
Jennifer

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Thursday, October 10, 2019 11:18 PM
To: Lucas, Jennifer (Federal) <JLucas@doc.gov>
Cc: O'Connor, Kasey (Federal) <KO'Connor@doc.gov>; Hull, Cordell (Federal) <CHull@doc.gov>
Subject: Re: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Jennifer,

Attached are my edits to the two sets of Census QFRs.

b(5) - DP/AC

David Dewhirst
Deputy General Counsel
U.S. Department of Commerce
ddewhirst@doc.gov
c. [b(6)]

*Sent from my iPad. Please excuse any typos.

From: Lucas, Jennifer (Federal) <JLucas@doc.gov>
Sent: Monday, October 7, 2019 10:31:04 AM
To: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Subject: FW: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Per your conversation with Beth. Thanks!

From: Lucas, Jennifer (Federal)
Sent: Tuesday, September 24, 2019 5:26 PM
To: Dewhirst, David (Federal) <DDewhirst@doc.gov>; Cannon, Michael (Federal) <MCannon@doc.gov>; Craig, Russell (Federal) <rCraig2@doc.gov>
Cc: DiGiacomo, Brian (Federal) <bDiGiaco@doc.gov>
Subject: RE: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Attached are the revised QFRs. Please let me know if you have additional comments.

b(5) - DP/AC

b(5) - DP/AC

Thanks,
Jennifer

From: Dewhirst, David (Federal) <DDewhirst@doc.gov>

Sent: Monday, September 16, 2019 12:12 PM

To: Cannon, Michael (Federal) <MCannon@doc.gov>; Lucas, Jennifer (Federal) <JLucas@doc.gov>; Craig, Russell (Federal) <rCraig2@doc.gov>

Cc: DiGiacomo, Brian (Federal) <bDiGiacco@doc.gov>

Subject: Re: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

CUI/PRIV

b(5) - DP/AC

--

David Dewhirst

Deputy General Counsel

U.S. DEPARTMENT OF COMMERCE

ddewhirst@doc.gov

c. **b(6)**

From: "Cannon, Michael (Federal)" <MCannon@doc.gov>

Date: Monday, September 16, 2019 at 11:24 AM

To: "Lucas, Jennifer (Federal)" <JLucas@doc.gov>, "Craig, Russell (Federal)" <rCraig2@doc.gov>

Cc: "Dewhirst, David (Federal)" <DDewhirst@doc.gov>, "DiGiacomo, Brian (Federal)" <bDiGiacco@doc.gov>

Subject: RE: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Thanks Jennifer. I know that Russ responded in my absence, and I appreciate that.

b(5) - DP/AC

Thanks!

Mike

Michael A. Cannon

Chief, General Litigation Division

Office of the Assistant General Counsel for Employment, Litigation, and Information

Office of the General Counsel

U.S. Department of Commerce

Telephone: (202) 482-5395

Cell: **b(6)**

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Email: mcannon@doc.gov

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From: Lucas, Jennifer (Federal) <JLucas@doc.gov>

Sent: Monday, September 16, 2019 9:11 AM

To: Cannon, Michael (Federal) <MCannon@doc.gov>; Craig, Russell (Federal) <rCraig2@doc.gov>

Cc: Dewhirst, David (Federal) <DDewhirst@doc.gov>

Subject: FW: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Please see Census' response to your comment on p. 3 and let me know if

b(5) - DP/AC

BC-DOC-0000026873

From: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>
Sent: Friday, September 13, 2019 4:37 PM
To: Lucas, Jennifer (Federal) <JLucas@doc.gov>; Tadlock, Tara A <tara.a.tadlock@census.gov>
Cc: Lang, Alan <alan.lang@census.gov>
Subject: Re: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Jennifer, we have responses to the comments thus far. Please let us know if we get more or if there are any questions on these edits.

From: Lucas, Jennifer (Federal) <JLucas@doc.gov>
Sent: Wednesday, September 11, 2019 9:32 AM
To: Tara Tadlock (CENSUS/OCIA FED) <tara.a.tadlock@census.gov>
Cc: Christopher J Stanley (CENSUS/OCIA FED) <christopher.j.stanley@census.gov>; Alan Lang (CENSUS/OCIA FED) <alan.lang@census.gov>; Tara Tadlock (CENSUS/OCIA FED) <tara.a.tadlock@census.gov>
Subject: RE: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Attached and below are **b(5) - DP** Please provide your response. Thanks, Jennifer

OCIO:

b(5) - DP

From: Tara Tadlock (CENSUS/OCIA FED) <tara.a.tadlock@census.gov>
Sent: Thursday, September 5, 2019 3:06 PM
To: Lucas, Jennifer (Federal) <JLucas@doc.gov>
Cc: Stanley, Christopher J <christopher.j.stanley@census.gov>; Lang, Alan <alan.lang@census.gov>; Tadlock, Tara A <tara.a.tadlock@census.gov>
Subject: Census HOUSE Hearing QFRs - Draft responses for review-07-24-2019 Hearing

Jennifer,

Please find attached the draft QFR responses from Director Dillingham's hearing before the House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties on July 24, 2019.

Chris Stanley is on leave until next Thursday, but you can reply all to Chris, Alan, and myself with any questions.

Thank you,
Tara

Tara Tadlock

Congressional Affairs Office Branch Chief

Office of Congressional and Intergovernmental Affairs (OCIA)

U.S. Census Bureau
Office 301-763-7798

Cell **b(6)**
tara.a.tadlock@census.gov

[census.gov](https://www.census.gov)

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**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, *et al.*;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et al.*;

Defendants,

and

DIANA MARTINEZ, *et al.*; COUNTY OF
SANTA CLARA, CALIFORNIA, *et al.*; and
STATE OF NEW YORK, *et al.*;

Defendant-Intervenors.

Civil Action No. 2:18-cv-00772-RDP

**MARTINEZ INTERVENORS' ANSWER TO PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
CROSS-CLAIM AGAINST DEFENDANTS**

Defendant-Intervenors Diana Martinez, Raisa Sequeira, Saulo Corona, Irving Medina, Joey Cardenas, Florinda P. Chavez, and Chicanos Por La Causa (collectively, "Martinez Intervenors"), for themselves alone and no other, answer the First Amended Complaint ("Complaint") for Declaratory Relief of Plaintiffs the State of Alabama, and Morris J. Brooks, Jr., Representative for Alabama's Fifth Congressional District (collectively, "Plaintiffs") as follows:

1. The allegations contained in Paragraph 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is

necessary, Martinez Intervenors deny each and every allegation in Paragraph 1, except as follows: Martinez Intervenors admit that on February 8, 2018 the United States Census Bureau (“Census Bureau”) issued the 2020 Census Residence Criteria and Residence Situations Rule, which speaks for itself.¹

2. The allegations contained in Paragraph 2 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 2.

3. The allegations contained in Paragraph 3 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 3.

4. The allegations contained in Paragraph 4 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs’ action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 4.

5. The allegations contained in Paragraph 5 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs’ action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 5.

¹ The allegations contained in Footnote 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Footnote 1, and further answer that, despite the definition provided by Plaintiffs, the term “illegal aliens” is vague and ambiguous. By Plaintiffs’ definition, persons “who are present in the United States by virtue of either illegal entry in violation of federal immigration statutes or who have entered the United States legally but have remained present in the country beyond the period of time permitted by federal law,” are “illegal aliens,” regardless of whether that person later became a lawful permanent resident or naturalized citizen. Plaintiffs’ definition could also include persons, including long-term residents, who have a form of protected immigration status issued and recognized by federal immigration authorities.

JURISDICTION AND VENUE

6. The allegations contained in Paragraph 6 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 6, and specifically deny that this Court has subject matter jurisdiction over Plaintiffs' suit.

7. The allegations contained in Paragraph 7 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 7.

8. Martinez Intervenors admit that venue is proper in this district.

9. The allegations contained in Paragraph 9 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs' action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 9.

THE PARTIES

1. The allegations contained in the second Paragraph 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 1, except as follows: Martinez Intervenors admit that the State of Alabama is a sovereign state in the United States and that the attorney general of Alabama is Steve Marshall.

2. The allegations contained in the second Paragraph 2 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 3, except as follows: Martinez Intervenors admit that Morris J. Brooks, Jr., is a plaintiff and is a

member of the United States House of Representatives for Alabama's 5th Congressional District. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the remaining allegation in Paragraph 2 that Mr. Brooks is registered to vote in the State of Alabama.

3. Martinez Intervenors admit the allegations stated in the second Paragraph 3 of the Complaint.

4. Martinez Intervenors admit the allegations stated in the second Paragraph 4 of the Complaint.

5. Martinez Intervenors admit the allegations stated in the second Paragraph 5 of the Complaint.

6. Martinez Intervenors admit the allegations stated in the second Paragraph 6 of the Complaint.

ALLEGATIONS

I. Allegations Regarding the Constitutional Requirement to Conduct a Census

7. The allegations contained in the second Paragraph 7 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in the second Paragraph 7, except to aver that U.S. Const. art. I, §2, cl. 3 and U.S. Const. amend. XIV, § 2 speak for themselves.

8. The allegations contained in the second Paragraph 8 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in the second

Paragraph 8, except to aver that U.S. Const. art. II, §1, cl. 2 and U.S. Const. amend. XII speak for themselves.

9. The allegations contained in the second Paragraph 9 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 9, except to aver that 13 U.S.C. § 141 (a)-(b) speaks for itself.

10. Martinez Intervenors admit the allegations stated in the second Paragraph 10 of the Complaint. 13 U.S.C. §§ 2, 4 speak for themselves.

11. The allegations contained in Paragraph 11 of the Complaint state legal conclusions, to which no responsive pleading is required.

12. Martinez Intervenors deny each and every allegation in Paragraph 12 of the Complaint, except to aver that 13 U.S.C. § 221 speaks for itself.

13. Martinez Intervenors admit the allegations contained in Paragraph 13 of the Complaint. 2 U.S.C. § 2a(a) speaks for itself.

14. Martinez Intervenors admit the allegations contained in Paragraph 14 of the Complaint. 2 U.S.C. § 2a(b) speaks for itself.

15. Martinez Intervenors admit the allegations contained in Paragraph 15 of the Complaint. 2 U.S.C. § 2a(b) speaks for itself.

II. Final 2020 Census Residence Criteria and Residence Situations

16. Martinez Intervenors admit the allegations contained in Paragraph 16 of the Complaint.

17. Martinez Intervenors admit the allegations contained in Paragraph 17 of the Complaint.

18. Martinez Intervenors admit the allegations contained in Paragraph 18 of the Complaint; the referenced Census Residence Criteria speaks for itself.

19. The allegations contained in Paragraph 19 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 19, except that the referenced Census Residence Criteria speaks for itself.

20. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 20 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 20, except to aver that 13 U.S.C. § 141 (b) speaks for itself.

21. The allegations contained in Paragraph 21 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 21, except to aver that 2 U.S.C. § 2a(a) speaks for itself.

22. The allegations contained in Paragraph 22 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 22.

23. The allegations contained in Paragraph 23 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors answer that the term “illegal aliens” is vague and ambiguous, and admit each and every other allegation in Paragraph 23.

24. Martinez Intervenors admit the allegations stated in Paragraph 24 of the Complaint.

25. The allegations contained in Paragraph 25 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors admit each and every allegation in Paragraph 25.

26. The allegations contained in Paragraph 26 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors admit each and every allegation in Paragraph 26.

27. Martinez Intervenors admit the allegations contained in Paragraph 27 of the Complaint.

28. The allegations contained in Paragraph 28 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 28.

III. Allegations Regarding Immigration and Apportionment

29. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 29 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 29, except to aver that the referenced Department of Homeland Security (“DHS”) document speaks for itself.

30. Martinez Intervenors deny each and every allegation in Paragraph 30 of the Complaint, except to aver that the referenced DHS, Pew Research Center, and Center for Migration Studies documents speak for themselves.

31. Martinez Intervenors answer the allegations contained in Paragraph 31 of the Complaint by asserting that the term “illegal aliens” is vague and ambiguous, and admit each and every other allegation in Paragraph 31.

32. The allegations contained in Paragraph 32 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 32, except as follows: Martinez Intervenors admit that there are 435 seats in the House of Representatives and aver that 2 U.S.C. § 2a(a) speaks for itself.

33. The allegations contained in Paragraph 33 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 33.

34. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 34 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 34.

35. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 35 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 35.

36. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 36 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 36 except to aver that the referenced DHS document speaks for itself.

37. The allegations contained in Paragraph 37 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 37.

38. The allegations contained in Paragraph 38 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 38.

39. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 39 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 39.

40. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 40 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 40, except that the referenced DHS document speaks for itself.

41. The allegations contained in Paragraph 41 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 41.

42. The allegations contained in Paragraph 42 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 42.

43. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 43 of the Complaint; moreover, the allegations state legal conclusions, to which no responsive pleading is required. However, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 43, except as follows: Martinez Intervenors admit that in the 2000 apportionment, 12 congressional seats and electoral college votes changed hands.

44. The allegations contained in Paragraph 44 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 44.

45. The allegations contained in Paragraph 45 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 45, except as follows: Martinez Intervenors admit that in the 2010 apportionment Louisiana, Missouri, and Ohio each lost one seat in the House of Representatives and one vote in the Electoral College, that Montana did not gain a seat in the House of Representatives or an electoral college vote, that California gained two seats in the House of Representatives and electoral college votes, and that Florida and Texas each gained one seat in the House of Representatives and one electoral college vote.

46. The allegations contained in Paragraph 46 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 46.

47. The allegations contained in Paragraph 47 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 47.

48. The allegations contained in Paragraph 48 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 48.

49. The allegations contained in Paragraph 49 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 49.

IV. Plaintiffs' Alleged Harm.

50. The allegations contained in Paragraph 50 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 50.

51. The allegations contained in Paragraph 51 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 51.

52. Martinez Intervenors admit the allegations stated in Paragraph 52 of the Complaint.

53. Martinez Intervenors admit the allegations stated in Paragraph 53 of the Complaint.

54. Martinez Intervenors admit the allegations stated in Paragraph 54 of the Complaint.

55. Martinez Intervenors admit the allegations stated in Paragraph 55 of the Complaint.

56. The allegations contained in Paragraph 56 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 56.

57. The allegations contained in Paragraph 57 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 57.

58. The allegations contained in Paragraph 58 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 58.

59. The allegations contained in Paragraph 59 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 59.

60. The allegations contained in Paragraph 60 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 60.

61. The allegations contained in Paragraph 61 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 61.

62. The allegations contained in Paragraph 62 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 62.

63. The allegations contained in Paragraph 63 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 63.

64. The allegations contained in Paragraph 64 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 64.

65. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 65 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 65.

66. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 66 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 66.

67. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 67 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the

total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 67.

68. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 68 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 68.

69. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 69 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 69.

70. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 70 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of

accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 70.

71. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 71 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 71.

72. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 72 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 72.

V. Plaintiffs' Challenge to the Census Residence Criteria

73. The allegations contained in Paragraph 73 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs' action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 73.

A. Constitutional Requirements for Apportionment

74. Martinez Intervenors admit the allegations stated in Paragraph 74 of the Complaint. U.S. Const. amend. XIV, § 2, cl. 1 speaks for itself.

75. Martinez Intervenors admit the allegations stated in Paragraph 75 of the Complaint. U.S. Const. Art. I, § 2, cl. 3 speaks for itself.

76. Martinez Intervenors admit the allegations stated in Paragraph 76 of the Complaint. U.S. Const. Art. II, § 1, cl. 2 speaks for itself.

77. The allegations contained in Paragraph 77 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 77, except to aver that *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992) speaks for itself.

78. The allegations contained in Paragraph 78 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 78.

1) Fourteenth Amendment of the U.S. Constitution.

79. The allegations contained in Paragraph 79 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive

pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 79, except to aver that U.S. Const. amend. XIV speaks for itself.

80. The allegations contained in Paragraph 80 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 80, except to aver that *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) speaks for itself.

81. The allegations contained in Paragraph 81 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 81.

82. The allegations contained in Paragraph 82 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 82.

83. The allegations contained in Paragraph 83 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 83.

84. The allegations contained in Paragraph 84 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 84.

85. The allegations contained in Paragraph 85 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 85.

2) Requirement to Apportion Congressional Seats Based on Total Number of Persons.

86. Martinez Intervenors admit the allegations stated in Paragraph 86 of the Complaint. U.S. Const. amen. XIV, § 2, cl. 1 speaks for itself.

87. Martinez Intervenors admit the allegations stated in Paragraph 87 of the Complaint. U.S. Const. art. I, § 2, cl. 3 speaks for itself.

88. The allegations contained in Paragraph 88 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 88.

89. The allegations contained in Paragraph 89 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 89, except to aver that 1 Records of the Federal Convention of 1787 350, 352 (Max Farrand, ed., Yale University Press, 1937) speaks for itself.

90. The allegations contained in Paragraph 90 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 90.

91. The allegations contained in Paragraph 91 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 91.

92. The allegations contained in Paragraph 92 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 92.

93. The allegations contained in Paragraph 93 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 93.

94. The allegations contained in Paragraph 94 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 94.

95. The allegations contained in Paragraph 95 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 95.

96. The allegations contained in Paragraph 96 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 96.

3) Equal Representation Based on Total Population.

97. The allegations contained in Paragraph 97 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 97, except to aver that *Franklin*, 505 U.S. at 804 speaks for itself.

98. The allegations contained in Paragraph 98 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 98, except to aver that *Evenwel v. Abbott*, 136 S. Ct. 1120, 1126 (2016) speaks for itself.

99. The allegations contained in Paragraph 99 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 99.

100. The allegations contained in Paragraph 100 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 100.

101. The allegations contained in Paragraph 101 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 101.

102. The allegations contained in Paragraph 102 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 102.

103. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 103 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 103.

104. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 104 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 104.

105. The allegations contained in Paragraph 105 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 105.

106. The allegations contained in Paragraph 106 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 106.

107. The allegations contained in Paragraph 107 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 107.

108. The allegations contained in Paragraph 108 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 108.

109. The allegations contained in Paragraph 109 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 109.

B. Alleged Violation of the Administrative Procedure Act (APA).

110. The allegations contained in Paragraph 110 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 110, except to aver that 5 U.S.C. § 706(2) speaks for itself.

111. The allegations contained in Paragraph 111 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 111, except to aver that *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) speaks for itself.

112. The allegations contained in Paragraph 112 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 112, except to aver that *Multicultural Media, Telecom, and Internet Council v. FCC*, 873 F.3d 932, 936 (D.C. Cir. 2017) and Residence Rule, 83 Fed. Reg. 5525, at 5526 speak for themselves.

113. The allegations contained in Paragraph 113 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 113, except that *Multicultural Media, Telecom, & Internet Council v. FCC*, 873 F.3d at 937 and the Census Residence Criteria speak for themselves.

114. The allegations contained in Paragraph 114 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 114, except to aver that *Int'l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 626 F.3d 84, 94 (D.C. Cir. 2010) speaks for itself.

115. The allegations contained in Paragraph 115 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 115, except to aver that the Census Residence Criteria and *Sierra Club v. Env'tl. Prot. Agency*, 863 F.3d 834, 838-39 (D.C. Cir. 2017) speak for themselves.

116. The allegations contained in Paragraph 116 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 116.

117. The allegations contained in Paragraph 117 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 117, except to aver that the Census Residence Criteria speaks for itself.

118. The allegations contained in Paragraph 118 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 118.

C. Alleged Violation of the APA For Action in Excess of Statutory Authority.

119. The allegations contained in Paragraph 119 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 119, except to aver that 5 U.S.C. § 706(2)(C) speaks for itself.

120. The allegations contained in Paragraph 120 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 120, except to aver that 13 U.S.C. § 141(a)-(b) speaks for itself.

121. The allegations contained in Paragraph 121 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 121, except to aver that *Johnson v. Governor of Florida*, 405 F.3d 1214, 1229 (11th Cir. 2005) speaks for itself.

122. The allegations contained in Paragraph 122 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 122.

123. The allegations contained in Paragraph 123 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 123.

124. The allegations contained in Paragraph 124 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 124.

125. The allegations contained in Paragraph 125 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 125.

FIRST CAUSE OF ACTION

Alleged Violation of the Fourteenth Amendment (Congressional Apportionment)

126. Answering Paragraph 126 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-125 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

127. The allegations contained in Paragraph 127 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 127, except to aver that U.S. Const. amend. XIV speaks for itself.

128. The allegations contained in Paragraph 128 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 128.

SECOND CAUSE OF ACTION

Alleged Violation of the Fourteenth Amendment, Article I, § 2, and Article II, § 1

(Electoral College Apportionment)

129. Answering Paragraph 129 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-128 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

130. The allegations contained in Paragraph 130 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 130, except that U.S. Const. art II, § 1, cl. 2 speaks for itself.

131. The allegations contained in Paragraph 131 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 131.

THIRD CAUSE OF ACTION

Alleged Violation of Article I, § 2 (Actual Enumeration)

132. Answering Paragraph 132 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-131 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

133. The allegations contained in Paragraph 133 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 133, except to aver that U.S. Const. art. I, § 2, cl. 3 and U.S. Const. amend. XIV speak for themselves.

134. The allegations contained in Paragraph 134 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 134.

FOURTH CAUSE OF ACTION

Alleged Violation of the APA (Arbitrary and Capricious)

135. Answering Paragraph 135 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-134 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

136. The allegations contained in Paragraph 136 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 136, except to aver that 5 U.S.C. § 706(2)(A) speaks for itself.

137. The allegations contained in Paragraph 137 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 137.

138. The allegations contained in Paragraph 138 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 138.

FIFTH CAUSE OF ACTION

Alleged Violation of the APA (Contrary to Law)

139. Answering Paragraph 139 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-138 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

140. The allegations contained in Paragraph 140 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 140, except to aver that 5 U.S.C. § 706(2)(C) speaks for itself.

141. The allegations contained in Paragraph 141 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 141.

142. The allegations contained in Paragraph 142 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 142.

143. The allegations contained in Paragraph 143 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 143.

PRAYER FOR RELIEF

To the extent that any response is required to Plaintiffs' separate Prayer for Relief, Martinez Intervenors deny each and every allegation contained in the Prayer for Relief, and

further deny that the Plaintiffs are entitled to declaratory relief, injunctive relief, or any other form of relief whatsoever.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses to all causes of action purported to be set forth by Plaintiffs in the Complaint, Martinez Intervenors allege as follows, subject to Martinez Intervenors' right to amend and assert such other affirmative defenses as may become available during discovery in this action:

FIRST AFFIRMATIVE DEFENSE: LACK OF STANDING

This Court lacks subject matter jurisdiction over Plaintiffs' claims because Plaintiffs cannot show the injury and redressability necessary to assert standing.

SECOND AFFIRMATIVE DEFENSE: FAILURE TO STATE A CAUSE OF ACTION

Plaintiffs' claim, as set forth in the Complaint, fails to state facts sufficient to constitute a cause of action against Defendants.

THIRD AFFIRMATIVE DEFENSE: LACHES

Some or all of Plaintiffs' claims are barred under the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE: UNCLEAN HANDS

Plaintiffs signed HB 56 into law in June 2011. AL Act 2011-535. The stated purpose of the law is to "discourage illegal immigration within the state." *U.S. v. Alabama*, 691 F.3d 1269 (11th Cir. 2012), *cert. denied*, 569 U.S. 968 (2013). Plaintiffs are now claiming that their decision to drive immigrants and their families out of Alabama is causing them political loss. By virtue of Plaintiffs' own racially discriminatory conduct, Plaintiffs should be barred from recovering against Defendants by the equitable doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE: RESERVATION OF RIGHTS

Because the Complaint is couched in conclusory terms, Martinez Intervenors cannot fully anticipate all affirmative defenses that may be applicable to the claims asserted. Accordingly, Martinez Intervenors reserve the right to assert additional affirmative defenses to the complaint, whether under law, equity, or otherwise, if and to the extent that such affirmative defenses are discovered and apply.

WHEREFORE, Martinez Intervenors respectfully request as follows:

1. That Plaintiffs' Complaint and its causes of action be dismissed with prejudice;
2. That Plaintiffs take nothing by way of the Complaint;
3. That Martinez Intervenors be awarded costs of the suit and attorneys' fees; and
4. That the Court order such other and further relief for Martinez Intervenors as the Court may deem appropriate.

CROSS-CLAIM BY MARTINEZ INTERVENORS FOR DECLARATORY RELIEF

INTRODUCTION

1. On May 21, 2018, the State of Alabama and Congressman Morris J. Brooks, Jr., sued the U.S Department of Commerce, Commerce Secretary Wilbur L. Ross, the U.S. Census Bureau, and Ron Jarmin, acting director of the U.S. Census Bureau at the time. On September 10, 2019, Plaintiffs amended their complaint for declaratory relief.²

2. Plaintiffs Alabama and Brooks seek to set aside the Final 2020 Census Residence Criteria and Residence Situations Rule ("Residence Rule"), 83 Fed. Reg. 5525 (February 8, 2018) (to be codified at 15 C.F.R. Ch. D), as unlawful under federal law and the U.S.

² Plaintiffs replaced Defendant Jarmin with Steven Dillingham, the current director of the U.S. Census Bureau, and removed their assertion of a financial injury based on the inclusion of undocumented immigrants in the decennial enumeration.

Constitution, and seek to exclude undocumented immigrants from the total population count for the purposes of congressional apportionment. ECF Doc. 112, p. 2-4 ¶¶1-5; p. 32, ¶ 144.

3. The U.S. Constitution requires an “actual Enumeration” of every person living in the United States to take place every ten years.

4. The Constitution gives Congress the authority to conduct the Census “in such a Manner as [Congress] shall by Law direct,” and Congress has wide discretion over the conduct of the census. Pursuant to this authority, Congress has delegated the duty of conducting the census to the Secretary of Commerce, subject to federal law.

5. Under the U.S. Constitution, the decennial enumeration of the national population is used to allocate seats in the U.S. House of Representatives to states based on the “whole number of persons in each State.”

6. Federal law requires the Secretary of Commerce to deliver to the President the tabulation of the total population of the states for the apportionment of Representatives in Congress among the several states by the end of the census year. The President must report the tabulation of the total population of the states to Congress within a week after the start of Congress’s new session.

7. Defendants will not conduct an enumeration of undocumented immigrants in the 2020 Census.

8. Any attempt to exclude undocumented immigrants from the total population tabulations reported to the President and Congress would be based on estimations that use probabilistic statistical modeling in order to determine the number of undocumented immigrants in the U.S. Because estimated data is not based on an enumeration, it violates the U.S.

Constitution for the purposes of congressional apportionment and the distribution of electors in the Electoral College, and is thus prohibited.

9. Any attempt to exclude undocumented immigrants from the total population tabulations reported to the President and Congress would exclude persons who are required by the Constitution to be included in the population tabulations used to apportion the House of Representatives and the Electoral College.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1346 over Defendant-Intervenors' causes of action under the United States Constitution and federal statutes. This Court may grant Defendant-Intervenors' request for declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this district. 28 U.S.C. §1391 (e)(1).

PARTIES

Plaintiffs

12. Defendant-Intervenor Diana Martinez is a resident of Ventura County, California. She is a longtime registered voter and lives in the City of Santa Paula, born and raised in California. According to American Community Survey ("ACS") data, Santa Paula is 81.3 percent Latino and 20.8 percent non-U.S. citizen.

13. Defendant-Intervenor Raisa Sequeira is a resident of Miami-Dade County in Florida. She is a registered voter and lives in the City of Miami. According to ACS data, Miami is 72.2 percent Latino and 30.6 percent non-U.S. citizen.

14. Defendant-Intervenor Saulo Corona is a resident of Maricopa County, Arizona. He lives and is registered to vote in the City of Tempe. According to ACS data, Maricopa County is 30.6 percent Latino and 9 percent non-U.S. citizen.

15. Defendant-Intervenors Irving Medina and Florinda P. Chavez are residents of Travis County, Texas. They both live and are registered to vote in Austin. According to ACS data, Austin is 34.5 percent Latino and 12.6 percent non-U.S. citizen.

16. Defendant-Intervenor Joey Cardenas is a resident of Wharton County, Texas. He is a longtime registered voter and lives in Louise, a census-designated place. According to ACS data, Wharton County is 40.3 percent Latino and 6.9 percent non-U.S. citizen.

17. CPLC is headquartered in Phoenix, Arizona and serves individuals who primarily reside in Coconino, Cochise, Maricopa, Pima, and Yuma Counties. CPLC serves individuals who live in neighborhoods, cities, counties, and voting districts with relatively larger Latino and non-U.S. citizen populations when compared to Arizona and the United States. For example, according to ACS data, Yuma County is 62.9 percent Latino and 15.6 percent non-U.S. citizen, while Phoenix is 42.5 percent Latino and 13.3 percent non-U.S. citizen.

Defendants/Defendants

18. Defendant Wilbur L. Ross is Secretary of the U.S. Department of Commerce. The Secretary of Commerce carries out the functions and duties imposed on him by the Census Act, issues rules and regulations to carry out his responsibilities, and delegates functions and duties as necessary.

19. Congress delegated the duty to conduct the Census to the Secretary of Commerce, who must take a census on April 1 every 10 years.

20. By the end of 2020, the Secretary of Commerce is required to deliver the tabulation of the population of each state to the President, who is required to transmit to Congress the total population of each state and the number of congressional seats to which each state is entitled. Ross is sued in his official capacity.

21. Defendant Steven Dillingham is the Director for the U.S. Census Bureau. The Director of the U.S. Census Bureau oversees the 2020 Census operations and is responsible for ensuring the accuracy of the 2020 Census count. Defendant Dillingham directs the Census Bureau and performs Census-related duties assigned by law, regulation, or the Secretary of Commerce. 13 U.S.C. § 21. Dillingham is sued in his official capacity.

22. Defendant U.S. Department of Commerce is an agency of the U.S. government which oversees the U.S. Census Bureau and its conduct of the decennial Census and other Census programs.

23. Defendant U.S. Census Bureau is an agency within the U.S. Department of Commerce. 13 U.S.C. § 2. The Census Bureau is responsible for conducting all Census programs, including the development and implementation of the 2020 Census.

FACTUAL ALLEGATIONS

24. The U.S. Constitution requires an “actual Enumeration” of “the whole number of persons in each State” to take place every ten years.

25. Under the U.S. Constitution, the decennial enumeration of the national population is used to allocate seats in the U.S. House of Representatives to states based on the “whole number of persons in each State,” under the U.S. Constitution. Congressional seats are apportioned to the states based on “their respective Numbers.”

26. The enumeration is also used to allocate the number of electors each state receives in the Electoral College.

27. The Constitution vests Congress with wide authority over the conduct of the Census. Pursuant to this authority, Congress delegated the duty of conducting the decennial Census to the Secretary of Commerce, subject to the provisions of the Census Act of 1976, 13 U.S.C. § 141, et seq. (the “Census Act”), and other applicable federal statutes and regulations.

28. Section 141(f) of Title 13, requires that the Secretary report to Congress his “determination[s]” as to the subjects of the next census not later than three years prior to the April 2020 Census date.

29. Federal law requires the Secretary of Commerce to deliver the “tabulation of total population of states . . . for the apportionment of Representatives in Congress among the several States” to the President by the end of the census year, who must report them to Congress within a week after the start of Congress’s new session.

30. Federal law requires that the President’s transmission to Congress provide a “statement showing the whole number of persons in each State excluding Indians not taxed, as ascertained under [the] decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions[.]”

31. Federal law requires that each State shall be entitled to the number of Representatives shown in such statement.

32. Federal law requires the Clerk of the House of Representatives, within fifteen calendar days after the receipt of the President’s statement to Congress, “to send the executive of each State a certificate of the number of Representatives to which such State is entitled[.]”

Collection of Decennial Census

33. The Census Act states, “Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as ‘sampling’ in carrying out the provisions of this title.” 13 U.S.C. §195.

34. The Secretary of Commerce may delegate authority to carry out his functions and duties to conduct the Census to the Department of Commerce, of which the Census Bureau is a part.

35. To conduct the decennial enumeration, the Census Bureau sends a questionnaire to each household in the U.S. Every head of household is required by law to answer the questions on the Census form truthfully.

Citizenship Data From the Census Bureau’s American Community Survey

36. There will not be a question on the 2020 decennial Census regarding the citizenship of respondents and their household members. Therefore, the decennial Census will not include an actual enumeration of non-citizens or of undocumented immigrants in the U.S.

37. The American Community Survey (“ACS”) is an ongoing, yearly survey by the Census Bureau that collects demographic information including ancestry, citizenship, year of entry to the U.S., educational attainment, income, language proficiency, migration, disability, employment, and housing characteristics from approximately 2.5 percent of U.S. households. ACS data provide estimates of population characteristics, including citizenship, that are based on sample data, and do not provide an enumeration of citizens and non-citizens. The ACS survey does not include a question on legal status of non-citizen respondents. The ACS survey therefore does not provide an estimate or an enumeration of the undocumented population in the U.S.

Defendants' Collection of Citizenship Data for Apportionment

38. The 2020 decennial Census will not include a question on immigration status, including any question to ascertain if the respondent is an undocumented immigrant. The decennial Census will not conduct an enumeration of undocumented immigrants living in the U.S.

39. On July 11, 2019, President Donald J. Trump issued Executive Order (“EO”) 13880 requiring that, among other things, all executive departments and agencies provide the Department of Commerce “the maximum assistance permissible, consistent with law, in determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing” the objective of collecting citizenship data.

40. EO 13880 states, “It is the policy of the United States to develop complete and accurate data on the number of citizens, non-citizens, and illegal aliens in the country.”

41. The data collected under EO 13880 is not an enumeration of individuals, and specifically is not an enumeration of undocumented immigrants, in the U.S.

42. Any data collected under EO 13880 will produce estimations based on statistical probabilities using administrative records. Such estimations based on statistical modeling are not an enumeration.

43. At a press conference announcing the issuance of EO 13880, President Trump stated that his intention in issuing EO 13880 is so that “[t]he Census Bureau can use [citizenship] information, along with information collected through the questionnaire, to create the official census. In other words, as a result of today’s executive order, we will be able to ensure the 2020 Census generates an accurate count of how many citizens, non-citizens, and illegal aliens are in

the United States of America.” The President’s statement is false and incorrect. Administrative records do not provide a count of the total population, nor do they provide an “accurate count,” or an enumeration of citizens, non-citizens, or undocumented immigrations within the total population.

44. At the same press conference announcing the issuance of EO 13880, U.S. Attorney General William Barr stated that “there is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of that dispute, this data may be relevant to those considerations,” and that the DOJ “will be studying this issue.”

45. On July 24, 2019, Defendant Dillingham testified before the House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties. During that hearing, Congresswoman Ayanna Pressley asked Defendant Dillingham, “Can you confirm for us today that the citizenship data collected pursuant to the executive order will not be used in the Bureau’s apportionment counts?” Defendant Dillingham answered, “. . . Let me get back to you on that.” Congresswoman Pressley subsequently asked Defendant Dillingham, “Do you believe it should be used for that purpose?” and Defendant Dillingham answered, “I don’t have any belief whatsoever, I just need to know the mechanics, Congresswoman, and I’ll get back to you on that.”³

46. Upon information and belief, the Census Bureau responded in writing to Congresswoman Pressley’s office regarding the July 24, 2019 exchange in front of Congress, “The issue you asked about is currently in litigation and we do not comment on ongoing

³ Video and Transcript of Testimony of U.S. Census Bureau Director Steven Dillingham on the 2020 Census before House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties, C-Span (Jul. 24, 2019), https://archive.org/details/CSPAN3_20190725_000000_U.S._Census_Bureau_Director_Steven_Dillingham_Testifies_Before_Congress/start/4080/end/4140.

litigation, but the Census Bureau will fulfill its constitutional mandate to conduct a complete and accurate 2020 Census and enumerate all persons living in the United States of America.”⁴

47. These ambiguous statements by Defendants create a live and actual controversy between Defendants, who threaten to report an unconstitutional enumeration of total population, and Martinez Intervenors, who are therefore entitled to declaratory relief.

48. Without an enumeration of the number of undocumented immigrants within the total population, Defendants would be required to use data from estimations based on probabilistic statistical modeling in order to determine the number of undocumented immigrants in the U.S.

49. Under the U.S. Constitution, the use of estimated data based on statistical probabilities to produce, in whole or in part, through addition or subtraction, the total population for the purposes of congressional apportionment is prohibited.

50. If Defendants were to decide to exclude undocumented immigrants from the enumeration reported to Congress for the purpose of apportioning Representatives and electors to the Electoral College without a question on the Census form that counted undocumented immigrants living in the U.S., they would be required to adjust the final enumeration based on probabilistic modeling.

51. If Defendants were to decide to exclude undocumented immigrants from the enumeration reported to Congress for the purpose of apportioning Representatives and electors to the Electoral College, they would be excluding persons constitutionally required to be included in the enumeration reported.

⁴ Hansi Lo Wang, Do Trump Officials Plan To Break Centuries Of Precedent In Divvying Up Congress?, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress>.

52. Martinez Intervenors will be injured if Representatives and electors to the Electoral College are apportioned based on data that excludes undocumented immigrants from the total enumeration reported to Congress. Martinez Intervenors will suffer harm to their representational and electoral interests if a dataset other than a total enumeration consistent with the U.S. Constitution is reported to Congress. The use of such an altered dataset will cause states and other political subdivisions with high proportions of undocumented individuals and/or Latinos to lose congressional representation and Electoral College representation.

CAUSE OF ACTION

COUNT I

(Declaratory Judgment - Violation of the U.S. Constitution)

53. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

54. Article I, Section 2, Clause 3 of the U.S. Constitution requires an “actual enumeration” of people in the United States. The Constitution mandates that the apportionment of congressional seats be conducted on the basis of total population of all persons. U.S. CONST., Amdt. XIV, § 2 (“Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State”).

55. Defendants’ production and report to the President or Congress of an altered dataset using estimations based on statistical probabilities that excludes the undocumented population from the population totals used for congressional apportionment would violate the U.S. Constitution.

56. The production and report of an altered dataset that excludes undocumented immigrants from the total population for the purposes of congressional apportionment will injure Plaintiffs and organizational Plaintiffs’ members by depriving them of representation in the U.S. House of Representatives and the Electoral College.

57. The use of administrative data to produce estimates based on probabilistic modeling to exclude undocumented immigrants from the enumeration for the purposes of Congressional apportionment and apportionment of electors in the Electoral College is unconstitutional.

58. The purposeful exclusion of undocumented immigrants residing in the United States from the population count used for purposes of Congressional apportionment and apportionment of electors in the Electoral College is unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- (a) Declare that production and reporting to the President or to Congress of an altered tabulation for the purposes of congressional apportionment that attempts to exclude the undocumented population violates the U.S. Constitution;
- (b) Enjoin Defendants and their agents from producing and/or reporting to the President or to Congress an altered tabulation for the purposes of congressional apportionment that attempts to exclude the undocumented population;
- (c) Award Plaintiffs reasonable costs, expenses, and attorneys' fees under 28 U.S.C. § 2412; and
- (d) Award such additional relief as the interests of justice may require.

Dated: October 1, 2019

Respectfully submitted,
/s/ Andrea Senteno

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all CM/ECF registrants.

Date: October 1, 2019

/s/ Andrea Senteno

Andrea Senteno

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**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

STATE OF ALABAMA, *et al.*;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE, *et al.*;

Defendants,

and

DIANA MARTINEZ, *et al.*; COUNTY OF
SANTA CLARA, CALIFORNIA, *et al.*; and
STATE OF NEW YORK, *et al.*;

Defendant-Intervenors.

Civil Action No. 2:18-cv-00772-RDP

**MARTINEZ INTERVENORS' ANSWER TO PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
CROSS-CLAIM AGAINST DEFENDANTS**

Defendant-Intervenors Diana Martinez, Raisa Sequeira, Saulo Corona, Irving Medina, Joey Cardenas, Florinda P. Chavez, and Chicanos Por La Causa (collectively, "Martinez Intervenors"), for themselves alone and no other, answer the First Amended Complaint ("Complaint") for Declaratory Relief of Plaintiffs the State of Alabama, and Morris J. Brooks, Jr., Representative for Alabama's Fifth Congressional District (collectively, "Plaintiffs") as follows:

1. The allegations contained in Paragraph 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is

necessary, Martinez Intervenors deny each and every allegation in Paragraph 1, except as follows: Martinez Intervenors admit that on February 8, 2018 the United States Census Bureau (“Census Bureau”) issued the 2020 Census Residence Criteria and Residence Situations Rule, which speaks for itself.¹

2. The allegations contained in Paragraph 2 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 2.

3. The allegations contained in Paragraph 3 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 3.

4. The allegations contained in Paragraph 4 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs’ action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 4.

5. The allegations contained in Paragraph 5 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs’ action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 5.

¹ The allegations contained in Footnote 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Footnote 1, and further answer that, despite the definition provided by Plaintiffs, the term “illegal aliens” is vague and ambiguous. By Plaintiffs’ definition, persons “who are present in the United States by virtue of either illegal entry in violation of federal immigration statutes or who have entered the United States legally but have remained present in the country beyond the period of time permitted by federal law,” are “illegal aliens,” regardless of whether that person later became a lawful permanent resident or naturalized citizen. Plaintiffs’ definition could also include persons, including long-term residents, who have a form of protected immigration status issued and recognized by federal immigration authorities.

JURISDICTION AND VENUE

6. The allegations contained in Paragraph 6 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 6, and specifically deny that this Court has subject matter jurisdiction over Plaintiffs' suit.

7. The allegations contained in Paragraph 7 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 7.

8. Martinez Intervenors admit that venue is proper in this district.

9. The allegations contained in Paragraph 9 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs' action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 9.

THE PARTIES

1. The allegations contained in the second Paragraph 1 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 1, except as follows: Martinez Intervenors admit that the State of Alabama is a sovereign state in the United States and that the attorney general of Alabama is Steve Marshall.

2. The allegations contained in the second Paragraph 2 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 3, except as follows: Martinez Intervenors admit that Morris J. Brooks, Jr., is a plaintiff and is a

member of the United States House of Representatives for Alabama's 5th Congressional District. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the remaining allegation in Paragraph 2 that Mr. Brooks is registered to vote in the State of Alabama.

3. Martinez Intervenors admit the allegations stated in the second Paragraph 3 of the Complaint.

4. Martinez Intervenors admit the allegations stated in the second Paragraph 4 of the Complaint.

5. Martinez Intervenors admit the allegations stated in the second Paragraph 5 of the Complaint.

6. Martinez Intervenors admit the allegations stated in the second Paragraph 6 of the Complaint.

ALLEGATIONS

I. Allegations Regarding the Constitutional Requirement to Conduct a Census

7. The allegations contained in the second Paragraph 7 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in the second Paragraph 7, except to aver that U.S. Const. art. I, §2, cl. 3 and U.S. Const. amend. XIV, § 2 speak for themselves.

8. The allegations contained in the second Paragraph 8 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in the second

Paragraph 8, except to aver that U.S. Const. art. II, §1, cl. 2 and U.S. Const. amend. XII speak for themselves.

9. The allegations contained in the second Paragraph 9 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 9, except to aver that 13 U.S.C. § 141 (a)-(b) speaks for itself.

10. Martinez Intervenors admit the allegations stated in the second Paragraph 10 of the Complaint. 13 U.S.C. §§ 2, 4 speak for themselves.

11. The allegations contained in Paragraph 11 of the Complaint state legal conclusions, to which no responsive pleading is required.

12. Martinez Intervenors deny each and every allegation in Paragraph 12 of the Complaint, except to aver that 13 U.S.C. § 221 speaks for itself.

13. Martinez Intervenors admit the allegations contained in Paragraph 13 of the Complaint. 2 U.S.C. § 2a(a) speaks for itself.

14. Martinez Intervenors admit the allegations contained in Paragraph 14 of the Complaint. 2 U.S.C. § 2a(b) speaks for itself.

15. Martinez Intervenors admit the allegations contained in Paragraph 15 of the Complaint. 2 U.S.C. § 2a(b) speaks for itself.

II. Final 2020 Census Residence Criteria and Residence Situations

16. Martinez Intervenors admit the allegations contained in Paragraph 16 of the Complaint.

17. Martinez Intervenors admit the allegations contained in Paragraph 17 of the Complaint.

18. Martinez Intervenors admit the allegations contained in Paragraph 18 of the Complaint; the referenced Census Residence Criteria speaks for itself.

19. The allegations contained in Paragraph 19 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 19, except that the referenced Census Residence Criteria speaks for itself.

20. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 20 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 20, except to aver that 13 U.S.C. § 141 (b) speaks for itself.

21. The allegations contained in Paragraph 21 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 21, except to aver that 2 U.S.C. § 2a(a) speaks for itself.

22. The allegations contained in Paragraph 22 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 22.

23. The allegations contained in Paragraph 23 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors answer that the term “illegal aliens” is vague and ambiguous, and admit each and every other allegation in Paragraph 23.

24. Martinez Intervenors admit the allegations stated in Paragraph 24 of the Complaint.

25. The allegations contained in Paragraph 25 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors admit each and every allegation in Paragraph 25.

26. The allegations contained in Paragraph 26 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors admit each and every allegation in Paragraph 26.

27. Martinez Intervenors admit the allegations contained in Paragraph 27 of the Complaint.

28. The allegations contained in Paragraph 28 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 28.

III. Allegations Regarding Immigration and Apportionment

29. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 29 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 29, except to aver that the referenced Department of Homeland Security (“DHS”) document speaks for itself.

30. Martinez Intervenors deny each and every allegation in Paragraph 30 of the Complaint, except to aver that the referenced DHS, Pew Research Center, and Center for Migration Studies documents speak for themselves.

31. Martinez Intervenors answer the allegations contained in Paragraph 31 of the Complaint by asserting that the term “illegal aliens” is vague and ambiguous, and admit each and every other allegation in Paragraph 31.

32. The allegations contained in Paragraph 32 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 32, except as follows: Martinez Intervenors admit that there are 435 seats in the House of Representatives and aver that 2 U.S.C. § 2a(a) speaks for itself.

33. The allegations contained in Paragraph 33 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 33.

34. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 34 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 34.

35. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 35 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 35.

36. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 36 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 36 except to aver that the referenced DHS document speaks for itself.

37. The allegations contained in Paragraph 37 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 37.

38. The allegations contained in Paragraph 38 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 38.

39. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 39 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 39.

40. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 40 of the Complaint; to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 40, except that the referenced DHS document speaks for itself.

41. The allegations contained in Paragraph 41 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 41.

42. The allegations contained in Paragraph 42 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 42.

43. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 43 of the Complaint; moreover, the allegations state legal conclusions, to which no responsive pleading is required. However, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 43, except as follows: Martinez Intervenors admit that in the 2000 apportionment, 12 congressional seats and electoral college votes changed hands.

44. The allegations contained in Paragraph 44 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 44.

45. The allegations contained in Paragraph 45 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 45, except as follows: Martinez Intervenors admit that in the 2010 apportionment Louisiana, Missouri, and Ohio each lost one seat in the House of Representatives and one vote in the Electoral College, that Montana did not gain a seat in the House of Representatives or an electoral college vote, that California gained two seats in the House of Representatives and electoral college votes, and that Florida and Texas each gained one seat in the House of Representatives and one electoral college vote.

46. The allegations contained in Paragraph 46 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 46.

47. The allegations contained in Paragraph 47 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 47.

48. The allegations contained in Paragraph 48 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 48.

49. The allegations contained in Paragraph 49 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 49.

IV. Plaintiffs' Alleged Harm.

50. The allegations contained in Paragraph 50 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 50.

51. The allegations contained in Paragraph 51 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 51.

52. Martinez Intervenors admit the allegations stated in Paragraph 52 of the Complaint.

53. Martinez Intervenors admit the allegations stated in Paragraph 53 of the Complaint.

54. Martinez Intervenors admit the allegations stated in Paragraph 54 of the Complaint.

55. Martinez Intervenors admit the allegations stated in Paragraph 55 of the Complaint.

56. The allegations contained in Paragraph 56 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 56.

57. The allegations contained in Paragraph 57 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 57.

58. The allegations contained in Paragraph 58 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 58.

59. The allegations contained in Paragraph 59 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 59.

60. The allegations contained in Paragraph 60 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 60.

61. The allegations contained in Paragraph 61 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 61.

62. The allegations contained in Paragraph 62 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 62.

63. The allegations contained in Paragraph 63 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 63.

64. The allegations contained in Paragraph 64 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 64.

65. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 65 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 65.

66. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 66 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 66.

67. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 67 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the

total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 67.

68. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 68 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 68.

69. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 69 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 69.

70. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 70 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of

accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 70.

71. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 71 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers of persons that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 71.

72. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 72 of the Complaint, specifically, as to whether the “estimates” in the paragraph are reliable for the purposes of accurately predicting the total numbers that will be counted in the 2020 Census, the total numbers of undocumented persons included in those numbers, and the total numbers of persons that will be included in each congressional district contained in the allegations in this paragraph. To the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 72.

V. Plaintiffs' Challenge to the Census Residence Criteria

73. The allegations contained in Paragraph 73 of the Complaint state legal conclusions and constitute characterizations of Plaintiffs' action and claims for relief, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 73.

A. Constitutional Requirements for Apportionment

74. Martinez Intervenors admit the allegations stated in Paragraph 74 of the Complaint. U.S. Const. amend. XIV, § 2, cl. 1 speaks for itself.

75. Martinez Intervenors admit the allegations stated in Paragraph 75 of the Complaint. U.S. Const. Art. I, § 2, cl. 3 speaks for itself.

76. Martinez Intervenors admit the allegations stated in Paragraph 76 of the Complaint. U.S. Const. Art. II, § 1, cl. 2 speaks for itself.

77. The allegations contained in Paragraph 77 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 77, except to aver that *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992) speaks for itself.

78. The allegations contained in Paragraph 78 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 78.

1) Fourteenth Amendment of the U.S. Constitution.

79. The allegations contained in Paragraph 79 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive

pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 79, except to aver that U.S. Const. amend. XIV speaks for itself.

80. The allegations contained in Paragraph 80 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 80, except to aver that *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) speaks for itself.

81. The allegations contained in Paragraph 81 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 81.

82. The allegations contained in Paragraph 82 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 82.

83. The allegations contained in Paragraph 83 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 83.

84. The allegations contained in Paragraph 84 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 84.

85. The allegations contained in Paragraph 85 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 85.

2) Requirement to Apportion Congressional Seats Based on Total Number of Persons.

86. Martinez Intervenors admit the allegations stated in Paragraph 86 of the Complaint. U.S. Const. amen. XIV, § 2, cl. 1 speaks for itself.

87. Martinez Intervenors admit the allegations stated in Paragraph 87 of the Complaint. U.S. Const. art. I, § 2, cl. 3 speaks for itself.

88. The allegations contained in Paragraph 88 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 88.

89. The allegations contained in Paragraph 89 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 89, except to aver that 1 Records of the Federal Convention of 1787 350, 352 (Max Farrand, ed., Yale University Press, 1937) speaks for itself.

90. The allegations contained in Paragraph 90 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 90.

91. The allegations contained in Paragraph 91 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 91.

92. The allegations contained in Paragraph 92 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 92.

93. The allegations contained in Paragraph 93 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 93.

94. The allegations contained in Paragraph 94 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 94.

95. The allegations contained in Paragraph 95 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 95.

96. The allegations contained in Paragraph 96 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 96.

3) Equal Representation Based on Total Population.

97. The allegations contained in Paragraph 97 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 97, except to aver that *Franklin*, 505 U.S. at 804 speaks for itself.

98. The allegations contained in Paragraph 98 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 98, except to aver that *Evenwel v. Abbott*, 136 S. Ct. 1120, 1126 (2016) speaks for itself.

99. The allegations contained in Paragraph 99 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 99.

100. The allegations contained in Paragraph 100 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 100.

101. The allegations contained in Paragraph 101 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 101.

102. The allegations contained in Paragraph 102 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 102.

103. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 103 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 103.

104. Martinez Intervenors aver that they are without sufficient information or knowledge to form a belief as to the allegations contained in Paragraph 104 of the Complaint; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 104.

105. The allegations contained in Paragraph 105 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 105.

106. The allegations contained in Paragraph 106 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 106.

107. The allegations contained in Paragraph 107 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 107.

108. The allegations contained in Paragraph 108 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 108.

109. The allegations contained in Paragraph 109 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 109.

B. Alleged Violation of the Administrative Procedure Act (APA).

110. The allegations contained in Paragraph 110 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 110, except to aver that 5 U.S.C. § 706(2) speaks for itself.

111. The allegations contained in Paragraph 111 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 111, except to aver that *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) speaks for itself.

112. The allegations contained in Paragraph 112 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 112, except to aver that *Multicultural Media, Telecom, and Internet Council v. FCC*, 873 F.3d 932, 936 (D.C. Cir. 2017) and Residence Rule, 83 Fed. Reg. 5525, at 5526 speak for themselves.

113. The allegations contained in Paragraph 113 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 113, except that *Multicultural Media, Telecom, & Internet Council v. FCC*, 873 F.3d at 937 and the Census Residence Criteria speak for themselves.

114. The allegations contained in Paragraph 114 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 114, except to aver that *Int'l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 626 F.3d 84, 94 (D.C. Cir. 2010) speaks for itself.

115. The allegations contained in Paragraph 115 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 115, except to aver that the Census Residence Criteria and *Sierra Club v. Env'tl. Prot. Agency*, 863 F.3d 834, 838-39 (D.C. Cir. 2017) speak for themselves.

116. The allegations contained in Paragraph 116 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 116.

117. The allegations contained in Paragraph 117 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 117, except to aver that the Census Residence Criteria speaks for itself.

118. The allegations contained in Paragraph 118 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 118.

C. Alleged Violation of the APA For Action in Excess of Statutory Authority.

119. The allegations contained in Paragraph 119 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 119, except to aver that 5 U.S.C. § 706(2)(C) speaks for itself.

120. The allegations contained in Paragraph 120 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 120, except to aver that 13 U.S.C. § 141(a)-(b) speaks for itself.

121. The allegations contained in Paragraph 121 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 121, except to aver that *Johnson v. Governor of Florida*, 405 F.3d 1214, 1229 (11th Cir. 2005) speaks for itself.

122. The allegations contained in Paragraph 122 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 122.

123. The allegations contained in Paragraph 123 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 123.

124. The allegations contained in Paragraph 124 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 124.

125. The allegations contained in Paragraph 125 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 125.

FIRST CAUSE OF ACTION

Alleged Violation of the Fourteenth Amendment (Congressional Apportionment)

126. Answering Paragraph 126 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-125 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

127. The allegations contained in Paragraph 127 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 127, except to aver that U.S. Const. amend. XIV speaks for itself.

128. The allegations contained in Paragraph 128 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 128.

SECOND CAUSE OF ACTION

Alleged Violation of the Fourteenth Amendment, Article I, § 2, and Article II, § 1

(Electoral College Apportionment)

129. Answering Paragraph 129 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-128 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

130. The allegations contained in Paragraph 130 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 130, except that U.S. Const. art II, § 1, cl. 2 speaks for itself.

131. The allegations contained in Paragraph 131 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 131.

THIRD CAUSE OF ACTION

Alleged Violation of Article I, § 2 (Actual Enumeration)

132. Answering Paragraph 132 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-131 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

133. The allegations contained in Paragraph 133 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 133, except to aver that U.S. Const. art. I, § 2, cl. 3 and U.S. Const. amend. XIV speak for themselves.

134. The allegations contained in Paragraph 134 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 134.

FOURTH CAUSE OF ACTION

Alleged Violation of the APA (Arbitrary and Capricious)

135. Answering Paragraph 135 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-134 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

136. The allegations contained in Paragraph 136 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 136, except to aver that 5 U.S.C. § 706(2)(A) speaks for itself.

137. The allegations contained in Paragraph 137 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 137.

138. The allegations contained in Paragraph 138 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 138.

FIFTH CAUSE OF ACTION

Alleged Violation of the APA (Contrary to Law)

139. Answering Paragraph 139 of the Complaint, Martinez Intervenors repeat and incorporate by reference each and all of the denials, admissions, and averments set forth above in the answers to Paragraphs 1-138 (including the initial Paragraphs 1-9) of the Complaint, as though fully set forth here.

140. The allegations contained in Paragraph 140 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 140, except to aver that 5 U.S.C. § 706(2)(C) speaks for itself.

141. The allegations contained in Paragraph 141 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 141.

142. The allegations contained in Paragraph 142 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 142.

143. The allegations contained in Paragraph 143 of the Complaint state legal conclusions, to which no responsive pleading is required; however, to the extent a responsive pleading is necessary, Martinez Intervenors deny each and every allegation in Paragraph 143.

PRAYER FOR RELIEF

To the extent that any response is required to Plaintiffs' separate Prayer for Relief, Martinez Intervenors deny each and every allegation contained in the Prayer for Relief, and

further deny that the Plaintiffs are entitled to declaratory relief, injunctive relief, or any other form of relief whatsoever.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses to all causes of action purported to be set forth by Plaintiffs in the Complaint, Martinez Intervenors allege as follows, subject to Martinez Intervenor's right to amend and assert such other affirmative defenses as may become available during discovery in this action:

FIRST AFFIRMATIVE DEFENSE: LACK OF STANDING

This Court lacks subject matter jurisdiction over Plaintiffs' claims because Plaintiffs cannot show the injury and redressability necessary to assert standing.

SECOND AFFIRMATIVE DEFENSE: FAILURE TO STATE A CAUSE OF ACTION

Plaintiffs' claim, as set forth in the Complaint, fails to state facts sufficient to constitute a cause of action against Defendants.

THIRD AFFIRMATIVE DEFENSE: LACHES

Some or all of Plaintiffs' claims are barred under the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE: UNCLEAN HANDS

Plaintiffs signed HB 56 into law in June 2011. AL Act 2011-535. The stated purpose of the law is to "discourage illegal immigration within the state." *U.S. v. Alabama*, 691 F.3d 1269 (11th Cir. 2012), *cert. denied*, 569 U.S. 968 (2013). Plaintiffs are now claiming that their decision to drive immigrants and their families out of Alabama is causing them political loss. By virtue of Plaintiffs' own racially discriminatory conduct, Plaintiffs should be barred from recovering against Defendants by the equitable doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE: RESERVATION OF RIGHTS

Because the Complaint is couched in conclusory terms, Martinez Intervenors cannot fully anticipate all affirmative defenses that may be applicable to the claims asserted. Accordingly, Martinez Intervenors reserve the right to assert additional affirmative defenses to the complaint, whether under law, equity, or otherwise, if and to the extent that such affirmative defenses are discovered and apply.

WHEREFORE, Martinez Intervenors respectfully request as follows:

1. That Plaintiffs' Complaint and its causes of action be dismissed with prejudice;
2. That Plaintiffs take nothing by way of the Complaint;
3. That Martinez Intervenors be awarded costs of the suit and attorneys' fees; and
4. That the Court order such other and further relief for Martinez Intervenors as the Court may deem appropriate.

CROSS-CLAIM BY MARTINEZ INTERVENORS FOR DECLARATORY RELIEF

INTRODUCTION

1. On May 21, 2018, the State of Alabama and Congressman Morris J. Brooks, Jr., sued the U.S Department of Commerce, Commerce Secretary Wilbur L. Ross, the U.S. Census Bureau, and Ron Jarmin, acting director of the U.S. Census Bureau at the time. On September 10, 2019, Plaintiffs amended their complaint for declaratory relief.²

2. Plaintiffs Alabama and Brooks seek to set aside the Final 2020 Census Residence Criteria and Residence Situations Rule ("Residence Rule"), 83 Fed. Reg. 5525 (February 8, 2018) (to be codified at 15 C.F.R. Ch. D), as unlawful under federal law and the U.S.

² Plaintiffs replaced Defendant Jarmin with Steven Dillingham, the current director of the U.S. Census Bureau, and removed their assertion of a financial injury based on the inclusion of undocumented immigrants in the decennial enumeration.

Constitution, and seek to exclude undocumented immigrants from the total population count for the purposes of congressional apportionment. ECF Doc. 112, p. 2-4 ¶¶1-5; p. 32, ¶ 144.

3. The U.S. Constitution requires an “actual Enumeration” of every person living in the United States to take place every ten years.

4. The Constitution gives Congress the authority to conduct the Census “in such a Manner as [Congress] shall by Law direct,” and Congress has wide discretion over the conduct of the census. Pursuant to this authority, Congress has delegated the duty of conducting the census to the Secretary of Commerce, subject to federal law.

5. Under the U.S. Constitution, the decennial enumeration of the national population is used to allocate seats in the U.S. House of Representatives to states based on the “whole number of persons in each State.”

6. Federal law requires the Secretary of Commerce to deliver to the President the tabulation of the total population of the states for the apportionment of Representatives in Congress among the several states by the end of the census year. The President must report the tabulation of the total population of the states to Congress within a week after the start of Congress’s new session.

7. Defendants will not conduct an enumeration of undocumented immigrants in the 2020 Census.

8. Any attempt to exclude undocumented immigrants from the total population tabulations reported to the President and Congress would be based on estimations that use probabilistic statistical modeling in order to determine the number of undocumented immigrants in the U.S. Because estimated data is not based on an enumeration, it violates the U.S.

Constitution for the purposes of congressional apportionment and the distribution of electors in the Electoral College, and is thus prohibited.

9. Any attempt to exclude undocumented immigrants from the total population tabulations reported to the President and Congress would exclude persons who are required by the Constitution to be included in the population tabulations used to apportion the House of Representatives and the Electoral College.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1346 over Defendant-Intervenors' causes of action under the United States Constitution and federal statutes. This Court may grant Defendant-Intervenors' request for declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper in this district. 28 U.S.C. §1391 (e)(1).

PARTIES

Plaintiffs

12. Defendant-Intervenor Diana Martinez is a resident of Ventura County, California. She is a longtime registered voter and lives in the City of Santa Paula, born and raised in California. According to American Community Survey ("ACS") data, Santa Paula is 81.3 percent Latino and 20.8 percent non-U.S. citizen.

13. Defendant-Intervenor Raisa Sequeira is a resident of Miami-Dade County in Florida. She is a registered voter and lives in the City of Miami. According to ACS data, Miami is 72.2 percent Latino and 30.6 percent non-U.S. citizen.

14. Defendant-Intervenor Saulo Corona is a resident of Maricopa County, Arizona. He lives and is registered to vote in the City of Tempe. According to ACS data, Maricopa County is 30.6 percent Latino and 9 percent non-U.S. citizen.

15. Defendant-Intervenors Irving Medina and Florinda P. Chavez are residents of Travis County, Texas. They both live and are registered to vote in Austin. According to ACS data, Austin is 34.5 percent Latino and 12.6 percent non-U.S. citizen.

16. Defendant-Intervenor Joey Cardenas is a resident of Wharton County, Texas. He is a longtime registered voter and lives in Louise, a census-designated place. According to ACS data, Wharton County is 40.3 percent Latino and 6.9 percent non-U.S. citizen.

17. CPLC is headquartered in Phoenix, Arizona and serves individuals who primarily reside in Coconino, Cochise, Maricopa, Pima, and Yuma Counties. CPLC serves individuals who live in neighborhoods, cities, counties, and voting districts with relatively larger Latino and non-U.S. citizen populations when compared to Arizona and the United States. For example, according to ACS data, Yuma County is 62.9 percent Latino and 15.6 percent non-U.S. citizen, while Phoenix is 42.5 percent Latino and 13.3 percent non-U.S. citizen.

Defendants/Defendants

18. Defendant Wilbur L. Ross is Secretary of the U.S. Department of Commerce. The Secretary of Commerce carries out the functions and duties imposed on him by the Census Act, issues rules and regulations to carry out his responsibilities, and delegates functions and duties as necessary.

19. Congress delegated the duty to conduct the Census to the Secretary of Commerce, who must take a census on April 1 every 10 years.

20. By the end of 2020, the Secretary of Commerce is required to deliver the tabulation of the population of each state to the President, who is required to transmit to Congress the total population of each state and the number of congressional seats to which each state is entitled. Ross is sued in his official capacity.

21. Defendant Steven Dillingham is the Director for the U.S. Census Bureau. The Director of the U.S. Census Bureau oversees the 2020 Census operations and is responsible for ensuring the accuracy of the 2020 Census count. Defendant Dillingham directs the Census Bureau and performs Census-related duties assigned by law, regulation, or the Secretary of Commerce. 13 U.S.C. § 21. Dillingham is sued in his official capacity.

22. Defendant U.S. Department of Commerce is an agency of the U.S. government which oversees the U.S. Census Bureau and its conduct of the decennial Census and other Census programs.

23. Defendant U.S. Census Bureau is an agency within the U.S. Department of Commerce. 13 U.S.C. § 2. The Census Bureau is responsible for conducting all Census programs, including the development and implementation of the 2020 Census.

FACTUAL ALLEGATIONS

24. The U.S. Constitution requires an “actual Enumeration” of “the whole number of persons in each State” to take place every ten years.

25. Under the U.S. Constitution, the decennial enumeration of the national population is used to allocate seats in the U.S. House of Representatives to states based on the “whole number of persons in each State,” under the U.S. Constitution. Congressional seats are apportioned to the states based on “their respective Numbers.”

26. The enumeration is also used to allocate the number of electors each state receives in the Electoral College.

27. The Constitution vests Congress with wide authority over the conduct of the Census. Pursuant to this authority, Congress delegated the duty of conducting the decennial Census to the Secretary of Commerce, subject to the provisions of the Census Act of 1976, 13 U.S.C. § 141, et seq. (the “Census Act”), and other applicable federal statutes and regulations.

28. Section 141(f) of Title 13, requires that the Secretary report to Congress his “determination[s]” as to the subjects of the next census not later than three years prior to the April 2020 Census date.

29. Federal law requires the Secretary of Commerce to deliver the “tabulation of total population of states . . . for the apportionment of Representatives in Congress among the several States” to the President by the end of the census year, who must report them to Congress within a week after the start of Congress’s new session.

30. Federal law requires that the President’s transmission to Congress provide a “statement showing the whole number of persons in each State excluding Indians not taxed, as ascertained under [the] decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions[.]”

31. Federal law requires that each State shall be entitled to the number of Representatives shown in such statement.

32. Federal law requires the Clerk of the House of Representatives, within fifteen calendar days after the receipt of the President’s statement to Congress, “to send the executive of each State a certificate of the number of Representatives to which such State is entitled[.]”

Collection of Decennial Census

33. The Census Act states, “Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as ‘sampling’ in carrying out the provisions of this title.” 13 U.S.C. §195.

34. The Secretary of Commerce may delegate authority to carry out his functions and duties to conduct the Census to the Department of Commerce, of which the Census Bureau is a part.

35. To conduct the decennial enumeration, the Census Bureau sends a questionnaire to each household in the U.S. Every head of household is required by law to answer the questions on the Census form truthfully.

Citizenship Data From the Census Bureau’s American Community Survey

36. There will not be a question on the 2020 decennial Census regarding the citizenship of respondents and their household members. Therefore, the decennial Census will not include an actual enumeration of non-citizens or of undocumented immigrants in the U.S.

37. The American Community Survey (“ACS”) is an ongoing, yearly survey by the Census Bureau that collects demographic information including ancestry, citizenship, year of entry to the U.S., educational attainment, income, language proficiency, migration, disability, employment, and housing characteristics from approximately 2.5 percent of U.S. households. ACS data provide estimates of population characteristics, including citizenship, that are based on sample data, and do not provide an enumeration of citizens and non-citizens. The ACS survey does not include a question on legal status of non-citizen respondents. The ACS survey therefore does not provide an estimate or an enumeration of the undocumented population in the U.S.

Defendants' Collection of Citizenship Data for Apportionment

38. The 2020 decennial Census will not include a question on immigration status, including any question to ascertain if the respondent is an undocumented immigrant. The decennial Census will not conduct an enumeration of undocumented immigrants living in the U.S.

39. On July 11, 2019, President Donald J. Trump issued Executive Order (“EO”) 13880 requiring that, among other things, all executive departments and agencies provide the Department of Commerce “the maximum assistance permissible, consistent with law, in determining the number of citizens and non-citizens in the country, including by providing any access that the Department may request to administrative records that may be useful in accomplishing” the objective of collecting citizenship data.

40. EO 13880 states, “It is the policy of the United States to develop complete and accurate data on the number of citizens, non-citizens, and illegal aliens in the country.”

41. The data collected under EO 13880 is not an enumeration of individuals, and specifically is not an enumeration of undocumented immigrants, in the U.S.

42. Any data collected under EO 13880 will produce estimations based on statistical probabilities using administrative records. Such estimations based on statistical modeling are not an enumeration.

43. At a press conference announcing the issuance of EO 13880, President Trump stated that his intention in issuing EO 13880 is so that “[t]he Census Bureau can use [citizenship] information, along with information collected through the questionnaire, to create the official census. In other words, as a result of today’s executive order, we will be able to ensure the 2020 Census generates an accurate count of how many citizens, non-citizens, and illegal aliens are in

the United States of America.” The President’s statement is false and incorrect. Administrative records do not provide a count of the total population, nor do they provide an “accurate count,” or an enumeration of citizens, non-citizens, or undocumented immigrations within the total population.

44. At the same press conference announcing the issuance of EO 13880, U.S. Attorney General William Barr stated that “there is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of that dispute, this data may be relevant to those considerations,” and that the DOJ “will be studying this issue.”

45. On July 24, 2019, Defendant Dillingham testified before the House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties. During that hearing, Congresswoman Ayanna Pressley asked Defendant Dillingham, “Can you confirm for us today that the citizenship data collected pursuant to the executive order will not be used in the Bureau’s apportionment counts?” Defendant Dillingham answered, “. . . Let me get back to you on that.” Congresswoman Pressley subsequently asked Defendant Dillingham, “Do you believe it should be used for that purpose?” and Defendant Dillingham answered, “I don’t have any belief whatsoever, I just need to know the mechanics, Congresswoman, and I’ll get back to you on that.”³

46. Upon information and belief, the Census Bureau responded in writing to Congresswoman Pressley’s office regarding the July 24, 2019 exchange in front of Congress, “The issue you asked about is currently in litigation and we do not comment on ongoing

³ Video and Transcript of Testimony of U.S. Census Bureau Director Steven Dillingham on the 2020 Census before House Oversight and Reform Subcommittee on Civil Rights and Civil Liberties, C-Span (Jul. 24, 2019), https://archive.org/details/CSPAN3_20190725_000000_U.S._Census_Bureau_Director_Steven_Dillingham_Testifies_Before_Congress/start/4080/end/4140.

litigation, but the Census Bureau will fulfill its constitutional mandate to conduct a complete and accurate 2020 Census and enumerate all persons living in the United States of America.”⁴

47. These ambiguous statements by Defendants create a live and actual controversy between Defendants, who threaten to report an unconstitutional enumeration of total population, and Martinez Intervenors, who are therefore entitled to declaratory relief.

48. Without an enumeration of the number of undocumented immigrants within the total population, Defendants would be required to use data from estimations based on probabilistic statistical modeling in order to determine the number of undocumented immigrants in the U.S.

49. Under the U.S. Constitution, the use of estimated data based on statistical probabilities to produce, in whole or in part, through addition or subtraction, the total population for the purposes of congressional apportionment is prohibited.

50. If Defendants were to decide to exclude undocumented immigrants from the enumeration reported to Congress for the purpose of apportioning Representatives and electors to the Electoral College without a question on the Census form that counted undocumented immigrants living in the U.S., they would be required to adjust the final enumeration based on probabilistic modeling.

51. If Defendants were to decide to exclude undocumented immigrants from the enumeration reported to Congress for the purpose of apportioning Representatives and electors to the Electoral College, they would be excluding persons constitutionally required to be included in the enumeration reported.

⁴ Hansi Lo Wang, Do Trump Officials Plan To Break Centuries Of Precedent In Divvying Up Congress?, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress>.

52. Martinez Intervenors will be injured if Representatives and electors to the Electoral College are apportioned based on data that excludes undocumented immigrants from the total enumeration reported to Congress. Martinez Intervenors will suffer harm to their representational and electoral interests if a dataset other than a total enumeration consistent with the U.S. Constitution is reported to Congress. The use of such an altered dataset will cause states and other political subdivisions with high proportions of undocumented individuals and/or Latinos to lose congressional representation and Electoral College representation.

CAUSE OF ACTION

COUNT I

(Declaratory Judgment - Violation of the U.S. Constitution)

53. Plaintiffs incorporate by reference the allegations in all preceding paragraphs.

54. Article I, Section 2, Clause 3 of the U.S. Constitution requires an “actual enumeration” of people in the United States. The Constitution mandates that the apportionment of congressional seats be conducted on the basis of total population of all persons. U.S. CONST., Amdt. XIV, § 2 (“Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State”).

55. Defendants’ production and report to the President or Congress of an altered dataset using estimations based on statistical probabilities that excludes the undocumented population from the population totals used for congressional apportionment would violate the U.S. Constitution.

56. The production and report of an altered dataset that excludes undocumented immigrants from the total population for the purposes of congressional apportionment will injure Plaintiffs and organizational Plaintiffs’ members by depriving them of representation in the U.S. House of Representatives and the Electoral College.

57. The use of administrative data to produce estimates based on probabilistic modeling to exclude undocumented immigrants from the enumeration for the purposes of Congressional apportionment and apportionment of electors in the Electoral College is unconstitutional.

58. The purposeful exclusion of undocumented immigrants residing in the United States from the population count used for purposes of Congressional apportionment and apportionment of electors in the Electoral College is unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- (a) Declare that production and reporting to the President or to Congress of an altered tabulation for the purposes of congressional apportionment that attempts to exclude the undocumented population violates the U.S. Constitution;
- (b) Enjoin Defendants and their agents from producing and/or reporting to the President or to Congress an altered tabulation for the purposes of congressional apportionment that attempts to exclude the undocumented population;
- (c) Award Plaintiffs reasonable costs, expenses, and attorneys' fees under 28 U.S.C. § 2412; and
- (d) Award such additional relief as the interests of justice may require.

Dated: October 1, 2019

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all CM/ECF registrants.

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NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; PRINCE
GEORGE'S COUNTY, MARYLAND; PRINCE GEORGE'S COUNTY MARYLAND
NAACP BRANCH; ROBERT E. ROSS; H. ELIZABETH JOHNSON,

Plaintiffs-Appellants,

v.

BUREAU OF THE CENSUS; STEVEN DILLINGHAM, Director, Bureau of the Census;
WILBUR ROSS, Secretary of the Department of Commerce; THE UNITED STATES,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maryland
No. 8:18-cv-00891-PWG, Hon. Paul W. Grimm, Judge Presiding

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ORAL ARGUMENT REQUESTED

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PRELIMINARY STATEMENT

This case arises out of the Defendants’ imminent failure to conduct the 2020 Census in an equal and accurate manner, an obligation expressly enshrined in the Enumeration Clause of the Constitution and buttressed by the passage of the Fourteenth Amendment and its nullification of the Three-Fifths Clause. In March 2018, Plaintiffs, who represent historically undercounted communities of color, brought this action because Defendants were choosing to ignore that obligation without any reasonable justification.

Plaintiffs—the NAACP; Prince George’s County, Maryland; the Prince George’s County Maryland NAACP Branch; and two NAACP members and African-American residents of Prince George’s County—challenge Defendants’ stated “final” plan to conduct the 2020 Census with drastic, unsupported, and unnecessary reductions in the resources needed to count Hard-to-Count communities accurately. Specifically, Defendants’ final plans for the 2020 Census include: (1) canvassing fewer than 40 percent of the addresses in the field to assemble their initial address list (compared to virtually 100 percent in prior censuses); (2) drastically reducing the resources devoted to their community partnership program, which is essential to increasing self-reporting in Hard-to-Count communities; and (3) cutting their workforce and field offices in half (cuts totaling *hundreds of thousands* of census takers), despite the increase in population and in distrust of government.

Plaintiffs alleged that Defendants recognized that these drastic cuts will inevitably and imminently lead to a severe undercount of Plaintiffs' communities, causing harm to Plaintiffs in violation the Enumeration Clause. Plaintiffs also alleged that Defendants' decisions were pretextual, arbitrary and capricious, and contrary to law under the Administrative Procedure Act ("APA").

Without reaching the merits, the District Court dismissed all of Plaintiffs' claims on procedural grounds, contrary to Supreme Court and Fourth Circuit precedent. First, the District Court dismissed Plaintiffs' constitutional claims for injunctive relief as unripe, reasoning that Plaintiffs could reinstate these claims later after completion of the census. But Plaintiffs pled that the Bureau's 2020 Census procedures—which the Bureau has confirmed it is employing—will lead to disastrous results for Hard-to-Count communities; the District Court erred by requiring Plaintiffs, contrary to Supreme Court precedent, to wait until those results materialize, leaving them without an effective remedy. Plaintiffs' claims were ripe when filed and are even more plainly so now that Defendants have actually commenced the very census operations Plaintiffs challenge.

Second, the District Court dismissed Plaintiffs' constitutional claims for declaratory relief standing and justiciability grounds. But these holdings were based on the Court's erroneous premise that Plaintiffs were exclusively challenging the amount of funding appropriated by Congress rather than the Bureau's own plans to

cut, without reasonable justification, the resources necessary to reach Hard-to-Count communities. As nearly every court to consider this question has held, including most recently the Supreme Court in *New York v. Department of Commerce*, Plaintiffs have standing based on the harms that result from a census undercount, and their claims are justiciable.

Third, the District Court dismissed Plaintiffs' APA claims on the grounds that Plaintiffs sought to challenge the Bureau's entire plan for conducting the census. But this misconstrued the challenges to discrete Bureau decisions detailed in Plaintiffs' complaint. The District Court also held that Defendants' conduct does not sufficiently impact Plaintiffs to determine their rights and obligations, a holding inconsistent with the Supreme Court's acknowledgment, in the standing context, that a differential undercount causes direct harms to individuals such as Plaintiffs.

Plaintiffs request this Court's urgent review of the District Court's errors in dismissing Plaintiffs' claims at the pleading stage, contrary to decades of census-related precedent, including multiple Supreme Court rulings. The District Court's jurisdictional rulings would effectively eliminate judicial review of the Executive's express constitutional duties to enumerate the people accurately and equally, even in the face of allegations (and now publicly available facts) that the Bureau has purposefully and arbitrarily flouted that constitutional obligation. Plaintiffs seek a remand to the District Court so that their claims can be quickly resolved and

Defendants may be ordered to fulfill their constitutional and statutory obligations to reduce the imminent harms faced by Plaintiffs and the minority communities they represent.

JURISDICTIONAL STATEMENT

The District Court had subject matter jurisdiction over this action under 28 U.S.C. §§ 1331. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291 because the District Court entered judgment dismissing the action on August 1, 2019, and Plaintiffs-Appellants filed a timely notice of appeal on August 6, 2019.

STATEMENT OF THE ISSUES

1. Whether the District Court erred in holding that Plaintiffs' claims for injunctive relief challenging key operations of the 2020 Census are unripe because they were brought prior to the beginning of the 2020 Census;
2. Whether the District Court erred in holding that Plaintiffs lack standing to challenge the Census Bureau's decisions to significantly reduce key resources despite the imminent harms alleged by Plaintiffs, including decreased political representation, diminished allocations of federal funding, and diverted organizational resources;
3. Whether the District Court erred in holding that this case is immune from judicial review pursuant to the political question doctrine;
4. Whether the District Court erred in dismissing Plaintiffs' APA claims, on the ground that the six challenged actions in the Bureau's "Final Operational Plan" are not "agency actions" because they are not sufficiently discrete and do not determine Plaintiffs' rights or obligations, or for any other reason urged by the government.

STATEMENT OF THE CASE

On March 28, 2018, Plaintiffs-Appellants initiated this action to challenge Defendants' violation of their constitutional obligation to conduct an "actual Enumeration" by drastically reducing the components of the 2020 Census required to reach minority communities, including eliminating critical resources for community outreach and slashing workforce and field infrastructure. Plaintiffs sought injunctive and declaratory relief to ameliorate these decisions and the resulting harms that Plaintiffs would face, including diminished political representation and funding.

On January 29, 2019, the District Court granted in part and denied in part Defendants' motion to dismiss the First Amended Complaint, dismissing Plaintiffs' claim for injunctive relief "without prejudice to being reinstated later," holding that Plaintiffs' claim for declaratory relief could proceed, and denying Defendants' motion in all other respects. *See* JA 564-618 (*NAACP et al. v. Bureau of the Census et al.*, No. 8:18-cv-00891-PWG (Jan. 29, 2019)) [hereinafter, January Opinion].

In February 2019, Defendants released their "Final Operational Plan" announcing the completion of planning for the 2020 Census. *See* JA 61-280 (United States Census, *2020 Census Operational Plan: A New Design for the 21st Century* (Dec. 2018) ("Final Operational Plan" or "FOP")). Plaintiffs sought leave to amend their complaint to add claims under the APA and reinstate their constitutional claim

for injunctive relief challenging the decisions described in the complaint and finalized in the Plan. The District Court allowed Plaintiffs' to add the APA claims, but did not allow Plaintiffs to reinstate their constitutional claim for injunctive relief.

On August 1, 2019, the District Court issued an opinion granting Defendants' motion to dismiss the action in its entirety, and entered judgment for Defendants. *See* JA 623-648 (*NAACP et al. v. Bureau of the Census et al*, No. 8:18-cv-00891-PWG (Aug. 1, 2019)) [hereinafter, August Opinion].

Plaintiffs-Appellantstimely appealed. On August 12, 2019, the day Plaintiffs' appeal was docketed, Plaintiffs moved for expedited consideration of their appeal. On August 20, 2019, this Court granted Plaintiffs' motion to expedite.

FACTUAL BACKGROUND

A. Defendants' Affirmative Obligation to Conduct a Census

Article I, Section 2 of the Constitution requires the federal government to conduct an “actual Enumeration” of every resident of the United States every ten years. Congress delegated this duty to the Secretary of Commerce, 13 U.S.C. § 141, who oversees the Census Bureau. The decennial census results have far-reaching implications. Census data is used for allocating hundreds of billions of dollars in federal funding, apportioning seats in the U.S. House of Representatives, drawing boundaries for congressional districts and state legislative districts, and enforcing voting rights. JA 19-60 (Second Amended Complaint (“SAC”) ¶¶ 14-15.)

Since the nation’s founding, however, the United States has systematically undercounted African Americans in the decennial census. First, this was by design: the Three-Fifths Clause appeared in the same constitutional provision that mandates a decennial census. Although the passage of the Fourteenth Amendment nullified the Three-Fifths Clause and instilled equality as a core value of the decennial census, the undercount of African Americans has persisted throughout history.

More recently, Congress has called on the Census Bureau to address that historic inequity. For at least the last three decades, Congress has tasked the Bureau with reducing the differential undercount, *i.e.*, the net undercount compared to other groups, of “individuals who have historically been undercounted.” Dep’ts of

Commerce, Justice, & State, the Judiciary, & Related Agencies Appropriations Act, Pub. L. No. 105-119, § 209(a)(5), 111 Stat. 2440, 2480 (1997) (emphasizing need for “aggressive and innovative promotion and outreach campaigns in hard-to-count communities”). In furtherance of that goal, the Bureau has historically made concerted efforts to reach Hard-to-Count communities, groups including racial and ethnic minorities, non-English speakers, lower income people, the homeless, and undocumented immigrants. SAC ¶¶ 21-22.

For the 2020 Census, however, the Bureau has drastically scaled back these efforts, announcing multiple decisions that effectively abandon this goal. The Bureau’s actions will inevitably significantly increase the differential undercount of African Americans and other minority groups, thereby harming Plaintiffs by decreasing their political representation, reducing federal funding, and diverting organizational resources.

B. The Bureau’s Severe and Irrational Cutbacks to Key Operations for Reaching Hard to Count Populations

The Bureau plans to slash its outreach and operations in each of the 2020 Census’ key phases. These reductions include fundamentally cutting the Bureau’s resources for compiling its “master” address list (the cornerstone of its effort to reach households), for its community outreach and advertising campaign (which is critical for reaching Hard-to-Count communities), and in-field follow up with non-responding populations (the core operation through which the Bureau contacts

households in person). SAC ¶¶ 66-68. Hard-to-Count populations, and African-American and Hispanic communities in particular, will bear the brunt of these cuts in the form of diminished political representation and significantly reduced federal funding. *Id.* ¶¶ 176-203. As alleged in the Complaint and as shown by publicly available information, Defendants have neither reliable data nor reasonable justifications to support these cuts and rely instead on a supposed lack of funds—a rationale made all the more implausible by the Bureau’s retention of over \$1.3 billion in appropriated, but unspent, funds.

1. Defunding of Human Resources to Build the Master Address File

Address canvassing is the first major step of census field operations and involves surveying the nation’s housing units to assemble and verify a comprehensive list of addresses to which the Bureau will mail surveys and send enumerators. SAC ¶¶ 140-41. This list, called the Master Address File, must be as comprehensive and accurate as possible; if households do not receive a survey or visit, they are unlikely to be counted. *Id.* To ensure accuracy, in past censuses, Bureau employees have sent field workers to walk nearly 100 percent of blocks and identify housing units in person. *Id.* ¶ 142.

To cut costs for the 2020 Census, however, the Bureau has departed from this past practice and reduced the number of addresses that it will canvass on foot from 100 percent to 38 percent, relying instead on new “in-office” processes to confirm

addresses, such as looking at satellite maps to determine if current housing units match those on their address lists. *Id.* ¶ 143-44. Although this change is drastic, the Bureau has performed little testing to understand its effects on the accuracy of its address list. Even that limited testing shows that the novel “in-office address canvassing” produces errors, finding discrepancies in 61 percent of addresses. *Id.* ¶¶ 151-52. The Bureau has no countervailing evidence that an in-office process is more accurate or reliable, and its own plans acknowledge that an in-field process generally yields “greater quality” results than an office-based process. *Id.* ¶ 153.¹

In making these changes, the Bureau failed to analyze or consider the effects on Hard-to-Count communities. *Id.* ¶ 154.² In fact, the increased errors in the Master Address File will disproportionately impact Hard-to-Count communities and render them less likely to be counted.

The Bureau’s in-field address canvassing process began in August 2019, and will continue through mid-Fall. FOP at 52, 95 (JA 118, 161). The failure to

¹ Compounding these error rates, the Bureau cancelled both its Active Block Resolution procedure and “Coverage Study”—both of which were designed to assess and improve the accuracy of address canvassing—citing budget constraints for both of these decisions. *Id.* ¶ 145-46.

² Indeed, an OIG Report concluded that the Bureau “does not know which populations or regions will be most affected by the missed household blocks.” JA 281-305 (Department of Commerce, OIG, 2020 Census: Issues Observed During the 2018 End-to-End Census Test’s Address Canvassing Indicate Risk to Address List Quality at 1, No. OIG-19-008-A (Feb. 2019) (“OIG, Address Canvassing Risk”).)

promptly remedy the defects in the Bureau's plans will contribute to a significantly higher differential undercount of minority communities.

2. Reductions in Critical Outreach and Partnership Programs

After compiling the address list, the Bureau undertakes a comprehensive advertising and outreach campaign to raise awareness of the census and increase response rates among traditionally low-responding communities. As part of these efforts, the Bureau relies on staff in its Partnership Program to build relationships with communities and non-profit organizations that can spread its message. SAC ¶ 168. These efforts are particularly important in the upcoming census for increasing the response rates for Hard-to-Count communities given increased distrust among minority communities regarding the Administration's use of census data, as the Bureau's own research acknowledges. *Id.* ¶ 172.

Yet the Bureau is significantly decreasing its partnership outreach despite a significantly larger population, increased mistrust of the government among minority communities, and increased media and communication challenges. *Id.* ¶¶ 81-84. Whereas the Bureau spent \$334 million on partnership staff for the 2010 Census, the Bureau has reduced its budget to \$248 million for the 2020 Census—an over one-third reduction, accounting for inflation. *Id.* ¶ 170. The Bureau has achieved these reductions by eliminating an entire category of partnership staff. The Bureau hired 1,750 partnership assistants for the 2010 Census; it will hire none in

the 2020 Census. *Id.* ¶ 171. The Bureau made these decisions despite its own survey data revealing an increased need for community outreach and communication. *Id.* ¶¶ 172-73.

Plaintiffs’ communities will be less likely to respond to the census and will face an increased differential undercount as a result of these cuts. The Bureau’s advertising and partnership program begins in November 2019. Accordingly, its deficiencies must be remedied promptly.

3. Drastic Reductions in Enumerators and Field Offices

After sending out its mailings and conducting advertising and outreach, the Bureau receives responses from a portion of the population that responds on their own. The Bureau then conducts Non-Response Follow-Up (“NRFU”) efforts to count the remaining portion of the population that did not respond to the initial mailings. This includes sending enumerators door-to-door to contact households. SAC ¶ 69. Because Hard-to-Count communities are less likely to “self-respond” to the initial mailings, the Bureau must conduct robust NRFU efforts to ensure that minority communities are fully counted.

As Plaintiffs alleged in their initial complaint and as the Bureau’s plans confirmed, the Bureau intends to hire drastically fewer enumerators for the 2020 Census, which the Bureau frames as a cost-saving “innovation.” FOP at 30 (JA 96); SAC ¶ 70. Public documents reveal that the Bureau will hire approximately 400,000

enumerators to carry out the 2020 Census— a decrease of 200,000 individuals from 2010 despite a six percent increase in the population to be counted.³

In addition to its reduced workforce, the Bureau will further gut its field presence by opening drastically fewer field offices than in 2010. In the last census, the Bureau had 495 field offices, from which it hired and trained enumerators and responded to problems during NRFU operations. SAC ¶¶ 114-16. For the 2020 Census, the Bureau will only open 248 area census offices, cutting its physical infrastructure in half, and leaving it less able to do the field work necessary to reach hard-to-count communities. *Id.* An April 2018 report from the Office of the Inspector General of the Department of Commerce stated that it “found no evidence that the Bureau reconciled the increased NRFU workload and associated increase in the number of enumerators” with its plan to open only 248 offices. *Id.* ¶ 128.

The Census is also eliminating another key form of community infrastructure: questionnaire assistance centers (“QACs”), at which individuals can be counted if they did not receive a mailing at their address. In 2010, the Bureau relied upon nearly 30,000 QACs and nearly 10,000 “Be Counted” sites to count over 760,000

³ Discovery in this action revealed that the Bureau plans to actually deploy even fewer enumerators in the field than it will hire, relying on approximately 250,000 “core enumerators”, and holding back the rest. This level of reduction would amount to an over 50-percent reduction of its central workforce.

people who would otherwise not have been counted.⁴ The Bureau has eliminated *all* of those 40,000 sites this cycle.

A robust on-the-ground field presence is essential for reaching Hard-to-Count communities and the Bureau's reduction will thus result in an increased differential undercount. *Id.* ¶¶ 72-73; 120-21. After the census begins in 2020, it will be too late to open more offices or hire additional enumerators. Accordingly, Plaintiffs' challenges to these decisions must be resolved promptly.

4. The Bureau's Lack of Reliable Data or Support for These Decisions

To the extent the Bureau has offered any justification for these severe reductions in the resources necessary to reach Hard-to-Count communities, its reasons are unsupported by any reliable data or are contradicted by publicly available information.

First, the Bureau has justified nearly all of these decisions by the need to reduce the cost of the 2020 Census. But budget constraints alone cannot justify the severity of the Bureau's actions and their effects on Hard-to-Count communities. Moreover, discovery in this action and public information have revealed that this reason is pretextual; the Bureau has left unspent over \$1.3 billion as it has rolled

⁴ See Census Bureau, 2010 Census Be Counted and Questionnaire Assistance Centers Assessment at 6 (May 2012), available at <https://www2.census.gov/programs-surveys/decennial/2010/program-management/5-review/cpex/2010-memo-194.pdf>.

back these crucial operations. Members of Congress have urged the Bureau to use these funds for the necessary resources to reach Hard-to-Count communities, including opening questionnaire assistance centers.⁵

Second, with regard to the NRFU operations, the Bureau has claimed that it will need fewer enumerators and offices because there will be a reduced NRFU workload, *i.e.* more people will initially self-respond. The Bureau emphasizes its first-ever Internet Self-Response option, in which individuals may provide their information to the government online. But the available evidence – including the Bureau’s own field testing – indicates that response rates will be **worse** for the 2020 Census, not better, and that the Bureau will need an **increased** workforce for its NRFU efforts, not a significantly decreased one. SAC ¶¶ 80-84.

Third, Defendants have also attempted to reduce their NRFU workload by replacing in-person visits to certain housing units with data from administrative records. Based on U.S. Postal Service Undeliverable-As-Addressed (“UAA”) information, the Bureau will omit certain units from the full NRFU protocol, paying them only a single field visit. *Id.* ¶¶ 157-58. But the Bureau has not reconciled this

⁵ See *Beyond the Citizenship Question: Repairing the Damage and Preparing to Count ‘We the People’ in 2020: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. (July 24, 2019), <https://oversight.house.gov/legislation/hearings/beyond-the-citizenship-question-repairing-the-damage-and-preparing-to-count-we>.

decision with its testing showing that UAA information is an inaccurate predictor of whether households are vacant or nonexistent. *Id.* ¶¶ 162-63.

Finally, the Bureau has claimed that its reduced in-field workforce will be able to handle more work because it will be more productive. But this justification, implausible on its face, *id.* ¶ 77, is also belied by the Bureau's lack of reliable data to support it. Defendants have cancelled most of the field testing necessary to support their productivity assumptions. *Id.* ¶¶ 130-37. Defendants are entering the 2020 Census with little reliable data to assess where their dramatic changes to the operations of the census may go wrong.

C. Plaintiffs Face Imminent Harm as a Result of the Bureau's Cutbacks

Plaintiffs live in and represent historically undercounted communities. In 2010, Prince George's County, a majority African-American county characterized in part as Hard-to-Count, experienced a net undercount of 2.3%, one of the highest in the nation among large counties. SAC ¶¶ 177-82. The 2010 undercount led to the loss of federal funding for Prince George's County and diminished political representation within the state. *Id.* ¶¶ 185-89. Defendants' failures will result in a significantly higher net undercount for Prince George's County, causing an even greater loss in federal funding and political representation. *Id.* ¶¶ 28-29.

The increased differential undercount will also injure NAACP members across the country. NAACP members are disproportionately located in Hard-to-

Count communities and will face increased differential undercounts as a result of the Defendants' actions. *Id.* ¶¶ 190-93. Accordingly, NAACP members' communities will incur diminished federal funding and political representation. *Id.* ¶¶ 194-95. Defendants' actions have also harmed the NAACP itself because it has had to divert resources to address Defendants' deficiencies for the 2020 Census. *Id.* ¶ 197.

Plaintiffs brought this action to challenge Defendants' finalized decisions that are causing imminent and actual harm to Plaintiffs and their communities.

PROCEDURAL BACKGROUND AND DECISIONS BELOW

A. The Complaint and Plaintiffs' Requests to Expedite The Case Schedule

In March 2018, Plaintiffs filed a single-count Complaint alleging that the Bureau's actions were violating the Enumeration Clause of the U.S. Constitution. The Complaint described decisions to decrease key operations, their effects on Hard-to-Count communities, and the harm to Plaintiffs. Moreover, because Defendants had publicly justified many of these decisions by pointing to insufficient funding, Plaintiffs presented context on the underfunding of the Census Bureau.

Immediately after filing the Complaint, Plaintiffs filed a letter seeking an "expedited case schedule," including a request for targeted expedited discovery and an expedited briefing schedule for any motion to dismiss that Defendants might file. (ECF 19.) The District Court granted Plaintiffs' request for limited expedited discovery and set an expedited motion schedule. The Defendants moved to dismiss on July 13, 2018, and the motion was fully briefed by September 4, 2018. On January 14, 2019, the Court held a hearing, and at the Court's request, the parties then submitted supplemental briefing.

B. The District Court's January 29 Decision

On January 29, 2019, the District Court issued a decision granting in part and denying in part Defendants' motion to dismiss. The Court separated Plaintiffs' claim into two parts: a claim for injunctive relief as to the Bureau's "methods and means"

for conducting the census, and a claim for declaratory relief as to the sufficiency of the Bureau’s funding. The Court dismissed the claim for injunctive relief as unripe at that time, “without prejudice to being reinstated later.” Jan. Op. at 34. The Court reasoned that Plaintiffs could still obtain relief “after the enumeration has taken place,” pointing to remedies proposed in other census-related lawsuits such as a “reallocation of congressional seats” or an “upwards adjustment of alleged differential undercounts.” *Id.* at 31. The Court also held that the Defendants had not yet finalized the plans Plaintiffs challenged, and the Court stated that “it is inevitable that many of the alleged deficiencies in staffing, census design, and testing will be addressed and, where deficient, corrected,” assuming that sufficient funding was appropriated. *Id.* at 32.

However, the Court held that it could “issue a declaratory judgment that congress has failed to appropriate sufficient funds” for Defendants to carry out the 2020 Census in a constitutional manner, particularly in light of the government shutdown in effect at the time. *Id.* at 34-35. The Court found this claim ripe because “[w]hile Plaintiffs’ other claims could be addressed through post-census litigation, census funding obviously cannot be increased after the fact.” *Id.* at 36.

The Court then rejected all of Defendants’ other arguments in their motion. *Id.* at 37 n.16. The Court held that Plaintiffs had standing because they alleged the concrete injury of a “disproportionate undercount, which in turn would result in

reducing funding and representation,” *id.* at 41, that this injury was fairly traceable to Defendants’ reductions and deficiencies for the 2020 Census, *id.* at 44-46, and was redressable by injunctive and declaratory relief. *Id.* at 50.

The Court then held that the political question doctrine did not preclude review of Plaintiffs’ Enumeration Clause claim, noting “Courts have routinely held that the Enumeration Clause does not textually commit exclusive, non-reviewable control over the census to Congress.” *Id.* at 53. Finally, the Court held that Plaintiffs had pled sufficiently that “proceeding as Defendants are with the 2020 Census will ‘unreasonably compromise the distributive accuracy of the census,’ thereby stating a claim for violation of the Enumeration Clause.” *Id.* at 54-55.

C. The Final Operational Plan and Plaintiffs’ Second Amended Complaint

On February 1, 2019, Defendants released the Final Operational Plan, which the Bureau stated “reflects our final design” for the 2020 Census. SAC ¶ 33. On February 11, 2019, Plaintiffs sought leave to add APA claims challenging the Bureau’s final decisions and to reinstate their constitutional claim for injunctive relief. (ECF 68.)

On February 28, 2019, following additional correspondence from the parties, the Court allowed Plaintiffs to amend the complaint to add the APA claims, but did not allow Plaintiffs to reinstate their constitutional claim for injunctive relief. JA

619-22. The District Court also set a briefing schedule for Defendants’ planned motion to dismiss. *Id.*

On April 1, 2019, Plaintiffs filed their Second Amended Complaint, detailing Bureau decisions that will inevitably result in a significantly undercount of Hard-to-Count communities, and African-American communities in particular. These decisions include the Bureau’s “plan to hire an unreasonably small number of enumerators,” the “drastic reduction in the number of Census Bureau field offices,” the “cancellation of crucial field tests,” the “decision to replace most in-field address canvassing with in-office address canvassing,” the “decision to make only extremely limited efforts to count inhabitants of housing units that appear vacant or nonexistent based on unreliable administrative records,” and “a significant reduction in the staffing of the Bureau’s partnership program.” SAC ¶ 67. The allegations were consistent with Plaintiffs’ allegations in prior pleadings, but provided additional detail regarding the finalization of the decisions in the Final Operational Plan.

D. Discovery Proceeds, and Plaintiffs Seek Emergency Relief

On March 11, 2019, the Court ordered discovery on Plaintiffs’ constitutional claim. (ECF 85.) Discovery proceeded from March through July 2019. On July 25, 2019, Plaintiffs filed a pre-motion letter seeking emergency relief on their claims because “the Bureau [was] about to begin critical early stages for carrying out the Census, and recent discovery and public disclosures show that the Bureau has chosen

to cut costs in key areas despite overwhelming evidence that the accuracy of the Census will be undermined as a result.” JA 558-61. Plaintiffs noted that the Bureau had made these “radical cuts . . . on the purported grounds of cost savings,” but was holding over one billion dollars in reserve that Congress had appropriated for the 2020 Census. *Id.*

On July 29, the Court issued an order “permitting Plaintiffs to file their proposed emergency motion as requested,” and directing the parties to “submit a proposed schedule for expeditious briefing of the emergency motion.” (ECF 150.) The parties agreed on a schedule, whereby Plaintiffs would file their motion on August 5, 2019. (ECF 152, 153.)

E. The District Court’s August 1 Decision

Before Plaintiffs could file their motion, on August 1, 2019, the District Court issued a decision granting Defendants’ motion to dismiss the APA claims. The Court also held that the remaining portion of Plaintiffs’ constitutional claim, the request for declaratory relief, should be dismissed as moot in light of Congress’s February 2019 appropriations bill which granted the Bureau’s funding request and thus “completely and irrevocably eradicated the effects of the alleged violation.” Aug. Op. at 7.

The Court also revised its decision on the justiciability of Plaintiffs’ underfunding claim, holding that Plaintiffs no longer had standing and were

challenging a non-justiciable political question. Focusing solely on the question of whether Congress had appropriated sufficient funding, the Court held that Plaintiffs lacked standing because it “would be speculative to conclude that Congress will fail to appropriate those funds.” *Id.* at 9. The Court also noted Plaintiffs’ concerns over the Bureau’s refusal to spend appropriated funds and held that directing the Bureau to expend already-appropriated funds is “not a remedy that a court has the authority, expertise, or time to provide.” *Id.* at 10. Finally, the Court held that Plaintiffs’ constitutional claim now raised a non-justiciable political question because the Court interpreted Plaintiffs as asking “whether the appropriated funding” provided by Congress “is sufficient.” *Id.* at 13.

The District Court also dismissed Plaintiffs’ APA claims. The Court held that Plaintiffs were not challenging “agency action” because the disputed actions were not sufficiently discrete, some were interrelated, and none “determine rights or obligations.”⁶ Even where the Court considered Plaintiffs’ challenges discrete, it held that Plaintiffs’ prayer for relief sought a “sweeping overhaul to the Final Operational Plan” that the Court could not order. *Id.* at 20-21.

The District Court also determined that the Bureau’s actions did not qualify as agency action because they “do not determine rights or obligations.” The Court

⁶ The Court did not reach the other arguments raised by Defendants, including that the actions were not “final,” that they were committed to agency discretion by law, and that the APA claims were not ripe. *Id.* at 17.

held that the effects of the Bureau’s conduct in carrying out the 2020 Census were too “attenuated” to sufficiently impact Plaintiffs. *Id.* at 25.

Plaintiffs timely appealed the Court’s dismissal of their claims.

SUMMARY OF ARGUMENT

The District Court's rulings improperly bar Plaintiffs, at the pleading stage, from raising any challenge to the Defendants' arbitrary and unlawful conduct related to one of the Government's most important affirmative obligations: its duty to conduct a fair and accurate census. As Plaintiffs have alleged, this conduct will cause them direct harm in the form of lost federal funding, diminished political representation, and diverted organizational resources.

First, the District Court erred in its January Opinion by dismissing Plaintiffs' claims for injunctive relief as unripe and holding that Plaintiffs could only obtain relief by waiting for the 2020 Census results. This holding contravenes Plaintiffs' allegations against plans and procedures that are going into use *now*, and which, if unaddressed, will irrevocably harm Plaintiffs. For support, the District Court cited several cases where plaintiffs challenged the decennial census *after* it was conducted, but did not address how these cases justified a rule that a plaintiff must *always* wait until after the census to seek relief. There is no such rule and applying one here would deprive Plaintiffs of an effective remedy.

Second, although the District Court correctly held in its January Opinion that Plaintiffs' had alleged sufficiently their standing for their constitutional claim and that such claim was justiciable, the District Court improperly reversed these holdings in its August Opinion. In its August Opinion, the court misconstrued Plaintiffs'

claims as asking for Congress to appropriate additional funds—something Plaintiffs have never sought. Plaintiffs have standing based on the harms they alleged resulting from Defendants’ conduct, as the Supreme Court’s decision earlier this summer in *New York* confirms.

Third, the political question doctrine does not bar review of Plaintiffs’ Enumeration Clause claim. The text of the Constitution does not commit the census exclusively to Congress, and there are manageable judicial standards that have been applied to census-related litigation for decades. Indeed, in five decades of census litigation, not a single court has agreed that census-related claims present a non-justiciable political question.

Fourth, the District Court erred by dismissing Plaintiffs’ APA claim as not challenging “agency action.” Contrary to the Court’s holding, Plaintiffs do not seek an “overhaul” of the Final Operational Plan. Rather, Plaintiffs challenge discrete agency decisions, each of which may be remedied on its own. The District Court further erred in holding that the Bureau’s decisions do not “determine rights or obligations,” a decision contrary to existing law on standing, which recognizes that a failure to properly carry out the census directly affects individuals and entities like Plaintiffs. The District Court gave no reason for departing from that precedent here.

Finally, to the extent Defendants contend that the dismissal of Plaintiffs’ APA claims would be warranted on other grounds, those arguments should be rejected.

ARGUMENT

I. THE DISTRICT COURT ERRED IN FINDING PLAINTIFFS' CONSTITUTIONAL CLAIM UNRIPE

In the January Opinion, the District Court erroneously dismissed the majority of Plaintiffs' Enumeration Clause claim as unripe. In doing so, the Court misconstrued Plaintiffs' claims. Plaintiffs challenge the procedures the Bureau will use to conduct the 2020 Census, and *not* the later uses of census data. Plaintiffs also challenge final decisions by the Bureau about the procedures for the 2020 Census, not some future action. These claims are ripe for review.

Further, the District Court imposed an unjustified legal rule requiring Plaintiffs to wait to raise these challenges until after the census has been conducted in an unconstitutional manner. No such rule appears in any of the census cases the District Court relied upon, and such a rule is expressly contradicted by Supreme Court precedent. This Court should reverse the erroneous dismissal of Plaintiffs' constitutional claim for injunctive relief.

A. Legal Standard

Ripeness doctrine “prevent[s courts] from becoming entangled in ‘abstract disagreements.’” *Scoggins v. Lee’s Crossing Homeowners Ass’n*, 718 F.3d 262, 270 (4th Cir. 2013) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)). A case is only unripe where “the plaintiff has not yet suffered any injury and any future impact remains wholly speculative.” *Doe v. Va. Dep’t of State Police*, 713 F.3d 745,

758 (4th Cir. 2013) (internal citations omitted). But where a dispute raises “purely legal” issues because the “action in controversy is final,” a case is ripe for review. *Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006).

This Court reviews a district court’s dismissal on ripeness grounds *de novo*. *Id.* at 316.

B. Delayed Review Will Cause Hardship to the Plaintiffs

The District Court’s holding that Plaintiffs may obtain relief for their injuries after the 2020 Census contravenes Plaintiffs’ well-pleaded allegations, deprives Plaintiffs of effective relief, and is contrary to ripeness decisions from this Circuit and the Supreme Court. The 2020 Census is already underway with a flawed design that will – according to the Bureau’s own data and Plaintiffs’ well-pled allegations – severely undercount African-American and other Hard-to-Count communities. When the census is completed, it will be too late to remedy the significantly increased differential undercount.

Binding precedent is contrary to the District Court’s ripeness rule. The Supreme Court has recognized that pre-census resolution of disputes is essential, and the Court need not “wait until the census has been conducted . . . because [delay] would result in extreme—possibly irreparable—hardship.” *Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 332 (1999) (“*U.S. House of Representatives*”); see also *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2565

(2019) (“*New York*”) (finding injuries from depressed turnout due to addition of citizenship question to be clearly impending before the census). This is because plans must be adjusted and hiring increased to correct decisions which are unconstitutional or which violate the APA. *See U.S. House of Representatives*, 525 U.S. at 332 (“[I]f the Bureau is going to alter its plan to use sampling in the 2000 census, it must begin doing so by March 1999.”). Plaintiffs seek precisely these remedies in the present case.

As in *Miller*, “[w]aiting until the last minute” until the census is conducted, or even later, would “severely diminish the effectiveness” of any relief that they can obtain. 462 F.3d at 321. Like the election procedures in *Miller*, the census involves numerous dates fixed by statute: Census Day is April 1, 2020, and by January 1, 2021 the Bureau is required to report the results to the President. 13 U.S.C. § 141(a)-(b). By April 1, 2021, the Bureau must transmit the results to the states, *id.* § 141(c), and many states engage in redistricting immediately thereafter. *See, e.g.*, Cal. Const. art. XXI, § 1 (redistricting required in 2021); Del. Code Ann. tit. 29, § 805 (requiring redistricting by June 30, 2021).

Waiting until after the Census Bureau’s enumeration operation is complete will harm Plaintiffs because it will result in a failure to accurately count African-American and other Hard-To-Count communities. The Bureau’s error-ridden address canvassing process, which is disproportionately likely to leave Hard-

to-Count communities off the Master Address File, means those individuals will *never* be counted. *See* SAC ¶¶ 148-55. Delaying Plaintiffs’ challenge will mean that the Bureau cannot remedy these errors. Similarly, the Bureau is currently hiring partnership staff and conducting outreach that is critical to ensuring those Hard-To-Count communities actually respond during the census operation. Without immediate review, it will be too late for the Bureau to adequately fund the Partnership Program and to hire and train an adequate amount of partnership staff. *Id.* ¶¶ 171-75. And if the delay continues, it will also be too late for the Bureau to reverse its 50% cut to NRFU operations. *Id.* ¶¶ 72-73; 118-21. Without these changes, Hard-to-Count communities will be irrevocably left out of the 2020 Census, with devastating effects on Plaintiffs’ federal funding and representation. Thus Plaintiffs plausibly allege that they are incurring harms that must be remedied *now*, allegations which the District Court improperly disregarded. SAC ¶¶ 201-03.

To justify its incorrect holding, the District Court essentially fashioned a *per se* rule that cases alleging injuries from Defendants’ improper administration of the census must be brought “after the census already had been taken and preliminary population counts announced.” Jan. Op. at 31. The District Court cited no census case that directly supported this rule, but only cases where plaintiffs *chose* to bring lawsuits after the census. There is no basis for this barrier, which contravenes Supreme Court decisions that resolved pre-census challenges on the merits. For

instance, in *New York*, the Court held that the challenges to the addition of the citizenship question to the 2020 Census was sufficiently “concrete, particularized, and actual or imminent” to confer standing. 139 S. Ct. at 2565 (citation omitted); *see also U.S. House of Representatives*, 525 U.S. at 332 (“[I]t is certainly not necessary for this Court to wait until the census has been conducted to consider” a challenge to plans to use statistical sampling in the 2000 Census.).

The District Court also held that Plaintiffs could not bring their claims because effective relief would be available after the results of the census were known. But a case filed after the Bureau’s statutory deadline to transmit the results to the President – January 1, 2021 – would affect redistricting decisions a mere six months later and elections four months after that. Both here and in *Miller*, procedural violations and unconstitutional decisions threaten to taint results that cannot be redone; further delay raises serious practical concerns for states’ abilities to rely on Census results to plan elections and undertake redistricting. 462 F.3d at 321. Delayed review thus presents far greater practical problems, including the possibility of relief being ordered on the eve of elections. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (cautioning against orders affecting elections close to election date). All of these hardships will be avoided, however, if this Court orders immediate review of the Bureau’s final and discrete procedural decisions at issue in this case.

Moreover, the cases cited by the District Court do not support its conclusion that challenges to any part of the census become ripe only after enumeration. For instance, most of the cases the lower court cited sought relief relating to the *use* of census data and were not concerned with how the count itself was conducted. Jan. Op. at 31.⁷ But Plaintiffs in this case are not challenging what is done with census data after the census is taken. Instead, they challenge the Bureau’s decision to slash resources for programs designed to count Hard-to-Count communities, because those decisions compromise the distributive accuracy of the Census and violate the Enumeration Clause. The Plaintiffs challenge the methods of the census and not the application of the census data after the fact.

⁷ The District Court cited cases challenging the use of census data to justify dismissing Plaintiffs’ claim as unripe: *Dist. of Columbia v. U.S. Dep’t of Commerce*, 789 F. Supp. 1179 (D.D.C. 1992) (challenge to allocation of *already counted* prisoners as Virginia residents); *Massachusetts v. Mosbacher*, 785 F. Supp. 230 (D. Mass.) (challenge to allocation of *already counted* federal employees serving overseas), *rev’d sub nom. Franklin v. Massachusetts*, 505 U.S. 788 (1992); *City of Willacoochee, Ga. v. Baldrige*, 556 F. Supp. 551 (S.D. Ga. 1983) (post-census challenge to Bureau’s failure to adjust inaccurate census *results*); *City of Philadelphia v. Klutznick*, 503 F. Supp. 663 (E.D. Pa. 1980) (post-census challenge to Bureau’s decision not to share preliminary census *results* with local governments). It also cited *Texas v. Mosbacher*, 783 F. Supp. 308 (S.D. Tex. 1992), a post-census challenge to procedures used to count Latinos in Texas. But that decision did not address what relief the plaintiffs could obtain – and that court does not appear to have ever addressed the issue. *See id.* at 317 (“The court need not spell out what shape relief will take, if any in fact is needed, at this time because there is no record before it to allow it to venture such speculations.”).

In relying on this inapposite case law, the District Court offered little to no explanation of how Plaintiffs would obtain effective relief if the Bureau’s procedures are as inadequate as Plaintiffs allege—which must be accepted at the pleading stage. The constitutionally deficient decisions that will harm Plaintiffs are final and imminent, and Plaintiffs’ constitutional claim is ripe for review.

C. The Court Improperly Assumed that the Deficiencies Would Be Remedied Without Court Intervention

In finding a lack of ripeness, the District Court also improperly assumed that the Bureau would remedy its unconstitutional decisions. Jan. Op. at 32 (finding that challenged deficiencies would all be addressed eventually by adequate funding).

This holding turns the standard of review on its head and contravenes Plaintiffs’ well-pleaded allegations. A court may grant a motion to dismiss for lack of jurisdiction “only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law.” *Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, 887 F.3d 637, 645 (4th Cir. 2018) (citation omitted). Although the District Court stated that its decision was based only on the pleadings, it nonetheless assumed facts not in the pleadings (and not otherwise susceptible of judicial notice) by concluding that the deficiencies would later be remedied without its intervention. But Plaintiffs disputed whether Defendants would remedy their own

unconstitutional and arbitrary decisions,⁸ and continue to dispute this now, with support from Defendants' own documents. The Court ignored this factual dispute and, instead, adopted an unjustified factual position adverse to Plaintiffs to dismiss the bulk of their constitutional claim.

There is no basis in the complaint or the record to assume that the Bureau will deviate from its stated plans for the 2020 Census absent court intervention. Even by early 2019, when the District Court ruled on the issue, the Bureau had stated its fixed plans for the census that Plaintiffs were, and are, challenging. Those plans have only been formalized further: since then, the Bureau has released its final plans and subsequent documents confirming its planned changes. In short, the Bureau has no plans to remedy on its own the actions the Plaintiffs are challenging. Indeed, the Bureau is sitting on over \$1 billion in appropriated funds that it has refused to spend on correcting the challenged deficiencies, in spite of a congressional mandate to do so.⁹ This clear error by the District Court led to its erroneous ripeness finding.

⁸ See, e.g., Pls.' Mem. of Law in Opp. to Defs.' Mot. to Dismiss, Dkt. No. 46, at 18-19; Suppl. Br. of Pls. in Opp. to Defs.' Mot. to Dismiss, Dkt. No. 63, at 14-15.

⁹ See JA 306-533 (Census Bureau, FY 2020 Budget Request, at CEN-51 (JA 362) (showing \$1.02 billion left over from Bureau's Fiscal Year 2018 and 2019 appropriations)); see also *Beyond the Citizenship Question: Repairing the Damage and Preparing to Count 'We the People' in 2020: Hearing Before the H. Comm. on Oversight & Reform*, 116th Cong. (July 24, 2019), <https://oversight.house.gov/legislation/hearings/beyond-the-citizenship-question-repairing-the-damage-and-preparing-to-count-we>.

D. The District Court Erred in Demanding Additional Factual Development at the Pleading Stage

The District Court also erred in finding that more factual development was required to allow Plaintiffs' claim to proceed to discovery. For support, it offered as its only example that "completing the testing that the Bureau so far has postponed will provide essential information regarding the accuracy of digital procedures that will be employed in the 2020 Census." Jan. Op. at 33. But this finding again contravenes Plaintiffs' allegations, and was refuted by the Bureau's announcement soon after the Court's opinion that it had *cancelled* these very tests. SAC ¶¶ 130-39. The District Court acknowledged that there "may come a date" before the Census when Defendants' failures, such as the "failure to have conducted the testing," are sufficiently ripe for challenge. Jan. Op. at 33 n.14. But the District Court's ruling, and its letter order declining to allow Plaintiffs to reinstate their claim, prevents Plaintiffs from doing so, despite their having alleged sufficiently that the date has come.

The Bureau has announced its final plans for the 2020 Census as to the decisions Plaintiffs are challenging and has already begun or will soon begin implementing those plans. Accordingly, this case *is* like the citizenship question cases, where there was a "final agency action" to challenge. Jan. Op. at 22-24, 33 (distinguishing those cases on that basis). Plaintiffs' Enumeration Clause claim presents "purely legal" questions, *Miller*, 462 F.3d at 319; namely, whether the

Bureau’s decisions violate the Enumeration Clause because they “unreasonably compromise the distributive accuracy of the census.” Jan. Op. at 55. There is no risk of “premature adjudication.” *Id.* at 28. The Bureau will conduct an unconstitutionally and arbitrarily designed 2020 Census absent immediate judicial intervention, and Plaintiffs’ claims are ripe.

II. PLAINTIFFS HAVE STANDING.

In its August Opinion, the District Court dismissed Plaintiffs’ Enumeration Clause claim for lack of standing, characterizing Plaintiffs’ claim as a concern that “Congress will fail to appropriate [sufficient] funds.” Aug. Op. at 9. But this misconstrues Plaintiffs’ claim entirely. In its January Opinion, the District Court correctly concluded, consistent with nearly every court to consider the question at the pleading stage, that Plaintiffs have standing to challenge Defendants’ violation of the Enumeration Clause. Jan. Op. at 37-51. Moreover, since that opinion, the Supreme Court has ruled—unanimously—that standing exists for the same census-related injuries in a highly analogous causal chain to what Plaintiffs allege here. *New York*, 139 S. Ct. at 2565-66.

A. Legal Standard

For constitutional standing, the plaintiff must allege an actual or threatened injury that is not hypothetical, the injury must be fairly traceable to the challenged conduct, and a favorable decision must be likely to redress the injury. *Lujan v.*

Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). At the pleading stage, the burden of establishing standing to proceed is not a heavy one; rather, “general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.” *Id.* at 561 (citations and internal quotation marks omitted).

An organization such as Plaintiff NAACP may also establish standing if the conduct it complains of causes it to divert its resources or frustrates its mission. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). Or it may sue in a representational capacity, on behalf of its members, provided it can adequately allege, and eventually prove, that at least one of its members is injured by the challenged conduct. *See Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977). “[T]he presence of one party with standing is sufficient to satisfy Article III’s case-or-controversy requirement.” *Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014).

B. Plaintiffs Have Alleged Standing Sufficiently at This Stage

Plaintiffs have adequately alleged each of the prongs of standing, a conclusion that necessarily follows from the Supreme Court’s unanimous decision in *New York*. Plaintiffs’ complaint sets forth well-recognized forms of concrete and particularized harms—including but not limited to vote dilution, malapportionment, loss of federal

funding, and diversion of organizational resources—which are imminent and have a substantial risk of occurring, are directly traceable to Defendants’ conduct, and are redressable by judicial action.

1. Plaintiffs Allege Several Cognizable Injuries

An “injury in fact” is any invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. *Lujan*, 504 U.S. at 560. The imminence requirement is satisfied if “there is a ‘substantial risk’ that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014).

In its January Opinion, the District Court held that Plaintiffs plausibly alleged that “Defendants’ preparations for the 2020 Census will exacerbate the undercount Prince George’s County historically experiences,” and that this “in turn would result in reduced funding and representation.” Jan. Op. at 40-41. This holding was correct and is supported by every court to consider the question, including the Supreme Court and multiple Courts of Appeals.

Most notably, the Supreme Court in *New York* unanimously held that the same harms alleged by Plaintiffs here were sufficient for Article III standing. The plaintiffs in *New York* alleged that the Bureau’s conduct (in that case, instituting a citizenship question) would “depress the census response rate and lead to an inaccurate population count,” causing a “diminishment of political representation,

loss of federal funds, degradation of census data, and diversion of resources.” 139 S. Ct. at 2565. Plaintiffs have similarly alleged that Defendants’ deprivation of the key resources for counting Hard-to-Count communities will lead to an undercount in those communities, causing the same harms recognized by the Supreme Court in *New York*. See, e.g., SAC ¶¶ 187-89; 194. Accordingly, Plaintiffs have sufficiently alleged injury in fact. The District Court’s decision to reverse course in its later ruling was error.

2. Plaintiffs’ Harms Are Traceable to Defendants’ Conduct

At the pleading stage, the burden of alleging traceability is “relatively modest.” *Bennett v. Spear*, 520 U.S. 154, 171 (1997). Traceability is satisfied “where the plaintiff suffers an injury that is produced by the determinative or coercive effect” of the Defendants’ conduct “upon the action of someone else.” *Lansdowne on the Potomac Homeowners Ass’n, Inc. v. OpenBand at Lansdowne, LLC*, 713 F.3d 187, 197 (4th Cir. 2013) (quoting *Bennett*, 520 U.S. at 169).

In its January Opinion, the District Court held that Plaintiffs satisfied the traceability prong because Plaintiffs alleged that the “reduced . . . number of area offices and workers,” among other things, would “lead to an even higher undercount of ‘minority and low-income’ individuals.” Jan. Op. at 45-46. Thus, Plaintiffs had plausibly alleged that the disproportionate undercount and the resulting injury was “fairly traceable to Defendants’ plans for conducting the 2020 Census.” *Id.* at 46.

In *New York*, the Supreme Court held the plaintiffs' harms were traceable to government action. The Court found that "noncitizen households have historically responded to the census at lower rates than other groups," and that the worsening of those low rates was attributable to the "predictable effect of Government action." 139 S. Ct. at 2566. In doing so, the Supreme Court rejected the government's argument, also made by Defendants in this case, that the harms are "not fairly traceable to [the Bureau's conduct] because such harm depends on the independent action of third parties choosing to violate their legal duty to respond to the census." *Id.* at 2565. In this case, Plaintiffs have alleged that minority communities historically respond to the census at lower rates and that their differential undercount will predictably worsen as a result of Defendants' action, namely the removal of key resources for reaching those populations. This is sufficient to allege traceability, and the District Court's contrary holding in its August Opinion is erroneous.

3. Plaintiffs Have Alleged Redressable Harms

The redressability prong focuses on whether the injury that a plaintiff alleges is likely to be redressed through a favorable decision arising from the litigation. *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 286-87 (2008); *Townes v. Jarvis*, 577 F.3d 543, 547 (4th Cir. 2009). The relief need not be total but satisfies the standard so long as the injury can be "reduced to some extent." *Massachusetts v. E.P.A.*, 549 U.S. 497, 526 (2007). "[N]o explicit guarantee of

redress . . . is required to demonstrate a plaintiff's standing.” *Equity in Athletics, Inc. v. Dep’t of Educ.*, 639 F.3d 91, 100 (4th Cir. 2011).

In its January Opinion, the District Court held that the redressability prong was met because the Court could issue declaratory or injunctive relief that could remedy the Bureau’s “method and means” for conducting the census, if they are “as deficient as Plaintiffs expect.” Jan. Op. at 50. Though much of the Court’s opinion focused on its ability to issue declaratory relief regarding the funding of the census, it made clear that it was addressing Plaintiffs’ claims for injunctive relief as well. *Id.* at 37 n. 16, 50. And the Court noted correctly, it need not spell out the “exact contours” of the relief it could offer following an evidentiary hearing or trial, because that was “unnecessary to predict . . . at this preliminary stage of the case.” *Id.* at 51.

The District Court’s January ruling was correct. Plaintiffs have alleged injuries arising out of the Bureau’s radical reductions in certain key programs, including in-field address canvassing, community outreach and partnership, and field staffing and infrastructure. If this case advances to an evidentiary hearing or trial, there is nothing barring the District Court, as a matter of law, from enjoining those deficiencies and reducing Plaintiffs’ resulting injuries at least “to some extent.” *Massachusetts*, 549 U.S. at 526.

In its August Opinion, the District Court erred by reversing its earlier holdings on standing and instead finding that Plaintiffs’ claim was not redressable because it

asked the Court to “order the appropriation of funds,” Aug. Op. at 10, something that Plaintiffs have never sought in this case.¹⁰ Moreover, the Court stated that it does not have the “authority, expertise, or time” to order the Bureau to spend appropriated funds. *Id.* Although an order that the Bureau must spend certain appropriated funds is but one of many possible remedies in this case, and not a basis for dismissal, this holding was incorrect.¹¹

First, where an agency refuses to spend funds appropriated by Congress, courts have the authority to remedy that failure. *See, e.g., In re Aiken Cty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.) (“[T]he President does not have unilateral authority to refuse to spend” “less than the full amount appropriated by Congress for a particular project or program.”); *Guadamuz v. Ash*, 368 F. Supp. 1233, 1244 (D.D.C. 1973) (“Money has been appropriated by the Congress to achieve the purposes of both programs and the Executive has no residual constitutional power to refuse to spend these appropriations.”). Second, the District Court was premature in holding that it lacked the “expertise” to decide whether the

¹⁰ Because Plaintiffs are not actually challenging the level of funding appropriated to the Bureau, Judge Grimm’s concerns about the “transform[ation] [of] the federal courts into a venue for every person or entity with an axe to grind or an agenda to advance” are entirely unfounded. Aug. Op. at 11-12.

¹¹ The parties did not brief whether the Bureau could be ordered to spend the appropriated funds that it was holding in reserve, contrary to Congress’s instructions. The District Court appeared to have lifted the argument from Plaintiffs’ pre-motion letter, filed only a week prior.

Bureau should spend the appropriated funds, since there was “no record before it which would allow it to venture such speculations.” Jan. Op. at 51 (citing *Mosbacher*, 783 F. Supp. at 317). Third, whether the District Court has the “time” to issue an appropriate remedy is plainly not an appropriate consideration.

Plaintiffs have adequately alleged standing for their claims.

III. PLAINTIFFS’ CLAIMS ARE JUSTICIABLE

Plaintiffs’ Enumeration Clause claim is not precluded from review pursuant to the political question doctrine. In its August Opinion, the District Court held that Plaintiffs’ claim was non-justiciable, but only because it misconstrued Plaintiffs’ claim as being about “whether the appropriated funding [for the 2020 Census] is sufficient.” Aug. Op. at 13. In any event, as every other court to consider this issue has found, Defendants’ census-related conduct is not immune from review.

A. Legal Standard

The political question doctrine is a “narrow exception” to judicial review. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012). The key factors for determining whether a case presents a non-justiciable political question are (1) whether there exists a “textually demonstrable constitutional commitment of the issue to a coordinate political department”; or (2) whether there is a “lack of judicially discoverable and manageable standards for resolving it.” *Baker v. Carr*, 369 U.S. 186, 217 (1962); *see also* Jan. Op. at 52. The constitutional commitment

of authority must clearly vest *sole* discretion in a political branch “and nowhere else.” *See, e.g., Nixon v. United States*, 506 U.S. 224, 229 (1993).

B. Defendants’ Conduct Is Not Immune from Judicial Review

Plaintiffs’ allege that Defendants’ drastic reductions in the key operations for the 2020 Census violate the Enumeration Clause. The text of the Enumeration Clause does not commit this question solely to Congress or anyone else, and judicially manageable standards exist that have been applied over decades of census litigation. Courts have thus “consistently rejected application of the political question doctrine in [census] cases.” *New York v. Department of Commerce*, 315 F. Supp. 3d 766, 791 (S.D.N.Y. 2018). This has been true in every census-related case from *Baker*, 369 U.S. at 237 (holding that apportionment based on census figures did not present a non-justiciable political question), to *Carey v. Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) (finding that a challenge to the adequacy of address registers and field enumerators for the 1980 Census was not a political question), to the recent citizenship question cases. Similarly, Defendants’ conduct in this case should not be immune from review.

1. The Text of the Enumeration Clause Does Not Commit Sole Discretion to Congress

In its January Opinion, the District Court noted that courts “have routinely held that the Enumeration Clause does not textually commit exclusive, non-reviewable control over the census to Congress.” Jan. Op. at 53 (quoting *California*

v. Ross & City of San Jose v. Ross, Nos. 18-1865-RS & 18-2279-RS, slip. op. 19 (N.D. Cal. Aug. 17, 2018), ECF No. 47-1). Although Article I, Section 2 provides that Congress shall conduct the census “in such Manner as [Congress] shall by Law direct,” courts have consistently held that no part of the text granted Congress exclusive authority. The Enumeration Clause only “impose[s] on Congress the responsibility to provide for the taking of a decennial census. It does not say that Congress and Congress alone has the responsibility to decide the meaning of, and implement, Article 1, Section 2, Clause 3.” *Young v. Klutznick*, 497 F. Supp. 1318, 1326 (E.D. Mich. 1980), *rev’d on other grounds*, 652 F.2d 617 (6th Cir. 1981). Plaintiffs’ claim that Defendants are heading into the 2020 Census without the necessary resources, staff, and infrastructure to reach Hard-to-Count populations thus fits within the well-established body of precedent refusing to find Defendants’ pre-census conduct immune from judicial review.

2. There Are Judicially Manageable Standards for Plaintiffs’ Claims

Census-related claims may be reviewed to ensure that they bear “a reasonable relationship to the accomplishment of an actual enumeration of the population, keeping in mind the constitutional purpose of the census.” *Wisconsin v. City of New York*, 517 U.S. 1, 20 (1996); *Utah*, 536 U.S. at 478 (concluding that the Enumeration Clause contains an “interest in accuracy” for purposes of judicial review). Here, after the District Court initially rejected Defendants’ political question arguments, it

proceeded to apply that standard in holding that Plaintiffs stated a claim under the Enumeration Clause. Jan. Op. at 54-55. The Court held that Plaintiffs “alleged sufficiently that proceeding as Defendants are with the 2020 Census will unreasonably compromise[] the distributive accuracy of the census, thereby stating a claim for violation of the Enumeration Clause.” *Id.* (citation omitted). Discovery after the District Court’s January decision has only underscored the allegations supporting the Plaintiffs’ Enumeration Clause claim. The political question doctrine does not bar the Court from applying this same standard to Defendants’ drastic reductions of the resources needed to reach Hard-to-Count populations and their refusal to spend the funds appropriated by Congress for these very purposes. Accordingly, Plaintiffs’ claims are justiciable.

IV. The District Court Erred in Dismissing Plaintiffs’ APA Claims

In the Second Amended Complaint, Plaintiffs challenged six discrete and final agency actions as arbitrary and capricious under the APA:

(a) a plan to hire an unreasonably small number of enumerators; (b) a drastic reduction in the number of Census Bureau field offices; (c) cancellation of crucial field tests; (d) a decision to replace most in-field address canvassing with in-office address canvassing; (e) a decision to make only extremely limited efforts to count inhabitants of housing units that appear vacant or nonexistent based on unreliable administrative records; and (f) a significant reduction in the staffing of the Bureau’s partnership program.

SAC ¶ 67. The District Court dismissed the claims on the ground that “Plaintiffs do not direct their challenges to acts that meet the definition of ‘agency action.’” Aug.

Op. at 17. It “[did] not reach the other grounds that Defendants raise[d],” including that none of the discrete actions challenged are “final,” that all are “committed to agency discretion by law,” and that all are “unripe.” *Id.*

The District Court erred in concluding that Plaintiffs failed to challenge agency action because the actions Plaintiffs challenge are discrete and determine rights and obligations. In addition, because the government may argue that this Court should affirm the decision on alternative grounds, *see Republican Party of N. Carolina v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (“[W]e may affirm a judgment for any reason appearing on the record.”)), and because of the urgency of this challenge, (*see* ECF No. 14 (expediting this appeal), Plaintiffs also address those alternative arguments here and urge this Court to adjudicate them in this appeal.

A. Standard of Review

This Court reviews claims regarding agency action *de novo*. *See W. Virginia Dep’t of Health & Human Res. v. Sebelius*, 649 F.3d 217, 222 (4th Cir. 2011) (“We review *de novo* a district court’s evaluation of agency action, as to questions of both law and fact.”).

B. Plaintiffs Have Sufficiently Alleged APA Claims.

1. The Challenged Decisions Are “Agency Action.”

The District Court erred in concluding that “Plaintiffs do not direct their challenges to acts that meet the definition of ‘agency action.’” Aug. Op. at 17. The design choices Plaintiffs challenge are “agency actions” that are both

“circumscribed” and “discrete,” *Norton v. S. Utah Wilderness Alliance (SUWA)*, 542 U.S. 55, 62 (2004), and “determin[e] rights and obligations.” *Clear Sky Car Wash LLC v. City of Chesapeake, Va.*, 743 F.3d 438, 445 (4th Cir. 2014). As the District Court noted, an agency action “determin[es] rights and obligations” if it has “an immediate and practical impact” on “private parties,” *City of New York v. U.S. Dep’t of Defense*, 913 F.3d 423, 431 (4th Cir. 2019) (quoting *Golden & Zimmerman LLC v. Domenech*, 599 F.3d 426, 433 (4th Cir. 2010)), or alters “the legal regime in which it operates,” *id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)). The specific actions challenged directly impact Hard-to-Count communities.

a. The challenged decisions are “circumscribed” and “discrete”

Ignoring Plaintiffs’ well-pled allegations, the District Court mischaracterized Plaintiffs’ position as seeking “a sweeping overhaul to the Final Operational Plan, which exceeds the scope of reviewable ‘agency action.’” Aug. Op. at 21. But Plaintiffs challenge six discrete decisions, each of which fits well within the “broad sweep” of agency action. *Indep. Equip. Dealers Ass’n v. EPA*, 372 F.3d 420, 427 (D.C. Cir. 2004).

That Plaintiffs challenge multiple decisions by the Bureau does not mean that each challenged action is so “interrelated with other aspects of the Final Operational Plan” that it “cannot be analyzed” alone. Aug. Op. at 18. The broader context in which a program operates frequently informs agency actions. That does not make

the challenged actions any less independent or discrete. Courts can analyze each activity that Plaintiffs challenge without reference to the other activities. For example, the Bureau could increase in-field address canvassing without opening more field offices.

Additionally, neither challenging multiple decisions nor asking for injunctive relief converts this case into a “programmatic attack.” *SUWA*, 542 U.S. at 64. “Government deficiencies do not become non-reviewable simply because they are pervasive,” *City of New York*, 913 F.3d at 433, and the “aggregation of similar, discrete purported injuries” does not undermine a claim of agency action, *Ramirez v. U.S. Immigration & Customs Enf’t*, 310 F. Supp. 3d 7, 21 (D.D.C. 2018). Unlike other cases challenging “the sort of public policy problem that often requires reallocating resources, developing new administrative systems, and working closely with partners across government,” *City of New York*, 913 F.3d at 433, Plaintiffs ask that the Bureau conduct the same activities it has conducted in previous censuses and that it has reasonable basis for foregoing.

Finally, the District Court mistakenly concluded, without a sufficient record, that the challenged decisions “are not ‘required by law.’” Aug. Op. at 22 (quoting *City of New York*, 913 F.3d at 432). Indeed, the Census Act requires these actions. “[B]y mandating a population count that will be used to apportion representatives . . . the Act imposes ‘a duty to conduct a census that is accurate and that fairly accounts

for the crucial representational rights that depend on the census and the apportionment.” *New York*, 139 S. Ct. at 2568-69 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 820 (1992) (Stevens, J., concurring in part and concurring in judgment)).

b. Rights, obligations, and legal consequences flow from the challenged decisions

The District Court also erred in concluding that “the Bureau’s acts do not qualify as ‘agency action’ because they do not ‘determin[e] rights and obligations.”” Aug. Op. at 23 (quoting *City of New York*, 913 F.3d at 431). Legal obligations and consequences flow directly from the Bureau’s decisions to drastically understaff the 2020 Census and gut the field operations that reach Hard-to-Count communities. The way that Defendants choose to conduct the Census has an “immediate and practical impact” on private parties by exacerbating the undercount of communities of color, diluting their votes, and depriving them of critical federal funds. *City of New York*, 913 F.3d at 431; SAC ¶¶ 187-89, 194, 199.

In arguing to the contrary, Defendants have relied on Fourth Circuit precedents holding that various government *communications* do not affect rights and obligations or have legal consequences. *See, e.g., Golden & Zimmerman*, 599 F.3d at 428-29 (ATF Reference Guide); *Invention Submission Corp. v. Rogan*, 357 F.3d 452, 454 (4th Cir. 2004) (advertising campaign); *Flue-Cured Tobacco Cooperative*

Stabilization Corp. v. E.P.A., 313 F.3d 852, 855-56 (4th Cir. 2002) (EPA report).

These cases are inapposite.

The agency reports and communications at issue in Defendants' cited cases are not "agency action" because their "consequences . . . stem from independent actions taken by third parties." *Flue-Cured Tobacco*, 313 F.3d at 860; *see also Franklin*, 505 U.S. at 2773-74 (declaring that legal consequences stem from "the President's statement to Congress, not the [agency's] report"); *Golden & Zimmerman*, 599 F.3d at 428 (finding that the agency's communication was "simply informational" and effected no legal change).

Here, by contrast, the adverse consequences stem directly from the agency's decisions. The Final Operational Plan is not "simply informational." *Golden and Zimmerman*, 599 F.3d at 428. The agency's decisions to hire insufficient personnel, open fewer field offices, and reduce testing will have an undeniable impact on the funding and political representation Plaintiffs receive. SAC ¶¶ 187, 194, 199. This impact rests not on "mere speculation about the decisions of third parties" but "on the predictable effect of Government action on the decisions of third parties." *Dep't of Commerce*, 139 S. Ct at 2566.

Further, in finding that Plaintiffs were not challenging agency action, the District Court reasoned that Plaintiffs were focusing on the effect the Final Operational Plan has on the Census Bureau, rather than on private parties. Aug. Op.

at 25. This mischaracterizes Plaintiffs’ claims. Plaintiffs are challenging the Bureau’s final plans precisely because they will have drastic—and, if this Court does not act soon, irreversible—effects on Hard-to-Count communities. SAC ¶¶ 187-89, 194, 199, 203. That the Bureau’s stated final plans also prevent the Bureau from conducting the census in accordance with its constitutional obligations does not detract from this argument.

The District Court also suggested that the impact on Plaintiffs was not “immediate” because of the “attenuated” link between how the Bureau conducts the 2020 Census and “how many representatives and how much funding Plaintiffs receive.” Aug. Op. at 25. Again, ignoring Plaintiffs’ well-pled allegations, the District Court mischaracterized the effect of the Bureau’s actions on Plaintiffs. The funding and political representation Plaintiffs receive will result *directly* from the outcome of the 2020 Census. SAC ¶¶ 14-15. The relationship between these effects and the Bureau’s conduct are well-established in the standing context. *See, e.g., Carey*, 637 F.2d at 838; *Kravitz v. U.S. Dep’t of Commerce*, 336 F. Supp. 3d 545, 558 (D. Md. 2018) (finding “the dilution of Plaintiffs’ votes within states and their loss of federal funding” sufficient to establish injury-in-fact). The same reasoning applies here. Plaintiffs have sufficiently alleged that the manner in which the Bureau conducts the census will have an immediate effect on their rights and obligations

because of the legal consequences for representation and funding that flow directly from the Bureau's actions.

2. The Challenged Agency Actions Are “Final.”

The government incorrectly argued that the challenged actions are not “final” and thus immune from challenge under the APA. Defs.’ Mem. at 18. Defendants’ actions meet the legal standard for final agency action because they “mark the consummation of the agency's decisionmaking process.” *U.S. Army Corps of Eng'rs v. Hawkes*, 136 S. Ct. 1807, 1813 (2016) (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)).

Plaintiffs allege (and Defendants cannot deny) that the challenged decisions—all part of the agency's Final Operational Plan—are the consummation of the agency's decisionmaking process. SAC ¶¶ 31, 33. The Final Operational Plan itself states that it “reflects [the agency's] final design.” SAC ¶ 33.¹² This Court has recognized that an agency's approval of a plan to implement its duties constitutes final agency action, as do the plan's components. *See Vill. of Bald Head Island v. U.S. Army Corps of Eng'rs*, 714 F.3d 186, 193-95 (4th Cir. 2013) (“[T]he Corps formally approved the revisions to the . . . Project . . . and the revised project included

¹² See Deborah Stempowski (Chief, Decennial Management Division), *2020 Census Operational Plan*, Census Bureau (Feb. 1, 2019), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/pmr-materials/02-01-2019/pmr-op-plan-2019-02-01.pdf?> (Slide 19).

the Corps' plans That approval, not the Corps' subsequent activities in carrying it out, was the final agency action.”). Plaintiffs here only challenge certain parts of the agency's plans, not their implementation. SAC ¶¶ 66, 67.

Defendants' claim that they may yet revise the plan does not alter this conclusion. The mere “possibility” of revision “does not make an otherwise definitive decision nonfinal.” *U.S. Army Corps of Eng'rs*, 136 S. Ct. at 1814. Likewise, that the Final Operational Plan is not the culmination of *every* decision-making process does not change the finality of the choices it includes. *See* FOP at 1 (JA 67). Defendants' objection only highlights the specific and independent nature of Plaintiffs' claims in acknowledging that these decisions must be separate from those left unmade.

3. The Bureau's Actions Are Not Committed to Agency Discretion.

Further, the government contended in the District Court that Plaintiffs' claims are barred because they are committed to agency discretion by law. Earlier this year, the Supreme Court squarely rejected the argument that the Census Act commits these decisions to agency discretion and was emphatic that the Census Act “do[es] not leave [the Secretary's] discretion unbounded.” *See New York*, 139 S. Ct. at 2568.

The Supreme Court foreclosed all avenues by which Defendants might argue otherwise. “The taking of the census is not one of those areas traditionally committed to agency discretion Nor is the statute here drawn so that it furnishes no

meaningful standard by which to judge the Secretary's action.” *Id.* The operational plan at issue is subject to a cognizable legal standard because “the Act imposes ‘a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.’” *Id.* at 2569 (quoting *Franklin*, 505 U.S. at 819-20 (Stevens, J., concurring in part and concurring in the judgment)). Just as the citizenship question in *Department of Commerce* was reviewable, so too are the six decisions challenged by Plaintiffs.

4. Plaintiffs’ APA Claims Are Ripe.

In its earlier order, the District Court noted that Plaintiffs’ claims would, at that time, be unripe because “the Secretary is in the process of making his decisions about how to conduct the 2020 census,” *NAACP*, 382 F. Supp. 3d at 367. The government reiterated that argument. Defs.’ Mem. at 22. But that time has since passed. With the Bureau’s release of its final plans and its beginning of census operations, the Secretary’s decision-making process is complete and Plaintiffs’ claims are ripe for review.¹³

As explained in Part I in regard to the ripeness of Plaintiffs’ constitutional claims, Plaintiffs have already suffered harm and face even more harm if

¹³ With the release of the FOP, a Bureau official stated that it “culminates years of planning” and marks a transition “into the operational phase of the 2020 Census.” 02/01/19: 2020 Census Quarterly Program Management Review (PMR) at 24:35, U.S. Census Bureau (Feb. 1, 2019), <https://www.youtube.com/watch?v=b96n0AiZZSE>.

Defendants’ actions are not reviewed now. *See* SAC ¶¶ 176-203. The Supreme Court has recognized that census design choices may become irreversible if not decided well before the census begins and cause “extreme—possibly irremediable—hardship.” *See U.S. House of Representatives*, 525 U.S. at 332 (“[I]f the Bureau is going to alter its plan to use sampling in the 2000 census, it must begin doing so by March 1999.”). Further, dismissing Plaintiffs’ APA claims as unripe would “almost certainly preclude Plaintiffs from obtaining a final ruling on their claims.” *New York v. U.S. Dep’t of Commerce*, 351 F. Supp. 3d 502, 627 (S.D.N.Y. 2019). In light of Plaintiffs’ challenges to Defendants’ final actions, this Court should hold their APA claims are ripe for review.

C. The Challenged Actions Are Arbitrary, Capricious, and Contrary to Law.

Defendants’ challenged actions are “arbitrary, capricious, an abuse of discretion, [and] otherwise not in accordance with law,” in violation of the APA. 5 U.S.C. § 706(2)(A) (2018). Plaintiffs have sufficiently alleged six discrete actions that violate the Bureau’s statutorily mandated goal to reach Hard-to-Count communities. SAC ¶ 67. These actions evince no “rational connection between the facts found and the choice made,” *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

The District Court dismissed the APA claims on the pleadings, without directing the government to produce an administrative record. Thus, it did not examine the agency’s justification for each discrete action. Even the government’s proffered explanations, without any record, do not justify its decisions to drastically reduce its staff and office presence for the 2020 Census.

For example, one of the Bureau’s core arguments for reducing the number of enumerators by one-third compared to 2010 is their supposedly reduced workload. SAC ¶ 74. Yet only 67% of householders say they are “extremely likely” or “very likely” to complete the 2020 Census, *twenty percentage points lower* than the analogous figure in 2010. *Id.* ¶ 81, 83. This strongly suggests a need for more—not fewer—enumerators and partnership staff.

Likewise, in setting the number of field offices, the Commerce Department’s Office of the Inspector General stated there was “no evidence that the Bureau reconciled the increased NRFU workload” with the assumptions underlying the original plan to open 248 offices. *Id.* ¶ 128. Each of these decisions constitutes a failure to “examine the relevant data and articulate a satisfactory explanation” for the Bureau’s choices. *State Farm*, 463 U.S. at 43.

In each of these instances, the Bureau “entirely failed to consider an important aspect of the problem,” “offered an explanation for its decision that runs counter to the evidence before the agency,” or both. *Id.* Plaintiffs have sufficiently alleged that

the agency's actions should be set aside as arbitrary and capricious, and at a minimum, Defendants must produce an administrative record that will allow a court to consider the *actual* justifications for each decision, not the post-hoc rationalizations set forth in Defendants' briefing.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed and this matter should be remanded to the district court.

Dated: August 30, 2019

Respectfully submitted,

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^Ψ This motion does not purport to state the views of Yale Law School, if any.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE
REQUIREMENTS**

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 12,966 words (according to the Microsoft Word 2013 count function), excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman type style.

Date: August 30, 2019

BY: /s/Jacob D. Alderdice
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CERTIFICATE OF SERVICE

I, Jacob D. Alderdice, certify that today, August 30, 2019, I have caused a true and correct copy of the foregoing Brief of Plaintiffs-Appellants to be filed with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit via the appellate CM/ECF, which will send a notice of this filing to all participants in this case, including counsel for appellees.

BY: /s/Jacob D. Alderdice
Jacob D. Alderdice

United States Court of Appeals
for the
Fourth Circuit

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; PRINCE
GEORGE'S COUNTY, MARYLAND; PRINCE GEORGE'S COUNTY MARYLAND
NAACP BRANCH; ROBERT E. ROSS; H. ELIZABETH JOHNSON,

Plaintiffs-Appellants,

v.

BUREAU OF THE CENSUS; STEVEN DILLINGHAM, Director, Bureau of the Census;
WILBUR ROSS, Secretary of the Department of Commerce; THE UNITED STATES,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maryland

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INTRODUCTION

The 2020 Census is barreling towards a dramatic miscount. African-Americans are at risk of the most substantial *de facto* undercount in modern history, more than a century after the Civil War amendments ended the *de jure* undercounts once mandated by the Three-Fifths Clause. Defendants' final plans for the 2020 Census slash resources for outreach and community partnerships; gut the number of enumerators; and establish nearly half the number of field offices as in 2010. And as Plaintiffs allege, Defendants have made these decisions despite virtually no testing, a larger population that is more distrustful of government, and concrete evidence of the severe unreliability of these new methods.

Plaintiffs brought claims under the Enumeration Clause and the Administrative Procedure Act ("APA") challenging six specific and unlawful decisions by Defendants that the NAACP, Prince George's County, and other Plaintiffs alleged would result in a massive differential undercount of African-Americans. This undercount will deprive communities of millions of dollars of federal aid and political representation.

Rather than address the merits of Plaintiffs' claims, the District Court dismissed them as non-justiciable on grounds that the government largely does not defend on appeal. *See* JA 564-618 (*NAACP v. Bureau of the Census*, No. 8:18-cv-00891-PWG (Jan. 29, 2019)) [hereinafter January Opinion]; JA 623-648 (*NAACP v.*

Bureau of the Census, No. 8:18-cv-00891-PWG (Aug. 1, 2019)) [hereinafter August Opinion]. The government also fails to address the ramifications of the most immediate and relevant precedent, the Supreme Court’s conclusion only months ago that APA claims challenging discrete agency action related to the 2020 Census are reviewable. *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2568-69 (2019).

In fact, and contrary to the District Court’s holding, Plaintiffs have standing and properly target final agency action under the APA. They challenge discrete actions that directly implicate Plaintiffs’ rights and obligations and that are not committed to agency discretion. Likewise, the District Court erred in failing to find Plaintiffs’ Enumeration Clause claim ripe and appropriate for review. Plaintiffs should have had an opportunity to seek preliminary relief based on the discovery they had previously obtained, and the government should have been obliged to produce an administrative record that would permit meaningful judicial review.

In their opposition brief, Defendants mostly abandon the District Court’s reasoning and instead proffer an entirely new justification for their decisions: technological innovation. There are compelling reasons to be skeptical of this justification. More importantly, this is an improper ground for dismissal of Plaintiffs’ claims *on the pleadings*, and its invocation is contrary to the basic rule that agency action cannot be upheld based on *post hoc* justifications.

As Census Day draws near, Plaintiffs urge this Court to expeditiously reverse the District Court's dismissal of Plaintiffs' claims so that Defendants may be held responsible for the derogation of their constitutional and statutory obligations. Without judicial intervention, there is little hope that Defendants will count Plaintiffs' communities and other communities of color accurately and equally.

ARGUMENT

I. PLAINTIFFS' APA CLAIMS ARE JUDICIALLY REVIEWABLE.

The District Court erred in dismissing Plaintiffs' APA claims. From the outset of this litigation, Plaintiffs have been clear that they “challenge six discrete decisions,” not the overall operations of the census. Br. 50.¹ These actions are not committed to agency discretion by law, and this Court can review them against familiar and judicially manageable standards. Defendants' attempts to introduce new explanations for their decisions at this stage are improper, and this Court should not consider them.

A. The Government's Defense of the 2020 Census Design Flaws Is Improper and Unsupported by Evidence.

Defendants devote a substantial portion of their brief to an explanation of the “innovations” of the 2020 Census. *See* U.S. Br. 4-10. But these justifications are improper and critically flawed: (1) the District Court granted the Government's request to dismiss this action *on the pleadings*, when Plaintiffs' well-pleaded

¹ The challenged actions are “(a) a plan to hire an unreasonably small number of enumerators; (b) a drastic reduction in the number of Census Bureau field offices; (c) cancellation of crucial field tests; (d) a decision to replace most in-field address canvassing with in-office address canvassing; (e) a decision to make only extremely limited efforts to count inhabitants of housing units that appear vacant or nonexistent based on unreliable administrative records; and (f) a significant reduction in the staffing of the Bureau's partnership program.” JA 19-60 (Second Amended Complaint (“SAC”) ¶ 67).

allegations must be taken as true and Defendants’ factual proffers are improper; (2) Defendants’ explanations are classic *post hoc* rationalizations that the Supreme Court has rejected as insufficient to justify agency action, which must be evaluated on the agency’s own administrative record, and (3) even if the Court were to consider these *post hoc* rationalizations, the available evidence—including the Bureau’s own reports—demonstrates that the challenged actions are arbitrary and capricious and should be set aside. Defendants’ new claims—advanced for the first time on appeal and without proper evidentiary support—only highlight the need for prompt production of an administrative record and adjudication of Plaintiffs’ APA claims based on that record.

First, the Court should not consider Defendants’ newly advanced cost-saving theory for the Bureau’s actions as they are improper merits arguments. Defendants introduce novel contentions regarding the “innovations” of the 2020 Census on this appeal of an order granting a motion to dismiss. *See* U.S. Br. 4-10. But it is a well-established principle that “[a] motion to dismiss . . . does not resolve contests surrounding the facts [or] the merits of a claim.” *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (on Rule 12(b)(6) motions); *see also Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982) (on Rule 12(b)(1) motions). Because the District Court dismissed Plaintiffs’ APA claims without

allowing for production of the administrative record, it is neither possible nor appropriate to evaluate Defendants' factual assertions at this stage.

Second, APA decisions of this Court and the Supreme Court foreclose Defendants' attempt to justify agency action with *post hoc* rationales introduced in court briefings. "[C]ourts may not accept appellate counsel's post hoc rationalizations for agency action." *Dow AgroSciences LLC v. Nat'l Marine Fisheries Serv.*, 707 F.3d 462, 468 (4th Cir. 2013) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983)). "[A] court must only consider the record made before the agency at the time the agency acted . . . [a]nd a reviewing court may look only to these *contemporaneous* justifications in reviewing the agency action." *Id.* at 467-68. Defendants' selective presentation of facts through briefing is no substitute for the administrative record and "clearly d[oes] not constitute the 'whole record' compiled by the agency: the basis for review required by § 706 of the [APA]." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 419 (1971). Defendants' *post hoc* rationalizations should be disregarded.

The deficiencies in Defendants' justifications only underscore the importance of the APA relief sought by Plaintiffs: an order reversing the District Court's dismissal and remanding with instructions that the government promptly

produce the administrative record. Doing so would allow proper resolution of Plaintiffs' APA claims.

Third, even if the Court were to consider Defendants' proffered explanations via briefing, the available evidence demonstrates that they are insufficient to answer Plaintiffs' challenge that these actions are arbitrary and capricious. To survive arbitrary and capricious review, an agency's action must evince a "rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43 (internal quotation omitted). But Defendants' brief simply repeats the Bureau's public talking points regarding the agency's sharp deviations from historical practice, which are unresponsive to Plaintiffs' well-pleaded allegations demonstrating the irrationality of the actions.

For example, Defendants assert that the Bureau's Integrated Partnership and Communications Operation is adequate for the 2020 Census because it is "hyper-focused on reaching [hard-to-count] populations," citing the hiring of 1,500 partnership specialists and the questionnaire's availability in twelve languages. *See* U.S. Br. 9-10 (internal citations omitted). Defendants fail to mention, however, that the Bureau is hiring fewer partnership staff in 2020 than it did in 2010, SAC ¶ 171, that its 2020 budget for partnership and communications is *25 percent smaller* than it was in 2010, without accounting for inflation, SAC ¶ 170, and that it has reduced the number of non-English languages supported from twenty-seven in 2010 to

twelve in 2020.² The Bureau proceeded with this reduction despite its own data revealing that only 67 percent of households were “extremely likely” or “very likely” to complete the 2020 Census, a full *twenty percentage points* lower than the analogous figure in 2010. SAC ¶ 81, 83. The response rates are even lower for people of color. SAC ¶ 84. This disconnect between the Bureau’s own findings showing the need for additional outreach and its drastic reduction of the partnership and communications program is simply too great to survive arbitrary and capricious review.

The same can be said for any of the other five challenged agency actions. Defendants extol the benefits of administrative records as replacements for enumerators despite the Bureau’s own field testing demonstrating their unreliability (18 percent of housing units identified as vacant and 30 percent identified as nonexistent by administrative records were actually occupied). SAC ¶ 163. Defendants praise the “efficiencies” of in-office address canvassing, U.S. Br. 6, when the Bureau’s sole end-to-end test for the 2020 Census revealed that in-office address canvassing results differed from in-field results in *61 percent* of blocks tested. SAC ¶ 151. Because the available evidence demonstrates that the Bureau has repeatedly “offered . . . explanation[s] for its decision[s] that run[]

² See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-18-599, ACTIONS NEEDED TO ADDRESS CHALLENGES TO ENUMERATING HARD TO-COUNT GROUPS 13 (2018), <https://www.gao.gov/assets/700/693450.pdf>.

counter to the evidence before [it],” *State Farm*, 463 U.S. at 43, the Court should remand this matter and direct that Defendants immediately produce the full administrative record for review.

B. Plaintiffs Challenge Discrete and Circumscribed Agency Actions.

1. The District Court Erred in Deeming the Challenged Actions Non-Discrete.

Plaintiffs challenge only six discrete decisions about the conduct of the 2020 Census. A court can assess each of the challenged activities independently without consideration of the others. Although the District Court erroneously found that challenges to the number of field offices and enumerators could not be assessed in isolation, it nonetheless concluded that “Defendants have not identified any relationship between any of Plaintiffs’ four other challenges . . . and other aspects of the Final Operational Plan.” Aug. Op. at 19.³

The District Court further found that setting aside these six discrete actions “would . . . compel[] [the agency] to enact another plan in accordance with the

³ Instead of deeming each of Plaintiffs’ challenges to be discrete agency action, the District Court improperly assessed these claims with reference to the injunctive relief Plaintiffs sought for separate constitutional claims. Aug. Op. at 20-21. *Norton v. Southern Utah Wilderness Alliance’s (SUWA)* preclusion of APA claims where relief would “inject[] the judge into day-to-day agency management” applies, on its face, only to claims *under the APA*. 542 U.S. 55, 67 (2004). The District Court’s conclusion that the injunctive relief would “invit[e] the Court to ‘reach into the internal workings’ of the Bureau” inaccurately characterizes Plaintiffs’ constitutional claims and is irrelevant to the discreteness of actions for APA purposes. Aug. Op. at 20 (citation omitted).

Court's order.” *Id.* at 21. This conclusion was entirely unfounded, and Defendants do nothing to defend this decision beyond arguing, in conclusory fashion, that Plaintiffs are seeking a “sweeping overhaul” to the Bureau’s plans. U.S. Br. 18. Setting aside some or all of these actions would have no bearing on the numerous other decisions in the Bureau’s 220-page Final Operational Plan.

The Court’s conclusion that “the Bureau’s decision to reduce the number of enumerators is inextricably intertwined with its decision to ‘use new technology and new protocols’” is a case in point. Aug. Op. at 19 (citation omitted). Even assuming *arguendo* that the Bureau based its drastic reductions in enumerators solely on the use of new technology, nothing about that new technology precludes hiring more enumerators or opening additional field offices. Nor would doing so disrupt the use of new technology. For this reason, the District Court’s determination – without benefit of an administrative record – that the decisions to hire fewer enumerators and open fewer field offices are closely related to the Bureau’s rollout of new technology does not make them non-discrete for purposes of review.

Indeed, Defendants have never alleged these actions are mutually exclusive, nor have Plaintiffs challenged the Bureau’s decision to incorporate new technology into its plans. Rather, Defendants claim that additional field staff would be “redundant.” U.S. Br. 7. That is precisely the point of the APA review that the

District Court improperly denied: to determine whether the agency’s decisions are supported by evidence in the administrative record or are arbitrary and capricious. Rather than ordering prompt production of the administrative record so as to make this familiar APA decision, however, the District Court improperly credited Defendants’ arguments and dismissed the action.

2. Ordinary APA Review Is Sufficient to Resolve Plaintiffs’ Administrative Law Claims.

Affording the relief requested by Plaintiffs does not require “a sweeping overhaul to the [Bureau’s] Operational Plan.” U.S. Br. 18 (quoting JA 643). This Court need only reverse and remand so that the District Court can review the administrative record and set aside any of the challenged agency actions that it concludes are arbitrary and capricious.

Defendants argue that “[P]laintiffs’ claims are not meaningful[ly] distinguishable” from those in *City of New York v. U.S. Department of Defense*, 913 F.3d 423 (4th Cir. 2019). U.S. Br. 19. But *City of New York* was clear on its own terms that “[g]overnment deficiencies do not become non-reviewable simply because they are pervasive.” 913 F.3d at 433. That is, the number of discrete deficiencies does not, on its own, make a challenge a “programmatic attack.” *Id.* at 431 (quoting *SUWA*, 542 U.S. at 64). Further, this case is distinct from *City of New York* for three reasons.

First, the plaintiffs in *City of New York* challenged the *result* of underlying agency action rather than the action itself. They sought to “compel DOD’s full reporting of disqualifying information to the Attorney General.” *Id.* at 429. This would be akin to a demand in this case for the Bureau to count every single person in the 2020 Census in order to achieve an “actual enumeration.” But that is not this case; Plaintiffs challenge discrete components of the census’s design, rather than the efficacy of the census as a whole or its outcome. Accordingly, the Court can address Plaintiffs’ challenge with ordinary judicial review of whether these six decisions were arbitrary and capricious and need not take on “a day-to-day managerial role over agency operations.” *Id.* at 434 (quoting *Vill. of Bald Head Island v. U.S. Army Corps of Eng’rs*, 714 F.3d 186, 194 (4th Cir. 2013)).

Second, the plaintiffs in *City of New York* explicitly requested ongoing judicial management of agency decisions in their prayer for relief. They asked the court to compel the Department of Defense “on ‘a schedule to be set by the Court,’ . . . [to] ‘conduct a thorough review of [its] records and procedures,’ ‘submit to the Court for approval a compliance plan,’ and provide ‘a monthly report to the Court detailing [its] progress’ . . . ‘until such time as the Court is satisfied.’” *Id.* (citation omitted). While such relief surely runs afoul of *SUWA*, Plaintiffs here request no such judicial supervision under the APA and instead request relief of the kind routinely granted under 5 U.S.C. § 706.

Third, this Court’s characterization of the relief sought in *City of New York* differs from that requested by Plaintiffs in this case. There, this Court wrote that “the sort of public policy problem that often requires reallocating resources, developing new administrative systems, and working closely with partners across government” was not sufficiently discrete to meet the APA’s requirements for reviewability. *Id.* at 433. None of these issues apply to the APA claims in this case. The Bureau does not need to *reallocate* resources—it has over \$1 billion in unspent appropriated funds it can use to address these deficiencies. JA 558. Plaintiffs are not requesting that the Bureau develop new administrative systems but instead that the Bureau adequately fund and staff *existing* systems. Br. 51. And, unlike the interdepartmental information-sharing program at issue in *City of New York*, granting Plaintiffs’ requested relief would not implicate other agencies’ operations. It rests solely on the Census Bureau’s shoulders.

C. The Challenged Actions Are Not Committed to Agency Discretion.

Claims under the APA benefit from a “strong presumption favoring judicial review.” *Mach Mining, LLC v. E.E.O.C.*, 135 S. Ct. 1645, 1653 (2015). The exception to that presumption is a “very narrow” one. *Overton Park*, 401 U.S. at 410. It applies only where “statutes preclude judicial review,” 5 U.S.C. § 701(a)(1), or the “action is committed to agency discretion by law,” 5 U.S.C. § 701(a)(2).

Defendants’ argument for their census-related conduct to be exempt from judicial review flies in the face of decades of precedent affirming that “Congress rarely intends to prevent courts from enforcing its directives to federal agencies,” *Mach Mining*, 135 S. Ct. at 1651, and contravenes the Supreme Court’s ruling just last term that “the taking of the census is not one of those areas traditionally committed to agency discretion.” *New York*, 139 S. Ct. at 2568. The exception under 5 U.S.C. § 701(a)(2) applies only in the “rare instances where ‘statutes are drawn in such broad terms that. . . there is no law to apply.’” *Overton Park*, 401 U.S. at 410. This is not one of them.

1. The Challenged Actions Are Not Committed to Agency Discretion by Law.

The six discrete challenged actions do not fall under the narrow exception for actions committed to agency discretion by law. In *New York*, the Supreme Court rejected the government’s assertion that census procedures are committed to agency discretion. The Census Act “confers broad authority on the Secretary . . . [b]ut [the Act’s provisions] do not leave his discretion unbounded. . . . The taking of the census is not one of those areas traditionally committed to agency discretion.” 139 S. Ct. at 2568. The Court thus held that the inclusion of a citizenship question on the census questionnaire was reviewable. *Id.* Defendants offer no explanation for why the Bureau’s challenged actions here—which fall within the “taking of the census”—would meet this narrow exemption from APA reviewability.

Even prior to the Supreme Court’s ruling in *New York*, courts held that operational deficiencies in the conduct of the census are reviewable under the APA. The Second Circuit in *Carey v. Klutznick*, 637 F.2d 834 (2d Cir. 1980), reviewed a challenge to the inadequacy of the Census Bureau’s operational procedures, including the preparation and follow-up checks of the master address registers. The court “recognize[d] that there is no power to review agency action that is ‘committed to agency discretion by law,’ . . . but [that] this is not one of those ‘rare instances.’” *Id.* at 838. The challenged actions in *Carey* are almost identical to those challenged in this case. Despite Defendants’ insistence that census procedures involve a “complicated balancing” and therefore are committed to agency discretion, U.S. Br. 23 (citation omitted), the Second Circuit’s reasoning in *Carey* makes it abundantly clear that such matters are not foreclosed from judicial review.

Nor is this case analogous to actions traditionally excluded from agency review, such as those presented in *Heckler v. Chaney*, 470 U.S. 821 (1985). The actions Plaintiffs challenge, including the decisions to halve the number of field offices and to eliminate an entire class of partnership staff, do not constitute enforcement inaction and do not satisfy any of the three *Chaney* factors: (1) “a complicated balancing of . . . factors which are peculiarly within [an agency’s] expertise”; (2) lack of “coercive power over an individual’s liberty or property rights”; and (3) similarities with “the decision of a prosecutor . . . not to indict,” 470

U.S. at 831-32. In fact, the Supreme Court has drawn an explicit contrast between the conduct of the census, which is reviewable, and “a decision not to institute enforcement proceedings,” which is not. *New York*, 139 S. Ct. at 2568.

Defendants’ contention that “the allocation of funds from a lump-sum appropriation is generally committed to agency discretion,” U.S. Br. 25, fails as well, as *Lincoln v. Vigil*, 508 U.S. 182 (1993), is inapposite. In *Vigil*, the Court held that the agency had discretion to spend its funds on various programs “in what it sees as the most effective or desirable way.” 508 U.S. at 192. But the Bureau here is not utilizing its discretion to meet its statutory responsibilities; it is slashing vital resources that the Bureau itself recognizes as instrumental for counting minority communities. Further, unlike in the funding program in *Vigil*, the Census Act, Consolidated Appropriations Act, and accompanying conference report provide independent standards by which the Court can judge the Bureau’s actions. For example, the Appropriations Act’s conference report provides strict directives to the Bureau about various programs it should spend money on, undermining Defendants’ claim that census funding is even a lump-sum appropriation in the first place. *See* H.R. Rep. No. 116-9, at 611 (2019) (Conf. Rep.) (“[T]he Bureau shall devote funding to expand targeted communications activities as well as to open local questionnaire assistance centers in hard-to-count communities.”).

2. There Are Judicially Manageable Standards Against Which to Assess the Challenged Actions.

Further, there is law to apply to assess the adequacy of the Census Bureau's procedures. Only months ago, the Supreme Court confirmed in *New York* that the Census Act furnishes a "meaningful standard" for review. 139 S. Ct. at 2568. "[B]y mandating a population count that will be used to apportion representatives . . . the Act imposes 'a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.'" *Id.* at 2568-69 (citations omitted).

Relevant appropriations bills and their committee reports further elaborate judicially manageable standards, as this Court has recognized in other contexts. *See, e.g., South Carolina v. United States*, 907 F.3d 742, 748 (4th Cir. 2018) ("In its consolidated appropriations bill for fiscal year 2016, Congress's explanatory statement asserted that the funds allocated for the construction of the MOX facility 'shall be available *only*' for that purpose."); *see also* Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside – An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901, 980 (2013) ("[T]he purpose of the committee report in the appropriations context is essentially to *legislate*—that is, to direct where the money appropriated is going.").

As to the 2020 Census, the Conference Report accompanying the 2019 Consolidated Appropriations Act states: “[T]he Bureau *shall* devote funding to expand targeted communications activities as well as to open local questionnaire assistance centers in hard-to-count communities.” H.R. Rep. No. 116-9, at 611 (2019) (Conf. Rep.) (emphasis added). The instruction that the Defendants “shall . . . open local questionnaire assistance centers” provides law for a court to apply in determining whether the Bureau’s refusal to open *any* local questionnaire centers is arbitrary and capricious. The same Report also explains that the cost estimate for the “2020 Decennial Census . . . assumes the need for additional in-person follow-up visits due to fewer households expected to initially respond to the Census.” *Id.*

Congress mandated the Bureau to expend funding for at least two discrete, legally required activities in the Conference Report: (1) expanding targeted communications activities, and (2) opening local Questionnaire Assistance Centers in hard-to-count communities. H.R. Rep. No. 116-9, at 611. These actions are unlawfully withheld because Congress has “imposed a date-certain deadline on agency action,” *South Carolina*, 907 F.3d at 755 (internal citation omitted). That deadline—the end of fiscal year 2019 on September 30, 2019—has passed. *See* Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, 133 Stat. 13 (2019). The text of the Act and the Conference Report make clear that Congress intended the funds to be used during the 2019 fiscal year.

The language of these appropriations bills and reports, together with the Census Act itself are sufficient to supply law to apply. Even the District Court recognized that the Census Act requires the Bureau “to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment,” Aug. Op. at 22 (citing *New York*, 139 S. Ct. at 2569). As in *New York*, and contrary to Defendants’ assertion, this case is reviewable, and there are meaningful judicial standards.

D. Plaintiffs Need Not Show That the Challenged Decisions Are “Required by Law.”

Plaintiffs do not need to show that the Bureau’s challenged decisions are “required by law” because they do not seek injunctive relief under the APA. Plaintiffs did not plead any claim for relief under § 706(1). Defendants and the District Court mischaracterize Plaintiffs’ requests for injunctive relief in the constitutional context as remedies for Plaintiffs’ APA claims. *See* U.S. Br. 20 (“As the district court observed, the gravamen of plaintiffs’ suit is not a challenge to final agency action, but a request, ‘ . . . to compel agency action.’” (citing Aug. Op. at 21)). However, as explained above, Plaintiffs’ § 706(2)(A) claims seek to have the Bureau’s actions “set aside” for being “arbitrary and capricious” and to have the District Court enter an injunction “prohibit[ing] Defendants . . . from re-enacting the unlawful agency actions.” SAC Requested Relief ¶ 8. This relief would bar unlawful agency action, not compel required agency action.

II. PLAINTIFFS HAVE STANDING AND THEIR CLAIMS ARE RIPE.

Defendants do not defend the District Court’s decisions on either ripeness or the political question doctrine. Accordingly, two of the four issues outlined in Plaintiffs’ Statement of Issues have been conceded, and this Court should order reversal.

The District Court’s sole basis for dismissing Plaintiffs’ constitutional claim in the January Opinion was that the claim was unripe. In their opening brief, Plaintiffs explained at length why that decision was wrong. Br. 29-38. Because Plaintiffs alleged significant flaws with the Bureau’s existing plans for the 2020 Census, the District Court erred by requiring Plaintiffs to wait until the 2020 Census commences before they seek relief, contrary to Plaintiffs’ allegations and binding precedent. *See Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 332 (1999) (the Court need not “wait until the census has been conducted . . . because [delay] would result in extreme—possibly irreparable—hardship”). In their opposition brief, Defendants do not attempt to rebut Plaintiffs’ arguments and do not contest that the District Court erred in dismissing Plaintiffs’ claims as unripe. U.S. Br. 28. Accordingly, and for the reasons in Plaintiffs’ opening brief, this Court should reverse the District Court’s erroneous dismissal.

Defendants likewise fail to address Plaintiffs’ arguments that the District Court erred in holding that the political question doctrine rendered Plaintiffs’

constitutional claim non-justiciable. Br. 45-48. The District Court’s justiciability holding was contrary to abundant precedent and resulted from a misstatement of Plaintiffs’ claims. Plaintiffs were not, in fact, asking the District Court to resolve “whether the appropriated funding [for the 2020 Census] is sufficient.” Aug. Op. at 13. Defendants do not attempt to rehabilitate the District Court’s erroneous ruling on justiciability. Indeed, Defendants do not even mention the political question doctrine in their brief. Accordingly, and for the reasons in Plaintiffs’ opening brief, this Court should reverse the District Court’s holding that Plaintiffs’ constitutional claim presents a non-justiciable political question.

Finally, Plaintiffs’ opening brief explained why the District Court correctly concluded in January that Plaintiffs have standing to challenge Defendants’ violation of the Enumeration Clause, a finding not only consistent with that of nearly every lower court that has considered the question at the pleading stage, but also one that a unanimous Supreme Court subsequently confirmed. Br. at 38-45; *see also* Jan. Op. at 37-51.⁴ Defendants argue in opposition that Plaintiffs have not sufficiently alleged standing on two grounds: that Plaintiffs’ theory of injury is too

⁴ Defendants suggest in a footnote that the District Court’s original standing analysis related only to the “underfunding claim.” U.S. Br. 30 n.6. This is not true. The District Court expressly stated that its analysis of Defendants’ other justiciability arguments, including standing, pertained to all of Plaintiffs’ claims, even those dismissed as unripe, “as they may be reinstated.” Jan. Op. at 37 n.16.

speculative and attenuated to establish a concrete and imminent injury; and that Plaintiffs' alleged injuries are not redressable. Neither argument has merit.

A. Plaintiffs Have Alleged Actual and Imminent Harm Resulting from Defendants' Conduct.

At the pleading stage, “general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (citations omitted). Plaintiffs have alleged sufficient actual and imminent injuries—the loss of federal funding, vote dilution, malapportionment, and diversion of organizational resources—resulting from Defendants’ deprivation of the key resources for counting hard-to-count communities. *See* Br. 18-19. This Court should reject Defendants’ argument that this theory of injury “rests on a ‘highly attenuated chain of possibilities,’” U.S. Br. 29 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013)), because this argument is directly contrary to binding precedent.

The Supreme Court in *New York* unanimously held that, like Plaintiffs here, the plaintiffs established standing because the Bureau’s conduct would “depress the census response rate and lead to an inaccurate population count,” causing a “diminishment of political representation, loss of federal funds, degradation of census data, and diversion of resources.” 139 S. Ct. at 2565. In so holding, the Supreme Court rejected the same argument Defendants make here—that the harm is

too speculative to establish an imminent injury. Defendants attempt to distinguish *New York* on the grounds that plaintiffs' harm in that case was the "predictable effect" of the Bureau's conduct, whereas Plaintiffs' causal chain here is too attenuated. *Id.* at 2566. This distinction is not borne out by Plaintiffs' allegations.

Plaintiffs allege a drastic decrease in the resources needed to enumerate hard-to-count communities. *See, e.g.,* SAC ¶¶ 71-73, 115-21, 170-72. An increased differential undercount of those communities is the "predictable effect" of those cuts. *New York*, 139 S. Ct. at 2566. Defendants distort Plaintiffs' allegations in order to deem them speculative; for example, Defendants state that Plaintiffs' "theory rests on speculation that in-office address canvassing will produce worse results than in-person visits." U.S. Br. 29. Defendants omit that the Bureau's own data confirm Plaintiffs' allegations, already plausible on their face, that a significant reduction of field resources for address canvassing will lead to less accurate results. Br. 11-12.

As in *New York*, there is evidence that "[African American] households have historically responded to the census at lower rates than other groups," and Plaintiffs allege plausibly that the Bureau's decisions will exacerbate those low response rates. 139 S. Ct. at 2566. Nothing more is required. As Judge Furman held, *Clapper* dealt with a "significantly more attenuated" causal chain of "five discrete links" at the summary judgment stage. *New York v. U.S. Dep't of Commerce*, 315 F. Supp. 3d 766, 787 (S.D.N.Y. 2018). In this case, as in *New York*, Plaintiffs' chain of causation

has only two steps: “Defendants’ actions will increase non-response rates of certain populations and that the resulting undercount, in turn, will cause harm.” *Id.*⁵ Plaintiffs have demonstrated imminent harms resulting from Defendants’ actions.

B. Plaintiffs Have Alleged Redressable Harms.

Plaintiffs have alleged several types of redressable harms that will result from Defendants reducing key resources for the 2020 Census. Although it is “unnecessary to predict” the “exact contours” Plaintiffs’ relief will take at the pleading stage, Jan. Op. at 51, there are a number of remedies the Court could ultimately order, including enjoining any one of Defendants’ severe reductions or ordering Defendants to expend funds expressly appropriated for certain purposes, *see* Br. 43-44. The relief afforded to Plaintiffs need not be total; it is sufficient that Plaintiffs’ injuries will be “reduced to some extent.” *Massachusetts v. E.P.A.*, 549 U.S. 497, 526 (2007).

Defendants do not address the governing standards for redressability, and instead argue only that Plaintiffs’ injuries are not redressable because the “court cannot order Congress to appropriate additional funds, and it cannot order a ‘sweeping overhaul’” to the 2020 Census.” U.S. Br. 31. But of the many possible remedies available to Plaintiffs, these two are not among them, and Plaintiffs do not

⁵ Judge Furman also noted that in *Clapper*, the plaintiffs’ standing “turned on [proving] injury to *particular* individuals,” whereas Plaintiffs here allege harm that is “aggregate or communal in nature,” and can be proved through surveys or statistical proof. *Id.* at 787.

seek them. To the extent that Defendants argue about whether the Court *should* remedy Plaintiffs’ alleged harms, such a question is better reserved for consideration with the merits of this case. *See Equity in Athletics, Inc. v. Dep’t of Educ.*, 639 F.3d 91, 99, 100 (4th Cir. 2011) (“This court assumes the merits of a dispute will be resolved in favor of the party invoking our jurisdiction. . . . [N]o explicit guarantee of redress . . . is required to demonstrate a plaintiff’s standing.”). Plaintiffs have alleged redressable harms.

III. PLAINTIFFS’ CLAIMS ARE APPROPRIATE FOR REVIEW UNDER THE ENUMERATION CLAUSE.

Defendants do not defend the District Court’s reasons for dismissing Plaintiffs’ Enumeration Clause claim on the pleadings and instead appear to argue that Plaintiffs should not be permitted to pursue their claim because the “Supreme Court has never invalidated a census on the basis of the Enumeration Clause . . . [and] it has considered such claims only with respect to discrete actions otherwise susceptible to judicial review.” U.S. Br. 16. However, as Defendants acknowledge, the Supreme Court and lower courts have regularly held such claims justiciable. *See* U.S. Br. 27-28 (discussing cases). Because the Constitution and Supreme Court precedent provide a clear baseline for assessing Enumeration Clause claims and Plaintiffs’ claims mirror those in previous cases, the District Court erred in dismissing the Enumeration Clause claim as non-justiciable.

A. The Discrete Actions Challenged by Plaintiffs Are Akin to Those in Previous Enumeration Clause Challenges.

As in numerous past Enumeration Clause cases, Plaintiffs challenge discrete decisions about the conduct of the actual population count during the census. Plaintiffs specifically challenge the method of undertaking the count with fewer enumerators, radical cuts to partnership and outreach programs, and reduced field offices, in just the same way that plaintiffs in *Utah v. Evans* challenged the method of conducting the count using imputation, 536 U.S. 452, 457-59 (2002), and plaintiffs in *Franklin v. Massachusetts* challenged the method of enumerating overseas personnel, 505 U.S. 788, 791-95 (1992). In each of these cases, the Bureau's chosen methods threatened the accuracy of the enumeration and was thus appropriate for review.

Additionally, Plaintiffs' Enumeration Clause claims differ from the constitutional claims made in *New York*, despite Defendants' efforts to conflate the two. In that case, the Court denied review of Enumeration Clause claims relating to the citizenship question because it argued that such analysis was reserved for "decisions about the population count itself," not for "decisions about what kinds of demographic information to collect." *New York*, 139 S. Ct. at 2566. This limited holding on demographic information has no bearing on review of the decisions presented here about how to conduct the "population count itself." Rather, the

challenged decisions are precisely the kind traditionally considered appropriate for review.

B. The Supreme Court Has Developed a Constitutional Standard Applicable to Census Procedures.

In reviewing Enumeration Clause claims, the text of the Clause and subsequent case law provide a clear standard that the Bureau's decisions must meet. Its choices must bear a "reasonable relationship to the accomplishment of an actual enumeration of the population, keeping in mind the constitutional purpose of the census." *Wisconsin v. City of New York*, 517 U.S. 1, 20 (1996). The Bureau may alter its procedures, but those alterations must satisfy the "reasonable relationship" standard. When, as here, Defendants' actions fail to do so, courts need not defer to the Bureau's decisions.

Further, the Supreme Court has established that there is "a strong constitutional interest in accuracy." *Utah*, 536 U.S. at 478. This "interest in accuracy" includes ensuring distributive accuracy. *See Wisconsin*, 517 U.S. at 20-21 ("[A] preference for distributive accuracy (even at the expense of some numerical accuracy) would seem to follow from the constitutional purpose of the census, viz., to determine the apportionment of the Representatives among the States."). Plaintiffs properly alleged that the challenged actions by Defendants fail to promote numerical or distributive accuracy.

C. Defendants' Actions Violate This Constitutional Standard.

Plaintiffs adequately allege that Defendants' decisions to reduce the number of enumerators by almost one-third, SAC ¶ 71, slash partnership and outreach programs, SAC ¶ 170-71, and halve the number of field offices, SAC ¶ 116, will not result in an actual enumeration. These choices will disproportionately depress the count of communities of color and the areas home to such communities, thus reducing both the distributive and numerical accuracy of the 2020 Census.

Contrary to Defendants' arguments, Plaintiffs do not suggest that the entire operational plan "does not bear a reasonable relationship to the accomplishment of an actual enumeration." U.S. Br. 28. Rather, Plaintiffs contend that six specific actions set forth in the Final Operational Plan fail to satisfy the standard. For example, the Supreme Court has emphasized that an effort to achieve accuracy may be found "where all efforts have been made to reach every household." *Utah*, 536 U.S. at 479. Yet in 2020, the Bureau has abandoned its historic effort "to reach every household." Instead, based on unreliable data from the U.S. Postal Service's Undeliverable-As-Addressed list, certain households will be excluded from non-response follow-up and receive only a single field visit. SAC ¶¶ 157-58.

Plaintiffs have alleged that this decision and the five others that Plaintiffs challenge violate the Enumeration Clause, especially when the Bureau refuses to spend even the resources that Congress has already appropriated to meet this

constitutional obligation. JA 558. On remand, Plaintiffs should have the opportunity to present evidence, including discovery materials and the expert reports that were scheduled to be filed within days of the District Court's dismissal, demonstrating *inter alia* that the Bureau is refusing to expend approximately \$1.3 billion in appropriated funds, which is more than sufficient to redress constitutional harms alleged by Plaintiffs.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed and this matter should be remanded to the District Court.

Dated: October 7, 2019

Respectfully submitted,

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REQUIREMENTS**

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(ii). The brief contains 6,490 words (according to the Microsoft Word 2013 count function), excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman type style.

Date: October 7, 2019

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CERTIFICATE OF SERVICE

I, Michael J. Wishnie, certify that today, October 7, 2019, I have caused a true and correct copy of the foregoing Brief of Plaintiffs-Appellants to be filed with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit via the appellate CM/ECF, which will send a notice of this filing to all participants in this case, including counsel for appellees.

BY: /s/ Michael J. Wishnie
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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, ET AL.,

Plaintiffs-Appellants,

v.

BUREAU OF THE CENSUS, ET AL.

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maryland

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STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331. Their first complaint alleged that Congress had failed to appropriate sufficient funding for the decennial census, and that the government's preparations were so deficient as to violate the Enumeration Clause. *See* U.S. Const. art. I, § 2, cl. 3. In a January 29, 2019 order, the district court dismissed plaintiffs' claim challenging the Bureau's operational plans for conducting the census as unripe. JA 597. Plaintiffs subsequently amended their complaint to additionally allege that the government's operational plans violated the Administrative Procedure Act (APA). In an August 1, 2019 order, the district court dismissed plaintiffs' funding claim as moot, and plaintiffs' APA claims for lack of final agency action. JA 632, 639. Plaintiffs timely appealed. *See* ECF No. 155; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

Plaintiffs challenge the Census Bureau's operational plans for conducting the 2020 Census, claiming that the Bureau should take a variety of steps to purportedly improve the count. Plaintiffs premised this claim on the Administrative Procedure Act and the Enumeration Clause. In addition to other relief, plaintiffs sought "an injunction that requires Defendants to propose and implement, subject to [the district court's] approval and monitoring, a plan to ensure that the hard-to-count populations will be actually enumerated in the decennial census." JA 642.

The questions presented are:

1. Whether the district court correctly held that it lacks authority to compel an overhaul of operational plans for the decennial census in response to plaintiffs’ claim that the existing operational plan will not achieve a sufficiently accurate enumeration.

2. Whether, for related reasons, plaintiffs have stated an actual injury capable of being redressed by a court order as is required to demonstrate Article III standing.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Constitutional and Statutory Framework

1. The Constitution’s Enumeration Clause requires that an “actual Enumeration” of the population be conducted every ten years, the results of which are used to apportion the Members of the House of Representatives among the states. *See* U.S. Const. art. I, § 2, cl. 3 (“Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers.”); U.S. Const. amend. XIV, § 2 (“Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.”). The Constitution vests Congress with the authority to conduct the decennial census “in such Manner as they shall by Law direct.” U.S. Const. art. I, § 2, cl. 3.

2. As required by the Constitution, a census of the U.S. population has been conducted every ten years since 1790. *See Wisconsin v. City of New York*, 517 U.S. 1, 6 & n.2. (1996). “Pursuant to [its] constitutional authority to direct the manner in which

the ‘actual Enumeration’ of the population shall be made,” Congress in the early 1800s required the census to be conducted by “an actual inquiry at every dwelling-house, or of the head of every family within each district, and not otherwise.” *U.S. Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 321, 335 (1999). In 1964, in enacting the Census Act into positive law, Congress eliminated the requirement of gathering “every item of information” by personal visit. *See* Act of Aug. 31, 1964, Pub. L. No. 88-532, 78 Stat. 737. That amendment permitted the census to be carried out by a questionnaire “form delivered and returned via the Postal Service.” *U.S. House of Representatives*, 525 U.S. at 336. For the first time in 1970, approximately 60% of the census was conducted via mailed, paper questionnaires, with in-person visits only to homes that failed to return the forms. *Id.* at 337; *id.* at 364 (Stevens, J., dissenting) (“The ‘mailout-mailback’ procedure now considered a traditional method of enumeration was itself an innovation of the 1970 census.”).

Since 1976, Congress through the Census Act has delegated to the Secretary of Commerce the responsibility to conduct the decennial census “in such form and content as he may determine.” 13 U.S.C. § 141(a).¹ The Census Act today allows the Secretary to “acquire and use information available from” federal or state administrative records “[t]o the maximum extent possible” “instead of conducting direct inquiries” on the census form. *Id.* § 6(c). The Act also permits “the use of

¹ The Bureau of the Census and its Director assist the Secretary in the performance of his duties under the Census Act. *See* 13 U.S.C. §§ 2, 4.

[statistical] sampling procedures and special surveys,” for non-apportionment-related purposes. *See U.S. House of Representatives*, 525 U.S. at 337-38 (quoting 13 U.S.C. §§ 141, 195).

B. The 2020 Census

1. The decennial census is an event of immense national significance that requires years of planning and preparation. The 2020 Census will endeavor to enumerate upwards of 330 million people across 3.8 million square miles. *See* ECF No. 43.1, at 26. The procedures and operations for conducting the census have been designed and developed in an iterative fashion over the course of the decade, across two presidential administrations and at least four separate census directors or acting directors. *See* U.S. Census Bureau, *2020 Census Operational Plan: New Design for the 21st Century* (Dec. 2018), at 1, <https://go.usa.gov/xVmCb>.

2. In 2011, Congress directed the Census Bureau to “seriously examine the lessons-learned from [the 2010 census] to create more cost-effective operations.” S. Rep. No. 112-78, at 16 (2011). The 2010 Census cost approximately \$12.3 billion, and was the most expensive in U.S. history. *See 2020 Census: Actions Needed to Address Key Risks to a Successful Enumeration: Hearing Before S. Comm. on Homeland Sec. and Governmental Affairs*, 116th Cong. 3 (2019) (statement of Robert Goldenkoff, Director, Strategic Issues, and Nick Marinos, Director, Information Technology and Cybersecurity) (GAO Testimony), <https://go.usa.gov/xVGvP>. The Census Bureau Director testified in 2012 that “[i]f the Census Bureau makes no changes to the design

of the decennial census,” its projected rising costs “cannot be sustained.” *Census: Planning Ahead for 2020: Hearing Before S. Comm. on Homeland Sec. and Governmental Affairs, Subcomm. on Fed. Fin. Mgmt., Gov’t Info., Fed. Servs., and Int’l Sec.*, 112th Cong. 6 (2012) (statement of Robert M. Groves, Census Bureau Director), (Groves Testimony), <https://go.usa.gov/xVvuk>.

The Bureau thus “embarked on a research and testing program focused on major innovations to the design of the census oriented around the major cost drivers of the 2010 Census.” Groves Testimony at 6. Historically, field operations are the most expensive component of the decennial census. *See 2020 Census: Challenges Facing the Bureau for a Modern, Cost-Effective Survey, Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 114th Cong. 4 (statement of John Thompson, Census Bureau Director) (Thompson Testimony I), <https://go.usa.gov/xVvJb>. The Bureau has traditionally updated the Master Address File—which contains address and GPS information for all housing units to which census questionnaires are sent—by physically canvassing and verifying housing unit locations in almost 11 million census blocks. *Id.*; JA 81. The Bureau also conducts in-person, “non-response follow-up” operations “to enumerate households that do not initially provide their information” by responding to the questionnaire. Groves Testimony at 7. For the 2010 census, these field operations required “a massive national infrastructure to manage hundreds of thousands of interviewers”—12 regional census centers, almost 500 area census offices, and hiring more than 516,000 enumerators. *See id.*; JA 91.

Following research and testing over the course of 2012-2015, the Bureau explained that it “d[id] not believe that a paper-and-pencil approach to the Census [wa]s sustainable for the 2020 or future Censuses,” because it was no longer affordable or adequate to meet the challenges of the 21st century. *See Preparing For The 2020 Census: Will The Technology Be Ready? Joint Hearing Before the Subcomm. on Gov’t Operation and Subcomm. on Info. Tech. of Comm. on Oversight and Gov’t Reform*, 114th Cong. 7 (statement of John Thompson, Census Bureau Director) (Thompson Testimony II), <https://go.usa.gov/xVwq8>; JA 97. To “achieve a modern census” that “will cost far less than repeating the outdated processes used in 2010,” the Bureau proposed the use of “mobile technology, administrative records, innovations from the geospatial industry, and self-response via the Internet.” Thompson Testimony II, at 1. The Bureau introduced its “new design for the 21st century” in 2015, in version 1.0 of its 2020 operational plan. *See 2020 Census Operational Plan: A New Design for the 21st Century*, at 8 (Nov. 2015), <https://go.usa.gov/xVmxE>. Version 4.0 of the document, published in December 2018, reflects the Bureau’s latest approach to all of the operations necessary to execute the census, and is continually updated to incorporate the results of design testing through the summer of 2019. *See* JA 71, 97-121.

3. The Bureau has implemented numerous innovations to modernize the decennial process to increase field efficiencies and to optimally reach and enumerate everyone in the country. The first of the four main innovations is “in-office address canvassing” to update the Master Address File, which will use existing satellite

imagery and administrative records, including U.S. Postal Service, local government, and commercial, third-party data. JA 82. The Bureau will rely on in-field canvassing where address updates cannot be obtained or verified, or in areas that are undergoing rapid changes. JA 157-61. In-office canvassing has allowed the Bureau to update the Master Address File on an ongoing basis since 2015, and to eliminate redundant in-person visits to millions of housing units that the Bureau has determined to be uninhabited by examining the various databases. *See* Thompson Testimony I, at 3, 4.

A second key innovation is that the 2020 Census will shift from paper questionnaires to the Internet and telephone as the primary response mode. JA 84-87, 161, 169-74. Most housing units will receive several short mailings instructing them to complete the census online or by phone. JA 84, 171. If the Bureau does not receive a response following the third mailing, it will send the household a full paper questionnaire. JA 84, 171. Recognizing that Internet self-response is not feasible for the entire population, the Bureau will target areas and populations less likely to have Internet access, or less likely to use the Internet to respond, which populations will receive a full paper questionnaire in the first mailing, as well as information about responding online or by phone. JA 84, 170-73, 276.

As a third critical innovation, the Bureau will leverage existing information in administrative and third-party records to reduce the average number of visits to nonresponding households. JA 74, 87-90, 189-98. Typically, when the Bureau knows that a housing unit is occupied, an enumerator will make up to six or more attempts

across multiple days to contact a household member to complete the questionnaire. *See 2020 Census Detailed Operational Plan for: 18. Nonresponse Followup Operation (NRFU) 20-22, (July 15, 2019) (Detailed NRFU Operational Plan) <https://go.usa.gov/xVmap>* But where, for example, Undeliverable-As-Addressed information from the U.S. Postal Service identifies addresses as vacant or non-existent, the household will receive one in-person visit, and one final mailing encouraging occupants to self-respond. JA 190-91. All households that did not respond through Internet, telephone, or paper, and all households that are not clearly vacant, non-existent, or successfully enumerated with the first visit, will receive the full non-response, follow up treatment including up to six or more visits. JA 191; *see generally Detailed NRFU Operational Plan*.

Finally, the Bureau will take advantage of major technological innovations “to reduce the staffing, infrastructure, and brick and mortar footprint required for the 2020 Census.” JA 91. As part of eliminating paper-based follow-up enumeration—which includes eliminating paper maps, case assignments, response forms, and daily payroll forms—enumerators and their supervisors will now work remotely, and communicate, receive case assignments, report payroll, and collect and transmit census data entirely using mobile devices with optimized GPS. *See* JA 91; *see generally Detailed NRFU Operational Plan*. These reengineered field operations will allow the Bureau to streamline staffing structures and conduct the 2020 Census with approximately half the number of field offices as required in 2010, and to hire and

train approximately 400,000 field and staff supervisors for non-response follow-up operations. *U.S. Census Bureau's Budget Fiscal Year 2020* (March 2019) CEN-3 (FY2020 *Budget*), <https://go.usa.gov/xVGvV>.

4. “Despite consistent efforts to improve the quality of the [census] count,” the “census data are not perfect” and inevitably, “errors persist.” *See Wisconsin*, 517 U.S. at 6; *id.* (“Persons who should have been counted are not counted at all or are counted at the wrong location.”). Each year the Bureau “devote[s] substantial effort” towards minimizing any “undercount” of the population, including any “differential undercount”—*i.e.* an undercount affecting some segments of the population more than others, traditionally racial and ethnic minorities. *See id.* at 7.

For the 2020 Census, the Bureau has developed an extensive Integrated Partnership and Communications Operation “hyper-focused on reaching [hard-to-count] populations.” *2020 Census Partnership Plan* 9 (March 21, 2019), <https://go.usa.gov/xVwcw>. The Bureau will use a variety of strategies and partnerships to engage audiences that are highly mobile, face language barriers, lack Internet access, or are distrustful of government for a variety of reasons. *See id.*; *see also* JA 210, 274 (describing Census Barriers, Attitudes, and Motivator study conducted in 2018 to better understand response barriers among demographic subgroups).

To promote a robust self-response rate among these groups, the Bureau plans, among other efforts, to employ at least 1,500 partnership specialists through a

Community Partnership and Engagement Program, to make its online questionnaire available in twelve languages, and to encourage response by telephone among individuals with low Internet connectivity. See JA 84 (describing multilingual Questionnaire Assistance call center), JA 267-80 (*Operational Plan v.4, Appendix B, 2020 Census Operational Design: An Integrated Design for Hard-to-Count Populations*); see generally *2020 Census Partnership Plan*. The Bureau will employ enumerators who are “familiar with the neighborhoods where they work” and “speak the languages of the local community.” JA. 272. And apart from its specialized plans to target the hard to count, the Bureau has released a detailed operational plan for its Count Review Operation, which provides for post-census data review and correction. See *2020 Census Detailed Operational Plan for: 23. Count Review Operation (CRO)*, <https://go.usa.gov/xVmC3>

C. Factual Background and Prior Proceedings

1. Plaintiffs’ First Amended Complaint

a. Plaintiffs are Prince George’s County, Maryland, a county with a majority African-American population, the National Association for the Advancement of Colored People (NAACP), its Prince George’s County affiliate, and two individuals who are NAACP members and residents of Prince George’s County. ECF No. 91, at 5-6. Plaintiffs brought this action in 2018, alleging that the Bureau’s preparations for the 2020 Census to date violated the Enumeration Clause. JA 553. Plaintiffs asserted a “conspicuous neglect of a constitutional duty, through underfunding, understaffing,

and under-planning[] inadequacies.” JA 541. Plaintiffs challenged in particular Congress’s “direct[ion] that the budget for the 2020 Census not exceed the cost of the 2010 enumeration,” JA 542; a federal hiring freeze in early 2017, JA 545; the resignation of the then-Census Director in 2017, JA 546; and “serious design defects” related to the Bureau’s planned design innovations for the 2020 Census that, “if unresolved, will exacerbate the undercount” of racial and ethnic minorities, JA 547. Plaintiffs requested declaratory and injunctive relief, including “an injunction that requires Defendants to propose and implement, subject to [the district court’s] approval and monitoring, a plan to ensure that the hard-to-count populations will be actually enumerated in the decennial census.” JA 554-55.²

b. In January 2019, the district court granted the government’s motion to dismiss in all respects except one. The district court dismissed plaintiffs’ challenge to the “methods and means the Bureau plans to employ in the 2020 Census” as unripe. JA 597. The court remarked that plaintiffs had brought suit “in the midst of the [census] planning process,” in contrast to “challeng[ing] . . . a discrete agency action

² Plaintiffs have not alleged that the Bureau’s “decisions were pretextual” or bad faith on the part of the agency. Br. 2. Plaintiffs at one point argued to the district court that “underfunding has been used by Defendants to justify the scaling back and cancellation of critical tests,” ECF No. 46, at 5, but as plaintiffs also explained in their second amended complaint, the Bureau “scale[d] back critical planning activities due to budgetary uncertainty and shortfalls,” *see* ECF No. 91, at 12; *see id.* at 11 (“Congress approved only \$1.47 billion for the Census Bureau in the 2017 fiscal year, which was approximately 10 percent below what the Obama Administration had requested.”).

that *already* was finalized.” JA 585-87; JA 586 (clarifying that “the only claim brought by Plaintiffs is an Enumeration Clause claim—not an APA claim”). The court emphasized the lack of precedent for the “sweeping relief that [plaintiffs] seek here . . . speak[ing] volumes about the authority (not to mention ability) of courts to second-guess the Secretary’s planning of the decennial census as it is taking place, or the standards under which they might attempt to do so.” JA 597. The court thus declined to “interject itself into the Bureau’s process.” JA 596.

The district court did not dismiss plaintiffs’ claim for declaratory relief related to the purported “underfunding” of the census. ECF No. 38, at 9. The court found a “justiciable claim as to sufficiency of funding,” citing the extraordinary circumstances of a “35-day lapse in appropriations” and “government shutdown[,] []the longest in the nation’s history, and still looming like a Damoclean sword if the three-week extension of a continuing resolution fails to result in congressional appropriation of lasting funding.” JA 599, 601. The district court recognized that it was without power to “order Congress to adequately fund the 2020 Census,” but allowed the underfunding claim to proceed under the assumption that it “could issue a declaratory judgment that Congress has failed to appropriate sufficient funds.” JA 597, 611. Following the court’s January 29, 2019 memorandum opinion and order, on February 15, 2019, Congress appropriated over \$3.5 billion to the Bureau for use through 2021. *See* ECF No. 95, at 2, 5 & n.4 (Gov’t Second Mot. Dismiss).

2. Plaintiffs' Second Amended Complaint

One week after the district court's order, plaintiffs sought to reintroduce their dismissed constitutional claim for injunctive relief. *See* ECF No. 76, at 1 (Letter Order). The district court declined that request, but allowed plaintiffs to amend their complaint to challenge the Bureau's plans to conduct the census under the Administrative Procedure Act. *Id.* Plaintiffs' second amended complaint asserted that the 2020 Census's four innovations areas, as reflected in Version 4.0 of its 2020 Operational Plan, were arbitrary and capricious. *See* ECF No. 91, at 17 (Second Amend. Compl.). Plaintiffs subsequently sought emergency relief from the district court, including "a preliminary injunction directing the Bureau to allocate and spend immediately money." JA 560.

The district court granted the government's second motion to dismiss and declined to grant plaintiffs' requested injunctive relief. In rejecting plaintiffs' "underfunding claim," the court concluded that the 2019 Appropriations Act rendered plaintiffs' claim that the 2020 Census is underfunded no longer justiciable, and that any other alleged injury based on future appropriations was speculative. *See* JA 629-30. "Simply put," the court explained, "the Bureau now has the funding it previously lacked." JA 629. The district court also declined to allow plaintiffs to "question whether the appropriated funding is sufficient," an inquiry which would "take [the court] into the area reserved for Congress and the Executive Branch." JA 635, 637.

In dismissing plaintiffs' APA claims, the district court explained that plaintiffs did not challenge "discrete 'agency actions,'" but instead sought a "sweeping overhaul" and nothing "less than court-ordered modification to the Bureau's overall plan for the 2020 Census." JA 642-43. The court further explained that the Bureau's 2020 operational plans for conducting the census was not final agency action within the meaning of the APA, and, to the extent plaintiffs effectively sought to compel agency action "unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1), the "specific number of enumerators," or "specific number of Census Bureau field offices" was plainly not "required by law." JA 644.

SUMMARY OF ARGUMENT

In planning the 2020 Census, the Census Bureau sought to modernize the census-taking process while accommodating Congress's direction to limit mounting costs. The Bureau will make use of new technologies and enhanced databases to increase field efficiencies and optimally reach and enumerate everyone in the country. The 2020 Census will be the first to allow households to respond by Internet and phone. The Bureau will continue to mail questionnaires and conduct follow-up visits when responses are not received.

Plaintiffs challenge the Bureau's "departure from" an exclusively "paper and in-person method[] used in all previous censuses." JA 641. They assert that the new procedures for 2020 will prove inadequate to accurately count the population and will result in a differential undercount of "hard-to-count" communities, including those

with large populations of racial and ethnic minorities. As relief, plaintiffs seek, among other things, “an injunction that requires [the Bureau] to propose and implement, subject to [the district court’s] approval and monitoring, a plan to ensure that hard-to-count populations will be actually enumerated in the decennial census.” JA 642.

The district court correctly held that it had no authority to enter “a sweeping overhaul” of the Bureau’s conduct of the 2020 Census. Plaintiffs ask the courts to review not a discrete final agency action, but a complex operational plan for use of a variety of technologies, and the deployment of hundreds of thousands of personnel, including follow-on strategies. Plaintiffs’ attempt to characterize their suit as a challenge to final agency action fails in all respects. And, assuming that the operational plan could be regarded as final agency action, it would plainly be the type of agency action committed to agency discretion by law. 5 U.S.C. § 701(a)(2). A court attempting such a task would wade into an area outside its expertise without the benefit of applicable legal standards.

As the district court recognized, plaintiffs’ suit, in essence, seeks to compel agency action that they believe has been unlawfully withheld. 5 U.S.C. § 706(1). But the Supreme Court has made clear that under the APA, as under principles of mandamus incorporated by the APA, a court may order only “discrete agency action that [an agency] is *required to take*.” *Norton v. Southern Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (SUWA). The Supreme Court has emphasized that the limitation “precludes . . . broad programmatic attack[s]” “seek[ing] *wholesale* improvement of [a]

program by court decree.” *Id.* And as this Court has instructed, collapsing the “vital” “distinction between discrete acts, which are reviewable, and programmatic challenges, which are not,” would contravene “the APA’s conception of the separation of powers” and inject the courts “into the internal workings of the government.” *City of New York v. U.S. Dep’t of Def.*, 913 F.3d 423, 431 (4th Cir. 2019).

The limitations on judicial authority to order broad organizational relief apply equally to plaintiffs’ attempt to command agency action by asserting a violation of the Enumeration Clause. The Supreme Court has never invalidated a census on the basis of the Enumeration Clause, but, more important for the present case, it has considered such claims only with respect to discrete actions otherwise susceptible to judicial review. It has never suggested that a plaintiff could invoke the Enumeration Clause based on a series of disagreements with operational plans and then demand that a court order and oversee a better census.

For similar reasons, plaintiffs have also failed to demonstrate the basic elements of Article III standing. Their assertion of harm rests on a series of conjectures. But even assuming that these were sufficient to allege concrete injury, plaintiffs could not obtain an order that would redress their asserted injury. As the decisions of the Supreme Court and this Court make clear, the relief they seek is outside the proper limits of the judicial sphere.

STANDARD OF REVIEW

The district court's decisions is reviewed de novo. *See Miller v. Brown*, 462 F.3d 312, 316 (4th Cir. 2006) (“We review a district court’s dismissal for lack of standing and ripeness de novo.”); *West Virginia Dep’t of Health & Human Res. v. Sebelius*, 649 F.3d 217, 222 (4th Cir. 2011) (“We review de novo a district court’s evaluation of agency action.”).

ARGUMENT

I. The District Court Properly Recognized that It Could Not Enter the Sweeping Programmatic Relief Plaintiffs Seek

A.1. The Administrative Procedure Act reflects the long-established principles regarding the judicial role in relation to the political branches. “Under the terms of the APA, [a plaintiff] must direct its attack against some particular ‘agency action’ that causes it harm.” *Norton v. Southern Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (*SUWA*). “Agency action” is defined within the APA as “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13). “All of th[e]se categories involve circumscribed, discrete” actions, *SUWA*, 542 U.S. at 62, as opposed to a “broad programmatic attack” on the government’s operations. *City of New York v. U.S. Dep’t of Def.*, 913 F.3d 423, 431 (4th Cir. 2019). “The principal purpose” of this limitation “is to protect agencies from undue judicial interference with their lawful discretion, and to avoid

judicial entanglement in abstract policy disagreements which courts lack both expertise and information to resolve.” *SUWA*, 542 U.S. at 66.

Plaintiffs’ request for “a sweeping overhaul to the [Bureau’s] Operational Plan” is not a challenge to reviewable “agency action.” JA 643. As the district court explained, plaintiffs challenge the Bureau’s “departure from” an exclusively “paper and in-person method[] used in all previous censuses.” JA 641; *see also* Br. 51 (“Plaintiffs ask that the Bureau conduct the same activities it has conducted in previous censuses.”). They do not challenge a discrete act “determin[ing] rights and obligations,” JA 645, “such as [a] rulemaking[], order[], or denial[].” *City of New York v. U.S. Dep’t of Def.*, 913 F.3d at 431.³

Plaintiffs argue (Br. 50-51) that they “challenge six discrete decisions” because “the Bureau could,” for example, “increase in-field address canvassing without more field offices.”⁴ As the district court explained, these individual operations are part of

³ Plaintiffs incorrectly state that the district court “did not reach” the question of finality. Br. 25 n.6. The court held, correctly, that the Bureau’s operational plans also fail to amount to reviewable final agency action because they “do not determin[e] rights and obligations.” JA 645; *see Flue-Cured Tobacco Coop. Stabilization Corp. v. EPA*, 313 F.3d 852, 858 (4th Cir. 2002) (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (“First, the action must mark the ‘consummation’ of the agency’s decisionmaking process . . . And second, the action must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’”). The court did not address whether the operational plans “mark the consummation of the agency’s decisionmaking process.” *Id.*

⁴ Plaintiffs alleged that the “arbitrary and irrational design choices include (a) a plan to hire an unreasonably small number of enumerators; (b) a drastic reduction in

the larger programmatic design to conduct the census, and are “inextricably intertwined with [the Bureau’s] decision to use new technology and new protocols.” JA 641 (quotation marks omitted); *see also* JA 74 (detailing the 2020 Census’s four design innovations). The “six discrete decisions” are not separate final agency actions; they are relevant only insofar as they would inform the proposed standardless inquiry into the adequacy of the operational plan, and the content of the proposed court-approved “plan to ensure that hard-to-count populations will be actually enumerated in the decennial census.” JA 642. And, even taken individually, the “decisions” are parts of the complex deployment of resources that are plainly committed to agency discretion.

In this respect, plaintiffs’ claims are not meaningful distinguishable from those considered by this Court in *City of New York*, in which plaintiffs sought to compel the Defense Department to report information to the National Instant Criminal Background Check System. This Court rejected plaintiffs’ attempt to characterize their request to “supervise an agency’s compliance with [a] broad statutory mandate” “as simply an aggregation of many small claims.” 913 F.3d at 433. As the Court explained, “[a]ll government programs are the aggregation of individual decisions.”

the number of Census Bureau field offices; (c) cancellation of crucial field tests; (d) a decision to replace most in-field address canvassing with in-office address canvassing; (e) a decision to make only extremely limited efforts to count inhabitants of housing units that appear vacant or nonexistent based on unreliable administrative records; and (f) a significant reduction in the staffing of the Bureau’s partnership program.” ECF No. 91, at 15.

Id. The Court further concluded that the Defense Department’s failure to report information, while systematic, was not required by law and presented “the sort of public policy problem that often requires reallocating resources, developing new administrative systems, and working closely with partners across government.” *Id.* That is clearly the case here. *See* S. Rep. No. 112-78, at 16 (directing Bureau to “create more cost effective operations”); JA 132 (describing Systems Engineering and Integration Operation); *2020 Census Partnership Plan* at 2 (emphasizing tribal, state, and local government partnerships through the Community Partnership Engagement Program).

A.2. As the district court observed, the gravamen of plaintiffs’ suit is not a challenge to final agency action, but a request, “both directly and indirectly, to compel agency action.” JA 643 (citing 5 U.S.C. § 706(1)); *e.g.*, Br. 51 (“Plaintiffs ask that the Bureau conduct the same activities it has conducted in previous censuses.”). The court explained that the nature of plaintiffs’ suit is underscored by their request for “an injunction that requires [the Bureau] to propose and implement, subject to [the district court’s] approval and monitoring, a plan to ensure that hard-to-count populations will be actually enumerated in the decennial census.” ECF No. 91, at 21-22. Rather than challenge specific final agency action, plaintiffs seek to “compel [the Bureau] to go back to the drawing board” in its entire design approach to conducting the census. *See* JA 642-43.

The district court properly declined plaintiffs' invitation to "enter[] [the] quagmire" of "day-to-day agency management." *City of New York*, 913 F.3d at 431. This Court has instructed that the judiciary is "woefully ill-suited" to "adjudicate generalized grievances asking [it] to improve an agency's performance or operations." *Id.* To hold otherwise and collapse the "vital" "distinction between discrete acts, which are reviewable, and programmatic challenges, which are not," would contravene "the APA's conception of the separation of powers" and inject the courts "into the internal workings of the government." *Id.*

The Supreme Court emphasized in *SUWA* that the only agency action that can be compelled under 5 U.S.C. § 706(1) is "action legally *required*." 542 U.S. at 63. "Just like the traditional mandamus remedy from which this provision is derived, claims to compel agency action are limited to enforcement of a specific, unequivocal command, over which an official has no discretion." *City of New York*, 913 F.3d at 432 (quotation marks omitted). That limitation on "*discrete* agency action that [an agency] is *required to take*" rules out "broad programmatic attack[s]," and sweeping intrusion into an agency's exercise of its lawful discretion via "general orders compelling compliance with broad statutory mandates." *SUWA*, 542 U.S. at 64, 66-67.

The district court also explained that "the Bureau's challenged actions," *i.e.* its operational plans to conduct the census, "are not 'required by law.'" JA 644 (quoting *City of New York*, 913 F.3d at 432). As the court noted, "[p]laintiffs can point to no legal requirement that the Census Bureau conduct certain field tests, hire a specific

number of enumerators, open a specific number of Census Bureau field offices, or take any other action [p]laintiffs would prefer.” JA 643-44. Neither the Enumeration Clause nor the Census Act require the Bureau, for example, to engage in any community partnership activities. *See, e.g.*, Br. 1 (complaining of “drastic[] reduc[tion] [to] the resources devoted to the[] community partnership program”). And, as noted, the Bureau in fact has extensive plans to engage in an Integrated Partnership and Communications Operation “hyper-focused on reaching [hard-to-count] populations.” *See 2020 Census Partnership Plan* at 9.

So “nondirective” are the Census Act and Constitution about the particular operations required “to conduct a census . . . that you might as well turn it over to a panel of statisticians and political scientists and let them make the decision, for all that a court could do to add to its rationality or fairness.” *Tucker v. U.S. Dep’t of Commerce*, 958 F.2d 1411, 1417-1418 (1992). Nothing in the Census Act mandates any specific action in conducting the census, or provides standards for evaluating particular operational choices. On the contrary, the Census Act delegates authority to the Secretary to “take a decennial census of population . . . in such form and content as he may determine.” 13 U.S.C. § 141(a). The Supreme Court has never found a generalized challenge to how the census will be conducted to be “amenable for review.” *Department of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019); *see infra* pp. 26-27. Rather, the Enumeration Clause “suggest[s] the breadth of congressional

methodological authority, rather than its limitation.” See *Utah v. Evans*, 536 U.S. 452, 455 (2002).

In implementing its statutory responsibilities in planning the 2020 Census, the Bureau responded to Congress’s suggestion “to create more cost-effective operations.” S. Rep. No. 112-78, at 16 (2011); Cong. Research Serv., R44788, *The Decennial Census: Issues for 2020* 3-5 (2017). The Bureau’s decision to shift to a largely online census leveraging 21st century technology, and reducing the need for expensive follow-up operations, reflected expert judgments within the framework of available appropriations. Although plaintiffs may believe that Congress should have appropriated additional funds, or that the Bureau should have made different choices, they may not seek “*wholesale* improvement of th[e] [census design] program by court decree, rather than in the offices of the [Bureau] or the halls of Congress, where programmatic improvements are normally made.” *SUWA*, 542 U.S. at 64.

As discussed, if a court were to disregard the Supreme Court’s directive and wade into the “quagmire” of undertaking broad programmatic review, *SUWA*, 542 U.S. at 66-67, it would do so without the benefit of any governing legal standards to guide its inquiry. Designing the procedures to gather the census data involves a “complicated balancing of a number of factors,” *Heckler v. Chaney*, 470 U.S. 820, 831 (1985), including how best to verify the Master Address List, the advantages and disadvantages of moving to an online platform, and the most cost-effective way to follow up with non-responsive households. See JA 61-280. These judgments are

precisely the sort of decisions that the APA commits to agency discretion and makes immune from judicial second-guessing. *See* 5 U.S.C. 701(a)(2); *Chaney*, 470 U.S. at 831; *Tucker*, 958 F.2d at 1417.⁵

A.3. Plaintiffs contend (Br. 52) that “asking for injunctive relief” does not “convert[] this case into a ‘programmatic attack.’” The critical point, however, is not that plaintiffs seek injunctive relief, but that they seek “[no]thing less than court-ordered modification to the Bureau’s overall plan for the 2020 Census.” JA 642; *see also City of New York*, 913 F.3d at 434 (“If there were any doubt about the nature of the cities’ claim, the requested remedy tells the real story.”).

Plaintiffs do not advance their argument by asserting (Br. 44) that they seek to compel the Bureau to spend certain funds on different or additional operations. In stating that the Bureau is “sitting on over \$1 billion in appropriated funds that it has refused to spend,” Br. 36, plaintiffs apparently refer to appropriated funds that the Bureau plans to spend on fiscal year 2020 activities. *See FY2020 Budget* at CEN-49; *See Consolidated Appropriations Act, 2018*, Pub. L. No. 115-141, 132 Stat. 348, 402

⁵ Section 6(c) of the Census Act provides that “[t]o the maximum extent possible and consistent with the kind, timeliness, quality and scope of the statistics required, the Secretary shall acquire and use information available from [federal or state administrative records] instead of conducting direct inquiries.” 13 U.S.C. § 6(c). The Supreme Court has stated that it is unclear whether the provision applies beyond “the Secretary’s choices with respect to ‘statistics required,’” *Department of Commerce v. New York*, 139 S. Ct. 2551, 2572 (2019), but assuming it applies here, the provision only underscores the propriety of the Secretary’s choice, in his broad discretion, to supplement in-person information gathering methods with administrative records. *See supra* pp. 21-24; *infra* pp. 25-27.

(2018) (ensuring funds “remain available until September 30, 2020”). Plaintiffs demand that the Bureau spend these sums on their preferred conduct of the census, and on their preferred timeline. But the allocation of funds from a lump-sum appropriation is generally committed to agency discretion. *See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361, 370 (2018); *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993). As the district court summarized, “[a]pparently, it no longer is sufficient for the Court to declare that Congress should appropriate funds, or even that they should appropriate a certain amount of funds; Plaintiffs want the Court to tell the Bureau when and how to spend the funds and, in effect, take supervisory control over the execution of the 2020 Census.” JA 632.

Plaintiffs cast no doubt on the district court’s conclusion that they “can point to no legal requirement that the Census Bureau conduct certain field tests, hire a specific number of enumerators, open a specific number of Census Bureau field offices, or take any other action [p]laintiffs would prefer.” JA 643-44. Before the district court, plaintiffs admitted that “the Census Act does not set forth precise requirements related to the particular deficiencies that Plaintiffs challenge here.” ECF No. 98, at 21 (Pls’ Opp’n Mot. to Dismiss). Though plaintiffs now argue that “the Census Act requires these actions,” Br. 51, they identify no provision of the Census Act requiring any such action, and, as noted, the Census Act provides that the “decennial census of population,” shall be taken “in such form and content,” as the Secretary “may determine.” 13 U.S.C. § 141(a).

The Census Act also does not, as plaintiffs suggest (Br. 51), require “that the Bureau conduct the same activities as it has conducted in previous censuses.”

Plaintiffs’ argument would prevent any innovation over the years, and is particularly wide of the mark because the Bureau will be undertaking many of the activities that plaintiffs deem essential, such as mailed questionnaires and follow-up visits. The current plan allows the Bureau to scale down these operations by first taking advantage of improvements in technology and available databases. Plaintiffs do not explain how a court could properly review the Bureau’s continuous assessment of the efficacy of these procedures over the past nine years, which included considerations of feasibility, cost constraints, and resource allocation. *See* 13 U.S.C. § 141(a).

Plaintiffs fail to appreciate (Br. 56-57) the significant distinctions between their challenge and that presented in *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019). Plaintiffs in that case asserted that the Secretary’s decision to “reinstate a citizenship question” on the census questionnaire violated the Enumeration Clause, and was unsupported by the administrative record and pretextual. *Id.* at 2569. The Court found no constitutional basis to set aside the Secretary’s decision, in view of the government’s “long practice” of inquiring about citizenship through the census dating back to the early days of the Republic. *Id.* at 2567. And although discerning a “disconnect between the decision” to include the citizenship question “and the explanation given,” the Court remanded to the agency rather than hold that the agency decision was “substantively invalid” under the APA. *Id.* at 2576.

Plaintiffs’ broad programmatic attack bears no resemblance to the *New York* plaintiffs’ targeted challenge to a specific census question. There was no dispute in that case that the inclusion of the citizenship question constituted a discrete, final agency action. *See New York v. U.S. Dep’t of Commerce*, 351 F. Supp. 3d 502, 627 (S.D.N.Y. 2019). The Court ultimately found that a “significant mismatch” between the Secretary’s decision and stated rationale prevented meaningful judicial review of the reasonableness of the agency’s decisionmaking. *New York*, 139 S. Ct. at 2575. That holding does not translate to a judicially manageable standard by which to measure the Bureau’s plans to shift from a wholly paper-and-pencil enumeration to an online census. *See* Br. 56-57.

B. Plaintiffs’ reliance on the Enumeration Clause further underscores the extent to which they would embroil the courts in a standardless inquiry into complex operational matters. “The text of that clause ‘vests Congress with virtually unlimited discretion in conducting the decennial ‘actual Enumeration,’” and Congress ‘has delegated its broad authority over the census to the Secretary.’” *New York*, 139 S. Ct. at 2566 (quoting *Wisconsin*, 517 U.S. at 19). “Given that expansive grant of authority,” the Supreme Court has “rejected challenges to the conduct of the census where the Secretary’s decisions bore a ‘reasonable relationship to the accomplishment of an actual enumeration.’” *Id.* (quoting *Wisconsin*, 517 U.S. at 19).

The Supreme Court has never found a violation of the Enumeration Clause. More important, the cases that considered such claims, unlike the present case,

involved specific decisions potentially amenable to review. The district court noted that “the challenge in *U.S. House of Representatives* (like the citizenship question challenges in the 2020 Census cases) was to a discrete decision of the Census Bureau . . . as opposed to launching (as Plaintiffs do here) a sweeping challenge to the staffing, leadership, funding, design, and security of the 2020 Census.” JA 588; *see U.S. Dep’t of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 326 (1999) (noting final agency action); *New York*, 351 F. Supp. 3d at 627 (same). Plaintiffs’ argument would necessarily be that the operational plan for conducting the census does not bear a reasonable relationship to the accomplishment of an actual enumeration. Plaintiffs believe that Congress should have provided additional funding and that the Bureau should have made different choices in allocating its resource (although they do not know what these different allocations might be). But a quarrel regarding the appropriation of resources and their subsequent allocation does not remotely suggest that the good faith efforts to carry out the census are not an attempt to carry out an actual enumeration. The district court’s reasoning with respect to plaintiffs’ other claims applies with at least equal force to their Enumeration Clause claim.

Rather than address the fundamental problems with their claim, plaintiffs urge (Br. 29-38) that the court should have deemed it ripe for review. Even assuming, however, that the claim would now satisfy standards of ripeness, that would not transform the suit into a controversy susceptible of judicial resolution. The district court explained at length why it could not properly grant the overhaul of the census

operational plans that plaintiffs demand, and that reasoning applies with full force to plaintiffs' assertions under the Enumeration Clause.

II. Plaintiffs Have Also Failed to Meet the Basic Requirements of Standing

The central flaws in plaintiffs' suit would also compel dismissal on standing grounds, although, as the Supreme Court and this Court have explained, "a federal court has leeway to choose among threshold grounds for denying audience to a case on the merits." *Long Term Care Partners, LLC v. United States*, 516 F.3d 225, 232 (4th Cir. 2008) (quoting *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007)).

To establish Article III standing, "a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The injury must be "fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

Plaintiffs' theory of injury rests on a "highly attenuated chain of possibilities." *Clapper*, 568 U.S. at 410. Plaintiffs maintain (Br. 10-19) the Bureau's operational plan will result in a greater undercount than would have occurred under the Bureau's past practices. Plaintiffs' theory rests on speculation that in-office address canvassing will produce worse results than in-person visits; that adding Internet and phone options in

addition to paper questionnaires will produce lower response rates than using paper questionnaires alone; and that planned follow-up operations will produce substantially worse results than they have in the past. Plaintiffs moreover assume that the Bureau's targeted efforts to engage hard-to-count populations through its Integrated Partnership and Communications Operation, among other strategies, will fail to perform as well as they have historically. *See 2020 Census Partnership Plan*. And plaintiffs disregard the host of decisions that have yet to be made, as the Bureau continues to improve upon program risks identified from internal testing, and from sources outside the agency, including the Office of the Inspector General. *See* JA 301-05. The Bureau is also finalizing a Count Review Operation for post-census data review and correction. *See 2020 Census Detailed Operational Plan for: 23. Count Review Operation (CRO)*. Plaintiffs' reliance on that "highly attenuated chain of possibilities," *Clapper*, 568 U.S. at 410, presents a critical difference between this case and *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019), where low noncitizen response was the "predictable effect" of the Secretary's single, discrete decision. *See id.* at 2566.⁶

Even assuming that plaintiffs' speculative chain were sufficient to establish concrete, imminent injury, the district court's analysis makes clear that plaintiffs

⁶ The district court's standing analysis related to plaintiffs' underfunding claim, later dismissed as moot (and not challenged on appeal), has no bearing on the standing analysis here. *See* JA 629 ("On that narrow ground, with the government shutdown and no appropriations bill in place, I concluded that [p]laintiffs' underfunding claim was justiciable.").

cannot obtain an order that would redress their asserted injuries. The court cannot order Congress to appropriate additional funds, and it cannot order a “sweeping overhaul” that would constitute nothing “less than court-ordered modification to the Bureau’s overall plan for the 2020 Census.” JA 642-43. These limitations reflect fundamental principles of separation of powers which preclude a district court from ordering and monitoring “a plan to ensure that hard-to-count populations will be actually enumerated in the decennial census.” JA 642.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ROBERT K. HUR
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MARK B. STERN
s/ Thais-Lyn Trayer

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September 2019

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 7,761 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Thais-Lyn Trayer

Thais-Lyn Trayer

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Thais-Lyn Trayer

Thais-Lyn Trayer

ADDENDUM

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13 U.S.C. § 141(a)	A2

U.S. Const. art. I, § 2, cl. 3

. . . .

The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

13 U.S.C. § 141

§ 141. Population and other census information

(a) The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the “decennial census date”, in such form and content as he may determine, including the use of sampling procedures and special surveys. In connection with any such census, the Secretary is authorized to obtain such other census information as necessary.

To: Dewhirst, David (Federal)[DDewhirst@doc.gov]; Bogomolny, Michael (Federal)[MBogomolny@doc.gov]
From: Freitas, Jessica (Federal); b(6)
Sent: Fri 10/11/2019 12:18:58 PM (UTC-04:00)
Subject: RE: Please review: Corey, DOC-CEN-2019-001995
Combined Redacted Docs Corey DOC-CEN-2019-001995 2019-09-173 + JF.pdf

Hi all,

In advance of our conversation, see my edits attached

b(5) - DP/AC

b(5) - DP/AC

When are you available this afternoon to discuss?

Best,

Jessica Freitas
Counsel to the General Counsel
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From: Dewhirst, David (Federal) <DDewhirst@doc.gov>
Sent: Friday, October 11, 2019 9:08 AM
To: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Cc: Freitas, Jessica (Federal) <JFreitas@doc.gov>
Subject: Re: Please review: Corey, DOC-CEN-2019-001995

I would like the three of us to sit down and discuss

b(5) - DP/AC

b(5) - DP/AC

I can make time for this today.

--

David Dewhirst
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From: "Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>
Date: Friday, October 11, 2019 at 6:02 AM
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Cc: "Freitas, Jessica (Federal)" <JFreitas@doc.gov>
Subject: FW: Please review: Corey, DOC-CEN-2019-001995

b(5) - DP/AC

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Sent: Thursday, October 3, 2019 9:24 AM

To: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>

Cc: Curry, Vernon E <vernon.e.curry@census.gov>

Subject: Please review: Corey, DOC-CEN-2019-001995

From the Desk of Vernon E. Curry, Chief FOIA Officer/Privacy Act Officer:

b(5) - DP/AC

Thank you all for your time and cooperation.

r/
Dee

Deloris Reed

FOIA Section Chief

Freedom of Information Act (FOIA) Office

CAO

U.S. Census Bureau

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Connect with us on [Social Media](#)

To: Brebbia, Sean (Federal)[SBrebbia@doc.gov]; Dewhirst, David (Federal)[DDewhirst@doc.gov]
From: McClelland, Michelle O (Federal)[b(6)]
Sent: Fri 12/20/2019 6:55:13 PM (UTC-05:00)
Subject: Fwd: FYI - GAO report on 2020 Census: Changes Planned to Improve Data Quality
Final-GAO-20-282.pdf

From: Mausser, MaryAnn E (Federal) <MMausser@doc.gov>
Sent: Friday, December 20, 2019 4:36:31 PM
To: Burkett, Robert (Federal) <RBurkett@doc.gov>; Casias, Lisa (Federal) <lcasias@doc.gov>; Comstock, Earl (Federal) <EComstock@doc.gov>; DiGiacomo, Brian (Federal) <bDiGiac@doc.gov>; Gilman, Thomas (Federal) <TGilman@doc.gov>; Guenther, John (Federal) <JGuenther@doc.gov>; Herbert, Stephanie (Federal) <SHerbert@doc.gov>; Kluttz, Lawson (Federal) <LKluttz@doc.gov>; McClelland, Michelle O (Federal) <mMcClelland@doc.gov>; Mendes, Andre (Federal) <AMendes@doc.gov>; Mihlfried, Michael (Federal) <mmihlfried@doc.gov>; Moesle, Albert (Federal) <AMoesle@doc.gov>; OAE Resolution [b(6)] <[b(6)]@oig.doc.gov>; Preskenis, Kevin (Federal) <KPreskenis@doc.gov>; Sheppard, David <dsheppard@oig.doc.gov>; Sweet, Jon (Federal) <JSweet@doc.gov>; Wilde, Rachael R (Federal) <RWilde@doc.gov>; Pelter, Jeremy (Federal) <JPelter@doc.gov>; Berkowitz, Barry (Federal) <BBerkowitz@doc.gov>
Cc: Holzbach, Colleen <colleen.holzbach@census.gov>; Kane, Corey J <corey.j.kane@census.gov>; Williams, Kemi A <kemi.ariana.williams@census.gov>; Moulder, Pamela (Federal) <pmoulder@doc.gov>; Dinwiddie, James L <james.l.dinwiddie@census.gov>
Subject: FYI - GAO report on 2020 Census: Changes Planned to Improve Data Quality

FYI – GAO has released the following final report with no recommendations: [GAO-20-282, 2020 Census: Changes Planned to Improve Data Quality](#). The purpose of this engagement was to gather information rather than audit the program. See GAO’s summary of the report below.

What GAO Found

To determine where people should be counted during each decennial census, the Census Bureau (Bureau) has established residence criteria (see figure). For most people, applying these criteria is straightforward. For others who may be more mobile, like members of the military, college students, migrant farm workers, and people living in group quarters such as federal detention centers or in-patient hospice facilities, it can be more complicated. Therefore, for each decennial the Bureau issues guidance describing how the criteria should be applied to certain complex living situations. For the 2020 Census, the Bureau has updated its guidance on where to count people in six complex living situations, such as U.S. employees deployed overseas. The Bureau plans to count people in other living situations in the same manner as it did in 2010. As in 2010, the Bureau will count prisoners at the correctional facility where they are housed, but also plans to make other resources available to states that want to use prisoners’ in-state, pre-incarceration addresses for redistricting purposes instead of their prison addresses.

Bureau Residence Criteria

- 1. Count people at their usual residence, which is the place where they live and sleep most of the time.
- 2. People in certain types of group facilities on Census Day are counted at the group facility.
- 3. People who do not have a usual residence, or who cannot determine a usual residence, are counted where they are on Census Day.

Source: U.S. Census Bureau documentation for 2020 Census. | GAO-20-282

To resolve multiple responses for a single address, for 2020 the Bureau plans to use a longstanding automated routine—its Primary Selection Algorithm—to determine who to count at the address. For 2020, Bureau documents indicate it

updated the algorithm after reviewing various response scenarios and data from past censuses and tests.

To resolve missing household responses following data collection, as it did in 2010, the Bureau plans to use for 2020 a technique it refers to as count imputation, which draws data from similar nearby households to determine whether a housing unit exists, whether it is occupied, and, if so, by how many people. However, for 2020, the Bureau will also try to reduce the number of households which otherwise would have required count imputation and help reduce follow-up field work by drawing on relevant data from administrative records of sufficient quality in conjunction with its non-response follow-up field work.

To resolve incomplete and conflicting information within a household response, the Bureau plans to use a technique it refers to as edit and characteristic imputation. This technique involves drawing data from the same household response, prior census and other administrative records or similar nearby households, which the Bureau believes will improve data quality and produce more accurate results.

Why GAO Did This Study

The decennial census produces data vital to the nation. The data are used for congressional apportionment and redistricting; to allocate billions each year in federal funds; and to provide a social, demographic, and economic profile of the nation to guide policy decisions at all levels of government. Given census data's importance, it is incumbent upon the Bureau to ensure their quality. If people are counted in the wrong place, some states and localities may unduly lose or gain political power through apportionment and redistricting disproportionate to their actual population. Poor outcomes can also result if some households are over counted due to multiple responses, not counted due to missing responses, or miscounted due to incomplete or conflicting responses. GAO was asked to describe the Bureau's plans for the 2020 Census to resolve multiple, missing, incomplete, and conflicting responses. This report describes how, for 2020, the Bureau plans to (1) determine where to count people, including those in complex living situations, and how this differs from 2010; and (2) resolve multiple, missing, incomplete, and conflicting responses after data collection, and how this differs from 2010. GAO reviewed relevant Bureau documents and interviewed officials responsible for the 2020 Census.

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December 2019

2020 CENSUS

Changes Planned to Improve Data Quality

GAO Highlights

Highlights of GAO-20-282, a report to congressional requesters

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GAO provided a draft of this report to the Bureau. The Bureau provided technical comments, which were incorporated as appropriate.

View GAO-20-282. For more information, contact Robert Goldenkoff at (202) 512-2757 or goldenkoff@gao.gov.

December 2019

2020 CENSUS

Changes Planned to Improve Data Quality

What GAO Found

To determine where people should be counted during each decennial census, the Census Bureau (Bureau) has established residence criteria (see figure). For most people, applying these criteria is straightforward. For others who may be more mobile, like members of the military, college students, migrant farm workers, and people living in group quarters such as federal detention centers or in-patient hospice facilities, it can be more complicated. Therefore, for each decennial the Bureau issues guidance describing how the criteria should be applied to certain complex living situations. For the 2020 Census, the Bureau has updated its guidance on where to count people in six complex living situations, such as U.S. employees deployed overseas. The Bureau plans to count people in other living situations in the same manner as it did in 2010. As in 2010, the Bureau will count prisoners at the correctional facility where they are housed, but also plans to make other resources available to states that want to use prisoners' in-state, pre-incarceration addresses for redistricting purposes instead of their prison addresses.

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Source: U.S. Census Bureau documentation for 2020 Census. | GAO-20-282

To resolve multiple responses for a single address, for 2020 the Bureau plans to use a longstanding automated routine—its Primary Selection Algorithm—to determine who to count at the address. For 2020, Bureau documents indicate it updated the algorithm after reviewing various response scenarios and data from past censuses and tests.

To resolve missing household responses following data collection, as it did in 2010, the Bureau plans to use for 2020 a technique it refers to as count imputation, which draws data from similar nearby households to determine whether a housing unit exists, whether it is occupied, and, if so, by how many people. However, for 2020, the Bureau will also try to reduce the number of households which otherwise would have required count imputation and help reduce follow-up field work by drawing on relevant data from administrative records of sufficient quality in conjunction with its non-response follow-up field work.

To resolve incomplete and conflicting information within a household response, the Bureau plans to use a technique it refers to as edit and characteristic imputation. This technique involves drawing data from the same household response, prior census and other administrative records or similar nearby households, which the Bureau believes will improve data quality and produce more accurate results.

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December 20, 2019

The Honorable Gary Peters
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Brian Schatz
United States Senate

The decennial census is constitutionally mandated and produces data vital to the nation.¹ The data are used to apportion the seats of the U.S. House of Representatives; realign the boundaries of the legislative districts of each state; allocate hundreds of billions of dollars each year in federal financial assistance; and provide a social, demographic, and economic profile of the nation's people to guide policy decisions at each level of government. Furthermore, businesses, nonprofit organizations, universities, and others regularly rely on census data to support their work.

Given the importance of census data to the nation, it is incumbent upon the Census Bureau (Bureau) to count people once, only once, and in the right place. For example, if people are counted in the wrong place—that is, away from where they live and sleep most of the time—some states and localities may unduly lose or gain political power through apportionment and redistricting that inaccurately reflects their proportion of the population. Similarly, they may unduly lose or gain key benefits through improperly distributed federal funds or poorly informed policies. Inappropriate outcomes can also result if some household residents are counted more than once due to multiple census responses for the same address or if they are not counted at all due to missing responses. Further data quality issues may arise if answers within a household response are left incomplete or conflict with one another, resulting in missing or erroneous characteristics—such as age, sex, race, and ethnicity—which are key to informing public policy and other decisions of importance to our nation.

¹U.S. Const., art. I, § 2, cl. 3.

Leading up to each decennial census, the Bureau determines how it will ensure that people are counted in the right place and that multiple, missing, incomplete, and conflicting responses are resolved. These determinations are informed in part by the Bureau's review of how well this was done during the prior decennial, societal changes during the intervening years that merit an updated approach, and internal and external stakeholder input regarding needed changes.

You asked us to describe the Bureau's plans for the 2020 Census to resolve multiple, missing, incomplete, and conflicting responses. This report describes how, for the 2020 Census, the Bureau (1) plans to determine where to count people, including those in complex living situations, and how these plans differ from those for the 2010 Census; and (2) plans to resolve multiple, missing, incomplete, and conflicting responses following data collection and how these plans differ from those for the 2010 Census.

To address our objectives, we reviewed Bureau planning, operational, evaluation, and assessment documents related to the Bureau's efforts to enumerate the population for the 2020 Census and prior decennials. We also interviewed Bureau officials responsible for planning and executing the 2020 Census and with experience in prior decennials about planned changes from the 2010 Census.

To describe the Bureau's plans for determining where to count people for the 2020 Census, we reviewed Bureau documentation and *Federal Register* publications related to 2020 Census residence criteria and residence situations. We also reviewed Bureau evaluations and assessments of the 2010 Census which identified concerns related to counting certain populations. We interviewed Bureau officials responsible for developing and overseeing the implementation of 2020 Census residence criteria and residence situations. To understand changes from 2010, we compared the 2010 Census residence criteria and residence situations to the 2020 Census residence criteria and residence situations and interviewed Bureau officials to discuss their rationale for these changes.

To describe the Bureau's plans for resolving multiple, missing, incomplete, and conflicting responses following data collection for the 2020 Census, we reviewed and summarized Bureau documentation of how data are processed after they are collected, including program management briefings and memorandums, internal process flow diagrams, internal and external presentations related to post processing,

and documents describing relevant system coding for data processing. We also interviewed Bureau officials responsible for developing, administering, and overseeing the internal processing of response data following collection. To understand changes from 2010, we compared the 2010 Census internal processes to those planned for 2020 and we interviewed Bureau officials to discuss the rationale for these changes.

We conducted this performance audit from June to December 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Bureau is charged with counting every person in the decennial census once, only once, and in the right place. To ensure fairness and consistency in where people are counted, for the first decennial in 1790, Congress established the concept of counting people where they usually reside. The Bureau has relied on that concept ever since.

Building on the concept of usual residence, the Bureau subsequently established criteria, which it refers to as residence criteria, to determine where people should be counted during each decennial (see text box).

Residence criteria

1. Count people at their usual residence, which is the place where they live and sleep most of the time.
2. People in certain types of group facilities on Census Day are counted at the group facility.
3. People who do not have a usual residence, or who cannot determine a usual residence, are counted where they are on Census Day.

Source: U.S. Census Bureau documentation for 2020 Census. | GAO-20-282

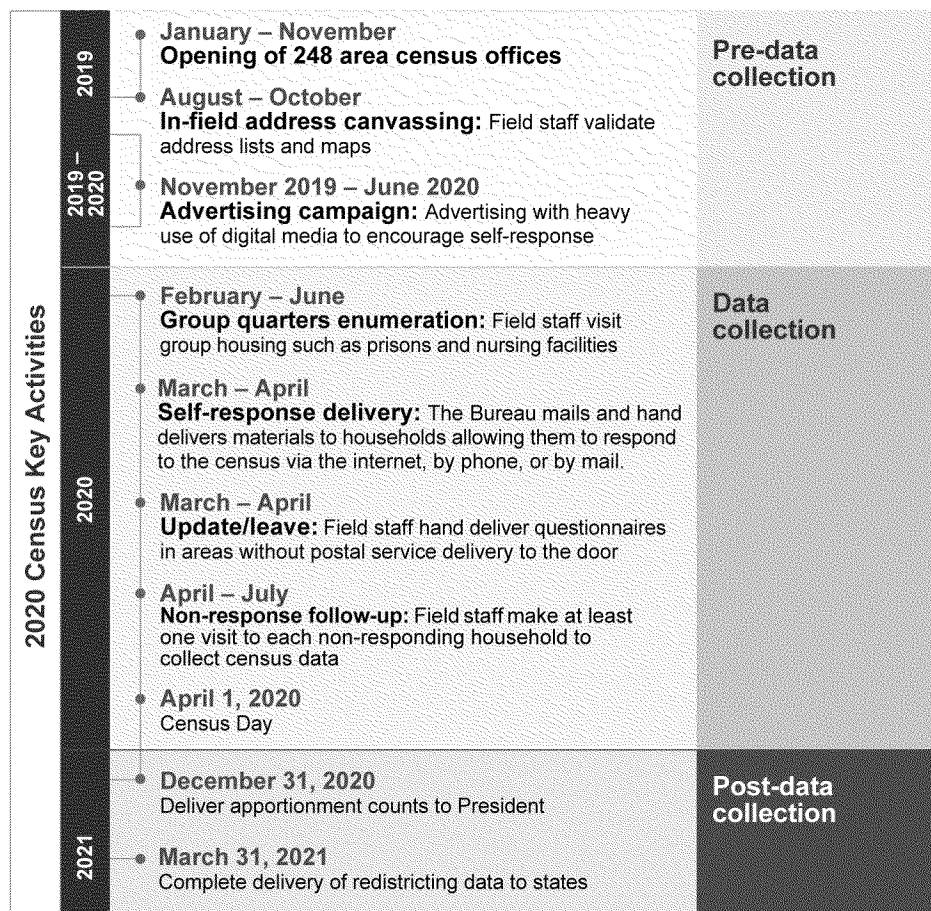
For most people, applying the concept of usual residence and the Bureau's associated residence criteria is straightforward. For others who may be more mobile, like members of the military, college students, migrant farm workers, and people living in group quarters, determining

where to count them can be more complicated. Therefore, for each decennial the Bureau issues guidance describing how the criteria should be applied to certain complex living situations for which people commonly request clarification. The guidance is intended to inform the public about how to respond and to assist enumerators and other Bureau staff in administering a proper count.²

In addition to counting the nation's population accurately, the Bureau must complete the count and tabulate it against a backdrop of immutable deadlines. The Bureau is required by law to count the population as of April 1, 2020 (Census Day); deliver state apportionment counts to the President by December 31, 2020; and provide redistricting data to the states by April 1, 2021. To meet these deadlines and ensure an accurate count, the Bureau carries out thousands of interrelated activities before, during, and after data collection (see figure 1 for a timeline of selected key activities).

²Enumerators are Bureau employees throughout the country who travel door to door to try to obtain census data from individuals who do not respond through other means (such as by mail, telephone, or the internet).

Figure 1: Timeline of Key Census Activities



Source: GAO analysis of U.S. Census Bureau documentation. | GAO-20-282






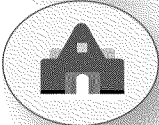
The Bureau Has Refined its Residence Guidance to Help Ensure More People Are Counted in the Right Place

The Bureau Has Updated Its Guidance on Where to Count People in Six Complex Living Situations

The Bureau plans to use its concept of usual residence and its associated residence criteria to determine where to count people in the 2020 Census generally as it did in 2010, but in 2018 the Bureau updated its guidance on how to apply that concept to count people in six complex living situations (see figure 2 for an overview of these changes). In developing the guidance for 2020, the Bureau sought input from external stakeholders on needed changes and solicited public comments on the draft guidance through the *Federal Register*.³ In response, the Bureau received input and comments from a variety of entities including federal, state, local, and tribal governments, as well as civil rights and other advocacy organizations.

³See, 80 Fed. Reg. 28950 (May 20, 2015); 81 Fed. Reg. 42577 (June 30, 2016); 83 Fed. Reg. 5525 (Feb. 8, 2018).

Figure 2: The Bureau Plans to Count People in Six Complex Living Situations Differently in 2020 Than It Did in 2010

Living situation	Where counted		Basis for change
	2010	2020	
 <p>Military and civilian employees of the U.S. deployed overseas who are U.S. citizens.</p>	Counted in state of home address of record for apportionment.	Counted at usual U.S. home address for apportionment and redistricting.	Bureau research on personnel data and consultation with stakeholders found that those on temporary assignments most often return to the same stateside home.
 <p>Military and civilian employees of the U.S. deployed overseas who are legal U.S. residents but not citizens.</p>	Not counted.		
 <p>Military and civilian employees of the U.S. assigned or stationed overseas who are legal U.S. residents but not citizens and any of their dependents living with them.</p>	Not counted.	Counted in state of home address of record for apportionment.	Bureau sought to treat all U.S. residents who are employees of the U.S. working overseas more consistently.
 <p>Crews of U.S. maritime and merchant vessels sailing between a U.S. and a foreign port.</p>	Not counted.	Counted at onshore home address or, if none, at U.S. port.	Bureau 2010 assessment and consultation with U.S. Maritime Administration found these crew members should be counted similarly to those that sail from one U.S. port to another.
 <p>Juveniles in noncorrectional residential treatment centers.</p>	Counted at facility location.	Counted at usual home address or, if none, at facility.	Bureau research indicated that most juveniles return to their usual home address when leaving treatment.
 <p>Religious group quarters residents.</p>	Counted at usual home address or, if none, at facility.	Counted at facility.	Bureau research indicated that most residents are long-term and do not have a separate address of record.

Source: GAO analysis of U.S. Census Bureau documentation. | GAO-20-282

Military and civilian employees of the United States deployed overseas. In 2010, overseas military and civilian employees of the United States who were U.S. citizens were counted at their home state of record for apportionment purposes only. For 2020, the Bureau decided to count these personnel differently depending on whether their permanent duty station was in the United States. Personnel assigned or stationed overseas will continue to be counted as they were in 2010. Personnel stationed in the United States while deployed overseas, however, will instead be counted at their usual home address in the United States for both apportionment and redistricting purposes. According to Bureau documentation, this change resulted from Bureau analysis of data from

the Department of Defense which found that personnel deployed overseas were there for shorter periods and were likely to return to their prior usual place of residence, whereas personnel assigned or stationed overseas generally remained overseas for greater periods and often did not return to their prior stateside location.

Military and civilian employees of the United States deployed, stationed, or assigned overseas who are legal U.S. residents but not citizens. For 2020, the Bureau plans to count this population the same way it counts U.S. citizens working for the federal government overseas, as described above. According to a Bureau assessment of how it counted personnel overseas in 2010, its guidance for federal agencies that provide the Bureau with data on overseas personnel was unclear on the treatment of non-citizens. According to Bureau officials, it is therefore likely that other federal agencies following that guidance generally excluded non-citizens from the 2010 count. Based on the Bureau's assessment, the Bureau plans to make clear in its 2020 guidance that U.S.-resident non-citizens working for the federal government overseas are to be counted the same way as U.S. citizens. Bureau officials stated that this change should ensure that U.S.-resident non-citizens are counted more consistently with other U.S. residents.

Crews of U.S. maritime and merchant vessels sailing between a U.S. and a foreign port. In 2010, if a U.S. maritime or merchant vessel was sailing between a U.S. and a foreign port on Census Day, then the crewmembers were not counted. For 2020, the Bureau plans to count these crewmembers at their onshore usual residence in the United States or, if they have none, then at the vessel's U.S. port of departure or arrival. This matches how the Bureau counts crewmembers if their vessel is at a U.S. port or sailing between two U.S. ports. According to Bureau documentation, this change resulted from Bureau analysis and consultation with stakeholders (including the Maritime Administration) which found that crewmembers in each of these situations usually retain an onshore residence in the United States where they live and sleep most of the time so they should be counted in the same way.

Juveniles in non-correctional residential treatment centers. For 2020, the Bureau plans to count this population at the U.S. residence where they live and sleep most of the time or, if they have no usual home address, then at the facility. In 2010, they were counted at the facility. The Bureau made this change after concluding that these juveniles typically only stay at residential treatment center facilities temporarily and

generally have a usual home elsewhere to which they return after treatment is completed.

Religious group quarters residents. For the 2020 Census, the Bureau will count this population at the religious group quarters facility. In 2010, this population was counted at their usual home address or, if they had no usual home address, then at the facility. The Bureau made this change after concluding that this population typically does not have a place of usual residence elsewhere.

According to Bureau officials, the Bureau expects the updated guidance will provide greater clarity and result in more informed responses and, thus, higher quality data. Among other things, Bureau officials stated that the data will more accurately reflect the composition of local communities.

The Bureau Will Continue to Count People in Other Living Situations as It Did in 2010

For the 2020 Census, the Bureau did not change its guidance regarding where to count people in other complex living situations. For example, the Bureau did not make changes to where it will count college students, who will continue to be counted at their parents' or guardians' home if they live and sleep there most of the time or, if they live away from their parents' or guardians' home, then at their on- or off-campus residence. See table 1 for an overview of where the Bureau will count people in complex living situations the same as it did in 2010.

Table 1: For 2020, the Bureau Will Continue to Count People in Many Complex Living Situations as It Did in 2010

Where counted	Living situation
Typically counted at the residence where they live and sleep most of the time. If this cannot be determined, then counted where they are staying on Census Day.	People away from their usual residence
	Visitors on Census Day
	Foreign citizens living in the United States ^a
	People who live or stay in more than one place, such as mobile workers, snowbirds, or children in shared custody
	People in housing for older adults, such as active adult communities, independent living, or retirement communities
	Relatives and nonrelatives, such as foster children, unmarried partners, housemates and roommates, roomers and boarders, etc.
	People moving into or out of a residence around Census Day (counted at their residence as of Census Day)
	People born on or deceased around Census Day (counted only if living on Census Day) ^b
	People in transitory locations, such as campgrounds, recreational vehicle parks, circuses, carnivals, etc.
	People in workers' residential facilities and Job Corps centers
	People displaced by natural disasters and other emergencies
	People who are at soup kitchens and regularly scheduled mobile food vans that provide food to people experiencing homelessness
	People in non-correctional residential treatment centers for adults
	People in hospitals and other health care facilities for reasons other than long-term nonacute care
	People on military ships
Facility residents typically counted where they are staying on Census Day. Facility staff members counted where they live and sleep most of the time (unless no usual home elsewhere, then counted at facility).	People in correctional facilities for adults
	College students (and staff) living in college housing while attending college in the United States ^c
	Students in residential schools for people with disabilities
	People in domestic violence shelters or in emergency and transitional shelters for people experiencing homelessness
	People in non-correctional group homes intended for adults
	People in mental (psychiatric) units or hospitals providing long-term nonacute care
	People in nursing or skilled nursing facilities providing long-term nonacute care
	People in military barracks and medical treatment facilities

Source: GAO analysis of U.S. Census Bureau documentation. | GAO-20-282

^aForeign citizens living in the United States who are members of the diplomatic community are counted at the embassy, consulate, United Nations facility, or other residences where diplomats live.

^bNewborn babies in hospitals are counted at the home where they will live.

^cBoarding school students below the college level living away from their parents' or guardians' home are counted at their parents' or guardians' home.

In addition, the Bureau's guidance includes examples of situations in which people should not be counted in the census, such as the following:

-
- people living outside the United States on Census Day who are not military or civilian employees of the U.S. government and are not dependents living with military or civilian employees of the U.S. government;
 - babies born after Census Day or people who die before Census Day;
 - college students living at and attending college outside the United States; and
 - citizens of foreign countries visiting the United States, such as on vacation or a business trip.

To help census respondents understand who and where to count household members and others, the Bureau is translating key terms from its census form for 2020 into 59 languages and making it available to community partners and others who may be in a position to help linguistically isolated groups provide accurate responses. It is translating scripted responses to questions about complex living situations into 12 foreign languages to be used by staff who will help answer questions about and take responses over the telephone.

The Bureau Will Continue to Count Prisoners at the Correctional Facility but Plans to Offer States Supplemental Tools for Redistricting with Prisoners' Pre-Incarceration Addresses

The Bureau reports that stakeholder feedback on where to count prisoners largely urged the Bureau to count them at their pre-incarceration addresses to avoid shifting political power to the prison locations at the expense of the prisoners' home communities.⁴ However, the Bureau concluded that counting prisoners anywhere other than the correctional facility would be less consistent with the concept of usual residence, since the majority of people in prisons live and sleep there most of the time. Therefore, for 2020, the Bureau decided that it will continue to count prisoners at the correctional facility as it did in 2010. However, the Bureau will make available to states two tools to allow them to "move" their prisoner population to the prisoners' pre-incarceration addresses for redistricting purposes. The tools are intended to support such movement within but not across state boundaries.

- The Bureau is providing states with an online tool that will identify the census geographical block that the population would be tabulated in

⁴The Bureau uses the term "prisoners," which includes inmates, who are incarcerated, as well as those who are detained, such as people in federal detention centers, federal and state prisons, local jails, and other municipal confinement facilities.

for any state-provided addresses. If a state wants to “move” the tabulation of specific prisoners within its boundaries, this information will let state officials know which block tabulations to adjust. On November 4, 2019, the Bureau launched the web page that will support states in using this tool. The Bureau plans to update it with 2020 Census geographic data in February 2021, before the Bureau is required to provide redistricting data to the states.⁵

- The Bureau also plans to provide states with data on group quarters, which will contain a separate count of their prisoner populations, as part of each state’s redistricting file.⁶ By including group quarters data in the redistricting file, the Bureau plans to provide these group quarters data to users 1 to 2 months earlier than it did in 2010 when it provided group quarters data separately from the redistricting file. According to the Bureau, this earlier release will benefit many users, including state officials who must consider whether to include or exclude certain populations when redrawing boundaries as a result of state legislation.




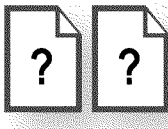
The Bureau Is Planning Additional Changes to Improve Count Accuracy, Completeness, and Consistency Following Data Collection

Once the Bureau has completed its decennial data collection efforts, it generally finds that a small proportion of responses have data quality issues that were not resolved during preceding operations. In these cases, (1) some addresses have multiple responses, (2) some households are missing responses altogether, or (3) some responses include answers that are incomplete or conflict with one another. The Bureau has a variety of plans to resolve these issues (see figure 3).

⁵The Census Geocoder is a public web-based address look-up tool accessible at www.census.gov/programs-surveys/geography/technical-documentation/complete-technical-documentation/census-geocoder.html.

⁶Under Public Law 94-171, the officers or public bodies having initial responsibility for the legislative apportionment or districting of each state may, prior to the census date, identify geographic areas for which specific tabulations of population are desired; the Bureau is then required to deliver these data no later than 1 year from Census day. See 13 U.S.C. §141(c).

Figure 3: For 2020, the Bureau Has Various Plans to Resolve Multiple, Missing, Incomplete, and Conflicting Responses after Data Collection

DATA QUALITY ISSUE	MULTIPLE	MISSING	INCOMPLETE	CONFLICTING
				
DESCRIPTION	More than one response is received for the same address.	No response is obtained from a household even following in-person follow-up.	A household response is obtained, but not all questions have been answered.	Information provided as part of a household response conflicts with other information in the same response.
PLANNED RESOLUTION	Determine who should be counted at the address using the Bureau's Primary Selection Algorithm, a longstanding automated routine.	Determine whether an address exists, is occupied or vacant, and how many people live there using a statistical technique the Bureau refers to as count imputation, which draws data from similar nearby households.	Fill in missing answers and resolve conflicting answers using a technique the Bureau refers to as edit and characteristic imputation, which draws data from the same household response, prior census and other administrative records, or similar nearby households.	
KEY CHANGE FROM 2010	Updated based on Bureau's review of various response scenarios and data from past censuses and census tests.	Enhanced by use of administrative records.		

Source: GAO analysis of U.S. Census Bureau documentation. | GAO-20-282

Determining Whom to Count at Addresses with Multiple Responses

The Bureau may receive multiple census responses from a household for various reasons. For example, different members of the same household could each respond by mail or over the internet, or one member could mail a response and another answer a census worker’s questions in person during the Bureau’s non-response follow-up operation. The Bureau assessed its response processing in 2010, and identified about 14 million responses for households that already had another response (roughly 10 percent of the total number of households included in the final 2010 count). The widespread option to respond over the internet is new

for 2020, and while having included it in multiple census tests, Bureau officials have not set expectations on the extent to which it may increase the number of addresses at which it gets multiple responses.

To guard against overcounting, as it has in prior decennials, for 2020 the Bureau plans to use an automated routine—referred to as the Primary Selection Algorithm—to determine whom to count at addresses for which it has received multiple responses once data collection is complete. According to Bureau officials, in making this determination, the algorithm takes into account a wide range of information, including results from its fraud detection efforts.⁷ We did not examine the algorithm for this review. In addition, to help ensure the integrity of these determinations, the Bureau does not disclose the details of the algorithm publicly and permits only Bureau officials with an operational need to know to access the algorithm. According to Bureau documentation, the Bureau has updated the algorithm for 2020 based on its review of various response scenarios and data from past censuses and census tests.

Filling in Missing Household Responses

When the Bureau, after its data collection efforts are completed, has been unable to reach anyone able and willing to respond at a particular address or to obtain information about the address and its potential occupants in other ways—such as through neighbors or a building manager—it may be left not knowing whether a housing unit even exists at the address or whether it is occupied, and, if so, by how many people. As it did in 2010, for 2020 the Bureau plans to use a statistical technique it refers to as count imputation to fill in missing data about the existence and number of people living at an address in question. Count imputation has three types.

- **Residence status.** This is used when the Bureau does not know whether an address is a real and livable residence. In contrast, it could be a business or in such disrepair that no one could live there.
- **Occupancy status.** This is used when the Bureau knows that an address is a real housing unit, but not whether it is vacant or occupied.

⁷For more information regarding the Bureau's fraud detection efforts, see GAO, *2020 Census: Additional Actions Needed to Manage Risk*, GAO-19-399 (Washington, D.C.: May 31, 2019).

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- **Household size.** This is used when the Bureau knows an address is a real, occupied home, but not how many people live there.

To carry out each of these types of count imputation, the Bureau uses a technique referred to as hot-deck imputation which employs continually updated census data from similar nearby households as the basis for filling in the missing statuses and household size. The Bureau has been using some form of hot-deck imputation since at least the 1960 Census.

According to Bureau reporting, in 2010, about 500,000 of 137 million addresses counted in the decennial (0.4 percent) were missing an entire response and the Bureau therefore used count imputation to determine a combination of their residence and occupancy status and household size.⁸ The Bureau's count imputation in 2010 added about 1.2 million people to the final census count. For 2020, however, some of the missing responses which otherwise would have required count imputation will instead be resolved through the use of administrative records in conjunction with the Bureau's door-to-door non-response follow-up effort. Specifically, the Bureau plans to draw on relevant data from records of sufficient quality thereby reducing the amount of follow-up field work needed and the number of households in need of count imputation. According to Bureau officials, they plan to finalize a decision memorandum in December 2019 specifying the Bureau's thresholds for determining whether administrative records are of sufficient quality for such uses.

According to Bureau officials, tests and evaluations performed during the preceding decade demonstrate that these uses of administrative records will provide more accurate results than traditional methods of seeking information about the address from neighbors and others or from count imputation alone. Bureau testing and evaluation also identified improvements to its count imputation technique for 2020, including enhanced use of administrative records in its hot-deck imputation, which it expects will generate results better aligned with actual data for those addresses where it had been missing.

⁸The Bureau imputed whether an address was livable for 0.12 percent of addresses, whether it was occupied or vacant for 0.03 percent, and its household size for 0.24 percent.

Resolving Incomplete and Conflicting Answers within a Household Response

Once the Bureau has determined the total number of households and people as of Census Day for apportionment purposes, it resolves incomplete and conflicting information within individual household responses for redistricting and final tabulation purposes. Specifically, for 2020, the Bureau plans to ensure that each household response includes complete and consistent information regarding, for occupied housing units, the age, date of birth, sex, race, and ethnicity (Hispanic or non-Hispanic origin) of each household resident; their relationship to the householder;⁹ whether the housing unit is rented or owned by a member of the household; for group quarters, the type of such quarters, such as federal detention center or in-patient hospice facility; and, if the unit is vacant, why (see figure 4).¹⁰

⁹The Bureau defines householder as someone who lives in the unit and owns it or pays its rent or, if the owner or rent payer lives elsewhere, then any adult living in the unit. This person is to be listed first in the census response.

¹⁰An additional type of information that may be incomplete is the census identification number. These numbers are assigned to most addresses, but some people responding to the census may not know their number, such as when responding by internet or telephone. The Bureau resolves this type of incomplete return by comparing the reported information to internal databases to see whether the associated address already has an identification number. If one cannot be found, the Bureau will assign a new one.

Figure 4: For 2020, the Bureau Plans to Ensure That Certain Information within Individual Household Responses Is Complete and Consistent

This figure is not a real census form—for example, due to limited space, it includes only a subset of response options for race—but it illustrates the types of information that the Bureau will ensure is complete and consistent in household responses

3. Is this house, apartment, or mobile home? Mark ☒ **ONE** box.

☐ **Owned** by you or someone in this household with a mortgage or loan? *Include home equity loans.*

☐ **Owned** by you or someone in this household free and clear (without a mortgage or loan)?

☐ **Rented?**

☐ Occupied without payment of rent?

Person 1

5. Please provide information for each person living here. If there is someone living here who pays the rent or owns this residence start by listing him or her as Person 1. If...

Person 2

3. How is this person related to Person 1? Mark ☒ **ONE** box.

<input type="checkbox"/> Opposite-sex husband/wife/spouse	<input type="checkbox"/> Father or mother
<input type="checkbox"/> Opposite-sex unmarried partner	<input type="checkbox"/> Grandchild
<input type="checkbox"/> Same-sex husband/wife/spouse	<input type="checkbox"/> Parent-in-law
<input type="checkbox"/> Same-sex unmarried partner	<input type="checkbox"/> Son-in-law or daughter-in-law
<input type="checkbox"/> Biological son or daughter	<input type="checkbox"/> Other relative
<input type="checkbox"/> Adopted son or daughter	<input type="checkbox"/> Roommate or housemate
<input type="checkbox"/> Stepson or stepdaughter	<input type="checkbox"/> Foster child
<input type="checkbox"/> Brother or sister	<input type="checkbox"/> Other non-relative

4. What is this person's sex? Mark ☒ **ONE** box.

☐ Male ☐ Female

Person 2

5. What is this person's age and what is this person's date of birth? *For babies less than a year old, do not write the age in months. Write 0 as the age.*

Age on April 1, 2020 Month Day Year of birth

years

6. Is this person of Hispanic, Latino or Spanish origin?

☐ No, not of Hispanic, Latino, or Spanish origin

☐ Yes, Mexican, Mexican Am. Chicano

☐ Yes, Puerto Rican

☐ Yes, Cuban

☐ Yes, another Hispanic, Latino, or Spanish origin
Print, for example, Salvadoran, Dominican, Colombian Guatemalan, Spaniard, Ecuadorian, etc...

7. What is this person's race?
Mark ☒ **one or more boxes AND** print origins

☐ White - *Print, for example, German, Irish, English, Italian, Lebanese, Egyptian, etc.*

☐ Black or African Am. - *Print, for example, African American, Jamaican, Haitian, Nigerian, Ethiopian etc.*

☐ American Indian or Alaska Native - *Print name of enrolled or principal tribe(s), for example, Navajo Nation*

☐ Some other race - *Print race or origin*

Source: GAO illustration adapted from U.S. Census forms. | GAO-20-282

Note: Additional characteristics the Bureau plans to ensure are complete and consistent are vacancy status (i.e., if the unit is vacant, why) and, for group quarters, the type of such quarters, such as federal detention center or in-patient hospice facility.

These characteristics (which the Bureau refers to as person and housing characteristics) may be incomplete or conflicting for various reasons, including intentional or accidental omissions or errors by the person filling out the form. According to Bureau data, in 2010, responses for 13 percent of the people counted in the decennial (about 40 million of the about 300 million counted) contained incomplete or conflicting person characteristics that the Bureau had to resolve.

For 2020, as it did for 2010, the Bureau plans to use a technique it refers to as edit and characteristic imputation to fill in incomplete and reconcile conflicting information in individual household responses. As summarized in table 2 and described below, it does so using one of three methods, depending on which characteristics are incomplete or conflicting and on what other information the Bureau has about those characteristics. The Bureau has been using some form of characteristic imputation since at least the 1940 Census.

Table 2: For 2020, the Bureau Has Three Methods to Resolve Incomplete and Conflicting Answers within a Household Response

Method	Where used	Potential data sources		
		2020 census response	Prior census and other administrative records	Similar nearby people or households
Use existing information about same person or household	Some person and household characteristics are incomplete or conflicting	yes	yes	no
Use existing information about other people or households			no	yes
Use existing information about same or other households	All person characteristics are incomplete	no	yes	yes

Source: GAO analysis of Census Bureau documentation. | GAO-20-282

- **Use existing information about same person or household.** This method is used when some, but not all, person and household characteristics are incomplete or conflicting and those characteristics can be filled in or reconciled using other information about the same person or household reported within the 2020 response or in prior census or other administrative records. For example, if a person’s date of birth is reported but not his or her age, the Bureau will fill in the age based on the date of birth. If neither age nor date of birth is reported, the Bureau will look to the 2010 Census to fill in both characteristics, adjusting for the intervening years.

-
- **Use existing information about other people or households.** As with the prior method, this method is used when some, but not all, person and household characteristics are incomplete or conflicting. However, unlike the prior method, the incomplete or conflicting characteristics cannot be filled in or reconciled using other information about the same person or household reported within the 2020 response or in prior census or other administrative records. Therefore, the Bureau will look instead to information about other people included in the same 2020 response or to nearby people or households from other 2020 responses.

For example, if race is reported for a parent but not a child, the Bureau will fill in the child's race using the race provided for the parent. If there is no information within the household response that can be used to fill in the child's race, the Bureau will use a hot-deck imputation method. As discussed earlier, this method employs continually updated census data from similar nearby households as the basis for filling in the needed information.

- **Use existing information about same or other households.** This method is used when all person characteristics are incomplete. In this instance, the Bureau will first look to prior census and other administrative records. If the household size reflected in those records matches the household size reflected in the 2020 response, the Bureau will use those records to fill in all person characteristics available in previous census and administrative records. Remaining characteristics not filled in by previous census and other administrative records will be filled in using the methods discussed above. If the household size totals do not match, the Bureau will use a hot-deck imputation method, drawing the missing information from continually updated census data from similar nearby households.

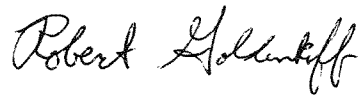
As with other areas of the 2020 Census, the key change in the Bureau's plan for resolving incomplete and conflicting information is the enhanced use of prior census and other administrative records. Specifically, in 2010 the Bureau relied on such records to fill in only race and ethnicity. In contrast, as discussed above, for 2020 the Bureau plans to use prior census and other administrative records as an integral part of its edit and characteristic imputation methods. The Bureau believes this will result in improved data quality and more accurate results.

Agency Comments

We provided a copy of this draft report to the Department of Commerce. The Census Bureau provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the Secretary of Commerce, the Director of the U.S. Census Bureau, and the appropriate congressional committees. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report please contact me at (202) 512-2757 or goldenkoff@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix I.



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Appendix I: GAO Contact and Staff Acknowledgments

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Staff Acknowledgments

In addition to the contact named above, Ty Mitchell (Assistant Director), Karen Cassidy and Emmy Rhine Paule (Analysts-in-Charge), Mark Abraham, Joy Booth, Ann Czapiewski, Brenda S. Farrell, Robert Gebhart, Gretta Goodwin, Amalia Konstas, Lisa Pearson, Cynthia Saunders, Andrea Starosciak, Jon Ticehurst, and Peter Verchinski made significant contributions to this report.

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Please Print on Recycled Paper.

From: Pepper, Samuel (Federal) [SPepper@doc.gov]
Sent: 8/24/2020 1:33:42 PM
To: Kelley, Karen (Federal) [KKelley@doc.gov]; Risko, Daniel (Federal) [DRisko@doc.gov]; Walsh, Michael (Federal) [MWalsh@doc.gov]; Rockas, James (Federal) [JRockas@doc.gov]; Goudarzi, Talat (Federal) [TGoudarzi@doc.gov]; Barranca, Steven (Federal) [SBarranca1@doc.gov]; Blair, Robert (Federal) [RBlair@doc.gov]; Burkett, Robert (Federal) [RBurkett@doc.gov]
CC: McDermott, Ryan (Federal) [RMcDermott1@doc.gov]; Williams, Allaire (Federal) [AWilliams2@doc.gov]; Stevens, Rose (Federal) [RStevens@doc.gov]; ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 08.24.2020 Briefing Book
Attachments: 8.24.20 Briefing Book.pdf; 2) 2020 Census Program Update 08242020.pdf; 4) Census 2020 Backend Processing FINAL.pptx; 4.1) 20200824 Overview slide for PM Final1.pptx

UPDATE

2) 2020 Census Program Update 08242020
4) Census 2020 Backend Processing FINAL
4.1) 20200824 Overview slide for PM Final1

Samuel "Yates" Pepper

Special Assistant, Executive Secretariat
Office of the Secretary
U.S. Department of Commerce

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SPepper@doc.gov

From: Pepper, Samuel (Federal)
Sent: Monday, August 24, 2020 9:00 AM
To: Kelley, Karen (Federal) <KKelley@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Walsh, Michael (Federal) <MWalsh@doc.gov>; Rockas, James (Federal) <JRockas@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Barranca, Steven (Federal) <SBarranca1@doc.gov>; Blair, Robert (Federal) <RBlair@doc.gov>; Burkett, Robert (Federal) <RBurkett@doc.gov>
Cc: McDermott, Ryan (Federal) <RMcDermott1@doc.gov>; Williams, Allaire (Federal) <AWilliams2@doc.gov>; Stevens, Rose (Federal) <RStevens@doc.gov>; ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 08.24.2020 Briefing Book

UPDATE:

1) Qatar- Call with H.E. Ahmed Mohammed Al-Sayed

Samuel "Yates" Pepper

Special Assistant, Executive Secretariat
Office of the Secretary
U.S. Department of Commerce

M: [b(6)]
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From: Pepper, Samuel (Federal)
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<MWalsh@doc.gov>; Rockas, James (Federal) <JRockas@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Barranca, Steven (Federal) <SBarranca1@doc.gov>; Blair, Robert (Federal) <RBlair@doc.gov>; Burkett, Robert (Federal) <RBurkett@doc.gov>

Cc: McDermott, Ryan (Federal) <RMcDermott1@doc.gov>; Williams, Allaire (Federal) <AWilliams2@doc.gov>; Stevens, Rose (Federal) <RStevens@doc.gov>; ExecSecBriefingBook <[b(6)]@doc.gov>

Subject: 08.24.2020 Briefing Book

For the Secretary:

0) Schedule for Secretary Wilbur Ross

b(5) - DP

4) ITA Info Memo on Canada- Softwood Lumber CVD Investigation WTO Dispute

5) ITA Info Memo on China- AD Prelim Difluoromethane

Samuel "Yates" Pepper

Special Assistant, Executive Secretariat

Office of the Secretary

U.S. Department of Commerce

M: [b(6)]

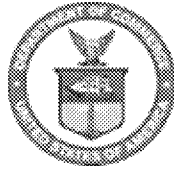
W:

SPepper@doc.gov

Briefing Book
Secretary
Wilbur L. Ross



For August 24, 2020



THE SCHEDULE OF SECRETARY WILBUR ROSS

As Prepared for August 24, 2020

11:00am-11:30am	Pre-Brief – EARB Conference Line – Non-Secure
11:30am-11:45am	Call with Ahmad Al-Sayed, Minister of State and Chairman of Qatar Free Zones Authority Conference Line – Non-Secure
1:45pm-2:20pm	Senior Management Decennial Committee Conference Line – Non-Secure
2:30pm-3:45pm	Small Group Briefing Conference Line – Non-Secure
5:00pm-5:30pm	EARB Meeting Conference Line – Non-Secure

August 24, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Arica Young, Qatar Desk Officer, b(6)

RE: Call with H.E. Ahmed Mohammed Al-Sayed, Minister of State and
Chairman of the Board of Directors of the Free Zone Authority in Qatar
On Monday, August 24, 2020, Time-TBD

b(5) - DP

PARTICIPANT BIOGRAPHY



H.E. Ahmed Mohammed Al-Sayed

Minister of State and Chairman of the Board of Directors of the Free Zone Authority in Qatar

His Excellency Ahmad Al-Sayed is the Minister of State and the Chairman of the Board of Directors, Free Zones Authority, Qatar. HE Al-Sayed is also the Chairman and Managing Director of Doha Venture Capital Fund (DVC), Board Member of Qatar Development Bank and Board Member of Msheireb Properties. Previously, His Excellency served as CEO of the Qatar Investment Authority and Qatar Holding. His Excellency Al-Sayed holds his MBA with Trium Global (from LSE, NYU Stern, HEC Paris), a Master of International Banking & Financial Law from Boston University, and an LLB from Qatar University.

BACKGROUND

b(5) - DP

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ATTACHMENTS

1. Meeting Participants & Suggested Talking Points
2. Qatar Country Fact Sheet

ATTACHMENT 1: Meeting Participants/Suggested & If Raised Talking Points

Government of Qatar

- H.E. Ahmed Mohammed Al-Sayed, Minister of State and Chairman of the Board of Directors of the Free Zone Authority
- Others, TBD

USG

- Wilbur Ross, Secretary of Commerce

SUGGESTED TALKING POINTS

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ATTACHMENT 2: Qatar Country Fact Sheet

STATISTICS AT A GLANCE

Qatar (Riyal)

INTERNATIONAL
TRADE
ADMINISTRATION

GROSS DOMESTIC PRODUCT, 2019

Nominal GDP (total)	USD 204 billion*
Nominal GDP (per capita)	USD 72,677*

ECONOMIC MIX, 2019

N/A services; N/A manufacturing; 0.2% agriculture

FOREIGN MERCHANDISE TRADE

(USD billions)	2017	2018	2019
Exports to the world	85.2	102.5	N/A
Imports from the world	62.2	65.8	N/A
U.S. exports to Qatar	3.1	4.4	6.5
U.S. imports from Qatar	1.2	1.6	1.7
Trade balance with U.S.	1.9	2.9	4.8

U.S. TRADE IN SERVICES

(USD billions)	2016	2017	2018
U.S. exports to Qatar	N/A	N/A	N/A
U.S. imports from Qatar	N/A	N/A	N/A

FOREIGN DIRECT INVESTMENT (FDI), F/U*

(USD billions)	2017	2018	2019
FDI into U.S. from Qatar	2.25	N/A	N/A
U.S. FDI in Qatar	8.2	10.6	N/A

* Terms: FP (F), Foreign Parent (can be subsidiary of foreign owner); UBO (U), Country of Ultimate Beneficial Owner
Supporting U.S. Jobs: N/A

Investing in Innovative R&D: N/A

Principal FDI suppliers to Qatar YEAR
N/A

U.S. Ambassador / Charge D'Affaires to Qatar
Charge d'Affaires Ambassador Greta C. Holtz

Qatari Ambassador to the United States
H.E. Sheikh Meshal bin Hamad Al Thani

Population: ~3 million (2019)
Capital: Doha
Government: Absolute Monarchy
Head of State: Tamim bin Hamad Al Thani, Emir
Head of Gov't: Abdullah bin Nasser bin Khalifa Al Thani, PM
Next Election:

ECONOMY

(percent value)	2017	2018	2019
Real GDP growth rate	1.49%	0.07%	-4.35%
Real GDP per capita growth rate	-2.79%	1.17%	1.55%
Consumer Prices (change)	0.18%	-0.55%	-1.19%
Unemployment	N/A	N/A	N/A

World Bank Ease of Doing Business

2020: 77 of 190 (83 of 190 in 2018)

Transparency International Corruption Perceptions Index

2019: 30 of 180

Additional Trade Data 2019

Ranking as a U.S. export market: 37th largest (0.4% of US exports)

Ranking as a source of U.S. imports: 66th largest (0.07% of US imports)

Ranking in total U.S. trade: 50th largest (0.2% of US Trade)

Principal U.S. merchandise exports to Qatar in 2019:

Transportation Equipment (57.4%); Computer & Elec Product (9.5%); Elect Equipment, (9.5%); Machinery, exc. Elec 4.8%; Fab Metal (4.4%)

Principal U.S. merchandise imports from Qatar in 2019:

Petroleum & Coal (41.3%); Chemicals (26.5%); Primary Metal Mfg (24.5%)

* IMF estimates; † World Bank data; N/A Not available

ITA leads the Federal Government's efforts to support U.S. job creation through trade and investment. We help American companies export their products and services, fight for market access globally, monitor and enforce our trade agreements, administer our trade laws, and work with state and local economic development organizations to attract foreign investment. ITA is located in more than 100 U.S. cities and more than 70 countries worldwide. ITA provides on-the-ground assistance worldwide—just a phone call or email away.

ITA Staff at Post: 5
Senior Commercial Officer: Megan Schildgen, SCO

PTO Attache: Peter Mehravari (Kuwait)
Enforcement & Compliance Attache: N/A
BIS Attache: N/A

Partnership Posts: None

ITA Country Desk Officer: Arica Young
Office of Legislative & Intergovernmental Affairs: 202-462-3015

U.S. Department of Commerce

International Trade Administration

Status Reporting: Nonresponse Followup for the 2020 Decennial Census

Periodic Reporting: Release for August 24, 2020

Periodic Performance Management Reports

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Periodic Performance Management Reports

2020 Census: Nonresponse Followup At A Glance – August 24, 2020

General

Self-Response Rate: 64.4% **Total Housing Units Enumerated:** 76.5%

Nine states have met or exceeded their final 2010 Census Self-Response Rate:
Colorado, Idaho, Kentucky, Michigan, Nevada, Oregon, Utah, Virginia, Washington

Hurricanes/Tropical Storms: Landfall Estimated Tuesday night, August 25.
Estimated Impact to 5 states: Alabama, Florida, Louisiana, Mississippi, and Texas
Estimated Remaining NRFU Workload Impacted : 5,640,000

Iowa Derecho: 16 Counties in Iowa with an Emergency Declaration
Estimated Remaining NRFU Workload Impacted: 210,000

California Wildfires: 17 Counties Impacted
Estimated Remaining NRFU Workload Impacted: 511,000

Progress

Current Workload: : 61,753,345
Completed Cases: 25,409,978 (41.1%)
Planned Completed Cases: 19,455,348 (31.5%)
Remaining Workload: 36,343,367

83 ACOs have completed over 50% of their NRFU workload

Timing

- **Days in Operation:** 53
- **Days Elapsed:** 15
- **Days Remaining:** 38

Enumerator Productivity

- **Average Hours worked per week (8/13-8/19):** 20.6
- **Average Cases Completed Per Hour:** 2.49
- **Planned Cases Completed Per Hour:** 1.55

Staffing

- **Selections:** 983,942
- **Invited to Training:** 625,311
- **Enumerators Hired Since January 1, 2020:** 384,615
- **Completed Training:** 292,506
- **Currently in Training:** 72,087
- **Active:** 233,072
- **Expected Replacement Training:** 100,310

Calculated Staff Needs

- Remaining workload: 36,343,367 cases
- Remaining weeks: 5.4
- Average cases per week: 6,730,253
- Average cases per hour: 1.55
- Needed hours per week: 4,342,099
- Average enumerator hours per week: 19
- Required average enumerators 228,532 To complete by 9/30
- Required average enumerators 177,112 (assuming 2 cases/hour)

Contingency Budget

- **Contingency Available (as of 3/14/20):** \$2,030 M
- **Expected Contingency Uses for COVID-19:** \$1,106 M
- **Contingency Approvals (through 7/31):** \$934 M
- **Remaining Contingency: (through 7/31):** \$924 M
- **Uncommitted Remaining Contingency:** \$187 M

	Planned	Actual
Overtime	\$100M	\$0.7M
Enumerator Awards	\$300M	--
Other	\$302M	\$11.5M
Total	\$702M	\$12M

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress

Case Progress for Field Enumeration

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

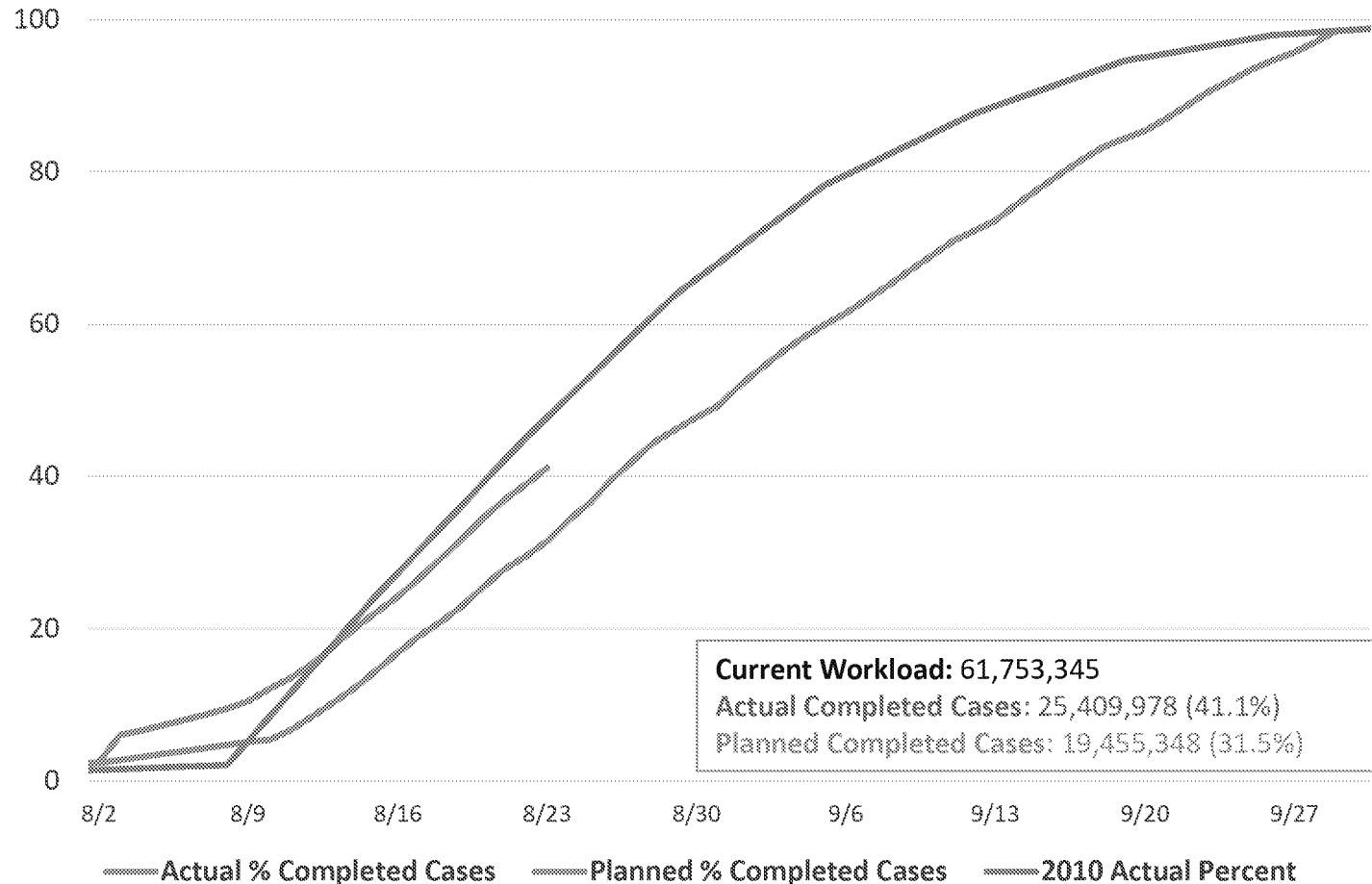
August 9, 2020

Completion Date:

September 30, 2020

Notes:

- Current workload reflects all case types.
- Data are charted beginning with soft launch.



Cases Completed by Telephone:

Pending

Cases Completed by Self-Response:

4,336,339 (17.1% of completed cases)

Remaining Workload:

36,343,367 cases

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress and Cost

Status:
● On Track

Data current as of:
August 24, 2020

Start Date:
August 9, 2020

Completion Date:
September 30, 2020

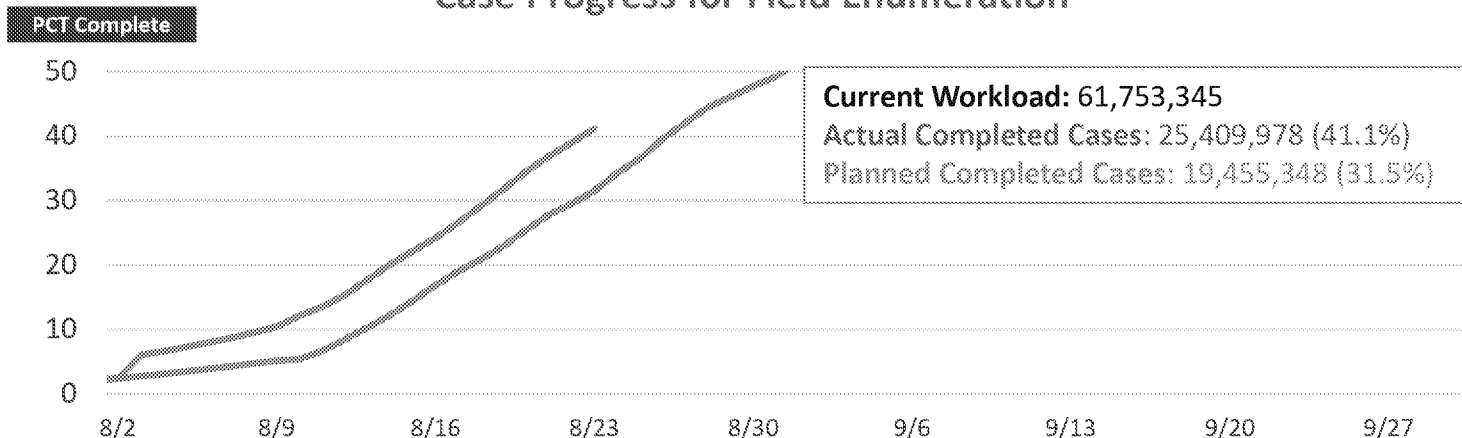
- Notes:
- Current workload reflects all case types. Costs include training and production costs for Enumerators and CFS.
 - Data are charted beginning with soft launch.

Cases Completed by Telephone:
Pending

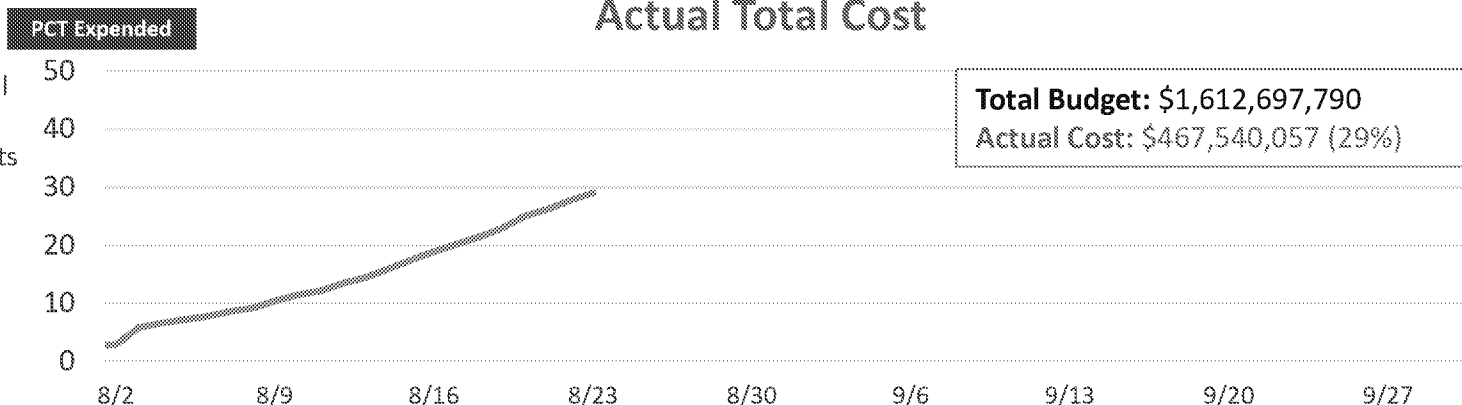
Cases Completed by Self-Response:
4,336,339 (17.1% of completed cases)

Remaining Workload:
36,343,367 cases

Case Progress for Field Enumeration



Actual Total Cost



Data as of 11:59 pm of the previous day

Source: MOJO Hermes

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Staffing

Status:

● On Track

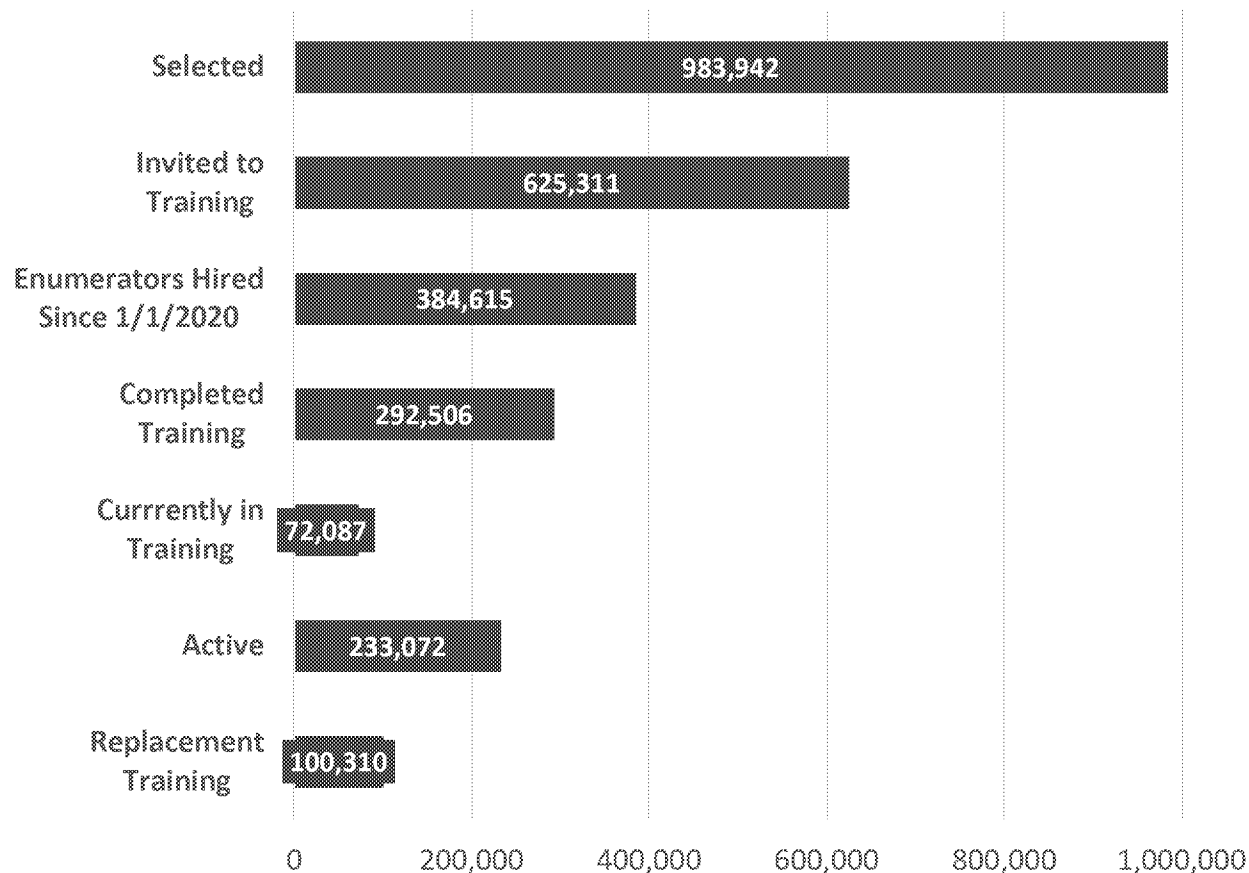
Data current as of:
August 24, 2020

Completion Date:
September 30, 2020

Notes:

- Enumerator Training No Show Rate: 38.5%
- Over the weekend of August 23, the Enumerator Training No Show Rate dropped to 16%.

Nonresponse Followup Onboarding Status



Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Productivity Curve

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

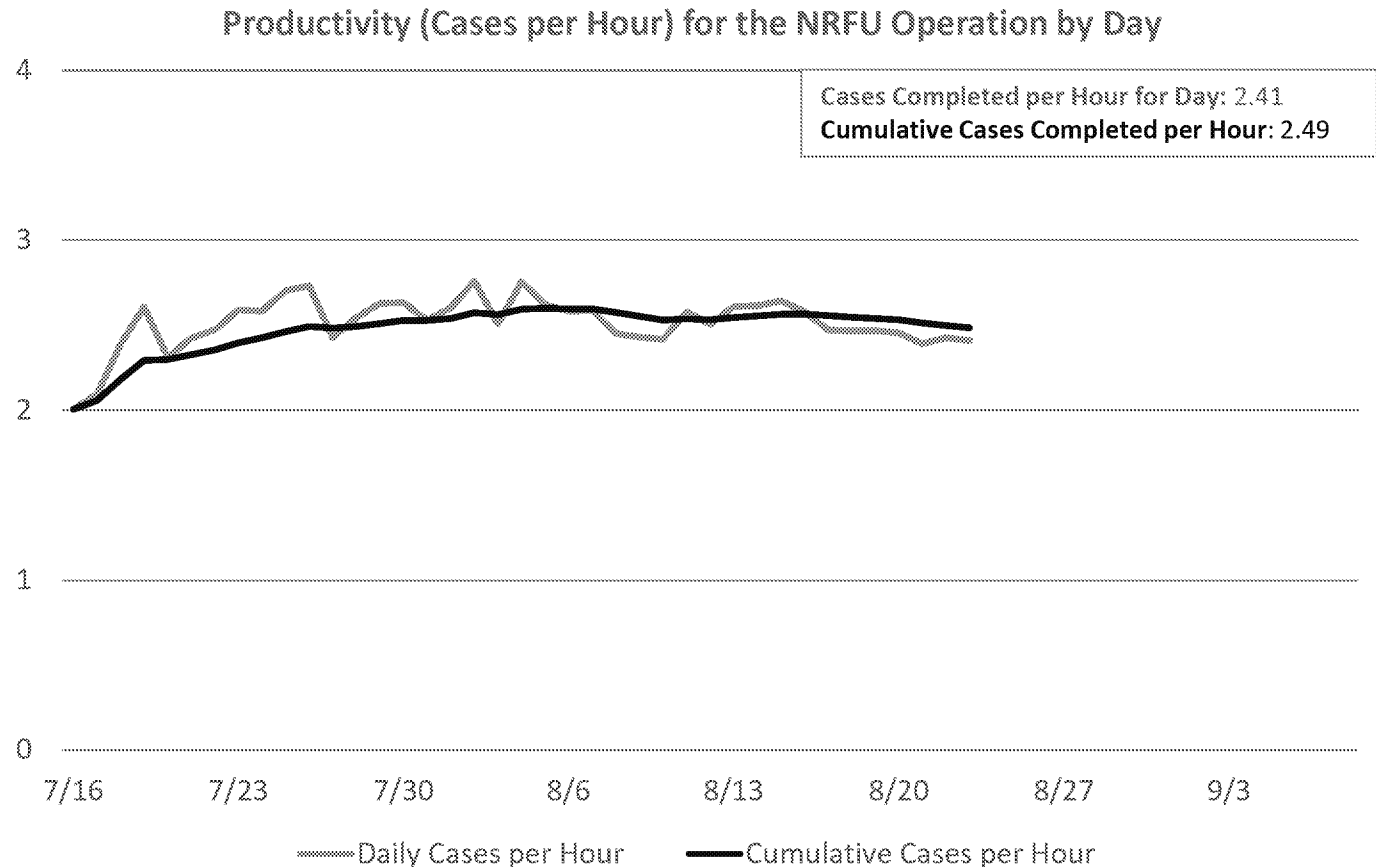
August 9, 2020

Completion Date:

September 30, 2020

Notes:

- Cases per hour include cases that were resolved by enumeration, administrative records, or self-response.
- Data are charted beginning with soft launch



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Work Hours

Status:

● On Track

Data current as of:

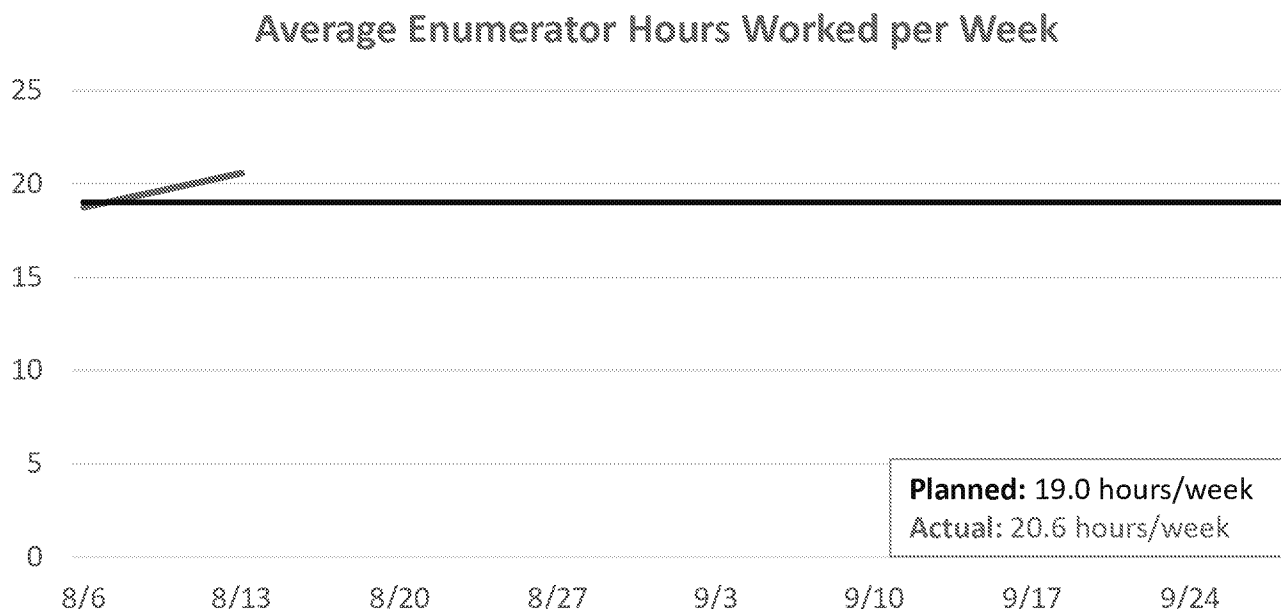
August 24, 2020

Completion Date:

September 30, 2020

Notes:

Preliminary Data - pending receipt of actual payroll data.



Percentage of Enumerators by Hours Worked

Week of	% of Enumerators that Worked < 19 Hours	% of Enumerators that Worked 19-24 Hours	% of Enumerators that Worked 25+ Hours
8/13-8/19	50.95%	15.61%	33.44%

Periodic Performance Management Reports

2020 Census: Housing Unit Enumeration Progress by State

Source: Census Data Lake, Unified Tracking System
Data Current as of: August 24, 2020

Note: Percentages may not sum due to rounding. A limited number of areas were part of the NRFU "soft launch" beginning July 16 and could have higher completion rates due to more time in the field. Percentages for the U.S. Total do not include housing units in Puerto Rico.

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Current Week	% HUs Enumerated Prior Week	Weekly Change
U.S. Total	64.4%	12.1%	76.5%	69.7%	6.8%
Alabama	61.5%	7.6%	69.1%	63.6%	5.5%
Alaska	52.2%	26.6%	78.8%	66.4%	12.4%
Arizona	60.8%	7.2%	68.1%	62.4%	5.7%
Arkansas	58.8%	16.5%	75.4%	64.7%	10.7%
California	66.4%	13.8%	80.2%	72.2%	8.0%
Colorado	67.8%	11.2%	79.0%	73.1%	5.9%
Connecticut	68.5%	16.9%	85.4%	78.0%	7.4%
Delaware	61.9%	11.2%	73.1%	66.2%	6.9%
District of Columbia	60.8%	13.0%	73.8%	66.1%	7.7%
Florida	61.1%	8.3%	69.4%	63.5%	5.9%
Georgia	59.8%	8.1%	67.9%	62.6%	5.3%
Hawaii	61.4%	22.4%	83.8%	74.9%	8.9%
Idaho	68.5%	25.5%	93.9%	88.8%	5.1%
Illinois	69.3%	14.8%	84.1%	78.2%	5.9%
Indiana	68.6%	15.9%	84.5%	77.2%	7.3%
Iowa	69.3%	4.3%	73.6%	69.6%	4.0%
Kansas	68.2%	18.3%	86.5%	80.2%	6.3%
Kentucky	66.7%	8.9%	75.6%	69.8%	5.8%
Louisiana	58.1%	13.3%	71.4%	65.4%	6.0%
Maine	56.6%	28.2%	84.8%	76.7%	8.1%
Maryland	68.8%	13.8%	82.6%	76.5%	6.1%
Massachusetts	66.7%	14.4%	81.1%	74.2%	6.9%
Michigan	69.6%	7.1%	76.7%	71.0%	5.7%
Minnesota	73.4%	9.8%	83.3%	76.9%	6.4%
Mississippi	58.6%	10.3%	68.9%	62.3%	6.6%

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Current Week	% HUs Enumerated Prior Week	Weekly Change
Missouri	64.2%	17.0%	81.2%	74.1%	7.1%
Montana	57.7%	10.2%	67.9%	61.7%	6.2%
Nebraska	69.9%	9.5%	79.4%	72.9%	6.5%
Nevada	63.5%	8.1%	71.6%	65.8%	5.8%
New Hampshire	64.3%	9.9%	74.2%	66.2%	8.0%
New Jersey	66.3%	9.5%	75.8%	69.4%	6.4%
New Mexico	54.9%	9.6%	64.5%	58.9%	5.6%
New York	60.3%	12.0%	72.3%	64.2%	8.1%
North Carolina	60.2%	8.5%	68.7%	62.6%	6.1%
North Dakota	63.5%	16.0%	79.5%	73.3%	6.2%
Ohio	68.5%	11.2%	79.7%	73.1%	6.6%
Oklahoma	58.8%	14.7%	73.5%	66.8%	6.7%
Oregon	67.2%	17.0%	84.2%	76.0%	8.2%
Pennsylvania	67.2%	13.0%	80.2%	73.9%	6.3%
Rhode Island	62.2%	12.8%	75.0%	66.3%	8.7%
South Carolina	58.2%	9.5%	67.7%	61.1%	6.6%
South Dakota	65.1%	9.6%	74.7%	67.9%	6.8%
Tennessee	63.7%	12.6%	76.2%	68.4%	7.8%
Texas	59.6%	12.1%	71.8%	64.2%	7.6%
Utah	68.7%	10.8%	79.5%	72.5%	7.0%
Vermont	58.1%	15.1%	73.1%	62.8%	10.3%
Virginia	69.0%	10.1%	79.1%	73.5%	5.6%
Washington	70.7%	16.7%	87.4%	80.9%	6.5%
West Virginia	55.4%	32.6%	88.1%	80.1%	8.0%
Wisconsin	70.7%	13.5%	84.2%	76.2%	8.0%
Wyoming	58.7%	12.9%	71.6%	63.4%	8.2%
Puerto Rico	31.4%	30.7%	62.1%	No Data	N/A

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Challenge Areas by State

Source: Field Division

Data Current as of: August 24, 2020

State	% of HUs that Self Responded	% of HUs Enumerated in NRFU	% of HUs Enumerated	Event/Issue	Contingency
Alabama	61.5%	7.6%	69.1%	Trop Storm – 800,000 NRFU cases, 5000 enumerators	Designated these areas for telephone contact.
Arizona	60.8%	7.2%	68.1%	Tribal – Ft Mojave and Havasupai reservations closed due to COVID	Partnership working to gain access.
California	66.4%	13.8%	80.2%	Wildfires – 511,000 NRFU Cases, 150 enumerators evacuated, 3 have lost homes Tribal – 6 reservations closed due to COVID	Designated these areas for telephone contact. Partnership working to gain access.
Florida	61.1%	8.3%	69.4%	Trop Storm – 1,100,000 NRFU cases, 5,700 enumerators Tribal – 3 reservations refuse to allow access	Designated these areas for telephone contact. Partnership working to gain access.
Iowa	69.3%	4.3%	73.6%	Derecho/Tornado – 210,000 NRFU cases, 1100 enumerators Tribal – Sac & Fox Reservation closed due to COVID	Bringing in staff from adjacent ACOs. Designated these areas for telephone contact. Partnership working to gain access.
Louisiana	58.1%	13.3%	71.4%	Trop Storm – 650,000 NRFU cases, 3,350 enumerators	Designated these areas for telephone contact.
Michigan	69.6%	7.1%	76.7%	Hiring – Goal – 6800. 5100 Active Enumerators, 2400 in Training Tribal – Huron Potawattami Reservation refusing to allow access	Partnership working to gain access.

Note: Percentages may not sum due to rounding

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Challenge Areas by State (continued)

Source: Field Division

Data Current as of: August 24, 2020

State	% of HUs that Self Responded	% of HUs Enumerated in NRFU	% of HUs Enumerated	Event/Issue	Contingency
Mississippi	58.6%	10.3%	68.9%	Trop Storm – 490,000 NRFU cases, 3500 enumerators	Designated these areas for telephone contact.
Nevada	63.5%	8.1%	71.6%	Tribal - 3 reservations closed due to COVID	Partnership working to gain access.
New Mexico	54.9%	9.6%	64.5%	Tribal – 4 reservations closed due to COVID	Partnership working to gain access.
Texas	59.6%	12.1%	71.8%	Trop Storm – 2,600,000 NRFU cases, 16,000 enumerators	Designated these areas for telephone contact.

Note: Percentages may not sum due to rounding

Tribal Areas that Refused Participation in the 2010 Census

Reservation	2010 Population	2020 NRFU Workload
Miccosukee Tribe of Indians of Florida	406	0 – All Update/Enumerate
Table Mountain Rancheria of California	64	18
Tonawanda Band of Seneca Indians of New York	517	242
Onondaga Nation of New York	468	632
Oneida Nation of New York	500 (est)	31
Tuscarora Nation of New York	1,152	475

2020 Census Bureau Fusion Center: Natural Disaster Situation Report (SITREP)

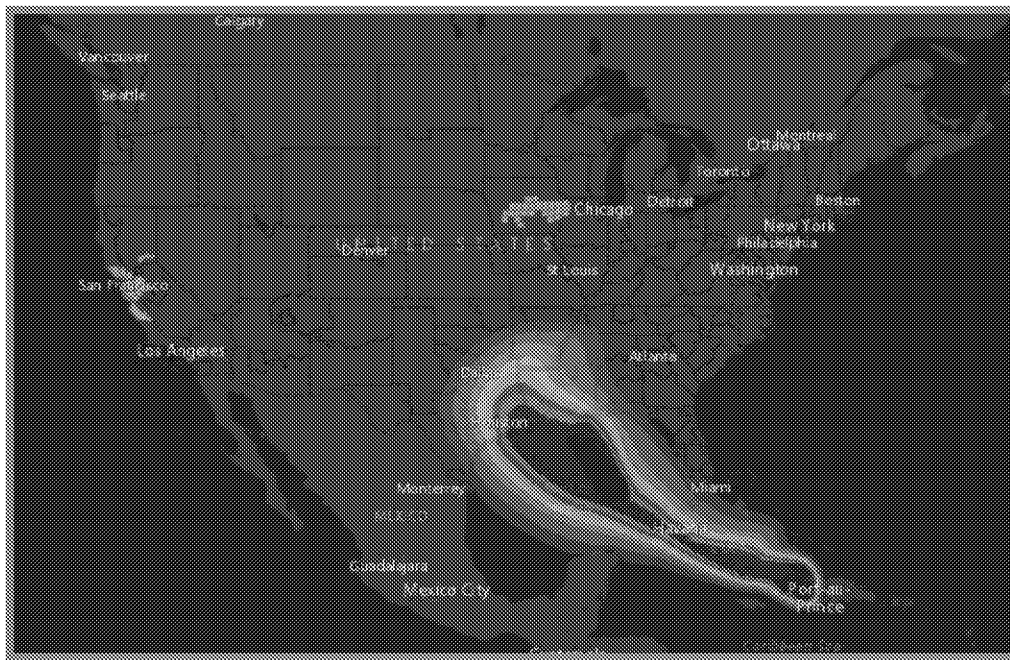
**Hurricane Marco & Tropical Storm Laura, Northern California Wild Fires,
Iowa Derecho**

August 23, 2020

Shape
your future
START HERE >

United States
Census
2020

Overview of Natural Disaster Impact on 2020 Census

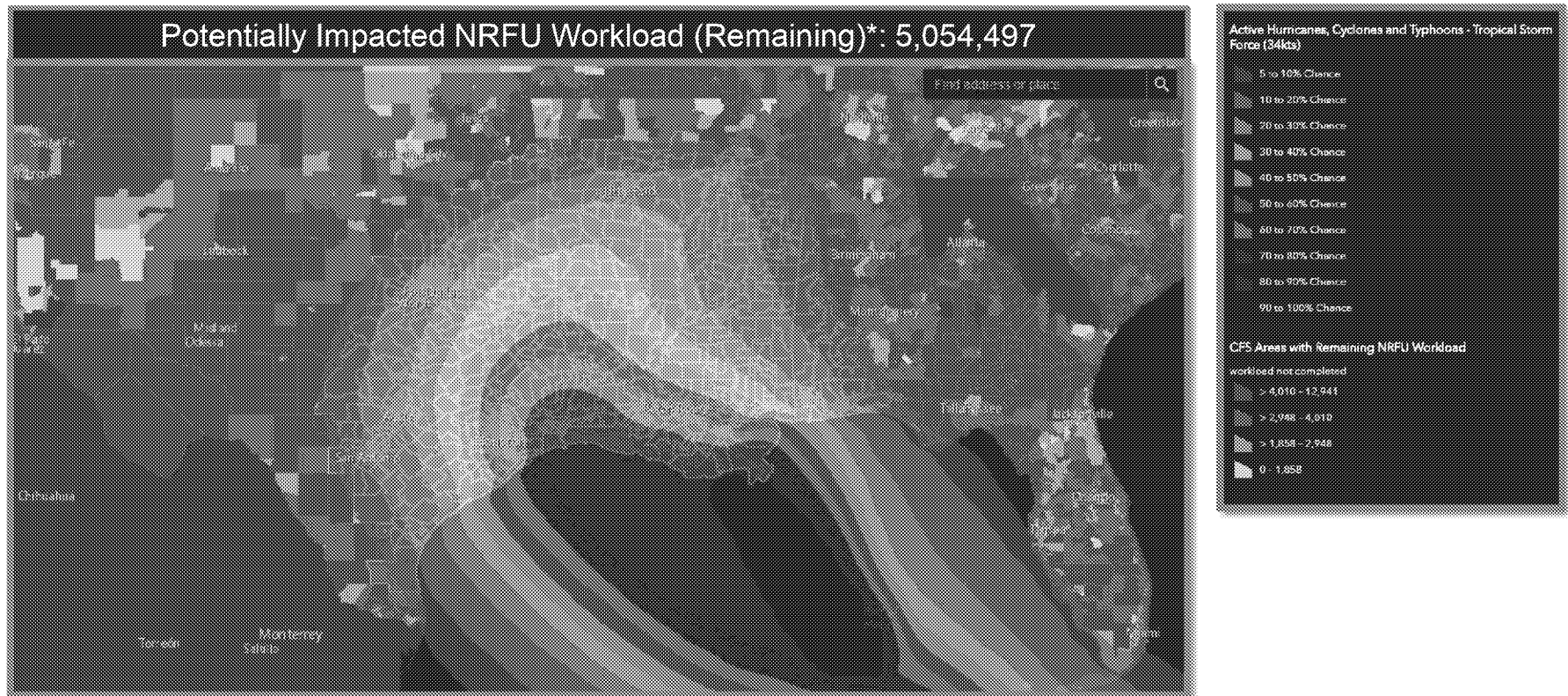


Total of Potentially Impacted NRFU Workload (Remaining)*: 5,773,441

Natural Disaster	Impacted Workload*
Hurricane Marco (Category 1) & Tropical Storm Laura	5,054,497
Lightning Complex and Northern California Wildfires	511,384
Iowa Derecho (August 10, 2020)	207,560

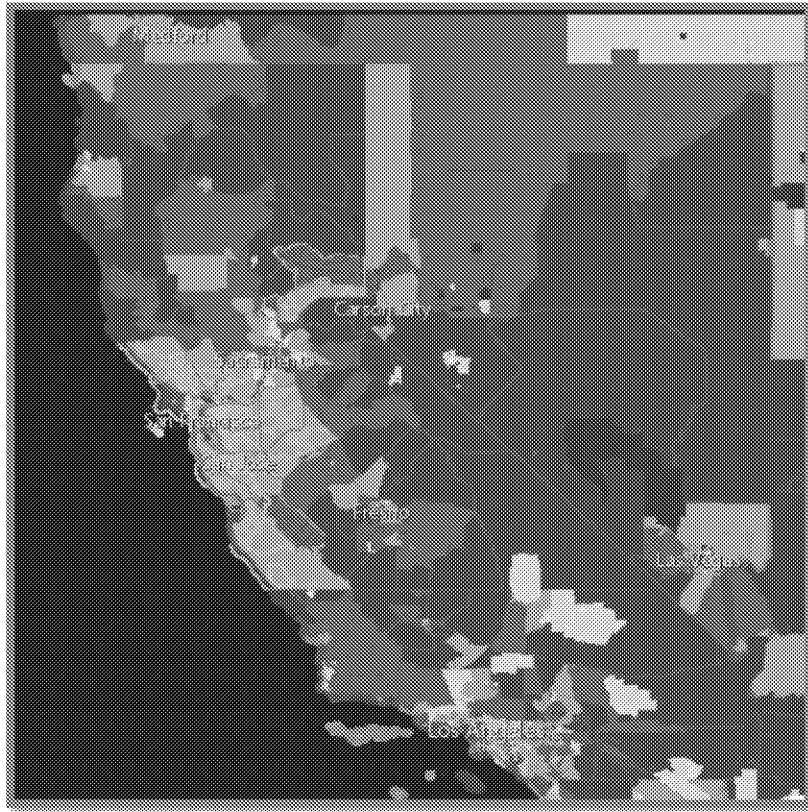
*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Hurricane Marco (Category 1) & Tropical Storm Laura



*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Lightning Complex and Northern California Wildfires



Potentially Impacted NRFU
Workload (Remaining)*: 511,384

California Counties Impacted by Wildfires

CFS Areas with Remaining NRFU Workload

workload not completed

> 4,010 - 12,941

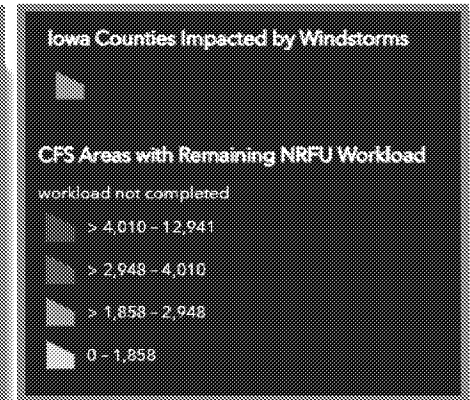
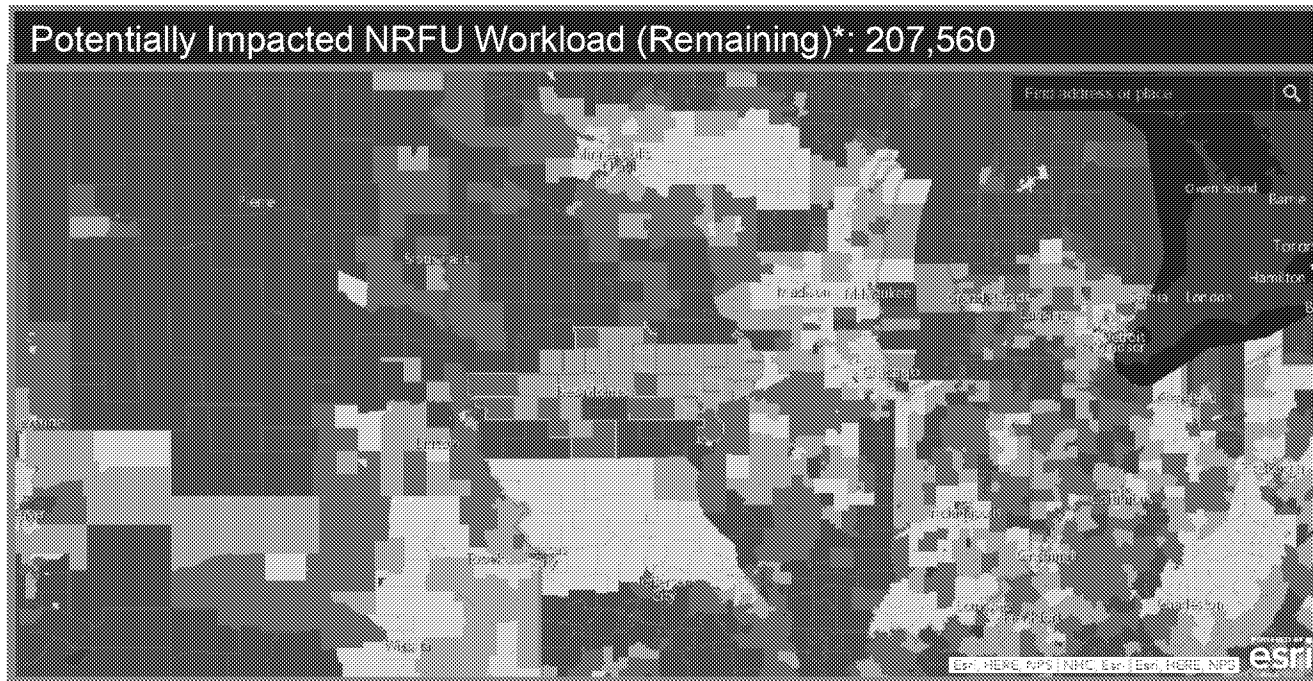
> 2,948 - 4,010

> 1,858 - 2,948

0 - 1,858

*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Iowa Derecho (August 10, 2020)



*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Budgetary Contingency Usage Status

Source: Decennial Budget Office

Data Current as of: August 20, 2020




Notional Contingency Waterfall for Estimated Revised NRFU		
(in millions of \$)		
	Plan (as of 7/31)	Actual to Date (8/20)
Contingency available on 3/14	\$2,030	\$2,030
<i>Risk Based Contingency</i>	<i>\$1,325</i>	<i>\$1,325</i>
<i>Secretarial Contingency</i>	<i>\$705</i>	<i>\$705</i>
Expected Contingency Uses for COVID-19	\$1,106	\$1,106
<i>Actual COVID related approvals</i>	<i>\$934</i>	<i>\$932</i>
<i>Remaining Potential COVID approvals</i>	<i>\$172</i>	<i>\$174</i>
Remaining Original Contingency	\$924	\$924
Additional contingency from estimated operational variance	\$70	\$70
Remaining Contingency before acceleration efforts	\$994	\$994
Potential Costs to Ensure Operational Continuity and Accelerate NRFU	\$702	\$12
<i>Additional Mailing and Advertising</i>	<i>\$50</i>	<i>\$11.5</i>
<i>Training of additional NRFU enumerators (previously approved)</i>	<i>\$64</i>	<i>--</i>
<i>Replacement training of 150k enumerators</i>	<i>\$165</i>	<i>--</i>
<i>Additional overtime for NRFU enumerators</i>	<i>\$100</i>	<i>\$0.7</i>
<i>Weekly enumerator award for exceeding 25 hrs/wk (Up to 5x)</i>	<i>\$150</i>	<i>--</i>
<i>Enumerator retention award for 3 weeks of acceptable work above 25 hrs/wk (Up to 2x)</i>	<i>\$150</i>	<i>--</i>
<i>CFS retention award for 3 weeks of acceptable work (Up to 2x)</i>	<i>\$23</i>	<i>--</i>
Allowance for up to 10% increase in production hours due to unknown factors	\$106	--
Remaining Contingency for Unknowns	\$187	--

Notes

- Actuals to Date represent approved purchases and incurred compensation expenses.
- Bonuses will begin accruing around September 3 due to payroll validation requirements.

Appendix

Periodic Performance Management Reports

Status	Report Title	Summary	Slide Number
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	20
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	21
	2020 Census: Self-Response of Housing Units by State		22
	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	23
	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 1,040. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 393,000. We have exceeded the 2010 Census numbers for both national and community partners.	24
	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts.	25
	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	26

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

March 12, 2020

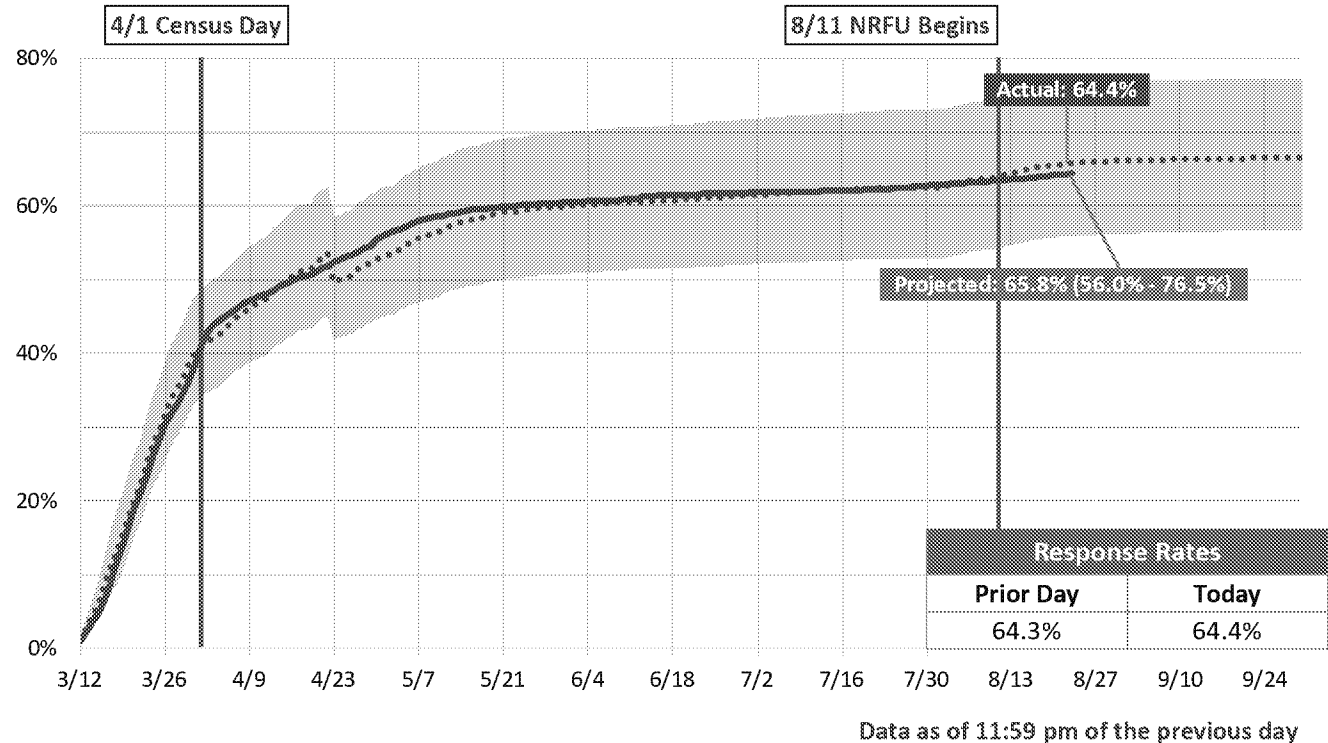
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



Legend

Actual Self-Response Rate	—————
Projected Self-Response Rate	*****
Lower & Upper Bound	—————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status:

○ Management Focus

Data current as of:

August 24, 2020

Start Date:

March 12, 2020

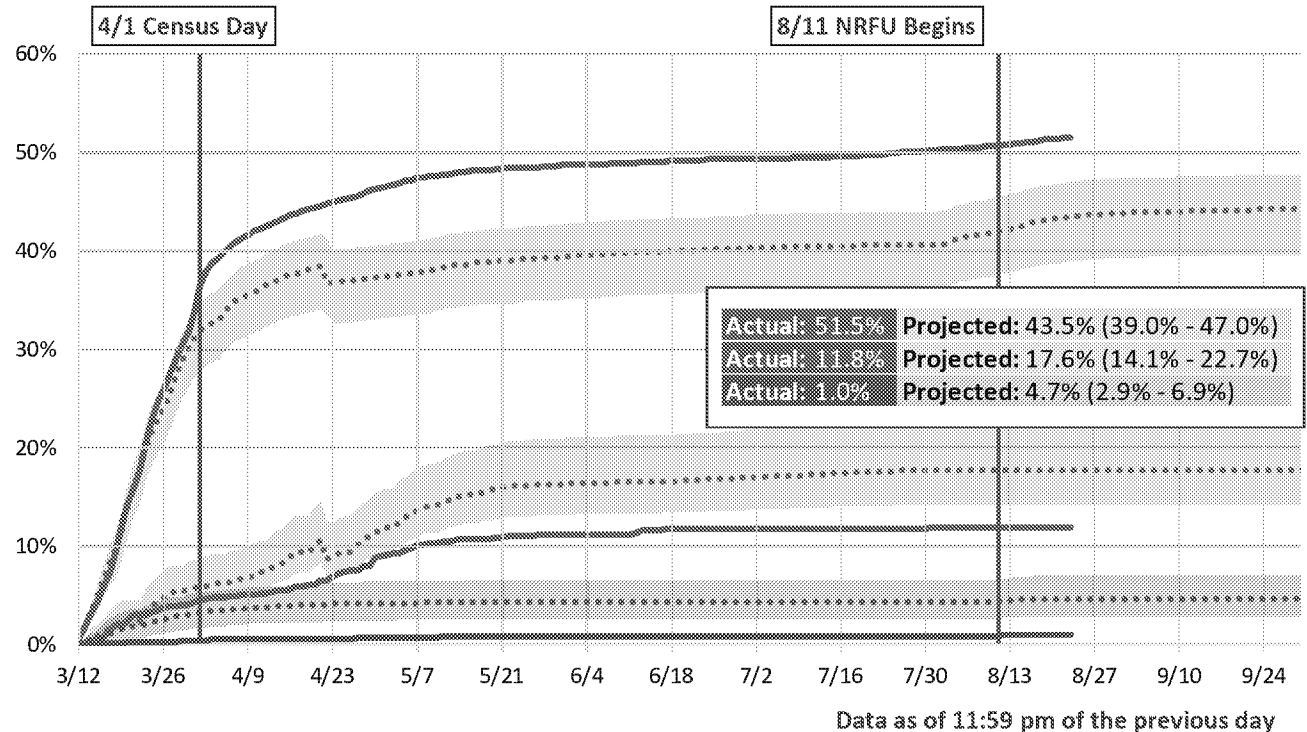
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	—————	—————	—————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound			

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division

Data Current as of: August 24, 2020

State	Actual	2010 Rate (Final)	2020 Rate (start of NRFU)	2010 Rate (start of NRFU)
U.S. Total	64.4%	66.5%	63.3%	63.5%
Minnesota	73.4%	74.1%	72.5%	71.6%
Wisconsin	70.7%	73.5%	69.7%	71.2%
Washington	70.7%	67.2%	69.1%	63.7%
Nebraska	69.9%	71.1%	69.0%	68.8%
Michigan	69.6%	67.7%	68.9%	65.4%
Iowa	69.3%	73.0%	68.9%	71.0%
Illinois	69.3%	70.5%	68.2%	67.7%
Virginia	69.0%	69.0%	68.0%	66.2%
Maryland	68.8%	69.5%	67.4%	66.5%
Utah	68.7%	68.6%	67.5%	65.4%
Indiana	68.6%	69.6%	67.5%	67.0%
Ohio	68.5%	69.0%	67.5%	66.2%
Idaho	68.5%	67.1%	67.8%	64.6%
Connecticut	68.5%	69.5%	67.1%	66.3%
Kansas	68.2%	70.0%	67.2%	67.4%
Colorado	67.8%	67.2%	66.6%	64.4%
Pennsylvania	67.2%	70.2%	66.3%	67.8%
Oregon	67.2%	66.9%	65.7%	63.9%
Massachusetts	66.7%	68.8%	65.4%	65.6%
Kentucky	66.7%	65.7%	66.0%	63.0%
California	66.4%	68.2%	64.6%	64.7%
New Jersey	66.3%	67.6%	65.2%	64.4%
South Dakota	65.1%	67.1%	64.4%	65.0%
New Hampshire	64.3%	64.4%	63.2%	61.5%
Missouri	64.2%	67.5%	63.4%	65.3%
Tennessee	63.7%	67.1%	62.5%	63.8%

State	Actual	2010 Rate (Final)	2020 Rate (start of NRFU)	2010 Rate (start of NRFU)
North Dakota	63.5%	68.8%	62.7%	66.8%
Nevada	63.5%	61.4%	62.4%	58.7%
Rhode Island	62.2%	65.7%	61.0%	62.8%
Delaware	61.9%	64.1%	60.8%	60.8%
Alabama	61.5%	62.5%	60.8%	59.5%
Hawaii	61.4%	64.1%	59.9%	60.7%
Florida	61.1%	63.0%	60.2%	59.6%
Arizona	60.8%	61.3%	59.9%	58.5%
District of Columbia	60.8%	66.0%	59.6%	62.2%
New York	60.3%	64.6%	59.0%	61.3%
North Carolina	60.2%	64.8%	59.3%	62.1%
Georgia	59.8%	62.5%	59.0%	59.5%
Texas	59.6%	64.4%	58.3%	60.3%
Arkansas	58.8%	62.3%	57.9%	59.5%
Oklahoma	58.8%	62.3%	57.9%	58.9%
Wyoming	58.7%	63.4%	57.6%	61.1%
Mississippi	58.6%	61.3%	58.0%	58.1%
South Carolina	58.2%	64.7%	57.4%	62.2%
Louisiana	58.1%	61.0%	57.3%	57.9%
Vermont	58.1%	60.3%	56.9%	58.1%
Montana	57.7%	64.6%	56.9%	62.3%
Maine	56.6%	57.4%	55.5%	55.3%
West Virginia	55.4%	59.1%	54.9%	56.8%
New Mexico	54.9%	60.0%	53.5%	56.9%
Alaska	52.2%	55.6%	49.9%	51.6%
Puerto Rico	31.4%	53.8%	28.7%	51.2%

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:

● On Track

Data current as of:

August 22, 2020

Completion Date:

September 30, 2020

Notes:

To date, 33,402 callers have requested the callback option. These callbacks have resulted in 12,302 completed interviews and 4,410 callers being provided assistance.

Total Inbound Call Volume % (PTD)

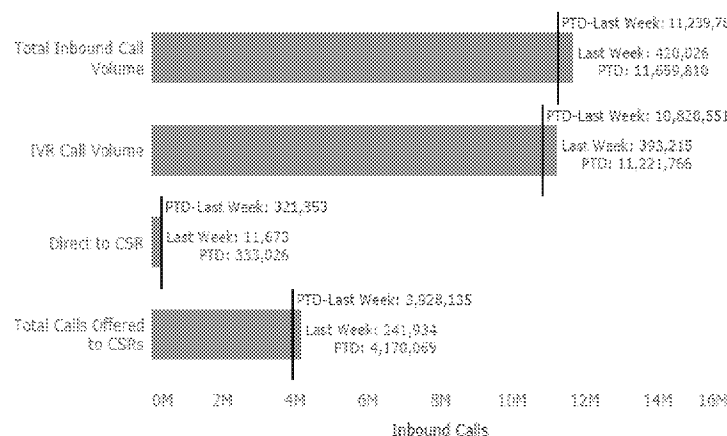


English	Spanish	TTY	Vietnamese	Chinese Mandarin	All Other
87.2%	10.9%	0.9%	0.2%	0.1%	0.7%

Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	11,100,665	11,659,810
Deflection Rate	47.0%	64.3%
Service Level - 30 Seconds	80.0%	68.0%
Average Handle Time	9:04	9:26

Inbound Call Volume



Calls Offered to CSRs by Language

	8/9 - 8/15	8/16 - 8/22	PTD	PTD %
English	164,287	222,948	3,695,185	88.6%
English Puerto Rico	240	181	3,170	0.1%
Spanish	8,950	12,073	310,886	7.5%
Spanish Puerto Rico	3,686	3,243	43,075	1.0%
Chinese Mandarin	400	534	11,805	0.3%
Chinese Cantonese	274	318	10,089	0.2%
Vietnamese	137	169	13,315	0.3%
Korean	285	283	13,244	0.3%
Russian	141	171	7,002	0.2%
Arabic	53	88	4,202	0.1%
Tagalog	31	20	2,692	0.1%
Polish	45	53	2,509	0.1%
French	14	23	1,213	0.0%
Haitian Creole	46	73	2,690	0.1%
Portuguese	38	63	1,903	0.0%
Japanese	40	39	2,329	0.1%
TTY	1,112	1,590	39,866	1.0%
Group Quarters	82	65	4,894	0.1%
Total	179,861	241,934	4,170,069	100.0%

Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:

● On Track

Data current as of:

August 20, 2020

Completion Date:

March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	384	71,379
Business	139	91,407
Chamber of Commerce/Trade or Professional Association	113	10,559
Education	103	83,552
Government	89	71,296
Faith-Based Organizations	66	40,319
Media	49	8,403
Healthcare	48	14,904
Technology	33	326
International Governmental/ Consulate/ Embassy	16	329
Grand Total	1,040	393,474

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	447	233,457
Black/African American	97	17,715
Young Children	90	5,842
Hispanic/Latino	85	25,668
Rural	80	13,935
Asian	79	10,141
Native Hawaiian Pacific Islander	48	674
Veterans	41	3,263
Young and Mobile	40	7,335
LGBTQ	24	1,276
Individuals with Disabilities	24	3,156
Elderly	24	8,789
Persons Experiencing Homelessness and Highly Mobile	22	5,440
American Indian/ Alaskan Native	19	3,548
MENA	15	80

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

Cumulative Completed Partnership Events: 439,379

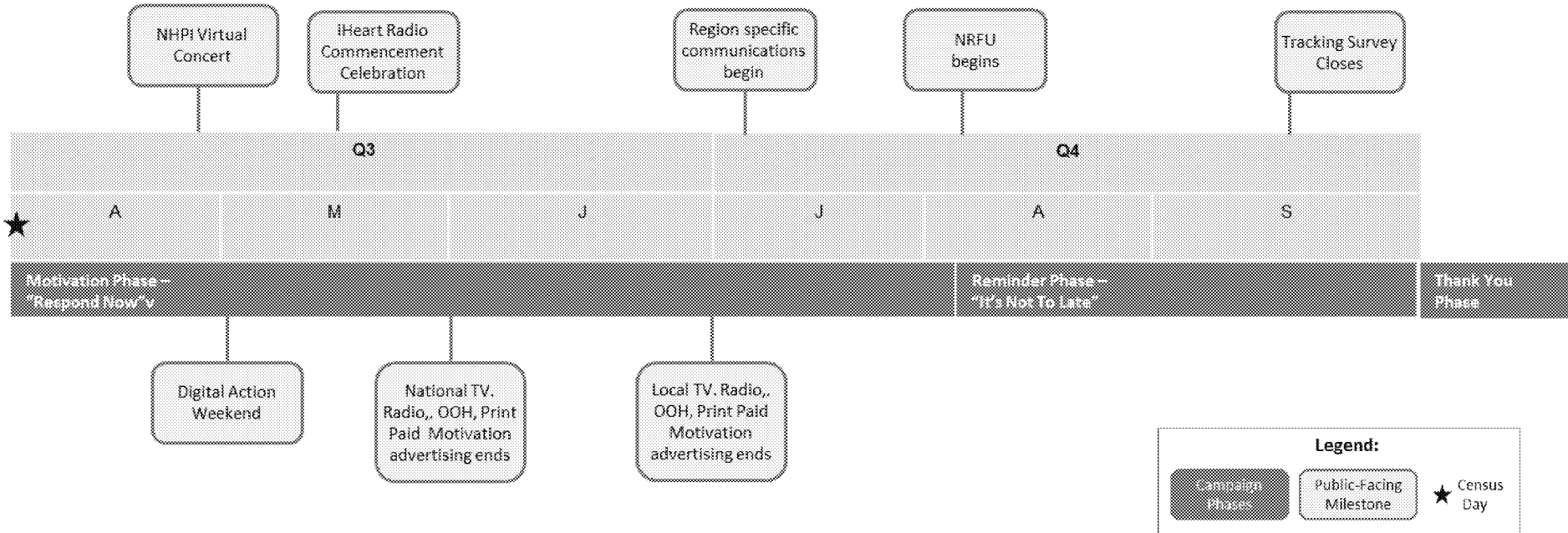
Partnership Events Completed 8/13-8/19: 6,331

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication

Data Current as of: August 19, 2020



Significant Accomplishments

- The New Audience Creative went live on 8/17.
- The Roland Martin Unfiltered (RMU) Activation for the Black/African American (B/AA) audience began on 8/17.
- The Jewish Federations of North America held a 2020 Census Webinar on 8/18.
- The Wonderama House Party (At Home Concert Series) for Los Angeles was held on 8/21.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: July 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 7/31/2020

\$ Amounts in Millions	IT	Non-IT	Total
Total Planned through July	\$1,728	\$5,155	\$6,883
Available contingency and additional appropriations through July	\$248	\$1,432	\$1,680
Planned Programmatic through July	\$1,480	\$3,723	\$5,203
Total Actual Commitments and Obligations through July	\$1,653	\$2,390	\$4,043
Unplanned commitments/obligations through July related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)	\$260	\$300	\$560
Actual Programmatic Commitments and Obligations through July	\$1,393	\$2,090	\$3,483
Total Plan Variance (\$/%)	\$75 (4.3%)	\$2,765 (53.6%)	\$2,840 (41.3%)
Remaining contingency and additional appropriations planned through July	(\$12)	\$1,132	\$1,120
Delayed Field Operation Spending through July	\$0	\$1,690	\$1,690
Non-Field Operational Programmatic Variance through July	\$87	(\$57)	\$30

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of available contingency funding. The total variance for the resources planned to be available through July is \$2.840 billion, or 41 percent. Below outlines the breakdown of the total variance:

- The positive variance through July against the original plan in 2020 Census IT systems and operations is \$75 million, or 4 percent. The positive variance is the result of relatively routine minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, partially offset by \$12 million in IT contingency used as the result of adjusted 2020 Census operations due to COVID-19 beyond the IT contingency estimate.
- The positive variance through July against the original plan in 2020 Census non-IT operations is \$2.765 billion, or 54 percent. This variance consists of \$1.690 billion delayed spending in the field operations as a result of schedule adjustments, and \$1.132 billion representing a portion of available contingency and additional appropriations that has not yet needed to be obligated. This variance is partially offset by a -\$57 million non-Field variance, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While unused contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions have been made to use risk-based contingency funds to support \$560 million in unplanned obligations or commitments through July as the result of the operational adjustments. The funds used to date include funding field staff salaries during to the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response, extending the communication efforts in the motivation and NRFU planning phases, purchases of personal protection equipment, and additional costs for the Fingerprint and CQA Contracts as the result of the operational timing adjustments.



UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, DC 20230

August 22, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

FROM: Cordell A. Hull
Acting Under Secretary for Industry and Security

RE: Export Administration Review Board Meeting – **b(5) - DP**
b(5) - DP; b(4) – Monday, August 24, 2020, from 5:00 PM to 5:30 PM

b(5) - DP; b(4)

BACKGROUND

b(5) - DP

Prepared by: Matthew S. Borman, Deputy Assistant Secretary for Export Administration,
Bureau of Industry and Security, contact information (202) 482-5711.

Attachments:

b(5) - DP

EXECUTIVE SECRETARIAT CLEARANCE:

Executive Secretariat

Date



UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, DC 20230

b(5) - DP; b(4)

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9
CUI/SP-EXPT

Business Confidential Information Protected from Disclosure under Section 1761(h) of the Export
Control Reform Act

BC-DOC-0000027231

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UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, DC 20230

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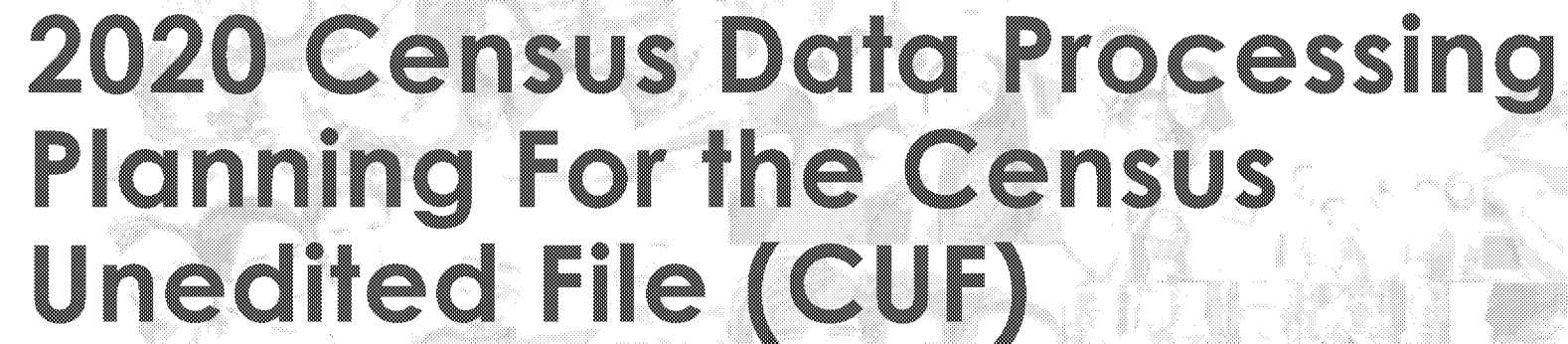
UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, DC 20230

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b(5) - DP; b(3); b(4)



2020 Census Data Processing Planning For the Census Unedited File (CUF)

8/24/2020

U//FOUO

Unclassified/ For Official Use Only

Shape
your future
START HERE >

United States[®]
Census
2020

Overview

- This is a viable plan to deliver the final Census Unedited File (CUF) by 12/14/2020
- It cuts a four-month process down to two and a half months
- It optimizes staff and computing resources to be in operation 24/7, weekends and holidays
- It streamlines and limits processes to focus only on Apportionment, separating and deferring redistricting processing
- We have identified any process that could start earlier, run in parallel, or be eliminated

Risks

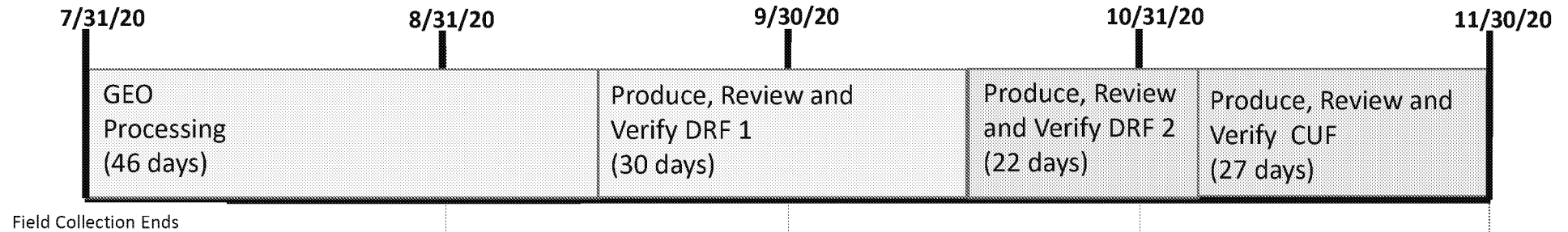
- This plan is contingent on field operations ending 9/30/2020, and depends on a reasonably smooth sequence of processing events
- The increased speed and reduced review time required in this plan and potential errors present risk to data accuracy
- If processing risks are realized, they will require decisions that weigh data accuracy and U.S. Census Bureau reputation against schedule delays

Bottom Line

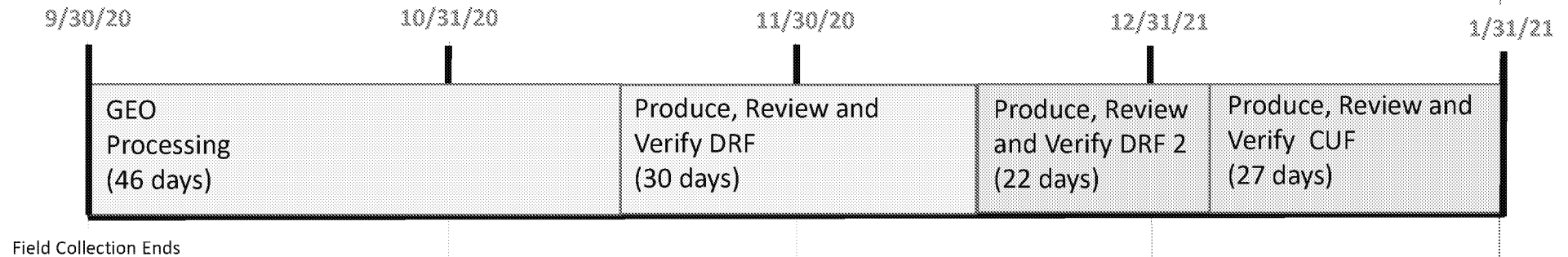
- By closely managing both the process and the risks, our intention continues to be to deliver an accurate, defensible 2020 Census count in compliance with statutory deadlines and the Presidential Memorandum

Re-Planning for 2020 Census Post Processing

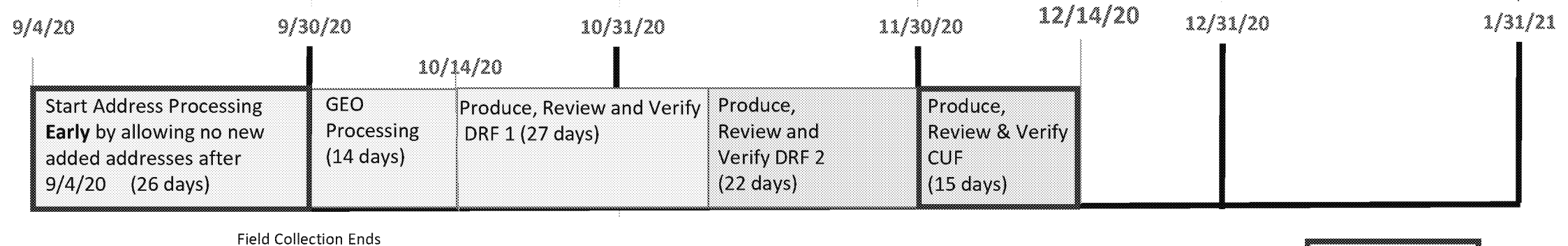
Original Plan (Before COVID 19)



Original Schedule with 9/30 as the end of Field Data Collection (notional)



Current Plan



Unclassified/ For Official Use Only

Most significant Plan changes

Geographic Processing Plan

Confidence that decades of work by the Census Bureau and our Partners have produced the most accurate and complete geographic foundation underpins this plan. Nearly 152 million addresses were included in the 2020 Census enumeration universe. Building the foundation requires human capital, computing power, and adequate time.

We have streamlined, rescheduled, and eliminated processing activities to meet the 12/14/2020 CUF delivery deadline

- No new addresses accepted from data collection operations after 9/4/2020
 - Any new addresses identified between then and 9/30/2020, the last day of data collection operations, and the population associated with those addresses **will not be included in the 2020 Census**
- We have significantly reduced the period of time to update the MAF with new addresses (102 to 29 days)
 - Due to the operational schedule changes, MAF updating for the majority of operations has converged in September (e.g., Remote Alaska, Update Enumerate, NRFU, Non-ID)
- The benchmarking process is shortened from 33 to 20 days, eliminating 13 days worth of processing activities that will be cut now and deferred until the creation of the redistricting data products
- We have cancelled the internal independent review of the final list of addresses that will be used to tabulate 2020 Census data (MAF Extract)
- We are eliminating quality control steps that traditionally resulted in a nationwide delivery of all files at once. Instead states will now be delivered on a flow basis.

Optimized Systems and Staff Resources

- **Improved Decennial Response Processing System (DRPS) Performance in Preparation for 2020 Census Processing**

Upgraded Oracle Real Application Clusters (RAC) to Oracle Exadata environment. Exadata is a high-performing pre-configured combination of hardware and software the provides infrastructure for Oracle databases.

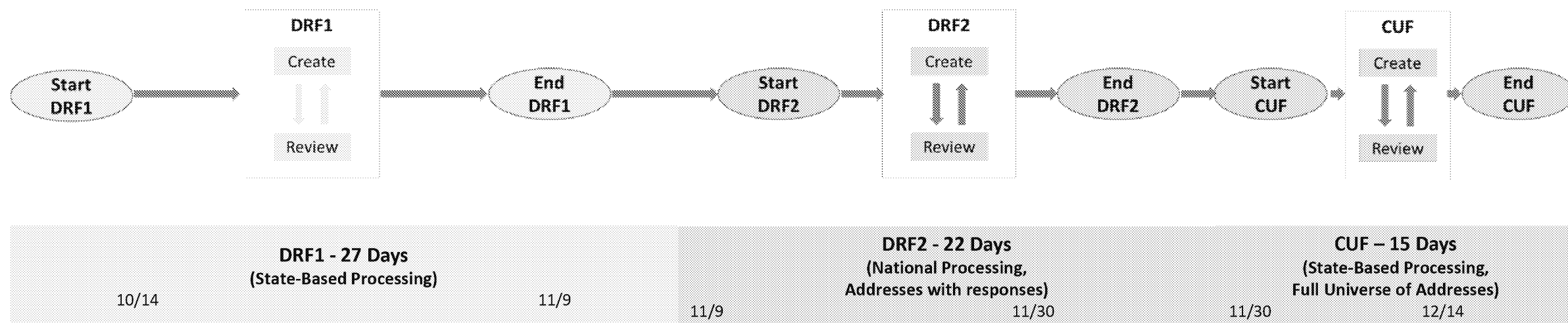
- Infrastructure Platform Optimized for Oracle Databases
- Actively optimizing DRPS processing through monitoring large test executions and consultation with Oracle
- Adjusted code base to address bottlenecks

- **Optimized role assignments to ensure maximum staff resource usage during this shortened production period**

	DRF1 (Decennial Response File 1)	DRF2 (Decennial Response File 2)	CUF (Census Unedited File)
Pre-Covid	Sept 15 – Oct 14, 2020	Oct 14 – Nov 4, 2020	Nov 4 – 30, 2020
Original Schedule with 9/30 as the end of Field Data Collection (notional)	Nov 15 – Dec 14, 2020	Dec 14, 2020 – Jan 4, 2021	Jan 4 - Jan 31, 2021
Current Plan	Oct 14 – Nov 9, 2020	Nov 9 – Nov 30, 2020	Nov 30 – Dec 14, 2020
Schedule Savings from Pre-Covid	3 Days	0 Days	12 Days

Decennial Response Processing and Review

Once geographic processing is complete, we have the frame that will serve as the collection geography for 2020 Census response processing. The process to deliver the Census Unedited File is heavily interactive with multiple concurrent cycles of data creation and review.



Decennial Response File 1 (DRF1) Plan

Produce the Decennial Response File 1 (DRF1) – 27 days

- Integrate final collection geography data with the response data for state-based processing
- Standardize data collection modes data (phone, internet, paper and Non Response Follow Up), incorporating high-quality administrative records data as the response data for housing units that do not have an enumeration.
- Classify living quarters as Housing Units or Group Quarters
- Identify unique persons within an individual response
- Incorporate results from NRFU re-interview and electronic records from group quarters
- Standardize demographic data for person matching
- Remove responses from collection universe depending on residence criteria
- Perform baby delete criteria – flags person records for deletion for babies confirmed to be born after 4/1
- Assign IDs to non-ID cases
- Collate multiple sheet large HU paper responses

Decennial Response File 2 (DRF2) and Census Unedited File (CUF) Plan

Produce Decennial Response File 2 (DRF2) – 22 days

- Remove responses that meet criteria for being born after Census Day
- Execute Primary Selection Algorithm (PSA) - This resolves situations where we have more than one response for a single address and two or more responses (possibly in different states) for the same household
- Review and verify PSA results
- Process DRF2 at the national level

Produce the Census Unedited File (CUF) – 15 days

- Determine the status for every housing unit as occupied, vacant or non-existent
- Identify the universe of data to include in the Census from the Sample Delivery File (SDF) and DRF2 and apply the Count Imputation (CI) operation to fill in the missing housing unit status and the missing household size
- Determine final population count for each address
- Review the population totals and their reasonableness
- Review and verify the data processing steps and products

Early and Ongoing Review to Enhance and Accelerate Final Data Review

New Subject Matter Expert (SME) Review Improvements

- Implemented increased analysis of real time response data to look for trends in data collection and shifting demographics. This helps to offset downstream review and processing risks
- Review of the DRF1 will occur to identify potential issues earlier; in 2010, SME review started with the DRF2
- The focus of the DRF1-CUF review will be on total population counts for apportionment; a separate team of analysts will be compiled to support the additional review of population totals
- An automated issue tracking system and a streamlined communication plan will allow for quicker decision making about identified issues and provide additional information to senior leadership

Other SME Review Methods to Accelerate Data Review

- Use of SME-developed and tested SAS review programs to automate data collection and data processing review
- The most in-depth demographic reasonableness review will be conducted on the first five to ten states produced by DRPS, with later states undergoing more cursory review checks
- Creation of the DRF1 and CUF will operate concurrently with SME Reviews

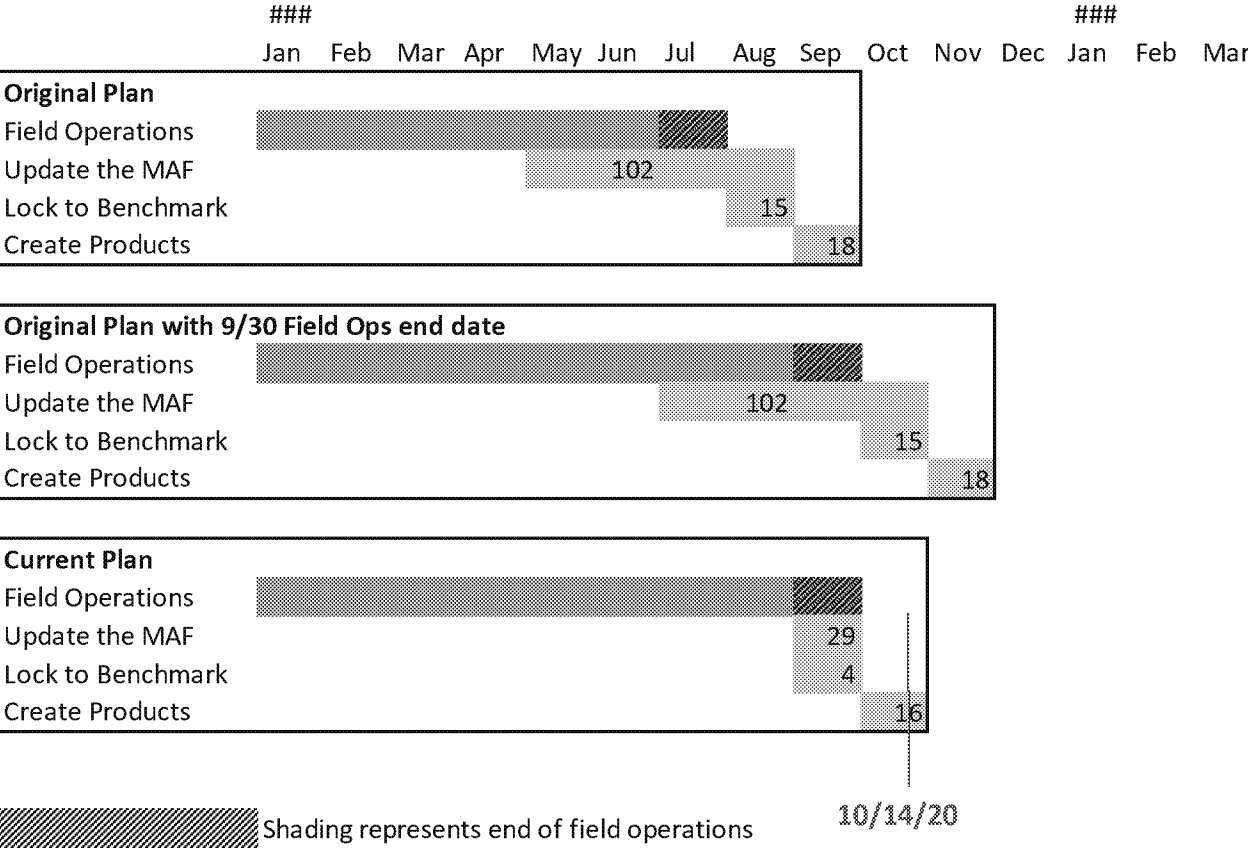
Appendix

Background on Risks

- If we do not complete all field data collection by 9/30/2020, this schedule may not be viable
- The schedule modifications in this plan have limited the ability to recover from a late start, processing delays, or other critical issues
- The risk of delays in processing is real, based on previous Census experience
 - As with every past Census, data anomalies will be detected during processing or review
 - Fixes may require individual states or all states to be re-processed.
 - State, multi-state, and national re-processing has been required in all recent censuses
 - We will not know the full extent of anomalies until we process the entire universe.
- Again, by closely managing both the process and the risks, our intention continues to be to produce an accurate, defensible 2020 Census count in compliance with statutory deadlines and the Presidential Memorandum

Additional Detail on GEO Processing

GEO Processing to meet 12/14/2020 CUF Delivery



Detailed Processing Steps

Activity ID	Activity Name	Calendar	OD	Start	Finish	Var- Start	Var- Finish
20ISR-12170	Conduct Internet Self-Response (ISR) Data Collection	3. 7 Day Federal Holiday thru 2023	230d	12-Mar-20	31-Oct-20	0d	0d
20NID-11020	Conduct Non-ID Clerical Process Operation	3. 7 Day Federal Holiday thru 2023	230d	12-Mar-20	31-Oct-20	0d	0d
20SQO-10500	Conduct Self-Response Quality Assurance	3. 7 Day Federal Holiday thru 2023	230d	12-Mar-20	31-Oct-20	0d	0d
20CQA-10830	Conduct Census Questionnaire Assistance (CQA) Inbound Operation	4. 7 Day No Holidays thru 2023	234d	12-Mar-20	31-Oct-20	0d	0d
20CQA-10840	Conduct Census Questionnaire Assistance (CQA) Outbound Operation	4. 7 Day No Holidays thru 2023	193d	22-Apr-20	31-Oct-20	0d	0d
20CIO-12520	Monitor CQA Outbound CI Telephone Operation	3. 7 Day Federal Holiday thru 2023	187d	24-Apr-20	31-Oct-20	0d	0d
20NRD-31520	Conduct NRFU Reinterview Field Data Collection	3. 7 Day Federal Holiday thru 2023	79d	12-Aug-20	31-Oct-20	0d	0d
20IPC-11080	Conduct 2020 Reminder Phase	4. 7 Day No Holidays thru 2023	79d	14-Aug-20	31-Oct-20	0d	0d
20MTS-22260	Create MAF/TIGER Benchmark for Final Collection Products and Services	3. 7 Day Federal Holiday thru 2023	22d	13-Nov-20*	5-Dec-20	0d	1d
20MTS-20400	Create MAF Extract for Final Collection - MAF/TIGER	3. 7 Day Federal Holiday thru 2023	9d	6-Dec-20	14-Dec-20	1d	1d
20MTS-20410	QC MAF Extract for Final Collection - MAF/TIGER	3. 7 Day Federal Holiday thru 2023	9d	7-Dec-20	15-Dec-20	1d	1d
20MTS-20390	Deliver MAF Extract & Header File to DITD/CarDS for Final Collection - MAF/TIGER	3. 7 Day Federal Holiday thru 2023	2d	16-Dec-20	17-Dec-20	1d	3d
20CAR-50950	DITD/CarDS Receive MAF Extract from MAF/TIGER for Final SDF (Coll)	1. 5 Day Federal Holiday thru 2023	0d	18-Dec-20		1d	1d
20CAR-50980	CarDS Ingests MAF Extract from MAF/TIGER for Final SDF (Coll)	4. 7 Day No Holidays thru 2023	2d	18-Dec-20	19-Dec-20	3d	3d
20CAR-51060	CarDS Creates and Review Final SDF (Coll)	4. 7 Day No Holidays thru 2023	4d	20-Dec-20	23-Dec-20	3d	6d
20CAR-51100	CarDS Delivers Final SDF (Coll) to DRPS	4. 7 Day No Holidays thru 2023	0d		23-Dec-20	6d	6d
20DRP-90590	DRPS Receives and Ingests Final Collection SDF from CarDS	4. 7 Day No Holidays thru 2023	3d	24-Dec-20	26-Dec-20	6d	9d
20DRP-90580	Create Initial Decennial Response File (PCDI/DRF1) - DRPS	1. 5 Day Federal Holiday thru 2023	12d	28-Dec-20	13-Jan-21	5d	5d
20DRP-11590	Deliver Initial Decennial Response File (PCDI/DRF1) to RPO/DSSD - DRPS	1. 5 Day Federal Holiday thru 2023	13d	30-Dec-20	19-Jan-21	5d	5d
20DRP-11600	Receive Approval of Decennial Response File (PCDI/DRF1) from RPO/DSSD - DRPS	1. 5 Day Federal Holiday thru 2023	1d	19-Jan-21	19-Jan-21	5d	5d
20DRP-90750	Create Initial Decennial Response File (PSA/DRF2) - DRPS	1. 5 Day Federal Holiday thru 2023	6d	19-Jan-21	26-Jan-21	5d	5d
20DRP-18430	Deliver Initial Decennial Response File (PSA/DRF2) to RPO/DSSD - DRPS	1. 5 Day Federal Holiday thru 2023	1d	26-Jan-21	26-Jan-21	5d	5d
20RPO-11250	Receive Primary Selection Algorithm File (PSA) (Final PSA/DRF2) from DRPS	1. 5 Day Federal Holiday thru 2023	1d	26-Jan-21	26-Jan-21	5d	5d
20RPO-11260	Perform SME Review of Primary Selection Algorithm File (Final PSA/DRF2)	1. 5 Day Federal Holiday thru 2023	11d	26-Jan-21	9-Feb-21	5d	5d
20DRP-18440	Receive Approval of Decennial Response File (PSA/DRF2) from RPO/DSSD - DRPS	1. 5 Day Federal Holiday thru 2023	1d	9-Feb-21	9-Feb-21	5d	5d
20DRP-90610	Create Initial Census Unedited File (CUF) - DRPS	1. 5 Day Federal Holiday thru 2023	17d	9-Feb-21	4-Mar-21	5d	5d
20RPO-11270	Provide Results and Approval of Primary Selection Algorithm File (Final PSA/DRF2) to DRPS	1. 5 Day Federal Holiday thru 2023	0d		9-Feb-21	5d	5d
20DRP-18460	Deliver Initial Census Unedited File (CUF) to RPO/POP - DRPS	1. 5 Day Federal Holiday thru 2023	15d	11-Feb-21	4-Mar-21	5d	5d
20DRP-18470	Receive Approval of Census Unedited File (CUF) from RPO/POP - DRPS	1. 5 Day Federal Holiday thru 2023	1d	4-Mar-21	4-Mar-21	5d	5d
20DRP-18480	Deliver Final Census Unedited File (CUF) to POP / CDL - DRPS	1. 5 Day Federal Holiday thru 2023	0d		4-Mar-21	5d	5d
20DPD-10730	POP Receives Final CUF from CDL/DRPS	1. 5 Day Federal Holiday thru 2023	0d	5-Mar-21		5d	5d
20PMD-16890	-----Executive Review and Approve CUF-----	4. 7 Day No Holidays thru 2023	30d	5-Mar-21	3-Apr-21	7d	-2d
20DPD-10740	POP Creates/Verifies Apportionment Tables	1. 5 Day Federal Holiday thru 2023	16d	5-Apr-21	26-Apr-21	-1d	0d
20DPD-10750	POP Delivers Final Apportionment Tables to BOC DIR and CQAS	1. 5 Day Federal Holiday thru 2023	0d		26-Apr-21	0d	0d
20DPD-10760	BOC DIR/CQAS Assembles Final Apportionment Transmittal Package	1. 5 Day Federal Holiday thru 2023	4d	27-Apr-21	30-Apr-21	0d	0d
20DPD-10770	BOC DIR Delivers Final Apportionment Transmittal Package to DOC	1. 5 Day Federal Holiday thru 2023	0d		30-Apr-21	0d	0d
20DPD-10850	DOC Delivers Apportionment Counts to President (U.S.C. Article 1, Section 2)	1. 5 Day Federal Holiday thru 2023	0d		30-Apr-21	0d	0d

August 21, 2020

INFORMATION MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Joseph A. Laroski
Deputy Assistant Secretary for Policy and Negotiation
Cell: **b(6)**

RE: Softwood Lumber from Canada Countervailing Duty (CVD) Investigation

b(5) - AC/WP/DP

b(5) - AC/WP/DP

August 21, 2020

INFORMATION MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Joseph Laroski
Deputy Assistant Secretary for Policy and Negotiations
Desk: (202) 482-5788; Mobile: **b(6)**

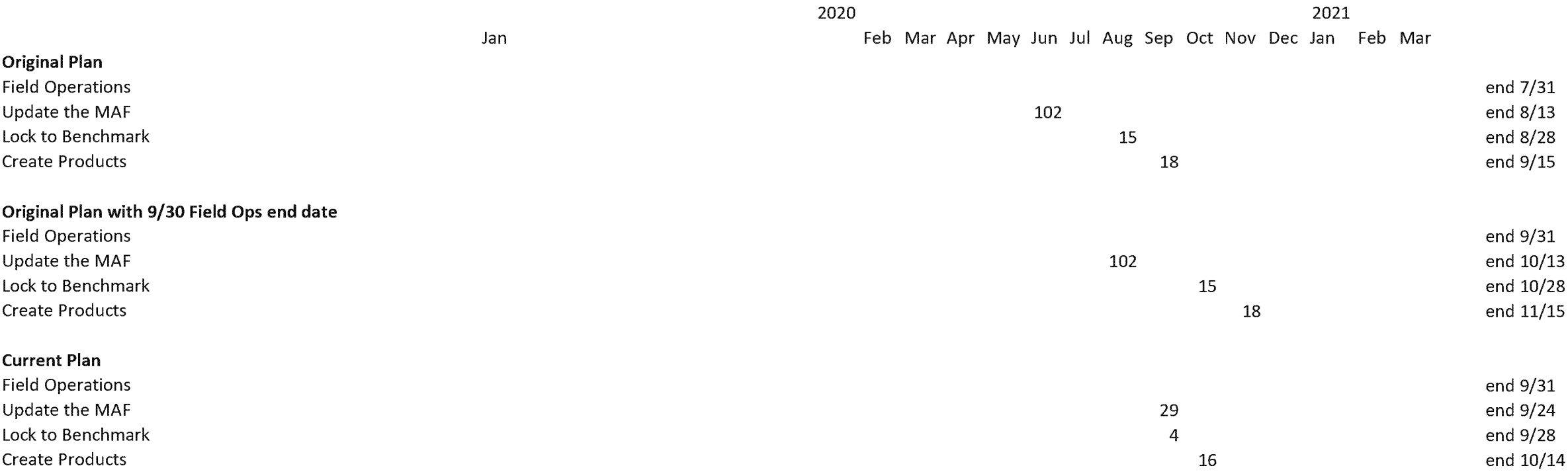
RE: Preliminary Determinations in the Antidumping Duty (AD) Investigations
of Difluoromethane from China

On August 21, 2020, the Department of Commerce (Commerce) announced its preliminary determinations in the AD investigations of difluoromethane from China. Commerce preliminarily determined that exporters from China are dumping diflouromethane in the United States at rates between 161.49 and 221.06 percent.

BACKGROUND

b(5) - DP

GEO Processing to meet 12/14/2020 CUF Delivery



Shading represents end of field operations

no adds after 9/4

Status Reporting: Nonresponse Followup for the 2020 Decennial Census

Periodic Reporting: Release for August 24, 2020

Periodic Performance Management Reports

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Periodic Performance Management Reports

2020 Census: Nonresponse Followup At A Glance – August 24, 2020

General

Self-Response Rate: 64.4% **Total Housing Units Enumerated:** 76.5%

Nine states have met or exceeded their final 2010 Census Self-Response Rate:
Colorado, Idaho, Kentucky, Michigan, Nevada, Oregon, Utah, Virginia, Washington

Hurricanes/Tropical Storms: Landfall Estimated Tuesday night, August 25.
Estimated Impact to 5 states: Alabama, Florida, Louisiana, Mississippi, and Texas
Estimated Remaining NRFU Workload Impacted : 5,640,000

Iowa Derecho: 16 Counties in Iowa with an Emergency Declaration
Estimated Remaining NRFU Workload Impacted: 210,000

California Wildfires: 17 Counties Impacted
Estimated Remaining NRFU Workload Impacted: 511,000

Progress

Current Workload: : 61,753,345
Completed Cases: 25,409,978 (41.1%)
Planned Completed Cases: 19,455,348 (31.5%)
Remaining Workload: 36,343,367

83 ACOs have completed over 50% of their NRFU workload

Timing

- **Days in Operation:** 53
- **Days Elapsed:** 15
- **Days Remaining:** 38

Enumerator Productivity

- **Average Hours worked per week (8/13-8/19):** 20.6
- **Average Cases Completed Per Hour:** 2.49
- **Planned Cases Completed Per Hour:** 1.55

Staffing

- **Selections:** 983,942
- **Invited to Training:** 625,311
- **Enumerators Hired Since January 1, 2020:** 384,615
- **Completed Training:** 292,506
- **Currently in Training:** 72,087
- **Active:** 233,072
- **Expected Replacement Training:** 100,310

Calculated Staff Needs

- Remaining workload: 36,343,367 cases
- Remaining weeks: 5.4
- Average cases per week: 6,730,253
- Average cases per hour: 1.55
- Needed hours per week: 4,342,099
- Average enumerator hours per week: 19
- Required average enumerators 228,532 To complete by 9/30
- Required average enumerators 177,112 (assuming 2 cases/hour)

Contingency Budget

- **Contingency Available (as of 3/14/20):** \$2,030 M
- **Expected Contingency Uses for COVID-19:** \$1,106 M
- **Contingency Approvals (through 7/31):** \$934 M
- **Remaining Contingency: (through 7/31):** \$924 M
- **Uncommitted Remaining Contingency:** \$187 M

	Planned	Actual
Overtime	\$100M	\$0.7M
Enumerator Awards	\$300M	--
Other	\$302M	\$11.5M
Total	\$702M	\$12M

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress

Case Progress for Field Enumeration

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

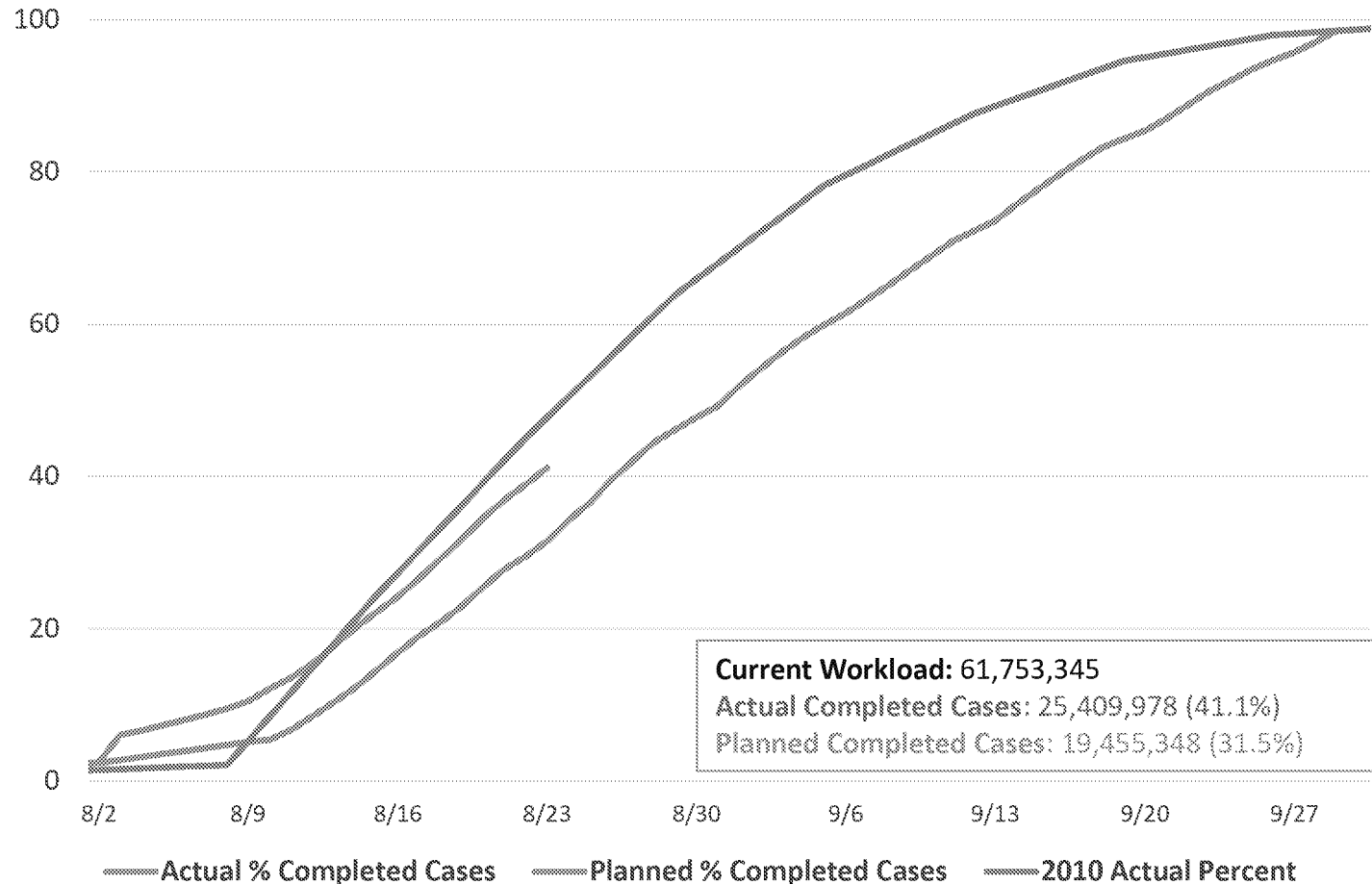
August 9, 2020

Completion Date:

September 30, 2020

Notes:

- Current workload reflects all case types.
- Data are charted beginning with soft launch.



Cases Completed by Telephone:

Pending

Cases Completed by Self-Response:

4,336,339 (17.1% of completed cases)

Remaining Workload:

36,343,367 cases

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress and Cost

Status:
● On Track

Data current as of:
August 24, 2020

Start Date:
August 9, 2020

Completion Date:
September 30, 2020

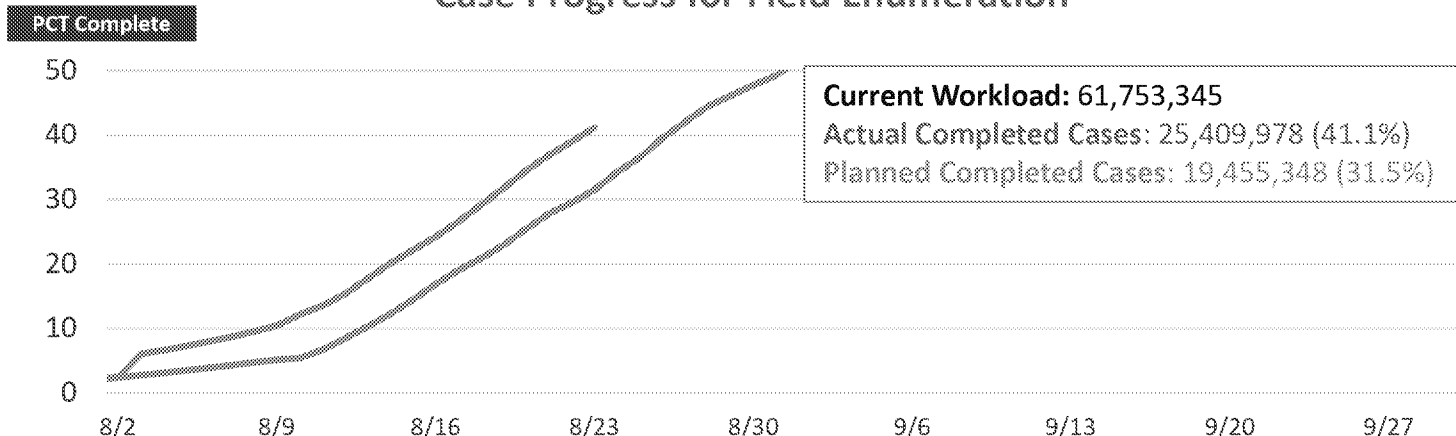
- Notes:
- Current workload reflects all case types. Costs include training and production costs for Enumerators and CFS.
 - Data are charted beginning with soft launch.

Cases Completed by Telephone:
Pending

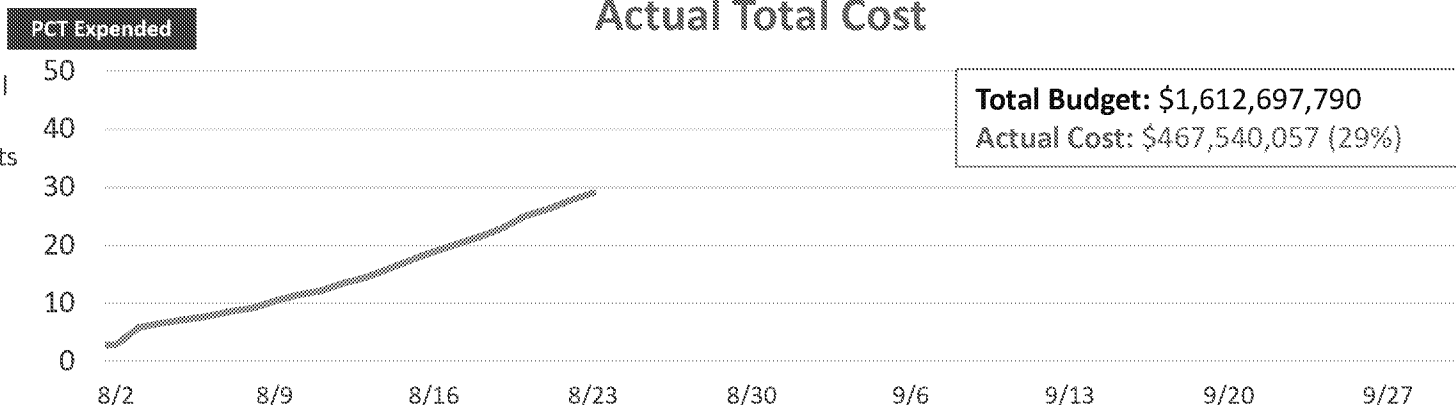
Cases Completed by Self-Response:
4,336,339 (17.1% of completed cases)

Remaining Workload:
36,343,367 cases

Case Progress for Field Enumeration



Actual Total Cost



Data as of 11:59 pm of the previous day

Source: MOJO Hermes

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Staffing

Status:

● On Track

Data current as of:

August 24, 2020

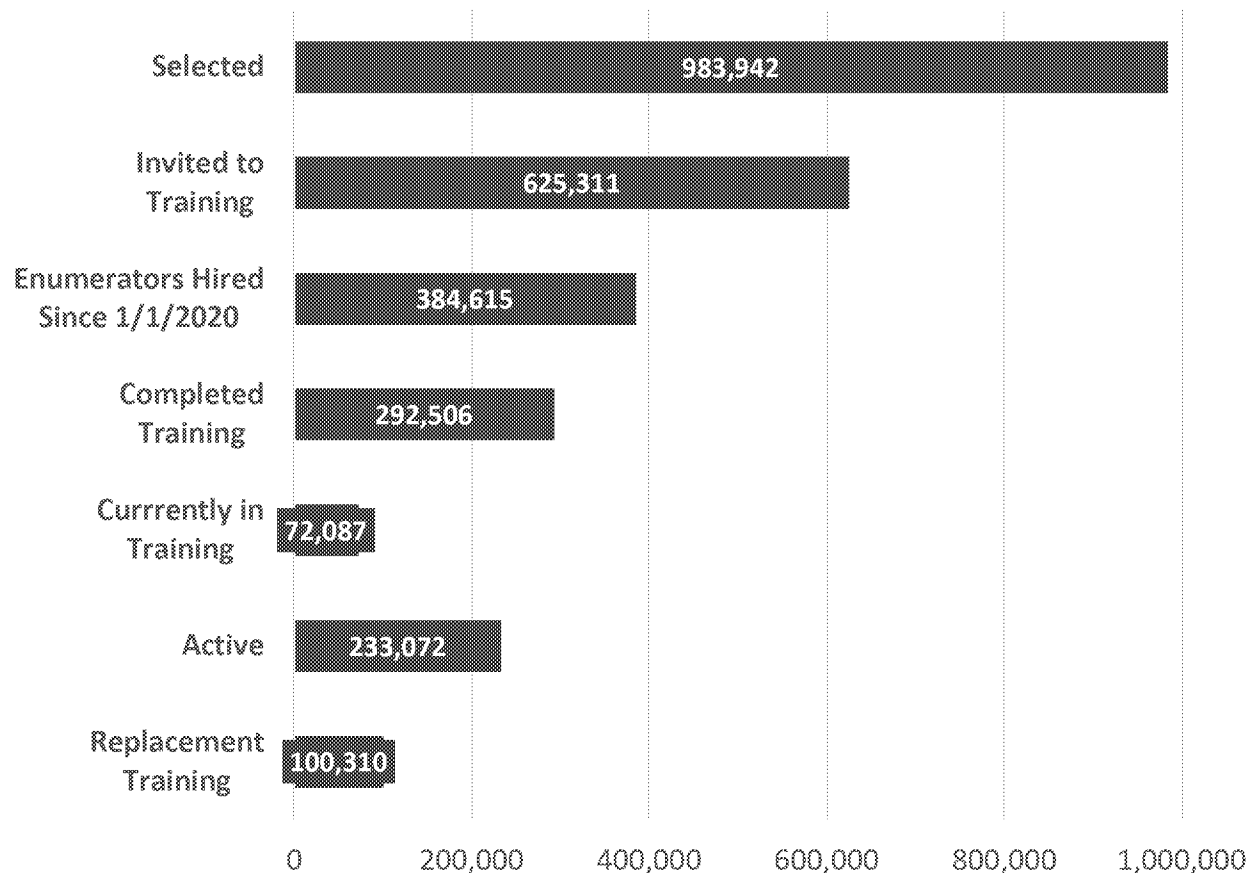
Completion Date:

September 30, 2020

Notes:

- Enumerator Training No Show Rate: 38.5%
- Over the weekend of August 23, the Enumerator Training No Show Rate dropped to 16%.

Nonresponse Followup Onboarding Status



Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Productivity Curve

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

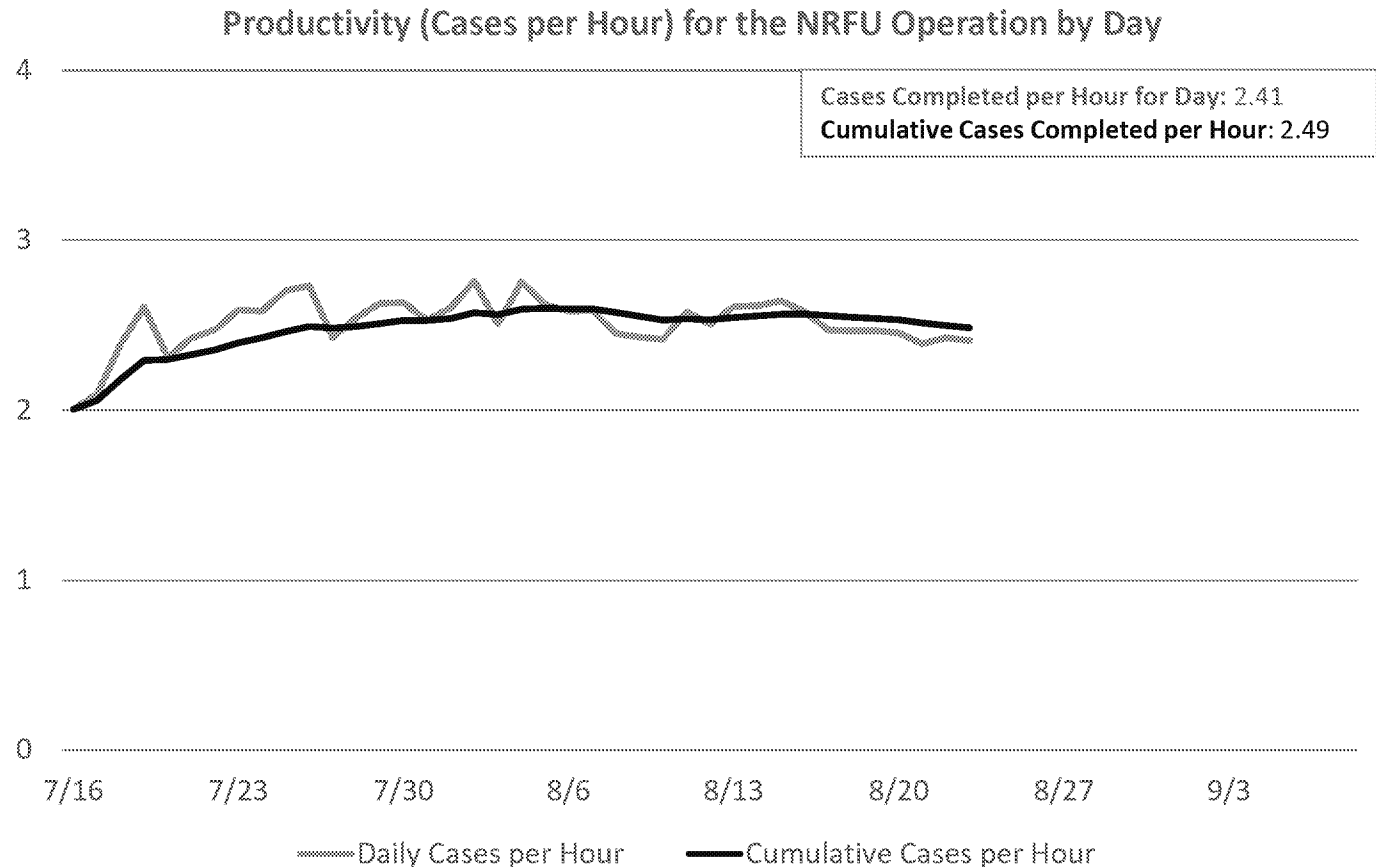
August 9, 2020

Completion Date:

September 30, 2020

Notes:

- Cases per hour include cases that were resolved by enumeration, administrative records, or self-response.
- Data are charted beginning with soft launch



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Work Hours

Status:

● On Track

Data current as of:

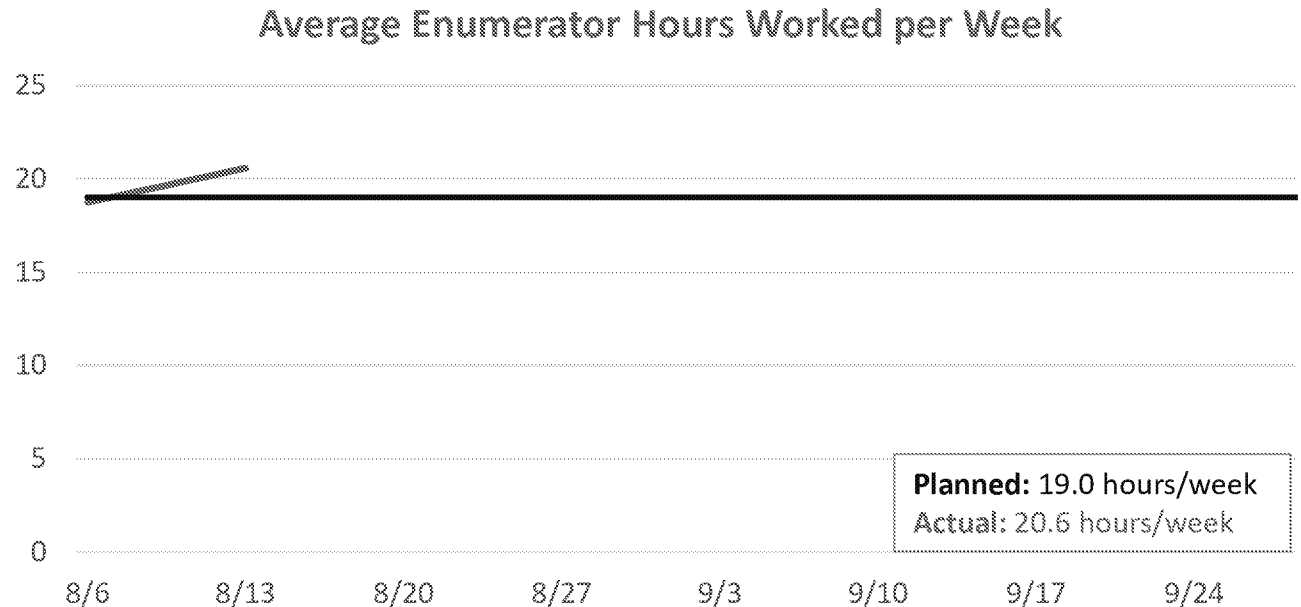
August 24, 2020

Completion Date:

September 30, 2020

Notes:

Preliminary Data - pending receipt of actual payroll data.



Percentage of Enumerators by Hours Worked

Week of	% of Enumerators that Worked < 19 Hours	% of Enumerators that Worked 19-24 Hours	% of Enumerators that Worked 25+ Hours
8/13-8/19	50.95%	15.61%	33.44%

Periodic Performance Management Reports

2020 Census: Housing Unit Enumeration Progress by State

Source: Census Data Lake, Unified Tracking System
Data Current as of: August 24, 2020

Note: Percentages may not sum due to rounding. A limited number of areas were part of the NRFU "soft launch" beginning July 16 and could have higher completion rates due to more time in the field. Percentages for the U.S. Total do not include housing units in Puerto Rico.

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Current Week	% HUs Enumerated Prior Week	Weekly Change
U.S. Total	64.4%	12.1%	76.5%	69.7%	6.8%
Alabama	61.5%	7.6%	69.1%	63.6%	5.5%
Alaska	52.2%	26.6%	78.8%	66.4%	12.4%
Arizona	60.8%	7.2%	68.1%	62.4%	5.7%
Arkansas	58.8%	16.5%	75.4%	64.7%	10.7%
California	66.4%	13.8%	80.2%	72.2%	8.0%
Colorado	67.8%	11.2%	79.0%	73.1%	5.9%
Connecticut	68.5%	16.9%	85.4%	78.0%	7.4%
Delaware	61.9%	11.2%	73.1%	66.2%	6.9%
District of Columbia	60.8%	13.0%	73.8%	66.1%	7.7%
Florida	61.1%	8.3%	69.4%	63.5%	5.9%
Georgia	59.8%	8.1%	67.9%	62.6%	5.3%
Hawaii	61.4%	22.4%	83.8%	74.9%	8.9%
Idaho	68.5%	25.5%	93.9%	88.8%	5.1%
Illinois	69.3%	14.8%	84.1%	78.2%	5.9%
Indiana	68.6%	15.9%	84.5%	77.2%	7.3%
Iowa	69.3%	4.3%	73.6%	69.6%	4.0%
Kansas	68.2%	18.3%	86.5%	80.2%	6.3%
Kentucky	66.7%	8.9%	75.6%	69.8%	5.8%
Louisiana	58.1%	13.3%	71.4%	65.4%	6.0%
Maine	56.6%	28.2%	84.8%	76.7%	8.1%
Maryland	68.8%	13.8%	82.6%	76.5%	6.1%
Massachusetts	66.7%	14.4%	81.1%	74.2%	6.9%
Michigan	69.6%	7.1%	76.7%	71.0%	5.7%
Minnesota	73.4%	9.8%	83.3%	76.9%	6.4%
Mississippi	58.6%	10.3%	68.9%	62.3%	6.6%

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Current Week	% HUs Enumerated Prior Week	Weekly Change
Missouri	64.2%	17.0%	81.2%	74.1%	7.1%
Montana	57.7%	10.2%	67.9%	61.7%	6.2%
Nebraska	69.9%	9.5%	79.4%	72.9%	6.5%
Nevada	63.5%	8.1%	71.6%	65.8%	5.8%
New Hampshire	64.3%	9.9%	74.2%	66.2%	8.0%
New Jersey	66.3%	9.5%	75.8%	69.4%	6.4%
New Mexico	54.9%	9.6%	64.5%	58.9%	5.6%
New York	60.3%	12.0%	72.3%	64.2%	8.1%
North Carolina	60.2%	8.5%	68.7%	62.6%	6.1%
North Dakota	63.5%	16.0%	79.5%	73.3%	6.2%
Ohio	68.5%	11.2%	79.7%	73.1%	6.6%
Oklahoma	58.8%	14.7%	73.5%	66.8%	6.7%
Oregon	67.2%	17.0%	84.2%	76.0%	8.2%
Pennsylvania	67.2%	13.0%	80.2%	73.9%	6.3%
Rhode Island	62.2%	12.8%	75.0%	66.3%	8.7%
South Carolina	58.2%	9.5%	67.7%	61.1%	6.6%
South Dakota	65.1%	9.6%	74.7%	67.9%	6.8%
Tennessee	63.7%	12.6%	76.2%	68.4%	7.8%
Texas	59.6%	12.1%	71.8%	64.2%	7.6%
Utah	68.7%	10.8%	79.5%	72.5%	7.0%
Vermont	58.1%	15.1%	73.1%	62.8%	10.3%
Virginia	69.0%	10.1%	79.1%	73.5%	5.6%
Washington	70.7%	16.7%	87.4%	80.9%	6.5%
West Virginia	55.4%	32.6%	88.1%	80.1%	8.0%
Wisconsin	70.7%	13.5%	84.2%	76.2%	8.0%
Wyoming	58.7%	12.9%	71.6%	63.4%	8.2%
Puerto Rico	31.4%	30.7%	62.1%	No Data	N/A

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Challenge Areas by State

Source: Field Division

Data Current as of: August 24, 2020

State	% of HUs that Self Responded	% of HUs Enumerated in NRFU	% of HUs Enumerated	Event/Issue	Contingency
Alabama	61.5%	7.6%	69.1%	Trop Storm – 800,000 NRFU cases, 5000 enumerators	Designated these areas for telephone contact.
Arizona	60.8%	7.2%	68.1%	Tribal – Ft Mojave and Havasupai reservations closed due to COVID	Partnership working to gain access.
California	66.4%	13.8%	80.2%	Wildfires – 511,000 NRFU Cases, 150 enumerators evacuated, 3 have lost homes Tribal – 6 reservations closed due to COVID	Designated these areas for telephone contact. Partnership working to gain access.
Florida	61.1%	8.3%	69.4%	Trop Storm – 1,100,000 NRFU cases, 5,700 enumerators Tribal – 3 reservations refuse to allow access	Designated these areas for telephone contact. Partnership working to gain access.
Iowa	69.3%	4.3%	73.6%	Derecho/Tornado – 210,000 NRFU cases, 1100 enumerators Tribal – Sac & Fox Reservation closed due to COVID	Bringing in staff from adjacent ACOs. Designated these areas for telephone contact. Partnership working to gain access.
Louisiana	58.1%	13.3%	71.4%	Trop Storm – 650,000 NRFU cases, 3,350 enumerators	Designated these areas for telephone contact.
Michigan	69.6%	7.1%	76.7%	Hiring – Goal – 6800. 5100 Active Enumerators, 2400 in Training Tribal – Huron Potawattami Reservation refusing to allow access	Partnership working to gain access.

Note: Percentages may not sum due to rounding

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Challenge Areas by State (continued)

Source: Field Division

Data Current as of: August 24, 2020

State	% of HUs that Self Responded	% of HUs Enumerated in NRFU	% of HUs Enumerated	Event/Issue	Contingency
Mississippi	58.6%	10.3%	68.9%	Trop Storm – 490,000 NRFU cases, 3500 enumerators	Designated these areas for telephone contact.
Nevada	63.5%	8.1%	71.6%	Tribal - 3 reservations closed due to COVID	Partnership working to gain access.
New Mexico	54.9%	9.6%	64.5%	Tribal – 4 reservations closed due to COVID	Partnership working to gain access.
Texas	59.6%	12.1%	71.8%	Trop Storm – 2,600,000 NRFU cases, 16,000 enumerators	Designated these areas for telephone contact.

Note: Percentages may not sum due to rounding

Tribal Areas that Refused Participation in the 2010 Census

Reservation	2010 Population	2020 NRFU Workload
Miccosukee Tribe of Indians of Florida	406	0 – All Update/Enumerate
Table Mountain Rancheria of California	64	18
Tonawanda Band of Seneca Indians of New York	517	242
Onondaga Nation of New York	468	632
Oneida Nation of New York	500 (est)	31
Tuscarora Nation of New York	1,152	475

2020 Census Bureau Fusion Center: Natural Disaster Situation Report (SITREP)

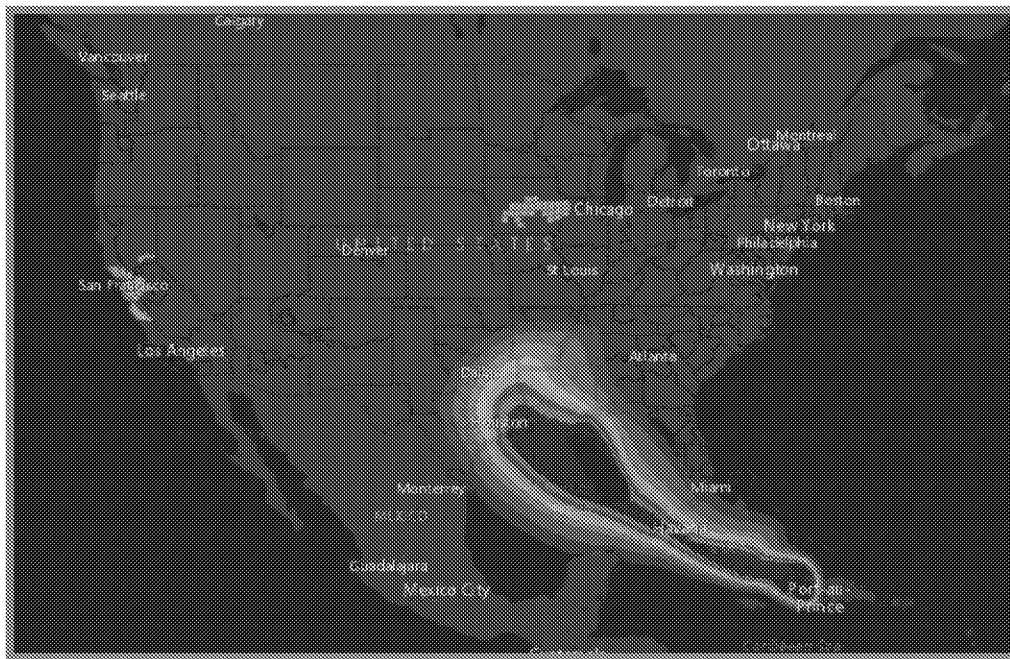
**Hurricane Marco & Tropical Storm Laura, Northern California Wild Fires,
Iowa Derecho**

August 23, 2020

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United States
Census
2020

Overview of Natural Disaster Impact on 2020 Census

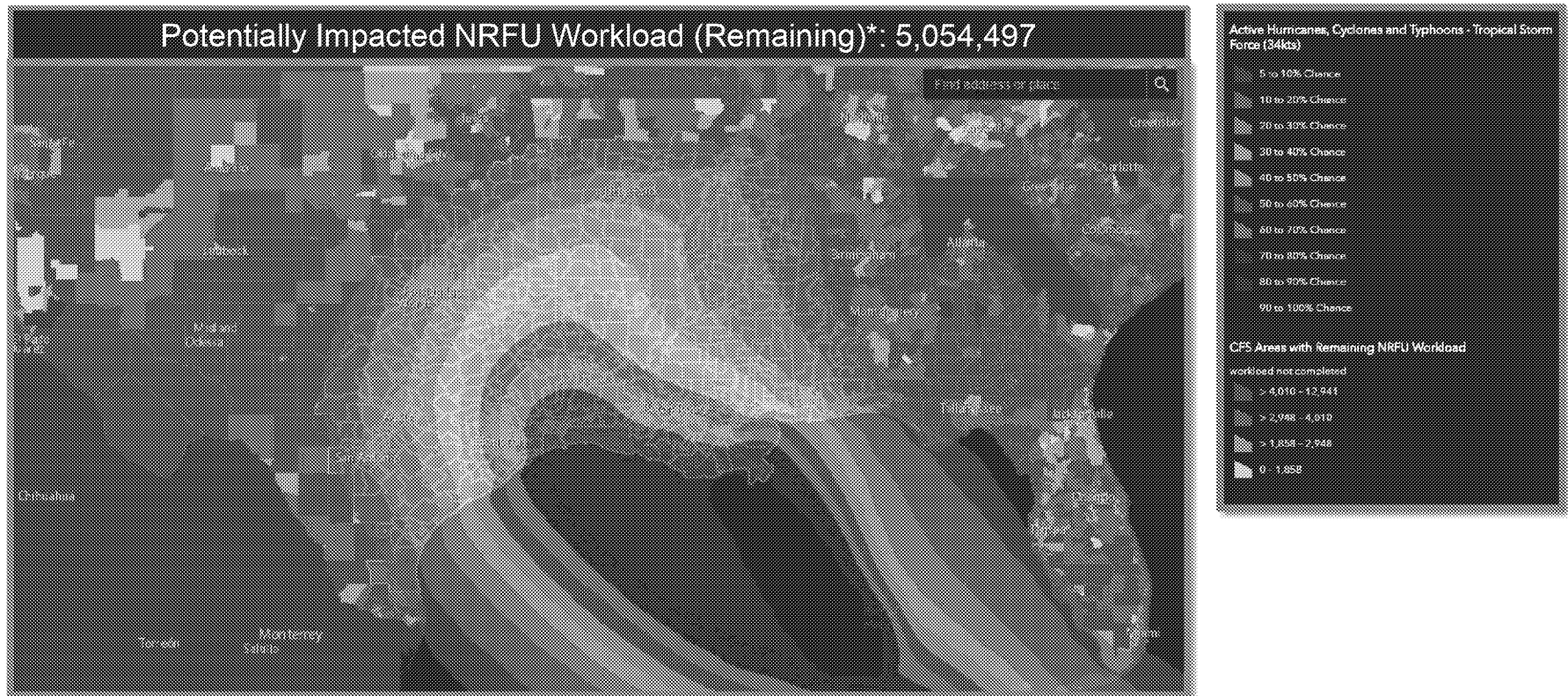


Total of Potentially Impacted NRFU Workload (Remaining)*: 5,773,441

Natural Disaster	Impacted Workload*
Hurricane Marco (Category 1) & Tropical Storm Laura	5,054,497
Lightning Complex and Northern California Wildfires	511,384
Iowa Derecho (August 10, 2020)	207,560

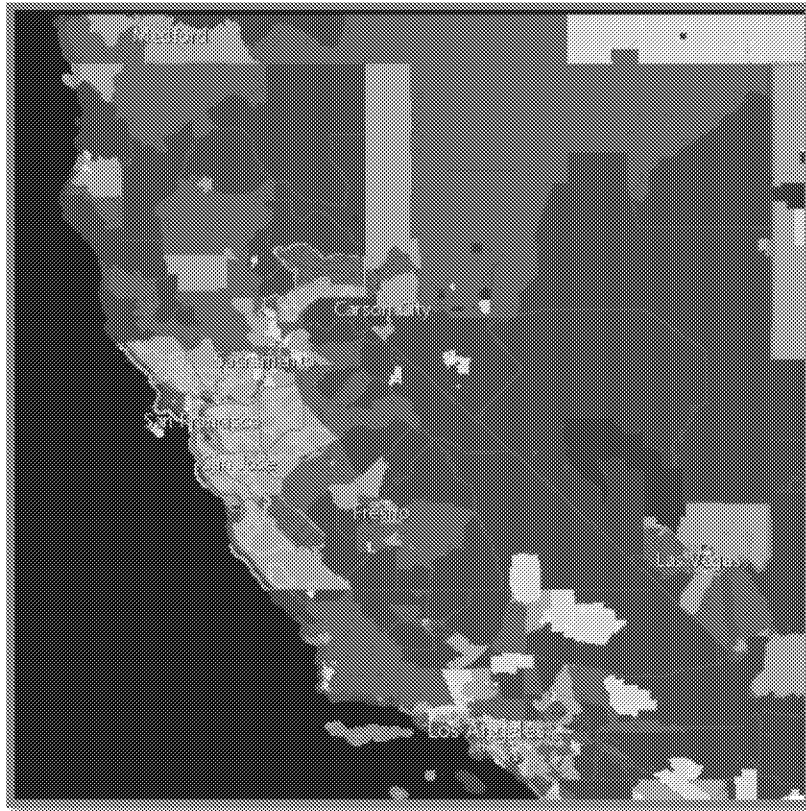
*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Hurricane Marco (Category 1) & Tropical Storm Laura



*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Lightning Complex and Northern California Wildfires



Potentially Impacted NRFU
Workload (Remaining)*: 511,384

California Counties Impacted by Wildfires

CFS Areas with Remaining NRFU Workload

workload not completed

> 4,010 - 12,941

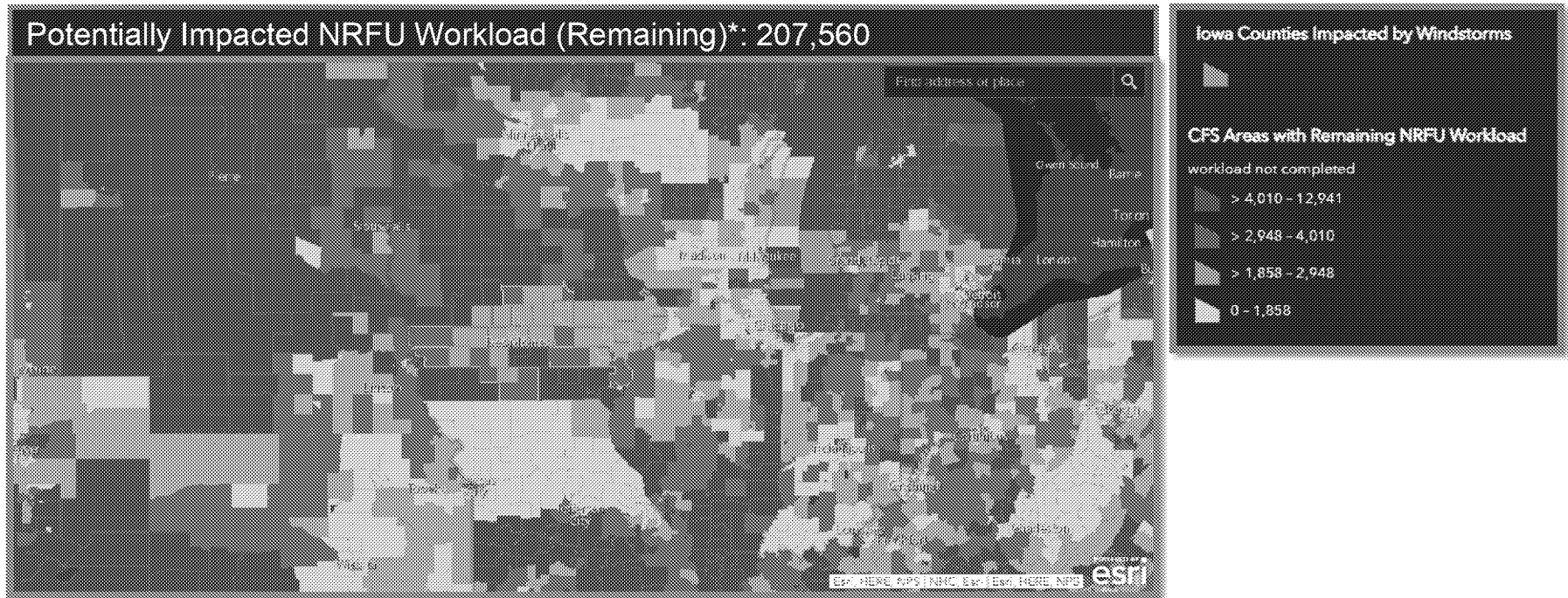
> 2,948 - 4,010

> 1,858 - 2,948

0 - 1,858

*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Iowa Derecho (August 10, 2020)



*Potentially Impacted NRFU Workload (Remaining) estimated based upon data reported on 8/21.

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Budgetary Contingency Usage Status

Source: Decennial Budget Office

Data Current as of: August 20, 2020








Notional Contingency Waterfall for Estimated Revised NRFU		
(in millions of \$)		
	Plan (as of 7/31)	Actual to Date (8/20)
Contingency available on 3/14	\$2,030	\$2,030
<i>Risk Based Contingency</i>	<i>\$1,325</i>	<i>\$1,325</i>
<i>Secretarial Contingency</i>	<i>\$705</i>	<i>\$705</i>
Expected Contingency Uses for COVID-19	\$1,106	\$1,106
<i>Actual COVID related approvals</i>	<i>\$934</i>	<i>\$932</i>
<i>Remaining Potential COVID approvals</i>	<i>\$172</i>	<i>\$174</i>
Remaining Original Contingency	\$924	\$924
Additional contingency from estimated operational variance	\$70	\$70
Remaining Contingency before acceleration efforts	\$994	\$994
Potential Costs to Ensure Operational Continuity and Accelerate NRFU	\$702	\$12
<i>Additional Mailing and Advertising</i>	<i>\$50</i>	<i>\$11.5</i>
<i>Training of additional NRFU enumerators (previously approved)</i>	<i>\$64</i>	<i>--</i>
<i>Replacement training of 150k enumerators</i>	<i>\$165</i>	<i>--</i>
<i>Additional overtime for NRFU enumerators</i>	<i>\$100</i>	<i>\$0.7</i>
<i>Weekly enumerator award for exceeding 25 hrs/wk (Up to 5x)</i>	<i>\$150</i>	<i>--</i>
<i>Enumerator retention award for 3 weeks of acceptable work above 25 hrs/wk (Up to 2x)</i>	<i>\$150</i>	<i>--</i>
<i>CFS retention award for 3 weeks of acceptable work (Up to 2x)</i>	<i>\$23</i>	<i>--</i>
Allowance for up to 10% increase in production hours due to unknown factors	\$106	--
Remaining Contingency for Unknowns	\$187	--

Notes

- Actuals to Date represent approved purchases and incurred compensation expenses.
- Bonuses will begin accruing around September 3 due to payroll validation requirements.

Appendix

Periodic Performance Management Reports

Status	Report Title	Summary	Slide Number
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	20
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	21
	2020 Census: Self-Response of Housing Units by State		22
	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	23
	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 1,040. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 393,000. We have exceeded the 2010 Census numbers for both national and community partners.	24
	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts.	25
	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	26

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:

● On Track

Data current as of:

August 24, 2020

Start Date:

March 12, 2020

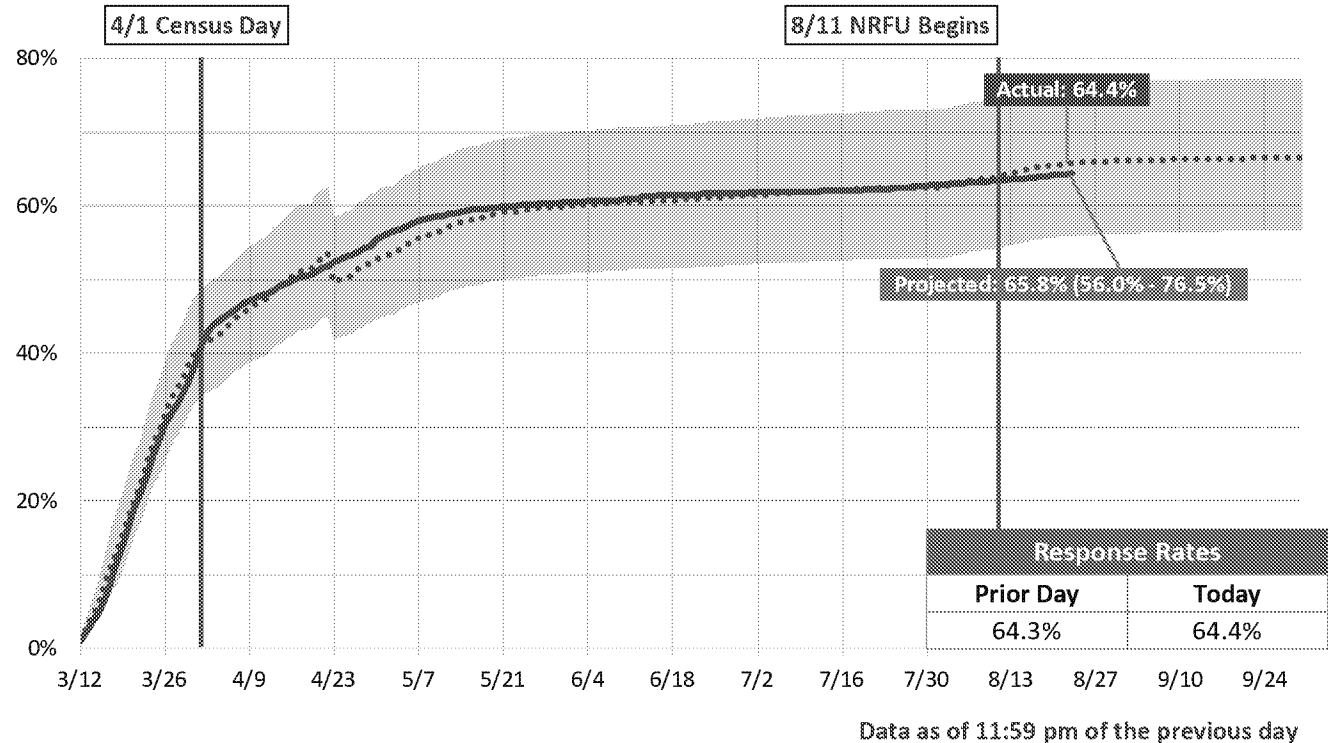
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



Legend

Actual Self-Response Rate	—————
Projected Self-Response Rate	*****
Lower & Upper Bound	—————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status: ☐ Management Focus

Actual vs. Projected Self-Response Rates by Mode

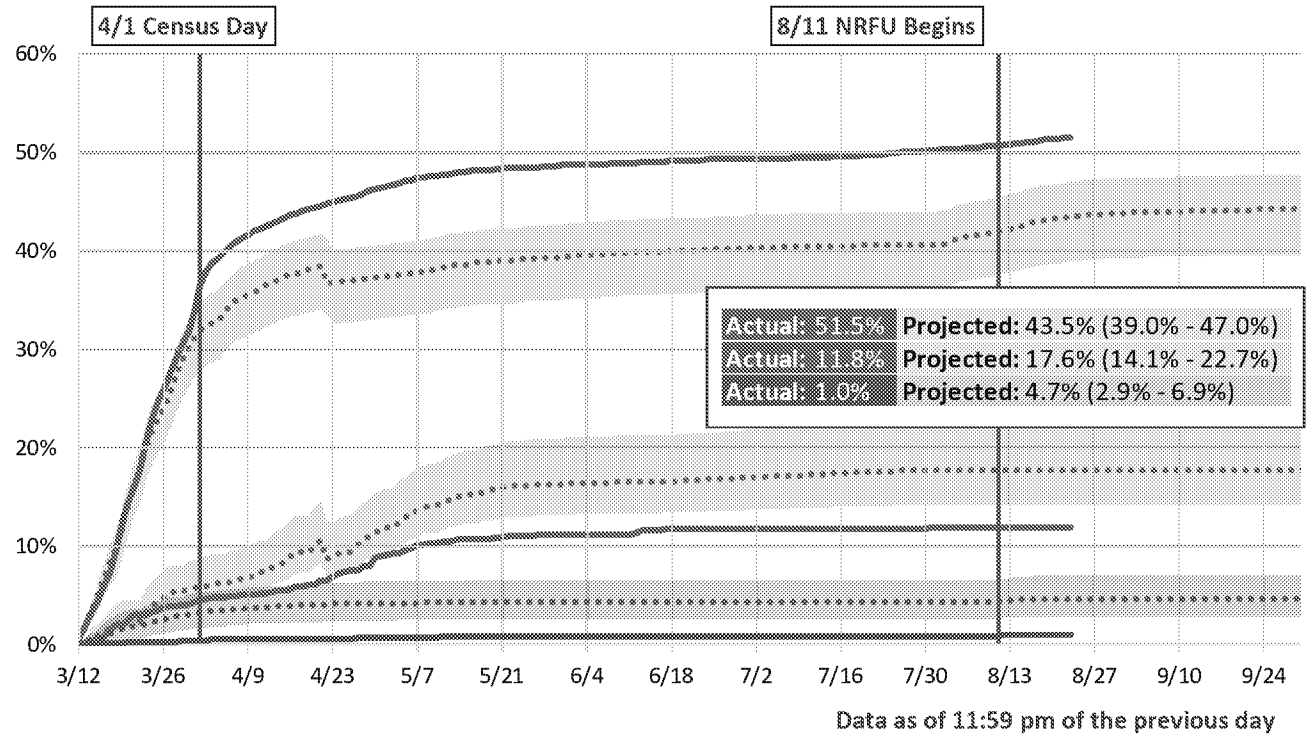
Data current as of:
August 24, 2020

Start Date:
March 12, 2020

Completion Date:
September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	=====	=====	=====
Projected Self-Response Rate	xxxxxxx	xxxxxxx	xxxxxxx
Lower & Upper Bound			

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division

Data Current as of: August 24, 2020

State	Actual	2010 Rate (Final)	2020 Rate (start of NRFU)	2010 Rate (start of NRFU)
U.S. Total	64.4%	66.5%	63.3%	63.5%
Minnesota	73.4%	74.1%	72.5%	71.6%
Wisconsin	70.7%	73.5%	69.7%	71.2%
Washington	70.7%	67.2%	69.1%	63.7%
Nebraska	69.9%	71.1%	69.0%	68.8%
Michigan	69.6%	67.7%	68.9%	65.4%
Iowa	69.3%	73.0%	68.9%	71.0%
Illinois	69.3%	70.5%	68.2%	67.7%
Virginia	69.0%	69.0%	68.0%	66.2%
Maryland	68.8%	69.5%	67.4%	66.5%
Utah	68.7%	68.6%	67.5%	65.4%
Indiana	68.6%	69.6%	67.5%	67.0%
Ohio	68.5%	69.0%	67.5%	66.2%
Idaho	68.5%	67.1%	67.8%	64.6%
Connecticut	68.5%	69.5%	67.1%	66.3%
Kansas	68.2%	70.0%	67.2%	67.4%
Colorado	67.8%	67.2%	66.6%	64.4%
Pennsylvania	67.2%	70.2%	66.3%	67.8%
Oregon	67.2%	66.9%	65.7%	63.9%
Massachusetts	66.7%	68.8%	65.4%	65.6%
Kentucky	66.7%	65.7%	66.0%	63.0%
California	66.4%	68.2%	64.6%	64.7%
New Jersey	66.3%	67.6%	65.2%	64.4%
South Dakota	65.1%	67.1%	64.4%	65.0%
New Hampshire	64.3%	64.4%	63.2%	61.5%
Missouri	64.2%	67.5%	63.4%	65.3%
Tennessee	63.7%	67.1%	62.5%	63.8%

State	Actual	2010 Rate (Final)	2020 Rate (start of NRFU)	2010 Rate (start of NRFU)
North Dakota	63.5%	68.8%	62.7%	66.8%
Nevada	63.5%	61.4%	62.4%	58.7%
Rhode Island	62.2%	65.7%	61.0%	62.8%
Delaware	61.9%	64.1%	60.8%	60.8%
Alabama	61.5%	62.5%	60.8%	59.5%
Hawaii	61.4%	64.1%	59.9%	60.7%
Florida	61.1%	63.0%	60.2%	59.6%
Arizona	60.8%	61.3%	59.9%	58.5%
District of Columbia	60.8%	66.0%	59.6%	62.2%
New York	60.3%	64.6%	59.0%	61.3%
North Carolina	60.2%	64.8%	59.3%	62.1%
Georgia	59.8%	62.5%	59.0%	59.5%
Texas	59.6%	64.4%	58.3%	60.3%
Arkansas	58.8%	62.3%	57.9%	59.5%
Oklahoma	58.8%	62.3%	57.9%	58.9%
Wyoming	58.7%	63.4%	57.6%	61.1%
Mississippi	58.6%	61.3%	58.0%	58.1%
South Carolina	58.2%	64.7%	57.4%	62.2%
Louisiana	58.1%	61.0%	57.3%	57.9%
Vermont	58.1%	60.3%	56.9%	58.1%
Montana	57.7%	64.6%	56.9%	62.3%
Maine	56.6%	57.4%	55.5%	55.3%
West Virginia	55.4%	59.1%	54.9%	56.8%
New Mexico	54.9%	60.0%	53.5%	56.9%
Alaska	52.2%	55.6%	49.9%	51.6%
Puerto Rico	31.4%	53.8%	28.7%	51.2%

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:

● On Track

Data current as of:

August 22, 2020

Completion Date:

September 30, 2020

Notes:

To date, 33,402 callers have requested the callback option. These callbacks have resulted in 12,302 completed interviews and 4,410 callers being provided assistance.

Total Inbound Call Volume % (PTD)



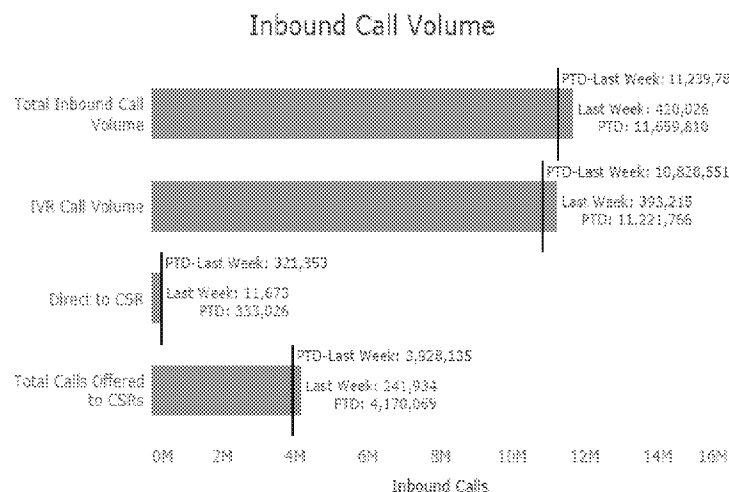
English	Spanish	TTY	Vietnamese	Chinese Mandarin	All Other
87.2%	10.9%	0.9%	0.2%	0.1%	0.7%

Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	11,100,665	11,659,810
Deflection Rate	47.0%	64.3%
Service Level - 30 Seconds	80.0%	68.0%
Average Handle Time	9:04	9:26

Calls Offered to CSRs by Language

	8/9 - 8/15	8/16 - 8/22	PTD	PTD %
English	164,287	222,948	3,695,185	88.6%
English Puerto Rico	240	181	3,170	0.1%
Spanish	8,950	12,073	310,886	7.5%
Spanish Puerto Rico	3,686	3,243	43,075	1.0%
Chinese Mandarin	400	534	11,805	0.3%
Chinese Cantonese	274	318	10,089	0.2%
Vietnamese	137	169	13,315	0.3%
Korean	285	283	13,244	0.3%
Russian	141	171	7,002	0.2%
Arabic	53	88	4,202	0.1%
Tagalog	31	20	2,692	0.1%
Polish	45	53	2,509	0.1%
French	14	23	1,213	0.0%
Haitian Creole	46	73	2,690	0.1%
Portuguese	38	63	1,903	0.0%
Japanese	40	39	2,329	0.1%
TTY	1,112	1,590	39,866	1.0%
Group Quarters	82	65	4,894	0.1%
Total	179,861	241,934	4,170,069	100.0%



Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:

● On Track

Data current as of:

August 20, 2020

Completion Date:

March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	384	71,379
Business	139	91,407
Chamber of Commerce/Trade or Professional Association	113	10,559
Education	103	83,552
Government	89	71,296
Faith-Based Organizations	66	40,319
Media	49	8,403
Healthcare	48	14,904
Technology	33	326
International Governmental/ Consulate/ Embassy	16	329
Grand Total	1,040	393,474

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	447	233,457
Black/African American	97	17,715
Young Children	90	5,842
Hispanic/Latino	85	25,668
Rural	80	13,935
Asian	79	10,141
Native Hawaiian Pacific Islander	48	674
Veterans	41	3,263
Young and Mobile	40	7,335
LGBTQ	24	1,276
Individuals with Disabilities	24	3,156
Elderly	24	8,789
Persons Experiencing Homelessness and Highly Mobile	22	5,440
American Indian/ Alaskan Native	19	3,548
MENA	15	80

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

Cumulative Completed Partnership Events: 439,379

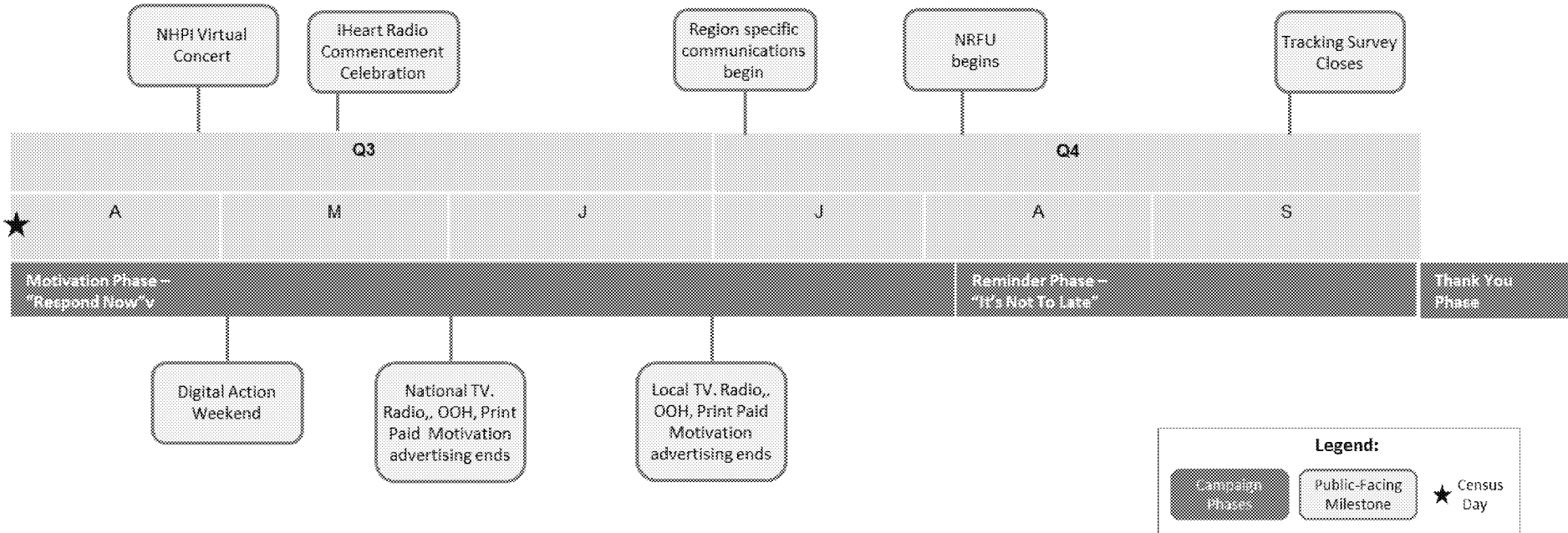
Partnership Events Completed 8/13-8/19: 6,331

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication

Data Current as of: August 19, 2020



Significant Accomplishments

- The New Audience Creative went live on 8/17.
- The Roland Martin Unfiltered (RMU) Activation for the Black/African American (B/AA) audience began on 8/17.
- The Jewish Federations of North America held a 2020 Census Webinar on 8/18.
- The Wonderama House Party (At Home Concert Series) for Los Angeles was held on 8/21.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: July 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

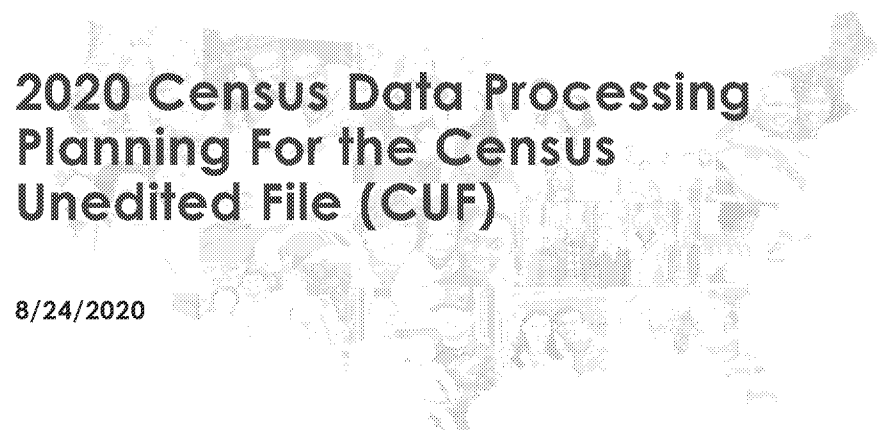
FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 7/31/2020

\$ Amounts in Millions	IT	Non-IT	Total
Total Planned through July	\$1,728	\$5,155	\$6,883
Available contingency and additional appropriations through July	\$248	\$1,432	\$1,680
Planned Programmatic through July	\$1,480	\$3,723	\$5,203
Total Actual Commitments and Obligations through July	\$1,653	\$2,390	\$4,043
Unplanned commitments/obligations through July related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)	\$260	\$300	\$560
Actual Programmatic Commitments and Obligations through July	\$1,393	\$2,090	\$3,483
Total Plan Variance (\$/%)	\$75 (4.3%)	\$2,765 (53.6%)	\$2,840 (41.3%)
Remaining contingency and additional appropriations planned through July	(\$12)	\$1,132	\$1,120
Delayed Field Operation Spending through July	\$0	\$1,690	\$1,690
Non-Field Operational Programmatic Variance through July	\$87	(\$57)	\$30

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of available contingency funding. The total variance for the resources planned to be available through July is \$2.840 billion, or 41 percent. Below outlines the breakdown of the total variance:

- The positive variance through July against the original plan in 2020 Census IT systems and operations is \$75 million, or 4 percent. The positive variance is the result of relatively routine minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, partially offset by \$12 million in IT contingency used as the result of adjusted 2020 Census operations due to COVID-19 beyond the IT contingency estimate.
- The positive variance through July against the original plan in 2020 Census non-IT operations is \$2.765 billion, or 54 percent. This variance consists of \$1.690 billion delayed spending in the field operations as a result of schedule adjustments, and \$1.132 billion representing a portion of available contingency and additional appropriations that has not yet needed to be obligated. This variance is partially offset by a -\$57 million non-Field variance, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While unused contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions have been made to use risk-based contingency funds to support \$560 million in unplanned obligations or commitments through July as the result of the operational adjustments. The funds used to date include funding field staff salaries during to the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response, extending the communication efforts in the motivation and NRFU planning phases, purchases of personal protection equipment, and additional costs for the Fingerprint and CQA Contracts as the result of the operational timing adjustments.



2020 Census Data Processing Planning For the Census Unedited File (CUF)

8/24/2020

U//FOUO

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2020 Census

Overview

- This is a viable plan to deliver the final Census Unedited File (CUF) by 12/14/2020
- It cuts a four-month process down to two and a half months
- It optimizes staff and computing resources to be in operation 24/7, weekends and holidays
- It streamlines and limits processes to focus only on Apportionment, separating and deferring redistricting processing
- We have identified any process that could start earlier, run in parallel, or be eliminated

Risks

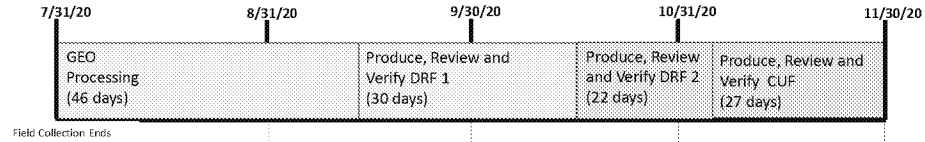
- This plan is contingent on field operations ending 9/30/2020, and depends on a reasonably smooth sequence of processing events
- The increased speed and reduced review time required in this plan and potential errors present risk to data accuracy
- If processing risks are realized, they will require decisions that weigh data accuracy and U.S. Census Bureau reputation against schedule delays

Bottom Line

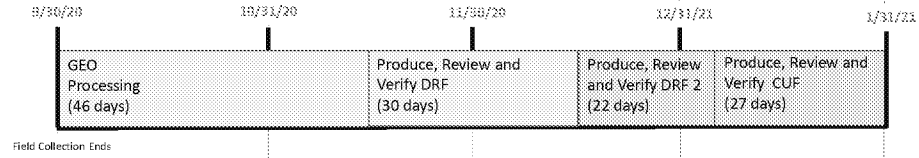
- By closely managing both the process and the risks, our intention continues to be to deliver an accurate, defensible 2020 Census count in compliance with statutory deadlines and the Presidential Memorandum

Re-Planning for 2020 Census Post Processing

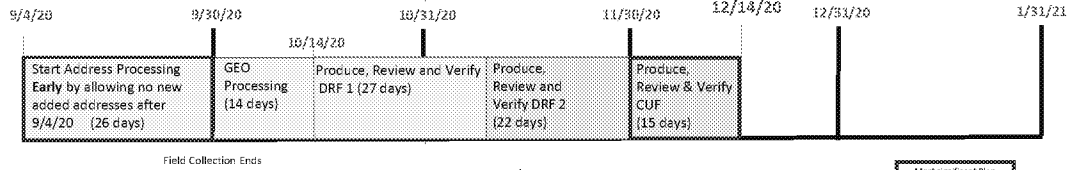
Original Plan (Before COVID 19)



Original Schedule with 9/30 as the end of Field Data Collection (notional)



Current Plan



Unclassified/ For Official Use Only

Most significant Plan changes

Geographic Processing Plan

Confidence that decades of work by the Census Bureau and our Partners have produced the most accurate and complete geographic foundation underpins this plan. Nearly 152 million addresses were included in the 2020 Census enumeration universe. Building the foundation requires human capital, computing power, and adequate time.

We have streamlined, rescheduled, and eliminated processing activities to meet the 12/14/2020 CUF delivery deadline

- No new addresses accepted from data collection operations after 9/4/2020
 - Any new addresses identified between then and 9/30/2020, the last day of data collection operations, and the population associated with those addresses **will not be included in the 2020 Census**
- We have significantly reduced the period of time to update the MAF with new addresses (102 to 29 days)
 - Due to the operational schedule changes, MAF updating for the majority of operations has converged in September (e.g., Remote Alaska, Update Enumerate, NRFU, Non-ID)
- The benchmarking process is shortened from 33 to 20 days, eliminating 13 days worth of processing activities that will be cut now and deferred until the creation of the redistricting data products
- We have cancelled the internal independent review of the final list of addresses that will be used to tabulate 2020 Census data (MAF Extract)
- We are eliminating quality control steps that traditionally resulted in a nationwide delivery of all files at once. Instead states will now be delivered on a flow basis.

Optimized Systems and Staff Resources

• Improved Decennial Response Processing System (DRPS) Performance in Preparation for 2020 Census Processing

Upgraded Oracle Real Application Clusters (RAC) to Oracle Exadata environment. Exadata is a high-performing pre-configured combination of hardware and software that provides infrastructure for Oracle databases.

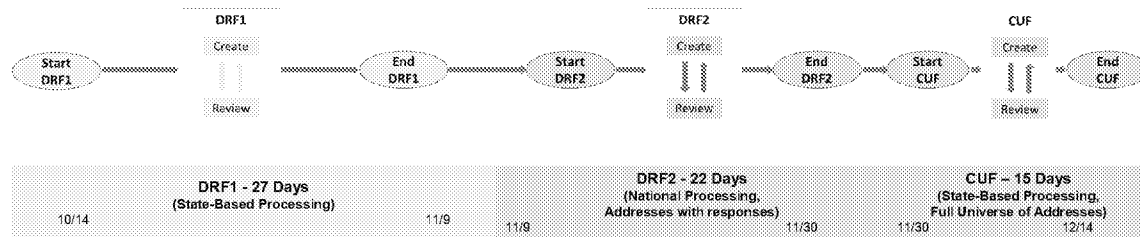
- Infrastructure Platform Optimized for Oracle Databases
- Actively optimizing DRPS processing through monitoring large test executions and consultation with Oracle
- Adjusted code base to address bottlenecks

• Optimized role assignments to ensure maximum staff resource usage during this shortened production period

	DRF1 (Decennial Response File 1)	DRF2 (Decennial Response File 2)	CUF (Census Unedited File)
Pre-Covid	Sept 15 – Oct 14, 2020	Oct 14 – Nov 4, 2020	Nov 4 – 30, 2020
Original Schedule with 9/30 as the end of Field Data Collection (notional)	Nov 15 – Dec 14, 2020	Dec 14, 2020 – Jan 4, 2021	Jan 4 - Jan 31, 2021
Current Plan	Oct 14 – Nov 9, 2020	Nov 9 – Nov 30, 2020	Nov 30 – Dec 14, 2020
Schedule Savings from Pre-Covid	3 Days	0 Days	12 Days

Decennial Response Processing and Review

Once geographic processing is complete, we have the frame that will serve as the collection geography for 2020 Census response processing. The process to deliver the Census Unedited File is heavily interactive with multiple concurrent cycles of data creation and review.



Decennial Response File 1 (DRF1) Plan

Produce the Decennial Response File 1 (DRF1) – 27 days

- Integrate final collection geography data with the response data for state-based processing
- Standardize data collection modes data (phone, internet, paper and Non Response Follow Up), incorporating high-quality administrative records data as the response data for housing units that do not have an enumeration.
- Classify living quarters as Housing Units or Group Quarters
- Identify unique persons within an individual response
- Incorporate results from NRFU re-interview and electronic records from group quarters
- Standardize demographic data for person matching
- Remove responses from collection universe depending on residence criteria
- Perform baby delete criteria – flags person records for deletion for babies confirmed to be born after 4/1
- Assign IDs to non-ID cases
- Collate multiple sheet large HU paper responses

UHE College student example

DRF1 & 2 deal with addresses we have responses for, CUF deals with the whole universe, including addresses without responses.

Decennial Response File 2 (DRF2) and Census Unedited File (CUF) Plan

Produce Decennial Response File 2 (DRF2) – 22 days

- Remove responses that meet criteria for being born after Census Day
- Execute Primary Selection Algorithm (PSA) - This resolves situations where we have more than one response for a single address and two or more responses (possibly in different states) for the same household
- Review and verify PSA results
- Process DRF2 at the national level

Produce the Census Unedited File (CUF) – 15 days

- Determine the status for every housing unit as occupied, vacant or non-existent
- Identify the universe of data to include in the Census from the Sample Delivery File (SDF) and DRF2 and apply the Count Imputation (CI) operation to fill in the missing housing unit status and the missing household size
- Determine final population count for each address
- Review the population totals and their reasonableness
- Review and verify the data processing steps and products

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UHE College student example

DRF1 & 2 deal with addresses we have responses for, CUF deals with the whole universe, including addresses without responses.

Early and Ongoing Review to Enhance and Accelerate Final Data Review

New Subject Matter Expert (SME) Review Improvements

- Implemented increased analysis of real time response data to look for trends in data collection and shifting demographics. This helps to offset downstream review and processing risks
- Review of the DRF1 will occur to identify potential issues earlier; in 2010, SME review started with the DRF2
- The focus of the DRF1-CUF review will be on total population counts for apportionment; a separate team of analysts will be compiled to support the additional review of population totals
- An automated issue tracking system and a streamlined communication plan will allow for quicker decision making about identified issues and provide additional information to senior leadership

Other SME Review Methods to Accelerate Data Review

- Use of SME-developed and tested SAS review programs to automate data collection and data processing review
- The most in-depth demographic reasonableness review will be conducted on the first five to ten states produced by DRPS, with later states undergoing more cursory review checks
- Creation of the DRF1 and CUF will operate concurrently with SME Reviews

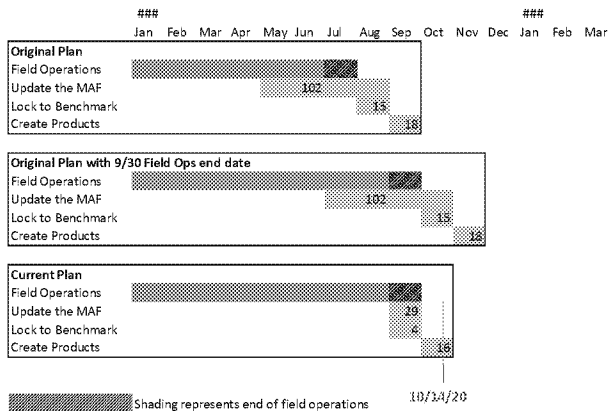
Appendix

Background on Risks

- If we do not complete all field data collection by 9/30/2020, this schedule may not be viable
- The schedule modifications in this plan have limited the ability to recover from a late start, processing delays, or other critical issues
- The risk of delays in processing is real, based on previous Census experience
 - As with every past Census, data anomalies will be detected during processing or review
 - Fixes may require individual states or all states to be re-processed.
 - State, multi-state, and national re-processing has been required in all recent censuses
 - We will not know the full extent of anomalies until we process the entire universe.
- Again, by closely managing both the process and the risks, our intention continues to be to produce an accurate, defensible 2020 Census count in compliance with statutory deadlines and the Presidential Memorandum

Additional Detail on GEO Processing

GEO Processing to meet 12/14/2020 CUF Delivery



Detailed Processing Steps

Activity ID	Activity Name	Calendar	DD	Start	Finish	Var-Start	Var-Finish
20SR-12170	Conduct Internet Self-Response (ISR) Data Collection	5, 7 Day Federal Holiday thru 2023	230d	17-Mar-20	31-Oct-20	0d	0d
20RD-11020	Conduct Non-ID Clinical Process Operation	5, 7 Day Federal Holiday thru 2023	230d	12-Mar-20	31-Oct-20	0d	0d
20SQ-10500	Conduct Self-Response Quality Assurance	5, 7 Day Federal Holiday thru 2023	250d	12-Mar-20	31-Oct-20	0d	0d
20QA-10930	Conduct Census Questionnaire Assistance (CQA) Inbound Operation	4, 7 Day No Holidays thru 2023	234d	12-Mar-20	31-Oct-20	0d	0d
20QA-10940	Conduct Census Questionnaire Assistance (CQA) Outbound Operation	4, 7 Day No Holidays thru 2023	193d	22-Apr-20	31-Oct-20	0d	0d
20CO-12520	Monitor CQA Outbound Call Telephone Operation	5, 7 Day Federal Holiday thru 2023	187d	24-Apr-20	31-Oct-20	0d	0d
20NRD-31520	Conduct NRRU Reminder/Field Data Collection	5, 7 Day Federal Holiday thru 2023	79d	12-Aug-20	31-Oct-20	0d	0d
20RPC-11080	Conduct 2020 Reminder Phase	4, 7 Day No Holidays thru 2023	79d	14-Aug-20	31-Oct-20	0d	0d
20MTS-22260	Create MAF/TIGER Benchmark for Final Collection Producers and Services	5, 7 Day Federal Holiday thru 2023	22d	13-Nov-20*	5-Dec-20	0d	1d
20MTS-20400	Create MAF Extract for Final Collection - MAF/TIGER	5, 7 Day Federal Holiday thru 2023	9d	6-Dec-20	14-Dec-20	1d	1d
20MTS-20420	QC MAF Extract for Final Collection - MAF/TIGER	5, 7 Day Federal Holiday thru 2023	9d	7-Dec-20	15-Dec-20	1d	1d
20MTS-20330	Deliver MAF Extract & Header File to DTED/CARDS for Final Collection - MAF/TIGER	5, 7 Day Federal Holiday thru 2023	2d	16-Dec-20	17-Dec-20	1d	3d
20CAR-50950	DTED/CARDS Receive MAF Extract from MAF/TIGER for Final SDF (col)	1, 5 Day Federal Holiday thru 2023	0d	18-Dec-20		1d	1d
20CAR-50980	CARDS Ingests MAF Extract from MAF/TIGER for Final SDF (col)	4, 7 Day No Holidays thru 2023	2d	18-Dec-20	19-Dec-20	3d	3d
20CAR-51060	CARDS Creates and Review Final SDF (col)	4, 7 Day No Holidays thru 2023	4d	20-Dec-20	23-Dec-20	3d	6d
20CAR-51100	CARDS Delivers Final SDF (col) to DRPS	4, 7 Day No Holidays thru 2023	0d		23-Dec-20	6d	6d
20DRP-50590	DRPS Receives and Ingests Final Collection SDF from CARDS	4, 7 Day No Holidays thru 2023	3d	24-Dec-20	26-Dec-20	6d	9d
20DRP-50580	Create Initial Decennial Response File (PCDU/DRF1) - DRPS	1, 5 Day Federal Holiday thru 2023	12d	28-Dec-20	13-Jan-21	5d	5d
20DRP-11590	Deliver Initial Decennial Response File (PCDU/DRF1) to RPO/DSSD - DRPS	1, 5 Day Federal Holiday thru 2023	13d	30-Dec-20	19-Jan-21	5d	5d
20DRP-11600	Receive Approval of Decennial Response File (PCDU/DRF1) from RPO/DSSD - DRPS	1, 5 Day Federal Holiday thru 2023	1d	19-Jan-21	19-Jan-21	5d	5d
20DRP-50750	Create Initial Decennial Response File (PSA/DRF2) - DRPS	1, 5 Day Federal Holiday thru 2023	6d	19-Jan-21	26-Jan-21	5d	5d
20DRP-18420	Deliver Initial Decennial Response File (PSA/DRF2) to RPO/DSSD - DRPS	1, 5 Day Federal Holiday thru 2023	1d	26-Jan-21	26-Jan-21	5d	5d
20RPO-11250	Receive Primary Selection Algorithm File (PSA) (Final PSA/DRF2) from DRPS	1, 5 Day Federal Holiday thru 2023	1d	26-Jan-21	26-Jan-21	5d	5d
20RPO-11260	Perform SME Review of Primary Selection Algorithm File (Final PSA/DRF2)	1, 5 Day Federal Holiday thru 2023	11d	26-Jan-21	9-Feb-21	5d	5d
20DRP-18460	Receive Approval of Decennial Response File (PSA/DRF2) from RPO/DSSD - DRPS	1, 5 Day Federal Holiday thru 2023	1d	9-Feb-21	9-Feb-21	5d	5d
20DRP-30620	Create Initial Census Unedited File (CUF) - DRPS	1, 5 Day Federal Holiday thru 2023	17d	9-Feb-21	4-Mar-21	5d	5d
20RPO-11270	Provide Results and Approval of Primary Selection Algorithm File (Final PSA/DRF2) to DRPS	1, 5 Day Federal Holiday thru 2023	0d		9-Feb-21	5d	5d
20DRP-18480	Deliver Final Census Unedited File (CUF) to RPO/POP - DRPS	1, 5 Day Federal Holiday thru 2023	15d	11-Feb-21	4-Mar-21	5d	5d
20DRP-18470	Receive Approval of Census Unedited File (CUF) from RPO/POP - DRPS	1, 5 Day Federal Holiday thru 2023	1d	4-Mar-21	4-Mar-21	5d	5d
20DRP-18490	Deliver Final Census Unedited File (CUF) to POP / CDL - DRPS	1, 5 Day Federal Holiday thru 2023	0d		4-Mar-21	5d	5d
20DPD-10730	POP Receives Final CUF from CDL/DRPS	1, 5 Day Federal Holiday thru 2023	0d	5-Mar-21		5d	5d
20PMD-16390	Executive Review and Approval CUF	4, 7 Day No Holidays thru 2023	30d	5-Mar-21	3-Apr-21	7d	2d
20DPD-10740	POP Creates/Verifies Apportionment Tables	1, 5 Day Federal Holiday thru 2023	16d	5-Apr-21	26-Apr-21	1d	0d
20DPD-10750	POP Delivers Final Apportionment Tables to BOC DIR and CQAS	1, 5 Day Federal Holiday thru 2023	0d		26-Apr-21	0d	0d
20DPD-10760	BOC DIR/CQAS Assembles Final Apportionment Transmittal Package	1, 5 Day Federal Holiday thru 2023	4d	27-Apr-21	30-Apr-21	0d	0d
20DPD-10770	BOC DIR Delivers Final Apportionment Transmittal Package to DOC	1, 5 Day Federal Holiday thru 2023	0d		30-Apr-21	0d	0d
20DPD-10850	DOC Delivers Apportionment Counts to President (U.S.C. Article 1, Section 2)	1, 5 Day Federal Holiday thru 2023	0d		30-Apr-21	0d	0d

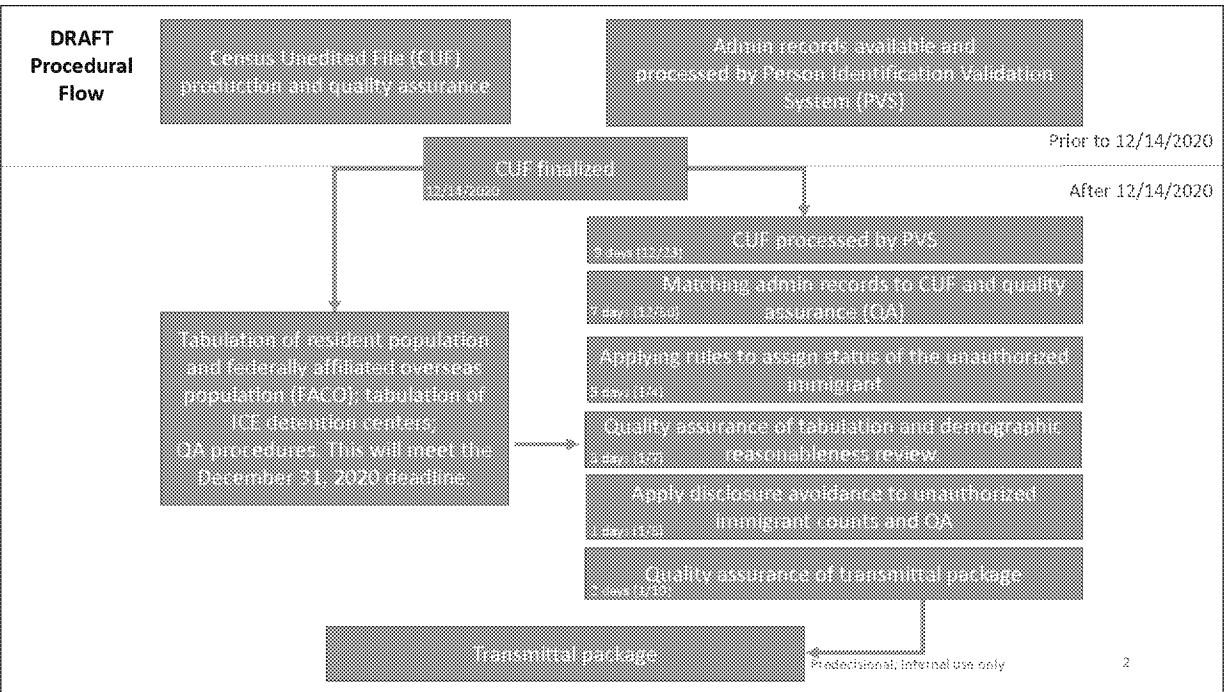
DRAFT

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 24, 2020

Presidentially internal use only

3



From: Risko, Daniel (Federal) [DRisko@doc.gov]
Sent: 8/17/2020 10:31:45 AM
To: Walsh, Michael (Federal) [MWalsh@doc.gov]
Subject: Fwd: PM PPT
Attachments: 20200816_Overview_of_procedures for PM.pptx; ATT00001.htm

Dan Risko
Chief of Staff
Office of the Deputy Secretary
United States Department of Commerce
202-482-6010 (o) | b(6) (c)
drisko@doc.gov

Begin forwarded message:

From: "Risko, Daniel (Federal)" <DRisko@doc.gov>
Date: August 17, 2020 at 10:29:38 AM EDT
To: "Martin, Nicole (Federal)" <NMartin1@doc.gov>
Subject: Fwd: PM PPT

Dan Risko
Chief of Staff
Office of the Deputy Secretary
United States Department of Commerce
202-482-6010 (o) | b(6) (c)
drisko@doc.gov

Begin forwarded message:

From: "Ron S Jarmin (CENSUS/DEPDIR FED)" <Ron.S.Jarmin@census.gov>
Date: August 17, 2020 at 10:29:16 AM EDT
To: "Risko, Daniel (Federal)" <DRisko@doc.gov>
Cc: "Velkoff, Victoria A" <victoria.a.velkoff@census.gov>, "Abowd, John M" <john.maron.abowd@census.gov>
Subject: Fw: PM PPT

Please add this to the 10:30. Don't add to 2PM yet.

Ron S Jarmin, PhD., Deputy Director
U.S. Census Bureau

o: 301-763-1858 | m: **b(6)**
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From: Victoria Velkoff (CENSUS/ADDP FED) <Victoria.A.Velkoff@census.gov>
Sent: Monday, August 17, 2020 8:46 AM
To: Ron S Jarmin (CENSUS/DEPDIR FED) <Ron.S.Jarmin@census.gov>; Christa D Jones (CENSUS/DEPDIR FED) <Christa.D.Jones@census.gov>; Enrique Lamas (CENSUS/DEPDIR FED) <Enrique.Lamas@census.gov>
Cc: John Maron Abowd (CENSUS/ADRM FED) <john.maron.abowd@census.gov>
Subject: PM PPT

Slightly revise version of the PPT as I received some comments from decennial about

b(5) - DP

b(5) - DP Note I just shared this version with the director.

Not sure who is making sure everyone at 10:30 has the correct version of the deck.

Thanks

Tori

Victoria Velkoff, PhD
Associate Director for Demographic Programs
U.S. Census Bureau
o: 301-763-1372
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Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 17, 2020



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3

Overview

- Post data collection processing
- Presidential Memorandum teams and data stewardship
- Flowchart of steps needed to complete Presidential Memorandum work and timing
- ICE detention centers tabulation
- Admin records available
- Processing the CUF through the PVS and matching to admin records
- Rules for assigning status
- Quality assurance of the unauthorized immigrant counts
- Communication strategy decision

Post Data Collection Processing

- Post data collection processing is a complex operation that includes several divisions (Decennial Census Management Division; Decennial Information Technology Division; Decennial Statistical Studies Division; Geography Division; Population Division; Social, Economic, and Housing Statistics Division) who all have unique roles in the process.
- Example of some of the activities in this operation include:
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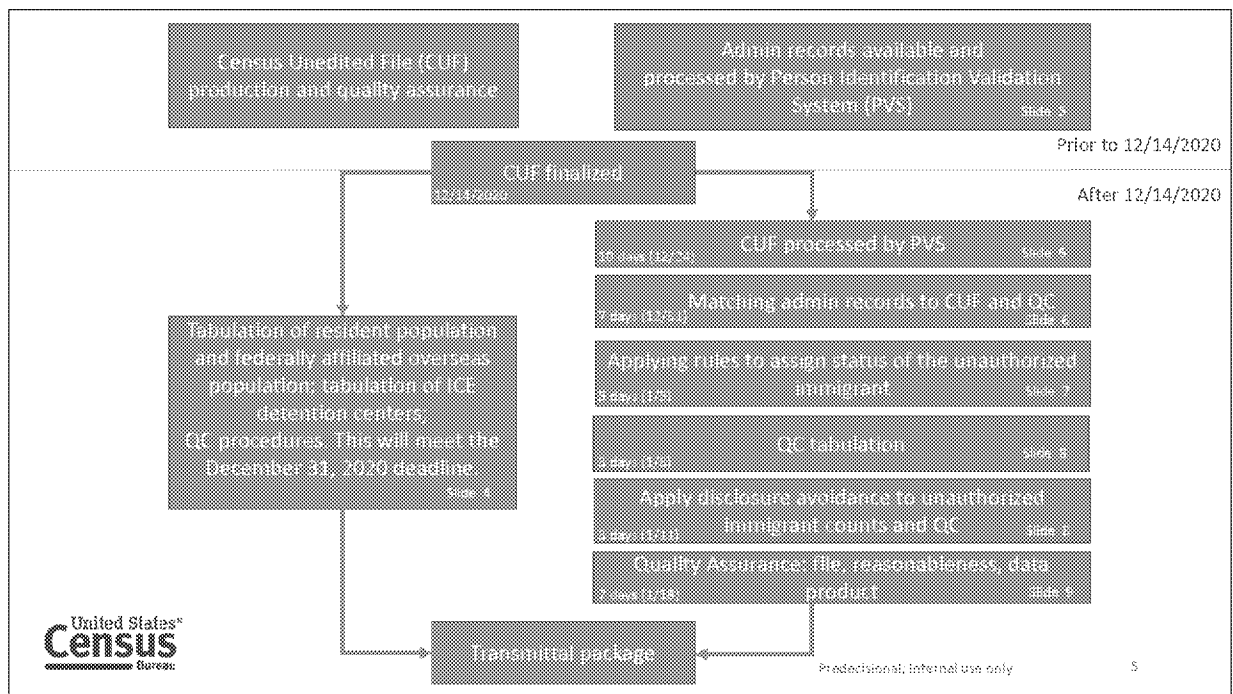
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 - Team Leads – Chief Scientist and Chief Demographer
 - Includes experts on admin records, demographers, economists, and statisticians
 - Builds on the experience of the CVAP team using data sets from the EO
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 - Members – Associate Directors for Decennial, Demographic, Economic, Field, and Research and Methodology; CIO; Chief of Staff; Assistant Directors for Communication and R&M; Chief of PCO; Chief Privacy Officer; Two at large members
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Tabulating ICE Detention Centers

- Inmates in ICE detention centers were counted as part of the Group Quarters enumeration process.
- When we have the final CUF, we will tabulate these data to create a count of inmates in ICE detention centers for each state.
- This tabulation can be done by the December 31, 2020 deadline.
- We need to make a decision about whether all inmates are unauthorized. In order to distinguish who is unauthorized, record linkage to the CUF is required pushing this past December 31.

Administrative Record Sources

- The administrative record sources include
 - SSA Numident
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 - Personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers (ITINs), which is public information
- These records will be put through the PVS process to assign Protected Identification Keys (PIK) prior to December and will be ready for matching when the CUF is available.

Processing the CUF through the PVS and Matching to Admin Records

- First we process the CUF through the PVS
 - Each of the 50 states plus DC will be run through the PVS programs. The process includes over 20 passes for each state in order to assign PIKs.
 - A team will check the quality of the identifiers and review for any errors due to the PVS process.
 - The final step includes generating the crosswalk of protected identification keys (PIK) for each state.
- Next we link the CUF to the admin records
 - We have over two dozen unique administrative record files and each file will be separately compared to the CUF looking for a matching PIK.
 - Pertinent information on authorization status will be maintained on a consolidated file.
 - Once each administrative record file has been processed against the CUF, the data will need to be reconciled for any inconsistencies between administrative record files regarding status.
 - Once those issues are identified and resolved, a final file will be ready for processing.



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Assignment Rules

We will apply a series of rules to individuals who have a match between the CUF and admin records to assign an authorized/unauthorized status as of April 1, 2020.

It is possible for admin records to have multiple statuses for an individual (e.g., people who enter in an unauthorized status can be given legal status such as refugee; a student on a visa could overstay their visa and become unauthorized).

If definitive admin records show that someone is a citizen, we assign this person citizenship status. This is the reason that we must use all admin records in the process.

People will be classified as an unauthorized immigrant if they are enumerated in the census and match to an admin record that has a clear indication that they are here illegally as of April 1, 2020.

For each state and DC, we will only tabulate unauthorized immigrants who link directly to a census record. Records that do not match are out of scope.



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Quality Assurance on Assignment Rules and Disclosure Avoidance

- Assignment rules will be independently double-programmed (concurrently) and compared to ensure data quality standards.
- Staff will need to investigate any obvious errors and resolve these issues. Since solving these puzzles is not always straightforward, we estimate this step will take three days.
- We will apply disclosure avoidance and then produce the final table of unauthorized immigrants.

Quality Assurance of the Unauthorized Immigrant Counts

After disclosure avoidance is applied, we will do quality assurance of the tabulated unauthorized immigrant counts:

1. Verify file (e.g., does every state have an count?)
2. Data reasonableness review. Typical process: (1) Compare current-year estimates to prior-year estimates (2) Compare to other, similar estimates (benchmarks).
 - No recent Census Bureau estimates of unauthorized immigrants in decennial censuses.
 - Compare to estimates of unauthorized immigrants from Pew Research Center (Pew 2018), Center for Migration Statistics (Warren 2018), and Office of Immigration Statistics (OIS 2018). Specifically, compare levels and rough rank-ordering of states.
3. Produce a table of the unauthorized immigrants for each state and DC and provide to the Secretary.

Communication Strategy Decision

- The Census Bureau typically is transparent about methodologies used for data products. We need to decide how to publically communicate the methodologies used to create these tabulations and when to do this communication.
- We recommend that we do a federal register notice on the methodology because transparency requires that the American public understand how we derived the counts of unauthorized immigrants and have the opportunity to comment on that methodology.

From: Martin, Nicole (Federal) [NMartin1@doc.gov]
Sent: 8/17/2020 10:31:04 AM
To: Dillingham, Steven [steven.dillingham@census.gov]; Cogley, Nathaniel [nathaniel.cogley@census.gov]; Meredith, Ethan (Federal) [EMeredith@doc.gov]; Olson, Stephanie (Federal) [SOlson@doc.gov]; Walsh, Michael (Federal) [MWalsh@doc.gov]; Keller, Catherine (Federal) [CKeller@doc.gov]; Jarmin, Ron S [ron.s.jarmin@census.gov]; Jones, Christa D [christa.d.jones@census.gov]; Velkoff, Victoria A [victoria.a.velkoff@census.gov]; Abowd, John M [john.maron.abowd@census.gov]; Lamas, Enrique [enrique.lamas@census.gov]
CC: Martin, Nicole (Federal) [NMartin1@doc.gov]
Subject: Census Pre-Brief
Attachments: 20200816_Overview_of_procedures for PM.pptx

Good morning team,

Attached you will find the powerpoint for the Census Pre Brief.

Best,
Nicole

Nicole Martin
Office of the Deputy Secretary
NMartin1@doc.gov
O: 202-482-0504
C: b(6)

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 17, 2020



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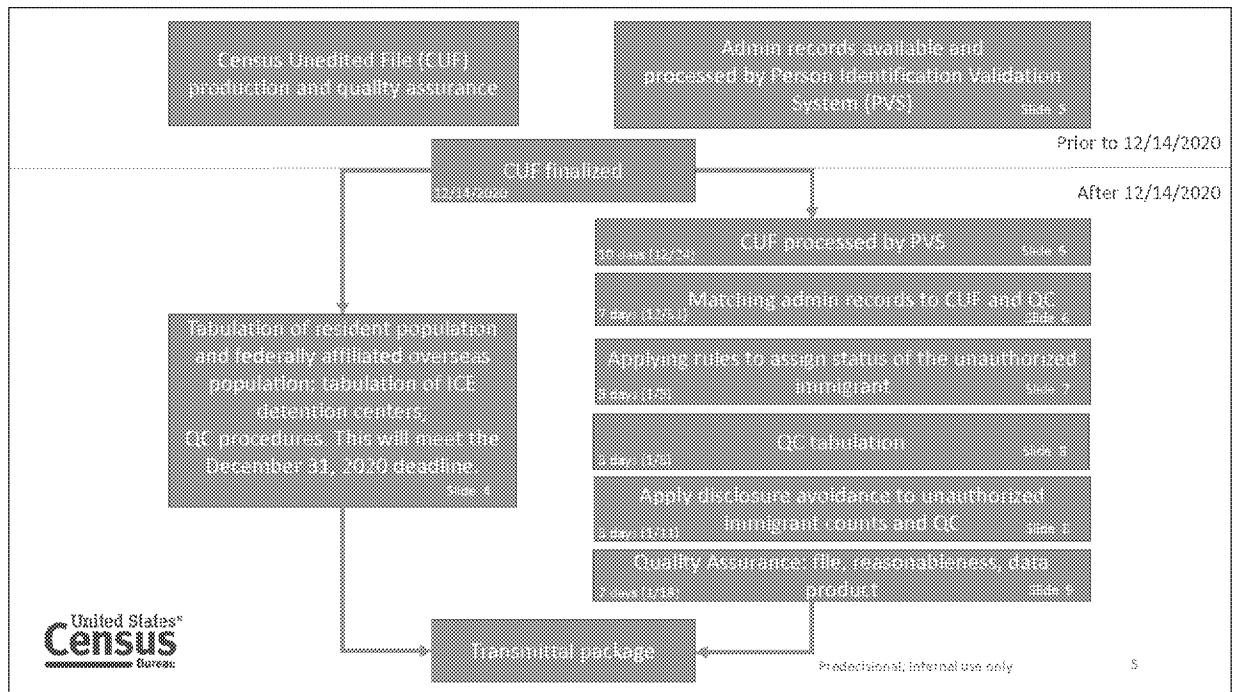
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 - We have over two dozen unique administrative record files and each file will be separately compared to the CUF looking for a matching PIK.
 - Pertinent information on authorization status will be maintained on a consolidated file.
 - Once each administrative record file has been processed against the CUF, the data will need to be reconciled for any inconsistencies between administrative record files regarding status.
 - Once those issues are identified and resolved, a final file will be ready for processing.



Predecisional; internal use only

5

Assignment Rules

We will apply a series of rules to individuals who have a match between the CUF and admin records to assign an authorized/unauthorized status as of April 1, 2020.

It is possible for admin records to have multiple statuses for an individual (e.g., people who enter in an unauthorized status can be given legal status such as refugee; a student on a visa could overstay their visa and become unauthorized).

If definitive admin records show that someone is a citizen, we assign this person citizenship status. This is the reason that we must use all admin records in the process.

People will be classified as an unauthorized immigrant if they are enumerated in the census and match to an admin record that has a clear indication that they are here illegally as of April 1, 2020.

For each state and DC, we will only tabulate unauthorized immigrants who link directly to a census record. Records that do not match are out of scope.

Quality Assurance on Assignment Rules and Disclosure Avoidance

- Assignment rules will be independently double-programmed (concurrently) and compared to ensure data quality standards.
- Staff will need to investigate any obvious errors and resolve these issues. Since solving these puzzles is not always straightforward, we estimate this step will take three days.
- We will apply disclosure avoidance and then produce the final table of unauthorized immigrants.

Quality Assurance of the Unauthorized Immigrant Counts

After disclosure avoidance is applied, we will do quality assurance of the tabulated unauthorized immigrant counts:

1. Verify file (e.g., does every state have an count?)
2. Data reasonableness review. Typical process: (1) Compare current-year estimates to prior-year estimates (2) Compare to other, similar estimates (benchmarks).
 - No recent Census Bureau estimates of unauthorized immigrants in decennial censuses.
 - Compare to estimates of unauthorized immigrants from Pew Research Center (Pew 2018), Center for Migration Statistics (Warren 2018), and Office of Immigration Statistics (OIS 2018). Specifically, compare levels and rough rank-ordering of states.
3. Produce a table of the unauthorized immigrants for each state and DC and provide to the Secretary.

Communication Strategy Decision

- The Census Bureau typically is transparent about methodologies used for data products. We need to decide how to publically communicate the methodologies used to create these tabulations and when to do this communication.
- We recommend that we do a federal register notice on the methodology because transparency requires that the American public understand how we derived the counts of unauthorized immigrants and have the opportunity to comment on that methodology.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5770 (JMF)

NEW YORK IMMIGRATION
COALITION, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, *in his official
capacity as President of the United
States*, et al.,

Defendants.

20-CV-5781 (JMF)

**PLAINTIFFS' LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

Pursuant to Local Civil Rule 56.1, Plaintiffs the State of New York et al. and the New York Immigration Coalition et al. submit the following statement of material facts as to which there is no genuine issue to be tried.

**EXCLUDING UNDOCUMENTED IMMIGRANTS FROM THE APPORTIONMENT
BASE AFTER THE 2020 CENSUS WILL DEPRIVE CALIFORNIA AND/OR TEXAS OF
CONGRESSIONAL SEATS**

1. Since 1790, no decennial census has excluded any category of persons who usually reside in the United States on their basis of their citizenship or immigration status for purposes of

apportioning congressional representation. *See, e.g., 2020 Decennial Census Residence Rule and Residence Situations*, 80 Fed. Reg. 28,950, 28,950, (2015); Thompson Decl. ¶ 8 (Ex. 57).¹

2. Millions of undocumented immigrants live in the United States and many have lived in the United States for many years. *See* Office of Immigration Statistics, U.S. Dep’t of Homeland Sec., *Population Estimates: Illegal Alien Population Residing in the United States: January 2015* at 2 (Dec. 2018), https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf.

3. California and Texas are consistently the two states with the largest populations of undocumented residents. *Id.* at 4-5.

4. According to the Department of Homeland Security, California had 2.9 million undocumented residents and Texas had 1.9 million undocumented residents in 2015. *Id.* at 2.

5. As of the most recent Congressional reapportionment following the 2010 Decennial Census, the average population of each U.S. House district is 710,767 people. *See* Kristin D. Burnett, *Congressional Apportionment*, U.S. Census Bureau (Nov. 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf> (last visited July 30, 2020).

6. According to the United States Census Bureau, as of July 1, 2019, the population of the United States was estimated to be 328,239,523. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

¹ Citations to “Ex. ___” are to the exhibits to the accompanying Declaration of Matthew Colangelo dated August 7, 2020.

7. If the July 1, 2019 Census Bureau estimate of the total United States population is divided by the total number of seats in Congress (435), the quotient is 754,574. *See id.*

8. The Memorandum states that “[i]ncreasing congressional representation based on the presence of aliens who are not in a lawful immigration status would also create perverse incentives encouraging violations of Federal law.” *Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census*, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020) (the “Memorandum”) (ECF No. 1-1).

9. The Memorandum states: “Current estimates suggest that one State is home to more than 2.2 million illegal aliens, constituting more than 6 percent of the State’s entire population. Including these illegal aliens in the population of the State for the purpose of apportionment could result in the allocation of two or three more congressional seats than would otherwise be allocated.” *Id.*

10. A state in which 2.2 million people represent 6 percent of the population would have a total population of more than 36 million residents.

11. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of California was 37,253,956. U.S. Census Bureau, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019* (NST-EST2019-02), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited July 30, 2020).

12. According to the Census Bureau, as of July 1, 2019, the total population of the State of California was 39,512,223. *Id.*

13. The second most populous state in the United States is Texas. *Id.*

14. According to the United States Census Bureau, as of April 1, 2010, the total population of the State of Texas was 25,145,561. *Id.*

15. According to the United States Census Bureau, as of July 1, 2019, the total population of the State of Texas was 28,995,881. *Id.*

16. After California and Texas, the next most populous state is Florida, which, according to the Census Bureau, had a total population of 18,801,310 as of April 1, 2010, and an estimated total population of 21,477,737 as of July 1, 2019. *Id.*

17. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute approximately 7.6 percent of the estimated total population of Texas as of July 1, 2019. *See id.*

18. Based on the Census Bureau's 2019 estimate, 2.2 million people would constitute over 10 percent of the estimated total population of Florida as of 2019. *See id.*

19. The Memorandum anticipates that excluding undocumented immigrants from the apportionment base would deprive California of at least one seat in the House of Representatives. *See* 85 Fed. Reg. at 44,680.

20. Dr. Christopher Warshaw modeled the effects of excluding undocumented immigrants from the population count used to calculate Congressional reapportionment after the 2020 Census. *See* Warshaw Decl. at ¶ 11 (Ex. 58).

21. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that Texas will lose a seat in the House of Representatives is 98.3%. *Id.* § 5.2, Tbl. 7.

22. According to Dr. Warshaw, if undocumented immigrants are excluded from the apportionment basis, the probability that California will lose a seat in the House of Representatives is 72.1%. *Id.*

**THE POLITICAL INFLUENCE OF PLAINTIFFS CONSTITUENTS WILL BE
DIMINISHED BY THE MEMORANDUM'S EXCLUSION OF UNDOCUMENTED
IMMIGRANTS FROM THE APPORTIONMENT BASE**

23. Plaintiff the City and County of San Francisco, represented by and through its City Attorney, is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county. Gov't Pls.' Am. Compl. ¶ 42 (ECF No. 34).

24. Residents of the City and County of San Francisco will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

25. Plaintiff Monterey County, California is a political subdivision of the State of California. *See* Gov't Pls.' Am. Compl. ¶ 48 (ECF No. 34).

26. Residents of the Monterey County will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

27. Plaintiff Cameron County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 44 (ECF No. 34).

28. Residents of Cameron County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

29. Plaintiff El Paso County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 45 (ECF No. 34).

30. Residents of El Paso County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

31. Plaintiff Hidalgo County, Texas is a political subdivision of the State of Texas. Gov't Pls.' Am. Compl. ¶ 46 (ECF No. 34).

32. Residents of Hidalgo County will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

33. Plaintiff American-Arab Anti-Discrimination Committee ("ADC") is a membership-based not-for-profit organization. Khalaf Decl. ¶ 4 (Ex. 26).

34. ADC has several thousand dues-paying members nationwide, with members in all 50 states including California and Texas. *See New York*, 351 F. Supp. 3d at 608; Khalaf Decl. ¶ 5 (Ex. 26).

35. Dr. Souhail Toubia is a member of ADC and a resident of Orange County, California. Khalaf Decl. ¶ 17 (Ex. 26).

36. George Majeed Khoury is a member of ADC and a resident of San Diego, California. *Id.*

37. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

38. George Majeed Khoury is a member of ADC and a resident of San Diego, California. Khalaf Decl. ¶ 17 (Ex. 26).

39. Because Dr. Toubia and Mr. Khoury reside in California, they will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

40. Plaintiff FIEL Houston Inc. ("FIEL") is a membership-based not-for-profit organization based in Houston, Texas. Espinosa Decl. ¶ 2 (Ex. 18).

41. Today, FIEL has approximately 11,000 members in the greater Houston area. *Id.* ¶ 3.

42. Deyanira Palacios is a member of FIEL and a resident of Montgomery County, Texas. *Id.* ¶ 19.

43. Because Ms. Palacios resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

44. Karen Ramos is a member of FIEL and a resident of Harris County, Texas. Espinosa Decl. ¶ 20 (Ex. 18).

45. Because Ms. Ramos resides in Texas, she will lose political power because of Texas' loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58).

46. Plaintiff Ahri for Justice ("Ahri") is a membership-based not-for-profit organization based in Los Angeles, California. Seon Decl. ¶ 2 (Ex. 43).

47. Ahri has roughly 220 individual members, with most residing in Southern California, and particularly in Orange and Los Angeles Counties. Some but not all of these members are U.S. citizens. *Id.* ¶ 4.

48. Julie Kim is a member of Ahri and a resident of Orange County, California. *Id.* ¶ 20.

49. Because Ms. Kim resides in California, she will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *Id.*

50. Simon Lee is a member of Ahri and a resident of Los Angeles County, California. *Id.* ¶ 21.

51. Because Mr. Lee resides in California, he will lose political power because of California's loss of at least one seat in the House of Representatives due to the exclusion of undocumented immigrants from the apportionment base. *See* Warshaw Decl. § 5.2, Tbl. 7 (Ex. 58); Seon Decl. ¶ 21 (Ex. 43).

DATED: August 7, 2020

Respectfully submitted,

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From: McDermott, Ryan (Federal) [RMcDermott1@doc.gov]
Sent: 8/17/2020 12:59:21 PM
To: Kelley, Karen (Federal) [KKelley@doc.gov]; Risko, Daniel (Federal) [DRisko@doc.gov]; Walsh, Michael (Federal) [MWalsh@doc.gov]; Rockas, James (Federal) [JRockas@doc.gov]; Goudarzi, Talat (Federal) [TGoudarzi@doc.gov]; Barranca, Steven (Federal) [SBarranca1@doc.gov]; Blair, Robert (Federal) [RBlair@doc.gov]; Burkett, Robert (Federal) [RBurkett@doc.gov]
CC: Williams, Allaire (Federal) [AWilliams2@doc.gov]; Pepper, Samuel (Federal) [SPepper@doc.gov]; Stevens, Rose (Federal) [RStevens@doc.gov]; ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 08-17-2020 Briefing Book
Attachments: 8.17.20 Briefing Book.pdf; 3) 20200817_Overview_of_procedures for PM final.pptx

UPDATE:

Call-In – Small Group Decennial Meeting

From: McDermott, Ryan (Federal)
Sent: Monday, August 17, 2020 12:27 PM
To: Kelley, Karen (Federal) <KKelley@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Walsh, Michael (Federal) <MWalsh@doc.gov>; Rockas, James (Federal) <JRockas@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Barranca, Steven (Federal) <SBarranca1@doc.gov>; Blair, Robert (Federal) <RBlair@doc.gov>; Burkett, Robert (Federal) <RBurkett@doc.gov>
Cc: Williams, Allaire (Federal) <AWilliams2@doc.gov>; Pepper, Samuel (Federal) <SPepper@doc.gov>; Stevens, Rose (Federal) <RStevens@doc.gov>; ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 08-17-2020 Briefing Book

UPDATE:

Call-In – Small Group Decennial Meeting

From: McDermott, Ryan (Federal)
Sent: Monday, August 17, 2020 11:51 AM
To: Kelley, Karen (Federal) <KKelley@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Walsh, Michael (Federal) <MWalsh@doc.gov>; Rockas, James (Federal) <JRockas@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Barranca, Steven (Federal) <SBarranca1@doc.gov>; Blair, Robert (Federal) <RBlair@doc.gov>; Burkett, Robert (Federal) <RBurkett@doc.gov>
Cc: Williams, Allaire (Federal) <AWilliams2@doc.gov>; Pepper, Samuel (Federal) <SPepper@doc.gov>; Stevens, Rose (Federal) <RStevens@doc.gov>; ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 08-17-2020 Briefing Book

UPDATE:

Call-In – Senior Decennial Management Committee Meeting

From: McDermott, Ryan (Federal)
Sent: Sunday, August 16, 2020 10:07 PM
To: Kelley, Karen (Federal) <KKelley@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Walsh, Michael (Federal) <MWalsh@doc.gov>; Rockas, James (Federal) <JRockas@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Barranca, Steven (Federal) <SBarranca1@doc.gov>; Blair, Robert (Federal) <RBlair@doc.gov>; Burkett, Robert (Federal) <RBurkett@doc.gov>
Cc: Williams, Allaire (Federal) <AWilliams2@doc.gov>; Pepper, Samuel (Federal) <SPepper@doc.gov>; Stevens, Rose

(Federal) <RStevens@doc.gov>; ExecSecBriefingBook [b(6)]@doc.gov>

Subject: 08-17-2020 Briefing Book

For the Secretary:

- 1) THE SCHEDULE OF SECRETARY WILBUR ROSS
- 2) Call with Mayor Stan Booker, Lawton, OK
- 3) Call-In – Senior Decennial Management Committee Meeting **FORTHCOMING**
- 4) Call-In – Small Group Decennial Meeting **FORTHCOMING**
- 5) Call with Governor Doug Ducey, Arizona

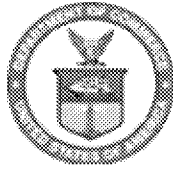
Ryan McDermott

[b(6)]

Briefing Book
Secretary
Wilbur L. Ross



For August 17, 2020



THE SCHEDULE OF SECRETARY WILBUR ROSS

As Prepared for August 17, 2020

7:00am-7:05am	Depart en route Mornings with Maria Drive Time: 5 minutes
7:30am-7:45am	Interview – Mornings with Maria <div style="border: 1px dashed black; padding: 5px; text-align: center;">b(6)</div>
11:00am-11:10am	Call with Mayor Stan Booker, Lawton, OK Conference Line – Non-Secure
1:00pm-1:45pm	Call-In – Senior Decennial Management Committee Meeting Conference Line – Non-Secure
2:00pm-3:30pm	Call-In – Small Group Decennial Meeting Conference Line – Non-Secure
5:00pm-5:15pm	Call with Governor Doug Ducey, Arizona Conference Line – Non-Secure

August 4, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

FROM: Tim Olson, Associate Director of Field Operations, U.S. Census Bureau
b(6)

RE: Call with Mayor Stan Booker, Lawton, OK
on Monday, August 17, 2020, from 11 AM to 11:10 AM

You will make phone calls to mayors of cities with populations of 80,000 or greater and with the lowest response rates for the 2020 Census as of June 30.

These calls are an opportunity to encourage mayors to complement Census Bureau efforts to promote response, which is important to get a complete and accurate count and reduce the workload for census takers conducting in-person follow-up.

As of this late date, there is not enough time to effectively participate in roundtable discussion, as was done following the last round of calls with mayors that were conducted throughout much of May. As an alternative, we can share specific action items and immediately connect them with partnership staff on the ground to coordinate their participation in the promotional surge.

Talking Points

- Mr./Ms. Mayor, thank you for taking my call. I hope you are doing well during this difficult time with the coronavirus and the recent social unrest facing our Nation.
- The purpose of my call is about the 2020 Census. I want to thank you for what you have done so far to promote response in your city.
- Today the national response rate is 61.8% [*will have update for each day*], which is higher than our 60.5% projection. Each percent response represents millions of households, and we are incredibly pleased at the Nation's response to the census thus far.
- However, in your city, the response rate today is xx.x%, which as you know, is lower than most of the Nation.
- We want to work together with you to increase your city's response.
- Given the current environment of the coronavirus, we want to maximize self-response so that we will not have as many households who may not want to open their doors and cooperate with one of our 500,000 census takers.
- Therefore, we are making a big push through advertising, social media, and partnership efforts in the lowest responding areas to increase the response before door knocking begins.
- Your city is included in this final push, which began in mid-July.
- I would like to ask for your help as we continue this final campaign.
- Joining me on this call is Tim Olson from the Census Bureau. Tim is the Census Bureau's Associate Director for Field Operations, and he has some ideas he's heard from other cities that he would like to share with you.

Tim would provide details on these following suggestions on how the mayor and city leaders can work with local partnership staff to promote response:

1. Distribute neighborhood/city specific response flyers in low responding neighborhoods through the use of city volunteers and census staff;
2. Host a community parade in the lowest responding tracts;
3. Rally community partners to actively engage during this final push with response messaging and volunteer support;
4. Bring religious leaders together virtually and urge them to make one final push to their congregants to participate in the census; and
5. Ask the mayor to personally urge her/his residents to respond before door knocking begins using press conferences, social media, and other avenues in local press.

Status Reporting: Nonresponse Followup for the 2020 Decennial Census

Periodic Reporting: August 17, 2020

Periodic Performance Management Reports

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Report Title	Slide Number
2020 Census: Nonresponse Followup At A Glance	3
2020 Census: Nonresponse Followup Progress	4
2020 Census: Nonresponse Followup Progress and Cost	5
2020 Census: Nonresponse Followup Enumerator Staffing	6
2020 Census: Nonresponse Followup Enumerator Productivity Curve	7
2020 Census: Completion Status by State	8
2020 Census: Nonresponse Followup Budgetary Contingency Usage Status	9
Appendix	10-18

Periodic Performance Management Reports

2020 Census: Nonresponse Followup At A Glance – August 17, 2020

General

Self-Response Rate: 63.8%

Offices Operational as of 08/09/20: 248

Timing

- **Days in Operation:** 53
- **Days Elapsed:** 8
- **Days Remaining:** 45

18 ACOs are over 50% complete with NRFU.

Progress

Current Workload: : 61,335,507

Completed Cases: 14,851,615 (24.2%)

Planned Completed Cases: 10,341,647 (16.86%)

Remaining Workload: 46,483,892

Enumerator Productivity

- **Hours per week for last week for Cycle 1a:** 19.0
- **Hours per week for last week for Cycle 1b:** 16.3
- **Hours per week for last week for Cycle 2:** 16.3
- **Average Cases Completed Per Hour:** 2.59
- **Planned Cases Completed Per Hour:** 1.55

Staffing

- **Selections:** 968,280
- **Invited to Training:** 452,740
- **Completed Training:** 263,356
- **Currently in Training:** 78,041
- **Active:** 200,269
- **Expected Replacement Training:** 70,559

Calculated Staff Needs (updated weekly)

- Remaining workload: 46,483,892 cases
- Remaining weeks: 6
- Average cases per week: 7,747,315
- Average cases per hour: 1.55
- Needed hours per week: 4,998,268
- Average enumerator hours per week: 19
- Required average enumerators 263,067 To complete by 9/30
- Required average enumerators 203,877 (assuming 2 cases/hour)

Contingency Budget

- **Contingency Available (as of 3/14/20):** \$2,030 M
- **Expected Contingency Uses for COVID-19:** \$1,106 M
- **Contingency Approvals (through 7/31):** \$934 M
- **Remaining Contingency: (through 7/31):** \$924 M
- **Uncommitted Remaining Contingency:** \$187 M

	Planned	Actual
Overtime	\$100M	\$0.2M
Enumerator Awards	\$300M	--
Other	\$302M	\$11.5M
Total	\$702M	\$12M

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

July 16, 2020

Completion Date:

September 30, 2020

Notes:

Current workload
reflects all case types.

Cases Completed by Telephone:

Pending

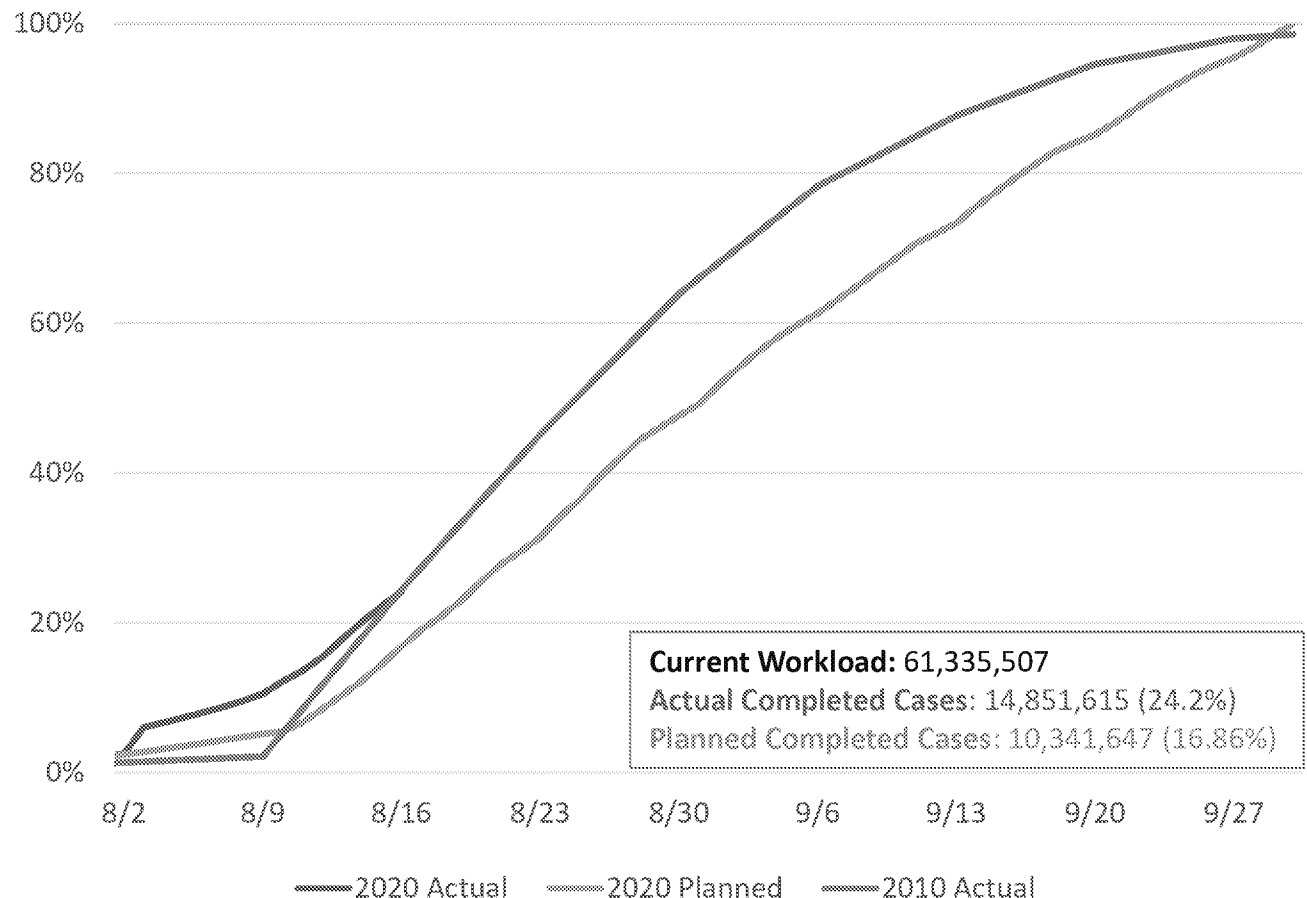
Cases Completed by Self-Response:

3,522,026 (23.7% of completed cases)

Remaining Workload:

46,483,892 cases

Case Progress for Field Enumeration



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress and Cost

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

July 16, 2020

Completion Date:

September 30, 2020

Notes:

Current workload reflects all case types. Costs include training and production costs for NRFU Enumerators and CFS.

Cases Completed by Telephone:

Pending

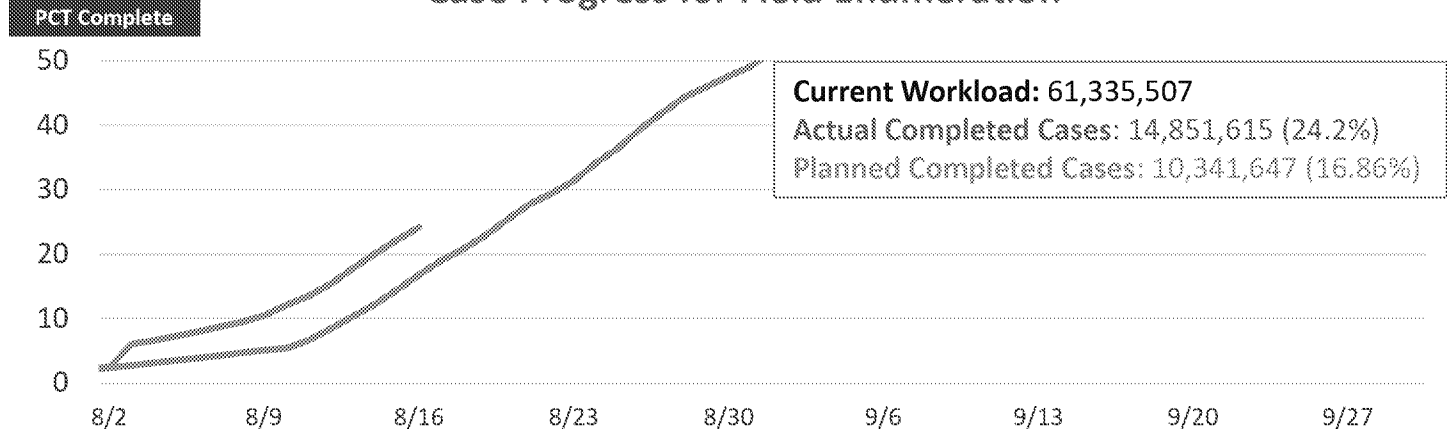
Cases Completed by Self-Response:

3,522,026 (23.7% of completed cases)

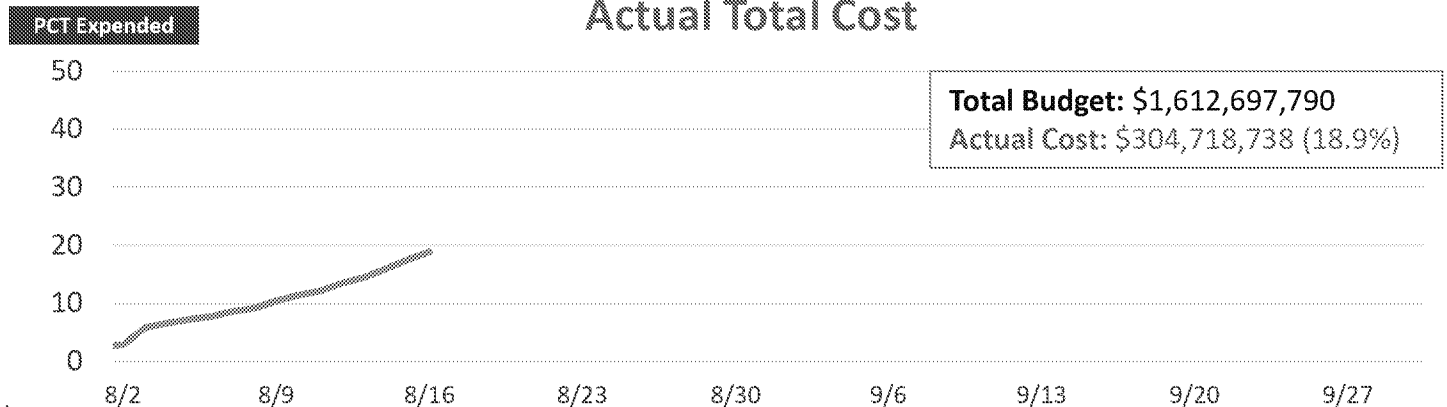
Remaining Workload:

46,483,892 cases

Case Progress for Field Enumeration



Actual Total Cost



Data as of 11:59 pm of the previous day

Source: MOJO Hermes

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Staffing

Status:

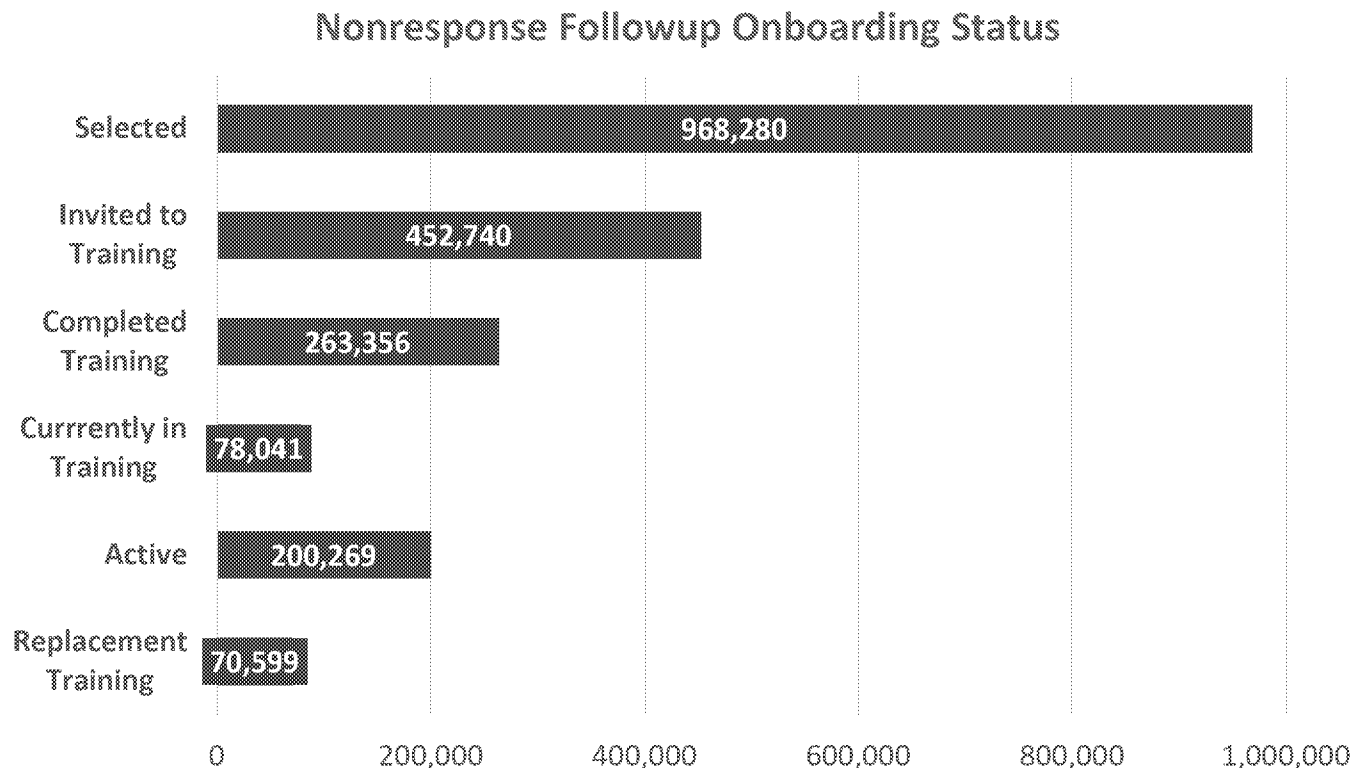
● On Track

Data current as of:
August 17, 2020

Completion Date:
September 30, 2020

Notes:

- Enumerator Training No Show Rate: 33%
- Over the weekend of August 15, the Enumerator Training No Show Rate dropped to 23%.



Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Productivity Curve

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

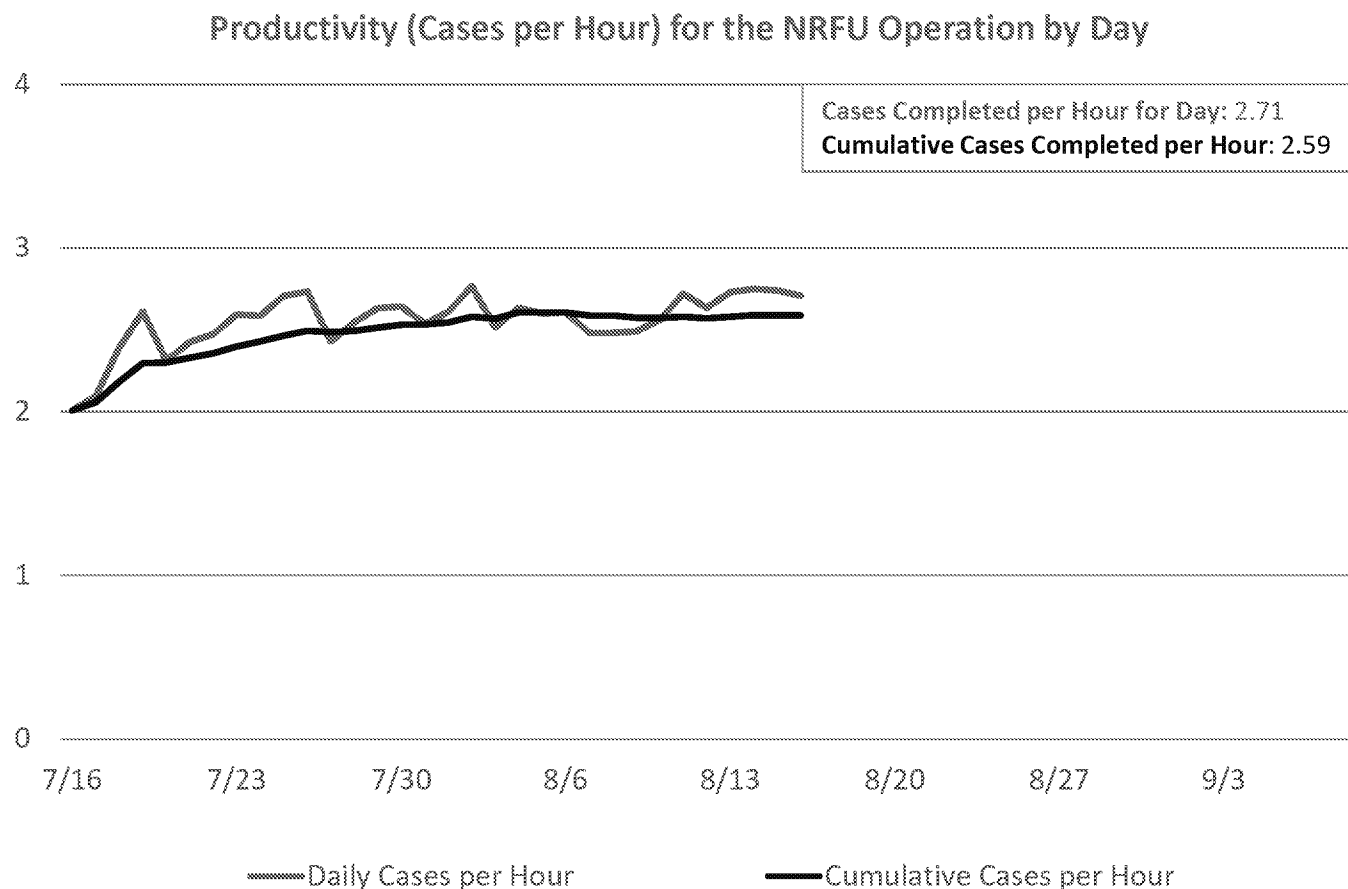
July 16, 2020

Completion Date:

September 30, 2020

Notes:

Cases per hour include cases that were resolved by enumeration, administrative records, or self-response.



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Completion Status by State

Source: Census Data Lake, Unified Tracking System

Data Current as of: August 17, 2020

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Prior Week	% HUs Enumerated Current Week	Weekly Change
U.S. Total	63.8%	5.9%	--	69.7%	--
Alabama	61.2%	2.4%	--	63.6%	--
Alaska	51.1%	15.3%	--	66.4%	--
Arizona	60.4%	2.0%	--	62.4%	--
Arkansas	58.3%	6.4%	--	64.7%	--
California	65.5%	6.7%	--	72.2%	--
Colorado	67.2%	6.0%	--	73.1%	--
Connecticut	67.8%	10.2%	--	78.0%	--
Delaware	61.3%	5.0%	--	66.2%	--
District of Columbia	60.2%	5.9%	--	66.1%	--
Florida	60.6%	2.9%	--	63.5%	--
Georgia	59.3%	3.2%	--	62.6%	--
Hawaii	60.8%	14.2%	--	74.9%	--
Idaho	68.2%	20.6%	--	88.8%	--
Illinois	68.7%	9.5%	--	78.2%	--
Indiana	68.0%	9.1%	--	77.2%	--
Iowa	69.1%	0.5%	--	69.6%	--
Kansas	67.8%	12.5%	--	80.2%	--
Kentucky	66.3%	3.5%	--	69.8%	--
Louisiana	57.7%	7.7%	--	65.4%	--
Maine	56.1%	20.5%	--	76.7%	--
Maryland	68.2%	8.3%	--	76.5%	--
Massachusetts	66.1%	8.2%	--	74.2%	--
Michigan	69.2%	1.8%	--	71.0%	--
Minnesota	72.9%	4.0%	--	76.9%	--
Mississippi	58.3%	4.0%	--	62.3%	--

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Prior Week	% HUs Enumerated Current Week	Weekly Change
Missouri	63.8%	10.3%	--	74.1%	--
Montana	57.2%	4.4%	--	61.7%	--
Nebraska	69.4%	3.5%	--	72.9%	--
Nevada	62.8%	3.0%	--	65.8%	--
New Hampshire	63.6%	2.6%	--	66.2%	--
New Jersey	65.7%	3.8%	--	69.4%	--
New Mexico	54.1%	4.8%	--	58.9%	--
New York	59.6%	4.7%	--	64.2%	--
North Carolina	59.7%	2.8%	--	62.6%	--
North Dakota	63.1%	10.2%	--	73.3%	--
Ohio	68.0%	5.1%	--	73.1%	--
Oklahoma	58.4%	8.4%	--	66.8%	--
Oregon	66.4%	9.5%	--	76.0%	--
Pennsylvania	66.8%	7.1%	--	73.9%	--
Rhode Island	61.5%	4.8%	--	66.3%	--
South Carolina	57.8%	3.3%	--	61.1%	--
South Dakota	64.7%	3.2%	--	67.9%	--
Tennessee	63.1%	5.3%	--	68.4%	--
Texas	58.9%	5.3%	--	64.2%	--
Utah	68.0%	4.5%	--	72.5%	--
Vermont	57.4%	5.5%	--	62.8%	--
Virginia	68.5%	5.0%	--	73.5%	--
Washington	70.0%	10.9%	--	80.9%	--
West Virginia	55.2%	24.9%	--	80.1%	--
Wisconsin	70.2%	6.0%	--	76.2%	--
Wyoming	58.1%	5.3%	--	63.4%	--

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Budgetary Contingency Usage Status

Source: Decennial Budget Office

Data Current as of: August 14, 2020







Notional Contingency Waterfall for Estimated Revised NRFU		
(in millions of \$)		
	Plan (as of 7/31)	Actual to Date (8/14)
Contingency available on 3/14	\$2,030	\$2,030
<i>Risk Based Contingency</i>	<i>\$1,325</i>	<i>\$1,325</i>
<i>Secretarial Contingency</i>	<i>\$705</i>	<i>\$705</i>
Expected Contingency Uses for COVID-19	\$1,106	\$1,106
<i>Actual COVID related approvals</i>	<i>\$934</i>	<i>\$932</i>
<i>Remaining Potential COVID approvals</i>	<i>\$172</i>	<i>\$174</i>
Remaining Original Contingency	\$924	\$924
Additional contingency from estimated operational variance	\$70	\$70
Remaining Contingency before acceleration efforts	\$994	\$994
Potential Costs to Ensure Operational Continuity and Accelerate NRFU	\$702	\$12
<i>Additional Mailing and Advertising</i>	<i>\$50</i>	<i>\$11.5</i>
<i>Training of additional NRFU enumerators (previously approved)</i>	<i>\$64</i>	<i>--</i>
<i>Replacement training of 150k enumerators</i>	<i>\$165</i>	<i>--</i>
<i>Additional overtime for NRFU enumerators</i>	<i>\$100</i>	<i>\$0.2</i>
<i>Weekly enumerator award for exceeding 25 hrs/wk (Up to 5x)</i>	<i>\$150</i>	<i>--</i>
<i>Enumerator retention award for 3 weeks of acceptable work above 25 hrs/wk (Up to 2x)</i>	<i>\$150</i>	<i>--</i>
<i>CFS retention award for 3 weeks of acceptable work (Up to 2x)</i>	<i>\$23</i>	<i>--</i>
Allowance for up to 10% increase in production hours due to unknown factors	\$106	--
Remaining Contingency for Unknowns	\$187	--

Notes

- Actuals to Date represent approved purchases and incurred compensation expenses.
- Bonuses will begin accruing around September 3 due to payroll validation requirements.

Appendix

Periodic Performance Management Reports

Status	Report Title	Summary	Slide Number
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	12
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	13
	2020 Census: Self-Response of Housing Units by State		14
	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	15
	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 1,035. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 392,000. We have exceeded the 2010 Census numbers for both national and community partners.	16
	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts.	17
	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	18

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

March 12, 2020

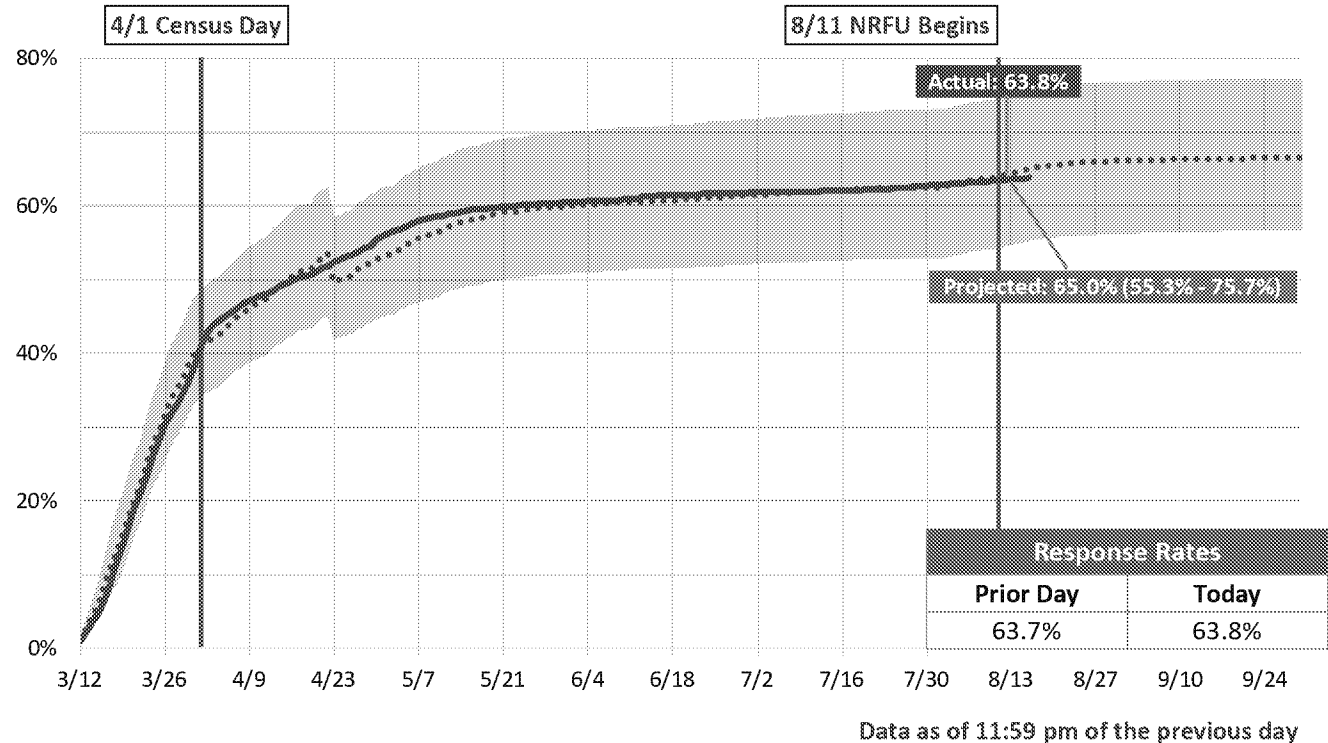
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



Legend

Actual Self-Response Rate	—————
Projected Self-Response Rate	*****
Lower & Upper Bound	—————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status:

☐ Management Focus

Data current as of:

August 17, 2020

Start Date:

March 12, 2020

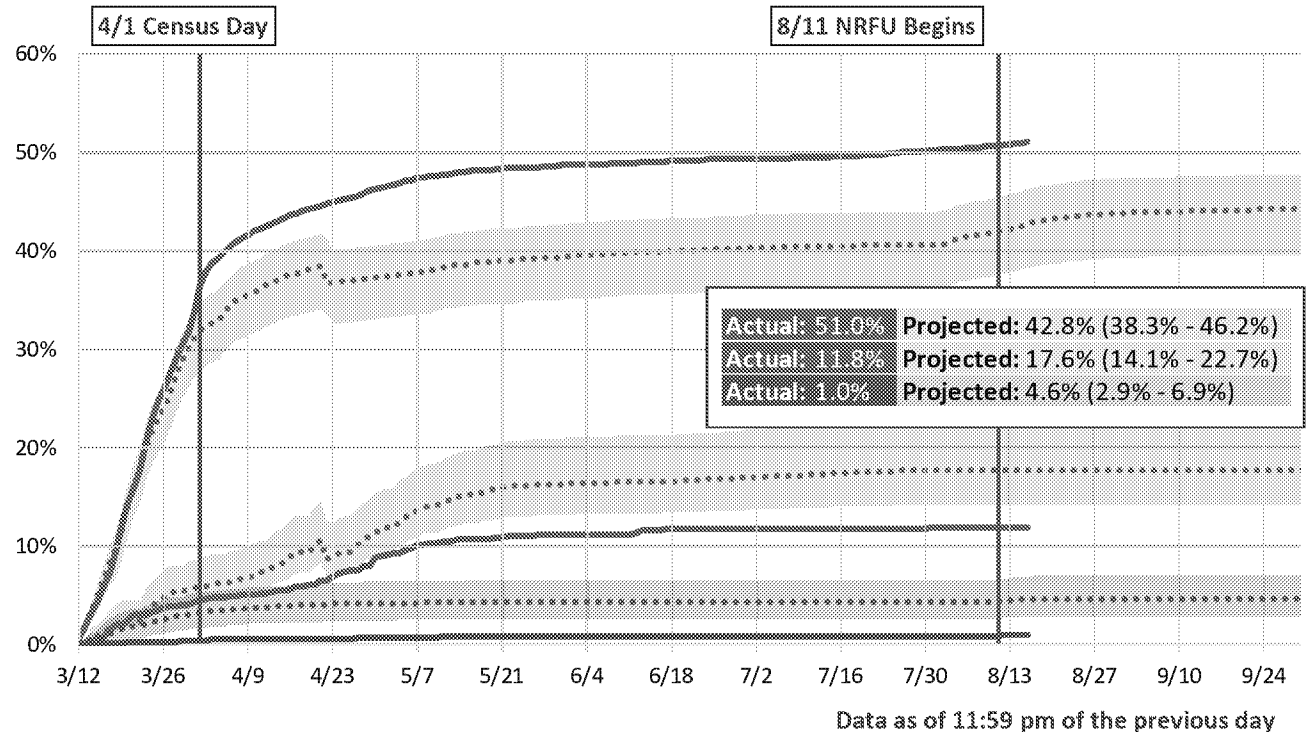
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	—————	—————	—————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound			

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division

Data Current as of: August 17, 2020

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
U.S. Total	63.8%	63.3%	63.5%
Minnesota	72.9%	72.5%	71.6%
Wisconsin	70.2%	69.7%	71.2%
Washington	70.0%	69.1%	63.7%
Nebraska	69.4%	69.0%	68.8%
Michigan	69.2%	68.9%	65.4%
Iowa	69.1%	68.9%	71.0%
Illinois	68.7%	68.2%	67.7%
Virginia	68.5%	68.0%	66.2%
Idaho	68.2%	67.8%	64.6%
Maryland	68.2%	67.5%	66.5%
Indiana	68.0%	67.5%	67.0%
Utah	68.0%	67.5%	65.4%
Ohio	68.0%	67.4%	66.2%
Kansas	67.8%	67.2%	67.4%
Connecticut	67.8%	67.1%	66.3%
Colorado	67.2%	66.6%	64.4%
Pennsylvania	66.8%	66.3%	67.8%
Oregon	66.4%	66.0%	63.9%
Kentucky	66.3%	65.7%	63.0%
Massachusetts	66.1%	65.4%	65.6%
New Jersey	65.7%	65.2%	64.4%
California	65.5%	64.6%	64.7%
South Dakota	64.7%	64.4%	65.0%
Missouri	63.8%	63.4%	65.3%
New Hampshire	63.6%	63.2%	61.5%
North Dakota	63.1%	62.7%	66.8%

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
Tennessee	63.1%	62.5%	63.8%
Nevada	62.8%	62.4%	58.7%
Rhode Island	61.5%	61.0%	62.8%
Delaware	61.3%	60.8%	60.8%
Alabama	61.2%	60.8%	59.5%
Hawaii	60.8%	60.2%	60.7%
Florida	60.6%	59.9%	59.6%
Arizona	60.4%	59.9%	58.5%
District of Columbia	60.2%	59.6%	62.2%
North Carolina	59.7%	59.3%	62.1%
New York	59.6%	59.0%	61.3%
Georgia	59.3%	59.0%	59.5%
Texas	58.9%	58.3%	60.3%
Oklahoma	58.4%	58.0%	58.9%
Arkansas	58.3%	57.9%	59.5%
Mississippi	58.3%	57.9%	58.1%
Wyoming	58.1%	57.6%	61.1%
South Carolina	57.8%	57.4%	62.2%
Louisiana	57.7%	57.3%	57.9%
Vermont	57.4%	56.9%	58.1%
Montana	57.2%	56.9%	62.3%
Maine	56.1%	55.5%	55.3%
West Virginia	55.2%	54.9%	56.8%
New Mexico	54.1%	53.5%	56.9%
Alaska	51.1%	49.9%	51.6%
Puerto Rico	30.2%	28.7%	51.2%

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:

● On Track

Data current as of:
August 15, 2020

Completion Date:
September 30, 2020

Notes:

- To date, 24,961 callers have requested the callback option. These callbacks have resulted in 9,931 completed interviews and 4,054 callers being provided assistance.

Total Inbound Call Volume % (PTD)

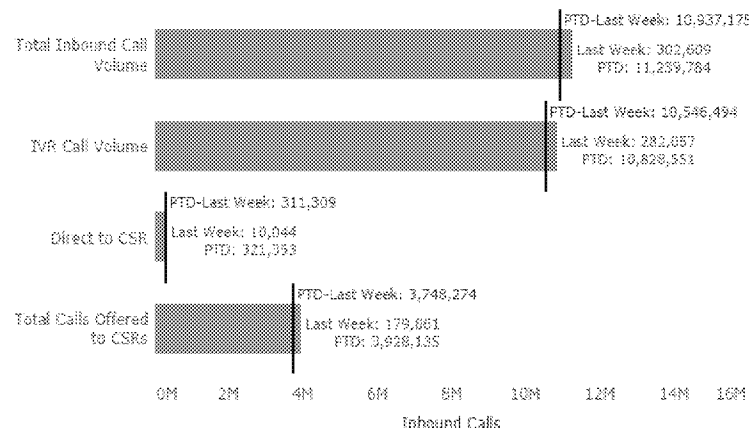


Language	Percentage
English	87.2%
Spanish	11.0%
TTY	0.8%
Vietnamese	0.2%
Chinese Mandarin	0.1%
All Other	0.7%

Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	10,456,486	11,239,784
Deflection Rate	47.0%	65.2%
Service Level - 30 Seconds	60.0%	66.5%
Average Handle Time	9:04	9:26

Inbound Call Volume



Calls Offered to CSRs by Language

	8/2 - 8/8	8/9 - 8/15	PTD	PTD %
English	87,513	164,287	3,472,237	88.4%
English Puerto Rico	178	240	2,989	0.1%
Spanish	6,813	8,950	298,813	7.6%
Spanish Puerto Rico	2,246	3,686	39,832	1.0%
Chinese Mandarin	233	400	11,271	0.3%
Chinese Cantonese	206	274	9,771	0.2%
Vietnamese	126	137	13,146	0.3%
Korean	145	285	12,961	0.3%
Russian	84	141	6,831	0.2%
Arabic	38	53	4,114	0.1%
Tagalog	28	31	2,672	0.1%
Polish	23	45	2,456	0.1%
French	22	14	1,190	0.0%
Haitian Creole	38	46	2,617	0.1%
Portuguese	39	38	1,840	0.0%
Japanese	20	40	2,290	0.1%
TTY	358	1,112	38,276	1.0%
Group Quarters	105	82	4,829	0.1%
Total	98,215	179,861	3,928,135	100.0%

Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:

● On Track

Data current as of:

August 13, 2020

Completion Date:

March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	382	71,162
Business	138	91,778
Chamber of Commerce/Trade or Professional Association	113	10,540
Education	103	83,528
Government	88	71,287
Faith-Based Organizations	65	40,159
Media	49	8,363
Healthcare	48	14,846
Technology	33	330
International Governmental/ Consulate/ Embassy	15	329
Grand Total	1,035	392,322

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	444	232,392
Black/African American	95	17,715
Young Children	90	5,832
Hispanic/Latino	83	25,668
Rural	80	13,834
Asian	79	10,097
Native Hawaiian Pacific Islander	48	665
Veterans	41	3,261
Young and Mobile	40	7,333
LGBTQ	24	1,277
Individuals with Disabilities	24	3,153
Elderly	24	8,772
Persons Experiencing Homelessness and Highly Mobile	22	5,426
American Indian/ Alaskan Native	19	3,528
MENA	15	79

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

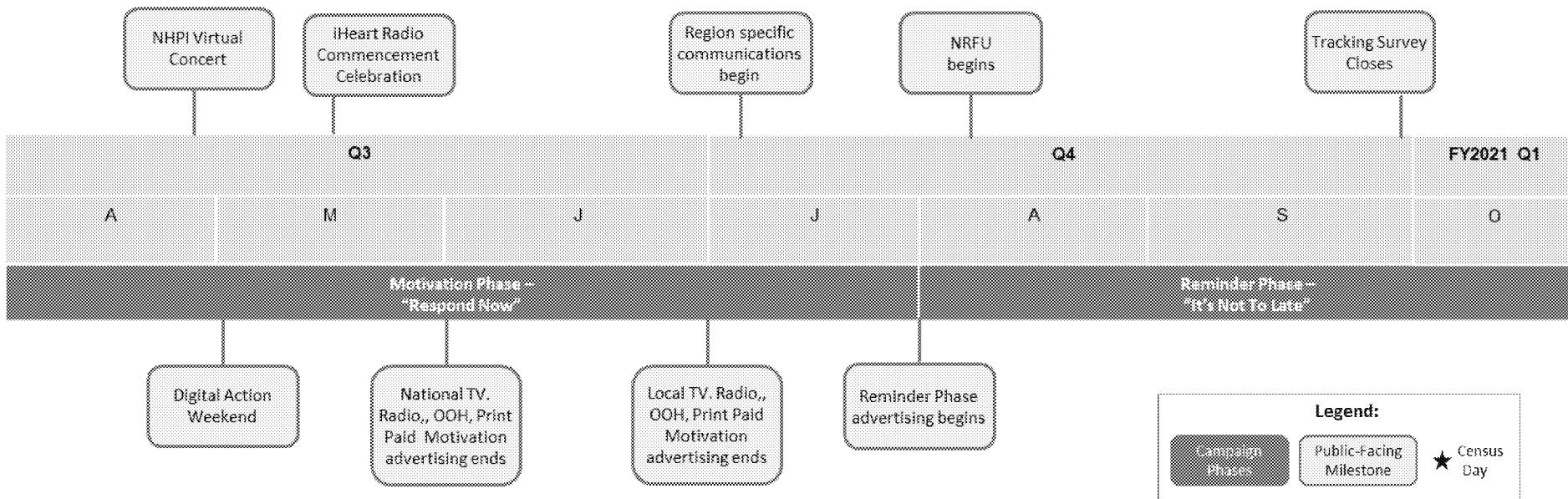
Completed Community Partnership Events: 433,048

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication

Data Current as of: August 13, 2020



Significant Accomplishments

- The reminder email campaign continues with the third installment. The first two installments resulted in a 11.5% digital engagement rate.
- The Wonderama House Party (At Home Concert Series) for New York City was held on 8/14.
- Statistics In Schools (SIS) is contacting SIS ambassadors for back to school outreach and plan on transitioning them to work with SIS staff this fall. They are also pursuing opportunities to present virtually at conferences for the American Indian Education Association and the National Council of Social Studies.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: July 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 7/31/2020

\$ Amounts in Millions	IT	Non-IT	Total
Total Planned through July	\$1,728	\$5,155	\$6,883
Available contingency and additional appropriations through July	\$248	\$1,432	\$1,680
Planned Programmatic through July	\$1,480	\$3,723	\$5,203
Total Actual Commitments and Obligations through July	\$1,653	\$2,390	\$4,043
Unplanned commitments/obligations through July related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)	\$260	\$300	\$560
Actual Programmatic Commitments and Obligations through July	\$1,393	\$2,090	\$3,483
Total Plan Variance (\$/%)	\$75 (4.3%)	\$2,765 (53.6%)	\$2,840 (41.3%)
Remaining contingency and additional appropriations planned through July	(\$12)	\$1,132	\$1,120
Delayed Field Operation Spending through July	\$0	\$1,690	\$1,690
Non-Field Operational Programmatic Variance through July	\$87	(\$57)	\$30

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of available contingency funding. The total variance for the resources planned to be available through July is \$2.840 billion, or 41 percent. Below outlines the breakdown of the total variance:

- The positive variance through July against the original plan in 2020 Census IT systems and operations is \$75 million, or 4 percent. The positive variance is the result of relatively routine minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, partially offset by \$12 million in IT contingency used as the result of adjusted 2020 Census operations due to COVID-19 beyond the IT contingency estimate.
- The positive variance through July against the original plan in 2020 Census non-IT operations is \$2.765 billion, or 54 percent. This variance consists of \$1.690 billion delayed spending in the field operations as a result of schedule adjustments, and \$1.132 billion representing a portion of available contingency and additional appropriations that has not yet needed to be obligated. This variance is partially offset by a -\$57 million non-Field variance, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While unused contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions have been made to use risk-based contingency funds to support \$560 million in unplanned obligations or commitments through July as the result of the operational adjustments. The funds used to date include funding field staff salaries during to the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response, extending the communication efforts in the motivation and NRFU planning phases, purchases of personal protection equipment, and additional costs for the Fingerprint and CQA Contracts as the result of the operational timing adjustments.

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 17, 2020

Overview

- Post data collection processing to finalize the Census Unedited File (CUF)
- Presidential Memorandum teams and data stewardship
- Flowchart of steps needed to complete Presidential Memorandum work and timing
- ICE detention centers tabulation
- Admin records available
- Processing the CUF through the Person Identification Validation System (PVS) and matching to admin records
- Rules for assigning status
- Quality assurance of the unauthorized immigrant counts
- Communication strategy decisions

Post Data Collection Processing to Finalize the Census Unedited File (CUF)

- Post data collection processing is a complex operation that includes several divisions (Decennial Census Management Division; Decennial Information Technology Division; Decennial Statistical Studies Division; Geography Division; Population Division; Social, Economic, and Housing Statistics Division) who all have unique roles in the process.
- Example of some of the activities in this operation include:
 - Geocoding all addresses, meaning that it codes each address to the block level so that it is properly reflected in the correct geography. This geography will form a backbone for all remaining processing.
 - Ensuring that responses from households that responded without the unique identifier or who responded from a previously unidentified address are assigned to the correct location.
 - Merging and standardizing the format of data received from different sources, including mail-in, phone, or internet self-responses; nonresponse follow-up information provided to an enumerator; and “special operations” such as group quarters. This includes clerical coding of write-in responses.
 - De-duplicating data from households who may have responded multiple times in order to avoid “double counting.” This includes reviewing instances where a household provided different information across multiple responses, and determining what information should be counted as part of the official record.
 - Performing statistical techniques to account for missing housing unit status and household size information.
 - Processing the counts for military and civilian personnel working for the federal government and their dependents living overseas as part of the Federally Affiliated Count Overseas operation.
- At each step of the process, experts conduct and document rigorous quality assurance to look for errors in processing or tabulation, including evaluating the data at multiple levels of geography against benchmark data to ensure demographic reasonableness of data.

Presidential Memorandum Teams and Data Stewardship

- Presidential Memorandum (PM) Implementation
 - PM Team
 - Team Leads – Chief Scientist and Chief Demographer
 - Includes experts on admin records, demographers, economists, and statisticians
 - Builds on the experience of the CVAP team for determining methodology and using data sets from the Executive Order 13880
 - PM Executive Guidance Group (EGG)
 - Chair – Director
 - Members – Cogley, Jarmin, Abowd, Creech, Fontenot, Jones, Lamas, Smith, and Velkoff
 - EGG provides the charge to the PM team and gives guidance
- Data Stewardship Executive Policy Committee (DSEP)
 - Membership
 - Chair – Deputy Director/Chief Operating Officer
 - Members – Associate Directors for Decennial, Demographic, Economic, Field, and Research and Methodology; CIO; Chief of Staff; Assistant Directors for Communication and R&M; Chief of PCO; Chief Privacy Officer; two at-large members (Bishop and Lamas)
 - Mission
 - Ensures the Census Bureau maintains its commitment, by fulfilling the legal, ethical, and reporting obligations levied by Title 13 of the U.S. Code, the Privacy Act, and other applicable statutes, including those of governmental and other suppliers of data to the Census Bureau

Census Unedited File (CUF)
production and quality assurance

Admin records available and
processed by Person Identification Validation
System (PVS)

Slide 7

Prior to 12/14/2020

CUF finalized

12/14/2020

After 12/14/2020

Tabulation of resident population
and federally affiliated overseas
population; tabulation of ICE
detention centers;
QA procedures. This will meet the
December 31, 2020 deadline.

Slide 6

CUF processed by PVS

10 days (12/24)

Slide 8

Matching admin records to CUF and quality
assurance (QA)

7 days (12/31)

Slide 8

Applying rules to assign status of the unauthorized
immigrant

5 days (1/5)

Slide 9

Quality assurance of tabulation

3 days (1/8)

Slide 10

Apply disclosure avoidance to unauthorized
immigrant counts and QA

3 days (1/11)

Slide 10

Quality assurance of file, reasonableness, data
product

7 days (1/18)

Slide 11

Transmittal package

Predecisional; Internal use only

Tabulating ICE Detention Centers

- Inmates in ICE detention centers were counted as part of the Group Quarters enumeration process.
- When we have the final CUF, we will tabulate these data to create a count of inmates in ICE detention centers for each state.
- This tabulation can be done by the December 31, 2020 deadline.
- We need to make a decision about whether all inmates are unauthorized. In order to distinguish who is unauthorized, record linkage to the CUF is required pushing this past December 31.
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- The administrative record sources include
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 - State Department U.S. passports and Worldwide Refugee Admissions Processing System (WRAPS) refugee data
 - USCIS naturalization certificates, lawful permanent residents, refugees, asylees, Deferred Action for Childhood Arrivals (DACA), Special Immigrant Juveniles (SIJ), and lawful permanent resident pending applicants and denials
 - CBP Arrival and Departure Information Systems (ADIS)
 - ICE Student Exchange Visitor Information System (SEVIS) student and exchange visa holders and Enforcement and Removal Operation (ERO) data
 - Department of Interior Incident Management Analysis Reporting System (IMARS) and Law Enforcement Management Information System (LEMIS) data
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For each state and DC, we will only tabulate unauthorized immigrants who link directly to a census record. Records that do not match are out of scope.

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- Assignment rules will be independently double-programmed (concurrently) and compared to ensure data quality standards.
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3. Produce a table of the unauthorized immigrants for each state and DC and provide to the Secretary.

Communication Strategy Decisions

- The Census Bureau typically is transparent about methodologies used for data products. We need to decide how to publically communicate the methodologies used to create these tabulations and when to do this communication.
- We recommend that we do a federal register notice on the methodology because transparency requires that the American public understand how we derived the counts of unauthorized immigrants and have the opportunity to comment on that methodology.
- Data dissemination strategy – to be determined at a later date.

CUI/PRIVILEGED/DELIBERATIVE

August 12, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Anthony Foti
Performing the delegated duties of the Assistant Secretary for
Legislative and Intergovernmental Affairs, (202) 482-1148

Ian Steff
Assistant Secretary of Commerce for Global Markets, (202) 482-5076

RE: Call with Governor Doug Ducey (R-AZ) regarding Semiconductor
Manufacturing in Arizona, on Monday, August 17, 2020,
from 5 PM to 5:15 PM

b(5) - DP

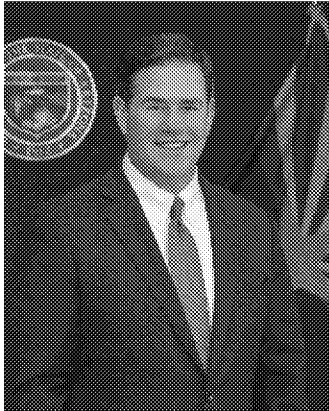
b(5) - DP

ATTACHMENT

1. Participant Biography

ATTACHMENT 1: Participant Biography

PARTICIPANT BIOGRAPHY



Governor Doug Ducey (R-AZ)

Governor Doug Ducey was elected on November 4, 2014 and was sworn into office on January 5, 2015, becoming Arizona's 23rd Governor.

As governor, Ducey's priorities are growing the economy, creating jobs, improving outcomes in K-12 education and balancing the budget. A champion of limited government, economic development and Arizona businesses and families, Governor Ducey has pledged to work every day to ensure "Opportunity for All."

Prior to taking his oath as governor, Ducey served as Arizona's 32nd state treasurer, a position he held since his oath of office in January 2011. As Arizona's chief banker and investment officer, Ducey managed more than \$13 billion in state assets and served as an investment manager for local governments.

As state treasurer, Ducey notably led the opposition of Proposition 204, a tax increase that would have cost Arizona taxpayers \$1 billion per year. With Ducey's leadership, the proposition was soundly defeated by a nearly two-to-one margin. During his tenure, Ducey also oversaw the Permanent Land Endowment Trust Fund. Under his watch, the trust fund surpassed \$5 billion for the first time, with 90 percent of the earnings allocated toward K-12 education.

Before being elected state treasurer, Ducey was chief executive officer of Cold Stone Creamery. An Arizona-born concept, Cold Stone expanded from a handful of locations to more than 1,400 worldwide under Ducey's management.

Governor Ducey was born in Toledo, Ohio. He moved to Arizona to attend Arizona State University's business school, where he earned his Bachelor of Science in finance in 1986. Governor Ducey and his wife, Angela, live in Phoenix with their three sons, Jack, Joe and Sam.

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 17, 2020



Predecisional; internal use only

3

Overview

- Post data collection processing to finalize the Census Unedited File (CUF)
- Presidential Memorandum teams and data stewardship
- Flowchart of steps needed to complete Presidential Memorandum work and timing
- ICE detention centers tabulation
- Admin records available
- Processing the CUF through the Person Identification Validation System (PVS) and matching to admin records
- Rules for assigning status
- Quality assurance of the unauthorized immigrant counts
- Communication strategy decisions

Post Data Collection Processing to Finalize the Census Unedited File (CUF)

- Post data collection processing is a complex operation that includes several divisions (Decennial Census Management Division; Decennial Information Technology Division; Decennial Statistical Studies Division; Geography Division; Population Division; Social, Economic, and Housing Statistics Division) who all have unique roles in the process.
- Example of some of the activities in this operation include:
 - Geocoding all addresses, meaning that it codes each address to the block level so that it is properly reflected in the correct geography. This geography will form a backbone for all remaining processing.
 - Ensuring that responses from households that responded without the unique identifier or who responded from a previously unidentified address are assigned to the correct location.
 - Merging and standardizing the format of data received from different sources, including mail-in, phone, or internet self-responses; nonresponse follow-up information provided to an enumerator; and "special operations" such as group quarters. This includes clerical coding of write-in responses.
 - De-duplicating data from households who may have responded multiple times in order to avoid "double counting." This includes reviewing instances where a household provided different information across multiple responses, and determining what information should be counted as part of the official record.
 - Performing statistical techniques to account for missing housing unit status and household size information.
 - Processing the counts for military and civilian personnel working for the federal government and their dependents living overseas as part of the Federally Affiliated Count Overseas operation.
- At each step of the process, experts conduct and document rigorous quality assurance to look for errors in processing or tabulation, including evaluating the data at multiple levels of geography against benchmark data to ensure demographic reasonableness of data.



Predecisional; internal use only

3

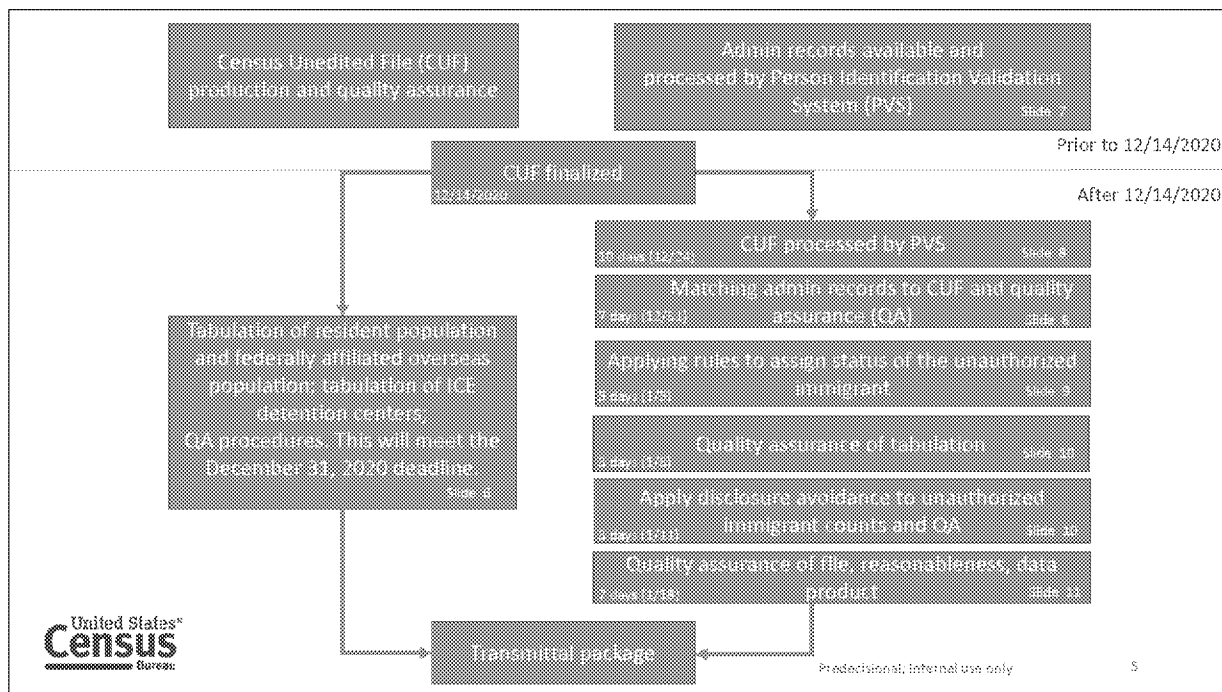
Presidential Memorandum Teams and Data Stewardship

- **Presidential Memorandum (PM) Implementation**
 - **PM Team**
 - Team Leads – Chief Scientist and Chief Demographer
 - Includes experts on admin records, demographers, economists, and statisticians
 - Builds on the experience of the CVAP team for determining methodology and using data sets from the Executive Order 13880
 - **PM Executive Guidance Group (EGG)**
 - Chair – Director
 - Members – Cogley, Jarmin, Abowd, Creech, Fontenot, Jones, Lamas, Smith, and Velkoff
 - EGG provides the charge to the PM team and gives guidance
- **Data Stewardship Executive Policy Committee (DSEP)**
 - **Membership**
 - Chair – Deputy Director/Chief Operating Officer
 - Members – Associate Directors for Decennial, Demographic, Economic, Field, and Research and Methodology; CIO; Chief of Staff; Assistant Directors for Communication and R&M; Chief of PCO; Chief Privacy Officer; two at-large members (Bishop and Lamas)
 - **Mission**
 - Ensures the Census Bureau maintains its commitment, by fulfilling the legal, ethical, and reporting obligations levied by Title 13 of the U.S. Code, the Privacy Act, and other applicable statutes, including those of governmental and other suppliers of data to the Census Bureau



Predecisional; internal use only

4



Tabulating ICE Detention Centers

- Inmates in ICE detention centers were counted as part of the Group Quarters enumeration process.
- When we have the final CUF, we will tabulate these data to create a count of inmates in ICE detention centers for each state.
- This tabulation can be done by the December 31, 2020 deadline.
- We need to make a decision about whether all inmates are unauthorized. In order to distinguish who is unauthorized, record linkage to the CUF is required pushing this past December 31.
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From: McDermott, Ryan (Federal) [RMcDermott1@doc.gov]
Sent: 8/17/2020 12:27:29 PM
To: Kelley, Karen (Federal) [KKelley@doc.gov]; Risko, Daniel (Federal) [DRisko@doc.gov]; Walsh, Michael (Federal) [MWalsh@doc.gov]; Rockas, James (Federal) [JRockas@doc.gov]; Goudarzi, Talat (Federal) [TGoudarzi@doc.gov]; Barranca, Steven (Federal) [SBarranca1@doc.gov]; Blair, Robert (Federal) [RBlair@doc.gov]; Burkett, Robert (Federal) [RBurkett@doc.gov]
CC: Williams, Allaire (Federal) [AWilliams2@doc.gov]; Pepper, Samuel (Federal) [SPepper@doc.gov]; Stevens, Rose (Federal) [RStevens@doc.gov]; ExecSecBriefingBook [b(6)]@doc.gov
Subject: RE: 08-17-2020 Briefing Book
Attachments: 8.17.20 Briefing Book.pdf; 3) 20200817_Overview_of_procedures for PM final.pptx

UPDATE:

Call-In – Small Group Decennial Meeting

From: McDermott, Ryan (Federal)
Sent: Monday, August 17, 2020 11:51 AM
To: Kelley, Karen (Federal) <KKelley@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Walsh, Michael (Federal) <MWalsh@doc.gov>; Rockas, James (Federal) <JRockas@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Barranca, Steven (Federal) <SBarranca1@doc.gov>; Blair, Robert (Federal) <RBlair@doc.gov>; Burkett, Robert (Federal) <RBurkett@doc.gov>
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Subject: RE: 08-17-2020 Briefing Book

UPDATE:

Call-In – Senior Decennial Management Committee Meeting

From: McDermott, Ryan (Federal)
Sent: Sunday, August 16, 2020 10:07 PM
To: Kelley, Karen (Federal) <KKelley@doc.gov>; Risko, Daniel (Federal) <DRisko@doc.gov>; Walsh, Michael (Federal) <MWalsh@doc.gov>; Rockas, James (Federal) <JRockas@doc.gov>; Goudarzi, Talat (Federal) <TGoudarzi@doc.gov>; Barranca, Steven (Federal) <SBarranca1@doc.gov>; Blair, Robert (Federal) <RBlair@doc.gov>; Burkett, Robert (Federal) <RBurkett@doc.gov>
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Subject: 08-17-2020 Briefing Book

For the Secretary:

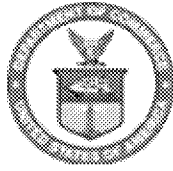
- 1) THE SCHEDULE OF SECRETARY WILBUR ROSS
- 2) Call with Mayor Stan Booker, Lawton, OK
- 3) Call-In – Senior Decennial Management Committee Meeting **FORTHCOMING**
- 4) Call-In – Small Group Decennial Meeting **FORTHCOMING**
- 5) Call with Governor Doug Ducey, Arizona

Ryan McDermott
[b(6)]

Briefing Book
Secretary
Wilbur L. Ross



For August 17, 2020



THE SCHEDULE OF SECRETARY WILBUR ROSS

As Prepared for August 17, 2020

7:00am-7:05am	Depart en route Mornings with Maria Drive Time: 5 minutes
7:30am-7:45am	Interview – Mornings with Maria <div style="border: 1px dashed black; padding: 5px; text-align: center;">b(6)</div>
11:00am-11:10am	Call with Mayor Stan Booker, Lawton, OK Conference Line – Non-Secure
1:00pm-1:45pm	Call-In – Senior Decennial Management Committee Meeting Conference Line – Non-Secure
2:00pm-3:30pm	Call-In – Small Group Decennial Meeting Conference Line – Non-Secure
5:00pm-5:15pm	Call with Governor Doug Ducey, Arizona Conference Line – Non-Secure

August 4, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

FROM: Tim Olson, Associate Director of Field Operations, U.S. Census Bureau

b(6)

RE: Call with Mayor Stan Booker, Lawton, OK
on Monday, August 17, 2020, from 11 AM to 11:10 AM

You will make phone calls to mayors of cities with populations of 80,000 or greater and with the lowest response rates for the 2020 Census as of June 30.

These calls are an opportunity to encourage mayors to complement Census Bureau efforts to promote response, which is important to get a complete and accurate count and reduce the workload for census takers conducting in-person follow-up.

As of this late date, there is not enough time to effectively participate in roundtable discussion, as was done following the last round of calls with mayors that were conducted throughout much of May. As an alternative, we can share specific action items and immediately connect them with partnership staff on the ground to coordinate their participation in the promotional surge.

Talking Points

- Mr./Ms. Mayor, thank you for taking my call. I hope you are doing well during this difficult time with the coronavirus and the recent social unrest facing our Nation.
- The purpose of my call is about the 2020 Census. I want to thank you for what you have done so far to promote response in your city.
- Today the national response rate is 61.8% [*will have update for each day*], which is higher than our 60.5% projection. Each percent response represents millions of households, and we are incredibly pleased at the Nation's response to the census thus far.
- However, in your city, the response rate today is xx.x%, which as you know, is lower than most of the Nation.
- We want to work together with you to increase your city's response.
- Given the current environment of the coronavirus, we want to maximize self-response so that we will not have as many households who may not want to open their doors and cooperate with one of our 500,000 census takers.
- Therefore, we are making a big push through advertising, social media, and partnership efforts in the lowest responding areas to increase the response before door knocking begins.
- Your city is included in this final push, which began in mid-July.
- I would like to ask for your help as we continue this final campaign.
- Joining me on this call is Tim Olson from the Census Bureau. Tim is the Census Bureau's Associate Director for Field Operations, and he has some ideas he's heard from other cities that he would like to share with you.

Tim would provide details on these following suggestions on how the mayor and city leaders can work with local partnership staff to promote response:

1. Distribute neighborhood/city specific response flyers in low responding neighborhoods through the use of city volunteers and census staff;
2. Host a community parade in the lowest responding tracts;
3. Rally community partners to actively engage during this final push with response messaging and volunteer support;
4. Bring religious leaders together virtually and urge them to make one final push to their congregants to participate in the census; and
5. Ask the mayor to personally urge her/his residents to respond before door knocking begins using press conferences, social media, and other avenues in local press.

Status Reporting: Nonresponse Followup for the 2020 Decennial Census

Periodic Reporting: August 17, 2020

Periodic Performance Management Reports

Table of Contents

Report Title	Slide Number
2020 Census: Nonresponse Followup At A Glance	3
2020 Census: Nonresponse Followup Progress	4
2020 Census: Nonresponse Followup Progress and Cost	5
2020 Census: Nonresponse Followup Enumerator Staffing	6
2020 Census: Nonresponse Followup Enumerator Productivity Curve	7
2020 Census: Completion Status by State	8
2020 Census: Nonresponse Followup Budgetary Contingency Usage Status	9
Appendix	10-18

Periodic Performance Management Reports

2020 Census: Nonresponse Followup At A Glance – August 17, 2020

General

Self-Response Rate: 63.8%

Offices Operational as of 08/09/20: 248

Timing

- **Days in Operation:** 53
- **Days Elapsed:** 8
- **Days Remaining:** 45

18 ACOs are over 50% complete with NRFU.

Progress

Current Workload: : 61,335,507

Completed Cases: 14,851,615 (24.2%)

Planned Completed Cases: 10,341,647 (16.86%)

Remaining Workload: 46,483,892

Enumerator Productivity

- **Hours per week for last week for Cycle 1a:** 19.0
- **Hours per week for last week for Cycle 1b:** 16.3
- **Hours per week for last week for Cycle 2:** 16.3
- **Average Cases Completed Per Hour:** 2.59
- **Planned Cases Completed Per Hour:** 1.55

Staffing

- **Selections:** 968,280
- **Invited to Training:** 452,740
- **Completed Training:** 263,356
- **Currently in Training:** 78,041
- **Active:** 200,269
- **Expected Replacement Training:** 70,559

Calculated Staff Needs (updated weekly)

- **Remaining workload:** 46,483,892 cases
- **Remaining weeks:** 6
- **Average cases per week:** 7,747,315
- **Average cases per hour:** 1.55
- **Needed hours per week:** 4,998,268
- **Average enumerator hours per week:** 19
- **Required average enumerators 263,067 To complete by 9/30**
- **Required average enumerators 203,877 (assuming 2 cases/hour)**

Contingency Budget

- **Contingency Available (as of 3/14/20):** \$2,030 M
- **Expected Contingency Uses for COVID-19:** \$1,106 M
- **Contingency Approvals (through 7/31):** \$934 M
- **Remaining Contingency: (through 7/31):** \$924 M
- **Uncommitted Remaining Contingency:** \$187 M

	Planned	Actual
Overtime	\$100M	\$0.2M
Enumerator Awards	\$300M	--
Other	\$302M	\$11.5M
Total	\$702M	\$12M

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

July 16, 2020

Completion Date:

September 30, 2020

Notes:

Current workload
reflects all case types.

Cases Completed by Telephone:

Pending

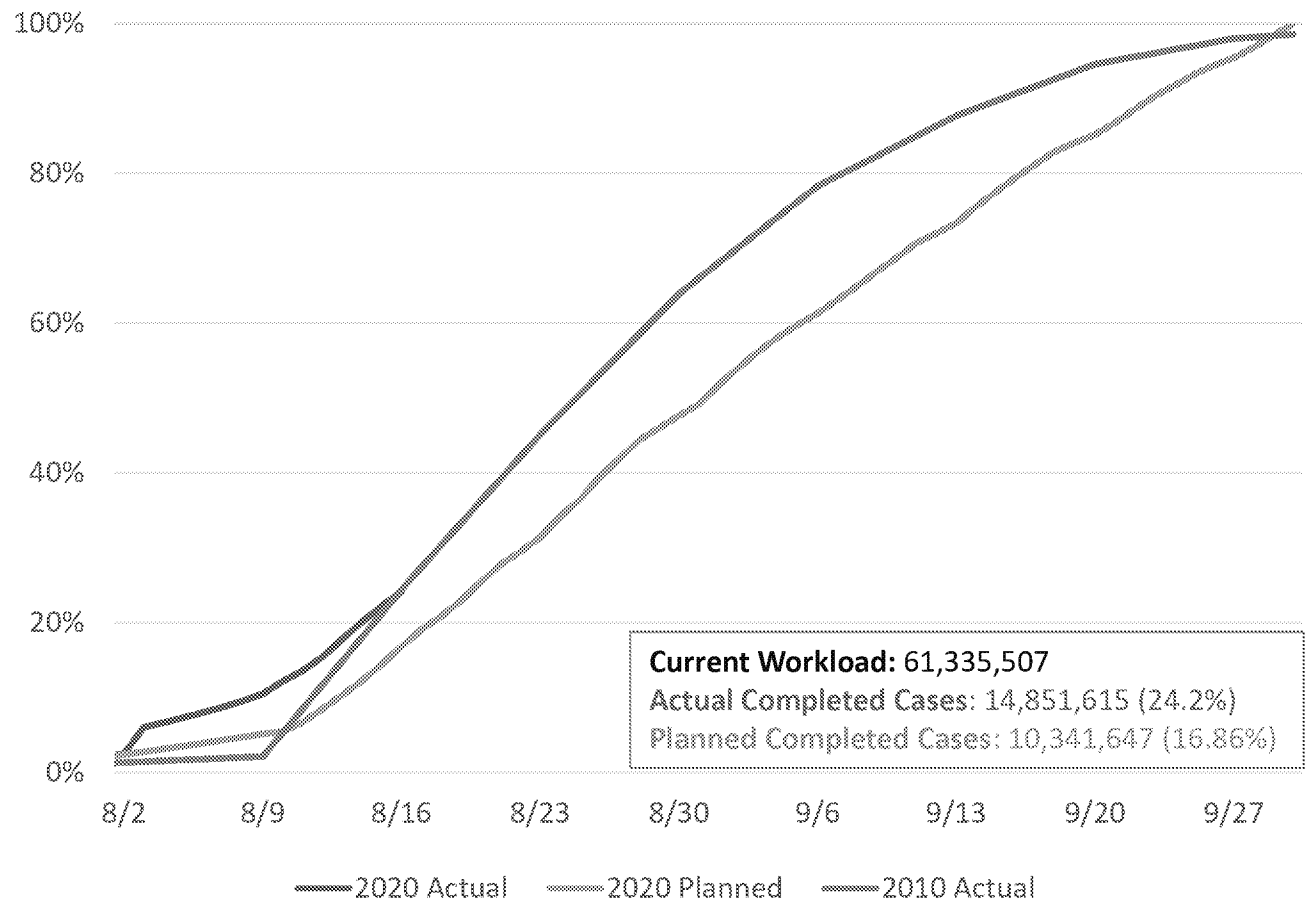
Cases Completed by Self-Response:

3,522,026 (23.7% of completed cases)

Remaining Workload:

46,483,892 cases

Case Progress for Field Enumeration



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Progress and Cost

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

July 16, 2020

Completion Date:

September 30, 2020

Notes:

Current workload reflects all case types. Costs include training and production costs for NRFU Enumerators and CFS.

Cases Completed by Telephone:

Pending

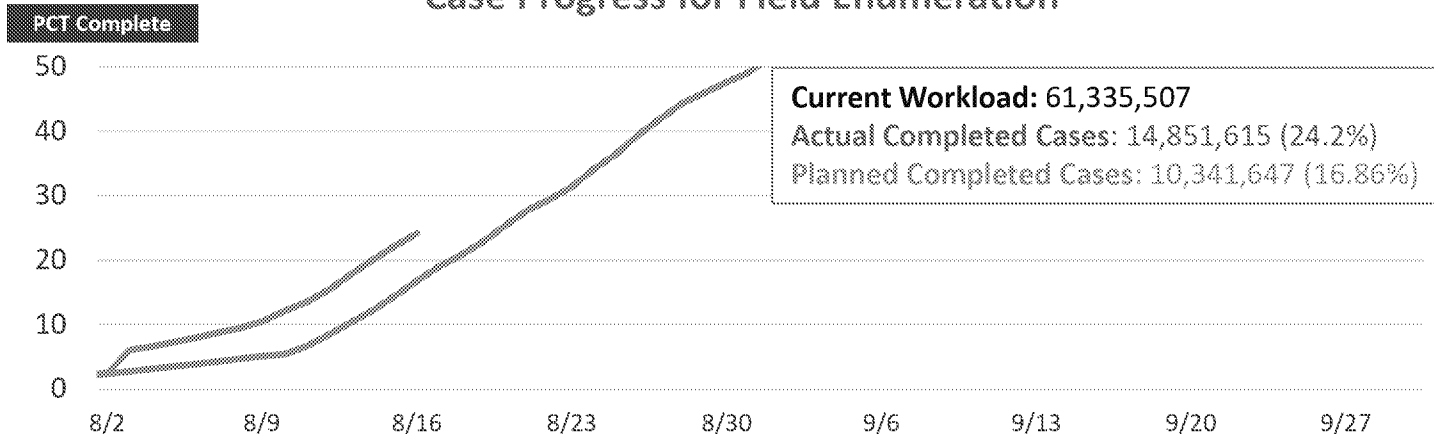
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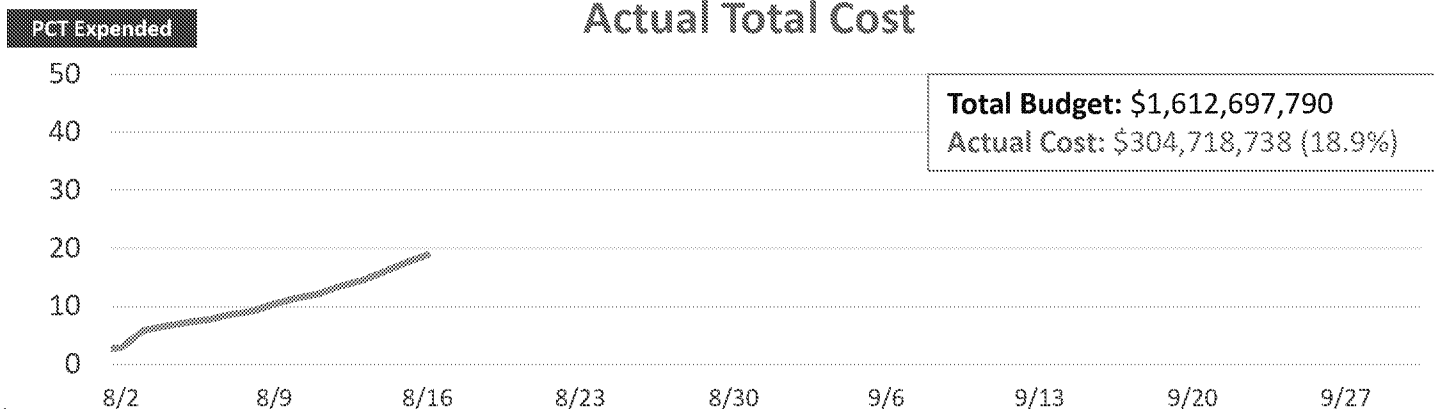
Remaining Workload:

46,483,892 cases

Case Progress for Field Enumeration



Actual Total Cost



Data as of 11:59 pm of the previous day

Source: MOJO Hermes

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Staffing

Status:

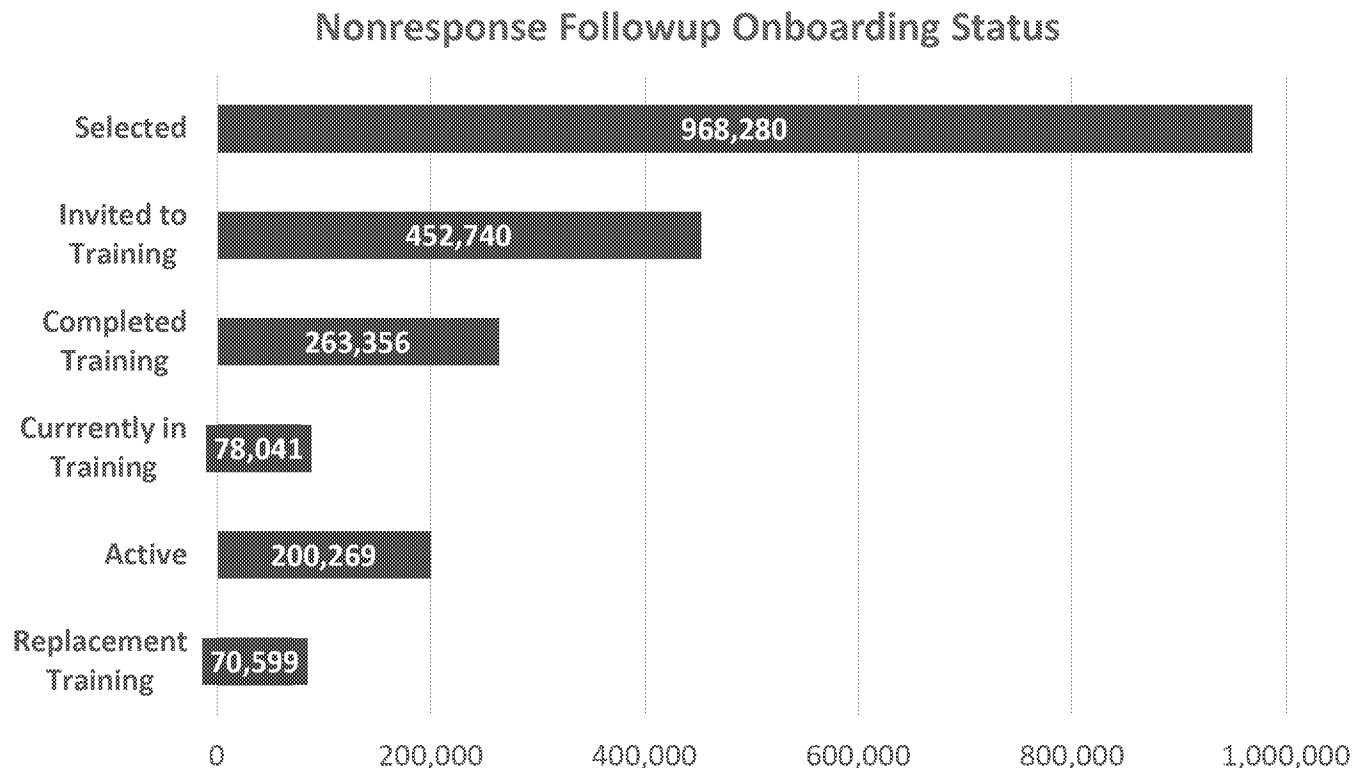
● On Track

Data current as of:
August 17, 2020

Completion Date:
September 30, 2020

Notes:

- Enumerator Training No Show Rate: 33%
- Over the weekend of August 15, the Enumerator Training No Show Rate dropped to 23%.



Periodic Performance Management Reports

2020 Census: Nonresponse Followup Enumerator Productivity Curve

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

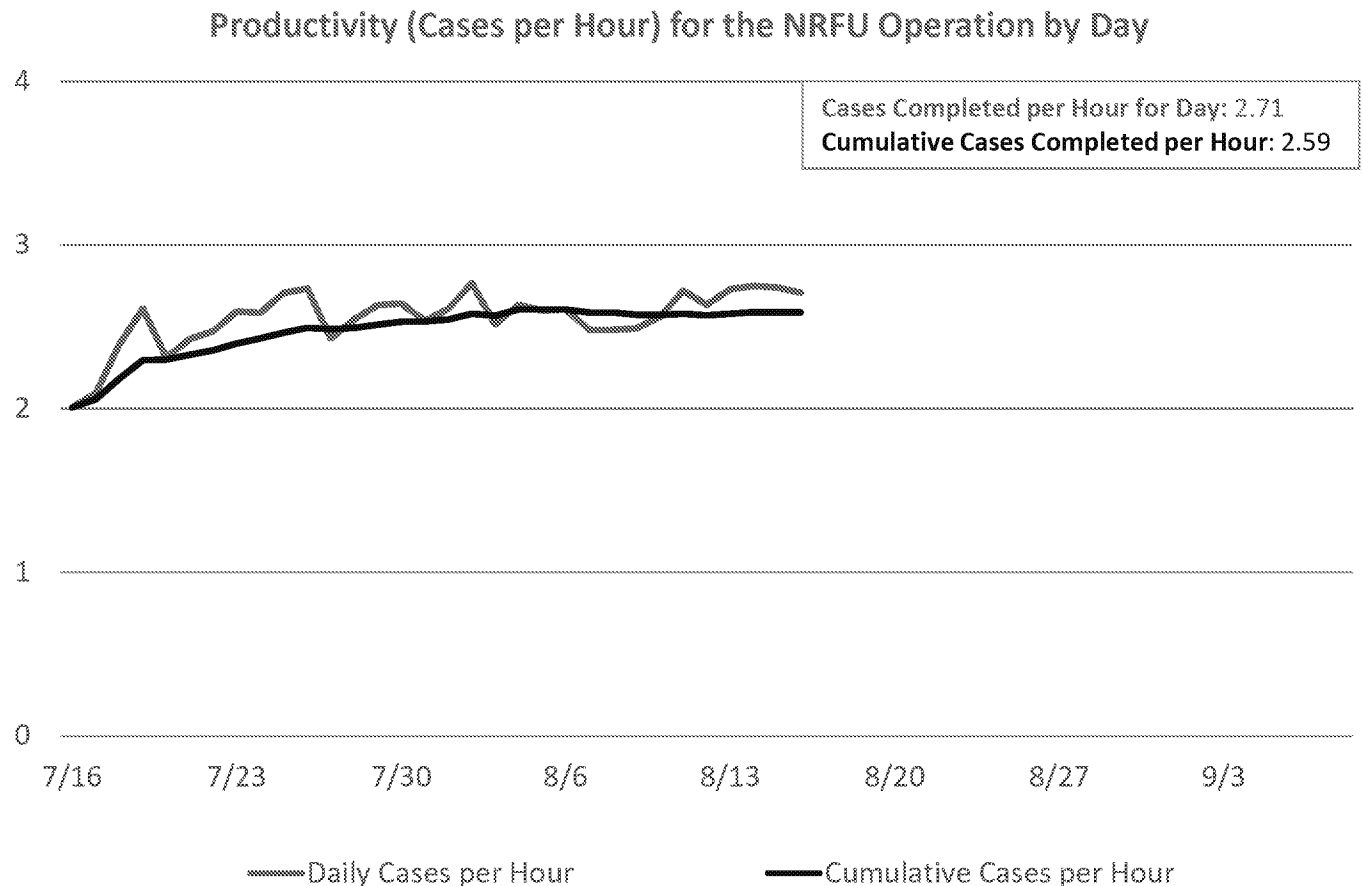
July 16, 2020

Completion Date:

September 30, 2020

Notes:

Cases per hour include cases that were resolved by enumeration, administrative records, or self-response.



Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Completion Status by State

Source: Census Data Lake, Unified Tracking System

Data Current as of: August 17, 2020

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Prior Week	% HUs Enumerated Current Week	Weekly Change
U.S. Total	63.8%	5.9%	--	69.7%	--
Alabama	61.2%	2.4%	--	63.6%	--
Alaska	51.1%	15.3%	--	66.4%	--
Arizona	60.4%	2.0%	--	62.4%	--
Arkansas	58.3%	6.4%	--	64.7%	--
California	65.5%	6.7%	--	72.2%	--
Colorado	67.2%	6.0%	--	73.1%	--
Connecticut	67.8%	10.2%	--	78.0%	--
Delaware	61.3%	5.0%	--	66.2%	--
District of Columbia	60.2%	5.9%	--	66.1%	--
Florida	60.6%	2.9%	--	63.5%	--
Georgia	59.3%	3.2%	--	62.6%	--
Hawaii	60.8%	14.2%	--	74.9%	--
Idaho	68.2%	20.6%	--	88.8%	--
Illinois	68.7%	9.5%	--	78.2%	--
Indiana	68.0%	9.1%	--	77.2%	--
Iowa	69.1%	0.5%	--	69.6%	--
Kansas	67.8%	12.5%	--	80.2%	--
Kentucky	66.3%	3.5%	--	69.8%	--
Louisiana	57.7%	7.7%	--	65.4%	--
Maine	56.1%	20.5%	--	76.7%	--
Maryland	68.2%	8.3%	--	76.5%	--
Massachusetts	66.1%	8.2%	--	74.2%	--
Michigan	69.2%	1.8%	--	71.0%	--
Minnesota	72.9%	4.0%	--	76.9%	--
Mississippi	58.3%	4.0%	--	62.3%	--

State	Percent of HUs that Self-Responded	Percent of HUs Enumerated in NRFU	% HUs Enumerated Prior Week	% HUs Enumerated Current Week	Weekly Change
Missouri	63.8%	10.3%	--	74.1%	--
Montana	57.2%	4.4%	--	61.7%	--
Nebraska	69.4%	3.5%	--	72.9%	--
Nevada	62.8%	3.0%	--	65.8%	--
New Hampshire	63.6%	2.6%	--	66.2%	--
New Jersey	65.7%	3.8%	--	69.4%	--
New Mexico	54.1%	4.8%	--	58.9%	--
New York	59.6%	4.7%	--	64.2%	--
North Carolina	59.7%	2.8%	--	62.6%	--
North Dakota	63.1%	10.2%	--	73.3%	--
Ohio	68.0%	5.1%	--	73.1%	--
Oklahoma	58.4%	8.4%	--	66.8%	--
Oregon	66.4%	9.5%	--	76.0%	--
Pennsylvania	66.8%	7.1%	--	73.9%	--
Rhode Island	61.5%	4.8%	--	66.3%	--
South Carolina	57.8%	3.3%	--	61.1%	--
South Dakota	64.7%	3.2%	--	67.9%	--
Tennessee	63.1%	5.3%	--	68.4%	--
Texas	58.9%	5.3%	--	64.2%	--
Utah	68.0%	4.5%	--	72.5%	--
Vermont	57.4%	5.5%	--	62.8%	--
Virginia	68.5%	5.0%	--	73.5%	--
Washington	70.0%	10.9%	--	80.9%	--
West Virginia	55.2%	24.9%	--	80.1%	--
Wisconsin	70.2%	6.0%	--	76.2%	--
Wyoming	58.1%	5.3%	--	63.4%	--

Periodic Performance Management Reports

2020 Census: Nonresponse Followup Budgetary Contingency Usage Status

Source: Decennial Budget Office

Data Current as of: August 14, 2020








Notional Contingency Waterfall for Estimated Revised NRFU		
(in millions of \$)		
	Plan (as of 7/31)	Actual to Date (8/14)
Contingency available on 3/14	\$2,030	\$2,030
<i>Risk Based Contingency</i>	<i>\$1,325</i>	<i>\$1,325</i>
<i>Secretarial Contingency</i>	<i>\$705</i>	<i>\$705</i>
Expected Contingency Uses for COVID-19	\$1,106	\$1,106
<i>Actual COVID related approvals</i>	<i>\$934</i>	<i>\$932</i>
<i>Remaining Potential COVID approvals</i>	<i>\$172</i>	<i>\$174</i>
Remaining Original Contingency	\$924	\$924
Additional contingency from estimated operational variance	\$70	\$70
Remaining Contingency before acceleration efforts	\$994	\$994
Potential Costs to Ensure Operational Continuity and Accelerate NRFU	\$702	\$12
<i>Additional Mailing and Advertising</i>	<i>\$50</i>	<i>\$11.5</i>
<i>Training of additional NRFU enumerators (previously approved)</i>	<i>\$64</i>	<i>--</i>
<i>Replacement training of 150k enumerators</i>	<i>\$165</i>	<i>--</i>
<i>Additional overtime for NRFU enumerators</i>	<i>\$100</i>	<i>\$0.2</i>
<i>Weekly enumerator award for exceeding 25 hrs/wk (Up to 5x)</i>	<i>\$150</i>	<i>--</i>
<i>Enumerator retention award for 3 weeks of acceptable work above 25 hrs/wk (Up to 2x)</i>	<i>\$150</i>	<i>--</i>
<i>CFS retention award for 3 weeks of acceptable work (Up to 2x)</i>	<i>\$23</i>	<i>--</i>
Allowance for up to 10% increase in production hours due to unknown factors	\$106	--
Remaining Contingency for Unknowns	\$187	--

Notes

- Actuals to Date represent approved purchases and incurred compensation expenses.
- Bonuses will begin accruing around September 3 due to payroll validation requirements.

Appendix

Periodic Performance Management Reports

Status	Report Title	Summary	Slide Number
	2020 Census: Self-Response of Housing Units	Self-Response to the 2020 Census is tracking within the projected range. The projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	12
	2020 Census: Self-Response of Housing Units by Response Mode	Internet response is exceeding expectations. The projected Self-Response rates by mode have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.	13
	2020 Census: Self-Response of Housing Units by State		14
	2020 Census: Questionnaire Assistance Inbound Calls	Inbound call support continues. A return call option is available to callers who leave a message requesting this option.	15
	2020 Census: Partners & Participating Organizations	Progress to establish relationships with National and community organizations is ongoing. The number of partnering organizations at the national-level has grown to 1,035. The 2020 Census exposure at the local and community level continues; the number of active community partners is over 392,000. We have exceeded the 2010 Census numbers for both national and community partners.	16
	2020 Census: Integrated Communications Campaign Weekly Report Timeline	Steady progress continues on Integrated Communications Campaign efforts.	17
	2020 Census: Monthly FY 2020 Budget Execution Report	Fiscal Year 2020 budget execution is managing budget to address critical program needs.	18

Legend

Not Applicable

Completed

On Track

Management Focus

Requires Attention

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units

Status:

● On Track

Data current as of:

August 17, 2020

Start Date:

March 12, 2020

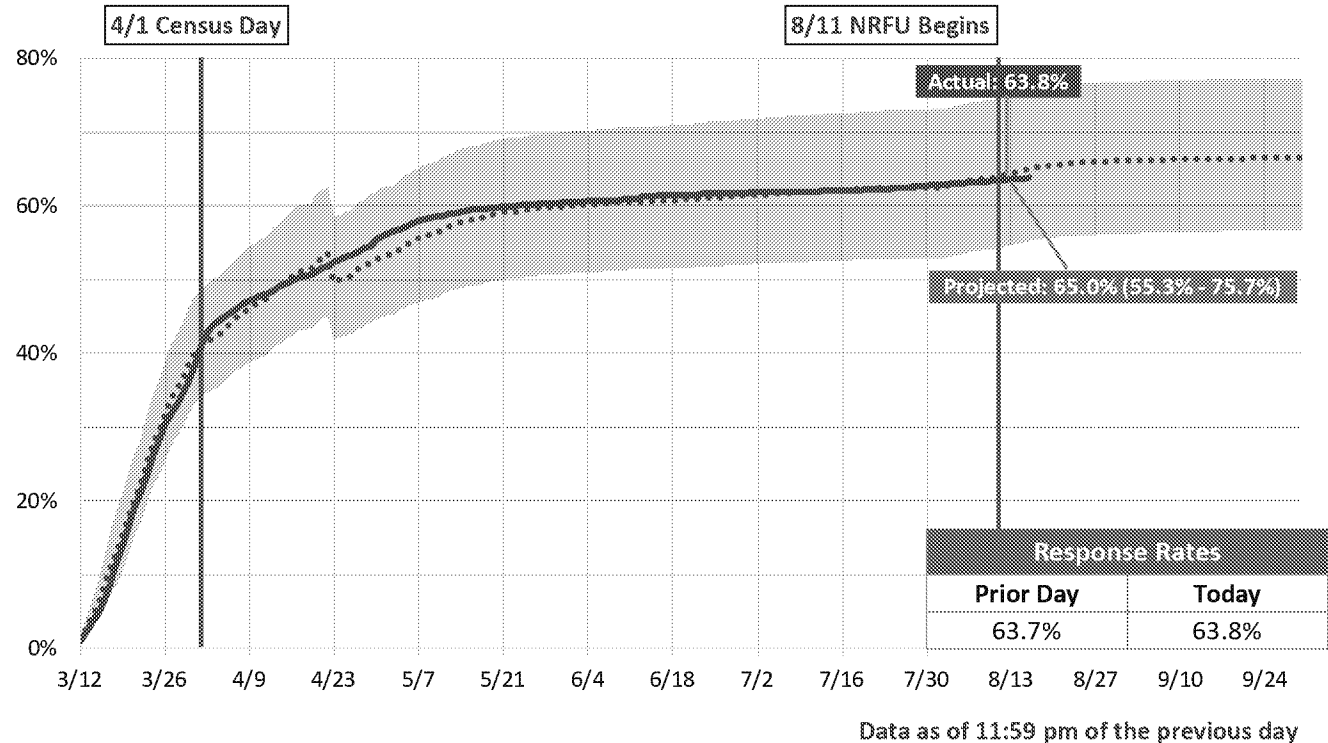
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rate has been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- Response rates reflect responses from Self-Response and Update Leave.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates



Legend

Actual Self-Response Rate	—————
Projected Self-Response Rate	*****
Lower & Upper Bound	—————

Source: Census Data Lake & Decennial Statistical Studies Division

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by Response Mode

Status:

○ Management Focus

Data current as of:

August 17, 2020

Start Date:

March 12, 2020

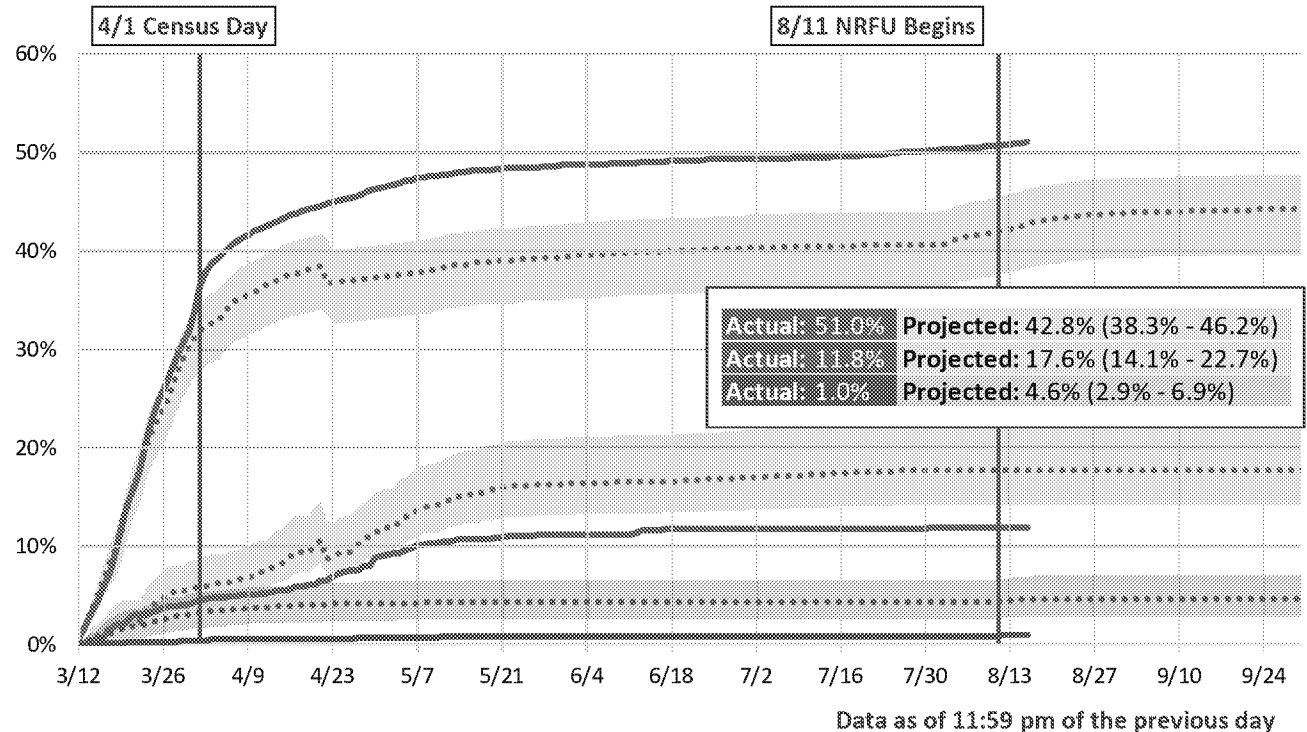
Completion Date:

September 30, 2020*

Notes:

- As of April 22, the projected Self-Response rates have been revised to account for re-planned operational timing and a sixth mailing prior to the August 11 start of Nonresponse Followup.
- The paper counts include inbound mail.
- * Internet, Paper, and Phone response options remain available throughout the data collection timeframe to offer maximum flexibility for respondents.

Actual vs. Projected Self-Response Rates by Mode



Legend

	Internet	Paper	Phone
Actual Self-Response Rate	—————	—————	—————
Projected Self-Response Rate	*****	*****	*****
Lower & Upper Bound	—————	—————	—————

Periodic Performance Management Reports

2020 Census: Self-Response of Housing Units by State

Source: Decennial Statistical Studies Division

Data Current as of: August 17, 2020

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
U.S. Total	63.8%	63.3%	63.5%
Minnesota	72.9%	72.5%	71.6%
Wisconsin	70.2%	69.7%	71.2%
Washington	70.0%	69.1%	63.7%
Nebraska	69.4%	69.0%	68.8%
Michigan	69.2%	68.9%	65.4%
Iowa	69.1%	68.9%	71.0%
Illinois	68.7%	68.2%	67.7%
Virginia	68.5%	68.0%	66.2%
Idaho	68.2%	67.8%	64.6%
Maryland	68.2%	67.5%	66.5%
Indiana	68.0%	67.5%	67.0%
Utah	68.0%	67.5%	65.4%
Ohio	68.0%	67.4%	66.2%
Kansas	67.8%	67.2%	67.4%
Connecticut	67.8%	67.1%	66.3%
Colorado	67.2%	66.6%	64.4%
Pennsylvania	66.8%	66.3%	67.8%
Oregon	66.4%	66.0%	63.9%
Kentucky	66.3%	65.7%	63.0%
Massachusetts	66.1%	65.4%	65.6%
New Jersey	65.7%	65.2%	64.4%
California	65.5%	64.6%	64.7%
South Dakota	64.7%	64.4%	65.0%
Missouri	63.8%	63.4%	65.3%
New Hampshire	63.6%	63.2%	61.5%
North Dakota	63.1%	62.7%	66.8%

State	Actual	2010 Rate (start of NRFU)	2010 Rate (Final)
Tennessee	63.1%	62.5%	63.8%
Nevada	62.8%	62.4%	58.7%
Rhode Island	61.5%	61.0%	62.8%
Delaware	61.3%	60.8%	60.8%
Alabama	61.2%	60.8%	59.5%
Hawaii	60.8%	60.2%	60.7%
Florida	60.6%	59.9%	59.6%
Arizona	60.4%	59.9%	58.5%
District of Columbia	60.2%	59.6%	62.2%
North Carolina	59.7%	59.3%	62.1%
New York	59.6%	59.0%	61.3%
Georgia	59.3%	59.0%	59.5%
Texas	58.9%	58.3%	60.3%
Oklahoma	58.4%	58.0%	58.9%
Arkansas	58.3%	57.9%	59.5%
Mississippi	58.3%	57.9%	58.1%
Wyoming	58.1%	57.6%	61.1%
South Carolina	57.8%	57.4%	62.2%
Louisiana	57.7%	57.3%	57.9%
Vermont	57.4%	56.9%	58.1%
Montana	57.2%	56.9%	62.3%
Maine	56.1%	55.5%	55.3%
West Virginia	55.2%	54.9%	56.8%
New Mexico	54.1%	53.5%	56.9%
Alaska	51.1%	49.9%	51.6%
Puerto Rico	30.2%	28.7%	51.2%

Data as of 11:59 pm of the previous day

Periodic Performance Management Reports

2020 Census: Questionnaire Assistance Inbound Calls

Status:

● On Track

Data current as of:
August 15, 2020

Completion Date:
September 30, 2020

Notes:

- To date, 24,961 callers have requested the callback option. These callbacks have resulted in 9,931 completed interviews and 4,054 callers being provided assistance.

Total Inbound Call Volume % (PTD)

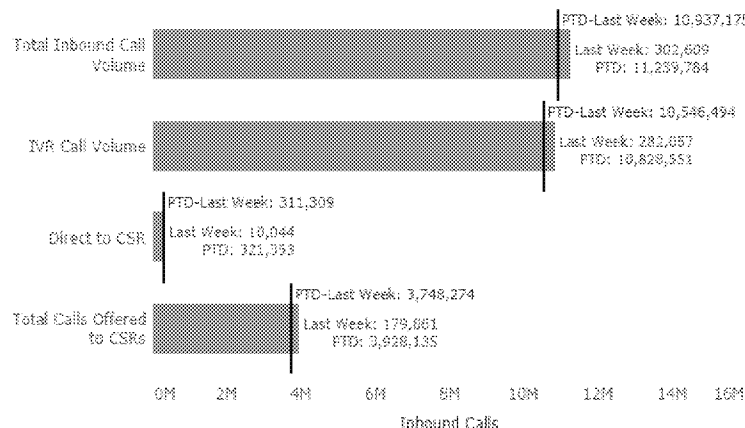


English	Spanish	TTY	Vietnamese	Chinese Mandarin	All Other
87.2%	11.0%	0.8%	0.2%	0.1%	0.7%

Key Performance Metrics (PTD)

	Planned	Actual
Total Inbound Call Volume	10,456,486	11,239,784
Deflection Rate	47.0%	65.2%
Service Level - 30 Seconds	60.0%	66.5%
Average Handle Time	9:04	9:26

Inbound Call Volume



Calls Offered to CSRs by Language

	8/2 - 8/8	8/9 - 8/15	PTD	PTD %
English	87,513	164,287	3,472,237	88.4%
English Puerto Rico	178	240	2,989	0.1%
Spanish	6,813	8,950	298,813	7.6%
Spanish Puerto Rico	2,246	3,686	39,832	1.0%
Chinese Mandarin	233	400	11,271	0.3%
Chinese Cantonese	206	274	9,771	0.2%
Vietnamese	126	137	13,146	0.3%
Korean	145	285	12,961	0.3%
Russian	84	141	6,831	0.2%
Arabic	38	53	4,114	0.1%
Tagalog	28	31	2,672	0.1%
Polish	23	45	2,456	0.1%
French	22	14	1,190	0.0%
Haitian Creole	38	46	2,617	0.1%
Portuguese	39	38	1,840	0.0%
Japanese	20	40	2,290	0.1%
TTY	358	1,112	38,276	1.0%
Group Quarters	105	82	4,829	0.1%
Total	98,215	179,861	3,928,135	100.0%

Source: Daily Briefing Deck: Census Questionnaire Assistance

Periodic Performance Management Reports

2020 Census: Partners & Participating Organizations

Status:

● On Track

Data current as of:

August 13, 2020

Completion Date:

March 2020

Notes:

- 2010 Census: 256,000 regional partners and 856 national partnering organizations.
- We have exceeded the 2010 Census for both national and community partners.
- The National Partnership Program (NPP) met its 2020 Census goal the week of April 20 of securing 900 national participating organizations. NPP will continue to grow the number of national partners and engagements.

Participating Organizations by Sector		
Sector	National	Community
Nonprofit	382	71,162
Business	138	91,778
Chamber of Commerce/Trade or Professional Association	113	10,540
Education	103	83,528
Government	88	71,287
Faith-Based Organizations	65	40,159
Media	49	8,363
Healthcare	48	14,846
Technology	33	330
International Governmental/Consulate/Embassy	15	329
Grand Total	1,035	392,322

Participating Organizations by Audiences Served*		
Audiences Served	National	Community
Mass Appeal	444	232,392
Black/African American	95	17,715
Young Children	90	5,832
Hispanic/Latino	83	25,668
Rural	80	13,834
Asian	79	10,097
Native Hawaiian Pacific Islander	48	665
Veterans	41	3,261
Young and Mobile	40	7,333
LGBTQ	24	1,277
Individuals with Disabilities	24	3,153
Elderly	24	8,772
Persons Experiencing Homelessness and Highly Mobile	22	5,426
American Indian/Alaskan Native	19	3,528
MENA	15	79

*Participating organizations that serve more than one audience are tallied against multiple audiences served as appropriate, so the sum total is greater than the grand total shown.

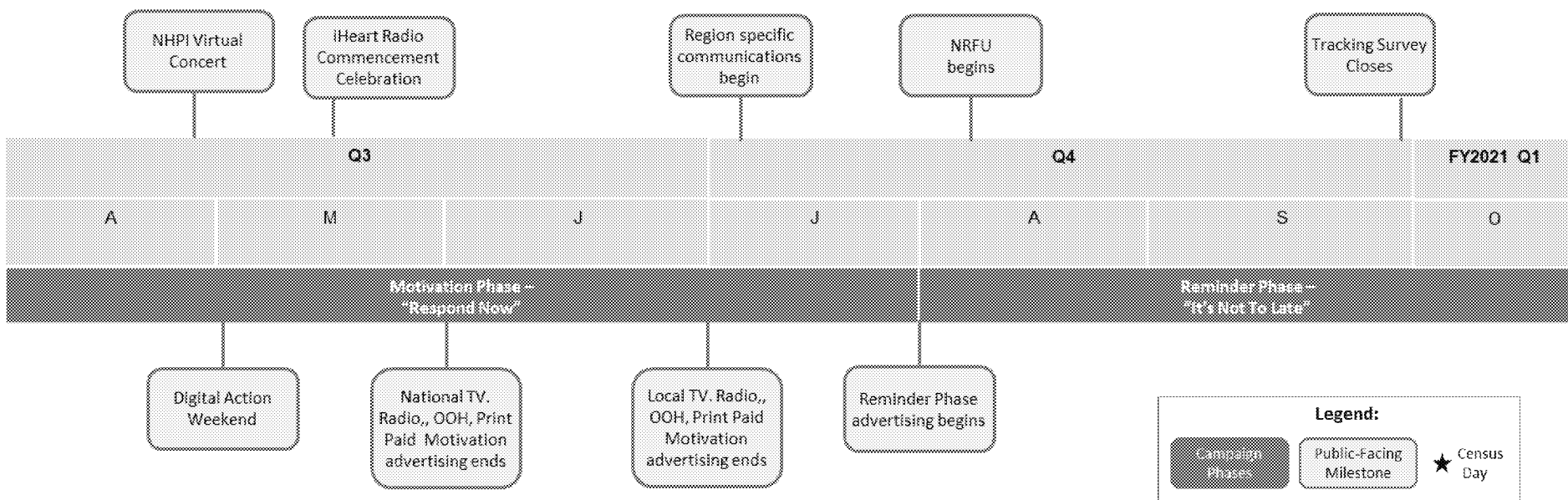
Completed Community Partnership Events: 433,048

Periodic Performance Management Reports

2020 Census: Integrated Communications Campaign Weekly Report Timeline

Source: Integrated Partnerships and Communication

Data Current as of: August 13, 2020



Significant Accomplishments

- The reminder email campaign continues with the third installment. The first two installments resulted in a 11.5% digital engagement rate.
- The Wonderama House Party (At Home Concert Series) for New York City was held on 8/14.
- Statistics In Schools (SIS) is contacting SIS ambassadors for back to school outreach and plan on transitioning them to work with SIS staff this fall. They are also pursuing opportunities to present virtually at conferences for the American Indian Education Association and the National Council of Social Studies.

Periodic Performance Management Reports

2020 Census: Monthly FY 2020 Budget Execution Report

Status: ● On Track

Data current as of: July 31, 2020

Completion Date: September 30, 2020

Notes: The data are updated monthly following the financial close-out of the previous month, typically about five business days into the next month.

FY 2020 Actual Budget Execution for the 2020 Census Program - Commitments and Obligations through 7/31/2020

\$ Amounts in Millions	IT	Non-IT	Total
Total Planned through July	\$1,728	\$5,155	\$6,883
Available contingency and additional appropriations through July	\$248	\$1,432	\$1,680
Planned Programmatic through July	\$1,480	\$3,723	\$5,203
Total Actual Commitments and Obligations through July	\$1,653	\$2,390	\$4,043
Unplanned commitments/obligations through July related to adjusted 2020 Census operations due to COVID-19 (risk-based contingency)	\$260	\$300	\$560
Actual Programmatic Commitments and Obligations through July	\$1,393	\$2,090	\$3,483
Total Plan Variance (\$/%)	\$75 (4.3%)	\$2,765 (53.6%)	\$2,840 (41.3%)
Remaining contingency and additional appropriations planned through July	(\$12)	\$1,132	\$1,120
Delayed Field Operation Spending through July	\$0	\$1,690	\$1,690
Non-Field Operational Programmatic Variance through July	\$87	(\$57)	\$30

High-Level Variance Explanations:

In light of the COVID-19 pandemic, the U.S. Census Bureau adjusted 2020 Census operations in order to protect the health and safety of the American public and Census Bureau employees, implement guidance from Federal, State, and local authorities regarding COVID-19, and ensure a complete and accurate count of all communities. These adjustments resulted in positive variances due to schedule adjustments, offset by additional obligations needed to support operational adjustments through the usage of available contingency funding. The total variance for the resources planned to be available through July is \$2.840 billion, or 41 percent. Below outlines the breakdown of the total variance:

- The positive variance through July against the original plan in 2020 Census IT systems and operations is \$75 million, or 4 percent. The positive variance is the result of relatively routine minor timing adjustments in contract actions and other IT purchases to later months in the fiscal year, partially offset by \$12 million in IT contingency used as the result of adjusted 2020 Census operations due to COVID-19 beyond the IT contingency estimate.
- The positive variance through July against the original plan in 2020 Census non-IT operations is \$2.765 billion, or 54 percent. This variance consists of \$1.690 billion delayed spending in the field operations as a result of schedule adjustments, and \$1.132 billion representing a portion of available contingency and additional appropriations that has not yet needed to be obligated. This variance is partially offset by a -\$57 million non-Field variance, primarily from a prior decision to increase funding above the original plan for the ICC contract to facilitate additional media purchases ahead of Census Day.
- While unused contingency contributes to the overall positive variance, this is a function of a budget decision last October to make all risk-based contingency available for peak operations. Decisions have been made to use risk-based contingency funds to support \$560 million in unplanned obligations or commitments through July as the result of the operational adjustments. The funds used to date include funding field staff salaries during to the suspension of field operations, IT purchases for additional devices and licenses, additional media purchases to encourage self response, extending the communication efforts in the motivation and NRFU planning phases, purchases of personal protection equipment, and additional costs for the Fingerprint and CQA Contracts as the result of the operational timing adjustments.

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 17, 2020

Overview

- Post data collection processing to finalize the Census Unedited File (CUF)
- Presidential Memorandum teams and data stewardship
- Flowchart of steps needed to complete Presidential Memorandum work and timing
- ICE detention centers tabulation
- Admin records available
- Processing the CUF through the Person Identification Validations System (PVS) and matching to admin records
- Rules for assigning status
- Quality assurance of the unauthorized immigrant counts
- Communication strategy decisions

Post Data Collection Processing to Finalize the Census Unedited File (CUF)

- Post data collection processing is a complex operation that includes several divisions (Decennial Census Management Division; Decennial Information Technology Division; Decennial Statistical Studies Division; Geography Division; Population Division; Social, Economic, and Housing Statistics Division) who all have unique roles in the process.
- Example of some of the activities in this operation include:
 - Geocoding all addresses, meaning that it codes each address to the block level so that it is properly reflected in the correct geography. This geography will form a backbone for all remaining processing.
 - Ensuring that responses from households that responded without the unique identifier or who responded from a previously unidentified address are assigned to the correct location.
 - Merging and standardizing the format of data received from different sources, including mail-in, phone, or internet self-responses; nonresponse follow-up information provided to an enumerator; and “special operations” such as group quarters. This includes clerical coding of write-in responses.
 - De-duplicating data from households who may have responded multiple times in order to avoid “double counting.” This includes reviewing instances where a household provided different information across multiple responses, and determining what information should be counted as part of the official record.
 - Performing statistical techniques to account for missing housing unit status and household size information.
 - Processing the counts for military and civilian personnel working for the federal government and their dependents living overseas as part of the Federally Affiliated Count Overseas operation.
- At each step of the process, experts conduct and document rigorous quality assurance to look for errors in processing or tabulation, including evaluating the data at multiple levels of geography against benchmark data to ensure demographic reasonableness of data.

Presidential Memorandum Teams and Data Stewardship

- Presidential Memorandum (PM) Implementation
 - PM Team
 - Team Leads – Chief Scientist and Chief Demographer
 - Includes experts on admin records, demographers, economists, and statisticians
 - Builds on the experience of the CVAP team for determining methodology and using data sets from the Executive Order 13880
 - PM Executive Guidance Group (EGG)
 - Chair – Director
 - Members – Cogley, Jarmin, Abowd, Creech, Fontenot, Jones, Lamas, Smith, and Velkoff
 - EGG provides the charge to the PM team and gives guidance
- Data Stewardship Executive Policy Committee (DSEP)
 - Membership
 - Chair – Deputy Director/Chief Operating Officer
 - Members – Associate Directors for Decennial, Demographic, Economic, Field, and Research and Methodology; CIO; Chief of Staff; Assistant Directors for Communication and R&M; Chief of PCO; Chief Privacy Officer; two at-large members (Bishop and Lamas)
 - Mission
 - Ensures the Census Bureau maintains its commitment, by fulfilling the legal, ethical, and reporting obligations levied by Title 13 of the U.S. Code, the Privacy Act, and other applicable statutes, including those of governmental and other suppliers of data to the Census Bureau

Census Unedited File (CUF)
production and quality assurance

Admin records available and
processed by Person Identification Validation
System (PVS)

Slide 7

Prior to 12/14/2020

CUF finalized

12/14/2020

After 12/14/2020

Tabulation of resident population
and federally affiliated overseas
population; tabulation of ICE
detention centers;
QC procedures. This will meet the
December 31, 2020 deadline.

Slide 6

CUF processed by PVS

10 days (12/24)

Slide 8

Matching admin records to CUF and quality
assurance (QA)

7 days (12/31)

Slide 8

Applying rules to assign status of the unauthorized
immigrant

5 days (1/5)

Slide 9

Quality assurance of tabulation

3 days (1/8)

Slide 10

Apply disclosure avoidance to unauthorized
immigrant counts and QA

3 days (1/11)

Slide 10

Quality assurance of file, reasonableness, data
product

7 days (1/18)

Slide 11

Transmittal package

Predecisional; Internal use only

Tabulating ICE Detention Centers

- Inmates in ICE detention centers were counted as part of the Group Quarters enumeration process.
- When we have the final CUF, we will tabulate these data to create a count of inmates in ICE detention centers for each state.
- This tabulation can be done by the December 31, 2020 deadline.
- We need to make a decision about whether all inmates are unauthorized. In order to distinguish who is unauthorized, record linkage to the CUF is required pushing this past December 31.
- The PM Team will make a recommendation on whether to use admin records for ICE detention centers.

Administrative Record Sources

- The administrative record sources include
 - SSA Numident
 - State Department U.S. passports and Worldwide Refugee Admissions Processing System (WRAPS) refugee data
 - USCIS naturalization certificates, lawful permanent residents, refugees, asylees, Deferred Action for Childhood Arrivals (DACA), Special Immigrant Juveniles (SIJ), and lawful permanent resident pending applicants and denials
 - CBP Arrival and Departure Information Systems (ADIS)
 - ICE Student Exchange Visitor Information System (SEVIS) student and exchange visa holders and Enforcement and Removal Operation (ERO) data
 - Department of Interior Incident Management Analysis Reporting System (IMARS) and Law Enforcement Management Information System (LEMIS) data
 - Personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers (ITINs), which is public information
- These records will be put through the PVS process to assign Protected Identification Keys (PIK) prior to December and will be ready for matching when the CUF is available.
- We are awaiting delivery of 2 files.
- All MOUs need to be modified to allow tabulation of unauthorized immigrants.

Processing the CUF through the PVS and Matching to Admin Records

- First we process the CUF through the PVS
 - Each of the 50 states plus DC will be run through the PVS programs. The process includes over 20 passes for each state in order to assign PIKs.
 - A team will check the quality of the identifiers and review for any errors due to the PVS process.
 - The final step includes generating the of protected identification keys (PIK) files for each state.
- Next we link the CUF to the admin records
 - We have over two dozen unique administrative record files and each file will be separately compared to the CUF looking for a matching PIK.
 - Pertinent information on authorization status will be maintained on a consolidated file.
 - Once each administrative record file has been processed against the CUF, the data will need to be reconciled for any inconsistencies between administrative record files regarding status.
 - Once those issues are identified and resolved, a final file will be ready for processing.

Assignment Rules

We will apply a series of rules to individuals who have a match between the CUF and admin records to assign an authorized/unauthorized status as of April 1, 2020.

It is possible for admin records to have multiple statuses for an individual (e.g., people who enter in an unauthorized status can be given legal status such as refugee; a student on a visa could overstay their visa and become unauthorized).

If definitive admin records show that someone is a citizen, we assign this person citizenship status. This is the reason that we must use all admin records in the process.

People will be classified as an unauthorized immigrant if they are enumerated in the census and match to an admin record that has a clear indication that they are here illegally as of April 1, 2020.

For each state and DC, we will only tabulate unauthorized immigrants who link directly to a census record. Records that do not match are out of scope.

Quality Assurance on Assignment Rules and Disclosure Avoidance

- Assignment rules will be independently double-programmed (concurrently) and compared to ensure data quality standards.
- Staff will need to investigate any obvious errors and resolve these issues. Since solving these puzzles is not always straightforward, we estimate this step will take three days.
- We will apply disclosure avoidance and then produce the final table of unauthorized immigrants as defined as in the Presidential Memorandum.

Quality Assurance of the Unauthorized Immigrant Counts

After disclosure avoidance is applied, we will do quality assurance of the tabulated unauthorized immigrant counts:

1. Verify file (e.g., does every state have an count?)
2. Data reasonableness review. Typical process: (1) Compare current-year estimates to prior-year estimates (2) Compare to other, similar estimates (benchmarks).
 - No recent Census Bureau estimates of unauthorized immigrants in decennial censuses.
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- The Census Bureau typically is transparent about methodologies used for data products. We need to decide how to publically communicate the methodologies used to create these tabulations and when to do this communication.
- We recommend that we do a federal register notice on the methodology because transparency requires that the American public understand how we derived the counts of unauthorized immigrants and have the opportunity to comment on that methodology.
- Data dissemination strategy – to be determined at a later date.

CUI/PRIVILEGED/DELIBERATIVE

August 12, 2020

BRIEFING MEMORANDUM FOR SECRETARY ROSS

THROUGH: Joseph Semsar
Deputy Under Secretary for International Trade,
Performing the non-exclusive functions and duties of the
Under Secretary for International Trade

FROM: Anthony Foti
Performing the delegated duties of the Assistant Secretary for
Legislative and Intergovernmental Affairs, (202) 482-1148

Ian Steff
Assistant Secretary of Commerce for Global Markets, (202) 482-5076

RE: Call with Governor Doug Ducey (R-AZ) regarding Semiconductor
Manufacturing in Arizona, on Monday, August 17, 2020,
from 5 PM to 5:15 PM

b(5) - DP

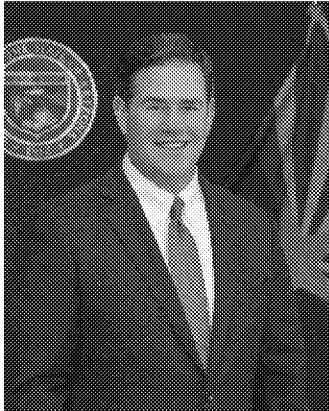
b(5) - DP

ATTACHMENT

1. Participant Biography

ATTACHMENT 1: Participant Biography

PARTICIPANT BIOGRAPHY



Governor Doug Ducey (R-AZ)

Governor Doug Ducey was elected on November 4, 2014 and was sworn into office on January 5, 2015, becoming Arizona's 23rd Governor.

As governor, Ducey's priorities are growing the economy, creating jobs, improving outcomes in K-12 education and balancing the budget. A champion of limited government, economic development and Arizona businesses and families, Governor Ducey has pledged to work every day to ensure "Opportunity for All."

Prior to taking his oath as governor, Ducey served as Arizona's 32nd state treasurer, a position he held since his oath of office in January 2011. As Arizona's chief banker and investment officer, Ducey managed more than \$13 billion in state assets and served as an investment manager for local governments.

As state treasurer, Ducey notably led the opposition of Proposition 204, a tax increase that would have cost Arizona taxpayers \$1 billion per year. With Ducey's leadership, the proposition was soundly defeated by a nearly two-to-one margin. During his tenure, Ducey also oversaw the Permanent Land Endowment Trust Fund. Under his watch, the trust fund surpassed \$5 billion for the first time, with 90 percent of the earnings allocated toward K-12 education.

Before being elected state treasurer, Ducey was chief executive officer of Cold Stone Creamery. An Arizona-born concept, Cold Stone expanded from a handful of locations to more than 1,400 worldwide under Ducey's management.

Governor Ducey was born in Toledo, Ohio. He moved to Arizona to attend Arizona State University's business school, where he earned his Bachelor of Science in finance in 1986. Governor Ducey and his wife, Angela, live in Phoenix with their three sons, Jack, Joe and Sam.

Procedures for Identifying and Tabulating Unauthorized Immigrants as Defined in the Presidential Memorandum

Briefing
August 17, 2020



Predecisional; internal use only

3

Overview

- Post data collection processing to finalize the Census Unedited File (CUF)
- Presidential Memorandum teams and data stewardship
- Flowchart of steps needed to complete Presidential Memorandum work and timing
- ICE detention centers tabulation
- Admin records available
- Processing the CUF through the Person Identification Validations System (PVS) and matching to admin records
- Rules for assigning status
- Quality assurance of the unauthorized immigrant counts
- Communication strategy decisions

Post Data Collection Processing to Finalize the Census Unedited File (CUF)

- Post data collection processing is a complex operation that includes several divisions (Decennial Census Management Division; Decennial Information Technology Division; Decennial Statistical Studies Division; Geography Division; Population Division; Social, Economic, and Housing Statistics Division) who all have unique roles in the process.
- Example of some of the activities in this operation include:
 - Geocoding all addresses, meaning that it codes each address to the block level so that it is properly reflected in the correct geography. This geography will form a backbone for all remaining processing.
 - Ensuring that responses from households that responded without the unique identifier or who responded from a previously unidentified address are assigned to the correct location.
 - Merging and standardizing the format of data received from different sources, including mail-in, phone, or internet self-responses; nonresponse follow-up information provided to an enumerator; and "special operations" such as group quarters. This includes clerical coding of write-in responses.
 - De-duplicating data from households who may have responded multiple times in order to avoid "double counting." This includes reviewing instances where a household provided different information across multiple responses, and determining what information should be counted as part of the official record.
 - Performing statistical techniques to account for missing housing unit status and household size information.
 - Processing the counts for military and civilian personnel working for the federal government and their dependents living overseas as part of the Federally Affiliated Count Overseas operation.
- At each step of the process, experts conduct and document rigorous quality assurance to look for errors in processing or tabulation, including evaluating the data at multiple levels of geography against benchmark data to ensure demographic reasonableness of data.



Predecisional; internal use only

3

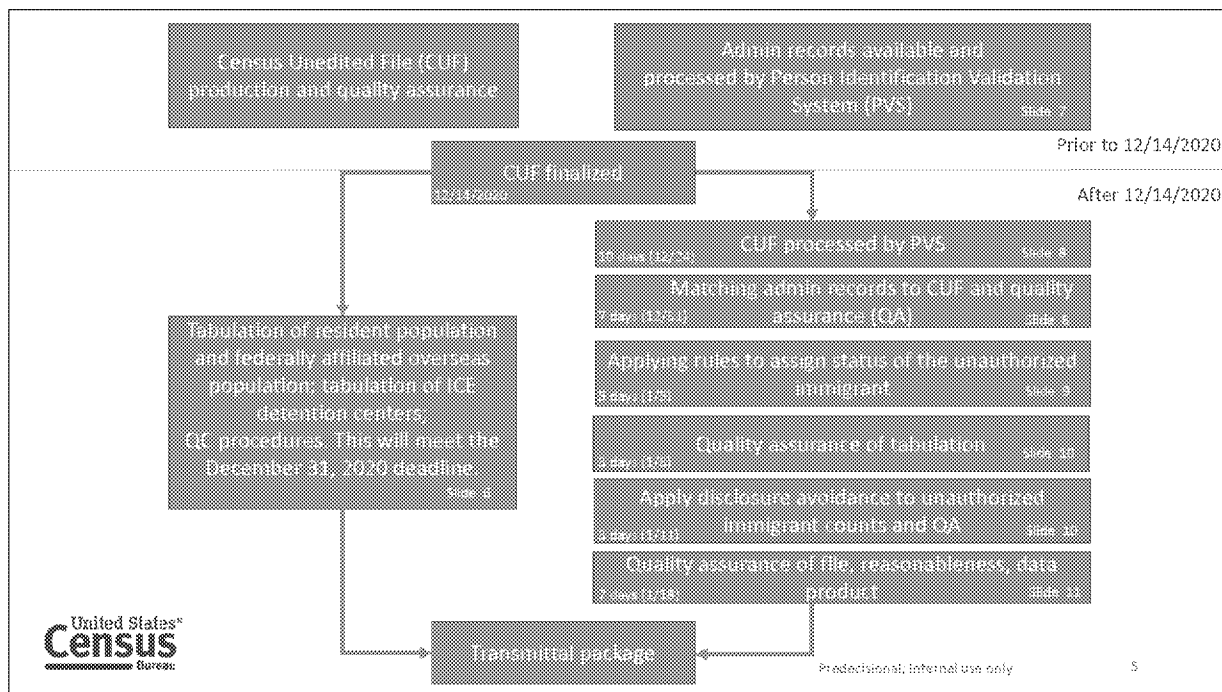
Presidential Memorandum Teams and Data Stewardship

- **Presidential Memorandum (PM) Implementation**
 - **PM Team**
 - Team Leads – Chief Scientist and Chief Demographer
 - Includes experts on admin records, demographers, economists, and statisticians
 - Builds on the experience of the CVAP team for determining methodology and using data sets from the Executive Order 13880
 - **PM Executive Guidance Group (EGG)**
 - Chair – Director
 - Members – Cogley, Jarmin, Abowd, Creech, Fontenot, Jones, Lamas, Smith, and Velkoff
 - EGG provides the charge to the PM team and gives guidance
- **Data Stewardship Executive Policy Committee (DSEP)**
 - **Membership**
 - Chair – Deputy Director/Chief Operating Officer
 - Members – Associate Directors for Decennial, Demographic, Economic, Field, and Research and Methodology; CIO; Chief of Staff; Assistant Directors for Communication and R&M; Chief of PCO; Chief Privacy Officer; two at-large members (Bishop and Lamas)
 - **Mission**
 - Ensures the Census Bureau maintains its commitment, by fulfilling the legal, ethical, and reporting obligations levied by Title 13 of the U.S. Code, the Privacy Act, and other applicable statutes, including those of governmental and other suppliers of data to the Census Bureau



Predecisional; internal use only

4



Tabulating ICE Detention Centers

- Inmates in ICE detention centers were counted as part of the Group Quarters enumeration process.
- When we have the final CUF, we will tabulate these data to create a count of inmates in ICE detention centers for each state.
- This tabulation can be done by the December 31, 2020 deadline.
- We need to make a decision about whether all inmates are unauthorized. In order to distinguish who is unauthorized, record linkage to the CUF is required pushing this past December 31.
- The PM Team will make a recommendation on whether to use admin records for ICE detention centers.

Administrative Record Sources

- The administrative record sources include
 - SSA Numident
 - State Department U.S. passports and Worldwide Refugee Admissions Processing System (WRAPS) refugee data
 - USCIS naturalization certificates, lawful permanent residents, refugees, asylees, Deferred Action for Childhood Arrivals (DACA), Special Immigrant Juveniles (SIJ), and lawful permanent resident pending applicants and denials
 - CBP Arrival and Departure Information Systems (ADIS)
 - ICE Student Exchange Visitor Information System (SEVIS) student and exchange visa holders and Enforcement and Removal Operation (ERO) data
 - Department of Interior Incident Management Analysis Reporting System (IMARS) and Law Enforcement Management Information System (LEMIS) data
 - Personal tax identifiers in the range reserved for Individual Taxpayer Identification Numbers (ITINs), which is public information
- These records will be put through the PVS process to assign Protected Identification Keys (PIK) prior to December and will be ready for matching when the CUF is available.
- We are awaiting delivery of 2 files.
- All MOUs need to be modified to allow tabulation of unauthorized immigrants.

Processing the CUF through the PVS and Matching to Admin Records

- First we process the CUF through the PVS
 - Each of the 50 states plus DC will be run through the PVS programs. The process includes over 20 passes for each state in order to assign PIKs.
 - A team will check the quality of the identifiers and review for any errors due to the PVS process.
 - The final step includes generating the of protected identification keys (PIK) files for each state.
- Next we link the CUF to the admin records
 - We have over two dozen unique administrative record files and each file will be separately compared to the CUF looking for a matching PIK.
 - Pertinent information on authorization status will be maintained on a consolidated file.
 - Once each administrative record file has been processed against the CUF, the data will need to be reconciled for any inconsistencies between administrative record files regarding status.
 - Once those issues are identified and resolved, a final file will be ready for processing.



Predecisional; internal use only

5

Assignment Rules

We will apply a series of rules to individuals who have a match between the CUF and admin records to assign an authorized/unauthorized status as of April 1, 2020.

It is possible for admin records to have multiple statuses for an individual (e.g., people who enter in an unauthorized status can be given legal status such as refugee; a student on a visa could overstay their visa and become unauthorized).

If definitive admin records show that someone is a citizen, we assign this person citizenship status. This is the reason that we must use all admin records in the process.

People will be classified as an unauthorized immigrant if they are enumerated in the census and match to an admin record that has a clear indication that they are here illegally as of April 1, 2020.

For each state and DC, we will only tabulate unauthorized immigrants who link directly to a census record. Records that do not match are out of scope.

Quality Assurance on Assignment Rules and Disclosure Avoidance

- Assignment rules will be independently double-programmed (concurrently) and compared to ensure data quality standards.
- Staff will need to investigate any obvious errors and resolve these issues. Since solving these puzzles is not always straightforward, we estimate this step will take three days.
- We will apply disclosure avoidance and then produce the final table of unauthorized immigrants as defined as in the Presidential Memorandum.

Quality Assurance of the Unauthorized Immigrant Counts

After disclosure avoidance is applied, we will do quality assurance of the tabulated unauthorized immigrant counts:

1. Verify file (e.g., does every state have an count?)
2. Data reasonableness review. Typical process: (1) Compare current-year estimates to prior-year estimates (2) Compare to other, similar estimates (benchmarks).
 - No recent Census Bureau estimates of unauthorized immigrants in decennial censuses.
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No. 20-16868

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
Case No. 5:20-cv-05799-LHK

**OPPOSITION TO MOTION FOR IMMEDIATE ADMINISTRATIVE STAY
PENDING DISPOSITION OF EMERGENCY STAY MOTION**

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September 28, 2020

*Counsel for Plaintiffs-Appellees National Urban League, et al.
(complete list of counsel on signature pages)*

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INTRODUCTION

After multiple rounds of extensive briefing, a thorough review of the partial administrative record, and several lengthy hearings, the district court issued a detailed and comprehensive 78-page decision. That decision stayed and enjoined Defendants from implementing a “Replan” for the 2020 Census. The Replan, thrown together in four days, was contrary to the expert advice of high-level Census Bureau officials and stopped all counting on September 30. The district court’s decision instead returned to the status quo ante: a schedule adopted and implemented by Defendants, after a decade of planning, which would allow counting to continue until October 31. Among other things, the district court found that the Replan’s truncated timeline would cause irreparable harm to Plaintiffs and the public by rushing to a premature and inaccurate close a Census count that would control political representation and trillions of dollars in federal funding for the next decade.

Defendants appeal that decision and move for an emergency stay pending appeal. Plaintiffs will oppose that motion on any schedule ordered by the Court. But Defendants also ask this Court to issue an “immediate administrative stay” that would upend the status quo and end the 2020 Census in *two days*. Through the guise of this “administrative stay,” Defendants seek to obtain the precise end relief they ultimately desire: the ability to end critical Census field operations, to immediately fire upwards of 200,000 Census enumerators who are still working to count millions

of uncounted Americans, and to ensure no practicable hope of restarting the count (as Defendants themselves concede). An administrative stay is wholly inappropriate when it would cause the very harm that the district court's stay and injunction was entered to prevent—harm that could not be fully remedied by a ruling on the stay pending appeal. That alone is reason to deny.

But Defendants also fail to satisfy their burden to show that an administrative stay is warranted under the four-factor test. Defendants do not address, let alone refute, the severe and irreparable harm that Plaintiffs (and the entire nation) will suffer from a count the Bureau has admitted will be incomplete and inaccurate by its own standards if stopped on September 30. Defendants, by contrast, will suffer no irreparable harm from continuing to implement the October 31 deadline the Bureau itself adopted—and they make no meaningful effort to show otherwise. Nor do Defendants even try to justify the fatal flaws in their decision to adopt the Replan. Defendants' arguments begin and end with the December 31 statutory deadline. But Defendants ignore now (as they did then) their competing statutory and constitutional duty to conduct an accurate census. And the December 31 deadline (still three months away) cannot excuse Defendants' utter failure to comply with the minimum standards of reasoned decisionmaking mandated by the Administrative Procedure Act—as the district court explained at length.

The Court should deny Defendants’ request for an immediate administrative stay and order full briefing on Defendants’ emergency motion to stay.

STATEMENT

A. Factual Background

Defendants’ version of the facts bears no resemblance to the actual record in this case as described, in detail, by the district court. Add.2-15.

The Census Bureau spent most of the last decade planning, developing, testing, and re-testing the original operational plan for the 2020 Census. Add.2-3. The Bureau consulted with experts, stakeholders, and partners. Add.3. And the Bureau’s plan was ultimately codified in a 200-page operational plan (“2018 Operational Plan”), as well as detailed plans for each sub-operation, containing precise timelines for each and every operation in the 2020 Census. Add. 3-4.

As relevant here, and consistent with prior censuses, the 2018 Operational Plan determined that the Bureau needed 20.5 weeks (March 12-July 31) for self-response, 11.5 weeks (May 13-July 31) for non-response follow up (“NRFU”), and 22 weeks (August 1-December 31) for data processing. Add.3. NRFU is the “most important census operation to ensuring a fair and accurate count” and is essential for capturing hard-to-count populations (Add.2 (quoting Thompson Decl. ¶15)), including communities of color, low-income individuals, undocumented immigrants, non-English speakers, and persons with mental and physical disabilities. During

NRFU, enumerators go door-to-door to households that have not otherwise responded and also perform quality control checks to ensure that the information provided is accurate. Add.2.

Then in March, just as census season began, the COVID-19 pandemic hit and the Bureau was forced to reevaluate its plan. Add.4. Among the many new challenges, the Bureau was unable to hire and train enumerators to go door-to-door and households were, not surprisingly, unwilling to answer their doors in the midst of a pandemic. Over the course of the next month, the Bureau developed a revised plan, which they announced on April 13 (the “COVID-19 Plan”). Add.6.

The COVID-19 Plan retained the key design choices from the 2018 Operational Plan; it simply adjusted the timeline for operations, ensuring that each was given the same amount of time or more. Add.6-7. As relevant here, the Bureau delayed and slightly expanded the timeline for NRFU, providing that it would last from August 11 to October 31, 2020. Add.6. The Bureau also expanded data processing from 22 weeks to 26 weeks, so that it would end (and apportionment counts would be delivered to the President) by April 30, 2021. Add.7. The additional time was necessary “to account for the pandemic’s disruptions to Bureau operations,” the “public’s ability to respond to the census,” and “the pandemic’s effects on the quality of the data, especially for groups that are less likely to self-respond (often hard to count populations).” Add.6-7 (citation omitted); Add.49

(quoting DOC_265) (26 weeks for data processing represented “as much as we can” compress the schedule “without risking significant impacts on data quality”).

Because the revised timeline extended beyond the December 31 statutory deadline for reporting apportionment counts to the President, the Secretary and the Bureau jointly requested an extension from Congress. Add.7. The President agreed that additional time was essential, but did not think legislation was required. *Id.* (“I don’t know that you even have to ask [Congress]. This is called an act of God. . . . I think 120 days isn’t nearly enough.” (quoting President Trump)).

Over the next four months, Defendants implemented the COVID-19 Plan. And senior “Bureau officials publicly stated that meeting the December 31, 2020 deadline would be impossible.” Add.7; *see* Add.7-9 (collecting statements of Bureau and Commerce officials, as well as documents and recommendations, from April through early July). The consensus was that the completeness and accuracy of the Census in the face of a once-in-a-century-pandemic was what mattered most.

All of that changed when President Trump issued a memorandum on July 21 declaring that it was the United States’ policy to exclude undocumented immigrants from the congressional apportionment base. Add.9. Immediately thereafter, there was a “push to complete NRFU asap.” Add.10 (quoting DOC_7738). In response, high-level Bureau officials repeated what they had said earlier, with even more force. For example, on July 23, Associate Director Olson emphasized the “need to sound

the alarm to realities on the ground,” explaining that “it is ludicrous to think we can complete 100% of the nation’s data collection earlier than 10/13 and any thinking person who would believe we can deliver apportionment by 12/31 has either a mental deficiency or a political motivation.” Add.10 (quoting DOC_7738); *see* Add.9-11 (other similar statements between July 21 and July 29).

Despite these warnings, on July 29, the Secretary “directed” the Bureau “to present a plan at our next weekly meeting on Monday, August 3, 2020, to accelerate the remaining [census] operations in order to meet the statutory apportionment deadline.” Add.107 (¶81). Pursuant to that directive, senior Bureau officials gathered the next day “to begin to formalize a plan to meet the statutory deadline.” *Id.* By the afternoon of July 31, the Bureau had thrown together a plan to truncate both data collection and processing, and spent the next two days reducing the plan to a slide deck. Add.11-12. At the same time, Bureau officials continued to sound the alarm that the accelerated plan would significantly compromise data quality and pose a grave and irreparable risk to the accuracy and completeness of the census. *See* Add.54-59.

On the morning of August 3, the Bureau submitted the final presentation to Secretary Ross. Add.14. It warned that “[a]ll of these activities represent abbreviated processes or eliminated activities that will reduce the accuracy of the 2020 Census,” that the “compressed review period creates risk for serious errors not

being discovered in the data—thereby significantly decreasing data quality,” and that those “serious errors” if discovered “may not be fixed” due to lack of time. Add.55, 58 (citations omitted). Without considering or addressing any of that, the Secretary approved the plan the same day, and the Bureau announced the “Replan” in an August 3 press release. Add.11 (quoting August 3 Press Release).

The Replan drastically cut the timelines for accomplishing the 2020 Census. It required that all data collection conclude on September 30—shortening the time for door-to-door NRFU operations from 11.5 weeks to 7.5 weeks. Add.11-12. Data processing, meanwhile, was cut in half from 26 weeks to 13 weeks, with the deadline advancing from April 30, 2021 to December 31, 2020. Add.12.

Independent agencies and experts—including the Government Accountability Office, the Commerce Department’s Office of Inspector General (“OIG”), and the Bureau’s own Scientific Advisory Committee—repeatedly and recently issued dire warnings that the Replan’s revised timeline poses significant risks to the accuracy, completeness, and reliability of the 2020 Census. Add.12-15 (collecting reports).

B. Procedural Background

Like their factual recitation, Defendants’ version of the procedural history bears little resemblance to that recounted by the district court (Add.15-20) and observed by Plaintiffs. Defendants assert:

That an immediate stay is needed from this Court on an emergency basis is in no small part a byproduct of the district court’s repeated

refusal to issue an appealable order. The court instead enjoined operations for 19 days under temporary restraining orders for the sole purpose of pursuing massive court-initiated discovery under the guise of compiling an administrative record regarding the Bureau's non-final set of scheduling waystations en route to the December 31 statutory deadline.

Stay Mot. 3. That is flat wrong. It was Defendants who refused to produce *any* administrative record in an APA case. It was Defendants who violated court orders requiring such production. And it was Defendants who repeatedly changed their positions, refused to answer the district court's questions, and feigned ignorance of facts in their possession. The district court worked tirelessly on this case and issued every order within 24 to 48 hours. Any delay in moving this case to an appeal was entirely of Defendants' own making.

This suit was filed on August 18, 2020. Because data collection was scheduled to continue until September 30, the parties stipulated to an accelerated briefing schedule that would culminate in a preliminary injunction hearing on September 17, and Plaintiffs filed their motion for a preliminary injunction on August 25. Add.15-16. The next day, the district court held a case management conference, at which "Defendants repeatedly denied the existence of an administrative record." Add.16 (quoting transcript). Nonetheless, the court instructed Defendants that "[i]f there's an administrative record, it should be produced." Add.16 (quoting transcript). The court also ordered Defendants to

provide the date upon which the Bureau planned to wind down field operations, to assess how quickly a ruling was needed. Add.126-27.

A week later, on September 2, Defendants informed the court they had already begun winding down field operations—nearly a month before September 30 and three weeks after starting NRFU in most of the country. Add.127. This early wind down would have left the court practically incapable of granting effective relief after the September 17 hearing to which the parties jointly agreed. With no other options, Plaintiffs immediately moved for a temporary restraining order (“TRO.”). Add.127.

At the September 4 TRO hearing, Defendants told the district court that it should wait to review the declaration of Associate Director Albert Fontenot before ruling. But that declaration, once filed, only confirmed the need for a TRO. It revealed that field operations could start closing on September 11 region-by-region regardless of the completion rate; that the Bureau had already started terminating enumerators; and that it would be extremely difficult to restart field operations once they had been shut down. Add.112-13 (¶¶95-98). After finding “serious questions” on the merits, a likelihood of irreparable harm, and that the equities tipped “sharply” in favor of Plaintiffs, the court granted a 12-day TRO to preserve the status quo and prevent Defendants from shutting down data collection before September 17. Add.116-22.

Defendants, at that same hearing, also “reiterated their position that no administrative record existed,” but for the first time “disclosed that there were documents considered by agency decisionmakers at the time the Replan was adopted.” Add.16. But Defendants insisted that the court must rule on their threshold arguments before ordering production of the administrative record. Add.129. After full briefing, the district court rejected their threshold arguments and ordered a phased initial production. Add.17. In particular, the court ordered that the most crucial portions of the administrative record be produced on September 13 and 16, before the September 17 hearing. Add.17.

Defendants did not comply. On the date of the first production, Defendants reviewed only 25% of the responsive documents, stopped that review 12 hours short of the deadline, claimed privilege over the vast majority of the documents, and later informed the court they would be unable to meet the second deadline as well. Add.18, 130. But rather than sanction Defendants and order the record produced immediately, the court instead allowed them to produce a subset of the record (for purposes of the preliminary injunction) comprising only those documents previously provided to OIG. Add.18-19. With the TRO set to expire within 48 hours, and still no administrative record, the court granted a short extension and rescheduled the preliminary injunction hearing for September 22. Add.123-40.

Defendants complied with this new production order and the (still limited) administrative record was finally produced on September 19, 20, and 21. Add.20. On September 22, the court held the preliminary injunction hearing. *Id.* Two days later, it issued a 78-page decision granting the preliminary injunction. Add.1-78. The following day, the court denied a stay pending appeal. Dkt. No. 212.

ARGUMENT

“A stay is an ‘intrusion into the ordinary process of administration and judicial review,’ and accordingly ‘is not a matter of right, even if irreparable injury might otherwise result to the appellant.’” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (citations omitted). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the Court’s] discretion.” *Id.* at 433-34. In deciding whether to grant a stay, the Court considers four factors: “(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* at 434 (citation omitted). A temporary or “administrative” stay “is only intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered on the merits.” *Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019). Defendants fall far short of satisfying their burden.

A. Any “Administrative Stay” Would Upend The Status Quo

Defendants’ request for an administrative stay “would not preserve the status quo: it would upend it.” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 778 (9th Cir. 2018). For months now, the Census Bureau has been employing hundreds of thousands of enumerators, conducting field operations, and engaging in data collection. That was true under the COVID-19 Plan (which continued data collection until October 31), and it remained true under the Replan (which would have ended data collection on September 30). Before and after the TRO, issued weeks before the September 30 end date, the Bureau was and is still counting.

Defendants have not denied that if this Court were to stay the district court’s order they would *immediately* shut down operations and would stop counting entirely by September 30. *See* Stay Mot. 3 (complaining that district court’s order “requires the Bureau to continue field operations beyond September 30”). And Defendants certainly do not suggest they could or would restart field operations once halted, no matter the outcome of this litigation. Defendants ask this Court to upend the status quo and bring data collection to a crashing halt—the exact opposite of what an administrative stay is intended to do. That is reason enough to deny.

B. Defendants Cannot Satisfy Their Burden

Plaintiffs welcome the opportunity to fully brief the reasons why Defendants cannot satisfy their burden under the four-factor test when this Court sets a briefing

schedule on the emergency motion for a stay pending appeal. But those factors also demonstrate why an administrative stay is wholly inappropriate here.

1. An Administrative Stay Will Inflict Serious And Irreparable Harm On Plaintiffs And The Public

Plaintiffs and the public will suffer serious and irreparable harm if an administrative stay is granted. An inaccurate count will lead to a loss of critical funding and political rights for Plaintiffs, their residents, and their members. Add.23-27. And as noted, *supra* at 12, a stay would allow Defendants to stop counting *two days* from today. Freed from the district court’s order, Defendants would immediately stop “assigning new reinterview cases” and engaging in other “quality assurance” checks. Add.145 (¶10) (“If we were not under the TRO, we would have ceased assigning reinterview cases, SRQA (Self Response Quality Assurance) cases, and field verification cases.”). They would reduce the number of visits to housing units. Add.147 (¶13). And they would immediately start to terminate enumerators and other field operations staff. Add.113 (¶98).

As the district court explained, “termination of data collection is practically irreversible.” Add.35. To that point, Associate Director Fontenot specifically declared that “[l]ack of field staff would be a barrier to reverting to the COVID Schedule”; that “[t]he Census Bureau begins terminating staff as operations wind down, even prior to closeout”; and that “[i]t is difficult to bring back field staff once we have terminated their employment.” Add.75 (quoting Sept. 5 Fontenot Decl.

¶98). If Defendants’ administrative stay is granted, there will be no time to rule on the emergency motion for stay before that harm is inflicted. In other words, even if Plaintiffs prevail, Defendants will have obtained a ruling that permits the Bureau to achieve their goal of concluding data collection by September 30. And there will be no time for Congress to extend the December 31 deadline (still three months away).¹

Tellingly, Defendants never dispute that data collection will *not* be complete (as measured by the Bureau’s own standards) before September 30. Nor could they. The Bureau’s benchmark for an “acceptable level of accuracy” for the 2020 Census requires resolution of “at least 99% of Housing Units in *every state*.” Add.11 (quoting DOC_10275-76) (emphasis added). That has been the historic benchmark as well and, in the past, when the Bureau has fallen short by the end of the scheduled data collection period, they have extended field operations to complete the count.²

¹ The House has already passed a bill to extend the deadlines, and the Senate is currently considering a similar bill with bipartisan support. *See* H.R. 6800, 116th Cong., § 70201 (passed May 15, 2020); S. 4571, 116th Cong. (introduced Sept. 15, 2020); Hansi Lo Wang, *Bipartisan Senate Push to Extend Census Begins Weeks Before Count Is Set to End*, NPR (Sept. 15, 2020), <https://www.npr.org/2020/09/15/913163016/bipartisan-senate-push-to-extend-census-begins-weeks-before-count-is-set-to-end>; *see also* Press Release, *Murkowski Welcomes Court Ruling Moving 2020 Census Deadline Back to Late October* (Sept. 25, 2020), <https://www.murkowski.senate.gov/press/release/murkowski-welcomes-court-ruling-moving-2020-census-deadline-back-to-late-october>.

² Census Bureau, U.S. Dep’t of Commerce, *1990 Census of Population and Housing—History* (1990), <https://www.census.gov/history/pdf/1990proceduralhistory.pdf>; *1990 Census Coverage Evaluation Operations: Hearing Before the Comm. on Post Office and Civil Service*, 101st Cong. 75-76 (1990) (statement of

But as of September 27, only 16 states have hit 99% and 6 states are at or below 95%.³ With only two days remaining, that is a significant shortfall—even putting to one side the harm to the accuracy of data obtained from Defendants’ rushing the count, as well as considerably lower resolution rates in areas within states with large hard-to-count populations.⁴

All of this mirrors Defendants’ own statements. On September 11, Mr. Fontenot declared that the Bureau was “facing significant risks to complete all states by September 30.” Add.147 (¶14). On September 17, he told the Census Advisory Committee that he “did not know whether Mother Nature would allow us to meet the September 30 date.” *Id.* And, on September 22, he reaffirmed that his “concerns in this regard continue.” *Id.* That Defendants continue to insist that the count immediately end *regardless* only reinforces the very real, imminent, and irreparable harm an administrative stay would cause.

Prof. Eugene P. Ericksen, Temple University), <https://www.loc.gov/law/find/hearings/pdf/00183650932.pdf>.

³ See Census Bureau, *2020 Census Self-Response By State* (Sept. 27, 2020 Report Date) <https://2020census.gov/content/dam/2020census/news/daily-nrfu-rates/nrfu-rates-report-09-27.pdf>.

⁴ Even these completion numbers are likely misleading, as Defendants have repeatedly downgraded their definition of what processes are required to “complete” counting a household. See Prelim. Injunction Reply Ex. 32 at 2, Dkt. No. 131-18 (acknowledging Defendants were forced to downgrade “completion” rate “due to cases that were reopened” following the TRO).

2. Defendants Will Suffer No Irreparable Harm Without An Administrative Stay

Defendants, in contrast, cannot show they will suffer irreparable harm from the district court's stay and injunction. Defendants' (very limited) articulation of the harm is as follows: (1) the Bureau cannot start data processing until after completing data collection, and it cannot compress data processing any further than it already has; (2) under the district court's decision, the Bureau must revert back to the COVID-19 Plan and, as such, must continue data collection until October 31; and (3) if the Bureau has to keep counting until October 31, it cannot possibly meet the December 31 deadline. Stay Mot. 19-20. But that does not explain how the relief *granted* by the district court—which stays the Replan's December 31 deadline—harms Defendants. The only possible harm would come from this Court *staying* that relief. *Only then* would the Bureau be in the difficult position of having to complete data collection in two days (when it is already far behind where it needs to be), and rushing data processing to finish by December 31.

Nor can Defendants articulate what harm (irreparable or otherwise) they would suffer from the Bureau's failure to meet the Census Act's December 31 deadline. That is unsurprising: the district court's order simply restores the status quo ante and allows the Bureau's own previously adopted deadline of April 30, 2021 in the COVID-19 Plan to become operative once again. The Bureau is already on record saying, repeatedly, that it cannot complete an accurate census by December

31. *See, e.g.*, Add.7-9. And the duty to conduct an accurate count is itself a statutory requirement—and one with constitutional valence. *See* Part B.3, *infra*.

3. Defendants Have Not Made A Strong Showing That They Are Likely To Succeed On The Merits

On the merits, Defendants cannot make a strong showing that they are likely to succeed. It is worth noting, at the outset, that Defendants have now abandoned most of the “threshold” arguments they rested on below. For good reason. As the district court explained, similar arguments have been routinely and recently rejected in census cases and are similarly misplaced here. *See* Add.21-44.⁵

As the district court also explained, at length, Defendants failed to comply with the APA’s minimum standards of reasoned decisionmaking—five times over. Add.44-74. The administrative record (1) shows that Defendants did not consider key aspects of the problem before them, including “how the Replan would feasibly

⁵ Defendants do not ground their assertion that there are no “judicially manageable or enforceable standards of census accuracy” in any particular doctrine. Stay Mot. 14. But that argument fails regardless. The Supreme Court confirmed just last year that the Census Act is not “drawn so that it furnishes no meaningful standard” of review—that is, despite the “broad authority [conferred] on the Secretary” the Act does “not leave his discretion unbounded” and “constrains” his authority in important respects. *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2568 (2019). And neither the district court nor this Court is required to “evaluat[e] a particular census plan” for accuracy. Stay Mot. 14. The district court considered only whether Defendants had adequately explained their decision to adopt the Replan knowing that *the Bureau itself* had warned that the Replan would create grave risks to the census’s accuracy, and without offering any countervailing justification or considering the various aspects of the problem as required by the APA.

protect the same essential interests that the Bureau had identified”; (2) “belies Defendants’ claim that Congressional inaction on the deadline justified the Replan”; (3) demonstrates that Defendants “failed to consider” the alternative course of “not adopting the Replan while striving in good faith to meet statutory deadlines”; (4) makes clear that Defendants failed to articulate a satisfactory explanation for the Replan or “explain why they disregarded the facts and circumstances that underlay their previous policy: the COVID-19 Plan”; and (5) proves that Defendants failed to “consider the reliance interests” engendered by the previous policy. Add.57-71.

And although the district court did not reach Plaintiffs’ Enumeration Clause claim (Add.44), Defendants cannot make a strong showing of success on that claim either. The Replan does not bear a “reasonable relationship to the accomplishment of an actual enumeration of the population,” *Wisconsin v. City of New York*, 517 U.S. 1, 20 (1996), and it would require the Bureau to use statistical imputation in ways that cannot be squared with the Constitution’s requirements, *see Utah v. Evans*, 536 U.S. 452, 472-79 (2002).

Defendants offer no meaningful response to any of that. Instead, their entire merits argument is trained on the Census Act’s statutory deadline. But as the district court spent nearly 30 pages explaining, that is no excuse for violating the APA. Add.46-74. Agencies should, of course, strive to comply with statutory deadlines—and no one is “cavalierly” suggesting otherwise. Stay Mot. 20. But the mere

existence of a statutory deadline does not free an agency from considering its *other* statutory—and constitutional—obligations, such as the duty to conduct “a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2568-69 (2019) (citation omitted); *see also Utah v. Evans*, 536 U.S. at 478. Nor does it free an agency of its duty to consider key aspects of the problem before it, explain its decisions in ways consistent with the evidence, justify departures from previous policy, consider alternatives, or take account of reliance interests. Defendants do not deny that they did none of the above.

Defendants’ insistence that the Replan was adopted to meet the December 31 deadline because Congress failed to act also “runs counter to the facts.” Add.63. Those facts “show not only that the Bureau could not meet the statutory deadline, but also that the Bureau had received pressure from the Commerce Department to cease seeking an extension of the deadline.” *Id.* And Defendants’ current view that it would be unlawful for the Secretary to report after the statutory deadline—no matter the circumstances, no matter the accuracy of the count, no matter the costs—similarly finds no support in the record. The reality is that agencies *do* miss statutory deadlines for far less weighty reasons than the need to complete the critically important, difficult, and constitutionally mandated work of a decennial census that will dictate apportionment, redistricting, and over a trillion dollars in federal funding

for the next decade—during a once-in-a-lifetime global pandemic. *See* Add.64-67 (citing cases). The APA does not allow the Secretary to turn a blind eye to that reality and to the Bureau’s own repeated and unequivocal view that the statutory deadline *must* yield in these extraordinary circumstances.

Defendants also fail to cast doubt on the district court’s holding that they were required to consider the alternative policy of “not adopting the Replan while striving in good faith to meet statutory deadlines.” Add.64. In *Department of Homeland Security v. Regents of the University of California*, the Supreme Court vacated the DHS Secretary’s recession of DACA despite the Attorney General’s conclusion that the program was illegal and must be rescinded on that basis. 140 S. Ct. 1891, 1911 (2020). The Supreme Court declined to rule on whether that determination of illegality was correct because, even if it were, the Secretary had still violated the APA by failing to consider important aspects of the decision and possible alternatives to complete rescission. *Id.* This case is stronger still because, unlike *Regents*, there is no contemporaneous statement declaring that the COVID-19 Plan is or would become unlawful as of December 31. But even had such a determination been made, it would not excuse Defendants from complying with the APA—particularly given Defendants’ competing statutory and constitutional obligations.

Defendants seek to dismiss all of this by noting that *Regents* concerned the “wind down of an enforcement policy adopted by the agency *as a matter of*

discretion.” Stay Mot. 13-14. But that is true here, too. As the district court explained, Defendants could have continued to operate under the COVID-19 Plan while striving to meet statutory deadlines; could have “taken measures short of terminating the census early” such as undertaking “good faith efforts to meet the deadline coupled with an operational plan that would—at least in the Bureau’s view—generate results that were not ‘fatal[ly]’ or ‘unacceptabl[y]’ inaccurate”; or could have selected a plan that would balance the statutory and constitutional directive to conduct an accurate census with the statutory directive to complete such a census by a particular deadline. Add.64 (citation omitted; alterations in original). That Defendants did not even *consider* these alternatives is, again, undisputed.

Finally, Defendants’ rhetoric to the side, this is not a broad programmatic attack on the internal operations of the Bureau, and the remedy ordered by the district court does not require “hands-on” management of the 2020 Census. Add.30. The district court merely granted the run-of-mine remedy for an APA violation that stays the unlawful action (the Replan) and, returning to the status quo ante, allows the *Bureau’s* previously adopted COVID-19 Plan to govern in the interim. This Court should not accept Defendants’ invitation to override the Bureau’s own expert judgment on what was needed to accomplish a complete and accurate census, or the district court’s determination that the Secretary did not follow the most basic procedural steps in adopting the Replan. And it certainly should not do so in the

form of an “administrative stay” that would enable Defendants to immediately end data collection and fire enumerators in ways that would be practically impossible to reverse—causing irreparable harm to Plaintiffs and the nation for the next decade.

CONCLUSION

The Court should deny Defendants’ motion for an administrative stay.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion response complies with the type-volume limitation of Circuit Rules 27-1(1)(d) and 32-3(2) because the document contains 5,195 words according to the count of Microsoft Word, excluding the parts of the brief exempted by Federal Rules of Appellate Procedure 27(a)(2)(B) and 32(f) and Circuit Rule 27-1(1)(d).

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